

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INTERIM ORDER REQUIRING STATUS REPORT

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, 2024.¹

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.²

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.³

¹ Complaint ¶ 5.

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

³ 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.⁴

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).⁵

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 \$45,000.00.⁶ 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".⁷

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

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.⁸

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.⁹

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.¹⁰ 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.¹¹

⁸ Complaint ¶ 16.
⁹ Complaint ¶ 17.
¹⁰ Preliminary Objections ¶¶ 6-8.
¹¹ 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.¹²

On December 31, 2024, an Interim Order was entered dismissing the preliminary objections filed by East Brady Borough and requiring Respondent, East Brady Borough to file an answer to the complaint of Petroleum Valley Regional Water Authority on or before January 17, 2025.

Discovery is currently ongoing in this proceeding.

Under the circumstances, the following interim order will be entered.

THEREFORE,

IT IS ORDERED:

1. The Parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the Parties have recourse to the Commission's procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et seq.* The Parties must not send the undersigned Presiding Officer any discovery requests, responses or material or cover letters, unless attached to a motion to compel. All motions to compel must contain a certification of the Party, or from counsel if represented, regarding the informal discovery undertaken and their efforts to resolve

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their discovery disputes informally. If a motion to compel fails to contain such certification, the Presiding Officer will contact the Parties and direct them to pursue informal discovery.

2. **ON OR BEFORE June 1, 2025**, the Parties shall conclude discovery in this proceeding, unless an extension of the discovery completion deadline is filed prior to the discovery deadline.

3. **ON OR BEFORE July 10, 2025**, the Parties shall file any dispositive motions together with and memoranda or briefs in support of such dispositive motions.

4. **ON OR BEFORE September 1, 2025**, the Parties shall file a status report in this proceeding and serve a copy upon the opposing Party and the undersigned Presiding Officer. In addition, prior to September 1, 2025, the Parties shall confer in an attempt to agree upon proposed dates for a hearing in this case to be held in November or December of 2025. The status report shall identify the agreed upon hearing date, to consist of three consecutive days and whether the Parties are requesting a telephone or in-person hearing. In the event the Parties are unable to agree upon a hearing date, the Parties, in their respective status reports, shall also identify all dates in which the Parties and their witnesses will be able to provide testimony in this proceeding in November and December of 2025. The Parties shall identify at least two different proposed hearing dates, consisting of three consecutive days each, in November and December of 2025. Absent receipt of this information, in-person hearing dates will be established by the undersigned Presiding Officer and the Parties and their witnesses will make themselves available at the scheduled date(s) and time(s).

5. The Parties are reminded it is the Commission's policy to encourage settlements. 52 Pa.Code § 5.231(a). If settlement is not feasible, the Parties are encouraged to stipulate to any matters they reasonably can in order to expedite this proceeding, lessen the burden of time and expenses in litigation on all Parties and conserve administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234. All stipulations entered into by the Parties must be reduced to writing, signed by the Parties to be bound thereby, and accepted into the record during the hearings in this case or prior to the hearing by interim order. An exception to this

requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation may be permissible, if accepted and as directed by the Presiding Officer.

6. The Commission's regulations (52 Pa.Code § 5.423) specifically provide for the protection of "confidential" information in order to ensure that adequate procedural safeguards are put in place to make certain that sensitive information is not improperly disclosed to the public. In the event that any Party is desirous of entering into an agreement with regard to a protective order or wishes that a protective order be entered by the undersigned Presiding Officer, the Parties shall confer and discuss a possible agreement or protective order to address the disclosure and use of the discovery materials and other sensitive information in this proceeding. In the event the Parties are unable to reach an agreement, any Party may file a request the entry of a protective order consistent with the Commission's rules and regulations.

Date: March 28, 2025

/s/

Jeffrey A. Watson

Administrative Law Judge

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

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