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November 5, 2024

***(Via electronic filing)***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

***RE: Petroleum Valley Regional Water Authority v.  
East Brady Borough***

Dear Secretary Chiavetta:

Enclosed please find a copy of the Answer to Preliminary Objections to Formal Complaint on behalf of Petroleum Valley Regional Water Authority that was electronically filed on this day.

Thank you for your attention to this matter.

Very truly yours,

Michael D. Gallagher

MDG:mt  
Enclosure

cc: Amy R. Schrempf, Esquire *(Via email and Regular Mail)*  
Steven C. Gray, Sr. Supervising Small Business Advocate *(Via email and Regular Mail)*  
Christine M. Hoover, Sr. Asst. Consumer Advocate *(Via email and Regular Mail)*  
Paul Diskin, Director *(Via email and Regular Mail)*  
Allison Kaster, Director *(Via email and Regular Mail)*  
Petroleum Valley Regional Water Authority  
Attn: Rayne Brothers, Secretary *(Via email)*

**COMMONWEALTH OF PENNSYLVANIA**  
**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETROLEUM VALLEY  
REGIONAL WATER AUTHORITY

Complainant,

COMPLAINT DOCKET NO.:  
C-2024-3051609

v.

EAST BRADY BOROUGH,

Respondent.

**ANSWER TO PRELIMINARY OBJECTIONS TO  
FORMAL COMPLAINT**

Filed on Behalf of Complainant:

**PETROLEUM VALLEY REGIONAL  
WATER AUTHORITY**

Counsel of Record for this Party:

Michael D. Gallagher, Esquire  
PA ID No. 59237

Sean M. Gallagher, Esquire  
PA ID No. 318872

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**COMMONWEALTH OF PENNSYLVANIA**  
**BEFORE THE**  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETROLEUM VALLEY	:	
REGIONAL WATER AUTHORITY,	:	
	:	COMPLAINT DOCKET NO.:
Complainant,	:	C-2024-30511609
	:	
v.	:	
	:	
EAST BRADY BOROUGH,	:	
	:	
Respondent.	:	

**ANSWER TO PRELIMINARY OBJECTIONS TO FORMAL COMPLAINT**

AND NOW, comes the Complainant, Petroleum Valley Regional Water Authority (“PVRWA”), and files the within Answer to Preliminary Objections to Formal Complaint filed by EBB (“PVRWA”), even though the Preliminary Objections do not contain the Notice to Plead as required by 52 Pa. Code § 5.10(b), and in support thereof, avers as follows:

1. Admitted.
2. Admitted. By way of further response, PVRWA also served Attorney Schrempf a copy of the PUC Complaint on October 10, 2024.
3. Denied as stated. As set forth in Paragraph 8 of the Complaint, PVRWA was and remains a bulk water customer of EBB.
4. Denied as stated. Said averment is not supported by Verification nor does it constitute a reasonable inference from the Complaint. See, *Kingsley v. PPL Elec. Utils.*, 144 A.3d 228 (unreported Pa. Cmwlth. 2024). (In determining preliminary objections, the Court must accept all well pled allegations of fact as true, as well as inferences reasonably deducible from those facts).
5. Admitted.

6. Admitted.

7. The first sentence of Paragraph 7 is admitted. The second sentence of Paragraph 7 is denied as setting forth an incorrect conclusion of law as will be further explained in Paragraph 10, below.

8. Admitted.

9. Admitted.

10. Denied. As set forth in PVRWA's Complaint, in the 1971 Supreme Court case, *East Hempfield Twp. v. Lancaster*, 273 A.2d 333 (Pa. 1971), the Supreme Court quoted Section 301 of the PUC law (66 P.S. §1141<sup>1</sup>): "...public utility service being furnished or rendered by a municipal corporation, or by the operating agencies of any municipal corporation, beyond its corporate limits, shall be subject to regulation and control by the commission [Public Utility Commission] as to rates, with the same force, and in like manner, as if such service were rendered by a public utility." As a result, the Supreme Court recognized that the PUC, as opposed to Common Pleas Court, has jurisdiction to hear rate cases involving municipal corporations and the sale of water to entities beyond the boundaries of those municipal corporations.

Very recently, the Commonwealth reaffirmed the extension of jurisdiction of the PUC in cases where municipal corporations provide utility services beyond their boundaries (albeit in reference to 66 Pa.C.S. §1102(a)(5) and 66 Pa.C.S. §1501). *Conyngham Twp. v. PUC*, 2024 Pa. Commw. LEXIS 218 citing *Borough of Ridgeway v. PUC*, 480 A.2d (Pa. Commw. 1984) and *In Re White Oak Borough*, 93 A.2d 437 (Pa. 1953). The focus of these cases is not on the entity that received the utility service; indeed the focus is on the fact that a municipal corporation provided utility service beyond its boundaries, thereby coming into the jurisdiction of the PUC.

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<sup>1</sup> Now 66 Pa. C.S.A. § 1301(a).

Because PVRWA is an entity outside the boundary of EBB, the Preliminary Objections are clearly contrary to both the Public Utility Law and the Pennsylvania Supreme Court decision affirming PUC jurisdiction in rate cases such as these. EBB asserts that because PVRWA is a bulk water purchaser, then the law does not apply to EBB sales to PVRWA. EBB cites no case law in support of its proposition. Curiously, the only authority cited by EBB is a general information website of the PUC. A general-purpose website certainly does not rise to any level of binding or persuasive authority, especially in light of the overwhelming contrary binding authority of the Supreme Court and the clear meaning of 66 Pa. C.S. §1301(a). Moreover, although PVRWA identified the *East Hempfield* case in its complaint as a basis for the PUC's jurisdiction in this case, EBB's Preliminary Objections fail to address the *East Hempfield* case in any manner whatsoever.

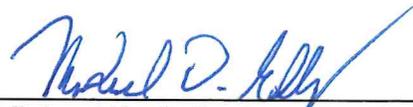
11. Denied as an incorrect conclusion of law for the reasons set forth in Paragraph 10, above.
12. Admitted.
13. Denied as an incorrect conclusion of law for the reasons set forth in Paragraph 10, above.

WHEREFORE, Petroleum Valley Regional Water Authority respectfully requests that the Preliminary Objections to Formal Complaint of PVRWA be dismissed and that EBB be directed to file an Answer within ten (10) days.

Respectfully submitted,

GALLAGHER LAW GROUP

By:



Michael D. Gallagher, Esquire  
PA I.D. No. 59237

Sean M. Gallagher, Esquire  
PA I.D. No. 318827

*Solicitors for Complainant,  
Petroleum Valley Regional  
Water Authority*

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COMMONWEALTH OF PENNSYLVANIA

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETROLEUM VALLEY  
REGIONAL WATER AUTHORITY,

Complainant,

v.

EAST BRADY BOROUGH,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the following persons, in the manner indicated below on November 5, 2024:

Amy R. Schrempf, Esquire  
Solicitor for East Brady Borough  
Andrews & Price LLC  
1500 Ardmore Boulevard, Suite 506  
Pittsburgh, PA 15221  
*(Via email [aschrempf@andrewsandprice.com](mailto:aschrempf@andrewsandprice.com)  
and Regular Mail)*

Paul Diskin, Director  
Pennsylvania Public Utility Commission  
Bureau of Technical Utility Services  
Commonwealth Keystone Building  
400 North Street, 3<sup>rd</sup> Floor West  
Harrisburg, PA 17120  
*(Via email [pdiskin@pa.gov](mailto:pdiskin@pa.gov) and Regular Mail)*

Steven C. Gray,  
Sr. Supervising Small Business Advocate  
Office of Small Business Advocate  
555 Walnut Street  
1<sup>st</sup> Floor, Forum Place  
Harrisburg, PA 17101  
*(Via email [sgray@pa.gov](mailto:sgray@pa.gov) and Regular Mail)*

Allison Kaster, Director  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
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Christine M. Hoover,  
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555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
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Michael D. Gallagher, Esquire  
Sean M. Gallagher, Esquire