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April 30, 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 an Answer to Preliminary Objections on behalf of Alpha Gas and Electric LLC 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 Alpha Gas and Electric LLC's Entry of Appearance 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. Charles E. Rainey, Jr.
Chief Administrative Law Judge
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
bobbwillia@pa.gov

Dated: April 30, 2021

Karen O. Moury

Karen O. Moury, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ALPHA GAS & ELECTRIC LLC’S
ANSWER TO PRELIMINARY OBJECTIONS**

TO CHIEF ADMINISTRATIVE LAW JUDGE CHARLES E. RAINEY, JR:

Pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission” or “PUC”) at 52 Pa. Code § 5.61, Alpha Gas & Electric LLC (“Alpha”) submits this Answer to the Preliminary Objections of Andrew Perrong (“Mr. Perrong” or “Complainant”) filed on April 21, 2021. As Eckert Seamans Cherin & Mellott, LLC (“Eckert Seamans”) entered an appearance in this matter on April 21, 2021, the Preliminary Objections are moot. Therefore, Alpha respectfully requests that the Commission dismiss the Preliminary Objections. In further support of this Answer, Alpha avers as follows:

I. INTRODUCTION

1. The Commission served Mr. Perrong’s Formal Complaint on Alpha on March 18, 2021.
2. Alpha timely filed an Answer and New Matter on April 6, 2021.
3. Complainant filed Preliminary Objections to Alpha’s Answer and New Matter on April 21, 2021.

4. In the Preliminary Objections, Complainant raises an issue about the Answer and New Matter being filed with the Commission by Alpha's General Counsel, Adam Small, because Mr. Small is not licensed to practice law in Pennsylvania. Complainant seeks the issuance of an order requiring Alpha to secure counsel authorized to represent it in this proceeding. The Preliminary Objections also request that Alpha's Answer and New Matter to be stricken.

5. On the same date as the Preliminary Objections were filed, Eckert Seamans entered its appearance in this proceeding.

6. Accordingly, any concerns about Mr. Small's status as an attorney licensed to practice law in Pennsylvania have been rectified.

7. No other relief is warranted, and nothing in the Preliminary Objections justifies striking Alpha's Answer and New Matter.

8. Alpha respectfully requests that the Commission dismiss the Preliminary Objections.

II. ARGUMENT

A. Applicable Legal Standards

11. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections.¹ The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

12. Under Section 5.101(a) of the Commission's regulations, preliminary objections must specifically state the legal and factual grounds relied upon and be limited to the following:

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding;

¹ 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter;
- (3) Insufficient specificity of a pleading;
- (4) Legal insufficiency of a pleading;
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and
- (7) Standing of a party to participate in the proceeding.

13. The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.² However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.³

14. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.⁴

B. Complainant Cites Nothing in Support of his Request for the Answer and New Matter to be Stricken

15. None of the grounds upon which Complainant relies support striking Alpha's Answer and New Matter.

a. Alpha's Lack of Legal Representation Has Been Timely Cured

16. Complainant cites the Commission's regulations requiring corporations to be represented by an attorney admitted to practice before the Supreme Court of Pennsylvania.⁵

² *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

³ *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

⁴ *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

⁵ 52 Pa. Code §§ 1.21-1.23.

However, those regulations also permit an attorney not licensed in the Commonwealth to appear before the Commission in accordance with the Pennsylvania Bar Admission Rules.⁶ In addition, the emphasis in the rules is on representation of a person or corporation at a hearing.⁷ The Commission has frequently accepted responsive pleadings filed by an attorney who is employed by the respondent and licensed to practice law in another state. Indeed, the Commission's regulations permit individuals other than an attorney to submit pleadings on behalf of corporations.⁸

17. Additionally, when a corporation is not represented by an attorney authorized to practice law in Pennsylvania, the remedy is for the administrative law judge ("ALJ") to issue an order requiring the corporation to have a Pennsylvania-licensed attorney enter an appearance.⁹

18. Approximately two weeks after Alpha filed its Answer and New Matter, and before the issuance of an order by an ALJ, Eckert Seamans had already entered an appearance on behalf of Alpha. Therefore, the Preliminary Objections on this ground are moot and should be dismissed.

b. The Complainants' Other Grounds Are Equally Baseless

19. The other grounds raised in the Preliminary Objections for dismissal of Alpha's Answer and New Matter are also without any valid basis.

20. A pleading is not legally insufficient for the reasons advanced by the Preliminary Objections. Under the Commission's regulations, a separate entry of appearance is not required to be filed.¹⁰ Further, the absence of a notice to plead, which can be rectified at any time, would

⁶ 52 Pa. Code § 1.22(b).

⁷ 52 Pa. Code § 1.23.

⁸ 52 Pa. Code § 1.35(b)(ii).

⁹ *Sherwood Springs Property Holdings, LLC v. Pittsburgh Water and Sewer Authority and Pennsylvania-American Water Company*, Docket No. C-2018-3004826 (Initial Decision issued November 28, 2018, at p. 2; Order entered January 3, 2019); *New Fizon Catering, Inc. v PECO Energy Company*, Docket No. C-2008-2065498 (Order entered June 18, 2009, at pp. 4-8).

¹⁰ 52 Pa. Code § 1.24(b)(1).

simply mean that a party could not move for an entry of judgment in the event that the other party failed to respond.¹¹ A legally insufficient pleading is one that fails to set forth factual averments that, if proven, would result in a finding that a law over which the Commission has jurisdiction has been violated.¹²

21. As to the Complainant's contention that Mr. Small lacks standing to participate in the proceeding, Mr. Small is not a party seeking to participate in the proceeding. Rather, it is Alpha, which is the named respondent, that is a party, and clearly, Alpha has standing to defend the complaint that has been filed against it.¹³

22. The Preliminary Objections also contend that Mr. Small engaged in the unauthorized practice of law. The Commission does not have jurisdiction to make this determination as the oversight of attorneys is handled exclusively by the Pennsylvania Supreme Court.¹⁴

III. CONCLUSION

WHEREFORE, Alpha Gas & Electric respectfully requests that the Commission dismiss the Preliminary Objections and grant any other relief deemed appropriate.

[Signature Next Page]

¹¹ See, e.g., 52 Pa. Code § 5.63(b).

¹² See *Balogh v. West Penn Power Company*, Docket No. C-2012-2329713 (Order entered November 19, 2012), 2012 Pa. PUC LEXIS 1721.

¹³ See *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269, 280-281 (Pa. 1975).

¹⁴ *Gmerek v. State Ethics Comm'n*, 751 A.2d 1241, 1250 (2000).

Respectfully submitted,

/s/ *Karen O. Moury*

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Date: April 30, 2021

Counsel for
Alpha Gas & Electric LLC

Verification

I, Adam Small, am General Counsel for Alpha Gas & Electric LLC, and I hereby state that the facts set forth in the foregoing **Answer** are true and correct to the best of my knowledge, information and belief and that I expect Alpha to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: April 30, 2021

/s/ Adam Small _____

Adam Small
General Counsel
Alpha Gas & Electric LLC