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November 21, 2025

VIA ELECTRONIC FILING

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

**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 Reply Brief of Pennsylvania-American Water Company in the above-captioned proceeding. Copies of this Reply 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 **Reply 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).

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Date: November 21, 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 :

**REPLY BRIEF OF PENNSYLVANIA AMERICAN
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AND NOW COMES PAWC,¹ pursuant to 52 Pa. Code § 5.502 and the Briefing Order issued in this matter on October 22, 2025, to file this Reply Brief. For the reasons set forth in PAWC’s Main Brief and this Reply Brief, PAWC requests that the ALJ recommend that the Commission deny I&E’s request for an order directing PAWC to acquire RSWC. There are practical and economically feasible alternatives to a forced acquisition – the voluntary acquisition of RSWC by SCBWA or placing RSWC into bankruptcy. As a result, Section 529 of the 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 municipality, municipal authority (such as SCBWA), cooperative or public utility (including, possibly, PAWC).

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

PAWC incorporates by reference the Statement of the Case set forth in Section I.A. of its Main Brief.

¹Unless otherwise indicated, all capitalized terms and acronyms have the same definitions as set forth in PAWC’s Main Brief.

1. RSWC

PAWC incorporates by reference Section I.A.1 of its Main Brief.

2. RSWC's Water System

PAWC incorporates by reference Section I.A.2 of its Main Brief.

B. PROCEDURAL HISTORY

PAWC incorporates by reference the Procedural History set forth in Section I.B. of its Main Brief. In addition, PAWC updates that Procedural History as follows:

On November 7, 2025, Main Briefs were filed by DEP, I&E, Ferguson Township, the OCA, PAWC, RSWC and SCBWA. Also on November 7, 2025, the OSBA and Aqua each filed a letter notifying the Commission that they would not be filing a Main Brief.

II. LEGAL STANDARDS

PAWC incorporates by reference Section II of its Main Brief.

III. SUMMARY OF ARGUMENT

This case concerns a troubled water utility, Rock Spring. This utility has a lengthy history of non-compliance with settlement agreements, laws and regulations. For example, RSWC's UFW for 2023 was 65.0% -- well above the levels that the Commission and DEP consider excessive. Regulatory agencies and courts have ordered RSWC to rectify these instances of non-compliance, but RSWC has failed to comply with those orders within a reasonable period of time.

In the March 2025 Order, the Commission provided a temporary solution for RSWC's problems to protect the customers of Rock Spring: the Commission appointed PAWC to serve as the Receiver of RSWC until a final order is entered in this Section 529 Investigation or RSWC abandons its Certificate (whichever is later). Now, the Commission is tasked with finding a permanent solution for the problems that have plagued the System for years.

A. DOES THE COMMISSION HAVE AUTHORITY TO ORDER A CAPABLE PUBLIC UTILITY TO ACQUIRE ROCK SPRING?

As an independent commission created by the General Assembly, the Commission only has the powers expressly conferred or necessarily implied by statute. Section 529 of the Code empowers the Commission to order a capable public utility to acquire RSWC only if six criteria are met. PAWC respectfully submits that one criterion has not been satisfied. Consequently, the Commission lacks authority to compel any capable public utility to acquire RSWC.

Section 529 empowers the Commission to order a capable public utility to acquire a troubled water utility only as a last resort, when there is no practical and economically feasible alternative to a Commission-ordered acquisition. In this case, there is a practical and economically feasible alternative: the voluntary acquisition of RSWC by SCBWA. The owners of Rock Spring have not sold the System to SCBWA yet because RSWC's negotiating strategy has been to seek the maximum possible purchase price for the System. They believe that PAWC will pay more for the System than SCBWA has been willing to offer – especially if PAWC is forced to acquire the System through eminent domain (as provided in Section 529(e)). If the Commission would deny I&E's request for an order requiring PAWC to acquire the System, RSWC would have to change its negotiating strategy. It could no longer hold out for more money from PAWC; it would have to bargain with SCBWA.

Another practical and economically feasible alternative to a Commission-ordered acquisition is the bankruptcy of RSWC. The record in this case practically begs the Commission to consider this alternative. In fact, RSWC's Main Brief admits “[a]s DEP regulations have become more stringent over the years, RSWC, *due to lack of financial resources*, has not kept pace with the requirements of the regulations.” RSWC's Main Brief p. 2 (emphasis added). The Commission already gave PAWC, as Receiver, authority to file a bankruptcy proceeding on behalf

of RSWC. The Commission can take official notice that the United States Bankruptcy Code (the “Bankruptcy Code”) creates an orderly process by which a debtor’s assets (such as the System) can be transferred to another owner. Because there are practical and economically feasible alternatives to a Commission-ordered acquisition, the Commission lacks authority to order any capable public utility to acquire RSWC.

RSWC similarly contends that the Commission lacks authority to order it to be sold, but offers different reasons for that conclusion. For example, RSWC claims it rebutted I&E’s *prima facie* case by proving that Rock Spring furnishes and maintains adequate, efficient, safe and reasonable service and facilities at just and reasonable rates. This argument is truly startling considering that the Commission ordered PAWC to serve as Receiver for RSWC because RSWC is not capable of providing safe, adequate and reasonable service. RSWC’s argument is also surprising because RSWC argues that, even though RSWC can provide reasonable and adequate service, PAWC’s Receivership should continue after the Commission issues its order in this matter. The ALJ should recommend that the Commission reject RSWC’s argument and find that RSWC did not rebut I&E’s *prima facie* case (to the extent that I&E established a *prima facie* case).

B. CONSIDERING THE ABOVE, SHOULD THE COMMISSION ORDER A CAPABLE PUBLIC UTILITY TO ACQUIRE ROCK SPRING?

In their Main Briefs, DEP, I&E, Ferguson Township, the OCA and SCBWA argue that all six criteria in Section 529(a) have been satisfied. Therefore, they argue that the ALJ should recommend that the Commission order a capable public utility to acquire Rock Spring.

In contrast, PAWC submits that the ALJ should recommend that the Commission not order a capable public utility to acquire Rock Spring because one of the six criteria in Section 529(a) have not been satisfied. This does not mean that the Commission must hand the operation of the System back to RSWC. To finally resolve the problems that have plagued the System for years,

the ALJ should recommend that the Commission direct PAWC, as Receiver, to file a bankruptcy petition on behalf of RSWC. Although PAWC already has authority to commence a bankruptcy proceeding on RSWC's behalf, PAWC is reluctant to exercise this authority in the absence of a Commission order because the automatic stay provision of the Bankruptcy Code could force this proceeding to be stayed pending the outcome of the bankruptcy proceeding. A bankruptcy proceeding would provide a path forward for transferring the System to a municipality, a municipal authority, or a public utility – even though the Commission cannot order RSWC to be sold pursuant to Section 529.

RSWC agrees that the Commission should not order any capable public utility to acquire Rock Spring. However, RSWC recommends that the Commission order Rock Spring to file a rate case. PAWC's Receivership would continue pending the outcome of that rate case, at which time the Receivership could be wound down and the System could be turned back to RSWC with a more robust management team.

PAWC opposes RSWC's recommendation. Considering RSWC's record of failing to comply with regulatory and court orders, it seems unlikely that RSWC will comply with the Commission's order. Even if it does, there is no guarantee of a favorable outcome in the rate case. Additionally, RSWC does not propose any deadlines for filing the rate case or hiring a more robust management team. Receivership is not a long term solution and PAWC is concerned that the adoption of RSWC's proposal will result in PAWC serving as Receiver for a prolonged period.

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

If the ALJ finds that the six criteria of Section 529(a) have been satisfied, the ALJ should recommend that the Commission order PAWC to acquire the System. Of all the entities in this case that satisfy the statutory definition of a "capable public utility," PAWC is the most proximate

to Rock Spring and the most familiar with the System (since PAWC has been acting as the Receiver of Rock Spring since March 2025). I&E and OCA concur in this recommendation.

SCBWA and Ferguson Township contend that the ALJ should recommend that the Commission order SCBWA to acquire the System. DEP contends that the ALJ should recommend that the Commission order either SCBWA or PAWC to acquire the System. PAWC respectfully submits that the Commission lacks statutory authority to order SCBWA to acquire the System. Section 529 gives the Commission authority only to order a “capable public utility” to acquire RSWC. As a municipal authority, SCBWA is not a “public utility.” Consequently, SCBWA cannot be a “capable public utility.”

D. OTHER FACTORS FOR CONSIDERATION

PAWC’s Main Brief contends that, regardless of the ALJ’s recommendation on whether the six Section 529(a) criteria have been satisfied, additional issues should be considered to ensure that the customers of RSWC receive reasonable and adequate service and to protect PAWC and its customers financially. The Main Briefs of the other parties do not address the procedure going forward in much detail. In fact, RSWC and I&E are the only other parties who even address the procedure going forward.

If the Commission does not order a capable public utility to acquire RSWC, RSWC recommends that Commission staff meet with RSWC personnel to discuss alternatives to a Commission-ordered acquisition and other topics (including how to compensate RSWC’s counsel). RSWC recommends that Commission staff and RSWC provide a status report to the Commission after 120 days, but RSWC does not outline the recommended process going forward beyond that point.

PAWC urges the ALJ to recommend that the Commission reject RSWC’s proposal. First, the proposal is unclear. What is the purpose of having Commission staff discuss alternatives to a

forced acquisition with RSWC? Is this procedure intended to lay the groundwork for another Section 529 proceeding involving RSWC? This proceeding should provide for a final resolution of RSWC's problems, not another round of litigation. Second, RSWC's proposal is inconsistent with RSWC's own recommendation that PAWC serve as receiver pending the completion of an RSWC rate case. RSWC never explains why the Commission should issue an order that (a) directs RSWC to raise rates and, simultaneously, (b) orders RSWC to meet with Commission staff to consider alternatives such as merging with a public utility or selling to a municipality or municipal authority.

If the Commission does order a capable public utility to acquire Rock Spring, I&E urges RSWC and PAWC to agree on a purchase price rather than litigating an eminent domain proceeding to establish the acquisition price for the System. PAWC agrees but recommends that the Commission clearly describe the procedure going forward. For example, PAWC recommends that the Commission: provide guidance on what purchase price it would find acceptable; establish a deadline for RSWC and PAWC to agree on a purchase price; require PAWC to request an extension or institute an eminent domain proceeding to acquire RSWC if that deadline is not met; and, establish a deadline for PAWC to submit a Plan for Improvements.

IV. ARGUMENT

This case presents a logical series of questions. First, on the facts of this case, does Section 529 give the Commission authority to order the acquisition of Rock Spring? If no, does that mean the Commission must turn the operation of the System back to RSWC? If, however, the Commission does have authority to order the acquisition of Rock Spring, who should be ordered to acquire Rock Spring?

In addition, PAWC submits that the Commission's order should address the procedure going forward in this case – regardless of whether the Commission orders the acquisition of Rock Spring. PAWC respectfully submits that the Commission should provide a path forward that ensures reasonable and adequate water service for Rock Spring's customers, protects PAWC (as Receiver) and its customers, and finally resolves the problems that have plagued the Rock Spring System for years.

A. SECTION 529 CRITERIA – ON THE FACTS OF THIS CASE, THE COMMISSION DOES NOT HAVE AUTHORITY TO ORDER THE ACQUISITION OF ROCK SPRING

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). Section 529(a) explicitly empowers the Commission to order the acquisition of a small water utility (such as RSWC) if and only if each of six criteria are satisfied.

In this Section of its Reply Brief, PAWC will address the six criteria in Section 529(a). PAWC will then discuss RSWC's claim that, if I&E established a *prima facie* case, Rock Spring rebutted it by proving that RSWC is able to render adequate, efficient, safe and reasonable service at just and reasonable rates. PAWC strongly disagrees with this contention. Nevertheless, PAWC continues to request that the ALJ recommend that the Commission not order the acquisition of Rock Spring because the preponderance of the evidence demonstrates that only five of the six criteria in Section 529(a) have been satisfied.

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 water 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 Main Briefs of DEP, I&E, Ferguson Township, the OCA, PAWC and SCBWA provide overwhelming evidence that (a) RSWC is in violation of statutory or regulatory standards, and (b) these regulatory standards affect the safety, adequacy, efficiency or reasonableness of the service provided by RSWC.

RSWC acknowledges that it has “regulatory non-compliance issues,” RSWC’s Main Brief p. 7, but contends that regulatory non-compliance alone does not mandate acquisition. “The statute provides the Commission with discretion in determining whether acquisition is warranted, even when regulatory violations exist.” *Id.*

RSWC contends that, in this case, the Commission should exercise its discretion by not ordering the acquisition of Rock Spring. First, RSWC argues that ordering the acquisition of RSWC is not warranted because there is no evidence that RSWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. RSWC Main Brief pp. 6 and 7. Whether RSWC can be expected to provide reasonable and adequate service in the future is the third criterion in Section 529(a) and will be discussed in Section IV.A.3, *infra*. For present purposes, suffice it to say that the preponderance of the evidence proves that the third criterion has been satisfied.

Second, RSWC contends that ordering the acquisition of Rock Spring is unwarranted because Section 529 is an emergency provision that should be reserved for situations where customers face immediate threats to their water service. RSWC’s Main Brief p. 12. RSWC contends that its only remaining “regulatory non-compliance issue” is its high UFW levels. According to RSWC, this violation does not pose an emergency warranting an order requiring the acquisition of the System. RSWC’s Main Brief p. 12.

As support for its argument, RSWC quotes *Application of James Black Water Service Company for Approval to Provide Water Service to the Public in Jefferson Township, Lackawanna County, Pennsylvania*, Docket No. A-2013-2395443 (Opinion and Order entered Apr. 5, 2018), cited at RSWC Main Brief p. 12. According to RSWC, the Commission there stated that Section 529 “is in the nature of an emergency provision in which the Public Utility Code authorizes the Commission to take immediate action to protect the public interest.”

The quoted language, however, is not found in *Application of James Black Water Service Company*. It comes from *Pennsylvania Public Utility Commission v. North Heidelberg Sewer Company*, Docket No. M-2018-2645983 (Order entered Feb. 9, 2018), a Section 529 case that followed a course similar to the instant case. As such, *North Heidelberg* refutes, rather than supports, RSWC’s argument that this is an inappropriate case for the Commission to exercise its discretion to order the acquisition of a small water utility.

In *North Heidelberg*, the Commission issued an order at Docket No. P-2017-2594688 to remedy the public health and safety emergency occasioned by the impending termination of electric service to the utility. North Heidelberg failed to comply with that order and the Commission instituted a Section 529 Investigation. In the Section 529 proceeding, the Commission appointed a receiver in February 2018 to manage and operate the North Heidelberg system during the pendency of that proceeding. The Section 529 proceeding continued and an order was finally issued more than four years later approving a settlement agreement by which Aqua acquired the North Heidelberg system.

Here, the March 2025 Order appointed PAWC as Receiver of RSWC until the later of: a final order is entered in this Section 529 Investigation or RSWC abandons its Certificate. This order dealt with the immediate emergency before the Commission – “RSWC’s customers are at

risk of losing water service at any moment, and it is unclear if RSWC would be able to respond adequately if an emergency were to occur.” March 2025 Order p. 22. The Commission then had to comply with Section 529’s requirement that it give the parties notice and an opportunity to be heard on the question of whether to order the acquisition of RSWC. 66 Pa. C.S. § 529(a). By addressing the initial emergency presented in this case, the Commission did not divest itself of authority to conduct an orderly and thorough adjudication of the ultimate question presented in this Section 529 proceeding.

RSWC attempts to downplay the significance of its “regulatory non-compliance issues” by arguing that all regulatory violations have been corrected except for the high levels of UFW. RSWC’s Main Brief p. 6. In fact, RSWC has numerous “regulatory non-compliance issues” (*e.g.*, failing to comply with a Commission-approved settlement agreement, failing to comply with multiple DEP Orders, and failing to comply with Commonwealth Court orders). While these “regulatory non-compliance issues” may not present “emergencies,” they are nonetheless significant. As Ferguson Township stated at page 9 of its Main Brief:

Rock Spring’s prolonged and ongoing service deficiencies as detailed in both the record and [Ferguson’s Main Brief], have escalated from regulatory noncompliance to a significant public safety hazard. Due to inadequate system pressure, fire hydrants within the Rock Spring footprint in the Township are largely non-functional for fire suppression purposes, which places Township residents and property at risk. The protection of public safety is an inherent component of providing reasonable and adequate utility service.

Moreover, RSWC persisted in its non-compliance with those orders over an unreasonable period of time. PAWC Main Brief Sections IV.A.1 and IV.A.2. As PAWC witness Marcus Kohl stated,

Based on my years of experience at the Pennsylvania Department of Environmental Protection (“PA DEP”), I do not believe that the Commission should [allow Rock Spring to retain control of the system but direct it to make upgrades and changes in operations]. As Regional Director of the Northcentral Region [of DEP], the region covering Centre County, the regional team spent years trying to push Rock Spring

into compliance through numerous inspections and orders. In the end, they were ignored, which has brought us to where we are today. I do not believe it should be an option to allow Rock Spring to retain ownership and be required to complete upgrades and make changes to operational practices. PA DEP has been attempting to do that for years with no success.

PAWC St. No. 2-SR p. 3.

Contrary to RSWC's assertions, RSWC's lengthy list of violations of the Code, environmental statutes and regulations, and regulatory and court orders, would justify a Commission order directing a capable public utility to acquire the System – if all of the other criteria in Section 529(a) would be satisfied, which they are not. 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). As discussed above, and in the Main Briefs of DEP, I&E, Ferguson Township, the OCA, PAWC and SCBWA, the record contains overwhelming evidence that Rock Spring has not complied, within a reasonable period of time, with regulatory and court orders concerning the safety, adequacy, efficiency or reasonableness of service. RSWC's Main Brief does not appear to dispute this contention.

PAWC continues to submit 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). RSWC contends that the record is devoid of evidence that RSWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. RSWC's Main Brief p. 6. According to RSWC, "[t]his forward-looking standard requires more than mere regulatory violations – it demands a finding of future incapacity to provide adequate service." RSWC's Main Brief pp. 6-7.

It is well established that 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). 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).

PAWC respectfully submits that the record contains more than enough relevant evidence for a reasonable mind to conclude that RSWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. For example, RSWC claims that its only remaining violation is that its UFW levels are too high. RSWC Main Brief p. 6. This situation, however, has been on-going for almost two decades and there is no reason to believe that RSWC will do anything to address it. DEP witness Chad Miller testified:

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 management of RSWC] appear to lack comprehension of the situation, I have concluded that [RSWC management] are both unwilling and incapable of bringing the system back into compliance. Their incapacities are financial, managerial, and technical. When we met with Rock Spring and their engineering consultant on October 10, 2024, [RSWC management] concluded that they would not spend the millions of dollars necessary to replace the 22 miles of distribution system that are generally thought to be necessary to lower unaccounted-for water loss to below 30%.

DEP St. No. 1 p. 3.

The record demonstrates a lengthy history of noncompliance by Rock Spring, even after DEP and the Commonwealth Court have issued orders requiring action by RSWC. As the Commission stated at page 28 of its March 2025 Order: “It is apparent that the Rock Spring water system has been chronically mismanaged.” There has been no sign of a change in RSWC’s performance in the recent past, nor is there any indication that RSWC’s performance will improve in the future. For example, RSWC’s Main Brief repeatedly claims that the company does not have the revenue needed to comply with applicable settlement commitments, laws and regulations. *See, e.g.*, RSWC’s Main Brief p. 2. Rock Spring could have addressed this situation at any time by filing a rate case, but has not filed a rate case for thirteen years. There is simply no sign that RSWC will change its ways and begin to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.

The only signs of improvements at the System came after PAWC took over as Receiver and made upgrades that RSWC was unable or unwilling to make. RSWC attempts to take credit for these upgrades. *See, e.g.*, RSWC’s Main Brief p. 10 (“The evidence shows that RSWC, under proper management through the receivership, has demonstrated its ability to correct violations and provide adequate service. The substantial reduction in unaccounted for water loss and correction of multiple DEP violations [by PAWC] prove that [RSWC] can reasonably be expected to furnish adequate service in the future.”). However, improvements made by the Receiver are not evidence that RSWC will provide reasonable and adequate service in the future if and when the receivership is terminated.

In the absence of any evidence of change by RSWC, it is reasonable to believe that RSWC will continue to provide the same level of service that it has provided in the past. Since RSWC

has not furnished and maintained adequate, efficient, safe and reasonable service and facilities in the past, RSWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. Therefore, PAWC respectfully submits that the ALJ should recommend that the Commission reject RSWC's argument. Instead, the ALJ should recommend that the Commission find 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. In its Main Brief, PAWC argued that I&E failed to make out a *prima facie* case on this criterion. RSWC's Main Brief also argues that I&E failed to establish a *prima facie* case on this criterion, but for a different reason. The ALJ should recommend that the Commission reject RSWC's argument.

In addition, in its Main Brief, PAWC argued that the preponderance of the evidence shows that alternatives are practical and economically feasible. PAWC will elaborate on this argument below.

b. I&E Failed to Present a *Prima Facie* Case. RSWC argues that I&E failed to present a *prima facie* case because it failed to prove that a precondition for instituting a Section 529 investigation occurred. RSWC Main Brief pp. 9-10. Specifically, Section 529(a)(4) provides that alternatives to acquisition are to be considered "in accordance with subsection (b)." Subsection (b) states:

Before the commission may order the acquisition of a small water or sewer utility in accordance with subsection (a), the commission shall discuss with the small

water ... utility, and shall give such utility a reasonable opportunity to investigate, alternatives to acquisition

In this case, nothing in the record indicates that I&E (or any other arm of the Commission) discussed alternatives to acquisition with RSWC (although the March 2025 Order directed RSWC to attempt to negotiate a sales agreement with SCBWA). RSWC Main Brief p. 9. I&E's testimony only indicates that I&E staff reviewed the alternatives listed in Section 529(b)(1) through (5) and concluded that none were practical or economically feasible. I&E St. No. 1 pp. 5-6. Consequently, Rock Spring contends that I&E failed to present a *prima facie* case that the fourth criterion in Section 529 has been satisfied. RSWC Main Brief pp. 9-10.

The Commission has held that discussing alternatives with a small water utility is indeed a required procedural step for a Section 529 proceeding:

Finally, we agree with the ALJ that Section 529(b) of the Code requires the Commission to discuss with the small water or sewer utility, and give it a reasonable opportunity to investigate, alternatives to acquisition, before the Commission may consider ordering the acquisition of the utility pursuant to Section 529(a). There is no indication in the record that these discussions have taken place.

Pa. Pub. Util. Comm'n v. Deer Haven, LLC, d/b/a Deer Haven Sewer Company, Docket No. R-2010-2194577 (Opinion and Order entered May 19, 2011) p. 46.

Deer Haven, however, does not stand for the proposition that a small water utility can wait until the eleventh hour to raise the issue of compliance with the procedural requirement of Section 529(b). *Deer Haven* was a general base rate case. In that case, the Commission's Office of Trial Staff (now I&E) argued that the Commission should commence a Section 529 proceeding, but the administrative law judge and the Commission concluded that such a proceeding would be premature because the discussions required by Section 529(b) had not yet taken place.

In contrast, this proceeding is a Section 529 investigation. In its Main Brief, RSWC contends that the Commission cannot order its System to be transferred because there is no

evidence that the procedural step required by Section 529(b) was taken. RSWC never raised this issue before, even though this case has been pending before the Commission for approximately *fourteen months*. PAWC submits that RSWC's claim is barred by the doctrines of waiver and/or laches.

A waiver is defined as the act of intentionally relinquishing or abandoning some known right, claim or privilege and will not be presumed or implied unless by one party's conduct the opposite party has been misled, to his prejudice, into the honest belief that such waiver was intended or consented to. *Re: Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations*, Docket No. M-00001353 (Opinion and Order entered Aug. 18, 2000), *citing Corbett v. Large*, 715 A.2d 1226 (Pa. Cmwlth. 1998) and *Brown v. City of Pittsburgh*, 186 A.2d 399 (Pa. 1962).

Waiver is essentially a matter of intention. It may be expressed or implied.... In short, the doctrine of implied waiver in Pennsylvania applies only to situations involving circumstances equivalent to an estoppel, and the person claiming the waiver to prevail must show that he was misled and prejudiced thereby.

Brown v. Pittsburgh, supra, quoted with approval in *Re: Structural Separation of Bell Atlantic-Pennsylvania, Inc., supra*.

In this case, a waiver should be implied because PAWC and all the other parties to this case were misled and prejudiced by RSWC's failure to raise the issue in a timely manner. I&E witness Keller testified that the Commission's Bureau of Technical Utility Services ("TUS") referred this matter to I&E in May of 2024. I&E St. No. 1 p. 3. On September 20, 2024, I&E filed a petition requesting that the Commission open a Section 529 Investigation.

PAWC had no way of knowing whether TUS or I&E had discussed alternatives to acquisition with RSWC prior to September 20, 2024. When RSWC failed to raise the issue after the case was filed, and again failed to raise the issue after Mr. Keller's testimony was served on

January 23, 2025, PAWC was misled into believing that discussions regarding alternatives had been held or that RSWC had waived the issue. PAWC has been forced to litigate this case for over a year (so far). PAWC would be severely prejudiced if RSWC could now argue that a necessary precondition failed to occur, effectively requiring this case to be restarted in the future after the Commission discusses alternatives with RSWC.

If the waiver doctrine does not apply, the laches doctrine does.

Laches is defined as the neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity. (*Black's Law Dictionary* 875 (6th ed. 1990)). In determining whether a plaintiff exercised due diligence in pursuing its claim, a court focuses on what the plaintiff reasonably should have known, by use of the information within its reach, with the vigilance the law requires, and not on what it actually knew. (*Tudor Development Group v. United States Fidelity & Guaranty Co.*, 768 F. Supp. 493 (M.D. Pa. 1991)). The law requires that the plaintiff discover those facts which were discoverable through the exercise of reasonable diligence. (*Tudor*, 768 F. Supp. at 495); (*Sprague v. Casey*, 520 Pa. 38, 550 A.2d 184, 187 (1988)).

Application for Approval of the Transfer of Assets of Delaware Valley Utilities, Inc. to the Municipal Authority of the Township of Westfall, Docket No. A-230034F2000 (Opinion and Order entered Sep. 27, 2001) p. 9.

Shortly after this Section 529 proceeding was filed, RSWC reasonably should have informed itself about Section 529 and therefore should have known that Section 529(b) requires that the Commission discuss alternatives to acquisition with the small water utility. RSWC also reasonably should have known that it had no such discussions with the Commission. Nevertheless, RSWC did not raise the issue until the Commission and the parties spent over a year and untold thousands of dollars litigating this matter. RSWC's failure to assert its claim, combined with the lapse of time, caused prejudice to PAWC and all other parties who have litigated this proceeding for months.

Therefore, the ALJ and the Commission should apply the doctrines of waiver and/or laches to reject RSWC's claim that I&E failed to establish a *prima facie* case on the fourth criterion in Section 529(a) because I&E failed to prove compliance with the procedural requirements of Section 529(b).

PAWC believes that I&E failed to establish a *prima facie* case on the fourth criterion in Section 529(a), but for different reasons. First, I&E failed to present enough evidence to establish a *prima facie* case that a voluntary sale to SCBWA is impractical or economically infeasible. The "evidence" cited to show that RSWC's acquisition by SCBWA is impractical or economically infeasible is the fact that RSWC and SCBWA have not yet entered into a sales agreement. This "evidence" is insufficient to draw the desired conclusion. PAWC's Main Brief pp. 21-23.

DEP posits that a forced acquisition is necessary because RSWC stubbornly refuses to consider any alternative to a Commission-ordered sale. DEP Main Brief p. 34. In contrast, PAWC believes RSWC has not yet sold its System because Rock Spring's owners seek the maximum possible purchase price for the System and they believe that PAWC will pay more for the System than SCBWA has been willing to offer -- especially if PAWC is forced to acquire the System through the eminent domain process. PAWC Main Brief p. 22. If the Commission would deny I&E's request for an order requiring PAWC to acquire the System, RSWC would have to change its negotiating strategy. It could no longer hold out for more money from PAWC; it would have to bargain with SCBWA.

Second, the list of alternatives in Section 529(b)(1)-(5) is not comprehensive. PAWC's Main Brief p. 29. Another alternative is the bankruptcy of RSWC. The record practically begs the Commission to consider this alternative, especially considering that RSWC's Main Brief states "[a]s DEP regulations have become more stringent over the years, RSWC, *due to lack of financial*

resources, has not kept pace with the requirements of the regulations.” RSWC’s Main Brief p. 2 (emphasis added). As Receiver, PAWC has authority to file a bankruptcy petition on behalf of RSWC. March 2025 Order, Appendix A ¶¶ 1.1 and 2.a. Therefore, RSWC’s desire to maximize the purchase price for the System would not pose an obstacle to this alternative. Nothing in the record indicates that the alternative of bankruptcy is impractical or economically infeasible. *See* Section IV.A.4.c, *infra*.

Although the bankruptcy alternative was not discussed in PAWC’s testimony or pleadings prior to its Main Brief, consideration of this alternative is not barred by the doctrines of waiver or laches. 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). Therefore, all parties had notice that RSWC’s financial condition would be an issue in this proceeding. Additionally, in Appendix A to its March 2025 Order, the Commission authorized PAWC to file a bankruptcy proceeding on behalf of RSWC. March 2025 Order, Appendix A ¶¶ 1.1 and 2.a. Therefore, the Commission itself raised the possibility of bankruptcy as an alternative to a forced acquisition months ago.

RSWC practically invited the Commission to consider the bankruptcy alternative by claiming at the Evidentiary Hearing that it lacks the funds needed to comply with DEP regulations, Tr. 523, or its own settlement commitments, Tr. 491-495. RSWC’s Main Brief continues to suggest this alternative by indicating that RSWC lacks the funds needed to pay its counsel, RSWC’s Main Brief p. 15, and by repeatedly claiming that RSWC needs more revenue to bring the System into compliance with regulatory standards. *See, e.g.*, RSWC’s Main Brief p. 10, 11, 13. Considering all of the above, neither RSWC nor any other party to this proceeding can claim

that it has been prejudiced because PAWC did not discuss the alternative of bankruptcy in its testimony or prior pleadings.

For all of the above reasons, PAWC respectfully submits that the ALJ should recommend that the Commission find that I&E did not establish a *prima facie* on the fourth criterion in Section 529(b).

c. The Preponderance of the Evidence Shows that Alternatives are In Fact Practical and Economically Feasible. Even if I&E established a *prima facie* case that alternatives to acquisition are not practical and economically feasible, PAWC and the other parties introduced more than enough evidence to rebut that *prima facie* case. First, the acquisition of RSWC by SCBWA is a practical and economically feasible alternative. DEP, Ferguson Township, the OCA, PAWC, and SCBWA introduced a mountain of evidence demonstrating that RSWC's acquisition by SCBWA is practical and economically feasible. This evidence was summarized on pages 23-30 of PAWC's Main Brief and will not be repeated here.

As discussed above, the only "evidence" that any party has introduced to show that a voluntary transfer of the System to SCBWA is impractical or economically infeasible is the fact that it has not yet occurred. Until I&E can make a more fulsome showing that RSWC's acquisition by SCBWA is impractical or economically infeasible, the Commission should not expose any capable public utility – and its ratepayers – to the risk of an exorbitant purchase price for RSWC in an eminent domain proceeding. Instead, the Commission should find that I&E failed to carry its burden of proving that all alternatives to a forced acquisition of RSWC are impractical or economically infeasible.

Second, the bankruptcy of RSWC is a practical and economically feasible alternative to a Commission-ordered acquisition. PAWC's Main Brief p. 29. PAWC as Receiver already has the

authority to commence a bankruptcy proceeding on RSWC's behalf. Appendix A ¶¶ 1.1 and 2.a. PAWC, however, is reluctant to exercise this authority in the absence of a Commission order to do so because the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362, could force this proceeding to be stayed pending the outcome of the bankruptcy proceeding.

The Commission can take official notice that the Bankruptcy Code creates an orderly, court-supervised process by which a debtor's assets (such as the System) can be transferred to another owner (such as a municipality, municipal authority or public utility). Non-bankruptcy regulatory approvals (such as a Commission order approving the transfer and the abandonment of RSWC's Certificate) would still be required. 11 U.S.C. § 943(b)(6).

For all of the above reasons, PAWC continues to request that the ALJ recommend the Commission find that the fourth criterion in Section 529(a) has not been 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 capable 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). PAWC does not believe that the Commission should order any capable public utility to acquire Rock Spring. Nevertheless, if the Commission orders a capable public utility to acquire Rock Spring, the ALJ should recommend that the Commission order PAWC to acquire it. PAWC is financially, managerially and technically capable of acquiring and operating RSWC. *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 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 unreasonably because of the acquisition. 66 Pa. C.S. § 529(a)(6). PAWC does not believe that the Commission should order any capable public utility to acquire Rock Spring. Nevertheless, if the Commission orders a capable public utility to acquire Rock Spring, the ALJ should recommend that the Commission order PAWC to acquire it. Due to PAWC's ability to spread the costs of the acquisition among a large rate base, PAWC's rates for pre-acquisition customers are not expected to increase unreasonably if it is ordered to acquire RSWC. PAWC St. No. 3 p. 4.

PAWC respectfully submits that the ALJ should recommend that the Commission find the sixth criterion for ordering a capable public utility to acquire RSWC has been satisfied.

7. 66 Pa. C.S. § 529(i) – RSWC Failed to Prove It Is Providing Reasonable and Adequate Service

RSWC correctly notes that Section 529 contains a unique provision regarding the burden of proof. RSWC Brief pp. 10-11. I&E has the burden of establishing a *prima facie* case that the acquisition of the small water utility would be in the public interest and in compliance with Section 529. Once I&E has established its *prima facie* case, the small water utility “shall have 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). RSWC contends that, even if I&E established a *prima facie* case, RSWC rebutted it by demonstrating that RSWC is providing adequate, efficient, safe and reasonable service at just and reasonable rates. RSWC Brief p. 11.

RSWC's position is truly startling. First, RSWC argues that "no customer has suffered harm or gotten sick from RSWC water." RSWC Main Brief p. 11. Section 1501's requirement that a public utility provide adequate, efficient, safe and reasonable service, 66 Pa. C.S. § 1501, sets a much higher standard for a water utility than not making its customers sick. PAWC respectfully submits that the Commission should order a troubled water utility to be sold long before its service causes a public health crisis.²

Second, RSWC's service has been so inadequate for so long that the Commission appointed PAWC to serve as Receiver of the System in March 2025. The Commission stated: "[i]t is apparent that the Rock Spring water system has been chronically mismanaged." March 2025 Order p. 28. The Commission "agree[d] with the ALJ that RSWC is not capable of providing safe, adequate and reasonable service to its customers." *Id.* at 18. The Commission noted that it only found that OCA's Petition for Interim Emergency Order had raised a substantial legal question; the Commission was not determining the merits of the underlying controversy. *Id.* at 18-19. Nevertheless, PAWC submits that the Commission's appointment of a Receiver to protect RSWC's customers is strong evidence that RSWC is not providing reasonable and adequate service at just and reasonable rates.

Third, DEP's Main Brief pp. 16-24 shows that RSWC has been cited numerous times for violating 25 Pa. Code § 109.4, and remains in violation of this regulation. This regulation provides:

Public water suppliers shall:

- (1) Protect the water sources under the supplier's control.
- (2) Provide treatment adequate to assure that the public health is protected.
- (3) Provide and effectively operate and maintain public water system facilities.

²Curiously, RSWC argues that, even though a forced acquisition is not justified because RSWC furnishes and maintains adequate, efficient, safe and reasonable service and facilities at just and reasonable rates, PAWC should continue to serve as Receiver of RSWC after the Commission enters its order in this proceeding. RSWC's Main Brief p. 10. If RSWC furnishes and maintains adequate, efficient, safe and reasonable service and facilities at just and reasonable rates, one would expect that PAWC's Receivership should end. Even RSWC does not advocate that result.

(4) Take whatever investigative or corrective action is necessary to assure that safe and potable water is continuously supplied to the users.

Providing adequate water treatment, effectively operating and maintaining system facilities, and ensuring that safe and potable water is continuously supplied to users is certainly part of furnishing and maintaining adequate, efficient, safe and reasonable service at just and reasonable rates. Based on RSWC's repeated violations of this regulation, it is difficult to take seriously RSWC's argument that it is providing reasonable and adequate service at just and reasonable rates.

The evidence that RSWC cites to claim that it is providing reasonable and adequate service at just and reasonable rates is hardly persuasive. RSWC presented no testimony from any of its officers, directors, or employees. Instead, RSWC introduced the testimony of a handful of customers who stated that they are satisfied with the service they receive from RSWC.³ RSWC's Main Brief p. 6. This testimony is easily outweighed by the testimony of other customers at the public input hearing, many of whom advocated the sale of the System. PAWC St. No. 2-SR p. 2.

RSWC's testimony is also outweighed by the mountain of testimony and documents introduced by DEP, I&E, Ferguson Township, PAWC, the OCA and SCBWA. In the words of DEP's Main Brief:

[T]he record demonstrates that Rock Spring's compliance with the Department for the past 19 years has been abysmal, and Rock Spring has allowed the water system to deteriorate to the point where it cannot maintain adequate, efficient, safe and reasonable service and facilities in the future. *See* 66 Pa. C.S. § 529(a)(3). Thus, Rock Spring did not meet its 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)

³RSWC attempted to introduce the written Direct Testimony of Samuel Mannino, but Mr. Mannino also testified at the public input hearing. Consequently, his written testimony was not introduced. Tr. 463. At the public input hearing, Mr. Mannino testified that he had been satisfied with the service, water and rates of Rock Spring over the years. Nevertheless, he strongly suggested that the System be sold to SCBWA. Tr. 253.

DEP Main Brief p. 49.

Interestingly, RSWC claims that *PAWC's* performance as Receiver indicates that *RSWC* provides adequate and reasonable service at just and reasonable rates. For example, RSWC argues:

The evidence shows that *RSWC, under proper management through the receivership, has demonstrated its ability to correct violations and provide adequate service.* The substantial reduction in unaccounted for water loss and correction of multiple DEP violations prove that the utility can reasonably be expected to furnish adequate service in the future.

RSWC Main Brief p. 10 (emphasis added). *See also, e.g.,* RSWC Main Brief p. 8 (“[u]nder the current management of PAWC, RSWC is doing fine”) and p. 10 (“[u]nder receivership, *RSWC* has corrected all DEP violations except for the unaccounted for water (which has been substantially reduced).”) (emphasis added). There is no logical reason for the ALJ or the Commission to find that *RSWC* is capable of providing reasonable and adequate service based on *PAWC's* performance as Receiver.

RSWC claims that all it needs to improve its service to customers is more revenue to support a more robust management and operations team. RSWC Main Brief p. 11. Rather than ordering a capable public utility to purchase RSWC, Rock Spring argues that the Commission should “order that RSWC increase its rates to a level [sufficient] to support the appropriate engineering and operational requirements to continue to provide safe and reliable water service to its customers.” RSWC Main Brief p. 13.

RSWC's argument, however, is an admission that Rock Spring currently lacks the financial, managerial and technical ability to own and operate the System in accordance with the Code and environmental statutes and regulations. The Commission can and should consider this factor in making its decision in this case. 66 Pa. C.S. § 529(c)(1).

For all of the above reasons, the ALJ should recommend that the Commission find RSWC has not rebutted I&E's *prima facie* case (to the extent that the Commission finds that I&E has established a *prima facie* case).

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

In their Main Briefs, DEP, I&E, Ferguson Township, the OCA and SCBWA argue that the Commission should order a capable public utility to acquire RSWC because the requirements of Section 529(a) have been satisfied. In its Main Brief, RSWC argues that the Commission should not order a capable public utility to acquire RSWC. Instead, RSWC argues that PAWC's Receivership should continue.

In this Section, PAWC will respond to the recommendation in RSWC's Main Brief before reiterating why the Commission lacks authority to order any capable public utility to acquire Rock Spring.

1. 66 Pa. C.S. § 529(g) – The Commission Should Not Adopt RSWC's Proposal to Continue the Receivership Pending the Outcome of an RSWC Rate Case

Rather than ordering a capable public utility to acquire Rock Spring, RSWC argues that the Commission "should allow the receivership to continue for a short period of time." *Id.* at 10. According to RSWC, the Commission should order Rock Spring to raise rates "to a level [sufficient] to support the appropriate engineering and operational requirements to continue to provide safe and reliable water service." *Id.* at 13. At that time, the receivership can be wound down and the System can be turned over to a more robust management team. *Id.* PAWC construes RSWC's Main Brief as recommending that PAWC's Receivership continue until RSWC completes a rate case and hires a more robust management team to operate the System.

Considering RSWC's record of failing to comply with regulatory and court orders over the past two decades, it seems unlikely that RSWC will comply with the Commission's order to file a rate case so it can hire a more robust management team. Even if RSWC does comply with the Commission's order, there is no firm deadline for RSWC to prepare and file the rate case, there is no guarantee of a favorable outcome in the rate case,⁴ and there is no firm deadline for RSWC to hire a more robust management team after it is completed. As a result, the adoption of RSWC's recommendation seems likely to result in a prolonged receivership for PAWC.

The ALJ should recommend that the Commission reject RSWC's proposal.⁵ At page 39 of the March 2025 Order, the Commission stated "[w]e also believe that it is necessary to minimize the time in which PAWC functions in the role of receiver." Consequently, the Commission ordered that PAWC serve as Receiver until the later of: a final order is entered in this Section 529 Investigation or RSWC abandons its Certificate. This holding is consistent with the principle that receiverships are designed to be temporary in nature. *Pa. Pub. Util. Comm'n v. North Heidelberg Sewer Company*, Docket No. M-2018-2645983 (Opinion and Order entered Oct. 7, 2021) p. 14. I&E also takes the position that "receivership is not a long term solution." I&E's Main Brief p. 13.

For all of the above reasons, the ALJ should recommend that the Commission reject RSWC's proposal to continue PAWC's Receivership pending the outcome of a rate case to be filed by RSWC.

⁴Section 526 of the Code, 66 Pa. C.S. § 526, allows the Commission to reject a rate increase, in whole or in part, due to the utility's inadequate quality or quantity of service. Considering that the Commission has already appointed a receiver for RSWC based on its inadequate quality or quantity of service, the outcome of the rate case might not be favorable for RSWC.

⁵For additional reasons to reject this proposal, see Section IV.D.1, *infra*.

2. The Commission Should Not Require a Capable Public Utility to Acquire Rock Spring

Nothing in the Main Briefs of the other parties has caused PAWC to change its position. 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. One of the six criteria for ordering a capable public utility to acquire the small water utility has not been satisfied.

Section 529 only gives the Commission authority to compel a capable public utility to acquire a small water utility as a last resort. PAWC Main Brief p. 31. In this case, I&E failed to establish a *prima facie* case that there are no practical and economically feasible alternatives to a Commission-ordered acquisition. Even if I&E did establish a *prima facie* case, the preponderance of the evidence demonstrates that there are practical and economically feasible alternatives to a Commission-ordered acquisition. Therefore, the ALJ should recommend that the Commission find that it lacks authority to compel a capable public utility to acquire RSWC.

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

In its Main Brief, PAWC argues that, if the Commission orders a capable public utility to acquire Rock Spring, the Commission should order PAWC to acquire it. PAWC's Main Brief p. 32. The Main Briefs of I&E and the OCA concur in that recommendation.

In this section of its Reply Brief, PAWC will first reply to the arguments of those parties who advocate that the Commission should order SCBWA to acquire the System. PAWC will then reiterate why the Commission should order PAWC to acquire Rock Spring – if the Commission orders any public utility to acquire RSWC.

1. 66 Pa. C.S. § 529(m) – The Commission Cannot Order SCBWA to Acquire RSWC

SCBWA and Ferguson Township contend that the Commission should order SCBWA to acquire RSWC. SCBWA’s Main Brief p. 14; Ferguson Township’s Main Brief p. 10. DEP contends that the Commission should order either PAWC or SCBWA to acquire Rock Spring. DEP’s Main Brief p. 50. PAWC respectfully submits that the Commission cannot order SCBWA to acquire RSWC.

As an independent commission created by the General Assembly, the Commission only has the powers expressly conferred or necessarily implied by statute. *Feingold, supra*. Section 529 gives the Commission explicit authority to order a “capable public utility” to acquire a small water utility. 66 Pa. C.S. § 529(a). A “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. *A public utility* which would otherwise be a *capable public utility* except for the fact that it has fewer than 4,000 customer connections may elect to be a *capable public utility* for the purposes of this section regardless of the number of its customer connections and regardless of whether or not it is proximate to the ... small water utility to be acquired.

66 Pa. C.S. § 529(m) (emphasis added).

The Code defines a “public utility” as “any *person or corporations* now or hereafter owning or operating in this Commonwealth equipment or facilities for,” among other things, diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation. 66 Pa. C.S. § 102 (emphasis added). A municipal authority, however, is neither a person nor a corporation as defined in the Code. A “person” is defined in pertinent part as “individuals, partnerships, or associations other than corporations.” *Id.* A “corporation” is defined as excluding a “municipal corporation.” *Id.* A municipal authority is a “municipal corporation.” *Id.* Therefore, a municipal authority such as SCBWA cannot be a “public utility” or a “capable

public utility.” Consequently, Section 529 does not give the Commission authority to order SCBWA to acquire RSWC.

DEP argues that the Commission should order a “capable utility” to acquire Rock Spring. DEP’s Main Brief p. 48. It contends that SCBWA is one of several utilities that would be capable of acquiring and operating Rock Spring. *Id.* pp. 38-47.

The flaw in this argument is that Section 529 does not give the Commission authority to order a “capable utility” to acquire a small water utility. Section 529 gives the Commission authority to order a “capable public utility” to acquire a small water utility. As stated above, an authority such as SCBWA is not a “public utility” and therefore cannot be a “capable public utility.”

SCBWA contends that the Commission can order it to acquire Rock Spring. SCBWA contends that the Commission did not have jurisdiction over it initially, but the Commission acquired jurisdiction over it by way of SCBWA’s intervention and participation in this proceeding. SCBWA explains that it satisfies the criteria for intervening in a case, 52 Pa. Code §§ 5.71 through 5.75. Thereafter, SCBWA participated in this proceeding by serving discovery, introducing testimony and filing pleadings. SCBWA’s Main Brief pp. 9-12.

The ALJ should recommend that the Commission reject SCBWA’s argument. SCBWA’s focus on whether the Commission has jurisdiction over it is a misdirection. Based on the clear, unambiguous language of Section 529(a), the critical inquiry is whether SCBWA is a “capable public utility” as that term is defined in Section 529(m). According to SCBWA’s logic, any individual or entity who satisfies the criteria for intervening in a Section 529 proceeding and participates in the case is a “capable public utility.” This logic should be rejected because the criteria for intervening in a case have nothing to do with the criteria for being a “capable public

utility.” The Code defines a “capable public utility” as a public utility that meets certain criteria. SCBWA is not a public utility, and so cannot be a “capable public utility.”

Ferguson Township contends that SCBWA is in the best position to acquire Rock Spring, but acknowledges “the only holdback is the requirement that the PUC appoint a PUC-regulated entity rather than the logical, adjacent qualified entity.” Ferguson Township’s Main Brief p. 10. It contends that PAWC and SCBWA have provided a legal path to get to this juncture. *Id.*

For the reasons discussed above, the ALJ should recommend that the Commission reject the legal path outlined in SCBWA’s Main Brief. While PAWC contends that the Commission cannot directly order SCBWA to acquire the System, PAWC recommends a legal path that could indirectly result in SCBWA acquiring the System (by putting Rock Spring into a bankruptcy proceeding in which SCBWA could acquire the System).

2. The Commission Should Not Direct a Capable Public Utility to Acquire Rock Spring, But If It Does, It Should Direct PAWC to Acquire Rock Spring

If the ALJ 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 is very familiar with the System because it currently serves as Receiver of RSWC. PAWC St. No. 1-Supp. p. 2; PAWC Exhibits MJG-1, MJG-2, and MJG-11. Finally, PAWC is ready,

willing and able to 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

PAWC's Main Brief contends that, 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. PAWC's Main Brief p. 33. PAWC's Main Brief devoted approximately eleven pages to the procedure that should be used going forward in this proceeding.

The Main Briefs of the other parties do not address the procedure going forward in much detail. In fact, RSWC and I&E are the only other parties who address the procedure going forward at all. RSWC only addresses the procedure going forward if the Commission does not order a capable public utility to acquire RSWC. I&E only addresses the procedure going forward if the Commission orders PAWC to acquire the System. PAWC will address each scenario in turn.

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

As discussed above, RSWC recommends that PAWC's Receivership continue pending the outcome of a rate case to be filed by RSWC and the hiring of a more robust management team. *See* Section IV.B.1. However, RSWC makes a second proposal for the procedure going forward in this case. Rock Spring recommends that:

- The Commission have the appropriate agencies within its jurisdiction engage in discussions with Rock Spring Water Company regarding alternatives to a forced acquisition;
- Those discussions will take place over the next 120 days, and the parties shall determine how to compensate PAWC as receiver and how to compensate counsel for RSWC; and

- At the conclusion of the 120-day period, RSWC and the appropriate agency within the Commission shall provide a joint status report regarding the status of the discussions.

Id. at 15.

RSWC's second proposal is unclear. What is the purpose of having Commission staff discuss alternatives to a forced acquisition with RSWC? Is this procedure being recommended so another Section 529 proceeding can be initiated against RSWC? Why is Commission staff spending time discussing how RSWC's counsel will be compensated? Legal expenses are a cost of doing business for RSWC and should not be imposed on the ratepayers of other utilities.

In addition, RSWC's second proposal is incomplete. What happens after the joint status report is filed? Do the other parties to this case have an opportunity to file comments with the Commission responding to the joint status report? Is the Commission expected to issue another order in this case?

Finally, RSWC's second proposal seems inconsistent with its first proposal. Why should the Commission (a) order RSWC to file a rate case to hire a more robust management team, and, in the same order, (b) direct Commission staff to meet with RSWC to discuss alternatives to a forced acquisition? If RSWC and Commission staff are to discuss the alternatives listed in Section 529(b) (including a potential merger with a public utility or a potential sale to a municipality or municipal authority), the order to raise rates to hire a more robust management team is premature.

Considering all of these unanswered questions, the ALJ should recommend that the Commission reject RSWC's second proposal. Instead, the ALJ should recommend that the Commission adopt the proposal outlined in PAWC's Main Brief, Section IV.D.1 – ordering PAWC to exercise its existing authority as Receiver to file a bankruptcy petition on behalf of RSWC (and any necessary applications at the Commission, such as an application to approve the

transfer of the System and an application for the abandonment of RSWC's Certificate). PAWC's Main Brief pp. 33-36.

PAWC's proposal, unlike RSWC's second proposal, offers the Commission a path forward that would protect RSWC's customers in the short term and finally resolve the issues that have plagued the RSWC System for years. If the Commission would order PAWC to file a bankruptcy petition on behalf of RSWC, the System could be transferred to a municipality, municipal authority (such as SCBWA) or a public utility (such as PAWC). PAWC's Main Brief pp. 33-36. PAWC's proposal is consistent with the Legislative intent behind Section 529, which was enacted to give the Commission a way of solving the problem of troubled small water and wastewater systems.

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

I&E notes that the purchase price for Rock Spring has not been determined yet in this proceeding. I&E contends "it is in the best interest of Rock Spring, its customers and the acquiring utility to agree to a reasonable purchase price rather than resorting to an eminent domain proceeding." I&E Main Brief p. 19.

PAWC agrees with I&E that a negotiated resolution of the remaining issues in this proceeding would be in the public interest. A negotiated settlement would save untold thousands of dollars in further litigation expense and would simplify and hasten the final resolution of all outstanding issues. To facilitate a negotiated resolution, PAWC respectfully requests that the Commission give RSWC and PAWC a reasonable time (such as three months) to negotiate an asset purchase agreement identifying the System assets that are included in the sale and to establish a purchase price for those assets. 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). PAWC's Main Brief pp. 37-38.

PAWC also requests that the Commission provide RSWC and PAWC with guidance on the purchase price that it would consider reasonable, to mitigate the risk that RSWC and PAWC would come to the Commission with a purchase price that the Commission finds unreasonable. In addition, PAWC requests that the Commission order RSWC to pay certain amounts from the proceeds of the sale, to the extent that funds are available from the proceeds of the sale. These amounts include: the costs of PAWC's Receivership, the costs for PAWC to acquire easements or other property rights for RSWC's facilities on lands owned by third parties; and the outstanding fines and penalties imposed on RSWC for failing to comply with applicable laws and regulations. Finally, PAWC requests that it be given a reasonable period (such as three months) to submit a Plan for Improvements, pursuant to 66 Pa. C.S. § 529(j). PAWC's Main Brief pp. 38-43.

V. CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, for all of the foregoing reasons, PAWC continues to respectfully request that the ALJ recommend, and the Commission order:

1. A. That I&E's request for an order directing a capable public utility to acquire Rock Spring be 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 RSWC and participate in

such proceedings on behalf of RSWC in order to transfer RSWC's water system to a municipality, municipal authority, cooperative or public utility (including, possibly, 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 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.q, 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, PAWC may 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,



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