



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

January 25, 2011

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Shane and Melissa Elison v.
Pennsylvania-American Water Company

Docket No. C-2010-2175673

Dear Secretary Chiavetta:

Enclosed please find an original and three (3) copies of the Office of Trial Staff's (OTS) **Reply to New Matter** in the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 783-6155.

Sincerely,

Adeolu A. Bakare
Prosecutor
Office of Trial Staff
PA Attorney I.D. #208541

Enclosure
AAB/edc

cc: Parties of Record
Hon. David A. Salapa

SECRETARY'S BUREAU
PA PUC

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shane and Melissa Elison

v.

Pennsylvania American Water
Company

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Docket No. C-2010-2175673

**THE OFFICE OF TRIAL STAFF'S
REPLY TO NEW MATTER OF
PENNSYLVANIA AMERICAN WATER
COMPANY TO THE COMPLAINT
OF SHANE AND MELISSA ELISON**

I. INTRODUCTION

On January 5, 2010, Pennsylvania American Water Company (“PAWC” or “Company”) filed an Amended Answer and New Matter to the Complaint of Shane and Melissa Elison. PAWC filed the Amended Answer pursuant to discussions at the Prehearing Conference presided over by Administrative Law Judge David A. Salapa on December 14, 2010 in Harrisburg, Pennsylvania. All parties consented to the filing of the Amended Answer. The Office of Trial Staff (“OTS”) hereby replies to only the New Matter filed with the Amended Answer. Accordingly, pursuant to 52 Pa. Code § 5.63, OTS avers as follows:

II. REPLY TO NEW MATTER

OTS replies to the New Matter in the following enumerated fashion:

9. Admitted in part denied in part. PAWC incorporates the 8 paragraphs from its Answer into the New Matter. To the extent that the averments in paragraph 5 are incorporated by reference, this statement is denied for the reasons discussed in paragraph 11 *infra*.

10. OTS is without sufficient knowledge or information to form a belief as to PAWC's provision of adequate, efficient, safe and reasonable water service in compliance with the Public Utility Code, the Commission's Regulations and Orders, and the Company's Commission approved tariff.

11. A. Denied. PAWC avers that the Elisons are legally responsible for installing a backflow prevention device on their service connection pursuant to 25 Pa. Code § 109.709 and under PAWC's effective tariff. Both averments are unsupported. 25 Pa. Code § 109.709, titled "Cross-connection control program" sets forth rules and regulations to eliminate the introduction of contaminants through service connections to public water systems. Under the terms of the regulation, a customer must "eliminate cross-connections or provide backflow devices to prevent contamination of the distribution system from both backsiphonage and backpressure." 52 Pa. Code § 109.709(a)(1). "Cross-connection" as used in the regulation, is defined as follows:

[a]n arrangement allowing either a direct or indirect connection through which backflow, including backsiphonage, can occur between the drinking water in a public water system and a system containing a source or potential source of contamination, or allowing treated water to be removed from any public water system, used for any purpose or routed through any device or pipes outside the public water system, and returned to the public water system. 52 Pa. Code § 109.1.

A residential home, absent unusual circumstances, cannot reasonably be considered as a

source or potential source of contamination of a public water system. There is no evidence of any activity occurring at the Elison's residence that would threaten to contaminate PAWC's system. The Elisons have no cross-connection to speak of and have therefore satisfied the terms of 52 Pa. Code § 109.709(a)(1).

B. Additionally, the Company's tariff states only that "A minimum of an approved (ASSE 1024) dual check valve shall be installed on all service pipes for residential service."¹ The language offers no specificity as to who bears responsibility for installation and maintenance of the devices. OTS notes that the tariff offers further specific for particular customers, including residential customers with lawn irrigation systems or fire sprinklers, commercial customers, and industrial customers.² These customers are explicitly required to maintain check valves on their service connections.³ As evidenced by the above-quoted language, the tariff does not place a corresponding duty upon general residential customers, such as the Elisons.

12. Admitted.

13. Admitted.

14. Admitted in part, denied in part. To the extent that this averment may be construed to suggest that the Elisons are required by Pennsylvania law to provide and install a backflow preventer, it is denied for the reasons discussed in paragraph 11 *supra*.

15. Denied.

1 Pennsylvania-American Water Company Tariff Water-Pa. P.U.C. No. 4, Original Page 20.

2 *Id.*

3 *Id.*

WHEREFORE, for the reasons state herein, the Office of Trial Staff respectfully requests that the Pennsylvania Public Utility Commission dismiss the New Matter filed by Pennsylvania American Water Company.

Respectfully submitted,



Adeolu Bakare
Prosecutor
PA Attorney ID #208541

Pennsylvania Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: January 25, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Shane and Melissa Elison :
 :
 v. : Docket No. C-2010-2175673
 :
 Pennsylvania-American :
 Water Company :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply to New Matter** dated January 25, 2011, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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