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October 19, 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") Objections to Application for Subpoena with regard to the above-referenced matter. Copies to be served in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in blue ink that reads "Deanne M. O'Dell".

Deanne M. O'Dell, Esq.

DMO/jls

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 Objections to Application for Subpoena 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

Hon. Elizabeth Barnes
Administrative Law Judge
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
ebarnes@pa.gov



Date: October 19, 2020

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	:

**FRONTIER UTILITIES NORTHEAST LLC’S
OBJECTION TO COMPLAINANT’S
APPLICATION FOR A SUBPOENA TO DATA EXCHANGE, INC. D/B/A TPV.COM**

Pursuant to 52 Pa. Code § 5.421(f), Frontier Utilities Northeast LLC (“Frontier”) submits this Objection to the Application for a Subpoena to Data Exchange, Inc. d/b/a TPV.com (“Data Exchange”) (“Application”) of Andrew Perrong (“Mr. Perrong”), which is dated October 9, 2020. For the reasons discussed herein, the Complainant’s Application must be denied.

I. BACKGROUND

On May 25, 2020, Mr. Perrong filed a Formal Complaint against Frontier, alleging that a caller working for Frontier contacted him in violation of Chapter 111 of the Commission’s regulations (collectively referred to 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. On June 15, 2020, Frontier filed an Answer and New Matter denying the allegations in the Complaint, as well as Preliminary Objections. Mr. Perrong subsequently filed an Amended Formal Complaint and Supplemental Narrative on June 22, 2020 (“Complaint”), and Frontier filed an Answer and New Matter and Preliminary Objections to the Amended Complaint on July 20, 2020.

On August 18, 2020, the Honorable Elizabeth H. Barnes issued a Prehearing Order setting the hearing in this matter for November 3, 2020. The Prehearing also ordered the parties to comply with certain other requirements.

On October 6, 2020, Frontier submitted a Motion for Summary Judgment seeking dismissal of the Complaint with prejudice. On October 9, 2020, Mr. Perrong filed his Application seeking to obtain information from Data Exchange. For the reasons discussed herein, Frontier submits that the Application must be denied.

II. OBJECTIONS

A. Mr. Perrong Failed to Serve the Correct Person.

The Commission's regulation at 52 Pa. Code § 5.421 provides the requirements that must be met for a subpoena to be requested and issued including the form of the application, service requirements, and the opportunity for other parties to object. Specifically, Section 5.421(c)(5) provides that the party requesting a subpoena must serve the application for subpoena on "[t]he person or individual for whom the subpoena is sought when the person is not a party to the case."¹ Mr. Perrong has failed to comply with this requirement.

The Application seeks to obtain information from Data Exchange; however, Mr. Perrong has failed to serve the Application on Data Exchange.² Rather, the Application and Notice to Plead are incorrectly directed at Frontier. This violates Section 5.421(c)(5), which requires that the Application must have been served on the person for whom the subpoena is sought when that

¹ 52 Pa. Code § 5.421(c)(5) (emphasis added). A "person" is defined as including "individuals, corporations, partnerships, associations, joint ventures, other business organizations . . ." and a variety of other entities. 52 Pa. Code § 1.8.

² Application at 1 ("Perrong hereby requests that the Commission issue a subpoena to Data Exchange, Inc db/a TPV.com."). The Certificate of Service accompanying the Application indicates that it was only served on counsel for Frontier, the Secretary of the Commission, and Hon. Elizabeth Barnes as the Administrative Law Judge.

person is not a party to the case.³ Since Data Exchange has not been served, it has not had the opportunity to object to or otherwise submit an answer to the Application as required by the regulations.⁴ The Commission has previously rejected an application for subpoena in this same factual scenario – defective service for failing to serve the person for whom the subpoena is sought.⁵ Therefore, the Application must be rejected for failure to serve Data Exchange as required by the Commission’s regulations.

B. Mr. Perrong Currently Possesses the Information Sought.

If the Application is granted, the subpoena will request information that is already in Mr. Perrong’s possession. Specifically, Mr. Perrong is seeking:

- (i) recording(s) of any calls associated with TPV ID 419148521;
- (ii) all documents related to TPV ID 419148521, including all records showing when the TPV occurred, the length of the TPV, and any other internal records related to the TPV; and
- (iii) all documents sufficient to identify the source of the TPV ID 419148521, including the identity of Vendor Number 36 or agent ID NGETQS5006 “Jordan Smith”.

Application at ¶ 1.

In his Complaint, Mr. Perrong alleges that “[t]he TPV agent refused to accept the sign-up because [his] number was on the Do-Not-Call list” and that certain “information was provided to the TPV verifier.”⁶ Mr. Perrong also alleges that “[e]ach of these calls was documented and recorded.”⁷ Thus, Mr. Perrong is already in possession of the recordings he is requesting in the Application as he recorded them himself. Further, Mr. Perrong already knows the facts related to

³ 52 Pa. Code § 5.421(c)(5).

⁴ 52 Pa. Code §§ 5.421(c)(5); 5.421(f).

⁵ *See Simpson A. Chalmers v. PPL Electric Utilities Corp.*, Docket No. C-2017-2605855, Initial Decision (July 18, 2018).

⁶ *See* Compl., Perrong Supplemental Narrative/Explanation dated June 22, 2020 (“Supplemental Narrative”) at ¶¶ 13-14.

⁷ *Id.* at ¶ 17.

“when the TPV occurred” and the “length of the TPV”; that information is included in his Complaint and the recordings that he took himself.⁸ Additionally, Mr. Perrong already knows the identity of the caller – the Application contains the name (“Jordan Smith”), vendor ID number (“36”), and “agent ID NGETQS5006.”⁹ It is unclear what additional information Mr. Perrong would gain through the issuance of the subpoena that he does not already possess.

Because the information sought through the subpoena is already in Mr. Perrong’s possession, the issuance of the subpoena would be a waste of time and resources for the parties as well as the ALJ and the Commission. Therefore, the Application should be rejected.

C. The Application Fails to Provide a Sufficient Justification for the Information Requested.

Section 5.421(b) requires that the Application provide a specific and detailed rationale for the information requested. General descriptions of the information and vague statement of relevance are not sufficient, the Application:

(1) Must specify as nearly as possible the general *relevance, materiality* and scope of the testimony or documentary evidence sought, including, as to documentary evidence, specification as nearly as possible of the documents desired.

(2) Must list the *facts* to be *proved* by the documents in sufficient detail to indicate the necessity of the documents.¹⁰

The Application fails to meet this high standard and should be denied.

Not one time in the Application does Mr. Perrong state that the information is relevant to the claims in his Complaint, let alone that the information is material. Further, the Application does not list any facts that he intends to prove at the hearing in support of his claims that can be

⁸ Application at 1(ii); see Supplemental Narrative at ¶¶ 6, 13-14, 17.

⁹ Application at 1(iii); see also Supplemental Narrative at ¶¶ 13-14.

¹⁰ 52 Pa. Code § 5.421(b) (emphasis added).

shown through the information requested. The Application should be denied for this reason alone.

Mr. Perrong's sole reason why the information is relevant is Frontier's Motion for Summary Judgment. In justifying the relevance of his request to obtain certain documents or information through a subpoena, Mr. Perrong makes a number of inaccurate statements and mischaracterizes Frontier's Motion for Summary Judgment. These statements should be disregarded and do not provide adequate justification for the issuance of a subpoena.

In Paragraph 2 of the Application, Mr. Perrong characterizes Frontier's Motion for Summary Judgment as stating that "the TPV [third party verification] process was unsuccessful and did not occur as Plaintiff has alleged" This statement is inaccurate. The Motion for Summary Judgment states that the enrollment was unsuccessful, because the TPV process itself prevented the enrollment from occurring.¹¹ In other words, Mr. Perrong was never enrolled to receive service from Frontier because the TPV process worked appropriately, resulting in the call being terminated and the enrollment not being verified. Further, the Application directly contradicts Mr. Perrong's admission in his Complaint that TPV enrollment did not occur "The TPV agent refused to accept the sign-up because my number was on the Do-Not-Call list."¹²

In Paragraph 3 of the Application, Mr. Perrong claims that Frontier's Motion for Summary Judgment states that "the vendor who submitted the TPV was not authorized to do so." This statement is also an incorrect characterization. The Motion for Summary Judgment states that Frontier did not authorize the call to Mr. Perrong; not that the caller was unauthorized to submit to the TPV process.¹³

¹¹ Frontier Motion for Summary Judgment at ¶ 12.

¹² Supplemental Narrative at ¶ 1.

¹³ Frontier Motion for Summary Judgment at 1, n. 1 ("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.")

Finally, in Paragraph 4 of the Application, Mr. Perrong claims the information sought is relevant because it relates to his claims under Chapter 111 of the Commission's regulations.¹⁴ It should be noted, however, that the basis for Frontier's Motion for Summary Judgment is that Chapter 111 does not apply in this situation and, therefore, Mr. Perrong does not have a valid claim.¹⁵

Mr. Perrong's mischaracterizations of Frontier's Motion for Summary Judgment should be disregarded and do not provide an adequate justification for a subpoena to be issued. The Application should be denied.

D. The Application is Untimely and Should be Denied.

The proposed subpoena imposes unnecessary time and expense on the parties. As discussed above, the subpoena seeks information from Data Exchange that Mr. Perrong knows he already possesses and has possessed since April 2, 2019 - 1.5 years ago. Mr. Perrong filed his original complaint in May and did not seek any discovery for the past five months. The Prehearing Order dated August 18, 2020 advised Mr. Perrong to "submit [his] written application [for a subpoena] sufficiently in advance of the hearing date so that the other parties will have the required ten (10) days' notice to answer or object, and so that you will have enough time to receive the subpoena and serve it."¹⁶ Yet, Mr. Perrong did nothing. On October 6, 2020, Frontier filed a Motion for Summary Judgment seeking dismissal of the Complaint with prejudice. It was not until three days later, on October 9, 2020, that Mr. Perrong served discovery on Frontier and filed the Application. The Application should be denied as untimely.

¹⁴ 52 Pa. Code § 111.1 *et seq.*

¹⁵ See Frontier Motion for Summary Judgment at ¶¶ 22, 31.

¹⁶ Prehearing Order dated August 18, 2020 at 3, ¶ 7.

It would be a waste of the time and resources of the parties, the ALJ, and the Commission to issue a subpoena now while a Motion for Summary Judgment is pending. If the Motion is granted, the Complaint would be dismissed and the information sought through the subpoena would be irrelevant. It is not rational to issue a subpoena and require Data Exchange to provide responses while a motion is currently pending that may well result in dismissal of the Complaint.

Further, this matter is set for hearing on November 3, 2020. Assuming the Commission grants the Application, Mr. Perrong would still need to formally serve Data Exchange with the subpoena. Data Exchange would then have an opportunity to object and have a ruling on that objection before being required to produce any responsive information it may have. Frontier would be prejudiced by not having sufficient time to review any information produced by Data Exchange sufficiently in advance of the November 3 hearing.

Because Mr. Perrong waited until the eleventh hour to submit the Application and Frontier already has a pending Motion for Summary Judgment, the Application should be denied.

III. CONCLUSION

As discussed above, the Application for Subpoena: (1) failed to provide service to the person for whom the subpoena is sought, in violation of the Commission's regulations; (2) seeks information that is already in Mr. Perrong's possession; (3) incorrectly characterizes Frontier's Motion for Summary judgment when justifying the relevance of the information sought through the subpoena; and, (4) was untimely filed. For these reasons, the Application must be denied.

WHEREFORE, Frontier respectfully requests that the Application for a Subpoena to Data Exchange, Inc. d/b/a TPV.com be denied.

Respectfully submitted,

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October 19, 2020

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