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October 6, 2020

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Andrew Perrong v. Frontier Utilities Northeast LLC  
Docket No. C-2020-3019899

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Frontier Utilities Northeast LLC's ("Frontier") Motion for Summary Judgment and Notice to Plead with regard to the above-referenced matter. Copies to be served in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Deanne M. O'Dell".

Deanne M. O'Dell, Esq.

DMO/lww

Enclosure

cc: Hon. Elizabeth Barnes w/enc.  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Frontier Utilities Northeast LLC's Motion for Summary Judgment upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

### Via Email Only

Andrew Perrong  
1657 The Fairway, Suite 131  
Jenkintown, PA 19046  
[andyperrong@gmail.com](mailto:andyperrong@gmail.com)

Hon. Elizabeth Barnes  
Administrative Law Judge  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[ebarnes@pa.gov](mailto:ebarnes@pa.gov)



Date: October 6, 2020

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Deanne M. O'Dell, Esquire  
Attorneys for  
Frontier Utilities Northeast LLC

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANDREW PERRONG,	:	
	Complainant	:
	:	Docket No. C-2020-3019899
v.	:	
	:	
FRONTIER UTILITIES NORTHEAST LLC,	:	
	Respondent	:

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**NOTICE TO PLEAD**

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**TO: Andrew Perrong**  
1657 The Fairway, Suite 131  
Jenkintown, PA 19046  
[andyperrong@gmail.com](mailto:andyperrong@gmail.com)

Pursuant to 52 Pa. Code § 5.102(a) you are hereby notified that an answer or other responsive pleading regarding the enclosed **Motion for Summary Judgment** by Frontier Utilities Northeast LLC shall be filed within twenty (20) days of service of the Motion.

All documents must be filed\* with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Frontier Utilities Northeast, LLC and the Administrative Law Judge Elizabeth H. Barnes who is presiding over the proceeding.

\*Due to the COVID-19 pandemic, the Pennsylvania Public Utility Commission is encouraging individuals to eFile documents. Information regarding eFiling with the Commission is available at <https://www.puc.pa.gov/efiling/default.aspx>."



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Deanne O'Dell, Esquire

Attorney for  
Frontier Utilities Northeast LLC

Date: October 6, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANDREW PERRONG,	:	
	Complainant	:
	:	Docket No. C-2020-3019899
v.	:	:
	:	:
FRONTIER UTILITIES NORTHEAST LLC,	:	
	Respondent	:

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**MOTION FOR SUMMARY JUDGMENT BY  
FRONTIER UTILITIES NORTHEAST LLC**

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Pursuant to 52 Pa. Code § 5.102, Frontier Utilities Northeast LLC (“Frontier”) submits this Motion for Summary Judgment (“Motion”) seeking the dismissal of the Amended Formal Complaint dated June 15, 2020 (“Complaint”) of Andrew Perrong (“Mr. Perrong”). Mr. Perrong alleges that a caller working for Frontier<sup>1</sup> contacted him at his “private residential number” of 215-322-7458 (“Contacted Telephone Number”),<sup>2</sup> that the conduct of the caller is governed by Chapter 111 of the Commission’s regulations (collectively referred as the “Sales and Marketing Regulations”), and that Frontier should be held liable for any violations by the caller pursuant to the Sales and Marketing Regulations. Upon further investigation and as set forth in the attached Affidavit of Jason Wasserman and supporting exhibits, the Contacted Telephone Number at issue here is not related to a residential electricity service address. Ex. 1, Wasserman Aff. Rather, the address Mr. Perrong provided as his service address, and the address Mr. Perrong directly associates with the Contacted Telephone Number, is a commercial business. Because the Sales and Marketing Regulations are applicable only to offerings in the retail residential

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<sup>1</sup> As noted in its pleadings, Frontier did not authorize the call in question, nor the caller to make the call. The caller was not an agent of Frontier.

<sup>2</sup> See Compl., Perrong Supplemental Narrative/Explanation dated June 22, 2020 (“Supplemental Narrative”) at ¶ 5. Mr. Perrong provided the unmasked number to Frontier subsequent to filing the Complaint.

energy market<sup>3</sup> and not for business accounts, and because Mr. Perrong associated the Contacted Telephone Number with a commercial business, the Complaint must be dismissed.

Mr. Perrong is not the typical residential consumer the Commission seeks to protect through its Sales and Marketing Regulations. Mr. Perrong pursues financial compensation by suing companies he claims called him on his phone without proper legal consent. He is a professional litigation plaintiff who has filed or been associated with *over* 50 lawsuits in the United States federal court system related to phone calls or phone texts allegedly made in violation of law.<sup>4</sup> And, as one federal court noted, he uses “aggressive” litigation tactics in such cases.<sup>5</sup> Accordingly, Frontier believes Mr. Perrong is using the time and resources of the Commission in this instance simply to gain leverage for another federal lawsuit in which he will seek monetary damages. Mr. Perrong is a seasoned plaintiff who is not using the Commission’s time and publicly funded resources for the public benefit, but rather, Frontier believes, for his own personal gain.

While the Commission is generally cautious about dismissing consumer complaints from actual aggrieved consumers prior to hearing, such dismissal is warranted based on the indisputable facts set forth herein. Mr. Perrong’s Complaint should be held to a higher standard of review as he is a “prolific” and experienced litigant, and is currently a law student at Temple University;<sup>6</sup> not the typical consumer that the Commission’s rules were enacted to protect. By granting this Motion and dismissing the Complaint, the Commission will be appropriately

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<sup>3</sup> 52 Pa. Code § 111.1.

<sup>4</sup> See Attachment A to Frontier’s Answer and New Matter to Amended Complaint dated July 20, 2020, for a representative (but not complete) list of cases filed by Mr. Perrong.

<sup>5</sup> Ex. 2, *Perrong v. Reweb Real Estate LLC*, No. 19-4228, 2020 U.S. Dist. LEXIS 152271, at \*7 (E.D. Pa. Aug. 21, 2020) (“*Perrong v. Reweb*”).

<sup>6</sup> *Perrong v. Reweb*, 2020 U.S. Dist. LEXIS 152271, at \*1; Preliminary Objections of Andrew R. Perrong dated Aug. 9, 2020 at ¶ 7.

responding to the circumstances of this proceeding while preserving its processes for those consumers who legitimately require the protections afforded to them through the Commission's Sales and Marketing Regulations. Accordingly, Frontier requests that this Motion be granted and that the Complaint be dismissed with prejudice.

In support of its Motion, Frontier states as follows:

**I. INTRODUCTION**

1. Section 5.21(a) of the Commission's regulations permits a person to file a formal complaint claiming violation of a statute that the Commission has jurisdiction to administer. 52 Pa. Code § 5.21(a). If, however, a hearing is not necessary, then Section 5.21(d) authorizes the Commission to dismiss a complaint. 52 Pa. Code § 5.21(d).

2. Section 5.102 of the Commission's regulations permits any party to move for summary judgment after the pleadings are closed, but within such time as not to delay a hearing. 52 Pa. Code § 5.102. A motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, admissions, and supporting affidavits. 52 Pa. Code § 5.102(c). Pursuant to Section 5.1(a)(2), the pleadings in an action before the Commission include the formal complaint, answer, new matter, reply to new matter, and preliminary objections. 52 Pa. Code § 5.1(a)(2). The presiding officer will grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

3. It is well recognized that an administrative law judge has the discretion to dismiss a complaint on preliminary motion if that dismissal is neither arbitrary nor capricious, and is otherwise in accordance with the law. *Guesman v. Columbia Gas of Pa., Inc.*, Docket No. C-

2012-2326301 (Final Order entered January 4, 2013) (citing *Graham v. Philadelphia Suburban Water Co. and Bell-Atlantic Pa., Inc.*, Docket No. C-00957557 (Order entered June 12, 1996)).

4. Section 5.102(c), which permits dismissal based on summary judgment, serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S.A. § 703(a); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa. Cmwlt. 1989); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlt. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n*, 540 A.2d 1006 (Pa. Cmwlt. 1988); *White Oak Borough Auth. v. Pa. Pub. Util. Comm'n*, 103 A.2d 502 (Pa. Super. 1954). Moreover, it would be inefficient to use Commission resources on a serial plaintiff's efforts for financial gain via a lawsuit, when those resources are better used to support the public interest and consumers who truly need protection.

## **II. FACTUAL BACKGROUND**

5. Frontier is licensed as an electric generation supplier by the Commission to provide electric generation supply services to residential and small commercial (25 kW and under demand) customers in the electric distribution company service territories within the Commonwealth, including (but not limited to) that of PECO Energy Company. Answer and New Matter at ¶ 2.

6. Paragraphs 4 and 5 of the Complaint explicitly allege violations of Section 111.10 of the Commission's regulations. Compl. at ¶¶ 4, 5; Order Denying Respondent's Preliminary Objections To Amended Complaint, dated Aug. 11, 2020 at 1 (procedural history). In subsequent pleadings filed by Mr. Perrong, he further confirmed that the Complaint is limited to alleging violations of 52 Pa. Code § 111.10. See Complainant's Memorandum of Law, dated July 30, 2020.

7. Chapter 111 of the Commission’s regulations is applicable to sales and marketing activities involving residential customers. See 52 Pa. Code § 111.1 (general), 111.2 (definitions); *Rulemaking Re: Marketing and Sales; Practices for the Retail Residential Energy Market*, PUC Docket No. L-2010-2208332, Corrected Final Rulemaking Order entered October 24, 2012. Chapter 111 sets forth certain standards applicable to suppliers engaged in telemarketing to residential customers. See 52 Pa. Code § 111.10 (emphasis added).

8. Mr. Perrong states that he was contacted at his “private residential telephone number” of 215-322-7458, the Contacted Telephone Number. Supplemental Narrative at ¶ 5.

9. However, Mr. Perrong’s pleadings confirm that the Contacted Telephone Number is *not* in fact his “private residential telephone number.” First, he identifies a completely different telephone number on the Commission’s complaint form as his “home” number and repeatedly uses that “home” number in his signature block for the various pleadings he has filed in this matter. Mr. Perrong identifies 215-791-6957 as his “home” telephone number in the Complaint:

Telephone Number(s) Where We Can Contact You During the Day: (required)

( 215 ) 791-6957 (home) ( ) (mobile)

Compl. at Response to Question No. 1. He consistently repeats this number in his signature block on all the pleadings filed with the Commission:



Andrew Perrong  
Complainant Pro-Se  
1657 The Fairway #131  
Jenkintown, PA 19046  
Phone: 215-791-6957  
Facsimile: 888-329-0305  
andyperrong@gmail.com

See, e.g., Compl. at Certificate of Service.

10. Second, Mr. Perrong's pleadings make clear that the account for which he was contacted is 1657 The Fairway, Suite 131, Jenkintown, PA 19046 ("The Fairway Address"). Mr. Perrong confirms in his Complaint to this Commission that The Fairway Address is his service address. Compl. at Response to Question No. 1. More specifically, the Commission's Complaint form requires consumers to identify whether the complaint involves "utility service provided to a different address" than the provided mailing address. Mr. Perrong did *not* provide information in response to that question:

**1. Customer (Complainant) Information (required)**

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Andrew Perrong

Street/P.O. Box 1657 The Fairway, Suite 131 Apt # \_\_\_\_\_

City Jenkintown State PA Zip 19046

County Montgomery

Telephone Number(s) Where We Can Contact You During the Day: (required)

( 215 ) 791-6957 (home) ( \_\_\_\_\_ ) \_\_\_\_\_ (mobile)

E-mail Address (required): andyperrong@gmail.com

Utility Account Number (from your bill) N/A

**If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.**

Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

*Id.* Therefore, The Fairway Address is Mr. Perrong's service address.

11. Mr. Perrong's Supplemental Narrative in his Complaint further confirms that he himself represented to the caller that The Fairway Address is his service address because he sets

forth the information that “was provided to the [Third Party Verification] verifier.”

Supplemental Narrative at ¶ 14.

12. The Commission’s Sales and Marketing Regulations recognize the use of a Third Party Verification (“TPV”) process as part of a second step that must occur before a residential customer’s electricity account can be switched to another supplier. The first part of the two-step process (referred to as the “Transaction”) is receiving the customer’s authorization to transfer the account. 52 Pa. Code § 111.7(a). This first step of the process requires confirming basic customer information to include the service address and authorization to make changes on the account. Only after this information is acquired (from the consumer) does the separate TPV process begin to “verify” the Transaction. 52 Pa. Code § 111.7(b).

13. By providing the Commission with the information that he provided to the TPV verifier, Mr. Perrong is confirming that he provided the same information to the caller. That information includes an account number Mr. Perrong associated with The Fairway Address and a representation that he was authorized to make changes to the account associated with The Fairway Address. Supplemental Narrative at ¶ 14.

14. During the pendency of this case, Mr. Perrong represented to the U.S. Department of Transportation, Federal Aviation Administration (“FAA”) that The Fairway Address is not his private residential address. Attached as Exhibit 3 is a publicly available copy of Mr. Perrong’s Commercial Pilot Certificate which was issued on July 27, 2020. According to FAA statutes and regulations, Mr. Perrong was required to provide his residential address to obtain an airmen certificate. *See* 49 U.S.C. § 44703(b) (“an airman certificate shall . . . contain the name, address, and description of the individual to whom the certificate is issued.”); 14 C.F.R. § 61.39(7) (requires a “completed and signed application form” in order to be eligible to take the practical

test for an airman certificate); FAA Form 8710-1, Airman Certificate and/or Rating Application (requires the applicant to enter their “complete residential address” which, “must include street number, city, state, and zip code.”)(emphasis added); 49 C.F.R. § 61.60 (requires airman to notify the FAA of any change of address within 30 days of any such change to continue exercising the privileges of their certificates). Mr. Perrong provided the FAA the address 3551 Post Rd, Huntington Valley, PA 19006-32189 as his residential address; *not* The Fairway Address.

15. Based on the information provided by Mr. Perrong in his Complaint, to the caller and the TPV verifier, and other publicly available documentation disclosing information provided by Mr. Perrong, the facts as alleged by Mr. Perrong himself are that: (1) he was not contacted at his “private residential telephone number;” (2) he has consistently provided a different telephone number than the Contacted Telephone Number as his “home” number to this Commission; (3) The Fairway Address is not his private residence consistent with publicly available documentation disclosing information provided by Mr. Perrong to the FAA; (4) Mr. Perrong associated the Contacted Telephone Number to The Fairway Address; and (5) Mr. Perrong represented to the Commission, the caller, and the TPV verifier that The Fairway Address is his service address for the purposes of receiving electricity service.

16. The address which Mr. Perrong confirms was the subject of the telephone call at issue here – The Fairway Address – is a commercial property. *See* Wasserman Aff. There are no residential housing units or other residential dwellings at The Fairway Address. *Id.* at ¶ 6. The mailing address of 1657 The Fairway, Jenkintown, PA 19046 is for a business named The Postal Factory. *Id.* at ¶ 7. The Postal Factory is located in a strip mall open to the public and

there are no residential housing units or other residential dwellings in the strip mall where The Postal Factory is located. *Id.* at ¶ 8.

17. Chapter 111 of the Commission's Sales and Marketing Regulations apply only to the residential energy market and are not applicable to commercial service addresses. 52 Pa. Code § 111.1.

### III. MOTION FOR SUMMARY JUDGMENT

#### A. Standard for Review

18. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1976).

19. The non-moving party in a motion for summary judgment must allege facts showing that an issue for trial exists. *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Commonwealth v. Diamond Shamrock Chemical Co.*, 391 A.2d 1333 (Pa. Cmwlth. 1978); *Stover v. The United Telephone Co. of Pa.*, Docket No. C-00923833 (Order entered July 21, 1992). The Commission has interpreted Section 5.102(c) in conformity with Rule 1035 (now Rule 1035.1) of the Pennsylvania Rules of Civil Procedure. *South River Power Partners, L.P. v. West Penn Power Co.*, Docket No. C-00935287 (Order entered Nov. 6, 1996). In civil practice, a non-moving party may not rely solely upon denials in its pleadings, but must submit evidence to establish that a genuine issue of material fact exists. *Nicastro v. Cuyler*, 467 A.2d 1218 (Pa. Cmwlth. 1983); *Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc.*, 467 A.2d 330 (Pa. Super. 1983); *Geriot v. Council of Borough of Darby*, 457 A.2d 202 (Pa. Cmwlth. 1983).

**B. No Genuine Issue Of Material Fact Exists Regarding Mr. Perrong's Allegations**

20. Mr. Perrong bears the burden of proving that Frontier violated a Commission regulation or order. *See* 66 Pa. C.S.A. § 332(a). However, as supported by the pleadings and the Wasserman Affidavit, there is no genuine issue of material fact in this case. Frontier is entitled to a judgment as a matter of law.

21. Mr. Perrong's statement that he was contacted at his "private residential telephone number" of 215-322-7485 – his Contacted Telephone Number – is false for a number of indisputable reasons:

- a. As set forth in his Complaint, Mr. Perrong represented to the caller and the TPV verifier that the contacted number was associated with The Fairway Address. Supplemental Narrative at ¶ 14. Mr. Perrong's Complaint identifies The Fairway Address as his service address. Compl. at Response to Question No. 1.
- b. By his own account, Mr. Perrong confirmed to the caller and the TPV verifier that he was the customer responsible for the electric account at The Fairway Address. Supplemental Narrative at ¶ 14.
- c. There are no residential housing units or other residential dwellings at The Fairway Address. Wasserman Aff. at ¶ 6. The Fairway Address is occupied by "The Postal Factory" – a business that, among other things, rents mailboxes. *Id.* ¶ 7. That business is located in a strip mall open to the public known as the "Baederwood Shoppes On The Fairway." *Id.* ¶ 8. There are no residential housing units or other residential dwellings in the strip mall where the Postal Factory is located. *Id.*
- d. Mr. Perrong provided a completely different telephone number than the Contacted Telephone Number in his Complaint as his "home" number and repeatedly uses that "home" number in his signature block for the various pleadings he has filed in this matter. *See* ¶¶ 9,10 *infra*.
- e. Mr. Perrong has confirmed that The Fairway Address is not his private residence in documents he submitted to the FAA. *See* ¶ 14 *infra*.

22. There is no genuine issue of material fact in this case that the Contacted Telephone Number has been confirmed by Mr. Perrong as being associated with a commercial

business. As such, Chapter 111 of the Commission's regulations is *not* applicable to the Complaint because the Sales and Marketing Regulations only apply to the residential electricity market. *See* 52 Pa. Code § 111.1.

**C. The Public Interest Is Served By Dismissing Mr. Perrong's Complaint**

23. Mr. Perrong has significant experience in the use of the judicial system to pursue financial rewards. Indeed, Mr. Perrong has filed more than 50 lawsuits in the United States federal court system related to phone calls and texting allegedly in violation of law.<sup>7</sup>

24. While Frontier does not object to the right of any consumer to pursue legitimate claims regarding violations of the Commission's regulations, Mr. Perrong's history makes clear that he is not the average consumer nor a typical pro se complainant, but rather well-adept at manipulating a situation to serve his ultimate purpose of pursuing litigation. *See* Ex. 2, *Perrong v. Reweb*, 2020 U.S. Dist. LEXIS 152271, at \*7.

25. In *Perrong v. Reweb*, Federal District Court Judge Gerald McHugh described how Mr. Perrong took actions after receiving text messages in error, in order to craft the basis for his civil complaint:

The genesis of this action was Plaintiff's receipt of 3 text messages in a row. The first was addressed to an individual named Devin, with reference to a specific property he owned with an address in Florida. The second message expressed interest in buying other properties in the area, and the third text asked when it would be a convenient time to speak. Plaintiff responded in order to identify the sender, and he received another text asking again when it would be a good time to speak. Plaintiff then ostensibly requested a copy of REWeb's "Do-not-call" policy. Finally, after confirming the telephone number, he called and was connected . . . to defendant. . . . Thereafter, Plaintiff asserted his claim for damages.

*Id.* (emphasis added).

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<sup>7</sup> *See* Attachment A to Frontier's Answer and New Matter to Amended Compliant dated July 20, 2020, for a representative (but not complete) list of cases filed by Mr. Perrong.

26. This example shows how Mr. Perrong has manipulated a situation to his own advantage and for the purpose of supporting subsequent litigation. “Plaintiff’s aggressive style of litigation” led to the court in *Perrong v Reweb* to be concerned that it “represent[ed] a strategy of pressuring these defendants to settle independent of the merits of the case.” *Id.* at \*7-\*8.

27. Mr. Perrong’s actions in this case are no different. In his Complaint, Mr. Perrong transcribes the information he provided to the caller, that was then later provided as part of the TPV.<sup>8</sup> Based on his description of the transaction, Mr. Perrong engaged in a discussion with the caller over the course of at least a half hour wherein he provided the caller with his name, service address, account number, and authorization to switch service on a commercial entity’s electricity account. Supplemental Narrative at ¶¶ 10-15. Mr. Perrong further confirmed that The Fairway Address is his service address in his Complaint, and that his “home” number is different from the Contacted Telephone Number, which he related to The Fairway Address. Compl. at Response to Question No. 1.

28. Notwithstanding these undisputable facts, Mr. Perrong misrepresented to this Commission that he was contacted at his “private residential telephone number.” Supplemental Narrative at ¶ 5. Mr. Perrong’s Complaint creates the misimpression that he was contacted about electricity service to his residential property – an assertion that is *not* supported by the facts as set forth herein.

29. Given Mr. Perrong’s litigation history and the information provided herein, Mr. Perrong’s actions in this matter are best understood as a deliberate attempt to mislead the Commission into believing that an alleged phone call he received implicates the Commission’s

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<sup>8</sup> Despite claiming that the TPV process was “successful,” Mr. Perrong never alleges that his electric service was switched to Frontier and, in fact, Frontier never provided electric service to Mr. Perrong. Answer to Amended Complaint at ¶ 4(b).

Sales and Marketing Regulations. In fact, Mr. Perrong provided information to the caller, the TPV verifier, and this Commission making clear that the Commission's Sales and Marketing Regulations *do not apply* because the Contacted Telephone Number is not his home number. Further, the service address Mr. Perrong associated with the Contacted Telephone Number is a commercial business. *See Wasserman Aff.* at ¶¶ 4-8.

30. For all these reasons, dismissing the Complaint based on Mr. Perrong's admissions and undisputed facts is in the public interest, will satisfy the pursuit of justice, and will permit the Commission to devote its time and resources to enforcing its regulations in the situations where such enforcement is needed and appropriate. As Mr. Perrong has shown, he is more than capable of seeking any purported damages in court.

#### IV. CONCLUSION

31. Frontier is entitled to summary judgment as a matter of law because Chapter 111 of the Commission's regulations, including Section 111.10, is only applicable to residential customers. The pleadings, as well as the Wasserman Affidavit, demonstrate that there is no material dispute that Mr. Perrong associated his telephone number with service to a business/commercial property and then intentionally misrepresented to the Commission that he was contacted regarding his residential electricity account.

**WHEREFORE**, for the foregoing reasons, Frontier respectfully requests that the Commission grant this Motion and dismiss the Complaint, with prejudice.

Respectfully submitted,



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Deanne M. O'Dell, Esquire  
PA Attorney ID #81064  
Lauren M. Burge, Esquire  
PA Attorney ID #311570  
Eckert Seamans Cherin & Mellott, LLC  
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[lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)

October 6, 2020

Attorneys for  
Frontier Utilities Northeast LLC

**Exhibit 1**

**To**

**Frontier Motion for Summary  
Judgment**

**Perrong v. Frontier (Docket No. C-2020-3019899)**



### Wasserman Affidavit FINAL.pdf

DocVerify ID: 8A67FF7E-FFF3-413D-9AD4-0308F12DBC9C  
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Pages: 11  
Remote Notary: Yes / State: TX

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#### E-Signature Summary

**E-Signature 1: Jason Paul Wasserman (JPW)**

October 06, 2020 09:34:14 -8:00 [1B869411A486] [206.126.57.206]  
jason.wasserman@frontierutilities.com (Principal)

**E-Signature Notary: Dana K Drake (dkd)**

October 06, 2020 09:34:14 -8:00 [DF9FC48E4840] [163.116.129.115]  
ddrake@huntonak.com

I, Dana K Drake, did witness the participants named above electronically sign this document.



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANDREW PERRONG,	:	
	Complainant	:
	:	Docket No. C-2020-3019899
v.	:	
	:	
FRONTIER UTILITIES NORTHEAST LLC,	:	
	Respondent	:

---

**AFFIDAVIT OF JASON WASSERMAN  
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
OF FRONTIER UTILITIES NORTHEAST LLC**

---

STATE OF TEXAS                   §  
  §  
COUNTY OF HARRIS           §

On this day, personally appeared before me, Jason Wasserman, a person known to me, who did state and depose as follows:

1.       “My name is Jason Wasserman, I am over the age of 21, and am otherwise competent to execute this affidavit. I am the Vice President, C&I Strategy & Execution for Gexa Energy LP. I have personal knowledge of the matters set forth herein, and all of the matters set forth herein are true and correct.

2.       I was Vice President & General Manager for Frontier Utilities Northeast LLC (“Frontier”) from February 2018 through June 2020. In this capacity, I was responsible for overall operations of Frontier, which included all sales and supporting functions. As part of these job responsibilities, I am familiar with the regulatory processes utilized by Frontier to enroll customers including the sales and marketing activities of Frontier.

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3. I am also directly familiar with the formal complaint filed by Andrew Perrong (“Mr. Perrong”) with the Commission, and I have reviewed Frontier’s records and information regarding the allegations in Mr. Perrong’s Amended Formal Complaint (“Complaint”).

4. In his Complaint, Mr. Perrong identifies 1657 The Fairway, Suite 131, Jenkintown, PA 19046 (“The Fairway Address”) as his service address and confirms that he engaged in a verification process wherein he represented that he was the customer responsible for the electric account at The Fairway Address. Compl., Perrong Supplemental Narrative/Explanation at ¶¶ 1, 14; Compl. at Response to Question No. 1.

5. Attached as Exhibits A and B are true and correct copies of photographs taken on behalf of Frontier on October 1, 2020, for the purposes of identifying the customer classification of The Fairway Address.

6. There are no residential housing units or other residential dwellings at The Fairway Address.

7. The mailing address of 1657 The Fairway, Jenkintown, PA 19046 is for a business named The Postal Factory. Ex. A. The Postal Factory is a packing, shipping and printing business that also provides private mailbox rental services. *Id.* at 1 (identifying The Postal Factory as a “Postal & Business Center”). The private mailboxes that can be rented at The Postal Factory include mailbox number 131. *Id.* at 4. Mailbox 131 corresponds with “Suite 131” identified in Mr. Perrong’s Complaint. *Id.*

8. The Postal Factory is located in a strip mall open to the public known as the “Baederwood Shoppes On The Fairway.” Ex. A; Ex. B. There are no residential housing units or other residential dwellings in the strip mall where the Postal Factory is located. Ex. B. There are



only commercial offices above the strip mall businesses inside the Baederwood Offices On The Fairway. Ex. B at 3-4.

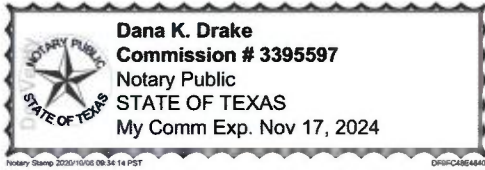
9. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 (relating to unsworn falsification to authorities).”

Signed this, the 6<sup>th</sup> day of October, 2020.

Jason Paul Wasserman  
Signed on 2020/10/06 09:34:14 -0500

Jason Wasserman

SWORN and SUBSCRIBED before me this, the 6<sup>th</sup> day of October, 2020, to certify which witness my hand and seal of office.



Dana K Drake  
Signed on 2020/10/06 09:34:14 -0500

Notary Public in and for  
The State of Texas

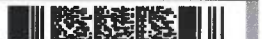


Exhibit A: The Postal Factory Located at 1657 The Fairway, Jenkinton, PA 19046

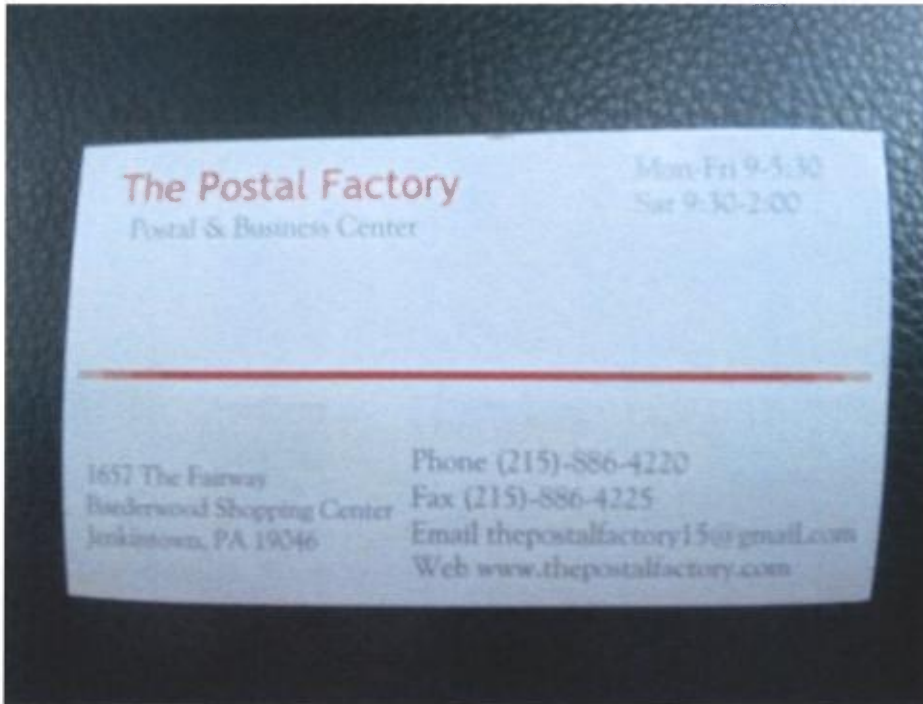


Exhibit A: The Postal Factory Located at 1657 The Fairway, Jenkinton, PA 19046



8A67FF7E-FFF3-413D-9AD4-0308F12DBC9C --- 2020/10/06 09:15:18 -8:00 --- Remote Notary



Exhibit A: The Postal Factory Located at 1657 The Fairway, Jenkinton, PA 19046



8A67FF7E-FFF3-413D-9AD4-0308F12DBC9C --- 2020/10/06 09:15:18 -6:00 --- Remote Notary



Exhibit A: The Postal Factory Located at 1657 The Fairway, Jenkinton, PA 19046



8A67FF7E-FFF3-413D-9AD4-0308F12DBC9C --- 2020/10/06 09:15:18 -8:00 --- Remote Notary

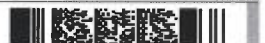


Exhibit B: Baederwood Shoppes and Offices On The Fairway



8A67FF7E-FFF3-413D-9AD4-0308F12DBC9C --- 2020/10/06 09:15:18 -8:00 --- Remote Notary



**Exhibit B: Baederwood Shoppes and Offices On The Fairway**



8A67FF7E-FFF3-413D-9AD4-0308F12DBC9C --- 2020/10/06 09:15:18 -6:00 --- Remote Notary



**Exhibit B: Baederwood Shoppes and Offices On The Fairway**



8A67FF7E-FFF3-413D-9AD4-0308F12DBC9C --- 2020/10/06 09:15:18 -8:00 --- Remote Notary



**Exhibit B: Baederwood Shoppes and Offices On The Fairway**



8A67FF7E-FFF3-413D-9AD4-0308F12DBC9C --- 2020/10/06 09:15:18 -8:00 --- Remote Notary



**Exhibit 2**  
**To**

**Frontier Motion for Summary  
Judgment**

**Perrong v. Frontier (Docket No. C-2020-3019899)**

## Perrong v. Reweb Real Estate LLC

United States District Court for the Eastern District of Pennsylvania

August 21, 2020, Decided; August 21, 2020, Filed

CIVIL ACTION NO. 19-4228

### Reporter

2020 U.S. Dist. LEXIS 152271 \*

ANDREW R. PERRONG v. REWEB REAL ESTATE  
LLC, ET AL.

### Core Terms

discovery, default

**Counsel:** [\*1] ANDREW R. PERRONG, Plaintiff, Pro  
se, JENKINTOWN, PA.

REWEB REAL ESTATE LLC, Defendant, Pro se,  
NAPLES, FL.

KYLE MCLAUGHLIN, Pro se, NAPLES, FL.

NICHOLAS UMMARINO, Pro se, NAPLES, FL.

**Judges:** Gerald Austin McHugh, United States District  
Judge.

**Opinion by:** Gerald Austin McHugh

### Opinion

#### MEMORANDUM

### McHUGH, J.

This is an action brought under the [Telephone Consumer Protection Act, \(TCPA\), 47 U.S.C. § 227, et seq.](#) Plaintiff is Andrew Perrong, a prolific and frequently successful *pro se* litigant in cases brought under the TCPA. Defendants include REWeb Real Estate, LLC, which Plaintiff pleads is incorporated in Florida and operates from offices there, REWeb's two principal owners, and "John Does 1 through 100." (Compl. ¶¶ 7-9.) Plaintiff avers that Defendants conduct business in Bucks and Montgomery Counties, and he further avers that "they purposely avail themselves of the markets in this District, including by purchasing and owning property in this District and/or entering into contracts for the purchase and sale of real property with residents of this District." (Compl. ¶ 5.)

The Complaint was filed on September 12, 2019, the summons apparently served on October 2, 2019, and a default entered by November 6, 2019, followed promptly by a motion to enter [\*2] judgment on the default. Defendants, also proceeding *pro se*, communicated with the Court by email on November 27, 2019, followed by a *pro se* motion to set aside the default. Defendants' email was docketed.

Mr. Perrong moved to strike the motion to set aside the default, arguing that it was improper in both form and substance, and further moved to strike Defendants' initial email communication to the Court as an improper *ex parte* communication with scandalous content. In an order entered December 5, 2019, I denied the motion to strike Defendants' motion, denied Plaintiff's motion for judgment, and granted the motion to vacate the default. In an order entered December 12, 2019, I denied Plaintiff's motion to strike Defendants' initial email communication from the record, but ordered that it be sealed, and barred Defendants from any further *ex parte* communication with the Court.

Defendants, still proceeding *pro se*, then simultaneously

filed an answer denying Plaintiff's allegations in some detail, and a motion to dismiss, asserting a lack of jurisdiction. The motion is conclusory. Nonetheless, a "federal court is bound to consider its own jurisdiction preliminary to consideration of the [\*3] merits," Trent Realty Assocs. v. First Fed. Sav. & Loan Ass'n, 657 F.2d 29, 35 (3d Cir. 1981), and thus may raise jurisdiction *sua sponte*, Sun Buick v. Saab Cars U.S.A., 26 F.3d 1259, 1261 (3d Cir. 1994). After review of the parties' submission the question of jurisdiction was of sufficient concern that I entered an Order directing Mr. Perrong to set forth in an affidavit the factual basis for his allegations of jurisdiction. He did so, simultaneously filing a motion to strike Defendants' answer on the ground that REWeb, as a corporation, could not defend itself *pro se* but was required to retain counsel. I will not strike Defendants' filing, but instead consider whether jurisdiction is properly vested in this court.

A "court may assert general [personal] jurisdiction over foreign corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." Daimler AG v. Bauman, 571 U.S. 117, 127, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014).

To establish specific personal jurisdiction over a defendant, the question is whether the defendant's contacts with the forum are such that the defendant could reasonably foresee being haled into the forum's courts. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985). "In determining whether minimum contacts are present, courts focus on 'the relationship among the defendant, the forum, and the litigation.'" Gehling v. St. George's School of Medicine, 773 F.2d 539, 541 (3d Cir. 1985) (quoting Shaffer v. Heitner, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977)) [\*4]. On this record, I am not persuaded that sufficient contacts exist. But even when such a showing can be made, the court must still consider whether its assertion of jurisdiction would comport with "traditional notions of fair play and substantial justice." Vetrotex Certaineed Corp. v. Consol. Fiber Glass Products Co., 75 F.3d 147, 150 (3d Cir. 1996).

As set forth below, there is certainly no basis for general jurisdiction, and the contacts between Defendants and Pennsylvania are marginal. Furthermore, I am not persuaded that subjecting them to jurisdiction here would be consistent with "traditional notions of fair play and substantial justice."

The genesis of this action was Plaintiff's receipt of 3 text messages in a row.<sup>1</sup> The first was addressed to an individual named Devin, with reference to a specific property he owned with an address in Florida. The second message expressed interest in buying other properties in the area, and the third text asked when it would be a convenient time to speak. Plaintiff responded in order to identify the sender, and he received another text asking again when it would be a good time to speak. Plaintiff then ostensibly requested a copy of REWeb's "Do-not-call" policy. Finally, after confirming the telephone number, he called and was connected [\*5] first to individual defendant Nicholas Umarino and then to defendant Kyle McLaughlin. (Complaint ¶¶ 18-38.) Thereafter, Plaintiff asserted his claim for damages.

In answering the Complaint, Defendants concede that the texts were sent, but specifically deny that any automatic dialer was used. Rather, they contend that it was sent accidentally to the wrong number as one of their employees was seeking to communicate with the owner of the specific property identified and was using a number found in a published directory. (Defs.' Answer ¶¶ 18-34.) They further deny that their business lacked a "Do-not-call" policy, (*id.* ¶ 34), and attached it as an exhibit to their answer, (*id.*, Ex. A.)

As to the scope of the business, Defendants averred that they limit their activities to Southeast Florida, where they are licensed, and conduct no direct business activities in Pennsylvania. (*Id.* ¶¶ 1-2.) They further identify the specific person whom they were trying to contact and identify him as the owner of a property in Cape Coral Florida, an area in which they regularly do business. (*Id.* ¶ 30.) Their answer further pleads that Plaintiff demanded \$7000 in settlement, told them that they would need to [\*6] hire a lawyer, further stating that his demand would increase if they did not immediately capitulate. (*Id.* ¶37.) Considering the general and often evasive nature of many answers to civil complaints, the specificity and unambiguous nature of the denials stands out.

Plaintiff's affidavit in support of jurisdiction, (ECF 17), is long on argument and short on facts. There is no support for his allegation that Defendants purchase or own homes in this judicial district. He further asserts that they do a "brisk business" in Pennsylvania. (Perrong Aff. ¶ 6.) But the most that Plaintiff can show, citing to REWeb's website, is that Defendants apparently have

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<sup>1</sup> Defendants allege that it was a single text.

listed a property in Naples, Florida owned by a Pennsylvania resident. (*Id.*) Plaintiff also asserts that defendant McLaughlin recently sold another property in Naples, Florida to a Pennsylvania resident, but he was acting through a different real estate company. (*Id.*) Plaintiff tries to characterize the text messages he received as evidence that Defendants were masquerading as investors seeking to buy property in Pennsylvania, but I do not find that to be a reasonable characterization of the texts.

Plaintiff further seeks leave to conduct [\*7] discovery in support of jurisdiction, (Perrong Aff. ¶ 8.) Whether to grant such discovery rests within the discretion of the court. *Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 455 (3d Cir. 2003)*. To justify discovery, a plaintiff asserting jurisdiction must set forth facts that "suggest with reasonable particularity the possible existence of the requisite contacts between [the parties] and the forum state." *Id. at 456*. The facts that Plaintiff has advanced here do not justify an inference that allowing discovery will demonstrate a basis for jurisdiction. In reaching that conclusion, I remain troubled that Plaintiff would unambiguously allege in the Complaint that Defendants conduct business here "by purchasing and owning property" in the absence of any factual support.

I am also guided by my obligations under *Federal Rule of Civil Procedure 26 (b)(1)*, particularly considerations of proportionality and burden. Plaintiff's motion to strike Defendants' answer was filed simultaneously with his affidavit. If the motion were granted, it would have the effect of requiring Defendants to expend funds for the retention of counsel. Similarly, his request for jurisdictional discovery would impose further transactional costs on Defendants. Both are consistent with Plaintiff's aggressive style of litigation, [\*8] and a concern arises that this represents a strategy of pressuring these defendants to settle independent of the merits of the case. This concern on my part is a separate basis on which I deny discovery given the record in this case.

Plaintiff, of course, remains free to pursue his claims and establish the merits of his case, but he must do so in a forum where Defendants are properly subject to personal jurisdiction. An appropriate Order follows.

/s/ Gerald Austin McHugh

United States District Judge

This 21st day of August, 2020, it is hereby **ORDERED** that Plaintiff's Motion to Strike, ECF 18, is **DENIED**, and Defendants' Motion to Dismiss, ECF 14, is **GRANTED**.

This action is **DISMISSED** without prejudice.

The Clerk is requested to mark this case **CLOSED** for statistical purposes.

/s/ Gerald Austin McHugh

United States District Judge

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End of Document

**ORDER**

**Exhibit 3**  
**To**

**Frontier Motion for Summary  
Judgment**

**Perrong v. Frontier (Docket No. C-2020-3019899)**



**Federal Aviation  
Administration**

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**U.S Department of Transportation  
Federal Aviation Administration  
Airman Details Report**

**Personal Information:**

**ANDREW ROMAN PERRONG**

3551 POST RD  
HUNTINGDON VALLEY PA 19006-3219  
County: MONTGOMERY  
Country: USA

**Medical Information:**

**Medical Class:** Third **Medical Date:** 5/2017  
MUST WEAR CORRECTIVE LENSES FOR NEAR AND DISTANT VISION.  
**BasicMed Course Date:** None **BasicMed CMEC Date:** None

**Certificate Information:**

**Certificate:** COMMERCIAL PILOT  
**Date of Issue:** 7/27/2020

**Ratings:**

**COMMERCIAL PILOT**  
AIRPLANE SINGLE ENGINE LAND  
AIRPLANE MULTIENGINE LAND  
INSTRUMENT AIRPLANE

**Limits:**

ENGLISH PROFICIENT.