

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETROLEUM VALLEY REGIONAL
WATER AUTHORITY,

Complainant,

vs.

EAST BRADY BOROUGH,

Respondent.

COMPLAINT DOCKET NO.
C-2024-3051609

ANSWER TO MOTION IN LIMINE TO
PRECLUDE EVIDENCE OF RATE
INCREASE CALCUATIONS OR
JUSTIFICATIONS FOR RATE
INCREASE

Filed on behalf of Respondent:

EAST BRADY BOROUGH

Counsel of Record for this Party:

Amy R. Schrempf, Esquire
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PETROLEUM VALLEY REGIONAL WATER AUTHORITY,	:	COMPLAINT DOCKET NO.
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	:	
Respondent.	:	

**ANSWER TO MOTION IN LIMINE TO PRECLUDE EVIDENCE OF RATE
INCREASE CALCUATIONS OR JUSTIFICATIONS FOR RATE INCREASE**

NOW COMES Respondent, East Brady Borough, (hereinafter “Borough”), by its undersigned counsel, and files the following ANSWER TO MOTION IN LIMINE TO PRECLUDE EVIDENCE OF RATE INCREASE CALCUATIONS OR JUSTIFICATIONS FOR RATE INCREASE, in support thereof averring as follows:

1. On November 7, 2025, by email, Complainant Authority (hereinafter “Authority”) served this Motion in Limine on Respondent. No brief in support was attached.
2. The Motion in Limine states no legal reason as to why to exclude evidence, and with no supporting brief, Respondent is essentially unable to respond in any meaningful way to the Motion.
3. Paragraph 6 of the motion states that through a Right to Know Request, outside of this litigation, PVRWA requested documents related to a **surcharge** on PVRWA.

4. Then in its request for relief, PVRWA requested that all evidence related to a **rate increase** be excluded.

5. A surcharge is not a rate increase.

6. A response to a Right to Know request imposes no future duty of supplementation and exists as of the point in time the response is made.

7. Motions in limine are made prior to the presentation of evidence to aid the clear presentation of evidence, and to narrow the evidentiary issues for trial. *United States v. Ramsey*, No. 19-628, 2021 U.S. Dist. LEXIS 192115, 2021 WL 4554642, at *2 (E.D. Pa. Oct. 5, 2021).

8. Evidence should only be excluded on a motion in limine if it is clearly inadmissible on all potential grounds. *Hunt v. Drake*, No. 16-CV-1729, 2020 U.S. Dist. LEXIS 108003, 2020 WL 3402343 (M.D. Pa. June 19, 2020).

9. Authority, as the moving party, bears the burden of demonstrating that the evidence is inadmissible on all potential grounds. *Id.*

10. Authority makes no legal argument as to the admissibility of the evidence it seeks to exclude, and provided no supporting brief to assist in such analysis.

11. Authority merely states that evidence of a surcharge was not provided in response to a Right to Know Request, and that this somehow is related to a rate increase, which is at issue in the instant matter.

12. However, our Supreme Court has articulated the threshold inquiry in determining whether evidence is properly admitted into evidence: Any analysis of the admissibility of a particular type of evidence must start with a threshold inquiry as to its relevance and probative value. The Court has cited with approval the test for relevance propounded by two leading evidentiary authorities, Wigmore and McCormick. Wigmore defines relevance in terms of two

axioms, 'None but facts having rational probative value are admissible,' and 'All facts having rational probative value are admissible, unless some specific rule forbids.' 1 Wigmore, Evidence, § 9-10 at 289-95 (3rd Ed. 1940). McCormick suggests the following for determining relevance, '. . . [d]oes the evidence offered render the desired inference more probable than it would be without the evidence? . . . Relevant evidence then, is evidence that in some degree advances the inquiry, and thus has probative value, and is prima facie admissible.' McCormick, Evidence § 185 at 437-38 (2nd Ed. 1972)." *Commonwealth v. Walzack*, 360 A.2d, 914, 918 (Pa. 1976).

13. Authority does not address any aspect of this inquiry in its motion in limine.

14. Further, Authority simply concludes that the evidence is prejudicial.

15. A trial court may exclude relevant evidence if its probative value is outweighed by a danger of, among other things, unfair prejudice. Pa.R.E. 403.

16. "Unfair prejudice" is "a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." Pa.R.E. 403.

17. "Unfair prejudice" does not mean that the evidence is inconvenient to the moving party's theory of the case. It must suggest a decision based upon an improper basis or divert the attention away from its duty of weighing the evidence.

18. Authority alleges none of these things here when asserting prejudice.

19. Evidence related to the increase in rates is incredibly relevant and not prejudicial in any way. It is just inconvenient to the Authority's theory of its case.

20. A surcharge is not a rate increase. *See, e.g.*, 66 P.S. Section 1317 and 1319.

21. A surcharge is an amount added to a utility customer's regular bill that is established outside the normal ratemaking procedure. The surcharge is imposed pursuant to an automatic

adjustment clause in a utility's approved tariff. *Popowsky v. Pa. PUC*, 13 A.3d 583 (Pa.Cmwlth. 2011).

22. Evidence of a surcharge would not be relevant, because the Borough has not instituted any such surcharge on the Authority. Instead the Borough increased its rates and changed its rate structure.

23. Further, since no surcharge was imposed it is not surprising that there are no records publicly available of such surcharge.

24. As such, the Motion in Limine must be denied.

WHEREFORE, Borough respectfully requests that the Motion in Limine be denied.

Respectfully submitted,

ANDREWS & PRICE LLC

By: *Amy R. Schrempf*

Amy R. Schrempf

Attorney for Respondent, East Brady Borough

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ORDER

AND NOW, this ____ day of _____, 20____, upon consideration of the MOTION IN LIMINE filed by Petroleum Valley Regional Water Authority, it is hereby **ORDERED** that PVRWA’s MOTION IN LIMINE TO PRECLUDE EVIDENCE OF RATE INCREASE CALCUATIONS OR JUSTIFICATIONS FOR RATE INCREASE is hereby DENIED.

Jeffrey A. Watson
Administrative Law Judge J.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby verifies that on November 17, 2025, a true and correct copy of the Response to Motion was served upon the following by U.S. Postal Service, First Class Mail and via email:

Michael D. Gallagher
Sean Gallagher
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Butler, PA 16001

ANDREWS & PRICE LLC

By: Amy R. Schrempf
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