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Borough of Lodi v. Passaic Valley Water Com'n

Superior Court of New Jersey, Appellate Division - November 22, 2013 - Not Reported in A.3d - 2013 WL 6122592

In 2008, defendant Passaic Valley Water Commission (PVWC or Commission) concluded that, for approximately one decade, it had erred in failing to raise the rates it charged to plaintiff Borough of Lodi (Lodi or Borough) pursuant to a lease provision that permitted rate increases based on increases in wholesale water costs. PVWC made “corrective rate increases” totaling 49% over two years that were designed to bring the rates charged to the level where they would have been if increases in wholesale water costs had been passed on to Lodi.

Lodi filed suit, challenging the increases. The trial court ruled that rate increases to Lodi in 2009 and 2010 were unconscionable; required it to roll back rates to 2008 levels with defined annual increases; required the refund of rates deemed excessive; and restricted future annual rate increases. PVWC appealed.

The appeals court concluded that the term “wholesale water costs” means the costs incurred in delivering water to the Lodi retail distribution system. As for rate increases based upon the increase in “wholesale water costs,” PVWC was authorized to implement such increases only based upon increases in the wholesale water rates for the year preceding the rate increase. To the extent the “corrective rate increases” exceeded the increases available pursuant to this interpretation of the lease, they were not authorized by the lease. Those increases must be rescinded and any amount collected pursuant to the unauthorized increases must be credited or returned to the retail customers.