

COMMONWEALTH OF PENNSYLVANIA



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February 18, 2025

Via Electronic Mail

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Re: Section 529 Investigation into the Acquisition of Rock Spring Water Company
Docket No. P-2024-3051313

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Brief on the Petition for Interim Emergency Order.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Enclosures

cc: Secretary Rosemary Chiavetta (Via Electronic Filing)
Certificate of Service

CERTIFICATE OF SERVICE

Section 529 Investigation into the : Docket No. P-2024-3051313
Acquisition of Rock Spring Water Company :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Brief on Petition for Interim Emergency Order, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 18th day of February 2025.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Section 529 Investigation of Rock Spring : Docket No. P-2024-3051313
Water Company :

BRIEF ON PETITION FOR INTERIM EMERGENCY ORDER
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

A. Description of the Office of Consumer Advocate

The Office of Consumer Advocate (OCA) is the statutory advocate with the authority and duty to represent the interest of consumers as a party before the Pennsylvania Public Utility Commission (Commission) in public utility acquisition investigations. The OCA seeks to ensure that Rock Spring's customers are able to receive service immediately from a capable provider that can provide water service that complies with the character of service and facilities standards prescribed in Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501.

B. Procedural History

On September 20, 2024, the Pennsylvania Public Utility Commission's (Commission) Bureau of Investigation and Enforcement (I&E) filed a Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Rock Spring Water Company (I&E Petition). 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 11, 2024, a hearing notice was issued establishing a telephonic prehearing conference for October 30, 2024.

On October 16, 2024, Aqua Pennsylvania, Inc. (Aqua) filed a Petition to Intervene. On October 21, 2024, State College Borough Water Authority (SCBWA or Authority) filed a Petition to Intervene. On October 28, 2024, DEP filed a Petition to Intervene. On November 11, 2024, Ferguson Township filed a Petition to Intervene.

On October 30, 2024, Administrative Law Judge (ALJ) John M. Coogan convened a prehearing conference, and on November 5, 2024, he issued a Prehearing Order setting forth the procedural schedule addressed during the prehearing conference. On December 10, 2024, counsel for Rock Spring filed a Notice of Appearance.

On January 13, 2025, counsel for Rock Spring filed an Emergency Petition for Appointment of Receiver in the Court of Common Pleas of Centre County, at docket no. 2025-CV-0064-CI, asking the Court to appoint SCBWA as receiver for Rock Spring. On January 22, 2025, the Commission's Law Bureau filed a Petition for Intervention in the Court of Common Pleas docket.

On January 23, 2025, pursuant to the procedural schedule set forth in the Prehearing Order, I&E filed the direct testimonies of I&E witness Ethan Cline and I&E witness Christopher Keller.

On January 30, 2025, the Centre County Court of Common Pleas held a hearing on the Emergency Petition and the Law Bureau's Petition to Intervene. At the hearing, the Law Bureau argued that the Commission has exclusive jurisdiction over Rock Spring as a certificated public utility. On February 5, 2025, the Court entered an order dismissing Rock Spring's Emergency Petition for Appointment of Receiver, ruling that the appointment of a receiver for Rock Spring is within the Commission's jurisdiction, but noting that Law Bureau had likely overstated the breadth of the Commission's jurisdiction.

On February 6, 2025, the OCA filed a Petition for Interim Emergency Order (Emergency Petition). On February 14, 2025, an evidentiary hearing on the Emergency Petition was held as scheduled and on the same day, a Briefing Order was issued by the ALJ. In accordance with the February 14, 2025, Briefing Order, the OCA submits this brief.

II. LEGAL STANDARDS

A. Burden of Proof, 66 Pa. C.S. § 332(a)

As the proponent of an order in this proceeding, the OCA has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa.C.S. § 332(a). The OCA must demonstrate its case by a preponderance of evidence. *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. Ct. 1990) (*Lansberry*), *alloc. denied*, 602 A.2d 863 (Pa. 1992). More precisely, the OCA's evidence

supporting its case must be more convincing than the evidence presented by any opposing party against it. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950). Additionally, a Commission decision must be supported by substantial evidence in the record. Indeed, “the elements of that cause of action [must be] proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. PUC*, 461 A.2d 1234, 36 (Pa. 1983). Additionally, the evidence must be substantial and legally credible and cannot be mere “suspicion” or a “scintilla” of evidence. *Lansberry* at 602; *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

B. Emergency Orders

The standards that govern the issuance of interim emergency orders are set forth in 52 Pa. Code Section 3.6. Section 3.6 requires a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for emergency relief, including facts which support the following four elements:

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

52 Pa. Code § 3.6(b).

All elements must be present in order for the Commission to grant interim emergency relief, but it is not necessary to determine the merits of the case in order to find that a petitioner’s right to relief is clear. *See Glade Park East Home Owners Association v. Pa. P.U.C.*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993); *T.W. Phillips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776 (Pa. Cmwlth. 1985) (*Phillips Gas*) (holding that the only required determination is that the petition raises substantial legal questions). When evaluating whether an injury is irreparable, the Commission examines “whether the harm can be reversed if the request for emergency relief is

not granted. The party seeking relief bears the burden of proving all four elements, which must be demonstrated by a preponderance of the evidence.” *See Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered Sept. 23, 2011). Section 3.10(a) provides that an order granting or denying interim emergency relief is immediately effective upon issuance by the ALJ and that no stay of the order will be permitted pending Commission review of the order. 52 Pa. Code § 3.10(a). A presiding officer is required to certify the grant or denial of relief to the Commission as a material question. 52 Pa. Code § 3.10(b). An “emergency” is defined as a “situation which presents clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1.

C. Commission Authority to Appoint a Receiver Under Section 529(g)

The Commission can appoint a receiver over a small water or wastewater utility meeting the criteria of Section 529(a) in order to protect the interests of the customers of the small water utility. 66 Pa.C.S. § 529(g).

III. STATEMENT OF THE CASE

Rock Spring has a long history of noncompliance with the orders of the Commission and the requirements of the Safe Drinking Water Act. *See generally* OCA St. 1; I&E St. 1; I&E St. 2; DEP St. 1; DEP St. 2. Specifically, Rock Spring has struggled with sustained unaccounted for water loss, at 65% unaccounted for water in its 2023 Annual Report, failure to monitor for volatile organic chemicals, failure to operate and maintain its treatment and distribution system in an adequate manner, and failure to provide boil water advisories to customers when required. *See* I&E Petition at 4-5; DEP St. 1 at 3-17; *see also* 52 Pa. Code 65.20(4) (“Levels of unaccounted-for water should be kept within reasonable amounts. Levels above 20% have been considered by the

Commission to be excessive.”). As DEP witness Mr. White stated, from 2021 to 2025, the Company has incurred “five significant deficiencies, eight minor violations, 30 minor deficiencies, and 78 valid monitoring violations.” DEP St. 1 at 4:25-26.

These concerns, and others, have been highlighted in several local news articles, providing anecdotal insight on Rock Spring’s customers’ experience receiving service from the Company; the stories reported by the Company’s customers are alarming. OCA St. 1 at 8. Further, DEP witness Mr. White stated that Rock Spring’s distribution system is “unlikely to provide adequate fire flow,” exacerbating the public health and safety concerns growing from Rock Spring’s poor condition. DEP St. 1 at 4. It is unclear whether, if an emergency were to occur, the Company is ready and able to fix it. OCA St. 1 at 5.

The Company’s failures pose a significant threat to its customers and to the environment and an emergency receiver should be appointed by the Commission to operate the system as quickly as possible.

IV. SUMMARY OF ARGUMENT

Rock Spring is a Commission-certificated public utility that provides water utility service to approximately 1,000 people with 494 connections. 529 Petition at ¶¶ 4,6. Rock Spring has an ongoing obligation, pursuant to its certificate of public convenience, to provide service to its customers until the resolution of the Section 529 proceeding. 66 Pa. C.S. §§ 1101, 1102, 1501.

The immediate appointment of a receiver for the Rock Spring system is necessary to protect the health, safety and welfare of Rock Spring customers during the pendency of the Section 529 proceeding. Rock Spring customers are facing imminent cessation of adequate, efficient, safe and reasonable water service due to the owners’ management inabilities and neglect of the system. Because it appears that the current owners of Rock Spring are incapable of managing the system or effectively participating in the Section 529 proceeding, the immediate relief of appointing a

receiver is necessary to ensure that Rock Spring's customers have access to safe, adequate and reasonable water service.

The OCA respectfully submits that its Interim Emergency Petition should be granted.

V. ARGUMENT

A. **The OCA is entitled to the relief requested in the Petition because substantial evidence supports that an emergent public health and safety crisis is imminent if no emergency receiver is appointed.**

The OCA brought this Emergency Petition for Appointment of a Receiver due to concerns that, if an emergency occurred, the Company would be unable to adequately address it. OCA Petition at 4-6. The OCA incorporates its Petition as if fully set forth herein. Due to the significant and continuous water loss in the Company's distribution system, the degrading state of the well pit, and the Company's failure to address leaks which occur in the system, it is possible for a customer to lose access to water service, which is a public health and safety concern. DEP St. 1 at 4. DEP witness Mr. White stated that Rock Spring's distribution system is "unlikely to provide adequate fire flow," exacerbating the public health and safety concerns growing from Rock Spring's poor condition. *Id.* If customers are able to receive water, the customers have no guarantee that the water is potable, due to Rock Spring's continuous failure to monitor the water it is providing and failure to notify customers, when required under law, that contaminants may be present in the water. *Id.* These are clear violations of Rock Spring's obligation to provide, adequate, reasonable, and continuous service. 66 Pa. C.S. § 1501. It is unclear whether, if an emergency were to occur, that the Company is ready and able to fix it. OCA St. 1 at 5.

Rock Spring has demonstrated that it is uncooperative with the Commission and the parties to this proceeding. The Company has been in violation of orders of the Commission, DEP, and/or the Commonwealth Court for nearly 20 years. *See* DEP St. 2 at 2-7. When contacted by DEP, the Company has been evasive and uncooperative or outright lied to DEP regarding the Company's

compliance with DEP orders. *See, e.g.*, DEP St. 1 at 13. Rock Spring has failed to respond to discovery in this proceeding. OCA St. 1 at 8. Even counsel for Rock Spring has found the certified operator of the system incapable of managing the system and has had issues inducing the operator to be cooperative. *Id.* at 7. As stated by DEP witness Ms. Minium,

Rock Spring Water Company needs to be placed in receivership, as their current leadership has demonstrated both an inability and unwillingness to maintain compliance with the Department and other regulatory entities to the detriment of their customers. Having Rock Spring Water Company continue to manage and operate the water system poses definite risks to public health and to the environment.

DEP St. 2 at 7.

The Commission has an obligation to ensure that certificated public utilities are meeting the requirements of the Public Utility Code, including, and especially, that public utilities are providing adequate quality of service. 66 Pa. C.S. § 501. The Commission is also obligated to act “with due consideration to the interests of consumers.” 71 P.S. § 309-5. In this proceeding, the Commission can satisfy its obligations by appointing an emergency receiver to ensure that Rock Spring’s customers will be receiving adequate service. 66 Pa. C.S. § 529(g).

Based on the extensive testimony provided in advance of and during the February 14, 2025, hearing, it is clear that Rock Spring is currently providing inadequate service, and the Commission should not risk the situation becoming increasingly dire for Rock Spring’s customers. SCBWA, PAWC, and Aqua all indicated that they would be able to act as receiver for Rock Spring, though SCBWA is the most logical choice, followed closely by PAWC. Therefore, the OCA respectfully urges the Commission to appoint an emergency receiver to provide service to Rock Spring’s customers during the pendency of the current Section 529 investigation.

B. The Commission’s authority to appoint a municipal authority as receiver of a jurisdictional water utility is unclear but there may be a path forward.

While the OCA recognizes that PAWC is next best situated to serve as receiver, the OCA agrees with the statements of other parties that SCBWA is the most logical choice to act as receiver, especially due to the OCA’s position that SCBWA should likely be the entity which ultimately acquires Rock Spring. OCA St. 1 at 9-11. Due to several parties’ position that the SCBWA is likely the best situated entity to act as receiver for Rock Spring, the ALJ requested that the parties brief the issue of the Commission’s authority to appoint SCBWA, a municipal authority incorporated under the Municipality Authorities Act (MAA), to be the temporary receiver of the system. The following is the OCA’s attempt to wholly address the issue without advocating a position.

1. The OCA at this time is still considering PAWC’s primary jurisdiction argument and will consider PAWC’s brief on the issue.

The OCA at this time is still considering PAWC’s primary jurisdiction argument and will consider PAWC’s brief on the issue. *See* PAWC Answer at ¶ 35. The OCA, by briefing the issue of primary versus exclusive jurisdiction, neither supports nor opposes PAWC’s position, but rather, given the circumstances and expedited deadline for briefing, attempts to wholly address the issues. The OCA respects and supports PAWC’s attempts to present a solution-oriented approach to this problem, and, in similar spirit, the OCA offers the remainder of its brief for the ALJ’s consideration.

2. The Commission likely has exclusive jurisdiction over the appointment of a receiver of a jurisdictional water utility because it has the power to award relief to make the OCA whole in this proceeding.

The Commission likely has exclusive jurisdiction in proceedings brought under Section 529(g) if a receiver could be appointed by the Commission. As stated by the Superior Court, “[i]f the available administrative remedies are complete and adequate to make the complainant whole, then the PUC has exclusive jurisdiction over the controversy and there is no recourse to the courts

outside of the normal channels of appeal to the Commonwealth Court.” *DiSanto v. Dauphin Consol. Water Supply Co.*, 436 A.2d 197, 202 (Pa. Super. 1981). If the Commission does not have the ability to make a claimant whole by providing complete and adequate relief, then the Commission has primary jurisdiction and not exclusive jurisdiction, meaning that a party exhausts their administrative remedies before the Commission and the remaining relief required to make a claimant whole flows from the order of a civil court. *Pettko v. Pa.-American Water Co.*, 39 A.3d 473, 484 (Pa Cmwlth. 2012). For example, in *Pettko*, the Commonwealth court determined that the Commission’s jurisdiction over concerns regarding overbilling for tariffed rates was under the primary and exclusive jurisdiction because the Public Utility Code provided a remedy for such overbilling, whereas the Commission only had primary jurisdiction over a claim brought under the Unfair Trade Practices and Consumer Protection Law because it could not award relief under that statute. *Id.* at 485.

In the instant proceeding, the OCA requested that the Commission appoint an emergency receiver to operate the Rock Spring system during the pendency of I&E’s investigation brought under Section 529. OCA Petition at 4-7. Under Section 529(g), the Commission may issue an order appointing a receiver and, therefore, can provide complete and adequate relief to the OCA.¹ 66 Pa. C.S. § 529(g). Because the OCA did not request relief that the Commission cannot grant under the Public Utility Code, the Commission has exclusive jurisdiction over the appointment of a receiver to redress the OCA’s Petition, which means that no court – beyond the scope of an appellate

¹ The circumstances presented in this proceeding are markedly different from those presented in *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 (Order entered Nov. 1, 2023) (*East Dunkard Receivership*). Namely, in the *East Dunkard Receivership* proceeding, the entity which was having a receiver appointed was not a certificated public utility, requiring collaboration between a court of competent jurisdiction – the Commonwealth Court – and the Commission to appoint a receiver under the Commission’s primary jurisdiction over the appointed receiver, PAWC. *Id.* In this proceeding, the entity which is having a receiver appointed on its behalf is a certificated public utility, which means that the Commission has primary and exclusive jurisdiction if a valid receiver jurisdictional public utility can be appointed.

proceeding – has jurisdiction over the OCA’s Petition. While the OCA or other parties may believe that SCBWA is the best option to be appointed as receiver for Rock Spring, if the Commission determines that it lacks jurisdiction to appoint SCBWA as the receiver, the Commission still has the ability to appoint a receiver which is a certificated public utility, such as PAWC or Aqua. Hence, the Commission has exclusive jurisdiction over the appointment of a receiver of Rock Spring, in addition to primary jurisdiction.²

In sum, though the Commission’s power may not be able to achieve the full extent of the aims sought by the parties (*i.e.*, appointing the best situated provider to serve as receiver), its power is sufficient for a finding that the Commission has exclusive jurisdiction over the appointment of a qualified receiver of a certificated public utility.

- 3. If the Commission has exclusive jurisdiction to appoint a receiver of Rock Spring, then the ALJ must decide certain questions that necessarily stem therefrom.**
 - a. SCBWA likely would need to willingly apply to obtain a temporary certificate of public convenience to serve as the receiver.**

While the Commission has exclusive jurisdiction to appoint a receiver for the Rock Spring system, the Commission may be limited in *which* entity it can appoint of the qualified entities which can serve as receiver. Namely, because SCBWA is a municipal authority incorporated under the MAA, the courts of common pleas have exclusive jurisdiction as to all issues pertaining to the rates and service of the Authority. 53 Pa.C.S. § 5607(d)(9). However, based on a recent 2024 Commonwealth Court decision, should the Commission determine that an appointment of a receivership under Section 529(g) is not a question of rates or service of the municipal authority,

² It is unclear if an agency has exclusive jurisdiction where there are multiple options for relief to make a claimant whole, but the agency only has authority to offer some of them, where the agency has primary jurisdiction over the matter. Having exclusive jurisdiction, in such a circumstance, forecloses the agency from being able to consider *all* available remedies to make the claimant whole, merely because a claimant could be made whole from relief which the agency *is* competent to offer.

then the Commission may have jurisdiction to appoint SCBWA to act as receiver. *Conyngham Twp. v. Pa. PUC*, 325 A.3d 885, 889-891 (Pa. Cmwlth. 2024) (noting that the chief consideration under Sections 1102(a)(5) and 1103 is whether a certificate of public convenience is “necessary or proper,” and is not a question regarding rates or service); 66 Pa. C.S. §§ 1102(a)(5), 1103(a), (d).

More specifically, the Commission has previously determined based on prior case law that its jurisdiction presently extends only to certificates, rates, and services of municipalities acting outside their corporate limits, but *not* as to certificates, rates, or service of municipal authorities acting within or outside their corporate boundaries of the municipality that created it. *See, e.g., Pa. PUC v. E. Dunkard Water Auth.*, Docket No. C-2021-3027615 (Order entered Nov. 1, 2023)³ at 17-22 (citations omitted). However, in *Conyngham Twp.*, the Commonwealth Court determined that the question of whether or not an entity requires a certificate of public convenience falls within the Commission’s jurisdiction and is not a question of rates or service of the municipal authority to be left to the courts of common pleas. *Conyngham Twp.*, 325 A.3d at 890.

Thus, based on the Commonwealth Court’s determination in *Conyngham Twp.*, under Section 1102(a)(5) of the Public Utility Code, a municipal corporation – including municipal authorities – must apply for a certificate of public convenience “to acquire, construct, or **begin to operate**, any plant, equipment, or other facilities for the rendering or furnishing to the public of any public utility service beyond its corporate limits.” 66 Pa. C.S. 1102(a)(5) (emphasis added).

While parts of Ferguson Township – in which Rock Spring is currently providing service – receive service from SCBWA at present, Ferguson Township is not an entity which incorporated SCBWA as a municipal authority; rather, SCBWA was incorporated by the Borough of State College. SCBWA does not provide service in Franklin Township, where the remainder of Rock

³ Available at: <https://www.puc.pa.gov/pcdocs/1803835.pdf>.

Spring's service territory is located. This means that SCBWA's operation of the Rock Spring system as receiver *may* constitute an act requiring the issuance of a certificate of public convenience, as SCBWA would begin to operate public utility facilities (*i.e.*, the facilities of Rock Spring) beyond the corporate limits of its incorporating municipality.

Moreover, the language of Section 529(g) provides the Commission the basis to determine that the appointment of a municipal authority as receiver of a jurisdictional water utility does not concern the authority's rates and service. Section 529 provides that "[t]he commission may, in its discretion, appoint a receiver **to protect the interests of the customers of the small water or sewer utility.**" 66 Pa. C.S. § 529(g) (emphasis added). Under Section 529, the Commission's chief consideration is whether the appointment of a receiver would "protect the interests of the customers of the small water or sewer utility," and not a question regarding the rates or service of a municipal authority outside of the receivership. *Id.*

b. Without SCBWA's voluntary application for a temporary certificate, a Commission order appointing the municipal authority as receiver is at risk for a court determination of Commission overreach.

While SCBWA has indicated its willingness to serve as receiver, its consent to a receivership order under Section 529(g) is likely not sufficient for a finding of Commission jurisdiction over the municipal authority to appoint it as the receiver. Whether the Commission as an administrative agency has jurisdiction over an entity in the first place (in order to direct them to do something that is within its power) is not simply a matter of whether the entity consents to such jurisdiction but rather is a matter of statutory authority as provided for by the General Assembly.

Here, the statute provides express language enabling a municipal authority to voluntarily consent to the Commission's jurisdiction, which is through the voluntary application for a

certificate of public convenience. In the ordinary course, Sections 1103(a) and (b) require that an application be made to the Commission in writing, be verified by oath or affirmation, and for the Commission to hold hearings to determine if the granting of a certificate will affirmatively promote the public interest. 66 Pa. C.S. §§ 1103(a), (b). However, Section 1103(d) provides an exception where temporary authority can be sought and granted without a hearing:

(d) *Temporary authority.* — [T]he commission...may, without hearing, in proper cases, consider and approve applications for certificates of public convenience, and in emergencies grant temporary certificates under this chapter, pending action on permanent certificates; but no applications shall be denied without right of hearing thereon being tendered to the applicant.

66 Pa. C.S. § 1103(d).

In contrast to Section 1103, Section 529 is completely void of any language that would allow a municipal authority to consent to the Commission's jurisdiction for the limited reason of being appointed the receiver of small water or wastewater utility meeting the criteria of Section 529(a).

By reading the provisions of Section 529(g), 1102(a)(5), and 1103(a), (d) together (and the Commonwealth Court's binding interpretation of Sections 1102(a)(5) and 1103(a) with respect to municipal authorities), the rules of statutory construction would be respected. The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. 1 Pa.C.S. § 1921(a). Every statute shall be construed, if possible, to give effect to all its provisions. *Id.* When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b).

It would be a significant departure from public utility law practice to find that the Commission can exercise its jurisdiction over a municipal authority without there being the need for the grant of certificate of public convenience in the first place. Moreover, should the Commission determine that a municipal authority's operation of a certificated public utility's

system as a receiver does not require a certificate of public convenience, the question of enforcement of the authority's receivership obligations pursuant to the conditions set forth in the receivership order becomes very unclear.

- c. **On the separate question of SCBWA's implementation of receivership duties pursuant to a Commission receivership order, a municipal authority must comply with the conditions in the Commission order and the Commission must have a way to enforce its order.**

As receiver, SCBWA would need to comply with certain conditions provided by the Commission in its receivership order. *See, e.g., East Dunkard Receivership*. On the separate question of a municipal authority's implementation of receivership duties pursuant to a Commission receivership order, there are a couple options.

On the one hand, to the extent that the Commission determines that the Authority's compliance with the conditions of the receivership order do not concern the rates and service of the Authority but rather concern the implementation of its receivership obligations pursuant to the receivership order, then the Commission has the power to enforce its own order, given that the authority would be certificated.

On the other hand, to the extent the Commission determines that the Authority's compliance with the conditions of the receivership order do concern the rates and service of the Authority, the Commission can potentially seek to enforce the conditions of the receivership in the appropriate court. The Public Utility Code provides the Commission with authority to seek enforcement of its orders through appropriate legal proceedings in courts of the Commonwealth. 66 Pa. C.S. § 502.

d. Section 1103(d) allows for the temporary and emergency grant of certificate of public convenience authority pending action on permanent certificates.

Section 1103(d) allows for the temporary and emergency grant of certificate of public convenience authority pending action on permanent certificates. 66 Pa. C.S. § 1103(d). Here, the permanent certificates to be acted upon would be Rock Spring's transfer of system assets and facilities to the ultimate acquiror in the Section 529 proceeding as well as Rock Spring's abandonment of service to its existing customers. Hence, should the Authority decide to voluntarily submit a written application for temporary certificate of public convenience, the Commission can, in a single order, grant the certificate on a temporary and emergency basis, without a hearing, and appoint SCBWA as receiver of the Rock Spring system, noting that the permanent certificates under the Commission's consideration are the ones under consideration for granting to Rock Spring to relinquish it from its duties as a public utility so that the ultimate acquiror can take over the system.

C. The Commission should hastily appoint an emergency receiver.

The OCA submits that the Commission's priority should be to immediately appoint an emergency receiver, primary to all other considerations regarding synergies with respect to the ultimate owner of the system. While it may be beneficial to the customers of the receiver and ultimate owner if they are the same entity, it is more important to ensure that the Rock Spring system is brought into compliance with the Public Utility Code as quickly as possible. OCA Petition at 7. Due to the public health and safety crisis which would result if an emergency were to arise in the Rock Spring system, which is not currently capable of remediating any emergency and is in deteriorating condition, the Commission should act in all haste to appoint a receiver to ensure that the Company's customers are able to receive continuous, adequate, and reasonable service.

VI. CONCLUSION AND REQUEST FOR RELIEF

For the reasons set forth in the OCA's Emergency Petition, this brief, and for the protection of the health, safety, and welfare of Rock Spring Water Company's customers, the Office of Consumer Advocate respectfully requests that the Commission immediately appoint a receiver to enable the provision of water service to the affected customers that complies with the quality standards of Section 1501 of the Public Utility Code.

Respectfully submitted,

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DATED: February 18, 2025

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PROPOSED ORDERING PARAGRAPHS

It is Ordered:

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

2. That Rock Spring Water Company shall provide notice to their customers of the imposition of the receivership in the same manner as a general rate increase and shall inform customers to direct future payments for water and wastewater service to the Receiver as appointed by the Commission.

3. That pursuant to 66 Pa. C.S. § 529(a), the Commission directs [Receiver] (“Receiver”) to act as the Receiver of Rock Spring Water Company beginning March 1, 2025, and to continue during the pendency of the Section 529 proceeding.

4. The Receiver shall not assume any debt incurred by Rock Springs Water Company unless the assumption is approved through an Order of this Commission.

5. The Receiver shall not be liable for preexisting conditions, defects, regulatory, or statutory violations incurred by Rock Spring Water Company.

6. The Receiver is permitted and directed to initiate service to the facilities that used to serve Rock Spring Water Company customers in the name of the Receiver as appointed the ordering paragraphs above.

7. That Rock Spring Water Company shall preserve all hard copy or electronic records, files, bank statements, documents, papers, or any other materials related to their offering of utility service, including records of all contracts, agreements, loans, payments, and other arrangements with affiliated companies or be subject to criminal and/or civil prosecutions under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

8. That Rock Spring Water Company shall no later than March 1, 2025, turn over copies or originals of all books, records, accounts, and any other information used and useful in the provision of utility water and wastewater service to customers served by Rock Spring Water Company to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

9. That Rock Spring Water Company shall, no later than March 1, 2025, turn over all operations and assets, including the keys to locks serving facilities, buildings, and any other property whether personal or real property, used and useful in the provision of utility service to customers served by Rock Spring Water Company to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

10. That Rock Spring Water Company, including its owners, officers, and employees, are directed to provide full and unconditional cooperation with the orderly transition of operations, management, and oversight to the Receiver as appointed by the Commission in the time leading up to March 1, 2025, with the provision of information and access to Rock Spring facilities. Facilities include office buildings and buildings that include customer data and control center information. Data includes all financial and customer data. Failure to provide full and unconditional cooperation may be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

11. Rock Spring Water Company shall cease all billing and collections activity to its former customers as of March 1, 2025.

12. Effective immediately, Rock Spring Water Company shall not engage in any purchases, sale, payment, lease, loan, or exchange of any service, property, money, security, right or thing under contract, whether real or written or under any arrangement with an affiliated interest, the terms which have not been approved by the Commission, or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

13. The Commission will coordinate with the Pennsylvania Department of Environmental Protection (“DEP”) to provide to the Receivers all data and reports associated with Rock Spring Water Company as soon as possible.

14. Rock Spring Water Company Employees shall provide all documents evidencing ownership or right of access to property upon which Rock Spring Water Company facilities are situate.

15. That a copy of this Order be served on Rock Spring Water Company, Pennsylvania-American Water Company, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Northwest Regional Office of the DEP, the proximate municipalities and authorities providing water and wastewater service in and around Rock Spring Water Company and identified on the service list for the consolidated dockets, and all parties to the consolidated dockets.

16. That a copy of this Order be posted on the Commission’s website at www.puc.pa.gov.

Administrative Law Judge John Coogan

ORDER ENTERED:

PROPOSED CONDITIONS OF RECEIVERSHIP
(Proposed Appendix A to the Proposed Order)
Docket No. P-2024-3051313

Receiver (“Receiver”), in its capacity as receiver of the Rock Spring Water Company (RWSC), shall be authorized to take the actions identified in Appendix A and serve as the Receiver of the Authority subject to the conditions contained in Appendix A.

1. That the Receiver, in its capacity as receiver of the RWSC, 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 Pennsylvania Department of Environmental Protection (DEP) 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 the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.
 - d. Conduct an evaluation of the system, identify the deficiencies in the system’s physical conditions, facilities and operational procedures, identify and prepare a plan of capital and operational improvements and report the results of such evaluation, as well as any DEP mandated capital improvements, to the Commission.
 - e. Provide all supervision and personnel necessary to operate the system in a professional, efficient and economic manner, and in accordance with sound operating practices and prudent industry and utility standards.
 - f. Respond to system emergencies by taking necessary action to ensure the continued provision of adequate, efficient, safe and reasonable service.
 - g. Notify appropriate regulatory or governmental agencies regarding any emergency which, in the reasonable judgement of the receiver, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety.

OCA Main Brief – Appendix B

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

- t. Satisfy the aforementioned duties and responsibilities either directly, through Commission-approved affiliates, or through competitive operation and maintenance agreements or any combination thereof.
 - u. Charge RWSC reasonable rates for all services rendered to or for RWSC on behalf of the receivership.
2. That the Receiver, in its own capacity, shall have the following duties and responsibilities:
- a. Should RWSC be unable to obtain necessary financing for ensuring the continued provision of adequate, efficient, safe and reasonable service to the customers of RWSC, the receiver, at its option, may either directly provide financing for RWSC 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 RWSC.

PROPOSED FINDINGS OF FACT

1. Rock Spring Water Company (Rock Spring) is a Commission-certificated public utility that provides water utility service to approximately 1,000 people with 494 connections. OCA St. 1 at 4.
2. J. Roy Campbell is a shareholder and the president of Rock Spring Water Company and serves as the Company’s certified operator. DEP St. 1 at 3.
3. Rock Spring has several alleged failures, statutory and regulatory violations:
 - a. Failure to comply with the 2013 Joint Settlement of its base rate case, *PUC v. Rock Spring Water Company*, Docket No. R-2012-2336662 (Order entered June 13, 2013).⁴
 - b. Rock Spring failed to timely implement a waterline replacement project as required by its 2006 Consent Order and Agreement (COA) with the Pennsylvania Department of Environmental Protection (DEP) to address its excessive water loss and failure to properly operate and maintain its distribution system.⁵
 - c. DEP issued Rock Spring a Notice of Violation dated January 10, 2018, for the following: failure to provide appropriate public notification, failure to provide public notification certification to DEP, failure to monitor for 21 volatile organic chemicals (VOCs) in the year 2017.⁶
 - d. DEP issued Rock Spring another Notice of Violation dated May 21, 2018, for the failure to monitor the VOCs, report chlorine residuals after the monitoring violation observed on December 19, 2017, provide public notice, and include a Level I Assessment for a total-coliform positive-sample violation in the Consumer Confidence Report.⁷
 - e. DEP assessed a civil penalty of \$40,000 on Rock Spring, noting the continued failure to comply with the 2006 COA.⁸
 - f. DEP issued an Administrative Order on August 27, 2018, that required Rock Spring to submit and implement a Corrective Action Plan (CAP) including the actions and schedule to reduce Rock Spring’s unaccounted-for water loss to 30% or less within five years. The approved CAP required Rock Spring to (1) install a Supervisory Control and Data Acquisition system by September 2019 for the operation of the well, booster pumps, and finished water storage tank⁹; (2) contract with a professional leak detection company to conduct a complete system evaluation/leak detection survey until the unaccounted-for water loss is 30% or less.¹⁰; and (3) complete a waterline replacement project by December 2023 should the unaccounted-for water loss still be greater than 30% by December 2021.

⁴ I&E Petition, ¶¶ 13-17.

⁵ I&E Petition, ¶¶ 19-21.

⁶ I&E Exhibit D, pp. 6-7.

⁷ *Id.* at 7.

⁸ I&E Exhibit C, p. 13.

⁹ I&E Exhibit G, p. 1.

¹⁰ I&E Exhibit H, p. 1.

- g. To date of I&E’s Petition, Rock Spring failed to comply with the August 2018 Administrative Order as their unaccounted-for water loss is still greater than 30%, and Rock Spring did not complete the waterline replacement project.¹¹
 - h. On January 18, 2024, DEP’s Petition to Enforce Administrative Order was granted by the Commonwealth Court, *DEP v. Rock Spring Water Company*, Docket No. 438 M.D. 2023 (Order entered January 18, 2024).¹²
 - i. On July 24, 2024, the Commonwealth Court issued an Order finding Rock Spring to be in contempt of the Court’s January 18, 2024 Order and imposed sanctions, *DEP v. Rock Spring Water Company*, Docket No. 438 M.D. 2023 (Order entered July 24, 2024).¹³
4. In sum, from 2021 to 2025, the Company has incurred “five significant deficiencies, eight minor violations, 30 minor deficiencies, and 78 valid monitoring violations.” DEP St. 1 at 4:25-26.
5. The Company’s distribution system is “unlikely to provide adequate fire flow.” DEP St. 1 at 4.
6. Rock Spring has not provided any indication that they have the ability or willingness to improve the water system or address the violations and deficiencies identified by DEP.
7. Customers are at risk of losing water service at any moment, and it is unclear if the Company would be able to respond adequately if an emergency were to occur.
8. On September 20, 2024, I&E filed a petition requesting the Commission open a Section 529 investigation into the acquisition of Rock Spring (I&E Petition).
9. OCA, I&E, and DEP sent discovery requests to Rock Spring on October 9, 2024, October 30, 2024, and December 31, 2024, respectively.
10. Rock Spring has not responded to any party’s discovery requests.
11. On December 11, 2024, counsel for Rock Spring submitted a letter to counsel for State College Borough Water Authority (SCBWA), indicating that Rock Spring agreed to sell its system to SCBWA for \$65,000.¹⁴
12. On December 18, 2024, counsel for Rock Spring emailed parties of the Section 529 proceeding, stating, in part, “my client has surrendered; the only delay in transfer is going to be occasioned by SCBWA;s [sic] insistence that they be provided a two page [sic] list of documents etc [sic] prior to any meeting.”¹⁵

¹¹ I&E Exhibit E.

¹² *Id.*

¹³ I&E Exhibit F.

¹⁴ OCA’s Petition for Interim Emergency Order, Exhibit A.

¹⁵ OCA’s Petition for Interim Emergency Order, Exhibit B.

13. On January 13, 2025, counsel for Rock Spring filed an Emergency Petition for Appointment of Receiver in the Court of Common Pleas of Centre County, at docket no. 2025-CV-0064-CI, asking the Court to appoint SCBWA receiver for Rock Spring. Counsel averred, “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 clear and present danger to all of Rock Springs’ customers which cannot be resolved by present management.”¹⁶ By Order dated February 5, 2025, the Court dismissed the Emergency Petition, citing a lack of jurisdiction over Rock Spring.
14. On February 6, 2025, the OCA filed a Petition for Interim Emergency Order with Exhibits A-C.
15. Rock Spring Water Company customers may, at any given time, lose water service or lose potable water service, should an emergency arise which the Company is unable to address. It is in the interest of Rock Spring Water Company customers to have a receiver appointed as quickly as possible to limit the possibility of such an occurrence.

¹⁶ OCA’s Petition for Interim Emergency Order, Exhibit C.

PROPOSED CONCLUSIONS OF LAW

1. Rock Spring Water Company is a public utility as defined in Section 102 of the Public Utility Code. 66 Pa. C.S. § 102.
2. The Commission has jurisdiction over the appointment of a receiver on behalf of Rock Spring Water Company. 66 Pa. C.S. § 529(g).
3. The Commission may “appoint a receiver to protect the interests of the customers of” Rock Spring Water Company. 66 Pa. C.S. § 529(g).
4. As the proponent of an order in this proceeding, the OCA has the burden of proof to establish that (1) its right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if the relief is not granted; and (4) that the relief requested is not injurious to the public interest. 66 Pa.C.S. § 332(a); 52 Pa. Code § 3.6(b).
5. An “emergency” is a “situation which presents clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1.
6. Rock Spring Water Company provides inadequate, unreasonable, and frequently interrupted water distribution service, which is deficient under the Public Utility Code. 66 Pa. C.S. § 1501.
7. Rock Spring Water Company’s inability to address an urgent deficiency in the water deficiency, should one occur, coupled with the potential for loss of continuous service for the Company’s customers and the Company’s failure to notify customers in the event of concerns regarding the quality of water provided, present an emergency under the Commission’s regulations. 52 Pa. Code § 3.1.
8. The OCA established that it (1) has a clear right to a receiver being appointed on behalf of Rock Spring Water Company; (2) a receiver must immediately be appointed to operate Rock Spring Water Company; (3) customers of Rock Spring Water Company would suffer irreparable injury to their health and safety if a receiver is not appointed; and (4) the public would benefit, not be injured by, the Commission’s appointment of a receiver on behalf of Rock Spring Water Company. 66 Pa. C.S. § 529(g); 52 Pa. Code § 3.6(b).
9. [Receiver] is a technically, managerially, and financially fit public utility which is capable of providing service on behalf of Rock Spring Water Company to the customers of Rock Spring Water Company on a temporary basis as a receiver.
10. The Commission appoints [Receiver] to act as receiver on a temporary and emergency basis for Rock Spring Water Company until a permanent entity acquires Rock Spring Water Company subject to the conclusion of the pending Section 529 proceeding at this docket number.