

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Harrisburg, Pennsylvania 17120**

**Andrew Perrong**

v.

**Alpha Gas & Electric LLC**

**Public Meeting February 24, 2022**

**3024359-ALJ**

**Docket No. C-2021-3024359**

**STATEMENT OF VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (ID) in the complaint case filed by Andrew Perrong (Complainant) against Alpha Gas & Electric LLC (Alpha).

The Complainant alleged that Alpha engaged in illegal marketing through a phone call to his private number, which is on the national and state do-not-call registries. The presiding Administrative Law Judge (ALJ) concluded that the Complainant did not meet his burden of proving that Alpha was responsible for the call. I agree with the decision of the ALJ to dismiss the complaint.

In reaching this decision, the ALJ did not consider the Complainant's recording of the phone call between himself and a third party. The Complainant alleged the third party was an agent representing Alpha. Based on her review of a Commission order regarding telephone service,<sup>1</sup> the ALJ concluded that recorded calls are prohibited from being used, by both utilities and customers, in evidentiary proceedings before the Commission.

I note that the telephone call at issue here was recorded by an individual and not a public utility. Based on my review of the case, I would have taken a different approach with respect to the recording offered by the Complainant. The Complainant did not inform the third party that the conversation was being recorded and did not obtain his consent for the recording. Under Pennsylvania's Wiretapping and Surveillance Control Act (Wiretapping Act), it is illegal to record a person's telephone communication without the person's consent, and the Wiretapping Act precludes the disclosure of the contents of an illegally recorded call.<sup>2</sup> While the Commission does not have jurisdiction over violations of the Wiretapping Act,<sup>3</sup> the Commission's regulations do authorize an ALJ to control the receipt of evidence, including ruling on the admissibility of evidence.<sup>4</sup> I believe it would have been well within the ALJ's authority to exclude this evidence of questionable legality.

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<sup>1</sup> Guidelines for Waiver of the Call Recording Prohibition at 52 Pa. Code § 63.137(2) Pending Rulemaking, Docket No. M-2008-2074891, Final Order entered July 29, 2009.

<sup>2</sup> 18 Pa. C.S. §§ 5703, 5704.

<sup>3</sup> McClellan v. Pa. Pub. Util. Comm'n, 634 A.2d 686 (Pa. Cmwlth. 1993).

<sup>4</sup> 52 Pa. Code § 5.403.

Even if the recording did not implicate the Wiretapping Act, the Complainant would have needed to properly authenticate the recording for it to be admissible.<sup>5</sup> While strict rules of evidence have been relaxed in agency hearings under the Commonwealth's Administrative Agency Law,<sup>6</sup> there has not been an abandonment of all rules. The Complainant did not claim to have any prior or subsequent experience with the alleged agent and therefore could not confirm the individual's identity or association with Alpha. Among other facts set forth in the ID, Alpha demonstrated that the alleged agent was not employed by them or its vendor, nor did the Complainant's phone number appear in its vendor's contact list.

I would have relied on the above reasons to conclude that the Complainant's recorded call was inadmissible as evidence in this case.

Although the admissibility of a utility-recorded call is not the issue currently before us, I further note that the Commission has accepted utility-recorded calls, or transcripts made from utility-recorded calls, as evidence.<sup>7</sup> These recordings were made in the normal course of business with customer notice and consent, and these recordings were properly authenticated. As a related matter, complaints against electric generation and natural gas suppliers often involve recordings of third-party verification calls.<sup>8</sup> Therefore, I do not necessarily agree that telephone calls recorded by a public utility cannot be used as evidence in a Commission proceeding.

Despite this difference in addressing the Complainant's recorded call, I ultimately agree with the ALJ that the Complainant failed to meet his burden of proof with respect to his allegations of illegal marketing by Alpha. The Complaint was properly dismissed.

Date: February 24, 2022



**JOHN F. COLEMAN, JR., VICE CHAIRMAN**

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<sup>5</sup> Pa. R.E. 901(a).

<sup>6</sup> 2 Pa.C.S. § 505.

<sup>7</sup> DeLaine Andrews v. PECO Energy Co., Docket No. C-2012-2283978 (Final Order entered January 25, 2013) and Temple v. West Penn Power Co., Docket No. C-2014-2412337 (Final Order entered December 18, 2014).

<sup>8</sup> Portillo v. Washington Gas Energy Services, Docket No. C-2014-2454108 (Final Order entered December 22, 2015) and Dawes v. Pennsylvania Gas & Electric, Docket No. F-2013-2361655 (Final Order entered February 27, 2014). In fact, the Commission's regulations require electric generation and natural gas suppliers to provide copies of verification records, which could include call recordings, to the Commission upon request. 52 Pa. Code § 111.7(b)(6).