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March 9, 2026

*VIA E-FILING*

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

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

Dear Secretary Homsher:

Enclosed for filing with the Pennsylvania Public Utilities Commission please find  
Exceptions to the Recommended Decision of Administrative Law Judge John M. Coogan on  
behalf of Rock Spring Water Company in the above-referenced matters. A copy of this filing is  
being served in accordance with the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me. Thank you.

Very truly yours,



Rodney A. Beard

RAB/nld

Enclosure

c: Rock Spring Water Company  
ALJ John M. Coogan via email to [jcoogan@pa.gov](mailto:jcoogan@pa.gov)  
All parties on the attached Certificate of Service in the manner specified.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition to Request the Commission :  
Open a Section 529 Investigation Into : Docket No. P-2024-3051313  
The Acquisition of Rock Spring Water :  
Company :

**EXCEPTIONS TO RECOMMENDED DECISION  
OF ADMINISTRATIVE LAW JUDGE JOHN M. COOGAN  
FILED BY ROCK SPRING WATER COMPANY**

AND NOW, comes Rock Spring Water Company (RSWC), by and through its undersigned counsel, and files the within Exceptions to the Recommended Decision (RD) of Honorable Administrative Law Judge (ALJ) John M. Coogan issued in the above-referenced matter on February 18, 2026.

**RSWC Exception #1: The RD failed to properly apply the statutory language of Section 529 (b).**

Section 529(b) states as follows:

Alternatives to acquisition - 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 or sewer utility, and shall give such utility a reasonable opportunity to investigate, alternatives to acquisition, including, but not limited to:

- (1) the reorganization of the small water or sewer utility under new management.
- (2) the entering of a contract with another public utility or a management or service company to operate the small water or sewer utility.

(3) the appointment of a receiver to assure the provision of adequate, efficient, safe, and reasonable service and facilities to the public.

(4) the merger of the small water or sewer utility with one or more other public utilities.

(5) the acquisition of the small water or sewer utility by a municipality, a municipal authority or a cooperative.

66 Pa.C.S.A. §529(b). (Emphasis added).

Section 529(b) is implicated and required by Section 529(a)(4). 66 Pa.C.S.A. §529(a)(4).

The language of Section 529(b) is mandatory, not permissive.

The RD properly finds that the language found in statutes must be read according to their common and approved usage. RD, Page 166, (citing 1 Pa.C.S. § 1903(a)). The RD then points out that the word “discuss,” is not defined in the Public Utility Code, citing 66 Pa.C.S. § 102, Definitions.

The RD therefore refers to various dictionary definitions of the word “discuss,” citing *Chamberlain v. Unemployment Comp. Bd. of Rev.*, 114 A.3d 385, 394 (Pa. 2015) for authority. Four (4) of the six (6) dictionary definitions cited by the RD specifically include the words, “To talk about.” Even Dictionary.com cited by the RD uses the phrase, “talk over.” The term “discuss,” is not ambiguous.

The RD finds that the requirements of Section 529(b) are satisfied because the record contains evidence of exchanges of ideas and opinions between I&E, the Commission, and RSWC, regarding alternatives to acquisition under Section 529. RD, Page 167. This was error because the witnesses for I&E made up their minds about the alternatives without discussing those alternatives with RSWC. Furthermore, the statute does not require evidence

of exchanges of ideas and opinions. The statute requires – by its plain language – that the Commission discuss with the small water or sewer utility alternatives to acquisition. This requirement of the statute is unambiguous. The record does not contain any evidence of I&E or the Commission talking about or discussing alternatives to acquisition with RSWC. It is not sufficient under Section 529(b) for only one alternative (e.g., negotiation with State College Borough Water Authority (SCBWA) regarding transfer of RSWC’s water system) to have been discussed. Furthermore, there is no evidence that the Commission talked with RSWC about this alternative. I&E’s witness Christopher Keller was aware that discussions had occurred between RSWC and SCBWA, but he was not able to state in his testimony or upon cross-examination that the Commission had discussed this alternative with RSWC.

The RD places a burden on RSWC to rebut the testimony of I&E. See RD, Page 168. The reference to I&E Statement No 1 at 5-6 shows that Christopher Keller, the I&E witness, considered various alternatives, but the Statement does not show that I&E discussed various alternatives with RSWC. The language cited in I&E Statement No. 1 at pages 5 and 6 is simply a recitation by Christopher Keller of the alternatives listed in Section 529(b), and then his internal reasoning for why he feels those alternatives have been satisfied. The reference to this portion of the record in the RD does not provide any evidence of discussions between the Commission and RSWC of the alternatives set forth in section 529(b). Although I&E Statement No. 1, at pages 5-6, does refer to contacts between RSWC and SCBWA since 2008, that is the only alternative listed – which is subsection (5) in Section 529(b) – for which there is any evidence in the record. And again, there is no evidence in the record that the Commission discussed or talked about that alternative with RSWC.

Although it may be convenient to ignore the fact that I&E failed to fulfill the requirement to talk about these alternatives to acquisition with RSWC, it is not appropriate to ignore the statutory language.

Where the words of a statute are clear, a reviewing court is not free to disregard the language of the statute in order to pursue legislative intent or the spirit of the statute.

Department of Transportation, Bureau of Licensing v. Empfield, 526 Pa. 220, 585 A.2d 442 (1991). Where the language of a statute is clear, it must be read in accordance with the plain meaning and common usage of the words. 1 Pa. C.S. § 1903(a); Commonwealth v. Bell, 512 Pa. 334, 516 A.2d 1172 (1988). Where language of a statute is unambiguous, that language is the best indicator of the intent of the legislature. Crown Castle NGE, LLC v. Pa. PUC, 660 Pa. 674, 234 A.3d 665, 674 (Pa. 2020).

As stated by the Pennsylvania Supreme Court in Goodwin v. Goodwin, 280 A.3d 937, at page 943-944 (2022):

We are guided in our analysis by the Statutory Construction Act of 1972 (Statutory Construction Act), 1 Pa. C.S. §§ 1501-1991, which provides that the object of all statutory interpretation "is to ascertain and effectuate the intention of the General Assembly." 1 Pa. C.S. § 1921(a). Generally, the plain language of the statute "provides the best indication of legislative intent." Miller v. Cnty of Centre, 643 Pa. 560, 173 A.3d 1162, 1168 (Pa. 2017). If the statutory language is clear and unambiguous in setting forth the intent of the General Assembly, then "we cannot disregard the letter of the statute under the pretext of pursuing its spirit." Fletcher v. Pa. Prop. & Cas. Ins. Guar. Ass'n, 603 Pa. 452, 985 A.2d 678, 684 (Pa. 2009) (citing 1 Pa. C.S. § 1921(b)). In this vein, "we should not insert words into [a statute] that are plainly not there." Frazier v. Workers' Comp. Appeal Ed. (Bavada Nurses, Inc.), 616 Pa. 592, 52 A.3d 241, 245 (Pa. 2012). When the statutory language is ambiguous, however, we may ascertain the General Assembly's intent by considering the factors set forth in Section 1921(c) of the Statutory Construction Act, 1 Pa. C.S. § 1921(c), and other rules of statutory construction. See Pa. Sch. Eds. Ass'n, Inc. v. Pub. Sch. Emps. Ret. Ed., 580 Pa. 610, 863 A.2d 432, 436 (Pa. 2004) (observing that "other interpretative rules of statutory construction are to be utilized only where the

statute at issue is ambiguous"). Additionally, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage," though "technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in [the Statutory Construction Act] shall be construed according to such peculiar and appropriate meaning or definition." 1 Pa. C.S. § 1903(a). "We also presume that 'the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable,' and that 'the General Assembly intends the entire statute to be effective and certain.'" *Berner v. Montour Twp. Zoning Hearing Ed.*, 655 Pa. 137, 217 A.3d 238, 245 (Pa. 2019) (quoting 1 Pa. C.S. § 1922(1)-(2)).

Goodwin v. Goodwin, 280A3d 937, 943-944

It is not sufficient for I&E to state that an option should be explored.<sup>1</sup> It is incumbent upon I&E to show by a preponderance of the evidence that the Commission discussed the alternatives with RSWC. I&E has not offered any explanation as to why the Commission did not discuss the alternatives listed in Section 529(b) with RSWC. In its Reply Brief, at page 8, I&E reiterated that, "I&E has considered these options and found them non-viable." This does not satisfy the requirement that the alternatives listed in Section 529(b) be discussed with the small water or sewer utility.

**RSWC Exception #2 – The RD determined that all the elements of 66 Pa. C.S. § 529(a)(4) and 529(b) have been satisfied.**

There is no evidence in the record that the Commission talked to RSWC about the possibility of reorganizing under new management or entering a contract with another public utility or management service to operate RSWC. The RD blew by this requirement by accepting I&E's position that neither of these alternatives would provide the capital

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<sup>1</sup> See I&E Statement No. 1-SR, page 4, where Christopher Keller testifies that . . . "and I believe this option should be explored as well," referring to the possibility of SCBWA acquiring RSWC.

necessary to fix the RSWC water system. RD, Page 27, Finding 115. But I&E did not discuss these alternatives with RSWC. The RD states that “the record already contains evidence of exchanges of ideas and opinions between I&E, the Commission, and RSWC, regarding alternatives to acquisition under Section 529.” RD, Page 167. While the RD wishes to insert the words “exchanges of ideas and opinions,” in place of the word “discuss,” in the statute – apparently based on the dictionary definitions cited – the RD completely ignores the word “discuss,” – which means “to talk about.” The statute does not say that the Commission shall exchange ideas and opinions with the small water or sewer utility; the statute states that the Commission shall discuss the items listed in Section 529(b) with the small water or sewer utility. Where there is no evidence in the record establishing the fact that the Commission discussed the alternatives to acquisition listed in Section 529(b) with RSWC, it was error for the RD to find that those items were satisfied. The statute requires that the Commission discuss these items with RSWC before ordering acquisition.

The instant case is similar to Pa. PUC v. Deer Haven, LLC, d/b/a Deer Haven Sewer Company, 2011 Pa.PUC LEXIS 1864. Although that case started as a rate case, the Commission specifically “agree[d] 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.”

Similarly, there is no evidence in the record in our current proceeding that the Commission discussed with RSWC the possibility of reorganizing under new management, contracting with another public utility or management or service company, or merging with one

or more other public utilities. Also, there is no evidence of discussions between the Commission and RSWC regarding acquisition by a municipality or a cooperative. The only items for which there is evidence in the record are discussions with a municipal authority (SCBWA) and receivership. Therefore, the elements of the statute have not been satisfied.

Although the RD found that “discussions regarding alternatives to acquisition under Section 529 have taken place for over a decade,” [RD, page 168], there is no evidence that the Commission engaged in these discussions with RSWC as required by Section 529. It is inappropriate and erroneous to impute the discussions between RSWC and SCBWA as being between the Commission and RSWC. Discussion with a municipal authority about possible acquisition is only one of the alternatives listed in Section 529(b), and there is no evidence in the record that the Commission was involved in these discussions. Quite possibly, had the Commission been involved in those discussions, including the more recent discussions that were ordered to occur as part of the *March 2025 Order*, perhaps those discussions would have resulted in a more desirable outcome. In its Reply Brief, at page 8, I&E “submits that Rock Spring is likely not a viable merger or acquisition candidate . . . .” However, the statute requires that the Commission discuss these alternatives with RSWC – not simply make up its own mind because it thinks an outcome is likely. For the RD to find that the elements of Section 529(b) have been satisfied when I&E cannot point to any evidence that the Commission discussed the alternatives with RSWC was error.

**RSWC Exception #3 – The RD’s finding that RSWC’s arguments are barred by the doctrine of waiver or laches is erroneous and constitutes a due process violation.**

The proponent of a rule or order in a PUC proceeding bears the burden of proof and must establish its case by a preponderance of the evidence. 66 Pa.C.S.A. § 332(a). In our current

case, I&E was the proponent and therefore bears the burden of proof. Samuel J. Lansberry, Inc., v. Pa. PUC, 578 A.2d 600, 602-03 (Pa. Cmwlth. 1990) *alloc. denied*, 602 A.2d 863 (Pa. 1992).

This burden requires a showing, by a preponderance of the evidence, that all the statutory requirements for ordering acquisition of RSWC have been met. The preponderance of the evidence is a more likely than not standard. Popowsky v. Pa. PUC, 594 Pa. 583, 937 A.2d 1040, 1055 n. 18 (Pa. 2007). It was not up to RSWC to show, during these proceedings, that I&E failed to carry its burden; it was up to I&E to show that it was more likely than not that the Commission satisfied the requirements of Section 529(b) by discussing the alternatives listed therein with RSWC. By applying the doctrines of waiver and laches to RSWC, the RD essentially shifted the burden of proof to RSWC to show that I&E failed to satisfy the statutory requirements during the proceedings. RSWC did not have the burden of proof in this matter.

In Pennsylvania, the doctrines of waiver and laches are distinct equitable principles, each with specific legal standards for their application.

### **Doctrine of Waiver**

Waiver in Pennsylvania is defined as the intentional relinquishment or abandonment of a known right, claim, or privilege. To establish waiver, the following elements must be demonstrated:

The party alleged to have waived the right must have had knowledge of the right in question. RSWC had knowledge of its rights under Section 529(b).

However, for the doctrine of waiver to apply, there must be a clear, unequivocal, and decisive act by the party indicating an evident purpose to surrender the right. This can be shown through express declarations or undisputed acts or language that leave no reasonable inference to

the contrary . Miller v. Indiana Hospital, 277 Pa. Super. 370 (1980), In re Estate of Yoder, 2010 Pa. Dist. & Cnty. Dec. LEXIS 227 (2010). The failure to present rebuttal testimony cannot be construed as a clear, unequivocal and decisive act by RSWC to waive its rights to claim that I&E failed to carry its burden. It was not incumbent upon RSWC to point out I&E's shortcomings in presentation of its case. RSWC had no obligation to assist I&E by making sure that I&E have evidence in the record to prove its case and carry its burden. Not presenting rebuttal evidence is not a clear, unequivocal, and decisive act indicating that RSWC had a purpose to not argue that I&E failed to meet its statutory burden. Cross-examination of I&E's witness at the evidentiary hearing was proof and notice that RSWC did not waive the applicability of the statutory requirements. See Transcript, October 20, 2025, page 495 – 498.

### **Doctrine of Laches**

Laches is an equitable defense that bars relief when a party fails to exercise due diligence in asserting a claim, resulting in prejudice to the opposing party. The legal standards for applying laches in Pennsylvania are as follows:

**Unjustified Delay:** The party must have delayed in asserting their claim without due diligence. The focus is not only on what the party knew but also on what they could have discovered through reasonable diligence . In re A.M.M. v. Pa. State Police & Allegheny Cty. Dep't of Behavioral Health, 2018 PA Super 236 (2018), Weinberg v. Commonwealth, 509 Pa. 143 (1985), Shipperville-Elk Twp. Volunteer Fire Dep't v. Ladies Aux., 680 A.2d 923 (1996). In this case, RSWC had no duty to assist I&E with making out its case. Thus, there is no delay or failure of due diligence on RSWC's part. To point out I&E failures during the proceeding would have been detrimental to RSWC, and RSWC has no

duty to engage in activities or litigation strategy that are detrimental to its interests (despite what prior counsel for RSWC may have asserted).

**Prejudice to the Defendant:** The delay must have caused prejudice to the other party.

Prejudice may include:

- Loss of evidence or records.
- Unavailability of witnesses.
- Changes in the other party's position based on the assumption that the claim would not be pursued. Union Labor Life Ins. Co. v. Isle of Capri Assocs., L.P., 202 A.3d 858 (2019), Del-Val Electrical Inspection Service, Inc. v. Stroudsburg-East Stroudsburg Zoning & Codes Office, 100 Pa. Commw. 429 (1986).

There has been no claim by I&E or any other party to this proceeding that they lost evidence or records, or that witnesses were unavailable to prove their case due to RSWC not raising the criteria of Section 529(b) during the case. To the contrary, at the evidentiary hearing in this case that occurred on October 20, 2025, counsel for RSWC specifically cross-examined Christopher Keller, the witness of I&E Statement No. 1, about the five (5) elements of Section 529(b). See Transcript, October 20, 2025, page 495, line 19 through page 498, line 3.

The application of laches is determined by examining the specific circumstances of each case. The passage of time alone is insufficient; there must also be evidence of prejudice. I&E has not presented any evidence or claim of prejudice. Indeed, it is only Pa. American Water Company (PAWC) that has even raised the issue. PAWC Reply Brief, at 17 - 18.

**Affirmative Defense:** Furthermore, laches is an affirmative defense, and the burden of proof lies with the party asserting it. It is entirely inappropriate for the RD to assert the doctrine of laches *sua sponte*. It is extremely odd that the RD would agree with PAWC's position on the waiver and laches issues. PAWC in fact argued that one of the provisions of Section 529(b) had not been satisfied, PAWC Reply Brief at 19, so clearly the matter was not waived, and RSWC cannot be said to be guilty of laches any more so than PAWC. For the ALJ to take on the position of advocate in asserting the doctrines of waiver and laches against RSWC is improper. Hrivank v. Perrone, 372 A.2d 730, 732 (Pa. 1977) cited in Application of Aqua Pennsylvania Wastewater, Inc., for approval of the wastewater system within the City of Beaver Falls, 2025 PA. PUC Lexis 205, Docket No. A-2022-3033138. This was a non-jurisdictional issue raised by the ALJ without the opportunity for RSWC to brief or argue the issue. This constitutes a due process violation. See Somerset Mental Retardation Unit v. Sanders, 483 A.2d 1018 (Pa. Cmwlth. 1984); Omatick v. Cecil Twp Zoning Hearing Board, 286 A.3d. 413 (Pa. Cmwlth. 2022). In this Petition, the burden of proof is on I&E to show that the statutory requirements were satisfied. RSWC had no obligation during the proceedings to point out that the Commission had failed to discuss the alternatives listed in Section 529(b) with RSWC. Indeed, the requirement for discussion of the alternatives applies before the Commission may order acquisition, and those discussions may still occur because the Commission has not ordered acquisition of RSWC.

**CONCLUSION**

WHEREFORE, RSWC respectfully requests that the Pennsylvania Public Utility Commission reject the Recommended Decision of Honorable Administrative Law Judge John M. Coogan consistent with these Exceptions and dismiss the Petition filed by the Bureau of Investigation and Enforcement in this matter.

Respectfully submitted:

3-9-26

Date



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition to Request the Commission :  
Open a Section 529 Investigation Into : Docket No. P-2024-3051313  
The Acquisition of Rock Spring Water :  
Company :

**CERTIFICATE OF SERVICE**

I hereby certify that I am filing electronically on the Commission's electronic filing system and serving a true and correct copy of Exceptions to Recommended Decision of Administrative Law Judge John M. Coogan Filed by Rock Spring Water Company dated March 9<sup>th</sup>, 2026, in the manner and upon the persons listed below:

**Served Via Electronic Mail Only**

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