

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lynn Ray	:	
	:	
v.	:	C-2023-3043218
	:	
Aqua Pennsylvania, Inc.	:	

ORDER GRANTING MOTION TO COMPEL

This Order is issued pursuant to the authority granted to presiding officers by the regulations of the Commission at 52 Pa. Code § 5.483.

On January 16, 2024, following discussions between Lynn Ray (Ms. Ray or Complainant) and Attorney Margaret A. Morris (Ms. Morris), counsel for the Respondent, Aqua Pennsylvania, Inc. (Aqua or Respondent), Ms. Morris submitted via email a joint request for a continuance. The continuance was requested to allow the Complainant to arrange for a plumber to address certain plumbing issues at her home and for the parties to monitor the Complainant’s water usage for a period of 90 days after completion of the plumbing work. Ms. Ray was copied on the request.

By email dated January 17, 2024, I advised the parties that their request had been granted and informed them that the Initial Hearing scheduled in this matter for January 17, 2024, would be cancelled and rescheduled sometime between May 15, 2024 and Initial Hearing June 15, 2024. On January 23, 2024, a Hearing Notice was issued informing the parties that the Initial Hearing had been rescheduled for May 16, 2024, at 10:00 a.m.

On March 8, 2024, Aqua filed a Certificate of Service indicating that it had served Interrogatories and Request for Documents (Discovery Request) on the Complainant. The Discovery Request informed the Complainant that objections to the Discovery Request were to

be sent to Ms. Morris within 10 days i.e. by May 18, 2024, and answers were to be sent within 20 days i.e. by May 28, 2024.

On March 29, 2024, Ms. Morris sent a letter to Ms. Ray informing her that if responses to the Discovery Request were not received by Monday, April 1, 2024, a Motion to Compel a response would be filed.

On April 2, 2024, Aqua filed a Motion to Compel (Motion) with the Commission. The Motion seeks to have an order issued compelling the Complainant to fully and completely respond to the Discovery Request within 5 days of the issuance of an order on the Motion. The Motion also requests that the Formal Complaint filed by the Complainant on September 22, 2023, in this matter (Complaint) be dismissed in its entirety if the Complainant fails to timely and fully respond to the Discovery Request.

In the Motion, Aqua contends that “The information/documents sought by Aqua is . . . is directly relevant and material to the allegations raised in the Formal Complaint.” Motion at ¶ 14. Additionally, Respondent contends that “Aqua is entitled to the requested information to enable it to fully prepare for the scheduled telephonic hearing on May 16, 2024. The Complainant has prevented Aqua from preparing and presenting a proper defense.” Motion at ¶ 14. Further, Aqua avers that “[d]ue process requires that Aqua be advised of the allegations so that it can prepare and defend its actions at hearing.”¹

Here, Aqua is seeking disclosure of information concerning the plumbing work and water consumption that were the basis for the parties’ joint continuance request made and granted by me in January 2024. A review of the Motion indicates that Aqua is seeking information that will allow it (a) to determine whether the plumbing work was performed, and if so when, by whom and at what cost; and (b) to compare the Complainant’s water consumption rate before and after the completion of the plumbing work to ascertain whether the allegation of

¹ Aqua cited *Schneider v. Pa. P.U.C.*, 479 A.2d 10 (Pa. Cmwlth. 1984) in support of its due process argument.

“continued spiking usage issues” that prompted the filing of the Complaint in this matter were addresses and/or resolved by the plumbing work. Complaint ¶ 5. An Answer to the Motion was due on March 28, 2024.

Under the Commission’s Regulations, 52 Pa. Code § 5.321, the scope of discovery is broad:

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

52 Pa. Code § 5.321(c).

Limitations on discovery, however, are set forth in the Commission’s regulations at 52 Pa. Code § 5.361, which states, in pertinent part:

§ 5.361. Limitation of scope of discovery and deposition.

(a) Discovery or deposition is not permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

While the Commission allows parties wide latitude in discovery matters, the implication of 52 Pa. Code § 5.361 is that there is a rule of, “reasonableness” as well as relevancy that guides us. In deciding a Motion to Compel, this means that the Presiding Officer must

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LYNN RAY
408 CHESWOLD COURT
CHESTERBROOK PA 19087
610.420.4451
lynnwray@gmail.com
Accepts eService

MARGARET MORRIS ESQUIRE
REGER RIZZO & DARNALL
CIRA CENTRE 13TH FL
2929 ARCH STREET
PHILADELPHIA PA 19104
215.495.6524
215.870.5785
mmorris@regerlaw.com
Accepts eService
(*Counsel for Aqua*)

CHRISTOPHER FRANKLIN
762 W LANCASTER AVENUE
BRYN MAWR PA 19010
610.645.1015
hsdharrisson@aquaamerica.com
(*Aqua Pennsylvania Inc*)