

COMMONWEALTH OF PENNSYLVANIA



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November 21, 2025

Via Electronic Filing

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

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

Dear Secretary Homsher:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in this proceeding.

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

Respectfully submitted,

/s/ Janna E. Williams

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Enclosures

cc: Administrative Law Judge John M. Coogan (Via Email Only)
Certificate of Service

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
Bureau of Investigation & Enforcement : Docket No. P-2024-3051313
Petition to Request the Commission Open a :
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Acquisition of Rock Spring Water Company :

REPLY BRIEF OF THE
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I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Reply Brief in response to the Main Briefs of Rock Spring Water Company (RSWC or Company), Pennsylvania-American Water Company (PAWC), and State College Borough Water Authority (SCBWA). The Main Brief submitted by the OCA contains a comprehensive discussion of the evidence in this matter and its position on the issues, thus the OCA will only respond to those matters raised by RSWC, PAWC, and SCBWA that were not previously addressed or require clarification. The OCA does not waive its position on any issues because it does not repeat those arguments in this reply. Accordingly, the OCA incorporates the arguments and analysis of its Main Brief herein.

II. SUMMARY OF REPLY ARGUMENT

In its brief, RSWC argues that it has been providing safe and reliable drinking water service to its customers for decades and can do so in the future. Specifically, RSWC argues that the criteria required by Section 529 of the Public Utility Code to order the acquisition of a water utility by another capable public utility have not been met and alternatives have not been considered. *See generally* RSWC Main Brief. 66 Pa. C.S. § 529. These arguments are not persuasive. In the Main Briefs submitted by the OCA, the Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement (I&E), the Pennsylvania Department of Environmental Protection (DEP), and Ferguson Township, there is ample evidence put forth that RSWC is not capable of providing adequate, efficient, safe and reasonable services at just and reasonable rates now or in the future. Additionally, rate relief will not, in fact, provide funding necessary for the scope of improvements faced by RSWC system but would astronomically increase rates to RSWC's customers.

PAWC argues in its Main Brief that the criteria of Section 529(a)(4) and (b)(1)-(5) have not been met as there is a viable alternative to a forced acquisition by a capable public utility. PAWC argues in its brief that it is practical and economically feasible for SCBWA to acquire the

RSWC system. While the OCA is on record as also supporting SCBWA's voluntary acquisition of the RSWC's system as a practical alternative, both entities have been in negotiations for SCBWA's voluntary acquisition for 12 years with no success. It is apparent that this alternative has been explored at length and is not viable or the voluntary sale and transfer would have occurred.

PAWC argues in the alternative should the Commission find that the criteria of Section 529 have been met, that the Commission should order it to maintain its receivership of RSWC to allow PAWC to petition for bankruptcy. PAWC did not develop the record in this matter regarding this alternative. Further, PAWC does not provide specifics in its brief regarding the many issues and potentially protracted litigation that this alternative raises and most likely to the detriment of RSWC's customers. Until more specifics are presented and developed on the record regarding this alternative, the OCA cannot concur with this alternative.

SCBWA argues in its Main Brief that the Commission has the authority to order it to acquire RSWC because despite SCBWA being a municipal authority, the Commission has obtained jurisdiction over it by way of SCBWA's intervention and participation in these proceedings. This argument lacks merit as it ignores a plain reading of the Public Utility Code.

Consistent with the evidence in this proceeding, which shows that RSWC is not capable of providing adequate, efficient, safe, and reasonable services to its customers at just and reasonable rates now or in the future, that all alternatives have been explored and exhausted, and that the Commission lacks jurisdiction to order SCBWA to acquire RSWC, the OCA recommends that a capable public utility be ordered to acquire the RSWC system.

III. REQUIREMENTS OF SECTION 529 OF THE PUBLIC UTILITY CODE HAVE BEEN MET.

A. RSWC is not providing adequate, efficient, safe, and reasonable service or facilities now and cannot be expected to do so in the future.

1. RSWC has and is not providing adequate, efficient, safe, and reasonable service or facilities now.

The Company argues in its Main Brief that it has been providing adequate, efficient, safe, and reasonable services now and can do so in the future. RSWC points to the direct testimony of several customers from the public input hearings as well as two customers who participated in the evidentiary hearing in Harrisburg as evidence they are providing safe and reliable water services. *See* RSWC Main Brief at 6; *See also* Tr. at 267-268, 289-293, 545, and 558. While these RSWC customers testified that they have not experienced problems with the service provided, three consumers testified at the public input hearings as to receiving inadequate service and there is substantial record evidence from DEP to the contrary.

Mr. Jason Lennox testified at the public input hearing that he frequently received boil water notices, received poor communication from the Company, and water pressure was low. Tr. at 369-370. Mr. John Hajduk also testified to the poor communication from RSWC, including not receiving boil water notices, 24 events over 6 years where water was not available to customers, having to personally install a filtration system in his home, and issues with delays and billing. Tr. at 389-394. Finally, Ms. Laura Dininni testified to receiving conserve water notices, boil water notices, and installing a whole home ultraviolet and reverse osmosis drinking water system out of concerns for the health of a family member. Tr. 418-419.

The testimony provided by these RSWC customers is on top of the mountain of evidence provided by DEP reflecting issues with the safety of the water being supplied by the Company. To reiterate, RSWC has been in near constant violation of the Pennsylvania Safe Drinking Water Act

for nearly 20 years. DEP's witness, Mr. Nathan White, conducted one full inspection, seven partial inspections, two complaint inspections, and two administrative inspections of RSWC. DEP St. 1 at 5. In the past two years, Mr. White issued Notices of Violation (NOVs) to Rock Spring on December 6, 2023, April 18, 2024, June 7, 2024, September 13, 2024, and a Field Order. *Id.* at 6-15. DEP's NOVs have cited violations for failure to monitor for volatile organic compounds, report chlorine residuals, and a Level 1 Assessment for a positive total-coliform test result, among other issues. I&E St. 2 at 8.

The OCA submits that based on the testimony of customers and the numerous violations documented by DEP, there is abundant evidence that RSWC is not providing adequate, efficient, safe, and reasonable service and facilities to the contrary of its Main Brief.

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

RSWC argues in its Main Brief that there is no record evidence that it cannot reasonably be expected to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in the future and that all the violations have been corrected. RSWC Main Brief at 6-7. Pursuant to *Pa. PUC v. Rock Spring Water Co.*, Docket No. P-2024-3051313 (Order entered Feb. 20, 2025), PAWC has been the receiver for RSWC since March 2025. RSWC's argument that it can be reasonably expected to provide adequate, efficient, safe, and reasonable service and facilities in the future falls flat because there was no attempt by RSCW to correct any problems with the system until PAWC became the receiver.

Since its appointment as receiver in March 2025, PAWC has successfully addressed several issues facing the RSWC system. PAWC has addressed lost water in the RSWC system by implementing leak detection, which lead to the repair of seven service leaks and two major main breaks. PAWC St. 1-Supp. at 2. PAWC has installed instrumentation to monitor compliance and

provide remote alarms and shutdown in the event of equipment failures. *Id.* PAWC has employed additional staff to operate the system. *Id.* Despite these improvements, PAWC considers the majority of the system to be poorly constructed. *Id.* at 3. According to estimates from PAWC and SCBWA, it could take between \$16 and \$20 million to repair the RSWC system. OCA St. 1 at 22.

PAWC has made notable improvements but acknowledges there is much more to be completed. RSWC takes credit for PAWC's improvements to the system in an attempt to maintain control. Testimony from I&E witness Mr. Christopher Keller noted that the Company owners display a lack of interest in operating the water system and had filed an Emergency Petition for Appointment of a Receiver in the Court of Common Pleas of Centre County. I&E St. 1 at 6. RSWC was ordered as a provision of its 2012 base rate case to begin negotiations for sale of the system to SCBWA. *See Pa. PUC v. Rock Spring Water Co.*, Docket No. R-2012-2336662. RSWC has actively attempted to sell the system since that time but has been unable to come to an agreement with SCBWA.

RSWC argues that it can provide adequate, efficient, safe, and reasonable service and facilities in the future. However, it has refused to follow orders of both the Commission and the DEP and has deferred maintenance on the system to the point of almost complete system degradation. The only improvement has occurred during PAWC's receivership. The only means of RSWC providing adequate, efficient, safe, and reasonable service and facilities in the future is by PAWC being ordered into perpetual receivership, which is not an acceptable solution.

The OCA submits that there is ample record evidence that RSWC is not providing safe and reliable service now, and there is no evidence that it will be able to in the future contrary to the arguments in its Main Brief.

B. Alternatives to acquisition have been considered and exhausted.

The Main Briefs of both RSWC and PAWC argue that acquisition of the RSWC system by a capable public utility is not supported because alternatives to acquisition under Section 529(a)(4) and (b)(1)-(5) have not been explored. 66 Pa. C.S. § 529(a)(4) and (b)(1)-(5). RSWC argues that Section 529(b) requires that discussion and investigation of each alternative must occur with RSWC and there is no record evidence of formal discussions. PAWC argues that Section 529(a)(4) has not been met because there is a practical and economically feasible alternative to acquisition, in that SCBWA can acquire RSWC through a sale. These arguments are meritless, and the OCA responds to each of these arguments below.

1. RSWC has been aware of and exploring alternatives to its ownership of the RSWC since 2012.

RSWC first argues that the only alternative explored is the sale of the system to SCBWA. RSWC Main Brief at 9. As a provision of the Joint Settlement of the 2012 base rate case, RSWC agreed to begin negotiations for the sale of its system to SCBWA. *See Pa. PUC v. Rock Spring Water Co.*, Docket No. R-2012-2336662. RSWC has spent 12 years negotiating with SCBWA and nothing has materialized. There is no record evidence that RSWC, despite knowing that it must either sell its system or find another alternative, did anything other than attempt to sell the system to SCBWA. In that same timeframe, RSWC continued to disregard DEP NOV's and orders and the state of its water system continued to deteriorate. *See generally* DEP St. 1, OCA St. 1, and I&E St.

2. RSWC was aware for 12 years that changes needed to be made to improve its water system as evidenced by the multiple DEP and Commission orders and made no attempt to explore any other alternative than sale to SCBWA, and RSWC has not succeeded in reaching an agreement with SCBWA.

I&E, unlike RSWC, has explored alternatives to acquisition. According to testimony provided by I&E witness Mr. Keller, the first three alternatives to acquisition under Section 529(b) would not address the financial resources needed for the RSWC system to come into compliance with DEP and resolve the issues with unaccounted for water. I&E St. 1 at 6. RSWC requires tens of millions of dollars in repairs to return to a compliant water system. Notwithstanding that, RSWC argues that with more funding alternatives to acquisition may be possible. Even though it now argues that increased funding could prevent the forced acquisition of its system, RSWC has not filed for a rate increase in 12 years.

Beyond the lack of funding, Mr. Keller testified that the Company owners display a lack of interest in operating the water system, making merger unviable. I&E St. 1 at 6. In January 2025, RSWC filed an Emergency Petition for Appointment of a Receiver in the Court of Common Pleas of Centre County. *Id.* at 14. RSWC's Petition stated that the owners of RSWC have not been cooperative and that they are not capable of managing the system nor assisting with the sale of the system. *Id.* This lack of interest is apparent in the status of the water system at the time of the PAWC receivership. RSWC's argument that alternatives other than acquisition by a capable public utility is difficult to fathom when the ownership puts no effort into maintaining or improving the system and the only option to acquisition it has explored is a sale to SCBWA.

In February, the OCA filed a Petition for Interim Emergency Order seeking the appointment of a receiver for the RSWC system. *Pa. PUC v. Rock Spring Water Co.*, Docket No. P-2024-3051313 (Order entered Feb. 20, 2025). The OCA's Petition was granted and PAWC has managed the operations of the RSWC since March 2025. *Id.* RSWC was required by the receivership order to negotiate in earnest for the transfer of the system to SCBWA and to subsequently file an abandonment application with the Commission. *Id.* However, nothing

materialized from the Commission-directed exploration of a viable alternative, and on June 19, 2025, PAWC filed a letter stating that SCBWA and RSWC have not reached an agreement and, because 90 days had passed without an agreement between SCBWA and RSWC and no abandonment application had been filed, PAWC requested that a further prehearing conference be scheduled. Hence, RSWC's argument that there is no record evidence of discussion of alternatives to acquisition is without merit. RSCW has been discussing alternatives to its ownership for 12 years with the Commission, first during its 2012 base rate case and again after the recent receivership order. No alternative other than SCBWA ownership has been proffered or even explored by RSWC in those 12 years and now RSWC wants additional time to explore other options.

The OCA submits that RSWC's argument that there has been no discussion of alternatives to acquisition fails as the Commission and RSWC have been discussing alternatives for 12 years. Accepting RSWC's argument that it now gets additional time for discussion of additional alternatives is not in the best interest of RSWC customers.

2. Acquisition of the RSWC system by SCBWA is not legally practical.

PAWC argues in its brief that it is practical and economically feasible for SCBWA to acquire the RSWC system. PAWC Main Brief at 21-29. However, RSWC and SCBWA have twice been ordered into negotiations for the sale of the system in the past 12 years. *See Pa. PUC v. Rock Spring Water Co.*, Docket No. R-2012-2336662; *See also Pa. PUC v. Rock Spring Water Co.*, Docket No. P-2024-3051313 (Order entered Feb. 20, 2025). Those negotiations have failed to yield any movement towards a sale of the system. While OCA agrees that SCBWA is an acceptable alternative to ownership of the system by RSWC, the Commission lacks the authority in the Public Utility Code to direct SCBWA to acquire the system because SCBWA is a municipal authority incorporated under the Municipal Authorities Act. 53 Pa. C.S. § 5601 et. seq, and not a public

utility. As a municipal authority, and not a certificated utility, SCBWA is not subject to the Commission's jurisdiction. While SCBWA has indicated its willingness to acquire the Rock Spring water system, it would be a significant deviation from public utility law practice to find that the Commission can exercise its jurisdiction over a municipal authority to force it to acquire a troubled small water system.

The OCA submits that absent voluntary action on the part of SCBWA, this alternative is not viable.

IV. THE COMMISSION LACKS JURISDICTION TO ORDER SCBWA TO ACQUIRE THE RSWC SYSTEM

In its Main Brief, SCBWA argues that the Commission has obtained jurisdiction over it through its intervention and participation in 529 proceedings. SCBWA goes on to argue that because the Commission has obtained jurisdiction over it through SCBWA's intervention and participation in this proceeding, the Commission can order it to acquire the RSWC system. While the OCA agrees that SCBWA's voluntary acquisition of the RSWC system is a viable alternative to the acquisition by a capable public utility, it is just that, an alternative. As explained further below, the Commission has not gained jurisdiction over SCBWA as a public utility and therefore lacks authority to direct SCBWA to acquire the RSWC system pursuant to Section 529 of the Code.

Section 529 of the Public Utility Code states "The commission may order a capable public utility to acquire a small water or sewer utility..." 66 Pa. C.S. § 529(a). It is clear from this plain language that the legislature intended that forced acquisitions of systems through 529 proceedings be through an entity which the Commission had the jurisdiction to monitor in the future – a public utility. This is made further obvious through the specific carve out in Section 529(b), discussing *alternatives* to acquisition by a capable public utility. 66 Pa. C.S. § 529(b). Specifically, Section 529(b)(5) states "The acquisition of the small water or sewer utility by a municipality, a municipal

authority or a cooperative.” 66 Pa. C.S. § 529(b)(5). Again, it is clear from this plain language that a municipal authority such as SCBWA was to be considered as an alternative to a capable public utility.

The term “public utility” is defined in Section 102 of the Public Utility Code. 66 Pa. C.S. § 102. Specifically, a public utility is defined as “[a]ny person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for...[d]iverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.” 66 Pa. C.S. § 102. Additionally, Section 102 provides a definition of a “municipal corporation” as:

“All cities, boroughs, towns, townships, or counties of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.”

Id. The term municipal corporation includes municipal authorities, and the Commission has taken the position that it lacks authority over municipal authorities all together under the Public Utility Code.¹ In addition to the carve out in Section 529, other Sections of the Public Utility Code specifically carve out exceptions for municipal corporations as distinct from public utilities. *See* 66 Pa. C.S. §§ 1102(a)(5), 1301(b), 1501.

By definition, SCBWA is a municipal corporation and not a public utility under the Public Utility Code. In its Main Brief, SCBWA admits that it is a “well-recognized principal that the

¹ *See also* the Brief of Respondent Pennsylvania Public Utility Commission filed in *Conyngham Township v. Pa. PUC* Docket No. 113 C.D. 2024 in which the PUC argues that the Municipal Authorities Act confers exclusive jurisdiction over challenges and questions regarding the adequacy, safety, and reasonableness of an authority’s services.

The PUC argues that the Commission “is a creature of statute and only has those powers which are expressly conferred upon it by the General Assembly and those powers which arise by necessary implication *Allegheny Cnty. Port Auth. v. Pa. PUC*, 427 Pa. 562 (1967); *Delaware River Port Auth. v. Pa. PUC*, 393 Pa. 639 (1958).” *Id.* at 13. Additionally, that Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967) *Id.* Neither silence nor agreement of the parties will confer jurisdiction where it otherwise would not exist. *Commonwealth v. Van Buskirk*, 449 A.2d 621 (Pa. Super. 1982), nor can jurisdiction be obtained by waiver or estoppel. *Scott v. Bristol Twp. Police Dep’t*, 669 A.2d 457 (Pa. Cmwlth. 1995). *Id.*

Commission’s jurisdiction does not extend to municipal authorities.” SCBWA Main Brief at 10. However, SCBWA argues that it consented to the jurisdiction of the Commission *merely* by participating and intervening in the proceedings. This argument ignores the plain language of the Public Utility Code.

Not only is SCBWA’s argument contrary to the plain language in the Public Utility Code, applying this argument to future cases before the Commission could have a chilling effect on Commission proceedings. If the Commission accepts this argument, future municipalities may refuse to participate in a variety of proceedings before the Commission for fear of waiving jurisdiction. The OCA submits that the plain language of the Public Utility Code is clear and the legislature did not intend for the Commission to have jurisdiction in Section 529 proceedings to direct municipal corporations to acquire small, troubled systems other than as a consideration of an alternative to a capable public utility being directed to acquire a troubled system. The OCA submits that a capable public utility should be ordered to acquire the RSWC system.

V. ADDITIONAL FUNDING THROUGH INCREASED RATES FOR THE RSWC IS NOT IN THE PUBLIC INTEREST

RSWC argues throughout its brief that if it were to obtain additional funding in the form of a rate increase, either it could properly manage the system or any number of alternatives to the acquisition of the system could occur. As the OCA explained in its Main Brief PAWC, as receiver of RSWC, has invested significantly in the system and still considers it to be in poor condition. PAWC St. 1-Supp. at 2. According to estimates from PAWC and SCBWA, it could take between \$16 and \$20 million to repair the RSWC system. OCA St. 1 at 22. Dividing these costs between a base of 452 residential and 12 commercial customers would result in such a large increase in rates as to not be economically or financially supportable. *Id.* RSWC has had decades to explore options to increase rates and raise capital to invest into its system. Waiting until Section 529 proceedings

have been initiated and then arguing that additional capital is required to support millions of dollars of system upgrades is indefensible.

The OCA submits that without astronomical rate increases for the RSWC customers RSWCA is unable to furnish or maintain adequate, efficient, safe, and reasonable service and facilities now or in the future. Acquisition of the system by a capable utility is in the public's best interest.

VI. THE COMMISSION HAS INSUFFICIENT EVIDENCE TO ORDER PAWC TO FILE FOR BANKRUPTCY AS RECEIVER OF RSWC BECAUSE THIS ALTERNATIVE WAS NOT DEVELOPED IN THE RECORD.

PAWC argues in its Main Brief that the Commission should order it to exercise its authority as receiver of RSWC to file for bankruptcy on behalf of RSWC in order to transfer the system to a public utility, municipality, municipal authority, or cooperative. PAWC Main Brief at 1. While this may be a viable alternative to the acquisition of RSWC by a capable public utility, the OCA submits that ordering this alternative would lead to additional time and proceedings that are not in the interests of the RSWC customers.

PAWC's argument that it should be ordered to file for bankruptcy on behalf of RSWC was not developed on the record but first argued in Main Brief. While RSWC's counsel did admit at the evidentiary hearing and in the RSWC Main Brief that RSWC lacks financial resources to maintain its system, exploring this alternative now would lead to unreasonable delay and expense. *See generally* RSWC Main Brief; *See also* TR. 491-495, 523. PAWC did not provide details as to the type of bankruptcy that it would file, at a minimum to explore this option the record in these proceedings would need to remain open.

The OCA submits that the type of bankruptcy filing contemplated by PAWC, a Chapter 7 liquidation proceeding versus a Chapter 11 reorganization proceeding, is a crucial detail to these proceedings. Based on the record as developed thus far, it would not be in the interest of RSWC

customers for PAWC to consider a Chapter 11 reorganization of RSWC. Additionally, proceeding in bankruptcy would add additional time and expense to these proceedings that are not in the interest of RSWC customers.

Given the positions taken by SCBWA and PAWC in their respective Main Briefs, after the Commission directs PAWC to acquire RSWC, PAWC could initiate a Commission proceeding to obtain a certificate of public convenience to sell the system to SCBWA as a voluntary buyer rather than protracting these proceedings further by requiring the record to remain open and to initiate bankruptcy proceedings in federal bankruptcy court.

The OCA argues that ordering PAWC to file for bankruptcy as the receiver for RSWC is not a viable alternative to the acquisition of RSWC's system by a capable public utility. Should PAWC be ordered to acquire RSWC, it is free to sell the system to SCBWA after the order. The OCA submits that in the best interest of the RSWC customers, a capable public utility should be required to acquire the RSWC system.

VII. CONCLUSION

For the reasons set forth in this Reply Brief, the OCA Main Brief, and for the protection of the health, safety, and welfare of Rock Spring Water Company's customers, the Office of Consumer Advocate respectfully requests that the Commission immediately order a capable public utility to acquire Rock Spring Water Company to enable the provision of water service to the affected customers that complies with the quality standards of Section 1501 of the Public Utility Code.

Respectfully submitted,

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