

Stevens & Lee

17 N. Second Street, 16th Floor
Harrisburg, PA 17101
(717) 234-1090
www.stevenslee.com

Direct Dial: (717) 255-7365
Email: michael.gruin@stevenslee.com
Direct Fax: (610) 988-0852

October 21, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**RE: Ronald and Sheila Derian v. Pennsylvania-American Water Company
Docket No. C-2023-3041252**

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Pennsylvania-American Water Company is its Reply to the Exceptions filed in the above-referenced matter. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Michael A. Gruin

Enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RONALD AND SHEILA DERIAN	:	
	:	
Complainants	:	
	:	
v.	:	Docket No. C-2023-3041252
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

**PENNSYLVANIA-AMERICAN WATER COMPANY’S
REPLY TO EXCEPTIONS**

Pursuant to 52 Pa Code § 5.535, Pennsylvania-American Water Company (“PAWC” or “Company”), hereby replies to the Exceptions filed by the Complainant Ronald and Sheila Derian (“Derians” or “Complainant”) to the Initial Decision issued by Administrative Law Judge Emily DeVoe (“ALJ DeVoe”) in this matter.

I. Background and Procedural History

The Complainants in this case, Mr. and Mrs. Derian, have experienced water infiltration issues on their property for many years. The Derians’ theory is that the water issues at their home are solely caused by underground leaking of PAWC service mains in the general vicinity of the home. However, PAWC has investigated the Complainant’s concerns numerous times, and there is simply no evidence that would allow for a conclusion that the water issues at the home are caused by PAWC, or that PAWC violated the Public Utility Code or the Commission’s regulation or orders in any way.

Notably, the Derians did not provide testimony or evidence from any independent professional that the water issues at their home were caused by PAWC mains leaking.

They did not submit any proof that water from a main entered their property, other than water from one main break which occurred for several hours on one day (June 15, 2021). There are no reports from any neighbor of the Derians of continued water infiltration from PAWC mains such as the Derians are alleging. While the Derians submitted notes and testimony regarding several water main breaks in the general vicinity of their home over the past several years, an examination of the details of those main breaks revealed that many of the main breaks were nowhere in the vicinity of their home, and the ones that were nearby could not and did not cause any water infiltration to the Derians' property.

By contrast, PAWC presented the testimony of a professional engineer who made two site visits to the Derian property following the June 15, 2021 main break and prepared two detailed reports of his conclusions. The engineer, Joseph Fagan, concluded that the water infiltration issues had been present at the Derian home for several years, and the only damage that may have been caused by the water from the June 15, 2021 main break is the bowing of the left portion of a retaining wall at the rear of the Derians' yard.¹ As Mr. Joe Fagan explained in his report and testimony, the Derian property sits in a bowl at the bottom of two steep hills, and groundwater and surface water flows onto the Derian property regularly and continually, unrelated to any PAWC main breaks. Mr. Fagan noted multiple signs of water infiltration on the Derian property from years before the main break, and the fact that the Derian's self-installed a drainage trench in their basement in 2018 indicates that they were experiencing water issues prior to that time, which is years before any PAWC main break in their area.²

¹ PAWC Exhibit 2, at p. 5

² PAWC Exhibit 2, at p. 4

As stated in the Derians' Formal Complaint and on the record in the proceeding, they have brought their complaint for the express purpose of recovering monetary damages from PAWC.³ PAWC is sympathetic to the Derians' situation, however, PAWC has thoroughly investigated the Derian's claims over multiple years, and there is simply no evidence to allow for a conclusion that water from PAWC's mains is the cause of the water issues at the Derian property. In this case, the presiding Administrative Law Judge carefully and thoroughly evaluated the extensive record that was generated over two days of hearings, and correctly concluded that the Derians had not provided substantial evidence that PAWC violated any Commission rule, order or regulations, or the Company's Commission-approved tariff.

II. Reply to Exceptions

The Complainants' Exceptions provide no valid basis for reversing or modifying the findings of the Initial Decision, and are mainly just statements of disagreement with those findings.

A. Reply to Complainants' Exception 1

The Complainants' first Exception alleges that PAWC did not follow the Commission's Interim Order by not scheduling a mediation session with the Commission's Mediator. However, the Interim Order issued in the case did not mandate the scheduling of a mediation session. The Interim Order, like all standard Interim Orders in customer complaint cases, directs the parties to attempt to resolve the complaint themselves, and that the parties are entitled to a hearing to resolve the complaint. As such, requesting that the case be scheduled for a hearing after an initial call with the

³ Formal Complaint, at p. 5

Complainant was in no way a violation of the Interim Order.

B. Reply to Complainants' No. 2

The Complainants' second Exception consists solely of a statement that they disagree with the findings of the professional engineer, Joseph Fagan, who made two site visits to the Derian property following the June 15, 2021 main break and prepared two detailed reports of his conclusions. The Complainants point to their Exhibit No. 5 as contradicting the report submitted by Mr. Fagan. However, Exhibit No. 5 is not a report prepared by an engineer and instead is a timeline of events prepared by the Complainants. No engineer or other professional testified on behalf of the Complainants, whereas Mr. Fagan did appear and testify at the hearing in addition to submitting his two reports into the record. Accordingly, Exception No. 2 does not provide any basis for modifying or reversing the Initial Decision.

C. Reply to Complainants' Exception No. 3.

The Complainants' third Exceptions takes issue with Findings of Fact 120 and 121 of the Initial Decision, and alleges that they are contradictory. However, the two findings are not contradictory. Finding of Fact 120 correctly confirmed that the PAWC employee did not observe any running water in the basement. This statement is not inconsistent with the ability of the employee to take a sample of the water that was standing in the basement for testing.

D. Reply to Complainants' Exception 4

The Complainants' fourth Exception takes issue with Finding of Fact 147 regarding the location where the water sample was pulled from on May 20, 2022. This issue was addressed by PAWC's witness on the record (Tr. p. 270), and he explained that

he could not confirm the source of the water in the trench and how long it had been there. It is correct that PAWC pulled samples from inside the house, but the point the witness was making is that he could not confirm the source of the water that was in the basement trench/drain.

E. Reply to Complainants' Exception 5

The Complainant's fifth Exception takes issue with Finding of Facts 159-161. However, these findings of fact are directly supported by testimony in the record by PAWC's witness, and the witness flatly rejected the allegation that stated the water at the property was PAWC's water. See Tr., at. p. 272.

F. Reply to Complainants' Exception 6

The Complainant's sixth Exception takes issue with Finding of Fact 211, and expresses disagreement with the finding that the Complainants' sump pump sends water to the trench in their basement. However, this finding is consistent with the detailed description of the configuration of the sump pump and trench as reflected in Mr. Fagan's initial Engineering Report, PAWC Exhibit 2, and specifically, the photos included in that Report.

In short, the Complainant's Exceptions provide no basis for modifying or reversing the Initial Decision. For these reasons and the other reasons explained in PAWC's Brief and ALJ DeVoe's Initial Decision, Mr. and Mrs. Derians' Exceptions should be denied.

Respectfully submitted,



Michael A. Gruin (I.D. No. 78625)
17 North Second Street
16th Floor
Harrisburg, PA 17101
Telephone: 717-255-7365
Facsimile: 610-988-0852
mag@stevenslee.com

*Counsel for
Pennsylvania American Water Company*

Dated: October 21, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RONALD AND SHEILA DERIAN	:	
	:	
Complainants	:	
	:	
v.	:	Docket No. C-2023-3041252
	:	
PENNSYLVANIA-AMERICAN	:	
WATER COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Reply to Exceptions upon the party listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA Electronic Mail

Ronald and Sheila Derian
200 E. Miller Ave.
Munhall, PA 15120



Michael A. Gruin

DATED: October 21, 2024