

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Leron Alston	:	
	:	
v.	:	F-2025-3052978
	:	
Community Utilities of Pennsylvania Inc.	:	

ORDER
DENYING PRELIMINARY OBJECTIONS

HISTORY OF THE PROCEEDING

On January 16, 2025, Leron Alston (“Mr. Alston”) filed a Formal Complaint (“Complaint”) against Community Utilities of Pennsylvania Inc. (“CUPA”) with the Pennsylvania Public Utility Commission (“Commission”). Mr. Alston checked the boxes on the Complaint form stating that CUPA is threatening to or has already shut off his service and that there were incorrect charges on his bill. Mr. Alston claimed that he is being charged for wastewater service that he does not use, stating that he does not have a wastewater meter to accurately measure wastewater usage. For relief, Mr. Alston requested that he be refunded for all his wastewater usage charges. Further, on page 4 of the Complaint form, Mr. Alston claimed that he attempted to contact CUPA concerning its low-income assistance programs, but that CUPA did not respond to his calls and that CUPA’s website application to apply for low-income assistance was no longer active. Complaint, p. 4. Mr. Alston attached his June 30, 2017 bill and a letter titled “low-income assistance programs” to his Complaint.

On February 5, 2025, CUPA filed an Answer with New Matter to the Complaint. CUPA denied that there were incorrect charges on Mr. Alston’s bill and asserted that there is no legal basis for CUPA to provide a refund to Mr. Alston. CUPA admitted that it provided Mr. Alston with information regarding low-income assistance including how to apply for low-income rates and CUPA’s arrearages management program available to low-income consumers. CUPA

denied however that its website application to apply for low-income assistance or thereto on the letter attached to the Complaint was incorrect or “a dead no longer active website.”

In its New Matter, CUPA asserted that pursuant to the Commission-approved settlement in its 2023 base rate case¹, CUPA bills its wastewater customers metered rates based on the customer’s actual water usage data from Aqua Pennsylvania Inc. (“Aqua”), the water provider. CUPA asserted that it is adhering to its Commission-approved tariff regarding Mr. Alston’s wastewater metered charges. 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. Alston to file a Response to CUPA’s New Matter within 20 days of its service. Mr. Alston did not file a Response to CUPA’s New Matter.

Also on February 5, 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,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 Utility Code.

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”).

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

On March 10, 2025, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me as Administrative Law Judge.

Respondent's Preliminary Objections are ready to be ruled upon and for the reasons explained below, will be denied.

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

In this case, Mr. Alston's Complaint is twofold. First, Mr. Alston complains about his wastewater rates. 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.

To the extent that Mr. Alston challenges the wastewater rates charged pursuant to CUPA's tariff, 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.

Second however, Mr. Alston also complains in his Complaint about not being able to enter into a low-income payment plan with CUPA. Mr. Alston alleged that CUPA has not been responsive to his phone calls and that CUPA's website application to apply for low-income assistance is no longer active. Accepting these facts alleged in the Complaint as true for the purpose of disposing of CUPA's Preliminary Objections, it is clear that relief would be possible for Mr. Alston. Therefore, CUPA has not met its burden of proving that Mr. Alston would not be entitled to relief under any circumstances as a matter of law.

For the above reasons, CUPA's Preliminary Objections will be denied in the Ordering paragraphs below.

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