

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of:)
VALE VISTA ASSOCIATES, L.P.,)
a Pennsylvania limited partnership, and)
DONALD J. IVILL and GLORIA IVILL,)
his wife, t/a **IVILL DEVELOPMENT,**)
and **GENERAL MECHANICAL**)
CONTRACTORS, INC., a Pennsylvania)
corporation, d/b/a **GENERAL**)
INDUSTRIES,)
Complainants,)

vs.)

WEST PENN POWER COMPANY,)
a Pennsylvania corporation, and)
FIRST ENERGY SERVICE)
COMPANY, an Ohio corporation,)
Respondents.)

Case No. C-2015-2517345

**RESPONSE TO PRELIMINARY
OBJECTIONS**

Filed on Behalf of Complainants:
Vale Vista Associates, L.P.,
Donald J. Ivill,
Gloria Ivill, and
General Mechanical Contractors, Inc.

Counsel For This Party:

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AND NOW come Complainants, Vale Vista Associates, L.P., a Pennsylvania limited partnership, Donald J. Ivill and Gloria Ivill, his wife, t/a Ivill Development, and General Mechanical Contractors, Inc., a Pennsylvania corporation, d/b/a General Industries, by and through their attorneys, Brenda B. Sebring, Esquire and Sebring and Associates, and file the within Response to Preliminary Objections, in support of which Complainants aver the following:

1. After reasonable investigation, Complainants are without sufficient information to ascertain the truth of the averments, except to the extent that Complainants admit that West Penn is a "public utility" under the Public Utility Code. Pursuant to Pa.R.C.P. 1029(c), said averment is therefore denied in part.

2. After reasonable investigation, Complainants are without sufficient information to ascertain the truth of said averment. Pursuant to Pa.R.C.P. 1029(c), said averment is therefore denied.

3. Admitted. By way of further response, as a matter of law, West Penn's obligation of "reasonable service" includes its maintenance of vegetation. Popowsky v. Pennsylvania Pub. Util. Comm'n, 635 A.2d 1385, 1390 (Pa.Cmwlt. 1995).

4. Admitted.

5. Admitted in part that West Penn maintains the rights-of-way ("ROWS") set forth in Attachment 1 of Respondents' Preliminary Objections. After reasonable investigation, Complainants are without sufficient information to ascertain the truth of the remaining averments and said averments are therefore denied in part pursuant to Pa.R.C.P. 1029(c).

6. Admitted.

7. Admitted in part. Complainants deny that West Penn's work plan is permissible or "reasonable service" under the ROWs.

8. Admitted in part. Complainants deny that West Penn's work plan is permissible or "reasonable service" under the ROWs.

9. Admitted.

10. Denied. By way of further response, as a matter of law, West Penn's obligation of "reasonable service" includes its maintenance of vegetation. Popowsky v. Pennsylvania Pub. Util. Comm'n, 635 A.2d 1385, 1390 (Pa.Cmwlt. 1995). Therefore, the Commission has subject matter jurisdiction to adjudicate the claims set forth in the Complaint.

11. The averments in Paragraph 11 cite a statute which speaks for itself.

12. Complainants deny that the issues alleged are outside the scope of the PUC's jurisdiction. Complainants' stated claims involve the planned removal of trees from the Complainants' property and the Commonwealth Court has stated that vegetation management "is squarely with the PUC's regulatory jurisdiction." PECO Energy Co. v. Twp. Of Upper Dublin, 922 A.2d 996, 1009 (Pa.Cmwth. 2007).

13. The averments in Paragraph 13 state the standard of review for preliminary objections. Complainants have alleged that that the plain language of the ROWs does not permit West Penn to "remove" trees from Complainants' property (Complaint at ¶¶ 18-23), and West Penn has admitted and acknowledged that "[t]he Complainants aver that West Penn's work plan is not permitted based upon the plain language of the ROWs and easement" (Preliminary Objections at ¶ 7). Pursuant to the applicable standard of review, "all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom must be accepted." (Preliminary Objections at ¶ 13, citing Stilp v. Commonwealth, 910 A.2d 775, 781 (Pa.Cmwth. 2006)). Therefore, in ruling on these Preliminary Objections, it must be accepted that the plain language of the ROWs does not permit West Penn's work plan, and the sole question before the Commission is whether West Penn's unreasonable removal of the trees from Complainants' property is within the jurisdiction of the PUC. Complainants assert that the PUC does have jurisdiction.

14. Paragraph 14 is an incorporation paragraph to which no response is required.

15. Denied. The Commonwealth Court has stated that "[a] power company's maintenance of vegetation constitute[s] service." Popowsky, 635 A.2d at 1390. Vegetation management "is squarely with the PUC's regulatory jurisdiction." PECO Energy Co. v. Twp. Of Upper Dublin, 922 A.2d 996, 1009 (Pa.Cmwth. 2007).

16. Admitted. Complainants deny any implication that the PUC lacks jurisdiction to rule on the Complaint.

17. Complainants deny that the PUC lacks jurisdiction to rule on the Complaint. By way of further response, the ROWs produced by West Penn, by their plain language, do not permit the "removal" of trees from the Complainants' property. Therefore, Boczar, as cited by West Penn, is distinguishable. West Penn has also produced a ROW that clearly does not apply to the Complainants' property – Deed Book Volume 2302, Page 84.

18. Complainants deny that the PUC lacks jurisdiction to rule on the Complaint.

19. Complainants deny that the PUC lacks jurisdiction to rule on the Complaint.

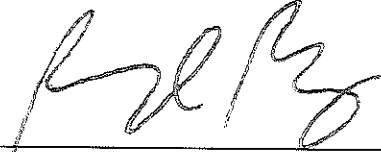
20. Paragraph 20 is an incorporation paragraph to which no response is required.

21. Complainants deny that the PUC lacks jurisdiction to rule on the Complaint.

22. Denied.

WHEREFORE, Complainants respectfully requests that the Public Utility Commission Order that Respondents are prohibited from removing trees from the Property and may only cut and trim as may be reasonable and necessary to keep the wires or said transmission line from interference and protect said transmission line from possible falling timber.

Respectfully submitted,
SEBRING & ASSOCIATES



Brenda B. Sebring, Esquire
Counsel for Complainants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following by mailing the same via UPS Next Day Mail (1Z 983 V0W 22 1000 558 8) and electronic mail, this 19th day of January, 2016:

Margaret A. Morris, Esq.
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SEBRING & ASSOCIATES



By: _____
Brenda B. Sebring, Esq.
Counsel for Complainants