

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

Paula Ponte
v.
Verizon Pennsylvania LLC

**PUBLIC MEETING: August 23, 2018
2559745-ALJ***

Docket No. C-2016-2559745

STATEMENT OF VICE CHAIRMAN ANDREW G. PLACE

Before us for disposition is Initial Decision (I.D.) of Administrative Law Judge (ALJ) Christopher P. Pell that dismisses the Formal Complaint (Complaint) of Ms. Paula Ponte against Verizon Pennsylvania LLC (Verizon PA or Respondent). The Complaint involves a Verizon PA pole and Ms. Ponte's allegations that lines situated on the pole inhibit safe building maintenance, and that the location of the utility pole prevents the installation of a fire escape on the side of the building.¹

Following the completion of the evidentiary hearing in this matter on October 25, 2017 and upon review of the record ALJ Pell established that the service address and building in question was owned by a trust. On the basis that Commission regulations require a trust to be represented by an attorney in an adversarial proceeding, ALJ Pell reopened the record in this matter and "ordered Ms. Ponte to have an attorney licensed to practice law in the Commonwealth of Pennsylvania enter an appearance to represent her and the trust on or before the close of business on April 16, 2018." ALJ Pell's directives made clear that if Ms. Ponte failed to comply "the Complaint would be subject to dismissal."² ALJ Pell granted an extension of the deadline for Ms. Ponte to obtain competent legal representation.³ ALJ Pell dismissed the Complaint on the basis that the Commission's regulations and applicable law required the legal representation of a trust in an adversarial proceeding before the Commission, and no attorney filed an appearance on behalf of the Complainant and the trust.⁴

I do not advocate or support the premise that our regulations regarding the legal representation of business or corporate entities, including trusts, should be violated or ignored. Similarly, the directives that are issued by our presiding ALJs to participating parties during adversarial adjudication proceedings should be respected and obeyed. The ALJs of the Commission already have a challenging and sensitive task in impartially managing the process in formal complaint cases.

However, I believe that the simple exercise of judicial economy and administrative efficiency should have permitted Ms. Ponte to maintain her Complaint action as a *pro se* Complainant, and a ruling on her case should have been reached on the merits and the evidence presented in this case. I note that the Pennsylvania Commonwealth Court may treat the issue of the legal representation of business trusts on a case-by-case basis and has inquired whether a business or corporate trust is valid.⁵

¹ Verizon PA's Preliminary Objection was denied in the underlying adjudication with a finding that "while Verizon was correct that the Commission does not have subject matter jurisdiction to adjudicate public right-of-way issues, the Commission does have jurisdiction to address Ms. Ponte's claims of unsafe conditions regarding Verizon's facilities within that right-of-way." I.D. at 2-3.

² I.D. at 4.

³ I.D. at 4-5.

⁴ I.D. at 7-10.

⁵ *Straban Township v. Hanoverian Trust*, 152 A.3d 702 (Pa. Cmwlth. 2016); 2016 Pa. Commw. Unpub. LEXIS 669; 2016 WL 4937885, citing *Harkness v. Unemployment Compensation Bd. of Review*, 920 A.2d 162, 166 (Pa. 2007) ("[W]hat constitutes the practice of law [is determined] on a case-by-case basis"). See also *Straban Township v. Hanoverian Trust*, 112 A.3d 702 (Pa. Cmwlth. 2015); 2015 Pa. Commw. Unpub. LEXIS 294; 2015 WL 1943990.

The available record indicates that no such relevant inquiries were made here. Ms. Ponte disclosed at the start of the October 25, 2017 evidentiary hearing that the building at issue was owned by a trust, that she was the trustee, and that she had purchased the building on behalf of the trust in February 2010.⁶


I also note that the Commission has exercised a certain degree of flexibility regarding issues of legal representation for business or corporate entities, including public utilities that operate under the Commission's jurisdiction.⁷ This flexibility was and is fully consistent with the concepts of judicial economy and administrative efficiency for participating parties and the resources of this Commission.

The record in this proceeding discloses that the PECO electric utility performed certain work on the Verizon PA pole, and placed its electric power lines at a greater distance from the building at issue.⁸ The record also indicates that Verizon PA performed certain work on its pole and straightened it, thus placing the attached Verizon PA wiring at a further distance from the building.⁹ The testimony of Verizon PA described the work that was performed in straightening its pole,¹⁰ and asserted that its associated telephone wiring had sufficient clearance from the building.¹¹ Furthermore, Verizon PA's testimony indicated that its telephone wires on this pole presented no safety issues in terms of the voltage that they carry (they are completely dissimilar to the PECO electric distribution lines on the same pole),¹² the relevant and small electric voltage that they carry being used for the generation of telephone ringing tones,¹³ and they are covered with a protective sheath.¹⁴

Thus, it appears that the underlying adjudication had generated a sufficient evidentiary record for reaching a ruling on the merits of this case. Directing the Complainant to obtain legal representation for the trust and herself after the conclusion of the evidentiary hearing may be consistent with our regulations but it also held the potential of further delaying the disposition of the case and increasing the administrative costs for all the participants and this Commission.¹⁵

For these reasons, I will be respectfully concurring in result only in the disposition of this matter.

Dated: August 23, 2018



Andrew G. Place
Vice Chairman

⁶ Tr. 8-9, 38, 69.

⁷ See, e.g., *Pennsylvania Public Utility Commission, et al. v. Pine-Roe Natural Gas Company, Inc.*, Docket No. R-2017-2618332, Order entered May 23, 2018.

⁸ Tr. 18-19.

⁹ Tr. 20.

¹⁰ Tr. 55.

¹¹ Tr. 62.

¹² Tr. 62-63.

¹³ Tr. 76-77.

¹⁴ Tr. 80.

¹⁵ The Complaint was filed on July 15, 2016. I.D. at 1.