

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Manickavel Ganesan	:	
	:	
v.	:	C-2025-3054318
	:	
Community Utilities of Pennsylvania Inc.	:	

INTERIM ORDER ON RESPONDENT’S PRELIMINARY OBJECTIONS

On March 27, 2025, Manickavel Ganesan (Complainant or Mr. Ganesan) filed a Formal Complaint (Complaint) against Community Utilities of Pennsylvania Inc. (CUPA, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission) alleging that the Respondent’s billing method is incorrect and that the Respondent does not have a proper billing mechanism.

As relief, the Complainant requests that: 1) CUPA’s billing rates be revisited by the Commission; 2) CUPA be allowed to charge based only on actual usage reported by CUPA’s wastewater meter - Aqua readings not be used for CUPA’s billing calculations; 3) wastewater meters be visible to CUPA’s customers to verify their reading and unit rates be disclosed to customers; 4) the flat rate for the water treatment be removed if CUPA is billing for actual usage; and 5) wastewater charges should be less than charges for clean water.

On April 21, 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. Ganesan’ 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 ¶ 16, 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 ¶ 22.

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 ¶ 25. Its Tariff does not contain a provision that would allow it to utilize deduct meters. New Matter ¶ 26. CUPA would need Commission approval through a separate proceeding to implement deduct metering, likely a rate proceeding. *Id.*

Also on April 21, 2025, 2025, the Respondent filed a Preliminary Objection seeking to dismiss the Complaint as legally insufficient. In its Preliminary Objection, CUPA reiterates that its metered rates for wastewater are based on volumes of water the customer uses as reported by Aqua in accordance with Commission-approved settlement terms. “To allow for meters that would deduct irrigation usage from water volumes and rebates pursuant to those meters would require a separate rate proceeding for Commission approval.” Preliminary Objection ¶ 3. CUPA further argues that its rates were designed based on historic customer usage data from Aqua, meaning the volumes of water used for all purposes were included in the current rate design. COPA explains that, by law, it has no choice but to adhere to its tariff and cannot provide the relief Complainant seeks. *Id.*

Complainant did not file a response to CUPA’s New Matter or its Preliminary Objection.

On May 29, 2025, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on July 29, 2025, at 10:00 a.m. and the case was assigned to me. On June 2, 2025, a Prehearing Order was served on the parties.

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.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlt. 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.Cmwlt. 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.Cmwlt. 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. Ganesan claims that CUPA's billing method is incorrect and that the Respondent does not have a proper billing mechanism. As relief, the Complainant requests that: 1) CUPA's billing rates be revisited by the Commission; 2) CUPA be allowed to charge based only on actual usage reported by CUPA's wastewater meter - Aqua readings not be used for CUPA's billing calculations; 3) wastewater meters be visible to CUPA's customers to verify their reading and unit rates be disclosed to customers; 4) the flat rate for the water treatment be removed if CUPA is billing for actual usage; and 5) wastewater charges should be less than charges for clean water.

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. Ganesan is challenging the reasonableness of CUPA's current 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. Ganesan to prevail on this issue, he must successfully carry the heavy burden of proving that **the facts and circumstances leading to 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.** If Mr. Ganesan is unable to carry this initial burden, he is unable to establish a *prima facie* case in the matter.

For the reasons stated above, CUPA's Preliminary Objection shall be denied. The case is set for a telephonic hearing on July 29, 2025.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Community Utilities of Pennsylvania Inc. in the matter of Manickavel Ganesan v. Community Utilities of Pennsylvania Inc. at Docket No. C-2025-3054318 is denied.
2. That the matter is set for a telephonic hearing on July 29, 2025, to address the issues raised in the Complaint.

Date: June 12, 2025

/s/
Eranda Vero
Administrative Law Judge

C-2025-3054318 - MANICKAVEL GANESAN v. COMMUNITY UTILITIES OF PENNSYLVANIA, INC.

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