

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bret Pfaff	:	
	:	
v.	:	C-2025-3053638
	:	
Community Utilities of Pennsylvania Inc.	:	

INTERIM ORDER ON RESPONDENT’S PRELIMINARY OBJECTIONS

On February 26, 2025, Bret Pfaff (Complainant or Mr. Pfaff) filed a Formal Complaint (Complaint) against Community Utilities of Pennsylvania Inc. (CUPA, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission) alleging that there are incorrect charges on his wastewater bill. More specifically, Mr. Pfaff avers that CUPA’s current wastewater rate increase is not in line with the Commission-approved settlement and, that the Company is charging wastewater rates for water that is not processed through its facilities.

As relief, the Complainant requests that the Commission investigate CUPA's newly implemented rate increase as well as the Company’s new methods of billing wastewater customers based on "water-in" usage. The Complainant seeks a payment arrangement as well as a refund of any overcharges.

On March 19, 2025, the Respondent filed an Answer and New Matter, along with a Notice to Plead. In its Answer, CUPA denies the material allegations of the Complaint; whereas, in its New Matter, Respondent avers that Mr. Pfaff’s Complaint fails as a matter of law, because even if all allegations within the Complaint are true, CUPA has not violated a Commission Order, regulation, or the Public Utility Code. New Matter ¶ 14, citing *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984). CUPA further argues that its rate design, resultant rates, and average increases were fully set forth in the Commission-approved Settlement between CUPA, I&E, OCA, and OSBA in CUPA’s 2023 Base Rate Case. *Pa. PUC et al v. Community*

Utilities of Pennsylvania Inc., Docket Nos. R-2023-3042804 et al. Opinion and Order at 15-16 (entered August 1, 2024) (2023 Base Rate Case), Joint Petition for Settlement of 2023 Base Rate Case at Appendices E, F. In particular, Appendix F contained the percentage of the rate increase for all levels of wastewater usage from the flat rate to metered rates. In view of this, CUPA reasons that the Commission approved that customers using higher volumes would face significant rate increases because the Commission expressly approved these rates as just and reasonable. New Matter ¶ 20.

Next, CUPA maintains that pursuant to 66 Pa.C.S. § 1303, it must adhere to its Commission-approved tariff and can only charge the Commission-approved rates on the terms therein. New Matter ¶ 23. Its Tariff does not contain a provision that would allow it to utilize deduct meters. New Matter ¶ 24. CUPA would need Commission approval through a separate proceeding to implement deduct metering, likely a rate proceeding. *Id.*

Also on March 19, 2025, the Respondent filed a Preliminary Objection seeking to dismiss the Complaint as legally insufficient. In its Preliminary Objection, CUPA argues that the actions complained about in Mr. Pfaff's 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.

On March 28, 2025, Mr. Pfaff filed an Answer to CUPA's Preliminary Objection in which he reiterates the claims and relief sought in his Complaint. Mr. Pfaff stated that pursuant to 66 Pa. C.S. § 315(a) the burden of proving that the rate involved is just and reasonable is on the public utility. He further argued that CUPA's newly implemented rates and methodology go against Cost-of-Service Principles and are unreasonable and unjustifiable.

By Motion Judge Assignment Notice dated April 3, 2025, CUPA's Preliminary Objection was assigned to me for disposition.

CUPA's Preliminary Objection is ready for disposition.

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide:

§ 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.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa.*

State Ethics Comm'n, 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). 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 Bd.*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

In his Formal Complaint, Mr. Pfaff claims that CUPA's current wastewater rate increase is not in line with the Commission-approved settlement and, that the Company is charging wastewater rates for water that is not processed through its facilities.

The Respondent seeks dismissal of the Formal Complaint because, assuming everything the Complaint says is true, 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

Pennsylvania courts have repeatedly held that tariff provisions previously approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). **A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable.** *Citing Shenano Twp. bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996). (Emphasis added).

It is well within this Commission's jurisdiction and power to review and investigate the reasonableness of the tariff provisions of a utility. Since Mr. Pfaff is challenging the reasonableness of CUPA's tariff pertaining to billing for wastewater service, CUPA cannot

prevail on its Preliminary Objection as a matter of law. However, it bears repeating that for Mr. Pfaff to prevail on this issue, he must successfully carry the heavy burden of proving that the facts and circumstances leading to the creation of the Commission's approval of CUPA's current billing method for wastewater service have changed so drastically as to render the application of the tariff provision unreasonable.

For the reasons stated above, CUPA's Preliminary Objection shall be denied. The case shall be set for a hearing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Community Utilities of Pennsylvania Inc. in the matter of Bret Pfaff v. Community Utilities of Pennsylvania Inc. at Docket No. C-2025-3053638 is denied.
2. That the matter shall be set for a hearing to address the issues raised in the Complaint.

Date: May 19, 2025

_____/s/
Eranda Vero
Administrative Law Judge

C-2025-3053638 - BRET PFAFF v. COMMUNITY UTILITIES OF PENNSYLVANIA INC

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