

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Sean Petty

Public Meeting of May 22, 2025

3052590-ALJ

v.

Docket No. C-2024-3052590

Community Utilities of Pennsylvania, Inc.

MOTION OF CHAIRMAN STEPHEN M. DeFRANK

Before the Commission for consideration today is the complaint of Sean Petty against Community Utilities of Pennsylvania, Inc. (CUPA). The Commission previously approved a new tariff to allow CUPA to begin billing for wastewater services using water usage data from Aqua Pennsylvania Inc., Mr. Petty's water company. In his complaint, however, Mr. Petty stated, among other things, that he has no objection to the new rate of the tariff, but that the new tariff did not contemplate homeowners or others like him with in-ground irrigation systems. Mr. Petty averred, in part, that the new tariff caused his wastewater bill to increase from \$75 per month to more than \$800 during certain months. As relief, Mr. Petty requested that the tariff be modified or that an alternative metering system be available for irrigation systems.

In response to the complaint, CUPA filed a Preliminary Objection arguing that the actions complained of in the complaint are in compliance with CUPA's Commission-approved tariff. CUPA argued that the complaint should therefore be dismissed.

The Administrative Law Judge (ALJ) agreed with CUPA and issued an Initial Decision granting the Preliminary Objection and dismissing Mr. Petty's complaint prior to a hearing. The Initial Decision found that the complaint was legally insufficient because the Commission-approved wastewater tariff does not contain a provision that would allow customers to use deduct meters.¹ The Initial Decision further stated that "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."²

¹ Initial Decision at 7-8. 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 that measures the flow of water that does not enter the wastewater system and is used to calculate a reduction in wastewater charges. *Id.* at n.3.

² Initial Decision at 8.

The Initial Decision granting the Preliminary Objection and dismissing the complaint must be reversed, the Preliminary Objection denied, and the matter remanded back to OALJ for a hearing.

Consumers have a right to file a complaint and be heard when they believe that an existing tariff is unreasonable when applied to them. Any prohibition on allowing a utility to deviate from its tariff that the ALJ relied upon should not result in the dismissal of Mr. Petty's complaint arguing that CUPA's existing tariff is unreasonable as applied to him. Although tariffs are considered prima facie reasonable, that does not mean they cannot be challenged in a complaint. Rather, a complainant seeking to evade the effect of an existing tariff provision must prove that facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable.³

This is especially true where the complaint is being dismissed prior to a hearing in response to a preliminary objection, as is the case here. A preliminary objection seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.⁴ The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the motion, all well-pleaded material facts of the other party, as well as every inference fairly deducible from those facts.⁵ The Commission must view the complaint in this case in the light most favorable to Mr. Petty and should dismiss the complaint only if it appears that Mr. Petty would not be entitled to relief under any circumstances as a matter of law.⁶

In this case, when reading Mr. Petty's complaint in the light most favorable to him, it is not clear that he is not entitled to any relief under any circumstances as a matter of law. It may be, for example, that, despite the heavy burden to contest the application of an existing tariff, the prohibition on using deduct meters is not reasonable as applied to Mr. Petty which Mr. Petty averred caused his bill to increase to \$800 for certain months. CUPA's Preliminary Objection must be denied, the Initial Decision must be reversed and the matter remanded to the Office of Administrative Law Judge for further hearings to allow Mr. Petty the opportunity to demonstrate that CUPA's tariff as applied to him is unreasonable and not have his case dismissed on a preliminary basis.⁷

³ *Shenango Township Board of Supervisors v. Pa. P.U.C.*, 686 A.2d 910 (Pa. Cmwlth 1996) at 914 (noting that the burden to contest an existing tariff is a heavy one).

⁴ *Interstate Traveller Servs., Inc. v. Pa. Dept. of Env't Res.*, 406 A.2d 1020 (Pa. 1979) (*Interstate*).

⁵ *Cnty. of Allegheny v. Commonwealth*, A.2d 402 (Pa. 1985).

⁶ *Equitable Small Transp. Interveners v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994); *see also Interstate*.

⁷ Furthermore, it is noted that, in *Richard Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993), the Commission determined that unrepresented complainants should have an opportunity to be heard orally, and not have their case dismissed on the basis of a preliminary pleading. *Id.* at 7 (in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form and to deny unrepresented complainants a meaningful opportunity to be heard in such cases can be viewed as a gross abuse of authority).

THEREFORE, I MOVE:

1. That the Initial Decision of Administrative Law Judge Alphonso Arnold III issued at this docket and dated March 26, 2025 is reversed and remanded to the Office of Administrative Law Judge for further hearings, consistent with this motion.
2. That the Preliminary Objection filed by Community Utilities of Pennsylvania, Inc. at this docket is denied.
3. That the Office of Special Assistants prepare an Order consistent with this motion.

May 22, 2025
Date



Stephen M. DeFrank
Chairman