



Elizabeth Rose Triscari
Senior Director, Corporate Counsel
852 Wesley Drive | Mechanicsburg, PA 17055
Phone: 717-550-1574
elizabeth.triscari@amwater.com

November 7, 2025

VIA ELECTRONIC FILING

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

P-2024-3051313-AEL-11/7/25

**RE: Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement Petition to Request the Commission Open a Section 529 Investigation Into the Acquisition of Rock Spring Water Company
Docket No. ~~P-2024-30513~~**

Dear Secretary Homsher:

Enclosed you will find for filing the Main Brief of Pennsylvania-American Water Company in the above-captioned proceeding. Copies of this Main Brief have been served to all parties on the Certificate of Service.

Please contact me if you have any questions about this filing.

Sincerely,

A handwritten signature in blue ink that reads "Elizabeth Rose Triscari".

Elizabeth Rose Triscari

cc: The Honorable Administrative Law Judge John M. Coogan (*via electronic mail*)
All Parties on the Attached Certificate of Service (*via electronic mail*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
 Bureau of Investigation and Enforcement :
 Petition to Request the Commission Open : Docket No. P-2024-3051313
 A Section 529 Investigation into the :
 Acquisition of Rock Spring Water Company :

CERTIFICATE OF SERVICE

I hereby certify that on this day I am serving the above-referenced **Main Brief** upon people 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 NOVEMBER 7, 2025

Robert A. Mix, Esquire Robert Mix Law 211 Kimport Avenue Boalsburg, PA 16827 E-mail: Bmix470@gmail.com Counsel for State College Borough Water Authority	Melanie Joy El Atieh, Esquire Jacob D. Guthrie, Esquire Office of Consumer Advocate 555 Walnut Street 5th Floor, Forum Place Harrisburg, PA 17101-1923 Email: OCARockSpring@paoca.org Counsel for the Office of Consumer Advocate
Amanda Chaplin, Esquire Glenn Masser, Esquire Pennsylvania Department of Environmental Protection Northcentral Regional Office 208 West Third Street, Suite 101 Williamsport, PA 17701 E-mail: achaplin@pa.gov E-mail: gmasser@pa.gov Counsel for the Pennsylvania Department of Environmental Protection	Elizabeth A. Dupuis, Esquire Morgan M. Madden, Esquire Babst, Calland, Clements & Zomnir, P.C. 330 Innovation Blvd., Suite 302 State College, PA 16803 Email: bdupuis@babstcalland.com E-mail: mmaden@babstcalland.com Counsel for Ferguson Township
Carrie B. Wright, Esquire Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement Commonwealth Keystone Building 400 North Street Harrisburg, PA 17120 E-mail: carwright@pa.gov Counsel for the Bureau of Investigation and Enforcement	Rebecca Lyttle, Esquire Steven Gray, Esquire Office of Small Business Advocate 555 Walnut Street 1 st Floor, Forum Place Harrisburg, PA 17101 E-mail: relyttle@pa.gov E-mail: sgray@pa.gov Counsel for Office of Small Business Advocate

<p>Alexander R. Stahl, Esquire Aqua Pennsylvania, Inc. 762 W. Lancaster Avenue Bryn Mawr, PA 19010 E-mail: astahl@aquaamerica.com Counsel for Aqua Pennsylvania, Inc.</p>	<p>Rod Beard, Esquire Beard Law Company 101 N. Allegheny Street Bellefonte, PA 16823 E-mail: rod@beardlawco.com Counsel for Rock Spring Water Company</p>
<p>David S. Gaines, Jr. MILLER, KISTLER & CAMPBELL 720 South Atherton Street, Suite 201 State College, PA 16801 E-Mail dgaines@mkclaw.com Counsel for State College Borough Water Authority</p>	<p>David P. Zambito, Esquire Jonathan P. Nase, Esquire Cozen O'Connor 17 North Second Street, Suite 1410 Harrisburg, PA 17101 Phone: (717) 703-5892 E-mail: dzambito@cozen.com E-mail: jnase@cozen.com</p>

Respectfully submitted,



Elizabeth Rose Triscari, Esquire (PA ID #306921)
Teresa K. Harrold, Esquire (PA ID #311082)
Erin K. Fure, Esq. (PA ID No. 312245)
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Telephone (717) 550-1556
E-mail: elizabeth.triscari@amwater.com
E-mail: teresa.harrold@amwater.com
E-mail: erin.fure@amwater.com

Counsel for Pennsylvania-American Water Company

Date: November 7, 2025

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF PENNSYLVANIA-AMERICAN
WATER COMPANY**

Elizabeth Rose Triscari, Esq. (PA ID No. 306921)
Teresa Harrold, Esq. (PA ID No. 311082)
Erin K. Fure, Esq. (PA ID No. 312245)
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA, 17055
Telephone: 717-550-1556
E-mail: elizableth.triscari@amwater.com
E-mail: teresa.harrold@amwater.com
E-mail: erin.fure@amwater.com

David P. Zambito, Esq. (PA ID 80017)
Jonathan P. Nase, Esq. (PA ID 44003)
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
Telephone: 717-703-5892
Facsimile: 215-989-4216
E-mail: dzambito@cozen.com
E-mail: jnase@cozen.com

Counsel for *Pennsylvania-American Water
Company*

Dated: November 7, 2025

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AND NOW COMES PENNSYLVANIA-AMERICAN WATER COMPANY (“PAWC” or the “Company”), pursuant to 52 Pa. Code § 5.501 and the Briefing Order issued in this matter on October 22, 2025, to file this Main Brief. For the reasons set forth herein, PAWC respectfully requests that Administrative Law Judge John M. Coogan (the “ALJ”) recommend that the Pennsylvania Public Utility Commission (the “Commission”) deny the request of the Bureau of Investigation and Enforcement (“I&E”) for an order directing a capable public utility to acquire the Rock Spring Water Company (“RSWC” or “Rock Spring”). There is a practical and economically feasible alternative to a forced acquisition – the voluntary acquisition of RSWC by the State College Borough Water Authority (“SCBWA”). As a result, Section 529 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 529, does not give the Commission authority to compel any capable public utility to acquire RSWC. Instead, PAWC respectfully requests that the ALJ recommend that the Commission order PAWC to exercise its existing authority as Receiver of RSWC to file a petition for bankruptcy on behalf of RSWC in order to transfer the water system to a public utility, municipality, municipal authority or cooperative.

In the alternative, if the ALJ recommends that the Commission direct a capable public utility to acquire Rock Spring, PAWC is ready, willing and able to acquire RSWC. If the Commission orders PAWC to acquire RSWC, PAWC respectfully requests that the Commission address the next steps in the process (such as giving RSWC and PAWC a reasonable period to attempt to negotiate an asset purchase agreement, providing guidance on a “reasonable” purchase price, and giving PAWC a reasonable period to prepare a Plan for Improvements pursuant to Section 529(j)).

I. INTRODUCTION

A. STATEMENT OF THE CASE

1. RSWC

RSWC is a certificated public utility providing water service to the public (utility code 212610). It is located in Ferguson Township, Centre County. DEP St. No. 2 p. 2. As of December 31, 2023, RSWC served 452 residential and 12 commercial customers. I&E St. No. 2 p. 4.

RSWC is owned by twelve shareholders. Its officers are: J. Roy Campbell, President; John Campbell, Vice President; Emilie Campbell, Secretary; and Sue Campbell, Treasurer. J. Roy Campbell and Elizabeth Campbell are the only members of RSWC's Board of Directors. PAWC Exhibit MK-4.

RSWC's last rate case was concluded in 2013. *Pa. Pub. Util. Comm'n v. Rock Spring Water Company*, Docket No. R-2012-2336662 (Order entered Jun. 13, 2023). In addition to agreeing to a 14.55% rate increase, the parties agreed:

10(f). Rock Spring agrees to reduce its current level of unaccounted for water (73.2%, per the Jan. 31 report to DEP) by 10% (to 63.2%) within 18 months from the effective date of the rates contained in this settlement. Thereafter, and for a duration of 48 additional months, Rock Spring agrees that it will continue to make 10% reductions (to 53.2%, 43.2%, 33.2%, 23.2%) in its unaccounted for water losses for each 12 month period. If Rock Spring fails to achieve the agreed upon 10% reduction in any such period, it agrees that it will plan to install two additional isolation valves in its system, not to exceed a maximum installation of 10 new isolation valves during the entire 66 month period. Rock Spring further agrees that it will provide I&E, OCA and the Commission's Bureau of Technical Utility Services (TUS) with its unaccounted for water data at the end of each of the previously noted periods. In its report, the Company also will describe what steps were taken to reduce major leaks during the previous period and will indicate where it intends to place the two additional isolation valves if the target reduction was not met and the reasons for that placement. This provision is based on the Company's calculation of its unaccounted for water in accordance with PUC requirements and does not bind OCA or I&E in any future proceeding regarding the appropriate calculation of unaccounted for water or any issues in any future proceeding regarding unaccounted for water.

11(g). Rock Spring will make efforts to sell the Company and agrees to provide to OCA and I&E the status of any negotiations, discussions or offers related to the sale of the Company or the transfer of the assets. These efforts could result in a proposed sale of the Company which will need to be reviewed by the Commission and other parties. The parties have reserved all rights regarding any potential application which may be filed by Rock Spring.

Pa. Pub. Util. Comm'n v. Rock Spring Water Company, Docket No. R-2012-2336662 (Recommended Decision issued May 29, 2013) p. 4. RSWC did not comply with either of these provisions. I&E St. No. 1 p. 2.

On March 21, 2025, the Commission ordered PAWC to serve as the Receiver for RSWC until a final order is entered in this Section 529 Investigation or RSWC abandons its Certificate (whichever is later). Opinion and Order entered March 21, 2025 (“March 2025 Order”). In that Order, the Commission directed RSWC to negotiate in earnest for the transfer of its system to SCBWA. *Id.* at 39 and Ordering Paragraph 6. RSWC did not reach an agreement with SCBWA for the transfer of the System.

2. RSWC’s Water System

RSWC’s water system (the “System”) is comprised of approximately 22 miles of water lines, a storage tank, and a well. SCBWA St. No. 4 p. 2. Significant portions of the System were installed on private land with no easement or other property rights secured. For example, the System’s storage tank is located on land owned by the Pennsylvania State University (“Penn State”) and a large portion of the System’s distribution facilities are located on the same land. No easement was secured for the construction of the assets on Penn State’s property. The tank is critical to the operation of the System because there is only one well and the tank provides both a backup to the well in case of equipment failure and water for fire flows. PAWC St. No. 1-Supp. pp. 3-4.

The RSWC water system components are in a degrading state. DEP St No. 1 p. 4. The well pit for the source is prone to flooding, the chlorine injection system has caused low entry point chlorine situations, the high service pumps that feed the water system sound as though they are malfunctioning when they are running, and the storage tank is in need of a rehabilitation project. DEP St. No. 3 p. 4. Additionally, the majority of main lines in the System are undersized and unlikely to provide adequate fire flow. DEP St. No. 3 p. 4.

As Receiver, PAWC has taken steps to improve regulatory compliance at the System. For example, PAWC has installed instrumentation to monitor compliance and provide remote alarms and shutdown in the event of equipment failure. PAWC St. No. 1-Supp p. 2. *See also* PAWC Exhibits MJG-1 and MJG-2, DEP St. 4 p. 7.

RSWC's unaccounted for water ("UFW") for the year ended December 31, 2023 was 65.0%. I&E St. No. 2 p. 5. As Receiver, PAWC has taken steps to address the lost water in the System. Leak detection has begun to locate any large leaks that can be repaired quickly. As of the end of August, 2025, PAWC fixed two major main breaks and two company side service leaks and identified and required customers to repair five customer side service leaks. During the first full three months of PAWC's Receivership, RSWC saw its average daily delivery of water decrease by 35%. PAWC St. No. 1-Supp. p. 2.

B. PROCEDURAL HISTORY

On May 23, 2024, the Commission's Bureau of Technical Utility Services referred this matter to I&E. I&E St. No. 1 p. 3. On September 20, 2024, I&E filed a Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Rock Spring Water Company.

On October 9, 2024, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention.

On October 10, 2024, Alexander R. Stahl, Esq. filed his Notice of Appearance on behalf of Aqua Pennsylvania, Inc. (“Aqua”). Aqua filed a Petition to Intervene on October 16, 2024.

On October 10, 2024, PAWC filed a Petition to Intervene.

On October 11, 2024, the Commission issued a Notice of Initial Telephonic Prehearing Conference scheduling a prehearing conference for October 30, 2024. A Prehearing Conference Order was issued on October 15, 2024.

On October 21, 2024, the State College Borough Water Authority (“SCBWA”) filed a Petition to Intervene.

On October 23, 2024, the Office of Small Business Advocate filed a Notice of Intervention.

On October 28, 2024, the Pennsylvania Department of Environmental Protection (“DEP”) filed a Petition to Intervene.

The Prehearing Conference was held as scheduled on October 30, 2024. On November 5, 2024, the ALJ issued his Prehearing Order. Among other things, the Prehearing Order established a litigation schedule for this proceeding.

On November 11, 2024, Ferguson Township filed a Petition to Intervene. This Petition was granted in the ALJ’s Prehearing Order No. 2, issued on December 2, 2024.

On December 5, 2024, RSWC filed proof that it issued a Notice of the Section 529 Investigation to its customers.

On December 10, 2024, James N. Bryant, Esq. and Carolyn M. Larrabee, Esq., entered their appearance on behalf of RSWC.

On January 13, 2025, Counsel for RSWC filed an Emergency Petition for Appointment of Receiver in the Court of Common Pleas for Centre County. I&E St. No. 1 p. 14; OCA St. No. 1

(dated Feb. 13, 2025)¹ p. 7 and Exhibit NAD-2. This Petition was denied on or about February 5, 2025 on the ground that the Commission has jurisdiction over the appointment of a receiver of RSWC. OCA St. No. 1 (dated Feb. 13, 2025) p. 7.

I&E served Direct Testimony on January 23, 2025.

On February 6, 2025, the OCA filed a Petition for Interim Emergency Order asking the Commission to appoint a receiver for RSWC. On February 7, 2025, the Commission issued a Telephonic Hearing Notice, scheduling a hearing on the OCA's Petition for Interim Emergency Order for Friday, February 14, 2025. On February 7, 2025, the ALJ issued a Prehearing Order for this hearing.

Answers to the OCA's Petition for Interim Emergency Order were filed by RSWC, DEP, PAWC. SCBWA filed an Answer and New Matter.

The hearing on OCA's Petition for Interim Emergency Order was held as scheduled on February 14, 2025. Written and/or oral testimony was introduced by PAWC, Aqua, DEP, the OCA and SCBWA.

The ALJ issued his Briefing Order on February 14, 2025. Briefs were filed by PAWC, Aqua, SCBWA, I&E, DEP and OCA. The OSBA filed a letter in lieu of a brief. Counsel for RSWC filed a brief and the officers of RSWC filed a letter in lieu of a brief.

SCBWA, OCA, DEP, and PAWC served Direct Testimony on February 20, 2025.

On February 20, 2025, the ALJ issued his Order Granting Emergency Petition and Certification of Material Questions. Among other things, this Order appointed PAWC as the

¹ On February 14, 2025, OCA introduced OCA St. No. 1 into evidence addressing OCA's Petition for Interim Emergency Order. At the Evidentiary Hearing on OCA subsequently introduced a different OCA St. No. 1 addressing the remaining issues in this case. This Main Brief will refer to the testimony introduced on February 14, 2025 as "OCA St. No. 1 (dated Feb. 13, 2025)." The testimony introduced at the Evidentiary Hearing will be referred to simply as "OCA St. No. 1." Similar citation conventions are used where other parties introduced two pieces of written testimony bearing the same statement numbers.

Receiver of RSWC until the later of: a final order is entered in this Section 529 Investigation or RSWC abandons its Certificate of Public Convenience (“Certificate”). An Errata Notice was issued on February 21, 2025 correcting typographical errors in the Order Granting Emergency Petition and Certification of Material Questions.

Briefs on the Material Question were filed by SCBWA and PAWC.

On March 4, 2025, Mr. Bryant and Ms. Larrabee filed a Motion to Withdraw as Counsel for RSWC.

On March 13, 2025, the Commissioners voted to adopt the Joint Motion of Chairman Stephen M. DeFrank and Commissioner John F. Coleman, Jr., which granted the OCA’s Petition for Issuance of Interim Emergency Order and appointed PAWC to serve as Receiver for RSWC. The Joint Motion also directed RSWC to work with SCBWA to negotiate an agreement to sell RSWC’s assets to SCBWA within 90 days of the issuance of an Order formalizing the Joint Motion. That Order was entered on March 21, 2025.

On March 17, 2025, PAWC filed an unopposed Motion to Stay the Proceedings for 90 days so RSWC and SCBWA could negotiate the agreement described in the Joint Motion. The ALJ granted the Motion to Stay by Order issued on March 19, 2025.

On May 20, 2025, PAWC filed the 60-day status report required by the March 2025 Order, summarizing the conditions found and activities performed at RSWC.

On July 19, 2025, PAWC filed a letter stating that SCBWA and RSWC had not reached an agreement within 90 days of entry of the March 2025 Order. PAWC requested that a further prehearing conference be held.

On June 27, 2025, a hearing notice was issued notifying the parties that a Further Telephonic Prehearing Conference would be held on July 23, 2025. Also on June 27, 2025, the ALJ issued his prehearing conference order.

The Further Telephonic Prehearing Conference was held as scheduled on July 23, 2025. The ALJ issued his Prehearing Order on July 24, 2025, which, among other things, established a new litigation schedule.

PAWC, SCBWA, DEP and RSWC served Direct and/or Supplemental Direct Testimony on August 27, 2025.

On September 2, 2025, Ferguson Township filed a request for a public input hearing. On September 9, 2025, the Commission issued a Notice of In-Person Public Input Hearings. Two public input hearings were scheduled for September 30, 2025. Also on September 9, 2025, the ALJ issued Prehearing Order #4, which modified the litigation schedule based on the addition of in-person public input hearings.

PAWC and DEP served Rebuttal Testimony on September 18, 2025.

Two public input hearings were held as scheduled on September 30, 2025, one at 1:00 p.m. and another at 6:00 p.m. At the public input hearing, Counsel for OCA and several other parties objected to the testimony of several witnesses at the public input hearing because these witnesses had previously submitted written Direct Testimony on behalf of RSWC. The ALJ took this issue under advisement because he had not been served with RSWC's testimony.

RSWC witnesses Samuel P. Mannino, Corrine Henderson, and Scott Henderson were unavailable to testify at the Evidentiary Hearings scheduled for October 20 and 21, 2025. To preserve the due process rights of the parties, the public input hearing testimony of these witnesses

was admitted into the record, but the written Direct Testimony of these witnesses was not admitted into the record. Tr. 463.

RSWC witnesses Gene F. Byers and Sharon J. Byers were available to testify at the Evidentiary Hearings. Their written Direct Testimony was introduced into the record and they were subject to cross-examination at the Evidentiary Hearing. Their public input hearing testimony was stricken. Tr. 543-545.

PAWC, DEP, I&E and SCBWA served Surrebuttal Testimony on October 8, 2025.

An Evidentiary Hearing was held as scheduled on October 20, 2025. The Evidentiary Hearing scheduled for October 21, 2025 was cancelled. The ALJ issued his Briefing Order on October 22, 2025.

II. LEGAL STANDARDS

A. BURDEN OF PROOF

Section 529(i) states:

(i) Burden of proof.--The Bureau of Investigation and Enforcement shall have the burden of establishing a *prima facie* case that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of this section. Once the commission determines that a *prima facie* case has been established:

(1) the small water or sewer utility shall have the burden of proving its ability to render adequate, efficient, safe and reasonable service at just and reasonable rates; and

(2) a proximate public utility providing the same type of service as the small water or sewer utility shall have the opportunity and burden of proving its financial, managerial or technical inability to acquire and operate the small water or sewer utility.

66 Pa. C.S. § 529(i).

The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production determines which party must come forward with evidence to support a particular

proposition. This burden may shift between the parties during the course of a trial. If the party with the burden of production fails to introduce sufficient evidence, the opposing parties are entitled to receive a favorable ruling. Once the party with the initial burden of production introduces sufficient evidence to make out a *prima facie* case, the burden of production shifts to the opposing parties. If the opposing parties introduce evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to its position. The burden of production goes to the legal sufficiency of a party's case.

Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion. “[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings.” *Riedel v. County of Allegheny*, 633 A.2d 1325, 1328 n. 11 (Pa. 1993).

To establish a sufficient case and satisfy its burden of proof, I&E must show, by a preponderance of the evidence, that it is entitled to the relief it is seeking. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, its evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

B. SECTION 529(A)

Section 529(a) empowers the Commission to order a capable public utility² to acquire a small water utility³ if it determines:

(1) that the small water ... utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, ... , and the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water ... utility;

(2) that the small water ... utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;

(3) that the small water ... utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;

(4) that alternatives to acquisition have been considered in accordance with subsection (b)⁴ and have been determined by the commission to be impractical or not economically feasible;

(5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water ... utility in compliance with applicable statutory and regulatory standards; and

(6) that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

66 Pa. C.S. § 529(a).

In making the determinations required by Section 529(a), the Commission is to consider:

(1) The financial, managerial and technical ability of the small water ... utility.

² In pertinent part, “capable public utility” is defined as “[a] public utility which regularly provides the same type of service as the small water utility ... to 4,000 or more customer connections, which is not an affiliated interest of the small water utility ... and which provides adequate, efficient, safe and reasonable service.” 66 Pa. C.S. § 529(m).

³ A “small water utility” is defined as “[a] public utility which regularly provides water service to 1,200 or fewer customer connections.” 66 Pa. C.S. § 529(m).

⁴ The alternatives to acquisition listed in subsection (b) include, but are not limited to, acquisition of the small water utility by a municipal authority. 66 Pa. C.S. § 529(b)(5).

(2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service.

(3) The expenditures which may be necessary to make improvements to the small water ... utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(4) The expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water ... utility to be acquired.

(5) The opinion and advice, if any, of the Department of Environmental [Protection] as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(6) Any other matters which may be relevant.

66 Pa. C.S. § 529(c).

If the Commission orders the acquisition of the small water utility, the Commission is to issue an order that provides for the extension of the service area of the acquiring public utility. 66 Pa. C.S. § 529(d). The purchase price for the acquisition is to be determined by agreement between the small water utility and the capable public utility, subject to a determination by the Commission that the purchase price is reasonable. If the small water utility and the capable public utility cannot reach an agreement, or if the Commission finds that the agreed-to purchase price is unreasonable, the Commission is to order the acquiring capable public utility to acquire the small water utility following the procedure set forth in the Eminent Domain Code. 66 Pa. C.S. § 529(e).

III. SUMMARY OF ARGUMENT

As an independent commission created by the General Assembly, the Commission only has the powers expressly conferred or necessarily implied by statute. Section 529 explicitly empowers the Commission to order a capable public utility to acquire a small water utility *if and only if* each of six criteria are satisfied. PAWC respectfully submits that the Commission lacks

authority to order a capable public utility to acquire RSWC because one criterion has not been satisfied.

Section 529(a)(4) of the Code requires the Commission to determine that alternatives to acquisition have been considered and determined to be impractical or not economically feasible. The clear and unambiguous language of Section 529 gives the Commission authority to order a capable public utility to acquire a small water utility as a last resort – when no alternatives to a forced acquisition are practical or economically feasible.

One alternative that the Commission is required to consider is acquisition of the System by a municipality, municipal authority or cooperative. In this case, a municipal authority (SCBWA) is interested in acquiring RSWC. I&E failed to establish a *prima facie* case that SCBWA's acquisition of RSWC is impractical or not economically feasible. Even if I&E did establish a *prima facie* case on this criterion, PAWC, SCBWA, DEP and other parties to this case introduced more than enough evidence to rebut that case. The preponderance of the evidence clearly establishes that SCBWA's acquisition of RSWC is practical and economically feasible.

Another alternative that the Commission can and should consider is RSWC filing for bankruptcy. Appendix A to the March 2025 Order already gives PAWC, as Interim Receiver, the authority to file a petition for bankruptcy on behalf of RSWC. Appendix A ¶¶ 1.1 and 2.a. In such a proceeding, the System could be sold to SCBWA or a public utility (including PAWC). Placing the System into bankruptcy would be a logical alternative to a forced acquisition, considering that, at the Evidentiary Hearing, RSWC's counsel admitted that RSWC failed to comply with DEP regulations and settlement commitments because of Rock Spring' lack of financial resources.

PAWC therefore respectfully requests that the ALJ recommend that the Commission not order a public utility to acquire RSWC. This does not mean that the Commission must place the

operation of the System back in the hands of RSWC. Instead, the ALJ should recommend that the Commission's Order not close this proceeding. This result would clearly allow PAWC to continue to serve as Receiver of the System, exercising the powers and duties set forth in Appendix A to the March 2025 Order.

Appendix A gave PAWC, as receiver, “the authority to file a petition for bankruptcy and participate in such proceedings on behalf of RSWC.” Appendix A ¶ 1.1 and 2.a. The record in this proceeding amply demonstrates that RSWC lacks the financial ability (or the managerial or technical ability) to operate the System in compliance with applicable laws and regulations. RSWC's counsel admitted this at the Evidentiary Hearing by arguing RSWC does not have the financial resources needed to operate in accordance with DEP's regulations. Despite the System's long-standing problems, RSWC has not filed a rate case for over a dozen years seeking to obtain the financial resources needed to operate in accordance with applicable laws and regulations. It is unlikely that Rock Spring's 464 customers could afford to pay the costs of rehabilitating the dilapidated System (estimated to be approximately \$16.1 million).

PAWC should be ordered to file a bankruptcy petition on behalf of RSWC, within 120 days of entry of the Commission's order, in order to transfer the System to a public utility, municipality, municipal authority or cooperative.⁵ PAWC, as receiver, should also be directed to make any necessary related filings at the Commission on behalf of RSWC (such as an application for approval to transfer property and to abandon service). This approach would provide a path forward for finally resolving the issues that have plagued the System for years – even though Section 529 does not give the Commission authority to order RSWC to be sold to a capable public utility.

⁵ SCBWA could acquire the System in the bankruptcy proceeding, which provides further evidence that the acquisition of RSWC by SCBWA is practical and economically feasible.

In the alternative, if the ALJ concludes that the six criteria in Section 529 have been satisfied, he should recommend that the Commission direct PAWC to acquire the System. PAWC is ready, willing and able to acquire the System if the Commission so orders.

However, if the ALJ recommends that the Commission direct PAWC to acquire the System, he should also recommend that the Commission's Order address the procedure going forward. The Commission should give RSWC and PAWC a reasonable period (such as three months) to negotiate an asset purchase agreement identifying the System assets that will be transferred and a reasonable purchase price for those assets. If RSWC and PAWC cannot reach an agreement within that time period, PAWC could either request an extension of time to negotiate an agreement or file an eminent domain proceeding to acquire the System.

PAWC requests that the ALJ recommend that the Commission provide PAWC and RSWC with a "range of reasonableness" for the purchase price, to mitigate the risk that the parties will come back to the Commission with a purchase price that the Commission finds unreasonable. In addition, PAWC requests that the ALJ recommend that the Commission Order direct that certain existing debts of RSWC be paid from the proceeds of the sale of the System, to the extent that proceeds are available. These debts include the costs of PAWC's receivership and the outstanding fines and penalties that have been imposed on RSWC. Such an order would be consistent with the March 2025 Order, which sought to protect PAWC's ratepayers from having to pay the costs of the receivership. It would also protect the Commonwealth's taxpayers, who, for years, have financed DEP's enforcement actions against RSWC. Any proceeds remaining after these amounts are paid should be paid to RSWC.

Finally, PAWC requests that the ALJ recommend that the Commission's Order give PAWC time to submit a Plan for Improvements for remedying the System's deficiencies pursuant to Section 529(j).

IV. ARGUMENT

As an independent commission created by the General Assembly, the Commission only has the powers expressly conferred or necessarily implied by statute. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977). Of course, Section 529 proceedings also implicate Article I, Section 10 of the Pennsylvania Constitution and the Fifth Amendment to the United States Constitution, both of which prohibit the taking of private property for public uses without just compensation. Pa. Const. art. I § 10, U.S. Const. Amend. V.

Section 529 explicitly empowers the Commission to order a capable public utility to acquire a small water utility if and only if each of six criteria are satisfied. A small water utility is defined as a "public utility which regularly provides water service to 1,200 or fewer customer connections." 66 Pa. § 529(m). RSWC satisfies this definition because it is a certificated utility that regularly provides water service to about 464 customers. I&E St. No. 2 p. 4. A capable public utility is defined as a public utility that regularly provides the same type of service as the small water utility to 4,000 or more customer connections, that is not an affiliate of the small water utility, and that provides adequate, efficient, safe and reasonable service. *Id.* PAWC and Aqua satisfy the definition of a capable public utility. SCBWA does not satisfy that definition because it is a municipal authority rather than a public utility.

The crux of this case, therefore, is whether the six criteria contained in Section 529 are satisfied. PAWC respectfully submits that one criterion has not been satisfied. I&E failed to establish a *prima facie* case that alternatives to a forced acquisition of RSWC are impractical or not economically feasible. Even if I&E did establish a *prima facie* case on this criterion, PAWC,

SCBWA, DEP and other parties introduced more than enough evidence to rebut that *prima facie* case. Nevertheless, if the Commission determines that all six Section 529 criteria have been satisfied, then PAWC is ready, willing and able to acquire RSWC.

A. SECTION 529 CRITERIA

The Commission only has authority to order a small water utility to be acquired by a capable public utility if the six criteria set forth in Section 529(a) are satisfied. In making its determination, the Commission is to consider the factors contained in Section 529(c). PAWC respectfully submits that only five of the six criteria have been satisfied in this case.

1. 66 Pa. C.S. § 529(a)(1)

The first criterion for ordering a capable public utility to acquire a small water utility is that the small utility must be in violation of statutory or regulatory standards that affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water utility. 66 Pa. C.S. § 529(a)(1). The Commission's statement of policy on water conservation measures states that UFW levels are to be kept within reasonable levels, but levels above 20% are generally considered excessive. 52 Pa. Code § 65.20(4). DEP does not have a regulation explicitly establishing an acceptable level of UFW, but DEP considers high and especially chronically high unaccounted for water loss to be a failure under 25 Pa. Code § 109.4 to effectively operate and maintain public water system facilities and a failure to take whatever investigative or corrective action is necessary to assure that safe and potable water is continuously supplied to the users. DEP St. No. 1 pp. 3-4.

The record clearly shows that high levels of UFW affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water utility. UFW can have a major impact on public health because leaking water lines can be a direct pathway for bacteria, viruses and other potentially harmful pathogens to enter the water system. Some of these bacteria and viruses can

cause health problems. Bacteria and viruses entering water lines through breaks and cracks are introduced into the water system after the water has been treated and the remaining chlorine may not be enough to kill the newly introduced contaminants, meaning that they are more likely to actually reach customers and cause illness if consumed. DEP St. No. 6 p. 3.

Additionally, UFW wastes material and financial resources for the water system and its customers. Proper water treatment by a water supplier involves numerous costs, including the cost of treatment chemicals, electricity to power pumps and other mechanical equipment, and materials needed for general maintenance. When most of the water being treated ends up being lost through leaking water lines as UFW, this is a significant waste of money for the water system and its customers. DEP St. No. 6 p. 4.

RSWC has chronically high levels of UFW. The running annual average of Rock Spring's UFW typically falls between 50-70%. DEP St. No. 2 pp. 4-5. RSWC's UFW for the year ended December 31, 2023 was 65.0%. I&E St. No. 2 p. 5. PAWC respectfully submits that the ALJ should recommend that the Commission find that the first criterion for ordering a capable public utility to acquire RSWC has been satisfied.

2. 66 Pa. C.S. § 529(a)(2)

The second criterion for ordering a capable public utility to acquire a small water utility is that the small water utility has failed to comply, within a reasonable period of time, with any order of the Commission or DEP concerning the safety, adequacy, efficiency or reasonableness of service. 66 Pa. C.S. § 529(a)(2). A 2006 Consent Order and Agreement ("COA") required RSWC to submit a Corrective Action Plan to reduce its UFW to 30% or less within five years. DEP St. No. 2 p. 3. Due to RSWC's failure to fully comply with the 2006 COA, and the overall lack of progress on the Corrective Action Plan milestones, DEP attempted to enter into a new COA with RSWC in 2018. Negotiations failed and DEP issued an Administrative Order (the "2018 AO") on

August 27, 2018. DEP also issued a Civil Penalty Assessment to RSWC in the amount of \$40,000 on October 17, 2018. RSWC has yet to pay the Civil Penalty Assessment. DEP St. No. 2 p. 3.

DEP filed a Petition to Enforce the August 2018 AO with the Commonwealth Court of Pennsylvania (“Commonwealth Court”) in October 2023. The Commonwealth Court granted the petition in January 2024. DEP St. No. 2 p. 6. RSWC has failed to comply with multiple parts of the Commonwealth Court’s Order. Consequently, the Commonwealth Court found RSWC in contempt of court for not complying with its order. In October 2024, DEP filed a Certification of Non-Compliance with the Commonwealth Court. DEP St. No. 2 pp. 6-7. RSWC remains in violation of DEP’s August 27, 2018 AO. DEP St. No. 2 p. 3. PAWC respectfully submits that RSWC has failed to take action to comply with the 2018 AO within a reasonable period of time. The 2018 AO required RSWC to take action to reduce its UFW. As discussed above, chronically high levels of UFW concern the safety, adequacy, efficiency or reasonableness of service.

Additionally, in RSWC’s most recent (2012) rate case, the Commission approved a settlement in which RSWC agreed to (1) reduce its UFW by 50% over 66 months and (2) attempt to sell the System. The Company did not comply with either of these commitments. I&E St. No. 1 p. 2.

For all of the above reasons, PAWC respectfully submits that the ALJ should recommend that the Commission find that the second criterion for ordering a capable public utility to acquire RSWC has been satisfied.

3. 66 Pa. C.S. § 529(a)(3)

The third criterion for ordering a capable public utility to acquire a small water utility is that the small water utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. 66 Pa. C.S. § 529(a)(3). As discussed above, RSWC has a history of failing to comply with DEP regulatory orders. Similarly,

RSWC has a long history of failing to comply with its own promises to improve services in Commission proceedings. In its most recent base rate case (which was filed in 2012), the Company agreed to a settlement resolving the case.

As part of the settlement of the base rate case, the Company was to reduce its unaccounted for water (“UFW) by 50% over 66 months to 23.3%. However, the Company failed to reach its benchmark of 63.2% within 18 months or the 10% reductions per year as required by the settlement. Also, as part of the settlement, the Company was required to attempt to sell the system, however, this has not occurred.

I&E St. No. 1 p. 2 (note omitted).

At the Evidentiary Hearing, RSWC’s counsel admitted that RSWC failed to comply with DEP regulations because Rock Spring lacks the money to comply. *See, e.g.*, Tr. 523. *See also*, Tr. 491-495 (RSWC’s counsel contends that Rock Spring did not comply with the settlement in its 2012 rate case due to lack of financial resources). Additionally, I&E witness Keller contended that reorganizing under new management was not a viable alternative for RSWC because Rock Spring would still lack the financial resources to address its issues with UFW. Tr. 496. Nevertheless, RSWC has not filed a rate case for 13 years to give it the financial resources to comply with laws, regulations and settlements.

Considering RSWC’s continuing financial issues and its long history of noncompliance with Commission, DEP, and Court orders, RSWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. I&E St. No. 2 p. 10; DEP St. No. 2 p. 8; DEP St. No. 5 p. 4; PAWC St. No. 2-SR p. 3. PAWC respectfully submits that the ALJ should recommend that the Commission find that the third criterion for ordering a capable public utility to acquire RSWC has been satisfied.

4. **66 Pa. C.S. § 529(a)(4)**

a. **Introduction.** The fourth criterion for ordering a capable public utility to acquire a small water utility is that alternatives to acquisition have been considered and have been determined by the Commission to be impractical or not economically feasible. One alternative that the Commission is required to consider is acquisition of the small water utility by a municipality, a municipal authority or a cooperative. 66 Pa. C.S. § 529(b)(5). The obvious alternative to ordering a capable public utility to acquire RSWC is for SCBWA to acquire RSWC in a voluntary transfer. After all, this case was previously stayed to give RSWC and SCBWA additional time to negotiate a mutually acceptable asset purchase agreement. The Commission lacks authority to order any capable public utility to acquire RSWC unless it finds that the acquisition of RSWC by SCBWA is “impractical or not economically feasible.”

b. **I&E Failed to Present a *Prima Facie* Case.** In this case, I&E failed to present a *prima facie* case that the acquisition of RSWC by SCBWA is impractical or not economically feasible. The only “evidence” that such an acquisition is impractical or not economically feasible is that RSWC and SCBWA have not yet reached an agreement for such an acquisition. I&E St. No. 1 p. 6. PAWC respectfully submits that RSWC’s failure to sell its System is due to its own intentional bargaining strategy. The Commission should not use RSWC’s bargaining strategy to support a finding that the transaction is impractical or not economically feasible.⁶

⁶ I&E witness Keller concluded that the alternative of merging RSWC with one or more public utilities is impractical or not economically feasible because RSWC has several DEP violations and a significant deterioration of its System. Additionally, he testified that “the lack of interest by the Company’s owners in operating the water system makes the Company an unviable merger candidate.” I&E St. No. 1 p. 6. This testimony does not demonstrate that the potential acquisition of RSWC by SCWBA is impractical or not economically feasible. SCWBA (unlike any capable public utility) is interested in acquiring RSWC. Thus, the Commission should not use this testimony, directed at the

Unlike most Section 529 proceedings, a nearby municipal authority is interested in purchasing the System, SCBWA St. No. 1 p. 1, and has made a reasonable offer to purchase it. SCBWA St. No. 1 p. 1; SCBWA St. No. 4 p. 1. Rock Spring reported that its net utility plant as of December 31, 2023 was \$11,317. PAWC St. No. 2 p. 3. In 2025, SCBWA offered to purchase the System for \$65,000 – almost six times the net utility plant – but RSWC did not accept that offer. Neither did RSWC make a counter-offer. SCBWA St. No. 4 p. 1. In this proceeding, RSWC has introduced no evidence of the value of its System. Although the owners of RSWC have repeatedly professed their intention to sell the System, they have never followed through with serious efforts to sell it. DEP St. No. 2 (Feb. 13, 2025) p. 6; DEP St. No. 2 pp. 7-8; DEP St. No. 4 p. 4. Where as here, there is overwhelming evidence that the acquisition of a small water utility by a municipal authority would be practical and economically feasible, the small water utility should not be permitted to force a capable public utility to acquire it simply by “going through the motions” of negotiating a sale.

Apparently, Rock Spring believes PAWC (and its ratepayers) have deeper pockets than SCBWA; RSWC has made a strategic decision not to sell the System to SCBWA because it might receive a greater purchase price if the Commission orders PAWC to acquire the System (especially if the purchase price is determined in an eminent domain proceeding). *See* 66 Pa. C.S. § 529(e) (if the capable public utility and the small water utility cannot agree on a purchase price, or if the Commission finds that they agreed to a purchase price that is unreasonable, the Commission is to direct the capable public utility to acquire the system through an eminent domain proceeding). RSWC’s bargaining strategy does not support a Commission finding that acquisition by SCBWA is impractical or not economically feasible.

alternative described in Section 529(b)(4), to find that the alternative described in Section 529(b)(5) is impractical or not economically viable.

Commission decisions must be supported by substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Dutchland Tours, Inc. v. Pa. Pub. Util. Comm'n*, 337 A.2d 922, 925 (Pa. Cmwlth 1975). Commission decisions must be supported by more than mere “suspicion” or a “scintilla” of evidence. *Lansberry, supra* 578 A.2d at 602 . In this case, I&E failed to present a *prima facie* case because it failed to introduce enough relevant evidence to support a reasonable conclusion that the acquisition of RSWC by SCBWA is impractical or not economically feasible.

c. The Preponderance of the Evidence Shows that RSWC’s Acquisition by the SCBWA is Practical and Economically Feasible. Even if I&E did establish a *prima facie* case that RSWC’s acquisition by SCBWA is impractical or not economically feasible, PAWC, SCBWA, DEP and other parties have more than rebutted I&E’s case. The record demonstrates that the acquisition of RSWC by SCBWA is practical and economically feasible:

- SCBWA is interested in purchasing the RSWC System and has offered to buy it for \$65,000 (about six times its net utility plant). SCBWA Exhibit A.
- SCBWA has a history of assisting Rock Spring in operating its System, having provided technical assistance since 1993. I&E St. No. 1 p. 9; I&E Exhibit No. 1 Schedule 4 pp. 3-4. As a result, SCBWA is familiar with the System.
- RSWC is located in Ferguson Township, which is part of SCBWA’s existing territory. SCBWA St. No. 4 p. 4.
- SCBWA is located 0.8 miles from RSWC. I&E St. No. 1 p. 9.
- SCBWA has approximately 15,000 customer connections. SCBWA St. No. 1 p. 5.
- SCBWA has a Susquehanna River Basin Commission withdrawal limit of 8.0 million gallons per day (“MGD”) with a current average daily demand of 5.1 MGD

and a peak demand of 6.2 MGD. SCBWA St. No. 1 p. 4. It also has a storage capacity of approximately 15.8 million gallons. SCBWA St. No. 1 p. 5.

- SCBWA has 42 staff members. SCBWA St. No. 2 p. 1.
- SCBWA has about \$25,000,000 in reserve funds which should be more than enough to purchase the System and interconnect it with the SCBWA System. SCBWA St. No. 4 p. 5.
- SCBWA has consistently ended each fiscal year with a net income exceeding budget. It has one existing loan (from the Pennsylvania Infrastructure Investment Authority) with an outstanding balance of approximately \$20,000,000. SCBWA St. No. 2 p. 3; SCBWA Exhibit D, Independent Auditor's Report p. 6.
- If SCBWA were to acquire RSWC, it would pursue all applicable Federal and State grants or other programs to finance upgrades to the System. SCBWA St. No. 4 p. 5. SCBWA also would collaborate with Ferguson Township to pursue grants to help finance upgrades to the System. SCBWA St. No. 2 p. 3; OCA St. No. 1 p. 11.
- If SCBWA were to acquire RSWC, it would incorporate the RSWC System into SCBWA's existing system. SCBWA St. No. 4 p. 3. The RSWC System would be interconnected with the SCBWA system. SCBWA St. No. 3 p. 4. Incorporating the RSWC System into the SCBWA system will provide a larger, more reliable source of water and redundant back up supply sources. SCBWA St. No. 4 p. 3.
- SCBWA has a plan for upgrading the RSWC System, if it is able to acquire it. Essentially, SCBWA would replace the entire RSWC water storage, transmission and distribution system. The total cost would approach \$20 million and is expected to be completed in five to ten years. SCBWA St. No. 3 pp. 5-6.

- SCBWA has acquired smaller systems near it that were in poor condition. I&E St. No. 1 p. 9.
- The acquisition of RSWC would allow SCBWA to expand and develop additional sources of water, creating a more efficient water system. I&E St. No. 1 p. 9.
- If SCBWA would acquire RSWC, SCBWA's rates to its pre-acquisition customers would increase minimally. Any increase would be based upon the financial condition of SCBWA as a whole; it would not be based on the recovery of costs of acquiring RSWC. SCBWA St. No. 5 p. 1.
- SCBWA's rates are currently higher than RSWC's rates. SCBWA St. No. 2 p. 4. If SCBWA would acquire the RSWC System, SCBWA anticipates that it will charge RSWC's current customers the same rates charged to SCBWA's pre-acquisition customers. The Authority might consider a small monthly fee to recover a portion of the cost of required system improvements. SCBWA St. No. 5 p. 1.
- The acquisition of RSWC by SCBWA would have minimal impact on the service that SCBWA provides to its pre-acquisition customers. SCBWA St. No. 3 p. 3.

PAWC introduced testimony that the acquisition of RSWC by SCBWA is practical and economically feasible. PAWC St. No. 1-Supp. pp. 7-8; PAWC St. No. 2 p. 3. PAWC also sent Requests for Admission to every other party in this case asking them to admit that the acquisition of RSWC by SCBWA is practical and economically feasible. In response:⁷

⁷ None of the witnesses at the public input hearing testified that the acquisition of RSWC by SCBWA would not be practical or economically feasible. In fact, of the witnesses who opined that Rock Spring should be sold, a majority opined that the System should be sold to SCBWA. PAWC St. No. 2-SR pp. 1-2.

- Aqua admitted that the acquisition of RSWC by SCBWA is practical and economically feasible. PAWC St. No. 1-R p. 3; PAWC Exhibit MJG-5.
- DEP admitted that the acquisition of RSWC by SCBWA is practical and economically feasible. DEP gave a lengthy explanation of its admissions. PAWC St. No. 1-Supp. p. 8; PAWC Exhibit MJG-4. *See also*, DEP St. No. 1 p. 6 and DEP St. No. 2 p. 9 (opining that SCBWA is in the best overall position to acquire RSWC and bring its water system back into compliance with regulatory standards).
- Ferguson Township admitted that the acquisition of RSWC by SCBWA is practical and economically feasible. PAWC St. No. 1-R p. 3; PAWC Exhibit MJG-8.
- SCBWA admitted that the acquisition of RSWC by SCBWA is practical and economically feasible. PAWC St. No. 1-R pp. 3-4; PAWC Exhibit MJG-9.
- OSBA admitted that the acquisition of RSWC by SCBWA is practical and economically feasible, but expressed concern because SCBWA has stated it would not become a certificated public utility. PAWC St. No. 1-R pp. 3-4; PAWC Exhibit MJG-6.
- I&E admitted that the acquisition of RSWC by SCBWA is practical. With respect to whether the acquisition of RSWC by SCBWA is economically feasible, I&E expressed concern about the Commission's jurisdiction over SCBWA. PAWC St. No. 1-R pp. 3-4; PAWC Exhibit MJG-7.
- RSWC admitted that the acquisition of RSWC by SCBWA is economically feasible. PAWC St. No. 1 pp. 3-4; PAWC Exhibit MJG-10. RSWC further admitted that such an acquisition may be practical from some perspectives but not from others. PAWC Exhibit MJG-10.

The OCA objected to PAWC's Requests for Admission that the acquisition of RSWC by SCBWA would be practical and economically feasible. In the spirit of compromise, PAWC withdrew its Requests for Admission to OCA. Nevertheless, the OCA's Direct Testimony makes OCA's position clear. OCA witness DeMarco testified:

My testimony will show that [SCBWA] is financially, managerially, and technically capable⁸ to repair and operate the [RSWC] System. While [PAWC] is also a capable option, SCBWA's proximity, familiarity with the system, and interest in purchasing the system makes them a better option than PAWC in this case. The Commission should allow the current negotiations between Rock Spring and SCBWA to continue and/or help facilitate SCBWA's purchase of the system.

OCA St. No. 1 p. 2. *See also* OCA St. No. 1 pp. 6-7 ("I believe that SCBWA is financially, managerially, and technically capable and it is in Rock Spring's consumers' best interests that SCBWA be allowed to acquire and integrate the Rock Spring system into its existing water system.").

Significantly, I&E (which bears the burden of proof in this proceeding) introduced the Surrebuttal Testimony of Christopher Keller stating:

As I noted in my direct testimony and again in this testimony, I&E does not dispute that SCBWA would potentially be a better fit [than PAWC to acquire the System] given its closer proximity to the Rock Spring system, and I believe this option should be explored as well. *I&E would not oppose the acquisition of Rock Spring by SCBWA, assuming the Commission determines SCBWA has demonstrated its fitness to own and operate the Rock Spring system.*

I&E St. No. 1-SR p. 4 (emphasis added). Based on the extensive evidence cited above, demonstrating that the acquisition of RSWC by SCBWA is practical and economically feasible,

⁸ In determining whether the six criteria in Section 529(a) have been satisfied, the Commission is to consider certain factors, including the financial, managerial and technical ability of all proximate public utilities providing the same type of service. 66 Pa. C.S. § 529(c)(2). This legal standard is different from that used in Section 1102 acquisitions, in which the Commission considers whether an acquiring public utility is financially, legally and technically fit to acquire another system. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985).

PAWC respectfully submits that the record in this case amply demonstrates that SCBWA has the financial, managerial and technical ability to own and operate the System.

Finally, it is worth noting that Section 529(i) states that I&E's burden of proof is to show that the acquisition of the small water utility would be in the public interest, as well as in compliance with the provisions of Section 529. The record demonstrates that the acquisition of RSWC by SCBWA would be in the public interest for the following reasons:

- The Commission has a policy of promoting regionalization and consolidation in the water industry. 52 Pa. Code § 69.721. The acquisition of RSWC would promote regionalization and consolidation in the water industry because of the proximity of the two systems (the two systems will be physically interconnected if SCBWA acquires RSWC). PAWC St. No. 1-E p. 4; PAWC St. No. 1-Supp. p. 8.
- If SCBWA would acquire the RSWC System and interconnect its system to the RSWC System, SCBWA would no longer need the well and treatment building currently owned by RSWC. SCBWA therefore could spend about \$4,000,000 less to bring the System into compliance with regulatory standards than would PAWC. PAWC St. No. 1-Supp. p. 8.
- The acquisition would have substantial environmental benefits, which would promote the public's right to a clean environment consistent with the Environmental Rights Amendment, Pa. Const. art. I, § 27 ("The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment."). RSWC's high rate of UFW has adverse environmental consequences. DEP St. No. 6 p. 3. In contrast to RSWC, SCBWA has aggressive leak detection and leak correction efforts and has committed

significant resources and personnel to control water loss in its system. Its annual non-revenue water levels are about 12%. SCBWA St. No. 3 p. 3. As stated above, SCBWA has a plan for upgrading the RSWC System, which would address RSWC's high levels of UFW. SCBWA St. No. 3 pp. 5-6.

Significantly, Section 529(b) requires the Commission to consider alternatives to acquisition, *including but not limited to* five alternatives listed in the statute. Expressions like “including but not limited to,” which precede a specific list of items, are considered words of enlargement and not words of limitation. *Dep't of Env'l Prot. v. Cumberland Coal Res., LP*, 102 A.3d 962, 976 (Pa. 2014). Thus, the examples listed in Section 529(b) are given to illustrate meaning but are not meant to be exclusive. *Friends of DeVito v. Wolf*, 227 A.3d 872, 888 (Pa. 2020).

Another alternative, which is not specifically named in Section 529(b), is the bankruptcy of the small water utility. The Commission has already authorized PAWC as Receiver of the System to place the System into bankruptcy. March 2025 Order, Appendix A, ¶¶ 11 and 2.a. In such a proceeding, the System could be sold to SCBWA or a public utility (including PAWC). Placing the System into bankruptcy would be a logical alternative, considering that, at the Evidentiary Hearing, RSWC's counsel admitted that RSWC failed to comply with DEP regulations because Rock Spring lacks the financial resources to comply with those regulations and that Rock Spring failed to comply with the settlement in its 2012 rate case (which required it to reduce its UFW) due to a lack of funds. *See, e.g.*, Tr. 491-495, 523. The possibility of selling the System to a municipal authority or a public utility in a bankruptcy proceeding further demonstrates that there are practical and economically feasible alternatives to ordering a capable public utility to acquire the System.

For all of the above reasons, PAWC respectfully submits that the preponderance of the evidence amply demonstrates that the acquisition of RSWC by SCBWA would be practical and economically feasible. Consequently, the ALJ should recommend that the Commission find that the fourth criterion in Section 529(a) is not satisfied.

5. 66 Pa. C.S. § 529(a)(5)

The fifth criterion for ordering a capable public utility to acquire a small water utility is that the acquiring public utility is financially, managerially and technically capable of acquiring and operating the small water utility in compliance with applicable statutory and regulatory standards. 66 Pa. C.S. § 529(a)(5). I&E recommended that the ALJ recommend that the Commission direct PAWC to acquire RSWC. I&E St. No. 1 p. 4. No party to this proceeding has disputed that PAWC is financially, managerially and technically capable of acquiring and operating the RSWC System.⁹

PAWC introduced evidence showing that it is financially, managerially and technically capable of acquiring and operating the RSWC System. *See, e.g.*, PAWC St. No. 3 p. 2 (PAWC is financially capable); PAWC St. No. 1-Supp. pp. 4-6 (PAWC is managerially and technically capable). PAWC's witnesses also testified that PAWC is ready, willing and able to acquire Rock Spring if the Commission so orders. PAWC St. No. 2-SR p. 3; PAWC St. No. 1-E p. 4; PAWC St. No. 2 p. 6. PAWC respectfully submits that the ALJ should recommend that the Commission find that the fifth criterion for ordering a capable public utility to acquire RSWC has been satisfied.

6. 66 Pa. C.S. § 529(a)(6)

The sixth criterion for ordering a capable public utility to acquire a small water utility is that the acquiring capable public utility's rates for pre-acquisition customers will not increase

⁹ Aqua is also an existing public utility. No party has disputed that Aqua is financially, managerially and technically fit to acquire and operate the RSWC System.

unreasonably because of the acquisition. 66 Pa. C.S. § 529(a)(6). If the Commission would order PAWC to acquire the RSWC System, the System's purchase price, as well as a portion of the cost of capital improvements identified for Rock Spring, will need to be paid for in part by PAWC's pre-acquisition customers. As a result, PAWC's rates for existing customers are expected to increase. PAWC St. No. 3 p. 3. Nevertheless, because of PAWC's large size, spreading the cost of acquiring and rehabilitating the RSWC System to PAWC's pre-acquisition customers is not expected to cause rates to increase unreasonably. PAWC St. No. 3 p. 4. PAWC respectfully submits that the ALJ should recommend that the Commission find that sixth criterion for ordering a capable public utility to acquire RSWC has been satisfied.

B. BASED ON THE ABOVE, SHOULD A CAPABLE PUBLIC UTILITY BE REQUIRED TO ACQUIRE ROCK SPRING?

PAWC respectfully submits that, based on the unique facts of this particular case, the Commission lacks authority to order a capable public utility to acquire the System. The terms of Section 529(b)(4) are clear and unambiguous. "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).

The Commission has authority only to order a capable public utility to acquire a small water utility when there is no other alternative. That is, the Commission has authority only to compel a capable public utility to acquire a small water utility as a last resort. In this case, I&E failed to carry its burden of establishing a *prima facie* case that there are no practical or economically feasible alternatives to a forced acquisition of RSWC. Even if it did establish a *prima facie* case on this point, PAWC and the other parties to this case introduced an overwhelming amount of evidence to rebut that *prima facie* case. The preponderance of the

evidence shows that RSWC's acquisition by SCBWA would be practical and economically feasible.

Therefore, the ALJ has no option but to recommend that the Commission find that it lacks authority to compel a capable public utility to acquire RSWC.¹⁰

C. IF A CAPABLE UTILITY SHOULD BE REQUIRED TO ACQUIRE ROCK SPRING, WHICH CAPABLE UTILITY SHOULD BE REQUIRED TO ACQUIRE ROCK SPRING?

The Commission ordered PAWC to serve as the Receiver of RSWC. March 2025 Order. The Commission need not order the entity selected as receiver to acquire the small water utility; whether to appoint a receiver for a small water utility is a different question than whether to order a capable public utility to acquire that same small water utility; OCA St. No. 1 (dated Feb. 13, 2025) pp. 11-12; PAWC St. No. 1-R pp. 4-5.

Nevertheless, if the ALJ disagrees with PAWC, and recommends that the Commission find that all six criteria in Section 529(a) have been satisfied, the ALJ should recommend that the Commission order PAWC to acquire the System. Only two capable public utilities have been identified in this proceeding: PAWC and Aqua. Both utilities are financially, managerially and technically fit to own and operate the System. PAWC St. No. 1-Supp. pp. 4-6; Aqua St. No. 1 p. 3. Nevertheless, PAWC would be the better fit because PAWC is more proximate to RSWC (PAWC is located 13 miles from RSWC, I&E St. No. 1 p. 9, whereas Aqua's closest system is approximately 38 miles from RSWC and Aqua's closest operations center is approximately 50 miles from RSWC, Aqua St. No. 1 p. 3). PAWC currently serves as Receiver of RSWC. PAWC St. No. 1-Supp. p. 2; PAWC Exhibits MJG-1, MJG-2, and MJG-11. Consequently, PAWC is much more familiar with the System than is Aqua. Finally, PAWC is ready, willing and able to

¹⁰ This is not to say that the Commission must allow RSWC to continue to own and operate the System. See Section IV.D.1, *infra*.

acquire the System, if the Commission directs it to do so. PAWC St. No. 2-SR p. 3; PAWC St. No. 1-E p. 4; PAWC St. No. 2 p. 6.

D. OTHER FACTORS FOR CONSIDERATION

Regardless of the ALJ's recommendation on whether the six Section 529(a) criteria have been satisfied, there are additional issues that the ALJ should address in his Recommended Decision to ensure that the customers of RSWC receive reasonable and adequate service and to protect PAWC and its customers financially. This section of PAWC's Main Brief begins by discussing the issues that remain if the ALJ agrees with PAWC and finds that the Commission lacks authority to order a capable public utility to acquire RSWC. This section of PAWC's Main Brief then addresses the issues that remain if the ALJ recommends that the Commission order PAWC to acquire RSWC.

1. Procedure Going Forward if the Commission Lacks Authority to Order a Capable Public Utility to Acquire RSWC

If the ALJ recommends that the Commission find that it lacks authority to order a capable public utility to acquire RSWC, he need not recommend that the Commission turn the operation of the System back to RSWC. In fact, based on the record in this case, the ALJ should not make such a recommendation. As discussed above, RSWC has a lengthy history of failing to comply with the Code and applicable environmental statutes and regulations. As also discussed above, there is no reason to believe RSWC will comply with the Code and applicable environmental statutes and regulations in the future.

Instead, the ALJ should recommend that the Commission's Order not close this proceeding. PAWC currently serves as Receiver until a final order is entered in this Section 529 Investigation or RSWC abandons its Certificate (whichever is later). March 2025 Order. The Commission's Order, however, arguably contemplated that RSWC would abandon its Certificate

before a final order was entered in this Section 529 proceeding. To ensure that PAWC continues to serve as Receiver following the entry of the Commission's decision, the Commission should retain jurisdiction of this matter. As Receiver, PAWC would continue to exercise the powers and duties that the Commission gave to it in Appendix A to the March 2025 Order.

Significantly, Appendix A gave PAWC, as Receiver, "the authority to file a petition for bankruptcy and participate in such proceedings on behalf of RSWC." Appendix A ¶¶ 11 and 2.a. In a Section 529 proceeding, the Commission is to consider the "financial, managerial and technical ability of the small water ... utility." 66 Pa. C.S. § 529(c)(1). The record in this proceeding amply demonstrates that RSWC lacks the financial ability (let alone the managerial or technical ability) to operate the System in compliance with applicable laws and regulations.

At the Evidentiary Hearing, RSWC's counsel argued that RSWC failed to comply with its commitment to reduce UFW in its 2012 rate case due to a lack of financial resources. Tr. 491-495. Nevertheless, RSWC has never filed another rate case to enable it to live up to its commitment to reduce UFW to reasonable levels.

Similarly, at the Evidentiary Hearing, RSWC's counsel noted that only one person at Rock Spring was qualified to take daily grab samples as required by DEP regulations. He therefore contended that RSWC was unable to comply with the regulations if that individual was ill, off work, etc. Tr. 519- 524. When DEP counsel objected to this line of questioning, RSWC's counsel argued:

The issue we're having here is Rock Spring Water Company does not have the finances necessary to operate in accordance with the regulations that DEP has imposed upon Rock Spring Water Company. If they were able to raise the rates and hire more employees, get other certified analysts available to do this work, this wouldn't be an issue.

Tr. 523. In this regard, it should be noted that Rock Spring uses unpaid volunteers (friends of the owners) to assist in bookwork and billing customers, which raises serious questions about whether

RSWC is maintaining the confidentiality of customer information. Tr. 560. Nevertheless, Rock Spring has not filed a rate case to allow it to raise the money to hire the staff to allow it to comply with applicable laws and regulations.

PAWC has developed a five-year capital plan designed to remedy the System's deficiencies. PAWC Exhibit MJG-3. This plan calls for capital improvements in the System totaling approximately \$16.1 million. If the existing 464 customers financed these improvements, the cost would be almost \$34,700 per customer. This figure does not include the costs of additional employees to operate the System, as discussed by RSWC's counsel. PAWC respectfully submits that RSWC, on its own, cannot raise the money necessary to bring the Company back into compliance with the applicable laws and regulations.

I&E's testimony supports the admissions of Rock Spring's counsel regarding Rock Spring's poor financial condition. I&E witness Keller stated that several alternatives to acquisition were not practical or economically feasible because they "would not address the financial resources needed to address the issues with the Company's extremely high UFW as well as other DEP violations that have issues going back more than ten years." I&E St. No. 1 p. 6; Tr. 497.

DEP's testimony also supports the admissions of Rock Spring's counsel. DEP witnesses Chad Miller and Mark Accettulla both testified that RSWC lacks the financial (as well as the technical and managerial) capacity to operate the Rock Spring Water Company in a manner that complies with the Safe Drinking Water Act and DEP's regulations. DEP St. No. 1 p. 3; DEP St. No. 4 p. 8.

Under these circumstances, the ALJ should recommend that the Commission order PAWC to exercise its existing authority pursuant to Appendix A. Specifically, PAWC should be ordered to file a bankruptcy petition on behalf of RSWC, within 120 days of entry of the Commission's

order, in order to transfer the System to a public utility, municipality, municipal authority or cooperative.¹¹ PAWC should also be directed to make any necessary related filings at the Commission on behalf of RSWC (such as an application for approval to transfer property and to abandon service). PAWC should be directed to notify the Commission and all parties to this proceeding when it files the bankruptcy petition on behalf of RSWC.

Keeping PAWC as Receiver would ensure that Rock Spring's customers continue to receive reasonable and adequate water service in the short term because PAWC would continue to serve as the Receiver of the System. Ordering the Receiver to place RSWC into bankruptcy, as already authorized by Appendix A would provide a path forward for finally resolving the issues that have plagued the System for years – even though Section 529 does not give the Commission authority to order RSWC to be sold to a capable public utility.

Finally, the ALJ should recommend that the Commission refer this matter to I&E for such further action as may be appropriate. The ALJ also should recommend that the Commission refer this matter to OCA, OSBA, DEP and Ferguson Township for such further action as may be appropriate. During this proceeding, new allegations of potential violations of applicable laws and regulations have come to light (including, but not limited to, allegations of discriminatory treatment of customers in violation of 66 Pa. C.S. § 1304, Tr. 422). As long as RSWC continues to hold a Certificate, it should be required to comply with applicable laws and regulations and should be held accountable for any violations thereof.

¹¹ The ALJ and the Commission should also ensure that PAWC may make a claim in the first base rate to be filed after the conclusion of the bankruptcy case for any and all costs of its Receivership, *see* Appendix A ¶¶ 1.q, 1.u, 2.a. and 2.b, that PAWC does not recover from RSWC in the bankruptcy proceeding.

2. Procedure Going Forward If the Commission Orders PAWC to Acquire Rock Spring

If the Commission Orders PAWC to acquire the System, the Commission should establish a process for the next steps in this proceeding considering all of the issues that still need to be addressed. These issues include establishing a purchase price for the System, providing guidance as to a “reasonable” purchase price, and approving a plan for improvements to the System. PAWC respectfully requests that the ALJ’s Recommended Decision contain “next steps” for addressing these issues.

a. The Commission Should Retain Jurisdiction. Because of the need to address additional issues, the Commission should not enter a Final Order closing the case at this time. Instead, the Commission should retain jurisdiction so it can reach these other issues.

b. PAWC and RSWC Should Be Given Time to Negotiate an Asset Purchase Agreement. Section 529(e) provides that the price for the acquisition of the small water system is to be determined by agreement between the small water utility and the acquiring capable public utility, subject to a determination by the Commission that the purchase price is reasonable. If the small water utility and the acquiring capable public utility are unable to reach an agreement, the Commission is to direct the acquiring capable public utility to acquire the System through eminent domain. 66 Pa. C.S. § 529(e).

PAWC and RSWC have not agreed to a purchase price for the System. The Commission should give them a reasonable time (such as three months) to negotiate an asset purchase agreement identifying the System assets that are included in the sale and those that are excluded from the sale, and to establish a purchase price for the assets that are included. At the end of that three-month period, PAWC should be required to (1) file the asset purchase agreement and request

approval of the purchase price, (2) request an extension of time to negotiate an agreement, or (3) file an eminent domain proceeding to acquire the System pursuant to Section 529(e).

c. The Commission Should Provide Guidance on a Reasonable Purchase Price. PAWC respectfully requests that the Commission provide PAWC and RSWC with a “range of reasonableness” for the purchase price if PAWC would acquire substantially all of RSWC’s System. Such guidance would mitigate the risk that PAWC and RSWC would come back to the Commission with an agreed-to purchase price that the Commission finds unreasonable.

One factor that should be considered in setting this “range of reasonableness” is the depreciated original cost of the system. 66 Pa. C.S. § 1311(b)(1). Rock Spring reported that its net utility plant as of December 31, 2023 was \$11,317. PAWC St. No. 2 p. 3. Recently, PAWC purchased the East Dunkard Water Authority (“EDWA”) system. Although the EDWA system was also a troubled water system in receivership, the acquisition was approved pursuant to Section 1102 rather than Section 529 of the Code because EDWA was a municipal authority not under the Commission’s jurisdiction. The purchase price was \$5,000,000, which was less than the system’s estimated depreciated original cost of \$6,000,000. *Application of PAWC for Approval of the Acquisition of Substantially All the Assets of the East Dunkard Water Authority*, Docket No. A-2024-3049759 (Recommended Decision issued Feb. 27, 2025) p. 14.

Another factor that should be considered is other offers that have been made for the purchase of the System. SCBWA offered to purchase the RSWC System for \$65,000. SCBWA St. No. 4 p. 1.

Another factor that should be considered is the number of customers in the System. RSWC is a small water utility, with a total of 464 customers.

Another factor that should be considered is the condition of the System. The System is in such bad condition that PAWC's five-year capital plan calls for spending \$16.1 million (or \$34,699 per customer) to remediate the System. PAWC Exhibit MJG-3. In comparison, PAWC acquired the Delaware Sewer Company ("Delaware Sewer") in a Section 529 proceeding, *Investigation Instituted per Section 529 Into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No. I-2016-2526085 (Opinion and Order entered Mar. 26, 2020) at a purchase price of \$61,700 (or \$1,582 for each of Delaware Sewer's 39 customers), together with a plan of improvements for spending another \$972,450 (or another \$24,935 per customer). Recommended Decision pp. 9, 10. PAWC also acquired the Clean Treatment Sewage Company ("Clean Treatment") in a Section 529 proceeding, *Investigation Instituted into Whether the Commission Should Order a Capable Public Utility to Acquire Clean Treatment Sewage Company Pursuant to 66 Pa. C.S. § 529*, Docket No. I-2009-2109324 (Opinion and Order entered Jul. 16, 2013), pp. 11, for a purchase price of \$1,100,000 (\$1,300,000 less a refund to customers of \$200,000), or a purchase price of \$2,949 per usage customer. In addition, PAWC had a plan for improvements costing another \$6,500,000 (\$20,375 per usage customer). Finally, PAWC acquired the Winola Water Company ("Winola") in a Section 529 Proceeding, *Pa. Pub. Util. Comm'n v. Winola Water Company*, Docket Nos. P-2018-3006216 *et al.* (Order entered Aug. 6, 2020) for a purchase price of \$1 and a plan for improvements estimated at \$2,132,000 (or \$52,000 per customer for each of 13 year-round and 28 seasonal customers). Recommended Decision, pp. 1, 12, 25.

Considering all of the above, PAWC respectfully submits that the "range of reasonableness" should go from \$6,000 (about half of the System's net utility plant) to \$65,000 (the amount offered by SCBWA, which is approximately \$140 per customer). Together with the

estimated cost of improving the system, this purchase price would represent an investment of up to \$34,839 per customer in the RSWC System – a per customer figure exceeding the amount PAWC paid for the Delaware Sewer and Clean Treatment systems, but less than PAWC paid for the Winola system.

d. The Commission Should Require RSWC to Pay Certain Certain

Debts From the Proceeds of the Sale. At pages 38 and 39 of the March 2025 Order, the Commission stated:

Having acted to ensure the RSWC’s customers’ access to the necessity of safe and reliable water service, our focus now turns to the need to ensure that PAWC’s assumption of receivership during the interim period will be under terms which assure PAWC of a cost recovery mechanism for PAWC’s reasonable and necessary expenditures related to its duties as receiver. Such cost recovery mechanism is to assure that PAWC’s customers are not required to bear the costs of PAWC’s receivership of RSWC.

To that end, any approval of the acquisition of RSWC as in the public interest, and any approval of the surrender of RSWC’s Certificate of Public Convenience must be conditioned upon PAWC’s recovery of the reasonable and necessary costs incurred while acting as receiver for RSWC. We note, with approval, that the ALJ’s order authorized PAWC to establish a deferred expense account, including prudent and reasonable legal expenses, for recovery of costs incurred during the receivership. February 2025 Errata Order at 25. However, to the extent that this deferred expense account may not adequately cover the total costs incurred, the approval of the surrender of RSWC’s Certificate should be conditioned upon an adequate cost recovery mechanism for PAWC’s reasonable and necessary receivership expenses incurred until such time as any acquisition of RSWC is finalized.

Consistent with this approach, the ALJ should recommend that the Commission order all costs of PAWC’s receivership be paid from the proceeds of the sale (to the extent that funds are available from the proceeds of the sale). The costs of the receivership include any unpaid amounts described in the Appendix at Paragraphs 1.q., 1.u., 2.a. and 2.b. Requiring that the costs of the receivership be paid out of the proceeds of the sale of the System would protect PAWC and its ratepayers by ensuring that RSWC pays the costs of the receivership. If the proceeds of the sale

are insufficient to pay all the costs of the receivership, the ALJ should recommend that the Commission permit PAWC to make a claim for such unpaid receivership costs in a future base rate case.

Additionally, a significant portion of the distribution system was installed on private land with no easements or other property rights secured. For example, the only storage tank for the system is located on land owned by Penn State. This tank is critical to the operation of Rock Spring as there is only one well and the tank provides both a backup to the well in case of equipment failure and water for fire flows. PAWC understands that there was an oral agreement that the tank and distribution system were allowed on Penn State's Property in return for free water service for Penn State Ag Progress Days. If PAWC is ordered to acquire the Rock Spring System, PAWC will need to negotiate with Penn State to meter and charge it for water service, as well as to acquire an easement for the tank and distribution lines on Penn State's property to include the area around the tank as well as ingress and egress. There is no guarantee that PAWC will be successful and PAWC may be forced to construct a tank at a different site.

Consistent with PAWC's recent acquisitions in several Section 1329 acquisitions,¹² PAWC requests that the ALJ recommend that any proceeds of the sale remaining after the payment of all costs of PAWC's receivership be held in escrow for one year to pay PAWC's reasonable costs in negotiating, preparing and recording easements for the real estate on which Rock Spring's facilities and equipment are located. This would protect PAWC's ratepayers from having to pay these expenses. If PAWC cannot obtain an easement for Rock Spring's storage tank within one year after the date of entry of the Commission's Order, any remaining proceeds of the sale should

¹² See, e.g., *Application of PAWC for Approval of the Acquisition of Substantially All Wastewater Assets Owned and Operated by the Elizabeth Borough Municipal Authority*, Docket No. A-2025-3052983 (Order entered Oct. 9, 2025); *Application of PAWC for Approval of the Acquisition of Substantially All Wastewater Assets Owned by the Butler Area Sewer Authority*, Docket No. A-2022-3037047 (Opinion and Order entered Nov. 16, 2023).

continue to be held in escrow for up to two years to pay PAWC's reasonable and prudent costs incurred to acquire real estate, design and construct a new storage tank to replace Rock Spring's existing storage tank.

Additionally, RSWC has yet to pay certain fines and penalties that have been imposed on it for failing to comply with applicable laws and regulations. These fines and penalties include the \$40,000 civil assessment imposed by DEP for RSWC's failure to comply with the 2018 AO. DEP St. No. 2 p. 3. To ensure that RSWC is held accountable for its failure to comply with the laws and regulations that apply to public utilities, the ALJ should recommend that the Commission require these amounts to be paid from the proceeds of the sale (if any) remaining after the costs of the receivership are paid. To the extent that the proceeds of the sale are inadequate to cover any of the fines and penalties imposed on RSWC, RSWC should remain liable for those fines and penalties. The Commission's Order should provide that any fines and penalties that remain unpaid after closing may be collected as provided by law.

e. PAWC Should Be Given Time to Prepare a Plan for Improvements. Section 529(j) provides that, before a capable public utility acquires a small water utility pursuant to Section 529, the acquiring utility must submit to the Commission for approval a plan, including a timetable, for bringing the small water utility into compliance with applicable statutory and regulatory standards. A copy is to be provided to DEP and such other state and local agencies as the Commission may direct. The Commission is to give DEP an adequate opportunity to comment on the plan, and the Commission is to consider any comments from DEP in deciding whether to approve it. In addition, Section 529(k) provides for limitations on liability for the acquiring capable public utility after the Commission approves the plan for improvements and the capable public utility acquires the small water utility. Finally, Section 529(l) provides for

limitations on enforcement actions against the acquiring capable public utility after the Commission approves the plan for improvements and the capable public utility acquires the small water utility.

PAWC has prepared a five-year capital plan for remedying the System's deficiencies, but has not developed a plan for improvements and submitted it to the Commission for approval and to DEP and other state and local agencies for comment. If the ALJ recommends that the Commission order PAWC to acquire RSWC, he also should recommend that the Commission give PAWC a reasonable opportunity to prepare a plan for improvements and submit it to the Commission, DEP and other state and local agencies. PAWC estimates that it could prepare the plan for improvements within three months of the Commission's decision ordering PAWC to acquire the System.

The Commission should require PAWC to serve the Plan of Improvement on DEP and all other parties to this proceeding for comment. Those parties should be given thirty days to submit comments. PAWC should be given thirty days to submit reply comments to defend or modify its Plan for Improvements. Following the submission of Reply Comments, the Commission should issue an order on the Plan for Improvements.

V. CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, for all of the foregoing reasons, Pennsylvania-American Water Company ("PAWC") respectfully requests that the Honorable John M. Coogan (the "ALJ") recommend, and the Pennsylvania Public Utility Commission (the "Commission") order:

1. A. That the request of the Bureau of Investigation and Enforcement for an order directing a capable public utility acquire the Rock Spring Water Company ("RSWC") is DENIED;

B. That the Commission shall retain jurisdiction of this matter;

C. That PAWC shall continue to serve as Receiver for RSWC, as directed in the Commission's Opinion and Order entered March 21, 2025, with all the powers and duties specified in Appendix A thereof;

D. That, within 120 days of the entry of the Commission's Opinion and Order in this matter, PAWC shall file a petition for bankruptcy on behalf of Rock Spring Water Company, and participate in such proceedings on behalf of Rock Spring Water Company, in order to transfer the RSWC water system to a municipality, municipal authority, cooperative or public utility (including PAWC);

E. That PAWC shall notify the Commission and all parties to this proceeding of the filing of the bankruptcy petition within ten days after the petition is filed;

F. That PAWC shall also make any necessary related filings at the Commission (such as an application for approval to transfer property and to abandon service) on behalf of RSWC;

G. That PAWC may make a claim in the first base rate to be filed after the conclusion of the bankruptcy case for any and all costs of its Receivership, *see* Appendix A ¶¶ 1.q, 1.u, 2.a. and 2.b, that PAWC does not recover from RSWC in the bankruptcy proceeding;

H. That this matter is referred to the Commission's Bureau of Investigation and Enforcement for such further action as may be necessary;

I. That this matter is referred to the Office of Consumer Advocate for such further action as may be necessary;

J. That this matter is referred to the Office of Small Business Advocate for such further action as may be necessary;

K. That this matter is referred to the Pennsylvania Department of Environmental Protection (“DEP”) for such further action as may be necessary;

L. That this matter is referred to Ferguson Township for such further action as may be necessary.

2. In the alternative, if the Commission GRANTS the request of the Bureau of Investigation and Enforcement for an order directing a capable public utility to acquire the Rock Spring Water Company, PAWC respectfully requests that the ALJ recommend and the Commission order:

A. That the Commission direct PAWC to acquire Rock Spring Water Company;

B. That the Commission shall retain jurisdiction of this matter;

C. That the “range of reasonableness” for a purchase price for the RSWC water system is between \$6,000 (*i.e.*, less than the system’s net utility plant) and \$65,000.

D. That PAWC and RSWC shall have three months to negotiate an Asset Purchase Agreement (“APA”). At the end of this three month period, PAWC shall: (1) file the APA and request approval of the purchase price; (2) request an extension of time to file the APA; or (3) commence an eminent domain proceeding to acquire the RSWC water system.

E. That, within three months of the date of entry of the Commission’s decision, PAWC shall file a Plan for Improvements with the Commission and shall serve copies on all parties to this proceeding. DEP and all other parties to this proceeding shall have thirty days to submit comments on the Plan for Improvements, and PAWC shall have thirty days to submit Reply Comments. The Commission will then proceed to enter an order on the Plan for Improvements;

F. That all costs of PAWC's Receivership, *see* Appendix A ¶¶ 1.a, 1.u, 2.a. and 2.b, shall be paid from the proceeds of the sale of RSWC's water system. To the extent that the proceeds of the sale are insufficient to pay all the costs of the receivership, the ALJ should recommend that the Commission permit PAWC to make a claim for such unpaid receivership costs in a future base rate case.

G. That any proceeds of the sale remaining after the payment of all costs of PAWC's receivership be held in escrow for one year to pay PAWC's reasonable costs in negotiating, preparing and recording easements for the real estate on which Rock Spring's facilities and equipment are located. If PAWC cannot obtain an easement for Rock Spring's storage tank within one year after the date of entry of the Commission's Order, any remaining proceeds of the sale should continue to be held in escrow for up to two years to pay PAWC's reasonable and prudent costs incurred to acquire real estate, design and construct a new storage tank to replace Rock Spring's existing storage tank.

H. That all outstanding fines, penalties and assessments imposed on RSWC (including the civil assessment imposed by DEP) shall be paid from the proceeds of the sale of RSWC's water system remaining after the payment of the costs of PAWC's Receivership. To the extent that the remaining proceeds of the sale are insufficient to pay all outstanding fines, penalties and assessments, RSWC shall remain liable for those amounts and they may be collected from RSWC as provided by law.

[Signature appears on next page.]

Respectfully submitted,



Elizabeth Rose Triscari, Esq. (PA ID No. 306921)
Teresa Harrold, Esq. (PA ID No. 311082)
Erin K. Fure, Esq. (PA ID No. 312245)
Pennsylvania-American Water Company
852 Wesley Drive
Mechanicsburg, PA, 17055
Telephone: 717-550-1556
E-mail: elizabeth.triscari@amwater.com
E-mail: teresa.harrold@amwater.com
E-mail: erin.fure@amwater.com

David P. Zambito, Esq. (PA ID 80017)
Jonathan P. Nase, Esq. (PA ID 44003)
Cozen O'Connor
17 North Second Street, Suite 1410
Harrisburg, PA 17101
Telephone: 717-703-5892
Facsimile: 215-989-4216
E-mail: dzambito@cozen.com
E-mail: jnase@cozen.com

Counsel for *Pennsylvania-American Water Company*

Dated: November 7, 2025

APPENDIX A

Proposed Findings of Fact

The Parties

1. Pennsylvania-American Water Company (“PAWC”) is a regulated public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and is certificated by the Pennsylvania Public Utility Commission (“Commission”) to provide water service (public utility code 212285) and wastewater service (public utility code 230073) to the public. Petition to Intervene of PAWC p. 1.
2. Rock Spring Water Company (“RSWC”) is a water company certificated by the Commission (utility code 212610). Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of the Rock Spring Water Company ¶ 4 (“Petition to Open Section 529 Investigation”).
3. The Bureau of Investigation and Enforcement (“I&E”) is the entity established to prosecute actions involving certificated public utilities pursuant to 66 Pa. C.S. § 308.2(a)(11)-(12). Petition to Open Section 529 Investigation ¶ 5.
4. The Office of Small Business Advocate (“OSBA”) is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41. Notice of Intervention of the OSBA p. 1.
5. The Office of Consumer Advocate (“OCA”) is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2. Public Statement of the OCA p. 1.
6. Aqua Pennsylvania, Inc. (“Aqua”) is a Class A utility duly organized and existing under the laws of the Commonwealth of Pennsylvania, operating under Commission granted certificates of public convenience. Aqua’s public utility codes are 210104 (water) and 230240 (wastewater). Aqua’s Petition to Intervene ¶ 3.

7. State College Borough Water Authority (“SCBWA”) is a Pennsylvania municipal authority duly organized and existing under the Municipality Authorities Act of 1945. It is engaged in the business of operating a public water system in Benner, College, Ferguson, Harris and Patton Townships and State College Borough in Centre County. Petition to Intervene of SCBWA pp. 1-2.
8. The Pennsylvania Department of Environmental Protection (“DEP”) is the agency with the duty and authority to administer and enforce the Safe Drinking Water Act, 35 P. S. §§ 721.1 *et seq.*, and the rules and regulations promulgated thereunder. DEP’s Petition to Intervene pp. 1-2.
9. Ferguson Township (“Ferguson”) is a second class township and a home rule municipality in Centre County. Nearly all of RSWC’s customers are residents of Ferguson. Ferguson’s Petition to Intervene, pp. 1, 2.

RSWC and Its Water System

10. RSWC is a community public water system located in Ferguson Township, Centre County, Pennsylvania. DEP St. No. 2 p. 2. As of December 31, 2023, RSWC served 452 residential and 12 commercial customers in Centre County. I&E St. No. 2 p. 4.
11. The RSWC water system (the “System”) is comprised of approximately 22 miles of water line, a storage tank, and a well. SCBWA St. No. 4 p. 2.
12. According to RSWC’s Annual Report for 2023, the total net utility plant in service for the System was \$11,317. PAWC St. No. 2 p. 3, PAWC Exhibit MK-2 p. 15.
13. The majority of main lines in the System are undersized and unlikely to provide adequate fire flow. DEP St. No. 3 p. 4.

14. The RSWC water system components are in a degrading state. DEP St. No. 3 p. 4. For example, the storage tank is in need of a rehabilitation project. DEP St. No. 3 p. 4.
15. The majority of the System is poorly constructed and subject to leaks and breakage. The treatment building is decrepit and needs to be replaced. Additionally, the System does not have adequate security. PAWC St. No. 1-Supp. p. 3.
16. Significant portions of the distribution system were installed on private land with no easement or other property rights secured. For example, a large portion of the distribution system and the storage tank for the System are located on land owned by the Pennsylvania State University (“Penn State”). No easement was secured for the construction of the assets on Penn State’s property. PAWC St. No. 1-Supp. pp. 3-4.

Receivership

17. On March 21, 2025, the Commission ordered PAWC to serve as Interim Receiver for RSWC until a final order is entered in this Section 529 Investigation or Rock Spring abandons its certificate of public convenience (whichever is later). Opinion and Order entered March 21, 2025 (“March 2025 Order”).
18. As Receiver, PAWC has taken steps to address the lost water in the System. Leak detection has begun to locate any large leaks that can be repaired quickly. As of the end of August, 2025, PAWC fixed two major main breaks and two company side service leaks and identified and required customers to repair five customer side service leaks. PAWC St. No. 1-Supp. p. 2.
19. PAWC’s work as Receiver has reduced daily system water delivery by approximately 40,000 gallons per day (“gpd”). PAWC Exhibit MJG-11 p. 2.

20. As Receiver, PAWC has also taken steps to improve regulatory compliance at the System. PAWC has its staff operate the system on a daily basis. PAWC has installed instrumentation to monitor compliance and provide remote alarms and shutdown in the event of equipment failure. PAWC St. No. 1-Supp p. 2. See also PAWC Exhibits MJG-1, MJG-2, MJG-11; DEP St. 4 p. 7.
21. As of October 8, 2025, PAWC spent about \$10,000 as Receiver, not including internal labor expenses or reasonable legal expenses. PAWC St. No.1-SR p. 2.
22. PAWC has prepared a five-year capital investment plan for the System in the event that PAWC is ordered to acquire the System. This five-year plan calls for an investment in the System of approximately \$16.1 million. PAWC St. No. 1-Supp. p. 7, PAWC Exhibit MJG-3.
23. The System's receiver does not need to be the entity that is ultimately ordered to acquire the System. The appointment of a receiver and the approval of an acquirer are separate decisions to be made by the Commission. OCA St. No. 1 (dated Feb. 13, 2025) pp. 11-12; PAWC St. No. 1-R pp. 4-5.

RSWC's Violations of Statutory and Regulatory Standards

24. The running annual average of RSWC's unaccounted for water ("UFW") typically falls between 50-70%. DEP St. No. 2 pp. 4-5. RSWC's UFW for the year ended December 31, 2023, was 65.0%. I&E St. No. 2 p. 5.
25. DEP does not have a regulation explicitly establishing an acceptable level of UFW, but DEP considers high and especially high unaccounted for water loss to be a failure under 25 Pa. Code § 109.4 to effectively operate and maintain public water system facilities and

a failure to take whatever investigative or corrective action is necessary to assure that safe and potable water is continuously supplied to the users. DEP St. No. 1 pp. 3-4.

26. UFW can have a major impact on public health because leaking water lines can be a direct pathway for bacteria, viruses and other potentially harmful pathogens to enter the water system. Some of these bacteria and viruses can cause health problems. Bacteria and viruses entering water lines through breaks and cracks are being introduced after the water has been treated and the remaining chlorine may not be enough to kill those newly introduced contaminants, meaning that they are more likely to actually reach customers and cause illness if consumed. DEP St. No. 6 p. 3.
27. UFW can also harm the environment because chlorinated water leaking out of water lines can harm the environment, such as by leading to fish kills. DEP St. No. 6 p. 3.
28. UFW also wastes material and financial resources for the water system and its customers. Proper water treatment by a water supplier involves numerous costs, including the cost of treatment chemicals, electricity to power pumps and other mechanical equipment, and materials needed for general maintenance. When most of the water being treated ends up being lost through leaking water lines as UFW, this is a significant waste of money for the water system and its customers. DEP St. No. 6 p. 4.
29. The Commission has a statement of policy on water conservation measures, which states that level of UFW should be kept within reasonable amounts. “Levels about 20% have been considered by the Commission to be excessive.” 52 Pa. Code § 65.20.

RSWC Failed to Comply with Regulatory Orders

30. A 2006 Consent Order and Agreement (“COA”) required RSWC to submit a Corrective Action Plan to reduce its UFW to 30% or less within five years. DEP St. No. 2 p. 3.

31. Due to RSWC's failure to fully comply with the 2006 COA, and the overall lack of progress on the Corrective Action Plan milestones, DEP attempted to enter into a new COA with RSWC in 2018. Negotiations failed and DEP issued an Administrative Order ("AO") on August 27, 2018. DEP also issued a Civil Penalty Assessment to RSWC in the amount of \$40,000 on October 17, 2018. RSWC has yet to pay the Civil Penalty Assessment. DEP St. No. 2 p. 3.
32. DEP filed a Petition to Enforce the August 2018 Administrative Order with the Commonwealth Court of Pennsylvania in October 2023. The Commonwealth Court granted the petition in January 2024. DEP St. No. 2 p. 6.
33. RSWC has failed to comply with multiple parts of the Commonwealth Court's Order. The Commonwealth Court found RSWC in contempt of court for not complying with the Court's order. In October 2024, DEP filed a Certification of Non-Compliance with the Commonwealth Court. DEP St. No. 2 pp. 6-7.
34. RSWC remains in violation of DEP's August 27, 2018, Administrative Order. DEP St. No. 2 p. 3.

RSWC Cannot Be Expected to Furnish Adequate, Efficient, Safe and Reasonable Service and Facilities in the Future

35. Considering RSWC's long history of noncompliance with Commission, DEP, and Court orders, RSWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. I&E St. No. 2 p. 10; DEP St. No. 2 p. 8; DEP St. No. 5 p. 4; PAWC St. No. 2-SR p. 3.
36. Based on RSWC's consistent lack of cooperation and long history of failure to comply with DEP's regulations and enforcement actions, and their failure to comply with the

Commonwealth Court's orders, RSWC is not capable of bringing the System back into full compliance with the Safe Drinking Water Act and DEP regulations. DEP St. No. 2 p. 8. *See also* DEP St. No. 4 p. 8.

37. Based on the long history of noncompliance with next to zero effort to invest in the water system and perform much needed upgrades, in addition to the manner in which the officers of RSWC appear to lack comprehension of the situation, RSWC appears to be unwilling and incapable of bringing the system back into compliance. Their incapacities are financial, managerial and technical. DEP St. No. 1 p. 3.
38. A typical fallback response for RSWC, when DEP presses it for compliance, is to say that they want to sell the system. But RSWC never follows through with serious efforts to do so. DEP St. No. 2 (dated Feb. 13, 2025) p. 6; DEP St. No. 2 pp. 7-8. *See also* DEP St. No. 4 p. 4.
39. At the Evidentiary Hearing, RSWC's counsel argued that RSWC failed to comply with its commitment to reduce UFW in its 2012 rate case due to a lack of financial resources. Tr. 491-495.
40. At the Evidentiary Hearing, RSWC's counsel admitted that RSWC failed to comply with DEP regulations because Rock Spring lacks the money to comply. Tr. 523.
41. RSWC's last rate case was concluded in 2013. *Pa. Pub. Util. Comm'n v. Rock Spring Water Company*, Docket No. R-2012-2336662 (Order entered June 13, 2023).
42. Rock Spring uses unpaid volunteers (friends of the owners) to assist with bookwork and billing customers. Tr. 560.

Proximate Capable Public Utilities

43. I&E identified five public utilities, municipalities, municipal authorities or cooperatives and notified them of the instant proceeding. PAWC and SCWBA are the two most likely options to acquire the System. I&E St. No. 1 pp. 7-8.
44. PAWC is approximately 13 miles from RSWC. SCBWA is approximately 0.8 miles from RSWC. I&E St. No. 1 p. 9; PAWC St. No. 1 p. 3.
45. Aqua's closest system is approximately 38 miles from RSWC, and its closest operations center is about 50 miles from RSWC. Aqua St. No. 1 p. 3.

Alternatives to Acquisition by a Capable Public Utility are Practical and Economically Feasible

46. The acquisition of RSWC by SCBWA would be practical and economically feasible. PAWC St. No. 1-Supp. pp. 7-8; PAWC St. No. 2-SR p. 3.
47. Aqua, DEP, Ferguson and SCBWA admit that the acquisition of RSWC by SCBWA would be practical. I&E and OSBA admit that the acquisition of RSWC by SCBWA would be practical but expressed concern about the Commission's jurisdiction over SCBWA. RSWC admitted that its acquisition by SCBWA may be practical from some perspectives but not from others. PAWC St. No. 1-R pp. 3-4; I&E St. No. 1-SR pp. 3-4.
48. Aqua, DEP, Ferguson, RSWC and SCBWA admit that the acquisition of RSWC by SCBWA would be economically feasible. I&E and OSBA admit that the acquisition of RSWC by SCBWA would be economically feasible but expressed concern about the Commission's jurisdiction over SCBWA. PAWC St. No. 1-R pp. 3-4.
49. Of the witnesses who testified at the public input hearings, a majority of those who favored selling the System favored selling it to SCBWA. PAWC St. No. 2-SR p. 2.

50. SCBWA would potentially be a better fit for acquiring RSWC than PAWC given its closer proximity to RSWC. I&E St. No. 1-SR p. 4. SCBWA is 0.8 miles from RSWC whereas PAWC is 13 miles from RSWC. I&E St. No. 1 p. 9.
51. RSWC is located in Ferguson Township, which is part of SCBWA's existing territory. The two systems could easily be interconnected and operated as a single system. This would promote the Commission's goals of regionalization and consolidation. SCBWA St. No. 4 p. 4; PAWC St. No. 1 p. 4; PAWC St. No. 1-E p. 4. Incorporating the RSWC System into the SCBWA system will provide a larger, more reliable source of water and redundant back up supply sources. SCBWA St. No. 4 p. 3.
52. SCBWA has been providing technical assistance to RSWC since 1993. I&E St. No. 1 p. 9; I&E Exhibit No. 1 Schedule 4 pp. 3-4.
53. SCBWA has acquired smaller systems near it that were in poor condition. The acquisition of RSWC would allow SCBWA to expand and develop additional sources of water creating a more efficient water system. I&E St. No. 1 p. 9.
54. "While [PAWC] is also a capable option, SCBWA's proximity, familiarity with the system and interest in purchasing the system makes them a better option than PAWC in this case. The Commission should allow the current negotiations between Rock Spring and SCBWA to continue and/or help to facilitate SCBWA's purchase of the system." OCA St. No. 1 pp. 2, 23.
55. SCBWA is financially, managerially and technically capable and it is in Rock Spring's consumers' best interests that SCBWA be allowed to acquire and integrate the Rock Spring System into its existing water system. OCA St. No. 1 pp. 6-7.

56. SCBWA and Ferguson have a Memorandum of Understanding where Ferguson will support SCBWA's effort to acquire the System and the two entities will work together to secure funding for the System going forward. OCA St. No. 1 p. 11.
57. Ferguson's current and historic partnership with SCBWA in operating and improving the RSWC System demonstrates a substantial benefit to RSWC's customers if SCBWA were to acquire the RSWC System. OCA St. No. 1 p. 11.
58. SCBWA has a Susquehanna River Basin Commission withdrawal limit of 8.0 MGD with a current average daily demand of 5.1 MGD and a peak demand of 6.2 MGD. SCBWA St. No. 1 p. 4. It also has a storage capacity of approximately 15.8 million gallons. SCBWA St. No. 1 p. 5.
59. SCBWA has 42 staff members. SCBWA St. No. 2 pp. 1-2.
60. SCBWA has about \$25,000,000 in reserve funds, which should be more than enough to purchase the System and interconnect it with the SCBWA System. SCBWA will pursue all applicable Federal and State grants or other programs to finance upgrades to the System. SCBWA St. No. 4 p. 5.
61. SCBWA has consistently ended each fiscal year with net income exceeding budget. It has one loan, from the Pennsylvania Infrastructure Investment Authority, with a balance of approximately \$20,000,000. SCBWA St. No. 2 p. 3.
62. If the SCBWA were to acquire RSWC, it would collaborate with Ferguson to pursue grants to finance upgrades to the System. SCBWA St. No. 2 p. 3.
63. According to SCBWA's Independent Auditor's Report, SCBWA had net operating income of \$5,040,807 in 2024. Including nonoperating revenues and expenses (such as new

connection fees and gains on the disposal of assets), SCBWA had a change in net position of \$7,119,934. SCBWA Exhibit D, Independent Auditor's Report, p. 6.

64. If SCBWA were to acquire the System, it anticipates only a minimal increase in its water rates for its preacquisition customers. Any such increase would be based upon the financial condition of the Authority as a whole; it would not be based on recovery of the costs of acquiring the System. SCBWA St. No. 5 p. 1.
65. If SCBWA were to acquire the System, SCBWA anticipates charging the former Rock Spring customers the same rates charged to its preacquisition customers. SCBWA does not intend to charge existing Rock Spring customers tapping, connection or other fees and charges to recover the cost of the acquisition. SCBWA may consider a small fee applied to monthly water bills to recover a portion of the cost of required system improvements. SCBWA St. No. 5 p. 1.
66. If SCBWA would acquire RSWC, it would have minimal impact on service to SCBWA's existing customers. SCBWA St. No. 3 p. 3.
67. SCBWA has a plan for upgrading the RSWC System, if it is able to acquire the System. Essentially, SCBWA would replace the entire RSWC water storage, transmission, and distribution system. The total cost could approach \$20 million and is expected to be completed in five to ten years. SCBWA St. No. 3 pp. 5-6.
68. SCBWA is well suited to bring the RSWC System up to a respectable standard. SCBWA has the ability to rebuild the RSWC water system to provide the community with the reliable and quality water system it deserves. I&E Exhibit No. 1 Schedule 4 p. 4.
69. "Based on testimony given to date, it appears conclusive from the entities that are potential acquirers, that SCBWA is best situated in this case both from proximity of distribution

systems and number of staff that are near the Rock Spring system. I would agree with this conclusion. SCBWA has the advantage of being able to interconnect to the Rock Spring system and eliminate the need for the well that is subject to flooding. SCBWA has an excellent compliance history.” DEP St. No. 1 p. 6. *See also*, DEP St. No. 2 p. 9

70. If SCBWA could acquire the System, SCBWA would be able to interconnect its system to the RSWC system and would no longer need the well or treatment building currently owned by RSWC. This would leave water main replacement as the main capital need once the system is interconnected. SCBWA would therefore need to spend about \$4,000,000 less to bring the System into compliance than PAWC. PAWC St. No. 1-Supp. p. 8.
71. SCBWA is interested in acquiring the System and has the ability to acquire and operate it. Tr. 124-129.
72. SCBWA entered into a non-binding Letter of Intent for the acquisition of RSWC, by which RSWC would sell the assets of the System to SCBWA for \$65,000. SCBWA Exhibit A.
73. When the Section 529 investigation began, RSWC contacted SCBWA to resume negotiations for the sale of the System. The parties have been engaged in negotiations since then, including exchanging drafts of an Asset Purchase Agreement. Negotiations are continuing. SCBWA St. No. 4 p. 1.

PAWC is Financially, Managerially and Technically Fit

74. PAWC admits that it is ready, willing and able to acquire RSWC. PAWC St. No. 2-SR p. 3; PAWC St. No. 1-E p. 4; PAWC St. No. 2 p. 6..

75. PAWC admits that it is financially, managerially, and technically capable of acquiring RSWC. PAWC St. No. 1-Supp. pp. 4-6, PAWC St. No. 3 p. 2.

PAWC's Rates Would Not Increase Unreasonably If It Would Be Ordered to Acquire RSWC

76. If PAWC would be ordered to acquire the System, the purchase price and a portion of the cost of capital improvements would need to be paid for in part by PAWC's existing customers, causing their rates to increase. PAWC St. No. 3 p. 3.

77. Due to PAWC's large size, spreading the cost of acquiring and rehabilitating the RSWC System to PAWC's preacquisition customers is not expected to cause rates to increase unreasonably. PAWC St. No. 3 p. 4.

APPENDIX B

Proposed Conclusions of Law

1. The Pennsylvania Public Utility Commission (“Commission”) has jurisdiction over the subject matter of, and the parties to, this investigation. 66 Pa. C.S. § 529.

2. The Commission’s Bureau of Investigation and Enforcement (“I&E”) has the burden of proving that the acquisition of the Rock Spring Water Company would be “in the public interest and in compliance with the provisions of this section.” 66 Pa. S. C. § 529(i).

3. The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production determines which party must come forward with evidence to support a particular proposition. The burden of production goes to the legal sufficiency of a party’s case. Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion to be entitled to a verdict in its favor. “[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings.” *Riedel v. County of Allegheny*, 633 A.2d 1325, 1328 n. 11 (Pa. Cmwlth. 1993).

4. To establish a sufficient case and satisfy its burden of proof, I&E’s evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Selling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. The Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

6. Section 529 of the Pennsylvania Public Utility Code (“Code”) gives the Commission power to order a capable public utility to acquire a small water utility if the

Commission finds that six criteria are satisfied. These six criteria are set forth in 66 Pa. C.S. §§ 529(a)(1) through 529(a)(6).

7. A small water utility is a public utility which regularly provides water service to 1,200 or fewer customer connections. 66 Pa. C.S. § 529(m).

8. Rock Spring Water Company (“RSWC”) is a small water utility.

9. In pertinent part, a capable public utility is defined as a public utility that regularly provides the same type of service as the small water utility to 4,000 or more customer connections that is not an affiliated interest of the small water utility and that provides adequate, efficient, safe and reasonable service. 66 Pa. C.S. § 592(m).

10. PAWC is a capable public utility.

11. Aqua Pennsylvania, Inc. (“Aqua”) is a capable public utility.

12. One criterion for ordering a capable public utility to acquire a small water utility is that the small utility must be in violation of statutory or regulatory standards that affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water utility. 66 Pa. C.S. § 529(a)(1).

13. RSWC is in violation of statutory or regulatory standards that affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water utility.

14. Another criterion for ordering a capable public utility to acquire a small water utility is that the small water utility has failed to comply, within a reasonable period of time, with any order of the Commission or DEP concerning the safety, adequacy, efficiency or reasonableness of service. 66 Pa. C.S. § 529(a)(2).

15. RSWC has failed to comply, within a reasonable period of time, with orders of the Commission and DEP concerning the safety, adequacy, efficiency or reasonableness of service

16. The third criterion for ordering a capable public utility to acquire a small water utility is that the small water utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. 66 Pa. C.S. § 529(a)(3).

17. RSWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.

18. The fourth criterion for ordering a capable public utility to acquire a small water utility is that the Commission must determine that alternatives to acquisition have been considered and have been determined to be impractical or not economically feasible.

19. The Commission must consider alternatives to acquisition, including, but not limited to, the alternatives listed in Sections 529(b)(1) through 529(b)(5).

20. The alternative described in Section 529(b)(5) is the acquisition of the small water utility by a municipality, a municipal authority or a cooperative. 66 Pa. C.S. § 529(b)(5).

21. State College Borough Water Authority (“SCBWA”) is a municipal authority.

22. The acquisition of RSWC by SCBWA is practical and economically feasible.

23. Expressions like “including, but not limited to,” which precede a specific list of items, are considered words of enlargement and not words of limitation. *Dep’t of Env’l Prot. v. Cumberland Coal Res., LP*, 102 A.3d 962, 976 (Pa. 2014). Thus, the examples listed in Section 529(b) are not meant to be exclusive. *Friends of DeVito v. Wolf*, 227 A.3d 872, 888 (Pa. 2020).

24. The Commission can consider the bankruptcy of the small water utility as an alternative to the Commission ordering a capable public utility to acquire a small water utility.

25. One criterion for ordering a capable public utility to acquire a small water utility is that the acquiring public utility must be financially, managerially and technically capable of

acquiring and operating the small water utility in compliance with applicable statutory and regulatory standards. 66 Pa. C.S. § 529(a)(5).

26. PAWC is financially, managerially and technically capable.

27. Another criterion for ordering a capable public utility to acquire a small water utility is that the acquiring capable public utility's rates for pre-acquisition customers will not increase unreasonably because of the acquisition. 66 Pa. C.S. § 529(a)(6).

28. If PAWC were to acquire RSWC, rates for PAWC's pre-acquisition customers would not increase unreasonably.

29. I&E failed to satisfy its burden of proving, by a preponderance of the evidence, that the acquisition of RSWC by SCBWA would be impractical or not economically feasible.

30. If the Commission orders a capable public utility to acquire a small water utility, the purchase price is determined by agreement between the small water utility and the acquiring capable public utility, subject to a Commission determination that the purchase price is reasonable. If the small water utility and the acquiring capable public utility are unable to reach an agreement, the Commission is to direct the acquiring capable public utility to acquire the System through eminent domain. 66 Pa. C.S. § 529(e).

31. The Commission has assured PAWC of a cost recovery mechanism for its reasonable and necessary expenditures related to its duties as receiver. March 2025 Order pp. 38-39.

32. Before a capable public utility acquires a small water utility pursuant to Section 529, the acquiring utility must submit to the Commission for approval a plan, including a timetable, for bringing the small water utility into compliance with applicable statutory and regulatory standards. A copy is to be provided to DEP and such other state and local agencies as the

Commission may direct. The Commission is to give DEP an adequate opportunity to comment on the plan, and the Commission is to consider any comments from DEP in deciding whether to approve it. 66 Pa. C.S. § 529(j).

APPENDIX C

Proposed Ordering Paragraphs

Pennsylvania-American Water Company (“PAWC”) respectfully requests that the Honorable John M. Coogan (the “ALJ”) recommend, and the Pennsylvania Public Utility Commission (the “Commission”) order:

1. A. That the request of the Bureau of Investigation and Enforcement for an order directing a capable public utility acquire the Rock Spring Water Company (“RSWC”) is DENIED;
- B. That the Commission shall retain jurisdiction of this matter;
- C. That PAWC shall continue to serve as Receiver for RSWC, as directed in the Commission’s Opinion and Order entered March 21, 2025, with all the powers and duties specified in Appendix A thereof;
- D. That, within 120 days of the entry of the Commission’s Opinion and Order in this matter, PAWC shall file a petition for bankruptcy on behalf of Rock Spring Water Company, and participate in such proceedings on behalf of Rock Spring Water Company, in order to transfer the RSWC water system to a municipality, municipal authority, cooperative or public utility (including PAWC);
- E. That PAWC shall notify the Commission and all parties to this proceeding of the filing of the bankruptcy petition within ten days after the petition is filed;
- F. That PAWC shall also make any necessary related filings at the Commission (such as an application for approval to transfer property and to abandon service) on behalf of RSWC;
- G. That PAWC may make a claim in the first base rate to be filed after the conclusion of the bankruptcy case for any and all costs of its Receivership, *see* Appendix A ¶¶ 1.q, 1.u, 2.a. and 2.b, that PAWC does not recover from RSWC in the bankruptcy proceeding;

H. That this matter is referred to the Commission’s Bureau of Investigation and Enforcement for such further action as may be necessary;

I. That this matter is referred to the Office of Consumer Advocate for such further action as may be necessary;

J. That this matter is referred to the Office of Small Business Advocate for such further action as may be necessary;

K. That this matter is referred to the Pennsylvania Department of Environmental Protection (“DEP”) for such further action as may be necessary;

L. That this matter is referred to Ferguson Township for such further action as may be necessary.

2. In the alternative, if the Commission GRANTS the request of the Bureau of Investigation and Enforcement for an order directing a capable public utility to acquire the Rock Spring Water Company, PAWC respectfully requests that the ALJ recommend and the Commission order:

A. That the Commission direct PAWC to acquire Rock Spring Water Company;

B. That the Commission shall retain jurisdiction of this matter;

C. That the “range of reasonableness” for a purchase price for the RSWC water system is between \$6,000 (*i.e.*, less than the system’s net utility plant) and \$65,000.

D. That PAWC and RSWC shall have three months to negotiate an Asset Purchase Agreement (“APA”). At the end of this three month period, PAWC shall: (1) file the APA and request approval of the purchase price; (2) request an extension of time to file the APA

and request approval of the purchase price; or (3) commence an eminent domain proceeding to acquire the RSWC water system.

E. That, within three months of the date of entry of the Commission's decision, PAWC shall file a Plan for Improvement with the Commission and shall serve copies on all parties to this proceeding. DEP and all other parties to this proceeding shall have thirty days to submit comments on the Plan for Improvement, and PAWC shall have thirty days to submit Reply Comments. The Commission will then proceed to enter an order on the Plan for Improvements;

F. That all costs of PAWC's Receivership, *see* Appendix A ¶¶ 1.a, 1.u, 2.a and 2.b, shall be paid from the proceeds of the sale of RSWC's water system. To the extent that the proceeds of the sale are insufficient to pay all the costs of the receivership, the ALJ should recommend that the Commission permit PAWC to make a claim for such unpaid receivership costs in a future base rate case.

G. That any proceeds of the sale remaining after the payment of all costs of PAWC's receivership be held in escrow for one year to pay PAWC's reasonable costs in negotiating, preparing and recording easements for the real estate on which Rock Spring's facilities and equipment are located. If PAWC cannot obtain an easement for Rock Spring's storage tank within one year after the date of entry of the Commission's Order, any remaining proceeds of the sale should continue to be held in escrow for up to two years to pay PAWC's reasonable and prudent costs incurred to acquire real estate, design and construct a new storage tank to replace Rock Spring's existing storage tank.

H. That all outstanding fines, penalties and assessments imposed on RSWC (including the civil assessment imposed by DEP) shall be paid from the proceeds of the sale of RSWC's water system remaining after the payment of the costs of PAWC's Receivership. To the

extent that the remaining proceeds of the sale are insufficient to pay all outstanding fines, penalties and assessments, RSWC shall remain liable for those amounts and they may be collected from RSWC as provided by law.