



GOVERNOR'S OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

February 18, 2025

**VIA ELECTRONIC FILING**

Administrative Law Judge John M. Coogan  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
[jcoogan@pa.gov](mailto:jcoogan@pa.gov)

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 Judge Coogan:

Enclosed please find the Commonwealth of Pennsylvania, Department of Environmental Protection's Brief in Support of the Office of Consumer Advocate's Petition for Issuance of an Interim Emergency Order.

Copies are being served on all parties of record per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me at (570) 321-6568 or [achaplin@pa.gov](mailto:achaplin@pa.gov).

Sincerely,

Amanda K. Chaplin  
Assistant Counsel

Enclosure (Brief)

c: Secretary Rosemary Chiavetta (w/ enc.)  
Parties (w/ enc.)

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**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation & Enforcement	:	
Petition to Request the Commission Open	:	P-2024-3051313
Section 529 Investigation into the	:	
Acquisition of Rock Spring Water Company	:	

**COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL PROTECTION’S  
BRIEF IN SUPPORT OF THE OFFICE OF CONSUMER ADVOCATE’S  
PETITION FOR ISSUANCE OF AN INTERIM EMERGENCY ORDER**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), by and through its undersigned counsel, and respectfully submits this Brief in Support of the Petition of the Office of Consumer Advocate (“OCA”) for Issuance of an Interim Emergency Order requesting the appointment of a receiver for the Rock Spring Water Company:

**STATEMENT OF THE CASE**

Rock Spring Water Company (“Rock Spring”) is a public utility that owns and operates a public water system within Ferguson Township, Centre County, Pennsylvania at 1750 Tadpole Road, Pennsylvania Furnace, Pennsylvania 16865. Rock Spring’s public water system serves approximately 1,000 people with approximately 494 connections. Rock Spring has routinely failed to address its excessively high, unaccounted-for water loss since 2006.

On September 20, 2024, the Pennsylvania Public Utility Commission (“PUC”) directed its Investigation and Enforcement division (“I&E”) to open an investigation into whether the PUC should order a capable public utility to acquire Rock Spring pursuant to Section 529 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 529, at PUC docket number P-2024-3051313.

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.

The PUC issued a Hearing Notice on October 11, 2024, scheduling a telephonic prehearing conference for Wednesday, October 30, 2024, at 10:00 a.m. and assigning Administrative Law Judge John M. Coogan (“ALJ Coogan”) as the Presiding Officer. ALJ Coogan issued a Prehearing Conference Order on October 15, 2024, setting forth rules that govern the prehearing conference.

Aqua Pennsylvania, Inc. (“Aqua”), State College Borough Water Authority (“SCBWA”), and the Department each filed Petitions to Intervene on October 15, 2024, October 21, 2024, and October 28, 2024, respectively. On October 23, 2024, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention.

The Department, I&E, OCA, OSBA, PAWC, Aqua, SCBWA, and Veolia Water Pennsylvania, Inc. (“Veolia”) filed their respective prehearing memoranda on October 28, 2024.

On October 30, 2024, ALJ Coogan conducted a prehearing conference. The Department, I&E, OCA, OSBA, PAWC, Aqua, SCBWA, and Veolia appeared with counsel. Rock Spring’s president, J. Roy Campbell, appeared without counsel.

ALJ Coogan issued Prehearing Order #1 on November 5, 2024, which set forth procedural rules and deadlines for this case.

On November 11, 2024, Ferguson Township filed a Petition to Intervene. ALJ Coogan then issued Prehearing Order #2 on December 2, 2024, which granted Ferguson Township’s Petition to Intervene.

Counsel entered their appearance for Rock Spring on December 10, 2024. On December 13, 2024, Rock Spring and SCBWA entered into a letter of intent to negotiate the sale of Rock Spring to SCBWA for \$65,000.00.

On January 13, 2025, Rock Spring's counsel filed an Emergency Petition for Appointment of a Receiver in the Court of Common Pleas of Centre County ("Court of Common Pleas"), at Docket Number 2025-CV-0064-CI, asking the Court to immediately appoint SCBWA as a receiver for Rock Spring due to the severe state of deferred maintenance and numerous leaks presenting a clear and present danger to its customers.

The Court of Common Pleas issued a Rule to Rock Spring on January 13, 2025, ordering Rock Spring to Show Cause why the relief requested in the Emergency Petition for Appointment of a Receiver should not be granted and scheduling a hearing for January 22, 2025.

On January 15, 2025, the PUC issued a Telephonic Hearings Notice confirming the dates of the telephonic hearings scheduled for April 29-30, 2025, providing methods of access to the hearings, and setting forth rules that govern the hearings, at PUC Docket Number P-2024-3051313.

The PUC's Law Bureau filed a Petition for Intervention with the Court of Common Pleas, at Docket Number 2025-CV-0064-CI on January 22, 2025. That same day, Rock Spring's counsel filed a Motion for Continuance of the Emergency Petition for Appointment of a Receiver.

On January 23, 2025, the Court of Common Pleas granted Rock Spring's Motion for Continuance and rescheduled the hearing for January 30, 2025.

On January 30, 2025, the Court of Common Pleas held a hearing on Rock Spring's counsel's Emergency Petition for Appointment of a Receiver and the PUC's Law Bureau's Petition

to Intervene. At the conclusion of the hearing, the Court ordered the parties to file briefs by 5:00 p.m. on January 31, 2025.

The PUC's Law Bureau filed a Motion to Dismiss the Emergency Petition for Appointment of a Receiver and a memorandum of law arguing that the PUC has jurisdiction over the matter rather than the Court of Common Pleas as Rock Spring is a regulated public utility on January 31, 2025. Counsel for Rock Spring also filed a Brief in Support of Emergency Petition to Appoint a Receiver. On February 5, 2025, the Court of Common Pleas denied Rock Spring's counsel's Emergency Petition for Appointment of a Receiver and granted the PUC Law Bureau's Motion to Dismiss due to the Court of Common Pleas' lack of jurisdiction to appoint a receiver.

On February 6, 2025, the OCA filed a Petition for Issuance of an Interim Emergency Order, at PUC Docket Number P-2024-3051313, asking the PUC to immediately appoint a receiver for Rock Spring due to Rock Spring's inability to provide safe, adequate, and reasonable water services to its customers.

On February 7, 2025, ALJ Coogan issued a Prehearing Order for Telephone Hearing Regarding Petition for Issuance of an Interim Emergency Order, and the PUC issued a Telephonic Hearing Notice, scheduling an evidentiary hearing on the Petition for Issuance of an Interim Emergency Order for February 14, 2025, providing methods of access to the hearing, and setting forth rules that govern the hearing.

Rock Spring's counsel filed an Answer to the Petition for Issuance of an Interim Emergency Order specifically requesting that SCBWA be appointed receiver on February 7, 2025. On February 11, 2025, the Department filed an Answer to the Petition for Issuance of an Interim Emergency Order supporting OCA's request to appoint a receiver for Rock Spring. On February 11, 2025, PAWC filed an Answer to the Petition for Issuance of an Interim Emergency Order indicating that

SCBWA is the best choice for receiver and proposing a solution for coordinated orders between the PUC and the Centre County Court of Common Pleas to appoint SCBWA as receiver. On February 13, 2025, SCBWA filed an Answer and New Matter to the Petition for Issuance of an Interim Emergency Order indicating the conditions under which it would be willing to act as receiver for Rock Spring.

ALJ Coogan conducted an evidentiary hearing on the Petition for Issuance of an Interim Emergency Order on February 14, 2025. ALJ Coogan accepted into evidence written witness testimony and various exhibits submitted by the Department, I&E, PAWC, OCA, and Aqua. SCBWA also presented oral testimony at the hearing. That same day ALJ Coogan issued a Briefing Order on Petition for Interim Emergency Order, which requires that any briefs in this matter be submitted by February 18, 2025.

### **SUMMARY OF THE ARGUMENT**

The PUC should grant OCA's Petition for Issuance of an Interim Emergency Order and appoint a receiver for Rock Spring as the current operator is incapable and unwilling to repair the water system and has put Rock Spring's customers at unnecessary risk. The evidence demonstrates 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; and (4) the relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b).

SCBWA is the most logical choice for receiver as it is the closest in proximity and best staffed to operate Rock Spring, and SCBWA is financially, managerially, and technically capable of acquiring and operating Rock Spring. 66 Pa. C.S. § 529(a)(5).

The PUC can coordinate with the Centre County Court of Common Pleas to issue orders appointing SCBWA as receiver under the doctrine of primary jurisdiction and has exercised such

coordination in similar circumstances. *See Joint Petition of Pennsylvania-American Water Company and the Department of Environmental Protection Requesting an Ex Parte Emergency Order in Regard to Receivership of East Dunkard Water Authority*, P-2023-3043950.

## **ARGUMENT**

### **I. THE PUC SHOULD APPOINT A RECEIVER FOR ROCK SPRING WATER COMPANY.**

The PUC should grant OCA's Petition for Issuance of an Interim Emergency Order and immediately appoint a receiver for Rock Spring, as Rock Spring is both incapable and unwilling to repair the water system and bring it back into compliance and, therefore, has put its customers at unnecessary risk. An interim emergency order is an interlocutory order issued by a presiding officer which is immediately effective and grants injunctive relief during the pendency of a proceeding. *See* 52 Pa. Code § 3.1. An emergency is 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 public meeting. *Id.* A petition for an interim emergency order must be supported by a verified statement of facts which establishes the existence of the need for interim emergency relief, including facts to support the following: (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. *See* 52 Pa. Code § 3.6(b).

#### **A. The petitioner's right to relief is clear.**

The OCA's right to relief is clear because the evidence put forward by the parties raises several substantial legal questions concerning Rock Spring's ability to operate the water system. The basis for determining whether a petitioner has met this standard is whether the petitioner has raised "substantial legal questions." *Birdsboro Kosher Farms Corp. Birdsboro Kosher Meats, LLC, & Pwch LLC*, C-2021-3026163, 2021 WL 2911805, at \*1 (July 7, 2021), (quoting *T.W. Phillips*

*Gas and Oil Company v. The Peoples Natural Gas Company*, 492 A.2d 776 (Pa. Cmwlth. 1985)). The inquiry into whether this standard has been met does not require a determination of the merits of the underlying controversy. *Id.*

The OCA and other intervening parties have raised substantial legal questions as to whether Rock Spring is in violation of the PUC's regulations. Under the PUC's regulations, Rock Spring is required to furnish and maintain adequate, efficient, safe, and reasonable service, and facilities. *See* 66 Pa. C.S. § 1501. Rock Spring is also required to make all repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *Id.* Additionally, Rock Spring is required to provide reasonably continuous service without unreasonable interruptions or delay. *Id.*

At the hearing, the parties presented evidence that Rock Spring is not capable of providing continuous and safe water delivery services to its patrons. *See* DEP Statement No. 1, Direct Testimony of Nathan White at pp. 4 and 16, and DEP Exhibit 15. Department witness, Nathan White, testified to the numerous violations found during inspections between November 2023 and September 2024, which included several significant deficiencies including not repairing a leak for six months. *See* DEP Statement No. 1, Direct Testimony of Nathan White at pp. 9-10. *See also* DEP Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12. Mr. White also testified that J. Roy Campbell does not follow the Department's loss of positive pressure policy which requires the issuance of a Tier 1 Boil Water Advisory. *See* DEP Statement No. 1, Direct Testimony of Nathan White at pp. 7, 10, 12, 13, 14, 15 and 17. *See also* DEP Exhibit 13. According to Mr. White, every time J. Roy Campbell made a process control decision to create a loss of positive pressure in the distribution

system without issuing the Boil Water Advisory, he put the public health of the affected customers at risk. *See* DEP Statement No. 1, Direct Testimony of Nathan White at p. 17.

The Department also has difficulty reaching J. Roy Campbell when violations are observed at Rock Spring, as phone calls will commonly be unanswered and forwarded to a full voicemail box. *See* DEP Statement No. 1, Direct Testimony of Nathan White at p. 3. This occurred as recently as January 21, 2025, during a low chlorine event in the water system that needed to be addressed immediately. *Id.* Furthermore, J. Roy Campbell has indicated that Rock Spring does not have the financial capacity to perform the necessary waterline replacements. *Id.* at p. 16.

The parties also established that Rock Spring is not making necessary repairs or improvements to the water system. *Id.* Rather than make necessary repairs to bring the system back into compliance when pressed by the Department, Rock Spring's president and operator, J. Roy Campbell, would instead claim he is going to sell the water system. In fact, after a meeting discussing the extent of the work needed to repair the water system to comply with the Commonwealth Court's Orders requiring Rock Spring to identify a final waterline replacement project, Rock Spring sent a cryptic email indicating it was retiring. *See* DEP Statement No. 2, Direct Testimony of Sasha Minium at pp. 6-7, and DEP Exhibit 36.

Additionally, the parties presented evidence that Rock Spring cannot timely and adequately address another significant deficiency in the water system, such as a main break. *See* DEP Statement No. 1, Direct Testimony of Nathan White at pp. 16-17. Therefore, the parties have raised numerous substantial legal questions to the PUC about Rock Spring's ability to operate the water system.

**B. The need for relief is immediate.**

The need for the appointment of an interim receiver is immediate for the Rock Spring water system to ensure its customers receive continuous access to safe drinking water. According to PUC jurisprudence, the need for relief is not immediate where the complaint of events is not imminent, or likely to occur. *Venango Water Co. %bf Ex Parte Emergency Ord. Naming Aqua Pennsylvania, Inc. As Receiver Section 529 Investigation of Venango Water Co. Section 529 Investigation of Sugarcreek Water Co., W. Hickory Water Co., Plumer Water Co., Fryburg Water Co., Cooperstown Water Co. & Blaine E. Rhodes Sewer Co.*, I-2023-3042312, 2024 WL 4723210, at \*13 (Oct. 30, 2024) (citing *Application of Fink Gas Company for Approval of the Abandonment of Service by Fink Gas Company to 22 Customers Located in Armstrong County, Pennsylvania, and the Abandonment by Fink Gas Company of all Natural Gas Services and Natural Gas Distribution Services*, A-2015-2466653, 2015 Pa. PUC LEXIS 408, \*21-22 (Order entered August 20, 2015)). In the case at hand, the need for relief is immediate as the Rock Spring water system continues to deteriorate due to the lack of repair by its current operator.

Rock Spring's numerous violations with the Department demonstrates the immediate nature of the underlying claims as it is clear Rock Spring's current operator cannot and will not address the water system's high volumes of accounted-for water loss. The Department entered into a Consent Order and Agreement with Rock Spring on June 20, 2006, to address the water system's excessive water loss and Rock Spring's failure to properly operate and maintain its distribution system. The Consent Order and Agreement required Rock Spring to, in part: (1) submit to the Department a Corrective Action Plan ("CAP") outlining a comprehensive leak-detection program that would reduce its unaccounted-for water loss to 30% or less; and (2) timely implement the CAP. Rock Spring submitted a CAP in August 2006 which outlined a plan and schedule to reduce

Rock Spring's unaccounted-for water loss to less than 30% by September 31, 2010. If the unaccounted-for water loss was still greater than 30% by that deadline, Rock Spring would be required to begin a waterline replacement project, including design and completion, by no later than August 31, 2011. The Department approved the CAP. *See* DEP Exhibit 19.

Rock Spring failed to reduce its unaccounted-for water loss by September 31, 2010, and failed to begin a waterline replacement project by August 31, 2011. The Department issued an Administrative Order on August 27, 2018, pursuant to the Pennsylvania Safe Drinking Water Act, Act of May 1, 1984, P.L. 206, *as amended*, 35 P.S. §§ 721.1-721.17, which ordered Rock Spring to, in part: (1) submit to the Department a CAP, drafted by a professional engineer, which schedules Rock Spring's plans to reduce the public water system's unaccounted-for water loss within five years; (2) submit quarterly progress reports to the Department detailing Rock Spring's progress in adhering to the CAP; and (3) successfully reduce the unaccounted-for water loss to a running average of 30% or less within five years. *See* DEP Exhibit 20. Rock Spring submitted a CAP to the Department on March 28, 2019, and made revisions on April 17, 2019. The Department approved the CAP and revisions on April 24, 2019, which required Rock Spring to, in part: (1) identify a waterline project to address the unaccounted-for water loss should the unaccounted-for water loss still be greater than 30% by December 2021; and (2) have all necessary easements and permits in place for the waterline project by December 2022. *See* DEP Exhibit 22.

Rock Spring failed to reduce the unaccounted-for water loss to 30% or less by December 2021, failed to identify a waterline project addressing the water loss by December 2021, and failed to have all necessary easements and permits in place for the waterline project by December 2022. The Department sent a Notice of Violation to Rock Spring on January 3, 2023, notifying Rock Spring of its failure to comply with the Administrative Order and the CAP. *See* DEP Exhibit 26.

The Department filed a Petition to Enforce Administrative Order (“Petition”) before the Commonwealth Court of Pennsylvania (“Commonwealth Court”) on October 4, 2023, due to Rock Spring’s failure to comply with the Administrative Order and the CAP, and Commonwealth Court scheduled an evidentiary hearing for January 18, 2024. Rock Spring failed to appear for the January 18, 2024, hearing, failed to hire legal representation for the hearing, and failed to file an answer to the Petition. The Commonwealth Court entered an Order granting the Department’s Petition on January 18, 2024, which required Rock Spring to, in part: (1) submit to the Department within 90 days a written report, drafted by a professional engineer, which identifies a final waterline replacement project, identifies any and all previous work done to implement the final waterline replacement project, includes the results of all previous leak detection surveys, includes the results of any and all complete system evaluations, and includes all documentation proving that easements and permits are in place for the waterline project; (2) complete construction of the final waterline replacement project and reduce unaccounted-for water loss to 30% or less on a running annual average basis by December 31, 2024; and (3) fully comply with the terms and conditions of the Administrative Order and CAP. *See* DEP Exhibit 31.

Rock Spring failed to submit a written report to the Department identifying the final waterline replacement project within 90 days of the Commonwealth Court’s January 18, 2024 Order and failed to submit multiple quarterly progress reports to the Department detailing Rock Spring’s progress in adhering to the CAP. The Department filed an Application for Contempt (“Application”) before the Commonwealth Court due to Rock Spring’s failure to comply with the Commonwealth Court’s January 18, 2024 Order, and a hearing was scheduled for July 24, 2024. Rock Spring failed to hire legal representation for the hearing and failed to file an answer to the Application. The Commonwealth Court entered an Order on July 24, 2024, granting the

Department's Application and accepting an agreement between the Department and Rock Spring, which required Rock Spring to, in part: (1) submit to the Department within 30 days a written report, drafted by a professional engineer, which identifies a final waterline replacement project, identifies any and all previous work done to implement the final waterline replacement project, includes the results of all previous leak detection surveys, includes the results of any and all complete system evaluations, and includes all documentation proving that easements and permits are in place for the waterline project; (2) pay a judgement in the amount of \$1,500.00 as a sanction for Rock Spring's contempt; and (3) fully comply with the terms and conditions of the Commonwealth Court's January 18, 2024 Order. *See* DEP Exhibit 33. The Commonwealth Court's July 24, 2024 Order further provided that, should Rock Spring fail to timely purge its contempt, then upon certification and request by the Department, the Commonwealth Court would issue a Rule to Show Cause upon Rock Spring and its president, J. Roy Campbell, individually, to show cause why: (1) J. Roy Campbell, individually, should not be held in contempt until such time as Rock Spring purges its contempt by complying with the July 24, 2024 Order; and (2) J. Roy Campbell, individually, and Rock Spring, jointly and severally, should not be further sanctioned in the form of a judgement in an amount not to exceed \$15,000.00. *See Id.*

In an attempt to gain compliance with the Commonwealth Court's Orders, the Administrative Order, and the CAP, the Department met with J. Roy Campbell and a professional engineer on October 10, 2024, to discuss the requirements of the Commonwealth Court-ordered report and the amount of work needed to be done to replace the water system. *See* DEP Statement No. 2, Direct Testimony of Sasha Minium a p. 6. J. Roy Campbell provided the Department with a contract for engineering services that did not address the outstanding issues with the water system. *See* DEP Exhibit 35. The Department asked that J. Roy Campbell inform the Department

by October 18, 2024, whether he would comply with the Commonwealth Court's Orders requiring the report. *See* DEP's Answer to OCA's Petition for Issuance of Interim Emergency Order at ¶ 26; DEP Statement No. 2, Direct Testimony of Sasha Minium a p. 6. J. Roy Campbell instead informed the Department that he would sell the system and retire rather than create the report addressing replacement of the water system. *See* DEP Statement No. 2, Direct Testimony of Sasha Minium a p. 6; DEP Exhibits 36 and 37.

Rock Spring failed to submit a written report to the Department identifying the final waterline replacement project within 30 days of the Commonwealth Court's July 24, 2024 Order, and the Department filed a Certification of Non-Compliance before the Commonwealth Court on October 15, 2024. *See* DEP's Answer to OCA's Petition for Issuance of Interim Emergency Order at ¶ 25. The Commonwealth Court issued an Order on October 25, 2024, which, in part: (1) issued a Rule upon Rock Spring and J. Roy Campbell, individually, to Show Cause why J. Roy Campbell should not be held in contempt and why Rock Spring and J. Roy Campbell, jointly and severally, should not be further sanctioned in the form of a judgment in an amount not exceeding \$15,000.00; and (2) scheduled a hearing on the Rule to Show Cause for December 17, 2024.

Rock Spring retained legal counsel on December 10, 2024, and on December 13, 2024, Rock Spring and SCBWA signed a letter of intent to negotiate the sale of Rock Spring to SCBWA. *Id.* at ¶ 28. In consideration of the potential sale, which is in the best interest of the customers served by the public water system and the environment, the Department and Rock Spring filed a Joint Application to Continue Hearing before the Commonwealth Court on December 13, 2024. The Commonwealth Court issued an Order generally continuing the Rule to Show Cause hearing scheduled for December 17, 2024, noting the potential sale of Rock Spring. Rock Spring's counsel

has since indicated that J. Roy Campbell is hindering the sale of the public water system. *Id.* at ¶ 29.

The immediacy of the underlying claims is evidenced by the fact that Rock Spring has repeatedly failed to repair the water system and violated multiple enforcement actions from the Department. It is clear that J. Roy Campbell, the operator of Rock Spring, cannot and will not bring the water system back into compliance. *See* DEP Statement No. 1, Direct Testimony of Nathan White at p. 16. The unaccounted-for water loss is currently at a running average of 68.76%, which is well above the ordered 30% level. *See* DEP Statement No. 1, Direct Testimony of Nathan White at p. 4; DEP Exhibit 29. J. Roy Campbell also has a history of informing the Department that he will sell the system, or retire, rather than fix the numerous issues plaguing the water system. *See* DEP Statement No. 2, Direct Testimony of Sasha Minium at pp. 6-7; DEP Exhibit 36. Additionally, the Department has issued Rock Spring approximately five Notices of Violation since November 17, 2023. *See* DEP Exhibits 3, 5, 8, 10, and 12. Rock Spring has failed to adequately and timely respond to the Department's Notices of Violation. *See* DEP Statement No. 2, Direct Testimony of Sasha Minium at p. 2. Therefore, the evidence clearly establishes that the need for relief is immediate as significant violations are ongoing and future violations are likely to occur.

**C. The injury would be irreparable if relief is not granted.**

The injury to Rock Spring's patrons would be irreparable if relief is not granted. When evaluating if an injury is irreparable, it must be examined "whether the harm can be reversed if the request for emergency relief is not granted." *Birdsboro Kosher Farms Corp.*, C-2021-3026163, 2021 WL 2911805, at \*1 (July 7, 2021) (quoting *Core Communications, Inc. v. Verizon*

*Pennsylvania, Inc. and Verizon North LLC*, P-2011-2253650, 2011 WL 5121092, at \*1 (Sept. 12, 2011)) Generally, monetary losses alone will not support a finding of irreparable harm. *Id.*

Rock Spring has demonstrated it lacks the ability to timely respond to emergencies within the water system. *See* DEP Statement No. 1, Direct Testimony of Nathan White at pp. 16-17. Rock Spring does not have a satisfactory emergency response plan. *Id.* J. Roy Campbell's chronic mismanagement as the operator of Rock Spring has placed Rock Spring's patrons at unnecessary risk, considering the constant presence of imminent health threats. *Id.* at p. 17. *See* DEP Statement No. 2, Direct Testimony of Sasha Minium at p. 7. Rock Spring's patrons have reported frequent service interruptions, feeling the need to store water for use due to interruptions, and billing disputes related to unrepaired leaks. *See* OCA Statement No. 1, Direct Testimony of Nicholas DeMarco at p. 8. Rock Spring's patrons will continue to intermittently be without water considering Rock Spring's four-to-six-month delays in fixing main breaks and leaks in the water system; a harm which cannot be reversed. *See* DEP Statement No. 1, Direct Testimony of Nathan White at pp. 9, 12, 13 14 and 16-17. Therefore, the parties have established that the injury would be irreparable if relief is not granted.

**D. The relief requested is not injurious to the public interest.**

The emergency appointment of an interim receiver is not injurious to the public interest as the customers of Rock Spring will finally receive adequate service and continuous access to safe drinking water. Rock Spring's patrons have experienced issues concerning the water system's unaccounted-for water loss since 2006. *See* DEP Statement No. 2, Direct Testimony of Sasha Minium at p. 2; DEP Exhibit 19. The Department has identified and notified Rock Spring of five significant deficiencies, eight minor violations, and 78 valid monitoring violations from 2021 through 2025. *See* DEP Statement No. 1, Direct Testimony of Nathan White at p. 4. J. Roy

Campbell has incurred four violations as an operator in the same timeframe. *Id.* at pp. 4 and 5. It is in the best interest of Rock Spring's patrons and the public that an interim receiver be appointed as it will reduce the imminent health threats present in Rock Spring's water system. *Id.* at p. 17. The current leadership of Rock Spring has demonstrated an inability and unwillingness to maintain compliance with any regulatory agency, which poses definite health risks to the public and the environment. *See* DEP Statement No. 2, Direct Testimony of Sasha Minium at p. 7. Therefore, the evidence proves that the relief requested is not injurious to the public interest.

## **II. STATE COLLEGE BUREAU WATER AUTHORITY SHOULD BE APPOINTED RECEIVER FOR ROCK SPRING WATER COMPANY.**

SCBWA is in the best position to be appointed as receiver for Rock Spring while the Section 529 proceedings are pending because it is the closest in proximity and best staffed to operate Rock Spring, and SCBWA is financially, managerially, and technically capable of acquiring and operating Rock Spring. "The [PUC] may, in its discretion, appoint a receiver to protect the interests of the customers of a small water or sewer utility. Any such appointment shall be by order of the [PUC], which order shall specify the duties and responsibilities of the receiver." *Venango Water Co.*, I-2023-3042312, 2024 WL 4723210, at \*11 (Oct. 30, 2024) (citing 66 Pa. C.S. § 529(g)).

There are three possible receivers for Rock Spring: Aqua, PAWC, and SCBWA. However, SCBWA is the most logical choice for interim receiver under the circumstances of this case. The facts demonstrate that SCBWA is financially, managerially, and technically capable of acquiring and operating Rock Spring. 66 Pa. C.S. § 529(a)(5).

At the hearing, SCBWA witness Brian Heiser testified that SCBWA already services about 90% of Ferguson Township. Rock Spring services the remaining 10% of Ferguson Township. Mr. Heiser also testified that SCBWA has been in discussions with Rock Spring since 2008 to acquire the Rock Spring water system. Furthermore, Mr. Heiser testified that if SCBWA were to

be appointed interim receiver, SCBWA would operate the Rock Spring system as a stand-alone system as these proceedings continue. On the other hand, should SCBWA ultimately acquire the water system, SCBWA will eventually incorporate the Rock Spring system into its own water system.

SCBWA also presented evidence that it is financially capable of acting as interim receiver. SCBWA witness Katie McCaulley testified that SCBWA has a positive net income each year with the previous year ending with a 6% positive net income. Ms. McCaulley also testified that SCBWA has a capital reserve fund containing 20 million dollars, as well as a budget of 14 million dollars. Additionally, Ms. McCaulley demonstrated that SCBWA is familiar with and capable of receiving funding through PENNVEST as the SCBWA has already successfully applied for a loan through this organization.<sup>1</sup>

DEP also presented evidence demonstrating SCBWA's capability to act as interim receiver for Rock Spring. DEP witness Nathan White confirmed Mr. Heiser's testimony that SCBWA already services Ferguson Township and that SCBWA shared its plans to eventually incorporate the Rock Spring water system into its own water system. Per Mr. White, SCBWA is in good standing with the Department and has no outstanding enforcement actions. *See* DEP Statement No. 1, Direct Testimony of Nathan White at p. 19. In fact, Mr. White gave high praise to SCBWA for their maintenance and compliance efforts for their water system:

As the Sanitarian of Centre County, I regulate State College Borough Water Authority and have personally viewed water system components. I have conducted multiple inspections at State College Borough Water Authority over the past three years that I have been with the Department. The water system is well maintained, operates a "Commendable" rated filter plant, and currently has a low unaccounted for water loss at 11.7% based on the most recently available Chapter 110 report

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<sup>1</sup> The Ferguson Township Board of Supervisors has also entered a memorandum of understanding with SCBWA concerning applications for grant funding for repairs should SCBWA acquire the Rock Spring system. *See* [Ferguson leaders back State College effort to acquire Rock Spring • Spotlight PA](#).

filed to the Department. It has been my experience that the State College Borough Water Authority led by their Operator in Responsible Charge, Brian Heiser, have strived to go above and beyond the regulations set forth in the Safe Drinking Water Act. They have taken a proactive approach to compliance, going as far as building a membrane filtration plant with advanced treatment technology designed to remove emerging contaminants for two groundwater wellfields that are not required to be filtered per the Department's regulations.

*Id.* Moreover, SCBWA has 43 staff members based out of their nearby office located at 1201 West Branch Road State College, PA, including an Operator in Responsible Charge, eight certified water treatment plant operators, one uncertified treatment plant operator in training, 17 distribution crew, and seven-meter shop personnel. *Id.* According to Mr. White, "As it relates to State College Borough Water Authority becoming an interim receiver, they have advantages both in staffing and proximity over other interested parties in this proceeding." *Id.*

Additionally, the following parties have all agreed that SCBWA is capable of acting as interim receiver for Rock Spring: OCA, Rock Spring, and PAWC. *See* OCA's Petition for Issuance of an Interim Emergency Order at ¶ 30; Rock Spring's Answer to Petition for Issuance of an Interim Emergency Order at ¶ 27; and Testimony of Michael J. Guntrum at p. 4.

It is true that both Aqua and PAWC enjoy a presumption of fitness to act as receivers in this matter as they are both certified public utilities. *Venango Water Co.*, I-2023-3042312, 2024 WL 4723210, at \*11 (Oct. 30, 2024). However, Aqua has repeatedly stated that there are other capable utilities in a better position to act as receiver as Aqua's closest system is 38 miles from Rock Spring, and its closest operations center is approximately 50 miles from Rock Spring. *See* Aqua Statement No. 1, Direct Testimony of Stephen Clark at pp. 3-4, and Exhibit SC-1-1.

PAWC has also conceded that SCBWA is a better choice to act as receiver under the circumstances of this case. *See* Testimony of Michael J. Guntrum at p. 4. As indicated by PAWC, its closest system to Rock Spring is 13 miles away, while SCBWA's closest system is 0.8 miles

away. *Id.* at 3. In his testimony, PAWC witness Michael J. Guntrum points out that SCBWA has executed a letter of intent to negotiate the sale of the water system with Rock Spring. *Id.* See also Exhibit A of OCA's Petition for Issuance of an Interim Emergency Order. Furthermore, Mr. Guntrum testified that counsel for SCBWA informed the Centre County Court of Common Pleas that SCBWA was ready, willing, and able to act as interim receiver for Rock Spring at the hearing on the Emergency Petition for Appointment of Receiver filed by Rock Spring's own counsel at Docket No. 2025-CV-0064-CI. Testimony of Michael J. Guntrum at p. 5.

Moreover, PAWC has estimated that it will incur costs of around \$400,000.00 to act as interim receiver for Rock Spring, and the costs will be borne by PAWC's customers. *Id.* at 8-9. This would be fundamentally unfair to PAWC's customers as SCBWA is the entity most likely to acquire Rock Spring. *Id.* PAWC is clearly in the best position to determine how acting as interim receiver for Rock Spring would affect their own operations and customer base over any other regulatory body participating in this proceeding.

While the Department agrees that PAWC is a capable public utility with the ability to act as interim receiver for Rock Spring, the Department agrees that SCBWA is the optimal choice under the circumstances. Mr. White indicated that should there be an emergency at the Rock Spring system, the closest PAWC system is a 38-minute drive from the Rock Spring water treatment plant. See DEP Statement No. 1, Direct Testimony of Nathan White at p. 18. To Mr. White's knowledge, PAWC's Northcentral Operational District has 40 staff members. "[T]he Northcentral Operational District includes Pennsylvania American Water systems at Boggs, Nittany, Philipsburg, Milton/White Deer, Turbotville, and McEwensville." *Id.* While acknowledging PAWC's commendable work on its regional water systems, Mr. White acknowledged that the Department

believes some of the systems may be understaffed. *Id.* Therefore, the evidence supports that SCBWA is the best choice to act as interim receiver for Rock Spring.

### **III. THE PUC CAN COORDINATE ORDERS WITH THE CENTRE COUNTY COURT OF COMMON PLEAS.**

There is precedent supporting the PUC's ability to coordinate orders with the Centre County Court of Common Pleas that would allow for the appointment of SCBWA as interim receiver even though it is a non-jurisdictional municipal utility. The PUC regulates public utilities within the Commonwealth. *See* 66 Pa.C.S. § 501. SCBWA is a municipal utility and is, therefore, regulated by the Court of Common Pleas, not the PUC. *See* 53 Pa. C.S. § 5607(d)(9); 66 Pa. C.S. § 1102(a)(5).

However, PAWC has proposed a solution that would allow for the PUC to coordinate orders with the Centre County Court of Common Pleas to allow for the appointment of SCBWA as interim receiver even though SCBWA is a municipal utility, not a public utility. *See* PAWC's Answer to OCA's Petition for Issuance of an Interim Emergency Order at ¶ 35. To the Department's knowledge, SCBWA is willing to accept the receivership under such circumstances. The Department agrees with PAWC's proposed solution.

This coordination of orders would fall under the doctrine of primary jurisdiction, which permits the bifurcation of a plaintiff's claim, whereby a trial court, faced with a claim requiring the resolution of an issue that is within the expertise of an administrative agency, will first cede the analysis of the issue to that agency, and, once the agency resolves the particular issue over which it has primary jurisdiction, the trial court may proceed, if necessary, to apply the agency's decision to the dispute remaining before the trial court. *Pettko v. Pennsylvania Am. Water Co.*, 39 A.3d 473, 479 (Pa. Cmwlth. 2012). Under this doctrine, the PUC could enter an order finding that Rock Spring is in need of the appointment of a receiver and find that SCBWA should be appointed as

receiver. SCBWA could then go to the Centre County Court of Common Pleas, and the Court could enter an order appointing SCBWA as receiver for Rock Spring.

The Department is aware of another case where such coordination of orders was managed between the PUC and the Commonwealth Court<sup>2</sup>. In *East Dunkard*, P-2023-3043950, the Department and PAWC filed a joint petition pursuant to 52 Pa. Code § 3. seeking an emergency order directing PAWC to act as a receiver to operate the East Dunkard Water Authority (“Authority”). The Ex Parte Emergency Order is attached hereto as “Exhibit A” and is incorporated herein by reference. The Authority was a municipal utility, while PAWC was a public utility regulated by the PUC. Similarly to the instant case, the Authority had previously agreed to sell PAWC the water system in an asset purchase agreement. *See* Exhibit A at p. 5. The PUC agreed to appoint PAWC as receiver of the Authority’s water system, which was a non-jurisdictional entity, conditioned upon the receipt of an order from the Commonwealth Court placing the Authority’s water system into receivership.<sup>3</sup> *Id.* at 6-7. Therefore, there is precedent for the PUC to appoint SCBWA as interim receiver conditioned upon the entry of an order by the Centre County Court of Common Pleas.

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<sup>2</sup> The Department had enforcement actions in the Commonwealth Court in this matter at Consolidated Docket Nos. 557 M.D. 2022 and 490 M.D. 2023.

<sup>3</sup> The Commonwealth Court issued an Order on February 8, 2024, appointing PA-American as receiver.

**CONCLUSION**

WHEREFORE, the Department respectfully requests that the PUC grant OCA's Petition for the Issuance of an Interim Emergency Order and appoint SCBWA as receiver for Rock Spring.

Respectfully Submitted,

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

/s/Amanda Chaplin  
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Date: February 18, 2025

## **PROPOSED ORDER**

### **IT IS ORDERED THAT:**

1. The Petition for Issuance of an Interim Emergency Order filed on February 6, 2025, by the Office of Consumer Advocate is granted.

2. That, pursuant to 66 Pa.C.S. § 529(g), State College Borough Water Authority (“SCBWA”) shall act as Receiver for Rock Spring Water Company (“Rock Spring”).

3. Upon the issuance of a valid Court Order from the Centre County Court of Common Pleas appointing SCBWA as a Receiver for Rock Spring and its property, assets, and facilities (“Assets”), this Emergency Order shall become effective.

4. Utilities serving Rock Spring and facilities comprising the Rock Spring water system are permitted and directed to initiate and maintain utility service to Rock Spring’s Assets and Rock Spring facilities that are used to serve Rock Spring’s customers in the name of the Receiver for Rock Spring.

5. SCBWA, acting as the Receiver, shall not assume any debt incurred by Rock Spring unless such assumption is approved through an Order of this Commission.

6. SCBWA, acting as the Receiver, shall not be liable for preexisting conditions, defects, or regulatory or statutory violations occasioned by Rock Spring.

7. The Commission authorizes SCBWA to continue to provide such services as a Receiver until the termination of any Court Order appointing the Receiver or the consummation of the Acquisition Transaction.

8. A copy of this Order shall be served on Rock Spring, SCBWA, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Northcentral Regional Office of the Pennsylvania Department of

Environmental Protection, Pennsylvania-American Water Company, Aqua Pennsylvania, Inc., Ferguson Township, and all proximate municipalities and authorities providing water service in and around Rock Spring.

9. A copy of this Order shall be posted on the Commission's website at [www.puc.pa.gov](http://www.puc.pa.gov).

Date:

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John M. Coogan  
Administrative Law Judge

**APPENDIX A**  
P-2024-3051313

1. That the Receiver, in its capacity as receiver of the Rock Spring Water Company (“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.

b. Maintain any existing or necessary permits, licenses, approvals, authorizations, orders, consents, registrations, or filings.

c. Submit an initial status report to the Centre County Court of Common Pleas, the Pennsylvania Department of Environmental Protection, and 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 noncompliant 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. Specific improvement recommendations should address the well pit by either recommending actions to eliminate water from collecting in the well pit or eliminating the pit (preferred). The other specific improvement should be identifying the best sodium hypochlorite injection location and completing any necessary permitting.

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, efficient, safe and reasonable service.
- f. 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.
- 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 industry and utility practices would require.
- i. Assume Rock Spring's billing and collection functions.
- j. Provide Rock Spring's customer service.
- k. Have the authority to borrow money in the name of Rock Spring if necessary for the continued 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 Rock Spring's effective rates, rules, and regulations for Rock Spring's customers.
- n. Submit all necessary paperwork to regulatory agencies of the system on behalf of Rock Spring.
- o. Make reasonable efforts to establish the financial position of Rock Spring at the time the Receiver assumed receivership.

p. Establish a deferred expense account for expenses incurred by Rock Spring that are payable to the Receiver.

q. 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.

r. 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.

s. Satisfy the aforementioned duties and responsibilities either directly, through Commission-approved affiliates, or through competitive operation and maintenance agreements or any combination thereof.

t. 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.

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.

## DEP Exhibit A

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

**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**

On October 30, 2023, the Pennsylvania Department of Environmental Protection (DEP) and Pennsylvania American Water Company (PAWC) filed a Joint Petition (Joint Petition) pursuant to 52 Pa. Code § 3.2 seeking an emergency order directing PAWC to act as a receiver to operate the East Dunkard Water Authority (Authority).

The Authority is a municipal water authority that owns, operates, and maintains a municipal drinking water system serving approximately 1,800 households, businesses and schools and a population of approximately 4,200 in the following municipalities: Dunkard Township, Greene Township, and portions of Monongahela, Cumberland, Perry, and Whiteley Townships (Water System or System). The Water System consists of a surface water source (the Monongahela River), a conventional filtration water treatment plant including disinfection, water pumping facilities, water storage facilities, and a distribution system. Joint Petition at 1.

In the Joint Petition, PAWC and DEP averred that, since July 2021, DEP has conducted numerous inspections and issued multiple Orders to the Authority for violations of the Safe Drinking Water Act (SDWA) and its regulations. *Id.* Among the conditions underlying the violations identified at the Authority's Water System are

conditions that threaten to render portions of the water treatment process inoperable or ineffective, which would endanger public health, safety, and welfare. *Id.* at 1-2.

The Joint Petition explains that, on August 25, 2022, pursuant to the SDWA, DEP issued an order to the Authority (August 2022 Order) requiring a series of corrective actions to address deficiencies in the System, including requirements for: (1) all process control decisions to be made by a certified operator, staff in consultation with the certified operator or staff using Standard Operating Procedures; (2) continuous staffing of the treatment plant until automatic shutdown controls are installed; (3) filter-to-waste operations after each backwash and each startup until certain criteria are satisfied; (4) utilization of Individual Filter Effluent turbidity readings from all active filters for determination of compliance with SDWA regulations; (5) sampling for iron and manganese; (6) evaluation of all filters at the treatment plant; (7) evaluation of the filters, followed by preparation and implementation of a filter corrective action plan; (8) preparation and implementation of an emergency response plan; (9) submission of an uninterrupted system service plan; (10) evaluation of the clarifier system, followed by preparation and implementation of a clarifier corrective action plan; and (11) preparation and implementation of a filter bed evaluation program. *Id.* at 2.

Due to the Authority's failure to comply with the August 2022 Order, DEP initiated an action in Commonwealth Court to enforce its August 2022 Order. On December 15, 2022, the Commonwealth Court issued an Order (Commonwealth Court Order) requiring the Authority, among other things, to perform an evaluation of its filters and clarifier system and submit a report to DEP detailing the results of the evaluation (Report); submit a Corrective Action Plan for its filters and clarifier system to address the deficiencies identified in the Report and implement each Plan; implement a filter bed evaluation program and submit a copy of the results to DEP; and install an overflow and a receiving basin or drain capable of receiving accidental spills or overflows for its chemical tanks and drums. *Id.*

The Joint Petition states that, most recently, beginning on October 22, 2023, the Authority's System exhibited signs of potential failure, beginning with elevated levels of turbidity of the water that was leaving the water treatment plant's filters. On October 23, 2023, DEP reviewed the data submitted by the Authority, which showed that the elevated levels of turbidity were above the regulatory limits. In response to the Data submitted by the Authority, DEP immediately issued an order to the Authority directing it to issue a boil water advisory and investigate the cause of the elevated turbidity. On October 24, 2023, the Authority's System experienced a major upset resulting from operational failure of the filters at the water treatment plant. Shortly thereafter, the clarifier system at the water treatment plant ceased proper operation, and the Authority's System's water treatment plant ceased producing water. *Id.* at 2-3.

Additionally, since September 15, 2023, the Authority has been without a Certified Operator qualified to properly operate the Water System. Currently, no person at the Authority is legally authorized to make decisions concerning the Authority's System, including those affecting the quality or quantity of water being provided and the operation of the clarifier system and filters. *Id.* at 3.

The Joint Petition notes that the Authority has failed to comply with two successive Orders issued by DEP on February 8, 2023, and September 18, 2023, which required the Authority to retain the services of a qualified, properly certified drinking water system operator (Certified Operator). *Id.*

Similarly, the Authority has failed to comply with an Order issued by DEP on March 31, 2023, which required the Authority to, among other things, employ the services of a qualified professional to evaluate and correct data errors with the Authority's computerized data collection and reporting system, or Supervisory Control and Data Acquisition ("SCADA") system. *Id.*

Although the Authority has submitted a Clarifier Corrective Action Plan that can be approved by DEP, the Authority, almost eight months after the deadline set forth in the Commonwealth Court's Order, has yet to submit a Filter Corrective Action Plan that the Department is able to approve. *Id.*

In addition, the Authority failed to implement a filter bed evaluation program and submit copies of the filter evaluations to DEP. Moreover, the Authority has failed to install an overflow and a receiving basin or drain capable of receiving accidental spills or overflows for its chemical tanks and drums. The Authority's failure to take measures to ensure the proper operation of its System resulted in approximately 4,200 users across 1,800 households, businesses, and schools losing daily access to clean and safe water beginning on October 24, 2023. *Id.*

Between October 24, 2023 and October 29, 2023, the Authority attempted to supply water through its System by trucking tanker loads of water to the water treatment plant and pumping the trucked water into the Water System. Unfortunately, for a period of time between October 24, 2023 and October 27, 2023, some of the tanks that store water in the Water System were empty, and it is believed that, at times, *all users* of the Authority's System were without any water service. The lack of even non-potable water service, renders users of the Authority's System without water for basic sanitary and hygienic purposes, including bathing, dishwashing, and toilet flushing. *Id.* at 3-4.

On or about October 27, 2023, the Authority was able to restore partial function of the System's water treatment plant and began providing water to some users. On or about October 29, 2023, the Authority informed DEP that water service was restored to all users. However, all customers are under a boil water advisory and must continue to boil their water before consumption for an unknown amount of time until the Authority is able to demonstrate that its Water System is meeting all applicable monitoring and treatment standards. *Id.* at 4.

Even if the Boil Water Advisory may, at some point, be lifted, the Authority's failure to continually employ the services of a Certified Operator, failure to comply with the laws and regulations of this Commonwealth, failure to comply with the Commonwealth Court Order and DEP Orders indicate that the Authority's control over the water system's functioning will repeatedly endanger public health. *Id.*

On multiple occasions, the Authority has made representations to DEP that it does not have the financial resources to (1) effectively and properly operate its Water System, (2) comply with the Orders of the DEP or the Commonwealth Court, and (3) employ a Certified Operator. *Id.*

Because the Authority's actions threaten immediate harm to public health and safety, DEP has prepared an application to be filed in the Commonwealth Court seeking the appointment of a receiver for the Authority's Water System. DEP states that in light of the Authority's failure and apparent inability to properly operate and maintain the System in compliance with the requirements of the SDWA, DEP will seek to hold the Authority in contempt of the Commonwealth Court's Order and seek a court appointed receiver to manage the Authority, its property and assets. The appointed receiver would undertake corrective actions to address and resolve the Water System's deficient conditions pending approval and consummation of the Acquisition Transaction. *Id.*

The Authority has previously agreed to sell the East Dunkard System to PAWC pursuant to an Asset Purchase Agreement dated as of July 23, 2023, subject to a series of conditions, including approval of the acquisition by the Commission and satisfaction of certain covenants and conditions precedent to closing as set forth in the Purchase Agreement (the "Acquisition Transaction"). Pending satisfaction of such conditions and approval of the Acquisition Transaction by the Commission, the Authority continues to own and operate the East Dunkard System and is responsible for operating the System in compliance with all applicable environmental, health and safety laws, including the

Pennsylvania Safe Drinking Water Act and regulations adopted pursuant to the SDWA as contained in 25 Pa. Code Chapter 109. Joint Petition, Proposed Order at 1.

The Joint Petition states that while Pennsylvania's two largest regulated water utilities, PAWC and Aqua Pennsylvania, Inc., would be suitable candidates to serve as a receiver to manage the Authority, as a result of the pending Acquisition Transaction and its due diligence and inspections conducted in association with the Acquisition Transaction, PAWC has greater familiarity with the conditions of the System. Additionally, PAWC has experienced personnel and substantial public water system operations in southwestern Pennsylvania and has resources and capabilities to oversee and manage the East Dunkard System as a receiver for the Authority. *Id.* at 5.

Further, DEP has notified the Commission that it desires that PAWC be appointed to serve in the capacity of a receiver for the Authority, and requests that the Commission authorize PAWC to serve as a receiver for this non-jurisdictional entity. DEP believes and the Commission concurs that PAWC has the familiarity and understanding of the circumstances to work in an effective manner toward planning and executing corrective actions to restore safe, adequate, and reliable service to the public.

PAWC has agreed to be named as receiver to take control of and operate the Authority's Water System, conditioned upon receipt of an order from the Commonwealth Court placing the Authority's Water System in receivership and the issuance of this Emergency Order and attached Appendix A, which outlines its rights, duties and obligations as the duly-appointed receiver of the Authority.

Pursuant to 52 Pa. Code § 3.2, petitions for emergency orders must be supported by a verified statement of facts which establishes the existence of an emergency, including facts to support the following: (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.

Based on the matters described herein, the Commission determines that the facts as presented in the Joint Petition satisfies the Section 3.2 requirements. In addition, the Commission concurs that PAWC has the familiarity and understanding of the circumstances to work in an effective manner toward planning and executing corrective actions to restore safe, adequate, and reliable service to the public. Accordingly, in response to the request in the Joint Petition, and in light of the conditions described above, conditioned upon appointment by a court of competent jurisdiction to serve as a Receiver for the Authority and manage and operate the Authority pending approval and consummation of the Acquisition Transaction, this Order and Appendix outlines the rights, duties and obligations of PAWC as the duly-appointed receiver for the Authority.

The Public Utility Code authorizes the Commission to regulate the conduct of public utilities in the Commonwealth. 66 Pa.C.S. § 501. The Commission also has the authority to grant petitions for emergency order under our regulations at 52 Pa. Code § 3.2-3.3. As such, due to the Authority's failure to effectively and properly operate its Water System, which ultimately endangers the public health, safety, and welfare of the approximate 1,800 households, businesses and schools and the population of approximately 4,200 located in the Dunkard Township, Greene Township, and portions of Monongahela, Cumberland, Perry and Whiteley Townships, the Commission has determined it is appropriate to set forth the rights, duties and obligations of PAWC acting as a receiver of the Authority in order to manage and operate its Water System.

The Commission takes immediate affirmative action here, subject to revision in a subsequent Ratification Order, to protect the public interest and all members of the public affected by the ineffective services of the Authority. We note that the facts and circumstances of this case are unusual, yet, based upon the specific facts and circumstances in this matter, we determine that it is necessary and prudent to take this unprecedented action of establishing the rights, duties and obligations of a jurisdictional utility if and when it is appointed by the Commonwealth Court to be the receiver of this non-jurisdictional entity. We note specifically that PAWC is a regulated public utility corporation that is engaged in the business of collecting, treating, storing, supplying, distributing, and selling water to the public, and collecting, treating, transporting, and disposing of wastewater and sewage for the public. PAWC owns, operates, and maintains potable water production, treatment, storage, transmission and distribution systems, and wastewater collection, pumping, and/or treatment systems, for furnishing water and wastewater services to approximately 760,000 residential, commercial, industrial, and governmental customers in communities located in 37 of the 67 counties across Pennsylvania.

We also note that PAWC has had an asset purchase agreement with the Authority regarding this System since July 2023, which means it has great familiarity with this system. Since PAWC is a regulated entity that has expertise in operating a water system and already has a pending contract with this failing entity, we determine it is prudent to establish its rights, duties, and obligations if PAWC is appointed as a receiver by the Commonwealth Court. However, in order to ensure that the Authority's customers obtain long-term relief in the near term and no longer have concerns regarding access to clean and safe drinking water, we encourage PAWC, pursuant to 66 Pa.C.S. § 1102, to file an Application for a Certificate of Public Convenience to serve this territory. Accordingly, we undertake this emergency action where this immediate case appears to present a serious public health and safety threat that the Commission will not ignore;

**THEREFORE,**

**IT IS ORDERED THAT:**

1. The Commission pursuant to Section 501 of the Public Utility Code authorizes Pennsylvania-American Water Company to serve as a Receiver for the East Dunkard Water Authority and Assets in accordance with and subject to the conditions set forth in Appendix A to this Order.
  
2. Upon the issuance of a valid Court Order appointing Pennsylvania-American Water Company to serve as a Receiver for the East Dunkard Water Authority and its property, assets, and facilities (“Assets”), this Emergency Order shall become effective.
  
3. Utilities serving the East Dunkard Water Authority and facilities comprising the East Dunkard System are permitted and directed to initiate and maintain utility service to the Authority’s Assets and East Dunkard System facilities that are used to serve Authority’s customers in the name of the Receiver for the Authority.
  
4. Pennsylvania-American Water Company will continue to provide bottled water to the East Dunkard System customers as required in the interim between this Order and the entry date of the Commonwealth Court Order appointing Pennsylvania-American Water Company the Receiver for the East Dunkard Water System.
  
5. Pennsylvania-American Water Company, acting as the Receiver, shall not assume any debt incurred by the East Dunkard Water System unless such assumption is approved through an Order of this Commission.

6. Pennsylvania American Water Company, acting as the Receiver, shall not be liable for preexisting conditions, defects, or regulatory or statutory violations occasioned by the East Dunkard Water Authority.

7. The Commission authorizes PAWC to continue to provide such services as a Receiver until the termination of any Court Order appointing the Receiver or the consummation of the Acquisition Transaction.

8. A copy of this Order shall be served on the East Dunkard Water Authority, Pennsylvania-American Water Company, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Southwest Regional Office of the Pennsylvania Department of Environmental Protection, and all proximate municipalities and authorities providing water service in and around Dunkard Township, Greene Township, Monongahela Township, Cumberland Township, Perry Township and Whiteley Township, Green County, Pennsylvania.

9. A copy of this Order shall be posted on the Commission's website at [www.puc.pa.gov](http://www.puc.pa.gov).

DATE: November 1, 2023



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**Stephen M. DeFrank,**  
**Chairman**

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :  
 Bureau of Investigation & Enforcement :  
 Petition to Request the Commission Open : P-2024-3051313  
 Section 529 Investigation into the :  
 Acquisition of Rock Spring Water Company :

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving the foregoing Brief in Support of OCA’s Petition for Issuance of an Interim Emergency Order in the manner and upon the persons listed below:

**SERVED VIA ELECTRONIC MAIL ON FEBRUARY 18, 2025**

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COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF ENVIRONMENTAL  
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/s/Amanda Chaplin

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