

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Marlene Broman

Public Meeting September 20, 2018

2485454-OSA

v.

Docket No. C-2015-2485454

West Penn Power Company

STATEMENT OF COMMISSIONERS JOHN F. COLEMAN, JR.

The case before us involves an ongoing dispute about West Penn Power Company's ("West Penn") vegetation management program in a right-of-way across the Complainant's private property. West Penn obtained an easement there in 1968 to site and construct a 138kv electric transmission line. This transmission line is subject to mandatory FERC reliability requirements, which includes the development and implementation of a vegetation management plan along the length of its interstate electric transmission system.

In 2012, West Penn met with and notified the Complainant of its plans to undertake vegetation management within the right-of-way. The Complainant objected to aspects of the plan and filed a Formal Complaint in 2013, in which she asked the Commission to stop West Penn from performing various actions, including the removal of a number of trees located within the right-of-way.

The testimony provided in that case established that West Penn's right-of-way was 180 feet wide, and that West Penn's practice for 138kv lines was to manage vegetation for fifty feet on either side of the line, or 100 feet in total. The presiding ALJ issued a decision that concluded that West Penn's vegetation management approach to this property was unreasonable, and that it had failed to provide adequate notice to the Complainant of its activities. However, the Commission disagreed with the Initial Decision, and in an Order entered in April of 2014 unanimously concluded that West Penn's approach was reasonable, that it provided adequate notice to the Complainant, and dismissed the Formal Complaint.

Unfortunately, the Complainant either did not accept or understand that her Complaint was dismissed and refused to allow West Penn access to the property to remove the trees at issue.¹ The evidentiary record documents numerous attempts to communicate with the Complainant through correspondence, telephone and site visits after the conclusion of the first case. In May of 2015, after an in person visit by West Penn personnel to the property to discuss

¹ The record shows that the Complainant signed for a copy of the Commission order that West Penn mailed to her, as a courtesy, by certified mail. Nor is there any evidence that the copy sent by the Commission was returned as undeliverable. However, at the evidentiary hearing the Complainant testified that she had never seen it before.

the matter with her, the Complainant filed this Complaint, and again asked the Commission to prevent the removal of trees at the center of the dispute.

Early in the proceeding, West Penn asked that this Complaint be dismissed on *res judicata*, as it involved the same parties and the same issues decided in our 2014 Order. The presiding ALJ denied this Motion, and the case proceeded to an evidentiary hearing.

During the 2016 evidentiary hearing, the Complainant testified as to her ongoing objections to West Penn's vegetation management program. The only new fact that was introduced involved a brochure that was given to the Complainant after the conclusion of the first complaint, but before the filing of the second complaint. I believe the brochure can be fairly described as a consumer education document the purpose of which is to explain, at a very high and general level, FirstEnergy's vegetation management practices across the many rights-of-way it manages in Pennsylvania and other states in the territories of its operating companies, including West Penn.

Near the end of the hearing, West Penn called Mr. Weston, an expert in forestry, to testify that the work that remained to be done was part of the same plan developed in 2012. Mr. Weston had visited the property in 2012 to assess the needed work. He is a certified arborist, and his duties include identifying trees that may be incompatible with reliable transmission service, and the appropriate remedial action. While he was on the stand, the presiding ALJ questioned him about the alleged discrepancy between the brochure and the vegetation management plan of the property in question. The ALJ was disappointed with his responses, and on the basis of this testimony, the ALJ held that West Penn provided unreasonable service, and that a civil penalty of \$5,000 should be imposed.

In its Exceptions, West Penn reiterates its request that the entire Complaint be dismissed under *res judicata*, and that, in the alternative, the Commission find that it provided reasonable service to this Complainant. It also asserts that the civil penalty is inappropriate and excessive.

I agree with West Penn that this Complaint should have been dismissed in its entirety, and believe it should have been done in 2015.² I am satisfied, based on the Complainant's own testimony, that the relevant, material issues are identical to the 2013 Complaint.³ The Complainant has known since 2012 which trees West Penn intended to remove, and the relief she is seeking is the same as it was in the prior proceeding.

² The Complainant did not file a Reply to West Penn's New Matter or Answer to the Motion for Summary Judgment. I recognize that the Commission is often reluctant to dismiss the Complaints of *pro se* litigants prior to hearing, and that we have held that they be given more latitude in complying with Commission procedural regulations. While fully supportive of providing all customers adequate notice and opportunity to be heard, it bears noting that this dispute began in 2012, and much vegetation management work remains to be done at this property. There are eleven trees that have the capacity to interfere with the line if they continue to grow. The transmission line at issue serves many other customers, who enjoy a statutory right to reliable and reasonably continuous electric service. 66 Pa.C.S. §1501.


³ Q: "This testimony that you've provided, is that testimony that you were telling Judge Dunderdale in the prior proceeding?" A: "Well its ongoing. Of course it's the same --- yeah, it's the same problem, it's the same thing, yes." Hearing Transcript, pg. 33.

Additionally, I do not believe that the Complainant has met her burden of proof in demonstrating that the design, distribution, or communication regarding the vegetation management brochure rises to the level of unreasonable service. While it was unfortunate that Mr. Weston was unable to reconcile, to the ALJ's satisfaction, the brochure and the plan, it is important to remember the function he performs, and the reason he was called to testify. It is also worth noting that the presiding ALJ was operating under a misunderstanding regarding our decision on the first Complaint, and that this may have affected his determinations regarding this issue.⁴

I find it commendable for an electric distribution company to develop and distribute these consumer education brochures to property owners and agree with West Penn that they are only intended, and can only be expected, to describe company practices in a general way, and that what controls are the terms and conditions of the easement, and the vegetation management plan on file with the Commission for a specific property. There is no statute or Commission regulation that requires West Penn to provide these materials, and at present, no Commission rules or guidelines govern their format or content. As with any consumer education materials, I would encourage West Penn to review and revise these materials periodically based on experience and customer feedback.

Accordingly, I will be dissenting as I believe the Complaint should be dismissed in its entirety.

Date: September 20, 2018



**JOHN F. COLEMAN, JR.
COMMISSIONER**

⁴ The Initial Decision in this proceeding is based, in part, on the clearly erroneous determination that our prior Order never addressed West Penn's plan to remove vegetation only in the middle 100 feet of the 180 foot right of way. Initial Decision, pgs. 23, 28. The Commission's 2014 Order plainly acknowledged that West Penn's vegetation management plan was to remove vegetation in the middle 100 feet of the right-of-way: "West Penn introduced its work plan and showed that it centered solely on vegetation growing within the right-of-way. Tr. at 131; West Penn Exh. No. 9. Mr. Swink testified that although the easement establishes a right-of-way 180-foot wide, West Penn only maintains a 50-foot area extending out from either side of the centerline of the transmission line. Tr. at 180." *Marlene Broman v. West Penn Power Company*, C-2013-2356237 (Order entered April 23, 2014), pg. 14.