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October 27, 2020

Via eFile and Email

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 First Energy's Motion to Unseal Certain Proprietary Information in the above captioned matter.

Because Verizon's response includes certain Proprietary information, the Public Version of the Exceptions is being e-filed, with the Proprietary Version being provided via email.

Very truly yours,

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

Suzan D. Paiva

SDP/sau
Enclosure

Via E-Mail

cc: Office of Special Assistants (ra-OSA@pa.gov)
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 Opposition, 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 27th day of October, 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	:	

**OPPOSITION OF VERIZON PENNSYLVANIA LLC AND VERIZON NORTH LLC
TO MOTION OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA
ELECTRIC COMPANY, AND PENNSYLVANIA POWER COMPANY
TO UNSEAL CERTAIN PROPRIETARY INFORMATION**

(PUBLIC VERSION)

Verizon Pennsylvania LLC and Verizon North LLC (“Verizon”) oppose the Motion of Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company (“FirstEnergy”) to Unseal Certain Proprietary Information.¹

ARGUMENT

Dressed in the guise of a straightforward motion to release confidential information of limited scope and utility, FirstEnergy invites the Commission to release the most basic and commercially sensitive information underlying the parties’ joint use agreements—including the rental rates paid by Verizon—to compound the competitive harm FirstEnergy has imposed on Verizon for nearly a decade. FirstEnergy’s request is as disingenuous as it is misguided. FirstEnergy has long recognized the need to protect the sensitive pricing information it now seeks to disclose. Its Maryland affiliate recently requested confidential treatment of the same

¹ FirstEnergy’s motion repeats numerous factual and legal assertions from its Exceptions to the Recommended Decision, which are irrelevant to the relief sought in its motion. Verizon refers the Commission to its Reply to FirstEnergy’s Exceptions for Verizon’s opposition to them.

information in a related proceeding at the Federal Communications Commission (“FCC”). The Commission cannot unseal the confidential information FirstEnergy requests without necessarily disclosing the sensitive rates and other confidential information because of other information already in the public record. FirstEnergy offers no good reason, and there is none, to disclose any of Verizon’s proprietary information, especially at this stage of the case. The Commissioners have access to the information, and the public record discloses everything needed to understand the issues and potential precedential effect of a decision in this commercial dispute. The Commission should deny FirstEnergy’s motion to unseal.

A. FirstEnergy Misrepresents the Information Its Motion Would Disclose.

FirstEnergy seeks to disclose far more proprietary information than the two categories FirstEnergy cites—specifically, “the amount of refunds sought by Verizon” and “the annual revenue decrease sought by Verizon.”² Because FirstEnergy provided *no* reason to disclose these additional categories of proprietary information, FirstEnergy’s motion must be denied. FirstEnergy agreed the information should be held in confidence because it is commercially sensitive proprietary information that would cause competitive harm if released.³

First, FirstEnergy says its motion “only” would disclose the refund amount Verizon requested as a total amount [REDACTED] and on an annual basis [REDACTED].⁴ This is not true. These amounts, combined with information on the public record, will reveal Verizon’s annual rental payment to FirstEnergy, which is proprietary. The Commission’s regulations state

² Mot. at 1, 2; *see also id.* ¶¶ 21, 33, 34, 36.

³ *See, e.g.*, Mot. App’x K (Stipulated Protective Agreement); *cf.* 52 Pa. Code § 5.365(a).

⁴ Mot. at 1, 2, ¶¶ 21, 33, 34, 36. FirstEnergy refers to the annualized refund amount as the “annual revenue decrease.” Confidential information referenced in this opposition is marked with a red box in the proprietary version and redacted in the public version.

that a “refund ... will normally be the difference between the amount paid under the unjust and/or unreasonable rate” (a confidential number, ██████████) “and the amount that would have been paid under the rate ... established by the Commission, plus interest, consistent with the applicable statute of limitations”⁵ (a public number, \$7.55 million).⁶ As a result, FirstEnergy’s request to unseal refund amounts is also a request to unseal the total amount Verizon pays FirstEnergy under the parties’ Joint Use Agreements, which is proprietary.⁷

Second, though not discussed in its motion, FirstEnergy also seeks the release of additional categories of confidential information in the appendices attached to its motion.⁸ It provides no reason to disclose this competitively sensitive information. Instead, FirstEnergy emphasizes that it “is *not* requesting that the individual rates that Verizon pays be disclosed”⁹ or for disclosure of information that could “be used to back into the specific rates Verizon pays under each of the Joint Use Agreements.”¹⁰ This is false. The additional information FirstEnergy seeks to release permits a straightforward calculation of the very rates it claims it is not seeking to disclose.

⁵ 52 Pa. Code § 77.4(a) (incorporating 47 C.F.R. § 1.1407(a)(3)).

⁶ The lawful rent FirstEnergy is required to charge Verizon under the Commission’s regulations is public because it is calculated using the new telecom rate formula in the Commission’s regulations, presumptive inputs in the Commission’s regulations, publicly reported data, and publicly available numbers of shared utility poles. *See* Recommended Decision, Finding of Fact 11; *see also* VZ St. 2.0, Ex. MSC-1 at VZ00102 (Calnon Aff., Ex. C-6).

⁷ This is far different from the situation in *Lyft, Inc. v. Pa. P.U.C.*, where “aggregate” data did not and could not “reveal any details,” such “as reference to drivers, customers, or specific locations,” 145 A.3d 1235, 1243 (Pa. Commw. 2016).

⁸ *See, e.g.*, Mot. App’x A at 4:7-8; Mot. App’x C at 35; Mot. App’x E at 1, 3; Mot. App’x F at 9, 11, 19, 55; Mot. App’x G at 3, 43; Mot. App’x H at 6; Mot. App’x I at 6, 24.

⁹ Mot. at 2.

¹⁰ Mot. ¶ 33; *see also* Mot. at 2.

For example, FirstEnergy proposes unsealing the fact that the new telecom rate required by the Commission’s regulations “is about [REDACTED] the rate FirstEnergy has been charging Verizon.”¹¹ Because the new telecom rates are public,¹² multiplying them by [REDACTED] discloses the confidential Agreement rates with near precision. FirstEnergy also asks to unseal the specific pole attachment rental amounts Verizon paid each FirstEnergy company in 2019.¹³ Pole attachment rent is a matter of price times quantity. Because the quantity input (the number of shared utility poles) is public, these confidential rental amounts also disclose the confidential rates Verizon pays FirstEnergy.¹⁴ FirstEnergy’s motion thus provides the reason why it must be denied—contrary to its representations, it asks to unseal data that *can* be used to reverse calculate the rates Verizon pays FirstEnergy under the Joint Use Agreements.¹⁵

B. The Information FirstEnergy Seeks To Disclose Is Proprietary to Verizon, and Public Disclosure Would Cause Competitive Harm.

FirstEnergy’s request to unseal Verizon’s proprietary information is unprincipled and would competitively harm Verizon. FirstEnergy protects the same information for every other company attached to its utility poles because the information is competitively sensitive.¹⁶ And

¹¹ Mot. App’x F at 9, 11; *see also* Mot. App’x C at 35; Mot. App’x E at 1, 3.

¹² *See* Recommended Decision, Finding of Fact 11.

¹³ Mot. App’x A at 4:7-8.

¹⁴ For example, stating that Verizon paid Met-Ed [REDACTED] in 2019 is the same as stating that Verizon paid about [REDACTED] per pole because the parties pay the same effective rate (the exact rate was [REDACTED] per pole). The effective rate is calculated by dividing Verizon’s total payment by the “net” number of poles Verizon uses (meaning the 129,421 Met-Ed poles used by Verizon less the 30,027 Verizon poles used by Met-Ed) because rent on the overlapping number of poles cancels out: [REDACTED] / 99,394 net poles = [REDACTED] per pole.

¹⁵ Mot. at 2.

¹⁶ *See* Mot. App’x K (Stipulated Protective Agreement).

FirstEnergy’s Maryland affiliate is currently asking the FCC to keep the same information about Verizon’s Maryland affiliate confidential.¹⁷ In a request filed at the FCC, it explained:

This material should forever be kept confidential because it will always serve to discourage FirstEnergy and all of its ILEC joint use partners from negotiating freely if they knew such terms and conditions would be subject to disclosure. Moreover, the competitive harm of disclosing cost information of communications competitors would continue for the foreseeable future.¹⁸

Verizon’s proprietary information in Pennsylvania should be afforded the same confidential treatment.¹⁹

FirstEnergy admits its motion is untethered from the Commission’s regulations, which “do not specifically address requests by a party to unseal or re-designate certain proprietary information as public.”²⁰ And FirstEnergy waited nearly 11 months to challenge the designation of proprietary information Verizon first provided in its November 2019 complaint. Its last-minute challenge is curious and unfounded.

Commission regulations allow a party to file information under seal where “the potential harm to the party of providing the information would be substantial” and “the harm to the party if the information is disclosed without restriction outweighs the public’s interest in free and open

¹⁷ See Ex. A at 12-13 (Potomac Edison’s Request for Confidential Treatment, *Verizon Maryland LLC v. Potomac Edison Co.*, FCC Proceeding No. 19-355 (Apr. 27, 2020)).

¹⁸ *Id.* at 13.

¹⁹ See, e.g., *Dep’t of Health v. Office of Open Records*, 4 A.3d 803, 811 (Pa. Commw. 2010) (“[S]trong public policy considerations” support the need to protect from public disclosure confidential and proprietary information solicited by an agency carrying out its regulatory oversight duties, because requiring the agency to disclose these documents after it has obtained them based on a promise of confidentiality would make people “less likely to cooperate and provide relevant information” and hamper the agency’s ability to meet its regulatory responsibilities.).

²⁰ Mot. ¶ 20.

access to the administrative hearing process.”²¹ The Commission has already found comparable pole attachment information meets this standard, stating “the Commission has determined that substantial competitive harm would result . . . if the term and conditions, including the pricing information contained in the Wireless Agreement are released to the public.”²² As the Commission explained “substantial competitive harm could result because release of the information regarding the terms and conditions under which [a company] may attach it[s] equipment to [an electric utility’s] facilities would enable competitors to formulate a competitive strategy using company-specific and guarded information.”²³

Confidential treatment is also justified under each factor the Commission considers when deciding whether to issue a protective order.²⁴ FirstEnergy’s Maryland affiliate explained why in its filing at the FCC:

1. The extent to which the disclosure would cause unfair economic or competitive damage. If Joint Use Agreement rates, rental amounts, and requested refunds are disclosed, the “competitive harm of disclosing cost information of communications competitors would continue for the foreseeable future.”²⁵ And even if the rates are invalidated, their disclosure would still “serve to discourage FirstEnergy and all of its ILEC joint use partners from negotiating freely if they knew such terms and conditions would be subject to disclosure.”²⁶

²¹ 52 Pa. Code § 5.365(a).

²² *PPL Telecom LLC*, No. G-00000826, 2005 WL 1037186, at *2 (Pa. PUC Mar. 23, 2005).

²³ *Id.*; see also *The United Tel. Co. of Pennsylvania LLC d/b/a CenturyLink Petition for Protective Order Regarding 2017 Annual Price Cap Filing*, No. P-2017-2622414, 2017 WL 4552468, at *1–2 (Pa. PUC Oct. 5, 2017) (“disclosure of competitively-sensitive revenue and pricing information would allow competitors to gain knowledge of CenturyLink operations, financial performance, and proprietary operating results”).

²⁴ 52 Pa. Code § 5.365(a).

²⁵ Ex. A at 13 (Potomac Edison’s Request for Confidential Treatment).

²⁶ *Id.*

2. The extent to which the information is known by others and used in similar activities. “It is not common practice to disclose these joint use attachment rates” or refund information,²⁷ which is currently held in confidence.²⁸
3. The worth or value of the information to the party and to the party’s competitors. “[I]f communications companies know what their competitors pay in pole attachment rental rates, that information allows them to compete unfairly for specific customers in any area.”²⁹
4. The degree of difficulty and cost of developing the information. Not applicable.
5. Other statutes or regulations dealing specifically with disclosure of the information. Pole attachment rates, rental amounts, and requested refunds should be withheld from public inspection and provided confidential treatment under the comparable regulations at the FCC.³⁰

FirstEnergy’s motion must be denied. Disclosure of the information FirstEnergy marked would alert Verizon’s competitors to the extent of the competitive rate disparity in Pennsylvania and provide them an opportunity to exploit the disparity when making deployment decisions. The information would provide “competitors valuable insight into how [a company] structures and prices its leasing operations,”³¹ “could be used ... to determine the relative strengths and weaknesses in the markets in which [a company] operates,”³² and would chill and negatively impact Verizon’s relationships and rate negotiations with other electric utilities, including

²⁷ *Id.*

²⁸ Mot. ¶ 35.

²⁹ Ex. A at 10 (Potomac Edison’s Request for Confidential Treatment).

³⁰ *Id.* at 1 (citing 47 C.F.R. §§ 0.457, 0.459).

³¹ *Marcus Cable Assocs., L.P. v. Tex. Util. Elec. Co.*, 12 FCC Rcd 10362, 10376 (¶¶ 36-37) (1997) (quoting *In the Matter of Thomas N. Locke*, 8 FCC Rcd 8746 (¶ 4) (1996)); *see also BellSouth Telecommunications, LLC d/b/a AT&T Florida v. Florida Power and Light Co.*, 2020 WL 2568977, at *3 (¶¶ 6-8) (EB 2020) (redacting invoiced pole attachment rates and net rental amount); *Verizon Va. v. Va. Elec. and Power Co.*, 32 FCC Rcd 3750, 3753 (¶ 7 n.29) (EB 2017) (redacting invoiced pole attachment rates).

³² *See In the Matter of Lara v. Carlson*, 31 FCC Rcd 12931, 12933 (¶ 9) (2016).

utilities that are not subject to the Commission’s pole attachment regulations and can be expected to refuse a rate lower than the unreasonably high rates FirstEnergy imposed on Verizon.

C. Resolving this Case Does Not Require Disclosure of Proprietary Information.

It would be particularly inappropriate to release confidential information at this stage of the case, when the Commission has all the information it needs to issue a final decision and the public record permits a complete understanding of the issues and its potential precedential effect.

Release of the information is not required, as FirstEnergy contends, “for the Commission to adequately consider the relief sought by Verizon.”³³ The parties filed proprietary versions of all pleadings, briefs, testimony, exhibits, and exceptions and the presiding officer prepared a proprietary version of his recommended decision. The Commission is fully informed.

Release of the information is also not required for non-parties to understand the dispute and its potential precedential effect. This case is only about enforcing the Commission’s new pole attachment regulations. It is *not*, and cannot be, a broad inquiry into the wisdom of the regulations or their hypothetical impact on other rates or companies.³⁴ The Commission adopted its pole attachment regulations in a proper rulemaking grounded in undisputed statutory authority under the Public Utility Code and federal law. The regulations are binding in this case.³⁵

And the public record provides all the information needed to understand the dispute. FirstEnergy recognized during the Commission’s rulemaking that the new pole attachment

³³ Mot. ¶ 23; *see also* Mot. at 2.

³⁴ *See, e.g.*, 45 P.S. § 1201; *see also* Recommended Decision at 46 (“First Energy’s primary argument . . . seeks to relitigate the Commission’s Final Rulemaking Order that adopted this regulatory structure. This case is not the time or place for such relitigation.”).

³⁵ *Herdelin v. Greenberg*, 328 A.2d 552, 554 (Pa. Commw. 1974) (“Authorized regulations of an administrative agency have the force and effect of law and bind the agency equally with others.”); *see also Borough of Bedford v. Commonwealth*, 972 A.2d 53, 61 (Pa. Commw. 2009).

regulations require “lower rates for Incumbent Local Exchange Carriers (‘ILECs’)” such as Verizon under “most existing joint use agreements.”³⁶ The regulations provide the rate formula that sets the lawful rate and describes the refunds that are available in pole attachment complaint proceedings.³⁷ The public record includes those properly calculated new telecom rates for use of FirstEnergy’s poles,³⁸ Verizon’s arguments for enforcing those rates as of July 2011 when the FCC ordered electric utilities to charge competitively neutral rates, and FirstEnergy’s arguments against doing so.

There is no need to publish additional information. This case also will not determine the impact of the Commission’s regulations on FirstEnergy’s electric rates,³⁹ and should not “trigger a base rate proceeding” for FirstEnergy,⁴⁰ let alone require a rate increase if one is filed, because the refunds at issue average about █████ percent of FirstEnergy’s annual operating revenues.⁴¹ This case also will not determine the effect of the Commission’s regulations on any other electric utility in Pennsylvania. “Pole attachment rates are case specific”⁴² under the Commission’s regulations because they depend on the pole costs of the pole owner. And each electric utility knows the pole attachment rates it charges ILECs. If there is a disconnect, each electric utility already knows the extent of its own exposure. Information about the extent of FirstEnergy’s

³⁶ Comments of FirstEnergy at 7-8, Docket No. L-2018-3002672 (Oct. 29, 2018) (“FE Rulemaking Comments”).

³⁷ 52 Pa. Code § 77.4(a) (incorporating 47 U.S.C. § 224(b); 47 U.S.C. §§ 1.1407(a)(3), 1.1413(b)).

³⁸ See Recommended Decision, Finding of Fact 11.

³⁹ See, e.g., Recommended Decision at 48.

⁴⁰ See FE Initial Br. at 50 (discounting as “irrelevant” “[w]hether the reduction in rates would trigger a base rate proceeding for FirstEnergy’s EDCs”).

⁴¹ VZ St. 2.1 at 56:13-57:3 (Calnon Surrebuttal) and Ex. MSC-5.

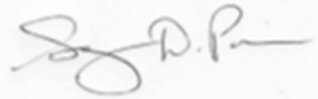
⁴² Order Denying Mot. to Compel filed by FirstEnergy at 7 (May 11, 2020).

misconduct adds nothing. Verizon's proprietary information should stay proprietary.

CONCLUSION

For the foregoing reasons, the Commission should deny FirstEnergy's motion to unseal certain proprietary information.

Respectfully submitted,



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Counsel for Verizon Pennsylvania LLC and
Verizon North LLC

Dated: October 27, 2020

Exhibit A

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April 27, 2020

Via ECFS

Marlene J. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

**Re: The Potomac Edison Company's Request for Confidential Treatment
(Proceeding Number 19-355; Bureau ID Number EB-19-MD-009)**

Ms. Dortch:

Please find attached The Potomac Edison Company's Request for Confidential Treatment in Proceeding Number 19-355; Bureau ID Number EB-19-MD-009.

Sincerely,



Timothy A. Doughty
Attorney for The Potomac Edison Company

Enclosures

cc: Rosemary McEnery, Enforcement Bureau
Anthony DeLaurentis, Enforcement Bureau

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Verizon Maryland LLC <i>Complainant,</i>)	
)	
)	Proceeding Number 19-355
v.)	
)	Bureau ID Number EB-19-MD-009
)	
The Potomac Edison Company, <i>Defendant</i>)	
)	

**THE POTOMAC EDISON COMPANY’S
REQUEST FOR CONFIDENTIAL TREATMENT**

Defendant The Potomac Edison Company (“Potomac Edison”), pursuant to Section 0.457 and 0.459 of the Commission’s Rules, 47 C.F.R. §§0.457, 0.459, the Enforcement Bureau’s April 13, 2020 Letter Order, and the scheduling request granted on April 24, 2020: (1) respectfully identifies certain information and documents previously filed and marked confidential that on further consideration do not necessitate confidential treatment should the Commission decide to use it in an order on the merits of this proceeding; and (2) respectfully requests that the Commission withhold from public inspection and accord confidential treatment to the information and documents identified below that were previously filed and marked confidential. In support of this Request, Potomac Edison states as follows:

A. Information and Documents That Do Not Necessitate Confidential Treatment if Used in a Commission Order on the Merits

On further consideration of the confidentiality designations in its Answer to Complaint filed on February 5, 2020 (“Answer”), in its Second Set of Responses to Complainant’s First Set of Interrogatories filed February 10, 2020 (“February 10 Discovery Responses”), and in the Joint

Statement filed on April 27, 2020 (“Joint Statement”), Potomac Edison respectfully identifies the following information and documents previously designated as confidential that on reconsideration do not necessitate confidential treatment should the Commission decide to use it in an order on the merits in this proceeding:

Pole Attachment Rental Rate Calculations

Answer at page 24, Affirmative Defenses ¶49.
Answer at page 44, Affirmative Defenses ¶95, second sentence.
Answer at page 51, Affirmative Defenses ¶110, columns 3, 4 and 5.
Answer at Attachment G, PE00087-PE00094
Joint Statement at page 10, ¶¶57-58
Joint Statement at page 33, ¶136
Joint Statement at page 54, ¶53
Joint Statement at page 68, ¶113

SPANS Fees

Answer at page 39, Affirmative Defenses ¶84
Answer at page 90, Answer to Verizon Maryland 39, section (iii)
Answer at Attachment B, PE00007, ¶20
Joint Statement at page 62, ¶95

Speed to Market

Answer at page 41, Affirmative Defenses ¶87
Answer at page 85, Answer to Verizon Maryland 33, section (iv)
Answer at page 89, Answer to Verizon Maryland 39, section (v)
Joint Statement at page 30, ¶116
Joint Statement at page 61, ¶88

Periodic Field Survey Costs

Answer at page 41, Affirmative Defenses ¶88
Answer at page 85, Answer to Verizon Maryland 33, section (v)
Answer at page 91, Answer to Verizon Maryland 40, second-to-last paragraph
Answer at Attachment B, PE00008, ¶22
Joint Statement at page 66, ¶105

Third Party Attachment Rate Range

Answer at page 47, Affirmative Defenses ¶101
Answer at Attachment B, PE00006, ¶9

Joint Statement at page 7, ¶42
Joint Statement at page 69, ¶119

Provisions Identified as Identical in Third Party Contracts

Answer at page 48, Affirmative Defenses ¶103, footnote 120, first sentence
Joint Statement at page 70, ¶120, second sentence

Statistically Reliable Field Audit

Answer at page 41, Affirmative Defenses ¶89
Answer at page 58, Affirmative Defenses ¶127
Answer at Attachment F, PE00052, ¶32
Answer at Attachment L, PE00138-PE00154
Joint Statement at page 31, ¶¶120-121
Joint Statement at page 35, ¶146
Joint Statement at page 66, ¶106
Joint Statement at page 71, ¶122

General Statement of Construction Costs

Answer at page 24, Affirmative Defenses ¶50
Answer at Attachment F, PE00052, ¶28

Email Prohibiting Duplicate Pole Construction

Answer at Attachment D, PE00038-PE00040

Draft License Agreement

Answer at page 90, italicized language of Verizon in Verizon Maryland 40
Answer at page 95, italicized language of Verizon in Verizon Maryland 46
Answer at page 96, italicized language of Verizon in Verizon Maryland 48

B. Request to Withhold From Public Inspection and Accord Confidential Treatment

Potomac Edison respectfully requests that the Commission withhold from public inspection and accord confidential treatment to the information and documents identified below that were previously filed and marked confidential.

Make-Ready Costs

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT¹

Answer at page iii

Answer at page 35, Affirmative Defenses ¶¶73

Answer at page 37, Affirmative Defenses ¶¶77

Answer at page 85, Answer to Verizon Maryland 33, section (ii)

Answer at page 89, Answer to Verizon Maryland 39, section (ii)

Answer at pages 90-91, Answer to Verizon Maryland 40, section (ii)

Answer at Attachment B, PE00007, ¶15

Answer at Attachment B, PE00010

Joint Statement at page 58, ¶72

Joint Statement at page 59, ¶80

2. IDENTIFICATION OF THE COMMISSION PROCEEDING IN WHICH THE INFORMATION WAS SUBMITTED OR A DESCRIPTION OF THE CIRCUMSTANCES GIVING RISE TO THE SUBMISSION²

The above-captioned proceeding.

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED³

All of this information is commercial and financial, since it identifies costs associated with obtaining access to Potomac Edison's distribution poles in order to provide communications services.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION⁴

All of this information concerns a service that is subject to competition because Potomac Edison's communications attachers compete with each other.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM⁵

Disclosure of this information could result in substantial competitive harm because if communications companies know what their competitors pay in make-ready costs, that information allows them to compete unfairly for specific customers in any area. Verizon, in fact, already has an advantage because Verizon, as the entity whose Complaint this Answer responded to, has had access to this information in the Answer about its competitor's make-ready costs.

¹ 47 C.F.R. § 0.459(b)(1).

² *Id.* § 0.459(b)(2).

³ *Id.* § 0.459(b)(3).

⁴ *Id.* § 0.459(b)(4).

⁵ *Id.* § 0.459(b)(5).

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE⁶

This information was generated to prepare Potomac Edison's Answer, is marked as confidential in Potomac Edison's Answer, and Potomac Edison does not otherwise make it available.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES⁷

This information is not available to the public and has not been disclosed to third parties.

8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE⁸

This material should forever be kept confidential because it will always serve to disclose cost information that is competitively sensitive and could be used to unfairly provide an advantage to competitors.

9. ANY OTHER INFORMATION THAT THE PARTY SEEKING CONFIDENTIAL TREATMENT BELIEVES MAY BE USEFUL IN ASSESSING WHETHER ITS REQUEST FOR CONFIDENTIALITY SHOULD BE GRANTED⁹

None.

Settlement Negotiations

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT

Answer at page iv
Answer at Attachment B, PE00006, ¶11
Answer at Attachment Q, PE00214-PE00217
Answer at Attachment R, PE00219-PE00220
Joint Statement at page 18, ¶33
Joint Statement at page 39, ¶170

2. IDENTIFICATION OF THE COMMISSION PROCEEDING IN WHICH THE INFORMATION WAS SUBMITTED OR A DESCRIPTION OF THE CIRCUMSTANCES GIVING RISE TO THE SUBMISSION

⁶ *Id.* § 0.459(b)(6).

⁷ *Id.* § 0.459(b)(7).

⁸ *Id.* § 0.459(b)(8).

⁹ *Id.* § 0.459(b)(9).

The above-captioned proceeding

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED

All of this information is commercial since it identifies issues pertaining to the joint use relationship between Potomac Edison and Verizon. This information is financial to the extent it identifies dollar amounts associated with the joint use relationship between Potomac Edison and Verizon.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION

All of this information concerns a service that is subject to competition because Potomac Edison's communications attachers compete with Verizon.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM

There is always an expectation that settlement negotiations will be kept confidential, particularly financial settlements. It would discourage settlement talks if the parties knew such sensitive financial settlement offers would be disclosed.

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE

This information is marked as confidential in Potomac Edison's Answer, and Potomac Edison does not otherwise make it available.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES

This information is not available to the public and has not been disclosed to third parties.

8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE

This material should forever be kept confidential because it will always serve to discourage parties from making settlement offers if they knew such sensitive financial settlement offers would be disclosed.

9. ANY OTHER INFORMATION THAT THE PARTY SEEKING CONFIDENTIAL TREATMENT BELIEVES MAY BE USEFUL IN ASSESSING WHETHER ITS REQUEST FOR CONFIDENTIALITY SHOULD BE GRANTED

None.

Costs to Construct Duplicate Pole or Conduit System

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT

Answer at page 23, Affirmative Defenses ¶¶45-47

Answer at page 24, Affirmative Defenses ¶48

Answer at page 25, Affirmative Defenses ¶50 (with the exception of the \$100,000 figure on page 24)

Answer at page 25, Affirmative Defenses ¶50, at footnote 62.

Answer at page 25, Affirmative Defenses ¶51

Answer at Attachment F, PE00051, ¶¶23-27

Answer at Attachment F, PE00085

Joint Statement at page 52, ¶¶48-49

Joint Statement at page 53, ¶¶50-51

Joint Statement at page 53-54, ¶¶52-55

Joint Statement at page 55, ¶¶56-58

2. IDENTIFICATION OF THE COMMISSION PROCEEDING IN WHICH THE INFORMATION WAS SUBMITTED OR A DESCRIPTION OF THE CIRCUMSTANCES GIVING RISE TO THE SUBMISSION

The above-captioned proceeding

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED

All of this information is commercial and financial, since it identifies costs associated with constructing duplicate pole or conduit distribution systems used to distribute electricity service.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION

All of this information concerns a service that is subject to competition because Potomac Edison is subject to competition for electricity delivery in some portions of its service area.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM

Public disclosure of this information would cause Potomac Edison and the other FirstEnergy companies substantial competitive harm because it would hinder negotiations with commercial entities for electricity line extensions. In addition, this information gives Potomac Edison's competitors for the provision of electricity access to information

about how much it costs Potomac Edison to construct new pole/conduit electric distribution lines.

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE

This information is marked as confidential in Potomac Edison's Answer, and Potomac Edison does not otherwise make it available.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES

This information is not available to the public and has not been disclosed to third parties.

8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE

This information should be kept confidential for 20 years, because costs will have changed enough by then to render it no longer reliable.

9. ANY OTHER INFORMATION THAT THE PARTY SEEKING CONFIDENTIAL TREATMENT BELIEVES MAY BE USEFUL IN ASSESSING WHETHER ITS REQUEST FOR CONFIDENTIALITY SHOULD BE GRANTED

In addition to the reasons specified above, public disclosure of this information would cause Potomac Edison and the other FirstEnergy companies substantial harm because it would hinder negotiations with commercial entities for electric line extensions.

Third Party Pole Attachment Agreements

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT

Answer at page 48, Affirmative Defenses ¶103, footnote 120, last sentence
Answer at Attachment P, PE00179-PE00212
February 10 Discovery Responses, Response to Interrogatories 3 and 5
Joint Statement at page 70, ¶120, last sentence

2. IDENTIFICATION OF THE COMMISSION PROCEEDING IN WHICH THE INFORMATION WAS SUBMITTED OR A DESCRIPTION OF THE CIRCUMSTANCES GIVING RISE TO THE SUBMISSION

The above-captioned proceeding

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED

All of this information is commercial, since it identifies the terms and conditions of pole attachment agreements. The information is also financial to the extent it divulges pole attachment rental rates and other cost information.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION

All of this information concerns a service that is subject to competition because Potomac Edison's communications attachers compete with each other and with Verizon.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM

Disclosing the terms and conditions of third party attachment agreements would hinder the ability of FirstEnergy and its communications attachers to negotiate freely. The Commission favors negotiated agreements and a party's inclination to negotiate any specific provision would be inhibited if they knew it would be subject to public disclosure. A CLEC attacher, for example, would not want a cable company competitor to see what terms and conditions they negotiated with Potomac Edison. It is not common practice to disclose contracts but if that changes then it would change an expectation of privacy.

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE

These contracts and information contained therein were marked as confidential in Potomac Edison's Answer and in the February 10 Discovery Responses, and Potomac Edison does not otherwise make such contracts and information available. Potomac Edison insisted that Verizon enter into a Protective Agreement prior to releasing them to Verizon. That Protective Agreement was modeled on the Protective Agreement that FirstEnergy and Frontier entered into in 2014 in an FCC complaint proceeding as a condition of any FirstEnergy third party attachment agreements being provided to Frontier. Potomac Edison does not otherwise make these agreements available.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES

This information is not available to the public. Although FirstEnergy and Frontier entered into a Protective Agreement in 2014 as a condition of FirstEnergy providing third party attachment agreements, Potomac Edison believes no such agreements were actually provided to Frontier because the parties entered into a settlement instead.

8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE

This material should forever be kept confidential because it will always serve to discourage parties from negotiating freely if they knew such terms and conditions would be subject to disclosure.

9. ANY OTHER INFORMATION THAT THE PARTY SEEKING CONFIDENTIAL TREATMENT BELIEVES MAY BE USEFUL IN ASSESSING WHETHER ITS REQUEST FOR CONFIDENTIALITY SHOULD BE GRANTED

None.

Third Party Attacher Pole Attachment Rental Rates

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT

February 10 Discovery Responses, Response to Interrogatory 4

2. IDENTIFICATION OF THE COMMISSION PROCEEDING IN WHICH THE INFORMATION WAS SUBMITTED OR A DESCRIPTION OF THE CIRCUMSTANCES GIVING RISE TO THE SUBMISSION

The above-captioned proceeding

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED

All of this information is commercial and financial because it is pole attachment rental rates charged the entities with which Potomac Edison has attachment agreements.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION

All of this information concerns a service that is subject to competition because Potomac Edison's communications attachers compete with each other and with Verizon.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM

Disclosure of this information could result in substantial competitive harm because if communications companies know what their competitors pay in pole attachment rental rates, that information allows them to compete unfairly for specific customers in any area.

Disclosing the terms and conditions of third party attachment agreements, including the pole attachment rental rate term, would hinder the ability of FirstEnergy and its communications attachers to negotiate freely. The Commission favors negotiated

agreements and a party's inclination to negotiate any specific provision would be inhibited if they knew it would be subject to public disclosure. A CLEC attacher, for example, would not want a cable company competitor to see what terms and conditions they negotiated with Potomac Edison. It is not common practice to disclose contracts but if that changes then it would change an expectation of privacy.

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE

This pole attachment rental rate information was marked as confidential in Potomac Edison's Answer and in the February 10 Discovery Responses, and Potomac Edison does not otherwise make such pole attachment rental rate information available. Potomac Edison insisted that Verizon enter into a Protective Agreement prior to releasing this information to Verizon.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES

This information is not available to the public and has not been disclosed to third parties.

8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE

This material should forever be kept confidential because it will always serve to discourage parties from negotiating freely if they knew such pole attachment rental rates would be subject to disclosure. Moreover, the competitive harm of disclosing cost information of communications competitors would continue for the foreseeable future.

9. ANY OTHER INFORMATION THAT THE PARTY SEEKING CONFIDENTIAL TREATMENT BELIEVES MAY BE USEFUL IN ASSESSING WHETHER ITS REQUEST FOR CONFIDENTIALITY SHOULD BE GRANTED

None.

Joint Use Attachment Rates

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT

Answer at page 25, Affirmative Defenses ¶51, second sentence
Answer at page 44, Affirmative Defenses ¶95, third sentence
Answer at page 51, Affirmative Defenses ¶110, column 2
Answer at page 68, Verizon Maryland 10
Answer at page 70, Verizon Maryland 13
Answer at page 71, Verizon Maryland 14

Answer at page 72, Answer to Verizon Maryland 14
Answer at page 73, Verizon Maryland 18
Answer at page 74, Verizon Maryland 19
Answer at page 75, Verizon Maryland 21
Answer at page 76, Verizon Maryland 22
Answer at page 78, Verizon Maryland 25
Answer at page 80, Verizon Maryland 27
Answer at pages 80-81, Verizon Maryland 28
Answer at page 83, Verizon Maryland 31
Answer at page 84, Verizon Maryland 32
Answer at page 87, Verizon Maryland 36
Answer at page 97, Verizon Maryland 49
Answer at page 98, Verizon Maryland 50
Answer at page 100, Verizon Maryland 56
Answer at page 101, Verizon Maryland 57
Joint Statement at page 7, ¶¶40-41
Joint Statement at page 11, ¶¶60-61
Joint Statement at page 13, ¶¶8-10
Joint Statement at page 14, ¶¶12, 13, 15
Joint Statement at page 15, ¶¶16, 18, 19
Joint Statement at page 16, ¶23
Joint Statement at page 32, ¶¶130-132
Joint Statement at page 37, ¶¶159-160, and n.176-177
Joint Statement at page 39, ¶169
Joint Statement at page 55, ¶57

2. IDENTIFICATION OF THE COMMISSION PROCEEDING IN WHICH THE INFORMATION WAS SUBMITTED OR A DESCRIPTION OF THE CIRCUMSTANCES GIVING RISE TO THE SUBMISSION

The above-captioned proceeding

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED

All of this information is commercial and financial because it is joint use attachment rates that Verizon and Potomac Edison charge each other for use of the other's poles.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION

All of this information concerns a service that is subject to competition because Potomac Edison's communications attachers compete with Verizon.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM

Disclosing these joint use attachment rates, read in conjunction with the terms and conditions of the joint use agreement which already has been publicly disclosed, would hinder the ability of FirstEnergy and its other ILEC joint use partners in other FirstEnergy service areas to negotiate freely. The Commission favors negotiated agreements and a party's inclination to negotiate any specific provision would be inhibited if they knew it would be subject to public disclosure. It is not common practice to disclose these joint use attachment rates but if that changes then it would change an expectation of privacy.

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE

This joint use attachment rate information was marked as confidential in Potomac Edison's Answer, and Potomac Edison does not otherwise make such joint use attachment rate information available.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES

This information is not available to the public and has not been disclosed to third parties.

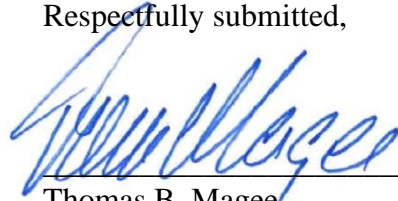
8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE

This material should forever be kept confidential because it will always serve to discourage FirstEnergy and all of its ILEC joint use partners from negotiating freely if they knew such terms and conditions would be subject to disclosure. Moreover, the competitive harm of disclosing cost information of communications competitors would continue for the foreseeable future.

9. ANY OTHER INFORMATION THAT THE PARTY SEEKING CONFIDENTIAL TREATMENT BELIEVES MAY BE USEFUL IN ASSESSING WHETHER ITS REQUEST FOR CONFIDENTIALITY SHOULD BE GRANTED

None.

Respectfully submitted,



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April 27, 2020

RULE 1.721(M) VERIFICATION

I, Thomas B. Magee, as signatory to this submission, hereby verify that I have read this Request for Confidential Treatment and, to the best of my knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding.


Thomas B. Magee

CERTIFICATE OF SERVICE

I, Timothy A. Doughty, hereby certify that on this 27th day of April 2020, a true and authorized copy of The Potomac Edison Company's Request for Confidential Treatment was served on the parties listed below via electronic mail and was filed with the Commission via ECFS.

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/s/ _____
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