

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held June 4, 2026

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
Petition to Request the Commission Open
a Section 529 Investigation into the
Acquisition of Rock Spring Water Company

P-2024-3051313

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Pennsylvania-American Water Company (PAWC) and Rock Spring Water Company (RSWC), filed on March 10, 2026, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) John M. Coogan, issued on February 18, 2026, in the above-captioned proceeding. Reply Exceptions were filed by the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), and the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP).

In his Recommended Decision, ALJ Coogan recommended that the Commission order PAWC to acquire RSWC, based upon his finding that the elements of 66 Pa.C.S. § 529 have been satisfied. For the reasons stated herein, we shall deny the Exceptions of PAWC and RSWC and adopt the Recommended Decision of ALJ Coogan, consistent with this Opinion and Order.

I. Background and History of the Proceeding

A. Background

This proceeding is an investigation instituted pursuant to Section 529 of the Public Utility Code (Code), 66 Pa.C.S. § 529 (Power of commission to order acquisition of small water and sewer utilities), into whether the Commission should order a capable public utility to acquire RSWC. By way of background, we provide the following:

RSWC is a certified public utility providing water service to the public (public utility code 212610). DEP St. 2 at 2. RSWC is a community water system (RSWC System or System) located in Ferguson Township, Centre County, Pennsylvania. The System serves approximately 1,000 people on average via approximately 487 connections. R.D. at 7, FOF No. 2; DEP St. 4, at 2-3. J. Roy Campbell (Mr. Campbell) is the president of RSWC and served as the certified operator in charge of the RSWC System prior to PAWC's appointment as receiver. R.D. at 9, FOF No. 18; DEP St. 2 at 2; DEP St. 3 at 3; DEP St. 4 at 3. Elizabeth Campbell (Ms. Campbell) is a shareholder of RSWC and was also the secretary and treasurer for RSWC. R.D. at 10, FOF No. 19; DEP St. 2 at 2; DEP St. 3 at 3; DEP St. 4 at 3.

The RSWC System components are in a degrading state. DEP St. 1 at 4. RSWC, including Mr. Campbell and Ms. Campbell, are financially, managerially, and technically incapable of bringing the System back into compliance with the Pennsylvania

Safe Drinking Water Act, Act of May 1, 1984, P.L. 206, *as amended*, 35 P.S. §§ 721.1-721.17 (Safe Drinking Water Act) and DEP’s regulations. R.D. at 10, FOF No. 22; DEP St. 1 at 3; DEP St. 2 at 8; DEP St. 4 at 8. Similarly, RSWC, including Mr. Campbell and Ms. Campbell, are incapable of bringing the System back into compliance with the Code and the Commission’s Regulations. R.D. at 11, FOF No. 25; DEP St. 1 at 3.

This proceeding commenced on September 20, 2024, with I&E filing a Petition to Request the Commission Open a Section 529, 66 Pa.C.S. § 529, Investigation into the Acquisition of Rock Spring Water Company (hereinafter referred to as “529 Petition”) with the objective of requiring a capable public utility to acquire the RSWC System. Shortly thereafter, the OCA filed a Petition for Issuance of an Interim Emergency Order (Interim Emergency Petition or Petition), pursuant to 52 Pa. Code §§ 3.1–3.11, which requested the Commission to appoint a receiver of RSWC to ensure that customers receive water service that complies with the quality standards of Section 1501 of the Code, 66 Pa.C.S. § 1501. OCA Interim Emergency Petition at 8. On March 21, 2025, the Commission entered an Order (*March 2025 Order*) in this proceeding which, *inter alia*, appointed PAWC as receiver of RSWC, and directed RSWC to negotiate in earnest for the transfer of its System to the State College Borough Water Authority (SCBWA). Because SCBWA and RSWC failed to reach an agreement for the transfer of the RSWC System, an evidentiary hearing was held.

It is the position of I&E, DEP, the OCA, SCBWA, and Ferguson Township that all six criteria of Section 529(a) have been satisfied and thus, the Commission should order a capable public utility to acquire RSWC. R.D. at 37, 57, 97, 147, 152. PAWC and RSWC both opposed PAWC’s acquisition of RSWC, as recommended by the ALJ, but for different reasons. R.D. at 165-70.

RSWC argued, *inter alia*, that I&E failed to meet its burden of proof, specifically in regard to Section 529(b). RSWC M.B. at 4-10; R.D. at 54. In response, PAWC asserted that the doctrines of waiver and/or laches bar RSWC's argument regarding Section 529(b) because the argument was introduced for the first time in the briefing stage of this proceeding. PAWC R.B. at 16-19.

PAWC argued, *inter alia*, that a more practical and economically feasible alternative to a forced transaction is the voluntary acquisition of RSWC by SCBWA. Additionally, PAWC requested that the Commission provide guidance on a reasonable purchase price if the Commission were to order PAWC to acquire the RSWC System. PAWC M.B. at 21-30, 38-40; R.D. at 109. In response, RSWC opposed PAWC's request. RSWC R.B. at 5.

B. Procedural History¹

On September 20, 2024, I&E filed the 529 Petition.

The Parties to this proceeding are the following: I&E, RSWC, PAWC, DEP, the OCA, the Office of Small Business Advocate (OSBA), Aqua Pennsylvania, Inc. (Aqua), and Ferguson Township.

No Party filed an answer to I&E's 529 Petition.

On February 6, 2025, the OCA filed its Interim Emergency Petition. Answers to the Interim Emergency Petition were filed by RSWC, PAWC, DEP, and SCBWA.

¹ See the Recommended Decision at 1-7 for a comprehensive summary describing the procedural history of this proceeding, which is incorporated herein.

On February 14, 2025, the telephonic hearing on the Interim Emergency Petition was held. Counsel for I&E, RSWC, the OCA, the OSBA, PAWC, Aqua, the DEP, the SCBWA, and Ferguson Township appeared at the hearing. During the hearing, testimony and exhibits were admitted into the record.

On February 18, 2025, I&E, RSWC,² the OCA, PAWC, Aqua, DEP, and the SCBWA filed briefs. On February 18, 2025, the OSBA filed a letter in lieu of a brief.

On February 20, 2025, an Order Granting Petition For Issuance of an Interim Emergency Order and Certifying Material Question to the Commission was issued by ALJ Coogan, granting the Interim Emergency Petition, appointing PAWC as receiver of RSWC pursuant to 66 Pa.C.S. § 529(g), and certifying the material question to the Commission requiring interlocutory review pursuant to 52 Pa. Code § 5.305. On February 21, 2025, an Errata Notice was issued attaching a Corrected Order Granting Petition For Issuance of an Interim Emergency Order and Certifying Material Question to the Commission.

On March 17, 2025, PAWC filed a Motion to Stay the Proceeding. On March 19, 2025, an Order granting the Motion to Stay was issued. The Order suspended the litigation schedule established by the November 5, 2024 Prehearing Order, and directed that, five days following RSWC's filing of an Abandonment Application, or 95 days following entry of the Commission's Opinion and Order answering the Material Question, whichever occurred first, all Parties shall file a status report at the docket of this proceeding, either separately or jointly, to include the Parties' understanding of what issues are still in dispute and the need for further proceedings. Also on March 19, 2025,

² Also on February 18, 2025, Mr. Campbell and Ms. Campbell submitted a letter recommending that the SCBWA be appointed as receiver.

the Commission issued a notice cancelling the initial telephonic hearing for the 529 Petition scheduled for April 29 and April 30, 2025 at 10:00 a.m.

On March 21, 2025, the Commission entered the *March 2025 Order* which, *inter alia*, answered the Material Question in the affirmative, and directed RSWC to negotiate in earnest for the transfer of its System to SCBWA and, if an agreement was reached, to file within 90 days of entry of an Opinion and Order an Application for Approval of Abandonment of its Certificate of Public Convenience.

On June 19, 2025, PAWC filed a letter stating that SCBWA and RSWC had not reached an agreement and, because 90 days have passed without an agreement between SCBWA and RSWC and no Abandonment Application has been filed, PAWC requested that a further prehearing conference be scheduled. No other status reports were filed.

On October 20, 2025, the evidentiary hearing was held as scheduled. Counsel for I&E, SCBWA, PAWC, the OCA, the OSBA, Aqua, DEP, RSWC, and Ferguson Township appeared at the hearing.

The record closed at the conclusion of the hearing pursuant to 52 Pa. Code § 5.431(a).³

Main Briefs were filed by I&E, the OCA, PAWC, SCBWA, DEP, RSWC, and Ferguson Township.

Reply Briefs were filed by I&E, the OCA, PAWC, DEP, and RSWC.

³ Section 5.431(a) provides that “[t]he record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.” 52 Pa. Code § 5.431(a).

On February 18, 2026, the Commission issued ALJ Coogan's Recommended Decision, wherein he recommended that the Commission order PAWC to acquire RSWC, pursuant to 66 Pa.C.S. § 529.

As previously noted, PAWC and RSWC filed Exceptions to the Recommended Decision on March 10, 2026. Replies to Exceptions were filed by I&E, DEP, and the OCA on March 20, 2026.

II. Discussion

As a preliminary matter, we note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A. Legal Standards

Section 529 of the Code, 66 Pa.C.S. § 529, provides, in part, that the Commission may order a capable public utility to acquire a small water or sewer utility if the Commission, after notice and an opportunity to be heard, determines the following six elements:

- (1) that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L. 1987, No. 394), known as The Clean Streams Law, the act of January 24, 1966 (1965 P.L. 1535, No. 537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P.L. 206, No. 43), known as the Pennsylvania Safe Drinking Water

Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility;

(2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;

(3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;

(4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible;

(5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and

(6) that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

66 Pa.C.S. § 529(a)(1)-(6).

In addition, Section 529(b) provides for the consideration of alternatives to an acquisition and states that before the Commission may order the acquisition of a small water or sewer utility in accordance with Section 529, 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. § 529(b).

In making a determination under Section 529(a), the Commission shall consider the following factors:

- (1) The financial, managerial and technical ability of the small water or sewer utility.
- (2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service.
- (3) The expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(4) The expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water or sewer utility to be acquired.

(5) The opinion and advice, if any, of the Department of Environmental Resources as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(6) Any other matters which may be relevant.

66 Pa.C.S. § 529(c).

If the Commission orders the acquisition of the small water utility, the Commission is to issue an order that provides for the extension of the service area of the acquiring public utility. 66 Pa.C.S. § 529(d). The purchase price for the acquisition is to be determined by agreement between the small water utility and the capable public utility, subject to a determination by the Commission that the purchase price is reasonable. If the small water utility and the capable public utility cannot reach an agreement, or if the Commission finds that the agreed-to purchase price is unreasonable, the Commission is to order the acquiring capable public utility to acquire the small water utility following the procedure set forth in the Eminent Domain Code. 66 Pa.C.S. § 529(e).

The Code establishes the applicable burdens regarding necessary proof in a Section 529 proceeding seeking the issuance of a Commission order for the acquisition of a small water company. Specifically, Section 529 establishes that I&E shall have the burden of establishing a *prima facie* case that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of Section 529. 66 Pa.C.S. § 529(i). Once the Commission determines that a *prima facie* case has been established, the small water or sewer utility which opposes

the acquisition shall have the burden of proving its ability to render adequate, efficient, safe and reasonable service at just and reasonable rates, and a proximate public utility positioned to acquire the small water or sewer utility shall have the opportunity and burden of proving its financial, managerial or technical inability to acquire and operate the small water or sewer utility.⁴ 66 Pa.C.S. § 529(i).

In Section 529 proceedings, the Commission has recognized that even though “I&E bears a statutory burden of proof in a Section 529 proceeding pursuant to 66 Pa.C.S. § 529(i), we have previously stated that the burden is not exclusive to I&E.” *Pa. PUC v. Twin Lakes*, Docket No. P-2020-3020914 (Opinion and Order entered September 17, 2020) at 21. “Rather, any party may present or rebut a prima facie case in support of its position in this proceeding.” *Id.* (citing *Petition of Delaware Sewer*

⁴ Regarding the burden of proof, in most proceedings, Section 332(a) of the Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). For example, as a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Code, the Commission's Regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Even in Section 529 proceedings, which has a statutorily prescribed burden of proof, the burden of proof on any underlying allegations of violations of the utility's duties would be relevant, especially if the utility disputed the acquisition under Section 529.

Company for the Opening of an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility to Acquire the Company Pursuant to 66 Pa.C.S. § 529, Docket No. P-2014-2404341 (Opinion and Order entered January 28, 2016) (*Delaware Sewer*) (“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 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”).

Once the Commission determines that I&E has established a *prima facie* case, RSWC has 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)(1). PAWC, SCBWA, and Aqua have the burden of proving their financial, managerial, or technical inability to acquire and operate the small water or sewer utility. 66 Pa.C.S. § 529(i)(2).

Finally, it is noted that the decision of the Commission must be supported by substantial evidence. *See* 2 Pa.C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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. PUC*, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

B. Recommended Decision

In the Recommended Decision, ALJ Coogan made 138 Findings of Fact and reached 21 Conclusions of Law. R.D. at 7-31; 177-80. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without

comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In the Recommended Decision, ALJ Coogan recommended that the Commission order an acquisition of RSWC by PAWC pursuant to 66 Pa.C.S. § 529. ALJ Coogan determined that all six elements of 66 Pa.C.S. § 529(a) have been met and the factors listed in 66 Pa.C.S. § 529(c) have been considered. R.D. at 158.

With respect to the elements of 66 Pa.C.S. § 529(a), ALJ Coogan indicated that substantial evidence was provided that RSWC has been continuously in violation of the Safe Drinking Water Act, and regulations adopted thereunder, since at least 2006. In addition, the ALJ determined that RSWC has been in violation of 66 Pa.C.S. §1501, which requires a public utility to, *inter alia*, furnish and maintain adequate, efficient, safe, and reasonable service and facilities. R.D. at 160 (citing OCA M.B. at 6-7; DEP M.B. at 8-9).

ALJ Coogan rejected RSWC's argument that nearly all regulatory violations have been corrected to show that the elements of Section 529(a)(1) have not been met. Instead, ALJ Coogan stated the following six reasons for his determination that the elements of Section 529(a)(1) were met: (1) RSWC does not have the capacity, managerially or financially, to adequately address and correct the Unaccounted for Water (UFW) issues; (2) RSWC's data integrity issues related to entry point sampling have not been remedied; (3) six DEP violations against RSWC's owner as an operator remain outstanding; (4) since PAWC has been acting as receiver of RSWC, there has been improved operation of RSWC and relative lack of violations; (5) RSWC does not address the fact that violations of the orders from both DEP and the Commission are violations; (6) RSWC has a history of incurring violations and there is no indication that it is taking steps to mitigate this pattern. R.D. at 161.

Turning to 66 Pa.C.S. §529(a)(2), ALJ Coogan reasoned that the record established that RSWC failed to comply, within a reasonable time, with orders of DEP and the Commission regarding the safety, adequacy, efficiency or reasonableness of service. Specifically, ALJ Coogan referenced RSWC's failure to reduce its UFW and complete a waterline project, including failure to comply with a 2006 Consent Order & Agreement, 2018 DEP Order, and 2024 Commonwealth Court Order. In addition, ALJ Coogan noted RSWC's failure to reduce its UFW under the terms of the Joint Settlement in *Pa. PUC v. Rock Spring Water Co.*, Docket No. R-2012-2336662 (*2012 RSWC Base Rate Case*). R.D. at 162.

Next, in regard to 66 Pa.C.S. §529(a)(3), ALJ Coogan found that substantial evidence had been established showing that RSWC cannot reasonably be expected to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in the future. ALJ Coogan cited to the Main Briefs of DEP, the OCA, and I&E that illustrated that RSWC fails to adequately meet its service obligations and is incapable of bringing the System back into compliance. The ALJ recommended the rejection of RSWC's argument that RSWC is providing adequate service under receivership. ALJ Coogan explained that it is only due to the actions of PAWC, not RSWC, that the System is currently providing improved service and that the improvements made by PAWC's receivership in no way demonstrate that RSWC, operating independently, can reasonably be expected to furnish and maintain adequate service and facilities in the future. ALJ Coogan also recommended the rejection of RSWC's reliance on public input testimony that supported its position. ALJ Coogan weighed the testimony favorable to RSWC against the expert witness testimony offered by I&E, DEP, and the OCA, along with other RSWC customers that testified as to their dissatisfaction with RSWC service. R.D. at 163-64.

ALJ Coogan also found that all elements of 66 Pa.C.S. §529(a)(4) and 529(b) have been met. ALJ Coogan determined that the first two options within

Section 529(b), reorganization under new management and entering a contract with another public utility or management or service company to operate the small water utility, would not address the financial resources needed to address the issues with the Company's extremely high UFW and numerous DEP violations. ALJ Coogan found that the third option under Section 529(b), appointment of a receiver, would not result in a long-term solution. Finally, ALJ Coogan explained that the last two alternatives to acquisition under Section 529(b), the merger of the small water utility with one or more public utilities and the acquisition of the small water utility by a municipality, are not practical or economically feasible. R.D. at 165.

ALJ Coogan noted the arguments of both PAWC and RSWC that elements of Section 529(a)(4) have not been met, but for different reasons. First, RSWC contended that the alternatives to acquisition by a capable public utility have not been adequately discussed, specifically that I&E did not provide evidence of discussions with RSWC on alternatives. While ALJ Coogan agreed with RSWC that the language found in statutes must read according to their common and approved language, he did not find that discussions with RSWC regarding alternatives to acquisition pursuant to Section 529 were inadequate. R.D. at 166 (citing 1 Pa.C.S. §1903(a)).

According to ALJ Coogan, as Section 529(b) does not specifically define "discuss," it must be construed with its common and ordinary meaning. R.D. at 166 (citing *Chamberlain v. Unemployment Comp. Bd. Of Rev.*, 114 A.3d 385, 394 (Pa. 2015)). As such, ALJ Coogan looked to Black's Law Dictionary, Cambridge Dictionary, Oxford Learners Dictionaries, Britannica Dictionary, Webster's New Collegiate Dictionary, and Dictionary.com in discerning the legislative meaning of the word "discuss," as referred by the Pennsylvania Supreme Court in *O'Neill v. State Employees' Ret. Sys.*, 280 A.3d 873, 885 (Pa. 2022). ALJ Coogan determined that consistent with multiple definitions of "discuss," 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. As support, ALJ Coogan pointed to the Commission's *March 2025 Order*, where it ordered RSWC to negotiate in earnest with SCBWA regarding the transfer of the RSWC System and ALJ Coogan's 90-day stay of the proceeding to facilitate such negotiations. Additionally, ALJ Coogan explained that I&E's testimony contained ideas and opinions regarding alternatives to acquisition. Furthermore, ALJ Coogan stated that discussions regarding alternatives to acquisition under Section 529 have taken place for over a decade. ALJ Coogan noted the *2012 RSWC Base Rate Case* where RSWC agreed to make efforts to sell the Company and provide to the OCA and I&E the status of any negotiations, discussions, or offers related to the sale of the Company of the transfer of the assets. R.D. at 166-68.

In the Recommended Decision, ALJ Coogan determined that, as RSWC first raised the argument, in the briefing stage of this proceeding, that the elements of 66 Pa.C.S. §529(a)(4) and (b) have not been met, these arguments are barred by the doctrine of waiver and/or laches. R.D. at 168.

Turning to PAWC's argument regarding Section 529(a)(4), ALJ Coogan recommended the rejection of PAWC's assertion that a practical and economically feasible alternative to a forced acquisition exists with the voluntary acquisition of RSWC by SCBWA. ALJ Coogan also rejected PAWC's argument that RSWC and SCBWA's failure to reach an agreement is adequate evidence that the PAWC acquisition is a feasible alternative. ALJ Coogan explained that PAWC's position would have merit if the discussions between RSWC and SCBWA had just begun, but that the evidence shows that discussions have been ongoing for years without any proof of progression. ALJ Coogan reasoned that the instant proceeding had been delayed further for RSWC and SCBWA to negotiate but failed to progress toward a settlement. R.D. at 169.

ALJ Coogan explained that although PAWC cited to evidence as to why SCBWA would be a practical and feasible alternative, the language of Section 529(b)(5)

clearly contemplates a scenario where a small water or sewer utility voluntarily agrees to its acquisition. ALJ Coogan acknowledged that while RSWC professed its intention to sell the System, they have never followed through with serious efforts to sell it. R.D. at 169 (citing PAWC M.B. at 22). The ALJ stated that further delay may very well lead to further inaction while RSWC remains under receivership without a long-term solution for the RSWC System and its customers. R.D. at 169.

In response to PAWC's alternative of requesting that RSWC files for bankruptcy so that the System could be sold to SCBWA or a public utility, ALJ Coogan found that it would not be in the best interests of this proceeding or RSWC customers. R.D. at 169-70.

In regards to 66 Pa.C.S. §529(a)(5), ALJ Coogan determined that as PAWC already holds a certificate of public convenience to own and operate systems regulated by the Commission, PAWC introduced evidence that it is fit to acquire and operate the RSWC System, and no Party challenged PAWC's capability to acquire and operate RSWC, PAWC satisfies the elements of 529(a)(5). ALJ Coogan then found that although SCBWA appears fit to acquire and operate RSWC and no Party challenged its capability to acquire and operate RSWC, SCBWA does not satisfy the elements of Section 529(a)(5). R.D. at 170-71.

Upon consideration of 66 Pa.C.S. §529(a)(6), ALJ Coogan found that substantial evidence established that the rates charged by either PAWC or SCBWA to its preacquisition customers would not increase unreasonably because of the acquisition of RSWC. R.D. at 171.

Next, ALJ Coogan considered the elements of 66 Pa.C.S. §529(c) and determined that RSWC does not possess the financial, managerial, or technical means to safely operate the small water system. ALJ Coogan explained that pursuant to

Section 529(c)(2), the abilities of PAWC, SCBWA, and Aqua have all been considered. Regarding Section 529(c)(3), the ALJ agreed with DEP that RSWC had years to address its crumbling System, but instead neglected issues which resulted in the System requiring millions of dollars in repairs of which RSWC has not demonstrated it will make in the future. ALJ Coogan considered the expansion of PAWC's franchise area in conjunction with its fitness to acquire and operate RSWC, as required by Section 529(c)(4). R.D. at 172-73. Lastly, ALJ Coogan stated that the elements of 66 Pa.C.S. § 529(c)(5) have been addressed by DEP and noted DEP's belief that RSWC requires a multi-million dollar project to eliminate the UFW loss. R.D. at 172-73.

After the ALJ found that the Commission should order a capable public utility to acquire RSWC, ALJ Coogan addressed the question of which utility should acquire RSWC. ALJ Coogan stated that PAWC, Aqua, and SCBWA were all considered as the acquiring utility. ALJ Coogan found that Aqua should not acquire RSWC, as no Party contended that Aqua should acquire RSWC and PAWC admitted that it would be a better fit to do so than Aqua, because it currently serves as receiver, and is ready, willing, and able to acquire the RSWC System. ALJ Coogan further stated that SCBWA was not named as receiver because unlike PAWC, SCBWA is not jurisdictional to the Commission and therefore not entitled to a presumption of fitness. R.D. at 173-74.

According to ALJ Coogan, there is no ambiguity in interpreting Section 529 and its mandate that the Commission may only order a capable public utility to acquire a small water or sewer utility. R.D. at 175 (citing 66 Pa.C.S. § 529(a)).

ALJ Coogan stated:

A "public utility" is defined by the Code as any "person or corporation," and the definition of corporation states, in part, that a corporation "...shall not include municipal corporations, except as otherwise expressly provided in this part...." The definition of "municipal corporation" includes authorities. 66 Pa.C.S. § 102. Although 66 Pa.C.S. § 529(m)

separately defines what is a “capable public utility,” this definition only serves to further narrow what type of “public utility,” as defined in Section 102 of the Code, can acquire a small water or sewer utility.

R.D. at 175. ALJ Coogan determined that the Commission has no statutory authority to order SCBWA to acquire RSWC pursuant to 66 Pa.C.S. § 529(a).

The ALJ rejected SCBWA’s argument that the Commission acquired jurisdiction over SCBWA by way of SCBWA’s intervention and participation in this proceeding. ALJ Coogan explained that a “public utility” or “capable public utility” regulated by the Commission does not include a municipal authority. R.D. at 175-76. ALJ Coogan stated that although SCBWA is a willing participant in this proceeding, other municipalities or municipal authorities may not be as willing to acquire a small water or sewer utility if the door is opened for such acquisitions under Section 529. *Id.* at 176.

Finally, in response to PAWC’s request that the Commission establish next steps in this proceeding if the Commission orders PAWC to acquire RSWC, ALJ Coogan recommended the adoption of most of PAWC’s proposals in the ordering paragraphs of the Recommended Decision. However, ALJ Coogan recommended that the Commission reject PAWC’s request that the Commission provide PAWC and RSWC with a “range of reasonableness” for the purchase price. R.D. at 176 (citing PAWC M.B. at 38-40). ALJ Coogan stated that what is reasonable should be a factual matter to be negotiated and presented to the Commission in a future stage of this proceeding. According to ALJ Coogan, pursuant to Section 529(e), the price for acquisition is only to be presented to the Commission if both Parties agree to a price. ALJ Coogan reasoned that to set a range of reasonableness now could limit the possibility of what the Parties agree to as reasonable during future negotiations. Furthermore, ALJ Coogan stated that setting an acceptable price range now is premature since, if PAWC and RSWC cannot agree to an acquisition

price, the Commission will order PAWC to acquire RSWC through eminent domain. R.D. at 176-77 (citing 66 Pa.C.S. § 529(e)).

C. Exceptions and Reply Exceptions

1. RSWC Exception No. 1 and Replies

a. RWSC Exception No. 1

In its first Exception, RSWC asserts that the ALJ failed to properly apply the statutory language of Section 529(b). RSWC argues that the ALJ improperly found that Section 529(b) has been 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. It is RSWC's position that the ALJ erred because the statute does not require evidence of exchanges of ideas and opinions, but requires that the Commission discuss with the small water or sewer utility alternatives to acquisition. RSWC contends that the record is devoid of any evidence of I&E or the Commission talking about or discussing alternatives to acquisition with RSWC. For support, RSWC points to the testimony of I&E's witness, Mr. Christopher Keller, where he testified that he was aware that discussions had occurred between RSWC and SCBWA, but was unaware of whether the Commission had discussed this alternative with RSWC. RSWC Exc. at 2-3.

RSWC states that the Recommended Decision places a burden on RSWC to rebut the testimony of I&E explaining that Mr. Keller considered various alternatives to acquisition. RSWC avers that I&E ignored the statutory language of Section 529(b) and failed to fulfill the requirement to talk about these alternatives to acquisition with RSWC. RSWC Exc. at 3-4.

According to RSWC, the burden was on I&E to show, by a preponderance of the evidence, that the Commission discussed the alternatives with RSWC. RSWC claims that I&E failed to satisfy the requirement that the alternatives listed in Section 529(b) be discussed when it stated in its Reply Brief that it had considered the options and found them to be non-viable. RSWC Exc. at 5 (citing I&E R.B. at 8).

b. I&E Reply

In its Reply to RSWC's Exception No. 1, I&E argues that the ALJ correctly found that I&E made a *prima facie* case, meeting all six elements of Section 529, and that RSWC failed to rebut I&E's *prima facie* case. I&E R. Exc. at 2 (citing RSWC Exc. at 1-5; R.D. at 158). I&E contends that Section 529 (b) 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..." and notes that "the statute then lays out five alternatives to acquisition." I&E R. Exc. at 2 (citing 66 Pa.C.S. § 529(b)). I&E notes that the crux of RSWC's argument appears to rely on the allegation that no one from the Commission met with RSWC regarding each of the five alternatives to acquisition. I&E R. Exc. at 2-3. According to I&E, such argument fails to recognize that the Section 529 investigation process serves as the designed forum for these discussions. *Id.* at 3.

I&E submits that, while the testimony in this proceeding largely supports the need for a more capable utility to acquire RSWC, RSWC did not present testimony responding to that of any other Party. In addition, I&E highlights that Section 529(b) requires the Commission to give the utility the opportunity to investigate alternatives to acquisition. I&E argues that by presenting testimony that it did not believe these alternatives were viable options, I&E provided RSWC with the opportunity to engage in those discussions, yet RSWC did not present any testimony demonstrating the feasibility of any alternatives. According to I&E, RSWC had a long opportunity to place its

position in the record but did not do so until the briefing stages of this proceeding. I&E R. Exc. at 3. I&E notes that not only has this instant case been pending before the Commission for about 14 months, but that as far back as 2012, RSWC was directed as part of the Commission's approval of a settlement in RSWC's base rate case to attempt to sell its System. *Id.* (citing *2012 RSWC Base Rate Case*, Settlement Agreement at ¶ 7.g). According to I&E, despite this extensive history, the record is devoid of evidence that RSWC did anything other than engage in discussions with SCBWA regarding the sale of the System. I&E R. Exc. at 3

Furthermore, I&E asserts that RSWC cannot use its failure to provide testimony to rebut I&E's position as support for its contention that the System does not need to be sold. It is the position of I&E that it met its burden of establishing that the elements of Section 529 are met and that RSWC failed to engage in the exchange of testimony, thereby failing to demonstrate that I&E did not meet its burden. I&E R. Exc. at 5.

c. OCA Reply

In its Reply to RSWC's Exception No. 1, the OCA argues that the ALJ correctly applied the language of Section 529(b) in determining that alternatives to acquisition were discussed with RSWC. OCA R. Exc. at 2 (citing R.D. at 164-70; OCA M.B. at 11-12; OCA R.B. at 6-8). The OCA notes that RSWC raised the argument that the Commission did not have a proper "discussion" with it regarding alternatives to acquisition in its Main and Reply Briefs. OCA R. Exc. at 2. The OCA argues that the ALJ provided an extensive analysis of the statutory language in Section 529(b) and the definition of "discuss," determining that, consistent with multiple definitions of discuss, the record contains evidence of "exchanges of ideas and opinions" between I&E, the Commission, and RSWC regarding the alternatives to acquisition. *Id.* (citing R.D. at 167). The OCA notes RSWC's argument that "discuss" strictly means verbal

communication between parties. The OCA asserts that RSWC, the Commission, and all Parties to the proceeding have been discussing these matters for the past decade, both through exchanging ideas and opinions and through verbal communication. OCA R. Exc. at 2. The OCA contends that while RSWC argued that the Commission should order discussion to take place, RSWC did not provide any indication as to what it considers to be adequate discussions. *Id.* (citing RSWC R.B. at 4-5).

In response to RSWC's argument that the ALJ places a burden on it to rebut the testimony provided by I&E that the criteria in Section 529(b) has been met, the OCA argues that Section 529(i)(1) provides that the small water or sewer authority has the burden of proving its ability to render adequate, efficient, safe, and reasonable service at just and reasonable rates. OCA R. Exc. at 3-4 (citing 66 Pa.C.S. § 529(i)(1)). According to the OCA, Rock Spring had an opportunity in both its Main and Reply Briefs to present the ALJ and the Commission with evidence that I&E did not meet its burden of proof. OCA R. Exc. at 4.

d. DEP Reply

In its Reply to RSWC's Exception No. 1, DEP contends that the ALJ's interpretation of the word "discuss" is supported by the statutory language of Section 529(b) of the Code, 66 Pa.C.S. § 529(b). DEP disagrees with RSWC that the word "discuss" in the statute is unambiguous. DEP R. Exc. at 6. DEP notes caselaw for when engaging in statutory interpretation and determining if there is ambiguity. *Id.* at 6-7. According to DEP, there is ambiguity about the meaning of the word "discuss" in Section 529(b), as the statute is silent on who from the Commission is responsible for discussing the alternatives, how to discuss the alternatives with the small utility, and the depth of the discussion needed. *Id.* at 7-8. In addition, DEP argues that the list of what could be considered a discussion is voluminous. DEP asserts that the ALJ, after determining that the Code and the Commission's Regulations do not define the

word “discuss,” used approved, dictionary definitions. Similarly, DEP argues that the ALJ properly found that there is evidence on the record that I&E and the Commission had discussions about alternatives to acquisition with RSWC under these definitions. *Id.* at 8.

2. RSWC Exception No. 2 and Replies

a. RSWC Exception No. 2

In its second Exception, RSWC echoes its argument in its first Exception that the Commission failed to discuss alternatives to acquisition with RSWC. Specifically, RSWC alleges that the ALJ erred in determining that all elements of 66 Pa.C.S. §529(a)(4) and (b) have been satisfied. RSWC contends that 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. RSWC states that the ALJ passed over this requirement by accepting I&E’s position that neither of these alternatives would provide the capital necessary to fix the RSWC System. RSWC Exc. at 5-6 (citing R.D. at 27).

According to RSWC, the instant matter is similar to the base rate case in *Pa. PUC v. Deer Haven, LLC, d/b/a Deer Haven Sewer Company*, Docket No. R-2010-2194577 (Opinion and Order entered May 19, 2011) (*Deer Haven Sewer*), where the Commission agreed with the presiding ALJ that Section 529(b) requires the Commission to discuss with the small water or sewer utility alternatives to acquisition before ordering the acquisition pursuant to Section 529(a). RSWC Exc. at 6. RSWC claims that the instant proceeding is similar because, like *Deer Haven Sewer*, there is no evidence in the record indicating that the Commission discussed alternatives to the acquisition with RSWC. *Id.* at 6-7.

RSWC states that although the ALJ found that “discussions regarding alternatives to acquisition under Section 529 have taken place for over a decade,” there is no evidence that the Commission engaged in these discussions with RSWC, as required by Section 529(b). RSWC Exc. at 7 (citing R.D. at 168). RSWC argues that it is inappropriate and erroneous to impute the discussions between RSWC and SCBWA as being between the Commission and RSWC. It is RSWC’s position that had the Commission been involved in the discussions, a more desirable outcome would have been reached. RSWC takes issue with I&E’s Reply Brief where it stated, “...Rock Spring is likely not a viable merger or acquisition candidate...” because it contends that the statute requires the Commission to discuss the alternatives with RSWC and not determine it unilaterally based upon a likely outcome. RSWC Exc. at 7 (citing I&E R.B. at 8).

b. I&E Reply

In its Reply to RSWC’s Exception No. 2, I&E argues that RSWC’s second Exception is largely a reiteration of its first Exception. I&E contends that RSWC’s failure to rebut the testimony of I&E’s witness, Mr. Keller, that alternatives to acquisition would not be viable options, is insufficient to demonstrate that the elements of Section 529(a)(4) and Section 529(b) were not satisfied. I&E R. Exc. at 6. Similarly, I&E argues that RSWC did not rebut DEP’s testimony showing the need for a more capable utility to acquire the System. *Id.* at 8. Again, I&E contends that the Commission has actively engaged with RSWC regarding the sale of the System since at least 2012, and discussions with SCBWA have continued since 2008. *Id.* at 6 (citing I&E St. 1 at 2, 9). In response to RSWC’s argument that the Commission did not talk to RSWC regarding the possibility of reorganizing under new management or entering into a contract with another utility or management service, I&E argues that this issue was addressed in Mr. Keller’s testimony, wherein he stated that these options would not be economically feasible. I&E R. Exc. at 6 (citing RSWC Exc. at 5; I&E St. 1 at 6).

I&E distinguishes the *Deer Haven Sewer* case, cited by RSWC, from the instant proceeding, arguing that unlike *Deer Haven Sewer*, the Commission has a full and complete Section 529 investigation record in the instant proceeding that RSWC failed to rebut. I&E R. Exc. at 7 (citing *Deer Haven Sewer*).

c. OCA Reply

In its Reply to RSWC's Exception No. 2, the OCA argues that the ALJ correctly determined that all criteria of Section 529(a)(4) and (b) have been met. OCA R. Exc. at 4 (citing R.D. at 164-70; OCA M.B. at 11-12; OCA R.B. at 6-8). The OCA notes that the majority of RSWC's argument that such criteria has not been met relies on its argument that I&E did not discuss the alternatives to acquisition with RSWC. According to the OCA, the Main and Reply Briefs submitted by the OCA, I&E, and DEP establish that the elements of Section 529(a)(4) and (b) have been met. OCA R. Exc. at 4. The OCA reiterates the findings of the ALJ, that I&E established that alternatives to acquisition are not feasible and that RSWC did not assert until the briefing stage of this proceeding that the criteria of Section 529(a)(4) and (b) were met. *Id.* at 5 (citing R.D. at 165, 168). The OCA asserts that RSWC had years to raise the issue that alternatives to acquisition were not discussed and that, therefore, the elements of Section 529(a)(4) and (b) were not met. According to the OCA, the ALJ correctly determined that RSWC's argument that there was no discussion of alternatives to acquisition must fail, as the record evidence demonstrates the contrary. OCA R. Exc. at 5.

d. DEP Reply

In its Reply to RSWC's Exception No. 2, DEP contends that there is substantial evidence that the Commission has already discussed alternatives to acquisition with RSWC, as required by Section 529(b). Specifically, DEP points to the Joint Settlement in the *2012 RSWC Base Rate Case* wherein RSWC was required to make

efforts to sell its System and provide both I&E and the OCA with the status of any negotiations, discussions, or offers related to the sale of the company or the transfer of assets. DEP R. Exc. at 9. In addition, DEP points to the Interim Emergency Petition where ultimately, the Commission ordered PAWC to act as temporary receiver and directed RSWC to negotiate in earnest the transfer of its System to SCBWA. *Id.* at 10 (citing *March 2025 Order*; 66 Pa.C.S. § 529(b)(3) and (5)).

In response to RSWC’s argument that the Commission is required to discuss every alternative listed in Section 529(b) with RSWC, DEP contends that Section 529(b), by its plain language, does not require that the Commission discuss “each” of the alternatives or “all” of the alternatives listed within this section. DEP R. Exc. at 10. Rather, DEP contends that this section is merely providing a non-exhaustive list of alternatives to ordered acquisition. *Id.* at 11.

Additionally, DEP argues that I&E has provided evidence as to why the other listed alternatives are not feasible for RSWC and therefore RSWC was on notice that I&E did not consider reorganizing under new management, contracting with another public utility or management or service company, or merging with another public utility as viable alternatives for RSWC. DEP R. Exc. at 11-12. According to DEP, it would not make sense for the legislature to intend I&E be required to discuss alternatives with RSWC that I&E has determined are infeasible for RSWC. *Id.* at 12.

3. RSWC Exception No. 3 and Replies

a. RSWC Exception No. 3

Lastly, in its third Exception, RSWC avers that the ALJ’s finding that RSWC’s arguments are barred by the doctrine of waiver or laches is erroneous and constitutes a due process violation. RSWC explains that in this matter, I&E failed to

carry its burden of proof that it met the requirements of Section 529(b) by discussing the alternatives listed therein with RSWC. RSWC asserts that by applying the doctrines of waiver and laches to RSWC, the ALJ essentially shifted the burden of proof to RSWC to show that I&E failed to satisfy the statutory requirements during the proceedings. RSWC Exc. at 8.

RSWC argues that 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. According to RSWC, 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. RSWC Exc. at 9.

Turning to the doctrine of laches, RSWC explains that for laches to apply in Pennsylvania, the party must have a delay in asserting their claim without due diligence, and that delay must have caused prejudice to the other party. RSWC Exc. at 9. RSWC claims it had no duty to assist I&E with establishing its case and, as such, there is no delay or failure of due diligence on RSWC's part. RSWC argues that 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. RSWC maintains that I&E has not presented any evidence or claim of prejudice and that the only Party that raised the issue was PAWC. *Id.* at 9-10.

RSWC avers that for the ALJ to take on the position of advocate in asserting the doctrine of waiver and laches against RSWC is improper. RSWC contends that the ALJ raised these non-jurisdictional issues without the opportunity for RSWC to brief or argue the issue, which constitutes a due process violation. RSWC Exc. at 11.

b. I&E Reply

In its Reply to RSWC's Exception No. 3, I&E argues that RSWC improperly asserts that the ALJ shifted the burden of proof to RSWC to show that I&E failed to satisfy the statutory requirements in this proceeding. I&E R. Exc. at 9 (citing RSWC Exc. at 8). According to I&E, the ALJ did not shift the burden of proof from I&E to RSWC but instead agreed that RSWC's argument that discussions had not occurred regarding alternatives to acquisitions was barred by the doctrine of waiver and/or laches. I&E R. Exc. at 9 (citing R.D. at 168). Regarding the doctrines of waiver and laches, I&E contends that the Commission does not need to find that either doctrine applies to determine that the RSWC System should be sold to a more capable utility. I&E R. Exc. at 10. Specifically, I&E contends that RSWC's argument that the doctrine of waiver cannot apply because it had no knowledge of its rights under Section 529(b) does not stand up to scrutiny, as RSWC is represented by an attorney. *Id.* (citing RSWC Exc. at 8). Regarding the doctrine of laches, I&E notes RSWC's argument that none of the Parties allege they lost evidence or records, or that witnesses were unavailable to prove their case because of RSWC's failure to raise the criteria of Section 529(b). I&E R. Exc. at 10 (citing RSWC Exc. at 10). In response, I&E asserts that to the extent RSWC had evidence contrary to that presented by I&E, DEP, and the OCA, RSWC failed to present that evidence and therefore the evidence was lost. I&E R. Exc. at 10.

c. OCA Reply

In its Reply to RSWC's Exception No. 3, the OCA asserts that to the extent RSWC argues that the Commission should order additional time for discussion of alternatives to acquisition, the ALJ correctly found those arguments to be barred by the doctrines of waiver and laches. OCA R. Exc. at 5 (citing R.D. at 168; PAWC R.B. at 16-21). In response to RSWC's argument that it bore no burden to show that I&E failed to carry its burden of proof, the OCA asserts that while Section 529 has a clear burden of

proof requirement, the Commission noted in *Delaware Sewer* that any party may present or rebut a *prima facie* case in support of its position. OCA R. Exc. at 5-6 (citing RSWC Exc. at 8; 66 Pa.C.S. § 529(i); *Delaware Sewer*). According to the OCA, RSWC failed to present evidence to address the evidentiary and statutory requirements of Section 529, as required by statute and Commission precedent. OCA R. Exc. at 6. The OCA agrees with PAWC's argument that to allow RSWC, at such a late stage of this proceeding, to argue that discussion never occurred would prejudice all Parties involved. *Id.* (citing PAWC R.B. at 16-21).

d. DEP Reply

In its Reply to RSWC's Exception No. 3, DEP posits that RSWC's arguments regarding the inapplicability of the doctrines of waiver or laches are irrelevant because I&E established a *prima facie* case that all elements of Section 529 are satisfied, which RSWC did not rebut. DEP R. Exc. at 12. DEP asserts that while I&E bears a statutory burden of proof in a Section 529 proceeding pursuant to 66 Pa.C.S. § 529(i), the Commission has held that this burden is not exclusive to I&E. *Id.* at 13. Rather, DEP contends that any party may present or rebut a *prima facie* case in support of its position in a Section 529 proceeding. *Id.* (citing *Delaware Sewer*). Therefore, according to DEP, the evidence presented by DEP and other Parties may be considered with the evidence put forth by I&E. It is DEP's position that the evidence presented by I&E, the OCA, and DEP supports each element of Section 529 and that there is substantial evidence on the record that the Commission engaged in discussions with RSWC concerning alternatives to acquisition to meet both Sections 529(a)(4) and 529(b). DEP R. Exc. at 13. As such, DEP argues that the burden shifted to RSWC to prove its ability to render adequate, efficient, safe, and reasonable service at just and reasonable rates. *Id.* (citing 66 Pa.C.S. § 529(i)(1)). According to DEP, RSWC did not meet its shifted burden, as RSWC did not file an answer to I&E's 529 Petition, nor did RSWC present any evidence establishing that it is capable of providing adequate, efficient, safe, and reasonable

service at just and reasonable rates. DEP R. Exc. at 13-14 (citing 66 Pa.C.S. § 529(i)(1)). DEP asserts that because I&E established its *prima facie* burden and RSWC failed to rebut I&E's *prima facie* case, the Commission does not need to consider RSWC's arguments concerning the inapplicability of the doctrines of waiver or laches, as these arguments are red herrings. DEP R. Exc. at 14

4. PAWC Exception No. 1

In its Exceptions, PAWC asserts that the Commission should provide non-binding guidance to PAWC and RSWC on a "reasonable" purchase price. PAWC does not except to the recommendation that PAWC acquire RSWC and represents that it is ready, willing, and able to acquire RSWC. PAWC Exc. at 1.

Rather, PAWC explains that it has not reached an agreement with RSWC to acquire the System. PAWC excepts to the ALJ's omission of a recommendation of a reasonable purchase price and requests that the Commission provide PAWC and RSWC with non-binding guidance on what the Commission might find to be a "reasonable" purchase price for the System. PAWC claims that such guidance would be in the public interest because it would avoid substantial delays in transferring the System to a capable public utility. PAWC states that the ALJ recommended that the Commission allow PAWC and RSWC three months to negotiate an Asset Purchase Agreement, with the possibility of extensions to conduct further negotiations. According to PAWC, if the Commission would provide non-binding guidance on a "reasonable" purchase price for the System, the Parties might quickly realize that they cannot agree on a purchase price that the Commission would find "reasonable" and would then trigger an eminent domain proceeding. PAWC avers that guidance on a "reasonable" purchase price is in the public interest because it would aid PAWC and RSWC in avoiding the unprecedented step of forcing a capable public utility to acquire an unwilling small water system through eminent domain. PAWC Exc. at 3-4. In a footnote, PAWC contends that if the eminent

domain process is utilized, that the court-determined valuation of the System along with all transaction and closing costs, including reasonable attorneys fees should be recoverable in rates. As such, PAWC requests that the Commission make clear in its order that those costs are recoverable in rates. *Id.* at 4, n.2.

PAWC states that the only Party to oppose PAWC's recommended procedure going forward was RSWC. PAWC explains that the Commission recently provided non-binding guidance to the regulated community on methodology it will use to determine whether the agreed-to purchase price for a utility system acquired pursuant to Section 1329 is "reasonable." PAWC cites to the *Valuation of Acquired Municipal Water & Wastewater Systems – Act 12 of 2016 Implementation*, Docket No. M-2016-2543193 (Order entered July 2, 2024), where the Commission adopted a Reasonableness Review Ratio (RRR) that the Commission will use as an additional factor and point of reference in making a determination on the overall prudence of a Section 1329 application. PAWC requests that the Commission establish a "range of reasonableness" similar to the RRR used in Section 1329 proceedings, but solely for PAWC's acquisition of RSWC. PAWC Exc. at 4-5.

PAWC requests the Commission to establish a "range of reasonableness" from \$6,000, representing about half of the System's net utility plant, to \$65,000, representing the amount offered by SCBWA. PAWC explains that together with the estimated costs of improving the System, this purchase price would represent an investment of up to \$34,839 per customer in the RSWC System, this figure exceeds the amount PAWC paid for the Delaware Sewer Company and Clean Treatment Sewage Company but is less than the amount PAWC paid for the Winola Water Company pursuant to Section 529. PAWC Exc. at 5.

PAWC contends that the Commission should provide guidance to PAWC and RSWC on the factors it would consider in determining whether an agreed-to price is

“reasonable.” PAWC lists the following factors it believes the Commission should consider:

- the assets included in/excluded from the acquisition and the condition of those assets;
- the purchase price per customer for those assets, the capital expenditures per customer needed to bring the System into compliance with statutory and regulatory standards, and comparable data for recent Section 529 acquisitions, all recent Section 1103 acquisitions, and those Section 1103 acquisitions for which PAWC has recently requested an acquisition adjustment pursuant to Section 1327;
- any other offers to purchase the System in the last five years;
- the depreciated original cost of the System; and
- the revenues of the System and the costs to operate the System;
- the expected impact of the acquisition on rates for RSWC’s existing customers and PAWC’s existing customers.

PAWC Exc. at 6.

PAWC argues that the Commission should not require the submission of appraisals completed by utility valuation experts, as required by Section 1329 but can take official notice of evidence in the record in recent Section 1329 acquisitions. PAWC explains that in a recent Section 1329 proceeding, approximately \$30,000 was paid to each utility valuation expert. PAWC states that as of December 31, 2023, RSWC’s net utility plant was estimated to be \$11,317. PAWC Exc. at 6 (citing PAWC St. 2 at 3). PAWC avers it would be unreasonable to require the Parties to spend almost three times the amount of RSWC’s net utility plant on an appraisal. PAWC Exc. at 6.

D. Disposition

1. RSWC Exception Nos. 1, 2, and 3

In its first and second Exceptions, RSWC argues that the ALJ erred in finding that Sections 529(a)(4) and (b) have been satisfied. RSWC Exc. at 1-7. Specifically, RSWC's claim hinges upon the notion that the Commission failed to discuss alternatives to acquisition of the RSWC System, violating Section 529(b). We note that RSWC's first and second Exceptions are a recitation of an argument that RSWC did not raise until its Main Brief. *See* RSWC M.B. at 8-10; R.D. at 168 (where the ALJ stated that 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).

As RSWC's claim was not raised until after the record had closed, the Parties did not have an opportunity to hear the claim or respond to it at the hearing. Considering the new claim at the briefing stage or now in the Exceptions would be a violation of due process to all Parties involved who have been diligently litigating this matter for years. *Courtney and James Parks v. Pennsylvania Electric Company*, Docket No. C-2018-3004227 (Opinion and Order entered December 19, 2024); *Hess v. Pa. PUC*, 107 A.3d 246, 266 (Pa. Cmwlth. 2014). We agree with I&E and the OCA that RSWC had a long opportunity to submit its position on the record, but failed to do so until the briefing stages of this proceeding. I&E R. Exc. at 3; OCA R. Exc. at 6.

However, even if the Commission were to consider RSWC's newly raised claim at such a late stage, we would find it to be without merit. We agree with ALJ Coogan that the elements of Section 529(a) have been satisfied. As stated above, pursuant to Section 529, I&E is charged with the burden of proof to present a *prima facie* case addressing the six Section 529(a) factors. *See* 66 Pa.C.S. §529(i). In the Recommended Decision, ALJ Coogan determined that I&E met its burden of proof and

recommended that the Commission order PAWC to acquire RSWC. R.D. at 173. RSWC, in its Exceptions, challenges ALJ Coogan's determination that I&E met its burden of proof and specifically takes issue with Section 529(b), which states,

[b]efore 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...

66 Pa.C.S. §529(b).

Upon review, the record evidence indicates that alternatives to acquisition were discussed with RSWC: twice in the instant proceeding, and over a decade ago in the *2012 RSWC Base Rate Case*. Specifically, in direct testimony, I&E raised alternatives to acquisition pursuant to Section 529(a)(4) and (b) and indicated that none of the alternatives to acquisition would be viable for the RSWC System. I&E St. 1 at 5-6. We note that RSWC failed to submit responsive testimony rebutting I&E's position. In addition, in response to the Emergency Petition filed in the instant proceeding, the Commission issued its *March 2025 Order* directing RSWC to negotiate in earnest with SCBWA regarding the transfer of its System. *March 2025 Order* at 39. Also, in its Reply Exceptions, I&E points to the Settlement in the *2012 RSWC Base Rate Case*, where RSWC agreed to make efforts to sell the Company and provide to the OCA and I&E the status of any negotiations, discussions, or offers related to the sale of the Company or the transfer of assets. I&E R. Exc. at 3 (citing *Pa. PUC v. Rock Spring Water Co.*, Docket No. R-2012-2336662, Settlement at ¶ 7(g)). Based upon the foregoing, we find that alternatives to acquisition were in fact discussed with RSWC and that the requirements under Section 529(a)(4) and (b) have been satisfied. As such, we will deny RSWC's first and second Exceptions.

In its third Exception, RSWC argues that the ALJ erred in finding that RSWC's new claim, raised for the first time in its Main Brief, is barred by the doctrine of waiver and/or laches and that such a finding constitutes a due process violation. RSWC Exc. at 7. As we have previously determined that RSWC's new claim was improperly raised during the briefing stage and not to be considered, RSWC's third Exception is denied.

2. PAWC Exception No. 1

As previously stated, PAWC requests, in its Exceptions, that the Commission provide PAWC and RSWC with "non-binding guidance" on what the Commission might find to be a reasonable purchase price for the System. PAWC Exc. at 3. We agree with the ALJ's determination to decline to recommend a range of reasonableness for the purchase price and will deny PAWC's Exceptions, as discussed, *infra*.

In a Section 529 proceeding, the Commission is charged with determining whether a specific, agreed-upon purchase price is "reasonable." The express language of Section 529 provides clear direction to the Commission that, if RSWC and PAWC are unable to agree on the acquisition price, then the Commission *shall* issue an order directing PAWC to acquire RSWC by following the eminent domain process. 66 Pa.C.S. § 529(e).

Thus, Section 529 contemplates only two paths: (1) an agreement between the parties on the acquisition price, where the Commission reviews reasonableness; or (2) no agreement, where the Commission orders a condemnation proceeding. There is no statutory role for the Commission to provide guidance by presetting, benchmarking, or otherwise prospectively suggesting a range of reasonable purchase prices before the purchase price is agreed upon by the Parties. Providing such guidance would improperly

shape or influence private negotiations between the Parties and may constrain the Commission's ability to independently and objectively assess a later agreed-upon price based solely on the evidentiary record.⁵

Consistent with this framework, the Commission's role is limited to assessing the reasonableness of an agreed-upon price after it has been reached. The factors that the Commission will consider in determining whether an agreed-to purchase price is reasonable are addressed on a case-by-case basis.

If RSWC and PAWC are unable to reach an agreement on price, the statute does not authorize the Commission to determine a purchase price, but instead directs resolution through eminent domain proceedings. *See* 66 Pa.C.S. § 529(e). In that circumstance, determination of the purchase price is realized through a different legal framework, and the Parties would not retain the same ability to structure or influence the economic terms of the transaction as they would through the Commission's regulatory process.

We understand PAWC's concerns that the eminent domain process may be complex, lengthy, and expensive. Nevertheless, these concerns do not change the express language in the statute. We encourage RSWC and PAWC to negotiate with each other toward reaching an acquisition price they both agree upon. We agree with the ALJ that three months is a reasonable amount of time for RSWC and PAWC to negotiate an asset

⁵ We disagree with PAWC's argument that the Commission's adoption of the RRR used in Section 1329 applications is precedent for PAWC's request that the Commission provide a range of reasonableness for the purchase price in this case. PAWC Exc. at 4-5. First, it is important to note that acquisitions pursuant to Section 1329 are *voluntary*, which may not always be the case in a Section 529 proceeding. In addition, the Commission's application of the RRR in a Section 1329 acquisition is not triggered until the parties provide the Commission with a purchase price for the acquisition. Here, PAWC is requesting guidance for negotiations before a purchase price is realized.

purchase agreement and establish a purchase price. The Recommended Decision is clear that at the end of the three-month period, PAWC is required to either: (1) file a petition to request approval of the purchase price and the Asset Purchase Agreement; (2) file a petition for an extension of time; or (3) file an eminent domain proceeding to acquire the System. PAWC may not file an eminent domain proceeding prior to the expiration of the three-month period. We note that even once the eminent domain proceedings have begun, the Parties may reach an agreement at any time during the proceedings regarding all or any part of the damages owed to the condemnee, RSWC. *See* 26 Pa.C.S. § 501.

Lastly, we deny PAWC's footnote request that should the Commission order PAWC to acquire RSWC through the eminent domain process, all costs of the acquisition be recoverable in rates because the Commission ordered PAWC to acquire the System. *See* PAWC Exc. at 4, n.2. The Commission is not in a position to thoroughly adjudicate ratemaking issues relating to the acquisition in this proceeding, nor do we find that this acquisition proceeding is the appropriate context for addressing these rate issues. Such issues are better reserved for a future base rate proceeding.

Accordingly, we find that the ALJ reached the correct conclusion in the Recommended Decision with respect to this issue, and we will deny PAWC's Exceptions.

III. Conclusion

We have reviewed the record as developed in this proceeding, including the ALJ's Recommended Decision and the Exceptions and Replies to Exceptions thereto. Based upon our review, evaluation, and analysis of the record evidence, we shall deny the Exceptions of RSWC and PAWC and adopt the ALJ's Recommended Decision, consistent with this Opinion and Order. **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Rock Spring Water Company, filed on March 10, 2026, to the Recommended Decision of Administrative Law Judge John M. Coogan, issued on February 18, 2026, at Docket No. P-2024-3051313, are denied, consistent with this Opinion and Order.

2. That the Exceptions of Pennsylvania-American Water Company, filed on March 10, 2026, to the Recommended Decision of Administrative Law Judge John M. Coogan, issued on February 18, 2026, at Docket No. P-2024-3051313, are denied, consistent with this Opinion and Order.

3. That the Recommended Decision of John M. Coogan, issued on February 18, 2026, at Docket No. P-2024-3051313, is adopted, consistent with this Opinion and Order.

4. That the Bureau of Investigation and Enforcement's Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Rock Spring Water Company, filed at Docket No. P-2024-3051313, is granted.

5. That, pursuant to 66 Pa.C.S. § 529(a), Pennsylvania-American Water Company is directed to acquire the Rock Spring Water Company.

6. That Pennsylvania-American Water Company and Rock Spring Water Company shall have three (3) months from the entry date of this Opinion and Order to negotiate an Asset Purchase Agreement. By or before the expiration of this three-month period, Pennsylvania-American Water Company shall file a petition to request approval of the purchase price and the Asset Purchase Agreement.

7. That Pennsylvania-American Water Company may file a petition for an extension of time to negotiate an Asset Purchase Agreement by or before the expiration of the three-month period.

8. That, if Pennsylvania-American Water Company does not file a petition to request approval of the purchase price and the Asset Purchase Agreement, or a petition for an extension of time by or before the expiration of the three-month period, Pennsylvania-American Water Company shall acquire the water system owned by Rock Spring Water Company through the eminent domain process set forth in 26 Pa.C.S. §§ 101, *et. seq.*

9. That, if the Commission denies Pennsylvania-American Water Company's petition for extension of time, Pennsylvania-American Water Company shall acquire the water system owned by Rock Spring Water Company through the eminent domain process set forth in 26 Pa.C.S. §§ 101, *et. seq.*

10. That Pennsylvania-American Water Company shall file a notification with the Commission when it takes title to the water system currently owned by the Rock Spring Water Company.

11. That, upon receipt of the notification described in Ordering Paragraph No. 10, *supra*, the Secretary's Bureau shall issue a Certificate of Public Convenience to Pennsylvania-American Water Company pursuant to Section 1102(a)(1) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(1), evidencing Commission approval for Pennsylvania-American Water Company to offer or furnish water service to the public in the Rock Spring Water Company service territory.

12. That, upon receipt of the notification described in Ordering Paragraph No. 10, *supra*, the Secretary's Bureau shall issue a Certificate of Public

Convenience to Rock Spring Water Company pursuant to Section 1102(a)(2) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(2), evidencing Commission approval for Rock Spring Water Company to abandon water service to the public in the Rock Spring Water Company service territory.

13. That Pennsylvania-American Water Company shall file its Plan for Improvements, pursuant to 66 Pa.C.S. § 529(j), with the Commission's Secretary, at this Docket Number, and provide a copy to the Commission's Bureau of Technical Utility Services-Water Division, the Pennsylvania Department of Environmental Protection, and all Parties to this Proceeding, within three months of the date of entry of this Opinion and Order. The Department of Environmental Protection and all other Parties to this proceeding shall have thirty days to submit comments on the Plan for Improvement, and Pennsylvania-American Water Company shall have thirty days to submit Reply Comments.

14. That all reasonable and necessary expenditures related to Pennsylvania-American Water Company's duties as receiver of the Rock Spring Water Company water system shall be paid from the proceeds of the sale of the Rock Spring Water Company water system. To the extent that the proceeds of the sale are insufficient to pay those costs, Pennsylvania-American Water Company is permitted to make a claim for such unpaid receivership costs in a future base rate case.

15. That any proceeds of the sale remaining after the payment of all reasonable and necessary costs of Pennsylvania-American Water Company's Receivership be held in escrow for one year to pay Pennsylvania-American Water Company's reasonable costs in negotiating, preparing and recording easements for the real estate on which Rock Spring Water Company's facilities and equipment are located. If Pennsylvania-American Water Company cannot obtain an easement for Rock Spring Water Company's storage tank within one year after the date of entry of this Opinion and

Order, any remaining proceeds of the sale should continue to be held in escrow for up to two years to pay Pennsylvania-American Water Company's reasonable and prudent costs incurred to acquire real estate, design, and construct a new storage tank to replace Rock Spring Water Company's existing storage tank.

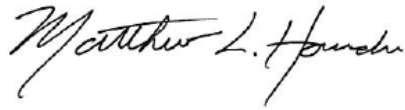
16. That all outstanding fines, penalties and easements imposed on Rock Spring Water Company (including the civil assessment imposed by the Department of Environmental Protection) shall be paid from the proceeds of the sale of Rock Spring Water Company's water system remaining after the payment of the costs of Pennsylvania-American Water Company's Receivership. To the extent that the remaining proceeds of the sale are insufficient to pay all outstanding fines, penalties and assessments, Rock Spring Water Company shall remain liable for those amounts and they may be collected from Rock Spring Water Company as provided by law.

17. That Pennsylvania-American Water Company shall continue to serve as receiver of Rock Spring Water Company pursuant to the Commission's March 21, 2025 Order in this proceeding until issuance of Certificates of Public Convenience pursuant to Ordering Paragraph Nos. 11 and 12, *supra*.

18. That a copy of this Opinion and Order be served upon the Commission's Bureau of Technical Utility Services-Water Division.

19. That the Secretary's Bureau shall mark closed the above-captioned matter upon issuance of Certificates of Public Convenience pursuant to Ordering Paragraph Nos. 11 and 12, *supra*.

BY THE COMMISSION,

A handwritten signature in cursive script that reads "Matthew L. Homsher".

Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: June 4, 2026

ORDER ENTERED: June 4, 2026