
Garrett P. Lent
Associate

glent@postschell.com
717-612-6032 Direct
717-731-1979 Direct Fax
File #: 180259

December 1, 2020

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (collectively, “FirstEnergy”) write this letter to object to the representations and arguments made by Verizon Pennsylvania LLC and Verizon North LLC (“Verizon”) in their letter dated November 30, 2020. Although Verizon claims that its letter simply notifies the Pennsylvania Public Utility Commission (“Commission”) of the Federal Communications Commission’s November 23, 2020 Memorandum Opinion and Order in a pole attachment proceeding involving the Maryland affiliates of Verizon and FirstEnergy, it instead includes additional, procedurally improper factual and legal arguments. As explained below, Verizon’s arguments should be rejected.

Section 5.533(c) of the Commission’s regulations states that “[a] separate brief in support of or in reply to exceptions may not be filed with the Secretary under § 1.4 (relating to filing generally).” 52 Pa. Code § 5.533(c). While the Commission’s regulations permit a party to file a petition to reopen prior to the issuance of a final decision, Verizon’s letter does not satisfy the Commission’s requirements for the filing of a petition to reopen. *See* 52 Pa. Code § 5.571. Verizon’s letter constitutes an improper brief or supplement in support of their exceptions and replies to exceptions and, therefore, should be rejected.

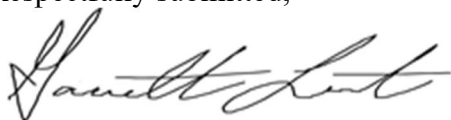
Nevertheless, and in order to preserve its rights, FirstEnergy briefly responds to the arguments and representations made by Verizon as follows.

Rosemary Chiavetta, Secretary
December 1, 2020
Page 2

- The Public Utility Code and Pennsylvania law govern the instant dispute and un rebutted evidence demonstrates that the existing rates Verizon pays under the joint use agreements are just and reasonable.
- The FCC's November 23, 2020 Memorandum Opinion and Order explicitly rejects Verizon's attempt to insert the "new telecom rate" into an existing joint use agreement and holds that the "old telecom rate" applies. Verizon consistently argued, and the Recommended Decision of Deputy Chief Administrative Law Judge Cheskis concluded, that the instant dispute is governed by the FCC regulations and precedent. Verizon seeks to avoid and distinguish FCC precedent in a proceeding that involves substantially similar joint use agreements and facts.
- Verizon is precluded from obtaining refunds under the Pennsylvania Public Utility Code. Section 508 of the Public Utility Code only grants the Commission to prospectively vary, reform or revise the terms and conditions of a public utility contract. 66 Pa.C.S. § 508. Verizon's request for refunds in this case is therefore unlawful under Section 508 and is not supported by credible record evidence.¹

For these reasons, FirstEnergy submits that Verizon's November 30, 2020 letter should be rejected as procedurally improper by the Commission. Even if it is not rejected on this basis, the Commission should afford no weight to the additional arguments raised therein by Verizon. Therefore, and for the reasons more fully explained in FirstEnergy's briefs, exceptions and replies to exceptions, Verizon's complaint should be denied.

Respectfully submitted,



Garrett P. Lent

GPL/jl
Enclosures

cc: Honorable Joel H. Cheskis
Certificate of Service
Office of Special Assistants
Honorable Gladys Brown Dutrieuille, Chairman
Honorable David W. Sweet, Vice Chairman
Honorable John F. Coleman, Jr., Commissioner
Honorable Ralph V. Yanora, Commissioner

¹ FirstEnergy notes that the FCC's November 23, 2020 Memorandum Opinion and Order looked to Maryland law to determine the period for refunds. Under Pennsylvania law, Section 508 of the Public Utility Code, 66 Pa.C.S. § 508, applies and governs.

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

Suzan D. Paiva, Esquire
Verizon
900 Race Street, 6th Floor
Philadelphia, PA 19107
Suzan.D.Paiva@verizon.com

Curtis L. Groves, Esquire
Verizon
1300 I Street NW
Suite 500 East
Washington, DC 20005
curtis.groves@verizon.com

Claire J. Evans, Esquire
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
cevans@wiley.law

Christopher S. Huther, Esquire
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
chuther@wiley.law

Frank Scaduto, Esquire
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
fscaduto@wiley.law

Date: December 1, 2020



Garrett P. Lent