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May 24, 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 Objections to Deposition Notice 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 Objections to Deposition Notice 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 24, 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	:

**OBJECTIONS OF ALPHA GAS AND ELECTRIC LLC TO
DEPOSITION NOTICE OF ANDREW PERRONG**

To The Honorable Charece Z. Collins:

Pursuant to 52 Pa. Code § 5.343(f), Alpha Gas and Electric LLC (“Alpha”) files these Objections to the Deposition Notice filed with the Commission and served on Alpha on May 13, 2021 by Complainant, Andrew Perrong, in the above-captioned matter initiated by the filing of a Formal Complaint (“Complaint”). In support of these Objections, Alpha avers as follows:

I. INTRODUCTION AND BACKGROUND

1. The Commission served the Complaint on Alpha on March 18, 2021.
2. The Complaint alleges that Alpha made a telephone call to Complainant on February 15, 2021 to a private telephone number that is on the National Do-Not-Call Registry and the Pennsylvania Do-Not-Call Registry. Complainant avers that the telephone call violated the Commission’s regulations at 52 Pa. Code §§ 111.10(a)(2), 111.10(a)(3) and 111.10(b).
3. Alpha filed an Answer and New Matter on April 6, 2021.

4. Complainant filed Preliminary Objections to Alpha's Answer and New Matter on April 21, 2021, to which Alpha filed an Answer on April 30, 2021. Those Preliminary Objections are pending.

5. Complainant served Interrogatories and Requests for Production of Documents, Set I, on Alpha on April 26, 2021. Alpha served Objections to specified discovery requests in Complainant's Set I on May 6, 2021.

6. Alpha served Interrogatories and Requests for Production of Documents, Set II, on Complainant on May 11, 2021.¹

7. Complainant filed the Deposition Notice on May 13, 2021, scheduling a video deposition on June 2, 2021 at 10:00 a.m.

8. Complainant filed a Motion to Compel relating to Alpha's Objections to Complainant's Set I on May 13, 2021, to which an Answer would have been due on May 18, 2021.

9. Alpha provided responses to the requests in Complainant's Set I to which it had no objection on May 17, 2021.

10. Prior to Alpha filing an Answer to the Motion to Compel addressing its Objections to Complainant's Set I, Alpha and Complainant engaged in negotiations, resulting in the filing of a Joint Motion for Protective Order on May 18, 2021 due to confidential information being requested of both parties. If a Protective Order is issued and the Non-Disclosure Certificate is executed, the parties believe that the pending discovery dispute will be resolved. Therefore, the parties asked Administrative Law Judge ("ALJ") Collins to hold the Motion to Compel in abeyance pending a ruling on the Motion for Protective Order. Nonetheless, Complainant has

¹ Alpha had previously served a First Request for Production of Documents upon Complainant on April 6, 2021. Although Complainant served objections on April 26, 2021, Alpha did not pursue a Motion to Compel at that time.

reserved his right to reassert the Motion to Compel if he deems Alpha's responses deficient, and Alpha likewise reserves the right to file an Answer to the Motion to Compel at that time.

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

12. For reasons further explained below, Alpha objects to the Deposition Notice filed on May 13, 2021. Complainant has provided no justification to use this more onerous discovery mechanism when written discovery requests are sufficient to gather details that may be needed to prepare for hearing or the filing of any motions. Additionally, the scope of the inquiry described in the Deposition Notice is overly broad in that it seeks irrelevant information unrelated to the specific allegations in the Complaint. No explanation is offered in the Deposition Notice as to why the requested information is material or necessary, and production of the documents sought by the Deposition Notice would require an unreasonable investigation and be unduly burdensome. Finally, the Deposition Notice seeks information that is either privileged or confidential.

13. Therefore, Alpha respectfully requests that its Objections to the Deposition Notice be sustained.

II. ARGUMENT

14. Under the Commission's regulations, "a party may obtain discovery regarding any mater, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c). The Commission's regulations limit the scope of discovery by prohibiting requests that: (1) are sought in bad faith; (2) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to a party; (3) relate to matters which are privileged; and (4) would require the making of an unreasonable investigation by a party. 52 Pa. Code § 5.361(a). In addition, the Commission's regulations provide for party to seek the issuance of protective order

to the limit the availability of proprietary information, including trade secrets or confidential information if disclosure would be harmful to a party's business. 52 Pa. Code § 5.365(a).

15. The Commission's regulations governing the issuance of subpoenas, while not directly applicable to the deposition of a party, provide helpful guidance by requiring the written application to specify the general relevance, materiality and scope of the testimony or documentary evidence sought. Facts must be listed that would be proven by the documents in sufficient detail to indicate the necessity of their production. 52 Pa. Code § 5.421(b).

16. The Deposition Notice describes the purpose of the deposition as being to inquire about matters related to the Complainant; the allegations in the Complaint; Alpha's investigations into the allegations of the Complaint; Alpha's marketing practices and procedures; Alpha's use of third-party vendors to conduct marketing; Alpha's use of third-party overseas call centers; and Alpha's efforts to comply with the Public Utility Code with respect to marketing, particularly telemarketing. The Deposition Notice also requests the production of documents related to these matters.

17. Alpha objects to the Deposition Notice filed on May 13, 2021 on several grounds. At the outset, Complainant has provided no justification to use this more onerous (and seldom used) discovery mechanism in the Commission's regulations when written discovery requests are sufficient to gather any details that may be needed to prepare for hearing. Given that the Complaint alleges violations of the Commission's regulations governing telemarketing sales and practices stemming from a single telephone call that Alpha allegedly made to Complainant, it would be overly burdensome to subject Alpha to a deposition. Complainant filed the Complaint and carries the burden of proof under Section 332 of the Public Utility Code. 66 Pa.C.S. § 332. As the

allegations relate to a telephone call he received during which he allegedly spoke to agents for Alpha, he should be prepared to prosecute the Complaint without deposing an Alpha witness.

18. Additionally, Alpha objects to the Deposition Notice on the grounds that it intends to inquire about matters and requests documents pertaining to Alpha's marketing practices and procedures; Alpha's use of third-party vendors to conduct marketing; Alpha's use of third-party overseas call centers; and Alpha's efforts to comply with the Public Utility Code with respect to marketing, particularly telemarketing. These areas of inquiry are irrelevant to the allegations raised in the Complaint about a single telephone call being made to Complainant. No explanation is offered in the Deposition Notice as to the relevance of this information or why it is needed to prove Complainant's allegations. The standard for discovery is relevance, not curiosity. *See Pennsylvania Public Utility Commission, et. al., v. Pennsylvania American Water Company*, Docket No. R-2011-2232243 (Order on Motion to Compel dated July 21, 2011, at 21-22). As Complainant is seeking to conduct a fishing expedition to obtain information that is not germane to the adjudication of the Complaint, Alpha's Objections should be sustained. *See Stahl v. First Pennsylvania Banking and Trust Co.*, 411 Pa. 121, 191 A.2d 386 (1963) (when a party going on a fishing expedition, discovery is denied); *Pa. PUC v. Pennsylvania American Water Company*, 2011 Pa. PUC LEXIS 1523 *11-12 (discovery that is broad and unfocused is not permissible).

19. Further, the Deposition Notice seeks to explore matters that involve privileged information that is protected by the attorney-client privilege, as the communications related to a fact of which the attorney was informed for purposes of providing legal services. As such, Alpha's Objections should be sustained.

20. The Commission's regulations require the designation of a witness that the party consents to testify at a deposition within 10 days. 52 Pa. Code § 5.343. As Alpha is not consenting

to have any witness testify at a deposition, this designation is not being made at this time. Further, Alpha has already responded to Complainant's discovery requests noting the source of the responses provided.

III. CONCLUSION

Based on the foregoing, Alpha Gas and Electric LLC respectfully requests that its Objections to the Deposition Notice of Complainant, Andrew Perrong, be sustained and that other relief be granted as may be deemed appropriate.

Respectfully submitted,

Karen O. Moury

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Date: May 24, 2021

Counsel for Alpha Gas & Electric LLC