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August 24, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Main Brief 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 the Main Brief of Alpha Gas & Electric LLC upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

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Hon. Charece Z. Collins
Administrative Law Judge
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Pa. Public Utility Commission
400 North Street
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Dated: August 24, 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	:

**MAIN BRIEF OF
ALPHA GAS & ELECTRIC LLC**

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Pursuant to the Late-Filed Exhibits and Briefing Order dated June 25, 2021, as modified by the Amended Briefing Schedule Order dated August 9, 2021, which were issued by Administrative Law Judge (“ALJ”) Charece Z. Collins, Alpha Gas & Electric LLC (“Alpha”) hereby submits this Main Brief.

I. INTRODUCTION

This Formal Complaint (“Complaint”) involves a single telephone call allegedly made by Alpha to Andrew Perrong (“Complainant” or “Mr. Perrong”) on February 15, 2021 regarding the sale and marketing of electric generation supply services.¹ Importantly, Alpha and its vendor have no records showing that a call was placed to Mr. Perrong or that there were otherwise any interactions with Mr. Perrong on February 15, 2021. Further, Mr. Perrong was never enrolled with Alpha for electric supply services.

Alpha recognizes that the Complainant produced a recording of a call he received on February 15, 2021, during which a male told Mr. Perrong near the end of the call that Alpha would be his electric supplier. The recording alone, however, does not prove that the person who identified himself as Kevin Victor was working on behalf of Alpha. Indeed, Alpha’s testimony and evidence presented during the hearing showed that its only vendor handling telephone solicitations at that time had no authority to make an outbound call and further that the vendor’s agents do not include anyone by that name. An outbound telephone solicitation would have been completely contrary to Alpha’s business model, its contract with the third-party vendor and its telemarketing script. While Alpha cannot explain the recording or the

¹ Although Alpha holds a license as both an electric generation supplier (“EGS”) and a natural gas supplier (“NGS”), only the “electric” box was checked on the Complaint form. Complaint, ¶ 3. A search of the Utility History on the Commission’s website reveals that it was docketed at Alpha’s natural gas license docket. Given the focus of this proceeding, however, on electric supply services, Alpha’s Main Brief is centered on its practices as an EGS.

individual's reference to Alpha, it appears to be a situation in which the sales person was acting on his own for whatever nefarious reasons or motives he may have had.

Further, Mr. Perrong's reliance on the recording he produced of the February 15, 2021 call is inappropriate. Notably, the Complainant recorded the call without obtaining affirmative consent to record from the sales people. This is a violation of the Pennsylvania Wiretapping Law. Because the recording was illegally obtained, it cannot be relied upon as evidence to support factual findings or legal conclusions in this proceeding. Further, the recording has not been properly authenticated and cannot be relied upon as evidence for this reason as well. Accordingly, the recording and the related transcript that Mr. Perrong produced should be wholly disregarded in the disposition of this matter.

In addition to the shortcomings in the evidentiary record to prove that an Alpha sales agent made an outbound telemarketing call to the Complainant on February 15, 2021, two of the three provisions in the regulations that Alpha is alleged to have violated require compliance with state and federal laws that the Commission lacks the statutory authority to administer or enforce. Despite including these requirements in its regulations, the Commission has acknowledged that it lacks jurisdiction to administer and enforce them or to determine an entity's compliance therewith. The only way to find a violation of these regulations would be to analyze and interpret the federal and state telemarketing laws, which are complex and outside the Commission's expertise, along with its jurisdiction.

Nothing in the record demonstrates that a person working on behalf of and authorized by Alpha to conduct outbound telemarketing activities made an unsolicited call to Mr. Perrong. Therefore, Alpha respectfully requests that this Complaint be dismissed in its entirety.

II. STATEMENT OF THE CASE

A. Alpha

Alpha is an EGS and an NGS licensed by the Commission to sell electric generation services and natural gas supply services to retail customers throughout the Commonwealth.² As noted in footnote 1 of this Main Brief, the sales and marketing practices brought into question in this proceeding are focused on Alpha's role as an EGS.

B. Pleadings and Interim Orders

On March 1, 2021, the Complainant filed a Complaint against Alpha, which the Commission served on Alpha by Secretarial Letter on March 18, 2021. The Complaint alleges that Alpha – through a sales agent – made a telephone call to Mr. Perrong on February 15, 2021 and sought to sell electric supply services. Other alleged claims raised by the Complaint are that: (i) the caller identification displayed a “spoofed” telephone number; (ii) the call was made to a telephone number that is on the Pennsylvania Do-Not-Call Registry and the National Do-Not-Call Registry; (iii) the call began with a prerecorded message that identified the call as coming from the utility company along with an offer to refund charges and apply a discount to Mr. Perrong's supply bills; (iv) Mr. Perrong spoke with a female agent who did not identify herself and stated that the reason for the call was to offer a discount; (v) Complainant then spoke with a male agent who said he was with the utility company and a governmental body and that Mr. Perrong had been overcharged by a third-party supplier; (vi) the agent offered a rate that was higher than the utility's price to compare and then stated that he was calling on behalf of Alpha. By way of relief, Complainant seeks the imposition of a civil penalty on Alpha, the issuance of a

² Utility Code 1113755 (EGS); Utility Code 1215701 (NGS).

preliminary injunction enjoining Alpha from future violations, and a revocation of Alpha's license.

Consistent with the Commission's regulations at 52 Pa. Code § 5.61, Alpha timely filed an Answer on April 6, 2021, within twenty days following service of the Complaint. Through the Answer, Alpha generally denied the material averments set forth in the Complaint. In the New Matter, Alpha asserted that Complainant failed to state a claim for which relief can be granted; that Mr. Perrong lacked standing; and that the Commission does not have jurisdiction over Complainant's claims. Alpha further asserted that Mr. Perrong failed to indicate whether the call at issue was to a residential or cellular telephone number. Lastly, Alpha averred that during the time period in issue, it did not have an agent by the name identified in the Complaint and did not have any agents who were authorized to conduct outbound telemarketing in the Commonwealth of Pennsylvania. Alpha requested that Mr. Perrong's Complaint be dismissed with prejudice.

On April 20, 2021, Mr. Perrong filed Preliminary Objections in response to Alpha's Answer and New Matter. By Interim Order dated June 3, 2021, ALJ Collins denied Mr. Perrong's Preliminary Objections.

Mr. Perrong filed a Reply to Alpha's New Matter on April 26, 2021. Denying the averments in the New Matter, Complainant reiterated his requests for relief.

The parties filed a Joint Motion for Protective Order on May 18, 2021. Via the June 3, 2021 Interim Order, ALJ Collins granted the Joint Motion for Protective Order and issued a Protective Order.

C. Evidentiary Hearing

An evidentiary hearing was held in this matter on June 24, 2021 before ALJ Collins. During the hearing, Mr. Perrong testified on his own behalf, and Alpha presented the testimony

of Adam Small, General Counsel of Alpha. Several pre-served exhibits were admitted during the hearing. The Complainants' exhibits admitted during the hearing include Perrong Confidential Exhibit 1, which consists of telephone records; Perrong Confidential Exhibit 4, which is a transcript of the call; Perrong Confidential Exhibit 5, which is a document authenticating the transcript; and Perrong Confidential Exhibit 6, which is a list of Complainant's allegations concerning misrepresentations by the sales agent. Alpha's exhibits admitting during the hearing include Alpha Confidential Exhibit 1, which is Alpha's contract with the only vendor it was using for telephone solicitations at the time of the call; Alpha Confidential Exhibit 2, which is a marked-up draft of the telemarketing script in use on February 15, 2021; Alpha Confidential Exhibit 3, which is a WhatsApp Chat between Alpha representatives and its vendor; Alpha Confidential Exhibit 4, which is the vendor's report showing the telephone numbers with which the vendor interacted on February 15, 2021; Alpha Confidential Exhibit 5, which is Complainant's document provided in discovery regarding the National Do Not Call Registry; and Alpha Confidential Exhibit 6, which is Complainant's document provided in discovery regarding the Pennsylvania Do Not Call Registry. In addition, the parties agreed that late-filed exhibits would be submitted to the Secretary's Bureau by July 6, 2021, including: Perrong Confidential Exhibits 2 and 3, which are recordings of the February 15, 2021 phone call; Perrong Exhibit 7, which is updated information regarding the National Do Not Call Registry; and Alpha Confidential Exhibit 7, which is a copy of the final telemarketing script that was in place on February 15, 2021 call.

III. APPLICABLE LEGAL STANDARDS

A. Jurisdiction

The Commission has jurisdiction over the parties of this proceeding.³ As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Public Utility Code (“Code”).⁴ It is well-settled that the Commission must act within, and cannot exceed, its jurisdiction.⁵ Jurisdiction may not be conferred by the parties where none exists.⁶ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.⁷

B. Burden of Proof

Mr. Perrong has the burden of proof in this proceeding. As the proponent of a rule or order, he bears the burden of proving his factual allegations and alleged violations of the Commission’s regulations pursuant to Section 332(a) of the Public Utility Code.⁸ To satisfy this burden, Mr. Perrong must demonstrate that Alpha violated either (a) the Public Utility Code or another statute administered by the Commission or (b) a regulation or order of the Commission.⁹ Any violations must be shown by a preponderance of the evidence.¹⁰ Preponderance of the

³ 66 Pa. C.S. § 701.

⁴ 66 Pa. C.S. §§ 101 *et seq*; *See City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

⁵ *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 43 A.2d 348 (Pa. Super. 1945).

⁶ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

⁷ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

⁸ 66 Pa. C.S. § 332(a).

⁹ *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990).

¹⁰ *Samuel J. Lansberry, Inc. v. PUC*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party.¹¹

In addition, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient.¹² A complainant cannot establish a case merely by stating his or her personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence.¹³

C. 52 Pa. Code § 111.10(a)(2)

Section 111.10(a)(2) of the Commission’s regulations requires an agent that contracts with a supplier to conduct telemarketing and sales activities on behalf of the supplier to register as a telemarketer and comply with the Telemarketing Registration Act (“TRA”).¹⁴ Despite including this provision in the regulations, the Commission has held that it does not have jurisdiction to enforce the requirements of the TRA or to determine whether an entity has complied with this law.¹⁵ In so ruling, the Commission has acknowledged that the provision in its regulations requiring compliance with the TRA “does not equate to the General Assembly providing the Commission with jurisdiction to hear claims brought pursuant to the TRA.”¹⁶ To

¹¹ *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

¹² *Norfolk and Western Railway Co. v. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

¹³ *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

¹⁴ 73 P.S. §§ 2242 *et seq.*

¹⁵ *See Cmwlth. of PA, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Order entered December 11, 2014) (“*BPE Interlocutory Order*”) at 16-18.

¹⁶ *BPE Interlocutory Order* at 17.

the contrary, the Commission has concluded that its jurisdiction is limited to determining whether its own regulations have been violated by a supplier.¹⁷

Even prior to reaching this determination in the *BPE Interlocutory Order*, the Commission had acknowledged its lack of statutory authority to enforce the TRA or determine compliance with its provisions. During the rulemaking proceeding in which this regulation was promulgated, the Independent Regulatory Review Commission (“IRRC”) specifically questioned how the Commission would enforce these provisions when it is the Pennsylvania Office of Attorney General (“OAG”) that is charged with the administration and enforcement of the TRA. In addressing this comment filed by IRRC, the Commission recognized its lack of authority to adjudicate TRA claims, noting that it has a memorandum of law with the OAG to address such issues when they arise.¹⁸ Accordingly, the Commission has no jurisdiction to adjudicate the Complainant’s allegations that Alpha violated 111.10(a)(2) of its regulations.

D. 52 Pa. Code § 111.10(a)(3)

Section 111.10(a)(3) of the Commission’s regulations requires suppliers and their agents to comply with the federal Telemarketing and Consumer Fraud and Abuse Prevention Act and attendant regulations.¹⁹ While it does not appear that the Commission has expressly addressed its lack of statutory authority to administer or enforce this federal law, the rationale for concluding that it lacks such jurisdiction would mirror the discussion above regarding the TRA. Indeed, in promulgating this regulation, the Commission was simply reminding suppliers of their

¹⁷ *Id.*; See also *Mid-Atlantic Power Supply Assoc. v. PECO Energy Co.*, Docket No. P-00981615, 1999 Pa. PUC LEXIS 30, *45-49 (Order entered May 19, 1999) (Commission referred matters to the OAG pursuant to Section 2811 of the Public Utility Code, 66 Pa. C.S. § 2811, rather than adjudicating them).

¹⁸ *Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332 (Corrected Final Rulemaking Order entered October 24, 2012), at 5-8.

¹⁹ 15 U.S.C.A. §§ 6101-6108 and 16 CFR Part 310 (relating to telemarketing sales rule).

obligations to comply with federal, state and local laws, and emphasized that nothing in these regulations is intended to vacate or supersede any other existing federal, state or local requirement.²⁰ Further, a review of the federal law cited in this regulation identifies the Federal Trade Commission as having responsibility for its administration and enforcement.²¹ Therefore, the Complainant's allegations concerning Alpha's compliance with Section 111.10(a)(3) may not be adjudicated by the Commission.

E. 52 Pa. Code § 111.10(b)

Section 111.10(b) of the Commission's regulations provides that an agent who contacts customers by telephone shall, after greeting the customer, immediately identify himself by name, identify the supplier the agent represents and state the reason for the telephone call. The agent is also required to indicate that he or she is not working for and is independent of the local distribution company or another supplier. This provision further prohibits an agent from saying or suggesting to the customer that a utility customer is required to choose a competitive energy supplier.

IV. SUMMARY OF ARGUMENT

The Complainant has failed to demonstrate by a preponderance of the evidence any violation by Alpha of the Public Utility Code, the Commission's regulations, or a Commission order. Therefore, the Complaint must be dismissed in its entirety.

At the time of the call that the Complainant received, Alpha had only one vendor under contract to provide telemarketing services. Those activities were considered "inbound" – not "outbound" telephone solicitations – because they were limited under the contract to situations in

²⁰ *Id.* at 8.

²¹ 15 U.S.C.A. § 6105.

which customers signed up on an unrelated website to receive information about energy products and services or to instances when customers called in to the vendor about other products and services and were asked if they would like to receive information about energy products and services. Not only is this business model clearly outlined by the contract, it is also consistent with the telemarketing script that Alpha presented as evidence in the proceeding. All of this evidence refutes Mr. Perrong's claims that the person who called him was working on behalf of Alpha.

In addition, Alpha's vendor for these telemarketing activities reviewed all of the telephone numbers with which its agents had interactions on the date in question. Mr. Perrong's telephone number was not among them. Similarly, the vendor checked all of its records for February 15, 2021 and did not find the telephone number from which the Complainant claims that Alpha called him. Further, the male individual on the call identified himself as a name that does not match any of the agents that the vendor used for telemarketing activities under the Alpha contract. As to Mr. Perrong's claim that other agents can be heard in the background yelling Alpha's name, Alpha disputes this allegation based on its review of the recordings. Indeed, Mr. Perrong admitted in his testimony that there was no way to identify who the caller was – this concession shows that the only so-called "evidence" he produced is purely speculative, which cannot support a finding of a fact or a violation of the Commission's regulations.

While it is challenging, if not impossible, for Alpha to unequivocally disprove any association between it, its vendor and the sales people on the call, Alpha has shown that the person on the telephone call with Mr. Perrong was not authorized by Alpha to make an outbound telemarketing call on its behalf, use a pre-recorded message at the outset of the call or give the

impression that he was affiliated with the local utility or a government program. To the contrary, Alpha went to great lengths through its contractual provisions with the vendor and the telemarketing script that it approved for the vendor's use to ensure that the agents working on Alpha's behalf followed the applicable regulatory requirements.

It is significant that two of the regulations cited by Mr. Perrong in his Complaint reference compliance with state and federal telemarketing laws. Even though these regulations impose a requirement on suppliers to comply with federal and state telemarketing laws, the Commission has said that it does not have jurisdiction to administer or enforce them. The only way to find a violation of those regulations would be to analyze and interpret the federal and state telemarketing laws, which are complex and outside the Commission's expertise, along with its jurisdiction.

In summary, this Complaint involves an allegation of a single telemarketing call made to Mr. Perrong by an individual with whom Alpha is not familiar. Although the Complaint raises allegations about the content of the call that are in violation of the Commission's regulations, Mr. Perrong never enrolled with Alpha. Therefore, it is difficult to see how he was harmed in any way.

The Complainant has not carried his burden of proving that Alpha or its agent made any call to him. Even if all allegations in the Complaint were accepted as true, the relief requested is well beyond the scope of what the Commission has ordered in other complaint proceedings. Alpha has an unblemished compliance history with only one formal complaint, other than that filed by Mr. Perrong, having been filed against it, and no formal complaints having been sustained for the decade during which it has been licensed by the Commission.

For these reasons, the Complainant has failed to meet his burden of proof to demonstrate that Alpha has violated the Public Utility Code, the Commission’s regulations, or a Commission order. Therefore, Alpha respectfully requests that the Complaint be dismissed. To the extent any portion of the Complaint is sustained, no civil penalty should be assessed.

V. ARGUMENT

A. Violations Alleged by the Complaint

1. 52 Pa. Code § 111.10(a)(2)

In the Complaint, Mr. Perrong alleges that Alpha violated Section 111.10(a)(2) of the Commission’s regulations, which requires an “agent that contracts with a supplier to conduct telemarketing and sales activities on behalf of the supplier” to register as a telemarketer and comply with the TRA.²² Through a Supplemental Narrative/Explanation (“Supplement”) attached to the Complaint, the Complainant contends that the call he allegedly received from Alpha violated this provision because it did not comply with Section 2245.1(1) of the TRA.²³ This provision of the TRA prohibits the blocking of caller identification by telemarketers.²⁴ The Complainant contends that Alpha violated Section 2245.1(1) of the TRA because he allegedly received a call from the “spoofed” caller ID 215-412-1586.

As discussed above, the Commission does not have statutory authority to determine whether a supplier’s agent complies with the TRA, which is the only standard set forth in Section 111.10(a)(2). In order to find that Alpha violated Section 111.10(a)(2), the Commission would need to determine whether Alpha departed from the requirements of Section 2245.1(1) of the

²² Complaint, ¶ 4; 52 Pa. Code § 111.10(a)(2).

²³ Supplement, ¶ 8.

²⁴ 73 P.S. § 2245.1(1).

TRA. Given that the Commission lacks both jurisdiction and expertise to make this determination, it is without power to adjudicate this claim.

Moreover, the record in this proceeding contains no evidence to demonstrate that Alpha or its agent used a spoofed caller ID. Such practice would have entailed Alpha's vendor making outbound telephone solicitations. Yet, Alpha's contract with its only telemarketing vendor at the time provided for inbound calls or customer sign-ups to receive calls about other products and services. Tr. 46, 47, 49-53; Alpha Conf. Exh. 1, Section 8. Once an individual made an inbound call to the vendor or signed up online with the vendor to receive calls about other products and services, the sales agent would then ask whether the consumer was interested in hearing about energy supply service. Tr. 51-52. Therefore, the description of the call that the Complainant allegedly received from an Alpha agent does not match the contractual arrangement.

Similarly, the discussion on the recording between the sales people and Mr. Perrong bears no likeness to the telemarketing script that was in use at the time of the call. *See* Perrong Conf. Exhs. 2 and 4; Alpha Conf. Exh. 7. A review of the telemarketing script reveals that it is for an inbound call and identifies the agent and Alpha by name from the outset. In short, throughout the script are references to Alpha's products, pricing and terms and conditions, which vary drastically from the information provided during the call with Mr. Perrong. Further, Alpha's vendor does not have an agent by the name of Kevin Victor - the name provided by the individual on the call. Tr. 54-55.

Additionally, the vendor checked all of its call records and did not find Mr. Perrong's telephone number or the telephone number that he alleges called him. Tr. 53-54; Alpha Conf. Exh. 3. The vendor also provided a list of telephone numbers where agents had interactions involving Alpha on the day in question, and Mr. Perrong's number was not on the list. Alpha

Conf. Exh. 4. Likewise, the caller ID that the Complainant references did not appear on any of the Alpha vendor's lists. Tr. 54-55; Alpha Conf. Exh. 3.

Mr. Perrong testified that the male individual he spoke to stated that he was calling from Alpha. Tr. at 17. However, a careful review of the transcript and recording demonstrates that the male individual never said he was working on behalf of Alpha. To the contrary, near the end of the call, he stated that Mr. Perrong would receive electric supply service from Alpha – much like a broker might do after evaluating a consumer's usage patterns. Perrong Conf. Exhs. 2 and 4. The person on the call could have been anyone, and Mr. Perrong has not demonstrated that the individual was calling on behalf of or working for Alpha.

Alpha has no idea why the individual on the call mentioned Alpha's name near the end as the supplier that would be serving Mr. Perrong, and therefore cannot produce evidence to conclusively disprove any connection between the individual and Alpha. Tr. 58. Rather, Alpha can only point to the various inconsistencies between this call and its contract with the vendor, as well its approved telemarketing script, coupled with no evidence of the vendor having called Mr. Perrong's number. From the evidence, it appears that a rogue individual – not affiliated with Alpha - made a call to Mr. Perrong that was not made on behalf of Alpha. The person may have been seeking the possibility of personal gain by making it appear that Alpha's agents were acting in violation of the Commission regulations and then pursuing legal action against Alpha.

As to Mr. Perrong's claim that other agents can be heard in the background yelling Alpha's name (Tr. 17), Alpha disputes this allegation based on its review of the recordings and further notes that Mr. Perrong's suggestion brings his credibility into question. Indeed, Mr. Perrong admitted in his testimony that there was no way to identify who the caller was. Tr. 17. This concession shows that the only so-called "evidence" the Complainant produced is purely

speculative, which cannot support a finding of a fact or a violation of the Commission's regulations.

With respect to Mr. Perrong's testimony suggesting that the particular system that was used to make the call confirms that the call was from Alpha's vendor (Tr. 17-20), again, this leap is mere speculation. Any number of vendors or other entities have access to the same system, and even if his observation is correct as to the system that was used, that in no way proves that it was Alpha's vendor/sales agents who made the call in question.

To the extent that the allegations in the Complaint are true and Mr. Perrong received a call from a spoofed caller ID, the evidence produced in this proceeding does not establish any connection between the sales people and Alpha or its vendor. While the individual on the recording mentions Alpha, that reference does not demonstrate that Alpha authorized the call or otherwise had any involvement in the matter. Given the Commission's lack of jurisdiction to determine whether Alpha improperly used a spoofed caller ID, and the absence of evidence showing that it was an Alpha sales agent on the recording, the Commission should dismiss these allegations of the Complaint.

2. 52 Pa. Code § 111.10(a)(3)

The Complaint further alleges violations of Section 111.10(a)(3) of the Commission's regulations, which requires suppliers to comply with the federal Telemarketing and Consumer Fraud and Abuse Prevention Act and the federal regulations governing telemarketing sales.²⁵ In the Supplement attached to the Complaint, Mr. Perrong characterizes the call as an abusive practice under the federal regulations at 16 CFR § 310.3(b)(1)(iii)(B) because it was made to a

²⁵ Complaint, ¶ 4; 15 U.S.C.A. §§ 6101-6108 and 16 CFR Part 210.

telephone number on the National Do Not Call Registry.²⁶ The Complaint further alleges that the use of a spoofed caller ID violates Section 111.10(a)(3) of the Commission's regulations as an abusive telemarketing practice under 16 CFR § 310.4(a)(8).²⁷

As Section 310.3(b)(1)(iii)(B) does not exist, it appears that the correct reference to the federal regulations which makes it unlawful to call a number on the National Do Not Call Registry is 16 CFR § 310.4(b)(1)(iii)(B). Section 310.4(a)(8) is the federal regulation that prohibits the blocking of caller ID information. Consistent with the discussion above, the Commission does not have statutory authority to determine whether a supplier's agent complies with the federal law, which is the only standard set forth in Section 111.10(a)(3). In order to find that Alpha violated Section 111.10(a)(3), the Commission would need to determine whether Alpha departed from the requirements of the federal law and regulations. Given that the Commission lacks both jurisdiction and expertise to make this determination, it is without power to adjudicate this claim.

Coupled with the Commission's lack of statutory authority, the record is devoid of evidence establishing any connection between the sales people on the call and Alpha or its vendor. Notably, as discussed above in connection with Section 111.10(a)(2), Mr. Perrong received a telephone solicitation during a time when Alpha's contract with its only telemarketing vendor provided for inbound calls or customer sign-ups to receive calls about other products and services. Tr. 46, 47, 49-53; Alpha Conf. Exh. 1. In addition, the call captured on the recording bears no resemblance to Alpha's telemarketing script. *See* Perrong Conf. Exhs. 2 and 4; Alpha Conf. Exh. 7. Further, Alpha's vendor does not have an agent by the name of the male

²⁶ Supplement, ¶ 7.

²⁷ Supplement, ¶ 8.

individual on the call. Tr. 54-55; Alpha Conf. Exh. 3. Moreover, a review of all records from February 15, 2021 showed that no calls were made to Mr. Perrong's number and that the "spoofed caller ID" provided by the Complainant did not appear on any of the vendor's lists. Alpha Conf. Exhs. 3 and 4; Tr. 53-56.

Alpha has no explanation for why the person on the recording produced by Mr. Perrong would mention Alpha. Notably, the individual did not state he was with Alpha, but rather that Mr. Perrong would receive electric supply service from Alpha. In short, the person on the recording – assuming it is a legitimate recording – was not authorized by Alpha to call Mr. Perrong and was not calling on behalf of Alpha.

To the extent that the allegations in the Complaint are true and Mr. Perrong received a call from a spoofed caller ID, Alpha contends that the evidence produced in this proceeding does not establish any connection with Alpha. While the individual on the recording mentions Alpha, that reference does not demonstrate that Alpha authorized the call or otherwise had any involvement in the matter. Given the Commission's lack of jurisdiction to determine whether Alpha improperly used a spoofed caller ID or called an individual on the do not call list, and the absence of evidentiary support to show that it was in fact an Alpha sales agent on the recording, the Commission should dismiss these allegations of the Complaint.

3. 52 Pa. Code § 111.10(b)

The Complaint also alleges violations of Section 111.10(b) of the Commission's regulations,²⁸ which provides that an agent who contacts customers by telephone shall greet the customer, immediately identify himself by name, identify the supplier the agent represents and the reason for the telephone call. The agent is also required to state that they are not working for

²⁸ Complaint, ¶ 4; Supplement ¶¶ 2, 9-12, 14.

and are independent of the local distribution company or another supplier. This provision further prohibits an agent from saying or suggesting to the customer that a utility customer is required to choose a competitive energy supplier.

The Complaint claims that the call began with a prerecorded message stating that this was an apology call from the utility company and offering a discount.²⁹ Next, the Complainant says he spoke with a female agent that did not identify herself or that she was with a third-party supplier, as said the reason for the call was to offer a discount.³⁰ He then spoke to an agent named “Kevin Victor” who said Mr. Perrong had been overcharged by a third-party supplier.³¹ Kevin Victor also stated that he was calling from “the supplier portion of your PECO electricity bill,” that he worked as “part of PECO” and was the national supplier for PECO, which was a governmental body.³² The Complainant alleges that Kevin Victor did not state that he represented Alpha until more than nine (9) minutes into the call.³³ On these bases, Mr. Perrong alleges that Alpha has violated Section 111.10(b).

This argument must be rejected because: (1) the call was not authorized or made on behalf of Alpha; (2) the recording was illegally obtained in violation of Pennsylvania’s Wiretapping and Surveillance Control Act (“Wiretapping Act”);³⁴ and (3) the call recording has not been properly authenticated, and therefore cannot be relied upon as evidence.

²⁹ Supplement ¶ 9.

³⁰ Supplement ¶ 10.

³¹ Supplement ¶ 11.

³² Supplement ¶ 12.

³³ Supplement ¶ 14.

³⁴ 18 Pa. C.S. §§ 5702 *et seq.*

a. **The Call Was Neither Authorized Nor Made On Behalf of Alpha**

Alpha contends that the evidence produced in this proceeding does not establish any connection with Alpha. While the individual on the recording mentions Alpha, that reference does not demonstrate that Alpha authorized the call or otherwise had any involvement in the matter. Therefore, while the statements made in the call recording (to the extent the recording is legitimate) may not comply with Section 111.10(b), Alpha did not authorize this call and is not responsible for any violations. Although Alpha does not dispute its liability for acts of its agents under the Commission's regulations at 52 Pa. Code § 54.43(f), this responsibility is appropriate only when the agent is acting in a manner that is consistent with the contractual arrangements and the authority given to the agent by the supplier. In this situation, the sales people on the call – even if they are found to be linked to Alpha – were so far afield of the contract and the business model used by Alpha's vendor as to relieve Alpha of any liability for their actions.³⁵

As discussed herein, Alpha's contract with its only telemarketing vendor at the time provided for inbound calls or customer sign-ups to receive calls about other products and services. Tr. 46, 47, 49-53; Alpha Conf. Exh. 1. Once an individual made an inbound call to the vendor or signed up online with the vendor to receive calls about other products and services, the sales agent would then ask whether the consumer was interested in hearing about energy supply service. Tr. 51-52. Therefore, the description of the call that the Complainant allegedly received from an Alpha agent does not match the contractual arrangement.

Moreover, the vendor checked all of its call records and did not find Mr. Perrong's telephone number or the telephone number that he alleges called him. Tr. 53-54; Alpha Conf.

³⁵ See generally *Maier v. Patterson*, 535 F. Supp. 159, 1982 U.S. Dist. LEXIS 16233 **8-12 (union not responsible for unauthorized acts of agent which were not subsequently ratified).

Exh. 3. The vendor also provided a list of telephone numbers where agents had interactions involving Alpha on the day in question, and Mr. Perrong's number was not on the list. Alpha Conf. Exh. 4. Likewise, the caller ID that the Complainant references did not show up on any of the Alpha vendor's lists. Tr. 53-56; Alpha Conf. Exh. 3. Further, although Mr. Perrong alleges that he spoke with Kevin Victor, no agent used by Alpha's vendor goes by that name. Tr. 54-55; Alpha Conf. Exh. 3.

Alpha has no explanation for why the person on the recording produced by Mr. Perrong would mention Alpha. Notably, the individual did not state he was with Alpha, but rather that Mr. Perrong would receive electric supply service from Alpha. Perrong Conf. Exhs. 2 and 4. In short, the person on the recording – assuming it is a legitimate recording – was not authorized by Alpha to call Mr. Perrong and was not calling on behalf of Alpha. Therefore, Alpha is not responsible for any alleged violation of Section 111.10(b).

b. The Call Recording Was Illegally Obtained in Violation of Pennsylvania's Wiretapping Act and is Inadmissible as Evidence.

The recording of the call that the Complainant claims was made by Alpha was illegally obtained in violation of the Pennsylvania Wiretapping Act and therefore cannot be relied upon in this proceeding. The Wiretapping Act makes it a crime to record a person's telephone communication without their consent. Specifically, under the Wiretapping Act, a person is guilty of a felony of the third degree if he or she:³⁶

- (1) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication;
- (2) intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was

³⁶ 18 Pa. C.S. § 5703.

obtained through the interception of a wire, electronic or oral communication;
or

- (3) intentionally uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication.

“Intercept” is defined as “[a]ural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.”³⁷ A “wire communication” is defined as “any aural transfer made in whole or in part through the use of facilities for the transmission of communication by wire, cable or other like connection between the point of origin and the point of reception, including the use of such a connection in a switching station, furnished or operated by a telephone, telegraph or radio company for hire as a communication common carrier.”³⁸

The Crimes Code provides an exception when all parties to the wire communication have given prior consent to such interception.³⁹ Notably, under the Wiretapping Act, a speaker’s expectation of privacy in a telephone communication is irrelevant to the issue of legality.⁴⁰ The Wiretapping Act provides that “no person shall disclose the contents of any wire, electronic or oral communication, or evidence derived therefrom, in any proceeding in any court, board or agency of this Commonwealth.”⁴¹ While the Commission does not have jurisdiction to determine violations of the Wiretapping Act,⁴² the Wiretapping Act provides that an aggrieved

³⁷ 18 Pa. C.S. § 5702 (Definitions).

³⁸ *Id.*

³⁹ 18 Pa. C.S. § 5704.

⁴⁰ *Com. v. Deck*, 954 A.2d 603, 608 (Pa. Super. 2008).

⁴¹ 18 Pa. C.S. § 5721.1(a).

⁴² *McClellan v. Pennsylvania Pub. Util. Comm'n*, 634 A.2d 686 (Pa. Cmwlth. 1993).

person who is a party to any proceeding before a Pennsylvania administrative agency may move to exclude the contents of any wire, electronic or oral communication.⁴³ An “aggrieved person” is defined as a “person who was a party to any intercepted wire, electronic or oral communication or a person against whom the interception was directed.”⁴⁴

Mr. Perrong relies upon a recording he made of a call with a third party, where he did not obtain the third party’s consent to record. At the beginning of the call recording, the Complainant states twice that the line is being recorded, but he states this while an automated message is playing. Perrong Conf. Exhs. 2 and 4. When the female agent joins the call, Mr. Perrong states that it is a recorded line, but it is unclear if the agent heard him say this and she does not respond or in any way give consent to being recorded. *Id.* Further, the bulk of Mr. Perrong’s Complaint is based on statements made by the agent “Kevin Victor,” but Mr. Perrong did not inform Kevin Victor that the conversation was being recorded and did not obtain his consent. *Id.* Certainly, it cannot be argued that consent is implied, as it is not reasonable for telemarketers to anticipate or assume that the potential customers will record the conversation for purposes of future litigation against the caller personally or others referenced on the call.

Further, Alpha did not authorize the call and the call was not made on Alpha’s behalf. Tr. 61. As Mr. Perrong is seeking to use these illegally obtained recordings in this proceeding to hold Alpha liable for the third party’s actions, Alpha is an “aggrieved person,” and the illegally obtained called recordings are not admissible as evidence.⁴⁵ While Alpha opted to not object to

⁴³ 18 Pa. C.S. § 5721.1(b).

⁴⁴ 18 Pa. C.S. § 5702.

⁴⁵ *See e.g., Commonwealth v. Mason*, No. 1091 MDA 2018, 2019 WL 1084210, at *5 (Pa. Super. Ct. Mar. 7, 2019) (finding that the call recordings were subject to the Wiretapping Act and thus properly excluded from evidence where the recordings were made without the recorded party’s consent).

the admission of the recordings at the hearing, Alpha contended that they should not be relied upon for any purpose in this proceeding due to the precise reasons noted here. Tr. 20-23.

Even if Alpha is not considered an “aggrieved person” under the Wiretapping Act, the illegally obtained recording should not be considered in deciding this matter. Section 5.403(a)(1) of the Commission’s regulations authorizes the presiding officer to control the receipt of evidence, including ruling on the admissibility of evidence.⁴⁶ The presiding officer also has authority to confine the evidence to the issues in the proceeding and to impose “necessary limitations” upon the admission of evidence.⁴⁷ Section 5.403(b) of the Commission's regulations requires the presiding officers to "actively employ these powers to direct and focus the proceedings consistent with due process."⁴⁸ Limiting the receipt of illegally obtained evidence is not a new concept. For example, the “exclusionary rule” bars the use of illegally obtained evidence and the fruits of that evidence.⁴⁹ In this case, Mr. Perrong obtained evidence illegally for the purpose of pursuing litigation against Alpha. It is a “necessary limitation” and consistent with policy considerations for illegally obtained evidence to be disregarded during the disposition of this proceeding.

⁴⁶ 52 Pa. Code § 5.403(a)(1).

⁴⁷ 52 Pa. Code §§ 5.403 and 5.483.

⁴⁸ 52 Pa. Code § 5.403(b).

⁴⁹ See, e.g., *Commonwealth v. Arter*, 637 Pa. 541, 543, 151 A.3d 149, 151 (Pa. 2016). While the exclusionary rule has been, traditionally, limited to the principle that evidence seized in violation of Fourth Amendment rights (related to unreasonable searches and seizures) is not admissible in criminal cases, courts have recognized the notion that evidence obtained in violation of a person's legal rights, whether constitutional or statutory, should not be received in evidentiary proceedings. E.g., *United States v. Bonnell*, 483 F. Supp. 1070, 1075 n.8 (D. Minn. 1979), citing *United States v. Wade*, 388 U.S. 218, 240-41, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967); *Brewer v. Williams*, 430 U.S. 387, 398-400, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977) (“The term “exclusionary rule” is most commonly applied in the Fourth Amendment search-and-seizure context. However, as respondents note, fruits of poisonous trees are suppressed in other situations.”). Further, Pennsylvania has extended the exclusionary rule to apply in certain administrative proceedings. See *Commonwealth v. Arter*, 637 Pa. at 543, 151 A.3d at 151 (holding that the exclusionary rule can be applied to parole and probation revocation proceedings under Article 1, Section 8 of the PA Constitution).

Rejecting the use of the illegal recordings for evidentiary purposes is also consistent with Commission precedent. The Commission has previously determined that permitting calls recorded under the mantle of training and quality service improvement purposes to be used for any evidentiary purpose may violate Pennsylvania's wiretapping law.⁵⁰

In this proceeding, Mr. Perrong is seeking to use an illegally obtained recording and the transcript of this recording for the purpose of holding Alpha liable for the actions of a third party. This violates Pennsylvania's Wiretapping Law and must not be permitted. This evidence should be disregarded in reaching a decision in this matter.

c. The Call Recording Has Not Been Properly Authenticated and Cannot Be Relied On As Evidence In This Proceeding.

Further, the recording of the call that the Complainant relies on as evidence in this proceeding has not been authenticated. A "recorded telephone conversation must be properly authenticated before it is admitted into evidence."⁵¹ "Circumstantial evidence which tends to corroborate the identity of the sender, in addition to the confirmation that a number or address belonged to a particular person, is required for the authentication of electronic communications."⁵² "To be admissible, the recording must be authenticated by evidence sufficient to support a finding that the matter in question is what the proponent claims."⁵³

Here, the call recording made by Mr. Perrong cannot be authenticated. First, while Mr. Perrong may be able to identify his own voice on the call recording, he does not claim to have

⁵⁰ *Guidelines for Waiver of the Call Recording Prohibition at 52 Pa. Code § 63.137(2) Pending Rulemaking*, M-2008-207484, Opinion entered July 29, 2009; 2009 Pa. PUC LEXIS 1769 (Pa. P.U.C. July 29, 2009).

⁵¹ *Com. v. Davis*, No. 1360 MDA 2015, 2016 WL 1625810, at *9 (Pa. Super. Ct. Apr. 25, 2016); *see also* Pa. R.E. 901(a).

⁵² *Id.* (finding that the call recording was properly authenticated where a custodian of the records was called to testify regarding how the call recording is made, where it is stored, and how it was retrieved).

⁵³ *Ronald and Beverly Dawes v. Pennsylvania Gas & Electric*, Docket No. F-2013-2361655, 2014 WL 466614, at 13 (Initial Decision issued January 14, 2014 and Final Order entered February 27, 2014).

any prior experience with the female sales person or with “Kevin Victor” and therefore cannot confirm their identities or that they are affiliated with Alpha. Moreover, “Kevin Victor” is not an employee of Alpha or Alpha’s vendor and was not retained by Alpha to make the alleged call to Mr. Perrong. Tr. 54. Therefore, any purported representation by these individuals that they were calling on behalf of Alpha or to sign the Complainant up to receive service from Alpha cannot be used to adequately demonstrate the authenticity of the recording. Additionally, there is no evidence linking the call to Alpha that would be sufficient to prove the authenticity of the call recording.⁵⁴

Because Mr. Perrong cannot establish the authenticity of the call recordings or the transcripts, these items are not properly admissible and cannot be relied on as evidence in this proceeding.

4. 52 Pa. Code § 111.5

Although no allegations were raised in the Complaint about the adequacy of Alpha’s agent training, the Complainant alleged at the evidentiary hearing that Alpha failed to adequately train vendors as required by Section 111.5 of the Commission’s regulations. Tr. 30-31. This provision obligates suppliers to train agents on a variety of consumer protection requirements, as well as the supplier’s terms and conditions.⁵⁵ While Mr. Perrong testified that Alpha’s discovery responses provided in this proceeding support his allegation of inadequate training, he identified no such responses. For instance, Mr. Perrong did not present as an exhibit any discovery

⁵⁴ *Judge v. Wyoming Valley Health Care Sys., Inc.*, No. 1274 MDA 2013, 2015 WL 7260286, at *19 at n. 47 (Pa. Super. Ct. May 18, 2015) (affirming decision to exclude call recording because it was not properly authenticated).

⁵⁵ 52 Pa. Code § 111.5.

responses produced by Alpha that described its agent training program. In short, he offered no evidence in support of this allegation.

Moreover, his testimony wholly overlooked the extensive language in the contract between Alpha and its vendors, which is designed to ensure that the agents are following the requirements of the regulations. Alpha Conf. Exh. 1. During the hearing, Alpha's witness Mr. Small highlighted several such provisions in the contract, including quality control measures; training; use of an Alpha-approved script; prohibitions on the presentation of false or deceptive information; and the recording of calls. Tr. 46-50; Alpha Conf. Exh. 1, Sections 8 and 11, 13, and 15. As Mr. Small testified, these contractual provisions show that Alpha takes significant steps to promote vendor compliance with the applicable law and regulations. Tr. 51. In addition, Alpha Confidential Exhibit No. 7 is the telemarketing script approved by Alpha for use by the vendor's agents, which tracks the Commission's consumer protection regulations. Accordingly, Mr. Perrong's allegations concerning Alpha's agent training program have not been substantiated by the evidence produced in this case and should be outright rejected.

B. Relief Sought by the Complainant

1. Civil Penalty – Rosi Factors (52 Pa. Code § 69.1201)

Mr. Perrong argues that Alpha should be assessed a civil penalty as a result of the call. Tr. 14. Alpha submits that a civil penalty is not appropriate under these circumstances. The record does not show that the call was made by Alpha or its vendor on Alpha's behalf, and Alpha has no knowledge of this call. However, even if the Commission believes that the call was made on behalf of Alpha, an analysis of the so-called *Rosi* factors⁵⁶ demonstrates that a civil penalty is

⁵⁶ *Rosi v. Bell-Atlantic Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered Mar. 16, 2000); 52 Pa. Code § 69.1201(a).

not warranted here. For the following reasons, Alpha submits that a civil penalty should not be assessed in this case.

a. The Nature of Conduct^{57,58}

The call that Mr. Perrong claims he received was not the result of intentional or negligent conduct by Alpha. This complaint involves an allegation of a single telemarketing call made to Mr. Perrong by an individual with whom Alpha is not familiar. As discussed above, Mr. Perrong has not established that Alpha or its vendor made any call to him, or that the individual who allegedly called him had any relationship to Alpha. Neither Alpha nor its vendor have any knowledge of the individual who allegedly called Mr. Perrong, and no record of a call being made to his telephone number. Tr. 54-55; Alpha Conf. Exhs. 3 and 4. The call did not constitute intentional or negligent conduct by Alpha; therefore, a civil penalty is not warranted.

b. Consequences of Conduct⁵⁹

The consequences of the call that Mr. Perrong claims he received were minimal. Mr. Perrong never enrolled with Alpha as a result of the call (Tr. 46), and he has not shown that he was harmed in any way. Further, any consequences of the call were not caused by the conduct of Alpha or its vendor, as there is no record of Alpha or its vendor contacting Mr. Perrong. Tr. 54-

⁵⁷ 52 Pa. Code § 69.1201(c)(1) (Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty).

⁵⁸ 52 Pa. Code § 69.1201(c)(3) (Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.). In the case of “negligent” violations the presumption is that the penalty will range from \$ 0 to \$ 500 per day. *See Ronald A. Meder v. Peoples Natural Gas Co., Docket No. F-01620640, Opinion and Order entered August 21, 2006, 2006 WL 2472127; 2010 Pa. PUC LEXIS 2841.*

⁵⁹ 52 Pa. Code § 69.1201(c)(2) (Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.).

55; Alpha Conf. Exhs. 3 and 4. As such, the consequences of the telemarketing call were not of a serious nature and do not warrant a civil penalty.

c. Modifications to Practices⁶⁰

No modifications to Alpha's internal practices and procedures are necessary to address the conduct at issue and prevent similar conduct in the future. The record in this proceeding shows that alleged telemarketing call was not made by Alpha or its vendor. Tr. 54-55; Alpha Conf. Exhs. 3 and 4. Further, the practices and procedures that Alpha already has in place serve to prevent the type of conduct that is the subject of Mr. Perrong's complaint. At the time of the call, Alpha's contract with its only vendor provided for telemarketing through inbound calls to its call center about other products and services. Tr. 46-47, 50-53; Alpha Conf. Exh. 1. This practice would prevent the type of unauthorized call that is the subject of Mr. Perrong's complaint. No further modifications to Alpha's practices and procedures are necessary.

d. Number of Customers Affected and Duration⁶¹

Mr. Perrong is the only customer that has filed a complaint alleging that he received an inappropriate telemarketing call of this nature. Tr. 61-63. This was a single telemarketing call of which neither Alpha nor its vendor has any knowledge. Mr. Perrong was the only customer who claims to have been affected, and the call did not even result in the Complainant being enrolled with Alpha. Tr. 17, 46. This was a single call affecting a single customer, and the record does not establish that the call was even made by Alpha or its vendor; therefore a civil penalty is not warranted.

⁶⁰ 52 Pa. Code § 69.1201(c)(4) (Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.).

⁶¹ 52 Pa. Code § 69.1201(c)(5) (The number of customers affected and the duration of the violation.).

e. Alpha's Compliance History⁶²

Alpha has an excellent compliance history. Besides the Complaint filed by Mr. Perrong, only one other formal complaint has been filed against Alpha, and not a single formal complaint has been sustained during the decade in which Alpha has been licensed by the Commission. Tr. 61-63.⁶³ This factor weighs strongly against any civil penalty being assessed in this proceeding.

f. No Commission Investigation⁶⁴

No Commission investigation has been instituted into this matter. As such, this criteria is not relevant.

g. No Need to Deter Future Violations⁶⁵

There is no need to deter future violations. As discussed above, Alpha already has practices and procedures in place to prevent this type of telemarketing call from being made. The record in this proceeding shows that alleged telemarketing call was not made by Alpha or its vendor. Tr. 54-55; Alpha Conf. Exhs. 3 and 4. Further, the practices and procedures that Alpha already has in place serve to prevent the type of conduct that is the subject of Mr. Perrong's complaint. At the time of the call, Alpha's contract with its only vendor provided for telemarketing through inbound calls to its call center about other products and services. Tr. 46-

⁶² 52 Pa. Code § 69.1201(c)(6) (The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.).

⁶³ Alpha's Utility History reveals one complaint at Utility Code 1215701, being the one filed by Mr. Perrong. <https://www.puc.pa.gov/utility/1215701>. In addition, the Utility History at Utility Code 1113755 shows one complaint having been filed in 2018, which was resolved through the filing of a certificate of satisfaction. <https://www.puc.pa.gov/utility/1113755>. See *Patricia Cohen v. Alpha Gas & Electric LLC*, Docket No. C-2018-2645976 (Certificate of Satisfaction filed March 13, 2018).

⁶⁴ 52 Pa. Code § 69.1201(c)(7) (Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.).

⁶⁵ 52 Pa. Code § 69.1201(c)(8) (The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.).

47, 50-53; Alpha Conf. Exh. 1. Additionally, the script for Alpha's vendors complies with all regulatory requirements. Alpha Conf. Exh. 7. These measures prevent the type of unauthorized call that is the subject of Mr. Perrong's complaint.

h. Past Commission Decisions in Similar Situations⁶⁶

Prior Commission decisions show that a civil penalty is not warranted here. As an example, in *Mayer Krain v. Choice Energy LLC*, the Complainant received dozens of telemarketing calls, sometimes multiple calls per day, over a two-month period despite repeated requests to be removed from the supplier's call list.⁶⁷ Due to the large volume of calls and the failure to remove Mr. Krain from the supplier's call list, the Commission imposed a \$5,000 civil penalty. This is quite different from the instant proceeding, in which Mr. Perrong received a *single* telemarketing call. Alpha is unaware of a prior Commission decision that imposed a civil penalty for a single call that did not result in the Complainant being enrolled with the supplier. Pursuant to this factor, a civil penalty is not warranted.

i. Other Relevant Factors⁶⁸

As discussed previously, Alpha has an excellent compliance history. Tr. 61-63. Additionally, Mr. Perrong was never actually enrolled with Alpha and has not shown that he was harmed in any way. Tr. 46. To the extent that Mr. Perrong was harmed, the Complainant is well-aware of his opportunity to pursue legal actions in a court of competent jurisdiction in an

⁶⁶ 52 Pa. Code § 69.1201(c)(9) (Past Commission decisions in similar situations.).

⁶⁷ *Mayer Krain v. Choice Energy LLC*, Docket No. C-2016-2581006 (Opinion and Order entered Nov. 15, 2018).

⁶⁸ 52 Pa. Code § 69.1201(c)(10) (Other relevant factors.).

effort to recover any damages he may have sustained.⁶⁹ The totality of these factors demonstrate that a civil penalty is not warranted.

2. Preliminary Injunction

Citing Section 3301 of the Public Utility Code,⁷⁰ the Complainant further requests the issuance of a preliminary injunction enjoining Alpha from violating the regulations at 52 Pa. Code § 111.10 in the future. In addition, Mr. Perrong testified during the hearing that he is seeking this injunctive relief to ensure that “Pennsylvania consumers are not harmed by such violations in the future.” Tr. 14.

It is well-settled that the Commission has only the authority granted to it by the General Assembly. Nothing in the Public Utility Code authorizes the Commission to issue a preliminary injunction. The reference in Code Section 3301 to a preliminary injunction is related to such an order issued by a court of competent jurisdiction.⁷¹ Moreover, Code Section 502 makes it clear that the Commission must institute injunction, mandamus or other appropriate legal proceedings with a court to restrain future violations of its regulations or orders.⁷²

In addition, the purpose of a preliminary injunction is to “prevent irreparable injury or gross injustice by preserving the status quo as it exists or it previously existed before the acts complained of in the complaint.”⁷³ A party seeking a preliminary injunction from a court must establish that relief is necessary to prevent immediate and irreparable harm; a greater injury will occur from refusing the injunction than from granting it; the injunction will restore the parties to

⁶⁹ See *Perrong v. Victory Phones LLC*, 2021 U.S. Dist. LEXIS 26159; 2021 WL 516268.

⁷⁰ 66 Pa. C.S. § 3301.

⁷¹ 66 Pa. C.S. § 3301.

⁷² 66 Pa. C.S. § 502.

⁷³ *Ambrogi v. Reber*, 2007 Pa. Super. 278, 932 A.2d 969, 974 (Pa. Super. 2007) (quoting *Anchel v. Shea*, 2000 Pa. Super. 289, 762 A.2d 346, 351 (Pa. Super. 2000)).

the status quo; the alleged wrong is manifest and the injunction is reasonably suited to abate it; and the complainant's right to relief is clear.⁷⁴

Based upon the purpose of a preliminary injunction and the standards for determining whether one should be issued, the issuance of a preliminary injunction assumes that an unlawful act is ongoing or continuing. At worst case in the present proceeding, the Complainant received a single telephone call from a sales agent suggesting a possible connection to Alpha. As such, there is no ongoing violation – or for that matter, any violation – to enjoin.

Finally, it is well-settled that an individual customer may not obtain relief on behalf of other consumers and that an individual may only represent his or her interests in proceedings before the Commission.⁷⁵ Code Section 701 authorizes the Commission to hear complaints about acts done or omitted by a regulated entity in violation of any law that the Commission has jurisdiction to administer or any regulation or order of the Commission.⁷⁶ However, nothing in Code Section 701 or elsewhere in the Code gives the Commission power to grant relief to consumers who are not named complainants. The Complainant's request in this regard is in the nature of a class action lawsuit, which the Commission has already found it does not have the statutory authority to entertain.⁷⁷

⁷⁴ *Id.* at 976.

⁷⁵ 52 Pa. Code § 1.21.

⁷⁶ 66 Pa. C.S. § 701.

⁷⁷ *Commonwealth of Pennsylvania, et al. v Energy Services Providers, Inc. d/b/a Pennsylvania Gas & Electric*, Docket No. C-2014-2427656 (Order Granting Petition to Intervene dated April 23, 2015). *See also Painter v. Aqua PA, Inc.*, Docket No. C-2011-2239557 (Opinion and Order entered May 22, 2014); *Pettko v. Pennsylvania American Water Company*, Docket No. C-2011-2226096 (Administrative Law Judge Order dated October 5, 2011 adopted by Commission Order on February 18, 2013).

3. License Revocation

Citing the Commission's regulations at 52 Pa. Code § 54.42(a)(7)-(8), the Complainant further requests that the Commission revoke Alpha's license based on the allegations in the Complaint. As discussed above, the Commission has only the authority conferred upon it by the legislature. The Commission may not grant itself authority through its own regulations that the General Assembly has not established by the Public Utility Code.

Section 2809(c) of the Code authorizes the Commission to suspend or revoke a supplier's license only under specified circumstances, which have not been alleged in the Complaint. Specifically, Code Section 2809(c) provides that no supplier license shall "remain in force" unless the supplier fulfills its financial responsibility requirements of maintaining a bond or other security in a form and amount approved by the Commission remains current on its state tax obligations.⁷⁸ No other provision in the Code addresses the suspension or revocation of an EGS license. Although Section 54.42 of the Commission's regulations⁷⁹ provides that a license may be suspended or revoked and civil penalties may be imposed against an EGS for a variety of violations of the Code and Commission regulations, the Commission's statutory authority to suspend or revoke a license for reasons other than those noted in Code Section 2809(c) is nonexistent. Placing these reasons in the regulations is not the equivalent of the General Assembly conferring authority upon the Commission. *See BPE Interlocutory Order* at 17.

Notably, without addressing its statutory authority as to license revocation, the Commission has declined to revoke a supplier's license under circumstances that are far more

⁷⁸ See, e.g., *Electric Generation Supplier License Cancellations of Companies with an Expired Financial Security, Insufficient Financial Security Amount or Language*; Docket No. M-2021-3023559 (Tentative Order entered May 20, 2021 and Final Order entered July 22, 2021).

⁷⁹ 52 Pa. Code § 54.42.

dire, financially affecting a significant number of customers, than a single telephone call allegedly made to one consumer. In *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*,⁸⁰ the Commission adjudicated a complaint filed against a supplier by the Bureau of Investigation and Enforcement (“I&E”), finding that the supplier had made an executive level decision to increase customers’ prices despite a written guarantee to the contrary. As described by the Commission, the chief executive officer of HIKO Energy, LLC (“HIKO”) decided not to honor the introductory rate guarantee and made the business decision to intentionally overbill approximately 5,700 customers enrolled in the guaranteed savings plan over the course of a three-month period, resulting in 14,689 billing violations.⁸¹ Despite the Commission’s characterization of HIKO’s actions as converting its “customer base to financial guarantors to evade the consequences of its own decisions” to acquire its entire supply portfolio by spot-market purchases, the Commission declined to revoke HIKO’s license.⁸² Given the stark differences between the conduct that HIKO did not dispute and the single telephone call allegedly made by Alpha to the Complainant in this proceeding, no basis exists to even consider a revocation of Alpha’s license. Therefore, this request for relief made by the Complainant should be rejected.

⁸⁰ *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015) (“*HIKO I*”).

⁸¹ *HIKO I* at 15.

⁸² *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. P-2015-2519419 (Order entered January 28, 2016 denying an Emergency Petition for Supersedeas), at 17; *HIKO I* at 45.

VI. CONCLUSION

For the foregoing reasons, the Complainant has failed to meet his burden of proof to show that Alpha has violated the Public Utility Code, Commission regulations or a Commission order. Therefore, Alpha respectfully requests that this Complaint be dismissed in its entirety.

Respectfully submitted,

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Date: August 24, 2021

Counsel for Alpha Gas & Electric LLC

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APPENDIX A

PROPOSED FINDINGS OF FACT

1. Alpha is an electric generation supplier (“EGS”) and a natural gas supplier (“NGS”) licensed by the Commission to sell electric generation services and natural gas supply services to retail customers throughout the Commonwealth.
2. The sales and marketing practices brought into question in this proceeding are focused on Alpha’s role as an EGS.
3. The Formal Complaint relates to a single telephone marketing call that the Complainant alleges he received on February 15, 2021.
4. Mr. Perrong received a telephone solicitation during a time when Alpha’s contract with its only telemarketing vendor provided for inbound calls or customer sign-ups to receive calls about other products and services. Tr. 46, 47, 49-53; Alpha Conf. Exh. 1, Section 8.
5. Under Alpha’s contract with the vendor, when an individual made an inbound call to the vendor or signed up online with the vendor to receive calls about other products and services, the sales agent would then ask whether the consumer was interested in hearing about energy supply service. Tr. 51-52; Alpha Conf. Exh. 1.
6. The description of the call that the Complainant allegedly received does not match the contractual arrangement between Alpha and its vendor. *See* Perrong Conf. Exhs. 2 and 4; Alpha Conf. Exh. 1.
7. The contract between Alpha and its vendors includes extensive language which is designed to ensure that the agents are following the requirements of the regulations, including quality control measures; training; use of an Alpha-approved script;

- prohibitions on the presentation of false or deceptive information; and the recording of calls. Tr. 46-50; Alpha Conf. Exh. 1, Sections 8 and 11, 13, and 15.
8. The discussion on the recording between the sales people and Mr. Perrong is inconsistent with and bears no resemblance to the telemarketing script that was in use at the time of the call. *See* Perrong Conf. Exhs. 2 and 4; Alpha Conf. Exh. 7.
 9. The telemarketing script approved by Alpha for use by the vendor's agents tracks the Commission's consumer protection regulations. Alpha Conf. Exh. 7
 10. The vendor checked all of its call records and did not find Mr. Perrong's telephone number or the telephone number that he alleges called him. Tr. 53-54; Alpha Conf. Exh. 3.
 11. No calls were made to Mr. Perrong's number by the vendor on February 15, 2021. Alpha Conf. Exhs. 3 and 4; Tr. 53-56.
 12. The vendor provided a list of telephone numbers where agents had interactions involving Alpha on the day in question, and Mr. Perrong's number was not on the list. Alpha Conf. Exh. 4.
 13. The caller ID that the Complainant references was not included any of the Alpha vendor's lists. Alpha Conf. Exhs. 3 and 4; Tr. 53-56.
 14. Alpha's vendor does not have an agent that goes by the name Kevin Victor, which is the name provided by the male individual on the call. Tr. 54-55; Alpha Conf. Exh. 3.
 15. "Kevin Victor" is not an employee of Alpha or Alpha's vendor and was not retained by Alpha to make the alleged call to Mr. Perrong. Tr. 54.

16. The male individual on the call never said he was working on behalf of Alpha, but rather stated that Mr. Perrong would receive electric supply service from Alpha. Perrong Conf. Exhs. 2 and 4.
17. There was no way to identify who the caller was. Tr. 17.
18. Mr. Perrong does not claim to have any prior experience with the female sales person or with “Kevin Victor” and therefore cannot confirm their identities or that they are affiliated with Alpha.
19. Agents cannot be heard in the background yelling Alpha’s name. Perrong Conf. Exh. 2.
20. The record does not establish any connection between the sales people on the call and Alpha or its vendor.
21. Neither Alpha nor its vendor have any knowledge of the individual who allegedly called Mr. Perrong, and no record of a call being made to his telephone number. Tr. 54-55; Alpha Conf. Exhs. 3 and 4.
22. At the beginning of the call recording, the Complainant states twice that the line is being recorded, but he states this while an automated message is playing. Perrong Conf. Exhs. 2 and 4.
23. When the female agent joins the call, Mr. Perrong states that it is a recorded line, but it is unclear if the agent heard him say this and she does not respond or in any way give consent to being recorded. Perrong Conf. Exhs. 2 and 4.
24. Mr. Perrong did not inform the male agent that the conversation was being recorded and did not obtain his consent. Perrong Conf. Exhs. 2 and 4.
25. Alpha did not authorize the call and the call was not made on Alpha’s behalf. Tr. 61.

26. While Mr. Perrong testified that Alpha's discovery responses provided in this proceeding support his allegation that Alpha's vendors were inadequately trained, Mr. Perrong did not present as an exhibit any discovery responses produced by Alpha that described its agent training program. Tr. 11-13.
27. Alpha takes significant steps to promote vendor compliance with the applicable law and regulations. Tr. 51; Alpha Conf. Exh. 1.
28. Mr. Perrong never enrolled with Alpha as a result of the call. Tr. 17, 46.
29. Mr. Perrong is the only customer that has filed a complaint alleging that he received an inappropriate telemarketing call of this nature. Tr. 61-63.
30. Alpha has an excellent compliance history. Besides the Complaint filed by Mr. Perrong, only one other formal complaint has been filed against Alpha, and not a single formal complaint has been sustained during the decade in which Alpha has been licensed by the Commission. Tr. 61-63.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to this proceeding. 66 Pa. C.S. §701.
2. As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Public Utility Code. 66 Pa. C.S. §§ 101 *et seq.* See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).
3. The Commission must act within, and cannot exceed its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 43 A.2d 348 (Pa. Super. 1945).
4. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).
5. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).
6. As the proponent of a rule or order, the Complainant bears the burden of proving his allegations and alleged violations of the Commission’s regulations pursuant to Section 332(a) of the Public Utility Code.

7. To satisfy his burden of proof, the Complainant must demonstrate that Alpha violated either (a) the Public Utility Code or another statute administered by the Commission or (b) a regulation or order of the Commission. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990).
8. Any violations must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PUC*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Selling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).
9. The Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980). A complainant cannot establish a case merely by stating his or her personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).
10. Section 111.10(a)(2) of the Commission's regulations requires an agent that contracts with a supplier to conduct telemarketing and sales activities on behalf of the supplier to register as a telemarketer and comply with the Telemarketing Registration Act ("TRA"). 73 P.S. §§ 2242 *et seq.* 52 Pa. Code § 111.10(a)(2).
11. Notwithstanding the provision in Section 111.10(a)(2) of the Commission's regulations requiring compliance with the TRA, the Commission does not have jurisdiction to administer or enforce the TRA or to determine whether an entity has complied with this

law. *See Cmwlth. of PA, et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Order entered December 11, 2014) (“*BPE Interlocutory Order*”) at 16-18; *Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332 (Corrected Final Rulemaking Order entered October 24, 2012).

12. Including a provision in its regulations requiring compliance with the TRA “does not equate to the General Assembly providing the Commission with jurisdiction to hear claims brought pursuant to the TRA.” *BPE Interlocutory Order* at 17.
13. Section 111.10(a)(3) of the Commission’s regulations requires suppliers and their agents to comply with the federal Telemarketing and Consumer Fraud and Abuse Prevention Act and related regulations. 15 U.S.C.A. §§ 6101-6108 and 16 CFR Part 310 (relating to telemarketing sales rule). 52 Pa. Code § 111.10(a)(3).
14. In the same way that the Commission lacks statutory authority to enforce the TRA or determine compliance with its provisions, nothing in the Public Utility Code confers jurisdiction on the Commission to enforce or administer federal telemarketing laws or determine compliance therewith. *See BPE Interlocutory Order* at 17. The Commission is limited to determining compliance with its own regulations. *See also Mid-Atlantic Power Supply Assoc. v. PECO Energy Co.*, Docket No. P-00981615, 1999 Pa. PUC LEXIS 30, *45-49 (Order entered May 19, 1999).
15. Section 111.10(b) of the Commission’s regulations provides that an agent who contacts customers by telephone shall, after greeting the customer, immediately identify himself by name, identify the supplier the agent represents and state the reason for the telephone call. The agent is also required to indicate that he or she is not working for and is independent of the local distribution company or another supplier. This provision further

- prohibits an agent from saying or suggesting to the customer that a utility customer is required to choose a competitive energy supplier. 52 Pa. Code § 111.10(b).
16. Under Pennsylvania’s Wiretapping and Surveillance Control Act (“Wiretapping Act”), it is crime to record a person’s telephone communication without their consent. 18 Pa. C.S. § 5703.
 17. The Wiretapping Act provides that “no person shall disclose the contents of any wire, electronic or oral communication, or evidence derived therefrom, in any proceeding in any court, board or agency of this Commonwealth.” 18 Pa. C.S. § 5721.1(a).
 18. An aggrieved person who is a party to any proceeding before a Pennsylvania administrative agency may move to exclude the contents of any wire, electronic or oral communication. 18 Pa. C.S. § 5721.1(b).
 19. A “recorded telephone conversation must be properly authenticated before it is admitted into evidence.” *Com. v. Davis*, No. 1360 MDA 2015, 2016 WL 1625810, at *9 (Pa. Super. Ct. Apr. 25, 2016); *see also* Pa. R.E. 901(a).
 20. The recording presented by the Complainant may not be relied upon as evidence to support a finding of any violations of the Commission’s regulations since it was obtained without consent and was not properly authenticated.
 21. Section 111.5 of the Commission’s regulations requires suppliers to train agents on a variety of consumer protection requirements, as well as the supplier’s terms and conditions. 52 Pa. Code § 111.5.
 22. The Commission’s Policy Statement at 52 Pa. Code § 69.1201 sets forth the factors that the Commission considers when deciding whether to assess a civil penalty and in determining the amount of any such penalty.

23. The Commission does not have statutory authority to issue a preliminary injunction. 66 Pa. C.S. §§ 502, 3301.
24. The purpose of a preliminary injunction is “to prevent irreparable injury or gross injustice by preserving the status quo as it exists or it previously existed before the acts complained of in the complaint.” *Ambrogi v. Reber*, 2007 Pa. Super. 278, 932 A.2d 969, 974 (Pa. Super. 2007) (quoting *Anchel v. Shea*, 2000 Pa. Super. 289, 762 A.2d 346, 351 (Pa. Super. 2000)). A party seeking a preliminary injunction from a court must establish that relief is necessary to prevent immediate and irreparable harm; a greater injury will occur from refusing the injunction than from granting it; the injunction will restore the parties to the status quo; the alleged wrong is manifest and the injunction is reasonably suited to abate it; and the complainant’s right to relief is clear. *Id.* at 976.
25. Section 2809(c) of the Public Utility Code authorizes the Commission to revoke a supplier’s license for failure to fulfill its financial responsibility requirements of maintaining a bond or other security in a form and amount approved by the Commission remains current on its state tax obligations. 66 Pa. C.S. § 2809(c). No other provision in the Public Utility Code addresses license revocation.
26. Section 54.42 of the Commission’s regulations provides that a supplier’s license may be suspended or revoked for a variety of violations of the Public Utility Code and Commission regulations. Placing these reasons in the regulations is not the equivalent of the General Assembly conferring authority upon the Commission. *See BPE Interlocutory Order* at 17.
27. The Commission lacks statutory authority to find that Alpha Gas & Electric LLC violated Section 111.10(a)(2) and Section 111.10(a)(3) of its regulations.

28. Complainant has not met his burden of proof to show that Alpha Gas & Electric LLC violated the Public Utility Code, Section 111.10(b) or any other provisions of the Commission's regulations, or a Commission order.

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Andrew Perrong against Alpha Gas & Electric LLC at Docket C-2021-3024359 is dismissed.
2. That the Secretary mark the docket closed.

Date: _____

Charece Z. Collins
Administrative Law Judge