

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David P. Lewis	:	
	:	
v.	:	C-2025-3052926
	:	
Community Utilities of Pennsylvania, Inc.	:	

**ORDER
DENYING PRELIMINARY OBJECTIONS OF RESPONDENT**

On January 10, 2025, David P. Lewis (Complainant or Mr. Lewis) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Community Utilities of Pennsylvania, Inc. (CUPA or Respondent). In the Complaint, the Complainant disputes CUPA’s recent rate increase and method of calculating wastewater charges.

On February 3, 2025, CUPA filed an Answer with New Matter (Answer) along with a Notice to Plead. In its Answer, CUPA admitted in part and denied in part various material allegations of the Complaint. In its New Matter, CUPA averred that the Complaint should be dismissed because: (A) CUPA’s rates are presumed just and reasonable and the Commission cannot engage in retroactive ratemaking; (B) it fails to state a claim for which relief can be granted because it fails to allege that CUPA violated the Public Utility Code, a Commission regulation or order, or CUPA’s tariff; and (C) it is legally insufficient because the requested relief is unavailable as a matter of law.

The Complainant’ Answer to CUPA’s New Matter was due within twenty days of the date of service of the Answer with New Matter. 52 Pa. Code § 5.63(a). The Complainant did not file an Answer to CUPA’s New Matter.

Also on February 3, 2025, CUPA filed Preliminary Objections to the Complaint

along with a Notice to Plead. In its Preliminary Objection, CUPA reiterated their argument that Complainant is not entitled to relief as a matter of law because CUPA is adhering to Commission orders approving settlements and its Commission-approved tariff. Thus, CUPA requests the case be dismissed.

The Complainant's Answer to CUPA's Preliminary Objections was due within ten days of the date of service of the Preliminary Objections. 52 Pa. Code § 5.101. The Complainant did not file an Answer to CUPA's Preliminary Objections.

By Hearing Notice dated March 11, 2025, an Initial Call-In Telephonic Hearing was scheduled for May 15, 2025, and the matter was assigned to me.

CUPA's Preliminary Objections are now ready to be ruled upon. For the reasons discussed below, the Preliminary Objections will be denied, and the case will proceed to a hearing.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. The Commission's Rules provide, in relevant part:

§ 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).

When deciding preliminary objections, the Commission must accept as true all well pleaded material facts of the nonmoving party, as well as every reasonable inference deducible from those facts. *County of Allegheny v. Commonwealth*, 490 A. 2d 402 (Pa. 1985); *Commonwealth v. Bell Tel. Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the pleadings in the light most favorable to the nonmoving party and should dismiss a pleading only if it appears that the nonmoving party would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994); *see also*, *Interstate Traveler Services, Inc. v. Pennsylvania Department of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). “For purposes of testing the legal sufficiency of the challenged pleading, a [motion to dismiss] admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts.” *Marinoff v. Bell Tel. Co. of Pa.*, 75 Pa. PUC 489, 491 (1991). 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).

In this case, it appears the Complainant is challenging CUPA’s Commission-approved tariff. It is well established that a Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Zucker v. Pa. Pub. Util. Comm’n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). However, since

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