

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held May 22, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Kathryn L. Zerfuss
John F. Coleman, Jr., Concurring in Result Only
Ralph V. Yanora, Concurring in Result Only

Sean Petty

C-2024-3052590

v.

Community Utilities of Pennsylvania, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Alphonso Arnold III, issued on March 26, 2025, dismissing the Formal Complaint (Complaint) of Sean Petty (Mr. Petty or the Complainant) against Community Utilities of Pennsylvania, Inc. (CUPA or the Complainant), in the above-captioned proceeding. Exceptions to the Initial Decision have not been filed. However, we shall exercise our right to review the Initial Decision, pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa.C.S. § 332(h). For the reasons stated below, we shall reverse the

Initial Decision and remand this matter to the Office of Administrative Law Judge (OALJ) for further hearings, consistent with this Opinion and Order.

I. History of the Proceeding

On December 18, 2024, Mr. Petty filed the instant Complaint. Mr. Petty checked the box stating “other” on the Complaint form and stated 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 at ¶ 4.

As relief, the Complainant requested 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 at ¶ 5. Also attached to the Complaint were three CUPA wastewater bills, with due dates of April 8, 2024, October 15, 2024, and December 11, 2024, respectively.

On January 7, 2025, CUPA filed an Answer with New Matter (Answer) to the Complaint. In its Answer, CUPA admitted or denied the various allegations of the Complaint, specifically admitting that it utilizes Mr. Petty's Aqua Pennsylvania Inc.'s (Aqua) water bill volumes to calculate his wastewater charges. CUPA asserted that there is no legal basis for the Company to provide an adjustment to Mr. Petty's bill. Answer at 1-2.

In its New Matter, CUPA asserted that in its decision in *Pa. PUC, et al. v. Cmty. Utils. of Pa. Inc.*, Docket Nos. R-2023-3042804 (water) and R-2023-3042805 (wastewater) (Opinion and Order entered August 1, 2024) (*2023 Base Rate Case*), 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, the water provider. Thus, CUPA asserted that it was adhering to its Commission-approved tariff regarding wastewater metered charges. CUPA further asserted that its Commission-approved tariff does not contain a provision that would allow it to utilize deduct meters.¹ CUPA concluded its Answer with New Matter by requesting dismissal of the Complaint. Answer at 2-7. The Answer with New Matter contained a Notice to Plead for Mr. Petty to file a Reply to CUPA's New Matter within twenty (20) days of its service. Mr. Petty did not file a Reply to CUPA's New Matter. I.D. at 3.

Also on January 7, 2025, CUPA filed Preliminary Objections to the Complaint. Therein, CUPA argued that the Complaint was legally insufficient, pursuant to the Commission's Regulations at 52 Pa. Code § 5.101(a)(4). CUPA noted that in the

¹ 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. I.D. at 7, n.3.

proceeding in *Pa. PUC, et al. v. Cmty. Utils. of Pa. Inc.*, Docket Nos. R-2021-3025206 (water) and R-2021-3025207 (wastewater) (Opinion and Order entered January 13, 2022) (*2021 Base Rate Case*), the Company agreed to propose metered rates for flat rate wastewater customers. As a result, the Company explained that in its *2023 Base Rate Case*, CUPA proposed metered rates for previously unmetered, flat rate wastewater customers based on the customer's actual water usage, per the data obtained from Aqua. CUPA further explained that the *2023 Base Rate Case* resulted in a Commission-approved Settlement. CUPA, therefore, argued that the actions alleged by Mr. Petty in the Complaint were in adherence to Commission orders and CUPA's Commission-approved tariff, and thus did not violate any Commission Order, Regulation, or the Code. CUPA further argued that its Commission-approved tariff does not contain a provision that would allow the Company to utilize deduct meters. Preliminary Objections at 3-6.

The Preliminary Objections contained a Notice to Plead for Mr. Petty to file an Answer to CUPA's Preliminary Objections within ten (10) days of its service. Mr. Petty did not file an Answer to CUPA's Preliminary Objections. I.D. at 4.

On February 26, 2025, the Commission issued a Motion Judge Assignment Notice, assigning this matter to ALJ Arnold. I.D. at 4.

On March 26, 2025, the Commission issued the Initial Decision of ALJ Arnold, wherein he granted CUPA's Preliminary Objections and dismissed the Complaint. I.D. at 1, 9, 11.

As previously noted, no Exceptions to the Initial Decision have been filed.

II. Discussion

A. Legal Standards

1. Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that CUPA is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by CUPA. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to the Company. If the evidence presented by CUPA is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide some additional evidence to rebut that of the Company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Preliminary Objections

Section 5.101(a) of our Rules of Practice and Procedure states that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon, and must 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).

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 non-moving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985) (*County of Allegheny*); *Commonwealth of Pennsylvania v. Bell Telephone Company of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). Thus, the Commission must view a complaint only in the light most favorable to the complainant and should dismiss the complaint only if it appears that the complaint would not be entitled to relief under any circumstances as a matter of law. *Jeffrey W. Smiles v. PPL Electric Util. Corp.*, Docket No. C-2021-3026268 (Opinion and Order entered December 19, 2024) at 11.

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. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989); *Lehigh Valley Power Comm. v. Pa. PUC*, 563 A.2d 548 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. PUC*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Auth. v. Pa. PUC*, 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 or in the public interest. 66 Pa.C.S. § 703(b).

B. Initial Decision

In his Initial Decision, ALJ Arnold reached ten Conclusions of Law. I.D. at 9-10. We shall adopt and incorporate herein by reference the ALJ's Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

The ALJ explained that 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 upon his water usage, per data obtained from Aqua in August 2024. The ALJ noted Mr. Petty's assertion that CUPA's Commission-approved tariff "did not contemplate homeowners (or others) with in-ground irrigation systems." The ALJ also noted the Complainant's request for relief: that CUPA's tariff be modified or that CUPA make available an alternative metering system for irrigation systems, such as deduct metering. I.D. at 7.

The ALJ concluded that, in viewing the Complaint in the light most favorable to the Complainant, the Complaint was legally insufficient. Namely, the ALJ found that the Complainant failed to allege that CUPA has violated the Code, a Commission Regulation, or a Commission Order. Rather, the ALJ explained, the Commission's Opinion and Order in the *2023 Base Rate Case* authorized CUPA to transition unmetered, flat rate wastewater customers to metered rates based on the customer's actual water usage data from Aqua. I.D. at 7. The ALJ continued that 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. The ALJ stated that this Commission-approved wastewater tariff supplement does not contain a provision that would allow the Company to use deduct meters. *Id.* at 7-8

(citing Community Utilities of Pennsylvania, Inc. Supplement No. 15 to Tariff Wastewater Pa. P.U.C. No. 1, effective August 9, 2024).

According to the ALJ, “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.” Additionally, the ALJ found that in charging the Complainant wastewater rates based upon his Aqua water usage, and not making available an alternative metering system for measuring usage, CUPA was complying with its Commission-approved tariff. Accordingly, having found the Complaint to be insufficient, the ALJ dismissed the Complaint without a hearing. The ALJ reasoned that pursuant to Section 703 of the Code, 66 Pa.C.S. § 703(b), the Commission has the authority to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary or in the public interest. In the ALJ’s view, conducting a hearing in this matter would not enable Mr. Petty to better explain his position or to provide additional facts that would alter this conclusion. I.D. at 8-9.

Accordingly, the ALJ granted CUPA’s Preliminary Objections and dismissed the Complaint. I.D. at 9.

C. Disposition

As a preliminary matter, we note that any argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

On review of the record in this proceeding, we shall reverse the Initial Decision, deny CUPA's Preliminary Objections, and remand this matter back to the OALJ for a hearing, consistent with the following discussion.

Consumers have a right to file a complaint and be heard when they believe that an existing tariff is unreasonable when applied to them. In our view, 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 alleging that CUPA's existing Commission-approved tariff is unreasonable, as applied to him. Although tariffs are considered *prima facie* reasonable, that does not mean that such tariffs 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. *Shenango Township Board of Supervisors v. Pa. PUC*, 686 A.2d 910 (Pa. Cmwlth. 1996) at 914 (noting that the burden to contest an existing tariff is a heavy one).

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. *Interstate Traveller Servs., Inc. v. Pa. Dept. of Env't Res.*, 406 A.2d 1020 (Pa. 1979) (*Interstate*). 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. *See County of Allegheny*. The Commission must view the instant Complaint in the light most favorable to Mr. Petty 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. Interveners v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994); *see also Interstate*.

In this case, when reading Mr. Petty's complaint in the light most favorable to him, we find that 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.

Accordingly, we find that CUPA's Preliminary Objections must be denied, the Initial Decision must be reversed, and this matter must be remanded to the Office of Administrative Law Judge for further hearings to allow Mr. Petty the opportunity to demonstrate that CUPA's Commission-approved tariff, as applied to him, is unreasonable. In our view, Mr. Petty should not have his case dismissed on a preliminary basis.²

III. Conclusion

Based on our review of the ALJ's Initial Decision, the pleadings, and the applicable law, we shall reverse the ALJ's Initial Decision, deny the Preliminary Objections of CUPA, and remand this matter to the OALJ, for further hearings, consistent with this Opinion and Order; **THEREFORE,**

² 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).

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Alphonso Arnold III, issued on March 26, 2025, is reversed, consistent with this Opinion and Order.
2. That the Preliminary Objections filed by Community Utilities of Pennsylvania, Inc. on January 7, 2025, at Docket No. C-2024-3052590, are denied.
3. That this proceeding be remanded to the Office of Administrative Law Judge for further hearings, consistent with this Opinion and Order.

BY THE COMMISSION,



Matthew L. Homsher
Secretary

(SEAL)

ORDER ADOPTED: May 22, 2025

ORDER ENTERED: June 6, 2025