

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

HORIZON VENTURES OF WEST  
VIRGINIA, INC., a West Virginia  
corporation,

Plaintiff,

vs.

Civil Action No. 13-C-196  
Judge Martin J. Gaughan

AMERICAN BITUMINOUS POWER  
PARTNERS, L.P., a Delaware limited  
partnership, PLEASANT VALLEY  
ENERGY COMPANY, a California  
corporation, AMERICAN HYDRO  
POWER PARTNERS, L.P., a  
Pennsylvania limited partnership,

Defendants.

CIRCUIT COURT  
OF OHIO COUNTY  
2013 OCT 25 AM 10 58  
BRENDA L. MILLER

**ANSWER OF DEFENDANTS TO PLAINTIFF'S AMENDED COMPLAINT**

Now come Defendants American Bituminous Power Partners, L.P. ("AMBIT"); Pleasant Valley Energy Company ("Pleasant Valley"); and American Hydro Power Partners, L.P. ("American Hydro") (collectively referred to as "Defendants"), through counsel, Steptoe & Johnson PLLC and William D. Wilmoth and Kristen Andrews Wilson, and submit their Answer to Plaintiff's Amended Complaint:

**FIRST DEFENSE**

Plaintiff's Amended Complaint fails to state a claim or cause of action upon which relief may be granted.

**SECOND DEFENSE**

1. Upon information and belief, Defendants admit the allegations in paragraph 1 of Plaintiff's Amended Complaint.

2. Defendants admit the allegations in paragraph 2 of Plaintiff's Amended Complaint.

3. Defendants admit the allegations contained in paragraph 3 of Plaintiff's Amended Complaint.

4. Defendants deny the allegations in paragraph 4 of Plaintiff's Amended Complaint. American Hydro Power Company is the general partner of AMBIT. Its principle place of business is Villanova, PA. American Hydro Power Company is a Pennsylvania corporation licensed to do business in West Virginia.

5. Defendants admit the allegations in paragraph 5 of Plaintiff's Amended Complaint.

6. Paragraph 6 constitutes a legal conclusion to which no response is necessary. To the extent a response is required, those allegations are denied.

7. Defendants generally admit the allegations contained in paragraph 7 of Plaintiff's Amended Complaint and affirmatively state that the Lease Agreement speaks for itself.

8. Defendants generally admit the allegations contained in paragraph 8 of Plaintiff's Amended Complaint and affirmatively state that the Lease Agreement speaks for itself.

9. Defendants generally admit the allegations contained in paragraph 9 of Plaintiff's Amended Complaint and affirmatively state that the Lease Agreement speaks for itself.

10. Defendants generally admit the allegations contained in paragraph 10 of Plaintiff's Amended Complaint and affirmatively state that the attached Lease Agreement speaks for itself.

**COUNT I**  
**Declaratory Judgment**

11. Defendants incorporate all their responses and defenses to the claims asserted in paragraphs 1-10 of Plaintiff's Amended Complaint as if fully restated.

12. Defendants generally admit the allegations contained in paragraph 12 of Plaintiff's Amended Complaint and affirmatively state that the Lease Agreement speaks for itself.

13. Defendants generally admit the allegations contained in paragraph 13 of Plaintiff's Amended Complaint and affirmatively state that the Lease Agreement speaks for itself.

14. Defendants deny the allegations contained in paragraph 14 of Plaintiff's Amended Complaint.

15. Defendants deny the allegations contained in paragraph 15 of Plaintiff's Amended Complaint.

16. Defendants admit that AMBIT has failed to pay certain rent to Horizon. However, AMBIT asserts that this failure is because of its duty to satisfy other obligations listed in the Lease Agreement and AMBIT's duty to pay rent to Horizon is subordinate to these other obligations. Therefore, Defendants deny the remaining allegations contained in paragraph 16 of Plaintiff's Amended Complaint.

17. Defendants admit the allegations contained in paragraph 17 of Plaintiff's Amended Complaint that AMBIT received the letter described therein, but deny the remainder of the allegations contained therein.

18. Defendants admit that the rent owed was subordinated to other payments, but deny the remaining allegations contained in paragraph 18 of Plaintiff's Amended Complaint.

19. Paragraph 19 states a legal conclusion to which no response is necessary.
20. Paragraph 20 states a legal conclusion to which no response is necessary.
21. Paragraph 21 states a legal conclusion to which no response is necessary.

**COUNT II**  
**Breach of Contract**

22. Defendants incorporate all their responses and defenses to the claims asserted in paragraphs 1-21 of Plaintiff's Amended Complaint as if fully restated.

23. Defendants deny the allegations contained in paragraph 23 of Plaintiff's Amended Complaint.

24. Defendants admit the allegations contained in paragraph 24 of Plaintiff's Amended Complaint, but deny any wrongdoing on their part.

25. Defendants admit that AMBIT has failed to pay certain rent to Horizon. Defendants assert the AMBIT's duty to pay rent to Horizon is subordinate to its other obligations under the Lease Agreement. Therefore, Defendants deny the remaining allegations contained in paragraph 25 of Plaintiff's Amended Complaint.

26. Defendants deny the allegations contained in paragraph 26 of Plaintiff's Amended Complaint.

27. Defendants deny the allegations contained in paragraph 27 of Plaintiff's Amended Complaint.

28. Defendants deny the allegations contained in paragraph 28 of Plaintiff's Amended Complaint.

29. Paragraph 29 states a legal conclusion to which no response is necessary. To the extent a response is deemed necessary, those allegations are denied.

**COUNT III**  
**Injunctive Relief**

30. Defendants incorporate all their responses and defenses to the claims asserted in paragraphs 1-29 of Plaintiff's Amended Complaint as if fully restated.

31. Defendants deny the allegations contained in paragraph 31 of Plaintiff's Amended Complaint.

32. Defendants deny the allegations contained in paragraph 32 of Plaintiff's Amended Complaint.

33. Defendants deny the allegations contained in paragraph 33 of Plaintiff's Amended Complaint.

34. Defendants deny the allegations contained in paragraph 34 of Plaintiff's Amended Complaint.

35. Defendants deny the allegations contained in paragraph 35 of Plaintiff's Amended Complaint.

**COUNT IV**  
**Specific Performance**

36. Defendants incorporate all their responses and defenses to the claims asserted in paragraphs 1-35 of Plaintiff's Amended Complaint as if fully restated.

37. Defendants admit the allegations contained in paragraph 37 of Plaintiff's Amended Complaint and state the Lease Agreement speaks for itself.

38. Defendants admit that Plaintiff made demands for AMBIT's records, but deny the remaining allegations contained in paragraph 38 of Plaintiff's Amended Complaint.

39. Defendants admit that AMBIT has failed to make some its records available. However, Defendants deny that this failure was contrary to the language of the Lease

Agreement. Defendants deny the remaining allegations contained in paragraph 39 of Plaintiff's Amended Complaint.

40. Defendants deny the allegations contained in paragraph 40 of Plaintiff's Amended Complaint. Furthermore, Defendants deny any allegations of fact contained in the *ad damnum* clause, including subparts (1)-(5).

**COUNT V**  
**Breach of Contract**

41. Defendants incorporate all their responses and defenses to the claims asserted in paragraphs 1-40 of Plaintiff's Amended Complaint as if fully restated.

42. Defendants generally admit the allegations contained in paragraph 42 of Plaintiff's Amended Complaint and state that that Lease Agreement speaks for itself.

43. Defendants generally admit the allegations contained in paragraph 43 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

44. Defendants generally admit the allegations contained in paragraph 44 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

45. Defendants generally admit the allegations contained in paragraph 45 of Plaintiff's Amended Complaint and state that the Lease Agreements speaks for itself.

46. Defendants generally admit the allegations contained in paragraph 46 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

47. Defendants generally admit the allegations contained in paragraph 47 of Plaintiff's Amended Complaint and state that that Lease Agreement speaks for itself.

48. Defendants generally admit the allegations contained in paragraph 48 of Plaintiff's Amended Complaint and state that that Lease Agreement speaks for itself.

49. Defendants generally admit the allegations contained in paragraph 49 of Plaintiff's Amended Complaint and state that that Lease Agreement speaks for itself.

50. Defendants are without information sufficient to either admit or deny the allegations contained in paragraph 50 of Plaintiff's Amended Complaint.

51. Defendants deny the allegations contained in paragraph 51 of Plaintiff's Amended Complaint.

52. Defendants admit AMBIT has utilized and continues to utilize Foreign Fuel. Defendants deny the remaining allegations in paragraph 52 of Plaintiff's Amended Complaint.

53. Defendants deny the allegations in paragraph 53 of Plaintiff's Amended Complaint.

54. Plaintiff's allegations that "Horizon could [sic] by reasonable due diligence discover such concealment such that any limitations period of Horizon's claim for breach of contract has been equitably tolled" is a legal conclusion to which no response is necessary. Defendants deny the remaining allegations contained in paragraph 54 of Plaintiff's Amended Complaint.

55. Defendants deny the allegations contained in paragraph 55 of Plaintiff's Amended Complaint.

56. Defendants deny the allegations contained in paragraph 56 of Plaintiff's Amended Complaint.

57. Defendants deny the allegations contained in paragraph 57 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

**COUNT VI**  
**Fraud & Misrepresentation**

58. Defendants incorporate all their responses and defenses to the claims asserted in paragraphs 1-57 of Plaintiff's Amended Complaint as if fully restated.

59. Defendants generally admit the allegations contained in paragraph 59 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

60. Defendants are without information or knowledge sufficient to admit or deny the allegations contained in paragraph 60 of Plaintiff's Amended Complaint.

61. Defendants deny the allegations contained in paragraph 61 of Plaintiff's Amended Complaint.

62. Defendants admit that Foreign Fuel is utilized to fire the electric generation plant. Defendants deny the remaining allegations contained in paragraph 62 of Plaintiff's Amended Complaint.

63. Plaintiff's allegations that "Horizon could [sic] by reasonable due diligence discover such concealment such that any limitations period of Horizon's claim for breach of contract has been equitably tolled" is a legal conclusion to which no response is necessary. Defendants deny the remaining allegations contained in paragraph 63 of Plaintiff's Amended Complaint.

64. Defendants deny the allegations contained in paragraph 64 of Plaintiff's Amended Complaint.

65. Defendants deny the allegations contained in paragraph 65 of Plaintiff's Amended Complaint.

66. Defendants deny the allegations contained in paragraph 66 of Plaintiff's Amended Complaint.



67. Defendants deny the allegations contained in paragraph 67 of Plaintiff's Amended Complaint and state that Defendants overpaid rent payments to Horizon.

68. Defendants deny the allegations contained in paragraph 68 of Plaintiff's Amended Complaint and state that Defendants overpaid rent payments to Horizon.

69. Defendants deny the allegations contained in paragraph 69 of Plaintiff's Amended Complaint.

**COUNT VII**  
**Fraud & Misrepresentation**

70. Defendants incorporate all their responses and defenses to the claims asserted in paragraphs 1-69 of Plaintiff's Amended Complaint as if fully restated.

71. Defendants admit the allegations contained in paragraph 71 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

72. Defendants admit the allegations contained in paragraph 72 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

73. Defendants admit the allegations contained in paragraph 73 of Plaintiff's Amended Complaint.

74. Defendants admit the allegations contained in paragraph 74 of Plaintiff's Amended Complaint.

75. Defendants deny the allegations contained in paragraph 75 of Plaintiff's Amended Complaint.

76. Defendants deny the allegations contained in paragraph 76 of Plaintiff's Amended Complaint.

77. Defendants admit the allegations contained in paragraph 77 of Plaintiff's Amended Complaint.

78. Defendants deny the allegations contained in paragraph 78 of Plaintiff's Amended Complaint.

79. Defendants deny the allegations contained in paragraph 79 of Plaintiff's Amended Complaint.

80. Defendants deny the allegations contained in paragraph 80 of Plaintiff's Amended Complaint.

**COUNT VIII**  
**Unjust Enrichment**

81. Defendants incorporate all their responses and defenses to the claims asserted in paragraphs 1-80 of Plaintiff's Amended Complaint as if fully restated.

82. Defendants deny the allegations contained in paragraph 82 of Plaintiff's Amended Complaint.

83. Defendants deny the allegations contained in paragraph 83 of Plaintiff's Amended Complaint.

84. Defendants deny the allegations contained in paragraph 84 of Plaintiff's Amended Complaint.

85. Defendants deny the allegations contained in paragraph 85 of Plaintiff's Amended Complaint.

86. Paragraph 86 of Plaintiff's Amended Complaint states a legal conclusion to which no response is necessary. To the extent a response is deemed necessary, denied.

**COUNT IX**  
**Breach of Contract**

87. Defendants incorporate all their responses and defenses to the claims asserted in paragraphs 1-86 of Plaintiff's Amended Complaint as if fully restated.

88. Defendants generally admit the allegations contained in paragraph 88 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

89. Defendants generally admit the allegations contained in paragraph 89 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

90. Defendants deny the allegations contained in paragraph 90 of Plaintiff's Amended Complaint.

91. Defendants deny the allegations contained in paragraph 91 of Plaintiff's Amended Complaint.

**COUNT X  
Trespass and Conversion**

92. Defendants incorporate all of their responses and defenses to the claims asserted in paragraphs 1-91 of Plaintiff's Amended Complaint as if fully restated.

93. Defendants generally admit the allegations contained in paragraph 93 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

94. Defendants deny the allegations contained in paragraph 94 of Plaintiff's Amended Complaint.

95. Defendants deny the allegations contained in paragraph 95 of Plaintiff's Amended Complaint.

**COUNT XI  
Equitable Relief**

96. Defendants incorporate all of their responses and defenses to the claims asserted in paragraphs 1-95 of Plaintiff's Amended Complaint as if fully restated.

97. Defendants generally admit the allegations contained in paragraph 97 of Plaintiff's Amended Complaint and state that the Lease Agreement speaks for itself.

98. Defendants deny the allegations contained in paragraph 98 of Plaintiff's Amended Complaint.

99. Defendants deny the allegations contained in paragraph 99 of Plaintiff's Amended Complaint.

100. Defendants deny the allegations contained in paragraph 100 of Plaintiff's Amended Complaint.

101. Defendants deny the allegations contained in paragraph 101 of Plaintiff's Amended Complaint.

102. Defendants deny any allegations of fact in Plaintiff's Amended Complaint which are not specifically admitted above.

103. Defendants deny that they, or either of them, are liable to Plaintiff for any of the relief claimed in Plaintiff's Amended Complaint, or for any other relief.

#### **THIRD DEFENSE**

Plaintiff's claims are barred by the doctrine of unclean hands.

#### **FOURTH DEFENSE**

All or a portion of Plaintiff's claims may be barred by its failure to mitigate damages.

#### **FIFTH DEFENSE**

All or a portion of Plaintiff's claims may be barred by the doctrines of laches, estoppel, waiver, res judicata, collateral estoppel, or assumption of the risk.

#### **SIXTH DEFENSE**

The claims in the Complaint are barred by failure to comply with any necessary conditions precedent.

#### **SEVENTH DEFENSE**

To the extent Plaintiff relies upon any oral representations outside the Lease Agreement which is the subject of this action, its complaint may be barred by the statute of frauds.

#### **EIGHTH DEFENSE**

To the extent Plaintiff relies upon facts that are contrary to representations made by its representatives and/or predecessors in interest, its claims may be barred by fraud if misrepresentations were relied upon by Defendants to their detriment.

#### **NINTH DEFENSE**

Plaintiff's claims for punitive damages violate Defendants' right to procedural due process and constitute "excessive funds." Plaintiff's claims are unconstitutional and are therefore barred by the Fifth, Eighth, and Fourteenth Amendments to the *United States Constitution* and Article 3, Section 5 of the *West Virginia Constitution*.

#### **TENTH DEFENSE**

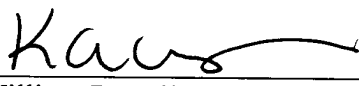
The parol evidence rule operates to bar all, or a portion of, Plaintiffs' claim.

#### **ELEVENTH DEFENSE**

Defendants reserve the right to raise additional affirmative defenses, which may be applicable, in whole or in part, to Plaintiff's claims as the evidence is developed in discovery.

**WHEREFORE**, having answered Plaintiff's Amended Complaint, Defendants respectfully request that judgment be entered in their favor and against Plaintiff and that they be further awarded their costs and expenses in and about the defense of this action, and all other relief that this Court deems appropriate.

STEPTOE & JOHNSON PLLC  
Of Counsel

  
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*Counsel for Defendants*

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Partnership, PLEASANT VALLEY  
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POWER PARTNERS, L.P., a  
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Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of October, 2013, I served the foregoing *Answer of Defendants to Plaintiff's Amended Complaint* upon all counsel of record, by United States Mail, postage prepaid, to the following address:

Carl N. Frankovitch, Esq.  
Kevin M. Pearl, Esq.  
Frankovitch, Anetakis, Colantonio & Simon  
337 Penco Road  
Weirton, WV 26062  
***Counsel for Plaintiff***

2013 OCT 25 AM 10 58  
OHIO COUNTY  
RECEIVED  
L. MILLER

