

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ORDER
REFERRING COMPLAINT TO MEDIATION**

Background

On August 10, 2022, Ann Marie Luyando (Complainant) filed a Formal Complaint (Complaint) against Newtown Artesian Water Company (Respondent, Newtown Water, or Company) 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 alleged potential health risk to her of exposure to electromagnetic frequencies emitted by a smart meter.

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 Jan. 13, 2023).

On January 25, 2023, the Company filed *nunc pro tunc* an Answer and New Matter (Answer & NM).¹ In its Answer, the Company denied the material allegations of fact and

¹ The Company was granted leave to file an Answer *nunc pro tunc* by Scheduling Order dated March 5, 2024.

conclusions of law in the Complaint. In its New Matter, the Company averred, *inter alia*: 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).

On April 10, 2023, this proceeding was stayed.² Following the lifting of this stay in November 2023, a second prehearing conference was scheduled and held on February 29, 2024.

On March 5, 2024, a *Scheduling Order* was issued which memorialized the various procedural matters discussed at the February 2024 prehearing conference including a litigation schedule culminating in evidentiary hearings scheduled for June 13, 2024 and June 18, 2024, beginning each day at 1:00 p.m.

On May 3, 2024, I denied the Complainant’s Motion to Dismiss the Objections and to Compel the Company to Answer certain Interrogatories propounded by the Complainant, having found that the Company adequately provided responses to most of the interrogatories.

On April 5, 2024, an Amended Scheduling Order was issued, which granted Ms.

² See Order dated April 10, 2023 for a discussion of the reason for the stay.

Luyando's request for an extension to identify any potential expert witness.³ However, the June 13 and June 18 hearings dates remained the same.

On May 31, 2024, the Complainant filed a Motion for a Continuance of the evidentiary hearings scheduled in June 2024. Ms. Luyando requested a continuance for "no less than 180 days" for medical reasons. In support of her request, the Complainant provided a doctor's letter to the undersigned and counsel for the Company, which she requested be treated as confidential. The Company did not object to a 90-day continuance, with a case status conference to be scheduled some time in September 2024. (*See Answer filed on June 11, 2024*).

Via email to the parties in June 2024, I informally granted the Complainant's first continuance request via email which ruling was formalized by Order dated August 9, 2024. This Order also directed that a case status conference would be scheduled by separate notice, and the parties were expected to be prepared to discuss proposed dates to reschedule the evidentiary hearing. By Notice dated August 12, 2024, a telephonic case status conference was scheduled for September 12, 2024.

By email dated August 28, 2024, Ms. Luyando requested that the September 12, 2024 conference be cancelled for medical reasons, including that she was medically unable to participate in a conference call. Ms. Luyando also requested another continuance of at least another 180 days. In support of her request, the Complainant attached to her email a doctor's letter, explaining that for confidentiality reasons she was not filing the doctor's note.

After a further exchange of emails with the parties, the September 12, 2024, case status conference was cancelled. However, Ms. Luyando was also advised that the record needed to accurately reflect the reasons for the length of her continuance request (a second six-month continuance), and why she was unable to participate in a telephonic evidentiary hearing and/or a telephonic prehearing conference. The Complainant was instructed to formally file a

³ Subsequently, the Complainant filed a letter dated May 7, 2024, that she would not be presenting expert testimony.

written motion which should include appropriate medical documentation. The Complainant was also advised that any supporting medical documentation such as a doctor's letter could, and would, be treated by the Commission as confidential if properly marked as such.⁴ The Complainant requested until sometime after November 18, 2024 to file a written Motion, along with a doctor's note.

By Order dated October 28, 2024, I formally granted the Complainant's second continuance request. This Order also directed that the Complainant file with the Commission and serve upon the Company and the undersigned by email a case status report no later than November 22, 2024 and an updated case status report no later than January 3, 2025. This Order further directed that any case status shall include why the Complainant is currently unable to participate in a telephonic evidentiary hearing and/or a telephonic prehearing conference, and when the Complainant can do so; and if said reason is for medical reasons, then the case status reports shall be accompanied by an appropriate doctor or medical letter that adequately addresses the aforesaid. The Complainant was again advised how to file confidential documentation.

By letters filed November 25, 2024 and January 2, 2025, the Complainant stated she was not able to medically participate in an evidentiary hearing or telephone conference. In support of these letters, the Complainant again emailed me and counsel for the Company a letter from her physician; however, the Complainant did not include this supporting documentation as "confidential" in her filings as instructed. The Complainant requested another 180-day continuance.

By hearing notice dated May 27, 2025, a telephonic prehearing conference was scheduled for June 5, 2025, at 1:00 p.m. I had advised the parties informally in an email to them dated May 9, 2025, that at this conference I intended to discuss, among other matters, whether the parties were agreeable to refer this matter to the Mediation Unit of the Office of Administrative Law Judge (OALJ) for possible resolution, and the Mediation process would be

⁴ The Complainant was advised that any filing of any personal information that is properly marked as "confidential" would not be made available to the public. Further, the Complainant was instructed as to who she may call in the Commission, along with their appropriate phone numbers, if she needed further guidance how to file confidential material.

explained more fully at the conference. In response emails, the Complainant was interested in pursuing Mediation; however, the Company did not believe Mediation would be helpful for various reasons.

On May 29, 2025, the Complainant filed another Motion for a Continuance for medical reasons. The Complainant requested a 90-day continuance, emailed me and counsel for Respondent a doctor's letter, but was not filed at that time.⁵ The Company opposed any more continuances.

Over the objection of the Company, on June 4, 2025, I cancelled the telephonic prehearing conference for June 5, 2025.

Referral to Mediation

After careful consideration of this matter, and considering that it is the Commission's policy to encourage settlements, I will exercise my discretion and refer this matter to OALJ's Mediation Unit for review. The Mediation Unit will determine whether this matter is appropriate for resolution. The parties will be duly contacted by the Mediation Unit for the next appropriate step.

As noted to the parties previously, mediation is completely voluntary and confidential. While I am cognizant that the Company does not believe mediation would be helpful, in exercising my discretion, I believe that the parties may be able to work out a resolution with the assistance of an experienced mediator in a more informal, flexible, and confidential setting. I have also considered that at one point I believed the parties were close to resolving this matter, but that the Complainant's health and health concerns may have interfered with final resolution. Should the attempt at resolving this matter through mediation be unsuccessful, a formal evidentiary hearing will be rescheduled as soon as practicable.

⁵ By letter received by the Commission on June 9, 2025, the Complainant did file supporting documentation for her continuance request as confidential, which is being treated as such.

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by the Complainant, Ann Marie Luyando, against Newtown Artesian Water Company, at Docket Number F-2022-3034600, is hereby referred to the Commission's Mediation Unit for mediation review for possible resolution.

2. That should the parties be unsuccessful in resolving this matter with the aid of a mediator, the Formal Complaint shall be scheduled for a formal evidentiary hearing.

Date: August 13, 2025

/s/
Gail M. Chiodo
Deputy Chief Administrative Law Judge

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

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