

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Edward Fryberger	:	
	:	
v.	:	C-2024-3051875
	:	
Community Utilities of Pennsylvania Inc.	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Preliminary Objections filed by a wastewater utility and dismisses a Formal Complaint filed by a customer. The Formal Complaint is legally insufficient as it does not set forth any violation of a Commission regulation, statute or order.

HISTORY OF THE PROCEEDING

On October 29, 2024, Edward Fryberger (“Mr. Fryberger”) filed a Formal Complaint against Community Utilities of Pennsylvania Inc. (“CUPA”) with the

Pennsylvania Public Utility Commission (“Commission”). Mr. Fryberger checked the box stating “other” on the Formal Complaint form and explained the following:

They are charging me sewage rate for water I used for watering my yard. For the last 40 years the sewage rate was always a flat rate paid quarterly until I enrolled in Autopay. It then became a monthly flat rate fee. When I inquired about the exist [sic] sewer bill they told me I needed to ask my water supplier for a "deduction meter." I called AquaPA and they do not offer this device.

Complaint, ¶ 4.

For relief, Mr. Fryberger stated that he wants his bill adjusted.

On December 5, 2024, CUPA filed a Motion for Leave to Respond to Formal Complaint *Nunc Pro Tunc*. In its Motion, CUPA acknowledged that the deadline for filing an Answer to the Complaint had passed but explained that it did not receive notice of the Complaint until November 27, 2024, due to the Commission serving the Complaint upon CUPA based on outdated contact information. CUPA requested that the Commission permit it to file responsive pleadings to the Complaint.

The Motion for Leave to Respond to Formal Complaint *Nunc Pro Tunc* contained a Notice to Plead for Mr. Fryberger to file a Response to the Motion within 20 days of its service. Mr. Fryberger did not file a Response to the Motion.

On December 20, 2024, CUPA filed an Answer with New Matter to the Complaint. In its Answer, CUPA admitted or denied the allegations of the Complaint. Specifically, CUPA admitted that Mr. Fryberger was moved from flat rate billing to metered use by utilizing volumes from Aqua’s water invoices. CUPA elaborated this

point in its New Matter, wherein CUPA asserted that in its 2023 base rate case¹ the Commission approved CUPA's proposal to transition unmetered, flat rate wastewater customers to metered rates based on the customer's actual water usage data from Aqua Pennsylvania Inc. ("Aqua"), the water provider. Thus, CUPA asserted that it is adhering to its Commission-approved tariff regarding wastewater metered charges. CUPA further asserted that its tariff does not contain a provision that would allow it to utilize deduct meters. CUPA concluded its Answer with New Matter by requesting dismissal of the Complaint.

The Answer with New Matter contained a Notice to Plead for Mr. Fryberger to file a Response to CUPA's New Matter within 20 days of its service. Mr. Fryberger did not file a Response to CUPA's New Matter.

Also on December 20, 2024, CUPA filed Preliminary Objections to the Complaint. CUPA in its Preliminary Objections argued that the Complaint is legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4). CUPA explained that in its 2021 base rate case,² it agreed to propose metered rates for flat rate wastewater customers. As a result, in its 2023 base rate case, CUPA proposed metered rates for previously unmetered, flat rate wastewater customers based on customer's actual water usage per the data obtained from Aqua. The 2023 base rate case resulted in a Settlement, approved by the Commission on August 1, 2024. CUPA therefore argued that the actions complained of in the Complaint are in adherence to Commission orders and CUPA's Commission-approved tariff and thus do not violate any Commission order, regulation, or the Public

¹ See *Pa. Pub. Util. Comm'n et al. v. Cmty. Utils. of Pa. Inc.*, Docket Nos. R-2023-3042804 (water) and R-2023-3042805 (wastewater) (Opinion and Order entered Aug. 1, 2024) ("2023 base rate case").

² See *Pa. Pub. Util. Comm'n et al. v. Cmty. Utils. of Pa. Inc.*, Docket Nos. R-2021-3025206 (water) and R-2021-3025207 (wastewater) (Opinion and Order entered Jan. 13, 2022) ("2021 base rate case").

Utility Code. CUPA further argued that its tariff does not contain a provision that would allow it to utilize deduct meters.

The Preliminary Objections contained a Notice to Plead for Mr. Fryberger to file an Answer to CUPA’s Preliminary Objections within 10 days of its service. Mr. Fryberger did not file an Answer to CUPA’s Preliminary Objections.

On January 21, 2025, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me as Administrative Law Judge (“ALJ”).

Respondent’s Preliminary Objections are ready to be ruled upon and will be granted in the Ordering paragraphs below.

FINDINGS OF FACT

1. Complainant in this case is Edward Fryberger.
2. Respondent in this case is Community Utilities of Pennsylvania Inc.
3. On October 29, 2024, Mr. Fryberger filed a Formal Complaint against CUPA with the Commission.
4. On December 20, 2024, CUPA filed an Answer with New Matter to the Complaint.
5. Also on December 20, 2024, CUPA filed Preliminary Objections to the Complaint seeking dismissal of the Complaint pursuant to 52 Pa. Code § 5.101(a)(4).

6. Mr. Fryberger did not file a Response to CUPA's New Matter, nor an Answer to CUPA's Preliminary Objections.

DISCUSSION

Legal Standards

CUPA in this matter filed Preliminary Objections to the Formal Complaint. The Commission's regulations provide that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). The grounds for preliminary objections are limited to those set forth as follows:

- (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).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary

objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Pa. State Lodge, Fraternal Order of Police v. Dept. of Conservation & Nat. Res.*, 909 A.2d 413 (Pa. Cmwlth. 2006), *aff'd*, 924 A.2d 1203 (Pa. 2007).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *Cnty. of Allegheny v. Commonwealth of Pa.*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pa. v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa.P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

In this matter, the Respondent filed Preliminary Objections seeking dismissal of the Complaint pursuant to 52 Pa. Code § 5.101(a)(4). The provision at 52 Pa. Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n.*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n.*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n.*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Auth. v. Pa. Pub. Util. Comm'n.*, 103 A.2d 502 (Pa. Super. 1954).

A complaint must set forth “an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 66 Pa.C.S. § 701. However, the Commission

may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b).

Analysis

Accepting the facts alleged in the Complaint as true for the purpose of disposing of CUPA's Preliminary Objections, CUPA has transitioned Mr. Fryberger from being billed based on flat rates to metered rates for his wastewater service.³ CUPA contends that the Complaint fails to allege that it has violated the Public Utility Code, Commission regulations or orders. Therefore, CUPA asserts that the Complaint is legally insufficient. I agree.

The Commission's Opinion and Order in the 2023 base rate case proceeding authorized CUPA to transition unmetered, flat rate wastewater customers to metered rates based on the customer's actual water usage data from Aqua, based on the Commission's approval of a settlement achieved between CUPA and the parties to that proceeding. On August 2, 2024, CUPA filed a wastewater tariff supplement in order to implement this Commission-approved method of billing its wastewater customers. By Secretarial Letter dated August 15, 2024, the Commission approved CUPA's wastewater tariff supplement.

A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Cmwlth. 2006). Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect its contents. 66 Pa.C.S. § 1302;

³ I note that Mr. Fryberger mentioned that he inquired with CUPA about deduct metering but raises no allegations in the Complaint regarding this subject.

52 Pa. Code § 53.25; *Phila. Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 808 A.2d 1044 (Pa. Cmwlth. 2002). Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers. *Pa. Elec. Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa. Cmwlth. 1995). The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. *Phila. Suburban Water Co. v. Pa. Pub. Util. Comm'n*, 808 A.2d 1044 (Pa. Cmwlth. 2002). A public utility may not charge a rate other than the rates set forth in its tariff. 66 Pa.C.S. § 1303.

CUPA is not in violation of any statute, regulation or order which the Commission has jurisdiction to administer as a result billing Mr. Fryberger for wastewater service on the basis of his water usage. CUPA is simply complying with its Commission-approved tariff by billing Mr. Fryberger consistent with its tariff.⁴ The Complaint does not set forth any violation of a Commission regulation, statute, order. The Complaint does not set forth any violation of CUPA's Commission-approved tariff. For these reasons, the Complaint is legally insufficient.

The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b). The Complaint is legally insufficient, and a hearing would not enable Mr. Fryberger to better explain his position or to provide additional facts that would alter this conclusion.

In *Hall v. Columbia Gas of Pennsylvania*, Docket No. C-2013-2343573 (Final Order entered Mar. 29, 2013) ("*Hall*"), complainant complained of being billed based on the cost of therms used instead of the volume of gas used. The ALJ found that

⁴ I note that Mr. Fryberger did not allege that CUPA billed him incorrectly according to its Commission-approved tariff.

the Commission had approved respondent's conversion to therm billing in respondent's last base rate case and that respondent did not violate a Commission regulation, statute or order by applying its Commission-approved tariff. Thus, the ALJ found that the complaint was legally insufficient, granted the preliminary objections of respondent, and dismissed the complaint without a hearing. The Commission upheld the ALJ's Initial Decision in its Final Order.

In *Benedict v. Columbia Gas of Pennsylvania*, Docket No. C-2015-2494976 (Opinion and Order entered Feb. 10, 2017) ("*Benedict*"), complainant complained of being billed by the utility for natural gas service using a therm multiplier. The ALJ granted the preliminary objections of respondent alleging legal insufficiency and dismissed the complaint without a hearing, finding that the Commission had previously approved the therm billing methodology in respondent's last base rate case. The Commission upheld the ALJ's Initial Decision in its Opinion and Order.

Similarly to *Hall* and *Benedict*, the billing methodology Mr. Fryberger complains of was approved by the Commission in CUPA's last base rate case proceeding, the 2023 base rate case. CUPA's rates proposed in that proceeding were subject to Commission consideration, review, and approval. Mr. Fryberger's opportunity to challenge CUPA's rates was in the 2023 base rate case proceeding.

For the above reasons, CUPA's Preliminary Objections will be granted and the Complaint dismissed in the Ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.

2. The Commission's regulations provide that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a).

3. The provision at 52 Pa. Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists.

4. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n.*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n.*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n.*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Auth. v. Pa. Pub. Util. Comm'n.*, 103 A.2d 502 (Pa. Super. 1954).

5. A tariff is a set of operating rules imposed by the Commission that each public utility must follow in order to provide service to its customers. *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm'n.*, 912 A.2d 386 (Pa. Cmwlth. 2006).

6. A public utility may not charge a rate other than the rates set forth in its tariff. 66 Pa.C.S. § 1303.

7. A complaint must set forth "an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission." 66 Pa.C.S. § 701.

8. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b).

