

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Matthew DiNatale	:	
	:	
v.	:	C-2024-3052447
	:	
Community Utilities of Pennsylvania Inc.	:	

**INTERIM ORDER REGARDING PRELIMINARY OBJECTIONS**

On December 9, 2024, Matthew DiNatale (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 December 9, 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.

As of the date of this order, the Complainant has not filed any response to the New Matter or Preliminary Objections.

Via Motion Judge Assignment dated January 29, 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).

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. Cmwlth. 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 (Cmwlth. 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 (Cmwlth. Ct. 1995). As such, I find that the Complainant's allegation related to the rate increase can move forward. 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 *Matthew DiNatale v Community Utilities of Pennsylvania Inc.*, Docket No. C-2024-3052447, are denied.



**C-2024-3052447 - MATTHEW J DINATALE v. COMMUNITY UTILITIES OF PENNSYLVANIA INC**

MATTHEW J DINATALE  
1553 BRIGHT GLADE CIRCLE  
DOWNTOWN, PA 19335  
**609-932-9179**

[mattdinat@yahoo.com](mailto:mattdinat@yahoo.com)

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WHITNEY E SNYDER ESQUIRE  
ERICH STRUBLE ESQUIRE  
HMS LEGAL LLP  
501 CORPORATE CIRCLE SUITE 302  
HARRISBURG PA 17110  
**717-236-1300**

**717-703-0812**

[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

[ewstruble@hmslegal.com](mailto:ewstruble@hmslegal.com)

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*(Counsel for Community Utilities of Pennsylvania, Inc.)*