

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ann Marie Luyando	:	
	:	
v.	:	F-2022-3034600
	:	
Newtown Artesian Water Company	:	

**ORDER
DENYING COMPLAINANT’S MOTION TO DISMISS OBJECTIONS
AND TO COMPEL THE COMPANY TO ANSWER INTERROGATORIES**

This Order addresses the discovery dispute between the parties. This dispute arises regarding the twenty-six interrogatories propounded by the Complainant, Ann Marie Luyando, upon the Respondent, Newtown Artesian Water Company (NAWC or Company). In accordance with the provisions of 52 Pa. Code § 5.342(g)(2) (relating to motion to compel), § 5.483 (relating to authority of presiding officer), and § 5.361 (relating to limitation of scope of discovery), this Order denies the Complainant’s Motion to Dismiss Objections and to Compel the Company to Answer Interrogatories, for all the reasons discussed below.

Abbreviated Procedural History¹

On August 10, 2022, Ms. Luyando filed a Formal Complaint (Complaint) against the Company seeking to prevent the Company from replacing the analog water meter currently installed at the Complainant’s residence in Bucks County, Pennsylvania, with a smart water meter. The Complainant alleges, *inter alia*, that the Company refused to provide her a disability accommodation or recognize her “medical exemption” so that she can minimize the potential health risk to her of exposure to electromagnetic frequencies emitted by a smart meter.

¹ For a more detailed procedural history, see the Scheduling Order dated March 5, 2024 (*Scheduling Order*).

On January 12, 2023, a prehearing conference was held. Ms. Luyando appeared and represented herself. Mr. J. T. Walsh, Esquire, appeared on behalf of the Company, along with Dan Angove, general manager for the Company. After some off-the-record discussion between the parties, the parties agreed to engage in settlement discussions between themselves and exchange information on an informal basis. (*See* Prehearing Order dated January 13, 2023).

On January 25, 2023, the Company filed *nunc pro tunc* an Answer and New Matter (Answer & NM).² In its Answer, the Company denied the material allegations of fact and conclusions of law in the Complaint. In its New Matter, the Company averred, among other things the following: that Ms. Luyando’s existing water meter is 32 years old and is scheduled to be replaced in accordance with the Company’s meter replacement program and applicable Commission regulations, citing 52 Pa. Code § 65.8 (relating to water meters); that all the replacement water meters installed by the Company must contain devices that utilize approved and required remote reading capability; that the Company does not offer, or is required to offer, an “opt-out” program; and that the Company intends to install the iPERL meter. (Answer & NM ¶¶ 13-16).

The Company also attached to its Answer and New Matter Exhibit “A” (iPERL Meter Specifications) and Exhibit “B” (SmartPoint Module Specifications) (which sends the water use data collected by the iPERL meter to the Company). The Company also averred that the SmartPoint module is a radio transmitter that, when conveying data to the Company’s receiving device, emits a safe level of radio frequency (RF) radiation. (Answer & NM ¶ 17; Exhibits A, B).

In its New Matter, the Company also averred that as an accommodation, the Company offered to not install the SmartPoint module on the new iPERL meter at Ms. Luyando’s residence and arrangements would have to be made to personally deliver the meter readings to the Company on a monthly basis. However, the Company avers that Ms. Luyando rejected this offer. (Answer & NM ¶ 18).

² *See Scheduling Order*, at 5, Ordering paragraph number 1, granting the request of the Company to file an Answer to the Complaint *nunc pro tunc*.

On April 10, 2023, this proceeding was stayed. Following the lifting of this stay in November 2023, a second prehearing conference was held on February 29, 2024.

On March 5, 2024, the *Scheduling Order* was issued which memorialized the various procedural matters discussed at the February 2024 prehearing conference including a litigation schedule.

On March 19, 2024, the Company filed a Certificate of Service of its objections and responses to the Complainant's Interrogatories Set 1, Nos. L-1 through L-26.³

On March 29, 2024, the Complainant caused to be filed with the Commission a Motion to Dismiss the Objections and to Compel NAWC to Answer Interrogatories, dated March 27, 2024 (*Motion to Compel or Motion*).

On April 5, 2024, following an email exchange with the parties, the Commission issued my Amended Scheduling Order (*Amended Scheduling Order*) which formally granted the Complainant's unopposed request for an extension to identify any potential medical expert. Further, this Order directed that the Company may timely file a response to the Complainant's *Motion to Compel* no later than April 8, 2024.⁴

On April 8, 2024, NAWC filed an Answer to Complainant's *Motion to Compel*, requesting that it be rejected or denied.

Legal Standards

Under the Commission's Regulations, the standard for permissible discovery provides, in relevant part:

³ I note that there is no Certificate of Service of the Complainant's Interrogatories filed in the record, as required by 52 Pa. Code § 5.341(b).

⁴ See *Amended Scheduling Order*, n.1 for the reasons for this directive including, but not limited to, the breakdown of the Commission's service process to timely service the Company the *Scheduling Order*, and the record did not reflect when the Complainant's Interrogatories were filed. (*see n.3, supra*).

§ 5.321. Scope.

* * *

(b) *Discretion.* The presiding officer may vary provisions of this subchapter as justice requires.

(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(b), (c).

Limitations on discovery, however, are set forth in the Commission's regulations at 52 Pa. Code § 5.361, which states, in relevant 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.

* * *

(c) If the information requested has been previously provided, the answering party shall specify the location of the information.

52 Pa. Code § 5.361(a), (c).

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 resolving discovery disputes. This means that the presiding officer must consider the law and weigh arguments of the parties as shaped around 52 Pa. Code § 5.361. *Also see*, Section 5.483 which again reiterates the application of a reasonableness standard and provides that, “[t]he presiding officer will have the authority . . . to . . . impose reasonable limitations on discovery and to otherwise regulate the course of the proceeding.” 52 Pa. Code § 5.483.

Complainant’s Motion to Compel

The Complainant’s *Motion* seeks an order compelling the Company to fully and completely respond to 26 Interrogatories, which will be identified as Set I, L-1 through L-26. These Interrogatories will be addressed individually or grouped together where appropriate. Each Interrogatory will be restated, followed by the Company’s objection and response, and my analysis and ruling.

However, initially I note that the Complainant appears to argue in her *Motion* that one of the reasons the Company’s objections should be dismissed is because the Company failed to comply with the 52 Pa. Code § 5.342, regarding the Company’s form of answers, objections, and timeliness. (*See, Motion* at 5-6 wherein Complainant recites Section 5.342; and at 2-3 wherein Complainant asserts NAWC did not adhere to this Section). Further, the Complainant argues that NAWC ignored the *Scheduling Order* by filing and sending me its responses to discovery requests.⁵ (*See Motion* at 6). To the extent I follow these procedural complaints, they are denied, and inconsistent with the record. My review indicates no procedural bar to addressing the *Motion* and the Company’s Answer to the *Motion*.

Therefore, turning to the Interrogatories at issue:

L-1. Manufacturer’s product spec sheets of the proposed meter with all parts included and identified, as well as how each part functions, with all

⁵ The Company did not send me or file its responses to the Complainant’s discovery requests. Rather, it filed and sent me a Certificate of Service of its objections and responses, as required by 52 Pa. Code § 5.432(e)(2). *Also see*, n.3 *supra*.

EMF/RF emission details including amounts, frequencies, how frequently, etc.

L-2. Manufacturer's product spec sheets of all radio frequency radiation emitting and electro magnetic frequencies of the proposed attachments / components with all part listed and identified, as well as how each part functions, with all EMF / RF emission details including amounts, frequencies, how frequently, etc.

Objection: Interrogatories L-1 and L-2 request information that is beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

Response: NAWC provided Luyando with the manufacturer's specifications for both the iPERL Smart Water Meter and the Xylem SmartPoint module. These are attached as Exhibit "A" and Exhibit "B," respectively, to NAWC's Answer and New Matter. The Formal Complaint is limited to allegations that Luyando is "medically exempt" from the smart meter and related facilities proposed for her residence. Questions regarding how the meter and module function are beyond the scope of the Formal Complaint and cannot lead to the discovery of admissible evidence.

The *Motion to Compel* responses to L-1 and L-2 are denied. However, they are not denied because they are beyond the scope of the proceeding. Since the Complainant alleges that exposure to RFs may pose a health risk to her, I find her discovery request reasonable to require from the Company certain specifications of the Company's proposed meter.

Rather, L-1 and L-2 are denied because the information requested has been previously provided and the Company specified where this information can be found, thereby satisfying 52 Pa. Code § 5.361(c). The Company already provided both the iPERL meter specifications and the SmartPoint module (which sends the water use data collected by the iPERL meter to the Company) as Exhibits "A" and "B" respectively to its Answer & New Matter. While the information provided by the Company may not be in the narrative format that the Complainant seems to want, the requested information is provided. For example, *see* Exhibit "B", at 2, wherein the specifications provide that proposed meter includes an RF reader with a narrow band, and a transmitter or frequency range that operates within 900-950 MHz, and complies with the Federal Communication Commission (FCC) regulation at 47 CFR Part 15.

L-3. Strict evidence proving the NAWC claims that the utility provided and updated Respondents' [sic] contact information including email address to the PUC for the purposes of this formal complaint within the required timeframe to file the answer.

L-4. Strict evidence that the NAWC email was "out of service" at the time and any evidence that the respondent tried to rectify the problem with the required time frame.

Objection: Interrogatories L-3 and L-4 request information that is beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

Response: NAWC filed its Answer and New Matter to Luyando's Formal Complaint with the Commission via eFiling on January 25, 2023 (eFiling confirmation number 2453543). At a telephonic conference and hearing held on February 29, 2024, Administrative Law Judge Gail Chiodo granted NAWC's oral motion to consider NAWC's Answer and New Matter as timely filed *nunc pro tunc*. The Formal Complaint is limited to allegations that Luyando is "medically exempt" from the smart meter and related facilities proposed for her residence. Questions regarding NAWC's contact information and status of the email address on file with the PUC are beyond the scope of the Formal Complaint and cannot lead to the discovery of admissible evidence.

The *Motion to Compel* responses to L-3 and L-4 are denied. They are not relevant to the subject matter involved in this pending action, as they both raise the timeliness of the Company's Answer & New Matter to the Complaint. The timeliness of the Company's Answer to the Complaint, including the above requested information, was already addressed at length at the first prehearing hearing conference held on January 12, 2023 (*see* Tr. at 6); the second prehearing hearing conference held on February 29, 2024 (*see* Tr. at 10-13); my *Scheduling Order* at 2, 4, and Ordering paragraph number 1, which formally granted the Company's motion to file an Answer to the Complaint *nunc pro tunc*.

L-5. When (date) was the smart meter upgrade started in Complainants' [sic] neighborhood where she lives? When was it completed? Strict evidence required.

L-6 When (date) was the smart meter upgrade started in the Complainants' [sic] street where she lives? When was it completed? Strict evidence required.

Objection: Interrogatories L-5 and L-6 request information that is beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

Response: In 2015, as part of recommendations set forth Management and Operations Audits of NAWC conducted by the Commission's Bureau of Audits, NAWC implemented a directive to replace all of its existing manually-read touchpad meters with automated meter reading (AMR) technology over a ten (10) year period. Luyando's plumber contacted NAWC in or around April 2022 to report a possible leak with the existing meter. NAWC determined that the age and type of meter at Luyando's residence warranted replacement with AMR equipment in accordance with the plan. The Formal Complaint is limited to allegations that Luyando is "medically exempt" from the smart meter and related facilities proposed for her residence. Questions regarding when NAWC conducted water meter replacements near Luyando's residence are beyond the scope of the Formal Complaint and cannot lead to the discovery of admissible evidence.

The *Motion to Compel* responses to L-5 and L-6 are denied. I find that the response of the Company is adequately responsive to the questions.

L-7. How old is the current analog meter at Claimants [sic] home? When was that meter installed at Complainants [sic] home address (dates)? Was it installed by NAWC? Strict evidence requested.

L-8. Did NAWC install an upgraded analog meter within the 20-year time limit, as required by 52 Pa. code [sic] 65.8, after the current analog meter was installed at Claimants' [sic] home address? When was the meter due for an upgrade (dates)? Why wasn't [sic] the upgrade done at her residence within the required timeframe? Strict evidence requested.

L-9. During the time after the smart meter upgrades were done on Complainants [sic] street where she lives, to present day, did NAWC experience any issues in reading the analog meter and collecting the data needed to fulfill the company's service obligations due to her analog water meter that remained in service during the entire time? If so, what, where, and when (dates)? Strict evidence requested.

L-10. From the time when the smart water meter upgrades were done on Complainants [sic] street where she lives to present day, did NAWC charge her for any smart water meter upgrade related expenses or costs and/or related equipment and services even though the company neglected to install a smart water meter upgrade at her residence. If so, for what, when,

and how much? Please provide itemized quarterly statements reflecting all costs, including any itemized hidden costs, charged to and paid by Complainant during the entire time she was billed for these costs. Strict evidence requested.

L-11. If NAWC billed any of the aforementioned costs and expenses related to the smart water meter upgrade she did not receive, will the company reimburse her for the full amount from the date of her street upgrades to present date? Strict evidence requested.

Objection: Interrogatories L-7 through L-11, inclusive, request information that is beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

Response: As of January 2023, the water meter serving Luyando's residence was 32 years old. NAWC does not know when the existing meter was installed. It was most likely installed by the original builder of her home when it was constructed in 1989. Like all similarly situated residents, Luyando pays only residential base rates for water service, per NAWC's tariff. The Formal Complaint is limited to allegations that Luyando is "medically exempt" from the smart meter and related facilities proposed for her residence. Questions regarding the installation date of the existing water meter, NAWC's water meter replacement program, and charges to recover meter replacement costs are beyond the scope of the Formal Complaint and cannot lead to the discovery of admissible evidence.

The *Motion to Compel* responses to L-7 through L-11 are denied. I find that responses of the Company are adequately responsive to these questions. Interrogatories L-7 and L-8 ask for specific dates when her current meter was installed and by whom, and why the Company did not upgrade her meter until now, which the Company adequately responded. Interrogatory L-9 concerns whether her current analog meter is functional. The Company adequately responded in its response to L-5 and L-6 regarding the call it received from the Complainant's plumber regarding a possible leak with the existing meter, at which time the age of the existing meter (32 years) was determined. Interrogatories L-10 and L-11 concern whether Ms. Luyando has been billed by the Company for a smart water upgrade, since a smart meter was not installed at her residence, to which I find that Company responded adequately that the Complainant is being charged in accordance with its tariff—i.e., the residential base rate for water serve, like all similarly situated residents.

L-12. Why did NAWC rescind the previous offer made to Complainant on 5/31/22? Please provide explanation and details. Strict evidence requested.

L-13. Did NAWC offer to accommodate Complainants' [sic] request of an analog water meter upgrade in her residence if the PUC honored her accommodation request?

Objection: Interrogatories L-12 and L-13 request information that is beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

Response: NAWC did not make, nor rescind, any official offer to Luyando on May 31, 2022. Any such communications were discussions by Mr. Angove [NAWC Chief Executive Officer] and Mr. Pierone [NAWC Director of Operations] to attempt to reasonably address Luyando's concerns. By letter dated January 25, 2023, in the interest of settling Luyando's Formal Complaint, NAWC made an official offer to install the iPERL meter but not attach the radio transmitting device (SmartPoint module). The Formal Complaint is limited to allegations that [Ms.] Luyando is "medically exempt" from the smart meter and related facilities proposed for her residence. Questions regarding offers made in the interest of settling the Formal Complaint are beyond the scope of the Formal Complaint and cannot lead to the discovery of admissible evidence.

The *Motion to Compel* responses to L-12 and L-13 are denied. These questions concern settlement discussion between the parties, which are usually confidential. Further, Section 5.231(d) of Commission's Regulations, 52 Pa. Code § 5.231(d), provides that offers of settlement are not admissible in evidence against counsel or a party claiming the privilege. Further, the Complainant has not averred how the answer to these questions are reasonably calculated to lead to the discovery of admissible evidence. Further, despite the lack of relevance, I find the Company's response sufficiently adequate to the questions. Finally, as noted throughout this proceeding, it is the policy of the Commission to encourage settlements. To the extent that the Complainant wishes to continue to pursue settlement discussions, she may do so and the parties are encouraged to settle, if possible.

L-14. Would the proposed smart meter install physically include the EMF / RFR-transmitting part(s), or would that part(s) [sic] be "absent" and not physically in her home at any time.

L-15. What levels of EMF/RFR will the proposed smart water meter, and parts, emit? How frequently will these emissions occur? From how many smart water meter sources, parts, or attachments, will the emissions be emitted?

L-16. If turned off or removed, would the company still be able to turn on the EMF/Radio Frequency Radiation-emitting device(s) at any time either in person or remotely? If turned off, will the meter still emit any EMF/RFR at any time in Complainants' [sic]home?

L-17. Would the installed meter and equipment still have wireless or power line data transmission capabilities?

L-18. Would the installed meter and equipment still have wireless or power line reception capabilities?

L-19. Would the installed meter be attached to the wiring of Complainants residence and if so, would the meter and equipment contain surge protection?

Objection: Interrogatories L-14 through L-19, inclusive, request information that is beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

Response: By letter dated January 25, 2023, NAWC offered to install the iPERL meter but not attach the radio transmitting device (SmartPoint module). The replacement iPERL meter will contain a battery-operated flow measurement system. It will be attached to the existing wire that leads to the existing external touchpad at the residence that is presently used to read Luyando's water meter. The Formal Complaint is limited to allegations that Luyando is "medically exempt" from the smart meter and related facilities proposed for her residence. Questions regarding offers made in the interest of settling the Formal Complaint, as well as the functioning, capacity, transmission and/or reception capabilities of the proposed meter, are beyond the scope of the Formal Complaint and cannot lead to the discovery of admissible evidence.

The *Motion to Compel* responses to L-14 through L-19 are denied. However, they are not denied because they are beyond the scope of the proceeding. Since the Complainant alleges that exposure to RFs may pose a health risk to her, I find her discovery request reasonable to require from the Company certain specifications and explanation of the Company's proposed meter. Rather, L-14 through L-19 are denied because I find that responses of the Company are adequately responsive to these questions. Further, as noted above, the Company

attached to its Answer and New Matter Exhibit “A” (iPERL Meter Specifications) and Exhibit “B” (SmartPoint Module Specifications).

L-20. Would the company employee be required to make readings at Complainants home from outside the residence, or does the company demand access into the home every month for a meter usage reading?

L-21. What is the cost for these newly added monthly employee readings at Complainant’s residence? Are there any other costs associated with this smart meter upgrade, installation, parts, equipment, services, etc., to be passed on to the Complainant, if so[,] what are they specifically and how much is each cost? Please itemize all associated costs.

Objection: Interrogatories L-20 and L-21 request information that is beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

Response: By letter dated January 25, 2023, in the interest of settling Luyando’s Formal Complaint, NAWC offered to install the iPERL meter but not attach the radio transmitting device (SmartPoint module). Under this arrangement, a NAWC employee will need to read the meter in person to determine Luyando’s usage just like it is done today. The employee will remain outside Luyando’s dwelling to take the reading by using a hand-held meter reader that interacts with the touchpad. Because Luyando rejected this offer, NAWC did not calculate the related labor costs and overhead to read the meter in person. The Formal Complaint is limited to allegations that Luyando is “medically exempt” from the smart meter and related facilities proposed for her residence. Questions regarding offers made in the interest of settling the Formal Complaint, as well as the functioning, capacity, transmission and/or reception capabilities of the proposed meter, are beyond the scope of the Formal Complaint and cannot lead to the discovery of admissible evidence.

The *Motion to Compel* responses to L-20 and L-21 are denied. However, they are not denied because they are beyond the scope of the proceeding. As to L-20, the *Motion* is denied because I find that response of the Company is adequately responsive to this question, even though it relates to the settlement discussions between the parties. As to L-21, I find the response of the Company adequately responsive to the first part of this question since again, it relates to settlement discussion between the parties. The second part of L-21 appears to address the costs of a smart meter upgrade. Although costs are not specifically alleged in the Complaint,

nonetheless, considering the *pro se* status of the Complaint, I find this discovery request may reasonably lead to the discovery of admissible evidence. However, L-21 is denied because I find the response of the Company as to costs was adequately addressed in its responses to L-10 and L-11 above, and L-22 below.

L-22. How much does the proposed smart meter and equipment costs?

L-23. Who is responsible to pay for the smart meter and equipment the company proposes to install in the Complainant's residence?

Objection: Interrogatories L-22 and L-23 request information that is beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

Response: The costs for the residential smart water meter and any related equipment are included in NAWC's base rates and/or related surcharge. There is no separate cost imposed on NAWC's customers for the smart water meter. The Formal Complaint is limited to allegations that Luyando is "medically exempt" from the smart meter and related facilities proposed for her residence. Questions regarding the costs of the smart meter are beyond the scope of the Formal Complaint and cannot lead to the discovery of admissible evidence.

The *Motion to Compel* responses to L-22 and L-23 are denied. However, they are not denied because they are beyond the scope of the proceeding. As explained above, although costs are not specifically alleged in the Complaint, nonetheless, considering the *pro se* status of the Complaint, I find this discovery request may reasonably lead to the discovery of admissible evidence. Rather, L-22 through L-23 are denied because I find that responses of the Company are adequately responsive to these questions

L-24. Did Complainant say she filed a PFA order on her PUC Formal Complaint?

L-25. In the untimely answer to complaint, Respondent claims that the proposed smart water meter surpasses in its safety and efficiency. Strict evidence demanded.

L-26. What PA Codes require the water utility to upgrade smart water meters from analog water meters? Strict evidence requested.

Objection: Interrogatories L-24, L-25, and L-26 request information that is beyond the scope of the proceeding and therefore cannot result in the discovery of admissible evidence.

Response: The Formal Complaint is limited to allegations that Luyando is “medically exempt” from the smart meter and related facilities proposed for her residence. Questions regarding whether or not Complainant filed a PFA, the safety and efficiency of the water meter installed by NAWC, and NAWC’s water meter upgrade and replacement program are beyond the scope of the Formal Complaint and cannot lead to the discovery of admissible evidence.

The *Motion to Compel* a response to L-24 is denied because the Complaint speaks for itself in that it is a matter of record as to what is, and is not, averred in the Complaint.

The *Motion to Compel* a response to L-25 is denied. However, it is not denied because it is beyond the scope of the proceeding. I find it reasonable that if this averment were made by the Company, that the Complainant may inquire as to the basis of said averment. However, the Complainant did not provide a pinpoint cite as to the alleged averment in the Company’s Answer and New Matter at which it averred that the smart meter “*surpasses* in its safety and efficiency.” (emphasis added). Further, my review of the Company’s Answer and New Matter shows that the Company averred that the proposed smart meter “provides superior water consumption readings, better leak detection, and is more durable than an older mechanical or analog meter” (Answer & New Matter ¶ 2); and “complies with its obligation to provide “adequate, efficient, safe, and reasonable” water service and facilities” (*Id.* at ¶ 19). Therefore, as posed, the *Motion to Compel* a response to L-25 is denied.

The *Motion to Compel* a response to L-26 is denied. Initially, I note that this is a legal conclusion or analysis which is beyond the scope of discovery. However, even assuming *arguendo* that it is discoverable, I find that the Company, in its Answer and New Matter, averred that the Complainant’s meter “is scheduled to be replaced in accordance with the Company’s meter replacement program and applicable Commission regulations”, citing to 52 Pa Code § 65.8 (relating to water meters). (Answer and NM ¶ 13). Further, the Company’s responses to L-5 and L-6 are relevant here. The Company explained that, “[i]n 2015, as part of recommendations set forth Management and Operations Audits of NAWC conducted by the Commission’s Bureau of

Audits, NAWC implemented a directive to replace all of its existing manually-read touchpad meters with automated meter reading (AMR) technology over a ten (10) year period. Luyando's plumber contacted NAWC in or around April 2022 to report a possible leak with the existing meter. NAWC determined that the age and type of meter at Luyando's residence warranted replacement with AMR equipment in accordance with the plan."

Accordingly, for all the reasons discussed above, the *Motion to Compel* will be denied.

THEREFORE,

IT IS ORDERED:

1. That the Motion of the Complainant, Ann Marie Luyando, to Dismiss Objections and to Compel Newtown Artesian Water Company to Answer Interrogatories, is denied.

2. That, consistent with the Scheduling Order dated March 5, 2024, the parties are again encouraged to cooperate and exchange information on an informal basis where possible and to cooperatively resolve any discovery disagreements between themselves where possible. (*See Scheduling Order*, at 5).

Date: May 3, 2024

/s/
Gail M. Chiodo
Administrative Law Judge

F-2022-3034600 - ANN MARIE LUYANDO v. NEWTOWN ARTESIAN WATER COMPANY

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