



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

April 12, 2016

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

RE: **Docket No. C-2015-2505831**

Dear Secretary Chiavetta:

Enclosed for filing please find the Department's *Petition to Intervene* in the above-captioned matter.

I hereby certify that a copy has been sent to all parties of record as indicated by the Certificate of Service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric J. Jackson".

Eric J. Jackson
Assistant Counsel in Charge

Enclosure

220/EJJ:bg

cc: Steven K. Haas, Administrative Law Judge
Thomas W. Jones
Deanne M. O'Dell, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

THOMAS JONES,	:	
	Complainant	:
	:	Docket No. C-2015-2505831
v.	:	
	:	Electronically Filed
SALSGIVER TELECOM, INC.	:	
	Respondent	:
	:	

**Petition to Intervene of the
Pennsylvania Department of Transportation**

Pursuant to 52 Pa. Code §5.72(b), the Commonwealth of Pennsylvania, Department of Transportation (PennDOT), by and through its counsel Eric J. Jackson, submits the following Petition to Intervene Nunc Pro Tunc¹:

Background

1. This matter was initiated by the filing of a Formal Complaint by Mr. Thomas W. Jones (Complainant) with the Public Utility Commission on September 28, 2015. In his complaint, Complainant alleges, among other things, that the location of Salsgiver Telecom Inc.'s (Respondent's) utility poles within PennDOT's right of way are unsafe. Formal Complaint, ¶ 4.

2. Respondent filed Preliminary Objections to the Complaint seeking dismissal of the action for lack of jurisdiction among other things.

¹ As noted in Paragraph 6, the Department of Transportation was not made aware of this proceeding until contacted by a representative of Respondent requesting testimony.

3. Administrative Law Judge Haas granted in part and denied in part Respondent's Preliminary Objections. Pertinent to this action, Respondent's request to have the Complaint dismissed was denied and the hearing was limited to whether the location of Respondent's poles and facilities within PennDOT's right of way create a safety risk or hazard to the public. Order of Administrative Law Judge Haas, p. 6.

4. A telephonic hearing has been scheduled for May 6, 2016.

5. PennDOT was made aware of this proceeding on Monday, April 4, 2016 when Respondent contacted PennDOT personnel and requested testimony on behalf of Respondent. At no time prior to this communication was PennDOT made aware of the pendency of this action, the substance of the Complaint, or the positions of the parties or the Public Utility Commission. Exhibit 1.

6. Respondent filed four highway occupancy permit applications to install utility poles (and other facilities) within the right of way of State Routes 160, 2030, and 2033. Permit Application #s 88826, 88833, and 88834 were filed on July 1, 2015; Application # 95122 was filed on September 25, 2015.

7. Permit Application #s 88826, 88833, and 88834 were approved by PennDOT on September 8, 2015 and the work authorized by those highway occupancy permits was completed and accepted by PennDOT on February 18, 2016; Application # 95122 was approved by

PennDOT on October 14, 2015 and the work authorized by that highway occupancy permit was completed and accepted by PennDOT on March 4, 2016.

8. All of the work authorized by Respondent's four highway occupancy permits has been completed and accepted by PennDOT.

Grounds for Intervention and Petitioner's Position Regarding the Issues

9. The foregoing recitals are incorporated herein as though fully set forth.

10. PennDOT has exclusive jurisdiction and control over State Highways. 71 P.S. § 512(a)(10).²

11. PennDOT's exclusive jurisdiction and control includes the authority to issue highway occupancy permits for utility facilities pursuant to regulations promulgated by the Secretary of Transportation (Secretary). *See* 36 P.S. §§ 670-411 and 670-420.

12. The Secretary has promulgated such regulations at 67 Pa. Code, Chapter 459, which address, among other things, the location of above ground utility facilities such as utility poles within State Highway right of way. *See* 67 Pa. Code § 459.7 (General conditions) and 67 Pa. Code § 459.9 (Special conditions, aboveground facilities).

² PennDOT acknowledges that the Public Utility Commission is vested with jurisdiction over rail-highway crossings pursuant to 66 Pa.C.S.A. §§ 2702 and 2704. None of the utility facilities authorized by the highway occupancy permits are located within a rail-highway crossing.

13. Public utilities may occupy State Highway right of way subject to PennDOT's reasonable rules and regulations. 15 Pa.C.S. § 1511(e); 36 P.S. §§ 670-411 and 670-420

14. PennDOT's administrative docket has jurisdiction to adjudicate appeals of the issuance or denial of a highway occupancy permit application or other administrative actions related to a highway occupancy permit. 67 Pa. Code § 459.3(k); 67 Pa. Code § 491.1(1) ("This chapter applies to activities and proceedings before the Department in matters under 2 Pa.C.S. §§ 501-508...which are not vested in other bodies by law.); and 2 Pa.C.S.A. §§501-508.

15. Respondent's highway occupancy permits were issued consistent with the requirements of 67 Pa. Code, Chapter 459, including, but not limited to, § 459.7 and § 459.9.

16. The Public Utility Commission lacks jurisdiction to adjudicate Respondent's rights vis-à-vis its highway occupancy permits because the location of utility facilities within State Highway right of way is a function of 67 Pa. Code, Chapter 459 and therefore exclusively within the purview of PennDOT. *See also* 36 P.S. §§ 670-411 and 670-420.

17. Complainant's appropriate remedy is to challenge the issuance of Respondent's highway occupancy permits before PennDOT's administrative docket.

18. As of April 12, 2016, the Complainant has not filed an appeal or any other administrative action with PennDOT's administrative docket. To the extent the Complainant has failed to do so, he has failed to exhaust his administrative remedies.

WHEREFORE, PennDOT respectfully requests that its Petition to Intervene be granted so as to afford PennDOT the opportunity to address the substantive legal issues in this matter that directly affect PennDOT's exclusive jurisdiction and control over State Highways and the permitting of utilities within the right of way.

Respectfully submitted,

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION



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DATED: April 12, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	Complainant	:
	:	Docket No. C-2015-2505831
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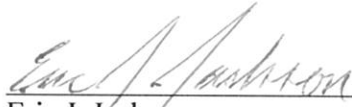
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Department's *Petition to Intervene* was served upon the parties listed below, in accordance with the requirements of §1.54, by First-Class mail, postage prepaid, this 12th day of April, 2016:

Thomas W Jones
700 Diamond Street
Berlin, PA 15530

Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

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DEPARTMENT OF TRANSPORTATION



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DATED: April 12, 2016