

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

<b>HOFFMAN &amp; KOZLANSKY</b>	:	
<b>REALTY CO., LLC,</b>	:	
	:	
<b>Complainant,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>PENNSYLVANIA AMERICAN</b>	:	
<b>WATER COMPANY</b>	:	
	:	
<b>Respondent.</b>	:	<b>Docket No. C-2018-3006168</b>

**COMPLAINANT HOFFMAN & KOZLANSKY REALTY CO., LLC’S MOTION TO  
DISMISS OBJECTIONS OF RESPONDENT PENNSYLVANIA AMERICAN WATER  
COMPANY AND TO COMPEL DISCOVERY RESPONSES**

On March 27, 2019, Complainant Hoffman & Kozlansky Realty Co., LLC (“Complainant”) served its First Set of Amended Interrogatories and Requests for Production of Documents upon Respondent Pennsylvania American Water Company (“Respondent”). On April 8, 2019, Respondent formally objected to Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, and 31. On April 18, 2019, counsel for Complainant and Respondent conducted a teleconference whereby Respondent agreed to respond to Interrogatory Nos. 14, 15, 18, 19, 20, 24, 25, 26, 27, 28, and 31 to the extent that the information sought by Complainant is within Respondent’s possession. Pursuant to the procedure set forth in 52 Pa. Code §§ 5.103, 5.321 and 5.342(g), Complainant, by counsel, requests that the Commission deny Respondent’s remaining objections and compel Respondent to respond fully to Interrogatory Nos. 2, 3, 4, 5, 6, 7, 10, 11, 13, and 17.

Virtually all of Respondent’s objections state that the requested information would not be admissible at the hearing, and that each request is vague and overly broad. Furthermore,

Respondent contends in some instances that it cannot produce documents because Complainant, not Respondent, possesses them. As explained below, Respondent's remaining objections are not well-taken and should be denied.

### **Legal Standard For Discovery**

Section 5.321(c) of the Public Utility Commission's Rules of Administrative Practice and Procedures provides that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c). Discovery is permitted regardless of whether the information sought "relates to the claim or defense of the party seeking discovery or to the claim or defense of another party." Id. Furthermore, information may be discoverable even if it would be inadmissible at a hearing "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Id. Thus, it is not ground for objection that the information sought will be inadmissible at a hearing. Id.

Importantly, "[t]he Commission has issued a number of decisions interpreting the scope of its discovery rules." John Lee v. Verizon Pa. Inc., Docket No. C-20054564, 2006 Pa. PUC LEXIS 28, at \*6 (Feb. 28, 2006)(citing Pennsylvania Public Util. Comm'n v. The Peoples Nat'l Gas Co., Docket Nos. R-850270, R-860310, 1986 Pa. PUC LEXIS 79 (Aug. 26, 1986); Pennsylvania Public Util. Comm'n v. Equitable Gas Co., Docket No. R-860315, 1986 Pa. PUC LEXIS 110 (May 16, 1986)). "Consistently, the Commission has allowed participants wide latitude in discovery matters," id., and, in adjudicating discovery disputes, the Commission has held that, "[w]e believe that the relevancy test should be liberally applied when considering discovery requests." Equitable Gas Co., 1986 Pa. PUC LEXIS 110, at \*22.

**Request #2**

**Identify all Pa. American Water meters installed on Plaintiff's property by way of meter serial number and location of installation. Provide supporting documentation.**

Respondent's primary objection to this request is based on relevancy. Respondent contends that Complainant requests information relating to Respondent's facilities that are not at issue in this proceeding. Additionally, Respondent contends that the information sought would not be admissible at the hearing. Finally, Respondent contends that Complainant's request for supporting documentation is "vague and overly broad and without reference to any timeframe." See Respondent's Objections at p. 4. As stated above and reiterated below, the information sought is relevant and, when construed liberally in favor of Complainant, satisfies the requirement that the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Identification of all of Respondent's meters installed on Complainant's property is clearly relevant and will lead to the discovery of admissible evidence. Respondent initially identified the meter at issue as domestic, and not fire line, necessitating a search to determine which meter was leaking. Respondent's initial identification was incorrect, as Complainant's independent search revealed that the fire line meters were leaking. Respondent's objection based on relevancy is thus improper. Respondent's objection that the information sought would be inadmissible at the hearing is also improper. See 52 Pa. Code § 5.321(c). Finally, Respondent's objection to the request for supporting documentation is improper, since the Public Utility Commission's Rules of Administrative Practice and Procedure provide that interrogatories "may include requests that the answering party provide copies of documents without making a separate request for the production of documents under § 5.349," without requiring a party to specify a time frame for the documentation sought. See 52 Pa. Code § 5.341(c).

**Request #3                    Identify all Pa. American Water meters being billing on Plaintiff's property together with meter serial number.**

Respondent's primary objection to this request is based on relevancy. Respondent contends that Complainant requests information relating to Respondent's facilities that are not at issue in this proceeding. Additionally, Respondent contends that the information sought would not be admissible at the hearing. Finally, Respondent contends that the requested information "is contained in the issued monthly bills for each respective account." See Respondent's Objections at p. 5. As stated above and reiterated below, the information sought is relevant and, when construed liberally in favor of Complainant, satisfies the requirement that the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Identification of all of Respondent's meters being billed on Complainant's property is clearly relevant and will lead to the discovery of admissible evidence. Respondent initially identified the meter at issue as domestic, and not fire line, necessitating a search to determine which meter was leaking. Respondent's initial identification was incorrect, as Complainant's independent search revealed that the fire line meters were leaking. Respondent's objection based on relevancy is thus improper. Respondent's objection that the information sought would be inadmissible at the hearing is also improper. See 52 Pa. Code § 5.321(c). Finally, Respondent improperly objects to the request on the ground that the information sought is contained in monthly bills for each respective account, as such information is clearly within the scope of discovery pursuant to 52 Pa. Code § 5.321.

**Request #4                    Identify what size and type of water line(s) Pa. American Water is metering and billing on Plaintiff's property. Provide supporting documentation.**

To the extent Request #4 seeks proprietary material, Complainant will not object to production of the information pursuant to a protective order under 52 Pa. Code § 5.362.

**Request #5                    Identify the date when each water meter was installed on Plaintiff's property. Provide supporting documentation.**

Respondent's primary objection to this request is based on relevancy. Respondent contends that Complainant requests information relating to Respondent's facilities that are not at issue in this proceeding. Additionally, Respondent contends that the information sought would not be admissible at the hearing. Finally, Respondent contends that Complainant's request for supporting documentation is "vague and overly broad." See Respondent's Objections at p. 7. As stated above and reiterated below, the information sought is relevant and, when construed liberally in favor of Complainant, satisfies the requirement that the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Identification of the date when each water meter was installed on Complainant's property is clearly relevant and will lead to the discovery of admissible evidence. Though Complainant's case concerns water leaks from August/September 2018, the first water leak on Complainant's property occurred in 2017. Additionally, Respondent initially identified the meter at issue as domestic, and not fire line, necessitating a search to determine which meter was leaking. Respondent's initial identification was incorrect, as Complainant's independent search revealed that the fire line meters were leaking. The date when each water meter was installed is thus clearly relevant, and Respondent's objection based on relevancy is improper. Respondent's objection that the information sought would be inadmissible at the hearing is also improper. See 52 Pa. Code § 5.321(c). Finally, Respondent's objection to the request for supporting documentation is improper, since the Public Utility Commission's Rules of Administrative Practice and Procedure provide that interrogatories "may include requests that the answering party provide copies of documents without making a separate request for the production of documents under § 5.349." See 52 Pa. Code § 5.341(c). The request is neither vague nor overly

broad, and clearly identifies the information sought as the date when each water meter was installed on Complainant's property.

**Request #6**            **Identify and provide the reports of all dates since January 1, 2017 to the present when each water meter servicing Plaintiff's property was inspected, tested for accuracy, calibrated and serviced. Provide supporting documentation.**

Respondent's primary objection to this request is based on relevancy. Respondent contends that Complainant requests information relating to Respondent's facilities that are not at issue in this proceeding. Additionally, Respondent contends that the information sought would not be admissible at the hearing. Respondent also contends that the request is "neither direct, nor simple or unambiguous." See Respondent's Objections at p. 8. Finally, Respondent contends that Complainant's request for supporting documentation is "vague and overly broad." Id. As stated above and reiterated below, the information sought is relevant and, when construed liberally in favor of Complainant, satisfies the requirement that the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Identification and production of the reports of all dates since January 1, 2017 to the present when each water meter serving Complainant's property was inspected, tested for accuracy, calibrated and serviced is clearly relevant and will lead to the discovery of admissible evidence. Though Complainant's case concerns water leaks from August/September 2018, the first water leak on Complainant's property occurred in 2017. Additionally, Respondent initially identified the meter at issue as domestic, and not fire line, necessitating a search to determine which meter was leaking. Respondent's initial identification was incorrect, as Complainant's independent search revealed that the fire line meters were leaking. Identification and production of all reports since January 1, 2017 is thus clearly relevant, and Respondent's objection based on relevancy is improper. Respondent's objection that the information sought would be

inadmissible at the hearing is also improper. See 52 Pa. Code § 5.321(c). Respondent's objection to the extent that the request is "neither direct, nor simple or unambiguous," see Respondent's Objections at p. 8, is similarly baseless, and has no support. Finally, Respondent's objection to the request for supporting documentation is improper, since the Public Utility Commission's Rules of Administrative Practice and Procedure provide that interrogatories "may include requests that the answering party provide copies of documents without making a separate request for the production of documents under § 5.349." See 52 Pa. Code § 5.341(c). The request is neither vague nor overly broad, and clearly identifies the information sought as identification and production of the reports of all dates since January 1, 2017 to the present when each water meter serving Complainant's property was inspected, tested for accuracy, calibrated and serviced.

**Request #7                      Provide all service logs for the meters on Plaintiff's property for the period of January 1, 2017 to the present.**

Respondent's primary objection to this request is based on relevancy. Respondent contends that Complainant requests information pertaining to meter records that do not relate to the fire line meters provided by Respondent. Additionally, Respondent contends that certain information sought would not be admissible at the hearing. As stated above and reiterated below, the information sought is relevant and, when construed liberally in favor of Complainant, satisfies the requirement that the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

A request for all service logs for the meters on Complainant's property for the period of January 1, 2017 to the present is clearly relevant and will lead to the discovery of admissible evidence. Though Complainant's case concerns water leaks from August/September 2018, the first water leak on Complainant's property occurred in 2017. Additionally, Respondent initially

identified the meter at issue as domestic, and not fire line, necessitating a search to determine which meter was leaking. Respondent's initial identification was incorrect, as Complainant's independent search revealed that the fire line meters were leaking. Respondent's objection based on relevancy is thus improper. Respondent's objection that the information sought would be inadmissible at the hearing is also improper. See 52 Pa. Code § 5.321(c).

**Request #10**            **Provide all maps, plans and diagrams for the underground water pipes located on Plaintiff's property that are being serviced by Pa. American Water Company meters, valves and any other appurtenances from January 1, 2017 to the present.**

Respondent contends that, to the extent Request #10 seeks proprietary material, Respondent will only produce such information to a party subject to a protective order under 52 Pa. Code § 5.362. Complainant will not object to a protective order that protects proprietary material.

**Request #11**            **Provide the make and model of all meters servicing Plaintiff's property and specifically those meters in calendar years 2017 and 2018.**

Respondent's primary objection to this request is based on relevancy. Respondent contends that Complainant requests information pertaining to meter records that do not relate to the fire line meters provided by Respondent. Additionally, Respondent contends that certain information sought would not be admissible at the hearing. As stated above and reiterated below, the information sought is relevant and, when construed liberally in favor of Complainant, satisfies the requirement that the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

A request for the make and model of all meters servicing Complainant's property, specifically those meters in calendar years 2017 and 2018, is clearly relevant and will lead to the discovery of admissible evidence. Though Complainant's case concerns water leaks from

August/September 2018, the first water leak on Complainant's property occurred in 2017. Additionally, Respondent initially identified the meter at issue as domestic, and not fire line, necessitating a search to determine which meter was leaking. Respondent's initial identification was incorrect, as Complainant's independent search revealed that the fire line meters were leaking. Respondent's objection based on relevancy is thus improper. Respondent's objection that the information sought would be inadmissible at the hearing is also improper. See 52 Pa. Code § 5.321(c).

**Request #13            Identify the "water main" location that services the Plaintiff's property from January 1, 2017 to the present.**

Respondent contends that, to the extent Request #13 seeks proprietary material, Respondent will only produce such information to a party subject to a protective order under 52 Pa. Code § 5.362. Complainant will not object to a protective order that protects proprietary material.

**Request #17            Provide the map of the water distribution system that services Plaintiff's property from January 1, 2017 to the present.**

Respondent contends that, to the extent Request #17 seeks proprietary material, Respondent will only produce such information to a party subject to a protective order under 52 Pa. Code § 5.362. Complainant will not object to a protective order that protects proprietary material.

**WHEREFORE**, Complainant requests that the Commission deny Respondent's remaining objections to Complainant's first set of amended interrogatories and compel Respondent to respond fully to Interrogatory Nos. 2, 3, 4, 5, 6, 7, 10, 11, 13, and 17.

Respectfully submitted,

s/John G. Dean

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Dated: April 18, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>HOFFMAN &amp; KOZLANSKY</b>	:	
<b>REALTY CO., LLC,</b>	:	
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<b>PENNSYLVANIA AMERICAN</b>	:	
<b>WATER COMPANY</b>	:	
	:	
<b>Respondent.</b>	:	<b>Docket No. C-2018-3006168</b>

**CERTIFICATE OF SERVICE**

I, JOHN G. DEAN, hereby certify that I have caused to be served this day a true and correct copy of a Complainant Hoffman & Kozlansky Realty Co., LLC's Motion to Dismiss Objections of Respondent Pennsylvania American Water Company and to Compel Discovery Responses on all parties of record via email and first class mail in accordance with the requirements of 52 Pa. Code § 1.54, upon the following:

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DATED: April 18, 2019