

COMMONWEALTH OF PENNSYLVANIA



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July 18, 2025

Via Electronic Filing

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Homsher:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Melanie Joy El Atieh
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Enclosures

cc: Administrative Law Judge John M. Coogan (Via Email: jcoogan@pa.gov)
Rod Beard, Esq. (Via Email: rod@beardlawco.com)
Certificate of Service

CERTIFICATE OF SERVICE

I&E Petition to Request the Commission :
Open a 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 Prehearing Conference Memorandum, 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 July 2025.

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Dated: July 18, 2025

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PREHEARING CONFERENCE MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to the Prehearing Conference Order issued on June 27, 2025, in the above-captioned proceeding, by the Honorable Administrative Law Judge (ALJ) John M. Coogan of the Office of Administrative Law Judge (OALJ) of the Pennsylvania Public Utility Commission (Commission), and pursuant to Section 333 of the Public Utility Code (Code), 66 Pa. C.S. Section 333, and the Commission’s regulations at 52 Pa. Code Sections 5.221-5.224, the Pennsylvania Office of Consumer Advocate (OCA) submits the following Prehearing Conference Memorandum.

I. PROCEDURAL HISTORY

This matter involves the proceeding commenced by the Commission’s Bureau of Investigation & Enforcement (I&E) on September 20, 2024, pursuant to Section 529 of the Public Utility Code, 66 Pa.C.S. Section 529, when I&E filed the captioned Petition (Petition) with the Commission seeking the acquisition of Rock Spring Water Company (RSWC or Company) by a capable public utility. RSWC serves approximately 494 customers. The purpose of the Petition was to determine whether the Commission should open an investigation to order a capable public utility to acquire RSWC and whether a receiver should be appointed.

In the Petition, I&E supported its request for the Commission to initiate a Section 529 investigation because RSWC had not satisfied certain components of the Joint Settlement of its 2012 base rate case, including: (1) a 50% reduction of Unaccounted For Water (UFW) phased-in over 66 months, with the first 10% reduction achieved within 18 months from the effective date of new rates and additional 10% reductions for each 12 month period over the next four years; and (2) installation of two isolation valves, not to exceed a maximum of ten new isolation valves over the 66-month period, if it fails to achieve the agreed upon 10% reduction. Additionally, I&E stated that RSWC has violated, and continues to violate, numerous Pennsylvania Department of Environmental Protection (DEP) environmental requirements, administrative orders, and enforcement orders issued by the Commonwealth Court.

The OCA filed a Notice of Intervention on October 9, 2024. Pennsylvania-American Water Company (PAWC) filed a Petition to Intervene on October 10, 2024. Aqua Pennsylvania, Inc. (Aqua) filed a Petition to Intervene on October 16, 2024. State College Borough Water Authority (SCBWA) filed a Petition to Intervene on October 21, 2024. The Office of Small Business Advocate (OSBA) filed a Notice of Intervention on October 23, 2024. The Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) filed a Petition to Intervene on October 28, 2024. No party filed an answer to I&E's Petition.

A Prehearing Conference convened on October 30, 2024. ALJ Coogan issued a Prehearing Order, setting forth the procedural matters addressed during the Prehearing Conference, including establishment of a litigation schedule, on November 5, 2024.

Ferguson Township filed a Petition to Intervene on November 11, 2024. ALJ Coogan issued an Order granting Ferguson Township's Petition to Intervene on December 2, 2024.

On January 23, 2025, I&E submitted its direct testimony, pursuant to the procedural schedule established in the November 5, 2024, Prehearing Order.

The OCA filed a Petition for Issuance of an Interim Emergency Order (Interim Emergency Petition) pursuant to 52 Pa. Code Sections 3.1-3.11 on February 6, 2025, seeking the appointment of a receiver of the RSWC system. The Commission issued a telephonic hearing notice setting a formal call-in telephonic hearing for the Interim Emergency Petition on February 7, 2025. ALJ Coogan issued a Prehearing Order setting forth various rules that would govern that proceeding on February 7, 2025.

PAWC and DEP filed Answers to the Interim Emergency Petition on February 11, 2025. SCBWA filed an Answer and New Matter to the Interim Emergency Petition on February 13, 2025.

The evidentiary hearing on the Interim Emergency Petition was held on February 14, 2025, as scheduled. At the February 14, 2025, hearing, the testimony – specifically pertaining to the OCA’s Emergency Petition – of OCA witness DeMarco, DEP witnesses White and Minium, PAWC witness Guntrum, Aqua witness Clark, I&E witnesses Keller and Cline, and SCBWA witnesses Heiser and McCalley and the associated exhibits of these witnesses were admitted to the record subject to cross-examination.

ALJ Coogan issued a Briefing Order on February 14, 2025. I&E, RSWC, OCA, PAWC, Aqua, DEP, and SCBWA filed Briefs on February 18, 2025. OSBA filed a letter in lieu of a Brief on February 18, 2025. ALJ Coogan issued an Order granting the Interim Emergency Petition and certifying a Material Question to the Commission on February 20, 2025.

Also on February 20, 2025, the OCA, DEP, PAWC, and SCBWA circulated their direct testimony – pertaining to I&E’s investigation Petition – pursuant to the procedural schedule

established in the November 5, 2024, Prehearing Order. PAWC and SCBWA filed Briefs on the Material Question on February 27, 2025.

The Commission voted 5-0 to adopt a Joint Motion by Chairman Stephen M. DeFrank and Commissioner John F. Coleman, Jr. (Joint Motion) on March 13, 2025, which, among other things, answered the Material Question in the affirmative, appointed PAWC to act as receiver for RSWC, directed RSWC to negotiate in earnest for the transfer of its water system to SCBWA, and, if an agreement is reached, to file within 90 days of entry of an Opinion and Order an Application for Approval of Abandonment of its Certificate of Public Convenience (Abandonment Application).

PAWC filed a Motion to Stay the Proceeding (Motion to Stay) on March 17, 2025, requesting that the proceedings on I&E's original Petition be held in abeyance until RSWC and SCBWA can satisfy the directive to negotiate for a 90-day period. PAWC's Motion to Stay indicated that no party opposed the Motion to Stay.

ALJ Coogan issued an Order granting the Motion to Stay on March 19, 2025. The order directed that, five days following RSWC's filing of an Abandonment Application, or ninety-five (95) days following entry of the Commission's Opinion and Order answering the Material Question, whichever occurs first, all parties shall file a status report at the docket of this proceeding, either separately or jointly, to include the parties' understanding of what issues are still in dispute and the need for further proceedings.

The Commission entered its Opinion and Order on March 21, 2025, which, among other things, answered the Material Question, appointed PAWC to act as receiver for RSWC, directed RSWC to negotiate in earnest for the transfer of its water system to SCBWA and, if an agreement is reached, to file an Abandonment Application within 90 days of entry of an Opinion and Order.

PAWC filed a letter on June 19, 2025, stating that SCBWA and RSWC have not reached an agreement and, because ninety (90) days have passed without an agreement between SCBWA and RSWC and no Abandonment Application has been filed, PAWC requests that a further prehearing conference be scheduled. No other status reports have been filed.

ALJ Coogan issued an Order on June 27, 2025, granting PAWC's request to lift the stay and scheduling a Prehearing Conference in this case for Wednesday, July 23, 2025, at 10:00 a.m.

II. ISSUES

The OCA is participating in this proceeding to ensure that the interests of the customers of RSWC are protected. Based upon its investigation and review of the filing, the issues to be addressed in the Section 529 proceeding include, but are not limited to, the following:

- RSWC's technical, managerial, and financial fitness, or lack thereof;
- RSWC's failures to comply with DEP and/or Commission orders and regulations;
- Whether the Commission should order a capable public utility to acquire RSWC; if so, which capable public utility should be ordered to acquire RSWC;
- PAWC's operations as receiver for RSWC, including the improvements made, status of the system, costs incurred, and further investment required; and
- The reasonableness of any purchase price for the assets of the RSWC water system.

III. WITNESSES

As stated above, on February 20, 2025, the OCA served the written direct testimony of OCA witness Nicholas A. DeMarco, but witness DeMarco is no longer available to appear as a witness on behalf of the OCA in this proceeding. At this time, the OCA cannot name a replacement witness. The OCA reserves the right to call new or additional witnesses, as necessary. If the OCA

determines that new or additional witnesses will be necessary, it will notify all parties of record promptly.

IV. LITIGATION SCHEDULE

The OCA will work with the parties to develop an agreed-upon litigation schedule. Based on available information at the time of this submission, the OCA is not requesting that a Public Input Hearing be held.

V. DISCOVERY

The OCA does not request any discovery rule modifications at this time.

VI. OCA COUNSEL / SERVICE ON THE OCA

The OCA will be represented in this case by the attorneys listed below:

Melanie Joy El Atieh, Deputy Consumer Advocate
Jacob D. Guthrie, Assistant Consumer Advocate
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The OCA will accept email service without provision of a hard copy. To the extent that materials are available electronically, it is requested that copies be served upon all the following group email: OCARockSpring@paoca.org.

VII. SETTLEMENT

The OCA will participate in settlement discussions in this matter.

VIII. REPRESENTATION OF RSWC

The OCA is concerned that, at this stage in the proceeding, RSWC does not have counsel of record. As identified by ALJ Coogan in the first footnote of the March 19, 2025 Order Granting Motion to Stay, Attorneys Bryant and Larabee who had initially entered an appearance on behalf of RSWC have since withdrawn their appearance. Also, in the Order Granting Motion to Stay, in

the second footnote, ALJ Coogan noted that Attorney Rod Beard has indicated that he represents RSWC; however, Mr. Beard has not entered an appearance on behalf of the Company at this stage in the proceedings.

Under the Commission's regulations, in adversarial proceedings, a party that is not representing themselves must be represented by an attorney. 52 Pa. Code §§ 1.21-1.23. A party that is not represented by an attorney and cannot represent themselves cannot fully participate in the proceeding by filing pleadings, introducing testimony at hearings, and/or by filing briefs or exceptions. *See Pa. PUC v. Ultimate Med. Servs., Inc.*, Docket No. C-2012-2310173 (I.D. issued Jan. 30, 2013)¹ at 7 (providing that a non-attorney representative cannot move for the admission of testimony at hearings) *aff'd Pa. PUC v. Ultimate Med. Servs., Inc.*, Docket No. C-2012-2310173 (Order entered Jan. 30, 2013). If a party that cannot represent itself is ordered to retain counsel, but does not do so, the party can still be subject to civil penalties or have its certificate of public convenience authority revoked by the Commission without violating the party's substantive or procedural due process rights. *See Pa. PUC v. Black Tie Limousine Services, Inc.*, Docket No. C-2018-3000163 (Order entered Apr. 15, 2021)² (cancelling the certificate of public convenience operator authority of and imposing a monetary penalty on an entity despite the entity's failure to meaningfully participate because it was not represented by counsel following the presiding officer's order to secure counsel).

The OCA respectfully requests that, if Mr. Beard or another attorney has not entered an appearance by the time of the July 23, 2025, Prehearing Conference, ALJ Coogan enter an Order requiring the Company to retain counsel for the purposes of this proceeding consistent with the Commission's regulations. As part of this Order, the OCA further requests that the Presiding

¹ Available at: <https://www.puc.pa.gov/pcdocs/1213112.doc/>.

² Available at: <https://www.puc.pa.gov/pcdocs/1700164.docx>.

Officer notify the Company that its right to meaningfully participate in this proceeding through the submission of legal documents or admission of testimony will be waived unless or until counsel is retained and the evidentiary record submitted to the Commission will continue to be developed despite the Company's ability to submit legal documents or move for the admission of testimony. *See, e.g., 52 Pa. Code § 5.245(a)* ("After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: (1) Be deemed to have waived the opportunity to participate in the conference or hearing. (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing. (3) Not be permitted to recall witnesses who were excused for further examination."). With the entry of such an order, the OCA's concerns will be addressed, and RSWC's due process rights will have been assured to the extent required by the Commission in prior proceedings.

Respectfully submitted,

/s/ Melanie Joy El Atieh
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Dated: July 18, 2025