**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Communications Workers of :

America for a Public, On-the-Record Commission :

Investigation of the Safety, Adequacy, and : P-2015-2509336

Reasonableness of Service Provided by Verizon :

Pennsylvania, LLC :

**SCHEDULING ORDER #2**

On October 21, 2015, the Communications Workers of America (CWA) filed with the Pennsylvania Public Utility Commission a Petition requesting that the Commission open an investigation into the safety, adequacy and reasonableness of service provided by Verizon Pennsylvania, LLC (Verizon). The Petition was docketed at P-2015-2509336. In its Petition, CWA indicated that it is the authorized bargaining unit for approximately 4,700 employees of Verizon who are directly responsible for operating and maintaining the physical facilities that are used to provide telecommunications service to the public. CWA averred that it conducted an investigation of the conditions at Verizon under which its members work and the investigation showed deferred maintenance or other indications that Verizon should be increasing its budget for certain repair and maintenance. CWA further averred that there are “numerous instances throughout the Commonwealth of physical plant in an appalling state of disrepair that pose a safety hazard to utility employees and the public.” CWA asked that the Commission conduct an in-depth in-person examination and audit of Verizon records and physical plant throughout Verizon’s service areas, adopt detailed findings of fact, order Verizon to take specific, detailed remedial actions and impose substantial civil penalties on Verizon for repeated and willful failure to comply with the Public Utility Code, Commission regulations and standard industry practices for protecting the safety of the public and utility employees. CWA provided specific examples in support of its Petition.

On November 3, 2015, the Office of Consumer Advocate (OCA) filed a Notice of Intervention and Public Statement.

On November 10, 2015, Verizon and Full Service Network (FSN) filed separate Answers to CWA’s Petition.

Also on November 10, 2015, the Small Business Advocate (OSBA) filed a Notice of Appearance, a Notice of Intervention and a Public Statement.

Additional pleadings and filings in the form of letters have been filed at this docket.

On February 16, 2016, the Commission issued a Hearing Notice establishing an Initial Prehearing Conference for this case for Friday, March 18, 2016 10:00 a.m. in Hearing Room 5 of the Commonwealth Keystone Building in Harrisburg and assigning me as the Presiding Officer. A Prehearing Conference Order was issued dated February 18, 2016.

The Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Intervention on February 24, 2016.

The Initial Prehearing Conference convened on March 18, 2016 as scheduled. The following counsel was present: Scott Rubin, Esquire, on behalf of CWA; Lauren Burge, Esquire, Darryl Lawrence, Esquire and Barrett Sheridan, Esquire, on behalf of the OCA; Elizabeth Triscari, Esquire, on behalf of OSBA; Stephanie Wimer, Esquire, and Bradley Gorter, Esquire, on behalf of I&E; Suzan Paiva, Esquire, on behalf of Verizon; and Sarah Stoner, Esquire, on behalf of FSN. Each of these parties previously submitted prehearing memoranda as requested in the Prehearing Conference Order. As per the Prehearing Conference Order regarding participation in this proceeding, the service list for this proceeding was limited to these six parties.

During the Initial Prehearing Conference, various procedural matters were discussed. Most notably, extensive discussion was held regarding a procedural schedule for this case. A Scheduling Order was issued dated March 22, 2016.

In response to the Scheduling Order, Verizon filed a Petition for Interlocutory Review and Answer to a Material Question on March 29, 2016. In its Petition, Verizon requested that the Commission answer the following questions in the affirmative:

1. Whether the procedure outlined in the ALJ’s March 22, 2016 order violates *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1204 (1992) and 66 Pa. C.S. § 308.2?

2. Whether the procedure outlined in the ALJ’s March 22, 2016 order violates 66 Pa. C.S. § 331(a)?

3. Whether the Commission should dismiss the petition because it has sufficient programs already in place to monitor Verizon’s service and the data collected shows no reason for concern?

4. Whether the Commission should dismiss the petition without prejudice to BIE carrying out its normal investigatory function and/or CWA filing a formal complaint within its standing?

On April 8, 2016, CWA, Verizon, the OCA and I&E filed briefs in response to the Petition. On April 21, 2016, the Commission issued an Opinion and Order granting the Petition, answering each of the questions in the negative and returning the matter to the Office of Administrative Law Judge.

On May 6, 2016, Verizon filed a Motion to Hold the Proceeding in Abeyance and for a Continuance (Motion). In its Motion, Verizon argued that, on April 13, 2016, CWA and the International Brotherhood of Electrical Workers (IBEW) began a strike against Verizon and its affiliates. Verizon stated that, as a result, the Company activated its business continuity plans resulting in the personnel necessary to prepare the Prehearing Memorandum and attend the Further Prehearing Conference, as well as the subject matter experts necessary to defend Verizon in this proceeding, including responding to discovery, being engaged in emergency work assignments. Verizon, therefore, requested, in the interest in providing a complete record in this proceeding, that the case be held in abeyance for the duration of the strike.

In light of the previously scheduled Further Prehearing Conference scheduled for March 26, 2016, the parties were asked to provide any Answers to Verizon’s Motion by May 16, 2016.

On May 16, 2016, CWA filed an Answer opposing Verizon’s Motion. In its Answer, CWA recognized that its members began a strike against Verizon on April 13, 2016 but argued that Verizon has not shown “good cause” for continuing the proceeding. CWA argued that Verizon is not required to use its experienced in-house legal counsel to perform non-legal tasks during the strike and that Verizon could hire outside counsel to represent its interests in this matter. The OSBA, I&E and OCA indicated they neither oppose nor support Verizon’s Motion.

By email dated May 17, 2016, the parties were informed that a ruling on Verizon’s Motion would be delayed until a discussion was held at the Further Prehearing Conference. The parties were encouraged to work amongst themselves to resolve the remaining procedural issues.

On May 19, 2016, Verizon submitted a Motion for Admission of Jennifer L. McClellan *pro hac vice*.

On May 25, 2016, counsel for CWA indicated via email that CWA and Verizon have reached an agreement regarding the following procedural schedule for this proceeding:

|  |  |
| --- | --- |
| June 30, 2016 | Verizon to file objections to CWA discovery Set I |
| August 12, 2016 | Verizon to file responses to CWA discovery Set I |
| September 29, 2016 | CWA and allied parties to file Direct Testimony |
| December 1, 2016 | Verizon and allied parties to file Direct Testimony |
| January 5, 2017 | CWA and allied parties to file Rebuttal testimony |
| Week of February 6, 2017 | Hearings |

The schedule proposed that normal discovery periods would resume after August 12, 2016. Counsel indicated that the Further Prehearing Conference could be cancelled if no other party objected to the schedule. The parties were instructed to indicate via email any objection to the proposed procedural schedule, as well as the Motion for Admission *pro hac vice*. Each party responded that they had no objection to either the proposed procedural schedule or the Motion for Admission *pro hac vice*.

As a result, as the proposed procedural schedule is unopposed, the Further Prehearing Conference scheduled for May 26, 2016 was cancelled and this Scheduling Order #2 is being issued to formally establish the procedural schedule for this matter and to grant the Motion for Admission *pro hac vice*. The Verizon Direct Testimony, however, will be referred to as Verizon Rebuttal Testimony and the CWA Rebuttal Testimony will be referred to as CWA Surrebuttal Testimony. The hearing will be held in Harrisburg in a hearing room in the Commonwealth Keystone Building. In addition, the parties were queried regarding any need for a Protective Order or any modification to the Commission’s regulations regarding discovery. Verizon indicated that it intends to submit a Motion for a Protective Order and to request modifications to the Commission’s discovery rules. Both of those issues will be addressed when filed. The Motion for Admission *pro hac vice* will be granted because it is also unopposed.

Finally, the parties are reminded that Commission policy promotes settlements. 52 Pa. Code §5.231(a). The parties are encouraged to commence settlement discussions as early as possible. Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled. The parties are reminded, however, that decisions of the Commission must be supported by substantial evidence. 2 Pa. C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Any settlement submitted for approval must be supported by substantial evidence.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the following procedural schedule will be adopted for this proceeding:

|  |  |
| --- | --- |
| June 30, 2016 | Verizon to file objections to CWA discovery Set I |
| August 12, 2016 | Verizon to file responses to CWA discovery Set I |
| September 29, 2016 | CWA and allied parties to file Direct Testimony |
| December 1, 2016 | Verizon and allied parties to file Rebuttal Testimony |
| January 5, 2017 | CWA and allied parties to file Surrebuttal testimony |
| Week of February 6, 2017 | Hearings |

1. That the Motion for Admission of Jennifer L. McClellan *pro hac* vice is granted.
2. That the parties shall receive all documents and shall copy all other parties on documents they file with the Commission or serve on me. The parties are expected to conduct discovery, attend hearings, or present or cross-examine witnesses, as appropriate. The parties shall serve the documents listed above so that the documents are received in-hand by the parties and presiding officer no later than 4:30 p.m. on the dates listed. Parties may serve the documents listed above via e-mail to meet this requirement, with hard copy to follow by regular first class mail, so long as the electronic version is Microsoft Word compatible and no larger than 5 MB per email. Parties shall not file testimony with the Commission, but shall file a certificate of service.
3. That written testimony shall comply with the requirements of 52 Pa.Code §5.412 and shall be marked with numerical, sequential statement numbers. Parties serving pre-served testimony pursuant to 52 Pa.Code § 5.412(f) are required, within thirty (30) days after the final hearing, to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding, consistent with the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973.

5. That all parties shall comply with the provisions of 52 Pa.Code §5.243(e) which prohibits the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.

6. That the parties shall conduct discovery pursuant to 52 Pa.Code §§5.321-5.373. The parties are encouraged to cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require formal resolution. All motions to compel shall contain a certification by counsel setting forth the informal discovery undertaken and their efforts to resolve their discovery disputes informally. If a motion to compel does not contain this certification, the parties will be directed to pursue informal discovery. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§5.361, 5.371-5.372

7. That the evidentiary hearing will be held in Harrisburg and will commence at 10:00 a.m. unless changed by the presiding officer.

8. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.

9. That the evidentiary hearings in this matter constitute a formal legal proceeding and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.

10. That any provision of this order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code § 5.223(a).

Date: May 26, 2016

Joel H. Cheskis

Administrative Law Judge

**P-2015-2509336 – PETITION OF COMMUNICATIONS WORKERS OF AMERICA FOR A PUBLIC, ON-THE-RECORD COMMISSION INVESTIGATION OF SAFETY, ADEQUACY AND REASONABLENESS OF SERVICE PROVIDED BY VERIZON PENNSYLVANIA LLC.**

***Revised 3/23/16***

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