

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JANET ARMOUR,

Complainant

v.

VERIZON PENNSYLVANIA LLC,

Respondent

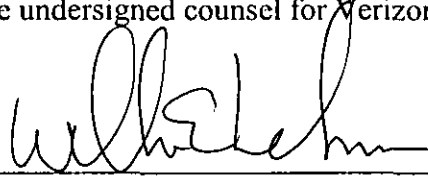
Docket No. C-2013-2395643

NOTICE TO PLEAD

TO: Janet Armour
7641 Overbrook Ave.
Philadelphia, PA 19151

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SECRETARY'S OFFICE

Pursuant to 52 Pa. Code §§5.101 et seq. you are hereby notified that Verizon Pennsylvania Inc. ("Verizon PA") has filed Preliminary Objections to which you may answer within ten (10) days unless otherwise provided in Chapter 5 of Title 52 of the Pennsylvania Code. Your failure to answer will allow the presiding officer to rule on the Preliminary Objections without a response from you, thereby requiring no other proof. All Pleadings such as a reply to these Preliminary Objections must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Verizon PA.



William E. Lehman, Attorney I.D. #83936
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
E-mail: wlehman@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841

Counsel for Verizon Pennsylvania Inc.

DATED: January 9, 2014

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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JANET ARMOUR,
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PA P.U.C.
SECRETARY'S BUREAU

Docket No. C-2013-2395643

**PRELIMINARY OBJECTIONS OF VERIZON PENNSYLVANIA LLC
TO THE COMPLAINT OF JANET ARMOUR**

Verizon Pennsylvania LLC, ("Verizon PA"), by and through its counsel in this proceeding, Hawke McKeon & Sniscak LLP, hereby asserts the following Preliminary Objections to the Complaint filed by Janet Armour ("Complainant" or "Ms. Armour") pursuant to the Pennsylvania Public Utility Commission's ("Commission") regulation at 52 Pa. Code §5.101. Specifically, Verizon PA submits that the Commission has no subject matter jurisdiction to adjudicate private right-of-way issues. In support thereof, Verizon PA represents as follows:

BACKGROUND

1. On or about December 11, 2013, the Commission served the instant Complaint of Janet Armour on Verizon PA. The Complaint, *inter alia*, by way of relief in Paragraph No. 5, requests: "I want you the PUC to have the wires and that pole placed somewhere else." The Complainant is dissatisfied with the location of Verizon PA's facilities on her premises.

2. On January 9, 2013, Verizon PA filed its Answer and New Matter. Verizon PA's Answer and New Matter are incorporated herein by reference.

PRELIMINARY OBJECTIONS

3. The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code §5.101.¹ Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.²

4. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.³ The Commission has adopted this standard.⁴

5. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.⁵ The motion may be granted only if the moving party prevails as a matter of law.⁶ Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.⁷

6. As noted above, by way of relief, the Complainant requests that the Commission order Verizon PA to remove its facilities from her home.

7. As stated in its New Matter, Verizon PA's facilities are located on the Complainant's home pursuant to a valid right-of-way agreement that was entered into in 1948 between Verizon PA's predecessor and the owners of the building at the time.

¹ See *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

² *Id.*

³ *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991).

⁴ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

⁵ *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (1985); *Commw. of Pa. v. The Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Commw. 1988).

⁶ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Commw. 1985).

⁷ *Dept. of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Commw. 2002)).

8. One of the issues to be litigated in this case is whether Verizon PA's facilities are located pursuant to a proper and valid right-of-way agreement. The Commission has no jurisdiction to adjudicate this issue.

9. The Commission must act within, and cannot exceed its jurisdiction.⁸

10. It is well established that the Commission does not have subject matter jurisdiction over private contractual disputes.⁹ It is equally well established that the Commission does not have subject matter jurisdiction over allegations of trespass and the proper use of right-of-ways.¹⁰

11. Finally, in a recent Commission case, *Richard Ryan v. Verizon Pennsylvania, Inc.*, Docket No. C-2009-2135745 (Interim Order #4 issued by ALJ Cynthia Fordham on March 21, 2011; Final Order issued July 13, 2012) (attached as **Attachment A**), the Commission addressed the very same issue raised in this case – whether the Commission had the jurisdiction to order Verizon PA to remove its facilities that were attached to the Complainant's premises pursuant to a right-of-way agreement. The factual scenario from the *Ryan* case is almost identical to the instant case. The Complainant, who resided in Philadelphia, filed a Complaint requesting, among other things, that the Commission order Verizon PA to remove its facilities from the Complainant's home. Verizon PA filed Preliminary Objections arguing that the facilities were located on the Complainant's home pursuant to a right-of-way agreement, and the

⁸ *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996).

⁹ *Sowers v. PPL Gas Utilities Corp.*, 2007 WL 519687 (Pa. P.U.C.) (PUC Docket No. C-2006-6530, Order entered January 27, 2007); *Adams v. Pa. P.U.C.*, 819 A.2d 631 (Pa. Cmwlth. 2003); *Litman v. Peoples Natural Gas Company*, 449 A.2d 720 (Pa. Supra. 1982).

¹⁰ *Steve Rushkin v. Verizon Pennsylvania Inc.*, Docket No. C-2004-2591 (Order entered July 14, 2004); *Fairview Water Co. v. Pa. P.U.C.*, 502 A.2d 162 (Pa. 1985); and *Messina v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00968225 (Order entered September 23, 1998); *David Stefanoski v. Pennsylvania-American Water Co.*, Docket No. C-20078219, (Commissioner Tyrone J. Christie stated in his Motion that the Commission does not have jurisdiction over disputes that require interpretations of a validity of a right-of-way. Commission Christie's Motion was incorporated into the Commission's Final Order.)

Commission had no jurisdiction to adjudicate private contractual matters such as the validity or scope of the right-of-way agreement. ALJ Fordham granted the Preliminary Objection finding that:

A review of the decisions relating to easements and the Commission's jurisdiction show that the Commission cannot interpret documents produced by parties to determine the validity of the easement or whether it has been revoked. ... The Court of Common Pleas, rather than the Commission, has the jurisdiction over substantive property rights. ... In this case, the Complainant seeks a Commission order directing Respondent to remove its facilities from his property and install underground facilities at the Respondent's cost. Therefore, this case is similar to *Amati* since the issues deal with the proper use of real property. Accordingly, this matter falls within the jurisdiction of the Court of Common Pleas. (Order #4 at 8-9; adopted by Final Order issued July 13, 2012)

The exact same result should apply here.

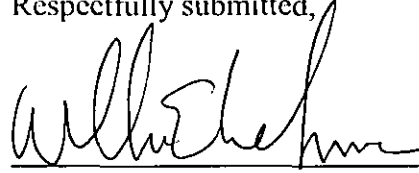
12. The Commission "may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest."¹¹ As the Commission lacks subject matter jurisdiction, and therefore has no authority to require any action to be taken by Verizon PA, holding a hearing would be a fruitless exercise and a waste of resources.

13. Accordingly, because the instant complaint involves the location of Verizon PA's facilities within an existing right-of-way agreement, the Commission should dismiss the instant Formal Complaint because it has no subject matter jurisdiction over the issues.

¹¹ 66 Pa. C.S. § 703(b)

WHEREFORE, for the reasons set forth above, and in accordance with the Public Utility Code and the Commission's regulations, Verizon Pennsylvania LLC respectfully requests that the Formal Complaint filed at Docket No. C-2013-2395643 be dismissed or denied in its entirety.

Respectfully submitted,



William E. Lehman, Attorney I.D. #83936
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100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
E-mail: welehman@hmslegal.com
Telephone: (717) 236-1300
Facsimile: (717) 236-4841
Counsel for Verizon Pennsylvania LLC

DATED: January 9, 2014

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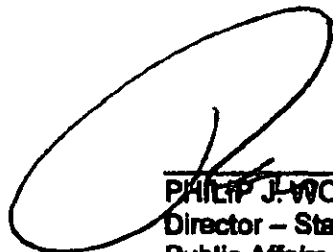
VERIFICATION

I, Philip J. Wood, Jr., Director – State Government Relations, Public Affairs, Policy & Communications of Verizon Pennsylvania LLC, hereby state that the facts above set forth 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 falsifications to authorities).

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SECRETARY'S OFFICE



PHILIP J. WOOD, JR.
Director – State Government Relations
Public Affairs, Policy & Communications

ATTACHMENT A

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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

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Richard Ryan

v.

Verizon Pennsylvania Inc.

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C-2009-2135745

FINAL ORDER

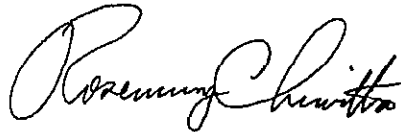
In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Marlane R. Chestnut dated May 22, 2012, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Richard Ryan against Verizon Pennsylvania Inc. at Docket No. C-2009-2135745 is denied; and
2. That the record at Docket No. C-2009-2135745 be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ENTERED: July 13, 2012

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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SECRETARY'S OFFICE

Richard Ryan

v.

Verizon Pennsylvania, Inc.

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C-2009-2135745

ORDER #4 Granting Verizon PA's Preliminary Objection to Partially Dismiss the Amended Complaint and Addressing Outstanding Discovery Disputes

History

On October 1, 2009, Richard Ryan ("Ryan" or "Complainant") filed a formal complaint with the Pennsylvania Public Utility Commission ("Commission") against Verizon Pennsylvania, Inc. ("Verizon" or "Respondent"). The Complainant alleged the following: that telephone wires owned by Verizon are attached to the entire length of the western facade of his home; that the wires degrade the appearance of his property; that he made numerous requests to have the telephone wires removed; that the Respondent maintained that it has a right to keep its facilities where they are pursuant to an existing easement, and that the Respondent requested that Complainant pay more than \$11,000.00 to have the wires moved to another location. The Complainant alleged that after he filed an informal complaint with the Commission's Bureau of Consumer Services, the Respondent sent him a blank easement to sign and a new contract to remove the wires for \$5,500.00. The Complainant requests that the Respondent apologize for lying and trying to deceive him. In addition, he wants the Respondent to remove its telephone wires from the western facade of his home and place them underground. He wants this work done in a timely manner and he does not want to pay for the work.

On November 2, 2009, the Complainant submitted supplemental information. He alleged that the Respondent's attorney contacted his wife and informed her that the Respondent was filing preliminary objections with the Commission and that this case should be moved to the

Court of Common Pleas. According to Complainant, the Respondent was trying to frighten his wife into thinking that they had to hire a lawyer.

On November 4, 2009, the Respondent, through its counsel, filed an Answer and New Matter and Preliminary Objections. In the Answer, the Respondent admitted that its telephone facilities are attached to the side of the Complainant's home. The Respondent denied that its facilities degrade the appearance of the Complainant's home. The Respondent admitted that it originally told the Complainant that it would cost \$11,000 to remove and bury the facilities. The Respondent stated that its tariff authorizes it to charge a customer when the facilities are relocated at the customer's request. The Respondent admitted that, pursuant to conversations with the Complainant, it sent the Complainant a new easement and a contract to relocate its facilities for \$5,500.00. The Respondent denied that it lied to the Complainant. In the New Matter the Respondent averred that the Complainant's property was originally built around 1915 as a stable, and that since then it has been used for commercial purposes, warehousing, etc. The Respondent stated that around August 6, 1924, in accordance with the former owner's request, it placed facilities that ran from underground to the side of the building, based on the right of way agreement that was customary at the time. In support of this statement, the Respondent attached a copy of a card with the address of the property in question and a description of the "Privilege." Furthermore, the Respondent averred that in the early 1980's, in response to the former owners' request, the Respondent replaced the original facilities and added additional facilities at the exact same location on the side of the building.

In the Preliminary Objections, Verizon requested that the complaint be dismissed on the grounds that the Commission lacks subject matter jurisdiction to adjudicate private right-of-way issues and trespass issues. The Respondent indicated that the facilities have been at the same location since 1924.

On November 17, 2009, and December 8, 2009, the Complainant filed his responses to Verizon's Preliminary Objections and New Matter. In both responses Complainant denied that Respondent has an easement for his property. Furthermore, the Complainant denied

that the former owner requested that the Respondent replace the facilities on the side of the building.

By Order dated January 28, 2010, Chief Administrative Law Judge Veronica A. Smith denied the Preliminary Objections. In the Order, it was stated that the Commission has asserted jurisdiction in cases disputing the existence of an easement. The Commission has stated that it does not have jurisdiction to determine the scope and validity of an easement. Based on the pleadings, it was determined that there was a factual dispute concerning whether an easement existed to allow the Respondent to place its facilities on the western side of the Complainant's property. Thus, the Respondent's Preliminary Objections were denied. In addition, it was stated that the Commission has the exclusive jurisdiction to determine the reasonableness and sufficiency of a public utility's service and facilities. *Elkin v. Bell of PA*, 420 A.2d 371 (Pa. 1980), 66 Pa. C.S. § 102.

By hearing notice dated February 3, 2010, a hearing was scheduled for March 8, 2010 at 10:00 a.m.

On February 8, 2010, the presiding officer sent the parties a Prehearing Order.

On February 22, 2010, the Respondent filed a Motion to Vacate the Order on Respondent's Preliminary Objections.

On February 24, 2010, the Complainant submitted subpoena applications and an Answer to the Motion to Vacate.

By correspondence dated March 1, 2010, Robert C. Cohen, Esquire, entered his appearance on behalf of the Complainant.

On March 2, 2010, Respondent's counsel sent an e-mail on behalf of the Complainant and Respondent requesting that the hearing be converted to a prehearing conference to address procedural issues.

Therefore, instead of continuing the hearing, by Order dated March 4, 2010, the hearing was converted to a prehearing conference (Tr. 22).

On March 8, 2010, a prehearing conference was held. The Complainant, Richard Ryan, was represented by Robert C. Cohen, Esquire. The Respondent was represented by William Lehman, Esquire. Verizon employees, Regina Ryan and Philip Wood were present.

During the prehearing conference, the parties were given time to engage in settlement discussions. Mr. Lehman reported to the undersigned that although they discussed settlement of the issues, the subpoenas, the discovery objections and the scope of the proceeding, they were unable to reach an amicable agreement (Tr. 15).

In Prehearing Order #3, dated March 12, 2010, the undersigned granted the Respondent's Motion to Vacate the Order issued on January 29, 2010. The Respondent was given twenty (20) days to reply to the amended complaint.

On March 12, 2010 the Respondent, through its counsel, filed Objections to Complainant's Requests for Subpoena of Witnesses.

On March 12, 2010, the Complainant, through his counsel, filed a Motion to Compel Answers to Interrogatories.

On April 1, 2010, the Respondent, through its counsel, filed the Answer and New Matter of Verizon Pennsylvania to the Amended Complaint of Richard Ryan.

On April 1, 2010, the Respondent, through its counsel, filed the Preliminary Objection of Verizon Pennsylvania to Partially Dismiss the Amended Complaint of Richard Ryan. The Respondent urged the Commission to dismiss the part of the instant complaint pertaining to the validity of Verizon's legal right to have its facilities located on the Complainant's home.

On April 15, 2010, the Complainant, through his counsel, filed the Complainant's Answer to Preliminary Objection to Partially Dismiss the Amended Complaint¹.

On April 15, 2010, the Complainant, through his counsel filed the Complainant's Reply to New Matter.²

Discussion

1. Ruling on Preliminary Objection

The Commission's regulations at 52 Pa. Code §§ 5.101(a)(1)-(6) permit the filing of preliminary objections. Preliminary objection practice before the Commission is similar to Pennsylvania civil practice concerning preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (Order entered July 18, 1994). Motion at ¶ 3

The Commission regulations at 52 Pa. Code §§ 5.101(a)(1)-(6) read as follows:

§ 5.101. Preliminary objections.

(a) Grounds. Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

(3) Insufficient specificity of a pleading.

¹ The undersigned received this document on April 23, 2010.
² The undersigned received this document on April 23, 2010.

(4) Legal insufficiency of a pleading.

(5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Petitioners, recovery or relief is possible. *Department of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003), 2003 Pa. Commw. LEXIS 849; *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996) 1996 Pa. Commw. LEXIS 11. For purposes of disposition of the motion, the moving party must accept as true all well-pleaded material, relevant facts in the complaint. *Marinoff v. Bell Telephone Co. of Pennsylvania*, 75 PA P.U.C. 489, 491 (1991). Only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997) 1997 Pa. Commw. LEXIS 148. The motion should be granted only if the moving party prevails as a matter of law. Any doubt must be resolved in favor of the non-moving party by denying the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002) 2002 Pa. Commw. LEXIS 580. Motion ¶¶ 4, 5.

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Telephone. Company of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. Motion ¶ 9. *City of Pittsburgh v. Pennsylvania Public Utility Commission.*, 43 A.2d 348 (Pa Super. 1945), *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied* 637 A.2d 293 (Pa. 1993).

The Commission considered the issue of whether the Commission may address easement and right-of-way disputes in *In Re: Lou Amati/Amati Service Station v. West Penn Power Company and Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00945842 (October 25, 1996), and concluded that the Commission had no jurisdiction over substantive determinations of property rights and easements. Motion ¶¶ 12, 13.

In *Fairview Water Co. v. Pennsylvania Public Utility Commission*, 502 A.2d 162 (Pa. 1985), the Pennsylvania Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement. Historically, the Commission has determined that it is not the proper forum for resolving property rights controversies. Such controversies are a matter for a court of general jurisdiction. *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Order entered July 3, 2003); *Chris Nicholaides v PECO Energy Company*, Docket No. C-00003326 (Order entered April 6, 2001); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Order entered September 15, 1999).

In the Initial Decision in *Amati*, Administrative Law Judge Robert Meehan concluded that the Complainant's assertion that these poles are not properly on his property and seeking to have them removed are in the nature of civil actions in trespass and/or ejectment. These issues deal with the proper use of real property. Such actions are within the exclusive jurisdiction of the Courts of Common Pleas of the Commonwealth (*Amati*, ID at 17; Motion ¶¶ 13, 14). The Respondent stated that the instant case is similar to *Amati* in that the Complainant and the Respondent disagree about whether the Respondent's facilities are located on the Complainant's property pursuant to a valid property right. The Respondent contends that the holding in *Amati* controls. Thus, the Respondent requests that the portion of the complaint concerning whether the Respondent's facilities are located on the Complainant's home pursuant to a valid property right should be dismissed. Motion ¶ 15.

The Respondent contended that the Commission disregarded *Fairview Water Company* and numerous Commission decisions in *Samuel Messina v. Bell Atlantic Pennsylvania* 1998 Pa. PUC LEXIS 190, Docket No. C-00968225 (Order entered September 23, 1998) and

Robert S. J. Nigro v. PPL Electric Utilities Corporation, Docket No. C-00003242 (Order entered October 26, 2004). The Respondent argued that there are common-law bases, i.e. prescriptive easements, easements by implication, under which a valid property right can be established other than recorded easements Motion ¶¶ 18, 19.

In his answer to the Motion, the Complainant attached a copy of the document presented by the Respondent to show that it had a right to have its facilities on the Complainant's property-Attachment A and a document that relates to the first document – Attachment B. Answer ¶ 7. The Complainant argued that the Respondent failed to produce the second document in violation of the Rules of Civil Procedure. Answer ¶ 7.³

The second document is dated August 6, 1924 and is referenced in Attachment A. The second document gives permission to “Bell Telephone Company of Pennsylvania, its successors and assigns, to place and maintain its underground conduits, cable junction box and wires on rear wall on premises situate No. 308 to 310 S. Juniper Street”. Answer Attachment B.

The Complainant contends that the Respondent's attack on the cases cited by Chief Administrative Law Judge Smith is arrogant. Answer ¶ 10. The Complainant states that the Respondent cannot attack the *Messina* case because the Respondent failed to appeal it in 1998. Answer ¶ 10.

The Complainant argued that the Respondent's document shows that there is no easement and no license. “There may be a revocable permission, but that permission has been revoked.” Answer ¶ 10.

A review of the decisions relating to easements and the Commission's jurisdiction show that the Commission cannot interpret documents produced by the parties to determine the validity of the easement or whether it has been revoked. The Court of Common Pleas, rather than the Commission, has jurisdiction over substantive property disputes. *Fiorillo v. PECO Energy Company*, Docket No. C-00971088, (entered September 15, 1999) (the Commission

³ This document was not presented before the first preliminary objection was decided.

found a valid right-of-way and the interpretation of that agreement was held to be a substantive property rights issue and within the Court of Commons Pleas' jurisdiction); *Lou Amati/Amati Service Station v. West Penn Power Co. and Bell Atlantic-Pennsylvania, Inc.*, Docket C-00945872, (order entered October 25, 1996) (the Commission does not have subject matter jurisdiction over questions of trespass and the scope and validity of a utility's right-of-way); *Edward Boczar v. PPL Electric Utilities*, Docket No. C-20016332, (Order entered February 10, 2003) (the Commission does not have jurisdiction to determine if utility's facilities are situated within a valid right-of-way; such matters are within the exclusive jurisdiction of the Court of Common Pleas); *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110, (Order entered July 11, 2003) (concluding that, as in *Boczar*, the Commission does not have jurisdiction to determine the true location of the utility's right-of-way).

Recently, the Commission restated its position that its jurisdiction does not include the ability to interpret a right-of-way. In *Stefanoski v. Pennsylvanian-American Water Co.*, Docket No. C-20078219 (Order entered September 22, 2008), the Complainant sought removal of the utility's water line from his property or compensation for its remaining in the same location. The Commission again recognized that the determination of the validity of a right-of-way falls within the province of the Court of Common Pleas.

In this case, the Complainant seeks a Commission order directing Respondent to remove its facilities from his property and install underground facilities at the Respondent's cost. Therefore, this case is similar to *Amati* since the issues deal with the proper use of real property. Accordingly, this matter falls within the jurisdiction of the Court of Common Pleas.

2. Hearing will be held on outstanding issue:

During the prehearing conference, the parties agreed that the issues were: whether there was an easement; and whether the Respondent had provided reasonable service when dealing with the Complainant (Tr. 23). Therefore, a hearing will be held to determine whether the Respondent has provided reasonable service.

3. Motion to Compel Answers to Interrogatories.

During the prehearing conference the Complainant's counsel stated that he thought we were addressing the objection to the interrogatories and the request for production of documents (Tr. 21). The undersigned explained that he needed to file a motion to compel and attach the relevant documents so that I could rule on the matter. I stated that I could not rule at the prehearing conference because I had not seen any of the documents (Tr. 22).

During the prehearing the Respondent's counsel asked if he could have until March 12, 2010, to send responses to the interrogatories that the Respondent planned to answer (Tr. 26). The request was granted.

On March 12, 2010, the Complainant's counsel filed a Motion to Compel.

In light of my Order vacating the Order dismissing the Preliminary Objections, by electronic mail on March 17, 2010, the Respondent's counsel requested that the Respondent's Answer to the Motion to Compel, and all other discovery, be held in abeyance until the Respondent's pleadings have been filed and any Preliminary Objections ruled upon.

The request was granted.

In light of the ruling in this Order, the Complainant's discovery requests will probably change. If the Complainant decides to submit interrogatories, please serve a copy on the Respondent and file a certificate of service with the Secretary in accordance with 52 Pa. Code § 5.341. The Respondent shall file answers or objections to written interrogatories by a party. 52 Pa. Code § 5.342. If objections are filed, the Respondent shall file a copy of the certificate of service with the Secretary.

If a Motion to Compel is necessary, please send a copy of the interrogatories, the certificate of service and the objections so that I can see the relevant documents and rule on the matter. Please note that the current Motion did not include the objections or indicate when the interrogatories were propounded.

4. Objections to Complainant's Requests for Subpoena of Witnesses.

The Respondent objected to some of the documents requested in the subpoena directed to the custodian of records and the operations engineer. The Respondent's counsel stated that the custodian of records and the operations engineer would testify (Tr. 16). The Respondent objected to the subpoena for Philip Wood, the director of Regulatory Affairs. Mr. Wood signed the verification as an officer of the corporation. If the parties still have a dispute about the subpoenas, please let me know.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of Verizon Pennsylvania to Partially Dismiss the Amended Complaint of Richard Ryan is granted.
2. That the issue regarding the validity of the easement is dismissed.
3. That a hearing will be held on the issue of whether the Respondent provided reasonable service.
4. That a hearing will be scheduled.
5. That the parties can resume discovery.
6. That the parties shall serve the presiding officer and the other party with all documents submitted to the Commission.

7. That the hearing parties shall comply with the procedural rules and regulations discussed herein.

Date: March 21, 2011

Cynthia Williams Fordham
Administrative Law Judge

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 §1.54 (relating to service by a party).

SERVICE VIA FIRST CLASS MAIL:

Janet Armour
7641 Overbrook Ave.
Philadelphia, PA 19151



William E. Lehman
Counsel for Verizon Pennsylvania Inc.

Dated this 9th day of January 2014

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