

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrew Perrong	:	
	:	
v.	:	Docket # C-2021-3024359
	:	
Alpha Gas & Electric LLC	:	

NOTICE TO PLEAD

TO: ALPHA GAS & ELECTRIC LLC

c/o: Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Pursuant to 52 Pa. Code § 5.342(g)(1), you are hereby notified that an answer to the enclosed Motion to Compel must be filed within five days of service thereof upon you, or a judgment may be entered against you.

All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to Complainant, Andrew Perrong, and where applicable, the Administrative Law Judge presiding over the proceeding.

File with:*

Hon. Charece Z. Collins, Administrative Law
Judge & Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105
charcollin@pa.gov

With a copy to:

Andrew Perrong
1657 The Fairway #131
Jenkintown, PA 19046
andyperrong@gmail.com

*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>.

Dated: **May 12, 2021**

_____/s/_____
Andrew Perrong, *Complainant Pro-Se*

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MOTION TO COMPEL DISCOVERY RESPONSES

I. INTRODUCTION

On April 25, 2021, Complainant, ANDREW PERRONG, served his First Set of Interrogatories and First Set of Requests for Documents on Respondent, ALPHA GAS & ELECTRIC LLC (“Respondent”). On May 5, 2021, Alpha formally objected to Interrogatories 2–6 and Requests for Documents 3–6 propounded upon it. Pursuant to the procedures set forth in 52 Pa. Code §§ 5.103, 5.321 and 5.342(g), Complainant requests that the Commission overrule Respondent’s objections and compel Respondent to respond fully to all interrogatories and requests for documents.

Respondent’s objections state that the requested information is irrelevant, immaterial, as well as claim burden and confidentiality objections. This is despite the fact that the Commission’s rules specifically forbid objections based on the relatedness of the material to the claim or defense of the party seeking discovery or that of another party, in this case Respondent. *See* 52 Pa. Code § 5.321(c). Complainant has also informally disclosed information related to the telephone number that Alpha is alleged to have called, and Alpha has already represented to Complainant that it terminated the vendor it knew or suspected placed the violative calls at issue here. As explained below, Respondent’s objections are meritless and should be DENIED.

II. STANDARDS FOR DISCOVERY

Section 5.321(c) of the Commission's Rules provide that "a participant may obtain discovery regarding *any matter*, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c). Critically, discovery is permitted regardless of whether the information sought "relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant." *Id.*

In addition, even inadmissible information is discoverable. "It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 52 Pa. Code § 5.321(c). In keeping with this presumption of broad discovery, the Commission allows participants "wide latitude" in discovery. *Lee v. Verizon Pa. Inc.*, No. C-20054564, 2006 Pa. PUC LEXIS 28 (Feb. 28, 2006). Critically, the Commission has expressed a desire to "liberally" apply relevancy tests when considering discovery requests. *PUC v. Equitable Gas Co.*, 61 Pa. PUC 468 (May 16, 1986).

III. RESPONSES TO RESPONDENT'S OBJECTIONS

a. Burden Objection

Respondent claims that the discovery propounded on it is unduly burdensome because it does not indicate the telephone number that Respondent is alleged to have called. However, responding to these requests would not be burdensome merely because Respondent does not have the Complainant's full telephone number, and even then, Respondent does have the telephone number. That number, 215-947-XXXX, was disclosed informally to Alpha prior to the initiation of the proceedings, and Complainant is more than happy to confirm the last four digits of the telephone number to counsel privately. The Complainant redacted the last four digits of

the number from public filings because of the privacy interests at issue in this case, which center around violations of the Utility Code as a result of illegal marketing conduct by Respondent to that telephone number. The inclusion of the full, unredacted number on a public filing will result in its use by potentially thousands of both utility and nonutility telemarketers and substantially invade Complainant's privacy interests.

b. Unreasonable Investigation Objection

Respondent's unreasonable investigation objection should fail for similar reasons. It is Complainant's understanding that this objection only applies to Interrogatory 6, which seeks the identity of vendor(s) Respondent terminated as a result of the conduct alleged in the Complaint. Respondent already undertook the investigation sought in this interrogatory, identified the vendor(s), and confirmed it terminated them.

Indeed, Respondent's in-house counsel already confirmed to the Complainant that it had identified a vendor or vendors whom it knew or suspected made the illegal communications at issue in this case and terminated the same. Responding to the interrogatory, which seeks the identity of the vendor(s) reprimanded and those who investigated the violation (presumably Respondent's in-house counsel) as well as the action taken against those vendor(s) (which Complainant understands was termination) is not unreasonable. The Respondent admitted informally that it already undertook an investigation to identify those vendors responsible for the violations of the Utility Code alleged in the complaint, verified their involvement in the same, and terminated them. It therefore is not unreasonable to formalize this response, identifying the vendor or vendor(s), who conducted the investigation, and the action taken.

c. Relevance Objection

Respondent's relevance objection should fail because the identity of the vendor(s) whom

Respondent admitted it knew or suspected placed the calls at issue in this case is supremely relevant to adjudicating Complainant's allegations, since it is liable for these vendor(s)' actions. 52 Pa. Code § 111.3(b). It is Complainant's understanding that this objection only applies to Interrogatory 6, which seeks the identity of vendor(s) Respondent terminated as a result of the conduct alleged in the Complaint. Indeed, identifying who the vendors were and why they were terminated (presumably because they violated the Utility Code in their marketing behaviors on behalf of Alpha) is key to determining whether a violation occurred. Similarly, the vendor(s) might have discoverable information. Complainant has the absolute right to learn of the identity of the vendors so that he may seek a subpoena producing the information that would prove that the alleged violations of the Utility Code did occur. Similarly, identifying what action was taken or who investigated such violations is relevant because Complainant intends to depose them as well as elicit testimony from them.

d. Confidentiality Objection

Finally, Respondent objects on the basis that some or all of the information is "confidential" and seeks the adoption of a Protective Order, but at least some of this information could not conceivably be considered "confidential" under the high bar set in 52 Pa. Code § 5.365(a). To be clear, Complainant is not opposed to the entry of a Protective Order and will confer with counsel about coming to an agreement regarding a proposed Protective Order. However, Complainant notes that the general rule for a Protective Order is a presumption of openness and will only be granted if it constitutes the "least restrictive means of limitation which will provide the necessary protections from disclosure." *Id.*

It is Complainant's position that none of the factors in 5.365(a) are satisfied as to the discovery propounded on Respondent. Complainant is not a competitor, so disclosure is unlikely

to cause unfair economic or competitive damage. 52 Pa. Code § 5.365(a)(1). Next, much of the information sought is already known by both the Commission and others in the deregulated energy market in general, such as the available vendors for marketing or seeks information which is specific to Complainant. 52 Pa. Code § 5.365(a)(2). Third, the information sought would be essentially worthless to Respondent's competitors since it pertains to Respondent's actions and the specific claims at issue in this proceeding and violative vendors whom Respondent's competitors should not be dealing with. 52 Pa. Code § 5.365(a)(3). Fourth, the information sought has already been developed through Complainant's interactions with the Respondent, as detailed in his Formal Complaint, and was not developed independent of those interactions. 52 Pa. Code § 5.365(a)(4). Finally, there is a presumption that information in formal complaint proceedings, like any legal proceeding, be open and available to the public. 52 Pa. Code § 5.365(a)(5).

CONCLUSION

Complainant prays that the Commission OVERRULE Respondent's Objections and compel Respondent to respond fully to the Interrogatories and Requests for Documents propounded on it, as well as grant any other relief it deems meet and just. The Commission has demonstrated a preference for liberal discovery in such matters, it is clear that the requests are reasonably calculated to lead to the discovery of admissible evidence and are not burdensome. For these reasons, the requests propounded on Respondent are appropriate and Respondent should produce the requested information.

Dated: **May 12, 2021**

_____/s/_____

Andrew Perrong
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CERTIFICATE OF SERVICE

Pursuant to 52 Pa. Code § 1.54, I hereby certify that I served a copy of the foregoing via

E-Mail and First Class Mail, to:

Karen O. Moury, Esquire
Eckert Seamans Cherin &
Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com

Rosemary Chiavetta,
Secretary
Pennsylvania Public Utility
Commission
PO Box 3265
Harrisburg, PA 17105

Hon. Charece Z. Collins
Administrative Law Judge
Pennsylvania Public Utility
Commission
PO Box 3265
Harrisburg, PA 17105
charcollin@pa.gov

I also certify that I e-filed the foregoing with the Commission via their web portal.

Dated: **May 12, 2021**

_____/s/_____

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