

COMMONWEALTH OF PENNSYLVANIA

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETROLEUM VALLEY REGIONAL
WATER AUTHORITY,

COMPLAINT DOCKET NO.
C-2024-3051609

Complainant,

vs.

EAST BRADY BOROUGH,

Respondent.

BREIF IN OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT

Filed on behalf of Respondent:

EAST BRADY BOROUGH

Counsel of Record for this Party:

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	:	
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BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

NOW COMES Respondent, East Brady Borough, (hereinafter “Borough”), by its undersigned counsel, and files the following BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT as follows:

FACTUAL SUMMARY

The salient facts are not in dispute and incredibly simple, despite Complainant’s attempt to add complexity. The Borough of East Brady sells bulk water to Petroleum Valley Regional Water Authority (hereinafter “Authority”), and the Authority in turn sells that water to its individual customers. The Borough has no contact with individual customers of the Authority, does not collect individual bills from those customers, nor does it turn off service for non-payment. Water is billed based upon a metered main-line connection. The Authority was a contract bulk-water customer of the Borough’s, until their contract expired on March 2, 2024. PVRWA failed to enter into another long-term contract for water supply with the Borough.

In April of 2024, the Borough changed its rate structure to provide for the following rates: For permanent users and customers under contract with the Borough rates would be \$3.95 per thousand gallons of water, up to 144,000 gallons of water per day. Any usage for those customers over 144,000 gallons would be billed at the rate of \$7.15 per thousand gallons. All other interim users of the Borough's water system would be charged \$7.15 per thousand gallons.

Based on this rate change, the Authority filed this instant matter.

STANDARD OF REVIEW

A trial court should grant summary judgment only in cases where the record contains no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Summers v. Certainteed Corp.*, 997 A.2d 1152, 1159 (Pa. 2010). The moving party has the burden to demonstrate the absence of any issue of material fact, and the trial court must evaluate all the facts and make reasonable inferences in a light most favorable to the non-moving party. *Id.* The trial court is further required to resolve any doubts as to the existence of a genuine issue of material fact against the moving party and "may grant summary judgment only where the right to such a judgment is clear and free from doubt." *Toy v. Metro. Life Ins. Co.*, 928 A.2d 186, 195 (Pa. 2007).

ISSUES

1. DOES THE PUC HAVE JURISDICTION TO HEAR THIS CHALLENGE.

Suggested Answer: No.

It cannot be disputed that both parties are municipal corporations under Section 102 of the Public Utility Code. See 66 P.S. 102. Yet, the Public Utility Code (hereinafter "PUC") does not have jurisdiction to hear this rate challenge.

Public Utility is defined as “Any person or corporation ... diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for consumption.” Id. The term does not include furnishing water to itself. The Borough does not provide water to any individual customers other than its own residents. It supplies water in bulk to Rimersburg Borough (a municipal corporation) and to the Authority (a municipal corporation). These municipal corporations are not the “public.” The Borough does not hold itself out as a public utility, rendering service for compensation. *See e.g., Pennsylvania Chautauqua v. Public Service Commission*, 160 A.2d 225 (Pa. Super. 1932)(under former Public Service Company Act). Sourcing water to another municipal entity does not equate with sourcing water to the public.

It is well settled that the Public Utility Commission has jurisdiction over the price charged for utility services based upon the proposition that **individuals cannot, by contract**, abridge the police powers of the Commonwealth which protect the general welfare and the public interest. *See Grant v. Southwestern Pennsylvania Water Authority*, 601 A.2d 1359 (Pa. Cmwlth. 1992). This proposition has been applied in cases where the disputed rate is established by a deed covenant running with the land. *See, e.g., Leiper v. Baltimore and Philadelphia Railroad Company*, 105 A. 551, 553 (Pa. 1918). This illustrates that the purpose of the PUC is to protect the public individual, not two instrumentalities of the Commonwealth.

It is beyond dispute that a municipality operating a water system is, for purposes of regulation, a private business corporation. *White Oak Borough Authority Appeal*, 372 Pa. 424, 93 A.2d 437 (1953). A municipality furnishing water service solely within its political boundaries is exempt from regulation by the PUC. In *Akron v. PUC*, the Commonwealth Court held that the municipality was subject to the PUC when it served an individual tract of land

outside of its corporate limits. *See Akron v. Pennsylvania Public Utility Commission*, 2 Pa. Commonwealth Ct. 625, 630 (1971), *rev'd on other grounds*, 453 Pa. 554, 310 A.2d 271 (1973).

This follows because an individual tract of land is a member of the public.

Since sourcing water to another municipal corporation is not sourcing water to the public for compensation, the Borough is not acting as a public utility when it is sourcing water to the Authority, as it is here. The Borough does not charge rates to Authority's customers directly. The PUC does not regulate either party in this matter. <https://www.puc.pa.gov/water-wastewater/>.

The Authority's Motion for Summary Judgment must be denied, or in the alternative, summary judgment should be granted to the Borough because as a matter of law, the PUC does not have jurisdiction to hear this matter.

2. IS THE AUTHORITY ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW.

Suggested Answer: No.

The remainder of the Authority's brief attempts to find no issues of material fact but fails to account for the facts simply alleged in the Borough's Answer to the Complaint or the documentary evidence provided to the Authority. The Borough has adequately explained to the Authority that the increase in costs is related to the DEP requirement to drill a new well, combined with the Authority's failure to enter into a long-term agreement with the Borough that correspondingly affects their ability to obtain financing through PENNVEST and other financing that would require long term agreements with all customers. The Borough has consistently alleged these facts, and the Authority has not rebutted them in any way, except to say that it is too expensive.

For example, note the allegation of the Authority in Paragraph 38 of its Motion for Summary Judgment. It admits that the Borough has provided the peak flows and the average daily flows to illustrate the average daily demand of the system. It is a matter of public notice that DEP requires water demand to be met with the largest water well out of service. However, the Authority does not want to use the information to confirm the opinion of the Borough's engineer, but instead says that the information is not sufficient because the Borough did not perform the calculations for them. The Borough would note that at no time did the Authority request to depose the Borough's engineer to explain how to understand the data it requested. Failure to understand the data requested clearly shows that there is an issue of material fact to be determined at the time of trial.

Because there are material facts at issue that must be determined at the time of trial, the Authority's request for Summary Judgment on the merits must be denied.

WHEREFORE, Borough respectfully requests that the Motion for Summary Judgment 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 FOR SUMMARY JUDGMENT filed by Petroleum Valley Regional Water Authority, it is hereby **ORDERED** that PVRWA’s MOTION is hereby DENIED.

Jeffrey A. Watson
Administrative Law Judge J.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby verifies that on March 21, 2026, a true and correct copy of the Brief in Opposition of Motion for Summary Judgment was served upon the following by U.S. Postal Service, First Class Mail and via email:

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