



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

October 29, 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 Protective Order with regard to the above-referenced matter. **To enable the ability to share confidential information for purposes of the November 3, 2020 hearing, Frontier respectfully requests expedited action on this Motion.** 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/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 Protective Order 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 29, 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	:	

MOTION FOR PROTECTIVE ORDER

Frontier Utilities Northeast, LLC (“Frontier”) respectfully requests that a Protective Order be entered in this proceeding pursuant to the provisions of 52 Pa. Code §§ 5.362(a) and 5.365. In support of this motion, Frontier represents as follows:

Procedural Background

1. On May 25, 2020, Andrew Perrong (“Complainant”) filed a Formal Complaint against Frontier. In response, Frontier filed an Answer and New Matter as well as Preliminary Objections on June 15, 2020.
2. On June 26, 2020, Complainant filed an Amended Formal Complaint. In response, on July 20, 2020, Frontier filed an Answer and New Matter, Preliminary Objections, and a Motion for Ruling on Preliminary Objections.
3. On July 29, 2020, the Commission issued an Initial Telephonic Hearing Notice scheduling an Initial Call-in Telephonic Hearing for September 2, 2020.
4. On August 9, 2020, Complainant filed: (a) Answer to New Matter; (b) Preliminary Objections to New Matter; (c) Answer to Preliminary Objections; (d) Memorandum of Law In Opposition to Preliminary Objections; and, (e) Answer to Motion for Ruling on Preliminary Objections.

5. On August 11, 2020, an Order denying both Frontier and Complainant's Preliminary Objections was entered which also made clear that: (a) the Commission does not have jurisdiction to hear claims brought under the Unfair Trade Practices/Consumer Protection Laws; and, (b) the Commission has no authority to award Complainant compensation, attorneys' fees/costs, or federal civil penalties.
6. In response to an unopposed request from Frontier, the initially scheduled September 2, 2020 hearing was rescheduled and a Telephonic Hearing Cancellation/Reschedule Notice was issued August 17, 2020 rescheduling the Initial Call-In Telephonic Hearing to November 3, 2020. On August 18, 2020, a Prehearing Order was entered.
7. On October 6, 2020, Frontier filed a Motion for Summary Judgment requesting dismissal of the complaint on the basis that Chapter 111 of the Commission's regulations are applicable only to residential customers and there is no material dispute that Complainant 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.
8. On October 9, 2020, Complainant served: (a) First Set of Interrogatories; (b) First Set of Requests for Documents; and, (c) Application for a Subpoena. On October 19, 2020, Frontier served Objections regarding all three discovery documents.
9. On October 28, 2020, an order was entered denying Frontier's Motion for Summary Judgment.

Request for Protective Order

10. Under 52 Pa. Code §§ 5.362(a), the Office of Administrative Law Judge or the Commission may issue a Protective Order to prohibit disclosure of Proprietary Information. In applying this standard, relevant factors to be considered include the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others and used in similar activities; the worth or value of the information to the party and the party's competitors; the degree of difficulty and cost of development the information; and, other statutes and regulations dealing specifically with the disclosure of the information. 52 Pa. Code §§ 5.365(a)(1) – (5).
11. Some of the discovery requests included with Complainant's First Set of Interrogatories and Requests for Production of Documents served on October 9, 2020 seek confidential and proprietary information. Though Frontier is objecting to many of the discovery requests and continues to maintain that this complaint should be dismissed as discussed in its Motion for Summary Judgment, Frontier is submitting this Motion for Protective Order pursuant to 52 Pa. Code § 5.365(c)(4). If this matter proceeds to a hearing, Frontier anticipates that it may also seek to introduce confidential and proprietary information whether through documents and/or witness testimony.
12. The information for which Frontier anticipates seeking confidential treatment is information that is customarily treated as confidential ("Proprietary Information"). More specifically, Complainant's discovery requests seek information about Frontier's internal business practices and policies. Consistent with 52 Pa. Code § 5.365(a), this information is appropriately afforded confidential treatment. The information sets forth Frontier's

specific company policies and procedures which have been developed by Frontier at cost to Frontier. Enabling Frontier's competitors or the public to access this information could enable competitors to either copy the policies, thus sparing themselves of the development expense and time; or, provide them with Frontier specific operations and policies that would give Frontier's competitors an unfair competitive advantage.

Frontier does not publicly disclose this information and being required to publicly reveal it in this proceeding would cause unfair economic or competitive damage.

13. Treatment of such Proprietary Information as set forth in the attached proposed Protective Order (Attachment A) is justified because unrestricted disclosure of such information could harm Frontier and will not be in the public interest. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365(c) and in Administrative Law Judge or Commission Orders granting relief pursuant to the regulation.
14. The attached proposed Protective Order will protect Proprietary Information while allowing the parties to use such information for purposes of the instant litigation. Limitation on the disclosure of Proprietary Information will not prejudice the rights of the parties in this proceeding, nor will such limitation frustrate the prompt and fair resolution of this proceeding. Accordingly, the proposed Protective Order balances the interests of the parties, the public, and the Commission.
15. Frontier shared a copy of this Motion and proposed Protective Order in advance of filing and Mr. Perrong indicated that he opposes the entry of the Protective Order.

WHEREFORE, for all the foregoing reasons, Frontier requests that Your Honors grant this Motion and issue the attached Protective Order.

Respectfully submitted,

A handwritten signature in black ink that reads "Deanne M. O'Dell". The signature is written in a cursive style and is centered on the page.

Deanne M. O'Dell, Esq.
(PA Atty I.D. 80614)

Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
717.237.6000
717.237.6019 (fax)
dodell@eckertseamans.com

Dated: October 29, 2020

Counsel for Frontier Utilities Northeast, LLC

Attachment A

Text of Proposed Protective Order

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PROTECTIVE ORDER

Upon consideration of the Motion for Protective Order that was filed by Frontier Utilities Northeast, LLC (“Frontier”):

IT IS ORDERED:

1. This Protective Order is hereby granted with respect to all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding. All persons now or hereafter granted access to the materials and information identified in Paragraphs 2 and 3 of this Protective Order shall use and disclose such information only in accordance with this Protective Order.

2. The information subject to this Protective Order is all correspondence, documents, statement, exhibit, data, information, studies, methodologies and other materials, whether produced or reproduced or stored on paper, cards, tape, disk, film, electronic facsimile, magnetic or optical memory, computer storage devices or any other devices or media, including, but not limited to, electronic mail (e-mail), furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are so designated by being stamped or marked “CONFIDENTIAL” protected material. Such materials are referred to in this Order as

“Proprietary Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. For purposes of this Protective Order, a producing party may designate as “CONFIDENTIAL” those materials that are customarily treated by that party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject that party or its clients to the risk of unfair economic or competitive disadvantage.

4. Proprietary Information shall be provided to those persons who meet the criteria of a “Reviewing Representative” as set forth below. Reviewing Representatives shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument in this proceeding and may not use or disclose the Proprietary Information in any other proceeding, lawsuit or for any other purpose.

5. For purposes of receiving “CONFIDENTIAL” Proprietary Information, a “Reviewing Representative” is a person who has signed a Non-Disclosure Certificate and is:

- a. An attorney who has formally entered an appearance in this proceeding on behalf of a party; or,
- b. A self-represented party who is proceeding on a *pro se* basis in this proceeding.

6. Proprietary Information shall be treated by the Reviewing Representatives in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed pursuant to Paragraph 8. Proprietary Information shall be used as necessary, for the conduct of this proceeding and not for any other action or other

purpose. Proprietary Information shall not be disclosed in any manner to any person except a Reviewing Representative as defined in Paragraph 5.

7. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding for any other purpose including but not limited to as a basis to support a subsequent demand or lawsuit in this or another jurisdiction. In the event that a party wishes to designate as a Reviewing Representative a person not described in Paragraph 5, the party must first seek agreement to do so from the party providing the Proprietary Information. If an agreement is reached, the designated individual shall be a Reviewing Representative pursuant to Paragraph 5 above with respect to those materials. If no agreement is reached, the party seeking to have a person designated a Reviewing Representative shall submit the disputed designation to the presiding Administrative Law Judge for resolution prior to any Proprietary Information being disclosed.

8. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate in the form provided in Appendix A. A copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative. During the effectiveness of the March 20, 2020 Emergency Order of the Pennsylvania Public Utility Commission at Docket No. M-2020-3019262, all Reviewing Representatives may execute a Non-Disclosure Certificate in the form provided in Appendix A by electronic signature.

9. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping or marking the documents “CONFIDENTIAL” protected material or in the case of Proprietary Information contained in or on media other than paper, by affixing such a label to the information or by using its best efforts to identify the information as Proprietary Information.

10. That the Commission and all parties will consider and treat the Proprietary Information as within the exemptions from disclosure in Section 335(d) of the Public Utility Code, 66 Pa. C.S. § 335(d), and the Pennsylvania Right-to-Know Act, 65 P.S. §§ 67.101 *et seq.* (the “RTKL”), until such information is found by a tribunal with jurisdiction to be not confidential or subject to one or more exemptions. In the event that any person or entity seeks to compel the disclosure of Proprietary Information under Section 335(d) and/or the RTKL, the Commission and/or the party receiving such request shall promptly notify the producing party in order to provide the producing party an opportunity to oppose or limit such disclosure. None of the parties waive their right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Proprietary Information.

11. If any Reviewing Representative or party receives discovery, a subpoena, or order demanding the production of any Proprietary Information, the Reviewing Representative or party receiving the subpoena or order will, within 5 business days of the receipt of the request and not less than 10 business days before the production of any Proprietary Information, notify the party producing the Proprietary Information of the subpoena or order in writing. The Reviewing Representative or party will also, within 5 business days of the receipt of the request, notify the party issuing the discovery, subpoena, or order of the existence of this Protective Order.

12. Any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

13. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission or a Court with jurisdiction over such matters.

14. The parties shall retain the right to object to the production of Proprietary Information on any proper ground, and to refuse to produce Proprietary Information pending the adjudication of the objection.

15. Upon termination of this proceeding, whether by judgment, order, agreement, or otherwise, the receiving party, shall destroy all copies of all documents and other materials, including notes, which contain any Proprietary Information and will, upon request, provide written certification, under oath, of such destruction to the producing party.

Dated:

Elizabeth H. Barnes
Administrative Law Judge

APPENDIX A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

NON-DISCLOSURE CERTIFICATE

TO WHOM IT MAY CONCERN:

The undersigned is the _____ of _____ (the receiving party).

The undersigned has read and understands the Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order, which are incorporated herein by reference.

SIGNATURE

PRINT NAME

ADDRESS

EMPLOYER

DATE: _____