

**Before the
Federal Communications Commission
Washington, DC 20554**

VERIZON PENNSYLVANIA LLC and
VERIZON NORTH LLC,

Complainants,

v.

METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC
COMPANY, and PENN POWER
COMPANY,

Defendants.

Proceeding No. 19-354
Bureau ID No. EB-19-MD-008

**VERIZON’S OPPOSITION TO FIRSTENERGY’S¹
MOTION FOR LEAVE TO SUPPLEMENT AND CORRECT ANSWER**

The Commission should reject FirstEnergy’s Motion, which does not seek to “supplement” record evidence timely submitted, but to try to cure evidentiary deficiencies Verizon identified in its Reply. FirstEnergy chose *not* to include its field review data in its Answer. It also decided *not* to provide Verizon the field review data in January when FirstEnergy’s interrogatory responses were due.² FirstEnergy cannot change course now simply because it had second thoughts when reviewing Verizon’s Reply.

The Commission’s rules required FirstEnergy to include all its evidence and argument in its Answer: FirstEnergy needed to “advise the complainant and the Commission fully and

¹ In this Opposition, “FirstEnergy” refers collectively to the three defendants, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), and Penn Power Company (“Penn Power”) and “Verizon” refers collectively to the two complainants, Verizon Pennsylvania and Verizon North.

² See Verizon’s Interrogatory No. 10 (requesting “all survey, audit or sampling data”).

completely of the nature of any defense”³ by providing “every allegation, fact, argument, affidavit, and supporting paper”—including “all supporting documents, data compilations, and tangible things” that “support all of the facts on which [its] answer relies.”⁴ FirstEnergy had the field review data when it filed its Answer; it relied on the results of the field review when calculating rental rates and faulted Verizon for not relying on the results as well.⁵

The Commission previously rejected a similar effort to game the pole attachment complaint rules by providing data long after it was due. In that case, after Georgia Power Company was alerted to an evidentiary deficiency, it “assert[ed] that [it] has now included the underlying data in support of its original calculation.”⁶ The Commission rejected the belated attempt to provide the required data: “[t]his is the type of information that [Georgia Power Company] should have provided in response to the complaint.”⁷ The Commission could “not condone [Georgia Power Company’s] failure to provide the appropriate information at the required time” and so it did “not consider the new factual material.”⁸

The result should be the same here. FirstEnergy has *not* provided any explanation—let alone an “adequate explanation for its failure” to provide the field review data “at the time it responded to the complaint.”⁹ Its Motion must be denied. The Commission’s rules required

³ 47 C.F.R. § 1.726(b).

⁴ *In the Matter of Implementation of the Telecommunications Act of 1996*, 16 FCC Rcd 5681, 5695-96 (¶¶ 32-33) (2001) (“*Formal Complaints Reconsideration Order*”).

⁵ See Answer at FE Brief ¶¶ 105-106, 111-112.

⁶ *Teleport Commc’ns Atlanta, Inc. v. Ga. Power Co.*, 17 FCC Rcd 19859, 19868-69 (¶ 24) (2002).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

FirstEnergy to submit a “comprehensive pleading containing complete factual and legal analysis” to ensure the timely and efficient resolution of this dispute.¹⁰ There is no good cause to excuse FirstEnergy’s failure to meet that standard and to delay resolution by now requiring Verizon to commence review of data (including “more than 10,000 photographs”) Verizon should have had almost two months ago.¹¹ The Commission should send a strong message that pole attachment complaint defendants cannot hold back evidence, complicate proceedings, increase costs, and delay resolution of pole attachment complaints contrary to the Commission’s longstanding efforts to simplify, streamline, and expedite the resolution of disputes.¹²

FirstEnergy also says it needs to “correct” some “inadvertent errors” in its Answer about pole counts and Verizon’s use of its electronic notification system,¹³ but its request is premature because it did not seek to resolve this issue with Verizon prior to filing. If the errors are the ones Verizon already identified,¹⁴ FirstEnergy and Verizon should be able to agree to the submission of an errata.

¹⁰ *In the Matter of Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enf’t Bureau*, 33 FCC Rcd 7178 (¶ 13) (2018) (citation omitted); *see also, e.g., Formal Complaints Reconsideration Order*, 16 FCC Rcd at 5690 (¶ 19) (“[W]e find that requiring a defendant to respond specifically to all averments in a complaint ... will enhance the ability of Commission staff to resolve complaints more efficiently.”); *see also In the Matter of Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enf’t Bureau*, 32 FCC Rcd 7155, 7157 (¶ 8) (2017) (“In our experience, a uniform 30-day rule will allow defendants to more carefully and completely answer the complaint’s allegations.”).

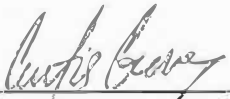
¹¹ *See* Motion for Leave to Supplement and Correct Answer at 2; *see also* Verizon’s Interrogatory No. 10.

¹² *See, e.g., Teleport Commc’ns*, 17 FCC Rcd at 19869 n.54 (¶ 24) (“As the Commission has stated before, ‘[w]e cannot allow a party to ‘sit back and hope that a decision will be in its favor and, when it isn’t, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.’”) (citations omitted).

¹³ *See* Motion for Leave to Supplement and Correct Answer at 2.

¹⁴ *See* Reply Legal Analysis at 27 n.141, 37.

Respectfully submitted,

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Dated: March 17, 2020

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2020, I caused a copy of the foregoing Verizon's Opposition to FirstEnergy's Motion for Leave to Supplement and Correct Answer to be served on the following (service method indicated):

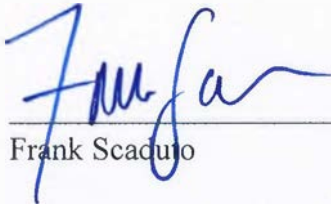
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