PENNSYLVANIA
PUBLIC UTILITY COMMISSION
HARRISBURG, PA 17120

Public Meeting held May 9, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr., Statement, Dissenting

Lindi Turgeon C-2021-3026390

v.

Verizon Pennsylvania LLC
Verizon North LLC

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Verizon North LLC (Verizon North or the Company) filed on December 19, 2023. The Exceptions raise various issues with the Initial Decision (I.D.) of Administrative Law Judge (ALJ) John M. Coogan, issued on November 29, 2023, which sustained the Formal Complaint of Lindi Turgeon (Mrs. Turgeon or Complainant) and ordered Verizon North to remove its utility facilities located on Mrs. Turgeon's property. No replies to the Exceptions have been filed.

For the reasons discussed herein, we shall grant the Exceptions in part, deny the Exceptions in part, modify the Initial Decision of ALJ Coogan, and dismiss the Formal Complaint (Complaint) of Mrs. Turgeon without prejudice, consistent with this Opinion and Order.

I. History of the Proceeding

The genesis of this matter is an April 30, 2021, Formal Complaint (Complaint) filed by Mrs. Turgeon against Verizon Pennsylvania LLC (Verizon Pennsylvania). The Complaint alleged that the Company did not have a valid easement or legal right-of-way for utility equipment located on her property. Complaint at 4-5. The Complaint also raised safety concerns regarding abandoned equipment and "dangling wires." *Id*. As relief, the Complaint requested all equipment, including the utility pole and attachments, located on the property be removed and that financial compensation be ordered. Complaint at 3, ¶ 5. Mrs. Turgeon's Complaint was served on Verizon Pennsylvania on June 9, 2021.

On June 25, 2021, Verizon North filed an Answer to the Complaint. Verizon North noted in the Answer that while the Complaint was initially docketed against Verizon Pennsylvania, the company servicing the area where Mrs. Turgeon resides is Verizon North. Answer at 1. The Company requested amendment of the caption in this matter to reflect it as the respondent. *Id*. Verizon North also denied the material allegations of the Complaint and noted that "real property issues, such as trespass and whether utility facilities were located pursuant to a valid easement, as well as claims for damages, are outside the jurisdiction of the Commission." *Id*. at 2. Verizon North requested the Complaint be dismissed, or in the alternative, sent to the Office of Administrative Law Judge (OALJ) Mediation Unit. *Id*. at 3.

Also on June 25, 2021, Verizon North filed Preliminary Objections and Motion to Strike Complaint of Lindi Turgeon (Preliminary Objections). As grounds for dismissal of the Complaint, Verizon North averred that "[i]t is well established that the Commission does not have subject matter jurisdiction over allegations of trespass and the proper use of right-of-ways." Preliminary Objections at 3, citing *Steve Rakushin v. Verizon Pennsylvania Inc*, Docket No. C-20042591 (Opinion and Order entered July 14, 2004); *Fairview Water Co. v. Pa. PUC*, 502 A.2d 162 (Pa. 1985) (*Fairview*); and *Messina v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00968225 (Opinion and Order entered September 23, 1998) (*Messina*). Verizon North quotes Commission precedent for the idea that "[t]he Commission has determined it is not the proper forum for resolving property right controversies. Rather, such controversies are a matter for a court of general jurisdiction." *Id*., *Anne E. Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Opinion and Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Opinion and Order entered September 15, 1999). Finally, Verizon North argues the Commission "lacks authority to award monetary damages…. [a]ccordingly, the Commission cannot entertain the request for 'compensation'" made by Mrs. Turgeon's Complaint. *Id*. at 4.

On August 6, 2021, ALJ Coogan entered an Order granting in part, and denying in part, the Preliminary Objections filed by Verizon North (*August 2021 Order*). Specifically, ALJ Coogan's Order granted the Preliminary Objections as to monetary damages, finding that the Commission "lacks jurisdiction to award monetary damages and to adjudicate issues related to trespass, the scope and validity of an easement, or whether Verizon North's facilities are situated within a valid easement." *August 2021 Order* at 3. The *August 2021 Order* declined to dismiss the question of whether an easement or right-of-way exists, holding that such a threshold question "is a factual determination incident to its jurisdiction." *Id*. at 5, citing *Messina*. ALJ Coogan also noted Mrs. Turgeon had made claims that Verizon North failed to furnish and maintain adequate, efficient, safe, and reasonable service and utilities, holding the Commission has

original jurisdiction over such claims "regardless of whether such unsafe facilities are within an easement or not." *Id*., internal citations omitted.

The Commission issued an Order Setting Resolution Procedure on August 11, 2021. Subsequent orders included an Initial Call-In Telephonic Hearing Notice and Prehearing Order, both issued on August 19, 2022. The Telephonic Hearing was continued four times at the request of the Parties, with a Telephonic Settlement Conference scheduled for May 10, 2023. After unsuccessful attempts to settle this matter, a Call-In Telephonic Hearing was scheduled for August 23, 2023, with an Initial Call-In Telephonic Hearing Notice and a Prehearing Order issued on July 5, 2023, and July 7, 2023, respectively.

The Call-In Telephonic Hearing convened as scheduled on August 23, 2023. Mrs. Turgeon appeared *pro se*, alongside her husband. Verizon North appeared with counsel and submitted the testimony of two witnesses. The record is comprised of the hearing transcript and fourteen (14) exhibits presented at the hearing. The record in this proceeding was closed after filing of the transcript on September 8, 2023.

As mentioned *supra*, ALJ Coogan issued an Initial Decision in this matter on November 29, 2023. The Initial Decision sustained the Complaint filed by Mrs. Turgeon and ordered Verizon North to remove utility facilities located on Mrs. Turgeon's property. Verizon North filed timely Exceptions to the Initial Decision on December 19, 2023. No Reply Exceptions have been filed by Mrs. Turgeon.

II. Discussion

A. Legal Standards

1. Jurisdiction

The Commission has original jurisdiction to review customer complaints against regulated utilities pursuant to Section 701 of the Public Utility Code (Code), which states in relevant part:

> The Commission, or any person…having an interest in the subject matter…may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.

66 Pa. C.S. § 701. Section 701 of the Code provides for complaints against a public utility for anything done or not done in violation of the laws administered by the Commission or Commission Regulations and Orders. *West Penn Power Co. v. Pa. PUC*, 478 A.2d 947 (Pa. Cmwlth. 1984) (*West Penn*). However, for the Commission to sustain a complaint against a public utility, the utility must be found to be in violation of its duty under the Code, the Commissions Regulations, or an Order of the Commission. Without proof of such a violation, the Commission does not have authority to require an action by the public utility in relation to the customer's complaint. *See*, *West Penn*.

As a creation of the legislature, the Commission possesses only the authority and jurisdiction granted to it in the Code. 66 Pa. C.S. §§ 101-3316. It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the Parties where none exists. *Roberts v. Martorano*, 235 A.2d 602

(Pa. 1967). Subject matter jurisdiction is required prior to exercising the power to decide a controversy. *Hughs v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992). Jurisdiction must arise from the express language of enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977).

Precedent establishes that claims or complaints relating to trespass, the scope and validity of an easement, or whether facilities are located within a valid easement, fall within the jurisdiction of the Courts of Common Pleas, rather than the Commission. *Fairview*; *Petition of Librandi Machine Shop, Inc. for Declaratory Order*, 2021 Pa. PUC Lexis 49 (Pa. PUC 2021); *Boczar v. PPL Elec. Util. Corp.*, Docket No. C-20016332 (Opinion and Order entered February 10, 2003) (*Bozcar*); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Opinion and Order entered September 17, 1999) (*Fiorillo*).

The Commission has found that the threshold question of whether a recorded right-of-way or easement exists is a factual determination incident to its jurisdiction and can be considered by the Commission. *Messina v. Bell Atlantic-Pa.*, Docket No. C-00968225 at 9 (Opinion and Oder entered September 23, 1998) (*Messina*). Where no proof exists of an executed easement or right-of-way agreement utility facilities may only be placed over private property by a utility exercising the power of eminent domain, and Commission approval is required before eminent domain may be exercised by a utility. *Id*., citing *Lou Amat/Amati Service Station v. West Penn Power Co.*, Docket No. C-0095842 (Opinion and Order entered October 25, 1996) (*Amati*). In *Messina*, the Commission also held that any decision or conclusion regarding whether a party has perfected an easement by prescription "is the type of matter over which the courts are better suited to decide." *Messina* at 12.

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain "adequate, efficient, safe, and reasonable service and facilities" and to make repairs,

changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See,* 66 Pa. C.S. § 1501. Section 1501 of the Code, 66 Pa. C.S. § 1501, provides, in pertinent part, as follows:

> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

The term "service" is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See*, 66 Pa. C.S. § 102. The statutory definition of "service" is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995) (*Country Place*).

2. Burden of Proof

Pursuant to Section 332(a) of the Code, the Complainant, as the proponent of a rule or order, bears the burden of proof. 66 P.a. C.S. § 332(a). To satisfy the burden of proof, the Complainant, as the party seeking relief, must establish a sufficient case that Verizon North is responsible for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). This showing must by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). This

standard requires the Complainant's evidence to be more convincing, by even the smallest amount, than the evidence presented by Verizon North. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

This Commission's decisions must be supported by substantial evidence in the record; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & West Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980). "Opinions and conclusions cannot be relied upon as substantial evidence in a decision by the Commission." *Norman v Phila. Gas Works*, Docket No. C-2018-2640719 (Opinion and Order entered October 7, 2021) (*Norman*).

Upon presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the evidentiary burden shifts to Verizon North to present persuasive evidence rebutting that of the Complainant. If Verizon North's evidence is of co-equal weight, the Complainant has not satisfied their burden of proof, and must provide additional evidence to rebut that of Verizon North. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983) (*Burleson*). While the evidentiary burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission to prove their case by a preponderance of the evidence. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*).

B. Initial Decision

In the Initial Decision, ALJ Coogan made thirty-one (31) Findings of Fact and reached eleven (11) Conclusions of Law. I.D. 3-6, 12-13. The Findings of Fact and Conclusions of Law are incorporated herein by reference and adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

ALJ Coogan's Initial Decision sustained the Complaint filed by Mrs. Turgeon and ordered Verizon North to remove utility facilities located on the Turgeon's property. In reaching this outcome, ALJ Coogan noted "[c]laims related to trespass, the scope and validity of an easement, or whether facilities are situated within a valid easement, are under the jurisdiction of the Courts of Common Pleas, not the Commission." I.D. at 7, internal citations omitted. ALJ Coogan relied on *Messina* to support sustaining the Complaint, noting "the threshold question of whether a recorded right-of-way or easement event exists is a factual determination incident" to Commission jurisdiction. *Id*. at 8, citing *Messina*.

The Initial Decision, in considering the evidence presented by the Parties, states "neither party produced any evidence that purported to demonstrate that an easement exists granting Verizon North use of the Turgeons' property." I.D. at 8. ALJ Coogan analyzed language in the Turgeons' deed that Verizon North argued established an easement or right-of-way for the Company's facilities, finding the language "appears to be boilerplate language" and "[i]t does not demonstrate the actual existence of any particular easement on the Turgeons' property." *Id*. at 8-9.

Continuing the inquiry, ALJ Coogan reviewed Commission precedent cited by the Parties. The Initial Decision distinguished *Messina* and *Lowry v. Duquesne Light Co.*[1] (*Lowry*), disagreeing with the decision reached in *Lowry*. Specifically, ALJ Coogan noted "I disagree with ALJ Nemec's reasoning, which appears to be directly contradictory to Commission precedent in *Messina*." I.D. at 9. The Initial Decision, in supporting its order that Verizon North remove its facilities from the Turgeons' property compared this matter to *Messina*, noting the utility in *Messina* argued it had obtained a prescriptive easement. *Id*. The *Messina* decision reiterated that the question of whether

[1] Docket No. C-20066074 (Initial Decision issued January 10, 2007). The Initial Decision was made final and adopted by the Commission via a Final Order issued March 6, 2007.

an easement by prescription had been perfected was a matter for the courts, however, the Commission went on to state "we do not have jurisdiction to conclude that Bell should be entitled to maintain its lines across the property of Mr. Messina" and ordered Bell to remove the facilities that were the subject of Mr. Messina's Complaint. *Id*. at 10.

Pursuant to this analysis, the Initial Decision found "[c]onsistent with *Messina*, here, there is no proof of an easement or right-of-way agreement … and Commission approval is required before eminent domain may be exercised. Therefore, the Turgeons' Formal Complaint is sustained, and Verizon North shall remove its facilities from Complainants' property." I.D. at 10.

ALJ Coogan's Initial Decision also dismissed an element of the Complaint which raised a safety issue regarding the height of Verizon North's lines across the property. I.D. at 11. The ALJ found that Verizon North provided credible evidence regarding the height of the line and Complainant failed to prove by a preponderance of the evidence the line height violated the Code, Commission regulations, or a Commission order, or created a safety issue implicating 66 Pa. C.S. § 1501. *Id*. at 11-12. The Initial Decision questioned whether the Commission could order Verizon North to raise the line height when the Company has already agreed to move the line height up by three (3) feet. *Id*. at 12.

C. Exceptions

Verizon North filed Exceptions on December 19, 2023, arguing that ALJ Coogan's Initial Decision exceeded the Commission's jurisdiction by adjudicating a property right controversy that is exclusively reserved for the jurisdiction of the courts. Exc. at 4. Verizon North espouses two (2) bases for this argument: (1) the Initial Decision, in ordering immediate removal of Verizon North's facilities on the Turgeon's property erred in rejecting the analysis in *Lowry* and substantively decided Verizon North

does not have a prescriptive easement, an issue that should have been left to the courts; and (2) the Initial Decision exceeded its jurisdiction by interpreting language in the Turgeon's deed regarding property rights, a question that should have been left to the courts. *Id*. at 5.

The Exceptions first analyze and provide an overview of the property law doctrine buttressing Verizon North's assertion it possesses an easement by prescription. Exc. at 5. Verizon North submits an easement by prescription is "a right to use another's property … which is not inconsistent with the owner's rights and which is acquired by a use that is open notorious, and uninterrupted for a period of 21 years." *Id*., citing *McNaughton Props., LP v. Barr*, 981 A.2d 222, 225 (Pa. Super. 2009), *see also, Rachel Carson Trails Conservancy, Inc. v. Dep't of Conservation & Natural Res.*, 201 A.3d 273, 278 (Pa. Cmwlth. 2018). Verizon North asserts it established a "*prima facie* case for a prescriptive easement, since the undisputed facts found by the Initial Decision establish that the pole and associated facilities have been in the same location since 1990 (an uninterrupted period of over 21 years), easily visible (open and notorious) and not inconsistent with the owner's rights." *Id*. at 5-6.

Beyond this *prima facie* case for a prescriptive easement, Verizon North states the Commission does not have jurisdiction to make determinations regarding the validity of a prescriptive easement, with such a determination being an issue for the courts, pointing to language within the Initial Decision stating that: "[c]laims related to trespass, the scope and validity of an easement, or whether facilities are situated within a valid easement, are under the jurisdiction of the Courts of Common Pleas, not the Commission." Exc. at 6, *citing* I.D. at 7.

Without countering the Initial Decision's position that whether a recorded right-of-way or easement exits, Verizon North argues the Initial Decision erred in concluding "that without a written recorded easement document, the only alternative is to

order the pole and facilities to be immediately removed from the property notwithstanding that the facts support the existence of a prescriptive easement." *Id*. at 6. Verizon North believes this conclusion of the Initial Decision "effectively finds that there is ***not*** a prescriptive easement" and substantially impacts Verizon North's asserted property right to maintain its utility facilities at the current location, a decision that exceeds the Commission's jurisdiction and should be made by the Court of Common Pleas. *Id*. (emphasis in original).

Verizon North goes on to explain that the holding of the Initial Decision is in direct contradiction to Commission precedent in *Lowry*. Verizon North Exceptions at 7. Verizon North points to language in *Lowry* as support for its position the Initial Decision erred in ordering removal of the Verizon North's facilities, specifically:

> [I]t would be inappropriate for the Commission to order Duquesne to remove its pole and lines from Mr. Lowry's property as the Commission would be in the position of determining that Duquesne does not have a valid prescriptive easement, a determination outside of its authority.

Id., citing *Lowry* at 10. Verizon North also distinguishes *Lowry* from the *Messina* decision relied upon by ALJ Coogan in the Initial Decision. Verizon North asserts the underlying Complaint in *Messina* established the utility facilities in question presented a safety issue implicating 66 Pa. C.S. § 1501. *Id*. at 7. Verizon North notes "[i]t is not clear that, absent the safety issue, the Commission in *Messina* would have required the pole to be moved." *Id*. at 8.

Verizon North expounds upon this line of critique, positing that "[e]ven if *Messina* stands for the proposition that the Commission has the authority as 'a threshold factual determination that is incident to our jurisdiction' to determine 'the mere existence of [the utility's] asserted [property] right'" it does not logically flow that the only way to show an asserted property right is via the existence of a written document. Exc. at 8-9,

citing Morning Call, Inc. v. Bell Atlantic-Pennsylvania Inc., 761 A.2d 139, 143 (Pa. Super. 2000). Verizon North then asks the Commission, rather than "ignoring" the holding in *Lowry*, to distinguish between *Messina* and *Lowry* and apply the reasoning present in *Lowry* since no safety issue is present in this matter. *Id*. at 9.

Verizon North follows this argument with an assertion that the Initial Decision exceeded the Commission's authority by interpreting language in the Turgeons' deed. Exc. at 10. Verizon North argues the Initial Decision, in deciding the deed language did not provide support for finding an easement, answered a question within the jurisdiction of the courts. *Id*.

Verizon North, via its Exceptions, makes clear it believes the proper outcome in this matter was dismissal of the Complaint and a direction to the Parties to resolve their property right issues in the Court of Common Pleas. Exc. at 6, 10.

III. Disposition

In considering the Exceptions, we note that any issue not specifically addressed shall be deemed duly considered and denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Commission has previously considered and addressed the issue of jurisdiction over easement and right-of-way issues, finding that we lack jurisdiction over substantive determinations of property rights and easements. *In re: Lou Amati/Amati Service Station v. West Penn Power Co. and Bell Atlantic-Pennsylvania*, Docket No. C-00945542 (Opinion and Order entered October 25, 1996). This finding has been

reiterated by the Pennsylvania Supreme Court, with the court also finding the Commission lacks jurisdiction to determine the scope and validity of an easement. *Fairview*. The Commission has extrapolated this finding to conclude it is without jurisdiction to adjudicate the scope and validity of a prescriptive easement. *Nigro v. PPL Electric Utilities Corp.*, C-00003242 (Opinion and Order entered October 26, 2004) (*Nigro*).

The Initial Decision in this matter relies on *Messina* for its holding that Verizon North must immediately remove its facilities located on the Turgeons' property. However, this reliance on *Messina* is misplaced. *Messina* itself states: "we conclude that this Commission should not engage in a determination of the property rights of Bell and the Complainant. A conclusion that Bell has perfected as easement by prescription is the type of matter over which the courts are better suited to decide." *Messina* at 12. Further, the disposition of the complaint in *Messina* hinged on a finding the Complainant had proven a violation of Section 1501 of the Code by the utility. *Id*. In *Messina* the Commission, while noting the lack of a written or recorded easement or right-of-way, ordered movement of utility facilities to another location on the Complainant's property, not completely off the property as the Initial Decision in this matter does. *Id*. at 12-13. *Messina* also construed the Complainant's request for relocation of the facilities as an acknowledgement of an easement for the new location. The Commission in *Messina* concluded it had authority to order moving the offending facilities to another location on the Complainant's property "due to our oversight over the service and facilities of a utility, which definitions are broadly construed." *Id*. at 13, citing *Country Place*. It is unclear whether the Commission would have reached the same decision in *Messina* absent the safety issue.

In *Lowry*, the Commission considered a similar situation to *Messina* where the utility "was unable to produce any instrument purporting to show an express grant of authority for a right-of-way across the Complainant's property." *Lowry* at 10. However,

the *Lowry* case is distinguishable as the Complainant did not sustain their burden of showing any service-related violations like in *Messina*. Without the existence of another violation implicating the oversight and jurisdiction granted in *Country Place*, the Commission in *Lowry* found that:

> Should either Mr. Lowry or Duquesne wish to prove, or disprove, the existence of an easement by prescription, it **must do so** in the Allegheny County Court of Common Pleas. Should Mr. Lowry succeed, **he could then** seek an order of ejectment directing Duquesne to remove its facilities from his property.

Id. (emphasis added). *Lowry* goes on, holding in relevant part:

> [i]t would be inappropriate for the Commission to order Duquesne to remove its pole and lines from Mr. Lowry's property as the Commission would be in the position of determining that Duquesne does not have a valid prescriptive easement, a determination outside of its authority.

Id. at 11. *Lowry* also provided a discussion of the rights Duquesne might possess if a prescriptive easement was found, noting "[a]ssuming that Duquesne does have a prescriptive easement … it clearly has the right to enter on the property to maintain or repair its facilities." *Id*. at 10.

In reviewing the case law and record in this matter, we agree with the ALJ that Verizon North 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 Mrs. 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 of a Section 1501 violation is premature due to the outstanding property dispute, and the Complaint shall be dismissed without prejudice. We encourage Mrs. Turgeon and Verizon North to resolve their property dispute in a court of competent jurisdiction. If Mrs. 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.

For these reasons, we shall deny Verizon North's Exceptions as they relate to ALJ Coogan's finding that the utility failed to provide written or other proof its facilities were located in a public right-of-way or easement. Specifically, we reject Verizon North's argument that the Initial Decision exceeded the scope of Commission

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[2] We agree with the ALJ's determination that Mrs. Turgeon did not meet her burden in proving that Verizon North's lines were not in compliance with the National Electric Safety Code or a violation of Section 1501, and thus this portion of the Complaint is denied. We also agree with the ALJ that the language in the deed is boilerplate language, and as Verizon North 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* (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* (The Commission noted that the controversy centered on whether a right-of-way agreement existed, in contrast to the scenario posed in *Amati* 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* (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* (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's jurisdiction.).

jurisdiction by interpreting language in the Complainant's deed and finding it to be boilerplate rather than a grant of an easement. However, we shall grant Verizon North's Exceptions to the extent that we conclude that the Commission lacks jurisdiction to determine whether Verizon North has perfected an easement by prescription for the facilities located on the Complainant's land. Specifically, we find such an issue to be within the sole jurisdiction of the Court of Common Pleas. Therefore, we conclude that an order removing the facilities to be premature given the unresolved property rights of the parties. We agree with Verizon North that the Complainant has not established a right to the relief requested. However, given the unresolved nature of the property rights involved, we shall dismiss the Complaint without prejudice.

IV. Conclusion

Based on the foregoing discussion and our review of the applicable law, record, and filings in this matter, we shall grant in part and deny in part the Exceptions of Verizon North LLC filed December 19, 2023, modify the Initial Decision of ALJ John M. Coogan issued on November 29, 2023, and dismiss the Complaint of Lindi Turgeon without prejudice, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

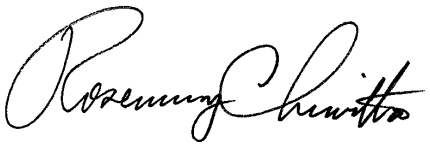
1. That the Exceptions of Verizon North LLC filed on December 19, 2023, to the Initial Decision issued by Administrative Law Judge John M. Coogan at Docket No. C-2021-3026390 on November 29, 2023, are granted in part, and denied in part, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge John M. Coogan, issued on November 29, 2023, is modified, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Lindi Turgeon on April 28, 2021, against Verizon North LLC at Docket No. C-2021-3026390, is denied and dismissed without prejudice, consistent with this Opinion and Order.

4. That this proceeding be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 9, 2024

ORDER ENTERED: May 30, 2024