

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

This Decision dismisses the formal complaint filed by Andrew Perrong against an electric generation service provider, as Mr. Perrong failed to satisfy his burden of demonstrating that the company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with respect to the service provided to him regarding a marketing call made to his private telephone number.

HISTORY OF THE PROCEEDING

On March 1, 2021, Mr. Andrew Perrong filed a complaint with the Pennsylvania Public Utility Commission (“Commission”) against Alpha Gas & Electric LLC (“Alpha”). Mr. Perrong alleged that Alpha violated various sections of Title 52 of the Public Utility Code by engaging in illegal marketing via a phone call to his private telephone number on February 15, 2021. Mr. Perrong averred that while his phone number is on the National Do-Not-Call Registry, he received a call from a “spoofed” caller ID 215-412-1586. Mr. Perrong further averred that he spoke with an agent, Kevin Victor, who said that he was calling from Alpha Gas

and Electric. Mr. Perrong stated that he attempted to contact Alpha about this call and received no response. Mr. Perrong specifically requested a civil penalty against Alpha for allegedly violating various portions of 52 Pa. Code; an issuance of a preliminary injunction enjoining Alpha from future violations; and a revocation of Alpha's license for the violations¹.

Mr. Perrong's complaint was served upon Alpha on March 2, 2021. On, April 6, 2021, Alpha filed an answer and new matter.² Alpha's answer denied the allegations in Mr. Perrong's complaint and stated that Alpha was without knowledge as to the facts alleged. Alpha admitted that it received an email purportedly from Mr. Perrong on February 18, 2021. In its new matter, Alpha asserted that Mr. Perrong failed to state a claim for which relief can be granted; Mr. Perrong lacked standing; and the Commission lacked jurisdiction over Mr. Perrong's claims. Alpha further asserted that Mr. Perrong failed to indicate whether the call at issue was to a residential or cellular phone number. Lastly, Alpha averred that during the time period at issue it did not employ anyone by the name of Kevin Victor or Victor Kevin, and it 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 and that the Commission assess costs and fees. The new matter did not contain a notice to plead.

On April 20, 2021, Mr. Perrong filed preliminary objections to Alpha's answer and new matter. In his preliminary objection, which was accompanied by a notice to plead, Mr. Perrong argued that Adam Small, who filed the answer on behalf of Alpha, is not an attorney admitted to practice in Pennsylvania and was therefore not permitted to enter his appearance or file any documents on behalf of Alpha. Mr. Perrong argued that the answer and new matter were therefore legally insufficient. Mr. Perrong further argued that the answer and new matter were incorrectly filed without the entry of a written notice of appearance by including a notice to plead

¹ On page 12 of his brief, Mr. Perrong withdrew his request to revoke Alpha's license. I will consider that statement to be a petition to withdraw that claim under 52 Pa. Code 5.94. That section allows an objection to be filed within 10 days. As there was no objection filed within 10 days, and there was no objection made in the reply brief filed 21 days later, I am granting the petition to withdraw that claim.

² Although Alpha's answer to Mr. Perrong's complaint was due within 20 days of service of the complaint per 52 Pa. Code § 5.61(a), Alpha did not file its answer until April 6, 2021. Nonetheless, an error or defect of procedure which does not affect the substantive rights of the parties may be disregarded. 52 Pa. Code § 1.2(a).

and reply to new matter. Lastly, Mr. Perrong argued that Mr. Small lacked standing to participate in the proceeding and that he engaged in the unauthorized practice of law. Mr. Perrong included a printout from the Disciplinary Board of the Supreme Court of Pennsylvania's website, showing that Mr. Small was licensed to practice law in a jurisdiction outside of Pennsylvania.

Alpha filed a timely response to Mr. Perrong's preliminary objections on April 30, 2021. In its answer, Alpha noted that on the same day that Mr. Perrong's preliminary objections were filed, Eckert Seamans entered its appearance in this proceeding. Alpha further argued that the Commission has frequently accepted responsive pleadings filed by individuals other than attorneys. Alpha ultimately argued that because Eckert Seamans entered an appearance in this matter on April 21, 2021, the preliminary objections are moot and should therefore be dismissed. With respect to Mr. Perrong's arguments about the legal insufficiency of Alpha's answer and new matter, Alpha argued that a separate entry of appearance is not required to be filed, and that the absence of a notice to plead can be rectified at any time and would only mean that a party could not move for an entry of judgment if the other party failed to respond. In response to Mr. Perrong's argument that Mr. Small lacked standing, Alpha averred that it is Alpha, and not Mr. Small, that is seeking to defend the Complaint filed against it. Lastly, in response to Mr. Perrong's argument that Mr. Small engaged in the unauthorized practice of law, Alpha argued that the Commission does not have jurisdiction to make this determination as the oversight of attorneys is handled by the PA Supreme Court. Alpha requested that the preliminary objections filed by Mr. Perrong be dismissed.

Mr. Perrong filed a timely reply to Alpha's answer and new matter on April 26, 2021. Mr. Perrong denied the averments in the answer and new matter and requested a civil penalty against Alpha for violating various sections of the Pa. Code, an order enjoining Alpha from violating the Code in the future and a revocation of Alpha's license for violating the Code.

A hearing notice was issued on May 7, 2021, establishing an initial telephonic hearing in this matter for June 9, 2021 at 10:00 a.m. and assigning me as the presiding officer. In response to an unopposed request for a continuance by Alpha's counsel, a rescheduled hearing

notice was issued on May 13, 2021, establishing an initial telephonic hearing in this matter for June 24, 2021 at 10:00 a.m.

On May 13, 2021, Mr. Perrong filed a motion to compel discovery. The motion to compel, which was accompanied by a notice to plead, stated that Mr. Perrong served interrogatories on Alpha on April 25, 2021, and Alpha formally objected to the interrogatories on May 5, 2021 on the grounds that the requested information is irrelevant, immaterial, creates a burden on the company to produce and impedes on the confidentiality of the company's information. Mr. Perrong requested that Alpha's objections be overruled and that Alpha be compelled to respond fully to the interrogatories and requests for documents.

Mr. Perrong also filed a Notice of Deposition on May 13, 2021. The Notice called for a deposition to take place virtually on June 2, 2021 at 10:00 a.m. The Notice generally stated that the deposition was to inquire about "matters" related to the Complainant and the allegations regarding the Respondent's marketing practices, etc. Alpha filed a timely objection to the deposition notice on May 24, 2021.

On May 18, 2021, Alpha filed a timely joint motion for protective order. Moreover, in an email from Karen Moury, Esquire, counsel for Alpha, dated May 17, 2021 and sent to me and Mr. Perrong, Ms. Moury requested that Mr. Perrong's motion to compel be held in abeyance until after the issuance of a protective order. Ms. Moury further stated that Mr. Perrong reserved his right to reassert the motion to compel if he found Alpha's responses to be deficient, and Alpha reserved its right to respond to the motion to compel at that time.

The joint motion for protective order was granted via my Order dated June 3, 2021, and Mr. Perrong's motion to compel and deposition notice were held in abeyance.³ Mr. Perrong's preliminary objections were denied in a separate Order also dated June 3, 2021.

The hearing was held as scheduled on June 24, 2021. Mr. Perrong appeared on behalf of himself, and Karen Moury, Esquire appeared on behalf of Alpha. Mr. Perrong

³ As the litigation in this matter is now complete, these motions are deemed moot.

submitted seven exhibits that were admitted into the record, including three late-filed exhibits submitted shortly after the hearing. Alpha submitted seven exhibits that were admitted into the record, including one late-filed exhibit submitted shortly after the hearing.

On August 24, 2021, both parties filed main briefs⁴, and on September 14, 2021, both parties filed reply briefs in this matter. The record closed on September 14, 2021, the date that the reply briefs were filed.

FINDINGS OF FACT

1. The Complainant in this case is Andrew Perrong.
2. The Respondent in this case is the Alpha Gas & Electric LLC.
3. The Complainant's service address is 1657 The Fairway, Number 131, Jenkintown, PA 19046.
4. On February 15, 2021, Mr. Perrong received a call from telephone number 215-412-1586. Tr. 14, 55; Perrong Confidential Exhibit 1; Alpha Confidential Exhibit 3, p. 1.
5. The phone number for Alpha's vendor shows as 929-224-5324. Alpha Confidential Exhibit 3, p. 8.
6. The agent that Mr. Perrong spoke to identified himself as Kevin Victor from Alpha Gas & Electric. Tr. 16-17.
7. At the time of the February 15, 2021 call, the caller ID was spoofed, and there was no other way to identify who the caller was. Tr. 17; 29.

⁴ In his brief, Mr. Perrong relied upon several documents that were not proposed during the proceedings nor admitted into the record. Those documents will not be considered in this decision.

8. A search for Mr. Perrong's phone number in Alpha's vendor's system for outgoing calls showed no results. Tr. 53-55; Alpha Confidential Exhibit 3, p. 8; Alpha Confidential Exhibit 4.
9. Alpha's vendor did not employ an agent named Kevin. Tr. 22, 54.
10. Alpha did not authorize the call and the caller was not an agent of Alpha. Tr. 22.
11. Alpha's records do not show any type of call or interaction with Mr. Perrong. Tr. 46.
12. At the time of the February 15, 2021 telephone call at issue, the only outbound telemarketing that Alpha utilized was with customers whose line had been disconnected and had agreed to be called back. Alpha otherwise only utilized inbound calls. Tr. 46-47, 51; Alpha Confidential Exhibit 1, p. 3.
13. "Inbound calls" meant that either the potential customer requested via the internet to be contacted by the company, or the potential customer called in to the company directly. Tr. 51-52.
14. Alpha's contract with its vendor prohibited any false or deceptive information or misrepresentation of its identity to Alpha or any potential Consumer. Tr. 49; Alpha Confidential Exhibit 1, p. 4.
15. Alpha has no record of verifying a sales call with Mr. Perrong through the process described in Alpha Confidential Exhibit 1, p. 4; Tr. 50.
16. The contract between Alpha and its vendor required the vendor to use a sales script approved by Alpha and establishes quality control. Tr. 51; Alpha Confidential Exhibit 1, pp. 3-4.

17. Both the draft script and the final script in place at the time of the February 15, 2021 call indicate that the vendor was trained to only take inbound calls. Tr. 53; Alpha Confidential Exhibits 2 and 7.

18. Mr. Perrong called Alpha to complain about the February 15, 2021 call. Tr. 53.

19. Adam Small, General Counsel for Alpha, spoke with Alpha's vendor in a WhatsApp Chat on February 19, 2021 to verify whether the vendor called Mr. Perrong at the number provided, and the vendor advised there was no record of that call. Tr. 53-54; Alpha Confidential Exhibits 3 and 4.

20. The closest name to Kevin Victor that Alpha and the vendor found in their system was Calvin. Tr. 54.

21. A record of all calls made by the vendor on behalf of Alpha on February 15, 2021 shows that no call was made to Mr. Perrong's number ending in 1920⁵. Tr. 56; Alpha Confidential Exhibit 4.

DISCUSSION

Burden of Proof

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a

⁵ Mr. Perrong asked that his number be kept confidential, so his entire number will not be written out in this Decision.

violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Perrong has alleged that Alpha violated several sections of Title 52 of the Public Utility Code regarding illegal marketing. Therefore, Mr. Perrong has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth 2001); *see also, Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth 1982). Moreover, 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 & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 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. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Wiretapping Issue

The primary evidence submitted by Mr. Perrong in this case is a recording of the February 15, 2021 phone call at issue. Mr. Perrong submitted two copies of the recording (Perrong Confidential Exhibits 2 and 3), a transcript of the recording (Perrong Confidential Exhibit 4) and a Certificate of Authenticity for the call transcript (Perrong Confidential Exhibit 5). While Alpha did not object to the admission of these exhibits, Alpha did argue that by recording the February 15, 2021 phone call without the other party’s express consent, Mr. Perrong violated the Pennsylvania Wiretapping and Electronic Surveillance Control Act at 18 Pa.C.S. § 5701 (“Wiretapping Act”).

The Commission is a creature of the legislature and only has the duties, powers, responsibilities and jurisdiction given to it by the Public Utility Code. *See Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *see also 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 (Pa. 1977); *see also W. Pa. Water Co. v. Pa. Public Utility Commission*, 311 A.2d 370 (Pa. Cmwlth 1973). There is no section of the Public Utility Code (66 Pa.C.S. §§ 101 *et seq.*) which allows the Commission to address the issues of possible wiretapping. The Commission has previously held, and the Commonwealth Court affirmed, that wiretapping is not an issue over which the Commission has jurisdiction. *McClellan v. Pa. Pub. Util. Comm'n*, 634 A.2d 686 (Pa. Cmwlth 1993). *see also Boatman v. Verizon N. Inc.*, C-2008-2066888 and *Boatman v. Pub. Util. Comm'n*, 4 A.3d 1055 (Pa. 2010). Therefore, the issue of whether Mr. Perrong violated wiretapping laws by recording his call on February 15, 2021 will not be addressed in this Decision⁶.

However, the Commission does regulate recorded calls by utilities. Section 63.137(2) of 52 Pa. Code states:

§ 63.137. Service monitoring and related matters.

(2) *Service evaluation and monitoring.* The telephone company may evaluate and monitor those aspects of its operations, including customer communications, necessary for the provision of service to its customers.

(i) *Service evaluation.* A telephone company may engage in the sampling of customer communications by telephone company employees or automated equipment to measure service quality. This sampling of customer communications shall be kept to the minimum needed to measure service quality. Service evaluation facilities may not have monitoring access points

⁶ The Commission does not condone the violation of any State or Federal laws. However, as there was no objection to the admission of this recording, Tr. 21, it could have been, but will not be, considered for the purposes of this Decision.

outside official evaluation quarters. Entry to evaluation quarters shall be strictly controlled. During periods when evaluation quarters are not in use or when otherwise considered appropriate, the quarters shall be securely locked or the equipment rendered inoperative or accessible only by authorized personnel. Access to service evaluation documents that contain individual employee-customer contact information shall be closely guarded to protect the customer's privacy.

(ii) *Maintenance monitoring.* A telephone company may engage in the monitoring of telephone company facilities by an employee entering the circuit to listen and carry out tests to determine whether noise, "cross-talk," improper amplification, reproduction or other problems may exist. This includes the mandatory routines covered by equipment test lists, tracing of circuits for corrective action and other similar activities. The monitoring may not interfere with the voice or data information being carried.

(iii) *Administrative monitoring.* A telephone company may engage in the monitoring of telephone company employee contacts with customers and with other employees which have a direct bearing on the quality of service provided to customers. The monitoring equipment shall be secure at all times and only used by authorized persons. The monitoring may be performed from a remote location. When the equipment is in a remote location and is not in use, it shall be secured or made inoperative or accessible only by authorized personnel.

52 Pa. Code § 63.137(2).

In the Guidelines for Temporary Waiver of the Call Recording Prohibition Set Forth at 52 Pa. Code § 63.137(2), Docket No. M-2008-2074891 (Order Entered 11/20/08) ("Guidelines"), the Commission noted the prohibition of the use of customer calls for evidentiary purposes: "accordingly, use of recorded customer calls is and will remain limited to training and quality control purposes, and the retention of recordings for "evidentiary" or other purposes is and will remain prohibited." *Guidelines* at page 8. Moreover, in headnote 8 of the Order, the Commission noted "this prohibition also prevents the use of recordings in informal complaint proceedings before the Commission." *Id.*

While the Commission’s Order does not directly address the recordings of calls by consumers, if recorded calls by utilities are prohibited from being utilized in evidentiary proceedings before the Commission, recorded calls by consumers should likely follow this same policy. *Id.* Therefore, Perrong Confidential Exhibits 2, 3, 4, and 5 will not be considered for the purposes of this Decision.

Failure to Meet Burden

Mr. Perrong alleged that on February 15, 2021, he was called by a man named Kevin Victor, who claimed at the end of the phone call to be calling on behalf of Alpha. Mr. Perrong’s evidence included a record of the call that he received from phone number 215-412-1586 (Perrong Confidential Exhibit 1); 2 recordings of the February 15 phone call (Perrong Confidential Exhibits 2 and 3); a transcript of that phone call (Perrong Confidential Exhibit 4); a Certificate of Authenticity regarding the transcript (Perrong Confidential Exhibit 5); and a printout from the National Do Not Call Registry (Perrong Confidential Exhibit 7) to show that his number was on the do-not-call list. Mr. Perrong’s phone call will not be relied upon in this Decision consistent with Commission regulations; however, even with the phone call, Mr. Perrong has not provided any objective evidence to prove that it was in fact Alpha who contacted him on February 15, 2021.

Mr. Perrong claimed that he received a call that he did not wish to receive; however, his evidence does not prove that the person who called him was employed by or in any way affiliated with Alpha. While Mr. Perrong provided evidence that his phone number was on the National Do Not Call Registry, Alpha provided proof that a search of Mr. Perrong’s number ending in 1920 did not show up in its vendor’s contact list. The draft script in Alpha Confidential Exhibit 2 and the approved script in Alpha Confidential Exhibit 7 supports the indication that Alpha’s vendor only engaged in telemarketing with inbound calls, as both scripts begin with the statement, “Thank you for calling. . .” Tr. 53; Alpha Confidential Exhibits 2 and 7. Mr. Perrong alleged that he received a call from the phone number 215-412-1586. Tr. 14, 55; Perrong Confidential Exhibit 1; Alpha Confidential Exhibit 3, p. 1. Alpha’s evidence showed that the number its vendor calls from is 929-224-5324. Alpha Confidential Exhibit 3, p. 8.

Moreover, Mr. Perrong testified that apart from what the person who called him said during the call, “there was no other way to identify who the caller was.” Tr. 17.

In addressing Alpha’s evidence, Mr. Perrong testified that the person who called him used a system called “Vicial” to make calls, and that Alpha’s Exhibit 3, pages 6 and 7 showed an audio file that he claimed to be the call made to him on February 15, 2021. Tr. 17-18. Mr. Perrong further testified that he did not have a copy of the recording supposedly reflected in Alpha Confidential Exhibit 3⁷. Tr. 18. Mr. Perrong further testified that the timestamp on the file is 20210215-120431, Tr. 19; Alpha Exhibit 3 p. 6, which was the date and time of the call at issue. He testified that the call happened at 12:04 and he picked up at 12:04 and 10 seconds, Tr. 15, and 120431 would be when it was picked up by a live agent, and that Vicial cuts off the automated portion of the call to save space. *Id.* Mr. Perrong also testified that the file name of the call is cut off in the screenshot, so we cannot see the full file name. Tr. 19-20.

Mr. Perrong did not establish himself as an expert in Vicial and other technical recording systems. There was no expert testimony provided on the Vicial system, how it records calls, what it cuts off, or, how to properly interpret the timestamps, etc. Moreover, if the file reflected in Alpha Confidential Exhibit 3 was an audio file of a telephone call recording, there is nothing to prove that it was a call made by or on behalf of Alpha, and there is nothing to show that it was the call that Mr. Perrong recorded on February 15, 2021. Mr. Perrong did not provide objective evidence of the exact time of his call – after reviewing Alpha’s discovery, he testified to the time and date of his call, which matched supposed date and time in the screenshot, but this is not enough to prove that the call happened at the exact time alleged. A “suspicion of the existence of a fact” is not sufficient to support a finding of fact upon which to base this Decision. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

⁷ In his briefs, Mr. Perrong argued that Alpha did not provide him with a copy of the recording potentially reflected in Alpha Confidential Exhibit 3, and therefore, this should prove Alpha’s guilt in this proceeding. However, Mr. Perrong did not raise this evidentiary issue prior to or during the hearing. The parties indicated that they resolved any discovery issues by submitting a Joint Confidential Order, and Mr. Perrong did not further pursue any additional discovery from Alpha. Therefore, Mr. Perrong’s lack of a recording shall not be construed as evidence of guilt against Alpha.

Mr. Perrong alleged in his complaint, and Alpha admitted in its answer, that Mr. Perrong called Alpha to complain about the call that he received on February 15, 2021. In response, Alpha conducted an internal investigation to determine if its vendor called Mr. Perrong. Tr. 53-54. After searching its vendor's database and speaking directly with its vendor, Alpha found nothing to indicate that its vendor called Mr. Perrong. *Id.*; Alpha Confidential Exhibit 3 and 4. Pennsylvania public utilities are encouraged to take consumer complaints seriously, and it is appreciated that Alpha investigated a consumer complaint in a timely fashion. However, Pennsylvania utilities cannot be held responsible when there is no substantial, objective evidence of their wrongdoing.

Telemarketing

Telemarketing practices are governed by Section 111 of the Commission's regulations, which provides:

§ 111.10. Telemarketing.

(a) A supplier and its agents shall comply with regulations that govern marketing, consumer protection and telemarketing sales including consumer protection regulations in Chapters 54 and 62 (relating to electricity generation customer choice; and natural gas supply customer choice) and applicable provisions in Chapters 56, 57 and 59 (relating to standards and billing practices for residential utility service; electric service; and gas service).

(1) A supplier that is licensed by the Commission and engages in telemarketing is not required to register as a telemarketer under section 3(a) of the act (73 P.S. § 2243(a)), regarding registration requirement, but shall comply with other provisions of the act.

(2) An agent that contracts with a supplier to conduct telemarketing and sales activities on behalf of the supplier shall register as a telemarketer and comply with the act.

(3) A supplier and its agents shall comply with the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C.A. § § 6101—6108) and 16 CFR Part 310 (relating to telemarketing sales rule).

(4) Customer consent to the release of customer information by the distribution company to the supplier to enable competitive solicitations does not constitute an express request to receive telephone solicitation calls. See section 5 of the act (73 P.S. § 2245), regarding unlawful acts and penalties. See the definition of “do not call list” in section 2 of the act (73 P.S. § 2242).

(b) An agent who contacts customers by telephone shall, after greeting the customer, immediately identify himself by name, identify the supplier the agent represents and the reason for the telephone call. The agent shall state that he is not working for and is independent of the local distribution company or another supplier. The agent may not say or suggest to a customer that a utility customer is required to choose a competitive energy supplier.

(c) When an agent completes a transaction with a customer, the agent shall explain the supplier’s verification process to the customer and state that the supplier will send a copy of the disclosure statement and other material about the service to the customer after the transaction has been verified. At the end of the telephone contact, the agent shall state that the customer may rescind the transaction within 3 business days after receiving the disclosure statement.

52 Pa. Code § 111.10.

Mr. Perrong has alleged that Alpha violated several of the sections of this regulation. On page 10 of his brief, Mr. Perrong argues that “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 . . . the PUC may independently consider the recording as in the public interest and hold that the Respondent committed the alleged misrepresentations.” The recording is not being relied upon in this Decision. Nonetheless, a finding that *someone* claiming to be from Alpha made misrepresentations is not sufficient to support a finding that *Alpha* violated a Commission law, regulation or order. The Commission strongly discourages illegal telemarketing in Pennsylvania and will hold public utilities accountable when they violate its regulations. However, in the present case, there is no substantial evidence in the record that Alpha or its vendor made an

illegal telemarketing call. In a time when consumers and companies alike are regularly subjected to spoofed and phished calls, it cannot be enough for a person to name another utility, and that utility be held responsible. Complainants carry the burden of proof to show that a company has violated a Commission law, regulation or outstanding order. 66 Pa.C.S. §§ 332(a), 701. It would pose a danger to all utility companies and the public if we accept as evidence against a company an unknown person stating a company's name over a spoofed phone line.

Sanctions

Mr. Perrong requested the issuance of sanctions against Alpha in the amount of \$5,000 to \$8,000 for its vendor's alleged violations in this case, plus an additional \$394,000 for an alleged additional 394 illegal calls that were made to residents in Pennsylvania. First, Mr. Perrong has not met his burden to establish, by a preponderance of the evidence, that it was in fact Alpha who made the call on February 15, 2021 and violated Commission regulations. Moreover, regarding the alleged 394 illegal calls, as a non-attorney, Mr. Perrong cannot represent the interests of others. Mr. Perrong has made no indication that he is licensed to practice law in Pennsylvania, and he therefore has no standing to represent individuals other than himself in this case. 52 Pa. Code §§ 1.21 & 1.22. Moreover, given that Alpha's contract indicated that calls are made to users who requested to be called, and users whose lines were disconnected during an inbound call, it has not been established that these 394 calls were illegally made.

The parties raised additional arguments in their briefs that lack merit either in light of the findings of fact above or due to a lack of jurisdiction by this Commission, and they will therefore not be addressed in this Decision. For example, Mr. Perrong argued potential prior violations of a company that preceded Alpha, which would have no impact on my determination as to whether Alpha, a separate and distinct entity, violated a Commission regulation, law or order in the instant case. Additionally, Mr. Perrong argued that Alpha violated various statutes over which the Commission has no jurisdiction to enforce, such as the Telemarketer Registration Act and the Telemarketing and Consumer Fraud and Abuse Prevention Act. While the Commission has authority to enforce its own regulations, the Commission is a creation of the

legislature and possesses only the authority that the state legislature has specifically granted to it, and its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Commonwealth v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Order entered December 11, 2014) (“*BPE Interlocutory Order*”); *see also Pettko v. Pa. Am. Water Co.*, 39 A.3d 473 (Pa. Cmwlth. 2012) (the Commission does not have the authority to award civil penalties up to \$5,000, as is allowed under the Unfair Trade Practices/Consumer Protection Law); *see also 73 Pa.C.S. § 201-8*; *see also City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997 (Pa. 1984). Neither the Telemarketer Registration Act nor the Telemarketing and Consumer Fraud and Abuse Prevention Act expressly confer jurisdiction upon the Commission.

Accordingly, for the reasons stated above, the Complainant’s Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter within its regulations and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).
4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

7. Non-attorneys may not represent other individuals in formal proceedings. 52 Pa. Code §§ 1.21 & 1.22.

8. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

9. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super.1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

10. The Commission is a creature of the legislature and only has the duties, powers, responsibilities and jurisdiction given to it by the Public Utility Code. *See Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *see also Pettko, et al. v. Pa. Am. Water Co.*, 39 A.3d 473, 484 (Pa. Cmwlth. 2012).

11. A supplier and its agents shall comply with regulations that govern marketing, consumer protection and telemarketing sales including consumer protection regulations. 52 Pa. Code § 111.10.

12. Mr. Perrong has failed to satisfy his burden to demonstrate that Alpha has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided to him. 66 Pa.C.S. §§ 332(a), 701.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Andrew Perrong against Alpha Gas & Electric LLC on March 1, 2021 at docket number C-2021-3024359 is hereby dismissed.
2. That this matter is marked closed.

Date: November 19, 2021

_____/s/
Charece Z. Collins
Administrative Law Judge