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May 26, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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 Chiavetta:

Enclosed please find Verizon's Opposition to the Motion to Dismiss Objections and Compel Responses to Interrogatories and Requests for Production of Documents – Set III, filed in the above-referenced proceeding.

Should you have any questions or concerns, please contact me.

Very truly yours,

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

Suzan D. Paiva

SDP/sau
Enclosures

cc: Honorable Joel Cheskis

**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	:	

**OPPOSITION OF VERIZON PENNSYLVANIA LLC AND VERIZON NORTH LLC TO
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 – SET III**

Pursuant to 52 Pa. Code § 5.342(g)(1), Verizon Pennsylvania LLC and Verizon North LLC (“Verizon”) oppose the Motion of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company (“FirstEnergy”) to Dismiss Objections and Compel Responses to Interrogatories and Requests for Production of Documents – Set III.

ARGUMENT

FirstEnergy’s motion should be denied. Again, FirstEnergy attempts to improperly expand this case—contravening the Commission’s explicit intent to “reduc[e] the time and resources spent on disputes”¹—with discovery of irrelevant and confidential information about the pole attachment rent Verizon pays non-parties.² With its previous motion to compel, FirstEnergy sought the pole attachment rates Verizon paid three non-party electric utilities, PECO Energy Company, PPL Electric Utilities Corporation, and Duquesne Light Company (the

¹ *Assumption of Comm’n Jurisdiction over Pole Attachments from the FCC*, No. L-2018-3002672, 2019 WL 4345730, at *6 (Aug. 29, 2019) (“Final Rulemaking Order”).

² *See Order Denying Motion to Compel Filed by FirstEnergy Regarding Interrogatories I-1, I-20, and I-21 at 5-7* (May 11, 2020) (“Order Denying Motion to Compel”).

“EDCs”).³ With this motion, FirstEnergy seeks a second bite at the apple by slightly repackaging its request: it asks for the total amount of “pole attachment rent that Verizon paid” to these three non-party EDCs “each year from 2011 to present,” expressed on a gross and net basis.⁴

The presiding officer correctly denied FirstEnergy’s request for the pole attachment rates Verizon paid non-party EDCs and should deny FirstEnergy’s request for the rental amounts Verizon paid non-party EDCs for the same reasons. The rental amount Verizon paid each EDC is confidential non-party information that Verizon cannot produce.⁵ The rental amounts are also outside the scope of proper discovery. “Pole attachment rates are case specific and the terms and conditions of various agreements dependent on the unique facts of each circumstance.”⁶ As a result, the pole attachment rental amounts Verizon pays to other electric utilities—like the “pole attachment rates Verizon pays to other electric utilities”—do not tend to establish a material fact, make a fact at issue more or less probable, or support a reasonable inference or presumption regarding a material fact in this case.⁷ It is about the “just and reasonable pole attachment rates Verizon should pay to *FirstEnergy*”—and not to the other EDCs.⁸

The Federal Communications Commission (“FCC”) recently reconfirmed that the pole attachment rates Verizon paid to non-parties are not relevant when setting rates under the FCC’s

³ *Id.* at 5.

⁴ Motion to Compel ¶ 26 (requesting response to Interrogatory III-1, as revised).

⁵ Order Denying Motion to Compel at 6.

⁶ *Id.* at 7. By statute and regulation, a just and reasonable pole attachment rate is calculated using pole costs specific to the pole owner. *See* 52 Pa. Code § 77.4(a) (incorporating 47 U.S.C. § 224(e) (stating how a “utility shall apportion the cost of providing space on a pole”) and 47 C.F.R. § 1.1406(d)(2) (calculating rates based on a pole owner’s “net cost of a bare pole”)).

⁷ Order Denying Motion to Compel at 6-7.

⁸ *Id.* at 6 (emphasis added).

rate formulas. In the related case involving FirstEnergy’s Maryland affiliate, Potomac Edison sought similar non-party rate information from Verizon’s Maryland affiliate. The FCC denied the request, finding that “Potomac Edison has not adequately demonstrated how the pole attachment rates that Verizon pays to other electric utilities is relevant to determining whether the rates Potomac Edison charges Verizon are just and reasonable under the Commission’s orders and rules.”⁹

FirstEnergy seeks a different result this time around, but its arguments do not make confidential non-party pole attachment rental information any more discoverable.¹⁰

First, FirstEnergy argues that non-party pole attachment rental amounts are relevant to “the potential impact of a Commission decision in Verizon’s favor, which would likely serve as precedent to substantially reduce the EDCs’ revenues derived from joint use agreements with ILECs and, by extension, increase the EDCs’ rates for electric distribution service.”¹¹ This is not a valid basis for discovery in a formal complaint proceeding, which is limited to the application of the Commission’s regulations to the facts of this case. This proceeding is *not*, and cannot be, a broad inquiry into the appropriateness of the Commission’s regulations, their hypothetical impact on all Pennsylvania utilities, or ways the regulations could be amended.¹² FirstEnergy had an opportunity to argue for different regulations during last year’s rulemaking; this case is now solely about enforcing the regulations the Commission adopted.

⁹ Letter Order at 3 (FCC May 22, 2020), available at <https://ecfsapi.fcc.gov/file/05222107409097/DOC-364529A1.pdf>.

¹⁰ FirstEnergy also argues that Verizon’s “general, non-specific objections” should be dismissed, Motion to Compel ¶¶ 15-17, but Verizon did not make any general objections, *id.* App’x B.

¹¹ Motion to Compel ¶ 31.

¹² *See, e.g.*, 45 Pa. Stat. Ann. § 1201.

FirstEnergy notes that the Commission exercised jurisdiction so it could “address Pennsylvania-specific pole attachment issues” and “provide a balanced approach to the competing needs and demands on pole infrastructure between pole owners, pole attachers, and the telecommunications, electric, and cable industries.”¹³ But this did not open the Commission’s regulations to reconsideration every time a formal complaint is filed. Instead—and as stated in the paragraph on which FirstEnergy relies—the Commission decided to assume jurisdiction of Pennsylvania-specific pole attachment disputes to “reduc[e] the time and resources spent on disputes” and to resolve such disputes “in a predictable manner using federal rules.”¹⁴ FirstEnergy’s request seeks the opposite—to complicate this case with far-reaching discovery into the propriety of the Commission’s regulations and their potential impact on non-parties. There is enough to decide in this case already without expanding it to include other EDCs and matters that may only properly be considered in a notice-and-comment rulemaking.

Nor is there any reason to believe the information FirstEnergy seeks would, in fact, disclose the impact of the Commission’s regulations on rates paid by electric ratepayers.¹⁵ FirstEnergy predicts other EDCs will reduce the rates they charge, that those EDCs will then seek to offset their proposed revenue requirements in their next Section 1308(d) base rate proceedings with lower rental rates, and that the Commission will approve increases to the rates charged electric ratepayers as a result.¹⁶ This is all pure conjecture. It is not relevant or likely to lead to the discovery of admissible evidence in this case, which is limited to setting the just and reasonable rate for Verizon’s use of FirstEnergy’s poles.

¹³ Motion to Compel ¶ 30 & n.8 (quoting Final Rulemaking Order, 2019 WL 4345730, at *6).

¹⁴ Final Rulemaking Order, 2019 WL 4345730, at *6.

¹⁵ Motion to Compel ¶¶ 29, 31.

¹⁶ *Id.* ¶ 29.

Second, FirstEnergy argues the specific pole rental amounts paid non-party EDCs are relevant because Verizon’s aggregate “Pole Rental Expense” is an input used when calculating rates third parties pay for use of *Verizon’s* poles.¹⁷ But the Commission is not setting rates for use of *Verizon’s* poles in this case because its jurisdiction is limited to ensuring just and reasonable rates for use of *FirstEnergy’s* poles.¹⁸ And even if the Commission were to consider rates for FirstEnergy’s use of Verizon’s poles, the company-specific rental amounts FirstEnergy seeks are *not* used when calculating rates for use of Verizon’s poles. FirstEnergy misunderstands or mischaracterizes the FCC’s rate formulas, which require Verizon to remove its *aggregate* “Pole Rental Expense” from the rental rates it charges third parties.¹⁹ This ensures that Verizon—and only Verizon—pays pole attachment rent for Verizon’s use of electric utility poles.²⁰ When adopting its rate formulas, the FCC rejected a company-specific approach to the “Pole Rental Expense” input like the one FirstEnergy seeks here.²¹ The specific rental amount Verizon paid each non-party EDC, therefore, has no bearing on or relevance to the calculation of rental rates third parties pay for use of Verizon’s poles, much less the just and reasonable rate to which Verizon is entitled for use of FirstEnergy’s poles.

¹⁷ *Id.* ¶ 33.

¹⁸ *See* 52 Pa. Code § 77.4(a) (incorporating 47 U.S.C. § 224(a)(4), (b)) (providing jurisdiction to “regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable,” and defining “pole attachment” to “mean[] any attachment by a cable television system or provider of telecommunications service to a pole ... owned or controlled by a utility.”). If granted the relief it seeks, Verizon will reduce the rates it charges FirstEnergy so they are proportional to the rates set by the Commission—and so Verizon’s witness, Dr. Calnon, calculated and attached to his direct testimony the rates Verizon would charge FirstEnergy if Verizon is granted the relief it seeks.

¹⁹ *See In Re Amendment of Rules & Policies Governing Pole Attachments*, 15 FCC Rcd 6453, 6483 (¶ 56) (2000).

²⁰ *Id.*

²¹ *Id.* at 6483 (¶ 55).

FirstEnergy argues that it “should be able to investigate the bases for” the aggregate “Pole Rental Expense” amounts Verizon reported to the FCC to “determine if they are accurate.”²² This argument also fails. The FCC’s rate formulas are based on Verizon’s *reported* cost data.²³ There is no basis for questioning or investigating in this case the “Pole Rental Expense” values that Verizon certified and filed at the FCC, particularly when it would also open to discovery the basis for the cost data FirstEnergy reported to the Federal Energy Regulatory Commission.²⁴

Finally, FirstEnergy argues that the pole attachment rental amounts Verizon pays non-party EDCs should not be confidential or competitively sensitive for three reasons that lack merit. First, it argues that Verizon’s aggregate “Pole Rental Expense” is publicly reported.²⁵ But disclosure of the aggregate amount does not change the fact that the specific amounts Verizon paid each EDC *are* confidential. Second, FirstEnergy argues that EDCs “include these revenues in their public Section 1308(d) base rate filings.”²⁶ But FirstEnergy does not point to any filing that separately reports the amount Verizon paid a specific EDC—and if such a public filing existed, FirstEnergy would not need to obtain the amount in discovery here. Finally, FirstEnergy argues the total rental amounts paid to non-party EDCs should not be confidential because it withdrew interrogatories seeking pole counts and attachment counts that FirstEnergy

²² Motion to Compel ¶ 33.

²³ *See, e.g., In Re Amendment of Rules & Policies Governing Pole Attachments*, 15 FCC Rcd at 6464 (¶ 13) (stating that rates for use of ILEC poles are calculated using amounts “as reported to ARMIS”).

²⁴ *See id.* at 6474 (¶ 36) (stating that rates for use of electric utility poles are calculated “using FERC Accounts”).

²⁵ Motion to Compel ¶ 36.

²⁶ *Id.*

could pair with the total rental amounts to back into the confidential rental rates.²⁷ This argument is based on a mischaracterization of Verizon’s objection, which objected to FirstEnergy’s attempt to obtain the previously denied confidential non-party pole attachment rates by seeking both the total rental amounts paid and the underlying pole counts or attachment counts.²⁸ But Verizon also specifically objected to production of the pole attachment rental amounts because they are confidential and competitively sensitive in their own right.²⁹ And, as the presiding officer rightly recognized, “[t]he other electric utilities whose information would be part of the answer” to FirstEnergy’s request “are not subject to the protective order in place in this proceeding.”³⁰ Discovery of the pole attachment rental amounts, therefore, is not permitted because they “relate[] to a matter which is privileged and the matter is privileged if it is confidential to another entity.”³¹

CONCLUSION

For the foregoing reasons, the Commission should deny FirstEnergy’s motion to dismiss objections and compel answers to interrogatory III-1.

²⁷ *Id.* ¶ 34.

²⁸ *Id.*

²⁹ *See id.* ¶ 25 (quoting Objection).

³⁰ Order Denying Motion to Compel at 6.

³¹ *Id.*

Respectfully submitted,



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Counsel for Verizon Pennsylvania LLC and
Verizon North LLC

Dated: May 26, 2020

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a true copy of Verizon's Opposition to the Motion to Dismiss and Compel, 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 26th day of May, 2020.

VIA E-MAIL

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