

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petroleum Valley Regional Water Authority	:	C-2024-3051609
	:	
v.	:	
	:	
East Brady Borough	:	

**ORDER DISMISSING PRELIMINARY OBJECTIONS**

Complainant is Petroleum Valley Regional Water Authority (Complainant, PVRWA or Authority). Respondent is East Brady Borough (Respondent, EBB or Borough). On October 10, 2024, the Authority filed a Formal Complaint (Complaint) against Borough regarding rates and terms of a water rate increase imposed by EBB against PVRWA on April 22, 2024.<sup>1</sup>

The Authority avers that the Pennsylvania Public Utility Commission (Commission or PUC) has the sole and limited jurisdiction to hear rate claim challenges in cases such as this, where the seller is a municipal corporation, such as a Borough, and the purchaser lies outside the Borough limits.<sup>2</sup>

The Authority avers that PVRWA was created in 2002 pursuant to a grant from the DEP to provide safe and clean potable water to a series of municipalities designated at risk because of the contamination of wells by the industrial dumping of resorcinol into the environment. PVRWA avers it has 60 miles of line reaching approximately 1,200 customers in Fairview Borough, Fairview Township, Petrolia Borough, Bruin Borough and Karns City Borough in Butler County, and in Parker Township, Perry Township and Bradys Bend Township in Armstrong County.<sup>3</sup>

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<sup>1</sup> Complaint ¶ 5.

<sup>2</sup> Complaint ¶ 6; *See East Hempfield Twp. v. Lancaster*, 273 A.2d (Pa. 1971).

<sup>3</sup> Complaint ¶ 7.

The Authority further avers that it purchases its water from East Brady Borough, which has three (3) wells, pursuant to a Water Supply Agreement entered into between PVRWA and EBB on March 2, 2004. The Authority also avers the Water Supply Agreement was for a term of 20 years and expired on March 2, 2024, and since that time, the parties have been operating without an Agreement.<sup>4</sup>

The Complaint alleges that on or about March 29, 2024, and March 31, 2024, the Borough mailed the Authority two separate invoices for water purchase. The March 29, 2024, invoice was designated "2 days at prior contract price" for a total of \$1,163.00, which is consistent with the price established pursuant to the contract formula of \$3.25 per thousand gallons. The Authority averred the monthly contract purchase price was approximately \$18,500.00 per month. The Authority further averred the March 31, 2024, invoice was designated "Out of Contract" for 30 days and did not state a specific price increase, but clearly had a large price increase (the invoice amount of \$39,875.55 divided by the purchase of 5,577,000 gallons equals a rate of \$7.15 per thousand gallons).<sup>5</sup>

According to the Authority, the "out of contract" invoice was the only notice of the rate increase provided to the Authority. The Complaint also appears to aver an increase in the base rate of \$3.95 per thousand gallons up to 144,000 gallons per day, after which a surcharge would be imposed on "not long-term bulk water customers" of \$7.15 per thousand gallons, and that the average "out of contract" monthly purchase price now invoiced to PVRWA is approximately \$45,000.00.<sup>6</sup> The Authority also avers that it was the only existing customer outside of the Borough (or any customer) of Borough who fits into the new category of "not long-term bulk water customer".<sup>7</sup>

The Authority also asserts that the approximate 118% rate increase was imposed upon the Authority by the Borough, even though the Borough did not review, analyze or consider any documentation of any sort, which would establish a reasonable basis to impose

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4 Complaint ¶ 8.  
5 Complaint ¶¶ 10-11.  
6 Complaint ¶¶ 12-13.  
7 Complaint ¶ 14.

the 118% rate increase solely upon the Authority, a customer outside the boundary of the Borough.<sup>8</sup>

The Authority also avers that the rate increase, cost and revenue allocation by the Borough is unjust, unreasonable and unlawfully discriminatory in violation of 66 Pa. C.S. §§ 1301 and 1304 of the Public Utility Code, as well as being contrary to appropriate public policy and sound rate policy considerations, and not being supported by any investigation or documentation.<sup>9</sup>

The prayer for relief in the Complaint requests that the Commission:

- a. Suspend and investigate the operation of the March 3, 2024, rate increase;
- b. At the conclusion of such investigation, reject the new rates to the extent required to ensure that East Brady Borough's rates are lawful, just, reasonable and not unduly discriminatory to the Petroleum Valley Regional Water Authority; and
- c. Grant such other relief as may be necessary or appropriate.

On October 28, 2024, Respondent filed preliminary Objections to the Complaint. Respondent avers that the Borough charges the Authority a bulk rate and that the Authority, in turn, resells the water to the Authority's customers. The Borough avers it does not charge rates to Authority customers directly and that the Commission does not regulate the Borough, a municipal corporation and not a public utility, nor the Authority.<sup>10</sup> Respondent asserts, based on its conclusion that the Commission does not regulate the Borough or Authority, the Commission does not have jurisdiction over this matter.<sup>11</sup>

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<sup>8</sup> Complaint ¶ 16.

<sup>9</sup> Complaint ¶ 17.

<sup>10</sup> Preliminary Objections ¶¶ 6-8.

<sup>11</sup> Preliminary Objections ¶ 11.

On November 5, 2024, Complainant filed its Answer to Preliminary Objections. Complainant avers that it was and continues to be a bulk water customer of the Borough and that the Commission has jurisdiction to hear rate cases involving municipal corporations and the sale of water to entities beyond the boundaries of the municipal corporation. Because the Authority is an entity outside the boundary of the Borough, Complainant argues the Preliminary Objections are contrary to Pennsylvania Supreme Court authority and the Public Utility Law which confer Commission jurisdiction in rate cases such as the instant action.<sup>12</sup>

Section 102 of the Code defines municipal corporation as “[a]ll cities, boroughs, towns, townships, or counties of this Commonwealth, and also any public corporation, authority, or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.”<sup>13</sup>

Section 1501 of the Code provides, in pertinent part: Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the [C]ommission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility.<sup>14</sup>

Under the Public Utility Code (Acts of May 28, 1937, P. L. 1053, art. III, § 301, and March 21, 1939, P. L. 10, § 2, 66 P. S. § 1141): "Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission. Provided, that only 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." Prior to the enactment of this

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<sup>12</sup> Answer to Preliminary Objections ¶ 10.

<sup>13</sup> 66 Pa.C.S. § 102.

<sup>14</sup> 66 Pa.C.S. § 1501.

legislation, the Court, in *Shirk v. Lancaster City*, 313 Pa. 158, 169 A. 557 (1933), assumed jurisdiction to act and pass upon the reasonableness of water rates for consumers outside the city limits and established guidelines for the ascertainment of the reasonableness of such rates.

Under the Code, the Commission has jurisdiction over a municipal utility operating beyond its corporate limits. The Code specifically states as follows:

Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility.<sup>15</sup>

Section 701 of the Public Utility Code (Code), 66 Pa.C.S. § 701, provides in pertinent part that “any person, corporation, or municipal corporation having an interest in the subject matter” may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.

In *East Hempfield Township v. Lancaster*, 273 A. 2d 333 (Pa. 1971), the Pennsylvania Supreme Court considered whether the Court of Common Pleas of Lancaster County had jurisdiction to determine the reasonableness of certain water rates fixed by the City of Lancaster, for users outside the City, or whether exclusive jurisdiction for such a determination rested with the Pennsylvania Public Utility Commission. The Supreme Court reversed the order of the Superior Court which held that the court of common pleas could hear this case. There, the plaintiffs were five Second Class Townships (East Hempfield, East Lampeter, Lancaster, Manor, and West Lampeter), one First Class Township (Manheim), a borough (Millersville), and a school district (Manheim), all of which were located in Lancaster County, as well as a Pennsylvania corporation (Clabell Company), a New Jersey corporation (North Cedar Corporation), and two individuals (Alan Sagner and Frank G. Drout). They

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<sup>15</sup> 66 Pa.C.S. § 1501.

collectively instituted an action in the Court of Common Pleas of Lancaster County against the City of Lancaster (hereinafter the City) and the City of Lancaster Authority (Authority), seeking to invalidate certain water rates fixed by the City for the consumption of water outside the City's corporate limits as being in excess of the rates charged inside the City's corporate limits.

There, the Authority was created by the City under the provisions of the Municipality Authorities Act of May 2, 1945, P. L. 382, 53 P. S. § 301. In 1955 the City conveyed to the Authority all the assets of its water system whether within or outside the City. In the same year the Authority "leased back" the water system to the City for a term of forty years. Under the provisions of the lease, the City agreed to keep in full force an ordinance imposing water rentals and charges on users of the water system. The ordinance imposing the challenged rates was adopted by the City on April 9, 1968. The City and the Authority filed preliminary objections to the complaint and raised the issue of jurisdiction. The court of common pleas held that it could hear the case, and that the Public Utility Commission did not have exclusive jurisdiction over the matter. The Superior Court affirmed in a memorandum opinion.<sup>16</sup>

Section 301 of the Public Utility Law, Acts of May 28, 1937, P.L. 1053, art. III, § 301, and March 21, 1939, P. L. 10, § 2, 66 P. S. § 1141, states that: ". . . 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." Further, Section 3531 of The Third Class City Code, Act of June 23, 1931, P. L. 932, art. XXXV, § 3531, as amended, Act of June 28, 1951, P. L. 662, § 35.2, 53 P. S. § 38531, provides: "The service of water by any such City in the territory outside the limits of the city shall be subject to regulation and control by the Public Utility Commission as to character of service, extensions, and rates. . . ."

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<sup>16</sup> *East Hempfield Township v. Lancaster*, 216 Pa. Super. 733, 258 A.2d 122 (1969).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.<sup>17</sup> Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.<sup>18</sup> All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party.<sup>19</sup>

The averments stated in the complaint may be considered in the instant case in resolving the preliminary objections. Based solely on the averments in the complaint, it is not clear the complaint should be dismissed. It is not appropriate to consider unverified averments, that are not specifically admitted, as set forth in the preliminary objections.

Accordingly, in the ordering paragraphs below, the preliminary objections will be denied. Respondent will be directed to file an answer to the complaint and this matter may be set for hearing.

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections of East Brady Borough are dismissed.
2. That Respondent, East Brady Borough shall file an answer to the complaint of Petroleum Valley Regional Water Authority on or before January 17, 2025.
3. That upon filing of the answer, absent further motion, a hearing shall be scheduled.

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<sup>17</sup> *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

<sup>18</sup> *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002).

<sup>19</sup> *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997).



**C-2024-3051609 - PETROLEUM VALLEY REGIONAL WATER AUTHORITY v. EAST BRADY  
BOROUGH**

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