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May 18, 2021

Via Electronic Filing

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

Re: Andrew Perrong v. Alpha Gas and Electric LLC
Docket No. C-2021-3024359

Dear Secretary Chiavetta:

Enclosed for electronic filing please find a Joint Motion for Protective Order in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Karen O. Moury
Karen O. Moury

KOM/lww
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Joint 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
Andyperorong@gmail.com

Hon. Charece Z. Collins
Administrative Law Judge
Office of the Administrative Law Judge
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120
Charcollin@pa.gov

Dated: May 18, 2021

Karen O. Moury

Karen O. Moury, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrew Perrong,	:			
	Complainant	:		Docket No. C-2021-3024359
		:		
v.		:		
		:		
Alpha Gas and Electric LLC,		:		
	Respondent	:		

JOINT MOTION FOR PROTECTIVE ORDER

To The Honorable Charece Z. Collins:

Alpha Gas and Electric LLC (“Alpha”), by and through its counsel, and Andrew Perrong, Complainant hereby move that a Protective Order be entered in this proceeding pursuant to the provisions of 52 Pa. Code § 5.365(a). In support of this motion, the Parties represent as follows:

1. On March 18, 2021, the Commission served the Formal Complaint of Andrew Perrong (“Complainant”) on Alpha.
2. On April 6, 2021, Alpha filed an Answer and New Matter of April 6, 2021.
3. On April 21, 2021, Complainant filed Preliminary Objections to Alpha’s Answer and New Matter.
4. On April 26, 2021, Complainant filed a Reply to Alpha’s New Matter.
5. On April 30, 2021, Alpha filed an Answer to Complainant’s Preliminary Objections to the Answer and New Matter. A ruling on the Preliminary Objections is pending.
6. The parties have exchanged discovery requests, with several objections raising the confidential nature of the information that has been requested from both parties.

7. On May 13, 2021, Complainant filed a Motion to Compel, to which Alpha's Answer is due on May 18, 2021.

8. Also, on May 13, 2021, Complainant filed a Notice of Deposition, to which Alpha's designation of witness(es) and any objections are due on May 24, 2021.

9. A telephonic evidentiary hearing is scheduled for this matter on June 24, 2021 at 10:00 a.m.

10. Under 52 Pa. Code §§ 5.362(7) and 5.365, the Office of Administrative Law Judge or the Commission may issue a Protective Order to limit or prohibit disclosure of Proprietary Information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the 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 the potential value of such information to the participant and the participant's competitors and trade partners. 52 Pa. Code §§ 5.365(a)(1) – (3).

11. Paragraph 3 of the attached Protective Order defines "Proprietary Information" as "those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury or personal injury including, but not limited to, reputation." Clearly, protecting this type of information from disclosure is appropriate.

12. 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 participants, 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. The proposed Protective Order will also protect other confidential information, including Complainant's telephone number and records related to the call at issue in this proceeding, pursuant to 52 Pa. Code § 5.365(a) and (e). Giving the public access to this information could result in the Complainant receiving unwanted communications.

13. Paragraph 13 of the attached Protective Order protects against overly broad designations of protected information by giving parties the right to question or challenge the confidential or proprietary nature of the Proprietary Information.

WHEREFORE, for all the foregoing reasons, Alpha requests that Your Honor grant this Joint Motion and issue the attached Protective Order.

Respectfully submitted,

Karen O. Moury

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600 Grant Street, 44th Floor
Pittsburgh, PA 15219
412.566.2146

Dated: May 18, 2021

Counsel for Alpha Gas and Electric LLC

Attachment A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrew Perrong,	:	
	Complainant	: Docket No. C-2021-3024359
	:	
v.	:	
	:	
Alpha Gas and Electric LLC,	:	
	Respondent	:
	:	

PROTECTIVE ORDER

Upon consideration of the Motion for Protective Order jointly filed by Alpha Gas and Electric LLC (“Alpha”) and Andrew Perrong (“Perrong”),

1. This Protective Order is hereby granted with respect to all materials and information identified in Paragraph 2 below, which are or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraph 2 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. The parties may designate as “CONFIDENTIAL” those materials which customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage of other business injury or personal injury including, but not limited to, reputation.

4. Proprietary Information shall be provided to a party or counsel for a party, subject to the terms of this Protective Order, who meets the criteria of a “Reviewing Representative” as set forth below. Such party counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, such party or counsel may allow others to have access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.

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

- a. An expert or an employee of an expert retained by a party for the purpose of advising that party or testifying in this proceeding on behalf of that party;
- b. Employees or other representatives of a party to this proceeding who have significant responsibility for developing or presenting the party’s positions in this docket;
- c. An individual who is a named Complainant, and a party, in this proceeding; or
- d. An attorney for a party to this proceeding.

6. Proprietary Information shall be treated by the parties and by the Reviewing Representative 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 for no other purpose. Proprietary Information shall not be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

7. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage. In the event that a party wishes to designate as a Reviewing Representative a person not described in Paragraph 5 (a) through (c) above, 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.

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, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under his or her instruction, supervision or control need not do so. 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. Attorneys and outside experts qualified as Reviewing

Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

9. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping or marking the documents “CONFIDENTIAL.” Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain 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. 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.

12. 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, shall be sealed for all purposes, excluding 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.

13. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.

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. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within 30 days after appeals are finally decided, the receiving party, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In the event that the party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies of documents and other materials containing Proprietary Information to the parties, upon request, the party shall certify in writing to the producing party that the Proprietary Information has been destroyed.

Date: _____

Charece Z. Collins
Administrative Law Judge

APPENDIX A
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Andrew Perrong,	:	
	Complainant	: Docket No. C-2021-3024359
	:	
v.	:	
	:	
Alpha Gas and Electric 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: _____

Verification

I, Karen O. Moury, state that I am an Attorney of Record for Alpha Gas and Electric LLC and that as such I am authorized to make this verification on its behalf. I hereby state that the facts contained in the foregoing Motion are true and correct (or are true and correct to the best of my knowledge, information and belief). I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

May 18, 2021

Karen O. Moury

Karen O. Moury, Esquire