



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

March 20, 2026

**Via Electronic Filing**

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

Re: I&E Petition to Request the Commission Open A Section 529 Investigation  
Into the Acquisition of the Rock Spring Water Company  
Docket No. P-2024-3051313  
**I&E Replies to Exceptions**

Dear Secretary Homsher:

Enclosed for electronic filing are the Bureau of Investigation and Enforcement's  
Replies to Exceptions in the above-captioned proceeding.

Copies are being served on parties per the attached Certificate of Service. Should you  
have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Carrie B. Wright' with a stylized flourish at the end.

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Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: March 20, 2026

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## **I. INTRODUCTION AND PROCEDURAL HISTORY**

On February 18, 2026, Administrative Law Judge (ALJ) John M. Coogan issued a Recommended Decision (RD) that recommended, among other things, Pennsylvania American Water (PAWC) be directed to acquire the Rock Spring Water Company (Rock Spring, RSWC, or Company).

For purposes of these Reply Exceptions, I&E generally adopts the procedural history as set forth in ALJ Coogan's RD.<sup>1</sup> Following issuance of the RD, Exceptions were filed by Rock Spring and PAWC. I&E now timely files these Reply Exceptions to the Exceptions of Rock Spring.

## **II. SUMMARY OF THE ARGUMENT**

Rock Spring has significant and long standing quality of service and compliance issues, along with historically high levels of unaccounted-for water. Further, Rock Spring has provided no indication that it is able or willing to improve the system or address the deficiencies.<sup>2</sup> Under Rock Spring's leadership prior to receivership, customers experienced frequent service interruptions, leaks, delays in fixing main breaks, and an unsatisfactory emergency response plan.<sup>3</sup> 66 Pa.C.S. § 529 gives the Commission the power to open an investigation and ultimately order the acquisition of small water and sewer utilities by a capable public utility. Section 529 list six criteria that must be met before the Commission will order the acquisition of a small water or sewer utility by a

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<sup>1</sup> RD, pp. 1-7.

<sup>2</sup> *Order Granting Petition for Issuance of an Interim Emergency Order*, Order at 22 Docket No. P-2024-3051313 (Order Entered March 21, 2025).

<sup>3</sup> *Id.*, p. 25.

capable public utility. I&E submits that, as recognized by the RD, the record in this proceeding established substantial evidence that an acquisition by a more capable public utility should occur.

### **III. REPLY EXCEPTIONS**

The ALJ was persuaded by the evidence presented by I&E, the Pennsylvania Department of Environmental Protection (DEP), and the Office of Consumer Advocate (OCA) and determined based on that evidence that I&E met its burden of establishing that the elements of Section 529 had been met and that PAWC should be ordered to acquire the Rock Spring system.

#### **A. REPLY TO RSWC EXCEPTION NO. 1: THE RD PROPERLY APPLIED THE STATUTORY LANGUAGE OF SECTION 529(b).**

In Exceptions, Rock Spring argues that the requirements of Section 529(b) were not satisfied.<sup>4</sup> Rock Spring states that I&E must “...show by a preponderance of the evidence that the Commission discussed alternative with RSWC.”<sup>5</sup> The RD correctly finds that a *prima facie* case that all six elements of Section 529 have been met and that Rock Spring failed to rebut this *prima facie* case.<sup>6</sup>

Specifically, with regard to Section 529(b), it states that “the Commission shall discuss with the small water or sewer utility, and shall give such utility a reasonable opportunity to investigate, alternatives to acquisition...”<sup>7</sup> The statute then lays out five alternatives to acquisition. The crux of Rock Spring’s argument seems to rely on the

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<sup>4</sup> Rock Spring Exceptions, pp. 1-5.

<sup>5</sup> Rock Spring Exceptions, p. 5.

<sup>6</sup> RD, p. 158.

<sup>7</sup> 66 Pa.C.S. § 529(b).

allegation that no one from the Commission met with Rock Spring about each of the five alternatives to acquisition. However, this argument fails to recognize that this is specifically what the Section 529 investigation does by design. Ideas about what should occur and whether the elements of Section 529 were met are ultimately discussed by the parties through written testimony and cross examination at the evidentiary hearing. The testimony in this proceeding was largely supportive of the need for a more capable utility to acquire Rock Spring. Rock Spring did not present testimony responding to any other parties' testimony or refuting the argument that an acquisition did not need to occur.

Further, I&E emphasizes that Section 529(b) says the Commission shall give the utility the opportunity to investigate alternatives to acquisition. By presenting testimony that I&E did not believe these alternatives were viable options, I&E presented Rock Spring with the option to engage in those discussions and demonstrate why it believed one or more of these options would be viable. Rock Spring presented no testimony to demonstrate that any of the alternatives to acquisition would be feasible. Rock Spring had a long opportunity to put its position on the record but failed to do so until the briefing stages of this proceeding. On September 20, 2024, I&E filed its Petition to Open a Section 529 investigation for this utility. Therefore, this case was pending before the Commission for approximately 14 months. Additionally, as far back as 2012, Rock Spring was directed as part of this Commission's approval of a settlement in its base rate case to attempt to sell its system.<sup>8</sup> Despite this directive, the record is devoid of evidence

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<sup>8</sup> 2012 RSWC Base Rate Proceeding, Docket No. R-2012-2336662 at Settlement Agreement ¶ 7.g.

that Rock Spring did anything other than engage in discussions with the State College Borough Water Authority (SCBWA) regarding the sale of the system. Additionally, during this period of time Rock Spring consistently ignored Notices of Violation (NOV) from the Department of Environmental Protection (DEP) and allowed the system to continue to fall into a state of disrepair. As far back as 2012, this Commission has acted to engage Rock Spring in discussions about the ultimate sale of this system. Rock Spring failure to be an active participant in those discussions is not evidence that I&E did not meet its burden of proving that the elements of Section 529 had been met. Rock Spring has had ample time to present testimony demonstrating that it is fit to own and operate this system, yet it has failed to do so.

Rock Spring was presented with the same opportunity as all other parties to present testimony responsive to I&E witness Chris Keller and Ethan Cline’s testimony but failed to do so. As noted above, since 2012, Rock Spring has been tasked with “discussing” the sale of its water system to a more capable provider. As ALJ Coogan succinctly explains:

...discussions regarding alternatives to acquisition under Section 529 have taken place for over a decade. I&E witness Keller testified that RSWC has been in contact with SCBWA since 2008 concerning acquisition...In the *2012 RSWC Base Rate Proceeding*, RSWC agreed to make efforts to sell the Company and to provide to OCA and I&E the status of any negotiations, discussions or offers related to the sale of the Company...This proceeding has not shown any meaningful advancement by RSWC of any alternatives to acquisition previously discussed.<sup>9</sup>

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<sup>9</sup> RD, p. 168.

I&E's testimony in this case contained its opinions regarding alternatives to acquisition. Rock Spring cannot use its failure to provide testimony to rebut the I&E position as support for its contention that the water system does not need to be sold.

Additionally, to further clarify, in its Exceptions, Rock Spring states that it is not sufficient for I&E to state that the option of SCBWA acquiring the Rock Spring system should be explored. It is clear that Rock Spring misunderstands I&E's testimony in this regard. That testimony was presented in response to PAWC witness Guntrum, who, unlike Rock Spring, provided responsive testimony to the I&E direct. I&E witness Keller's testimony was simply clarifying that to the extent the Commission agreed that a Rock Spring should be acquired by a more capable utility, it may make sense to look at SCBWA as an alternative.

Again, I&E has met its burden of establishing that elements of Section 529 have been met. Rock Spring failed to engage in the exchange of testimony and has thereby failed to demonstrate that I&E did not meet its burden. Therefore, the Commission should adopt the Recommended Decision of ALJ Coogan and reject RWSC Exception No. 1.

**B. REPLY TO RSWC EXCEPTION NO. 2: THE RD APPROPRIATELY DETERMINED THAT ALL ELEMENT OF 66 PA C.S. §529 (a)(4) AND 529(b) HAVE BEEN SATISFIED.**

Rock Spring's second exception is largely a rehashing of its first exception that these alternatives have not been "discussed" with Rock Spring. As explained in detail above, Rock Springs failure to rebut the testimony of I&E witness Keller that alternatives to acquisition would not be viable options is not sufficient showing that the elements of Section 529 (a)(4) and Section 529(b) have not been satisfied. This Commission has been actively engaging with Rock Spring about the sale of this system since at least 2012 and discussions with SCBWA have been ongoing since approximately 2008.<sup>10</sup> For approximately 18 years, Rock Spring has done nothing to advance the sale of this system and has instead largely disregarded the Commission and DEP recommendations and Orders.

Rock Spring alleges the Commission did not talk to Rock Spring about the possibility of reorganizing under new management or entering into a contract with another utility or management service.<sup>11</sup> However, this topic was in I&E witness Keller's testimony in which he stated that these options would not be practical or economically feasible.<sup>12</sup> As I&E noted, Rock Spring was a party to this proceeding and had the same rights to rebut the testimony of I&E witness Keller as any other party yet failed to do so with regard to these topics. Once again, 66 Pa.C.S. § 529(b) indicates the small utility should be given a reasonable opportunity to investigate alternatives to acquisition. Here,

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<sup>10</sup> I&E St. No. 1, p.2 and p. 9.

<sup>11</sup> Rock Spring Exceptions, p. 5.

<sup>12</sup> I&E St. No. 1, p. 6.

Rock Spring was given that opportunity, but failed to present any evidence that these alternatives would be viable.

Rock Spring's exceptions correctly quote the *Deer Haven Sewer* case in which the Commission stated:

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.<sup>13</sup>

However, unlike the instant proceeding the Commission made these comments in the context of a base rate case. In that proceeding the Commission did not have a full and complete Section 529 investigation record to rely on. Here the Commission has a full and complete record of testimony and evidence, which Rock Springs failed to refute, which establishes the need for a more capable public utility to acquire the system. In fact, Deer Haven Sewer later became subject to a Section 529 Investigation.<sup>14</sup>

To be clear, no one has failed to discuss with Rock Spring what should happen with this system. Rock Spring has largely been non-participatory in these proceedings and failed to present testimony that demonstrated it was capable of continuing to own and operate the system. Regarding communication with Rock Spring, DEP witness Miller confirmed:

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<sup>13</sup> *Pa. Pub. Util. Comm'n v. Deer Haven, LLC, d/b/a Deer Haven Sewer Company*, p. 46 Docket No. R-2010-2194577 (Opinion and Order entered May 19, 2011).

<sup>14</sup> *Petition of Deer Haven, LLC Requesting an Ex Parte Emergency Order Allowing Aqua Pennsylvania, Inc. to Act as a Receiver to Operate the Deer Haven Water and Wastewater Systems*, Docket No. P-2024-3050549 (Order Entered August 22, 2024).

My experience with Roy is that he is generally unresponsive. When he does respond, those responses are typically incoherent and do not address the topic at hand. When pressed to deal with deteriorating water system infrastructure or to address operational issues, he almost always resorts to a statement to the effect that he is selling the system.<sup>15</sup>

Much like I&E witness Keller's testimony, Rock Spring presented not rebuttal to the DEP testimony that demonstrated the need for a more capable utility to acquire the system. To the extent any such evidence existed, which I&E does not believe it did, it was incumbent upon Rock Spring to present that evidence during the testimony phase of the proceeding and not during the briefing stages.

As a result, the Recommended Decision of ALJ Coogan should be adopted and RSWC Exception No. 2 must be rejected.

**C. REPLY TO RSWC EXCEPTION NO. 3: THE ALJ CORRECTLY FOUND THAT RSWC'S ARGUMENTS AR BARRED.**

As noted by Rock Spring, I&E bears the burden in a Section 529 proceeding which requires a showing by a preponderance of evidence that all statutory elements required for ordering the acquisition of the subject utility have been met.<sup>16</sup> As I&E noted in its Main Brief, the Commission has explained:

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.<sup>17</sup>

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<sup>15</sup> DEP St. No. 1, p. 2.

<sup>16</sup> I&E MB, pp. 5-6.

<sup>17</sup> *Pa. P.U.C. v. Delaware Sewer Company*, Docket No. P-2014-2404341, Opinion and Order p. 28 (Order entered January 28, 2016).

A preponderance of the evidence is such evidence that is more convincing, by even the smallest amount, than that presented by another party.<sup>18</sup> If a preponderance of evidence is submitted, the burden of going forward with competing evidence shifts to opposing parties to produce credible evidence of at least equal weight. However, the burden of going forward and producing evidence may shift back and forth between the parties.

Rock Spring incorrectly asserts that the ALJ shifted the burden of proof to Rock Spring to show that I&E field to satisfy the statutory requirements in this proceeding.<sup>19</sup> This statement simply does not stand up to scrutiny. ALJ Coogan noted that to the extent that RSCW's argument that discussions had not occurred about alternatives to acquisition, because this argument had only been asserted in the briefing stage, he agreed that this argument was barred by the doctrine of waiver and/or laches.<sup>20</sup> At no point did ALJ Coogan shift the burden of proof from I&E onto Rock Spring. However, it is clear that to the extent Rock Spring had evidence contrary to that which I&E provided, the burden of going forward with that competing evidence shifted to Rock Spring. Because Rock Spring failed to go forward with any such evidence, and instead asserted for the first time in brief that it was Rock Spring's position that these discussions did not occur, the ALJ agreed with PAWC that these arguments were now barred by the doctrine of waiver and/or laches.

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<sup>18</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>19</sup> Rock Spring Exceptions, p. 8.

<sup>20</sup> RD, p. 168.

Regarding the doctrine of waiver, in Exceptions, Rock Springs states that waiver cannot apply because it had no knowledge of its rights under Section 529(b).<sup>21</sup> While I&E does not agree that the Commission has to find that the doctrine of waiver applies to in order to find that the Rock Spring system should be sold to a more capable utility, I&E also submits that this statement does not stand up to scrutiny. Rock Spring was represented by an attorney who could presumably read and understand the statute in question. Further Rock Spring states that it was not incumbent upon Rock Spring to present testimony rebutting the I&E position.<sup>22</sup> To a certain extent, this statement is accurate. If Rock Spring agreed with the testimony I&E presented, there was no need to refute that testimony. However, as explained above to the extent Rock Spring had evidence contrary to that which I&E provided, the burden of going forward with that competing evidence shifted to Rock Spring.

Regarding the doctrine of laches, in exceptions, Rock Spring states that no parties allege they lost evidence or records, or that witnesses were unavailable to prove their case as a result of Rock Spring's failure to raise the criteria of Section 529(b) during the case.<sup>23</sup> As with the doctrine of waiver, I&E also does not believe the Commission must make a finding that the doctrine of laches applies to determine that this another capable utility should be ordered to acquire this system. However, to the extent that Rock Spring had evidence contrary to that evidence presented by I&E, DEP and OCA, it did fail to present that evidence, and thus, the evidence was lost.

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<sup>21</sup> Rock Spring Exceptions, p. 8.

<sup>22</sup> Rock Spring Exceptions, p. 9.


<sup>23</sup> Rock Spring Exceptions, p. 10.

As acknowledged by the ALJ, I&E has met its burden of demonstrating all elements of Section 529 have been met. Rock Spring was not deprived of its right to due process<sup>24</sup> as it was afforded the same rights to participate in this proceeding as any other party. As a result, the Commission should adopt the Recommended Decision of ALJ Coogan which recognizes that the record in this proceeding establishes substantial evidence to order the acquisition of the Rock Spring Water Company by Pennsylvania American Water, and reject RSWC Exception No. 3.

## V. CONCLUSION

Administrative Law Judge John M. Coogan correctly determined that the record in this proceeding established substantial evidence to demonstrate that the Rock Spring Water Company should be acquired by Pennsylvania American Water and that a *prima facie* case establishing all six elements of 66 Pa.C.S. § 529(a) ) has been met and that the factors listed at 66 Pa.C.S. § 529(c) have been considered. Further ALJ Coogan correctly determined that Rock Spring failed to rebut this *prima facie* case. Therefore, I&E requests the Commission adopt the ALJ's Recommended Decision and order Pennsylvania American Water to acquire the Rock Spring Water Company.

Respectfully submitted,



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<sup>24</sup> Rock Spring Exceptions, p. 11.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Replies to Exceptions** dated March 20, 2026, in the manner and upon the persons listed below:

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