

ROBERT MIX LAW

Robert Mix, Esquire

211 Kimport Avenue
Boalsburg, PA 16827
(814) 880-2366
bmix470@gmail.com

February 27, 2025

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta

Enclosed please find the State College Borough Water Authority's Brief Re:
Interlocutory Commission Review and Answer to a Material Question Certified by the Presiding
Officer and a Certificate of Service for filing in the above-referenced proceeding.

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

ROBERT MIX LAW

By: 

Enclosure

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

Docket No. P-2024-3051313

VIA ELECTRONIC FILING

**STATE COLLEGE BOROUGH WATER AUTHORITY'S
BRIEF RE: INTERLOCUTORY COMMISSION REVIEW
AND ANSWER TO A MATERIAL QUESTION CERTIFIED
BY THE PRESIDING OFFICER**

Before the Pennsylvania Public Utility Commission (Commission) for its review and answer is a material question certified by Administrative Law Judge John M. Coogan (Judge Coogan) in his Order dated February 20, 2025 disposing of the Office of Consumer Advocate's (OCA) Petition for Issuance of an Interim Emergency Order seeking appointment of a Receiver for the Rock Spring Water Company (Rock Spring).

I. HISTORY OF THE PROCEEDING

A. Procedural History

1. On September 20, 2024 the Pennsylvania Public Utility Commission (PUC), Bureau of Investigation and Enforcement (Bureau I & E) filed a Petition requesting the Commission open a 529 Investigation into the acquisition of the Rock Spring Water

Company (Rock Spring) alleging that it has not satisfied certain components of a Joint Settlement of its 2012 base rate case, and (2) continuously violates numerous Pennsylvania Department of Environmental Protection (DEP) requirements and administrative orders issued by the Commonwealth Court.

2. Rock Spring, a Pennsylvania corporation, is a certificated public utility providing water service to approximately 1000 customers within its service area in Ferguson Township Centre County, Pennsylvania.
3. Between October 4, 2024 and November 11 ,2024, the Pennsylvania Office of Consumer Advocate (OCA), the Pennsylvania-American Water Company (PA American), Aqua Pennsylvania, Inc. (Aqua Penn), the State College Borough Water Authority (SCBWA), DEP and Ferguson Township filed Petitions to Intervene.
4. On October 30, 2024 Administrative Law Judge John Coogan held a prehearing conference and on November 5, 2024 issued a prehearing order setting forth a prehearing schedule of events.
5. On January 23,2025 the Bureau of I & E filed its direct testimony in accordance with the prehearing order. The direct testimony of other parties and intervenors will be due on February 20, 2025.
6. On January 13, 2025 Rock Spring filed an Emergency Petition for Appointment of a Receiver in the Court of Common Pleas of Centre County, Pennsylvania at Docket No. 2025-CV-0064-CI, asking the Court to appoint the SCBWA to serve its Receiver.

7. On January 22, 2025 the PUC's Law Bureau (Law Bureau) filed a Petition to Intervene and a Motion to Dismiss in the Centre County Action.
8. On January 30, 2025 a hearing was held on Rock Springs Emergency Petition for Appointment of Receiver.
9. On February 5, 2025 the Court granted the Law Bureau's Motion to Dismiss, finding that it did not have jurisdiction to appoint a Receiver for Rock Springs.
10. On February 6, 2025 the OCA filed a Petition for Interim Emergency Order.
11. On February 11, 2025 Rock Spring filed an Answer to the OCA's Petition.
12. On February 12, 2025 DEP filed an Answer to the OCA's Petition.
13. On February 12, 2025 PA American filed an Answer to the OCA's Petition.
14. On February 13, 2025 the SCBWA filed an Answer and New Matter to the OCA's Petition.
15. On February 14, a hearing was held on the OCA's Petition at which the parties and Intervenors entered written and live testimony and exhibits on the record and presented oral arguments.
16. On February 20, 2025 Judge Coogan issued an Order granting the Petition and certifying a material question to the commission.

B. Factual History

17. Rock Spring, a Pennsylvania corporation, is a certificated public utility providing water service to approximately 1000 customers within its service area in Ferguson Township Centre County, Pennsylvania.

18. In its Petition for Entry of an Interim Emergency Order the OCA contends that the cessation of adequate, efficient, safe and reasonable water service to Rock Spring's customers is imminent. (Petition, Paragraph 19)
19. In support of this contention the OCA cited the written testimony of the Bureau of I & E's witness Christopher Keller, who recommended that the PUC order a capable public utility to acquire Rock Springs pursuant to Section 529 of the Public Utility Code. Bureau I & E Statement 1 (Keller) at page 4. (Petition Paragraph 16)
20. In support of this contention the OCA cited the written testimony of the Bureau of I & E's witness Ethan Cline, who concluded that Rock Spring Cannot reasonably be expected to furnish and maintain adequate, sufficient, safe and reasonable water service and facilities. Bureau I & E Statement 2 (Cline) at page 10. (Petition Paragraph 17)
21. In support of this contention the OCA presumably will also rely on the written testimony of its witness, Nicholas DeMarco, who concluded that the need for relief is immediate because it appears that the current owners of Rock Spring are incapable of managing the system or effectively participating in the Section 529 proceeding. OCA Statement 1, (DeMarco) page 2, lines 18-21 and pages 5 through 9, lines 1-19 each page.
22. Additional citations to the evidence of record are set forth in the Discussion section below.

II. STATEMENT OF THE MATERIAL QUESTION.

Whether the granting of the Office of Consumer Advocate's Petition for Issuance of an Interim Emergency Order and the appointment of Pennsylvania American Water Company as Receiver for Rock Spring Water Company was necessary and proper?

Suggested Answer: No

III. SUMMARY OF ARGUMENT

The SCBWA does not contest Judge Coogan's Order to the extent it found that the appointment of a receiver for Rock Spring was necessary and proper. However, the SCBWA does contest said Order to the extent it appointed Pennsylvania American Water Company (PA American) to act as Receiver. Although both the SCBWA and PA American are technically, managerially and financially capable of acting as Receiver for Rock Spring, the SCBWA is the more appropriate choice for that position.

IV. ARGUMENT

As mentioned above, the SCBWA only contests Judge Coogan's Order to the extent it appointed Pennsylvania American Water Company (PA American) to act as Receiver of Rock Spring. Both the SCBWA and PA American are technically, managerially and financially capable of acting as Receiver for Rock Spring. PA American is a PUC certified public utility and, as such, is entitled to a presumption of fitness to serve as Receiver for Rock Spring. At the hearing held on February 14, 2025, the SCBWA presented oral testimony of Brian Heiser, its Executive Director, and Katie McCaulley, its Assistant Executive Director, which showed that it was a Pennsylvania municipal authority, incorporated in 1940, providing water service to approximately 15,000 customers in State College Borough and portions of

the surrounding townships of College, Ferguson, Halfmoon, Harris and Patton; that it has sufficient production and distribution facilities to serve the customers of Rock Spring in Ferguson Township, that it had sufficient staff to service and maintain the Rock Spring water system and that it is otherwise financially, technically and managerially capable of serving as Receiver of Rock Spring.

While PA American and the SCBWA are both capable of serving as Receiver of Rock Spring, there are several factors that favor the appointment of the SCBWA rather PA American. First, since the filing of this Section 529 proceeding, the SCBWA has entered into a Letter of Intent with Rock Spring to negotiate toward a sale / purchase of the Rock Spring system. Negotiations are ongoing. Second, in the event the SCBWA is appointed Receiver and subsequently acquires the Rock Spring system, any plan for rehabilitation of the Rock Spring system will be developed and carried out by the same entity. Third, the SCBWA's main office is approximately eight miles from the center of the Rock Spring system, making daily operation and maintenance tasks more convenient and efficient. Fourth, the SCBWA previously acquired the Ferguson Township Water Authority and currently provides water service to various portions of Ferguson Township, the municipality in which the Rock Springs system is located. Fifth, the Commission's policy of consolidating small water systems could more easily be accommodated. The closest connection point between the SCBWA's water system and Rock Spring's system is approximately 4,200 feet, whereas the closest connection point between PA American's closest system and Rock Spring's system is thirteen miles. Finally, the appointment of PA American as Receiver could result in prejudice to it. The costs and

expenses PA American could incur to maintain the failing Rock Spring system until it is sold or acquired could be considerable and recovery of those costs and expenses could be difficult to resolve. If the SCBWA were appointed Receiver, this issue would be non-existent. For all these practical reasons, Judge Coogan appointment of PA American rather than the SCBWA Receiver should not be approved.

In his Order, Judge Coogan cited several reasons why he believed appointing the SCBWA Receiver would be problematic, (1) that the Commission has no jurisdiction over the SCBWA, a municipal authority, (2) that the SCBWA has not applied to the Commission for a certificate of public convenience that would allow it to operate the Rock Spring system and (3) that the SCBWA is unwilling to accept an appointment as Receiver, if, by doing so, it is required to obtain a certificate of public convenience from the Commission and, thereby, subject itself to the jurisdiction of and regulation by the Commission

As to the first reason advanced, while the Commission has jurisdiction to appoint a Receiver for a failing public utility, such as Rock Spring, it does not have jurisdiction over municipal authorities, such as the SCBWA. Sections 102, 501 and 529 of the Public Utility Code (66 PA Code Section 102, 501 and 529). Issues involving a municipal authority's rates and service fall within the exclusive jurisdiction of the Court of Common Pleas. (53 Pa.C.S.A. 5607(d)(9)).

However, the Commission's lack of jurisdiction over the SCBWA need not preclude its participation in a process that would ultimately result in the appointment of the SCBWA as Receiver. The SCBWA submits that

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

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

the Commission agrees to cede that jurisdiction, to appoint the SCBWA Receiver, if that is the Commission's recommendation. By consenting to sharing jurisdiction over the process and allotting the decisions on certain issues to be made in appointing a Receiver for Rock Spring between the Commission and the Court, the SCBWA can be appointed Receiver. While this bifurcated procedure may be somewhat unusual, it, nevertheless, would carry out the Commission's decisions in this matter.

In its brief, PA American analogizes this procedure to one employed recently in a similar proceeding. *Joint Petition of Pennsylvania-American Water Company and the Department of Environmental Protection Requesting an Ex Parte Emergency Order In Regard to Receivership of East Dunkard Water Authority*, Docket No. P-2023-3043950 (Ratification Order entered Nov. 20, 2023) (the "*East Dunkard Order*"). The SCBWA incorporates PA American's argument in this regard by reference.

As to the second and third reasons advanced, the SCBWA submits that it is not necessary for it to obtain a certificate of public convenience to serve as Receiver of Rock Spring. Rock Spring already has a certificate of public convenience permitting it to operate its water system. This will continue in effect until such time as Rock Spring petitions the Commission to abandon such service. As Receiver, the SCBWA would be acting on Rock Spring's behalf, operating its water system in compliance with its certificate of public convenience. It is not a new entity seeking to own and operate a new water system. Thus, it is not necessary that the SCBWA obtain a separate certificate of public convenience.

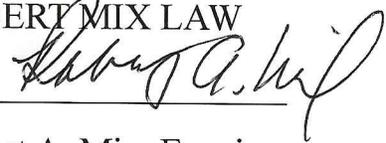
V. CONCLUSION

For the foregoing reasons, the SCBWA respectfully requests that the material question certified by Judge Coogan in his Order of February 20, 2025 be answered in the negative to the extent it appoints Pennsylvania American Water Company Receiver of the Rock Spring Water Company.¹

Respectfully submitted

ROBERT MIX LAW

By: _____



Robert A. Mix, Esquire
211 Kimport Avenue
Boalsburg, PA 16827
Solicitor for the State College
Borough Water Authority
Phone: (814) 880-2366
E-mail: bmix470@gmail.com

¹ It is anticipated that PA American may suggest that it and the SCBWA be appointed as Co-Receivers of Rock Spring. The SCBWA does not support this suggestion.

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the State College Borough Water Authority's Brief Re: Interlocutory Commission Review and Answer to a Material Question Certified by the Presiding Officer upon the persons and in the manner indicated below, which service satisfies the requirements of 52 Pa. Code §1.54 (relating to service by a party).

SERVED VIA ELECTRONIC MAIL ON February 27, 2025

Carrie B. Wright, Deputy Chief Prosecutor
Pennsylvania Public Utility Commission Bureau
of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
carwright@pa.gov
(Counsel for PUC I & E)

Amanda K. Chaplin, Esquire
Glenn P. Masser, Esquire
Department of Environmental Protection
Northeast Regional Office
208 West Third Street, Suite 101
Williamsport, PA 17701
achapin@pa.gov
gmasser@pa.gov
(Counsel for DEP)

Jacob D. Guthrie, Esquire
Emily A. Farren, Esquire
Office of Consumer Advocate
555 Walnut Street 5th Floor
Forum Place
Harrisburg, PA 17101-1923
JGuthrie@paoca.org
EFarren@paoca.org
(Counsel for OCA)

Rebecca Lyttle, Esquire
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
relyttle@pa.gov
(Counsel for OSBA)

James N. Bryant, Esquire
Carolyn Larrabee, Esquire
Bryant Larrabee, PC
107 East Main Street
P. O. Box 551
Millheim, PA 16854
jnbryant1@verizon.net
cmlarrabee@centrecountylaw.com
(Counsel for Rock Spring)

Alexandar R. Stahl, Esquire
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aguaamerica.com
(Counsel for Aqua Penn)

Elizabeth Rose Triscari, Esquire
Teresa Harrold, Esquire
Senior Director, Corporate Counsel
Pennsylvania American Water Company
852 Weslev Drive
Mechanicsburg, PA 17055
elizabeth.triscari@amwater.com
(Counsel for PA American)

David P. Zambito
Jonathan P. Nase, Esquire
Cozen & O'Connor
17 North Second Street, Suite 1401
Harrisburg, PA 17101
dzambito@cozen.com
jnase@cozen.com
(Counsel for PA American)

Elizabeth Dupuis, Esquire
Morgan M. Madden, Esquire
Babst, Calland, Clements & Zomnir, PC
Suite 302, 330 Innovation Blvd.
State College, PA 16803
bdupuis@babstcalland.com
mmadden@babstcalland.com
(Counsel for Ferguson Twp)

Raymond Myers
Huntingdon Area Water and Sewer Authority
81555 Deforrest Road
Huntingdon, PA 16652
Rmyers.raymond.h@gmail.com
(Chairman HAW&SA)

The Honorable John M. Coogan
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
jcoogan@pa.gov
(Administrative Law Judge)

Respectfully submitted

ROBERT MIX LAW

By: 

Robert A. Mix, Esquire
211 Kimport Avenue
Boalsburg, PA 16827
Solicitor for the State College
Borough Water Authority
Phone: (814) 880-2366
E-mail: bmix470@gmail.com