

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
800-684-6560 (in PA only)

IRWINA. POPOWSKY  
Consumer Advocate

FAX (717) 783-7152  
consumer@paoca.org

January 26, 2011

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17105

Re: Shane and Melissa Elison

v.

Pennsylvania-American Water Company  
Docket No. C-2010-2175673

Dear Secretary Chiavetta:

Enclosed please find the original and 3 copies of the Office of Consumer Advocate's Reply to Pennsylvania-American Water Company's New Matter in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely yours,

A handwritten signature in cursive script that reads "Christy M. Appleby".

Christy Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. #85824

Enclosures

cc: Honorable David A. Salapa  
Certificate of Service

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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OFFICE OF CONSUMER ADVOCATE'S  
REPLY TO PENNSYLVANIA AMERICAN  
WATER COMPANY'S NEW MATTER

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Pursuant to 52 Pa. Code § 5.63, the Office of Consumer Advocate (OCA) hereby submits its Reply to Matter raised by Pennsylvania American Water Company (PAWC or the Company) in its Amended Answer and New Matter to the Complaint of Shane and Melissa Elison filed in the above-referenced proceeding. The OCA submits the following:

**I. Introduction**

On May 8, 2010, Shane and Melissa Elison filed a Formal Complaint following the installation of a new meter by Pennsylvania-American Water Company (PAWC). The OCA filed its Notice of Intervention and Public Statement on July 1, 2010. The Office of Trial Staff (OTS) filed a Notice of Appearance on December 2, 2010.

Initially, the matter was set for mediation. Thereafter, the OCA requested that the matter be set for litigation and assigned to the Office of Administrative Law Judge. The Office of Administrative Law Judge further assigned Administrative Law Judge David A. Salapa to the matter. A Prehearing Conference was scheduled for December 14, 2010. At the December 14, 2010 Prehearing Conference, the parties agreed to stay the procedural schedule for 90 days in order to conduct discovery and that PAWC would file an Amended Answer to the Complaint of

the Elisons to reflect that the billing dispute portion of the matter had been resolved. In addition to its Amended Answer, PAWC also filed a New Matter requesting dismissal of the Complaint of the Elisons.

On January 19, 2011, the Elisons filed their objections to PAWC's Amended Answer and New Matter. On January 25, 2011, the Office of Trial Staff filed its Reply to New Matter and requested that the New Matter be dismissed. The Office of Consumer Advocate supports the Replies filed by the Elisons and OTS and hereby submits the following Reply to PAWC's New Matter.

## **II. Reply to New Matter**

The OCA provides specific responses to PAWC's New Matter as follows:

9. Admitted in part, denied in part. PAWC incorporates by reference its paragraphs 1 through 8 which are the Amended Answer to the Complaint of Shane and Melissa Elison. The OCA admits that the charges for the Elisons' water bill are no longer in dispute. However, to the extent that paragraphs 1 through 8 aver that the Complainants were legally required to install a check valve or relate to the New Matter, the OCA specifically denies for the reasons stated below.

10. Denied. The OCA filed its Intervention into this matter in order to investigate whether the Company has provided adequate, efficient, safe and reasonable water service in compliance with the Public Utility Code, the Commission's Regulations and Orders, and the Company's tariff. Pursuant to the December 14, 2010 Prehearing Conference, the parties agreed to a 90-day period of discovery in order to further investigate the backflow issue. The OCA is still in the process of conducting discovery regarding the issues identified in its Prehearing Memorandum:

- (1) to determine the scope of the problem, specifically whether the backflow issue experienced by the Elisons is unique to their home or whether it is a larger, more global problem across all of the Neptune meters;
- (2) if the issue is more global, then to determine under which factual circumstances the backflow problem occurs; and
- (3) to develop appropriate remedies such as notice to consumers and education of customer service representatives concerning the issue.

11. Denied. The OCA denies that the Elisons are legally responsible under either 52 Pa. Code § 109.709 or PAWC's tariff to install a backflow prevention device or check valve on their service connection as a condition to the provision of water service.

A. PAWC avers in Paragraphs 5 of its Amended Answer that the Elisons were legally required under the Pennsylvania Safe Drinking Water Act to install a backflow prevention device on their service connection. Specifically, PAWC avers that 52 Pa. Code § 109.709 prohibits cross-connections. Section 109.709 of the Public Utility Code states:

(a) No person may introduce contaminants into a public water supply through a service connection of a public water system.

(1) It shall be the responsibility of the customer to eliminate cross-connections or provide backflow devices to prevent contamination of the distribution system from both backsiphonage and backpressure. Individual backflow preventors shall be acceptable to the public water supplier.

(2) If the customer fails to comply with paragraph (1) within a reasonable period of time, the water supplier shall discontinue service after reasonable notice has been made to the customer.

52 Pa. Code § 109.709. PAWC has made no demonstration that Section 109.709 applies to the Elisons' situation or that the Elisons were in any way a source of or potential source of any contaminants into the public water supply. Section 109.709 would only apply if there was some demonstration that the Elisons' situation added some contaminant into the public water system

and there was a cross-connection between the Elisons' water supply and the public water supply. Nothing in Section 109.709 mandates that all residential customers must install or have such a backflow device. PAWC's customer website states that this cross-connection and backflow prevention requirement does not apply to all residential customers. On its webpage regarding cross connection and backflow prevention, PAWC states non-residential customers must have a backflow prevention device, but that "*In some cases, residential customers are also required to install backflow prevention devices (i.e., new service connections, permanently installed fire sprinklers and permanently installed lawn sprinklers.)*"<sup>1</sup> PAWC has made no demonstration in its New Matter that the Elisons would fall under this requirement. Further, the Complainants stated in their Formal Complaint and their January 19, 2011 Reply that prior to the spike in their water bill, they were never informed that they needed to install a backflow preventer or check valve.

B. PAWC avers in Paragraph 5 of its Amended Complaint that Section 4.6 of PAWC's tariff requires that a minimum of an approved dual check valve was to be installed on all service pipes for residential service and must be owned and maintained by the customer. Tariff Section 4.6 states that:

A minimum of an approved (ASSE 1024) dual check valve shall be installed on all service pipes for residential service. Residential accounts having a lawn irrigation system or fire sprinkler system will be required to install a reduced pressure zone backflow prevention device on the line which services this part of the customer's system. Reduced pressure zone devices are to be tested annually. On service pipes for commercial or industrial service, a backflow prevention device of a type approved by the Company shall be installed. The location of the double check valve or backflow prevention device shall be approved by the Company. Service pipes used for fire protection must in addition have an approved fire service pipe strainer. The double check valve and

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<sup>1</sup> <http://www.amwater.com/paaw/customer-service/cross-connection.html>

backflow prevention device shall be owned and maintained by the Customer. Non-residential Customers shall certify annually, in writing to the Company, that these devices have been maintained and are in working order. This is to include a test performed by an inspector who is a qualified backflow prevention device tester. They are also subject to Company inspection at reasonable times.

Tariff Water-PA P.U.C. No. 4, Section 4.6. The tariff language specifically identifies customers with a lawn sprinkler or fire sprinkler system as needing such a backflow prevention device or check valve. As discussed above in Paragraph 11(A), PAWC's own website discussion of this issue contradicts the need for *all* residential customers to have a check valve or backflow prevention device and specifically identifies new service connections, permanently installed fire sprinklers and permanently installed lawn sprinklers as needing such a device. The Complainants aver in their Formal Complaint and in their January 19, 2011 Reply that PAWC never informed them that they needed check valve or backflow prevention device. Further, the Elisons state that in numerous contacts with the Company, they were informed that they in fact did not need such a device. One of the issues that the OCA and the Elisons have raised is the need for PAWC to identify and to educate residential customers who need a check valve or backflow prevention device. This issue is not resolved by pointing to a tariff provision that is not generally applied to residential customers.

12. Admitted in part, denied in part. The Elisons did not have a check valve on their water meter at the time that they experienced the backflow issue. However, the OCA denies that the Elisons had a legal obligation to install such a check valve.

13. Admitted. It is the OCA's understanding that the check valve has resolved the Elisons' problem.

14. Admitted in part, denied in part. The OCA admits that the problem has been resolved by the installation of the check valve device. The OCA denies, as stated above, any

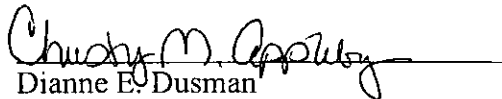
implication that the need for such a device, created a legal obligation on the part of the Elisons to install a check valve device.

15. Denied.

### III. Conclusion

WHEREFORE, for the reasons stated above, the Office of Consumer Advocate respectfully requests the Pennsylvania Public Utility Commission dismiss the New Matter filed by Pennsylvania American Water Company.

Respectfully submitted,



Dianne E. Dusman  
Senior Assistant Consumer Advocate  
Pa. Attorney Id. No. 38308

E-mail: [ddusman@paoca.org](mailto:ddusman@paoca.org)

Christy M. Appleby  
Assistant Consumer Advocate

Pa. Attorney Id. No. 85824

E-mail: [cappleby@paoca.org](mailto:cappleby@paoca.org)

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
555 Walnut Street  
Harrisburg, Pa. 17101-1923  
Telephone: (717) 783-5048  
Fax: (717) 783-7152

DATE: January 26, 2011  
138528.doc

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, Reply to New Matter of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 26th day of January 2011.

SERVICE BY EMAIL and IN PERSON

Johnnie E. Simms, Esquire  
Adeolu A. Bakare, Esquire  
Office of Trial Staff  
Pa. Public Utility Commission  
400 North Street  
Harrisburg, PA 17101

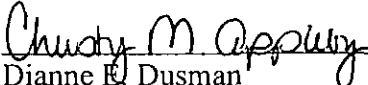
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Shane and Melissa Elison  
8 Dana Drive  
Collegeville, PA 19426

Michael D. Klein, Esquire  
Dewey & LeBoeuf, LLP  
1101 New York Avenue, NW  
Washington, DC 20005-4213

Kathy Pape, President  
Pennsylvania-American Water Company  
800 Hershey Park Drive  
Hershey, PA 17033

Susan Simms Marsh, Esquire  
Pennsylvania-American Water Company  
800 Hershey Park Drive  
Hershey, PA 17033

  
Dianne E. Dusman  
Senior Assistant Consumer Advocate  
PA Attorney I.D. #38308  
Email: DDusman@paoca.org

Christy Appleby  
Assistant Consumer Advocate  
PA Attorney I.D. #85824  
Email: CAppleby@paoca.org

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PA PUC  
SECRETARY'S BUREAU

Counsel for  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
128984