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December 9, 2013

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room
Harrisburg, PA 17120

RE: Patricia Manganaro v. Verizon Pennsylvania LLC; C-2012-2332597
MAIN BRIEF OF VERIZON PENNSYLVANIA LLC

Dear Ms. Chiavetta:

Attached for filing with the Commission is the Main Brief of Verizon Pennsylvania LLC in the above-referenced matter. A copy of this document has been served in accordance with the attached Certificate of Service.

If you have any questions with regard to this filing, please do not hesitate to contact me. Thank you for your attention to this matter.

Very truly yours,

William E. Lehman

Counsel for Verizon Pennsylvania LLC

WEL/bes

Attachment

Cc: Honorable Mark A. Hoyer, Administrative Law Judge

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I. INTRODUCTION AND STATEMENT OF THE CASE

On or about November 8, 2012, Patricia C. Manganaro (“Complainant”) filed a Formal Complaint against Verizon Pennsylvania LLC (“Verizon”) with the Pennsylvania Public Utility Commission (“Commission”), docketed at C-2012-2332597 (“Complaint”). This Complaint was consolidated with an identical Complaint she filed against Duquesne Light Company (“Duquesne”), docketed at C-2012-2332929.

Ms. Manganaro alleges that there are two downed poles on her property that she wants replaced. On November 26, 2012, Verizon filed a timely answer denying the Complainant’s allegations and averring that, after reasonable investigation, Verizon confirmed that it does not provide service to the Complainant and the subject poles are not owned by Verizon, but rather by the Complainant herself. Verizon attached a pole record to the Answer that confirmed that the Complainant was the owner of the poles. Charles Browning, a Verizon engineer, also conveyed this information to Ms. Manganaro before she filed the complaint.

During the course of this proceeding, settlement discussions took place primarily between Duquesne and the Complainant, because Verizon does not provide service to her, regarding alternate routes to get electrical service to her. These settlement negotiations ultimately did not lead to a resolution of the Complaints and a hearing was scheduled.

At the hearing, Verizon presented the testimony of one witness, Charles Browning, a Verizon engineer who personally handled this situation with the Complainant. Mr. Browning presented overwhelming evidence, including Verizon’s pole record, showing that the Complainant owned the poles in question.

By Briefing Order dated November 18, 2013, Administrative Law Judge (“ALJ”) Mark A. Hoyer requested Main Briefs be filed by the parties on December 9, 2013. This brief is submitted in compliance with that Order.

II. PROPOSED FINDINGS OF FACT

1. Ms. Manganaro lives at 325 Jacks Run Rd., Pittsburgh, Pa. 15202 and has lived on that property since 1999. (Transcript (“Tr.”) at 12:10-18).

2. Duquesne Light provides electric service to the Complainant’s house and has done so since 1999. (Tr. at 13:13-17). Comcast provides the Complainant’s telephone service and has done so since she moved into the house. (Tr. at 13:19-25).

3. Verizon does not presently and has never provided telephone service to the Complainant at her current address. (Tr. at 13:22–25; 37:22-23; 44:1-5).

4. Sometime over the Memorial Day weekend in 2012, the Complainant’s power went out for approximately two or three days. (Tr. at 14:14-15).

5. John Klim, troubleshooter for Duquesne Light, responded to the Complainant’s out of service situation and determined that a tree had fallen down and hit the customer’s section of the triplex electrical wiring, which brought the poles on her property down along with the electrical wiring. (Tr. at 62:15-20).

6. The poles that were torn down were located on the Complainant’s property and held the active electrical wires, and Comcast telephone and cable TV service wires between the joint use utility pole located on the street and her home. (Tr. at 62:15-63:16; 85:6-21; Duquesne Light Exhibit 3).

7. A Verizon representative informed the Complainant that Verizon does not own the downed poles. (Tr. at 15:4-6).

8. Charles Browning, Verizon outside plant manager, emailed a copy of Verizon’s pole record [Verizon Exhibit No. 1] to the Complainant, which indicated the poles on the Complainant’s property were subscriber owned poles. (Tr. at 37:15-20). Later on, she came to Mr. Browning’s office and he showed her the original. (Tr. at 37:19-20).

9. Verizon Exhibit No. 1 is a business record that keeps track of every pole to which Verizon are attached, regardless of ownership. (Tr. at 38:17-19).

10. Verizon Exhibit No. 1 indicates that the poles in question are subscriber (customer) owned, that Verizon has no equity ownership in the poles, that there are no joint-use agreements with any other utility, and that the poles were originally placed in 1937 for the property owner at the property owner's request. (Tr. at 39:2-25; 56:12-21).

11. Verizon Exhibit No. 1 is simply a business record and is not a right-of-way or easement agreement and was not recorded, which would be required if Verizon had owned the poles. (Tr. at 42:10-43:6).

12. This lack of a right-of-way or easement agreement was corroborated by the Complainant (Tr. at 16:11-17; 33:8-34:3) and by Duquesne Light's witness, Ms. Posney, who testified that there were no right-of-way or joint use agreements between Duquesne Light and Verizon. (Tr. at 84:11-17).

13. If Verizon owned the poles, there would have been a small oval tag above the numbers that would have said "BT Company of Pennsylvania," standing for "Bell Telephone Company," Verizon's predecessor. (Tr. at 41:4-25). The poles do not contain such tags.

14. There are thousands of customer-owned poles, like the ones owned by Ms. Manganaro, which appear primarily in rural areas. (Tr. at 93:12-18).

III. SUMMARY OF THE ARGUMENT

The only question with regard to Verizon's interest in this matter is ownership of the downed poles on the Complainant's property. The Complainant bears the burden of proving that Verizon owns the poles in question. She has failed to carry this burden because she has not provided any evidence that Verizon owns the poles. In fact, the evidence provided by Verizon

and Duquesne overwhelmingly shows that the Complainant, Ms. Manganaro, is the owner of the poles and not Verizon.

This evidence includes Verizon's pole agreement (Verizon Exhibit No. 1) showing the poles are subscriber (customer) owned poles, that there is no equity ownership by Verizon, no joint-use agreements, and that a custom work order was requested by the property owner at the time for Verizon to place customer-owned poles on their property. There are no joint-use agreements or right-of way or easement agreements, which would have been required if Verizon owned the poles. There was no tag on the pole indicating Verizon's ownership, which would have been there had Verizon owned the poles. Finally, Duquesne's witness testified that there are thousands of customer owned poles in Duquesne's service area so these poles being customer owned is not surprising and, in fact, very probable. The overwhelming evidence in this matter proves that the customer owns the poles in question, not Verizon.

Because the customer owns the poles, it would be unjust, unreasonable, and a taking of Verizon's property in violation of law, for the Commission to require Verizon to place poles that would be for the sole use of Duquesne and Comcast and not Verizon. Moreover, it would be unlawful to require Verizon to take remedial measures absent a finding of a violation of the Public Utility Code.¹ Therefore, the complaint against Verizon in this matter must be dismissed.

IV. ARGUMENT

A. Burden of Proof

Complainant, as the proponent of a rule or order in this Commission proceeding, bears the burden of proof. 66 Pa. C.S. § 332. Accordingly, Complainant has the burden of proving by a preponderance of the evidence, which is evidence that is more convincing than the evidence

¹ *West Penn Power Company v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984) (Commission cannot require a utility to take remediation absent a finding the utility's action violates the Code.)

presented by the other parties, that Respondent violated the Pennsylvania Public Utility Code, the Commission's regulations, or an order of the Commission. Moreover, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa. C.S. § 704. More evidence is required than a mere trace or suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Com. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

The "burden of proof" is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The Complainant must meet both burdens to sustain a complaint. Here, the Complainant has failed to meet either of these prongs of the burden of proof and the Complaint must be dismissed.

B. Complainant Has Not Met Her Burden Of Proof Because She Has Not Provided Any Credible Evidence That The Downed Poles On Her Property Are Owned By Verizon.

The issue in this matter with respect to the complaint against Verizon is the ownership of the two (2) downed poles on her property. The Complainant has alleged that the poles belong to Verizon and wants Verizon to replace the poles. The Complainant, however, has failed to provide any evidence that the poles belong to Verizon. Indeed, as will be shown in detail below, the only direct evidence of record shows that the property owner at 325 Jacks Run Rd, Pittsburgh, Pa. is the owner of the poles located on that property. That property owner is the Complainant, Ms. Manganaro, not Verizon.

1. Background

By way of background for the context of the contested pole ownership issue, it is undisputed that Ms. Manganaro lives at 325 Jacks Run Rd., Pittsburgh, Pa. 15202 and has lived on that property since 1999 and that she is the owner of the property. (Tr. at 12:10-18). Duquesne Light provides electric service to her house and has done so since 1999 and that she is the owner of the property. (Tr. at 13:13-17). Comcast provides the Complainant's telephone service and has done so since she moved into the house. (Tr. at 13:19-25). Verizon does not presently and has never provided telephone service to the Complainant at her current address. (Tr. at 13:22-25; 37:22-23; 44:1-5).

Sometime over the Memorial Day weekend in 2012, the Complainant's power went out for approximately two or three days. (Tr. at 14:14-15). John Klim, troubleshooter for Duquesne Light, responded to the Complainant's out of service situation and determined that a tree had fallen down and hit the customer's section of the triplex electrical wiring, which brought the poles on her property down along with the electrical wiring. (Tr. at 62:15-20). He made temporary repairs to get the Complainant back in service. (Tr. at 63:10-18). The poles that were torn down were located on the Complainant's property and held the active electrical wires, and Comcast telephone and cable TV service wires between the joint use utility pole located on the street and her home. (Tr. at 62:15-63:16; 85:6-21; Duquesne Light Exhibit 3).

At some point after the initial outage, Verizon met with the Complainant, at her property, along with representatives from Comcast and Duquesne Light. (Tr. at 14:15-16). At that meeting, the Verizon representative informed the Complainant that Verizon does not own the downed poles. (Tr. at 15:4-6). Within the next two weeks, the Complainant spoke with a Verizon representative who informed her that Verizon had a document that showed the owner of the property was the owner of the downed poles that are located on her property. He also

provided her with a card of a contractor that works with Verizon and said if she calls him, he would probably give her a good deal to replace the poles. (Tr. at 22:18-23:5).

Sometime in May or June of 2012, Ms. Manganaro called Charles Browning, Verizon's outside plant engineer, and asked about a form that was signed. He informed her that Verizon "had nothing like that." He pulled Verizon's pole record (described in detail below), which indicated the poles on her property were subscriber owned poles, and he emailed it to her. (Tr. at 37:15-20). Later on, she came to Mr. Browning's office and he showed her the original. (Tr. at 37:19-20).

2. Ownership of the poles located on the Complainant's property.

The primary and dispositive question with regard to Verizon's interest in this matter is ownership of the downed poles on the Complainant's property. The Complainant bears the burden of proving that someone other than herself owns the poles in question. With regard to her allegations that Verizon owns the poles, she has failed to carry her burden of proof because she has not provided any evidence that Verizon owns the poles. In fact, the evidence provided by Verizon and Duquesne overwhelmingly shows that the Complainant, Ms. Manganaro, is the owner of the poles and not Verizon.

The Complainant has failed to state any evidence showing that Verizon is the owner of the poles on her property other than her statement at the hearing that a Duquesne employee told her that the numbers on the poles indicated that the poles belonged to Verizon. (Tr. at 21:4-6). This "evidence" is not credible and cannot be relied on because it is hearsay and was properly objected to at the hearing and the Complainant's assertion that these numbers indicate Verizon ownership is refuted by the other evidence of the record. (Tr. at 21:7-8). This statement is not a statement against Verizon's interest, as counsel for the Complainant argued, because the statement was allegedly uttered by a Duquesne employee and *not* a Verizon employee.

Furthermore, Mr. Browning testified that Verizon stenciled these numbers on the poles, not as an indication of ownership, but simply for tracking purposes so Verizon would know where to find the poles if they are down. (Tr. at 40:13-23).

As will be discussed in detail below, the only direct evidence provided regarding ownership of the poles proves that the poles belong to the Complainant, and she, therefore, is responsible for the maintenance of the poles, including replacement if she so desires.

Verizon outside plant manager Charles Browning, who designs the outside plant, cables and poles that provide Verizon's telephone service, testified that he personally spoke with Ms. Manganaro regarding ownership of the poles and provided her with a copy of the pole record showing her that she owns the poles in question. (Tr. at 15:11-13). Mr. Browning sponsored Verizon Exhibit No. 1, which is the pole record that shows the Complainant is the owner of the downed poles on her property. (Tr. at 38:1-12; Verizon Exhibit No. 1). He testified that it is a business record that keeps track of every pole to which Verizon facilities are attached, regardless of ownership. (Tr. at 38:17-19). Mr. Browning described the information contained in the pole record that shows the Complainant owns the poles as follows:

Q: Now, could you brief[ly] explain what this is [Verizon Exhibit No. 1] and the relevant information that would be contained in this exhibit (indicating), to this matter?

A: We call it a pole record, and it's a business record, keeping track of every pole that Verizon is attached to, regardless of ownership.

Q: Could you go through the exhibit here, and just point out some of the relevant information?

A: On the left it says "Line 517." That's the lead number. String of poles, and the particular weight number that we give.

Down at the bottom, the 1 and 2 that's the pole numbers.

The "S" stands for "Subscriber."

On the right-hand corner, the date "10-25-37" is, I'm guessing, the date the record was made up, and the poles were placed at that time.

Let me see what else.

In the center at the bottom of the page, "subpole," meaning "subscriber pole."

Q: What does subscriber pole mean?

A: The homeowner owns the pole.

On the second column of writing, equity percentage, down at the bottom and the "0," that shows Verizon's equity ownership of the poles.

The third column from the left, "J.O. Name and Agreement Ref." if it was a utility-owned pole, there would be information in there, showing the agreement between the two utilities, as far as rental and attachment purposes.

The far right column, "Work Order, Estimate Number," down at the bottom and then, a customer work order and number. (Tr. at 39:2-25)

Mr. Browning also explained on cross-examination that the C.W.O. in the lower right hand corner of this pole record exhibit stands for "Custom Work Order" meaning "when a customer comes in and wants us to do work on a custom work order, and work on a place, and, the work we do that is outside the regulated tariffs, we would bill the customer to do the work. And in this case, the pole came under the ownership of the owner." (Tr. at 56:12-21). In other words, the former owner of the property engaged Verizon to install the poles for him as a customer work order, paid Verizon for that work, and the property owner was the owner of the poles.

This pole record document and Mr. Browning's testimony is the only direct evidence provided that shows ownership of the pole in this proceeding. This evidence shows that "subpole" indicates that the subscriber or homeowner owns the pole. Further, the zero equity percentage shows Verizon has no equity ownership of the poles. In addition, if Verizon had owned the poles, there would be information in the "J.O. Name and Agreement Ref" section showing the agreement between the utilities, as far as rental and attachment purposes, which

would have been required for Duquesne to attach their lines if Verizon owned the poles. Furthermore, the customer requested a custom work order for Verizon to perform non-tariffed work to install customer-owned poles for the landowner.

Mr. Browning explained that this pole record document is simply a business record and is not a right-of-way or easement agreement and was not recorded, which would be required if Verizon had owned the poles. (Tr. at 42:10-43:6). This lack of a right-of-way or easement agreement was corroborated by the Complainant (Tr. at 16:11-17; 33:8-34:3) and by Duquesne Light's witness, Ms. Posney who testified that there were no right-of-way or joint use agreements between Duquesne Light and Verizon. (Tr. at 84:11-17).

Furthermore, Complainant's Exhibit Number 11 (which is a picture of one of the downed poles with the identifying number of 517 – 2) further corroborates that the downed poles were not owned by Verizon. Mr. Browning testified that had Verizon owned the pole, there would have been a small oval tag above the numbers that would have said "BT Company of Pennsylvania," standing for "Bell Telephone Company," Verizon's predecessor. (Tr. at 41:4-25) Such tags were not present on the poles. When asked on cross-examination if this tag could have fallen off, Mr. Browning explained that there was no tag because if it had fallen off there would be a weathered shadow on the wood where the tag would have been. (Tr. at 45:10-15)

Finally, Duquesne witness Mr. Piasecki testified that there are thousands of customer-owned poles, like the ones owned by Ms. Manganaro, which appear primarily in rural areas. According to Mr. Piasecki, the bigger lots in this area, over a half an acre, are likely to have subscriber-owned poles. He has one on his own property and he is only located 50 feet from the street. (Tr. at 93:12-18).

The Complainant has provided no evidence whatsoever, beside her personal beliefs or wishes, to show that Verizon owns the poles in question. The evidence is overwhelming that the

downed poles on the Complainant's property are owned by her and, therefore, she is responsible for their maintenance and replacement if she so desires. This evidence includes Verizon's pole agreement (Verizon Exhibit No. 1) showing the poles are subscriber (customer) owned poles, that there is no equity ownership by Verizon, no joint-use agreements, and a custom work order requested by the property owner at the time for Verizon to place customer-owned poles for them. There are no joint-use agreements, right-of way or easement agreements, which would be required if Verizon owned the poles. There was no tag on the pole indicating Verizon's ownership, which would have been there had Verizon owned the poles. Finally, Duquesne's witness testified that there are thousands of customer owned poles in Duquesne's service area so these poles being customer owned is very probable. The overwhelming evidence in this matter proves that the customer owns the poles in question and not Verizon.

Furthermore, because Verizon does not own the poles and does not provide service to the Complainant, it would be unjust and unreasonable for Verizon to be ordered to replace the poles. The only reason to replace the poles would be for Duquesne and/or Comcast to be able to reattach their lines that serve the Complainant. It would be an illegal taking of Verizon's property if it had to replace poles it does not own and for the sole use of Duquesne and Comcast to provide service to the Complainant.² Therefore, this Complaint against Verizon should be dismissed.

V. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to 66 Pa.C.S. § 701, et seq.

² The Commission cannot require a utility to undertake remedial steps absent a finding of liability. *West Penn Power Company v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984) (Commission cannot require a utility to take remediation absent a finding the utility's action violates the Code.)

2. Verizon Exhibit No. 1 is conclusive proof of that Mr. Manganaro owns the poles located on her property.

3. The Complainant bears the burden of proof in this matter. 66 Pa. C.S. § 332.

4. Complainant's evidence fails to meet or carry her burden of proof.

5. Complainant has failed to prove Verizon has committed any violation of the Public Utility Code, 66 Pa. C.S. 101 et. seq., the Commission's Regulations, or Orders.

VI. PROPOSED ORDERING PARAGRAPHS

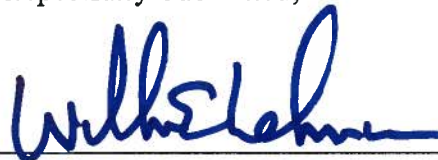
1. That the Formal Complaint of Patricia C. Manganaro against Verizon Pennsylvania LLC at Docket No. C-2012-2332597 is hereby dismissed with prejudice.

2. That this docket is marked closed.

VII. CONCLUSION

Complainant has failed to meet her burden of proof in this proceeding because she has provided no evidence in support of her allegation that Verizon owns the downed poles on her property. The evidence of record shows overwhelmingly that the Complainant owns the poles. Accordingly, the Complaint against Verizon must be dismissed.

Respectfully Submitted,



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Counsel for Verizon Pennsylvania LLC

Dated: December 9, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service Via First Class Mail:

Patricia Manganaro
325 Jacks Run Road
Allegheny, PA 15202

Edward Balzarini, Jr.
Balzarini & Watson
310 Grant Street, Suite 3303
Pittsburgh, PA 15219


William E. Lehman

Dated this 9th day of December, 2013