

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James and Tracy Smyth	:	
	:	
v.	:	C-2024-3052445
	:	
Community Utilities of Pennsylvania, Inc.	:	

ORDER

DENYING PRELIMINARY OBJECTION OF RESPONDENT

On December 9, 2024, James and Tracy Smyth (Complainants or Smyths) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Community Utilities of Pennsylvania, Inc. (CUPA or Respondent). In the Complaint, the Complainants dispute CUPA’s method of calculating wastewater charges.

On December 30, 2024, CUPA filed an Answer with New Matter (Answer) along with a Notice to Plead. In its Answer, CUPA admitted in part and denied in part various material allegations of the Complaint. In its New Matter, CUPA averred that its method of calculating wastewater charges were established in *Pa. PUC et al v. Community Utilities of Pennsylvania Inc.*, Docket Nos. R-2023-3042804 *et al.* (August 1, 2024) (2023 Base Rate Case) and CUPA’s Commission-approved tariff.

The Complainants’ Answer to CUPA’s New Matter was due within twenty days of the date of service of the Answer with New Matter. 52 Pa. Code § 5.63(a). The Complainants did not file an Answer to CUPA’s New Matter.

Also on December 30, 2024, CUPA filed a Preliminary Objection to the Complaint along with a Notice to Plead. In its Preliminary Objection, CUPA reiterated their

argument that its method of calculating wastewater charges were established in *Pa. PUC et al v. Community Utilities of Pennsylvania Inc.*, Docket Nos. R-2023-3042804 *et al.* (August 1, 2024) (2023 Base Rate Case) and CUPA's Commission-approved tariff. Thus, CUPA requests the case be dismissed.

On January 6, 2025, the Complainants filed an Answer to CUPA's Preliminary Objection reiterating their disagreement with CUPA's method of calculating wastewater charges. Additionally, the Complainants argue that CUPA is not in compliance with the Commission-approved settlement in *Pa. PUC et al v. Community Utilities of Pennsylvania Inc.*, Docket Nos. R-2023-3042804 *et al.* (August 1, 2024).

By Hearing Notice dated January 31, 2025, an Initial Call-In Telephonic Hearing was scheduled for March 4, 2025, and the matter was assigned to me.

CUPA's Preliminary Objection is now ready to be ruled upon. For the reasons discussed below, the Preliminary Objection will be denied, and the case will proceed to a hearing.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. The Commission's Rules provide, in relevant part:

§ 5.101. Preliminary objections.

- (a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:
- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

* * *

52 Pa. Code § 5.101(a).

When deciding preliminary objections, the Commission must accept as true all well pleaded material facts of the nonmoving party, as well as every reasonable inference deducible from those facts. *County of Allegheny v. Commonwealth*, 490 A. 2d 402 (Pa. 1985); *Commonwealth v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the pleadings in the light most favorable to the nonmoving party and should dismiss a pleading only if it appears that the nonmoving party would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994); *see also*, *Interstate Traveler Services, Inc. v. Pennsylvania Department of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). “For purposes of testing the legal sufficiency of the challenged pleading, a [motion to dismiss] ... admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts.” *Marinoff v. Bell Tel. Co. of Pa.*, 75 Pa. PUC 489, 491 (1991). All of the non-moving party’s averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees’ Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

In this case, the Complainants Complaint is threefold. First, it appears the Complainants are challenging the Commission-approved settlement in *Pa. PUC et al v. Community Utilities of Pennsylvania Inc.*, Docket Nos. R-2023-3042804 *et al.* (August 1, 2024). To this extent, CUPA is correct that the Complainants are barred from challenging this Settlement by the Public Utility Code (Code) at 66 Pa.C.S. § 316. Section 316 of the Code precludes a collateral attack upon a Commission order that has not been set aside by the Commission or reversed upon appeal.

However, the Complainants also allege that CUPA is not acting in compliance with the terms of the Commission-approved settlement in *Pa. PUC et al v. Community Utilities of Pennsylvania Inc.*, Docket Nos. R-2023-3042804 *et al.* (August 1, 2024). In this regard, when viewing these averments as true for purposes of the Preliminary Objection, it is clear that recovery or relief would be possible for the Complainants.

Finally, to the extent the Complainants are challenging CUPA's Commission-approved tariff, it is well established that a Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). However, since the tariff is only *prima facie* reasonable, the Complainant must be given the opportunity to rebut that presumption. It also follows that if the Complainant is able to rebut that presumption, recovery or relief would be possible for the Complainant. That being said, the Complainant should note that a complainant seeking to evade the effect of an existing tariff provision ***carries a very heavy burden*** of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996)(emphasis added).

Based on the foregoing, I conclude that CUPA has failed to show that the Complainant would not be entitled to relief under any circumstance as a matter of law and the Preliminary Objection must be denied.

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