

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INTERIM ORDER DENYING MOTIONS IN LIMINE WITHOUT PREJUDICE

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 allegedly imposed by Borough against Authority April 22, 2024.¹

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).²

The Authority avers the "out of contract" invoice was the only notice of the rate increase provided to the Authority. The Complaint also appears to aver a rate increase of \$3.95 per thousand gallons up to 144,000 gallons per day, after which a surcharge would be

¹ Complaint ¶ 5.

² Complaint ¶¶ 10-11.

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 the Authority is approximately \$45,000.00.³ The Authority also avers that it was the only existing customer outside of the Borough (or any customer) who fits into the new category of "not long-term bulk water customer".⁴

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 the 118% rate increase solely upon the Authority, a customer outside the boundary of the Borough.⁵

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.⁶

On October 28, 2024, the Borough filed preliminary Objections to the Complaint. The Borough avers it 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 the Commission does not regulate the Borough, a municipal corporation and not a public utility, nor the Authority.⁷ 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.⁸

³ Complaint ¶¶ 12-13.

⁴ Complaint ¶ 14.

⁵ Complaint ¶ 16.

⁶ Complaint ¶ 17.

⁷ Preliminary Objections ¶¶ 6-8.

⁸ Preliminary Objections ¶ 11.

On November 5, 2024, the Authority filed an Answer to Preliminary Objections. The Authority 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, the Authority 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.⁹

On December 31, 2024, an Interim Order was entered denying the preliminary objections, as, based on the averments in the complaint, it is not clear the complaint should be dismissed.

On January 16, 2025, the Borough filed an answer to the Formal Complaint filed by the Authority. The Borough denied that the Commission has any jurisdiction to hear rate claim challenges of bulk water customers. Borough avers it charges the Authority a bulk rate and the Authority in turn resells the water to its customers. The Borough further avers it does not charge rates to Authority customers directly.¹⁰

On March 28, 2025, an Interim Order was entered which, *inter alia*, directed that the Parties engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. The Order directed the Parties to conclude discovery by June 1, 2025; file dispositive motions together with and memoranda or briefs in support of such dispositive motions by July 10, 2025; file a status report by September 1, 2025; and to stipulate to any matters possible to expedite this proceeding, lessen the burden of time and expenses in litigation on all Parties and conserve administrative hearing resources.

On October 6, 2025, an Interim Order was entered Requiring Distribution Of Prehearing Memoranda, Proposed Exhibits And Other Requirements For The Evidentiary Hearings. The Interim Order, *inter alia*, scheduled in-person hearings on

⁹ Answer to Preliminary Objections ¶ 10.

¹⁰ Answer to Formal Complaint at ¶ 6.

December 16, 17, and 18, 2025, in Pittsburgh, Pennsylvania. The Interim Order further requires each Party to file and serve a prehearing memorandum, a witness matrix, and exchange certain enumerated evidence, documentation, material and evidence, by December 9, 2025. Parties were also directed to file any and all appropriate motions, including dispositive motions and motions in limine, if any, on or before November 7, 2025, and any responses to any such motions, dispositive motions or motions in limine, if any, on or before November 17, 2025.

On November 6, 2025, the Authority filed a Motion In Limine To Preclude Evidence Regarding Kaylor Mine No. 4 (Mine Motion), where the Authority asserts that any evidence introduced regarding Kaylor would be prejudicial to the Authority and has no probative value toward the ultimate issue before the Commission, whether the rate imposed by the Borough on the Authority is unreasonable, discriminatory and invalid.

In its Motion In Limine To Preclude Evidence of Rate Increase Calculations or Justifications For Rate Increase (Rate Increase Motion), the Authority argues it submitted a Right to Know Request to the Borough and the Borough submitted its Response on May 16, 2024. The Authority requested copies of all documents, including without limitation, engineering studies or reports, cost estimates and/or construction estimates upon which East Brady Borough imposed a surcharge on Petroleum Valley Regional Water Authority, and the Borough responded that no records exist. The Authority asserts the Borough admitted that it has no documentary evidence to support any rate increase, let alone a 118% rate increase, and it follows then that there existed no basis for a rate increase in March of 2024, except a rate increase based on speculation.

The Authority asserts any attempt to submit documentation would either be (a) disallowed as being contrary to the specific admission set forth in the borough's Response to the Authority's Open Records Request; or (b) an attempt at ex post facto justification, whose probative value would be far outweighed by the prejudice to PVRWA as a result of such speculation.

In its Motion In Limine To Preclude Evidence Regarding Any New Well (New Well Motion), the Authority asserts the Borough has claimed in public statements that it is looking

to build a new well, however, despite repeated requests by the Authority for information about the new well, no information has been provided to the Authority by the Borough.

The Authority asserts the Borough responded in part to a discovery request propounded by the Authority, regarding what documents were relied on by the Borough to impose a surcharge on the Authority, the Borough responded it based its rates on historic usage from its customers, peak flow data, average daily flow data, its water allocation permit and its operating budget, which was produced in response to PVRWA's April 11, 2024, Right to Know Request.

The Authority submits, in all of the documents provided by the Borough, there was no mention of a new well and that any information regarding a new well should have been produced and provided to the Authority through three (3) Sets of Interrogatories and Requests for Production of Documents.

In addition, in response to a Right to Know Request filed by PVRWA dated April 11, 2024, requesting copies of any permits, permit applications and grant applications that pertain to the new well proposed by the Borough, the Borough replied that no records existed. The Authority asserts, to allow the Borough to present information regarding a new well would be extremely prejudicial to the Authority, given the failure to present said information in discovery.

On November 17, 2025, the Borough filed Answers to the three Motions in Limine filed by the Authority. In its Answer To Motion In Limine To Preclude Evidence Regarding Kaylor Mine No. 4, the Borough asserts that the Authority argues that evidence regarding the Kaylor Mine No. 4 is prejudicial and has no relevance as to the reasonableness of the Borough rate increase of March 19, 2024. The Borough argues evidence of a new source of water, as the impetus for the Authority to not enter into a long-term agreement with the Borough is relevant and not prejudicial.

In its Answer To Motion In Limine To Preclude Evidence Regarding Any New Well, the Borough asserts that paragraph 15 of the Motion states, "To allow EBB to present information regarding a new well would be extremely prejudicial to PVRWA, given the failure

to present said information in discovery. The Borough argues evidence should only be excluded on a motion in limine if it is clearly inadmissible on all potential grounds.¹¹ The Borough further argues the Authority, as the moving party, bears the burden of demonstrating that the evidence is inadmissible on all potential grounds.¹² The Borough argues it has repeatedly explained that due to DEP requirements, a new well must be sourced and that the Borough is working on the pre-permit phasing of a new well. The Borough argues in its discovery responses on February 6, 2025, the Borough provided all of the information that it had at that time regarding the new well. It did not have construction estimates or engineering reports, because the Borough is not at that phase of the process yet. The Borough submits there is no mention of a new well because it isn't constructed yet – it is in the initial planning phases and that the Authority is in possession of all documents that are in the Borough's possession.

The Borough asserts that, instead of requesting information that was not produced in discovery be excluded, which would be a reasonable request, the Authority requests all evidence, even evidence it possesses be excluded, because the evidence that has been produced is not exactly what they want.

Finally, in its Answer To Motion In Limine To Preclude Evidence Of Rate Increase Calculations Or Justifications For Rate Increase, the Borough argues, in its Motion at paragraph 6, the Authority states that through a Right to Know Request, outside of this litigation, PVRWA requested documents related to a surcharge on the Authority. Then in its request for relief, the Borough argues Authority requests that all evidence related to a rate increase be excluded. Borough argues a surcharge is not a rate increase, and that 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.

¹¹ *Hunt v. Drake*, No. 16-CV-1729, 2020 U.S. Dist. LEXIS 108003, 2020 WL 3402343 (M.D. Pa. June 19, 2020).

¹² *Id.*

The Borough asserts evidence related to the increase in rates is relevant and not prejudicial in any way. The Borough further argues a surcharge is not a rate increase, but is an amount added to a utility customer's regular bill that is established outside the normal ratemaking procedure. The Borough submits a surcharge is imposed pursuant to an automatic adjustment clause in a utility's approved tariff.¹³ The Borough further asserts 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.

Section 5.401 of the PUC's regulations provides that relevant and material evidence is admissible subject to objections on other grounds. This provision further states that evidence will be excluded if it is "repetitious or cumulative," or if its probative value is outweighed by the "danger of unfair prejudice," "[c]onfusion of the issues," or "[c]onsiderations of undue delay or waste of time."¹⁴

Section 5.403 authorizes the presiding officer to control the receipt of evidence, including ruling on the admissibility of evidence and confining the evidence to the issues in the proceeding. This provision further establishes the authority of the presiding officer to impose limitations on the number of witnesses, the time and scope of testimony, the production of further evidence and other necessary limitations. The regulation explains that these powers are necessary to direct and focus the proceedings consistent with due process.¹⁵

A motion in limine has been recognized as a valid means of requesting that the presiding officer control the receipt of evidence in the proceeding.¹⁶ As a matter of policy, evidence that is irrelevant or immaterial to the issues presented in a proceeding must be

¹³ See *Popowsky v. Pa. PUC*, 13 A.3d 583 (Pa.Cmwlth. 2011).

¹⁴ 52 Pa. Code § 5.401.

¹⁵ 52 Pa. Code § 5.403.

¹⁶ See e.g., *Pa. Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Sixth Prehearing Order dated July 14, 2015).

excluded.¹⁷ Information is relevant if it “logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable, or supports a reasonable inference or presumption regarding the existence of a material fact.”¹⁸

Based upon a review of the Motions filed by the Authority, the Answers filed by the Borough, and applicable authority, the following Interim Order will be entered.

THEREFORE,

IT IS ORDERED:

1. That the Motion In Limine To Preclude Evidence Regarding Kaylor Mine No. 4, filed on November 6, 2025, by Petroleum Valley Regional Water Authority, is Denied without prejudice, consistent with the ordering paragraphs below.

2. That the Motion In Limine To Preclude Evidence of Rate Increase Calculations or Justifications For Rate Increase, filed on November 6, 2025, by Petroleum Valley Regional Water Authority, is Denied without prejudice, consistent with the ordering paragraphs below.

3. That the Motion In Limine To Preclude Evidence Regarding Any New Well filed on November 6, 2025, by Petroleum Valley Regional Water Authority, is Denied without prejudice, consistent with the ordering paragraphs below.

4. That any other Motions in Limine or restrictions on the evidence to be presented at the evidentiary hearing may be timely raised prior to or at the evidentiary hearing in this proceeding.

¹⁷ 66 Pa. C.S. § 332(b); 52 Pa. Code § 5.401(a).

¹⁸ *EQT Prod. Co. v. Borough of Jefferson Hills*, 208 A.3d 1010, 1025 (Pa. 2019), citing *Commonwealth v. Johnson*, 160 A.3d 127, 146 (2017); *Commonwealth v. DeJesus*, 880 A.2d 608, 614-15 (Pa. 2005).

5. That nothing contained in this order shall be construed by any party as a ruling on the admissibility of any evidence in this proceeding. Any objections to any evidence at the evidentiary hearing may be timely raised at or prior to the commencement of the hearing.

Date: November 25, 2025

_____/s/
Jeffrey A. Watson
Administrative Law Judge

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

Revised: October 6, 2025

MICHAEL GALLAGHER
SEAN M GALLAGHER
GALLAGHER LAW GROUP
110 E DIAMOND STREET
BUTLER PA 16001

724.282.3141

attys@gallagher.legal

smgallagher@gallagher.legal

Served via eService – November 25, 2025

(Counsel for Petroleum Valley Regional Water Authority)

AMY SCHREMPF ESQUIRE
ANDREWS & PRICE LLC
1500 ARDMORE BOULEVARD SUITE 506
PITTSBURGH PA 15221

412.243.9700

aschrempf@andrewsandprice.com

Served via Email – November 25, 2025

(Counsel for East Brady Borough)