FirstEnergy Statement No. 1-R

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Verizon Pennsylvania LLC and Verizon North LLC

v.

Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company
Docket No. C-2020-3019347

Rebuttal Testimony
of
Stephen F. Schafer

List of Topics Addressed

Federal Communications Commission's Rates and Verizon's Errors in Calculating those Rates

Negotiations of the Joint Use Agreements

Termination of Existing Agreements

Verizon's Advantages under the Joint Use Agreements

Other Allegations Made by Verizon

NON-PROPRIETARY VERSION

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REBUTTAL TESTIMONY
OF
STEPHEN F. SCHAFER

I. INTRODUCTION AND PURPOSE

Q. Please state your name and business address.

A. My name is Stephen F. Schafer. My business address is 76 S. Main Street, A-GO-9, Akron, Ohio 44308.

Q. By whom are you employed and in what capacity?

A. I am the Manager, Joint Use & Cable Locating for FirstEnergy Service Company.

Q. What are your duties as Manager, Joint Use & Cable Locating?

A. My responsibilities include providing leadership over Joint Use (and third-party pole attachment) processes and procedures in addition to the same for Underground Cable Locating and DOT Public Works. My team supports each of FirstEnergy's ten operating companies in five states: Maryland, New Jersey, Ohio, Pennsylvania, and West Virginia. My department tracks and supports the implementation of approximately 2,000 agreements, addenda, and memoranda of understanding to support joint use and pole attachments throughout the FirstEnergy footprint.

Q. What is your educational background?

A. I have a Bachelor's Degree in Business Management from Malone University.

Q. Please describe your professional experience.

A. I have over 35 years of management experience that includes nearly 15 years in the distribution electric utility industry with FirstEnergy. In addition, I hold the office of Vice Chair on the Southeastern Electric Exchange ("SEE") Joint Use Committee, the Office of Secretary on the Pennsylvania One Call Board of Directors, and the Office of Chairman on the Ohio Utilities Protection Service Board of Trustees.

Q. Have you previously testified as a witness before the Pennsylvania Public Utility Commission ("Commission")?

A. No.

Q. What is the purpose your rebuttal testimony?

A. I will respond to certain allegations in the direct testimony and exhibits submitted by Stephen C. Mills, Dr. Mark S. Calnon, and Dr. Timothy J. Tardiff on behalf of Verizon Pennsylvania LLC and Verizon North LLC (collectively, "Verizon"). Specifically, on behalf of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), and Pennsylvania Power Company ("Penn Power") (collectively, "FirstEnergy" or the "Companies"), I will address: (1) the history of the Joint Use Agreements between FirstEnergy and Verizon; (2) the Federal Communications Commission's ("FCC") rates and how they do not fully reflect the cost of service; (3) Verizon's errors in calculating the FCC's rates; (4) the negotiations between Verizon and FirstEnergy regarding the rates, terms, and conditions of Verizon's Joint Use Agreements with FirstEnergy; (5) the advantages and benefits that Verizon receives as compared to Verizon's competitors; and (6) other allegations made by Verizon.

Q. Are you sponsoring any exhibits with your rebuttal testimony?

A. Yes, I am sponsoring FirstEnergy Exhibits SFS-1 through SFS-14.

Q. Please identify the other witnesses that are providing testimony on behalf of FirstEnergy in this proceeding.

A. Below is a list of the other persons who are submitting rebuttal testimony on behalf of FirstEnergy and the subject matters of their testimony:

- William P. Zarakas (FirstEnergy Statement No. 2-R) will provide an overview of federal pole attachment regulations, describe pole attachment regulation in Pennsylvania, and explain how Verizon's arguments about bargaining power are without merit.
- Joanne M. Savage (FirstEnergy Statement No. 3-R) will explain how FirstEnergy's and other electric distribution companies' ("EDCs") pole attachment revenues are credited to electric distribution customers in base rate cases, address the impact of a reduction in pole attachment revenues on FirstEnergy's electric distribution customers, and outline the financial consequences to FirstEnergy of refunding prior years' pole attachment fees to Verizon.
- Randal J. Coleman, P.E. (FirstEnergy Statement No. 4-R) will address the as-found construction of Verizon's attachments to FirstEnergy's poles, the costs to remove FirstEnergy's electric facilities from Verizon's poles, and the physical characteristics and spacing of Verizon's attachments to FirstEnergy's poles.

- Thomas R. Pryatel, P.E. (FirstEnergy Statement No. 5-R) will explain how it is not feasible for FirstEnergy to remove its facilities from Verizon's poles and construct duplicate facilities, which further demonstrates that FirstEnergy does not have superior bargaining power over Verizon.
- Scott Carlin (FirstEnergy Statement No. 6-R) will testify about the field audit of FirstEnergy's utility poles that was performed by Davey Resource Group during December 2019 and January 2020 to gather data about specific pole and attachment attributes.
- Clark Guo (FirstEnergy Statement No. 7-R) will explain his development of statistically-reliable descriptive statistics for FirstEnergy-owned poles, Verizon's attachments to FirstEnergy-owned poles, and FirstEnergy's attachments to Verizon's poles, by using the results of the field audit survey performed by Davey Resource Group.

Q. Please summarize FirstEnergy's rebuttal testimony as a whole and how it responds to Verizon's Formal Complaint and direct testimony.

A. Verizon's Formal Complaint should be dismissed, and the relief requested should be denied. Verizon has failed to show that FirstEnergy's rates for Verizon's pole attachments are unjust and unreasonable under the federal Communications Act, that the rates in the existing Joint Use Agreements should be revised to reflect FCC's "new telecom rate" without any other changes to these agreements, and/or that FirstEnergy should be required to pay refunds for the period from 2011 to present. FirstEnergy's rebuttal testimony and exhibits make the following key determinations.

First, it is important to note that this is a case of first impression. This is the first complaint regarding pole attachment rates to be resolved by the Commission after it issued the 2019 Final Rulemaking Order.[1] As explained in the rebuttal testimony of William Zarakas (FirstEnergy Statement No. 2-R), while the FCC has historically regulated pole attachments, it has never determined a final ILEC pole attachment rate for any EDC anywhere in the country. As I explain below, Verizon's failure to engage in an open and fair discovery process leaves many gaps in the record and, as such, the Commission should be concerned about making such a significant precedential decision.

Second, Verizon's Complaint and direct testimony also fundamentally fail to reflect the change of jurisdiction from the FCC to the Commission. I am advised by counsel that, pursuant to the Commission's 2019 Final Rulemaking Order, the Commission now has jurisdiction over pole attachments under Pennsylvania law, not federal law. Consequently, the Public Utility Code, the Commission's regulations, and the Commission's precedent should apply. Yet, Verizon simply filed the same Complaint and testimony that it did before the FCC with the Commission and did not account for the applicability of the Pennsylvania Public Utility Code, the Commission's regulations, and Commission precedent.

As noted in the testimony of William Zarakas (FirstEnergy Statement No. 2-R), one of the reasons that the Commission took jurisdiction over these disputes was to more fully and specifically consider the interests of electric ratepayers. This policy

[1] *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, Docket No. L-2018-3002672 (Notice of Proposed Rulemaking entered July 12, 2018) ("2018 NOPR"); *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, Docket No. L-2018-3002672 (Final Rulemaking Order entered Aug. 29, 2019) ("2019 Final Rulemaking Order")).

consideration is important in this case because, as explained by Joanne Savage (FirstEnergy Statement No. 3-R), if the FirstEnergy electric utilities' joint use revenues are reduced, as Verizon has proposed in this case, then less revenues will be credited to electric customers in these EDCs' next base rate cases, and all else equal, electric rates will go up. Verizon does not consider these impacts on ratepayers at all.

In addition, William Zarakas (FirstEnergy Statement No. 2-R) further explains that the Commission stated that it exercised reverse preemption to encourage broadband expansion. However, Verizon has claimed that the impact of its requested relief on broadband deployment is irrelevant (*see* FirstEnergy Statement No. 3-R).

Further, and importantly, the Commission has long set rates based on a fully allocated cost of service. As explained by Mr. Zarakas (FirstEnergy Statement No. 2-R), none of the FCC rates are fully allocated cost of service rates and, therefore, are fundamentally at odds with traditional Commission ratemaking practices and policies. FirstEnergy's rebuttal testimony clearly shows that, in total, the Companies' existing rates are below the fully allocated cost of service and, therefore, not excessive. Verizon never addresses these issues and ultimately seeks relief that would have Pennsylvania electric distribution ratepayers subsidize Verizon's profits.

Third, Verizon is not entitled to "new telecom rate" for several reasons. First, as I explain below, Verizon could have but failed to terminate the Joint Use Agreements. This is a critical point because the parties negotiated and agreed to each of the existing Joint Use Agreements as a whole. Yet, Verizon wants to upend the benefit-of-the-bargain of these decades-old agreements by significantly lowering the rates it pays FirstEnergy without amending any of the other terms and conditions in the agreements,

including the rates that FirstEnergy pays Verizon. Such a request is completely unreasonable and should be rejected. Second, as I also explain below, Verizon has failed to demonstrate that it could not terminate the agreements. Third, as explained in the rebuttal testimony of William Zarakas (FirstEnergy Statement No. 2-R), Verizon does not lack bargaining power. Fourth, in any event, as I explain below, the Joint Use Agreements are clearly not comparable to the lease agreements FirstEnergy has in place with Verizon's cable and CLEC competitors. In fact, Verizon receives many advantages under the Joint Use Agreements.

Fourth, Verizon's request for refunds should be rejected because it assumes that Verizon would have been entitled in the past to a lower rate as part of the existing Joint Use Agreements. However, FirstEnergy has demonstrated that it would never have voluntarily entered into the Joint Use Agreements with such favorable terms and conditions to Verizon if Verizon were paying the reduced rates it seeks. I am further advised by counsel, and understand that the Company will address in brief, that the Commission should decline Verizon's request for refunds as a matter of law.

II. HISTORY OF THE JOINT USE AGREEMENTS

Q. Could you please provide some background on the Joint Use Agreements entered into by FirstEnergy, Verizon, and their predecessors?

A. Met Ed and Penelec each have several Joint Use Agreements corresponding to various telephone companies acquired by Verizon over time. The five agreements between Met Ed and Verizon were executed at different times ranging from 1967 and 1973. The five Penelec agreements were executed at different times ranging from 1958 through 1988.

The Penn Power agreement was executed in 1979. These agreements have been in place for many decades. Each of these agreements established (or continued) cost sharing arrangements between the parties for their distribution pole infrastructure allowing them to jointly use each other's poles. In 2009, the Met Ed and Penelec operating companies and Verizon negotiated a Memorandum of Understanding ("MOU") for each of their Joint Use Agreements. The parties negotiated a MOU to amend the Penn Power Joint Use Agreement in 1999. Thus, all of the Joint Use Agreements and related amendments were executed prior to 2011, and all of them are currently in full force and effect. I note that Verizon has included copies of all of the Joint Use Agreements, including the MOUs, as Exhibit SCM-2 attached to Mr. Stephen C. Mills's direct testimony (Verizon Statement No. 1.0). Therefore, I have not attached copies of the Joint Use Agreements in order to minimize duplication in the record in this proceeding.

Q. What was the purpose of the Joint Use Agreements?

A. The purpose of the Joint Use Agreements was to establish an equitable cost sharing methodology for poles owned by two separate utilities within the same area. The Joint Use Agreements allowed each utility to attach facilities to poles owned by the other utility which avoided duplicate poles. The Joint Use Agreements further established a methodology for how pole ownership and maintenance costs would be shared by the utilities. The Joint Use Agreements are fundamentally different from cable or Competitive Local Exchange Carrier ("CLEC") agreements. The Joint Use Agreements provide for joint ownership of poles within a certain area and provide benefits to each pole owner that are not provided in cable or CLEC agreements, and they are based on

each company's full cost of service. Cable or CLEC agreements are essentially lease agreements that allow these companies to lease space on utility owned poles but do not have the same benefits of Joint Use Agreements and are based on the incremental cost of the attachments. The differences between these two types of agreements are further explained in the testimony of Mr. Zarakas (FirstEnergy Statement No. 2-R).

Q. Are the cost sharing provisions of the Joint Use Agreements based upon the cost of service for each of the joint utilities?

A. Yes, they reflect the mutual agreement of the parties with respect to the costs of each party to own and maintain poles. The Met-Ed Joint Use Agreement with Bell Telephone dated September 28, 1973, illustrates this point. (Verizon Exhibit SCM-2, VZ00166-VZ00183.) As an initial matter, this Joint Use Agreement provided that the ratio of Joint Use of pole space would be Met-Ed 55% and Bell 45%. (Verizon Exhibit SCM-2, VZ00175.) This accounts for the difference in the amount of space that each utility occupies on a pole plus equally sharing the cost of the common space. Therefore, the ratio of pole ownership under the agreement was considered balanced if Met-Ed owned and maintained 55% of the poles and Bell owned 45% of the poles. (*Id.*) However, if Met-Ed owned more than 55% of the poles, that meant that Met-Ed was incurring more costs to install and maintain poles than was balanced under the Joint Use Agreement, and Bell was required to make a deficiency payment to balance the cost sharing arrangement. The deficiency payment was "the combined average of the Parties' annual carrying charge per pole of their respective forty (40) foot poles as of January of the then current

calendar year…." (*Id.*) In other words, the deficiency payment was based on both utilities' cost of service as mutually agreed to by the parties.

The various Joint Use Agreements have different terms and methodologies, but the underlying principle is that they establish cost of service-based sharing mechanisms that were voluntarily agreed to by both parties. For example, the Joint Use Agreement between Penelec and Bell dated April 1, 1986, provided that "[t]he amount of compensation will be based upon the annual carrying cost applicable to distribution poles of both parties and the relative usage by each party of an average joint use pole expressed as a percentage." (Verizon Exhibit SCM-2, VZ00330.) The Joint Use Agreement between Penn Power and Bell dated December 15, 1978, similarly set forth that Penn Power would annually pay "an amount equal to 56% of the mean annual carrying charge for each pole" owned by Bell to which Penn Power was attached, while Bell would annually pay "an amount equal to 44% of the mean annual carrying charge for each pole" owned by Penn Power to which Bell was attached. (Verizon Exhibit SCM-2, VZ00479.)

In 2009, the parties renegotiated the rates under the Joint Use Agreements. **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**

Q. Verizon argues that it tried to purchase poles from FirstEnergy. (Verizon Exhibit SCM-1, pp. 6-7.) Why did FirstEnergy not sell poles to Verizon?

A. FirstEnergy responded to Verizon's request to purchase a significant number of Met-Ed's poles by requesting information about Verizon's pole inspection and maintenance program. In fact, FirstEnergy asked several times for this information. Verizon failed to provide reasonable assurance that the poles would be maintained in a condition necessary for Met-Ed to meet its obligations to continue providing safe and reliable electric service to its customers. FirstEnergy informed Verizon of its expectation that any such sale of its pole infrastructure would have to satisfy Commission regulatory oversight. FirstEnergy informed Verizon that without the requested information it could not fulfill the purchase request. (See Verizon Exhibit SCM-5, VZ00560-VZ00562.)

Q. Could Verizon have installed more poles over the years to even out the payments?

A. Yes. The Joint Use Agreements permitted Verizon to install as many poles as it wished in order to reduce its deficiency in pole counts. In fact, FirstEnergy reminded Verizon of its opportunities to gain pole ownership proportions by setting and owning more poles. Verizon itself acknowledged the need to "[c]reate a methodology that will equitably share the burden of setting new poles to maintain pole parity going forward." (FirstEnergy Exhibit SFS-1 (August 12, 2009 Norman Parrish Letter).) In response to FirstEnergy's encouragement that Verizon set more of the new/replacement poles, Verizon protested that the Joint Use Agreement did not obligate it to do so. (*See* FirstEnergy Exhibit SFS-2 (Norman Parrish email dated August 17, 2012).)

Q. Did FirstEnergy incur additional pole installation and maintenance costs due to Verizon not installing more poles?

A. Yes. Because FirstEnergy found itself more frequently setting and owning new poles than the ownership ratio that the Joint Use Agreements specified, and in some cases replacing and taking ownership of damaged poles, FirstEnergy incurred more costs to install and maintain poles than it otherwise would have experienced had Verizon simply taken the initiative to pursue pole parity as Mr. Parrish himself described three years earlier.

III. THE FCC RATES DO NOT FULLY REFLECT COST OF SERVICE

Q. In this proceeding, Verizon argues that it should be entitled to the new telecom rate as determined by the FCC. (Verizon Exhibit SCM-1, pp. 20-31; Verizon Exhibit MSC-1, pp. 3-18; Verizon Exhibit TJT-1, pp. 3-4, 10-21.) Can you please explain the different FCC telecom rates?

A. As explained more fully by FirstEnergy witness Zarakas (FirstEnergy Statement No. 2-R), the FCC's "old telecom rate" was first established to accommodate the emergence of competition in the provision of telecommunications services and to provide non-discriminatory access to utility poles by these entities known as CLECs. In 2011, as the FCC explored ways to enhance broadband services through more competition, it viewed rental rates to CLECs as a barrier that could be mitigated through lower formula rates. The modified formula became known as the "new telecom rate," and the original became known as the "old telecom rate." The primary difference between the FCC's old telecom rate and the new telecom rate is the coefficient added to the formula to produce a rate that

essentially equaled the FCC's cable rate. Thus, while the rest of the formula remained the same, the added coefficient effectively yielded a cable rate value.

Q. Do either of the FCC rate calculations, the old telecom rate or the new telecom rate, fully reflect cost of service?

A. No, they do not. While the cost categories are reasonably inclusive, the mathematical formulation does not fully allocate pole costs related to the common space.

Q. Please describe how the old and new telecom rates lack a full allocation of the costs of the common space on a pole.

A. It is important to understand first what is meant by the term "common space," which is frequently referred to as the "unusable space." All poles must have a certain portion of their length buried below grade in order to provide stability to support horizontal loadings placed on the pole by the attachment of wires and cables. Further, all poles must have a minimum height above grade for the safety of public, including vehicles. All attachers benefit from this common space—indeed, attachments are impossible without it.

The cable rate formula was designed specifically to allocate only the cost of the usable space on a pole. In other words, cable attachments were considered to occupy only one foot in the usable space on the pole without sharing the cost of the common space proportionally with other entities attached to the pole. This results in cable attachers paying only 7.4% of the annual cost of the pole.

The FCC's initial rate formula for CLECs (the old telecom rate), on the other hand, was designed to require a portion of the fully allocated costs of the common space

to be shared proportionally by CLEC attachers in relation to the number of attaching entities. This was not a full allocation of the cost of the common space, however, because a coefficient of 2/3rd was inserted into common space allocation. With the insertion of this coefficient, pole owners were effectively directly assigned 1/3rd of the common space cost even though they are also included as an attaching entity for purposes of deriving the proportional share. To make matters worse for pole owners, cable attachments are also allocated common space even though, as explained above, the cable rate does not include any common space costs. This difference between cable cost allocation and the cable rate is borne by the pole owner. This effectively leaves pole owners with stranded costs that are not recovered in the old telecom rate. The result of this pre-2011 rate formula ("old telecom rate") is that CLEC attachers paid 11.2% of the annual cost of owning and maintaining poles.

When the FCC modified the old telecom rate to create the "new telecom rate" in 2011, it effectively removed allocation of common space costs by adding another coefficient designed to mathematically force the formula result to equal the cable rate. Thus, even though the common space allocation term still exists in the formula, its appearance there is illusory only—mathematically it has been eliminated. Therefore, from a practical standpoint, the new telecom rate is based on incremental costs rather than a fully allocated cost of service.

Q. How do the Joint Use Agreements compare to the lack of or less-than-full allocation of costs in the FCC formula rates?

A. In contrast to these rate formulas, as I explain above, joint use cost-sharing agreements were—and are—structured to cover the full cost of owning and maintaining poles, while reflecting the parties' historic mutual agreement on the proportion to be borne by each party. Some of the Joint Use Agreements start with a calculation of the costs and assign a greater proportion to FirstEnergy in recognition that FirstEnergy is allocated more space on the poles. Other agreements, like the Met-Ed agreements, require a disparate pole ownership ratio to capture the relative cost obligation. The important common feature is that they are based the full pole cost. This is also consistent with long-standing cost of service rate regulation at the Commission. As mentioned above, these cost-based/cost-sharing agreements stretch back many decades, with occasional amendments and updates to reflect current costs. A key difference between Joint Use Agreements and Licensee Agreements is that under the Licensee Agreements, the cable companies and CLECs do not own any of the poles, so there are no reciprocal terms and conditions. Relatedly, with Licensee Agreements, the cable companies and CLECs do not receive benefits that exist under the Joint Use Agreements, such as the Companies performing comprehensive vegetation management in accordance with their Commission-approved vegetation management plans for the ILECs' poles at no cost to the ILECs.

Q. What is the impact upon resultant rates from these different approaches to allocating the costs of the common space?

A. As one might expect, the cable rate formula and the new telecom rate formula yield the same value, give or take a few pennies. The old telecom rate is approximately 56% higher depending on certain input variables, such as the number of attaching entities.

However, as discussed above, none of these rates reflect the full allocation of common space. Tables 1 through 3 below illustrate the difference in results from the FCC formulas along with a comparison to a fully allocated cost of service formula rate, all using FirstEnergy's FERC Form 1 data and field-collected survey data.

Table 1

Met Ed			
Year Billed	**ME Old Telecom Rate (FERC)**	**ME New Telecom Rate (FERC)**	**Fully Allocated Pre-2011**
2011	$ 18.88	$ 8.33	$ 26.50
2012	$ 22.43	$ 9.90	$ 31.48
2013	$ 23.63	$ 10.43	$ 33.17
2014	$ 11.03	$ 4.87	$ 15.49
2015	$ 20.25	$ 8.93	$ 28.42
2016	$ 18.84	$ 8.31	$ 26.44
2017	$ 20.52	$ 9.05	$ 28.79
2018	$ 25.79	$ 11.38	$ 36.20
2019	$ 28.95	$ 13.67	$ 40.62

Table 2

Penelec			
Year Billed	**PN Old Telecom Rate (FERC)**	**PN New Telecom Rate (FERC)**	**Fully Allocated Pre-2011**
2011	$ 14.58	$ 6.34	$ 20.49
2012	$ 15.50	$ 6.74	$ 21.78
2013	$ 16.57	$ 7.20	$ 23.29
2014	$ 11.64	$ 5.06	$ 16.36
2015	$ 15.55	$ 6.76	$ 21.85
2016	$ 15.86	$ 6.90	$ 22.30
2017	$ 16.62	$ 7.23	$ 23.27
2018	$ 23.07	$ 10.03	$ 32.43
2019	$ 19.85	$ 8.63	$ 27.89

Table 3

Penn Power			
Year Billed	PP Old Telecom Rate (FERC)	PP New Telecom Rate (FERC)	Fully Allocated Pre-2011
2011	$ 18.79	$ 8.20	$ 26.28
2012	$ 21.12	$ 9.21	$ 29.53
2013	$ 21.44	$ 9.35	$ 29.97
2014	$ 19.27	$ 8.40	$ 26.94
2015	$ 22.30	$ 9.73	$ 31.18
2016	$ 23.64	$ 10.31	$ 33.05
2017	$ 23.61	$ 10.30	$ 33.01
2018	$ 28.94	$ 12.62	$ 40.46
2019	$ 30.22	$ 13.18	$ 42.25

As can be seen above, fully allocating the cost of the common space makes a significant difference compared to the partial allocation in the old telecom rate, and an even larger difference compared to the cable/new telecom rate. As will be discussed below, fully allocating the common space, even using the FCC presumption for every formula input, still yields a rental rate for Verizon's use of FirstEnergy's poles that is higher than the existing contract rates. In other words, the contract rates are currently below the cost of service.

Q. What is the impact of using a fully allocated cost of service on the claim for relief stated in Verizon's Complaint?

A. In the first place, the fully allocated cost of service rates comparison is higher than the existing contract rates. Also shown in Tables 4 through 6 below is the annual rental amount that would be produced using the fully allocated cost of service rates for each

operating company compared to the actual invoiced amounts. Note that this comparison also adjusts Verizon's rates for FirstEnergy's use of Verizon poles to a fully allocated cost of service rate.

[BEGIN CONFIDENTIAL]

Table 4

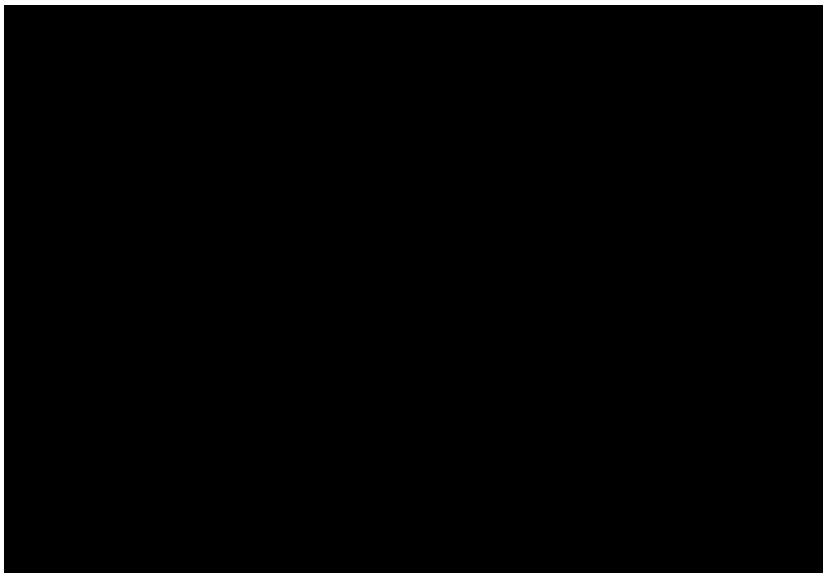

Table 5

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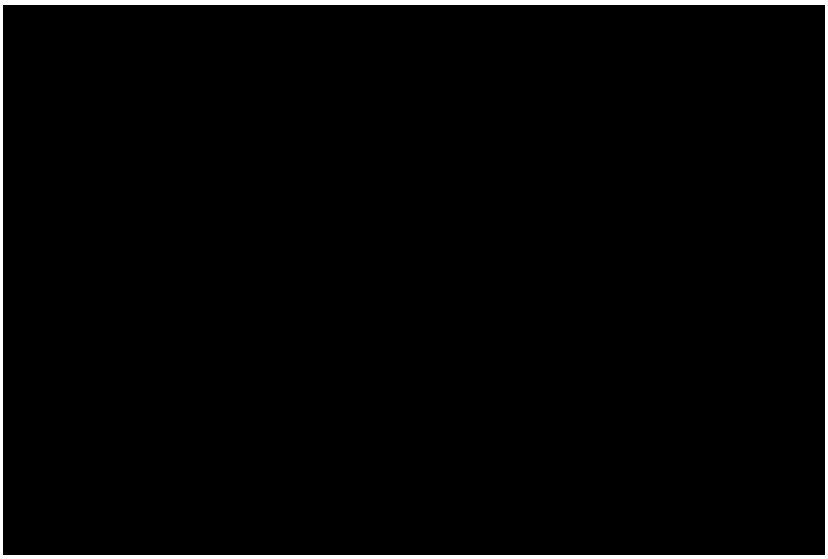
Table 6



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As Tables 4 through 6 demonstrate above, the rates in the Joint Use Agreements are well below fully allocated cost of service. In total, revenues based on fully allocated costs for the years 2011 through 2019 would have exceeded the revenues from the actual rates by **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]**, as summarized by Table 7 below. **[BEGIN CONFIDENTIAL]**

Table 7

[END CONFIDENTIAL]

IV. VERIZON'S CALCULATIONS OF THE FCC RATES ARE IN ERROR

Q. In its testimony, Verizon has provided calculations of the old telecom and new telecom rates. (Verizon Exhibit MSC-1.) Do you agree with Verizon's calculations?

A. No. The errors explained below with respect to Verizon's calculations using FirstEnergy's year-end 2018 costs seem to have been repeated in all of Verizon's calculations. Referencing the FirstEnergy calculation of year-end 2018 rates for Penelec (FirstEnergy Answer, Attachment G, to the Verizon calculation at VZ00077):

- In Line 19 (Accumulated Deferred Taxes (Accounts 190, 281-283)(Poles), Verizon's allocation of Accumulated Deferred Taxes (Electric) to distribution poles is in error. This cost should be allocated based on the ratio: Account 364 Gross Pole Investment ÷ Gross Electric Plant Investment. Instead, Verizon's allocation is based on the ratio: (Account 364 Gross Pole Investment – Depreciation) ÷ (Gross Electric Plant Investment - Depreciation).

- In Line 23, Verizon used an incorrect pole count. The correct pole count is 528,755.

- In Line 38, ("Accumulated Deferred Income Taxes for 364, 365 & 369"), Verizon's allocation of Accumulated Deferred Taxes (Electric) to these overhead Accounts 364, 365 and 369 is in error. This cost should be allocated based on the ratio: Investment in Accounts 364, 365 and 369 ÷ Gross Electric Plant Investment. Instead, Verizon's allocation is based on the ratio: (Investment in Accounts 364, 365 and 369 – Depreciation) ÷ (Gross Electric Plant Investment - Depreciation).

- In Line 52, Verizon used an incorrect rate of return. It is unclear how Verizon determined the rate of return, but the proper rate of return is the rate most recently approved by the Commission, which is 7.92%.

- Verizon used FCC presumptions for average pole height, unusable space, usable space, and number of attaching entities. These figures are incorrect. As explained below, FirstEnergy performed a statistically reliable audit of its pole plant and added to its calculations the actual figures.

Q. Verizon has also criticized FirstEnergy's calculations of the FCC rates. Please respond to Verizon's criticisms.

A. Verizon has claimed that FirstEnergy's calculations are flawed. One criticism is for using the rate of return authorized by the Commission in the Companies' last base rate

cases claiming the rates are too old and/or too high. This is what FCC rules require. Indeed, Verizon itself uses a "default" overall rate of return of 10.375%. (See Verizon Exhibit MSC-1, VZ00100.)

Verizon also has criticized what it calls FirstEnergy's "manipulation" of the rate formulas because FirstEnergy did not use the FCC's presumptions for several of the rate input variables, calling the statistically-valid survey "unreliable and hurried." However, these are rebuttable presumptions that FirstEnergy merely replaced with actual values. The field collection used industry best practices for measurements that provided contemporaneous system characteristics data.

Q. Please explain the formula rate input variables FirstEnergy used for its rate calculations.

A. The FCC's formulas require a significant amount of data input to determine the cost responsibility to be borne by attachers. I am advised by counsel that the FCC has received many comments in proceedings establishing the methodologies for deriving these inputs. As can be seen in both Verizon's Complaint (e.g., Exhibit C-5) and FirstEnergy's Answer (Attachment G), the sources of data and the mathematical formulas are quite prescriptive. However, the FCC adopted several rebuttable presumptions for certain inputs that are less readily available than the publicly reported accounting data. These rebuttable presumptions include: the percentage of pole costs attributable to the pole owner's facilities, such as crossarms (the "appurtenance factor"); average pole height; the amount of space occupied by the attachments; the amount of usable and unusable space; and the number of attaching entities. These variables, critical to the

formula outcome, require far more time and effort to produce actual numbers, and thus many if not most pole owners and attachers have relied on the presumptions.

In this case, particularly given that Verizon is an ILEC seeking to replace the agreed-upon joint use cost-sharing rates with the FCC formula rates, and also because the FCC presumptions have never been applied in the context of a joint use agreement between EDCs and ILECs, FirstEnergy believes it necessary to establish actual data that reflects the specific characteristics of its pole plant in Pennsylvania instead of the general presumptions that the FCC developed to apply in all parts of the United States. To illustrate the importance of distinguishing actual local conditions instead of general presumptions, the number of attaching entities is used to allocate the common space among the entities who benefit from using the pole. To assume that the predominantly rural territories served by FirstEnergy are the same as, say, Harrisburg or Honolulu, distorts that cost allocation and results in FirstEnergy and its customers receiving less than a fair share cost payment from cable companies and CLECs using its pole infrastructure. Verizon now seeks to lower its payments and add its shortfall to the stranded cost being borne by electric ratepayers.

FirstEnergy therefore retained Davey Resource Group to perform a field survey of a randomly selected sample of poles to collect data in each operating company territory regarding certain rebuttable presumption variables and other characteristics of joint use. These included on FirstEnergy poles: pole height; Verizon's number and space of attachments; and the total number of attaching entities. On Verizon poles, the survey gathered data on: pole height; amount of space occupied by FirstEnergy; and the space occupied by FirstEnergy if a new attacher required rearrangement of FirstEnergy's

facilities. The sample data was analyzed by a statistician, who generated a random sample to produce statistically valid measures of the values for these rate input variables. These values were used to generate FirstEnergy's calculation of the FCC formula rates, to the extent the Commission finds it appropriate to consider the formula rates given that the Joint Use Agreements at issue are not newly negotiated or newly renewed, and not in evergreen status.

V. NEGOTIATIONS OF THE JOINT USE AGREEMENTS

Q. Did Verizon voluntarily enter into these Joint Use Agreements?

A. Yes. Although I was not employed at FirstEnergy when these agreements originally were executed, I have observed that the terms of the agreements note the desire of the parties to enter the agreements, and there is no indication that there was any coercion. Furthermore, there has been no allegation of coercion by either party in this proceeding regarding these original agreements. I would also note that I participated in the negotiations that resulted in the 2009 MOUs for Met-Ed and Penelec and would agree with the characterization by Verizon employee Norman L. Parrish, who participated in those negotiations, that an amiable resolution to the issues was achieved. (*See* FirstEnergy Exhibit SFS-1.)

Q. Have Verizon and FirstEnergy tried to renegotiate the rates, terms, and conditions under these Joint Use Agreements?

A. Yes. There have been amendments or memoranda of understanding at various times with respect to certain provisions or operating practices in the Joint Use Agreements. For the

most recent example, in 2009 the parties reached mutual agreement to essentially consolidate and update the cost-sharing terms of the multiple agreements that Verizon had with each operating company. In 2011, FirstEnergy and Verizon began discussions on whether they could consolidate and update all of the terms and conditions of these Joint Use Agreements. The effort to consolidate these agreements was initiated by using a template agreement that Verizon offered in 2015.

Q. Did FirstEnergy negotiate with Verizon in good faith?

A. Yes, FirstEnergy always negotiated in good faith.

Q. Have you been involved in the negotiations between Verizon and FirstEnergy regarding the Joint Use Agreements since 2009?

A. Yes, I have been fully involved in negotiations with Verizon to modify the rates, terms, and conditions of Verizon's Joint Use Agreements with FirstEnergy.

Q. Could you please summarize Verizon's position in these negotiations?

A. Throughout these negotiations, Verizon has insisted on FirstEnergy charging Verizon new rental rates based on the FCC's new telecom formula. Whenever FirstEnergy tried to suggest such formulas be used as only as guidance or reference for negotiation, Verizon reiterated its position that it is entitled to the new telecom rate and that FirstEnergy must concede that argument or else negotiations would be pointless. Verizon merely asserted that it found no incremental value in the terms and conditions of their Joint Use Agreements compared to FirstEnergy's CLEC template agreement and that FirstEnergy's

lack of quantifying those benefits during negotiations meant Verizon was entitled to the lowest rate. Indeed, Verizon never submitted an offer to FirstEnergy that was not based on the new telecom rate. Verizon was simply attempting to lower the joint use rate substantially below cost of service and maintain all of the other benefits of the Joint Use Agreements.

Q. Please explain why FirstEnergy did not accept Verizon's offers based on the new telecom rate.

A. I am not a lawyer, but I am advised by counsel that Verizon simply was not legally entitled to the new telecom rate for their unterminated joint use agreements that pre-dated the FCC's assertion of jurisdiction over joint use rates in its April 2011 Order. Moreover, the FCC clearly stated in that order that it was not establishing a rate formula for joint use agreements and that if a complaint were to be brought regarding long-standing pre-existing agreements, then the FCC would be unlikely to disturb those agreements.[2] Further, none of the FCC's formulas properly allocate the full costs of poles, as explained in more detail below and by FirstEnergy witness Zarakas (FirstEnergy Statement No. 2-R), let alone adhere to the cost-sharing arrangements established by mutual agreement many decades ago. I would note that FirstEnergy was fully aware that any reduction in Verizon's payments would be expected to increase electric rates by the same amount. The bottom line is that while FirstEnergy was willing to negotiate a fair reduction in Verizon's payments, it could not agree to Verizon's demands to pay a small fraction of

[2] See FirstEnergy's Answer for the full legal analysis of the FCC's 2011 Order guidance, including the requirement that ILECs, not EDCs, bore the burden of proof regarding quantification of joint use agreement benefits.

agreement amounts nor to a demand for refunds of tens of millions of dollars based on a flawed premise of entitlement.

Q. Verizon claims that the Joint Use Agreement does not provide it with material benefits over the cable and CLEC agreements and dismisses the advantages of the Joint Use Agreements outlined by FirstEnergy. (Verizon Exhibit SCM-1, pp. 20-31; Verizon Exhibit TJT-1, pp. 15-21.) Has Verizon established that the rates, terms, and conditions of the existing Joint Use Agreements do not create a net material advantage over its cable company and CLEC competitors?

A. No. Verizon simply asserts that there are no incremental benefits without offering any objective proof and then alleges that the advantages cited by FirstEnergy are inapplicable to Verizon. From my perspective, Verizon believes that all it needed to do is file a Complaint to make the burden shift to FirstEnergy to demonstrate that Verizon was not similarly situated to existing cable and CLEC attachers and should not get the new telecom rate.

Q. What were your thoughts about Verizon's position during these negotiations?

A. I was disappointed that Verizon would not move from its position that only the new telecom leasing rate could be an appropriate joint use rate, especially since the parties had spent a good amount of time having cordial negotiations to update and consolidate the multiple existing joint use agreements into a unified agreement. The parties, in fact, had arrived at final terms and conditions for operational matters and simply needed to add a new agreed-upon joint use cost-sharing rate. Verizon's insistence on using the new

telecom rate, which effectively does not even include an allocation for the cost of the common space on poles, prevented those updated terms and conditions from ever taking effect.

Q. What changes to the rates, terms, and conditions of the Joint Use Agreements were offered by FirstEnergy?

A. During negotiations, FirstEnergy made several good faith offers to significantly reduce Verizon's annual rental payments, including reductions of more than **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per year under the existing agreements. Verizon's response was a flat rejection. Verizon's lack of movement even when FirstEnergy yielded concessions gave no indication that we could find middle ground.

Q. Has FirstEnergy been willing to calculate Met-Ed's rates into "reciprocal" per-pole rates to allow the parties to discuss and negotiate the-pole rate for use of the other party's poles?

A. Yes. It was FirstEnergy's idea to compare Met-Ed's deficiency (55:45 ownership ratio) agreement per pole rates to that of a more-typical parity (50:50 ownership ratio) agreement per pole rates that each party would charge the other. However, no suggestion was ever made by FirstEnergy to Verizon that this was a settlement proposal to reduce Verizon's annual net rental obligations "by just $465," as Verizon's witness Mr. Mills contends. (Verizon Exhibit SCM-1, VZ00009.) In fact, it was the intent of the calculation to yield a difference of zero—however, rounding yielded a difference of $465

that is de minimus in comparison to the total amount involved between the parties. I would note that in his direct testimony, Verizon witness Mills mischaracterized this calculation as a FirstEnergy offer, when in fact it allowed the parties to begin discussing the Met-Ed joint use rates vis-à-vis other agreements. (Verizon Exhibit SCM-1, VZ00009.)

Q. Did FirstEnergy offer to transition Verizon from the current Joint Use Agreements to the Companies' standard CLEC agreement and CLEC rate?

A. Yes. In light of Verizon's insistence on receiving the CLEC rate and building off of Verizon's previous offer to sell all of its Met-Ed joint use poles, FirstEnergy offered to allow Verizon to enter into the Companies' standard CLEC agreement and CLEC rate and to transition Verizon out of the pole-owning business. Specifically, FirstEnergy offered to set all new poles and to set and take ownership every time a Verizon pole must be replaced due to storm damage, car-pole accidents, age, condition, or the need to increase capacity for new attachers. FirstEnergy described this as an "accelerated transition." Verizon, however, ignored repeated direct requests for a response to this approach. I am aware that Verizon has characterized these communications[3] as "not an offer"[4]; however, Verizon gave no indication in email exchanges that it was willing even to discuss the idea. FirstEnergy finally broached the subject during a conference call with Verizon in July 2019, and Verizon said it would think about it and get back to the

[3] See FirstEnergy Exhibit SFS-3 (CONFIDENTIAL).
[4] See FirstEnergy Exhibit SFS-4 (Verizon's Answer to FE to Verizon Set I, No. 27).

Companies. After four months of not getting back to FirstEnergy, Verizon filed its Formal Complaint against FirstEnergy at the FCC.

Q. Is FirstEnergy still willing to transition Verizon from the current Joint Use Agreements to the Companies' standard CLEC agreement and CLEC rate?

A. Yes, in principle. Although this transition represents a marked departure from the history of the parties' joint use cost-sharing agreements, FirstEnergy is willing to explore how this can be done in order for Verizon to fairly receive the lowest formula rate. I would note that FirstEnergy never described this transition as conditioned on giving all of its poles to FirstEnergy for free as Verizon has claimed. (*See* Verizon's Legal Analysis in Support of Reply to FirstEnergy's Answer and Affirmative Defenses, p. 7.) By replacing Verizon's poles FirstEnergy would be incurring the full cost of a new pole for which Verizon otherwise would have been responsible. No doubt there are significant details to be worked out, which is why FirstEnergy's first offer was to discuss the concept. Since Verizon ignored every overture and then filed this Complaint in response to FirstEnergy bringing it up, the obvious conclusion seems to be that Verizon seeks the best of both worlds—receiving the new telecom rate that CLECs get while preserving all of the other terms and conditions under its existing Joint Use Agreements that CLECs do not receive. This is especially unreasonable given that the Joint Use Agreements include many terms and conditions that are predicated on a cost-sharing arrangement based on fully allocated costs, which FirstEnergy would not have agreed to under an incremental cost rate structure.

VI. TERMINATION OF EXISTING AGREEMENTS

Q. Please explain the termination provisions of the Joint Use Agreements between FirstEnergy and Verizon.

A. Generally speaking, the Joint Use Agreements allow either party to terminate an agreement upon advance written notice to the other party. For Penn Power and Penelec, the notice is required one year in advance. And for Met-Ed the notice is required 60 days in advance of termination.

Q. Verizon argues that it "genuinely lacks the ability to terminate" the existing Joint Use Agreements. (Verizon's Legal Analysis in Support of Reply to FirstEnergy's Answer and Affirmative Defenses, p. 18.) Could Verizon have terminated the existing Joint Use Agreements if it was not satisfied with the terms and conditions?

A. Yes, there are no conditions or requirements to justify the reason for termination. The only requirement is to provide notice in advance. Thus, Verizon was free to unilaterally to exercise its right to terminate the Joint Use Agreement(s).

Q. What would have happened if Verizon had terminated the existing Joint Use Agreements?

A. Each of the parties' facilities attached to the other party's poles would have been placed into "evergreen" status and subject to all the terms and conditions of the agreements at the time of the termination.

Q. What would have happened if Verizon had wanted to install new facilities?

A. Verizon could install new facilities on its own poles. However, if Verizon wished to install new facilities on FirstEnergy's poles, it would have to enter into a new agreement in order to install new attachments.

Q. Did FirstEnergy offer Verizon the option of terminating the Joint Use Agreements?

A. Yes, as explained previously, FirstEnergy offered Verizon the option of terminating the Joint Use Agreements and transitioning to the standard CLEC agreement and CLEC rate. (*See* FirstEnergy Exhibit SFS-3 (CONFIDENTIAL).)

VII. VERIZON'S ADVANTAGES UNDER THE JOINT USE AGREEMENTS

Q. Does Verizon enjoy advantages under the Joint Use Agreements over its cable company and CLEC competitors?

A. Yes, the Joint Use Agreements provide several advantages to Verizon over its cable company and CLEC competitors that have third-party pole attachment license agreements, including that FirstEnergy pays a large proportion of Verizon's costs to own and maintain its pole infrastructure.[5] Some of these advantages may be difficult or

[5] As explained in David J. Karafa's June 7, 2018 email to Brian H. Trosper (Verizon Exhibit SCM-5, VZ00689), Verizon's competitive advantages include: (1) pre-planning makes room in advance for Verizon, and Verizon benefits considerably from being the first attacher; (2) Verizon gets the lowest attachment height, which is easier to access; (3) Verizon benefits from one additional attachment by having the lowest position on the pole (*i.e.*, two attachments in the first 12" of space); (4) Verizon is guaranteed a number of feet on each pole; (5) new attachers that wish to compete with Verizon must contend with already-congested poles; (6) Verizon's make-ready costs are dramatically lower than its competitors' costs; (7) Verizon's survey costs are dramatically lower than its competitors' costs; (8) Verizon's engineering costs are dramatically lower than its competitors' costs; (9) Verizon does not have to wait for the permitting process to receive permission to attach and, therefore, can serve customers faster with less expense than its competitors; (10) unlike new attachers, Verizon can overlash at will without having to wait for the permitting process to receive permission to attach in the first place, thereby allowing Verizon to serve customers faster and with far less expense than its competitors; (11) Verizon's speed to market compared to new attachers (and even existing third party attachers) is worth millions of dollars to Verizon and costs millions of dollars to its competitors; (12) pole transfer provisions relieve Verizon of considerable attachment transfer costs that

impossible for FirstEnergy to quantify, such as those requiring Verizon financial or marketing data that Verizon has refused to provide in discovery, but that does not mean the advantages do not exist or have no value.

First, Verizon's Joint Use Agreements have allowed Verizon to construct its communications systems unfettered by significant make-ready expense, while its competitors pay a substantial amount in make-ready to gain access to FirstEnergy's poles. Attached to this testimony as CONFIDENTIAL FirstEnergy Exhibit SFS-5 is a chart that was prepared under my supervision that identifies the make-ready costs incurred by Verizon to attach to poles owned by Met-Ed, Penelec, and Penn Power and compares them to the make-ready costs incurred by some of Verizon's competitors. The Verizon competitors were identified as those which submitted the largest number of attachment applications during the past two years for each of the FirstEnergy operating utilities. The number of poles to which each of these entities is currently attached is also identified, and a calculation was performed to determine the make-ready costs these entities have incurred on a per attached pole basis.

This information indicates the following:

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third party attacher competitors must incur; (13) Verizon can attach to FirstEnergy's multi-ground neutrals, unlike Verizon's competitors; (14) Verizon can attach to FirstEnergy's guys and anchors, unlike Verizon's competitors; (15) Verizon is not subject to audit costs, while its competitors are subject to those costs; (16) Verizon need not affix identification tags, unlike its competitors; (17) Verizon is not subject to unauthorized attachment penalties, unlike its competitors; (18) Verizon is not subject to safety violation penalties, unlike its competitors; (19) Verizon need not post bonds or other security, unlike Verizon's competitors; (20) Verizon does not pay any agreement preparation fees, unlike its competitors; (21) Verizon does not pay any attachment application fees, unlike its competitors; (22) the evergreen provisions in the Joint Use Agreements prevent Verizon's attachments from being removed from FirstEnergy's poles, even if the contracts are terminated, unlike Verizon's competitors; (23) the insurance provisions are less burdensome for Verizon as compared to its competitors; and (24) the indemnification provisions are more favorable to Verizon, saving it millions of dollars in out of court settlements over its competitors.

For Poles owned by Met-Ed:

(1) Active attachers pay on average **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per existing attached pole per year in make-ready expenses.
(2) Verizon pays on average **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per existing attached pole per year in make-ready expenses.
(3) Verizon's competitors thus incur every year, on average, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** more in make-ready costs per attached pole than does Verizon.

For Poles owned by Penelec:

(1) Attachers pay on average **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per existing attached pole per year in make-ready expenses.
(2) Verizon pays on average **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per existing attached pole per year in make-ready expenses.
(3) Verizon's competitors thus incur every year, on average, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** more in make-ready costs per attached pole than does Verizon.

For Poles owned by Penn Power:

(1) Attachers pay on average **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per existing attached pole per year in make-ready expenses.
(2) Verizon pays on average **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per existing attached pole per year in make-ready expenses.
(3) Verizon's competitors thus incur every year, on average, **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** more in make-ready costs per attached pole than does Verizon.

Second, Verizon has not recently filed many applications to install new attachments to FirstEnergy's poles because it does not have to. Verizon already has attached to the vast majority of available FirstEnergy poles pursuant to the "built to order" joint use agreement system. Therefore, to reach new customers and to provide additional services to existing customers, all Verizon needs to do now is overlash[6] its

[6] "Overlashing" means "when a service provider physically ties its wiring to other wiring already secured on the pole." *Assumption of Comm'n Jurisdiction Over Pole Attachments from the Federal Communications Comm'n*, Docket No. L-2018-3002672, 2019 Pa. PUC LEXIS 267, at *6 n.6 (Order entered Sept. 3, 2019) ("*Chapter 77 Rulemaking Order*").

existing facilities or light existing dark fiber capacity[7] to reach those new customers and to provide the additional services that its existing customers might require. Moreover, this time-saving advantage enjoyed by Verizon is not offset by having one-touch make-ready available on FirstEnergy's systems, since there have been no more than 15 attacher requests on FirstEnergy's systems that qualify for the one-touch make-ready process due, in large part, to complex make-ready work required in any given application proposal. FirstEnergy requested information from Verizon to estimate the value of this advantage, but Verizon responded that it does not keep records that could have provided the information sought.[8]

Third, Verizon's relatively few installations of new facilities require considerably less upfront work. When filing their applications for permits, Verizon's competitors must submit pole profile sheets and photographs of the poles to which they seek to attach, but Verizon does not need to do either of these steps nor wait for processing. The Joint Use Agreements allow Verizon to "attach and notify" while its competition must apply and be approved.

Fourth, Verizon's competitors pay application fees as required by FirstEnergy's electronic application processing system known as SPANS, which Verizon does not need to pay. The fees amount to **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per application plus **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per

[7] Lighting dark fiber entails 'injecting' a stream of data into a previously dormant strand of fiber. Thus, "dark fiber" is unused fiber capacity, and "light fiber" is fiber capacity in use.

[8] *See* FirstEnergy Exhibit SFS-7 (Verizon's Answer to FE to Verizon Set I, No. 2) (stating that "Verizon does not track which Verizon distribution cables have been overlashed generally or which Verizon distribution cables attached to FirstEnergy's poles have been overlashed specifically . . . .").

pole and, like make-ready costs, are not recovered through FirstEnergy's annual rental rates.

Fifth, Verizon is subject to much more lenient overlashing rules than CLEC and cable company attachers. Unlike CLEC and cable companies, Verizon does not need to notify FirstEnergy of its overlashing activity or to perform pole loading studies. Cable company and CLEC attachers, however, must provide 15-days' advance notice of overlashing, 15-days' notice upon completion of the overlashing, and pole loading studies to support their overlashing.

Sixth, Verizon is not subject to the field audit costs that FirstEnergy's CLEC and cable attachers pay. FirstEnergy will be conducting field audits on a five-year cycle for all of its operating utilities that is similar to the field audit it has conducted in the Toledo Edison Company's service territory. The costs for that field audit to Verizon competitors were **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per pole. Dividing **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per pole by five years equals a rate difference of **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per pole per year that Verizon's competitors will pay but Verizon will not.

Finally, under the Joint Use Agreements, Verizon charges FirstEnergy rates that are based on fully allocated costs, instead of incremental costs. As I mentioned previously, the Joint Use Agreements' rates are based on fully allocated costs. However, Verizon wants to upend this balanced arrangement by forcing FirstEnergy to charge rates that are based on incremental costs, while retaining the benefit of charging FirstEnergy rates that are based on fully allocated costs. Regardless of whether Verizon's requested

relief is granted or not, Verizon cannot deny that it receives a benefit under the Joint Use Agreements by being able to charge FirstEnergy rates that are based on fully allocated costs.

Q. Are there any other benefits that Verizon receives due to its attachments being attached to FirstEnergy's poles?

A. Yes. Perhaps the single greatest benefit is that several of the advantages mentioned above combine to provide Verizon with a significant "speed-to-market" advantage over its competitors. Being able to attract and serve new customers more quickly than its competitors means that Verizon can secure contractual agreements with customers that new competitors find hard to overcome. Indeed, the Joint Use Agreements require FirstEnergy to inform Verizon in advance whenever a line extension is being installed to serve new customers. Earlier this year, a group of broadband providers, America's Communications Association ("ACA Connects"), requested the FCC to approve them to "attach-and-notify" for new customers because otherwise they "risk losing the sale."[9]

Another significant benefit is that FirstEnergy performs comprehensive vegetation management near all of its facilities, including facilities on Verizon's poles and pole lines, in accordance with the Companies' Commission-approved vegetation management plans. FirstEnergy clears overhanging branches and off right-of-way "danger" trees, such as ash trees diseased with emerald ash borer infestations. Verizon's competitors do not

[9] March 26, 2020 Letter to Marlene H. Dortch, Secretary FCC from Brian Hurley, Vice President of Regulatory Affairs, ACA Connects, Re: Ex Parte Presentation of ACA Connects—America's Communications Association; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012, WT Docket No. 19-250.

have pole lines that they would otherwise incur vegetation management expenses of the kind that Verizon is able to avoid due to FirstEnergy's greater diligence.

FirstEnergy also inspects Verizon's pole plant because Verizon cannot be relied upon to properly inspect its own pole plant, and this inspection also provides a significant benefit to Verizon.

Of all of these benefits, it is indisputable that Verizon, at the very least, enjoys the benefits of: guaranteed access; reserved space; no permitting; no inspection; lowest space on the pole; and charging First Energy a fully allocated cost rate for attachments to its poles.

VIII. OTHER ALLEGATIONS MADE BY VERIZON

Q. Would you please respond to Verizon's allegation that Met-Ed made 135 requests to attach to Verizon's poles and that 66 of those requests required Verizon to incur pole replacement costs?

A. Under my supervision, FirstEnergy conducted an analysis of Verizon's allegation. The results of that analysis are attached hereto as FirstEnergy Exhibit SFS-6. FirstEnergy determined that 15 of those pole replacements were the result of FirstEnergy asking Verizon to replace Verizon poles that Verizon apparently did not know were dangerous or deteriorated. The Companies also determined that 13 more of these pole replacement requests were nothing more than a forwarding of government or highway project requests. As a result, these highway project and deteriorated Verizon poles were replaced not simply for FirstEnergy's benefit.

Further, FirstEnergy would note that other organizations have publicly criticized Verizon's pole maintenance. In 2015, the Communications Workers of America filed a petition with the Commission alleging that poor maintenance of Verizon poles created a hazard to the safety of its workers. Specifically, among other things, CWA stated that Verizon "failed to: 1) replace damaged, bent, and broken poles; 2) repair or replace damaged cross-connect boxes and remote terminals; 3) repair or replace damaged cable; and 4) properly control falling trees and vegetation near its facilities."[10]

Q. In his direct testimony, Verizon witness Stephen C. Mills attempts to rely on FirstEnergy's Field Reference Guide as support for his claim that "FirstEnergy regularly lets Verizon's competitors install their facilities in the space that is designated as communications space under the joint use agreements and collects additional rent from those third parties without offset to Verizon." (Verizon Exhibit SCM-1 ¶ 63.) Would you please respond?

A. First Energy's Field Reference Guide depicts the information required in applications by third party attachers and is not a FirstEnergy construction standard. Therefore, it is inaccurate for Mr. Mills to rely on that document as support for his claim. Generally, new attachers are first located outside of Verizon's allocation as per terms of the Joint Use Agreement(s); however, it is true that FCC regulations prohibit pole owners from reserving space except under certain conditions.

[10] *Petition of Communications Workers of America for a Public, On-the-Record Commission Investigation of the Safety, Adequacy, and Reasonableness of Service Provided by Verizon Pennsylvania LLC*, Docket No. P-2015-2509336, p. 5 (Petition filed Oct. 21, 2015).

Q. Please describe claims made by Verizon that it has not supported with evidence.

A. One of the Verizon Joint Use Agreement advantages cited by FirstEnergy, having the guaranteed lowest position on the pole, was argued by Verizon to actually be a disadvantage not an advantage.[11] Mr. Mills claimed in his affidavit that Verizon attachments at the lowest position incur more costs from damage due to oversized vehicles snagging their lines, gaff hooks of employees working on higher attachments, and vandalism, etc. (Verizon Exhibit SCM-1, VZ00030-VZ00031.) However, Verizon produced no data in its Complaint to support this argument. In response to FirstEnergy's discovery seeking such evidence, Verizon produced nothing that would support a comparison to its competitors' costs, and for evidence of damage to its own facilities listed many instances of damages that equally impacted all attachers—such as snagged lines breaking poles in half and thus bringing down all of the attachers. In fact, Verizon stated that it "does not separately track the costs it incurs and is not aware of any costs it avoids because of the location of its facilities on a utility pole."[12]

Further, Verizon was unable to produce much of the requested information and documentation related to its allegations that "[i]ts facilities have the highest exposure to damage from oversized vehicles, vandalism, and similar hazards"[13] and that "[i]t has experienced damage from gaffs, ladders, and bucket trucks, has had holes poked in its

[11] See Verizon Complaint, ¶ 49, and Verizon Exhibit SCM-1, VZ00030.
[12] FirstEnergy Exhibit SFS-8 (CONFIDENTIAL) (Verizon's Answer to FE to Verizon Set I, No. 14.)
[13] FirstEnergy Exhibit SFS-9 (CONFIDENTIAL) (Verizon's Answer to FE to Verizon Set I, No. 15.)

cables, and has had support wires broken because of its lowest location on the pole."[14] However, of what I was able to review, many of the instances of vandalism apparently consist of theft of Verizon circuits, which I believe are due to the ability to sell copper scrap metal and not due to the fact that Verizon's line was the lowest attachment.

Additionally, in light of Verizon's claim that it "receives more requests to raise its cables to accommodate oversize loads that exceed standard vertical clearance requirements," FirstEnergy asked Verizon to produce copies of all such requests made to Verizon for Verizon facilities that are connected to FirstEnergy Poles and for Verizon facilities connected to Verizon-owned poles from 2011 to 2019. However, Verizon responded that it "does not generally track or document requests to raise its cables, and does not do so by the owner of the pole to which the cable was attached."[15] Verizon also propounded interrogatories on Verizon about Verizon's claim that it "incurs increased pole transfer costs" because its facilities have the lowest position on FirstEnergy's poles, and Verizon again responded that it does not track the requested information.[16] The bottom line is that Verizon's assertion that being in the lowest position on the pole is a disadvantage is both illogical and unsupported.

In addition, Verizon made assertions about how it completes much of the make-ready work itself, "surveying a pole to determine what make-ready is required, completing the engineering necessary to accommodate its attachment, transferring its facilities when required, and reviewing its attachments post-installation to ensure they

[14] FirstEnergy Exhibit SFS-10 (Verizon's Answer to FE to Verizon Set I, No. 16.) FirstEnergy notes that this discovery response references the same attachment to Verizon's Answer to FE to Verizon Set I, No. 15, which is included with FirstEnergy Exhibit SFS-9.
[15] FirstEnergy Exhibit SFS-11 (Verizon's Answer to FE to Verizon Set I, No. 17.)
[16] FirstEnergy Exhibit SFS-12 (Verizon's Answers to FE to Verizon Set I, Nos. 18 and 19.)

comply with applicable standards." (Verizon Complaint ¶ 45.) When asked to quantify these make-ready costs in discovery, Verizon responded that it "does not separately track the time required or cost incurred to complete the specific tasks."[17]

Similarly, when FirstEnergy requested that Verizon quantify the "comparable costs" allegedly incurred by Verizon to perform "its own safety checks, at no cost to FirstEnergy," Verizon stated that it "does not separately track the time required or cost incurred by Verizon to perform the safety checks of its facilities."[18]

Thus, many of Verizon's allegations do not have any records to support them and, therefore, should be disregarded.

IX. CONCLUSION

Q. Does this conclude your rebuttal testimony?

A. Yes, it does. However, I reserve the right to supplement my rebuttal testimony, including based upon additional information and materials that are produced by Verizon in discovery.

[17] FirstEnergy Exhibit SFS-13 (Verizon's Answer to FE to Verizon Set I, No. 11.)
[18] FirstEnergy Exhibit SFS-14 (Verizon's Answer to FE to Verizon Set I, No. 12.)