

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

Mahendra Orilall	:	
	:	
v.	:	C-2024-3052124
	:	
Community Utilities of Pennsylvania Inc.	:	

INTERIM ORDER REGARDING PRELIMINARY OBJECTIONS

On November 14, 2024, Mahendra Orilall (Complainant) filed a formal Complaint against Community Utilities of Pennsylvania Inc. (Respondent or CUPA or Company) alleging that there were incorrect charges on the bills and requested a payment arrangement. Specifically, the Complainant requested that the Commission review the new rate increase and how CUPA has handled the rollout of the increase.

The Commission's Secretary served the Complaint electronically on November 15, 2024.

On December 30, 2025, CUPA filed a Motion for Leave to file an Answer and New Matter in this case due to an administrative error which caused it not to receive notice of the Complaint until December 23, 2024.

On December 30, 2024, CUPA filed its Answer and New Matter, which denied the material allegations of the Complaint.

Also on December 30, 2024, CUPA filed Preliminary Objections. CUPA alleges that the Complaint is legally insufficient in that it does not have any authority to provide the relief requested.

On January 3, 2025, the Complainant filed a response to the Motion for Leave.

The Complainant also filed a response to the Preliminary Objections on January 8, 2025.

Via Motion Judge Assignment dated January 13, 2025, the matter was assigned to me as the presiding officer. This matter is now ripe for a determination.

DISCUSSION

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-000935435 (July 18, 1994). When considering the preliminary objection, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002).” *Dept. of Auditor General, et al. v. State Employees’ Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003). 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).

The regulation reads as follows:

§ 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).

On August 20, 2024, the Complainant filed a Formal Complaint which indicated that there were incorrect charges on the utility bills. Specifically, the Complainant alleges that the Company has mishandled the rollout of the rate increase and questions the rate increase itself. The Complainant also requested a payment arrangement.

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlt. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlt. 2002). 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.Cmwlt. 1997).

Based on the pleadings in the Complaint, the Complainant is challenging the rate increase and how the rate was implemented by the Company. According to the Public Utility Code, a public utility's rates must be just and reasonable. 66 Pa.C.S. § 1301. The Commission has broad discretion in determining whether rates are reasonable and to decide what factors it will consider in setting or evaluating a utility's rates. *Pa. Publ. Util. Comm'n v. City of Bethlehem - Water Dep't*, Docket No. R-2020-3020256 (Opinion and Order entered April 15, 2021) (citing *Popowsky v. Pa. Pub. Util. Comm'n*, 683 A.2d 958 (Pa. Cmwlt. 1996). *See also*, *Popowsky v. Pa. Pub. Util. Comm'n*, 665 A.2d 808 (Pa. 1995). To the extent that customers challenge a utility's Commission-approved, tariffed rates for service, customers have the burden of proving by a preponderance of the evidence that the rates are unjust, unreasonable or in violation of a Commission regulation or order. *Schellhammer v. Pa. Pub. Util. Comm'n*, 629 A.2d 189 (Cmwlt. Ct. 1993); 66 Pa. C.S. §§315(a), 332(a) and 1301.

While a strong presumption exists that rates in a utility's Commission-approved tariff are just and reasonable, that does not mean that a customer cannot challenge a rate or tariff. *Popowsky v. Pa. Pub. Util. Comm'n*, 669 A.2d 1029 (Cmwlt.

Ct. 1995). As such, I find that the Complainant's allegation related to the rate increase can move forward.

Further, the Public Utility Code requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The statutory definition of "service" is to be broadly construed. *Kim Betchy v. West Penn Power Co.*, Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020) (citing *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995)). As defined in the Code:

"Service." Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them

66 Pa.C.S. § 102.

It is clear that the Complainant is disputing the service that was provided in this instance related to the Company's rollout of the rate increase. There is clearly a dispute between the parties regarding the quality of service that the Company provided when the rate increase went into effect. Lastly, the Complainant requests a payment

arrangement. While the Company indicates that the Complainant did not have an outstanding balance as of December 20, 2024, that could have changed. Therefore, the Preliminary Objections filed by CUPA are denied and the issues should be sent to the Office of Administrative Law Judge's Mediation Unit for a resolution conference.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections of Community Utilities of Pennsylvania Inc. filed in the case captioned *Mahendra Orilall v Community Utilities of Pennsylvania Inc.*, Docket No. C-2024-3052124, are denied.

2. That the issues should be sent to the Office of Administrative Law Judge's Mediation Unit for a resolution conference.

Dated: February 26, 2025

_____/s/
Marta Guhl
Administrative Law Judge

C-2024-3052124 - MAHENDRA ORILALL v. COMMUNITY UTILITIES OF PENNSYLVANIA INC

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Served via eService February 26, 2025

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