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April 13, 2016

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

RE: Thomas Jones v. Salsgiver Telecom, Inc., Docket No. C-2015-2505831

Dear Secretary Chiavetta:

Attached for electronic filing is Salsgiver Telecom's Answer to PennDOT's Petition to Intervene, in the above-referenced matter. Copies have been sent in accordance with the attached Certificate of Service.

If you have any questions regarding this document, please contact us at your convenience.

Sincerely,



Carl R. Shultz

CRS/

Enclosure

cc: Hon. Steve Haas (w/enc)
Certificate of Service (w/enc)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing **Answer to Petition to Intervene** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail

Thomas Jones
700 Diamond Street
Berlin, PA 15530

Administrative Law Judge Steve Haas
Office of Administrative Law Judge
Harrisburg Office
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor, L-M West
400 North Street
Harrisburg , PA 17120

Eric J Jackson, Esquire
Pennsylvania Department Of Transportation
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Carl R. Shultz, Esquire

Date: April 13, 2016

Attorney for Salsgiver Telecom, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**SALSGIVER TELECOM'S
ANSWER TO
PENNDOT'S PETITION TO INTERVENE**

Pursuant to 52 Pa. Code § 5.66, Salsgiver Telecom, Inc. (“Salsgiver Telecom” or “Respondent”) submits this Answer to the Petition to Intervene (“Petition”) of the Commonwealth of Pennsylvania, Department of Transportation (“PennDOT”), which was served on Salsgiver Telecom on April 12, 2016.

Salsgiver Telecom supports PennDOT’s intervention in this proceeding. The “sole issue to be addressed at the upcoming hearing is whether the location of the poles at issue create or constitute a safety risk or hazard.” *Prehearing Order* (dated April 13, 2016), at ¶ 7 (emphasis added); *Interim Order on Preliminary Objections* (dated December 9, 2015), at 5. Such allegations primarily relate to traffic and pedestrian safety. Since PennDOT is the agency vested with exclusive jurisdiction over such issues, it is necessary and appropriate for PennDOT to intervene in this proceeding. PennDOT should be permitted to defend its underlying decisions related to the location and safety of the subject pole (from collateral attack by Mr. Jones).

ANSWER

Background

1 to 8. **Admitted.**

Grounds for Intervention

9. **No Response Necessary.** To the extent a response is required, the responses of Salsgiver Telecom to Paragraphs 1 to 8 of the Petition are incorporated herein by reference.

10 to 18. **Admitted.** The allegations in Paragraphs 10 to 18 of the Petition are admitted and consistent with the following:

Salsgiver Telecom submits that intervention by PennDOT is necessary or appropriate in this proceeding. *See* 52 Pa.Code § 5.72(a). The “sole issue to be addressed at the upcoming hearing is whether the location of the poles at issue create or constitute a safety risk or hazard.” *Prehearing Order* (dated April 13, 2016), at ¶ 7 (emphasis added); *Interim Order on Preliminary Objections* (dated December 9, 2015), at 5. While the Prehearing Order also states that the issues of the validity or legality of the Highway Occupancy Permits issued by PennDOT “will not be addressed or considered in this proceeding,” the location of above-ground facilities in State highway rights-of-way (other than at railroad crossings¹) is a matter that primarily relates to traffic and pedestrian safety, and PennDOT is the agency vested with exclusive jurisdiction over such issues.² 71 P.S. § 512(a)(10); 15 Pa.C.S. § 1511(e); 36 P.S. §§ 670-411, 670-420; 67 Pa.Code §§ 459.1, *et seq.* The location of the subject pole is inherently safe because the pole is


¹ 66 Pa.C.S. §§ 2702, 2704.

² *See, e.g., Witold Pachul v. The Bell Telephone Company of Pennsylvania*, PUC Docket No. C-881829, Opinion and Order entered August 7, 1989, 1989 Pa. PUC LEXIS 104; 70 Pa. PUC 387 (Commission lacks jurisdiction over placement of poles in PennDOT right-of-way).

situated in compliance with the requirements established by PennDOT. *See Salsgiver Telecom's Answer to Complaint*, at 4(f) to (l). The work is done, and was accepted by PennDOT.³ *See* Petition, at ¶¶ 6-8. PennDOT should be permitted to defend its underlying decisions on the location and safety of the subject pole (from collateral attack by Mr. Jones).

The Complaint fails to allege any other violation of 66 Pa.C.S. § 1501 for failure to provide safe facilities.⁴ To be clear, at issue is the single pole that was located, within PennDOT's right-of-way, at (or near) Mr. Jones' residence on Diamond Street in Berlin Borough. *See Complaint* at ¶ 4; *Salsgiver Telecom's Answer to Complaint*, at ¶ (e), (g), (i), (j). Mr. Jones lacks standing to challenge the location and/or safety of other poles within Berlin Borough. *See, e.g., Robert Bosco v. PECO Energy Company*, Docket No. C-2010-2153408, Final Order (Act 294) entered April 12, 2012 adopting Initial Decision dated February 16, 2012 (Complainant lacked standing to raise concerns for his neighbors regarding placement of above-ground poles). Mr. Jones cannot represent others, and he cannot raise issues on behalf of his neighbors or Berlin Borough. *Id.*; *See Prehearing Order*, at ¶ 2.

Respectfully submitted,


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Date: April 13, 2016

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³ "The poles located within PennDOT's right-of-way do not present an imminent risk or danger to the public. The work was done at a time and in a manner consistent with the safety of the public and conform to requirements and standards of PennDOT." *Salsgiver Telecom's Answer to Complaint*, at ¶ 4(l).

⁴ As noted, this proceeding is being limited to the location of the poles. "The issues of the validity or legality of the Highway Occupancy Permits issued by the Pennsylvania Department of Transportation, and Salsgiver's right to locate its facilities on those poles, will not be addressed or considered in this proceeding." *Prehearing Order*, at ¶ 7.