



Steven K. Haas
(717) 236-1300 x244
skhaas@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

September 27, 2013

VIA ELECTRONIC FILING

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

RE: Lidia Shan v. Verizon Pennsylvania LLC; Docket No. C-2013-2371560;
**ANSWER OF VERIZON PENNSYLVANIA LLC TO THE MOTION OF
LIDIA SHAN FOR DISQUALIFICATION OF A PRESIDING OFFICER**

Dear Secretary Chiavetta:

Enclosed for filing is Verizon Pennsylvania LLC's Answer to the Motion for Disqualification of a Presiding Officer of Lidia Shan in the above-captioned proceeding.

If you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,

Steven K. Haas
Counsel for Verizon Pennsylvania LLC

SKH/san

Enclosures

cc: Honorable Christopher P. Pell (Via First Class Mail)
Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Lidia Shan	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2013-2371560
	:	
Verizon Pennsylvania LLC	:	
	:	
Respondent	:	

**ANSWER OF
VERIZON PENNSYLVANIA LLC
TO THE MOTION OF LIDIA SHAN
FOR DISQUALIFICATION OF A
PRESIDING OFFICER**

NOW COMES Verizon Pennsylvania LLC, by and through its counsel in this matter, Hawke McKeon & Sniscak LLP, and hereby submits its Answer to the Motion for Disqualification of a Presiding Officer filed by Lidia Shan in the above-captioned proceeding.¹

The Complainant’s Motion is the latest in a series of unsuccessful attempts to revive and re-litigate an issue that has been fully considered and finally decided by the Commission via its Orders in two previous formal complaint proceedings. These repeated attempts by the Complainant have caused a significant waste of the time and resources of both Verizon PA and

¹ The Complainant’s filing was titled, “Petition to Assign a New Impartial ALJ for Scheduled Hearing on September 27, 2013.” In his Order Continuing Hearing, dated September 18, 2013, Administrative Law Judge Christopher P. Pell stated that the Petition would be treated as a Motion for Disqualification of a Presiding Officer.

the Commission. The issue of Verizon PA's Commission-approved, tariffed rate for its temporary suspension (vacation) service was first raised by Ms. Shan in her complaint at Docket No. C-2009-2150021. This proceeding was ultimately concluded by the Commission in its Order entered July 16, 2013, wherein it denied the Complainant's Petition for Rescission of the Commission's August 31, 2012 Opinion and Order, which had dismissed the complaint in its entirety. The Complainant's second attempt to litigate this same issue was made by the filing of a second complaint during the pendency of the 2009 proceeding. Her second complaint was filed in May of 2011, at Docket No. C-2011-2243183, and again raised the issue of Verizon's tariffed rate for its temporary suspension service. This proceeding was closed by the Commission's Opinion and Order entered January 12, 2012, wherein it granted Verizon PA's Preliminary Objection to the complaint on the basis of the pendency of the prior proceeding. In ordering paragraph 5 of that Opinion and Order, the Commission directed that Ms. Shan "... is precluded from filing any further informal or formal complaints with identity of issues to the pending complaint, Docket No. C-2009-2150021, for Lidia Shan's telephone account at her current service address."

In the instant complaint proceeding, Ms. Shan raised the issue of whether she was charged correctly for the "vacation" service from November of 2011 until September 2012. However, as can be readily seen from her numerous subsequent filings in this matter, including the Motion at issue here, this complaint is merely yet another attempt to re-litigate the issue of the reasonableness of Verizon PA's tariffed rate for its temporary suspension service. ALJ Pell correctly informed the Complainant in his Order Granting Motion of Verizon Pennsylvania LLC to Strike the New Matter of Lidia Shan, that this issue will not be addressed in this proceeding. It

is this directive from ALJ Pell that led to the Complainant's instant Motion. She refuses to accept the fact that this issue has been concluded by the Commission.

As discussed below, ALJ Pell is absolutely correct in his determination of the scope of the instant proceeding and, accordingly, the Complainant's Motion for Disqualification must be denied and any such future filings related to the issue of the rate for the temporary suspension service should be rejected preliminarily as being against numerous Commission rulings and as a further waste of the parties' and Commission's time and resources.

In the first paragraph of her motion, the Complainant reveals her true motivation, as she states:

[i]n support thereof I aver that on or about September 5, 2013 ALJ Christopher Pell in his reply to my letter stated that he is not going to listen to the closed docket #2009-2150021. The docket number may be closed but the issue of illegitimate tariff for suspended telephone land lines remains open without resolution.

Motion, at p. 1.

As noted, the proceeding at Docket No. C-2009-2150021 was ultimately concluded by the issuance of the Commission's Order entered July 16, 2013. Ms. Shan refuses to accept the Commission's ruling, however, and repeatedly attempts to revive this issue. Based upon the Commission's July 16, 2013 Order, as well as its directive set forth in its January 12, 2012 Opinion and Order at Docket No. C-2011-2243183, Judge Pell correctly determined the scope of the instant proceeding.

A second basis for the Complainant's motion appears to be her dissatisfaction with Judge Pell's Order Granting Verizon PA's Motion to Strike the New Matter of Lidia Shan, dated September 11, 2013. Despite Ms. Shan's confusion as to proper and allowable pleadings procedures, as is clearly evident in her discussion of this issue in her Motion, ALJ Pell simply,

and correctly, ruled that the Commission's regulations do not allow for the filing of New Matter in response to an Answer (without New Matter) to a Formal Complaint, as Ms. Shan attempted to do. Neither of these determinations by Judge Pell provide a basis to request his disqualification.

The Commission's regulations allow for parties to move for the disqualification of a presiding officer. The regulation provides, "[a] party may file a motion for disqualification of a presiding officer which shall be accompanied by affidavits alleging **personal bias or other disqualification.**" 52 Pa. Code §5.482(a) (Emphasis added). A Motion to Disqualify an Administrative Law Judge from participating in a complaint proceeding must be denied if the moving party's allegations are unsubstantiated and do not constitute good cause to warrant removal. *Lorraine F. Mosso v. Peoples Natural Gas Co. and Duquesne Light Co.*, 70 Pa. PUC 146 (1989). In *Mosso*, the Commission stated, "[t]he Complainant's references to certain provisions of the Public Utility Code and our regulations, **without proof of specific disqualifying acts**, are tantamount to mere assertions". *Mosso*, at 147. (Emphasis added). Accordingly, a party moving for disqualification of an ALJ in a complaint proceeding must not only allege but also prove actions on the part of the ALJ that demonstrate personal bias or some other disqualifying characteristic.

Here, the only actions asserted by the Complainant in support of her motion are (1) the ALJ refuses to allow her to re-litigate the issue of the reasonableness of Verizon PA's temporary suspension service which, as described above, has already been fully litigated and concluded by the Commission, and (2) the ALJ granted Verizon PA's Motion to Strike her New Matter, which was improperly filed in response to Verizon PA's Answer. These allegations constitute mere recitations of the procedural history of this proceeding, rather than assertions of instances of bias

on the part of Judge Pell. Ms. Shan has utterly failed to not only prove but even assert in the first instance any behavior on Judge Pell's part that shows unfairness or bias. He merely made rulings in this proceeding that, under the Commission's regulations, he was required to make.

Ms. Shan's standard or threshold for requesting the disqualification of a Presiding Officer appears to be any unfavorable ruling. Under her interpretation of the standard, every ruling made by an ALJ would present grounds for disqualification by the non-prevailing party. In this case, there has been absolutely no showing of any improper or biased actions by ALJ Pell in this proceeding. Accordingly, the Complainant's Motion for Disqualification of a Presiding Officer must be denied.

For the reasons set forth above, Verizon Pennsylvania LLC respectfully requests that the Complainant's Motion for Disqualification of a Presiding Officer be denied in its entirety.



Steven K. Haas
Hawke McKeon & Sniscak LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105-1778
717-236-1300

DATED: September 27, 2013

Counsel for Verizon Pennsylvania LLC

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Lidia Shan	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2013-2371560
	:	
Verizon Pennsylvania LLC	:	
	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have, on this day, served a true and correct copy of the foregoing Answer of Verizon Pennsylvania LLC upon the persons and in the manner indicated below.

Service by First Class Mail

Lidia Shan
301 Byberry Road, Apt. F-14
Philadelphia, PA 19116

Service by Electronic Mail

Lidia Shan
smellsense@aol.com

DATED: September 27, 2013



Steven K. Haas