

August 16, 2019

Via Electronic Filing

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

**Re: Docket No. C-2019-3010453
James Kuhn v. Pennsylvania Electric Company
Motion to Join Indispensable Party**

Dear Secretary Chiavetta:

Attached for filing is Pennsylvania Electric Company's Motion to Join the Tree Owners as an Indispensable Party (Motion) to the above-referenced complaint proceeding.

A copy of the Motion has been forwarded to the Complainant and the tree owners, Thomas and Mary Ann Ritter, in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/lam
Attachment

cc: The Hon. Katrina L. Dunderdale, PA Public Utility Commission [w/enc.]
John L. Munsch, Esquire, FirstEnergy Service Company [w/enc.]
James Kuhn [w/enc.]
Thomas and Mary Ann Ritter [w/enc.]

**Re: Docket No. C-2019-3010453
James Kuhn v. Pennsylvania Electric Company
Motion to Join Indispensable Party**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via Electronic and First Class Mail

James Kuhn
222 Buxton Rd.
Titusville, PA 16354
JKUHN@MANREENERGY.COM

Via First Class Mail

Thomas Ritter
Mary Ann Ritter
612 5th Ave.
Verona, PA 15147

Dated: August 16, 2019



Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES KUHN

V.

PENNSYLVANIA ELECTRIC COMPANY

:
:
:
:
:

Docket No. C-2019-3010453

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.103 you are hereby notified that if you do not file a written response answering the enclosed **Motion to Join the Tree Owners as an Indispensable Party** filed by Pennsylvania Electric Company in the above-referenced complaint proceeding, within **twenty (20) days** from service of this Notice, the facts set forth by Pennsylvania Electric Company in the Motion may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy to counsel for Pennsylvania Electric Company, Margaret A. Morris, Esq., and Administrative Law Judge Katrina L. Dunderdale who is presiding over the proceeding.

File with:

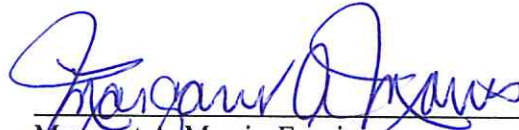
Rosemary Chiavetta, Esquire
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

The Hon. Katrina L. Dunderdale
PA PUC - OALJ
Piatt Place, Suite 220
301 Fifth Avenue
Pittsburgh, PA 15222

Margaret A. Morris, Esquire
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Date: August 16, 2019



Margaret A. Morris, Esquire
Attorney ID No. 75048
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 tel.
(215) 495-6600 fax
mmorris@regerlaw.com

Counsel for Pennsylvania Electric Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAMES W. KUHN :
 :
 v. : Docket No. C-2019-3010453
 :
 PENNSYLVANIA ELECTRIC COMPANY :

**MOTION OF PENNSYLVANIA ELECTRIC COMPANY
TO JOIN THE TREE OWNERS AS AN INDISPENSABLE PARTY**

Pennsylvania Electric Company (Company or Penelec) by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.103, hereby submits its Motion to Join the Tree Owners as an Indispensable Party (Motion) and require his appearance at the scheduled September 11, 2019, telephonic hearing regarding the Formal Complaint filed by James Kuhn (Complainant). At issue is a tree that the Complainant alleges presents a safety issue and seeks to have the Commission order Penelec to remove.

In support of its Motion, Penelec avers and represents as follows:

1. Upon information and belief, Thomas and Mary Ann Ritter (Owners) are the legal owners of the tree located at RR2 Lake Street, Union City, Pennsylvania. Company billing records reflect the Owners' mailing address as 612 5th Avenue, Verona, Pennsylvania.

2. In his Formal Complaint, filed May 30, 2019, the Complainant requests Penelec remove a tree that he alleges is a safety threat. The Complainant admits that (1) he is not the

owner of the tree; (2) he has no legal right to remove the tree; and (3) the Owners oppose its removal. A copy of the Formal Complaint is provided as Attachment 1.

3. In its Answer and New Matter, filed July 1, 2019, the Company averred that the tree is not located in the public right-of way or pursuant to any easement that Penelec holds. Penelec contends the tree is located solely on the Owners' private property and denies that the Company has the legal authority to enter the Owners' property and remove the tree against their wishes when the tree does not pose an immediate danger to the Company's facilities.

4. By Notice, dated July 26, 2019, the matter was scheduled for a telephonic hearing before the Honorable Katrina L. Dunderdale on September 11, 2019.

5. The Owners are a necessary party and the Formal Complaint should be amended to include the Owners as a respondent.

6. The general law regarding joinder of indispensable parties is well established in Pennsylvania.

7. Appellate courts have consistently held that property owners are indispensable parties in lawsuits concerning the owner's property rights. The issue of the "failure to join an indispensable party" cannot be waived. *Hart v. O'Malley*, 436 Pa. Super. 151, 647 A.2d 542, 549 (Pa. Super. 1994).

8. In Pennsylvania, an indispensable party is one whose rights are so directly connected with and affected by the litigation that he/she must be a party of record to protect such rights and the absence of that party renders any order or decree of court null and void for want of jurisdiction. *Pocono Pines Corp. v. Pa. Game Com., Com. of Pa.*, 464 Pa. 17, 345 A.2d 709 (1975).

9. To determine whether a party is indispensable, a court must consider: (1) Does the absent party have a right or interest related to the claim? (2) If so, what is the nature of that right or interest? (3) Is that right or interest essential to the merits of the issue? and (4) Can justice be afforded without violating the due process rights of the absent party? *Mechanicsburg Area School District v. Kline*, 494 Pa. 476, 481, 431 A.2d 953, 956 (1981).

10. In the instant proceeding, there can be no question that the Owners are an indispensable party. They are the legal owners of the tree located on their private property; they oppose the removal of their property and Penelec has no legal authority to remove their tree; their due process rights will be violated if the Commission orders Penelec in the present complaint proceeding to take their property. *Columbia Gas Transmission Corp. v. Diamond Fuel Co.*, 464 Pa. 377, 346 A.2d 788 (1975).

11. On August 14, 2019, the Complainant, *via* email, advised he does not object to the Owners being joined as an indispensable party.

WHEREFORE, Respondent, Pennsylvania Electric Company, requests that its uncontested Motion be granted and that Thomas and Mary Anne Ritter, the Owners of the tree located at RR2 Lake Street, Union City, Pennsylvania, be joined as an indispensable party.

Respectfully submitted,



Date: August 16, 2019

Margaret A. Morris, Esquire
Attorney ID No. 75048
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 tel.
mmorris@regerlaw.com

Counsel for Pennsylvania Electric Company

Docket No. C-2019-3010453
James Kuhn v. Pennsylvania Electric Company

Attachment 1

Formal Complaint

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name JAMES W. KUHN
Street/P.O. Box 2222 BUXTON RD Apt #
City TITUSVILLE State PA Zip 16354
County CRAWFORD

Telephone Number(s) Where We Can Contact You During the Day:

(814) 827-0600 (home) (814) 671-8300 (mobile)

E-mail Address (optional): JKUHN@MANRENERGY.COM

Utility Account Number (from your bill) 100078675277

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name JAMES W. KUHN
Street/P.O. Box 36039 LAKE STREET
City UNION CITY State PA Zip 16438

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PENELEC

RECEIVED

MAY 30 2019

PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC WASTEWATER/SEWER
 GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)
 WATER MOTOR CARRIER (e.g. taxi, moving company, limousine)
 STEAM HEAT

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

RECEIVED

MAY 30 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Other (explain). *THIS IS IN REGARD TO A DANGEROUS LARGE TREE THAT IS TOUCHING A PENELEC MAIN ELECTRIC LINE. THIS OPINION IS SUPPORTED BY A PROFESSIONAL FORESTER IN WRITING; ATTACHED! DURING SEPTEMBER 2018 A SIMILAR TREE FELL ABOUT 150 FEET AWAY ALONG THE SAME PENELEC LINE; IT BROKE OFF 3 POLES AND RIPPED OFF ELECTRIC SERVICE OFF MANY RESIDENCES WITHIN AN 800 FOOT SPAN. THIS TREE WILL DO THE SAME! PENELEC FIELD REPRESENTATIVES HAVE EXPLAINED THEY WAIT FOR THE TREE TO FALL TO DO REPAIRS.*

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

VERY SIMPLE; REMOVE THE LIFE THREATENING TREE !!

WHEN THIS FALLS IT WILL DESTROY MY RESIDENCE &
WE WILL BE KILLED IF WE ARE IN THE HOUSE!

THIS TREE IS NOT ON MY PROPERTY; ALSO I OFFERED
TO PAY FOR REMOVAL!

WE ARE IN DESPERATE NEED OF HELP AS WE HAVE NO
LEGAL RIGHT TO REMOVE.

ALSO THE PENNELEC RATE PAYERS WILL BE SUBJECTED TO
UNNECESSARY REPAIR COSTS.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA)

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES
NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES *INFORMAL COMPLAINT*
NO *CASE # 3701975*

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES
NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

I TALKED TO PENELEC SEVERAL TIMES AND THEY WILL NOT RECOGNIZE AS A SERIOUS PROBLEM; SO THEY DO NOTHING!

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. **Verification and Signature**

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. If you do not sign the Formal Complaint, the PUC **will not accept** it.

Verification:

I JAMES W. KUHN, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

James W. Kuhn 5-22-2019
(Signature of Complainant) (Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept** it.

10. **Two Ways to File Your Formal Complaint**

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will **not** be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.

May 29th, 2019

PUC Formal Complaint

Informal complaint filed- Case # 3701975

RE: Dangerous Tree – Mature beech tree with rotten core

Dear Sir(s):

This is a very serious situation that is being ignored by the utility company, Penelec.

The Penelec field representatives several times have apologized and stated, ***“the company does not remove trees near secondary lines until they fall, that is just the way it is even though you don’t want to hear that !”***

Please ask Penelec to provide the details of an incident that happened on September 16th, 2018 when a similar tree fell along the same electric line about 150 feet from this tree. The weather was a calm, clear night about 4 AM, luckily no one was in the vicinity.

The damage was extensive breaking 3 -4 electric poles and ripping electric service off many residences.

This had to cost tens of thousands of dollars that the Penelec rate payers have to cover. Now this will happen again and even worse due to total destruction of property damage and potential loss of life, again costing the rate payers an unnecessary expense .

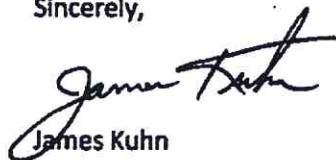
This can easily be avoided by removing the tree or just lowering the tree to 20 feet high.

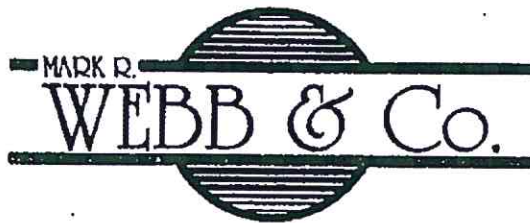
I have no recourse since the landowner will not cooperate.

I did hire a forester and an a professional tree service for a written evaluation, please see attached documents!

Thank you.

Sincerely,


James Kuhn



11049 Route 6 • Union City, Pennsylvania 16438
(814) 663-5393 • Fax (814) 663-4008 • Email: mrkrwebb@earthlink.net

April 22, 2019

James Kunn
2222 Buxton Road
Titusville, PA 16354

Hazard Tree at Canadohta Lake

Dear Jim,

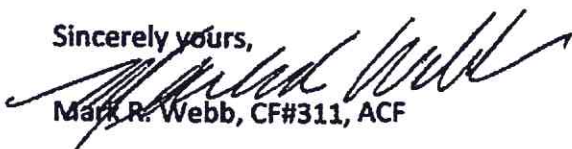
I am writing to give my professional opinion of an American Beech tree (*Fraxinus Americana*) located at 36039 Lake Street at Canadohta Lake. The tree in question is approximately 90 feet tall and has a diameter (measured at breast height) of approximately 38 inches. The tree has a very expansive crown. The issue with the tree is that it is hollow up to approximately 16 feet. The shell of the tree is only about 3-4-inches thick. In this condition, this an extreme hazard tree.

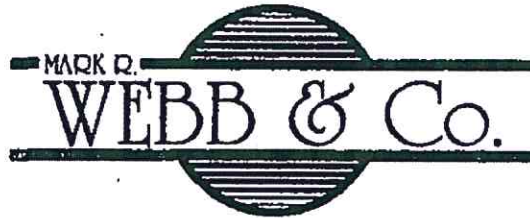
The tree is located next to the street and the electric line and also has a slight lean toward your cottage. When this tree does fall, and it will, it will cause extensive property damage and possibly loss of life if someone is in your cottage at that time.

My recommendation is to use whatever means necessary to have this tree removed before it falls causing extensive property damage and possible loss of life.

I remain available to offer further assistance as necessary in this matter.

Sincerely yours,


Mark R. Webb, CF#311, ACF



11049 Route 6 • Union City, Pennsylvania 16438
(814) 663-5393 • Fax (814) 663-4008 • Email: mrkrwebb@earthlink.net

PROFESSIONAL QUALIFICATIONS

-of-
MARK R. WEBB CF #311, ACF
MARK R. WEBB CF #311, ACF

EDUCATION:

BS Forest Management, 1973, Pennsylvania State University

PROFESSIONAL EXPERIENCE:

Sales Trainee, Blanchard Lumber Company, Wayne, New Jersey and Albany, New York
1973 to 1974

Senior Forester and Land Manager, Fisher & Young Lumber Company, Titusville,
Pennsylvania 1974 to 1980 (management responsibilities for 18,000 acres and timber
procurement)

General Manager, Endeavor Lumber Company, Ashville, New York, 1980 to 1981

Consulting Forester, Nagy & Webb, Partner, 1981 to 1993

Consulting Forester, Mark R. Webb & Co. – Owner, 1993 to present

PROFESSIONAL AFFILIATIONS:

Society of American Foresters

Association of Consulting Foresters

Pennsylvania Council of Professional Foresters, Charter Member

American Tree Farm, Certified Inspector

PROFESSIONAL HONORS:

Fellow, Society of American Foresters, 1999

Alumni of the Year 2004, Penn State School of Forest Resources

Centennial Fellow 2004, Penn State University, Mont Alto Campus

Member of the Society of American Foresters and Association of Consulting Foresters

CERTIFICATIONS:

Pennsylvania Forest Stewardship, Plan Writer

Society of American Foresters, Certified Forester since 1986

American Tree Farm System, Certified Inspector and Plan Writer

PROFESSIONAL ACTIVITIES:

Society of American Foresters:

Chairman Plateau Chapter, 1985
Chairman, Pennsylvania Division, 1990, 1991
Executive Committee, Allegheny Society, 1990 to present
Joint Chapter Deer/Regeneration Committee, 1985
Registration & Licensing Committee 1994 to 1996
Chair, Allegheny Society, 1998, 1999
Vice-Chair House of Society Delegates, 2000
Allegheny SAF Education Chair, 2004 to present

Association of Consulting Foresters:

Regional Director, 1996 to 1999
Chair, Penn Chapter, 1993 to 1996
Chair, National Meeting 1999
Director, Practicing Foresters Institute Trust 2009 to 2015

Pennsylvania Council of Professional Foresters

Charter Member
Chair, 2000- 2002
Current Director

State Activities:

Penn State Forest Issues Working Group
Best Management Practices for Silviculture Working Group
Timber Harvesting Assessment Advisory Team
Pennsylvania State Implementation Committee –
Sustainable Forestry Initiative
Pennsylvania Rural Development Council Committee on
Forest Taxation
Penn State School of Forest Resources Advisory Committee
Director /Financial Secretary, Penn State University College of Agriculture
Alumni Association
Penn State School of Forest Resources Alumni Society, Past President

Staff:

1 Full time Forester
1 Part time Forester
1 Part time secretary

BARON'S TREE SERVICE

1. SAFETY AND INTEGRITY OF VERY LARGE BEECH TREE.

Jim Kuhn contacted me on a hollow Beech tree. This is a very large tree. It over hangs his house and the power lines. This tree is hollow most of the way thru the stem. The top of the tree is full and healthy. That means there is lots of weight up top.

A. You can reach up into the stem a long way. Water is running in an opening in the top of the tree. It then is running out the bottom. I would advice removal of this tree.

It is a liability to the nearby structures. One being Jim's cottage. Which is his home 6 months of the year. There is a potential for the loss of life if this tree was to fail. I would strongly advise the removal of this tree.

5/29/2019

Thank you: Baron lee Waychoff Jr

814-516-0027

Baronw6718@gmail.com



CERTIFIED MAIL



7018 2290 0000 7223 3293



Mr. James W. Kuhn
2222 Buxton Rd
Titusville, PA 16354



1000



17120

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**Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120**