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April 29, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Verizon Pennsylvania LLC and Verizon North LLC v. Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company
Docket No. C-2020-3019347

Dear Secretary Ciavetta:

Enclosed for filing is the Motion of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company to Dismiss Objections and Compel Responses to Interrogatories and Requests for Production of Documents Propounded on Verizon Pennsylvania LLC and Verizon North LLC – Set I, in the above referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Devin Ryan

DTR/jl
Enclosures

cc: Honorable Joel H. Cheskis
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL ONLY

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Date: April 29, 2020



Devin Ryan


**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon Pennsylvania LLC and Verizon North LLC,	:	
	:	
Complainants	:	
	:	
v.	:	Docket No. C-2020-3019347
	:	
Metropolitan Edison Company,	:	
Pennsylvania Electric Company, and	:	
Pennsylvania Power Company,	:	
Respondents	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.342(g)(1), YOU MAY FILE AN ANSWER TO THE ENCLOSED MOTION TO COMPEL WITHIN FIVE (5) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR ANSWER SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Date: April 29, 2020

*Attorneys for Metropolitan Edison Company, Pennsylvania
Electric Company, and Pennsylvania Power Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon Pennsylvania LLC and Verizon North LLC,	:	
	:	
Complainants	:	
	:	
v.	:	Docket No. C-2020-3019347
	:	
Metropolitan Edison Company,	:	
Pennsylvania Electric Company, and	:	
Pennsylvania Power Company,	:	
Respondents	:	

MOTION OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, AND PENNSYLVANIA POWER COMPANY TO DISMISS OBJECTIONS AND COMPEL RESPONSES TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS PROPOUNDED ON VERIZON PENNSYLVANIA LLC AND VERIZON NORTH LLC – SET I

TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

Pursuant to 52 Pa. Code §§ 5.342(g) and 5.349(d), Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), and Pennsylvania Power Company (“Penn Power”) (collectively, “FirstEnergy” or the “Companies”) hereby file this Motion to Dismiss Objections and Compel Responses to Interrogatories and Requests for Production of Documents Propounded on Verizon Pennsylvania LLC and Verizon North LLC (collectively, “Verizon”) – Set I.¹

This proceeding demands a full and fair discovery process, where FirstEnergy is provided with the supporting information, materials, and data underlying and related to Verizon’s allegations. Pennsylvania courts and the Commission have long held that the Commission’s

¹ True and correct copies of FirstEnergy’s first set of interrogatories and requests for production of documents and Verizon’s objections thereto are attached to this Motion as **Appendix A** and **Appendix B**, respectively.

discovery standard is broad.² Section 5.321(c) of the Commission’s regulations entitles a party to discovery of any matter not privileged that is relevant to the pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). This vastly contrasts the Federal Communications Commission’s (“FCC”) discovery standard, which requires the information being “sought in each interrogatory” to be “necessary to the resolution of the dispute.” 47 C.F.R. § 1.730(b).

Nevertheless, like before the FCC, Verizon has objected to all of FirstEnergy’s interrogatories and requests for production of documents. In fact, Verizon begins its objections with a set of “general objections” to all of the Companies’ discovery requests, which is not a permissible practice under the Commission’s regulations, followed by a series of conclusory “specific objections” to the individual discovery requests. And even when Verizon indicates that it may be providing a response to some of these discovery requests, such as interrogatories asking basic questions like whether a Verizon witness is an attorney, Verizon states that it will do so “[s]ubject to and without waiving its objections.” (*See, e.g.,* Objection to FE to Verizon-I-23.)

When the Commission decided to reverse preempt the FCC’s regulation of pole attachments, the Commission stated that it wanted “to provide a local forum in Pennsylvania for the timely resolution of pole attachment disputes,” where the Commission can “address Pennsylvania-specific pole attachment issues, using its expertise regarding Pennsylvania telecommunications and electric utilities as well as safety issues.”³ The Commission further noted that its formal complaint and mediation processes would “allow for prompt resolution of

² *See, e.g., City of Pittsburgh v. Pa. PUC*, 526 A.2d 1243, 1249 (Pa. Cmwlth. 1987).

³ *Assumption of Comm’n Jurisdiction Over Pole Attachments from the Federal Communications Comm’n*, Docket No. L-2018-3002672, 2019 Pa. PUC LEXIS 267, at *12-13 (Order entered Sept. 3, 2019) (“*Chapter 77 Rulemaking Order*”).

disputes and utilize staff knowledgeable about pole attachment issues.”⁴ More importantly, the Commission emphasized that its “assertion of jurisdiction will benefit those who often struggle with defending themselves in FCC proceedings.”⁵ Obviously, the Commission intended for all of its procedural rules and requirements, including its broad discovery standard, to apply, so that EDCs, like FirstEnergy, can engage in a full and fair discovery process that often is denied to them before the FCC. Nonetheless, Verizon flouts the Commission’s rules and requirements and has objected to all of FirstEnergy’s interrogatories and requests for production of documents.

All of Verizon’s objections to FirstEnergy’s discovery requests are without merit and should be rejected for several reasons.

First, Verizon failed to comply with the Commission’s discovery rules and the requirements set forth in Deputy Chief Administrative Law Judge Joel H. Cheskis’s (“ALJ”) Scheduling Order governing discovery. The Commission’s regulations require the objecting party to “[i]nclude a description of the facts and circumstances purporting to justify the objection.” 52 Pa. Code § 5.342(c)(3). Here, Verizon merely states the alleged grounds for its objections, such as unduly burdensome, without ever explaining how the discovery request is objectionable on that ground. Stated otherwise, Verizon cannot simply state that the discovery request is unduly burdensome; it must explain why. Verizon’s failure to do so in its objections has denied FirstEnergy due process because the Companies cannot now respond to any explanation offered in Verizon’s Answer to the instant Motion. Moreover, the Commission’s regulations do not permit a party to serve “general objections” to discovery requests. The party’s objections must “specifically identif[y] the objectionable interrogatories.” 52 Pa. Code § 5.342(e)(1). Such general, non-specific objections are “improper” in Commission proceedings

⁴ *Id.* at *66-67.

⁵ *Id.* at *67.

and should be dismissed.⁶ Likewise, Verizon’s tactic of generally objecting to “every single interrogatory, even the ones to which it is filing a response,” is “highly confusing” and “highly improper” before the Commission.⁷

Additionally, in the Scheduling Order, the ALJ established specific rules for discovery in this proceeding, which were designed to expedite discovery and potentially resolve discovery disputes without involving the ALJ. One of those rules was for the parties to serve verbal notice of objections within three (3) days of service of the written discovery requests. *See* Scheduling Order, p. 5. The Scheduling Order explicitly stated such verbal notice of objections was intended “to facilitate resolution of the dispute.” *Id.*, p. 5. However, when Verizon contacted FirstEnergy about the discovery requests on April 20, 2020, Verizon thought it was sufficient to simply advise FirstEnergy that Verizon would be serving written objections on April 22, 2020. Despite being asked to do so by FirstEnergy, Verizon refused to outline its specific objections to each of the discovery requests.⁸ Verizon’s actions were inconsistent with Commission practice and the clear terms of the Scheduling Order, where oral objections serve as an opportunity for the parties to discuss the specific objections and try to resolve the objections before written objections are served. Verizon’s failure to comply with these requirements should not be excused, especially when Verizon itself agreed to these discovery rule modifications and jointly proposed them to the ALJ.

Second, FirstEnergy’s interrogatories and requests for production of documents all seek basic, foundational data, information, and materials related to or in support of Verizon’s

⁶ *Pa. PUC v. Pa. Am. Water Co.*, 2011 Pa. PUC LEXIS 1523, at *11-12 (Order on Motion to Compel entered July 21, 2011) (dismissing the utility’s “General Objections” to the Office of Consumer Advocate’s interrogatories because: (1) the objections “lack[ed] the factual specificity required by 52 Pa. Code § 5.342(g) and are therefore improper”; and (2) the utility’s general objection “to every single interrogatory, even the ones to which it is filing a response . . . causes confusion on the parties conducting discovery and is highly improper”).

⁷ *Id.* at *12.

⁸ A true and correct copy of Verizon’s counsel’s email to FirstEnergy explaining Verizon’s position is attached hereto as **Appendix C**.

arguments and allegations. In many of the interrogatories, FirstEnergy simply asked for data and information related specifically to statements made by Verizon in pleadings and affidavits filed with the FCC. For example, Verizon asserted in Paragraph 49 of its Formal Complaint that Verizon’s “facilities have the highest exposure of damage from oversized vehicles, vandalism, and similar hazards.” (Formal Complaint ¶49.) Consequently, FirstEnergy propounded a discovery request (FE to Verizon-I-15) asking Verizon to, among other things, list all of the incidents where “damage from oversized vehicles,” “vandalism,” and “similar hazards” occurred on a Verizon facility that was attached to a FirstEnergy pole—a basic, foundational question about the support (or lack thereof) Verizon has for that statement in its Formal Complaint. Similarly, in Paragraph 49 of the Formal Complaint, Verizon averred that “Verizon’s location on FirstEnergy’s poles increases its costs and sets it at a competitive disadvantage.” (Formal Complaint ¶49.) Naturally, in FE to Verizon-I-14, FirstEnergy asked Verizon to provide information directly related to this claim, including the costs saved and the costs incurred by Verizon due to the location of its facilities on poles owned by FirstEnergy.

Yet, Verizon alleges that discovery requests such as these are overly broad, unduly burdensome, and irrelevant and are not reasonably calculated to lead to the discovery of admissible evidence. (*See, e.g.*, Objections to FE to Verizon-I-14 and 15.) Moreover, Verizon objects on the grounds that it should not have to compile data or information that it “does not maintain in the format requested or in the normal course of business” and should not be required “to make a special study or analysis.” (*See, e.g., id.*)

As explained previously, Verizon wholly fails to explain how these discovery requests are objectionable on those grounds, as required by the Commission’s regulations. Verizon cannot now, for the first time in its Answer to this Motion, explain its reasoning for these

objections. On that ground alone, the ALJ should dismiss Verizon's objections. Moreover, as set forth in this Motion, Verizon's objections are without merit because FirstEnergy carefully limited its discovery requests in scope to the appropriate time period and subject matter. Additionally, contrary to Verizon's claims, FirstEnergy is not requesting any special study or analysis. FirstEnergy simply is requesting the necessary records and data so that the Companies can perform their own study or analysis.

All of Verizon's unjustified actions reveal its ultimate goal—to obstruct FirstEnergy's receipt of basic, foundational information and materials about Verizon's case in sufficient time before the Companies submit their rebuttal testimony and to hinder the development of a complete and reliable evidentiary record. This case is time-sensitive and is on an expedited litigation schedule, with FirstEnergy's rebuttal testimony due in a matter of weeks on May 21, 2020. By objecting to all of the Companies' discovery requests and forcing FirstEnergy to file the instant Motion to receive complete discovery responses, Verizon is unreasonably delaying the receipt of the information and materials FirstEnergy requires to present its case in rebuttal. In fact, assuming the ALJ rules on the Motion within 15 days of its presentation (as set forth in 52 Pa. Code § 5.342(g)(2)) and the ALJ directs Verizon to serve answers within three (3) days of the order granting the Motion, FirstEnergy only would receive answers on Monday, May 18, 2020, a mere three days before its rebuttal testimony and exhibits are due. FirstEnergy must timely receive the information and materials that are reasonably calculated to lead to the discovery of admissible evidence well in advance of the May 21, 2020, or else the Companies will be denied due process.

Verizon cannot be permitted to make claims in this proceeding and then fail to provide responses to discovery that are necessary for: (1) FirstEnergy to investigate and respond to those

claims; and (2) FirstEnergy to present its case in rebuttal. If Verizon continues to obstruct reasonable discovery, the ALJ should strike Verizon's testimony on these issues, adopt an adverse inference to any information and materials that Verizon refuses to produce, and/or determine that Verizon has not met its burden in this proceeding and that its Formal Complaint should be dismissed with prejudice. Moreover, for the number of days past the original May 4, 2020 due date for answers to FE to Verizon Set I, the same amount of days should be added on to the due date for FirstEnergy's rebuttal testimony.

For these reasons, and as further explained herein, FirstEnergy respectfully requests that the ALJ dismiss Verizon's baseless objections and compel full and complete responses to FirstEnergy's first set of interrogatories and requests for production of documents.

In support of its Motion, FirstEnergy states as follows:

I. INTRODUCTION

1. On April 17, 2020, FirstEnergy served Interrogatories and Requests for Production of Documents on Verizon – Set I (“FE to Verizon Set I”) by email.⁹ A true and correct copy of FE to Verizon Set I is attached hereto and marked as **Appendix A**.

2. Pursuant to the modified discovery rules in this proceeding, verbal notice of objections were due on April 20, 2020, written objections were due on April 22, 2020, and answers are due on or before May 4, 2020.

3. On April 20, 2020, counsel for FirstEnergy received a call from Verizon's counsel, who stated that Verizon was planning on serving written objections to FE to Verizon Set I. However, Verizon refused to outline specifically which discovery requests Verizon would be objecting to or all of the grounds on which it was objecting. Rather, as outlined in an email sent

⁹ Because the discovery requests were served before Noon, they were counted as being served on April 17, 2020, and not the next business day. *See* Scheduling Order, p. 5.

by Verizon's counsel to FirstEnergy's counsel later that day, Verizon believed it was sufficient to simply inform FirstEnergy that it would be serving written objections to FE to Verizon Set I. *See* Appendix C.

4. On April 22, 2020, Verizon served written objections to FE to Verizon Set I, which are the subject of the instant Motion. Verizon's objections are attached hereto and marked as **Appendix B**.

5. On April 27, 2020, FirstEnergy's counsel and Verizon's counsel discussed, among other things, Verizon's inappropriate practice of generally objecting to all of FirstEnergy's discovery requests.

6. On April 29, 2020, FirstEnergy's counsel left a detailed voicemail for Verizon's counsel about whether the parties could potentially informally resolve Verizon's objections to FE to Verizon Set I. As of filing the instant Motion, FirstEnergy's counsel has not heard back from Verizon's counsel. However, because of the short amount of time until FirstEnergy's rebuttal testimony is due, FirstEnergy determined that the Companies needed to proceed with filing the instant Motion.

7. For the reasons explained below, Verizon's objections to FE to Verizon Set I completely lack merit, and the ALJ should compel Verizon to fully respond to the discovery requests.

II. MOTION TO COMPEL

8. FirstEnergy requests that the ALJ dismiss Verizon's objections as without merit and direct Verizon to answer fully all of the interrogatories and requests for production of documents set forth in FE to Verizon Set I.

9. "The commission's regulation regarding discovery requests allows a broad scope of discovery." *City of Pittsburgh v. Pa. PUC*, 526 A.2d 1243, 1249 (Pa. Cmwlth. 1987).

10. Under 52 Pa. Code § 5.321(c), a party is entitled to obtain discovery of any matter not privileged that is relevant to the pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence. Discovery is permitted regardless of whether the information sought “relates to the claim or defense of the party seeking discovery or to the claim or defense of another party.” *Id.*

11. Consistent with that regulation, the Commission generally provides wide latitude in discovery matters. *See Pa. PUC v. The Peoples Natural Gas Co.*, 62 Pa. P.U.C. 56 (Order Entered Aug. 26, 1986); *Pa. PUC v. Equitable Gas Co.*, 61 Pa. P.U.C. 468 (Order Entered May 16, 1986).

12. An objection to a discovery request must “[r]estate the interrogatory or part thereof deemed objectionable and the specific ground for the objection.” 52 Pa. Code § 5.342(c)(2). Furthermore, the objection must “[i]nclude a description of the facts and circumstances purporting to justify the objection.” 52 Pa. Code § 5.342(c)(3); *see* 52 Pa. Code § 5.350(d)(3) (stating that the “[g]rounds for objections” to a request for admission “must be specifically stated”).

13. Objections to interrogatories must be served within 10 days of the date the discovery was served. 52 Pa. Code § 5.342(e). Objecting parties remain under an obligation to provide timely answers to interrogatories or subparts of interrogatories to which they did not object. *Id.* § 5.342(f). Further, objections must be contained in a document separate from an answer. *Id.* § 5.342(c).

14. The party’s objections must “specifically identif[y] the objectionable interrogatories.” 52 Pa. Code § 5.342(e)(1).

15. “The Commission’s discovery rules do not permit general objections or objections by illustration.”¹⁰

16. As a result, general, non-specific objections are “improper” in Commission proceedings and should be dismissed.¹¹

17. Similarly, the tactic of generally objecting to “every single interrogatory, even the ones to which it is filing a response,” is “highly confusing” and “highly improper” before the Commission.¹²

18. Under the Scheduling Order in this proceeding, the deadlines for objections and answers to discovery were modified as follows, in accordance with the language jointly proposed by Verizon and FirstEnergy at the prehearing conference:

Any discovery served after 4:30 Monday through Wednesday¹³ and after noon on a Friday will be considered to have been served the next business day;

Verbal notice of objections shall be provided within 3 calendar days following service of discovery requests so as to facilitate resolution of the dispute. If the dispute is not resolved, written objections must be served within 5 calendar days of service of the requests and (per the existing rule) any motions to compel are due within 10 calendar days of service of the objections.

Responses to discovery requests are due within 15 calendar days of service of the requests.

Any deadline that falls on a Saturday, Sunday, or Holiday will be the following business day.

Scheduling Order, p. 5.

¹⁰ *Joint Application of Aqua America Inc., Aqua Pa. Inc., Aqua Pa. Wastewater Inc., and Peoples Natural Gas Co. LLC*, Docket Nos. A-2018-3006061, *et al.*, p. 3 (Interim Order on Equitrans’ Motion to Dismiss Objections to Discovery entered Feb. 19, 2019).

¹¹ *Pa. PUC v. Pa. Am. Water Co.*, 2011 Pa. PUC LEXIS 1523, at *11-12 (Order on Motion to Compel entered July 21, 2011).

¹² *Id.* at *12.

¹³ FirstEnergy believes this is a typographical error in the Scheduling Order and should say “Thursday” instead of “Wednesday.”

19. In the Scheduling Order, the ALJ also encouraged the parties “to resolve any discovery disputes amongst themselves prior to seeking the intervention of the presiding officer.”

Id.

20. As explained herein, Verizon has completely failed to comply with the Commission’s discovery rules and the requirements of the Scheduling Order. For the reasons stated in more detail below, the ALJ should dismiss Verizon’s objections as without merit and direct Verizon to answer fully all of the interrogatories and requests for production of documents set forth in FE to Verizon Set I.

21. A primary purpose behind the Commission deciding to reverse preempt the FCC’s regulation of pole attachments was “to provide a local forum in Pennsylvania for the timely resolution of pole attachment disputes,” where the Commission can “address Pennsylvania-specific pole attachment issues, using its expertise regarding Pennsylvania telecommunications and electric utilities as well as safety issues.”¹⁴

22. The Commission further noted that its formal complaint and mediation processes “will allow for prompt resolution of disputes and utilize staff knowledgeable about pole attachment issues.”¹⁵

23. More importantly, the Commission emphasized that its “assertion of jurisdiction will benefit those who often struggle with defending themselves in FCC proceedings.”¹⁶

A. VERIZON’S “GENERAL OBJECTIONS” COMPLETELY LACK MERIT

24. In its objections, Verizon first set forth a series of “general objections” to the entirety of FE to Verizon Set I. Those general objections were as follows:

¹⁴ *Chapter 77 Rulemaking Order*, p. 9.

¹⁵ *Id.*, p. 47

¹⁶ *Id.*

1. Notwithstanding the broad definitions of “Responding Party,” “you,” and “your” as including “affiliates,” Verizon presumes that FirstEnergy’s requests are addressed to Verizon Pennsylvania LLC and Verizon North LLC and will answer accordingly. To the extent FirstEnergy intended to ask about affiliates not party to this case, Verizon objects on the ground that such information is outside this Commission’s jurisdiction or otherwise seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence.
2. Verizon objects to the extent FirstEnergy purports to request information not available in the ordinary course of business and/or to require Verizon to undertake an unduly burdensome search or special study. Subject to the limitations set forth in its other objections, Verizon will provide only such responsive information as is available to it in the ordinary course of business following a reasonably diligent search of the files that are reasonably expected to contain the responsive information.
3. Verizon objects to the extent FirstEnergy does not limit each request to a single question or request for information.
4. Verizon objects to the extent that FirstEnergy’s requests purport to seek legal analysis, and/or information and documents that are protected from disclosure by the attorney-client privilege, attorney work product privilege, or other such privilege.
5. Verizon objects to the requests to the extent that they seek information that is not within Verizon’s possession, custody, or control or information that is not within Verizon’s present knowledge.
6. Verizon objects to the requests to the extent that they call for information that is already within FirstEnergy’s possession, custody, or control.
7. Verizon objects to the requests to the extent that they seek discovery of legal conclusions, contentions, or information that is publicly available.
8. Verizon objects to the requests to the extent that the burden or expense of answering the Interrogatory would outweigh any benefit of the answer.
9. Verizon objects to the requests to the extent that they purport to impose requirements or obligations on Verizon in addition to or different from those imposed by the Commission’s rules. In

responding to the requests, Verizon will respond as required under the Commission's rules.

10. Verizon reserves the right to change or modify any objection should it become aware of additional facts or circumstances following the service of these objections.

11. The foregoing general objections are hereby incorporated into each specific objection listed below, and each specific objection is made subject to and without waiver of the foregoing general objections.

25. Verizon's "general objections" are without merit and should be dismissed.

26. As a preliminary matter, a party's objections must "specifically identif[y] the objectionable interrogatories." 52 Pa. Code § 5.342(e)(1). Such general, non-specific objections are "improper" in Commission proceedings and should be dismissed.¹⁷

27. Likewise, Verizon's tactic of generally objecting to "every single interrogatory, even the ones to which it is filing a response," is "highly confusing" and "highly improper" before the Commission.¹⁸

28. In addition, nothing in Verizon's general objections sets forth the "facts and circumstances purporting to justify the objection." 52 Pa. Code § 5.342(c)(3). Rather, Verizon's general objections are all conclusory statements of the grounds on which Verizon is objecting. As a result, all of Verizon's general objections fail to comply with Section 5.342(c)(3) of the Commission's regulations. *See id.*

29. Therefore, for these reasons alone, Verizon's general objections should be rejected in their entirety.

¹⁷ *Pa. PUC v. Pa. Am. Water Co.*, 2011 Pa. PUC LEXIS 1523, at *11-12 (Order on Motion to Compel entered July 21, 2011) (dismissing the utility's "General Objections" to the Office of Consumer Advocate's interrogatories because: (1) the objections "lack[ed] the factual specificity required by 52 Pa. Code § 5.342(g) and are therefore improper"; and (2) the utility's general objection "to every single interrogatory, even the ones to which it is filing a response . . . causes confusion on the parties conducting discovery and is highly improper").

¹⁸ *Id.* at *12.

30. Further, even if generally objecting to FirstEnergy's discovery requests was a permissible practice before this Commission, each of Verizon's general objections completely lacks merit.

31. General Objection 1 should be rejected because FirstEnergy properly defined those terms as including any affiliates, not only Verizon Pennsylvania LLC and Verizon North LLC. In this case, Verizon has relied on information from affiliates other than Verizon Pennsylvania LLC and Verizon North LLC in support of its case. For example, in Paragraph 34 of its Formal Complaint, Verizon states that it "has access to two license agreements that FirstEnergy entered with Verizon's affiliates" and alleges that "each bears little resemblance to the draft agreement FirstEnergy produced." (Formal Complaint ¶ 34.) Verizon witness Stephen C. Mills also averred in his Affidavit attached to the Formal Complaint that he has "access to information maintained by Verizon's CLEC affiliates in Pennsylvania: MCI Communications Services, Inc., MCImetro Access Transmission Services Corp., and XO Communications Services, LLC." (Formal Complaint, Exhibit A ¶ 3.) That Affidavit was expressly incorporated into Mr. Mills's direct testimony. (Verizon Statement No. 1.0, Exhibit SCM-1.) Clearly, Verizon believes that information from its affiliates besides Verizon Pennsylvania LLC and Verizon North LLC is relevant to this proceeding, or else it would not have included such information in its Formal Complaint and Mr. Mills's Affidavit. Thus, Verizon's attempt to pick and choose when information about its other affiliates is relevant should be rejected.

32. General Objection 2 should be denied as well. In General Objection 2, Verizon "objects to the extent" that the Companies are seeking information that is "not available in the ordinary course of business" or that would require "an unduly burdensome search or special study." FirstEnergy has not requested Verizon to produce information that is unavailable in the

ordinary course of business, nor is FirstEnergy asking that Verizon conduct any special study or analysis. The Companies have simply asked for background information and materials related to or in support of Verizon's claims. Moreover, Verizon fails to recognize what is considered a "special study or analysis" under the Commission's regulations. 52 Pa. Code § 5.361(b). For example, in *Application of Transource Pennsylvania, LLC*, Transource Pennsylvania LLC's ("Transource") objection on these grounds was sustained only after establishing "it would have to compile some 80 million data points and either run lengthy manual processes or develop a new computer program in order to run the simulations requested by OCA." *Application of Transource Pa., LLC*, Docket Nos. A-2017-2640195, *et al.*, p. 20 (Order Granting in Part and Denying in Part Motion to Compel entered Aug. 3, 2018). Additionally, "OCA could have purchased its own PROMOD license in order to undertake whatever investigations it wishes" and had "been provided all relevant requested information, sufficient for OCA to independently run its own tests should it choose to undertake those extensively cumbersome tasks." *Id.* Here, however, FirstEnergy has merely requested that Verizon provide background data and information related to or in support of Verizon's allegations, which is not a "special study or analysis" under 52 Pa. Code § 5.361(b).

33. In General Objection 3, "Verizon objects to the extent FirstEnergy does not limit each request to a single question or request for information." Nothing in the Commission's regulations prohibits a party from asking interrogatories with multiple subparts. In fact, parties routinely propound interrogatories with multiple subparts in Commission proceedings. Therefore, General Objection 3 should be rejected.

34. General Objection 4 should also be denied. FirstEnergy has not requested any "legal analysis, and/or information and documents that are protected from disclosure by the

attorney-client privilege, attorney work product privilege, or other such privilege.” Moreover, to the extent that Verizon refuses to produce responses based upon any of those privileges, it should appropriately provide a privilege log identifying the documents withheld, the documents’ subject matter, and the basis on which the privilege or other protection from disclosure is claimed.

35. In General Objection 5, Verizon states that it “objects to the requests to the extent that they seek information that is not within Verizon’s possession, custody, or control or information that is not within Verizon’s present knowledge.” Again, it appears that Verizon is trying to avoid providing information and materials that are within the “possession, custody, or control” of its other affiliates. As explained previously, Verizon’s attempt to extricate information about its affiliates from the discovery process is wholly undone by its reliance on information from affiliates in its Formal Complaint and Mr. Mills’s Affidavit, which has since been incorporated into Verizon Statement No. 1.0 as Exhibit SCM-1. (*See* Verizon Statement No. 1.0, Exhibit SCM-1.) Thus, General Objection 5 should be dismissed.

36. General Objection 6 should be rejected because FirstEnergy has not requested any “information that is already within FirstEnergy’s possession, custody, or control.” FirstEnergy would have no reason to propound these discovery requests if it already had the requested information and materials.

37. Similarly, in response to General Objection 7, FirstEnergy is not seeking the “discovery of legal conclusions” and “contentions.” Any of the requested answers that “involve an opinion or contention” are properly “related to a fact or the application of law to fact.” 52 Pa. Code § 5.342(c)(5). Moreover, even assuming *arguendo* that some of the requested information is “publicly available,” then Verizon must provide appropriate citations to where such information can be found.

38. General Objection 8 is without merit. Verizon states that it objects “to the extent that the burden or expense of answering the Interrogatory would outweigh any benefit of the answer.” Verizon has completely failed to quantify or explain what the “burden or expense” would be for any of these discovery requests. Such a general objection without factual support demonstrating why a particular interrogatory is overly broad and unduly burdensome should be rejected. Moreover, the benefit of these interrogatories is for FirstEnergy to uncover the information and materials that are related to Verizon’s allegations or that may lead to the discovery of admissible evidence related to those allegations, so that the ALJ and the Commission have the benefit of a complete and reliable record upon which to base their decisions. Furthermore, as explained herein, FirstEnergy’s discovery requests were narrowly tailored in scope.

39. General Objection 9 lacks merit as well. FirstEnergy’s discovery requests comply with the Commission’s regulations and contain standard instructions that have long been used in many Commission proceedings.

40. General Objection 10 is not even an objection. Verizon states that it “reserves the right to change or modify any objection should it become aware of additional facts or circumstances following the service of these objections.” Such a reservation of rights is not permitted under the Commission’s regulations. Verizon was required to set forth all of the objections it had to FE to Verizon Set I and explain, in detail, the facts and circumstances supporting its objections. Verizon failed to do so and cannot sidestep the Commission’s discovery rules by reserving its right to “change or modify any objection.” Therefore, General Objection 10 should be dismissed.

41. Lastly, General Objection 11 states that all of “[t]he foregoing general objections are hereby incorporated into each specific objection listed below, and each specific objection is made subject to and without waiver of the foregoing general objections.” Effectively, Verizon is declaring that it objects to the entirety of FE to Verizon Set I for the reasons set forth in its “general objections.” As explained previously, such general, non-specific objections are not permissible under the Commission’s discovery rules. Verizon must state with specificity its objections to each individual discovery requests and provide the facts and circumstances purporting to support those objections. *See* 52 Pa. Code § 5.342(c)(3), (e)(1).

42. Based on the foregoing, all of Verizon’s “general objections” are without merit and should be dismissed.

B. VERIZON’S “SPECIFIC OBJECTIONS” ARE WITHOUT MERIT

1. Verizon’s Objections to FE to Verizon-I-1 Lacks Merit

43. FE to Verizon-I-1 provides:

Identify the joint use rates paid in 2019 pursuant to Verizon’s joint use agreements with other electric utilities.

44. Verizon’s objections to the interrogatory state:

Verizon objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon will not respond to this request.

45. Verizon’s objections are without merit. Nothing in Verizon’s objections explains how the interrogatory is objectionable on these grounds, as required by the Commission’s regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon’s objections. For that reason alone Verizon’s objections should be dismissed.

46. In addition, the interrogatory is relevant and reasonably calculated to lead to the discovery of admissible evidence and is not overly broad or unduly burdensome. The interrogatory directly relates to the fundamental issue in this case—whether the pole attachment rates that Verizon pays under its Joint Use Agreements with FirstEnergy are unjust and unreasonable. Indeed, the rates that Verizon pays other electric utilities under their joint use agreements is certainly relevant to Verizon’s principal claim that the rates it pays under its Joint Use Agreements with FirstEnergy are too high. Moreover, the interrogatory is limited in temporal scope because it only requests the rates paid in 2019 instead of the full eight-year period for which Verizon claims refunds are due. Further, if Verizon has concerns about the confidentiality of such information, a protective agreement governing the treatment and disclosure of confidential information is already in place between the parties.

47. For these reasons, the ALJ should dismiss Verizon’s objections and direct Verizon to answer fully FE to Verizon-I-1.

48. Notwithstanding, in the interest of compromise, FirstEnergy would be willing to limit the scope of this request to the joint use rates paid in 2019 under Verizon’s joint use agreements with only the other major electric distribution companies (“EDCs”) in Pennsylvania (*i.e.*, PECO Energy Company, PPL Electric Utilities Corporation, and Duquesne Light Company), instead of all other electric utilities.

2. Verizon’s Objections to FE to Verizon-I-2, 3, and 5 Lack Merit

49. FE to Verizon-I-2, 3, and 5 provide:

FE to Verizon-I-2

Identify which FirstEnergy poles have Verizon attachments that have been overlashed.

FE to Verizon-I-3

Identify the number of customers Verizon serves using Verizon's overlashing of its attachments to FirstEnergy poles.

FE to Verizon-I-5

Identify Verizon's cost per mile to overlash its attachments to FirstEnergy's poles.

50. Verizon's objections to these interrogatories state:

FE to Verizon-I-2

Verizon objects to this request because "attachments" and "overlashed" are vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request because it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business and Verizon is not required under the Commission's discovery rules to make a special study or analysis to attempt to compile this information. Verizon also objects to this request because it would impose an unreasonable burden and expense on Verizon and because FirstEnergy is equally capable of obtaining the requested information and/or performing the requested study or analysis. Verizon will respond to this request only to verify that, to the extent it understands the question, it does not track this information.

FE to Verizon-I-3

Verizon objects to this request because the phrase "using Verizon's overlashing of its attachments" contains vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request because it requires the

compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business and Verizon is not required under the Commission's discovery rules to make a special study or analysis to attempt to compile this information. Verizon also objects to this request because it would place an unreasonable burden and expense on Verizon. Verizon will respond to this request only to verify that, to the extent it understands the question, it does not track this information.

FE to Verizon-I-5

Verizon objects to this request because "cost per mile to overlash its attachments" contains vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request because it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business and Verizon is not required under the Commission's discovery rules to make a special study or analysis to attempt to compile this information. Verizon also objects to this request because it would place an unreasonable burden and expense on Verizon. Verizon will respond to this request only to verify that, to the extent it understands the question, it does not track this information.

51. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatories are objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

52. Further, the interrogatories do not use vague and ambiguous terms that make it impossible to answer the discovery requests. The terms "attachment" and "overlash" have basic understandings in the industry, of which Verizon is fully aware. In fact, the FCC routinely uses

the terms “attachment”¹⁹ and “overlash,”²⁰ including in the primary orders cited by Verizon in its Formal Complaint. More tellingly, Verizon itself repeatedly uses the terms “attachment” and “overlash” throughout its Formal Complaint and its direct testimony. (See, e.g., Formal Complaint ¶¶ 29, 38, 44-45; Formal Complaint, Exhibit A ¶ 54; Verizon Statement No. 1.0, Exhibit SCM-1 ¶ 54.) Therefore, it is utterly absurd for Verizon to argue that these terms are vague and ambiguous and make the interrogatories impossible to answer. Notwithstanding, FirstEnergy clarifies that the words “attachment” means “pole attachment” as defined in 47 U.S.C. § 224(a)(4), limited to attachments to FirstEnergy-owned poles and excluding attachments to ducts, conduits, and rights-of-way of FirstEnergy,²¹ and that “overlapping” means “when a service provider physically ties its wiring to other wiring already secured on the pole.”²²

¹⁹ See, e.g., *Amendment of the Comm’n’s Rules and Policies Governing Pole Attachments*, 13 FCC Rcd 6777, 1998 FCC LEXIS 628, at *1, 5-6, 9-11, 13-14, 19, 25, 29 (F.C.C. Feb. 6, 1998) (“*Telecom Order*”) (using the terms “attachments” and “pole attachments”); *Amendment of Rules and Policies Governing Pole Attachments*, 15 FCC Rcd 6453, 2000 FCC LEXIS 1690, at *1-7, 12-13, 22, 25, 28-29, 32-33 (F.C.C. Apr. 3, 2000) (“*Fee Order*”) (utilizing the terms “attachments” and “pole attachments”); *Amendment of the Comm’n’s Rules and Policies Governing Pole Attachments*, 16 FCC Rcd 12103, 2001 FCC LEXIS 4952, at *1-14, 16-17 (F.C.C. May 25, 2001) (“*Reconsideration Order*”) (using the terms “attachments” and “pole attachments”); *Implementation of Section 224 of the Act*, 26 FCC Rcd 5240, 2011 FCC LEXIS 1362, at *4-6, 8-12, 14-15, 17, 23-24, 26-28 (F.C.C. Apr. 7, 2011) (“*Pole Attachment Order*”) (utilizing the terms “attachments” and “pole attachments”); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd 7705, 2018 FCC LEXIS 2038, at *2-3, 5-6, 8, 11-12, 17, 27, 33 (F.C.C. Aug. 3, 2018) (“*Third Report and Order*”) (using the terms “attachments” and “pole attachments”); see also *S. Co. Servs. v. FCC*, 313 F.3d 574, 575-77, 578-80 (D.C. Cir. 2002) (utilizing the terms “attachments” and “pole attachments”).

²⁰ See, e.g., *Telecom Order*, 1998 FCC LEXIS 628, at *76 (“Overlapping, whereby a service provider physically ties its wiring to other wiring already secured to the pole, is routinely used to accommodate additional strands of fiber or coaxial cable on existing pole attachments.”); *Fee Order*, 2000 FCC LEXIS 1690, at *38 (“A 30 foot electric utility pole can accommodate two communications attachments or more with overlapping.”); *Reconsideration Order*, 2001 FCC LEXIS 4952, at *66 n.178, 94 (stating that “[o]verlapping occurs when an attacher physically ties additional cables to cables already attached to a pole” and that “[c]able companies have, through overlapping, been able for decades to replace deteriorated cables or expand the capacity of existing communications facilities, by tying communication conductors to existing, supportive strands of cable on poles”); *Third Report and Order*, 2018 FCC LEXIS 2038, at *202-18 (addressing the “Treatment of Overlapping”); see also *S. Co. Servs. v. FCC*, 313 F.3d at 578 (stating that “the Commission adopted regulations for overlapping, a technique whereby a telecommunications provider attaches a wire to its own (or, for third-party overlapping, to other attachers’) existing wires”).

²¹ Section 224(a)(4) defines “pole attachment” as “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.” 47 U.S.C. § 224(a)(4).

²² *Chapter 77 Rulemaking Order*, 2019 Pa. PUC LEXIS 267, at *6 n.6.

53. In addition, the interrogatories are relevant and reasonably calculated to lead to the discovery of admissible evidence and are not overly broad or unduly burdensome. A principal issue in this case is whether the Joint Use Agreements provide Verizon with a net material advantage over its competitors that would justify the existing pole attachment rates. One of the disputed advantages is Verizon's ability to overlash its existing facilities attached to FirstEnergy's poles without having to wait for FirstEnergy's permitting process. (*See* Formal Complaint ¶ 44; FirstEnergy Answer to Formal Complaint ¶ 76.) As explained in FirstEnergy's Answer to the Formal Complaint:

Having taken full advantage of the joint use agreements to expand its "built to order" joint use attachments, Verizon need only overlash existing facilities or simply light existing dark fiber capacity to reach new customers and to provide additional services that its existing customers require. Overlapping and lighting existing dark fiber capacity, of course, takes far less time than the current make-ready process that Verizon's competitors must follow.

(FirstEnergy Answer to Formal Complaint ¶ 76) (footnote omitted). Thus, to determine the extent to which Verizon has overlashed its facilities and benefited from this advantage over its competitors, FirstEnergy needs Verizon to identify the FirstEnergy poles where Verizon attachments have been overlashed, the number of customers Verizon serves with its overlashed attachments, and Verizon's cost per mile to overlash its attachments to FirstEnergy's poles.

54. The interrogatories also do not require Verizon to perform a special study or analysis to compile this information. *See Application of Transource Pa., LLC*, Docket Nos. A-2017-2640195, *et al.*, p. 20 (Order Granting in Part and Denying in Part Motion to Compel entered Aug. 3, 2018). FirstEnergy is merely requesting that Verizon provide basic background information about Verizon's existing facilities, the customers it serves using those facilities, and

the costs it incurred to overlash those facilities. If Verizon has no such information, then it need only provide responses stating so.

55. Finally, contrary to Verizon's objection to FE to Verizon-I-2, FirstEnergy cannot reasonably compile the information requested in that interrogatory on its own. Although FirstEnergy could survey all of its approximately 300,000 poles with Verizon attachments, such a significant undertaking would be overly expensive and require an inordinate amount of labor hours to complete. FirstEnergy could not reasonably complete such an extensive survey of all the poles within the limited time until its rebuttal testimony is due on May 21, 2020. In contrast, it is much more reasonable for FirstEnergy to request this information from Verizon because Verizon: (1) owns the facilities attached to FirstEnergy's poles; and (2) overlashed those facilities.

56. For these reasons, the ALJ should dismiss Verizon's objections and direct Verizon to answer fully FE to Verizon-I-2, 3, and 5.

3. Verizon's Objections to FE to Verizon-I-4 and 6 Lack Merit

57. FE to Verizon-I-4 and 6 provide:

FE to Verizon-I-4

For the FirstEnergy poles to which Verizon has attached fiber optic facilities, identify every FirstEnergy pole with Verizon fiber capacity to which Verizon has granted leasing or other rights to another entity.

FE to Verizon-I-6

Identify Verizon's cost per mile to lease fiber optic capacity on Verizon attachments to FirstEnergy's poles.

58. Verizon's objections to the interrogatories state:

FE to Verizon-I-4

Verizon objects to this request because "fiber capacity" and "leasing or other rights" are vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request because it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business and Verizon is not required under the Commission's discovery rules to make a special study or analysis to attempt to compile this information. Verizon further objects to this request because it would place an unreasonable burden and expense on Verizon. Verizon will respond to this request only to verify that, to the extent it understands the question, it does not track this information.

FE to Verizon-I-6

Verizon objects to this request because "cost per mile to lease fiber optic capacity on Verizon's attachments" contains vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request because it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business and Verizon is not required under the Commission's discovery rules to make a special study or analysis to attempt to compile this information. Verizon also objects to this request because it would place an unreasonable burden and expense on Verizon. Verizon will respond to this request only to verify that, to the extent it understands the question, it does not track this information.

59. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatories are objectionable on these grounds, as required by the Commission's

regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon’s objections. For that reason alone Verizon’s objections should be dismissed.

60. Further, the interrogatories do not use vague and ambiguous terms that make it impossible to answer the discovery requests. The terms “fiber capacity” and “fiber optic capacity” are widely understood in the industry. Moreover, the term “leasing or other rights” also is not vague. FirstEnergy is simply asking Verizon to identify the FirstEnergy poles where Verizon has leased its fiber capacity to a third party or granted a third party any other rights to Verizon’s fiber capacity.

61. In addition, the interrogatories are relevant and reasonably calculated to lead to the discovery of admissible evidence and are not overly broad or unduly burdensome. A principal issue in this case is whether the Joint Use Agreements provide Verizon with a net material advantage over its competitors that would justify the existing pole attachment rates. One of the disputed advantages is Verizon’s ability to light existing dark fiber capacity to reach new customers and provide additional services to Verizon’s existing customers. (*See* FirstEnergy Answer to Formal Complaint ¶ 76; Verizon Reply to FirstEnergy’s Answer ¶¶ 38, 44.) As explained in FirstEnergy’s Answer to the Formal Complaint:

Having taken full advantage of the joint use agreements to expand its “built to order” joint use attachments, Verizon need only overlash existing facilities or simply light existing dark fiber capacity to reach new customers and to provide additional services that its existing customers require. Overlashing and lighting existing dark fiber capacity, of course, takes far less time than the current make-ready process that Verizon’s competitors must follow.

(FirstEnergy Answer to Formal Complaint ¶ 76) (footnote omitted). Thus, to determine the extent to which Verizon has taken advantage of its ability to light existing dark fiber capacity,

FirstEnergy needs Verizon to: (1) identify the FirstEnergy poles where Verizon has leased fiber capacity and granted other rights to third parties to that fiber capacity; and (2) provide Verizon's cost per mile to lease the fiber capacity.

62. The interrogatories also do not require Verizon to perform a special study or analysis to compile this information. *See Application of Transource Pa., LLC*, Docket Nos. A-2017-2640195, *et al.*, p. 20 (Order Granting in Part and Denying in Part Motion to Compel entered Aug. 3, 2018). FirstEnergy is merely requesting that Verizon provide basic background information about Verizon's existing fiber capacity. If Verizon has no such information, then it need only provide responses stating so.

63. For these reasons, the ALJ should dismiss Verizon's objections and direct Verizon to answer fully FE to Verizon-I-4 and 6.

4. Verizon's Objections to FE to Verizon-I-7 Lack Merit

64. FE to Verizon-I-7 provides:

Identify every FirstEnergy pole to which Verizon has copper facilities attached, the service over which Verizon has announced publicly or to its customers it has abandoned or will abandon.

65. Verizon's objections to the interrogatory state:

Verizon objects to this request because "copper facilities," "service over which," and "has abandoned or will abandon" are vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business or requires Verizon to make a special study or analysis. Verizon further objects to this request to the extent FirstEnergy is equally capable of obtaining the requested information from public filings and because it would place an unreasonable burden and expense on Verizon. Verizon will respond to this request only to

refer FirstEnergy to the publicly available copper retirement filings at the FCC, and to verify that, to the extent it understands the question, it does not otherwise track the specific information sought.

66. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatory is objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

67. Further, the interrogatory does not use vague and ambiguous terms that make it impossible to answer the discovery request. The terms "copper facilities," "service over which," and "has abandoned or will abandon" are basic and easily understood. FirstEnergy is asking Verizon to identify the FirstEnergy-owned poles where Verizon: (1) has copper wire facilities attached to those poles that Verizon used or uses to provide service to customers; and (2) has announced publicly or to its customers that it has abandoned or will abandon service to the customers served by those copper wire facilities.

68. In addition, the interrogatory is relevant and reasonably calculated to lead to the discovery of admissible evidence and is not overly broad or unduly burdensome. A principal issue in this case is whether the Joint Use Agreements provide Verizon with a net material advantage over its competitors that would justify the existing pole attachment rates. One of the disputed advantages is Verizon's ability to bolster its competitive advantage by not removing its unused copper wire facilities from FirstEnergy's poles. (*See* FirstEnergy Answer to Formal Complaint ¶ 89.) As explained in FirstEnergy's Answer to the Formal Complaint:

FirstEnergy's field audit shows that Verizon's facilities weigh much more than the facilities of other communications attachers, primarily because of the old copper wire that Verizon has not removed. This additional weight has several effects: (i) the load on

the pole created by Verizon's attachments is greater than the load on the pole created by Verizon's competitors, especially when considering ice and wind conditions typically experienced in Pennsylvania; (ii) Verizon's attachments create more sag than do the attachments of Verizon's competitors, thus requiring even more pole space; and (iii) newcomers to the pole are disadvantaged more by Verizon's attachments than by the attachments of other communications companies, because Verizon's attachments use up more loading and space capacity, thus making it more likely the pole will lack available loading or space capacity and must be replaced with a taller or stronger pole by the new attacher.⁹⁹

n.99. Coleman Decl. at ¶34. By not removing its unused copper wire facilities, Verizon is making it more difficult for new companies to attach, thereby bolstering its competitive advantage.

(FirstEnergy Answer to Formal Complaint ¶ 89) (footnote omitted). Thus, to determine the extent to which Verizon has and is able to take advantage of this circumstance, FirstEnergy needs Verizon to disclose every FirstEnergy pole to which Verizon has attached copper facilities, where Verizon has announced publicly or to its customers that it has abandoned or will abandon service over those copper facilities.

69. The interrogatories also do not require Verizon to perform a special study or analysis to compile this information. *See Application of Transource Pa., LLC*, Docket Nos. A-2017-2640195, *et al.*, p. 20 (Order Granting in Part and Denying in Part Motion to Compel entered Aug. 3, 2018). FirstEnergy is merely requesting that Verizon provide basic background information about Verizon's copper facilities. If Verizon has no such information, then it need only provide responses stating so.

70. Finally, FirstEnergy is not "equally capable" of compiling the requested information on its own, as alleged by Verizon. Although FirstEnergy could scour Verizon's retirement filings with the FCC, FirstEnergy would be unable to determine which copper facilities Verizon has told only its customers that Verizon has abandoned or will abandon service. In contrast, it is much more reasonable for FirstEnergy to request this information from

Verizon because Verizon: (1) owns or owned the facilities attached to FirstEnergy's poles; and (2) made any retirement filings with the FCC and communicated with its customers about any abandonments.

71. For these reasons, the ALJ should dismiss Verizon's objections and direct Verizon to answer fully FE to Verizon-I-7.

5. Verizon's Objections to FE to Verizon-I-8 and 9 Lack Merit

72. FE to Verizon-I-8 and 9 provide:

FE to Verizon-I-8

Identify the gross intrastate operating revenues and the de facto gross intrastate operating revenues as reported on the latest Section 510 Assessment Filing(s) submitted on behalf of Verizon to the Pennsylvania Public Utility Commission as required by Section 510 of the Public Utility Code, 66 Pa.C.S. § 510, and in accordance with the guidance set forth in the Commission's Statement of Policy, "Computation of Section 510 Assessments for Jurisdictionally-Mixed Telecommunications Services," at 52 Pa. Code § 69.3701. If Verizon did not make that submission, then provide such gross revenues for Verizon that are inputs to such latest Section 510 Assessment Filing(s).

FE to Verizon-I-9

Identify the collective revenue generated by Verizon's services (*i.e.*, interstate (including international services) and intrastate telecommunications services, interconnected VoIP services, and fixed broadband services) that was inputted into the FCC Forms 499-A that Verizon submitted for 2019 or for the latest year submitted. If Verizon did not make that submission, then provide such collective revenue generated by Verizon that are inputs to the FCC Forms 499-A that any Verizon affiliate submitted for 2019 or for the latest year submitted.

73. Verizon's objections to the interrogatories state:

FE to Verizon-I-8

Verizon objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon will not respond to this request.

FE to Verizon-I-9

Verizon objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon will not respond to this request.

74. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatories are objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

75. In addition, the interrogatories are relevant and reasonably calculated to lead to the discovery of admissible evidence and are not overly broad or unduly burdensome. Among other issues in this case are the parties' respective bargaining power and the alleged adverse impact of FirstEnergy's rates on the availability and expansion of Verizon's broadband services. (*See* Formal Complaint, p. 2.) Verizon's revenue information that was filed with the Commission and the FCC will help clarify whether Verizon truly has less bargaining power than FirstEnergy and whether Verizon's financial ability to provide broadband services has been substantially affected by FirstEnergy's pole attachment rates.

76. For these reasons, the ALJ should dismiss Verizon's objections and direct Verizon to answer fully FE to Verizon-I-8 and 9.

6. Verizon's Objections to FE to Verizon-I-10 Lack Merit

77. FE to Verizon-I-10 provides:

Reference Formal Complaint, p. 2. Verizon avers that "FirstEnergy has still refused a material reduction to Verizon's rates in Pennsylvania" Please quantify what Verizon considers to be a "material reduction" to FirstEnergy's rates in Pennsylvania and provide all documents, workpapers, reports, and analyses relied upon in making that statement and in responding to this interrogatory.

78. Verizon's objections to the interrogatory state:

Verizon objects to this request because it is vague and ambiguous because FirstEnergy misconstrues the quoted allegation that "FirstEnergy has still refused a material reduction to Verizon's rates in Pennsylvania." To the extent Verizon understands the question, Verizon has outlined in detail in its complaint, affidavits, exhibits, and direct testimony what rates FirstEnergy should be charging Verizon and has provided the calculations and reasoning supporting those rates. No further response is required.

79. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatory is objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

80. Moreover, the interrogatory is not vague and ambiguous, nor did FirstEnergy misconstrue this statement in the Formal Complaint. On page 2 of the Formal Complaint, Verizon avers that "a full year after the Commission issued its 2018 *Third Report and Order* establishing a presumption that Verizon and other ILECs should be charged no higher than the new telecom rate, FirstEnergy has still refused a material reduction to Verizon's rates in

Pennsylvania (or Maryland).” (Formal Complaint, p. 2.) The interrogatory merely asks Verizon to quantify this “material reduction” that it alleges FirstEnergy has refused and to provide the documents relied upon by Verizon. It is a completely fair question, and Verizon should be ordered to serve a complete response to it.

81. Furthermore, it appears that Verizon believes that it can provide a response within its objection to the interrogatory. Verizon states that “[n]o *further* response is required” because “[t]o the extent Verizon understands the question, Verizon has outlined in detail in its complaint, affidavits, exhibits, and direct testimony what rates FirstEnergy should be charging Verizon and has provided the calculations and reasoning supporting those rates.” (Objection to FE to Verizon-I-10) (emphasis added). However, the Commission’s regulations require discovery responses to be served separately from objections. *See* 52 Pa. Code § 5.342(c) (stating that “an objection must be contained in a document separate from an answer”). Also, Verizon fails to state whether the “material reduction” equals the difference between the existing rates under the Joint Use Agreements and Verizon’s proposed rate. Therefore, its answer within the objection also is insufficient and non-responsive.

82. For these reasons, the ALJ should dismiss Verizon’s objections and direct Verizon to answer fully FE to Verizon-I-10.

7. Verizon’s Objections to FE to Verizon-I-11, 12, and 13 Lack Merit

83. FE to Verizon-I-11, 12, and 13 provide:

FE to Verizon-I-11

Reference Formal Complaint ¶ 45. Verizon contends that it “completes much of this work itself, surveying a pole to determine what make-ready is required, completing the engineering necessary to accommodate its attachment, transferring its facilities when required, and reviewing its attachments post-installation to ensure they comply with applicable standards.”

- (a) Please quantify the costs incurred by Verizon to survey “a pole to determine what make-ready is required” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (b) Please quantify the costs incurred by Verizon to complete “the engineering necessary to accommodate its attachment” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (c) Please quantify the costs incurred by Verizon to review “its attachments post-installation to ensure they comply with applicable standards” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

FE to Verizon-I-12

Reference Formal Complaint ¶ 45. Verizon states that “[i]f such costs are ever incurred by Verizon’s competitors, Verizon incurs comparable costs because it performs its own safety checks, at no cost to FirstEnergy.”

Please quantify the costs incurred by Verizon to perform these “safety checks at no cost to FirstEnergy” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

FE to Verizon-I-13

Reference Formal Complaint ¶ 47; Mills Affidavit ¶ 62.

- (a) Please provide documentation evidencing Verizon’s “company policy to tag its facilities.”
- (b) Please quantify the costs incurred by Verizon to tag its facilities attached to FirstEnergy’s poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

84. Verizon's objections to these interrogatories state:

FE to Verizon-I-11

Verizon objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission's discovery rules. Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-12

Verizon objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission's discovery rules. Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-13

Verizon will respond to subpart (a). Verizon objects to subpart (b) to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission's discovery rules. Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

85. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatories are objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the

ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

86. The interrogatories also do not require Verizon to perform a special study or analysis to compile this information. *See Application of Transource Pa., LLC*, Docket Nos. A-2017-2640195, *et al.*, p. 20 (Order Granting in Part and Denying in Part Motion to Compel entered Aug. 3, 2018). FirstEnergy is merely requesting that Verizon provide basic background information about Verizon's existing fiber capacity. If Verizon has no such information, then it need only provide responses stating so.

87. For these reasons, the ALJ should dismiss Verizon's objections and direct Verizon to answer fully FE to Verizon-I-11, 12, and 13.

8. Verizon's Objections to FE to Verizon-I-14 Lack Merit

88. FE to Verizon-I-14 provide:

Reference Formal Complaint ¶ 49. Verizon avers that "Verizon's location on FirstEnergy's poles increases its costs and sets it at a competitive disadvantage."

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) Please quantify the costs incurred by Verizon due to its location on FirstEnergy's poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (c) Please quantify the costs saved by Verizon due to its location on FirstEnergy's poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those cost savings.
- (d) Please provide the following information: (1) the total number of poles owned by Verizon in Pennsylvania; (2) the number of Verizon-owned poles in Pennsylvania where Verizon's facilities are located at the lowest position on the poles; (3) the average height of Verizon's facilities that are located at the lowest position on Verizon-owned poles in

Pennsylvania; (4) the number of Verizon-owned poles in Pennsylvania where Verizon's facilities are not located at the lowest position on the poles; and (5) the average height of Verizon's facilities that are not located at the lowest position on Verizon-owned poles in Pennsylvania.

- (e) Please provide the following information: (1) the total number of poles owned by Verizon in FirstEnergy's certificated service territories to which FirstEnergy's facilities are not attached; (2) the number of poles identified in subpart (e)(1) where Verizon's facilities are located at the lowest position on the poles; (3) the average height of Verizon's facilities that are located at the lowest position on the poles identified in subpart (e)(1); (4) the number of poles identified in subpart (e)(1) where Verizon's facilities are not located at the lowest position on the poles; and (5) the average height of Verizon's facilities that are not located at the lowest position on the poles identified in subpart (e)(1).
- (f) Please quantify the costs incurred by Verizon due to its location on Verizon-owned poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (g) Please quantify the costs saved by Verizon due to its location on Verizon-owned poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those cost savings

89. Verizon's objections to these interrogatories state:

Verizon will respond to subpart (a). Verizon objects to subparts (b) through (g) to the extent they are overly broad, unduly burdensome and seek information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon also objects to subparts (b) through (g) to the extent they require the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or require Verizon to make a special study or analysis that is not required by the Commission's discovery rules. Verizon further objects to subparts (b) and (f) because "costs incurred by Verizon due to its location" is vague and ambiguous and it is not possible to answer the request. Verizon objects to subparts (c) and (g) because the phrase "costs saved by Verizon due to its location" is vague and ambiguous without a comparator and it is not possible to answer the request.

Verizon also objects to subparts (c) and (g) because the cited paragraph does not allege that Verizon saved costs due to its location on a pole. Verizon objects to subparts (d) and (e) because they would impose an unreasonable burden and expense on Verizon and because FirstEnergy is equally capable of obtaining the requested information and/or performing the requested study or analysis. Subject to and without waiving its objections, Verizon is currently investigating the availability of information requested in subparts (b) through (g), to the extent it understands the information requested, and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

90. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatory is objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

91. In addition, the interrogatory is relevant and reasonably calculated to lead to the discovery of admissible evidence and is not overly broad or unduly burdensome. In Paragraph 49 of its Formal Complaint, Verizon alleges that "Verizon's location on FirstEnergy's poles increases its costs and sets it at a competitive disadvantage." (Formal Complaint ¶ 49.) If Verizon wants to claim that it incurs increased costs due to its facilities having the lowest position on FirstEnergy's poles, then FirstEnergy is entitled to all reasonably calculated discovery related to that allegation, including information about the costs Verizon incurred due to that lowest position on both FirstEnergy-owned poles and Verizon-owned poles, the costs Verizon saved due to that lowest position, and characteristics of the Verizon-owned poles and facilities.²³

²³ The lack of evidence about the value of "occupying the lowest usable space on each pole" contributed to the FCC finding that Verizon Florida LLC failed to present sufficient evidence that its joint use agreement rates with Florida Power and Light Company were unreasonable:

92. Furthermore, it is vital that Verizon be required to detail the costs that it saves, if any, due to its facilities having the lowest position on the poles. In its objections, Verizon maintains that it should not have to provide any information about any such cost savings because “the cited paragraph does not allege that Verizon saved costs due to its location on a pole.” However, any reliable analysis of this data demands that both the costs incurred and the costs saved be provided, so that FirstEnergy can determine the veracity of Verizon’s statement that it incurs more costs attributable to Verizon’s facilities being located at the lowest position on the poles than the advantages it enjoys. Otherwise, the record will be incomplete, unreliable, and inequitably skewed toward Verizon.

93. Moreover, since Verizon is requesting a refund stretching back to 2011, it is appropriate for Verizon to present data related to this allegation for every year from 2011 to present. Therefore, the interrogatory is reasonably limited in temporal scope, given the breadth of Verizon’s requested relief.

[W]e find that Verizon has adduced insufficient evidence to support a finding that the Agreement Rates are unreasonable, or for the Commission to set a just and reasonable rate. Verizon concedes that it received and continues to receive benefits under the Agreement that are not provided to other attachers, but it has not produced any evidence showing that the monetary value of those advantages is less than the difference between the Agreement Rates and the New or Old Telecom Rates over time. Verizon provides no evidence regarding the value of access to Florida Power’s poles or occupying the lowest usable space on each pole. Verizon likewise made no attempt to estimate the costs Florida Power incurred by installing taller poles to accommodate Verizon. For its 67,000 attachments, Verizon was not required to pay make-ready costs and post-attachment inspection fees that competitive LECs must pay, yet Verizon has made no attempt to quantify the expenses it avoided under the Agreement. Absent such evidence, we are unable to determine whether the Agreement Rates are just and reasonable. Verizon’s raw comparison of the Agreement Rates to the Old and New Telecom Rates is not sufficient to show that the Agreement Rates are unjust.

Verizon Florida LLC v. Florida Power & Light Co., 30 FCC Rcd 1140, 2015 FCC LEXIS 441, at *32-33 (F.C.C. Feb. 11, 2015) (emphasis added). To the extent that Verizon objects here to discovery requests asking about the costs incurred and costs saved due to the lowest position on poles, then Verizon should be barred from introducing any evidence about such costs, or the ALJ should grant an adverse inference in favor of FirstEnergy that Verizon receives benefits from Verizon’s facilities having the lowest position on FirstEnergy’s poles.

94. Subparts (b), (c), (f), and (g) of the interrogatory also are not vague and ambiguous, as alleged by Verizon. The terms “costs incurred by Verizon due to its location” and “costs saved by Verizon due to its location” are easily understood and tie back directly to Verizon’s statement that “Verizon’s location on FirstEnergy’s poles increases its costs and sets it at a competitive disadvantage.” (Formal Complaint ¶ 49.) FirstEnergy clearly is seeking information about the costs that Verizon incurs (and saves) due to the location of Verizon’s facilities on the FirstEnergy-owned poles and the Verizon-owned poles.

95. Additionally, for subparts (d) and (e), FirstEnergy is not “equally capable of obtaining the requested information and/or performing the requested study of analysis.” Without the underlying data and documents, FirstEnergy cannot calculate the costs incurred and saved by Verizon due to its facilities being located at the lowest position on these poles. Also, FirstEnergy lacks the requested information about the Verizon-owned poles in Pennsylvania to which FirstEnergy’s facilities are not attached. As a result, FirstEnergy cannot reasonably obtain the requested information on its own and certainly is not “equally capable” as Verizon to do so. Rather, it is much more reasonable for FirstEnergy to request this information from Verizon because Verizon owns these poles and facilities referenced in subparts (d) and (e).

96. Lastly, the interrogatory does not require Verizon to perform a special study or analysis to compile this information. *See Application of Transource Pa., LLC*, Docket Nos. A-2017-2640195, *et al.*, p. 20 (Order Granting in Part and Denying in Part Motion to Compel entered Aug. 3, 2018). FirstEnergy is merely requesting that Verizon provide basic underlying data and information about Verizon’s claim that it incurs increased costs due to its facilities being located at the lowest position on FirstEnergy’s poles. FirstEnergy also reasonably requests information about non-joint use poles where Verizon has elected in its sole discretion to occupy

the lowest position on poles it owns free and clear of any joint use agreements with FirstEnergy. If Verizon has no such information, then it need only provide a response stating so.

97. For these reasons, the ALJ should dismiss Verizon's objections and direct Verizon to answer fully FE to Verizon-I-14.

9. Verizon's Objections to FE to Verizon-I-15 and 16 Lack Merit

98. FE to Verizon-I-15 and 16 provide:

FE to Verizon-I-15

Reference Formal Complaint ¶ 49. Verizon asserts that "[i]ts facilities have the highest exposure to damage from oversized vehicles, vandalism, and similar hazards."

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) From 2011 to present, please list the incidents where an oversized vehicle damaged a Verizon facility that was attached to a FirstEnergy pole. For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (c) From 2011 to present, please list the incidents where there was vandalism of a Verizon facility that was attached to a FirstEnergy pole. For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (d) From 2011 to present, please list the incidents where "similar hazards" occurred to a Verizon facility that was attached to a FirstEnergy pole. For each such incident listed, please provide the date and location that the incident occurred, a description of the incident, and the dollar amount of any damage caused.
- (e) From 2011 to present, please list the incidents where an oversized vehicle damaged a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania. For each such incident listed,

please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon's facility was located at the lowest position on the pole.

- (f) From 2011 to present, please list the incidents where there was vandalism of a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania. For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon's facility was located at the lowest position on the pole.
- (g) From 2011 to present, please list the incidents where "similar hazards" occurred to a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania. For each such incident listed, please provide the date and location that the incident occurred, a description of the incident, the dollar amount of any damage caused, and whether Verizon's facility was located at the lowest position on the pole.

FE to Verizon-I-16

Reference Formal Complaint ¶ 49. Verizon states that "[i]t has experienced damage from gaffs, ladders, and bucket trucks, has had holes poked in its cables, and has had support wires broken because of its lowest location on the pole."

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) From 2011 to present, please list the incidents where a Verizon facility that was attached to a FirstEnergy pole "experienced damage from gaffs, ladders, and bucket trucks . . . because of its lowest location on the pole." For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (c) From 2011 to present, please list the incidents where a Verizon facility that was attached to a FirstEnergy pole "had holes poked in its cables . . .

because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.

- (d) From 2011 to present, please list the incidents where a Verizon facility that was attached to a FirstEnergy pole “had support wires broken because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (e) From 2011 to present, please list the incidents where a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania “experienced damage from gaffs, ladders, and bucket trucks . . . because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.
- (f) From 2011 to present, please list the incidents where a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania “had holes poked in its cables . . . because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.
- (g) From 2011 to present, please list the incidents where a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania “had support wires broken because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.

99. Verizon's objections to these interrogatories state:

FE to Verizon-I-15

Verizon will respond to subpart (a). Verizon objects to subparts (b) through (g) to the extent they are overly broad, unduly burdensome and seek information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon also objects to subparts (b) through (g) to the extent they require the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or require Verizon to make a special study or analysis that is not required by this Commission's discovery rules. Subject to and without waiving its objections, Verizon is currently investigating the availability of information requested in subparts (b) through (g) and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-16

Verizon will respond to subpart (a). Verizon objects to subparts (b) through (g) to the extent they are overly broad, unduly burdensome and seek information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon also objects to subparts (b) through (g) to the extent they require the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or require Verizon to make a special study or analysis that is not required by this Commission's discovery rules. Subject to and without waiver of the foregoing, Verizon is currently investigating the availability of information requested in subparts (b) through (g) and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

100. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatories are objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the

ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

101. In addition, the interrogatories are relevant and reasonably calculated to lead to the discovery of admissible evidence and are not overly broad or unduly burdensome. In Paragraph 49 of its Formal Complaint, Verizon alleges that "[i]ts facilities have the highest exposure to damage from oversized vehicles, vandalism, and similar hazards" and that "[i]t has experienced damage from gaffs, ladders, and bucket trucks, has had holes poked in its cables, and has had support wires broken because of its lowest location on the pole." (Formal Complaint ¶ 49.) If Verizon wants to make these allegations, then FirstEnergy is entitled to all reasonably calculated discovery related to them, including information about the incidents that have occurred, the dollar amount of any damages caused, and whether Verizon's facility was located at the lowest position on the pole. All of these requests relate specifically to Verizon's averments in its Formal Complaint and will reveal whether such claims were credible or not.

102. Moreover, since Verizon is requesting a refund stretching back to 2011, it is appropriate for Verizon to present data related to these allegations for every year from 2011 to present. Therefore, the interrogatories are reasonably limited in temporal scope, given the breadth of Verizon's requested relief.

103. The interrogatories also do not require Verizon to perform a special study or analysis to compile this information. *See Application of Transource Pa., LLC*, Docket Nos. A-2017-2640195, *et al.*, p. 20 (Order Granting in Part and Denying in Part Motion to Compel entered Aug. 3, 2018). FirstEnergy is merely requesting that Verizon provide basic background information about Verizon's claims that "[i]ts facilities have the highest exposure to damage from oversized vehicles, vandalism, and similar hazards" and that "[i]t has experienced damage

from gaffs, ladders, and bucket trucks, has had holes poked in its cables, and has had support wires broken because of its lowest location on the pole.” (Formal Complaint ¶ 49.) These statements require Verizon’s internal data to be substantiated. If Verizon has no such information, then it need only provide responses stating so.

104. For these reasons, the ALJ should dismiss Verizon’s objections and direct Verizon to answer fully FE to Verizon-I-15 and 16.

10. Verizon’s Objections to FE to Verizon-I-17, 18, and 19 Lack Merit

105. FE to Verizon-I-17, 18, and 19 provide:

FE to Verizon-I-17

Reference Formal Complaint ¶ 49. Verizon claims that it “receives more requests to raise its cables to accommodate oversized loads that exceed standard vertical clearance requirements.”

- (a) Please provide copies of all such requests made to Verizon from 2011 to present for Verizon facilities that are connected to FirstEnergy poles.
- (b) Please provide copies of all such requests made to Verizon from 2011 to present for Verizon facilities that are connected to Verizon-owned poles in Pennsylvania.

FE to Verizon-I-18

Reference Formal Complaint ¶ 49. Verizon avers that it “incurs increased pole transfer costs because it must be the last company to transfer its facilities to a replacement pole.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) Please quantify the transfer costs incurred by Verizon due to its location on FirstEnergy’s poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

FE to Verizon-I-19

Reference Formal Complaint ¶ 49. Verizon asserts that it “often makes more than one trip to the replacement pole because others have not completed their transfers as scheduled.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) Please state the number of times, per year from 2011 to present, that Verizon had to make more than one trip to a FirstEnergy replacement pole “because others have not completed their transfers as scheduled,” and provide all documents, workpapers, reports, and analyses relied upon in compiling that figure.

106. Verizon’s objections to these interrogatories state:

FE to Verizon-I-17

Verizon objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission’s discovery rules. Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-18

Verizon will respond to subpart (a). Verizon objects to subpart (b) to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission’s discovery rules. Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

Verizon will respond to subpart (a). Verizon objects to subpart (b) to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission's discovery rules. Verizon further objects to subpart (b) to the extent FirstEnergy is equally capable of obtaining the requested information and/or performing the requested study or analysis. Subject to and without waiving its objections, Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

107. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatories are objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

108. The interrogatories also do not require Verizon to perform a special study or analysis to compile this information. *See Application of Transource Pa., LLC*, Docket Nos. A-2017-2640195, *et al.*, p. 20 (Order Granting in Part and Denying in Part Motion to Compel entered Aug. 3, 2018). FirstEnergy is merely requesting that Verizon provide basic background information about Verizon's claims that "[i]ts facilities have the highest exposure to damage from oversized vehicles, vandalism, and similar hazards" and that "[i]t has experienced damage from gaffs, ladders, and bucket trucks, has had holes poked in its cables, and has had support wires broken because of its lowest location on the pole." (Formal Complaint ¶ 49.) If Verizon has no such information, then it need only provide responses stating so.

109. In addition, regarding subpart (b) of FE to Verizon-I-19, FirstEnergy is not “equally capable of obtaining the requested information and/or performing the requested study or analysis.” Also, FirstEnergy lacks the requested information about Verizon’s alleged trips to FirstEnergy replacement poles and does not have the supporting documents, workpapers, reports, and analyses needed to compile that figure on its own. As a result, FirstEnergy cannot reasonably obtain the requested information on its own and certainly is not “equally capable” as Verizon to do so. Rather, it is much more reasonable for FirstEnergy to request this information from Verizon because Verizon allegedly made those trips to the replacement poles.

110. For these reasons, the ALJ should dismiss Verizon’s objections and direct Verizon to answer fully FE to Verizon-I-17, 18, and 19.

11. Verizon’s Objections to FE to Verizon-I-20 and 21 Lack Merit

111. FE to Verizon-I-20 and 21 provide:

FE to Verizon-I-20

Reference Formal Complaint ¶ 11 n.27, ¶ 16 n.47, ¶ 21 n.63, ¶ 29 n.94, ¶ 32 n.102, ¶ 37 n.124, ¶ 41 n.137, ¶ 55 n.211, ¶ 58 n.224; Tardiff Affidavit ¶ 8 n.7.

Please provide an un-redacted copy of the FCC’s decision in *Verizon Florida LLC v. Florida Power & Light Co.*, 30 FCC Rcd 1140 (F.C.C. Feb. 11, 2015).

FE to Verizon-I-21

Reference Formal Complaint ¶ 4 n.15, ¶ 22 n.67, ¶ 27 n.88, ¶ 33 n.109, ¶ 39 n.131, ¶ 43 n.142, ¶ 45 n.158, ¶ 53, n.207, ¶ 56 n.217; Tardiff Affidavit ¶ 15(3) n.28, ¶ 20 n.39, ¶ 28 n.50.

Please provide an un-redacted copy of the FCC’s decision in *Verizon Virginia, LLC v. Virginia Electric and Power Co.*, 32 FCC Rcd 3750 (F.C.C. May 1, 2017).

112. Verizon's objections to these interrogatories state:

FE to Verizon-I-20

Verizon objects to this request because Verizon and Dr. Tardiff did not rely on redacted portions of the FCC's public decision in *Verizon Florida LLC v. Florida Power & Light Co.*, 30 FCC Rcd 1140 (FCC Feb. 11, 2015) and because the confidential decision is not within the possession, custody, or control of the parties here, which are Verizon Pennsylvania or Verizon North. Verizon also objects to this request because FirstEnergy is equally capable of requesting the information from the FCC, which designated the information confidential. Verizon will not respond to this request.

FE to Verizon-I-21

Verizon objects to this request because Verizon and Dr. Tardiff did not rely on any redacted portions of the FCC's public decision in *Verizon Virginia, LLC v. Virginia Electric and Power Co.*, 32 FCC Rcd 3750 (FCC May 1, 2017) and because the confidential decision is not within the possession, custody, or control of the parties here, which are Verizon Pennsylvania and Verizon North. Verizon also objects to this request because FirstEnergy is equally capable of requesting the information from the FCC, which designated the information confidential. Verizon will not respond to this request.

113. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatories are objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

114. In addition, fundamental fairness and due process demand that Verizon provide un-redacted copies of these decisions to FirstEnergy.²⁴ As seen in the references in these

²⁴ The Commission must provide parties fundamental fairness and due process of law. *See Novak v. Unemp. Compensation Bd. of Review*, 457 A.2d 610, 612 (Pa. Cmwlth. 1983) (citations omitted); *Nuss v. Falls*, 491

interrogatories, Verizon heavily relies on these cases in its Formal Complaint and in Dr. Tariff's Affidavit attached to the Formal Complaint. However, FirstEnergy only has access to the public versions of these cases, which are heavily redacted. *See Verizon Florida LLC v. Florida Power & Light Co.*, 30 FCC Rcd 1140 (FCC Feb. 11, 2015); *Verizon Virginia, LLC v. Virginia Electric and Power Co.*, 32 FCC Rcd 3750 (FCC May 1, 2017). Even though Verizon's counsel and Dr. Tariff were active participants in these cases and presumably have reviewed and may even have copies of these decisions in their possession, Verizon seeks to deny FirstEnergy from reviewing complete copies of Verizon's principal legal authorities. In so doing, Verizon places FirstEnergy and its witnesses at an unfair and significant disadvantage.

115. Furthermore, to the extent that Verizon is concerned about the public disclosure of the un-redacted decisions and the confidential information set forth in those decisions, FirstEnergy notes that the parties already have a protective agreement in place to govern the disclosure and protection of confidential information and materials. The Commission also has well-established procedures for issuing protective orders to protect against the unwarranted public disclosure of confidential information and documents. *See* 52 Pa. Code § 5.365.

116. Moreover, Verizon's claim that it should be excused from providing the un-redacted copies of these decisions because they involved other Verizon affiliates is without merit. In this case, Verizon has relied on information from affiliates other than Verizon Pennsylvania LLC and Verizon North LLC in support of its case. *See* Paragraph 31, *supra*. Thus, Verizon's attempt to pick and choose when information about its other affiliates is relevant and can be disclosed and when it can and cannot obtain information and materials from affiliates

A.2d 971, 973 (Pa. Cmwlth. 1985) (citations omitted); *see also* 66 Pa.C.S. § 332(c) (stating that "[e]very party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts").

should be rejected. This is especially true when an external witness in this proceeding, Dr. Tardiff, provided expert testimony in all of these proceedings.

117. For these reasons, the ALJ should dismiss Verizon's objections and direct Verizon to answer fully FE to Verizon-I-20 and 21.

12. Verizon's Objections to FE to Verizon-I-22, 23, 25, 26, 28, 29, 30, 32, and 33 Lack Merit

118. FE to Verizon-I-22, 23, 25, 26, 28, 29, 30, 32, and 33 provide:

FE to Verizon-I-22

Reference Mills Affidavit.

Is Mr. Mills an attorney licensed to practice law? If so, please list all jurisdictions in which Mr. Mills is licensed to practice.

FE to Verizon-I-23

Reference Mills Affidavit.

Please provide all documents, workpapers, reports, and analyses relied upon by Mr. Mills in preparing his Affidavit.

FE to Verizon-I-25

Reference Mills Affidavit ¶ 40. Please explain in detail how FirstEnergy allegedly "manipulated the pre-existing telecom rate formula and inputs to increase the rates that Verizon would pay and decrease the rates that Met-Ed would pay."

FE to Verizon-I-26

Reference Mills Affidavit ¶ 45. Please explain in detail the "manipulations of the pre-existing telecom rate formula" that FirstEnergy relied on in an alleged effort "to perpetuate unreasonably high rental rates."

FE to Verizon-I-28

Reference Calnon Affidavit.

Is Dr. Calnon an attorney licensed to practice law? If so, please list all jurisdictions in which Dr. Calnon is licensed to practice.

FE to Verizon-I-29

Reference Calnon Affidavit.

Please provide all documents, workpapers, reports, and analyses relied upon by Dr. Calnon in preparing his Affidavit.

FE to Verizon-I-30

Reference Calnon Affidavit, Exhibits C-1 through C-6.

- (a) Please provide copies of Exhibits C-1 through C-6 in their native format (*e.g.*, Microsoft Excel) with all formulas intact.
- (b) Please provide all documents, workpapers, reports, and analyses relied upon by Dr. Calnon in preparing Exhibits C-1 through C-6.

FE to Verizon-I-32

Reference Tardiff Affidavit.

Is Dr. Tardiff an attorney licensed to practice law? If so, please list all jurisdictions in which Dr. Tardiff is licensed to practice.

FE to Verizon-I-33

Reference Tardiff Affidavit.

Please provide all documents, workpapers, reports, and analyses relied upon by Dr. Tardiff in preparing his Affidavit.

119. Verizon's objections to these interrogatories state:

FE to Verizon-I-22

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-23

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-25

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-26

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-28

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-29

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-30

Verizon objects to this request to the extent FirstEnergy has equal access to the information and to the extent it seeks information Verizon has already provided in its filings at the FCC. Subject to and without waiving its objections, Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested.

FE to Verizon-I-32

Subject to and without waiving its objections, Verizon will respond to this request.

Subject to and without waiving its objections, Verizon will respond to this request.

120. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatories are objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

121. In addition, as explained previously, the "general objections" that Verizon incorporates into these specific objections entirely lack merit and are not permitted by the Commission's regulations. *See* Section II.A, *supra*. Likewise, Verizon's tactic of generally objecting to "every single interrogatory, even the ones to which it is filing a response," is "highly confusing" and "highly improper" before the Commission.²⁵

122. Further, these interrogatories seek exceptionally basic information and materials, such as asking whether any of Verizon's witnesses are attorneys, requesting copies of Verizon's exhibits in their native format, and requesting copies of the documents, workpapers, reports, and analyses relied upon by each of Verizon's witnesses. The fact that Verizon has objections to any of these interrogatories reveals that Verizon's goal is to obstruct the discovery process and deny FirstEnergy a reasonable opportunity to develop and present its case in rebuttal.

123. Lastly, contrary to Verizon's objections to FE to Verizon-I-30, FirstEnergy does not have "equal access" to copies of Verizon's Exhibits C-1 through C-6 in their native format (*e.g.*, Microsoft Excel) with all formulas intact or all of the documents, workpapers, reports, and analyses relied upon by Dr. Calnon in preparing those exhibits. Currently, FirstEnergy only has

²⁵ *Pa. PUC v. Pa. Am. Water Co.*, 2011 Pa. PUC LEXIS 1523, at *12 (Order on Motion to Compel entered July 21, 2011).

PDF copies of the exhibits, which are all spreadsheets. Therefore, Verizon should be ordered to provide all of the requested materials.

124. For these reasons, the ALJ should dismiss Verizon's objections and direct Verizon to answer fully FE to Verizon-I-22, 23, 25, 26, 28, 29, 30, 32, and 33.

13. Verizon's Objections to FE to Verizon-I-24 Lack Merit

125. FE to Verizon-I-24 provides:

Reference Mills Affidavit ¶ 38.

- (a) Please identify the terms and conditions in the draft license agreement and the affiliate license agreements that Mr. Mills considers to be "comparable" to Verizon's joint use agreements with FirstEnergy, and explain in detail why Mr. Mills believes those terms and conditions are "comparable."
- (b) Please identify the terms and conditions in the draft license agreement and the affiliate license agreements that Mr. Mills considers not to be "comparable" to Verizon's joint use agreements with FirstEnergy, and explain in detail why Mr. Mills believes those terms and conditions are not "comparable."

126. Verizon's objections to this interrogatory states:

Verizon objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business. Verizon also objects to this request to the extent it seeks information Mr. Mills has already provided in the Affidavits filed at the FCC and in his direct testimony in this phase of the proceeding. Verizon also objects to subpart (b) of this request because Mr. Mills did not assert in paragraph 38 of his Affidavit that terms and conditions were not comparable. Verizon further objects to this request to the extent it requires Mr. Mills to undertake an analysis or prepare a special study that is not required by the Commission's discovery rules. Subject to and without waiving its objections, Verizon is currently investigating the availability of the requested information and will provide a response if Mr. Mills has this information in the format requested.

127. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatory is objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

128. In addition, the interrogatory reasonably asks for specific explanations about Mr. Mills's comparison of Verizon's Joint Use Agreements with FirstEnergy to the draft license agreement and the affiliate license agreements. In Mr. Mills's Affidavit, which was attached to his pre-served direct testimony as Exhibit A, he states the following:

Based on my experience, I have concluded that the terms and conditions in FirstEnergy's draft license agreement and the affiliate license agreements are comparable to the terms and conditions in the joint use agreements and do not justify any increase over the new telecom rate paid by Verizon's competitors, much less the significant rate difference charged under the joint use agreements.

(Verizon Statement No. 1.0, Exhibit A ¶ 38.) Beyond this general proclamation, Mr. Mills failed to identify the specific terms and conditions of these agreements that he considered to be comparable. Therefore, this interrogatory appropriately asks him to identify which terms and conditions are and are not comparable in these agreements. If he cannot do so, then his whole testimony about the comparisons of these agreements completely lacks credibility.

129. The interrogatory also does not require Verizon to perform a special study or analysis to compile this information. *See Application of Transource Pa., LLC*, Docket Nos. A-2017-2640195, *et al.*, p. 20 (Order Granting in Part and Denying in Part Motion to Compel entered Aug. 3, 2018). FirstEnergy is merely requesting that Verizon provide basic underlying information about Verizon's position that the terms and conditions in its Joint Use Agreements with FirstEnergy are comparable to the terms and conditions in the draft license agreement and

the affiliate license agreements. If Verizon has no such information, then it need only provide a response stating so.

130. For these reasons, the ALJ should dismiss Verizon's objections and direct Verizon to answer fully FE to Verizon-I-24.

14. Verizon's Objections to FE to Verizon-I-27 Lack Merit

131. FE to Verizon-I-27 provides:

Reference Mills Affidavit ¶ 47; VZ00650-VZ00651.

- (a) Please explain in detail why Verizon did not accept FirstEnergy's offer to transition Verizon to the standard Competitive Local Exchange Carrier ("CLEC") agreement and CLEC rate.
- (b) Please provide all documents, workpapers, reports, and analyses relied upon by Verizon in making the decision not to accept FirstEnergy's offer to transition Verizon to the standard CLEC agreement and CLEC rate.
- (c) Please identify the person or persons who made the final decision not to accept FirstEnergy's offer to transition Verizon to the standard CLEC agreement and CLEC rate.

132. Verizon's objections to this interrogatory states:

Verizon objects to this request because FirstEnergy did not make an "offer to transition Verizon to the standard Competitive Local Exchange Carrier ('CLEC') agreement and CLEC rate" and so the entire question is based on a faulty premise and it is impossible to answer. Verizon also objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business. Verizon further objects to this request to the extent it seeks information Verizon has already provided in its filings at the FCC. Verizon will not respond to this request.

133. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatory is objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the

ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

134. In addition, Verizon falsely claims that FirstEnergy never made an offer to transition Verizon to the standard CLEC agreement and CLEC rate. Attached to Verizon's own Formal Complaint on pages VZ00650-VZ00651 is an email dated May 2, 2018, from Stephen Schafer of FirstEnergy to James Slavin of Verizon. In that email, Mr. Schafer states: "As an alternative, if Verizon continues to insist on the CLEC rate, then I suggest we terminate our current Joint Use agreements and Verizon can enter into the standard CLEC agreement." (Formal Complaint, p. VZ00650.) Therefore, such an offer was indisputably made by FirstEnergy to Verizon.

135. However, Verizon never accepted that offer. Instead, Verizon filed the instant Formal Complaint, in which it argues that it is entitled to receive the new telecom rate and refunds extending back to 2011, while still maintaining all of the other terms and conditions of the Joint Use Agreements.

136. If there truly are no benefits to Verizon under the Joint Use Agreements that justified their higher rates, then Verizon had and continues to have a significant incentive to transition to FirstEnergy's CLEC agreement and CLEC rate. Therefore, the information and materials behind Verizon's decision not to accept FirstEnergy's offer to transition Verizon to the CLEC agreement and CLEC rate is especially relevant and should be disclosed.

137. Furthermore, even though Verizon failed to serve a specific objection to this interrogatory on the grounds that it was not reasonably calculated to lead to the discovery of admissible evidence, FirstEnergy emphasizes that this interrogatory seeks information that is highly relevant to this proceeding. Verizon devotes a substantial portion of Mr. Mills's

testimony and exhibits to FirstEnergy's "draft license agreement" with CLECs and cable companies as well as "the affiliate license agreements" that "FirstEnergy companies entered within Verizon affiliates Bell Atlantic – Pennsylvania and MCI Communications Services, Inc." (Verizon Statement No. 1.0, Exhibit SCM-1, pp. 15-16; Verizon Statement No. 1.0, Exhibits 13-15.) Mr. Mills then testifies that "the terms and conditions in FirstEnergy's draft license agreement and the affiliate license agreements are comparable to the terms and conditions in the joint use agreements and do not justify any increase of the new telecom rate paid by Verizon's competitors, much less the significant rate difference charged under the joint use agreements." (Verizon Statement No. 1.0, Exhibit SCM-1, p. 16.)

138. Therefore, discovery related to Verizon's views on FirstEnergy's CLEC agreements and CLEC rates is highly relevant to this proceeding. Verizon cannot claim that its testimony and exhibits about the CLEC agreement and CLEC rate are relevant and should be admitted into the record, while maintaining that these reasonable discovery requests about the CLEC agreement and CLEC rate are not reasonably calculated to lead to the discovery of admissible evidence.

139. Moreover, Verizon's willingness (or lack thereof) to accept the CLEC agreement and CLEC rate directly relates to Verizon's allegation that the terms and conditions of the Joint Use Agreements are not comparable to the draft license agreement and the affiliate license agreements and, therefore, do not justify Verizon paying higher rates than CLECs and cable companies.

140. For these reasons, the ALJ should dismiss Verizon's objections and direct Verizon to answer fully FE to Verizon-I-27.

15. Verizon's Objections to FE to Verizon-I-31 Lack Merit

141. FE to Verizon-I-31 provides:

Reference Calnon Affidavit ¶ 12. Dr. Calnon states that he “do[es] not have access to the rates of return that result[ed] from confidential settlements that the PUC approved to resolve the defendants’ 2014 and 2016 rate cases” and that “[a] proper allocation of the new telecom rate formula would use these updated rates of return, although it appears that the defendants continue to use the older, outdated rates of return to unreasonably increase the pole attachment rates that they charge all attachers.”

- (a) Is Dr. Calnon aware that the settlements reached in the 2014 and 2016 base rate cases were publicly filed with the Pennsylvania Public Utility Commission?
- (b) Is Dr. Calnon aware that the settlements reached in the 2014 and 2016 base rate cases were “black box” settlements, under which the parties did not agree on or identify all of the various components of the overall revenue requirements, including the rates of return?

142. Verizon's objections to this interrogatory states:

Verizon objects to this request because it is internally inconsistent, requests information about whether Dr. Calnon is aware of the confidential nature of the settlements, purports to characterize the content of those confidential settlements, recognizes that Dr. Calnon already acknowledged he cannot know the confidential aspects of the settlements, and seeks information Verizon already provided in its filings at the FCC. Verizon will not respond to this request.

143. Verizon's objections are without merit. Nothing in Verizon's objections explains how the interrogatory is objectionable on these grounds, as required by the Commission's regulations. *See* 52 Pa. Code § 5.342(c)(3). As a result, Verizon has denied FirstEnergy the ability to respond to any facts and circumstances that purportedly justify Verizon's objections. For that reason alone Verizon's objections should be dismissed.

144. In addition, Verizon falsely claims that the settlements FirstEnergy's 2014 and 2016 base rate cases are confidential. All of these settlements were publicly filed with the

Commission and are readily available at Docket Nos. R-2014-2428745, R-2014-2428743, and R-2014-2428744 and Docket Nos. R-2016-2537349, R-2016-2537352, and R-2016-2537355.

145. Verizon appears to not understand what a “black box” settlement means. The term does not mean that the settlements are confidential. It means that the parties did not agree on or identify all of the various components of the overall revenue requirements, including the costs of capital or authorized rates of return. As a result, contrary to Dr. Calnon’s testimony, there are no rates of return specified in those settlements. Thus, Verizon’s continued insistence that these settlements are confidential and its refusal to answer this interrogatory should be rejected.

146. For these reasons, the ALJ should dismiss Verizon’s objections and direct Verizon to answer fully FE to Verizon-I-31.

III. CONCLUSION

For the reasons set forth above, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company respectfully requests that Deputy Chief Administrative Law Judge Joel H. Cheskis grant this Motion to Dismiss Objections and Compel Responses to Discovery and direct Verizon Pennsylvania LLC and Verizon North LLC to answer fully FE to Verizon Set I, as described above within three (3) days from the date of the order. Moreover, for the number of days past the original May 4, 2020 due date for answers to FE to Verizon Set I, the same amount of days should be added on to the due date for FirstEnergy's rebuttal testimony.

Respectfully submitted,



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Date: April 29, 2020

Attorneys for Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company

APPENDIX A

Interrogatories and Requests for Production of Documents Propounded by FirstEnergy on Verizon – Set I



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April 17, 2020

VIA E-MAIL

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**Re: Verizon Pennsylvania LLC and Verizon North LLC v. Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company
Docket No. C-2020-3019347**

Dear Counsel:

Enclosed are the Interrogatories and Requests for Production of Documents Propounded by Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company on Verizon Pennsylvania LLC and Verizon North LLC – Set I, in the above-referenced proceeding.

Copies are being provided electronically only, as indicated on the Certificate of Service, due to the current closure of all non-life sustaining businesses in the Commonwealth upon direction of Governor Wolf.

Sincerely,

Devin Ryan

DTR/jl
Enclosures

Suzan D. Paiva, Esquire
Curtis L. Groves, Esquire
Claire J. Evans, Esquire
Christopher S. Huther, Esquire
April 17, 2020
Page 2

cc: Rosemary Chiavetta, Secretary (*Letter & Certificate of Service Only*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL ONLY

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Date: April 17, 2020



Devin Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon Pennsylvania LLC and Verizon North LLC,	:	
	:	
	:	
Complainants	:	
	:	Docket No. C-2020-3019347
v.	:	
	:	
Metropolitan Edison Company,	:	
Pennsylvania Electric Company, and	:	
Pennsylvania Power Company,	:	
	:	
Respondents	:	

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED BY
METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY,
AND PENNSYLVANIA POWER COMPANY ON
VERIZON PENNSYLVANIA LLC AND VERIZON NORTH LLC – SET I**

Pursuant to 66 Pa.C.S. § 333 and 52 Pa. Code §§ 5.341 *et seq.*, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company (“FirstEnergy” or the “Companies”) propound the following Interrogatories and Requests for Production of Documents (hereinafter, “discovery requests”) on Verizon Pennsylvania LLC and Verizon North LLC (“Verizon”) – Set I.

INSTRUCTIONS AND DEFINITIONS

1. The “Responding Party,” “you,” or “your” means the party to which these discovery requests are propounded and/or all attorneys, agents, affiliates, subsidiaries, employees, consultants, members, constituents, and representatives acting on behalf of the Responding Party.

2. “Commission” means the Pennsylvania Public Utility Commission.
3. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.
4. To “identify” a business entity means to state the full name of such business, the form of the business, and its location or address.
5. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:
 - a. The title or other means of identification of each such document;
 - b. The date of each such document;
 - c. The author, preparer or signer of each such document; and
 - d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.).

In lieu of “identifying” any document, it shall be deemed a sufficient compliance with these discovery requests to attach a copy of each such document to the answers hereto and reference said document in the particular interrogatory to which the document is responsive.

6. “Document” means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary,

chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

7. “Communication” means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

8. “Date” means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

9. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

10. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

11. The answers provided to these discovery requests should first restate the question asked and identify the person(s) supplying the information.

12. In answering these discovery requests, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party’s attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party’s own knowledge. If any of the discovery requests cannot be answered in full after exercising due diligence to secure the requested

information, please so state and answer to the extent possible, specifying the Responding Party's inability to answer the remainder, and stating whatever information the Responding Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

13. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 5 and state the basis of the objection.

14. If the Responding Party objects to part of a discovery request and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that discovery request. If the Responding Party objects to the scope or time period of a discovery request and refuses to answer for that scope or time period, state the Responding Party's objection and answer the discovery request for the scope or time period that the Responding Party believes is appropriate.

15. If, in connection with a discovery request, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

16. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and (c) the basis on which the privilege or other protection from disclosure is claimed.

17. As set forth in 52 Pa. Code § 5.342(g), these discovery requests are continuing, and the Responding Party is obliged to change, supplement, and correct all answers given to conform to new or changing information.

18. “Formal Complaint” means the Formal Complaint filed by Verizon against FirstEnergy before the Federal Communications Commission (“FCC”) at Proceeding Number 19-354 and Bureau ID Number EB-19-MD-008, which has been transferred to the Pennsylvania Public Utility Commission at Docket No. C-2020-3019347.

19. “Mills Affidavit” means the Affidavit of Stephen C. Mills attached to the Formal Complaint as Exhibit A.

20. “Calnon Affidavit” means the Affidavit of Mark S. Calnon, Ph.D. attached to the Formal Complaint as Exhibit B.

21. “Tardiff Affidavit” means the Affidavit of Timothy J. Tardiff, Ph.D. attached to the Formal Complaint as Exhibit C.

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED ON
VERIZON PENNSYLVANIA LLC AND VERIZON NORTH LLC – SET I**

FE to Verizon-I-1

Identify the joint use rates paid in 2019 pursuant to Verizon's joint use agreements with other electric utilities.

FE to Verizon-I-2

Identify which FirstEnergy poles have Verizon attachments that have been overlashed.

FE to Verizon-I-3

Identify the number of customers Verizon serves using Verizon's overlashing of its attachments to FirstEnergy poles.

FE to Verizon-I-4

For the FirstEnergy poles to which Verizon has attached fiber optic facilities, identify every FirstEnergy pole with Verizon fiber capacity to which Verizon has granted leasing or other rights to another entity.

FE to Verizon-I-5

Identify Verizon's cost per mile to overlash its attachments to FirstEnergy's poles.

FE to Verizon-I-6

Identify Verizon's cost per mile to lease fiber optic capacity on Verizon attachments to FirstEnergy's poles.

FE to Verizon-I-7

Identify every FirstEnergy pole to which Verizon has copper facilities attached, the service over which Verizon has announced publicly or to its customers it has abandoned or will abandon.

FE to Verizon-I-8

Identify the gross intrastate operating revenues and the de facto gross intrastate operating revenues as reported on the latest Section 510 Assessment Filing(s) submitted on behalf of Verizon to the Pennsylvania Public Utility Commission as required by Section 510 of the Public Utility Code, 66 Pa.C.S. § 510, and in accordance with the guidance set forth in the Commission's Statement of Policy, "Computation of Section 510 Assessments for Jurisdictionally-Mixed

Telecommunications Services,” at 52 Pa. Code § 69.3701. If Verizon did not make that submission, then provide such gross revenues for Verizon that are inputs to such latest Section 510 Assessment Filing(s).

FE to Verizon-I-9

Identify the collective revenue generated by Verizon’s services (*i.e.*, interstate (including international services) and intrastate telecommunications services, interconnected VoIP services, and fixed broadband services) that was inputted into the FCC Forms 499-A that Verizon submitted for 2019 or for the latest year submitted. If Verizon did not make that submission, then provide such collective revenue generated by Verizon that are inputs to the FCC Forms 499-A that any Verizon affiliate submitted for 2019 or for the latest year submitted.

FE to Verizon-I-10

Reference Formal Complaint, p. 2. Verizon avers that “FirstEnergy has still refused a material reduction to Verizon’s rates in Pennsylvania” Please quantify what Verizon considers to be a “material reduction” to FirstEnergy’s rates in Pennsylvania and provide all documents, workpapers, reports, and analyses relied upon in making that statement and in responding to this interrogatory.

FE to Verizon-I-11

Reference Formal Complaint ¶ 45. Verizon contends that it “completes much of this work itself, surveying a pole to determine what make-ready is required, completing the engineering necessary to accommodate its attachment, transferring its facilities when required, and reviewing its attachments post-installation to ensure they comply with applicable standards.”

- (a) Please quantify the costs incurred by Verizon to survey “a pole to determine what make-ready is required” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (b) Please quantify the costs incurred by Verizon to complete “the engineering necessary to accommodate its attachment” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (c) Please quantify the costs incurred by Verizon to review “its attachments post-installation to ensure they comply with applicable standards” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

FE to Verizon-I-12

Reference Formal Complaint ¶ 45. Verizon states that “[i]f such costs are ever incurred by Verizon’s competitors, Verizon incurs comparable costs because it performs its own safety checks, at no cost to FirstEnergy.”

Please quantify the costs incurred by Verizon to perform these “safety checks at no cost to FirstEnergy” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

FE to Verizon-I-13

Reference Formal Complaint ¶ 47; Mills Affidavit ¶ 62.

- (a) Please provide documentation evidencing Verizon’s “company policy to tag its facilities.”
- (b) Please quantify the costs incurred by Verizon to tag its facilities attached to FirstEnergy’s poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

FE to Verizon-I-14

Reference Formal Complaint ¶ 49. Verizon avers that “Verizon’s location on FirstEnergy’s poles increases its costs and sets it at a competitive disadvantage.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) Please quantify the costs incurred by Verizon due to its location on FirstEnergy’s poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (c) Please quantify the costs saved by Verizon due to its location on FirstEnergy’s poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those cost savings.
- (d) Please provide the following information: (1) the total number of poles owned by Verizon in Pennsylvania; (2) the number of Verizon-owned poles in Pennsylvania where Verizon’s facilities are located at the lowest position on the poles; (3) the average height of Verizon’s facilities that are located at the lowest position on Verizon-owned poles in Pennsylvania; (4) the number of Verizon-owned poles in Pennsylvania where Verizon’s facilities are not located at the lowest position on the poles; and (5) the

average height of Verizon's facilities that are not located at the lowest position on Verizon-owned poles in Pennsylvania.

- (e) Please provide the following information: (1) the total number of poles owned by Verizon in FirstEnergy's certificated service territories to which FirstEnergy's facilities are not attached; (2) the number of poles identified in subpart (e)(1) where Verizon's facilities are located at the lowest position on the poles; (3) the average height of Verizon's facilities that are located at the lowest position on the poles identified in subpart (e)(1); (4) the number of poles identified in subpart (e)(1) where Verizon's facilities are not located at the lowest position on the poles; and (5) the average height of Verizon's facilities that are not located at the lowest position on the poles identified in subpart (e)(1).
- (f) Please quantify the costs incurred by Verizon due to its location on Verizon-owned poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (g) Please quantify the costs saved by Verizon due to its location on Verizon-owned poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those cost savings

FE to Verizon-I-15

Reference Formal Complaint ¶ 49. Verizon asserts that “[i]ts facilities have the highest exposure to damage from oversized vehicles, vandalism, and similar hazards.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) From 2011 to present, please list the incidents where an oversized vehicle damaged a Verizon facility that was attached to a FirstEnergy pole. For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (c) From 2011 to present, please list the incidents where there was vandalism of a Verizon facility that was attached to a FirstEnergy pole. For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (d) From 2011 to present, please list the incidents where “similar hazards” occurred to a Verizon facility that was attached to a FirstEnergy pole. For each such incident listed, please provide the date and location that the incident occurred, a description of the incident, and the dollar amount of any damage caused.

- (e) From 2011 to present, please list the incidents where an oversized vehicle damaged a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania. For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon's facility was located at the lowest position on the pole.
- (f) From 2011 to present, please list the incidents where there was vandalism of a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania. For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon's facility was located at the lowest position on the pole.
- (g) From 2011 to present, please list the incidents where "similar hazards" occurred to a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania. For each such incident listed, please provide the date and location that the incident occurred, a description of the incident, the dollar amount of any damage caused, and whether Verizon's facility was located at the lowest position on the pole.

FE to Verizon-I-16

Reference Formal Complaint ¶ 49. Verizon states that "[i]t has experienced damage from gaffs, ladders, and bucket trucks, has had holes poked in its cables, and has had support wires broken because of its lowest location on the pole."

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) From 2011 to present, please list the incidents where a Verizon facility that was attached to a FirstEnergy pole "experienced damage from gaffs, ladders, and bucket trucks . . . because of its lowest location on the pole." For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (c) From 2011 to present, please list the incidents where a Verizon facility that was attached to a FirstEnergy pole "had holes poked in its cables . . . because of its lowest location on the pole." For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (d) From 2011 to present, please list the incidents where a Verizon facility that was attached to a FirstEnergy pole "had support wires broken because of its lowest location on the pole." For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.

- (e) From 2011 to present, please list the incidents where a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania “experienced damage from gaffs, ladders, and bucket trucks . . . because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.
- (f) From 2011 to present, please list the incidents where a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania “had holes poked in its cables . . . because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.
- (g) From 2011 to present, please list the incidents where a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania “had support wires broken because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.

FE to Verizon-I-17

Reference Formal Complaint ¶ 49. Verizon claims that it “receives more requests to raise its cables to accommodate oversize loads that exceed standard vertical clearance requirements.”

- (a) Please provide copies of all such requests made to Verizon from 2011 to present for Verizon facilities that are connected to FirstEnergy poles.
- (b) Please provide copies of all such requests made to Verizon from 2011 to present for Verizon facilities that are connected to Verizon-owned poles in Pennsylvania.

FE to Verizon-I-18

Reference Formal Complaint ¶ 49. Verizon avers that it “incurs increased pole transfer costs because it must be the last company to transfer its facilities to a replacement pole.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) Please quantify the transfer costs incurred by Verizon due to its location on FirstEnergy’s poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

FE to Verizon-I-19

Reference Formal Complaint ¶ 49. Verizon asserts that it “often makes more than one trip to the replacement pole because others have not completed their transfers as scheduled.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) Please state the number of times, per year from 2011 to present, that Verizon had to make more than one trip to a FirstEnergy replacement pole “because others have not completed their transfers as scheduled,” and provide all documents, workpapers, reports, and analyses relied upon in compiling that figure.

FE to Verizon-I-20

Reference Formal Complaint ¶ 11 n.27, ¶ 16 n.47, ¶ 21 n.63, ¶ 29 n.94, ¶ 32 n.102, ¶ 37 n.124, ¶ 41 n.137, ¶ 55 n.211, ¶ 58 n.224; Tardiff Affidavit ¶ 8 n.7.

Please provide an un-redacted copy of the FCC’s decision in *Verizon Florida LLC v. Florida Power & Light Co.*, 30 FCC Rcd 1140 (F.C.C. Feb. 11, 2015).

FE to Verizon-I-21

Reference Formal Complaint ¶ 4 n.15, ¶ 22 n.67, ¶ 27 n.88, ¶ 33 n.109, ¶ 39 n.131, ¶ 43 n.142, ¶ 45 n.158, ¶ 53, n.207, ¶ 56 n.217; Tardiff Affidavit ¶ 15(3) n.28, ¶ 20 n.39, ¶ 28 n.50.

Please provide an un-redacted copy of the FCC’s decision in *Verizon Virginia, LLC v. Virginia Electric and Power Co.*, 32 FCC Rcd 3750 (F.C.C. May 1, 2017).

FE to Verizon-I-22

Reference Mills Affidavit.

Is Mr. Mills an attorney licensed to practice law? If so, please list all jurisdictions in which Mr. Mills is licensed to practice.

FE to Verizon-I-23

Reference Mills Affidavit.

Please provide all documents, workpapers, reports, and analyses relied upon by Mr. Mills in preparing his Affidavit.

FE to Verizon-I-24

Reference Mills Affidavit ¶ 38.

- (a) Please identify the terms and conditions in the draft license agreement and the affiliate license agreements that Mr. Mills considers to be “comparable” to Verizon’s joint use agreements with FirstEnergy, and explain in detail why Mr. Mills believes those terms and conditions are “comparable.”
- (b) Please identify the terms and conditions in the draft license agreement and the affiliate license agreements that Mr. Mills considers not to be “comparable” to Verizon’s joint use agreements with FirstEnergy, and explain in detail why Mr. Mills believes those terms and conditions are not “comparable.”

FE to Verizon-I-25

Reference Mills Affidavit ¶ 40. Please explain in detail how FirstEnergy allegedly “manipulated the pre-existing telecom rate formula and inputs to increase the rates that Verizon would pay and decrease the rates that Met-Ed would pay.”

FE to Verizon-I-26

Reference Mills Affidavit ¶ 45. Please explain in detail the “manipulations of the pre-existing telecom rate formula” that FirstEnergy relied on in an alleged effort “to perpetuate unreasonably high rental rates.”

FE to Verizon-I-27

Reference Mills Affidavit ¶ 47; VZ00650-VZ00651.

- (a) Please explain in detail why Verizon did not accept FirstEnergy’s offer to transition Verizon to the standard Competitive Local Exchange Carrier (“CLEC”) agreement and CLEC rate.
- (b) Please provide all documents, workpapers, reports, and analyses relied upon by Verizon in making the decision not to accept FirstEnergy’s offer to transition Verizon to the standard CLEC agreement and CLEC rate.
- (c) Please identify the person or persons who made the final decision not to accept FirstEnergy’s offer to transition Verizon to the standard CLEC agreement and CLEC rate.

FE to Verizon-I-28

Reference Calnon Affidavit.

Is Dr. Calnon an attorney licensed to practice law? If so, please list all jurisdictions in which Dr. Calnon is licensed to practice.

FE to Verizon-I-29

Reference Calnon Affidavit.

Please provide all documents, workpapers, reports, and analyses relied upon by Dr. Calnon in preparing his Affidavit.

FE to Verizon-I-30

Reference Calnon Affidavit, Exhibits C-1 through C-6.

- (a) Please provide copies of Exhibits C-1 through C-6 in their native format (*e.g.*, Microsoft Excel) with all formulas intact.
- (b) Please provide all documents, workpapers, reports, and analyses relied upon by Dr. Calnon in preparing Exhibits C-1 through C-6.

FE to Verizon-I-31

Reference Calnon Affidavit ¶ 12. Dr. Calnon states that he “do[es] not have access to the rates of return that result[ed] from confidential settlements that the PUC approved to resolve the defendants’ 2014 and 2016 rate cases” and that “[a] proper allocation of the new telecom rate formula would use these updated rates of return, although it appears that the defendants continue to use the older, outdated rates of return to unreasonably increase the pole attachment rates that they charge all attachers.”

- (a) Is Dr. Calnon aware that the settlements reached in the 2014 and 2016 base rate cases were publicly filed with the Pennsylvania Public Utility Commission?
- (b) Is Dr. Calnon aware that the settlements reached in the 2014 and 2016 base rate cases were “black box” settlements, under which the parties did not agree on or identify all of the various components of the overall revenue requirements, including the rates of return?

FE to Verizon-I-32

Reference Tardiff Affidavit.

Is Dr. Tardiff an attorney licensed to practice law? If so, please list all jurisdictions in which Dr. Tardiff is licensed to practice.

FE to Verizon-I-33

Reference Tardiff Affidavit.

Please provide all documents, workpapers, reports, and analyses relied upon by Dr. Tardiff in preparing his Affidavit.

APPENDIX B

Objections of Verizon to the Interrogatories and Requests for Production of Documents Propounded by FirstEnergy – Set I

Suzan DeBusk Paiva
Associate General Counsel



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Philadelphia, PA 19107

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Suzan.D.Paiva@Verizon.com

April 22, 2020

Via Email

Devin Ryan, Esquire
Post & Schell Attorneys at Law
17 N. Second Street, 12th Floor
Harrisburg, PA 17101

Re: Verizon Pennsylvania LLC and Verizon North LLC v. Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company; Docket No. C-2020-3019347

Dear Mr. Ryan:

Enclosed please find the Objections of Verizon to the First Set of Interrogatories and Requests for Production of Documents submitted by Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company, in the above captioned matter.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in blue ink that reads "Suzan D. Paiva/sau".

Suzan D. Paiva

SDP/sau
Enclosures

Via Electronic Filing

cc: Secretary Rosemary Chiavetta (Cover Letter and Certificate Only)

Via E-Mail

cc: Honorable Joel Cheskis (Cover Letter and Certificate Only)
Attached Certificate of Service

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a true copy of Verizon's Objections to Set I of Interrogatories and Request for Production of Documents, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 22nd day of April, 2020.

VIA E-MAIL

Tori L. Giesler
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Suzan D. Paiva
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(267) 768-6184

Attorney for Verizon

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verizon Pennsylvania LLC and	:	
Verizon North LLC	:	
	:	
v.	:	C-2020-3019347
Metropolitan Edison Company, Pennsylvania	:	
Electric Company and Penn Power Company	:	

**OBJECTIONS OF VERIZON PENNSYLVANIA LLC AND VERIZON NORTH LLC
TO SET I OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS PROPOUNDED BY METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, AND
PENNSYLVANIA POWER COMPANY**

Verizon Pennsylvania LLC and Verizon North LLC (collectively, “Verizon”), pursuant to 52 Pa. Code §§ 5.321, 5.342, 5.349, and 5.361, object to the Set I Interrogatories and Requests for Production of Documents propounded by Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company (collectively, “FirstEnergy”) on April 17, 2020, as follows.

GENERAL OBJECTIONS

1. Notwithstanding the broad definitions of “Responding Party,” “you,” and “your” as including “affiliates,” Verizon presumes that FirstEnergy’s requests are addressed to Verizon Pennsylvania LLC and Verizon North LLC and will answer accordingly. To the extent FirstEnergy intended to ask about affiliates not party to this case, Verizon objects on the ground that such information is outside this Commission’s jurisdiction or otherwise seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

2. Verizon objects to the extent FirstEnergy purports to request information not available in the ordinary course of business and/or to require Verizon to undertake an unduly burdensome search or special study. Subject to the limitations set forth in its other objections,

Verizon will provide only such responsive information as is available to it in the ordinary course of business following a reasonably diligent search of the files that are reasonably expected to contain the responsive information.

3. Verizon objects to the extent FirstEnergy does not limit each request to a single question or request for information.

4. Verizon objects to the extent that FirstEnergy's requests purport to seek legal analysis, and/or information and documents that are protected from disclosure by the attorney-client privilege, attorney work product privilege, or other such privilege.

5. Verizon objects to the requests to the extent that they seek information that is not within Verizon's possession, custody, or control or information that is not within Verizon's present knowledge.

6. Verizon objects to the requests to the extent that they call for information that is already within FirstEnergy's possession, custody, or control.

7. Verizon objects to the requests to the extent that they seek discovery of legal conclusions, contentions, or information that is publicly available.

8. Verizon objects to the requests to the extent that the burden or expense of answering the Interrogatory would outweigh any benefit of the answer.

9. Verizon objects to the requests to the extent that they purport to impose requirements or obligations on Verizon in addition to or different from those imposed by the Commission's rules. In responding to the requests, Verizon will respond as required under the Commission's rules.

10. Verizon reserves the right to change or modify any objection should it become aware of additional facts or circumstances following the service of these objections.

11. The foregoing general objections are hereby incorporated into each specific objection listed below, and each specific objection is made subject to and without waiver of the foregoing general objections.

SPECIFIC OBJECTIONS

FE to Verizon-I-1:

Identify the joint use rates paid in 2019 pursuant to Verizon's joint use agreements with other electric utilities.

Objections:

Verizon objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon will not respond to this request.

FE to Verizon-I-2

Identify which FirstEnergy poles have Verizon attachments that have been overlashed.

Objections:

Verizon objects to this request because "attachments" and "overlashed" are vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request because it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business and Verizon is not required under the Commission's discovery rules to make a special study or analysis to attempt to compile this information. Verizon also objects to this request because it would impose an unreasonable burden and expense on Verizon and because FirstEnergy is equally capable of obtaining the requested information and/or performing the requested study or analysis. Verizon will respond to this request only to verify that, to the extent it understands the question, it does not track this information.

FE to Verizon-I-3

Identify the number of customers Verizon serves using Verizon's overlashing of its attachments to FirstEnergy poles.

Objections:

Verizon objects to this request because the phrase “using Verizon’s overlashing of its attachments” contains vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request because it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business and Verizon is not required under the Commission’s discovery rules to make a special study or analysis to attempt to compile this information. Verizon also objects to this request because it would place an unreasonable burden and expense on Verizon. Verizon will respond to this request only to verify that, to the extent it understands the question, it does not track this information.

FE to Verizon-I-4

For the FirstEnergy poles to which Verizon has attached fiber optic facilities, identify every FirstEnergy pole with Verizon fiber capacity to which Verizon has granted leasing or other rights to another entity.

Objections:

Verizon objects to this request because “fiber capacity” and “leasing or other rights” are vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request because it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business and Verizon is not required under the Commission’s discovery rules to make a special study or analysis to attempt to compile this information. Verizon further objects to this request because it would place an unreasonable burden and expense on Verizon. Verizon will respond to this request only to verify that, to the extent it understands the question, it does not track this information

FE to Verizon-I-5

Identify Verizon’s cost per mile to overlash its attachments to FirstEnergy’s poles.

Objections:

Verizon objects to this request because “cost per mile to overlash its attachments” contains vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request because it requires the compilation of data or information that Verizon does not

maintain in the format requested or in the normal course of business and Verizon is not required under the Commission's discovery rules to make a special study or analysis to attempt to compile this information. Verizon also objects to this request because it would place an unreasonable burden and expense on Verizon. Verizon will respond to this request only to verify that, to the extent it understands the question, it does not track this information.

FE to Verizon-I-6

Identify Verizon's cost per mile to lease fiber optic capacity on Verizon attachments to FirstEnergy's poles.

Objections:

Verizon objects to this request because "cost per mile to lease fiber optic capacity on Verizon's attachments" contains vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request because it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business and Verizon is not required under the Commission's discovery rules to make a special study or analysis to attempt to compile this information. Verizon also objects to this request because it would place an unreasonable burden and expense on Verizon. Verizon will respond to this request only to verify that, to the extent it understands the question, it does not track this information.

FE to Verizon-I-7

Identify every FirstEnergy pole to which Verizon has copper facilities attached, the service over which Verizon has announced publicly or to its customers it has abandoned or will abandon.

Objections:

Verizon objects to this request because "copper facilities," "service over which," and "has abandoned or will abandon" are vague, ambiguous and undefined terms and it is not possible to answer the request. Verizon also objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon further objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business or requires Verizon to make a special study or analysis. Verizon further objects to this request to the extent FirstEnergy is equally capable of obtaining the requested information from public filings and because it would place an unreasonable burden and expense on Verizon. Verizon will respond to this request only to refer FirstEnergy to the publicly available copper retirement filings at the FCC, and to verify that, to the extent it understands the question, it does not otherwise track the specific information sought.

FE to Verizon-I-8

Identify the gross intrastate operating revenues and the de facto gross intrastate operating revenues as reported on the latest Section 510 Assessment Filing(s) submitted on behalf of Verizon to the Pennsylvania Public Utility Commission as required by Section 510 of the Public Utility Code, 66 Pa.C.S. § 510, and in accordance with the guidance set forth in the Commission’s Statement of Policy, “Computation of Section 510 Assessments for Jurisdictionally-Mixed Telecommunications Services,” at 52 Pa. Code § 69.3701. If Verizon did not make that submission, then provide such gross revenues for Verizon that are inputs to such latest Section 510 Assessment Filing(s).

Objections:

Verizon objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon will not respond to this request.

FE to Verizon-I-9

Identify the collective revenue generated by Verizon’s services (*i.e.*, interstate (including international services) and intrastate telecommunications services, interconnected VoIP services, and fixed broadband services) that was inputted into the FCC Forms 499-A that Verizon submitted for 2019 or for the latest year submitted. If Verizon did not make that submission, then provide such collective revenue generated by Verizon that are inputs to the FCC Forms 499-A that any Verizon affiliate submitted for 2019 or for the latest year submitted.

Objections:

Verizon objects to this request because it is overly broad, unduly burdensome and seeks information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon will not respond to this request.

FE to Verizon-I-10

Reference Formal Complaint, p. 2. Verizon avers that “FirstEnergy has still refused a material reduction to Verizon’s rates in Pennsylvania” Please quantify what Verizon considers to be a “material reduction” to FirstEnergy’s rates in Pennsylvania and provide all documents, workpapers, reports, and analyses relied upon in making that statement and in responding to this interrogatory.

Objections:

Verizon objects to this request because it is vague and ambiguous because FirstEnergy misconstrues the quoted allegation that “FirstEnergy has still refused a material reduction to

Verizon’s rates in Pennsylvania.” To the extent Verizon understands the question, Verizon has outlined in detail in its complaint, affidavits, exhibits, and direct testimony what rates FirstEnergy should be charging Verizon and has provided the calculations and reasoning supporting those rates. No further response is required.

FE to Verizon-I-11

Reference Formal Complaint ¶ 45. Verizon contends that it “completes much of this work itself, surveying a pole to determine what make-ready is required, completing the engineering necessary to accommodate its attachment, transferring its facilities when required, and reviewing its attachments post-installation to ensure they comply with applicable standards.”

- (a) Please quantify the costs incurred by Verizon to survey “a pole to determine what make-ready is required” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (b) Please quantify the costs incurred by Verizon to complete “the engineering necessary to accommodate its attachment” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (c) Please quantify the costs incurred by Verizon to review “its attachments post-installation to ensure they comply with applicable standards” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

Objections:

Verizon objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission’s discovery rules. Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-12

Reference Formal Complaint ¶ 45. Verizon states that “[i]f such costs are ever incurred by Verizon’s competitors, Verizon incurs comparable costs because it performs its own safety checks, at no cost to FirstEnergy.”

Please quantify the costs incurred by Verizon to perform these “safety checks at no cost to FirstEnergy” for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

Objections:

Verizon objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission’s discovery rules. Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-13

Reference Formal Complaint ¶ 47; Mills Affidavit ¶ 62.

- (a) Please provide documentation evidencing Verizon’s “company policy to tag its facilities.”
- (b) Please quantify the costs incurred by Verizon to tag its facilities attached to FirstEnergy’s poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

Objections:

Verizon will respond to subpart (a). Verizon objects to subpart (b) to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission’s discovery rules. Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-14

Reference Formal Complaint ¶ 49. Verizon avers that “Verizon’s location on FirstEnergy’s poles increases its costs and sets it at a competitive disadvantage.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) Please quantify the costs incurred by Verizon due to its location on FirstEnergy’s poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (c) Please quantify the costs saved by Verizon due to its location on FirstEnergy’s poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those cost savings.

- (d) Please provide the following information: (1) the total number of poles owned by Verizon in Pennsylvania; (2) the number of Verizon-owned poles in Pennsylvania where Verizon's facilities are located at the lowest position on the poles; (3) the average height of Verizon's facilities that are located at the lowest position on Verizon-owned poles in Pennsylvania; (4) the number of Verizon-owned poles in Pennsylvania where Verizon's facilities are not located at the lowest position on the poles; and (5) the average height of Verizon's facilities that are not located at the lowest position on Verizon-owned poles in Pennsylvania.
- (e) Please provide the following information: (1) the total number of poles owned by Verizon in FirstEnergy's certificated service territories to which FirstEnergy's facilities are not attached; (2) the number of poles identified in subpart (e)(1) where Verizon's facilities are located at the lowest position on the poles; (3) the average height of Verizon's facilities that are located at the lowest position on the poles identified in subpart (e)(1); (4) the number of poles identified in subpart (e)(1) where Verizon's facilities are not located at the lowest position on the poles; and (5) the average height of Verizon's facilities that are not located at the lowest position on the poles identified in subpart (e)(1).
- (f) Please quantify the costs incurred by Verizon due to its location on Verizon-owned poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.
- (g) Please quantify the costs saved by Verizon due to its location on Verizon-owned poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those cost savings

Objections:

Verizon will respond to subpart (a). Verizon objects to subparts (b) through (g) to the extent they are overly broad, unduly burdensome and seek information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon also objects to subparts (b) through (g) to the extent they require the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or require Verizon to make a special study or analysis that is not required by the Commission's discovery rules. Verizon further objects to subparts (b) and (f) because "costs incurred by Verizon due to its location" is vague and ambiguous and it is not possible to answer the request. Verizon objects to subparts (c) and (g) because the phrase "costs saved by Verizon due to its location" is vague and ambiguous without a comparator and it is not possible to answer the request. Verizon also objects to subparts (c) and (g) because the cited paragraph does not allege that Verizon saved costs due to its location on a pole. Verizon objects to subparts (d) and (e) because they would impose an unreasonable burden and expense on Verizon and because FirstEnergy is equally capable of obtaining the requested information and/or performing the requested study or analysis. Subject to and without waiving its objections, Verizon is currently investigating the availability of information requested in subparts (b) through (g), to the extent it understands the information requested, and

will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-15

Reference Formal Complaint ¶ 49. Verizon asserts that “[i]ts facilities have the highest exposure to damage from oversized vehicles, vandalism, and similar hazards.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) From 2011 to present, please list the incidents where an oversized vehicle damaged a Verizon facility that was attached to a FirstEnergy pole. For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (c) From 2011 to present, please list the incidents where there was vandalism of a Verizon facility that was attached to a FirstEnergy pole. For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (d) From 2011 to present, please list the incidents where “similar hazards” occurred to a Verizon facility that was attached to a FirstEnergy pole. For each such incident listed, please provide the date and location that the incident occurred, a description of the incident, and the dollar amount of any damage caused.
- (e) From 2011 to present, please list the incidents where an oversized vehicle damaged a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania. For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.
- (f) From 2011 to present, please list the incidents where there was vandalism of a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania. For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.
- (g) From 2011 to present, please list the incidents where “similar hazards” occurred to a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania. For each such incident listed, please provide the date and location that the incident occurred, a description of the incident, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.

Objections:

Verizon will respond to subpart (a). Verizon objects to subparts (b) through (g) to the extent they are overly broad, unduly burdensome and seek information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon also objects to subparts (b) through (g) to the extent they require the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or require Verizon to make a special study or analysis that is not required by this Commission's discovery rules. Subject to and without waiving its objections, Verizon is currently investigating the availability of information requested in subparts (b) through (g) and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-16

Reference Formal Complaint ¶ 49. Verizon states that “[i]t has experienced damage from gaffs, ladders, and bucket trucks, has had holes poked in its cables, and has had support wires broken because of its lowest location on the pole.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) From 2011 to present, please list the incidents where a Verizon facility that was attached to a FirstEnergy pole “experienced damage from gaffs, ladders, and bucket trucks . . . because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (c) From 2011 to present, please list the incidents where a Verizon facility that was attached to a FirstEnergy pole “had holes poked in its cables . . . because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (d) From 2011 to present, please list the incidents where a Verizon facility that was attached to a FirstEnergy pole “had support wires broken because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred as well as the dollar amount of any damage caused.
- (e) From 2011 to present, please list the incidents where a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania “experienced damage from gaffs, ladders, and bucket trucks . . . because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon's facility was located at the lowest position on the pole.

- (f) From 2011 to present, please list the incidents where a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania “had holes poked in its cables . . . because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.
- (g) From 2011 to present, please list the incidents where a Verizon facility that was attached to a Verizon-owned pole in Pennsylvania “had support wires broken because of its lowest location on the pole.” For each such incident listed, please provide the date and location that the incident occurred, the dollar amount of any damage caused, and whether Verizon’s facility was located at the lowest position on the pole.

Objections:

Verizon will respond to subpart (a). Verizon objects to subparts (b) through (g) to the extent they are overly broad, unduly burdensome and seek information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Verizon also objects to subparts (b) through (g) to the extent they require the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or require Verizon to make a special study or analysis that is not required by this Commission’s discovery rules. Subject to and without waiver of the foregoing, Verizon is currently investigating the availability of information requested in subparts (b) through (g) and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-17

Reference Formal Complaint ¶ 49. Verizon claims that it “receives more requests to raise its cables to accommodate oversize loads that exceed standard vertical clearance requirements.”

- (a) Please provide copies of all such requests made to Verizon from 2011 to present for Verizon facilities that are connected to FirstEnergy poles.
- (b) Please provide copies of all such requests made to Verizon from 2011 to present for Verizon facilities that are connected to Verizon-owned poles in Pennsylvania.

Objections:

Verizon objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission’s discovery rules. Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-18

Reference Formal Complaint ¶ 49. Verizon avers that it “incurs increased pole transfer costs because it must be the last company to transfer its facilities to a replacement pole.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) Please quantify the transfer costs incurred by Verizon due to its location on FirstEnergy’s poles for each year from 2011 to present, and provide all documents, workpapers, reports, and analyses relied upon in quantifying those costs.

Objections:

Verizon will respond to subpart (a). Verizon objects to subpart (b) to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission’s discovery rules. Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-19

Reference Formal Complaint ¶ 49. Verizon asserts that it “often makes more than one trip to the replacement pole because others have not completed their transfers as scheduled.”

- (a) Please provide all documents, workpapers, reports, and analyses relied upon in making that statement.
- (b) Please state the number of times, per year from 2011 to present, that Verizon had to make more than one trip to a FirstEnergy replacement pole “because others have not completed their transfers as scheduled,” and provide all documents, workpapers, reports, and analyses relied upon in compiling that figure.

Objections:

Verizon will respond to subpart (a). Verizon objects to subpart (b) to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business, or requires Verizon to make a special study or analysis that is not required by the Commission’s discovery rules. Verizon further objects to subpart (b) to the extent FirstEnergy is equally capable of obtaining the requested information and/or performing the requested study or analysis. Subject to and without waiving its objections, Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested without undertaking a special study, or it will verify if it does not do so.

FE to Verizon-I-20

Reference Formal Complaint ¶ 11 n.27, ¶ 16 n.47, ¶ 21 n.63, ¶ 29 n.94, ¶ 32 n.102, ¶ 37 n.124, ¶ 41 n.137, ¶ 55 n.211, ¶ 58 n.224; Tardiff Affidavit ¶ 8 n.7.

Please provide an un-redacted copy of the FCC's decision in *Verizon Florida LLC v. Florida Power & Light Co.*, 30 FCC Rcd 1140 (F.C.C. Feb. 11, 2015).

Objections:

Verizon objects to this request because Verizon and Dr. Tardiff did not rely on redacted portions of the FCC's public decision in *Verizon Florida LLC v. Florida Power & Light Co.*, 30 FCC Rcd 1140 (FCC Feb. 11, 2015) and because the confidential decision is not within the possession, custody, or control of the parties here, which are Verizon Pennsylvania or Verizon North. Verizon also objects to this request because FirstEnergy is equally capable of requesting the information from the FCC, which designated the information confidential. Verizon will not respond to this request.

FE to Verizon-I-21

Reference Formal Complaint ¶ 4 n.15, ¶ 22 n.67, ¶ 27 n.88, ¶ 33 n.109, ¶ 39 n.131, ¶ 43 n.142, ¶ 45 n.158, ¶ 53, n.207, ¶ 56 n.217; Tardiff Affidavit ¶ 15(3) n.28, ¶ 20 n.39, ¶ 28 n.50.

Please provide an un-redacted copy of the FCC's decision in *Verizon Virginia, LLC v. Virginia Electric and Power Co.*, 32 FCC Rcd 3750 (F.C.C. May 1, 2017).

Objections:

Verizon objects to this request because Verizon and Dr. Tardiff did not rely on any redacted portions of the FCC's public decision in *Verizon Virginia, LLC v. Virginia Electric and Power Co.*, 32 FCC Rcd 3750 (FCC May 1, 2017) and because the confidential decision is not within the possession, custody, or control of the parties here, which are Verizon Pennsylvania and Verizon North. Verizon also objects to this request because FirstEnergy is equally capable of requesting the information from the FCC, which designated the information confidential. Verizon will not respond to this request.

FE to Verizon-I-22

Reference Mills Affidavit.

Is Mr. Mills an attorney licensed to practice law? If so, please list all jurisdictions in which Mr. Mills is licensed to practice.

Objections:

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-23

Reference Mills Affidavit.

Please provide all documents, workpapers, reports, and analyses relied upon by Mr. Mills in preparing his Affidavit.

Objections:

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-24

Reference Mills Affidavit ¶ 38.

- (a) Please identify the terms and conditions in the draft license agreement and the affiliate license agreements that Mr. Mills considers to be “comparable” to Verizon’s joint use agreements with FirstEnergy, and explain in detail why Mr. Mills believes those terms and conditions are “comparable.”
- (b) Please identify the terms and conditions in the draft license agreement and the affiliate license agreements that Mr. Mills considers not to be “comparable” to Verizon’s joint use agreements with FirstEnergy, and explain in detail why Mr. Mills believes those terms and conditions are not “comparable.”

Objections:

Verizon objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business. Verizon also objects to this request to the extent it seeks information Mr. Mills has already provided in the Affidavits filed at the FCC and in his direct testimony in this phase of the proceeding. Verizon also objects to subpart (b) of this request because Mr. Mills did not assert in paragraph 38 of his Affidavit that terms and conditions were not comparable. Verizon further objects to this request to the extent it requires Mr. Mills to undertake an analysis or prepare a special study that is not required by the Commission’s discovery rules. Subject to and without waiving its objections, Verizon is currently investigating the availability of the requested information and will provide a response if Mr. Mills has this information in the format requested.

FE to Verizon-I-25

Reference Mills Affidavit ¶ 40. Please explain in detail how FirstEnergy allegedly “manipulated the pre-existing telecom rate formula and inputs to increase the rates that Verizon would pay and decrease the rates that Met-Ed would pay.”

Objections:

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-26

Reference Mills Affidavit ¶ 45. Please explain in detail the “manipulations of the pre-existing telecom rate formula” that FirstEnergy relied on in an alleged effort “to perpetuate unreasonably high rental rates.”

Objections:

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-27

Reference Mills Affidavit ¶ 47; VZ00650-VZ00651.

- (a) Please explain in detail why Verizon did not accept FirstEnergy’s offer to transition Verizon to the standard Competitive Local Exchange Carrier (“CLEC”) agreement and CLEC rate.
- (b) Please provide all documents, workpapers, reports, and analyses relied upon by Verizon in making the decision not to accept FirstEnergy’s offer to transition Verizon to the standard CLEC agreement and CLEC rate.
- (c) Please identify the person or persons who made the final decision not to accept FirstEnergy’s offer to transition Verizon to the standard CLEC agreement and CLEC rate.

Objections:

Verizon objects to this request because FirstEnergy did not make an “offer to transition Verizon to the standard Competitive Local Exchange Carrier (‘CLEC’) agreement and CLEC rate” and so the entire question is based on a faulty premise and it is impossible to answer. Verizon also objects to this request to the extent it requires the compilation of data or information that Verizon does not maintain in the format requested or in the normal course of business. Verizon further objects to this request to the extent it seeks information Verizon has already provided in its filings at the FCC. Verizon will not respond to this request.

FE to Verizon-I-28

Reference Calnon Affidavit.

Is Dr. Calnon an attorney licensed to practice law? If so, please list all jurisdictions in which Dr. Calnon is licensed to practice.

Objections:

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-29

Reference Calnon Affidavit.

Please provide all documents, workpapers, reports, and analyses relied upon by Dr. Calnon in preparing his Affidavit.

Objections:

Subject to and without waiving its objections, Verizon will respond to this request.

FE to Verizon-I-30

Reference Calnon Affidavit, Exhibits C-1 through C-6.

- (a) Please provide copies of Exhibits C-1 through C-6 in their native format (*e.g.*, Microsoft Excel) with all formulas intact.
- (b) Please provide all documents, workpapers, reports, and analyses relied upon by Dr. Calnon in preparing Exhibits C-1 through C-6.

Objections:

Verizon objects to this request to the extent FirstEnergy has equal access to the information and to the extent it seeks information Verizon has already provided in its filings at the FCC. Subject to and without waiving its objections, Verizon is currently investigating the availability of this information and will provide a response if it maintains this information in the format requested.

FE to Verizon-I-31

Reference Calnon Affidavit ¶ 12. Dr. Calnon states that he “do[es] not have access to the rates of return that result[ed] from confidential settlements that the PUC approved to resolve the defendants’ 2014 and 2016 rate cases” and that “[a] proper allocation of the new telecom rate formula would use these updated rates of return, although it appears that the defendants continue to use the older, outdated rates of return to unreasonably increase the pole attachment rates that they charge all attachers.”

- (a) Is Dr. Calnon aware that the settlements reached in the 2014 and 2016 base rate cases were publicly filed with the Pennsylvania Public Utility Commission?
- (b) Is Dr. Calnon aware that the settlements reached in the 2014 and 2016 base rate cases were “black box” settlements, under which the parties did not agree on or identify all of the various components of the overall revenue requirements, including the rates of return?

Objections:

Verizon objects to this request because it is internally inconsistent, requests information about whether Dr. Calnon is aware of the confidential nature of the settlements, purports to characterize the content of those confidential settlements, recognizes that Dr. Calnon already acknowledged he cannot know the confidential aspects of the settlements, and seeks information Verizon already provided in its filings at the FCC. Verizon will not respond to this request.

FE to Verizon-I-32

Reference Tardiff Affidavit.

Is Dr. Tardiff an attorney licensed to practice law? If so, please list all jurisdictions in which Dr. Tardiff is licensed to practice.

Objections:

Subject to and without waiving its objections, Verizon will respond to this request.

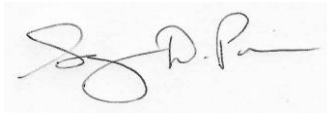
FE to Verizon-I-33

Reference Tardiff Affidavit.

Please provide all documents, workpapers, reports, and analyses relied upon by Dr. Tardiff in preparing his Affidavit.

Objections:

Subject to and without waiving its objections, Verizon will respond to this request.



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Counsel for

Verizon Pennsylvania LLC and

Verizon North LLC

Dated: April 22, 2020

APPENDIX C

**April 20, 2020 Email Sent by Verizon's Counsel to
FirstEnergy's Counsel**

Ryan, Devin

From: Huther, Christopher <CHuther@wiley.law>
Sent: Monday, April 20, 2020 5:00 PM
To: Langan, A. JoLene; Kanagy, Anthony; Lent, Garrett; MacGregor, David; Ryan, Devin; Tori Giesler (tgiesler@firstenergycorp.com)
Cc: Curtis L. Groves (Curtis.groves@verizon.com); Suzan DeBusk Paiva (Suzan.D.Paiva@verizon.com); Evans, Claire
Subject: RE: Verizon Pennsylvania LLC and Verizon North LLC v. Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company - Docket No. C-2020-3019347

Categories: FirstEnergy - Dark Red Category
FilingDate: 4/20/2020 5:01:00 PM

Counsel:

This email confirms that Verizon received FirstEnergy's discovery requests at 11:50 am on Friday, April 17 and that, consistent with the Scheduling Order and our agreement, today I provided verbal notice of Verizon's objections to FirstEnergy's discovery requests in conversations with Mr. Ryan. As I explained, Verizon plans to respond to several of FirstEnergy's discovery requests in whole or in part, but also has objections to certain of FirstEnergy's requests. For example, I informed Mr. Ryan that Verizon plans to object to the first nine requests consistent with its objection to those interrogatories at the FCC, to requests that seek the FCC's confidential information that Verizon cannot provide, and to certain requests that are overly burdensome and/or not likely to lead to the discovery of relevant information.

After Mr. Ryan and I engaged in the preliminary conversation about discovery that our discovery agreement contemplated, Mr. Ryan informed me that FirstEnergy sought a detailed, line-by-line accounting of Verizon's objections to each and every request akin to what is required in writing this Wednesday. That level of detail is not what Verizon contemplated or understood when it agreed to provide verbal notice of objections within 3 calendar days (particularly where the period falls almost entirely over a weekend). Verizon is amenable to continuing the informal discussions that were contemplated, and we will follow up with the written objections on Wednesday.

Regards,

Chris

From: Langan, A. JoLene <jlangan@postschell.com>
Sent: Friday, April 17, 2020 11:50 AM
To: Huther, Christopher <CHuther@wiley.law>; Evans, Claire <CEvans@wiley.law>; Curtis L. Groves (Curtis.groves@verizon.com) <Curtis.groves@verizon.com>; Kanagy, Anthony <akanagy@postschell.com>; Lent, Garrett <GLent@PostSchell.com>; MacGregor, David <dmacgregor@postschell.com>; Ryan, Devin <DRyan@PostSchell.com>; Suzan DeBusk Paiva (Suzan.D.Paiva@verizon.com) <Suzan.D.Paiva@verizon.com>; Tori Giesler (tgiesler@firstenergycorp.com) <tgiesler@firstenergycorp.com>
Subject: Verizon Pennsylvania LLC and Verizon North LLC v. Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company - Docket No. C-2020-3019347

Attached are the Interrogatories and Requests for Production of Documents Propounded by Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company on Verizon Pennsylvania LLC and Verizon North LLC – Set I, in the above-referenced

proceeding. Copies will be provided electronically only, as indicated on the Certificate of Service, due to the current closure of all non-life sustaining businesses in the Commonwealth upon direction of Governor Wolf.

A. JoLene Langan
Secretary
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VERIFICATION

I, Tori L. Giesler, Supervising Counsel of FirstEnergy Service Company, 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 Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company 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 falsification to authorities).

Date: April 29, 2020



Tori L. Giesler, Esquire