

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sean Petty	:	
	:	
v.	:	C-2024-3052590
	:	
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 December 18, 2024, Sean Petty (“Mr. Petty”) filed a Formal Complaint against Community Utilities of Pennsylvania Inc. (“CUPA”) with the Pennsylvania Public Utility Commission (“Commission”). Mr. Petty checked the box stating “other” on the Formal Complaint form and explained the following:

Following the approval of a new tariff, R-2023-3042804, which went into effect August 2024, Community Utilities of Pennsylvania began billing for wastewater services using water usage data from Aqua PA. I have no objection to the new rate of the tariff. My issue is that the new tariff did not contemplate homeowners (or others) with in-ground irrigation systems. My monthly bill went from about \$75 per month to more than \$800 during August, September, and November when the irrigation system was being used. CUPA offered no alternative metering or other resolution despite numerous attempts.

Complaint, ¶ 4.

For relief, Mr. Petty stated the following:

I would request that the PUC modify the tariff or find that an alternative metering system should be available for irrigation systems. This should either be a “deduct” meter or a way to have Aqua PA meter the irrigation differently and prevent that from being reported to CUPA. I have no objection to paying an additional fee for the installation of an alternate meter.

Complaint, ¶ 5.

Also attached to the Complaint are three CUPA wastewater bills, with due dates of April 8, 2024, October 15, 2024, and December 11, 2024.

On January 7, 2025, CUPA filed an Answer with New Matter to the Complaint. In its Answer, CUPA admitted or denied the allegations of the Complaint, specifically admitting that it utilizes Mr. Petty’s Aqua Pennsylvania Inc.’s (“Aqua PA”) water bill volumes to calculate his wastewater charges. CUPA asserted that there is no legal basis for CUPA to provide an adjustment to Mr. Petty’s bill.

In its New Matter, CUPA asserted that in its 2023 base rate case<sup>1</sup> 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 PA, 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. Petty to file a Reply to CUPA's New Matter within 20 days of its service. Mr. Petty did not file a Reply to CUPA's New Matter.

Also on January 7, 2025, 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,<sup>2</sup> 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 PA. The 2023 base rate case resulted in a Commission-approved Settlement. 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 Utility Code. CUPA further argued that its tariff does not contain a provision that would allow it to utilize deduct meters.

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<sup>1</sup> See *Pa. Pub. Util. Comm'n 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").

<sup>2</sup> See *Pa. Pub. Util. Comm'n 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").

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

On February 26, 2025, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me as Administrative Law Judge ("ALJ").

CUPA'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 Sean Petty.
2. Respondent in this case is Community Utilities of Pennsylvania Inc.
3. On December 18, 2024, Mr. Petty filed a Formal Complaint against CUPA with the Commission.
4. On January 7, 2025, CUPA filed an Answer with New Matter to the Complaint.
5. Also on January 7, 2025, CUPA filed Preliminary Objections to the Complaint seeking dismissal of the Complaint pursuant to 52 Pa. Code § 5.101(a)(4).
6. Mr. Petty did not file a Reply to CUPA's New Matter or 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.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

In this matter, CUPA 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 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).

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 in the Complaint as true for the purpose of disposing of the Preliminary Objections, CUPA began billing Mr. Petty for his wastewater services based on his water usage based on data from Aqua PA in August 2024. Mr. Petty complains that CUPA's new tariff "did not contemplate homeowners (or others) with in-ground irrigation systems." For relief, he requests that CUPA's tariff be modified or that CUPA make available an alternative metering system for irrigation systems, such as deduct metering.<sup>3</sup>

Viewing the Complaint in the light most favorable to Mr. Petty, I agree with the position of CUPA that the Complaint is legally insufficient. The Complaint fails to allege that CUPA has violated the Public Utility Code, Commission regulations, or Commission orders.

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. 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.

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<sup>3</sup> Deduct metering is a mechanism which allows individual customers, using a significant amount of outside water, such as for an irrigation system, to have a separate irrigation water meter installed. This second meter, known as a deduct meter, measures the flow of water that does not enter the wastewater system and is used to calculate a reduction in wastewater charges.

CUPA's Commission-approved wastewater tariff supplement does not contain a provision that would allow it to use deduct meters.<sup>4</sup>

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; 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 consistently 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.

In asking CUPA to make available an alternative metering system for irrigation systems, such as deduct metering, Mr. Petty is asking for the Commission to allow CUPA to deviate from its tariff, which the Commission has no authority to do. In charging Mr. Petty wastewater rates based on his Aqua PA water usage, and not making available an alternative metering system for measuring usage, CUPA is complying with its Commission-approved tariff.

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<sup>4</sup> See Community Utilities of Pennsylvania, Inc. Supplement No. 15 to Tariff Wastewater Pa. P.U.C. No. 1.

As the Complaint does not set forth any violation of a Commission regulation, statute or order, it 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. Petty to better explain his position or to provide additional facts that would alter this conclusion.

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. P.a. 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. CUPA's Commission-approved wastewater tariff supplement does not contain a provision that would allow it to use deduct meters. Community Utilities of Pennsylvania, Inc. Supplement No. 15 to Tariff Wastewater Pa. P.U.C. No. 1.

8. 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.

9. 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).

10. A hearing in this matter is not necessary in the public interest. 66 Pa.C.S. § 703(b).

