



**900 Race Street
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**Suzan DeBusk Paiva
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June 25, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Filing Room (2 North)
P.O. Box 3265
Harrisburg, PA 17105 3265

Re: Lindi Turgeon v. Verizon North LLC;
Docket No. C-2021-3026390;
PRELIMINARY OBJECTIONS OF VERIZON NORTH LLC

Dear Secretary Chiavetta:

Enclosed please find Verizon North LLC's Preliminary Objections to the Complaint of Lindi Turgeon in connection with the above-referenced case, which is being filed today.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,

Suzan D. Paiva
Counsel for Verizon North LLC

SDP/sau
Enclosures

Via U.S First Class Mail

cc: Office of Administrative Law Judge
Cynthia Lehman, Mediator
Lindi Turgeon

CERTIFICATE OF SERVICE

I, Suzan D. Paiva, hereby certify that I have this day served a copy of the Preliminary Objections of Verizon North LLC, upon the participants listed below.

Dated at Philadelphia, Pennsylvania, this 25th day of June, 2021.

VIA USPS FIRST CLASS MAIL

Lindi Turgeon
10244 Route 403 Hwy S
Seward, PA 15954



Suzan D. Paiva
Verizon North LLC
900 Race Street, 6th Floor
Philadelphia, PA 19107

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LINDI TURGEON,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3026390
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

NOTICE TO PLEAD

TO: Lindi Turgeon
10244 Route 403 Hwy S
Seward, PA 15954

Pursuant to 52 Pa. Code §§5.101 et seq. you are hereby notified that Verizon North LLC (“Verizon North”) has filed Preliminary Objections, which you may answer within ten (10) days unless otherwise provided in Chapter 5 of Title 52 of the Pennsylvania Code. Your failure to answer will allow the presiding officer to rule on the Preliminary Objections without a response from you, thereby requiring no other proof. All Pleadings such as a reply to these Preliminary Objections must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for Verizon North.



Date: June 25, 2021

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Verizon
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Suzan.d.paiva@verizon.com

*Counsel for Respondent
Verizon North LLC*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LINDI TURGEON,	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3026390
	:	
VERIZON PENNSYLVANIA LLC,	:	
	:	
Respondent	:	

**PRELIMINARY OBJECTIONS AND MOTION TO STRIKE
COMPLAINT OF LINDI TURGEON**

Pursuant to 52 Pa. Code §5.101(a)(1), Verizon North LLC (“Verizon North”)¹ submits the following Preliminary Objection to the Complaint filed by Lindi Turgeon on the ground that the Commission has no subject matter jurisdiction to determine the scope and validity of a utility’s right-of-way or easement, to determine if a utility’s facilities are situated within a valid right-of-way, to adjudicate property rights controversies, or to award damages.² In support thereof, Verizon represents as follows:

BACKGROUND

1. On June 9, 2021, the Commission electronically served a Complaint that had been filed by Lindi Turgeon on or about April 30, 2021, relating to poles and utility lines that she alleges are located outside the public right-of-way and on her private property. As relief she requests that all of the poles, lines, a ground stake, and any other related utility equipment be removed from her property “after I have been justly compensated for all.”

¹ Although the Commission served and docketed this complaint against Verizon Pennsylvania LLC, the company that serves the area where Ms. Turgeon lives is Verizon North LLC. Verizon respectfully requests that the caption be amended to reflect Verizon North LLC as the respondent.

² In the alternative, Verizon North moves to strike all claims and requests for relief that are outside this Commission’s authority.

PRELIMINARY OBJECTIONS

2. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections for lack of jurisdiction. 52 Pa. Code §5.101(a)(1). Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice.³

3. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.⁴ The Commission has adopted this standard.⁵

4. A preliminary objection that challenges the sufficiency of the complaint is in the nature of a demurrer.⁶ For testing the legal sufficiency of the challenged pleading, a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts. The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer.⁷

5. Alternatively, Verizon PA requests that this pleading be treated as a motion to strike pursuant to 52 Pa. Code § 5.103 because the Complainant's requests for the Commission to determine the validity of a right-of-way or easement and for compensation are outside this Commission's jurisdiction.

³ See *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

⁴ *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991).

⁵ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

⁶ *Jamieson v. Pa. Bd. of Probation and Parole*, 83 Pa. Commonwealth Ct. 546, 547, 478 A.2d, 152 (1984).

⁷ *County of Allegheny v. Commonwealth of Pennsylvania*, 507 Pa. 360, 372, 490 A.2d 402 (1985).

6. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. The Commission must act within, and cannot exceed its jurisdiction.⁸

7. Jurisdiction may not be conferred by the parties where none exists.⁹

8. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.¹⁰

9. It is well established that the Commission does not have subject matter jurisdiction over allegations of trespass and the proper use of right-of-ways.¹¹

10. In *Fairview Water Co. v. Pennsylvania Pub. Util. Comm'n.*, 502 A.2d 162 (Pa. 1985), the Pennsylvania Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement. The Commission has determined that it is not the proper forum for resolving property rights controversies. Rather, such controversies are a matter for a court of general jurisdiction.¹²

11. The Commission recently confirmed that “the Courts of Common Pleas and not this Commission have jurisdiction over substantive property disputes, including questions of trespass, the scope and validity of a utility’s right of way, or to determine if a utility’s facilities are situated within a valid right of way.”¹³

⁸ *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1977); *Loma, Inc. v. Pennsylvania Public Utility Commission*, 682 A.2d 424 (Pa. Cmwlth. 1996).

⁹ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

¹⁰ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied* 637 A.2d 293 (Pa. 1993).

¹¹ *Steve Rushkin v. Verizon Pennsylvania Inc.*, Docket No. C-2004-2591 (Order entered July 14, 2004); *Fairview Water Co. v. Pa. P.U.C.*, 502 A.2d 162 (Pa. 1985); and *Messina v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00968225 (Order entered September 23, 1998).

¹² *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Order entered September 15, 1999).

¹³ *Petition of Librandi Machine Shop, Inc. For Declaratory Order Librandi Machine Shop, Inc. ; v. ; Metropolitan Edison Company and Borough of Middletown*, P-2018-3000047, 2021 PA. PUC LEXIS 49

12. Accepting as true all the facts alleged in the complaint, the Complainant is not entitled to relief as a matter of law. The dispute alleged in the complaint is whether Verizon North's facilities trespass on the Complainant's property. As set forth above, the Commission lacks subject matter jurisdiction to adjudicate real property disputes or to determine if a utility's facilities are situated within a valid right of way.

13. In addition, the Commission lacks authority to award monetary damages. As the Pennsylvania Supreme Court explained in *Elkin v. Bell Telephone Co. of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980), "the legislature . . . withheld from the PUC the power to award damages."¹⁴ Accordingly, the Commission cannot entertain the request for "compensation."

14. The Commission "may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest."¹⁵ Accordingly, because the instant complaint involves a dispute over the location of Verizon North's facilities within an existing right-of-way and a request for compensation, the Commission should dismiss the complaint because it has no subject matter jurisdiction over these issues.

(Opinion and Order Entered; February 25, 2021) (citing *See Fairview Water Co. v. Pa. PUC*, 509 Pa. 384, 502 A.2d 162 (1985); *Fiorillo v. PECO Energy Company*, Docket No. C-00971088 [*48] (Order entered September 14, 1999); *Lou Amati/Amati Service Station v. West Penn Power Co.*, Docket No. C-00945872 (Order entered October 24, 1996); *Edward Boczar v. PPL Electric Utilities Corporation*, Docket No. C-20016332 (Order entered February 10, 2003); *Messina v. Bell Atlantic-Pa.*, Docket No. C-00968225 (Order entered September 23, 1998)).

¹⁴ *See Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *Poorbaugh v. Pa. P.U.C.*, 666 A.2d 744 (Pa. Cmwlth 1995) ("in *Feingold*, our Supreme Court further stated that it was clear that the remedial and enforcement powers vested in the PUC by the Utility Code were designed to allow the PUC to enforce its orders and regulations, but not to empower the PUC to award damages or to litigate a private action for damages on behalf of a complainant.").

¹⁵ 66 Pa. C.S. § 703(b)

WHEREFORE, for the reasons set forth above, and in accordance with the Public Utility Code and the Commission's regulations, Verizon North respectfully requests that the Formal Complaint Docket No. C-2021-3026390 be dismissed or denied in its entirety.



Date: June 25, 2021

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