

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

Lindi Turgeon
vs.
Verizon Pennsylvania, LLC;
Verizon North, LLC

Public Meeting held May 9, 2024
3026390-OSA
Docket No. C-2021-3026390

MOTION OF VICE CHAIR KIMBERLY BARROW

On April 30, 2021, Lindi Turgeon filed a Formal Complaint against Verizon Pennsylvania, LLC (Verizon) regarding the location of a utility pole on her property, and requested removal of the facilities and compensation. She noted that Verizon does not possess an easement on her property and, in addition to the active pole, abandoned a dangling wire on her property. Verizon filed an Answer and Preliminary Objections.

On August 6, 2021, the Administrative Law Judge (ALJ) issued an Order granting, in part, and denying, in part, Verizon's Preliminary Objections. The ALJ granted Verizon's Preliminary Objection as it relates to monetary damages but denied the Preliminary Objections related to whether an easement or rights-of-way exists and noted the Commission's jurisdiction over Section 1501¹ claims.

An evidentiary hearing was held on August 23, 2023. An Initial Decision was issued on November 29, 2023, sustaining the Formal Complaint and ordering Verizon to remove the utility facilities located on Ms. Turgeon's property. The Initial Decision found that Verizon did not have a written easement for the pole and related facilities in dispute, the pole was not located in the public right-of-way, and the pole was on Ms. Turgeon's property. Verizon filed Exceptions.

In reviewing the case law and record in this matter, I agree with the ALJ that Verizon did not provide proof of a written easement or prove that its facilities were located in a public right-of-way.² However, the Commission is unable to grant Ms. Turgeon's requested relief at this time in light of the outstanding property dispute related to the existence of an alleged prescriptive easement; such a determination is beyond the Commission's jurisdiction.³ Accordingly, a finding

¹ 66 Pa.C.S. § 1501.

² I agree with the ALJ's determination that Ms. Turgeon did not meet her burden in proving that Verizon's lines were not in compliance with the National Electric Safety Code or a violation of Section 1501, and thus this portion of the Formal Complaint is denied. I also agree with the ALJ that the language in the deed is boilerplate language, and as Verizon has not provided any proof of the existence of a written or express right-of-way, any further interpretation of the deed is better handled by a court of competent jurisdiction.


³ *Fairview Water Co. v. Pa. Pub. Util. Comm'n*, 502 A.2d 162 (Pa. 1985)(In the context of application proceedings which seek condemnation under eminent domain, the Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement.); *Messina v. Bell Atlantic-Pennsylvania*, Docket No. C-00968225 (Order entered September 23, 1998)(The Commission noted that the controversy centered on whether a right-of-way agreement existed, in contrast to the scenario posed in *In Re: Lou Amati/Amati Service Station v. West Penn Power Company and Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00945842 (Order entered October 25, 1996), where a valid easement or right of-way was demonstrated. Commission concluded that it had jurisdiction to determine whether a valid easement had been demonstrated.); *Fiorillo v. PECO Energy Co.*, Docket No. C-

of a Section 1501 violation is premature due to the outstanding property dispute, and the Formal Complaint shall be dismissed without prejudice. I encourage Ms. Turgeon and Verizon to resolve their property dispute in a court of competent jurisdiction. If Ms. Turgeon is successful, then she can seek an ejectment order from the court of competent jurisdiction and can return to the Commission to continue her Section 1501 allegations, if she chooses.

THEREFORE, I MOVE THAT:

1. The Exceptions filed by Verizon Pennsylvania, LLC; Verizon North, LLC to the Initial Decision of Administrative Law Judge John M. Coogan, issued on November 29, 2023, are granted, in part, and denied, in part.
2. The Initial Decision of Administrative Law Judge John M. Coogan, issued on November 29, 2023, is modified, consistent with this Motion.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

May 9, 2024



Kimberly Barrow, Vice Chair

00971088 (Opinion and Order entered Sept. 17, 1999)(The Commission determined that proper use of real property and questions of trespass are for the courts of common pleas and are not within the Commission's jurisdiction.); *Boczar v. PPL Elec. Util. Corp.*, Docket No. C-20016332 (Opinion and Order entered Feb. 10, 2003)(The Commission held that it was undisputed that the complainants executed right-of-way agreements with the utility, and thus the questions of property use and rights were outside the Commission' jurisdiction.).