



GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF ENVIRONMENTAL PROTECTION

November 21, 2025

VIA ELECTRONIC FILING

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

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

Dear Judge Coogan:

Enclosed please find the Commonwealth of Pennsylvania, Department of Environmental Protection's Reply Brief.

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

Sincerely,

Amanda K. Chaplin
Assistant Counsel

Enclosure (Brief)

c: Matthew L. Homsher, PUC Secretary (w/ enc.)
Parties (w/ enc.)

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

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

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL PROTECTION’S REPLY BRIEF**

AND NOW, comes the Commonwealth of Pennsylvania, Department of Environmental Protection (“Department”), by and through its undersigned counsel, pursuant to Section 332(d) of the Public Utility Code, 66 Pa. C.S. § 332(d), and the Commission’s regulations at 52 Pa. Code §§ 5.501-5.502, and respectfully submits the following Reply Brief:

I. INTRODUCTION

On September 20, 2024, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Rock Spring Water Company (“Petition”) to determine whether the Commission should order a capable public utility to acquire the Rock Spring Water Company (“Rock Spring”) pursuant to Section 529 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 529.

On October 11, 2024, the Commission assigned Administrative Law Judge John M. Coogan (“ALJ Coogan”) as the Presiding Officer in this matter. The following parties intervened after the filing of the Petition: the Department, the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Aqua Pennsylvania, Inc. (“Aqua”), Pennsylvania-American Water Company, Inc. (“PAWC”), State College Borough Water Authority (“SCBWA”), and Ferguson Township.

On October 20, 2025, ALJ Coogan conducted an evidentiary hearing on I&E's Petition. On October 22, 2025, ALJ Coogan issued a Briefing Order, which required the parties to submit any Main Briefs by November 7, 2025, and to submit any Reply Briefs by November 21, 2025.

On November 6, 2025, both Rock Spring and SCBWA submitted their Main Briefs. On November 7, 2025, the Department, I&E, OCA, PAWC, and Ferguson Township filed their respective Main Briefs. Both OSBA and Aqua submitted letters indicating they would not be submitting Main Briefs.

The Department submits this Reply Brief pursuant to ALJ Coogan's October 22, 2025, Order in response to issues raised in the Main Briefs of Rock Spring and PAWC.

II. BURDEN OF PROOF

Both Rock Spring and PAWC argue that I&E did not meet its burden establishing a *prima facie* case that the Rock Spring water system should be acquired by a more capable public utility under Section 529 of the Public Utility Code, 66 Pa. C.S. § 529. Both Rock Spring and PAWC assert that the Commission must consider alternatives to acquisition by a capable public utility and that alternatives currently exist. *See* Rock Spring Main Brief at 4, 8-10; and PAWC Main Brief at 13, 16-17, 21, 23, 28, and 31. Rock Spring also argues that if the Commission finds that the *prima facie* case for acquisition has been met, it has met its shifted *prima facie* burden of proving its ability to render adequate, efficient, safe, and reasonable service at just and reasonable rates under Section 529(i)(1) of the Public Utility Code, 66 Pa. C.S. § 529(i)(1). PAWC also argues that if the Commission finds that the *prima facie* case for acquisition has been met, PAWC has presented evidence rebutting I&E's *prima facie* case, and I&E has not established by a preponderance of the evidence that all elements of Section 529(a) of the Public Utility Code, 66 Pa. C.S. § 529(a), have been met.

Under Section 529(i) of the Public Utility Code, 66 Pa. C.S. § 529(i), I&E has the burden of establishing a *prima facie* case that the acquisition of Rock Spring would be in the public interest and in compliance with the provisions of Section 529 of the Public Utility Code, 66 Pa. C.S. § 529. Once the Commission determines that I&E has established a *prima facie* case, Rock Spring has the burden of proving its ability to render adequate, efficient, safe, and reasonable service at just and reasonable rates. 66 Pa. C.S. § 529(i)(1). Although I&E bears a statutory burden of proof in a Section 529 proceeding pursuant to Section 529(i) of the Public Utility Code, 66 Pa. C.S. § 529(i), the Commission has held that this burden is not exclusive to I&E. Rather, any party may present or rebut a *prima facie* case in support of its position in a Section 529 proceeding. *Pa. P.U.C. v. Delaware Sewer Company*, Docket No. P-2014-2404341, 2016 WL 406563 at 27-28 (Pa. P.U.C. Jan. 28, 2016).

Accordingly, “‘Burden of Proof’ means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party.” *Petition of Twin Lakes Util., Inc. for A Comm'n Ord. Authorizing the Acquisition of Twin Lakes Util., Inc. by A Capable Pub. Util. Pursuant to 66 Pa. C.S. § 529 Application of Twin Lakes Util., Inc. for A Comm'n Ord. Nunc Pro Tunc of Serv. Agreement Between Middlesex Water Co. & Twin Lakes Util., Inc., & Five Amends. to Serv. Agreement Between Middlesex Water Co. & Twin Lakes Util., Inc. Pursuant*, No. G-2020-3020941, 2021 WL 5448015, at *1 n. 5 (Pa. P.U.C. Nov. 18, 2021) (citing *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950)). If a *prima facie* case is established, the burden shifts to the utility. *Id.* However, if the utility cannot rebut the evidence, then the complainant prevails. *Id.* If the utility can rebut the evidence, the burden then shifts back to the complainant who must rebut the utility’s evidence by a preponderance of the evidence. *Id.* Thus, “[t]he burden of going forward with the evidence may

shift from one party to another, but the burden of proof never shifts; it always remains on a complainant.” *Id.* (citing *Milkie v. Pa. P.U.C.*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Burleson v. Pa. P.U.C.*, 443 A.2d 1373 (Pa. Cmwlth. 1982))).

Furthermore, any adjudication by the Commission must be supported by substantial evidence in the record. *Application of James Black Water Serv. Co. for Approval to Provide Water Serv. to the Pub. in Jefferson Twp., Lackawanna Cnty., Pa.*, No. A-2013-2395443, 2018 WL 1745324, at *5 (Pa. P.U.C. Apr. 5, 2018) (citing 2 Pa. C.S. § 704). “Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.* (citing *Consol. Edison Co. of N.Y. v. Nat’l Labor Relations Bd.*, 305 U.S. 197, 229 (1938)). A mere trace of evidence or a suspicion of a fact are not sufficient to meet the substantial evidence requirement. *Id.* (citing *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dep’t. of Public Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984)).

III. SUMMARY OF THE ARGUMENT

I&E, in conjunction with evidence presented by the Department, has established a *prima facie* case that Rock Spring cannot reasonably be expected to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in the future under Section 529(a)(3) of the Public Utility Code, 66 Pa. C.S. § 529(a)(3). The Department’s Main Brief details the substantial evidence of record that demonstrates that Rock Spring is incapable of addressing serious issues with the water system, including issues with very high unaccounted-for water loss and a failure to address outstanding violations with the Department for 19 years. Whereas Rock Spring failed to present sufficient evidence rebutting I&E’s and the Department’s *prima facie* case.

Additionally, the Department's Main Brief provides substantial evidence to show that Rock Spring's argument that it has successfully met the requirements of its shifted burden to show that it can render efficient and safe service at a reasonable rate is simply not true. *See* 66 Pa. C.S. § 529(i)(1). Instead, the Department provides extensive detail about Rock Spring's failures to address a multitude of serious violations, included unaccounted-for water loss, over the course of 19 years. Also, the Department details Rock Spring's ineffective management and technical abilities along with substantial necessary capital that is required to make considerable repairs to the water system.

Although Rock Spring claims that the issues with the water system do not amount to an emergency, the Department's Main Brief and the Commission's prior decisions provide clear proof showing otherwise. The Commission has already appointed PAWC as an emergency receiver due to Rock Spring's chronic mismanagement and the water system's deteriorating condition. The Department's Main Brief details the serious issues associated with Rock Spring's water system's high unaccounted-for water loss.

The Department, I&E, and OCA have shown that there are no viable alternatives to the acquisition of Rock Spring. The Commission considered alternatives in 2013 but ultimately entered into a Joint Settlement with Rock Spring directing it to sell the water system. Further, the Commission also appointed PAWC as an emergency receiver in 2025 because Rock Spring's water system was chronically mismanaged, and Rock Spring was not capable of providing safe and adequate service to its customers. Both the Department's Main Brief and witness testimony by I&E and OCA showed that no alternative was practical or economically feasible.

Furthermore, Rock Spring's newly alleged alternatives of reorganizing under new management or contracting with a management firm are neither practical nor economically

feasible because these alternatives do not raise the capital needed to address the issues with the water system. Rock Spring's proposal for required interconnection with SCBWA is also impractical and not economically feasible because this alternative requires an agreement with SCBWA, requires multiple permits from the Department, and the payment of permitting fees.

I&E and the Department have established by a preponderance of the evidence that the alternative for Rock Spring to sell the system to SCBWA has become impractical as Rock Spring has rejected SCBWA's offer, and there is no evidence that giving them more time to negotiate would result in a sale. *See* 66 Pa. C.S. § 529(b)(5). Additionally, PAWC's proposed alternative to pursue bankruptcy on behalf of Rock Spring is not practical as it would delay resolution of this matter with new federal court litigation and possibly discharge the Department's judgment against Rock Spring. Moreover, proceeding with bankruptcy would be legally unsound as PAWC is relying on questions and arguments from counsel, not evidence on the record. *See Commonwealth v. LaCava*, 666 A.2d 221, 231 (Pa. 1995).

IV. ARGUMENT

The substantial evidence presented by I&E, the Department, and OCA is clearly sufficient to establish a *prima facie* case in this matter. *See* Department's Main Brief at 28-38, and 48-49. The argument made by Rock Spring concerning the establishment of the *prima facie* case ignores this evidence and tends to rely on lay witness testimony and by minimizing the evidence presented. *See* Rock Spring Main Brief at 6 and 10-13. Additionally, Rock Spring completely ignores all the evidence presented concerning the dangerous conditions created by Rock Spring's mismanagement of the water system by claiming that Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, does not apply to this situation. Further, Rock Spring's argument regarding the burden shift of establishing that it may render, adequate, efficient, safe, and reasonable service at

just and reasonable rates is unsupported by fact. *Id.* at 10-11. Moreover, Rock Spring did not present evidence, and, therefore, cannot meet its shifted *prima facie* burden that its proposed alternatives to an ordered acquisition were practical and economically feasible. *See* Department's Main Brief at 35-37. Finally, the substantial evidence presented by both I&E and the Department rebutted the evidence put forward by PAWC concerning its proposed alternatives and established that all elements of Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, are met by a preponderance of the evidence. *See* DEP Main Brief at 33-38.

A. The Department and I&E Established a *Prima Facie* Case.

The Department's Main Brief has clearly established that the elements of Section 529(a) of the Public Utility Code, 66 Pa. C.S. § 529(a), have been met so that Rock Spring's argument that no *prima facie* case has been made must therefore fail.

In its Main Brief, Rock Spring first asserts that a *prima facie* case has not been made regarding Section 529(a)(3) of the Public Utility Code, 66 Pa. C.S. § 529(a)(3). *See* Rock Spring Main Brief at 6-7. This section requires that there is a determination that Rock Spring 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). Rock Spring's only evidence to refute the argument that it cannot satisfy this regulation was from four lay witnesses who indicated that they received safe and reliable water. *See* Rock Spring Main Brief at 6-7.

However, as stated in the Department's Main Brief, there is substantial evidence that proves that Rock Spring cannot provide safe and reliable water. *See* Department's Main Brief at 28-33. Engineering studies have shown that nearly all of Rock Spring's 22 miles of distribution system will need to be replaced at a cost of several million dollars, and that Rock Spring is not financially sound enough to do so. *Id.* at 30 and 32. In fact, Department sample results showed that a

residence near a main break revealed total coliform, which demonstrates an open pathway of contamination. *Id.* Among other issues, Rock Spring failed to issue water boil advisories to the residents using the system when it was required. *Id.* Furthermore, throughout the course of Rock Spring's ownership, it and its officers in charge of day-to-day operations have continuously failed to abide by the Safe Drinking Water Act, 35 P.S. §§ 721.1-721.17, and Department Regulations while also failing to make necessary improvements. *Id.* at 30-32.

In an attempt to support its argument, Rock Spring misrepresented the testimony of Department witness, Nathan White, former Sanitarian of Centre County, and has ignored other evidence presented by the Department. *See* Rock Spring's Main Brief at 6. While Rock Spring claims that Mr. White testified that all previous violations cited by the Department have been remedied aside from the unaccounted-for water loss and data integrity issues, Mr. White qualified his answers. *Id.* Mr. White explained that while Rock Spring addressed multiple violations identified in the last full inspection, further investigation will be required to determine the effectiveness of Rock Spring's resolutions to those violations. DEP Statement No. 3 at 4:29-34; Tr. 5:11-25, 512:1-17. Therefore, the Department's investigation into whether Rock Spring satisfactorily remedied all other violations is still open.

Finally, Rock Spring fails to acknowledge that non-compliance with any order of the Department or the Commission within a reasonable timeframe concerning safe and appropriate service is a separate factor to consider under Section 529(a) of the Public Utility Code, 66 Pa. C.S. § 529(a). 66 Pa. C.S. § 529(a)(2). While Rock Spring claims that all regulatory violations have been remedied except the unaccounted-for water loss and data integrity issues under Section 529(a)(3) of the Public Utility Code, 66 Pa. C.S. § 529(a)(3), Rock Spring ignores the fact that its violations of the orders from both the Department and the Commission are

violations as well. *See* Rock Spring's Main Brief at 6-7. Failure to comply with a Department order is a violation of Section 13 of the Safe Drinking Water Act, 35 P.S. § 721.13. For 19 years, Rock Spring failed to comply with the Department's orders requiring, among other things, for it to reduce its unaccounted-for water loss to 30 percent or less. *See* Department's Main Brief at 24-28. Additionally, the Commission entered into a Joint Settlement with Rock Spring in 2013 to address, among other things, Rock Spring's 73.2 percent unaccounted-for water loss, but Rock Spring failed to meet a single phase of that agreement. *See* Department's Main Brief at 28. Rock Spring is in violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, for its noncompliance with the Commission's Joint Settlement.

Rock Spring's arguments misrepresent Section 529(a) of the Public Utility Code, 66 Pa. C.S. § 529(a), and are otherwise unsupported by facts. The Department, in conjunction with I&E, maintains that it has successfully presented a *prima facie* case against Rock Spring.

B. Rock Spring Did Not Present Evidence to Satisfy Its Burden Shift.

Although Rock Spring's Main Brief argues against this, the Department's Main Brief explained how Rock Spring failed to provide evidence to support that it is capable of providing adequate, efficient, safe, and reasonable service at just and reasonable rates. 66 Pa. C.S. § 529(i)(1); *see* Rock Spring's Main Brief at 10-11 and Department's Main Brief at 28-33.

Without providing any supporting testimony, evidence or precedent, Rock Spring argues that it is capable of providing safe and efficient service at reasonable rates. *See* Rock Spring's Main Brief at 11. The most that Rock Spring offers is that Nathan White testified that to his knowledge nobody has gotten sick from drinking the water and that PAWC is still providing safe and reliable water. *Id.* Rock Spring then claims that all that is needed is more revenue to support a more robust

management team and that the infrastructure can be improved with appropriate financial planning over time. *Id.*

However, Rock Spring fails to acknowledge the magnitude of the necessary infrastructure improvements and the cost to make those improvements. *See* Department Main Brief at 36. Further, Rock Spring does not provide any evidence that shows what an estimate would be for an appropriate rate to cover the increase in revenue needed to support a better management team and infrastructure improvements. In fact, Rock Spring acknowledges that the present management team is unable to effectively manage the system by stating that a more robust team is needed, which shows that it cannot meet the requirements of Section 529(i)(1) of the Public Utility Code, 66 Pa. C.S. § 529(i)(1). *Id.*

The Department's Main Brief specifically includes substantial evidence that shows that Rock Spring has proven, over its years of management and service issues, that it is incapable of providing safe and efficient service at reasonable rates. *See* Department's Main Brief at 15-33. The Department's Main Brief provides substantial evidence about Rock Spring's failure to address a multitude of serious violations, including an excessive unaccounted-for water loss, over the course of 19 years. *Id.* at 24-28. Further, the Department's Main Brief details Rock Spring's inept managerial and technical abilities, including Mr. Campbell's falsification of collecting required samples and Rock Spring's failure to address the deteriorated state of its water system. *Id.* at 28-33. Rock Spring did not present any evidence to rebut the evidence of both I&E and the Department, which is aptly summarized in the Department's Main Brief. Therefore, Rock Spring has not met its *prima facie* burden to show that it is capable of providing adequate, efficient, safe, and reasonable water service.

C. **Rock Spring's Argument About Section 529 Being an Emergency Provision Requiring Immediate Public Interest is Without Merit.**

The substantial evidence presented by I&E, the Department, and OCA established that Rock Spring's negligence toward the issues surrounding the unaccounted-for water loss within the Rock Spring water system has created an emergency situation where it is in the best interest of the public for a more capable utility to acquire Rock Spring, so that Rock Spring's argument to the contrary is meritless.

In its Main Brief, Rock Spring contends that Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, is an emergency provision reserved for situations where customers face immediate threats to their water service. Rock Spring Main Brief at 12. According to Rock Spring, unaccounted-for water loss is not an emergency, and, rather, is an issue that can be addressed methodically over a long period of time. *Id.* Such an assertion is reflective of the disinterest Rock Spring and its owners have engaged in toward the water system for the past 19 years.

The Commission already found that the deteriorating condition of the water system and its chronic mismanagement by Rock Spring created a risk to the water service of Rock Spring's customers and appointed PAWC as temporary emergency receiver because it was in the best interest of both the public and Rock Spring's customers. *See* Opinion and Order dated March 21, 2025 at 18-19, 25-26, and 28.

Moreover, as discussed in the Department's Main Brief, excessive unaccounted-for water loss puts a water system at risk for more severe line breaks, outages in water production, the introduction of pathways to microbiological contamination, and hazards to nearby aquatic life. Department Main Brief at 23. Additionally, Department witness Nathan White testified that the majority of main lines within the Rock Spring distribution system are 4-inch asbestos cement lines that are undersized and unlikely to provide adequate fire flow to the water system. DEP Statement

No. 3 at 4:11-14. Thus, Rock Spring's customers are facing risks because Rock Spring is incapable of providing adequate, efficient, safe, and reasonable service.

Specifically, such risks were expressed by Rock Spring customer John Hajduk, who presented testimony at the public input hearing and submitted evidence indicating that between August 13, 2018, and September 7, 2024, he and his family have experienced the following: 1) approximately 280.5 hours of outage in water delivery; 2) received approximately 671 gallons of unusable water; and 3) have had approximately 28 instances of low water pressure, complete outage, cloudy water, dirty water, water with a foul odor, and water which failed total dissolved solids testing. *See* Hajduk Exhibit 2. Therefore, Rock Spring's assertion that unaccounted-for water loss is not an emergency intended to be addressed by Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, is without merit as there is substantial evidence establishing that the issues surrounding Rock Spring's unaccounted-for water loss and Rock Spring's inability to address those issues have put Rock Spring's customers and the water system at risk.

D. Rock Spring Did Not Establish Viable Alternatives to Acquisition.

The evidence presented by I&E, the Department, and OCA established a *prima facie* case that Rock Spring's proposed alternatives to acquisition are impractical and not economically feasible under Section 529(a)(4) of the Public Utility Code, 66 Pa. C.S. § 529(a)(4). Rock Spring did not present any evidence to meet its shifting burden. *See* 66 Pa. C.S. § 529(i)(1).

First, Rock Spring argues that the Commission has not had discussions with Rock Spring concerning alternatives to ordered acquisition under Section 529(b) of the Public Utility Code, 66 Pa. C.S. § 529(b). Rock Spring Main Brief at 9. However, the record demonstrates that the Commission has already directed Rock Spring to pursue the best alternatives to an ordered acquisition for the water system, and I&E, the investigative and enforcement body of the

Commission, has considered exceptions to acquisition in this matter and has found them to be impractical and not economically feasible.

The Commission approved a Joint Settlement with Rock Spring on June 13, 2013, directing Rock Spring to make attempts to sell the water system, to share the status of any negotiations or offers with both I&E and OCA, and any proposed sale would need to be reviewed by the Commission and the parties to the Joint Settlement. *See Pa. P.U.C. v. Rock Spring Water Co.*, Docket No. R-2012-2336662, 2013 WL 3070713 (Pa. P.U.C. June 13, 2013), Recommended Decision of ALJ Susan D. Colwell (May 21, 2013) at 4, ¶ 11(g), adopted by the Commission by Order dated June 13, 2013. Clearly, the Commission already considered what alternatives to ordered acquisition would best suit the Rock Spring water system and directed Rock Spring to make efforts to voluntarily sell the water system with the intention that the Commission would review the proposed sale. Thus, the Joint Settlement demonstrates that Rock Spring already had discussions with the Commission, I&E, and OCA about the best alternative to ordered acquisition.

Moreover, the Commission has already considered the alternatives of receivership and the acquisition of the water system by a municipal authority as the Commission ordered PAWC to act as temporary receiver in its March 21, 2025, Opinion and Order and ordered Rock Spring to negotiate in earnest the transfer of its water system to SCBWA. Opinion and Order dated March 21, 2025, at 39, 41 ¶¶ 1-6, and Appendix A; 66 Pa. C.S. § 529(b)(3) and (5). The Department submits that the March 21, 2025, Opinion and Order by the Commission focused on Rock Spring transferring the system to SCBWA rather than recommending other alternatives because the Commission found that Rock Spring was incapable of providing safe, adequate, and reasonable service to its customers, that Rock Spring has not provided any indication that it has the ability or the willingness to improve the water system or to address the deficiencies and violations cited by

the Department, and that the Rock Spring water system has been chronically mismanaged. *Id.* at 18, 22, and 28. Thus, there is evidence on the record that the Commission has considered the alternatives to acquisition, and the Commission has previously directed Rock Spring to pursue the best alternatives for the water system.

Furthermore, as fully discussed in the Department's Main Brief, I&E witness Christopher Keller, Fixed Utility Financial Analyst for I&E, has considered all alternatives listed in Section 529(b) of the Public Utility Code, 66 Pa. C.S. § 529(b), and concluded that they are not practical or economically feasible. DEP Main Brief at 37-38; *see also* I&E Statement No. 1 at 6:10-23; Tr. at 496:7-18. Therefore, the record does demonstrate that alternatives to ordered acquisition have been considered in this matter by both the Commission and I&E.

Rock Spring raises for the first time in its Main Brief that it should be allowed to pursue alternatives to acquisition, namely organizing under new management or contracting with a management firm to operate the Rock Spring water system. *See* Rock Spring Main Brief at 4, 8-10. According to Rock Spring, the Commission has not investigated reorganization of Rock Spring under different management or the possibility of Rock Spring contracting with a management company. *Id.* at 9. Rock Spring claims that with sufficient funding, Rock Spring could reorganize under new management and bring the water system back into compliance. *Id.* at 10.

However, Rock Spring did not put forward evidence establishing a *prima facie* case that these alternatives are practical or economically feasible for the water system. As the Department thoroughly discussed in its Main Brief, substantial evidence shows that organizing under new management or contracting with another public utility company or a management firm are not practical or economically feasible alternatives for the Rock Spring water system. *See* Department's Main Brief at 33-37. Additionally, organizing under new management or contracting with a

management firm will not produce the capital needed to repair the Rock Spring water system and bring it back into compliance. *Id.* at 35-37. Rock Spring admits that it lacks the financial resources to comply with the Department's regulations. *See* Rock Spring Main Brief at 2. As the Department discussed in its Main Brief, Rock Spring's customers cannot financially support the repairs to the water system. Department Main Brief at 36. Thus, Rock Spring does not have the financial capacity to bring the water system back into compliance under these alternatives.

Interestingly, Rock Spring argues that PAWC's work on its behalf is proof that the water company can be successful under new management and asks that the receivership continue for a short period of time rather than having a capable public utility acquire the system. Rock Spring's Main Brief at 10. However, Rock Spring does not say how long the receivership should continue, or how Rock Spring plans to proceed once the receivership ends. Despite PAWC's excellent work as receiver, the unaccounted-for water loss is still above 30 percent contrary to the requirements of the Department's 2006 Consent Order and Agreement and 2018 Administrative Order and is still in need of millions of dollars in repairs to restore its crumbling infrastructure. DEP Statement No. 5 at 4:13-16; DEP Exhibit 19 at 11; DEP Exhibit 20 at 5; DEP Exhibit 54; OCA Statement 1 at 22:13-14; SCBWA Statement No.3 at 5:98-108, 6:109-112; and PAWC Exhibit MJG-3. Any temporary work done by PAWC will not address Rock Spring's lack of capital. Thus, these alternatives are not practical or economically feasible.

Rock Spring also proposes for the first time in its Main Brief that an alternative to its acquisition would be for the Commission to require Rock Spring to interconnect with SCBWA to address concerns with the supply of water in the event of catastrophic failure of its single well. *See* Rock Spring's Main Brief at 10. This alternative is not practical as SCBWA will need to agree to allow Rock Spring to purchase an interconnection, and such an arrangement will require permitting

with the Department. *See* 25 Pa. Code §§ 109.501(b) and (d) and 109.503(b)(1)-(3). The interconnection itself would have to be permitted to either SCBWA or Rock Spring, Rock Spring would need a permit for a new source of water, and the application would require that an agreement be submitted between the two suppliers. *Id.* Because SCBWA has an allocation permit for use of a surface water source, Rock Spring would have to obtain a subsidiary water allocation permit.¹ *Id.* Rock Spring would also have to pay a \$1,000.00 permit fee for the public water supply permit and a \$25.00 fee for the allocation application. *See* 25 Pa. Code § 109.1404(a); and 32 P.S. § 641. Rock Spring has presented no evidence that it has an agreement with SCBWA to purchase an interconnection, and Rock Spring has not shown that it has the funding to purchase an interconnection and to pay the permitting fees. Without an agreement and the proper funding, this proposed alternative by Rock Spring is not practical or economically feasible. Thus, Rock Spring has not rebutted I&E's *prima facie* case supported by the Department and OCA, and a preponderance of the evidence supports a finding that the alternatives proposed by Rock Spring are impractical and are not economically feasible. *See* 66 Pa. C.S. § 529(i)(1).

E. A Preponderance of the Evidence Supports Acquisition Over PAWC's Alternatives.

I&E and the Department have presented evidence that rebuts PAWC's evidence and have established by a preponderance of the evidence that alternatives to acquisition under Section 529(a)(4) of the Public Utility Code, 66 Pa. C.S. § 529(a)(4), are impractical and not economically feasible. Thus, all elements of Section 529(a) of the Public Utility Code, 66 Pa. C.S. § 529(a), have been met.

PAWC argues that I&E did not establish by a preponderance of the evidence that all elements of Section 529(a) of the Public Utility Code, 66 Pa. C.S. § 529(a), have been met because

¹ [Bureau of Safe Drinking Water - Water Allocation | Department of Environmental Protection | Commonwealth of Pennsylvania](#)

an alternative to acquisition still exists as Rock Spring can sell the water system to SCBWA. *See* PAWC Main Brief at 13, 21, and 25; *see also* 66 Pa. C.S. § 529(b)(5). PAWC argues that I&E did not meet its burden because its only evidence that this alternative is impractical is that Rock Spring and SCBWA have not reached an agreement. PAWC's Main Brief at 21. However, that is not the extent of the evidence on the record supporting I&E's position.

As discussed in the Department's Main Brief, Rock Spring and SCBWA have been discussing the transfer of the water system to SCBWA since 2008 without reaching an agreement and time is running out for this alternative to still be considered practical. Department Main Brief at 38. While SCBWA is willing and capable of purchasing Rock Spring, this alternative has become unlikely, and, therefore, impractical as Rock Spring rejected SCBWA's offer. *See* SCBWA Statement No. 4 at 1:26-29. There is no evidence in the record that allowing Rock Spring and SCBWA more time to negotiate the transfer of the water system will result in a sale.

Moreover, these proceedings have already been stayed to allow Rock Spring and SCBWA to negotiate the sale of the Rock Spring water system after the Commission adopted the Joint Motion of Chairman Stephen M. DeFrank and Commissioner John F. Coleman, Jr. on March 13, 2025. The Joint Motion granted OCA's Petition for Issuance of Interim Emergency Order, appointed PAWC as receiver for Rock Spring, and directed Rock Spring to negotiate in earnest the sale of the water system to SCBWA within 90 days of the issuance of an Order formalizing the Joint Motion. *See* Joint Motion of Chairman Stephen M. DeFrank and Commissioner John F. Coleman, Jr. at 3-4 and 5 ¶ 6 (March 13, 2025). On July 19, 2025, PAWC filed a letter stating that Rock Spring and SCBWA had not reached an agreement within those 90 days.

At the time of writing this reply brief, another four months have passed without Rock Spring and SCBWA coming to an agreement for the sale of the water system. Thus, there is

substantial evidence of record to conclude that if Rock Spring and SCBWA have not been able to come to an agreement over the past 17 years, they are not going to come to an agreement now.

Additionally, as discussed in the Department's Main Brief, Rock Spring's misconduct over the last 19 years demonstrates that it will not willingly pursue an alternative to ordered acquisition or follow a directive from the Commission to pursue an alternative. Department's Main Brief at 33-35. This contention is supported by assertions made by PAWC in its Main Brief where PAWC asserts that Rock Spring has not sold the water system to SCBWA due to Rock Spring's bargaining strategy as Rock Spring believes it will be able to get a higher purchase price going through eminent domain proceedings. PAWC's Main Brief at 21-22. Thus, this is another indication that Rock Spring is not willing to negotiate a sale with SCBWA.

However, should the Commission disagree and order Rock Spring to continue to negotiate the transfer of the water system to SCBWA, the Department respectfully requests that the Commission keep this matter open with PAWC acting as receiver, set a defined period of time for Rock Spring and SCBWA to engage in negotiations, and require SCBWA and Rock Spring to provide a status report at the end of the negotiating period. If Rock Spring and SCBWA are unable to come to an agreement, the Department respectfully requests that the parties be permitted to petition the Commission for further proceedings to consider moving forward with the ordered acquisition of the water system by a more capable public utility.

Alternatively, in its Main Brief, SCBWA argues that the Commission can order it to acquire Rock Spring in this matter. *See* SCBWA Main Brief at 8, 11-12. SCBWA also argues that the Commission obtained jurisdiction over SCBWA in this matter because SCBWA has intervened in and participated in these proceedings. *Id.* If the Commission finds SCBWA's argument persuasive, the Department respectfully requests that the Commission order SCBWA to acquire the Rock

Spring water system. As discussed in the Department's Main Brief, SCBWA is technically, managerially, and financially capable of acquiring and operating the Rock Spring water system in compliance with both the Commission's and the Department's regulations, and SCBWA is in the best position to acquire the water system. *See* Department's Main Brief at 42-47.

Finally, PAWC has for the first time in its Main Brief proposed pursuing bankruptcy on behalf of Rock Spring as its receiver where either SCBWA or PAWC purportedly could acquire the Rock Spring water system through bankruptcy proceedings. *See* PAWC Main Brief at 13-14, 29, and 34-35. While PAWC does have authority pursuant to the Commission's March 21, 2025, Order appointing PAWC receiver to initiate bankruptcy proceedings on behalf of Rock Spring, this alternative is not practical. *See* Commission's Order dated March 21, 2025, at ¶¶ 1.1 and 2.a.

To pursue bankruptcy on behalf of Rock Spring, this matter would have to remain open and be stayed while new litigation would have to be initiated in federal bankruptcy court, which will likely take a minimum of several months to litigate. Additionally, the Department's unpaid \$40,000.00 civil penalty assessed against Rock Spring could be discharged because of the bankruptcy proceedings, which would be detrimental to the Department and would not hold Rock Spring accountable for its violations of the Safe Drinking Water Act, 35 P.S. §§ 721.1-721.17, and the underlying regulations.

Furthermore, the evidentiary basis asserted by PAWC in its Main Brief to pursue bankruptcy is not legally sound. To support its position that it could file for bankruptcy on Rock Spring's behalf, PAWC cites to statements made by Rock Spring's counsel at the evidentiary hearing. *See* PAWC's Main Brief at 13-14, 20, 29, and 34-35. However, "it is well settled in the law that attorneys' statements or questions at trial are not evidence." *Commonwealth v. LaCava*, 666 A.2d 221, 231 (Pa. 1995) (citing *Commonwealth v. Green*, 581 A.2d 544, 562 (Pa. 1990)).

PAWC cites to portions of the evidentiary hearing transcript where Rock Spring's counsel is asking questions to I&E witness Mr. Keller or making an argument in response to an objection from the Department. Tr. 491:1-25-495:1-17; 523:7-16. Thus, these questions or arguments by Rock Spring's counsel cannot be used as evidence and the basis for filing a new bankruptcy case. Therefore, this alternative to an ordered acquisition of Rock Spring is impractical, not legally sound, and I&E and the Department have established by a preponderance of the evidence that the elements of Section 529(a) of the Public Utility Code, 66 Pa. C.S. § 529(a), have been met and that the acquisition of Rock Spring is in the public interest.

V. CONCLUSION

WHEREFORE, the Department respectfully requests that the Commission grant I&E's Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Rock Spring Water Company and order a capable utility, namely SCBWA or PAWC, to acquire the Rock Spring Water Company.

Respectfully Submitted,

**FOR THE COMMONWEALTH OF
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Date: November 21, 2025

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

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

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Reply Brief, via electronic mail upon the persons listed below:

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