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Devin Ryan

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File #: 180259

May 18, 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**

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Dear Secretary Chiavetta:

Enclosed please find 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 III, for filing 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: May 18, 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	:	

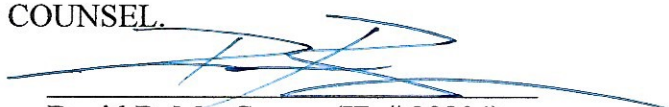
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**NOTICE TO PLEAD**

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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: May 18, 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	:	

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**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 III**

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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 III.<sup>1</sup>

As explained herein, Verizon’s objections to Interrogatory 1 of FirstEnergy to Verizon Set III are without merit, and Verizon should be compelled to provide a full and complete response.

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<sup>1</sup> 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.

In support of its Motion, FirstEnergy states as follows:

**I. INTRODUCTION**

1. On May 7, 2020, FirstEnergy served Interrogatories and Requests for Production of Documents on Verizon – Set III (“FE to Verizon Set III”) by email.<sup>2</sup> A true and correct copy of FE to Verizon Set III is attached hereto and marked as **Appendix A**.

2. Pursuant to the modified discovery rules in this proceeding, verbal notice of objections was due on May 11, 2020, written objections were due on May 12, 2020, and answers are due on or before May 18, 2020.

3. On May 11, 2020, counsel for FirstEnergy received a call from Verizon’s counsel, who verbally outlined objections that Verizon would be raising with respect to FE to Verizon Set III.

4. On May 12, 2020, Verizon served written objections to FE to Verizon Set III, which are the subject of the instant Motion. Verizon’s objections are attached hereto and marked as **Appendix B**.

5. On May 14, 2020, counsel for FirstEnergy emailed Verizon’s counsel in an effort to resolve informally Verizon’s objections to FE to Verizon Set III, No. 1. In that email, FirstEnergy stated that FirstEnergy would drop Interrogatories 2 and 3 if Verizon answered Interrogatory 1 as modified to the following:

(a) For each year from 2011 to present, please provide the total annual dollar amount of “gross” pole attachment rent that Verizon paid to each of the other Pennsylvania EDCs pursuant to joint use agreements with those EDCs, with the term “gross” pole attachment rent having the same meaning as used in Verizon’s Complaint.

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<sup>2</sup> Because the discovery requests were served before Noon, they were counted as being served on April 24, 2020, and not the next business day. *See* Scheduling Order, p. 5.

(b) For each year from 2011 to present, please provide the total annual dollar amount of “net rent” that Verizon paid to each of the other Pennsylvania EDCs pursuant to joint use agreements with those EDCs, with the term “net rent” having the same meaning as used in Verizon’s Complaint.

6. On May 15, 2020, counsel for Verizon emailed FirstEnergy’s counsel and rejected the proposed resolution, on the alleged grounds that: (1) the revised interrogatory was still seeking proprietary information about other electric distribution companies (“EDCs”); and (2) non-party information was irrelevant to this proceeding.

7. For the reasons explained below, Verizon’s objections to FE to Verizon Set III, No. 1, as revised, completely lack merit, and the ALJ should compel Verizon to fully respond to the discovery request.

## **II. MOTION TO COMPEL**

8. FirstEnergy requests that the ALJ dismiss Verizon’s objections to FE to Verizon Set III, No. 1 as without merit and direct Verizon to answer fully those interrogatories and requests for production of documents.

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. 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.”<sup>3</sup>

16. As a result, general, non-specific objections are “improper” in Commission proceedings and should be dismissed.<sup>4</sup>

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.<sup>5</sup>

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<sup>3</sup> *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).

<sup>4</sup> *Pa. PUC v. Pa. Am. Water Co.*, 2011 Pa. PUC LEXIS 1523, at \*11-12 (Order on Motion to Compel entered July 21, 2011).

<sup>5</sup> *Id.* at \*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 Wednesday<sup>6</sup> 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.

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. 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.” *Assumption of Commission Jurisdiction over Pole Attachments from the Federal Communications Commission*, 2019 Pa. PUC LEXIS 267, at \*11-12 (Order entered Sept. 3, 2019) (“*Chapter 77 Rulemaking Order*”).

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<sup>6</sup> FirstEnergy believes this is a typographical error in the Scheduling Order and should say “Thursday” instead of “Wednesday.”

21. 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. *Id.* at \*67.

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

23. For the reasons stated in more detail below, the ALJ should dismiss Verizon’s objections as without merit and direct Verizon to answer fully the discovery requests set forth in FE to Verizon Set III, No. 1, as revised by FirstEnergy.

**A. VERIZON’S OBJECTIONS TO FE TO VERIZON-III-1 ARE WITHOUT MERIT**

24. FE to Verizon-III-1 provides:

For each year from 2011 to present, please provide the total annual amount of money that Verizon paid to each of the other Pennsylvania EDCs pursuant to joint use agreements with those EDCs.

25. Verizon’s objections to the interrogatories state:

Verizon objects to this request because it is overly broad, unduly burdensome and seeks information about pole attachment rates, fees and other charges that are not at issue in this proceeding, are not relevant or material to the subject matter of this proceeding, and are not reasonably calculated to lead to the discovery of admissible evidence about the just and reasonable rate for Verizon’s use of FirstEnergy’s poles calculated using FirstEnergy’s pole costs:

- The total amounts Verizon paid to non-party Pennsylvania EDCs under different joint use agreements are not relevant or reasonably calculated to lead to the discovery of admissible evidence because “[p]ole attachment rates are case specific and the terms and conditions of various agreements dependent on the unique facts of each circumstance.” *See* Order Denying Motion to Compel Filed by FirstEnergy Regarding Interrogatories I-1, I-20, and I-21 (“Order”) at 7 (May 11, 2020).

- This request, when paired with Interrogatories III-2 (number of Verizon attachments to poles owned by non-party Pennsylvania EDCs) and III-3 (number of poles owned by non-party Pennsylvania EDCs with Verizon facilities attached), apparently seeks to obtain information regarding the rates, fees and charges imposed by non-parties comparable to and beyond the information FirstEnergy unsuccessfully sought in Interrogatory I-1, although this request seeks the information for a longer time period (2011 to present). Interrogatory I-1 asked Verizon to “[i]dentify the joint use rates paid in 2019 pursuant to Verizon’s joint use agreements with other electric utilities.” ALJ Cheskis correctly denied FirstEnergy’s motion to compel a response to Interrogatory I-1. The reasoning of his Order applies equally to the expanded information sought in this interrogatory.
- The total “amount of money that Verizon paid” is overly broad because this case is limited to the just and reasonable pole attachment rate for Verizon’s use of FirstEnergy’s poles. Without disclosing confidential information about its joint use agreements with other Pennsylvania EDCs or the rental rates paid under them, Verizon’s payments to other Pennsylvania EDCs under their joint use agreements may—like Verizon’s payments to FirstEnergy—include fees and charges additional to pole attachment rent.

Verizon also objects to this request because it seeks competitively sensitive and confidential information about entities that are not party to this case and whose rates are not the subject of this proceeding. ALJ Cheskis held that “discovery is not permitted if it relates to a matter which is privileged and the matter is privileged if it is confidential to another entity.” Order at 6. As with Interrogatory I-1, “[t]he other electric utilities whose information would be part of the answer” to this interrogatory “are not subject to the protective order in place in this proceeding.” *Id.* Absent waivers of confidentiality from the Pennsylvania EDCs with which Verizon has joint use agreements, Verizon cannot produce the information requested.

Verizon also objects to this request to the extent it requires the compilation of the various amounts paid to non-party Pennsylvania EDCs for pole attachment rates, fees and other charges, which Verizon does not maintain in the format requested.

For these reasons, and consistent with ALJ Cheskis’s Order, Verizon will not respond to this request.

26. In response to Verizon's objections, FirstEnergy has proposed to withdraw Interrogatories 2 and 3 and revise Interrogatory 1 as follows:

(a) For each year from 2011 to present, please provide the total annual dollar amount of "gross" pole attachment rent that Verizon paid to each of the other Pennsylvania EDCs pursuant to joint use agreements with those EDCs, with the term "gross" pole attachment rent having the same meaning as used in Verizon's Complaint.

(b) For each year from 2011 to present, please provide the total annual dollar amount of "net rent" that Verizon paid to each of the other Pennsylvania EDCs pursuant to joint use agreements with those EDCs, with the term "net rent" having the same meaning as used in Verizon's Complaint.

27. Verizon's objections to Interrogatory 1, as revised, are without merit, especially given FirstEnergy's proposed resolution to those objections.

28. The interrogatory is relevant and reasonably calculated to lead to the discovery of admissible evidence and is not overly broad or unduly burdensome. The instant proceeding is a case of first impression that will likely have a substantial impact on future litigation involving other EDCs. Indeed, this is the first Formal Complaint filed by an incumbent local exchange carrier ("ILEC") against an EDC challenging the existing pole attachment rates under joint use agreements, since the Commission recently reverse preempted the Federal Communications Commission's ("FCC") jurisdiction over such issues.

29. Under well-accepted Pennsylvania ratemaking practices, EDCs offset their proposed revenue requirements in Section 1308(d) base rate proceedings<sup>7</sup> with the revenues received from ILECs under their joint use agreements. Therefore, any reduction to the EDCs' rates under those agreements, like the substantial one proposed by Verizon in this proceeding,

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<sup>7</sup> See 66 Pa.C.S. § 1308(d).

will result in increases to the EDCs' proposed revenue requirements. Ultimately, depending on the outcome of the base rate proceedings, such increases will be borne by the EDCs' ratepayers.

30. The Commission also asserted jurisdiction over the rates, terms, and conditions of joint use agreements to provide a forum where the "Pennsylvania-specific" impacts on all parties, including the EDCs, could be considered.<sup>8</sup> Further, the Commission explained how it could "provide a balanced approach to the competing needs and demands on pole infrastructure between," among other entities, the EDCs and ILECs.<sup>9</sup>

31. As a result, Interrogatory 1 was well-within the scope of this proceeding. FirstEnergy is trying to obtain discovery about the potential impact of a Commission decision in Verizon's favor, which would likely serve as precedent to substantially reduce the other EDCs' revenues derived from joint use agreements with ILECs and, by extension, increase the EDCs' rates for electric distribution service. The Commission must balance these Pennsylvania-specific impacts, so that it is not unreasonably reducing the rates of ILECs at the expense of EDCs' ratepayers. The Commission should have a better understanding of how its decision could impact electric ratepayers across the Commonwealth before deciding this case.

32. Verizon also cannot claim that the other EDCs' revenues from joint use agreements with Verizon are irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, confidential, and competitively-sensitive when Verizon includes the EDCs' charges in its own rate calculations.

33. Specifically, in the public version of Exhibit C-5 included with Dr. Mark S. Calnon's Affidavit attached to both Verizon's Formal Complaint and Dr. Calnon's direct

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<sup>8</sup> *Chapter 77 Rulemaking Order*, 2019 Pa. PUC LEXIS 267 at \*13 ("The Commission also will be able to address Pennsylvania-specific pole attachment issues, using its expertise regarding Pennsylvania telecommunications and electric utilities as well as safety issues.").

<sup>9</sup> *Id.*

testimony (Verizon Statement No. 2.0), Line 16 shows “Pole Rental Expense” as being included in the “Carrying Charge Rate.” He then presents that information for 2011 through 2019, *i.e.*, the same years requested in this discovery request. Therefore, at the very least, FirstEnergy should be able to investigate the bases for those non-confidential figures and determine if they are accurate.

34. Furthermore, it is completely unclear how Interrogatory 1, as revised, could result in the disclosure of confidential and competitively-sensitive information, when FirstEnergy is withdrawing Interrogatories 2 and 3. In its objections, Verizon averred that the information requested in Interrogatory 1 “when paired with Interrogatories III-2 (number of Verizon attachments to poles owned by non-party Pennsylvania EDCs) and III-3 (number of poles owned by non-party Pennsylvania EDCs with Verizon facilities attached)” would result in the disclosure of confidential and competitively-sensitive information.<sup>10</sup>

35. Now that FirstEnergy has withdrawn Interrogatories 2 and 3 in an effort to reach a compromise with Verizon, the information requested in Interrogatory 1, as revised, can no longer be considered confidential and competitively-sensitive by Verizon, such that a waiver from the EDCs would be required. Indeed, with information about the number of poles and pole attachments, FirstEnergy would not be able to, as alleged by Verizon, use the information requested in Interrogatory 1, as revised, to calculate the other EDCs’ rates that are charged to Verizon.

36. Moreover, as noted previously, the EDCs include these revenues in their public Section 1308(d) base rate filings as offsets to the proposed revenue requirements. Verizon itself has treated such information as non-confidential by including it in the publicly-available version of Exhibit C-5. Given that public treatment of such information by the other EDCs and

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<sup>10</sup> Verizon Objections to Interrogatory 1 (emphasis added).

Verizon, and the withdrawal of Interrogatories 2 and 3, Verizon cannot reasonably claim that such information is confidential and competitively-sensitive.

37. Additionally, in response to Verizon’s objection that the “total ‘amount of money that Verizon paid’ is overly broad” because “Verizon’s payments to other Pennsylvania EDCs under their joint use agreements may—like Verizon’s payments to FirstEnergy—include fees and charges additional to pole attachment rent,” FirstEnergy offered to limit the scope of Interrogatory 1 to the “pole attachment rent” paid to the other EDCs. Therefore, Verizon’s concern about the requested information including other “fees and charges” besides “pole attachment rent” is completely without merit.


38. For these reasons, the ALJ should dismiss Verizon’s objections and direct Verizon to answer fully FE to Verizon-III-1, as revised.

### 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 III, No. 1 as revised, as described above within three (3) days from the date of the order.

Respectfully submitted,

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Date: May 18, 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 III**



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File #: 180259

May 7, 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**

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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 III, 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  
May 7, 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).

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Date: May 7, 2020



Devin Ryan

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**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 III**

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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 III.

**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. “Verizon Statement No. 1.0” means the direct testimony and exhibits of Stephen C. Mills submitted on behalf of Verizon in the above-referenced proceeding.

20. “Verizon Statement No. 2.0” means the direct testimony and exhibits of Mark S. Calnon, Ph.D. submitted on behalf of Verizon in the above-referenced proceeding.

21. “Verizon Statement No. 3.0” means the direct testimony and exhibits of Timothy J. Tardiff, Ph.D. submitted on behalf of Verizon in the above-referenced proceeding.

22. “EDC” means “electric distribution company” as defined in 66 Pa.C.S. § 2803.

23. “Other Pennsylvania EDCs” means the EDCs in Pennsylvania that are not Met-Ed, Penelec, and Penn Power.

24. “Pole attachment” means “pole attachment” as defined in 47 U.S.C. § 224(a)(4).

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

FE to Verizon-III-1

For each year from 2011 to present, please provide the total annual amount of money that Verizon paid to each of the other Pennsylvania EDCs pursuant to joint use agreements with those EDCs.

FE to Verizon-III-2

Please provide the total number of Verizon-owned pole attachments that are currently attached to each of the other Pennsylvania EDCs' poles.

FE to Verizon-III-3

Please provide the total number of poles that are owned by each of the other Pennsylvania EDCs that have Verizon-owned pole attachments attached to those poles.

FE to Verizon-III-4

Reference Verizon Statement No. 1.0, Exhibit SCM-1 ¶ 55-57. Please provide all documents, workpapers, reports, and analyses relied upon by Mr. Stephen C. Mills in making these averments. To the extent that any of those documents, workpapers, reports, and analyses have been produced in this proceeding already, Verizon need only identify them.

FE to Verizon-III-5

Reference Verizon Statement No. 1.0, Exhibit SCM-1 ¶ 55-57.

- (a) For each year from 2011 to present, please provide the total annual amount of "make-ready" costs incurred by Verizon for its pole attachments that are attached to Met-Ed-owned poles.
- (b) For each year from 2011 to present, please provide the total annual amount of "make-ready" costs incurred by Verizon for its pole attachments that are attached to Penelec-owned poles.
- (c) For each year from 2011 to present, please provide the total annual amount of "make-ready" costs incurred by Verizon for its pole attachments that are attached to Penn Power-owned poles.
- (d) Please provide all documents, workpapers, reports, and analyses relied upon in answering subparts (a) through (c) of this interrogatory.

## **APPENDIX B**

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

Suzan DeBusk Paiva  
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May 12, 2020

**Via Email**

Devin Ryan, Esquire  
Post & Schell Attorneys at Law  
17 N. Second Street, 12<sup>th</sup> 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 Verizon's Objections to Set III Interrogatories and Requests for Production of Documents propounded 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 III Interrogatories and Requests for Production of Documents propounded by Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company, 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 12<sup>th</sup> day of May, 2020.

**VIA E-MAIL**

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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 III 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 (“Verizon”), pursuant to 52 Pa. Code §§ 5.321, 5.342, 5.349, and 5.361, object to the Set III Interrogatories and Requests for Production of Documents propounded by Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company (“FirstEnergy”) on May 7, 2020, as follows.

**FE to Verizon-III-1:**

For each year from 2011 to present, please provide the total annual amount of money that Verizon paid to each of the other Pennsylvania EDCs pursuant to joint use agreements with those EDCs.

**Objections:**

Verizon objects to this request because it is overly broad, unduly burdensome and seeks information about pole attachment rates, fees and other charges that are not at issue in this proceeding, are not relevant or material to the subject matter of this proceeding, and are not reasonably calculated to lead to the discovery of admissible evidence about the just and reasonable rate for Verizon’s use of FirstEnergy’s poles calculated using FirstEnergy’s pole costs:

- The total amounts Verizon paid to non-party Pennsylvania EDCs under different joint use agreements are not relevant or reasonably calculated to lead to the discovery of admissible evidence because “[p]ole attachment rates are case specific and the terms and conditions of various agreements dependent on the unique facts of each circumstance.” *See* Order Denying Motion to Compel Filed by FirstEnergy Regarding Interrogatories I-1, I-20, and I-21 (“Order”) at 7 (May 11, 2020).

- This request, when paired with Interrogatories III-2 (number of Verizon attachments to poles owned by non-party Pennsylvania EDCs) and III-3 (number of poles owned by non-party Pennsylvania EDCs with Verizon facilities attached), apparently seeks to obtain information regarding the rates, fees and charges imposed by non-parties comparable to and beyond the information FirstEnergy unsuccessfully sought in Interrogatory I-1, although this request seeks the information for a longer time period (2011 to present). Interrogatory I-1 asked Verizon to “[i]dentify the joint use rates paid in 2019 pursuant to Verizon’s joint use agreements with other electric utilities.” ALJ Cheskis correctly denied FirstEnergy’s motion to compel a response to Interrogatory I-1. The reasoning of his Order applies equally to the expanded information sought in this interrogatory.
- The total “amount of money that Verizon paid” is overly broad because this case is limited to the just and reasonable pole attachment rate for Verizon’s use of FirstEnergy’s poles. Without disclosing confidential information about its joint use agreements with other Pennsylvania EDCs or the rental rates paid under them, Verizon’s payments to other Pennsylvania EDCs under their joint use agreements may—like Verizon’s payments to FirstEnergy—include fees and charges additional to pole attachment rent.

Verizon also objects to this request because it seeks competitively sensitive and confidential information about entities that are not party to this case and whose rates are not the subject of this proceeding. ALJ Cheskis held that “discovery is not permitted if it relates to a matter which is privileged and the matter is privileged if it is confidential to another entity.” Order at 6. As with Interrogatory I-1, “[t]he other electric utilities whose information would be part of the answer” to this interrogatory “are not subject to the protective order in place in this proceeding.” *Id.* Absent waivers of confidentiality from the Pennsylvania EDCs with which Verizon has joint use agreements, Verizon cannot produce the information requested.

Verizon also objects to this request to the extent it requires the compilation of the various amounts paid to non-party Pennsylvania EDCs for pole attachment rates, fees and other charges, which Verizon does not maintain in the format requested.

For these reasons, and consistent with ALJ Cheskis’s Order, Verizon will not respond to this request.

### **FE to Verizon-III-2**

Please provide the total number of Verizon-owned pole attachments that are currently attached to each of the other Pennsylvania EDCs’ poles.

### **Objections:**

Verizon objects to this request because it is overly broad, unduly burdensome and seeks information about poles and pole attachments that are not at issue in this proceeding, are not relevant or material to the subject matter of this proceeding, and are not reasonably calculated to

lead to the discovery of admissible evidence about the just and reasonable rate for Verizon's use of FirstEnergy's poles calculated using FirstEnergy's pole costs:

- The total number of Verizon-owned pole attachments currently attached to non-party Pennsylvania EDCs under different joint use agreements are not relevant or reasonably calculated to lead to the discovery of admissible evidence because “[p]ole attachment rates are case specific and the terms and conditions of various agreements dependent on the unique facts of each circumstance.” *See* Order Denying Motion to Compel Filed by FirstEnergy Regarding Interrogatories I-1, I-20, and I-21 (“Order”) at 7 (May 11, 2020).
- This request, when paired with Interrogatory III-1 (total amounts Verizon paid to non-party Pennsylvania EDCs), apparently seeks to obtain information regarding the rates, fees and charges imposed by non-parties comparable to and beyond the information FirstEnergy unsuccessfully sought in Interrogatory I-1. Interrogatory I-1 asked Verizon to “[i]dentify the joint use rates paid in 2019 pursuant to Verizon’s joint use agreements with other electric utilities.” ALJ Cheskis correctly denied FirstEnergy’s motion to compel a response to Interrogatory I-1. The reasoning of his Order applies equally to the expanded information sought in this interrogatory.

Verizon also objects to this request to the extent it seeks competitively sensitive and confidential information about entities that are not party to this case and whose rates are not the subject of this proceeding. Some electric utilities treat as confidential the number of poles shared by parties. *See Verizon Va. v. Va. Elec. & Power Co.*, 32 FCC Rcd 3750, 3752 (¶ 5 n.17) (EB 2017) (stating “[t]he shared Dominion-Verizon network consist of [redacted] poles”). ALJ Cheskis held that “discovery is not permitted if it relates to a matter which is privileged and the matter is privileged if it is confidential to another entity.” Order at 6. As with Interrogatory I-1, “[t]he other electric utilities whose information would be part of the answer” to this interrogatory “are not subject to the protective order in place in this proceeding.” *Id.* Absent waivers of confidentiality from the Pennsylvania EDCs with which Verizon has joint use agreements, Verizon cannot produce the information requested.

Verizon also objects to this request because it would require Verizon to make a special study that is not required by the Commission’s discovery rules. Verizon does not maintain records in the normal course of business that include “the total number of Verizon-owned pole attachments that are currently attached to each of the other Pennsylvania EDCs’ poles.” To obtain that information, Verizon would need to survey all poles owned by non-party Pennsylvania EDCs. FirstEnergy has recognized that a survey of the parties’ joint use network would be “a significant undertaking [that] would be overly expensive and require an inordinate amount of labor hours to complete.” Motion to Compel ¶ 55 (Apr. 29, 2020). A request for Verizon to complete a similar survey of its joint use networks with three non-party Pennsylvania EDCs would be even more unreasonable and unduly burdensome.

For these reasons, and consistent with ALJ Cheskis’s Order, Verizon will not respond to this request.

### **FE to Verizon-III-3**

Please provide the total number of poles that are owned by each of the other Pennsylvania EDCs that have Verizon-owned pole attachments attached to those poles.

#### **Objections:**

Verizon objects to this request because it is overly broad, unduly burdensome and seeks information about poles and pole attachments that are not at issue in this proceeding, are not relevant or material to the subject matter of this proceeding, and are not reasonably calculated to lead to the discovery of admissible evidence about the just and reasonable rate for Verizon's use of FirstEnergy's poles calculated using FirstEnergy's pole costs:

- The total number of poles owned by non-party Pennsylvania EDCs with Verizon-owned pole attachments attached under the terms and conditions of different joint use agreements are not relevant or reasonably calculated to lead to the discovery of admissible evidence because “[p]ole attachment rates are case specific and the terms and conditions of various agreements dependent on the unique facts of each circumstance.” *See* Order Denying Motion to Compel Filed by FirstEnergy Regarding Interrogatories I-1, I-20, and I-21 (“Order”) at 7 (May 11, 2020).
- This request, when paired with Interrogatory III-1 (total amounts Verizon paid to non-party Pennsylvania EDCs), apparently seeks to obtain information regarding the rates, fees and charges imposed by non-parties comparable to and beyond the information FirstEnergy unsuccessfully sought in Interrogatory I-1. Interrogatory I-1 asked Verizon to “[i]dentify the joint use rates paid in 2019 pursuant to Verizon’s joint use agreements with other electric utilities.” ALJ Cheskis correctly denied FirstEnergy’s motion to compel a response to Interrogatory I-1. The reasoning of his Order applies equally to the expanded information sought in this interrogatory.

Verizon also objects to this request to the extent it seeks competitively sensitive and confidential information about entities that are not party to this case and whose rates are not the subject of this proceeding. Some electric utilities treat as confidential the number of poles shared by parties. *See Verizon Va. v. Va. Elec. & Power Co.*, 32 FCC Rcd 3750, 3752 (¶ 5 n.17) (EB 2017) (stating “[t]he shared Dominion-Verizon network consist of [redacted] poles”). ALJ Cheskis held that “discovery is not permitted if it relates to a matter which is privileged and the matter is privileged if it is confidential to another entity.” Order at 6. As with Interrogatory I-1, “[t]he other electric utilities whose information would be part of the answer” to this interrogatory “are not subject to the protective order in place in this proceeding.” *Id.* Absent waivers of confidentiality from the Pennsylvania EDCs with which Verizon has joint use agreements, Verizon cannot produce the information requested.

Verizon also objects to this request because it would require Verizon to make a special study that is not required by the Commission’s discovery rules. Verizon does not maintain records in the normal course of business that include the total number of poles owned by non-party Pennsylvania EDCs that currently have Verizon-owned pole attachments attached. To obtain that information, Verizon would need to survey all poles owned by non-party Pennsylvania

EDCs. FirstEnergy has recognized that a survey of the parties' joint use network would be "a significant undertaking [that] would be overly expensive and require an inordinate amount of labor hours to complete." Motion to Compel ¶ 55 (Apr. 29, 2020). A request for Verizon to complete a similar survey of its joint use networks with three non-party Pennsylvania EDCs would be even more unreasonable and unduly burdensome.

For these reasons, and consistent with ALJ Cheskis's Order, Verizon will not respond to this request.

#### **FE to Verizon-III-4**

Reference Verizon Statement No. 1.0, Exhibit SCM-1 ¶ 55-57. Please provide all documents, workpapers, reports, and analyses relied upon by Mr. Stephen C. Mills in making these averments. To the extent that any of those documents, workpapers, reports, and analyses have been produced in this proceeding already, Verizon need only identify them.

#### **Objections:**

Verizon objects to this request because it is unnecessarily duplicative of two of FirstEnergy's prior discovery requests, which Verizon fully answered:

- FirstEnergy's Interrogatory No. 7 (served while the parties were at the Federal Communications Commission) sought "each pole referred to by Steve Mills in his affidavit at paragraphs 60 and 61." FirstEnergy seeks the same information with this request because the same poles are referenced in Verizon Statement No. 1.0, Exhibit SCM-1 ¶¶ 56-57.
- FirstEnergy's Interrogatory I-23 referenced the Affidavit of Stephen C. Mills attached to Verizon's Complaint as Exhibit A and requested "all documents, workpapers, reports, and analyses relied upon by Mr. Mills in preparing his Affidavit." FirstEnergy seeks the same "documents, workpapers, reports, and analyses" with this request because Exhibit SCM-1 is the Affidavit of Stephen C. Mills that was attached to Verizon's Complaint as Exhibit A.

Verizon will respond to this request by referring FirstEnergy to its prior responses to Interrogatory No. 7 and Interrogatory I-23.

#### **FE to Verizon-III-5**

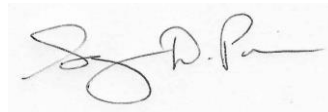
Reference Verizon Statement No. 1.0, Exhibit SCM-1 ¶ 55-57.

- (a) For each year from 2011 to present, please provide the total annual amount of "make-ready" costs incurred by Verizon for its pole attachments that are attached to Met-Ed-owned poles.

- (b) For each year from 2011 to present, please provide the total annual amount of “make-ready” costs incurred by Verizon for its pole attachments that are attached to Penelec-owned poles.
- (c) For each year from 2011 to present, please provide the total annual amount of “make-ready” costs incurred by Verizon for its pole attachments that are attached to Penn Power-owned poles.
- (d) Please provide all documents, workpapers, reports, and analyses relied upon in answering subparts (a) through (c) of this interrogatory.

**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 Statement No. 1.0, Exhibit SCM-1 ¶¶ 55-57, references the different ways Verizon incurs make-ready costs, including by performing a particular service itself. The cost incurred by Verizon to perform make-ready work should be comparable to the cost incurred by another entity to perform the same make-ready work because labor and material costs should be comparable in the same geographic market. Verizon, however, is not presently aware of records maintained in the normal course of business that compile all the costs Verizon incurs to complete make-ready work with the level of granularity FirstEnergy seeks. Verizon continues to investigate 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 confirm if it does not do so.



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Counsel for  
Verizon Pennsylvania LLC and  
Verizon North LLC

Dated: May 12, 2020

## 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: May 18, 2020

  
\_\_\_\_\_  
Tori L. Giesler, Esquire