

COMMONWEALTH OF PENNSYLVANIA



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March 20, 2026

Via Electronic Filing

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

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

Dear Secretary Homsher:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Janna E. Williams

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cc: Administrative Law Judge John M. Coogan (Via Email: jcoogan@pa.gov)
Office of Special Assistants (Via Email: ra-OSA@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

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

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

Dated this 20th day of March 2026.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS
OF THE
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TABLE OF CONTENTS

I. INTRODUCTION AND OVERVIEW.....1

II. REPLY EXCEPTIONS.....2

 A. Reply to RSWC Exception No. 1: The established record provides evidence that ALJ Coogan correctly applied the language of Section 529(b) in determining that alternatives to acquisition were discussed with RSWC, therefore RSWC’s exception to ALJ Coogan’s Recommended Decision should be denied. R.D. at 164-170; OCA M.B. at 11-12; OCA R.B. at 6-8.....2

 B. Reply to RSWC Exception No. 2: The recommendation by ALJ Coogan that all the criteria of Section 529(a)(4) and (b) have been met must stand. R.D. at 164-170; OCA M.B. at 11-12; OCA R.B. at 6-8.4

 C. Reply to RSWC Exception No. 3: To the extent that RSWC argues that the Commission should order additional time for it to discuss alternatives to acquisition, ALJ Coogan correctly found those arguments are barred by the doctrines of waiver and laches. R.D. at 168; PAWC R.B. at 16-21.5

III. CONCLUSION.....7

TABLE OF AUTHORITIES

Page(s)

Administrative Decisions

Pa. PUC v. Delaware Sewer Company,
Docket No. P-2014-2404341 Opinion and Order at 27 (Jan. 28, 2016)3, 6

Pa. PUC v. Rock Spring Water Co.,
Docket No. P-2024-3051313 (Order entered Feb. 20, 2025)3, 5

Statutes

71 P.S. § 309-4(a)1

71 P.S. § 309-5(2)1

66 Pa. C.S. § 529(i)1, 3, 4, 6

66 Pa. C.S. § 529(i)(1)1, 3, 4

66 Pa. C.S. § 529(a)1, 4, 5

66 Pa. C.S. § 529(a)(4)4, 5

66 Pa. C.S. § 529(b) *passim*

66 Pa. C.S. § 529(c)1

I. INTRODUCTION AND OVERVIEW

The Pennsylvania Office of Consumer Advocate (OCA), as a party in the underlying proceedings, submits these Reply Exceptions to the Exceptions filed by Rock Spring Water Company (RSWC or Company). On February 18, 2026, Administrative Law Judge John M. Coogan (ALJ) issued his Recommended Decision (Recommended Decision or RD). The OCA submits these Reply Exceptions to defend and protect the interests of the Rock Spring Water Company consumers.¹ The Pennsylvania Public Utility Commission (Commission), in reaching its final determination in this matter, must take such action with due consideration to the interest of consumers, consistent with its other statutory responsibilities.²

In the Recommended Decision, the ALJ found that “the record establishes substantial evidence to order an acquisition of the RSWC by PAWC pursuant to 66 Pa. C.S. § 529”. R.D. at 158. Importantly, ALJ Coogan found that “a *prima facie* case establishing all six elements of 66 Pa. C.S. § 529(a) has been met and the factors listed in 66 Pa. C.S. § 529(c) have been considered. RSWC failed to rebut this *prima facie* case pursuant to 66 Pa. C.S. § 529(i)(1).” *Id.* This finding includes 66 Pa. C.S. Section 529(b), which is the basis for all of RSWC’s exceptions. ALJ Coogan ultimately found that the Commission should order a capable public utility to acquire RSWC, and that PAWC was the appropriate capable public utility. R.D. at 173-174. Therefore, the Commission should order PAWC to acquire RSWC. *Id.* at 158.

Both RSWC and PAWC filed Exceptions to the Recommended Decision.

¹ 71 P.S. § 309-4(a).

² 71 P.S. § 309-5(2).

II. REPLY EXCEPTIONS

A. Reply to RSWC Exception No. 1: The established record provides evidence that ALJ Coogan correctly applied the language of Section 529(b) in determining that alternatives to acquisition were discussed with RSWC, therefore RSWC's exception to ALJ Coogan's Recommended Decision should be denied. R.D. at 164-170; OCA M.B. at 11-12; OCA R.B. at 6-8.

RSWC raised the argument in its Main and Reply Briefs that the Commission did not have a proper “discussion” with it regarding alternatives to acquisition. *See generally* RSWC Main Brief at 8-9; RSWC Reply Brief at 2-4. In his Recommended Decision, ALJ Coogan provided a lengthy analysis of the statutory language found in Section 529(b) and the definition of “discuss”. In summary, ALJ Coogan found that neither Section 529(b) nor the Public Utility Code define “discuss”. R.D. at 166. He determined that the common and ordinary meaning of discuss must be used. *Id.* ALJ Coogan provides six different definitions of “discuss” from various sources, including Black’s Law Dictionary, Merriam-Webster Dictionary, and Oxford Learners Dictionary. *Id.* at 166-167. Finally, ALJ Coogan determined that “consistent with multiple above definitions of ‘discuss,’ the record already contains evidence of exchanges of ideas and opinions between I&E, the Commission, and RSWC, regarding the alternatives to acquisition”. *Id.* at 167.

RSWC’s argument that ALJ Coogan’s Recommended Decision does not properly apply the language of Section 529(b), falls flat. The Recommended Decision provides both an analysis and multiple definitions of the term “discussion”. R.D. at 166-168. RSWC takes exception to the application of these definitions to the facts of this matter. RSWC Exceptions at 2. RSWC objects that ALJ Coogan construed the definition of “discuss” to mean an exchange of ideas and opinions, while RSWC believes that “discuss” strictly means verbal communication between parties.

The OCA submits that RSWC, the Commission, and all the parties in the matter have been discussing both in the sense of exchanging ideas and opinions and verbally communicating for approximately the past decade. Minimally, since February 2025, when the OCA filed a *Petition*

for *Interim Emergency Order* seeking the appointment of a receiver for the RSWC system³, RSWC has known that the parties believe that it must find an alternative to ownership of its water system. RSWC was required by the receivership order to negotiate in earnest for the transfer of the system to State College Borough Water Authority and to subsequently file an abandonment application with the Commission. *Id.* It is difficult to contemplate that during the course of nearly a decade, multiple Commission proceedings, and the recent receivership proceedings, that verbal communication with RSWC regarding alternatives to its ownership never took place.

Furthermore, RSWC's parsing of the definition of "discuss" is not constructive. RSWC argued that the Commission should order discussions to take place, however it provided no indication as to what it determines to be adequate discussions. RSWC R.B. at 4-5. RSWC wants to spend even more valuable consumer time to get yet another chance to remedy the problems with the water system that it created. To allow RSWC to continue in its decade long attempt to maintain control of a failing system is not in the interest of the RSWC public. The OCA submits that the record has established that alternatives to acquisition have been discussed between RSWC, the Commission, and I&E, and ALJ Coogan's determination that the criteria under Section 529(b) have been met should stand.

RSWC makes the argument that ALJ Coogan's Recommended Decision places a burden on it to rebut the testimony provided by I&E that the criteria in Section 529(b), including discussions, has been met. By statute, I&E bears the burden of proof to establish a *prima facie* case that the acquisition of a small water utility is in the public interest and complies with Section 529.⁴ Section 529(i)(1) provides that the small water or sewer authority shall have the burden of proving

³ *Pa. PUC v. Rock Spring Water Co.*, Docket No. P-2024-3051313 (Order entered Feb. 20, 2025)

⁴ 66 Pa. C.S. § 529(i); *See also Pa. PUC v. Delaware Sewer Company*, Docket No. P-2014-2404341 Opinion and Order at 27 (Jan. 28, 2016) (*Delaware Sewer*).

its ability to render adequate, efficient, safe, and reasonable service at just and reasonable rates.⁵ RSWC laments that it must rebut this evidence, however, that is what the statute requires. It had both a Main Brief and a Reply Brief to provide ALJ Coogan and the Commission with evidence that I&E did not meet its burden of proof to establish record evidence that alternatives were discussed and determined to be not feasible. RSWC has been in Commission proceedings for over a decade, the instant Section 529 proceedings have been taking place for nearly two years. RSWC has known that it must provide adequate water service or potentially have its system acquired by a capable public utility. The ALJ found that I&E met its burden in establishing that record evidence of discussion of alternatives to acquisition occurred and that the Section 529(b) criteria were met. OCA avers that RSWC's exceptions should be denied and ALJ Coogan's Recommended Decision should stand.

B. Reply to RSWC Exception No. 2: The recommendation by ALJ Coogan that all the criteria of Section 529(a)(4) and (b) have been met must stand. R.D. at 164-170; OCA M.B. at 11-12; OCA R.B. at 6-8.

Similar to its previous argument that the ALJ was incorrect in finding that I&E met its burden of proving that it discussed the alternatives to acquisition with RSWC, the Company also takes exception to the ALJ finding that the criteria of Section 529(a) and (b) have been met. The majority of RSWC's argument that these criteria have not been met relies on its argument that I&E did not discuss the alternatives to acquisition with it prior to these proceedings. OCA avers that its Main Brief, Reply Brief, and the Main and Reply Briefs submitted by I&E and DEP establish a clear record that elements of Section 529(a)(4) and (b) have been met. *See generally* OCA Main Brief at 11-12; OCA Reply Brief at 6-8; I&E Main Brief at 13-14; DEP Main Brief at 36-38.

⁵ 66 Pa. C.S. § 529(i)(1)

As ALJ Coogan stated in his Recommended Decision, I&E has established that alternatives to acquisition are not feasible. R.D. at 165. Further “it was only in the briefing stage that RSWC first asserted that the elements of 66 Pa. C.S. §§ 529(a)(4) and (b) have not been met.” *Id.* at 168. RSWC had approximately 12 years to argue that discussions to acquisition should have taken place, more specifically as recently as the receivership proceedings initiated by OCA, RSWC had knowledge that acquisition was a potential. *Pa. PUC v. Rock Spring Water Co.*, Docket No. P-2024-3051313 (Order entered Feb. 20, 2025). RSWC was required by the receivership order to negotiate in earnest for the transfer of the system to SCBWA and to subsequently file an abandonment application with the Commission. *Id.*

RSWC has had years to raise the issue that alternatives to acquisition have not been discussed and therefore the elements of Section 529(a)(4) and (b) have not been met. The OCA submits that ALJ Coogan correctly determined that RSWC’s argument that there has been no discussion of alternatives to acquisition must fail, as the record contains evidence to the contrary. The Commission and RSWC have been discussing alternatives for 12 years. Accepting RSWC’s argument that it now gets additional time for discussion of additional alternatives because the elements of Section 529(a) and(b) have not been met is not in the best interest of RSWC customers. The OCA avers that RSWC’s second exception must be denied.

C. Reply to RSWC Exception No. 3: To the extent that RSWC argues that the Commission should order additional time for it to discuss alternatives to acquisition, ALJ Coogan correctly found those arguments are barred by the doctrines of waiver and laches. R.D. at 168; PAWC R.B. at 16-21.

RSWC argues in its third Exception to ALJ Coogan’s Recommended Decision, that ALJ Coogan was incorrect when he agreed with PAWC that RSWC’s argument regarding lack of discussion under Section 529(b) is barred by waiver and/or laches. RSWC argues that this is a matter of burden of proof, and that it bore no burden during these proceedings to show that I&E

failed to carry its burden. RSWC Exceptions at 8. Further RSWC argues that by applying waiver and/or laches, ALJ Coogan shifted the burden in these proceedings from I&E to RSWC. *Id.* As stated above, Section 529 has a clear burden of proof requirement.⁶ However, the Commission has also noted in *Delaware Sewer* that any party may present or rebut a *prima facie* case in support of its position in the proceeding.⁷ Specifically the Commission found:

While the burden of going forward with evidence is on I&E, I&E is not assigned this task with any predetermined or targeted result in mind and will be guided in making its recommendation by the evidence it adduces. This does not preclude any other party, however, from producing its own evidence to address the evidentiary and statutory requirements of Section 529.

Delaware Sewer at 28. RSWC was required by statute and Commission precedent to present its evidence to address the evidentiary and statutory requirements of Section 529, and it failed to do so.

PAWC argued in its Reply Brief that to allow RSWC at this stage of litigation to argue that discussions never occurred would be a prejudice to all the parties involved who have been diligently litigating this matter for years. PAWC R.B. at 16-21. The OCA agrees with the arguments raised by PAWC in its reply brief regarding the application of the doctrines of waiver/laches. Despite the obligations to prove that it could provide adequate, efficient, safe and reasonable service at just and reasonable rates, and to provide any evidence addressing the statutory and evidentiary requirements of Section 529, RSWC waited until the eleventh hour to argue that discussions never occurred. ALJ Coogan's finding that "to the extent RSWC's argument regarding a lack of discussion pursuant to Section 529(b) has merit, it is barred by the doctrines of waiver and/or laches"⁸, must be upheld.

⁶ 66 Pa. C.S. § 529(i)

⁷ *Pa. PUC v. Delaware Sewer Company*, Docket No. P-2014-2404341 Opinion and Order at 27 (Jan. 28, 2016) (*Delaware Sewer*).

⁸ R.D. at 168.

III. CONCLUSION

Based on the foregoing and for the reasons articulated in the OCA's Main and Reply Briefs, the OCA respectfully requests that the Commission deny the Exceptions of RSWC in this matter.

Respectfully submitted,

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