

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMPLAINANT ANDREW PERRONG’S MAIN BRIEF**

Pursuant to 52 Pa. Code § 5.501, and the briefing orders entered in this case, Complainant Andrew Perrong (“Perrong” or “Complainant”) submits this main brief in support of the claims made against Respondent Alpha Gas & Electric LLC (“Alpha” or “Respondent”).

**CONCISE STATEMENT OF CASE**

Complainant initiated this formal complaint on March 1, 2021, seeking to hold Respondent accountable for its conduct in contacting the Complainant via an illegal telemarketing call on February 15, 2021. The call was placed to Complainant’s telephone number, 215-947-XXXX, using a “spoofed” caller ID, 215-412-1586. The caller, “Kevin Victor” claimed to be calling from Alpha and there were other agents in the background yelling “Alpha Gas & Electric” as well. *See* Tr. of Telephonic Hearing 16:10 [hereinafter “Tr.”]. This case has been the subject of extensive discovery and motions practice which are summarized in the Commission’s briefing order.

Respondent denies these allegations and specifically denies that it, or the vendor it hired to act on its behalf, placed the calls. *See* Tr. 45:4–6. Respondent further alleges that it only hired one vendor to do telephone marketing in any form, and that vendor was only authorized to “deal[] with inbound calls.” Tr. 45:13. It is Respondent’s position that the records obtained through its vendor demonstrate that no call ever took place and that the Complainant is not entitled to relief. Tr. 60:13–25. Furthermore, Respondent denies any wrongdoing in its relationship with its vendor.

As this brief will demonstrate, and as the evidence produced by the Complainant shows, there is adequate basis to find that the call did occur and did violate numerous sections of the Utility Code relating to advertising and marketing regulations, including through telemarketing. Furthermore, the evidence produced by the Complainant is both corroborated by the evidence produced by the Respondent in its own discovery, which also demonstrates that the Respondent committed additional violations of the Utility Code with respect to other consumers.

### **SUMMARY**

Complainant in this case, Andrew Perrong, is the owner and regular user of 215-947-XXXX (the “number”). Perrong Conf. Ex. 1. That number was registered on the National Do Not Call Registry since May 22, 2005 and has been on the Registry continually since that time. Perrong Conf. Ex. 1 at 3. Although Respondent questioned the accuracy of such confirmation based on information in the original confirmation email which did not incorporate a legal change that made registrations on the Do Not Call Registry permanent, Complainant subsequently provided documentation demonstrating that his number had not been removed from the Registry since 2005. Perrong Conf. Ex. 7. The number was also registered on the Pennsylvania Do Not Call List since February 5, 2015 and has been on the list continually since that time. Perrong Conf. Ex. 1 at 4. It is undisputed that Respondent’s vendor did not register as a telemarketer as required under the Pennsylvania Telemarketer Registration Act and did not scrub against the Pennsylvania DNC.

On February 15, 2021, the Complainant received a call from the caller ID 215-412-1586 to his number. That caller ID was “spoofed” in that it was invalid and does not actually go anywhere. *See generally* Tr. 70. This fact can be further verified by attempting to call the number and hearing an out-of-service message.<sup>1</sup> When Complainant answered, a pre-recorded message played claiming

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<sup>1</sup> The Complainant possesses a recording of the out-of-service message and would be glad to

to be from Complainant's utility company. Tr. 14:5. The pre-recorded message claimed that the Complainant was going to receive a "35% discount" on his electric and gas bills along with a reimbursement of "\$50." Perrong Conf. Exs. 2, 3. The Complainant reiterates such allegations herein. The purpose of the call was to sell Respondent's alternative electric services in Pennsylvania, and Respondent is a Pennsylvania-licensed alternative electric supplier. *See generally* Perrong Conf. Exs. 2, 3; Tr. 38.

At the hearing, the Complainant authenticated the recordings. Tr. 23:1–19. Respondent stated that they did not object to the recordings and that they didn't "have anything to hide." Tr. 20:20–25. During the call and the recordings, and although not required to do so, respondent stated that the call was being recorded at least three separate times. Perrong Conf. Exs. 2, 3, 4. In addition, the recordings were legally obtained using equipment which is ordinarily connected to telephone facilities. Tr. 23:1–19. As such, the recordings were not created using an "electronic, mechanical, or other device" and therefore fall outside the scope of the Wiretap Act regardless. *See* 18 Pa. Cons. Stat. § 5702 ("Any device . . . other than: (1) Any telephone or telegraph instrument, equipment or facility, or any component thereof, . . . furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business.").

The illegal telemarketing call was initially connected to an unnamed female representative who asked the Complainant some basic qualifying questions. Perrong Conf Ex. 2, 3. The Complainant was then transferred to a second representative, "Kevin Victor," who used illegal and deceptive marketing tactics. *See generally* Perrong Ex. 6 (outlining misrepresentations made during the call). For example, the representative, "Kevin Victor," stated that he was calling from PECO. Perrong Conf. Ex. 4 at 6 ("Like we are part of PECO."). He stated that Respondent was going to "suspend" the non-existent alternative supplier who was allegedly overcharging the Complainant,

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supplement the record if required.

although only the Commission may so do. Perrong Conf. Ex. 4 at 5. Moreover, the representative falsely represented that Alpha's rate of 13.996 cents per kilowatt hour was a cheaper "discounted rate." Perrong Conf. Ex. 4 at 7. Respondent did nothing about these misrepresentations.

In fact, Respondent turned a blind eye to the conduct committed by its vendor. Respondent's contract with its vendor included purported "quality control" measures, including a requirement that the vendor provide a report of who they were calling, provide recordings to Respondent, and prohibited outbound calling. Tr. 46:9–16; Alpha Conf. Ex. 1. However, Respondent repeatedly failed to exercise its contractual rights to police its vendor. On questioning by the Administrative Law Judge at the hearing on June 24, 2021, Alpha's general counsel, Adam Small, testified that he couldn't "say for sure whether . . . [the] script [that Alpha's vendor proposed to Alpha] was used." Tr. 75:4–8. Its vendor "couldn't produce calls" upon which consumer complaints were based on demand, but Respondent nevertheless continued to use the vendor despite its failure to abide by the contractual requirements it imposed. Alpha Conf. Ex. 3 at 1. Small also testified that, in the entirety of its relationship with the vendor, Alpha only listened to *one* call recording between the vendor and a consumer. Tr. 68:12–14. And the extent of Alpha's allegations into Mr. Perrong's complaint was to "reach out to the vendor" to see if they called Mr. Perrong and take the vendor's word for it when the vendor stated they did not. Tr. 52:9–12.

Although the vendor the Respondent hired denies calling the Complainant, the smoking-gun evidence provided by the Respondent paints a quite different picture and confirms that the calls the Complainant occurred were, in fact, made on behalf of the Respondent by its vendor. As a preliminary matter, Alpha Confidential Exhibit 3, at pages 6 and 7, are screenshots of the vendor's computer. A file opened on that computer, visible in the bottom right-hand corner, has the name "20210215-120431\_..." Alpha Conf. Ex. 3 at 6–7. The icon is that of a traffic cone, which is the

icon for the popular VLC Media Player, a computer program that plays audio files, including call recordings. *See* Tr. 17:4–21. This fact was unopposed at the hearing. *See* Tr. 35:5–7.

That file name is consistent with the recordings of the call produced as Perrong Confidential Exhibits 2 and 3 and is a recording of the call alleged in the formal complaint that was made by the vendor. As the call records from Complainant’s telephone provider demonstrate, the call was initiated on February 15, 2021 at 12:04:05 and Complainant answered the call at 12:04:10. Perrong Conf. Ex. 1 at 1. After the recorded message played for exactly 21 seconds, as illustrated by Complainant’s call recording, the Complainant was transferred to the initial representative, which initiated the call recording by the Respondent’s vendor at exactly 12:04:31 PM. *See* Perrong Conf. Exs. 2, 3; Tr. 18:1–25, 19:1–20. As such, the recording, which has still not been produced by Respondent’s vendor, is almost certainly the vendor’s recording of the call produced in Perrong Exhibits 2 and 3, or a portion thereof representing the time from the vendor’s human answer.

The Respondent, its employees, and its counsel, Adam Small, knew about other illegal conduct of its vendor prior to Complainant receiving the call herein, but did nothing. Sam Bessinger, an Alpha employee, stated in a WhatsApp chat with Alpha’s vendor regarding the allegations made by Complainant: “Got another complaint” “This is out of control.” Alpha Conf. Ex. 3 at 1. At the hearing, Mr. Small testified that this was the “second or third” complaint regarding that vendor possibly related to telemarketing calls. *See* Tr. 67:1–25, 68:1–6. Furthermore, despite knowing that something untoward was going on, Respondent did *no due diligence* to verify the caller IDs that its vendor *admitted* it was sending were valid. Tr. 68:18–21 (“Q. . . . [D]id you do any lookup or any ability to - did you undertake any efforts to establish whether or not that was a valid number? A. I did not.”). If it did, Respondent would have discovered that its vendor “contacted” at least “394” persons using a spoofed caller ID. Alpha Conf. Ex. 3 at 2.

If Small had called the number, he would have recognized that the caller ID the vendor claimed it was using, 985-432-9863, could not possibly have been valid since the 432 exchange does not exist in the 985 area code and therefore could not have possibly connected to the vendor. *See Central Office Code Utilized Report, SOMOS, INC. D/B/A NORTH AMERICAN NUMBERING PLAN ADMINISTRATOR*, <https://nationalnanpa.com/enas/coCodeReportUnsecured.do?reportType=7>.<sup>2</sup> Accordingly, the evidence produced by *Alpha* demonstrates that its vendor was spoofing caller ID separately and apart from the call Complainant received, including the 985-432-9863 number.

### **ARGUMENT**

#### *Respondent's Illegal Telemarketing To a DNC Number*

As articulated in the summary above, Respondent, through the vendor it hired, called 215-947-XXXX, a number on the National Do Not Call Registry and Pennsylvania Do Not Call List. Furthermore, neither Respondent nor its agent were registered as telemarketers under Pennsylvania law and as required by law. Accordingly, Respondent violated 52 Pa. Code § 111.10(a)(2), which clearly requires compliance with the Pennsylvania Telemarketer Registration Act and requires that its agent “register as a telemarketer.” 52 Pa. Code § 111.10(a)(2). Respondent has not disputed that its vendor did not do so and has not produced any evidence to demonstrate that its vendor was registered. By not doing so, Alpha’s vendor and agent violated 52 Pa. Code § 111.10(a)(2). Alpha is liable for such violation under 52 Pa. Code § 111.3, which imposes liability on a supplier for the conduct of its agent. Moreover, the alternative electric supplier licensing requirements establish that

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<sup>2</sup> Upon visiting the webpage, select the state of Louisiana and select area code 985. Notice that “432” does not appear under the NXX column. Accordingly, it can be verified that the caller ID is invalid and was therefore spoofed. Somos, Inc. is the corporation selected by the Federal Communications Commission to act as the North American Numbering Plan Administrator since 2018. As such, its records and this fact is judicially noticeable by the Commission as from a source whose accuracy cannot reasonably be questioned. 225 Pa. Code § 201(b)(2); *see also Harris v. Unemployment Comp. Bd. of Review*, 247 A.3d 477, 488 n.14 (Pa. Commw. Ct. 2021) (permitting judicial notice of government records).

suppliers are responsible for “any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employes [sic], agents or representatives” 52 Pa. Code § 54.43(f).

Under 52 Pa. Code § 111.10(a)(3), a supplier and its agents, like the vendor Respondent hired, must also comply with regulations governing marketing, including the Telemarketing and Consumer Fraud and Abuse Prevention Act and the Telemarketing Sales Rule. Under the Telemarketing Sales Rule, it is a deceptive act or practice to call a number on the National Do Not Call Registry. 16 CFR § 310.4(b)(1)(iii)(B). The vendor who called the Complainant violated this provision. It has been demonstrated that Complainant’s telephone number is and was on the National Do Not Call Registry at the time of the call. Perrong Conf. Ex. 7. During the call, the caller made the declaration that they were calling from Alpha, the Respondent. Perrong Conf. Exs. 2, 3, 4 at 7. And the screenshot of the computer used by Respondent’s vendor demonstrates that an audio file is open on it which matches exactly the date and time of the call at the very moment it was transferred to a human being. Alpha Conf. Ex. 3 at 6–7 (“20210215-120431\_...”). As the Complainant has alleged, this is almost certainly a recording of the call at issue in this proceeding, and the vendor has not produced it because it would be disastrous to Respondent.

Moreover, the data produced from ViciDial by respondent’s vendor does not necessarily show that the call did not take place as claimed. As described above, the vendor conveniently forgot to close the file of his computer which demonstrated that he was listening to a recording of the call at issue in this case. However, the other records that the vendor produced to Respondent were cherry-picked to make it appear that no call took place. As a preliminary matter, the vendor only appears to have searched the ViciDial system for “leads,” not call records. Alpha Conf. Ex. 3 at 8. Furthermore, the purported list of “leads” (again, not calls) submitted into the system include telephone numbers which are invalid, do not ring anywhere, or are duplicates. Alpha Conf. Ex. 4.

Therefore, the mountain of evidence supports the conclusion that Respondent's vendor contacted the Complainant, who is on the National Do Not Call Registry. It is not disputed that the Complainant's number was and is on the Registry. The caller stated that they were calling from Alpha, and there is a file on the vendor's computer with a filename representing the date and time of the call—down to the exact second it was answered by a human—which has not been produced. By its own admission, and despite trying to hide its illegal conduct, Respondent's vendor made at least 394 outbound sales calls, including the one to the Complainant, and at least 25 such calls on the day the Complainant received the calls, without registering as a telemarketer. The Respondent, therefore, violated 52 Pa. Code § 111.10(a)(2) because its vendor failed to register as a telemarketer and violated 52 Pa. Code § 111.10(a)(3) by calling a number on the National DNC.

#### *Respondent's Misrepresentations*

The recordings of the calls and the associated transcripts further demonstrate Respondent's illegal conduct. As summarized in Perrong Exhibit 6, Respondent's vendor made misrepresentations at the very start of the call that Complainant would get a "reimbursement" of \$50.00 and a "35%" discount on his "electric and gas bills." These "discounts" of 13.996 cents per kilowatt hour were, in fact, 117% higher than PECO's rate to compare of 6.426 cents per kilowatt hour, and the "reimbursement" of \$50.00 was nonexistent as it did not exist in Respondent's tariff. Perrong Ex. 6; *see Residential Price To Compare Table*, PECO (Dec. 1, 2020 to Feb. 28, 2021), [https://www.peco.com/SiteCollectionDocuments/FINAL\\_ResidentialPTC\\_01142021.pdf](https://www.peco.com/SiteCollectionDocuments/FINAL_ResidentialPTC_01142021.pdf).

The provisions of 52 Pa. Code § 111.10(a)(3) require compliance with the Telemarketing Sales Rule, which makes it a deceptive act of practice to misrepresent the costs of goods or the terms of any refund, cancellation, or exchange policies. 16 CFR § 310.3(a)(2)(i), (iv). By misrepresenting that the Complainant would receive a "35%" "discount" by virtue of paying a rate

117% *higher* than PECO's price to compare, and by claiming that the Complainant would receive a \$50.00 "reimbursement" (or refund), the Respondent committed deceptive acts or practices under the Telemarketing Sales Rule. It is the essence of this rule to misrepresent pricing and refund terms, which the Respondent unquestionably did as demonstrated by the recordings.

Similarly, by stating that they were a "part of PECO," Respondent deliberately misrepresented its association with and endorsement by PECO. Perrong Conf. Ex. 4 at 6; Perrong Ex. 6. Respondent also made similar misrepresentations by implying that they were the PUC, including by claiming that the Complainant was required to select Alpha and that Alpha had the power to suspend suppliers who were overcharging him. Perrong Conf. Ex. 4 at 5; Perrong Ex. 6.

An alternative supplier's conduct in misrepresenting their association and endorsement with the established electric utility and/or PUC runs afoul of both statutory law and PUC guidance. *See* 52 Pa. Code § 111.8(b) ("The agent shall state that he is not working for and is independent of the customer's local distribution company or other supplier."); 52 Pa. Code § 111.8(d) ("A supplier may not use the name, bills, marketing materials or consumer education materials of another supplier, EDC, NGDC or government agency in a way that suggests a relationship that does not exist."); *In re. Interim Guidelines on Marketing and Sales Practices for Electric Generation Suppliers and Natural Gas Suppliers*, No. M-2010-2185981 (Pa. PUC Nov. 4, 2020) ("The agent shall also make clear that he or she is not working for, and is in fact independent of the local distribution company or another supplier."). The Telemarketing Sales Rule likewise proscribes misrepresenting a seller's identity. Under the Rule, it is an abusive practice to fail to make a truthful disclosure of the identity of the seller. 16 CFR § 310.4(d)(1). It is also a deceptive practice to misrepresent a seller's affiliation with a government entity like the PUC. 16 CFR § 310.3(a)(2)(vii). The recordings and transcripts advanced by Complainant evidence these practices.

Although Respondent claims that no call—either incoming or outgoing—was placed to the Complainant, the fact still remains that the two authenticated recordings advanced by the Complainant illustrates that *someone* claiming to be from “Alpha Gas and Electric” made these misrepresentations. As described above, Respondent’s contention is not credible, but the PUC may independently consider the recording as in the public interest and hold that the Respondent committed the alleged misrepresentations. Indeed, as the Commission recently reiterated:

“With all of these enforcement resources, *the Commission* is confident that it *can* effectively *act upon information received through a variety of channels* and enforce these regulations. All market participants are put on notice that the Commission will use these resources to aggressively enforce these new regulations in the public interest—to safeguard public safety and ensure fairness for all.”

43 Pa. Bull. 3476 (June 29, 2013) (emphasis added).

#### *Respondent’s Caller ID Spoofing*

As explained at the June hearing, the Respondent, through its vendor, also engaged in caller ID spoofing. Caller ID spoofing is a technologically sophisticated method through which a caller can transmit a caller ID number of whatever they want, including of a telephone number which does not exist, is disconnected, or rings to an innocent third party. Tr. 16:5–11. The caller ID for the call the Complainant received was spoofed because it was disconnected and not in service, as described in the summary above and from calling the number at the time of the call. Not only did the vendor do so with the Complainant—and then attempt to cover up and deny such fact—it also did so *by its own admission* and in the documents produced *by Alpha* in discovery:

“2/19/21, 8:56 AM - Adam Small: What number shows up on the caller ID when you guys make a call?  
2/19/21, 8:58 AM - +1 (630) 343-4003: One minute  
2/19/21, 8:58 AM - +1 (630) 343-4003: IMG-20210219-WA0004.jpg (file attached)  
2/19/21, 9:00 AM - +1 (630) 343-4003: 9854329863”

Alpha Conf. Ex. 3 at 1.

The caller ID 985-432-9863, is an invalid telephone number purporting to be from Louisiana, as described in the above section. Louisiana is not a deregulated energy market, and it defies any practical or common sense why the Respondent, who is headquartered in New York, or its vendor, who is located in Pakistan, Canada, Illinois, and New York, would be using a Louisiana area code, let alone one that does not exist, unless they were doing something nefarious. Although this is *not* the caller ID the Complainant alleges he received the call from, it demonstrates an *independent* basis for the PUC to hold that Respondent illegally spoofed its caller ID, specifically with with respect to the “394” “total amount of people *we contacted*” with that caller ID, as demonstrated through Alpha’s *own documents*. Alpha Conf. Ex. 3 at 2 (emphasis added). It also raises a circumstantial presumption of validity of the Complainant’s claims.

As with the other allegations described herein, the provisions of 52 Pa. Code § 111.10(a)(3) require compliance with the Telemarketing Sales Rule, which prohibits the transmission of inaccurate caller ID numbers and makes it an abusive practice. 16 CFR § 310.4(a)(8). Furthermore, the Pennsylvania Telemarketer Registration Act makes similar requirements of transmitting accurate caller ID information. It is a violation of the Utility Code to fail to comply with the Act’s requirements regarding licensure or otherwise, such as caller ID. 52 Pa. Code § 111.10(a)(2).

### *Remedies*

Section 3301 of the Utility Code provides for penalties of \$1,000 per violation, per day for any infraction of the rules and regulations of the Commission. 66 Pa. Cons. Stat. § 3301. Furthermore, the PUC retains the ability to order injunctive relief. *Id.* Consistent with due process, the PUC may also issue license suspensions and revocations. 52 Pa. Code § 52.42(a)(7)–(8).

The totality of the circumstances warrants a penalty of between \$5,000 and \$8,000 with respect to the conduct complained of by Perrong. A separate civil penalty for each violation is

appropriate when each violation can be feasibly segregated into distinct and discrete violations. *Newcomer Trucking, Inc. v. PUC*, 531 A.2d 85 (Pa. Cmwlth. 1987). In the instant case, the Respondent (1) failed to have its vendor register as a telemarketer under Pennsylvania law, (2) called a number on the Do Not Call Registry, (3) called a number with a spoofed Caller ID, and (4) made at least five individual misrepresentations on the calls spanning generally two categories of proscribed conduct: pricing misrepresentations and affiliation misrepresentations. In the event the Commission is convinced that 394 cases of caller ID spoofing occurred, the Commission should order an additional \$394,000 penalty for each of these instances of caller ID spoofing. Of course, any penalty would be payable to the Commonwealth. 66 Pa. Cons. Stat. § 3301.

However, such payment of a penalty would be meaningless without adequate remedial relief to ensure that Respondent does not violate the Commission's regulations in the future. Therefore, the Commission, in accordance with its authority to do so, should issue an injunction prohibiting the Respondent from ever engaging with the vendor it hired for any purpose, as the vendor has demonstrated that it cannot be trusted to comply with the law. Alternatively, the Commission should also enjoin the vendor that Respondent identified from conducting any sort of marketing activity on behalf of Pennsylvania alternative electric suppliers. At this time and given the procedural posture of this case, the Complainant is withdrawing, without prejudice, his request for a revocation of Alpha's license.

The Commission has ordered similar relief in the past against Alpha's predecessor company, HIKO Energy. In *PUC v. HIKO Energy, LLC*, the Bureau of Investigation and Enforcement requested a civil penalty of \$14.78 million based on a \$1,000 penalty of 14,689 instances of unauthorized or illegal billing practices in violation of the disclosure requirements of 52 Pa. Code § 54.4(a). The Commission ordered a penalty of \$125 for each of the occurrences with a total award of \$1.836 million. *PUC v. HIKO Energy, LLC*, No. C-2014-2431410 (Pa. PUC Aug.

25, 2015). The Supreme Court of Pennsylvania affirmed the award. *See HIKO Energy, LLC v. PUC*, 209 A.3d 246 (Pa. June 5, 2019). At least part of the Commission’s decision in *HIKO* rested on *Towne v. Great American Power, LLC*. No. C-2012-2307991 (Pa. PUC Oct. 18, 2013). In *Towne*, the Commission increased a civil penalty against an alternative electric supplier from \$5,000 to \$10,000 because the supplier’s illegal telemarketing conduct was “detrimental to the ongoing enhancements and the ultimate success of Pennsylvania’s retail electric market.” *Id.*

### **CONCLUSION**

The evidence introduced at the hearing in this case by both the Complainant and respondent support the inevitable conclusion that the call the Complainant received from the Respondent on February 15 violated multiple provisions of the Utility Code pertaining to consumer protection. The Complainant prays that the Commission sustain the complaint and issue a civil penalty between \$5,000 and potentially as high as \$402,000. Furthermore, the Complainant prays that the Commission enjoin the Respondent from using the vendor identified in discovery in the future and enjoin that vendor from offering its services to any alternative supplier in the Commonwealth.

### **PROPOSED FINDINGS OF FACT**

1. The Complainant is Andrew Perrong. Mr. Perrong is a resident of Pennsylvania and authorized to file and prosecute the instant complaint against the Respondent. *Perrong v. Frontier Utils. NE, LLC*, No. C-2020-3019899 (Pa. PUC Aug. 11, 2020).

2. The Respondent is Alpha Gas & Electric LLC, a limited liability company established in the State of New York on October 19, 2010. At all relevant times, Alpha has maintained a principal place of business at 12 College Road, Monsey, New York, 20952. Tr. 37:18.

3. On July 5, 2011, Respondent was licensed by the Commission at Docket No. A-2011-2254554 to be an electric generation supplier (EGS) that supplies electric generation service to consumers in the service territories of, *inter alia*, PECO Energy.

4. At all times relevant, Respondent advertised, marketed, offered for sale, and sold electric generation service to retail customers in Pennsylvania through telephone solicitations. Alpha Conf. Ex. 3 at 1.

5. On February 15, 2021, Complainant received a call to his telephone number 215-947-XXXX from the caller ID 215-412-1586 (the “call.”). Perrong Conf. Ex. 1 at 1.

6. The call was initiated on February 15, 2021 at 12:04:05 PM. Perrong Conf. Ex. 1 at 1.

7. Complainant answered the call on February 15, 2021 at 12:04:10 PM. Perrong Conf. Ex. 1 at 1.

8. A prerecorded message played when Complainant answered the call. Perrong Conf. Ex. 2,3.

9. Complainant was transferred to a human being during the call on February 15, 2021 at 12:04:31 PM. Perrong Conf. Ex. 2 at 00:21.

10. At all times relevant, the telephone number 215-947-XXXX was on the National Do Not Call Registry. Perrong Conf. Ex. 7.

11. At all times relevant, the telephone number 215-947-XXXX was on the Pennsylvania Do Not Call List. Perrong Conf. Ex. 1 at 4.

12. The call was made on behalf of Respondent through a vendor hired by the Respondent. Alpha Conf. Ex. 3 at 1.

13. The caller ID 215-412-1586 was a spoofed caller ID. Tr. 16:10.

14. Alpha initiated the call to the Complainant through a vendor. Alpha Conf. Ex. 3 at 1.

15. Alpha’s vendor was not registered as a telemarketer under the Pennsylvania Telemarketer Registration Act. *See generally* Tr.

16. Perrong Confidential Exhibit 2 is a true and correct recording of the call.
17. Perrong Confidential Exhibit 3 is a true and correct recording of the call.
18. At the hearing, the Complainant authenticated the recordings. Tr. 23:1–19.
19. In addition, the recordings were legally obtained using equipment which is ordinarily connected to telephone facilities. Tr. 23:1–19.
20. Perrong Confidential Exhibit 4 is a true and correct transcript of Perrong Confidential Exhibit 2, which is itself a true and correct recording of the call.
21. The file open on Respondent’s vendor’s computer and visible in the screenshot in Alpha Confidential Exhibit 3 at pages 6 and 7, “20210215-120431\_...” has not been produced in discovery (the “vendor file”).
22. The vendor file appears to be the vendor’s copy of a recording of the call on the vendor’s computer. Alpha Conf. Ex. 3 at 6–7.
23. The vendor file matches exactly the date and time the call was transferred to a human. Perrong Conf. Ex. 2 at 00:21.
24. Respondent’s vendor also used the caller ID 985-432-9863 to place calls on behalf of the Respondent. Alpha Conf. Ex. 3 at 1.
25. Respondent’s vendor spoofed the caller ID 985-432-9863. Alpha Conf. Ex. 3 at 1; Somos database, *supra* n.2.
26. Respondent’s vendor placed at least 394 calls without registering as a telemarketer. *See generally* Tr.
27. Respondent’s vendor used the caller ID 985-432-9863 at least 394 times to place calls on behalf of the Respondent. Alpha Conf. Ex. 3 at 1.
28. The caller ID 985-432-9863 is not a valid telephone number. Alpha Conf. Ex. 3 at 1; Somos database, *supra* n.2.

29. Respondent is not the Public Utility Commission. Tr. 37:18.

Respondent possesses no power to suspend an alternative electric supplier. 52 Pa. Code § 52.42(a)(7)–(8).

30. Respondent is not a part of PECO Energy. Tr. 37:18.

31. Respondent does not offer reimbursements of any sort in its tariff.

32. At all times relevant, Respondent charged 13.996 cents per kilowatt hour. Perrong Conf. Ex. 2.

33. At all times relevant, PECO’s price to compare was 6.426 cents per kilowatt hour.

*Residential Price to Compare Table, supra.*

34. Complainant is not required to choose an electric supplier, including Respondent. 52 Pa. Code § 111.8(f).

35. The Respondent failed to identify itself during the call until the end of the call. Perrong Conf. Exs. 2, 3, 4.

36. The Respondent only identified itself at the end of the call by stating that they were “Alpha Gas and Electric.” Perrong Conf. Exs. 2, 3, 4.

37. The Respondent failed to state that they were a competitive electric supplier. Perrong Conf. Exs. 2, 3, 4.

### **PROPOSED CONCLUSIONS OF LAW**

1. The Pennsylvania Public Utility Commission is an agency empowered to regulate public utilities and electric generation suppliers operating within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, et seq.

2. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 501.

3. The Complainant is Andrew Perrong. Mr. Perrong is a resident of Pennsylvania and authorized to file and prosecute the instant complaint against the Respondent. *Perrong v. Frontier Utils. NE, LLC*, No. C-2020-3019899 (Pa. PUC Aug. 11, 2020).

4. The Respondent is Alpha Gas & Electric LLC, a limited liability company established in the State of New York on October 19, 2010. At all relevant times, Alpha has maintained a principal place of business at 12 College Road, Monsey, New York, 20952. Tr. 37:18.

5. On July 5, 2011, Alpha was licensed by the Commission at Docket No. A-2011-2254554 to be an electric generation supplier (EGS) that supplies electric generation service to consumers in the service territories of, inter alia, PECO Energy.

6. As a licensed provider of electric generation service for compensation, Alpha is subject to the power and authority of the Commission and must observe, obey and comply with the Commission's regulations and orders. 66 Pa.C.S. §§ 102; 501(c); 2809-2810.

7. The Complainant bears the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

8. To satisfy the burden of proof, the Complainant must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PUC*, 578 A.2d 600 (1990).

9. "Burden of proof" means the duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest amount, than the evidence presented by the other side. *Id.* at 602.

10. Complainant has met its burden of proof in this proceeding in part. 66 Pa.C.S. § 332(a).

11. Respondent is liable for the actions of its vendor. 52 Pa. Code § 111.3.

12. Respondent's vendor acted as the Respondent's agent.

13. At the hearing, the Complainant authenticated the recordings introduced as evidence.

Because they were properly authenticated, the Commission may accept them into evidence. PA. R. EVID. 901(a).

14. The recordings were legally obtained because they were created using equipment which is ordinarily connected to telephone facilities. Accordingly, they were not made using an “electronic, mechanical, or other device” as that term is defined under the Wiretap Act. 18 Pa. Cons. Stat. § 5702 (excluding from the definition equipment ordinarily connected to telephone facilities).

15. Respondent’s vendor is required to register as a telemarketer under the Pennsylvania Telemarketer Registration Act. 52 Pa. Code § 111.10(a)(2).

16. Respondent violated 52 Pa. Code § 111.10(a)(2), which clearly requires compliance with the Pennsylvania Telemarketer Registration Act and requires that its agent “register as a telemarketer.”

17. Respondent’s vendor did not register as a telemarketer as required by law.

18. Respondent placed at least 394 calls without registering as a telemarketer as required by law.

19. Respondent is liable for such violation under 52 Pa. Code § 111.3, which imposes liability on a supplier for the conduct of its agent.

20. Suppliers are responsible for “any fraudulent deceptive or other unlawful marketing or billing acts performed by the licensee, its employes [sic], agents or representatives” 52 Pa. Code § 54.43(f).

21. Under 52 Pa. Code § 111.10(a)(3), a supplier and its agents, like the vendor Respondent hired, must also comply with regulations governing marketing, including the Telemarketing and Consumer Fraud and Abuse Prevention Act and the Telemarketing Sales Rule.

22. Under the Telemarketing Sales Rule, it is a deceptive act or practice to call a number on the National Do Not Call Registry. 16 CFR § 310.4(b)(1)(iii)(B).

23. By calling a number on the National Do Not Call Registry, Respondent violated the Telemarketing Sales Rule, and in turn violated 52 Pa. Code § 111.10(a)(3).

24. The provisions of 52 Pa. Code § 111.10(a)(3) require compliance with the Telemarketing Sales Rule, which makes it a deceptive act of practice to misrepresent the costs of goods or the terms of any refund, cancellation, or exchange policies. 16 CFR § 310.3(a)(2)(i), (iv).

25. By misrepresenting that the Complainant would receive a “35%” “discount” by virtue of paying a rate 117% *higher* than PECO’s price to compare, and by claiming that the Complainant would receive a \$50.00 “reimbursement” (or refund), the Respondent committed deceptive acts or practices under the Telemarketing Sales Rule by misrepresenting pricing and refund terms.

26. It is unlawful for an alternative energy supplier or its agent to misrepresent their association and endorsement with the established electric utility and/or the PUC. 52 Pa. Code § 111.8(d).

27. The Telemarketing Sales Rule likewise proscribes misrepresenting a seller’s identity. Under the Rule, it is an abusive practice to fail to make a truthful disclosure of the identity of the seller. 16 CFR § 310.4(d)(1). It is also a deceptive practice to misrepresent a seller’s affiliation with a government entity like the PUC. 16 CFR § 310.3(a)(2)(vii).

28. By stating that Alpha was a “part of PECO,” stating that Alpha had the power to terminate a competitive supplier, and by stating that the Complainant needed to select Alpha as its competitive supplier, the Respondent violated both the Telemarketing Sales Rule and PUC directives by misrepresenting its identity.

29. The provisions of 52 Pa. Code § 111.10(a)(3) require compliance with the Telemarketing Sales Rule, which prohibits the transmission of inaccurate caller ID numbers and makes it an abusive practice. 16 CFR § 310.4(a)(8).

30. The Telemarketer Registration Act also makes it illegal to send “spoofed” or inaccurate caller ID information. 73 Pa. Cons. Stat. § 2245.1(1).

31. Respondent and its vendor sent “spoofed” or inaccurate caller ID information at least once to the Complainant, using the spoofed caller ID 215-412-1586. This action violated both the

Telemarketing Sales Rule and Telemarketer Registration Act, which in turn violated 52 Pa. Code § 111.10(a)(2)–(3).

32. Respondent and its vendor sent “spoofed” or inaccurate caller ID information at least 394 to other individuals, using the spoofed caller ID 985-432-9863. This action violated both the Telemarketing Sales Rule and Telemarketer Registration Act, which in turn violated 52 Pa. Code § 111.10(a)(2)–(3).

33. The Commission is authorized to impose a civil penalty of up to \$1,000 per violation of the Public Utility Code, Commission regulation or Commission order. 66 Pa.C.S. § 3301(a).

34. The Commission is authorized to impose injunctive relief. 66 Pa.C.S. § 3301(a).

35. A separate civil penalty for each violation is appropriate when each violation can be feasibly segregated into distinct and discrete violations. *Newcomer Trucking, Inc. v. PUC*, 531 A.2d 85 (Pa. Cmwlth. 1987).

36. A civil penalty of \$1,000 for each is appropriate for each discrete violation articulated above.

37. Alpha committed eight discrete violations with respect to complainant: (1) it failed to have its vendor register as a telemarketer under Pennsylvania law, (2) it called a number on the Do Not Call Registry, (3) it called a number with a spoofed Caller ID, and (4) it made at least five individual misrepresentations on the calls.

38. Respondent, through its vendor, also spoofed caller IDs to at least 394 other persons.

39. Respondent, through its vendor, called at least 394 other persons without registering as a telemarketer.

40. A civil penalty of \$1,000 for each instance of admitted caller ID spoofing and/or calls without registering as a telemarketer to at least 394 other persons is appropriate.

41. An injunction enjoining Respondent from ever using its vendor to conduct marketing in Pennsylvania is appropriate.

42. An injunction enjoining Respondent's vendor from engaging with other licensed electric suppliers in Pennsylvania for marketing purposes is appropriate.

43. In addition to expressly enumerated powers, the Commission also has full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof. 66 Pa.C.S. § 501.

### **PROPOSED ORDERING PARAGRAPHS**

THEREFORE, IT IS ORDERED:

1. That the Complaint filed by Andrew Perrong against Alpha Gas & Electric LLC at Docket No. C-2021-3024359 is hereby granted as follows.

2. Respondent, Alpha Gas & Electric LLC is directed to pay the Commonwealth of Pennsylvania a civil penalty in the amount of \$\_\_\_\_\_, due within thirty (30) days from the date of entry of the Commission's Final Order, made payable to "The Commonwealth of Pennsylvania" and addressed to: \_\_\_\_\_.

3. That no amount of the civil penalty shall be passed through as an additional charge to Respondent's customers in Pennsylvania.

4. That Respondent, Alpha Gas & Electric LLC is hereby permanently enjoined from engaging with the vendor it identified for the purpose of conducting marketing in Pennsylvania.

5. That all other competitive electric suppliers licensed by the Commission are hereby permanently enjoined from conducting business with the vendor [REDACTED].

6. That Respondent, Alpha Gas & Electric LLC is enjoined from violating the Pennsylvania Public Utility Code, Commission regulations, and Commission Orders regarding retail electricity markets.

7. That Complainant's request for revocation or suspension of Respondent's license is denied without prejudice.

8. That after Respondent, Alpha Gas & Electric LLC, remits \$\_\_\_\_\_ as required by Ordering Paragraph No. 3, the Secretary's Bureau shall mark Docket No. C-2021-3024359 closed.

Dated: **August 24, 2021**

\_\_\_\_\_/s/\_\_\_\_\_  
Andrew Perrong  
*Complainant Pro-Se*  
1657 The Fairway #131  
Jenkintown, PA 19046  
Phone: 215-791-6957  
Facsimile: 888-329-0305  
andyperrong@gmail.com

## CERTIFICATE OF SERVICE

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

Brief, to:

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

I also certify that I e-filed the foregoing with the Commission via their web portal, with a physical copy to:

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

and

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: **August 24, 2021**

\_\_\_\_\_/s/\_\_\_\_\_  
Andrew Perrong  
*Complainant Pro-Se*  
1657 The Fairway #131  
Jenkintown, PA 19046  
Phone: 215-791-6957  
Facsimile: 888-329-0305  
andyperrong@gmail.com