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June 15, 2016

**VIA E-FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  
v. Fair View Energy, Inc.; Docket No. C-2016-2547502

Dear Secretary Chiavetta:

On behalf of Fair View Energy, Inc., enclosed for filing is the Answer and New Matter of Fair View Energy, Inc., in the above-captioned matter.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Karen O. Moury

KOM/bb  
Enclosure  
cc: Certificate of Service



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT,</b>	:	
<b>Complainant</b>	:	<b>DOCKET NO. C-2016-2547502</b>
	:	
<b>v.</b>	:	
	:	
<b>FAIR VIEW ENERGY, INC.,</b>	:	
<b>Respondent.</b>	:	

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**ANSWER AND NEW MATTER OF FAIR VIEW ENERGY, INC.**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Fair View Energy, Inc. (“Fair View” or “Company”), by and through its counsel, Karen O. Moury, Kathleen Ryan and Buchanan Ingersoll & Rooney PC, pursuant to Sections 5.61 and 5.62 of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code §§ 5.61-5.62, answers and raises new matter to the above-captioned Formal Complaint (“Complaint”) filed by the Bureau of Investigation and Enforcement (“I&E”). By this Answer and New Matter, Fair View notes that over the course of the past year, it engaged in activities that generated roughly \$30,000 in earned revenues due to 27 commercial customers entering into supply contracts with licensed electric generation suppliers (“EGSs”). Fair View collected no money from these commercial customers, but rather received commissions from the licensed EGSs pursuant to private contractual arrangements. The EGSs got exactly what they paid for and neither they nor the commercial customers have complained. Prior to the onset of I&E’s informal investigation, the Company was not aware of Pennsylvania’s legal requirement for brokers to obtain EGS licenses. Fair View has since begun the application process, while

placing activities on hold that it now realizes require an EGS license. As an extremely small company, Fair View would be forced out of business if the nearly \$90,000 proposed civil penalty is imposed for activities that resulted in roughly \$30,000 in earned gross operating revenues. Given Fair View's willingness to fully comply with Pennsylvania laws and the fact that all entities affected by its activities received benefits and were not harmed, the Complaint should be dismissed, or in the alternative, satisfied by payment of a small civil penalty that reflects these and other relevant factors. In support hereof, Fair View further avers, as follows:

**I. COMMISSION JURISDICTION AND AUTHORITY**

1. Admitted. It is admitted that the Commission is an agency empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code ("Code"), 66 Pa. C.S. §§ 101, *et seq.*

2. The allegations of this paragraph regarding the authority that the Commission has delegated to I&E are conclusions of law to which no response is required. It is averred that the Commission Order entered on August 11, 2011 at Docket No. M-2008-2071852 and Code Section 308.2(a)(11), 66 Pa. C.S. § 308.2(a)(11), referenced in this paragraph speak for themselves.

3. Admitted. It is admitted that I&E's attorneys are identified in this paragraph.

4. Admitted in part and denied in part. It is admitted that Fair View maintains a business address as set forth in this paragraph; however, it is averred that Fair View is incorporated as an S Corporation and not as a Limited Liability Corporation. Therefore, the Respondent is Fair View Energy, Inc., not Fair View Energy LLC.

5. The allegations of this paragraph contain conclusions of law to which no response is required. It is averred that Code Section 2803 (relating to the definition of "electric generation

supplier”), 66 Pa. C.S. § 2803, and the Commission’s regulations at 52 Pa. Code § 54.31 (relating to the definitions of “broker” and “marketer”) speak for themselves.

6. Admitted. It is admitted that Fair View does not currently have an EGS license issued by the Commission. By way of further response, it is averred that Fair View does not take title to electricity or supply electric generation services to end-users as a supplier.

7. The allegations of this paragraph contain conclusions of law to which no response is required. It is averred that Code Sections 2801-2815, 66 Pa. C.S. §§ 2801-2815, and the Commission’s regulations at 52 Pa. Code §§ 54.31-54.43 referenced in this paragraph speak for themselves.

8. The allegations of this paragraph contain conclusions of law to which no response is required. It is averred that Code Section 2809, 66 Pa. C.S. §2809, and the Commission’s regulations at 52 Pa. Code § 54.32(a) referenced in this paragraph speak for themselves.

9. The allegations of this paragraph contain conclusions of law to which no response is required. It is averred that the Commission’s regulations at 52 Pa. Code §§ 54.39-54.40, Code Section 2809(g), 66 Pa. C.S. § 2809(g), and the Commission’s order at *Implementation of Act 155 of 2014* at Docket No. M-2014-2448825 (Final Implementation Order entered April 24, 2015) referenced in this paragraph speak for themselves.

10. The allegations of this paragraph contain conclusions of law to which no response is required. It is averred that Code Sections 501(c) and 2809, 66 Pa. C.S. §§ 501(c) and 2809, referenced in this paragraph speak for themselves.

11. The allegations of this paragraph contain conclusions of law to which no response is required. It is averred that Code Sections 2807 and 2809, 66 Pa. C.S. §§ 2807-2809, referenced in this paragraph speak for themselves.

12. The allegations of this paragraph contain conclusions of law to which no response is required. It is averred that Code Section 501(a), 66 Pa. C.S. § 501(a), speaks for itself.

13. The allegations of this paragraph contain conclusions of law to which no response is required. It is averred that Code Sections 3301(a) and (b), 66 Pa. C.S. § 3301(a)-(b), referenced in this paragraph speak for themselves.

14. The allegations of this paragraph contain conclusions of law to which no response is required. By way of further response, it is averred that Code Sections 501, 2802, 2807, 2809, and 3309, 66 Pa. C.S. § 501, 2802, 2807, 2809 and 3309, as well as the Commission's decision in *Herp v. Respond Power LLC*, Docket No. C-2014-2413756 (Order entered January 28, 2016) ("*Herp*") referenced in this paragraph speak for themselves. It is specifically denied that the *Herp* decision supports the issuance of refunds to customers under the factual allegations set forth in the Complaint or to EGSs under any circumstances. To the contrary, the *Herp* ruling only addressed the statutory authority of the Commission to order an EGS to issue refunds in situations where consumers allege that a sales agent guaranteed prices that were not honored. *Id.* at 39. Therefore, *Herp* has no relevance to the Complaint, which involves entirely different questions of whether Fair View (1) should have first obtained a license from the Commission to enter into private contracts with licensed EGSs, and (2) should be required to return commissions in the amount of \$31,331.63 that were received from EGSs in consideration for Fair View's performance under those private contracts.

## **II. BACKGROUND**

15. Admitted in part and denied in part. It is admitted that I&E notified Fair View by letter dated February 25, 2016 that it had initiated an informal investigation. Upon reasonable

investigation, Fair View is without information or knowledge sufficient to form a belief as to whether I&E initiated the informal investigation as a result of a confidential source who complained that Fair View is acting as an unlicensed EGS broker in the Commonwealth of Pennsylvania and demands proof thereof, if relevant, at hearing. By way of further response, it is averred that none of the 27 commercial customers that were enrolled with licensed EGSs and none of the licensed EGSs referenced in the Complaint complained to the Commission or raised any concerns about Fair View's activities.

16. Admitted in part and denied in part. It is admitted that I&E served and Fair View responded to two sets of I&E data requests. Upon reasonable investigation, Fair View is without information or knowledge sufficient to form a belief concerning I&E's informal investigation or the basis for its allegations, and demands proof thereof, if relevant, at hearing.

17. Admitted in part. It is admitted that Fair View became incorporated in Pennsylvania on April 10, 2015. The remaining allegations of this paragraph contain conclusions of law to which no response is required.

18. The allegations of this paragraph contain conclusions of law to which no response is required.

19. Admitted in part and denied in part. It is admitted that Fair View earned \$31,331.63 in revenues from June 1, 2015 through March 31, 2016, which were paid by three licensed EGSs for services provided pursuant to private contractual arrangements. It is specifically denied that these revenues were derived from fees for brokerage services collected from commercial customers. To the contrary, it is averred that Fair View collected no money from customers.

20. Admitted in part and denied in part. It is admitted that Michael P. McCormick and Jay A. Snyder were previously employed by another EGS who was licensed by the Commission.

21. Admitted in part and denied in part.

a. It is admitted that Mr. McCormick was employed at Glacial Energy Holdings, Inc. (“Glacial”) from May 2009 to September 2013, where he served as regional director for sales which included recruitment of sales agents and employees. By way of further response, it is averred that Mr. McCormick’s role was to hire salespersons and agents to enroll commercial customers through Glacial. It is further averred that Mr. McCormick had no experience working in the compliance department of Glacial and did not have any understanding as to what activities required a license from the Commission. It is also further averred that Mr. McCormick was never instructed by Glacial to have the sales agents provide proof that they were licensed EGSs.

b. It is denied that Mr. Snyder was employed at Glacial from August 2010 to March 2011. To the contrary, it is averred that Mr. Snyder worked for Glacial as an employee for approximately three months and thereafter worked as an independent contractor for the remaining time through March 2011. By way of further response, it is averred that Mr. Snyder served as an agent for a broker to enroll commercial customers with Glacial. It is also averred that Mr. Snyder had no experience working in Glacial’s compliance department and did not have any understanding as to what activities required a license from the Commission.

c. It is admitted that Glacial became a licensed EGS in Pennsylvania on July 23, 2009 at Docket No. A-2009-2109572 and that the Commission approved the abandonment of Glacial's EGS license by Secretarial Letter dated February 17, 2016 at Docket No. A-2015-2505175.

22. Admitted in part and denied in part.

a. It is admitted that Mr. Snyder was an employee of Front Line Power Solutions, LLC ("Front Line") from October 2014 through February 2015. In this capacity, Mr. Snyder did not work in the compliance department or have any understanding as to what activities required a license from the Commission.

b. It is denied that Mr. McCormick was employed at Front Line from October 2013 through April 2015 as the president of sales. To the contrary, it is averred that Mr. McCormick was never employed by Front Line but was rather compensated as an independent contractor.

c. It is admitted that Front Line became licensed to offer EGS services to commercial customers in Pennsylvania on August 15, 2013 at Docket No. A-2013-2360865.

23. Denied. It is denied that Fair View is regulated by the Public Utilities Commission of Ohio as an "EGS broker." To the contrary, it is averred that Fair View is regulated by the Public Utilities Commission of Ohio ("PUCO") as a "Power Broker."<sup>1</sup> See O.A.C. 4901:1-21-01(CC). Further, it is averred that Fair View's status in Ohio is irrelevant to any licensing obligations in Pennsylvania, given the variations in the definitions of suppliers and

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<sup>1</sup> A "Power Broker" is defined as a person certified by the commission, who provides power brokerage. O.A.C. 4901:1-21-01 (DD) defines "Power Brokerage" as "assuming the contractual and legal responsibility for the sale and/or arrangement for the supply of retail electric generation service to a retail customer in this state without taking title to the electric power supplied."

brokers in the two states' laws. *See* O.A.C. 4901:1-24-09, 4901:1-21-01; 66 Pa. C.S. §§ 2801-2815 and 52 Pa. Code §§ 54.31-54.43. By way of further response, it is averred that Fair View sought and obtained authority from PUCO after competitive retail electric service providers (“ESPs”) in Ohio required Fair View to obtain this authority before they would enter into contracts.

24. Denied. It is denied that Fair View knew or should have known that a license from the Commission is required. To the contrary, although Fair View was aware that the Commission issued EGS licenses and even that some entities operating as brokers obtained such licenses, it is averred that Fair View was not aware of any legal requirement for brokers operating in Pennsylvania to obtain EGS licenses. Indeed, Fair View informed I&E of that fact when it responded to the second set of data requests. It is further averred that if Fair View had known or believed that a license was necessary, it would have filed an application with the Commission, just as it did with PUCO. No plausible explanation exists or has been alleged as to why Fair View would have intentionally disregarded a Pennsylvania requirement while complying with the regulations in Ohio.

25. Admitted in part and denied in part.

a. It is admitted that Fair View did not obtain an EGS license to operate as a broker from the Commission prior to engaging with commercial customers to enroll with licensed EGSs in Pennsylvania. By way of further response, it is averred that Fair View was unaware of any need for it to obtain an EGS license to engage in brokering activities.

b. It is further averred that Fair View did not view I&E's letter dated February 25, 2016 as initiating a prosecutorial investigation. Rather, Fair View

perceived I&E's letter as informing the Company of the need to obtain a license and offering its assistance to help Fair View to achieve compliance with Pennsylvania licensing regulations.<sup>2</sup> Indeed, Fair View replied to the first set of data responses that it was "willing and committed to following any and all requirements to comply with all rules and regulations of the [Pennsylvania] Public Utility Commission."<sup>3</sup>

c. It is admitted that on March 9, 2016, Fair View obtained a surety bond in the amount of \$10,000 to initiate the EGS licensing process in Pennsylvania.

d. It is also admitted that Fair View has not yet filed an EGS application with the Commission to operate as a broker. By way of further answer, it is averred that although Fair View has begun the application process, its original efforts were delayed as it has sought to resolve outstanding litigation with principals of Front Line. Once that matter was resolved, it was necessary to publish notices in newspapers of general circulation, as required by the Commission's regulations. Although that process is well underway, one publication still needs to occur before Fairview can file its application with the Commission. Also by way of further answer, while the application process is pending, Fair View avers that it has revised its business model so as to work only as agents to brokers licensed by the Commission in contracting with commercial customers. Specifically, it is averred that Fair View has temporarily ceased engaging in transactions that to not include the involvement of brokers licensed

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<sup>2</sup> A copy of the letter is attached as Exhibit A. A review of the letter shows that it is replete with legal jargon and does not even mention the potential filing of a formal complaint or the imposition of civil penalties.

<sup>3</sup> A copy of the response is attached as Exhibit B.

by the Commission.

26. Denied.

a. It is specifically denied that Fair View is continuing to engage in activities requiring a license from the Commission. To the contrary, it is averred that Fair View is currently limiting its activities to working as agents to brokers licensed by the Commission in contracting with commercial customers to be enrolled with licensed EGSs. It is further averred that these activities have been part of Fair View's business model since its incorporation in April 2015.

b. It is specifically denied that Fair View Energy's website states that the Company "offers energy supply service for electric and natural gas in **all** deregulated markets within North America." (emphasis added). To the contrary, it is averred that Fair View's website currently states that "Fair View Energy offers energy supply services for electric and natural gas in **some** deregulated markets within North America." (emphasis added).<sup>4</sup>

### III. ALLEGED VIOLATIONS

27. The allegations of this paragraph are conclusions of law to which no response is required.

28. Admitted in part and denied in part. It is admitted that Fair View provided responses to I&E's data requests stating that it "brokers to commercial customers" using three licensed EGSs that supply electric generation services to the customers. It is denied, however, that Fair View knew or should have known at that time that the services it was providing

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<sup>4</sup> A copy of the FAQs page of Fair View's website may be viewed at the following link: <http://www.fairview-energy.com/faqs.html>, and is attached as Exhibit C. Fair View made this revision to the website specifically in response to the filing of the Complaint. Prior to that time, Fair View had not considered the need to make any change.

required an EGS license from the Commission. To the contrary, it is averred that Fair View was not aware that its activities legally required an EGS license.

**a. Sales to ConEdison Solutions, Inc.**

29. The allegations of this paragraph contain conclusions of law to which no response is required. By way of further response, it is admitted that ConEdison Solutions, Inc. (“Con Ed”) paid Fair View a commission as a result of the enrollment of a total of 41 commercial customer accounts for 9 individual customers between June 2015 and January 2016.<sup>5</sup> Upon reasonable investigation, Fair View is without information or knowledge sufficient to form a belief as to whether “numerous” commercial accounts were enrolled, and demand proof thereof, if relevant, at hearing.

30. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in June 2015, 22 commercial customer accounts were enrolled with ConEd. It is averred that these 22 accounts were enrolled for 1 commercial customer. It is further averred that an application of the factors set forth in the Commission’s Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per enrolled account.

31. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in July 2015, 22 commercial customer accounts were served by ConEd, which are the same 22 commercial customer accounts referenced in Paragraph 30. It is averred that an application of the factors set forth in the Commission’s Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200

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<sup>5</sup> As averred in Paragraph 37, 2 of these accounts (for the same customer) were dropped during this time period.

per enrolled account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS after the initial enrollment and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

32. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in August 2015, 25 commercial customer accounts were enrolled with or served by ConEd, including the 22 accounts referenced in Paragraph 31. It is averred that these 25 accounts are for 2 individual commercial customers. It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

33. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in September 2015, 31 commercial customer accounts were enrolled with or served by ConEd, including the 25 accounts referenced in Paragraph 32. It is averred that these 31 accounts are for 5 individual commercial customers. It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed

brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

34. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in October 2015, 34 commercial customer accounts were enrolled with or served by ConEd, including the 31 accounts referenced in Paragraph 33. It is averred that these 34 accounts are for 6 individual commercial customers. It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

35. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in November 2015, 34 commercial customer accounts were enrolled with or served by ConEd, which are the same 34 accounts referenced in Paragraph 34. It is averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of

brokering ends upon the customer's enrollment with the EGS.

36. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in December 2015, 37 commercial customer accounts were enrolled with or served by ConEd, including the 34 accounts referenced in Paragraph 35. It is averred that these 37 accounts are for 8 individual customers. It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

37. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in January 2016, 39 commercial customer accounts were enrolled with or served by ConEd, including the 37 accounts referenced in Paragraph 36. It is averred that these 39 accounts are for 9 individual customers, and that 2 of the accounts referenced in Paragraph 34 were terminated during January 2016.<sup>6</sup> It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with

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<sup>6</sup> It is also averred that the individual customer who dropped these 2 accounts continued to be served by ConEd for a remaining account.

the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

**b. Sales to NextEra Energy Services Pennsylvania, LLC**

38. The allegations of this paragraph contain conclusions of law to which no response is required. By way of further response, it is admitted that NextEra Energy Services Pennsylvania, LLC ("NextEra") paid Fair View a commission as a result of the enrollment of 24 commercial customer accounts for 13 individual customers between November 2015 and March 2016. Upon reasonable investigation, Fair View is without information or knowledge sufficient to form a belief as to whether "numerous" commercial accounts were enrolled, and demand proof thereof, if relevant, at hearing.

39. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in November 2015, 3 commercial customer accounts were enrolled with NextEra. It is averred that these 3 accounts were enrolled for 1 commercial customer. It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per enrolled account.

40. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in December 2015, 11 commercial customer accounts were enrolled with or served by NextEra, including the 3 accounts referenced in Paragraph 39. It is averred that these 11 accounts are for 7 individual commercial customers. It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code

§69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

41. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in January 2016, 21 commercial customer accounts were enrolled with or served by NextEra, including the 11 accounts referenced in Paragraph 40. It is averred that these 21 accounts are for 10 individual customers. It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

42. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in February 2016, 24 commercial customer accounts were enrolled with or served by NextEra, including the 21 accounts referenced in Paragraph 41. It is averred that these 24 accounts are for 13 individual customers. It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account.

To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

43. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in March 2016, 24 commercial customer accounts were served by NextEra, which are the same 24 accounts referenced in Paragraph 42. It is averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

**c. Sales to SFE Energy**

44. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law to which no response is required. By way of further response, it is admitted that SFE Energy ("SFE") paid Fair View a commission as a result of the enrollment of 23 commercial customer accounts for 5 individual customers between August 2015 and March 2016. Upon reasonable investigation, Fair View is without information or knowledge sufficient to form a belief as to whether "numerous" commercial accounts were enrolled, and demand proof thereof, if relevant, at hearing.

45. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in August 2015, 1 commercial customer account was enrolled with SFE. It is averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per enrolled account.

46. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in September 2015, 1 commercial customer account was served by SFE, which is the same account referenced in Paragraph 45. It is averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS. The act of brokering ends upon the customer's enrollment with the EGS.

47. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in October 2015, 1 commercial customer account was served by SFE, which is the same account referenced in Paragraph 45. It is averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with

the EGS. The act of unlicensed brokering ends upon the customer's enrollment with the EGS.

48. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in November 2015, 1 commercial customer account was served by SFE, which is the same account referenced in Paragraph 45. It is averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS. The act of brokering ends upon the customer's enrollment with the EGS.

49. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in December 2015, 2 commercial customer accounts were enrolled with or served by SFE, including the account referenced in Paragraphs 45-48. It is averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS. The act of brokering ends upon the customer's enrollment with the EGS.

50. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in January 2016, 22 commercial customer accounts were enrolled with or served by SFE, including the accounts referenced in Paragraph 49. It is averred

that these 22 accounts are for 5 individual customers. It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

51. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in February 2016, 23 commercial customer accounts were served by SFE, including the 22 accounts referenced in Paragraph 50. It is averred that these 23 accounts are for 5 individual customers. It is further averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

52. Admitted in part and denied in part. Also, the allegations of this paragraph contain conclusions of law and a request for relief to which no response is required. By way of further response, Fair View admits that in March 2016, 23 commercial customer accounts were served by SFE, which are the same accounts referenced in Paragraph 51. It is averred that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code

§69.1201 does not support the imposition of a civil penalty in the amount of \$200 per account. To the extent that the Commission concludes that a civil penalty is warranted for unlicensed brokering, it is not appropriate to impose a penalty for each month that a customer stayed with the EGS and for each account enrolled for a particular customer. The act of brokering ends upon the customer's enrollment with the EGS.

**Requested Relief**

53. This paragraph contains a request for relief to which no response is required. By way of further response, Fair View avers that an application of the factors set forth in the Commission's Policy Statement at 52 Pa. Code §69.1201 does not support the imposition of a civil penalty in the amount of \$89,800 arising from the enrollment of 27 individual commercial customers with licensed EGSs. To the extent that the Commission determines that it is necessary to impose a civil penalty for unlicensed brokering, the act of brokering occurred one time for each of those commercial customers and ended with the customers' enrollment with the EGSs. The fact that the commercial customers remained with the EGSs with whom they enrolled for several months thereafter does not equate to separate violations by Fair View under Code Section 3301 (a), 66 Pa. C.S. § 3301(a). Fair View did not engage in any further activity as an intermediary following the enrollment of those customers with EGSs. Moreover, the enrollment of multiple accounts for the same customer does not translate to additional violations of the Code.

54. This paragraph contains a request for relief to which no response is required. By way of further response, it is averred that Fair View received no fees from commercial customers. It is further averred that Fair View received commissions from licensed EGSs pursuant to private contracts, which the Commission has no statutory authority to interpret or

enforce. Rather, these are matters for civil courts of common pleas of competent jurisdiction. *See Allport Water Auth. v. Winburne Water Co.*, 258 Pa. Super. 555, 393 A.2d 673 (Pa. Super. 1978) (Commission lacks jurisdiction to address disputes involving private contracts); *Adams et al. v. Pa. Pub. Util. Comm'n*, 819 A.2d 631 (Pa. Cmwlth. 2003). Similarly, the Commission has no statutory authority to order an entity to issue refunds to EGSs. The Commission's only statutory authority for directing the issuance of refunds is in Code Section 1312, 66 Pa. C.S. § 1312, which requires a finding of unjust and unreasonable rates charged by a public utility and contemplates the issuance of refunds only to customers of the public utility. *See National Fuel Gas Distribution Corporation v. Pennsylvania Public Utility Commission*, 76 Pa. Cmwlth. 102, 464 A.2d 546 (1983).

55. This paragraph contains a request for relief to which no response is required.

56. This paragraph contains a request for relief to which no response is required. By way of further response, it is averred that any civil penalties for unlicensed brokering are limited to the activity resulting in the initial enrollment of the commercial customer with a licensed EGS and may not be imposed for subsequent months in which the commercial customer remains with the EGS or for multiple accounts for the same customer. An entity engages in no further intermediary activities once the customer is enrolled with the licensed EGSs.

#### **NEW MATTER**

57. The foregoing paragraphs are incorporated by reference.

58. This Complaint is about 27 commercial customers who were solicited by Fair View to sign up with licensed EGSs over the course of a year. To put this number of commercial customers in perspective, a review of the Commission's May 2016 shopping chart shows that 323,865 of about 700,000 total commercial customers in Pennsylvania are buying electricity

from an EGS.<sup>7</sup> The 27 commercial customers, who are the subject of this Complaint and comprise .008337 percent of shopping commercial customers in Pennsylvania, paid Fair View nothing and have received electric generation services under contracts they elected to enter into with licensed EGSs. They have not complained to the Commission or a court. In exchange for Fair View's services, the licensed EGSs paid commissions to the Company pursuant to private contracts, which are not regulated by the Commission. The EGSs got what they paid for and have not complained to the Commission or to a court. In short, no one was harmed by Fair View's actions, and indeed, the Complaint does not allege otherwise.

59. Rather than working with Fair View to achieve compliance and to reach an amicable resolution through payment of a reasonable civil penalty, I&E was fueled by a "confidential" tip and moved directly from a brief informal investigation to the filing of this Complaint seeking the imposition of an excessive fine that would certainly bankrupt the Company. Had I&E recognized that the tip from a confidential source was an outgrowth of private legal disputes and accepted Fair View's claims that it was more than willing to comply with all Commission requirements, this matter could have been resolved efficiently and effectively, saving valuable time and resources of both Fair View and the Commission.

60. From the outset, Fair View has accepted I&E's assertion that it should have obtained an EGS license from the Commission to operate as a broker in Pennsylvania and has initiated the application process. Under the Commission's regulations, several steps must be taken before an application can even be filed.<sup>8</sup> In addition to securing a \$10,000 bond on March 9, 2016, in direct response to I&E's February 25, 2016 letter, Fair View has completed the application and published notices in several newspapers of general circulation, as required by the

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<sup>7</sup> <http://www.papowerswitch.com/>.

<sup>8</sup> See 52 Pa. Code §§ 54.32-54.33.

Commission's regulations. Fairview's EGS application to operate as a broker in Pennsylvania will be filed with the Commission upon receipt of the final newspaper publication notice. In the interim, Fair View has limited its electric sales activities to those that involve working as an agent for brokers licensed as EGSs by the Commission.

61. Referring to the prior work experience of Mr. Snyder and Mr. McCormick for licensed EGSs and the broker authority obtained by Fair View from PUCO, I&E alleges that Fair View knew or should have known that a broker's license was needed to operate in Pennsylvania. However, that allegation is directly contrary to the information supplied by Fair View in response to the data requests served by I&E in February and March 2016. As Fair View noted at that time, it was previously unaware that brokers are legally required to obtain EGS licenses in Pennsylvania, and the Company pledged to take whatever steps were required to be fully compliant with the Commission's regulations.

62. Neither Mr. Snyder nor Mr. McCormick has ever worked for an EGS, as either an employee or independent contractor, in a compliance department or in a capacity where they became informed of Pennsylvania's licensing requirements. Both were involved in sales on behalf of a licensed EGS or licensed EGS broker, which did not require them to be aware of the specific activities that require EGS licenses. Therefore, working for licensed EGSs did not make the Fair View principals aware that they needed to receive an EGS license from the Commission in order to act as an intermediary in the sale and purchase of electric energy, in signing up commercial customers to be served by licensed EGSs.

63. Obtaining authority from PUCO also did not trigger any inquiry by Fair View into whether the same approach needed to be followed in Pennsylvania. Since the ESPs in Ohio imposed this requirement, Fair View sought the power broker authority from PUCO so that it

could continue working with those suppliers to enroll customers. Notably, PUCO issues licenses to power brokers that are separate from licenses issued to ESPs. Therefore, the licensing process in Ohio did not alert Mr. Snyder and Mr. McCormick about any regulatory licensing requirements in Pennsylvania.

64. Particularly with all the emphasis on a “deregulated electric market” since passage of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801-2812, the requirement for brokers to hold a license in Pennsylvania is not readily apparent to laypersons, even those with experience in the energy industry. A review of Code Sections 2807 and 2809, 66 Pa. C.S. §§ 2807 and 2809, which are cited in the Complaint, do not clearly set forth this requirement. In fact, Code Section 2807, 66 Pa. C.S. § 2807, establishes duties of electric distribution companies and has nothing to do with licensing requirements applicable to EGSs. While Code Section 2809, 66 Pa. C.S. § 2809, does establish licensing requirements for EGSs, it is necessary to refer back to Code Section 2803, 66 Pa. C.S. § 2803, to find that the statutory definition of EGS in Pennsylvania includes brokers and to then refer to the definition of broker in Code Section 2803 to determine what activities are covered. This legal maze is not a path that is easily followed, especially by non-lawyers.

65. Even the information on the Commission’s website relating to EGSs does not specify brokers or indicate any need for an entity to obtain an EGS license to act as an intermediary in the sale and purchase of electric energy.<sup>9</sup> All of the emphasis is on EGSs, which a layperson would not realize includes brokers unless he or she had broken the code in the definitions section of the law. Not until a person gets to page 3 of the EGS application does it become apparent that brokers are required to obtain an EGS license.<sup>10</sup> Nothing about the

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<sup>9</sup> [http://www.puc.pa.gov/consumer\\_info/electricity/electric\\_companies\\_suppliers.aspx](http://www.puc.pa.gov/consumer_info/electricity/electric_companies_suppliers.aspx).

<sup>10</sup> [http://www.puc.pa.gov/general/onlineforms/pdf/EGS\\_Lic\\_App.pdf](http://www.puc.pa.gov/general/onlineforms/pdf/EGS_Lic_App.pdf).

webpage or the link leading to the EGS application give any hint to an entity acting as a broker, under its own or someone else's definition, that it should open EGS application, let alone read to page 3. Similarly, the Commission's regulations at 52 Pa. Code §§ 54.31-54.43, are entitled "Electricity Generation Supplier Licensing" and specify that an EGS "may not offer to provide, or provide retail electricity or electric generation service until it is granted a license by the Commission." 52 Pa. Code § 54.32(a). None of these sources specifically focus on brokers or their specific intermediary activities and the need for Commission authority.<sup>11</sup>

66. Mr. Snyder and Mr. McCormick incorporated Fair View in April 2015 so that they could utilize the experience they had gained in the energy industry working as independent contractors or employees of licensed EGSs to help commercial customers find energy offers from licensed EGSs that would meet their needs. For these services, Fair View received *no* fees from the commercial customers. Rather, Fair View contracted with various licensed EGSs and received commissions from them, pursuant to private contracts, when new commercial customers were enrolled as a result of their efforts. Fair View has also worked as an agent for licensed brokers to assist EGSs in contracting with commercial customers.

67. When Mr. Snyder and Mr. McCormick embarked upon this venture, they were not aware that Fair View would require an EGS license from the Commission to operate as a broker in Pennsylvania. Their first inkling of that notion was the receipt of I&E's informal investigation letter dated February 25, 2016, which they viewed as an attempt by I&E to offer assistance in complying with the regulations. Indeed, the letter is replete with legal jargon and contains no hint that a complaint may be filed or that a massive civil penalty may be sought.

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<sup>11</sup> Indeed, the Commission has acknowledged over the past 20 years that some grey areas exist on the topic of brokers and what activities require entities to be licensed. See, e.g., *Licensing of Marketing Services Providers*, Docket No. M-2009-2082042 (Secretarial Letter dated December 10, 2009).

68. For Fair View's unintentional error in not first obtaining an EGS license to operate as a broker, which harmed no one, I&E seeks to bankrupt the Company. In requesting a nearly \$90,000 civil penalty, I&E is seeking to extract for the Commonwealth's coffers nearly three times the amount of commissions earned by Fair View from licensed EGSs for these 27 commercial customer enrollments.

69. Fair View is an extremely small company with Mr. Snyder and Mr. McCormick as its only employees. Currently, Fair View's gross monthly revenues, after eliminating the activities that are the subject of this Complaint, are between \$8,000 and \$9,000. A civil penalty of \$89,800 would completely obliterate the Company and everything that Mr. Snyder and Mr. McCormick have worked so hard to build. Courts have held that that a fine should not be imposed that would have an overly harsh impact on a respondent. *See, e.g., U.S. v. Donovan*, 466 F. Supp. 2d 595, 2006 WL 3751241 (2006).

70. Notably, the Commission appears to have reached its own conclusions about Fair View's conduct without first hearing the Company's side of the story. The Commission's press secretary, Nils Hagen-Frederiksen, was quoted in the Erie Times-News on June 6, 2016, as saying that "[t]hese commercial customers did receive electricity from Fair View Energy. But Fair View Energy was not in the position as an unlicensed supplier to collect commissions, so we are seeking restitution."<sup>12</sup> As this comment was made on behalf of the Commission, which may not direct or require I&E to initiate enforcement proceedings, it appears that an impermissible commingling of prosecutorial and adjudicatory functions has occurred. *See Lyness v. Cmwlth. of PA, State Board of Medicine*, 529 Pa. 535 (1992).

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<sup>12</sup> The news article is attached as Exhibit D. The article also refers to a lawsuit involving Fair View and Frontline in Rhode Island, without noting that it was actually Mr. Snyder who had initiated separate legal proceedings in September 2015 in the Court of Common Pleas of Erie County, Pennsylvania in *Jay Snyder v. Frontline Power Solutions, LLC et al.*, Civil Action No. 2015-12622.

71. Mr. Hagen-Frederiksen, *as the Commission's spokesperson*, went on to say that “[w]ithout licensing, there isn’t the financial security if a problem arises. Most importantly, when you apply for a PUC license, one of the first things is a review of the technical and financial fitness of the company. If a company is unlicensed, that hasn’t happened.” Yet, nothing in the Complaint suggests that a problem arose for which the \$10,000 in financial security that is required of licensed EGSs operating as brokers was needed. Moreover, nothing in the Complaint suggests that Fair View engaged in any practices in its dealings with commercial customers or licensed EGSs that would bring into question its technical or financial fitness to operate as a broker. Through the public comments of Mr. Hagen-Frederiksen, the Commission has indicated that it is unfairly pre-disposed to penalize Fair View for conduct that could have caused adverse consequences without any allegations, let alone proof, that any harm was caused at all. Perhaps most troubling is that this pre-disposition has been expressed even *before* the filing of this Answer and New Matter.

72. In proposing a civil penalty in the Complaint, I&E seeks to fine Fair View \$200 for every month that a commercial customer remained with an EGS following the initial enrollment and for every account associated with each commercial customer that enrolled with an EGS. Code Section 3301, 66 Pa. C.S. § 3301, authorizes the Commission to impose a civil penalty not exceeding \$1,000 for each violation of the Code. The allegation in the Complaint is that Fair View engaged in unlicensed brokering by acting as an intermediary in the sale and purchase of electric energy. Such conduct entails the interactions that are necessary to match commercial customers with licensed EGSs. As brokering involves acting as an intermediary in the sale and purchase of electric energy, the alleged violation consists of those interactions with the customers and the licensed EGSs leading up to the enrollment of the customer with licensed

EGSs. Once those customers were enrolled with licensed EGSs, Fair View's brokering activities were complete. Therefore, as Fair View did not commit a violation of the Code for each account that was enrolled and for each month that the account remained with the EGS, it is inappropriate to impose civil penalties for each account and for those ensuing months.

73. The Commission's decision in *Pa. PUC v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015), which assessed civil penalties on the basis of each bill issued by the EGS, does not support the proposed civil penalty structure here.<sup>13</sup> In that case, the EGS was found to have issued 14,689 bills to customers over the course of three months with each bill containing intentional overcharges. The Commission's rationale was that the EGS violated the regulations each time it issued a bill that did not reflect the terms and conditions set forth in its disclosure statement. By contrast, in this proceeding, Fair View's relationship with the customer ended once the customer enrolled with the EGS. In addition, nothing in the *HIKO Energy* case supports the concept proposed by I&E of assessing civil penalties for each account that was enrolled for the affected customers.

74. Even a civil penalty of \$200 per customer is far too high when the factors set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201 are analyzed and applied to the circumstances of this proceeding. As a starting point, Fair View notes that the Commission assessed a per-violation civil penalty of \$125 on an EGS for an egregious violation of the law involving an executive level decision to intentionally and significantly overcharge customers for electricity. *HIKO Energy*. Moreover, a review of the factors in the Policy Statement shows that

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<sup>13</sup> It is also noteworthy that the Commission's per-bill approach in that case is pending review by the Commonwealth Court. *HIKO Energy, LLC v. Pa. PUC*, No. 5 C.D. 2016. Even in other cases involving billing errors, the Commission has imposed civil penalties based on the number of affected customers rather than the number of incorrect bills. *See, e.g., Pa. PUC v. Pike County Light & Company*, Docket No. M-00061973, 2008 WL 8013889 (Pa. P.U.C.) (Order entered September 15, 2008) (a public utility's billing errors made over a period of years resulted in a \$35,300 contribution to "The Neighbor Fund," which was calculated on the basis of the number of affected customers).

each and every one of them would weigh in favor of low or no civil penalty. Most notably, the proposal to impose \$200 per violation ignores the facts that no adverse consequences resulted from the conduct; the violations were not intentional; the Company has made efforts to modify its internal practices to address the conduct at issue; no customers were adversely impacted by the violation; Fair View has never before been involved in an enforcement proceeding or been directed to cease and desist from engaging in certain conduct; the Company fully cooperated with I&E's informal investigation; the Company's extremely small size; the lack of need for a hefty penalty to act as a deterrent when Fair View has indicated its desire to be compliant; and the crippling effect that a nearly six-figure civil penalty would have on the Company. *See* 52 Pa. Code § 69.1201.

75. As to I&E's request for Fair View to be directed to issue refunds to the licensed EGSs who paid commissions pursuant to private contracts, the Commission has no statutory authority to either review those contracts or award damages. Particularly given the lack of any damages alleged by the Complaint, it is unclear what purpose would be served by returning commissions to licensed EGSs who got exactly what they contracted for and what they paid for. Indeed, I&E has failed to explain the basis upon which it has standing to seek remedies on behalf of those EGSs, who are certainly well-equipped to take any disputes they may have to a court with competent jurisdiction.

76. It is well-settled that 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 Code. *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).

77. The Commission has recently confirmed its lack of jurisdiction to review the terms of private contracts and to determine whether there has been a breach or to order restitution. *See DuBois Manor Motel v. Blue Pilot Energy, LLC*, Docket No. C-2014-2433817 (Order entered June 9, 2016), at 18-20; *Cmwlth of Pa. v. IDT Energy, Inc.*, Docket No. C-2014-2427657 (Order entered December 18, 2014). Noting that courts retain jurisdiction over suits for damages based on breach of contract, which notably has not even been alleged in the Complaint despite the request for restitution, the Commission in *DuBois Manor Motel* cited *Morrow v. The Bell Telephone Company of Pennsylvania*, 479 A.2d 548 (Pa. Super. 1984). As explained by the Commission, actions for damages are properly claimed in a court of common pleas, which has proper jurisdiction over such matters. *See Elkin v. The Bell Telephone Company of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold; Smith v. PECO Energy Co.*, Docket No. C-2014-2443198 (Order entered April 23, 2015).<sup>14</sup>

78. Code Section 1312, 66 Pa. C.S. § 1312, is the only statutory provision authorizing the issuance of refunds by the Commission and it provides the Commission with statutory authority to direct the issuance of refunds only by a public utility if the rates are determined to be “unjust or unreasonable.”<sup>15</sup> *See National Fuel Gas Distribution Corporation v. Pennsylvania Public Utility Commission*, 76 Pa. Cmwlth. 102, 464 A.2d 546 (1983). Even the Commission’s recent theories of having plenary authority under Code Section 501, 66 Pa. C.S. § 501, to direct

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<sup>14</sup> Code Section 3309, 66 Pa. C.S. § 3309, cited by the Complaint has no applicability to this proceeding, particularly since no damages are alleged and further because that provision does not empower the Commission to award damages but rather only provides that a person or corporation may be held liable for damages occasioned by acts that violate the Code. Given the statutory constraints on the Commission and the applicable case law, the harmed entity would need to file such action in a court with competent jurisdiction to recover such damages.

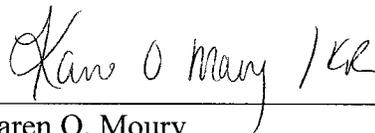
<sup>15</sup> 66 Pa. C.S. § 1312 (emphasis added).

EGSs to issue refunds to customers in limited situations, which have not yet been tested through appellate review, have no applicability here. *See Herp* and Paragraph 14 of this Answer and New Matter. As the Commission does not have authority under the Code to order an entity to issue refunds to EGSs of payments made pursuant to private contracts, this request for relief should be outright rejected. *See PECO Energy Co. v. Pa. Pub. Util. Comm'n*, 568 Pa. 39, 791 A.2d 1155, 1159-1160 (2002).

WHEREFORE, Fair View Energy, Inc. hereby requests that the Complaint be dismissed with prejudice, and that the Commission grant Fair View such other relief as is just and reasonable under the circumstances.

Dated: June 15, 2016

Respectfully submitted,



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Karen O. Moury  
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Kathleen Ryan  
PA Attorney I.D. # 314177  
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*Counsel for Fair View Energy, Inc.*

# EXHIBIT A



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

February 25, 2016

Jay A. Snyder  
Partner  
Fair View Energy LLC  
7782 West Ridge Road  
Fairview, PA 16415  
[jsnyder@fairview-energy.com](mailto:jsnyder@fairview-energy.com)

RE: Informal Investigation of Fair View Energy LLC's Activities Relating to Possible Violations of the Electricity Generation Customer Choice and Competition Act and Chapter 54 of Title 52 of the Pennsylvania Code  
Bp8CaseID# 2506353 (I&E Data Requests-Set I)

Dear Mr. Snyder,

The purpose of this letter is to advise you that the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) has initiated an informal investigation of Fair View Energy LLC (Fair View or Company) consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113. This investigation will focus on whether Fair View is engaging in the business of an electric generation supplier within the Commonwealth of Pennsylvania without first holding a license issued by the Commission. The Public Utility Code and Commission regulations require persons or corporations engaging in the business of an electric generation supplier within the Commonwealth, including brokers, marketers and aggregators, to hold a license issued by the Commission. *See* Section 2809 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2809, and Section 54.32(a) of the Commission's regulations, 52 Pa. Code § 54.32(a).

I&E, acting under delegated authority, is initiating its investigation pursuant to its responsibility to enforce compliance with the Public Utility Code, Commission regulations and orders. *See* 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate enforcement actions to I&E). Pursuant to 52 Pa. Code § 3.113(a), I&E's prosecutory staff is authorized to conduct investigations regarding the condition and management of a public utility or other entity subject to Commission jurisdiction. The purpose of such investigations is to gather data or substantiate allegations of potential violations of the Public Utility Code and other applicable statutes and regulations. Should I&E determine that violations or potential violations occurred and that formal action is warranted, I&E may initiate a docketed, on-the-record proceeding to resolve the issues. *See* 52 Pa. Code § 3.113(b)(2).

Throughout the course of this investigation, I&E may make information and document requests directed to your attention and may conduct interviews or depositions. **If you are not the individual to whom data and document requests and deposition notices should be sent**

**regarding this matter, please furnish the name, title, address, telephone number, and e-mail address of the appropriate individual.**

At this time, I&E has the following inquiries and document requests regarding this matter. With regard to the following inquiries, provide the name(s), title(s), and contact information of the Company representative(s) responsible for sponsoring each response to I&E's Data Requests – Set I.

Some of the below data requests may be deemed by Fair View to direct a response that requires Fair View to provide confidential information. Provide all such information in the responses and mark responses "Confidential" as deemed necessary.

The Company's responses should be provided to the undersigned on or before March 16, 2016.

1. Indicate whether Fair View is incorporated in the Commonwealth of Pennsylvania. If so, provide the date of incorporation.
2. Indicate whether Fair View acts as an intermediary in the sale and purchase of electric energy to end-use customers located in Pennsylvania, but does not take title to electric energy (e.g. a broker or marketer). If the response is in the affirmative, provide the date that such service was initiated in Pennsylvania.
3. If Fair View acts as an intermediary in the sale and purchase of electric energy to end-use customers located in Pennsylvania and does not take title to electric energy, indicate the total gross intrastate operating revenue earned by Fair View for this service since the date that such service was initiated in Pennsylvania.
4. Indicate whether Fair View purchases electric energy and takes title to electric energy as an intermediary for sale to end-use customers located in Pennsylvania. If the response is in the affirmative, provide the date that such service was initiated in Pennsylvania.
5. If Fair View purchases electric energy and takes title to electricity, provide the total amount of gross receipts from the sales of electricity since the date that Fair View initiated electric generation supply service in Pennsylvania to the present time.
6. For the total amount identified in response to Data Request Set I, No. 5, provide the amount of gross receipts from the sales of electricity for each quarter of each year.
7. List the electric distribution company (EDC) service territories in Pennsylvania within which Fair View provides electric generation service.

8. For each EDC service territory identified in response to Data Request Set I, No. 7, indicate the number of customers served by Fair View as of the first of each month starting with the date that Fair View initiated electric generation supply service in Pennsylvania to the present time. Categorize the monthly number of customers served by Fair View by customer class.
9. Indicate whether Fair View has received complaints directly from Pennsylvania customers or from the Commission's Bureau of Consumer Services related to the Company's electric generation supplier operations in Pennsylvania.
10. For the complaints referenced in response to Data Request Set I, No. 9, provide the following information: 1) the subject matter of each complaint received; 2) the date the complaint was received; and 3) the EDC service territory in which the customer-complainant is located.

Please be advised that I&E may request additional documents and information in the future should it become necessary to assist in its review.

Regardless of any document retention policy, you are directed to retain under your control and not destroy any physical or electronic drafts or final documents, information and data, including, but not limited to, corporate records, memoranda, accounts, employee or policy documents, training documents, advertising, contracts, contract proposals, mail and electronic mail, web pages, internet information, computer programs, databases and any other information in physical or electronic form which may pertain to this matter.

Thank you for your immediate attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Stephanie M. Wimer  
Prosecutor

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P. O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 772-8839  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

cc: Kourtney Myers, I&E Prosecutor

# EXHIBIT B

**Moury, Karen O.**

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**From:** Jay Snyder <jsnyder@fairview-energy.com>  
**Sent:** Tuesday, June 07, 2016 8:55 AM  
**To:** Moury, Karen O.  
**Cc:** Michael McCormick  
**Subject:** Fwd: Fair View Energy LLC Bp8CaseID# 2506353 - Initial Informal Investigation Letter and Set I Data Requests  
**Attachments:** Fair View Energy LLC - Bp8 2506353 - Initial Letter.pdf

Here is the response to the first set of Informal Investigating questions:

Jay Snyder <[jsnyder@fairview-energy.com](mailto:jsnyder@fairview-energy.com)>

Mar  
16

to Michael

Dear Stephanie,

The responses to your request (original letter attached) are as follows:

1. Fair View Energy, Inc. was incorporated in the Commonwealth of PA with a stamped date of approval of 4/10/2015. See Attached.
2. Fair View Energy, Inc. has acted as an intermediary in the sale and purchase of electric energy to end-use customer located in PA but does not take title to electric energy. This activity started in 5/2015
3. The total gross intrastate operating revenue earned by Fair View Energy, Inc for this service since 5/2015 has been approximately \$21,198.
4. No, Fair View Energy, Inc does not take title to electric energy in Pennsylvania.
5. N/A
6. N/A
7. N/A
8. N/A
9. N/A
10. N/A

Fair View Energy, Inc. has initiated the licensing process of the PA Brokers License application. The Bond requirement has been approved via State Farm Insurance and the bond is scheduled to be received in hard copy this week. The application for PA Brokers License will follow

once the bond has been received. Please be aware that we were in the understanding that the decision to business directly with a company was the suppliers choice. In no way, have we deceived any supplier by stating that we have an active PA brokers license. Fair View Energy, Inc. is willing and committed to following any and all requirements to comply with all rules and regulations of the PA Public Utility Commission.

Please feel free to reach out to my partner (Michael P. McCormick or myself) for any further discussion or directions that may help us to move forward in a compliant manner.

Jay A. Snyder

Fair View Energy, Inc.

cell 1 814 392-6535

fax 1 814 281-3142



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----- Forwarded message -----

From: **Wimer, Stephanie M** <[stwimer@pa.gov](mailto:stwimer@pa.gov)>

Date: Thu, Feb 25, 2016 at 3:03 PM

Subject: Fair View Energy LLC Bp8CaseID# 2506353 - Initial Informal Investigation Letter and Set I Data Requests

To: "[jsnyder@fairview-energy.com](mailto:jsnyder@fairview-energy.com)" <[jsnyder@fairview-energy.com](mailto:jsnyder@fairview-energy.com)>

Cc: "Myers, Kourtney" <[komyers@pa.gov](mailto:komyers@pa.gov)>

Mr. Snyder,

Please see the attached correspondence and first set of data requests on behalf of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement in the above-referenced matter. A hard copy will follow via first class mail.

Responses to the data requests are due within twenty (20) days, or by March 16, 2016.

Please contact me with any questions.

Regards,

**Stephanie M. Wimer** | Prosecutor

PA Public Utility Commission | Bureau of Investigation & Enforcement

Commonwealth Keystone Building

P.O. Box 3265 | Harrisburg PA 17105

Phone: 717.772.8839 | Fax: 717.783.3458

[stwimer@pa.gov](mailto:stwimer@pa.gov)

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# EXHIBIT C

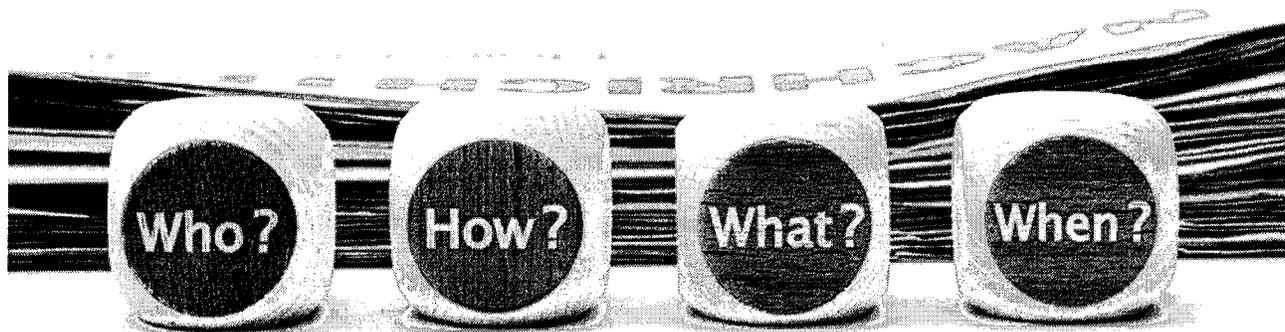


EASTERN PA

WESTERN PA

OHIO

FAQs



## Frequently Asked Questions

### **"Where does Fair View Energy offer service?"**

Fair View Energy offers energy supply services for electric and natural gas in some deregulated markets within North America.

### **"What is Energy Deregulation?"**

Utilities have historically controlled all three components of the electric industry. Many states have deregulated increasing the opportunity for the vast number of commercial and industrial users to reduce their energy supply costs. Deregulation separates the processes of energy generation, transmission and consumer supply...providing consumers the ability to lower their cost of supply.

### **"Who do I contact if my service is disrupted?"**

Your local utility provides all aspects of delivering your electricity or gas and maintaining the infrastructure.

Contact your local utility company. Your local utility will handle all service issues and provide information regarding outages, service alerts, storm alerts and restoration information in case of an emergency or general outage.

### **"Is there a cost to switching suppliers and/or will my service be interrupted?"**

Your electrical service will not change and, certainly, will not be disrupted in any manner. Our supply price provided to consumers is simply a seamless financial transaction providing SAVINGS and BUDGET CERTAINTY.

### **"How is it determined what Supply Plan is best for me?"**

Fair View Energy's consulting experts will analyze your usage history and trends factoring in the current market pricing compared to the actual utility supply charge. We will provide you with the best plan and rates available from a variety of options. Our experience with the current market trends, energy suppliers, efficiency platforms and potential renewable resource incentive plans allows us to present the best product to you for your specific power requirements.

**"FIXED rate plan VS VARIABLE rate plan"**

A fixed rate plan will lock in an agreed upon fixed rate per kWh for a predetermined contract period. Customers with fixed budgets are protected from fluctuating energy markets and have certain understanding of their future energy costs based on past usage.

Variable rates are base on a number of complicated factors. Your supply rate likely will "vary" from month to month. Certain months your supply rate may be higher than your local utility and certain months be considerably lower.

In most, but not all cases, FIXED rate plans are the recommended path.

**"What do you mean by 'TRANSPARENT ENERGY SOLUTIONS'?"**

FVE's sole target is to provide a substantial aggregate savings over an agreed upon contract period considering your consumption history and energy efficiency goals. Other factors include up front discussions related to applicable taxes and margins associated with your energy supply. All taxes, fees, margins and other associated costs will be disclosed and agreed upon before your contract commences.

We are transparent because we are fair! We have small margins(disclosed to you) with the goal of garnering, growing and maintaining a long-term relationship with you!

**"How do I switch my service to Fair View Energy?"**

Switching is a simple process. Fill out our CONTACT form and an agent will contact you and help you start saving today.

**"Why is it necessary for me to provide a copy of a utility bill?"**

Fair View Energy reviews your current consumption and with your permission contacts the utility for historical usage, regulatory, and tax data to determine the best plan available for your specific geographical area and energy usage needs. To sum it up, this information allows us to get the best pricing for you!

**"Do I need to contact anyone to make them aware of my new agreement?"**

This is an automatic notification process. The utility will be notified. So, you can sit back and wait for the savings to begin!

**"How long does it take to transition into to the start of my new agreement?"**

Our service will start within 1 to 2 billing cycles of the submission date depending on your geographical zone and the meter read date.

**"Will I be billed separately by Fair View Energy?"**

You will not receive a bill from FVE. You will receive it one of two ways(which we will disclose during the process):

1) Consolidated Billing - This means that you agreed upon supply price through us will appear directly on your utility bill.

2) Dual Billing - This means that you will receive a bill from the utility company for service related charges and a separate bill from the supplier of choice with whom we contract your supply.

**"Are renewable energy supply options available from Fair View Energy?"**

FVE has a variety of renewable energy programs that include renewable energy credits (RECs) from several renewable outlets.

# EXHIBIT D

Published: June 06. 2016 12:37AM

# **PUC files complaint against Fairview electricity supplier**

By David Bruce  
814-870-1736

Erie Times-News

The Pennsylvania Public Utility Commission has filed a complaint against a Fairview Township-based electricity supplier, claiming it did not obtain proper licensing or pay appropriate fees before signing up business customers in Pennsylvania.

The PUC seeks \$89,800 in civil penalties against Fair View Energy LLC, as well as an undetermined amount of money in commissions paid to the electricity supplier.

"These commercial customers did receive electricity from Fair View Energy," PUC press secretary Nils Hagen-Frederiksen said. "But Fair View Energy was not in the position as an unlicensed supplier to collect commissions, so we are seeking restitution."

Companies that want to become electricity suppliers in Pennsylvania must apply for a license, pay appropriate fees, and post a surety bond to protect customers from fraud, abuse and penalties.

Fair View Energy did not apply for a license or secure a surety bond until the PUC's Bureau of Investigation and Enforcement started its investigation in February.

"Without licensing, there isn't the financial security if a problem arises," Hagen-Frederiksen said. "Most importantly, when you apply for a PUC license, one of the first things is a review of the technical and financial fitness of the company. If a company is unlicensed, that hasn't happened."

Phone messages left with Fair View Energy were not returned Friday.

The complaint, filed May 25, identified Jay A. Snyder and Michael P. McCormick as two of Fair View's officers. The business' address was listed as 7782 W. Ridge Road, though it supplies electricity throughout Pennsylvania and eastern Ohio.

Snyder's wife, Amy, is also an officer in the company.

The complaint is the first formal enforcement action against a broker operating without a license, Hagen-Frederiksen said. It stated that Snyder and McCormack previously worked for other suppliers and "knew or should have known" they needed a license.

Fair View is one of scores of brokers that strike deals between generation suppliers and commercial and industrial energy customers. The PUC's complaint cited Fair View for 449 alleged violations for each time it signed up a commercial account.

The PUC is asking for a \$200 civil penalty for each violation.

Snyder and Fair View Energy were sued in September in U.S. District Court in Rhode Island by Frontline Power Solutions LLC, where Snyder was a senior vice president of sales before setting up Fair View in 2015.

The lawsuit alleged that Snyder breached his contract by siphoning Frontline customers and sales agents to his new company by "tarnishing Frontline Power's reputation" with "false and slanderous statements."

The parties reached a settlement in March, according to records.

The Philadelphia Inquirer contributed to this story.

DAVID BRUCE can be reached at 870-1736 or by email. Follow him on Twitter at [twitter.com/ETNbruce](https://twitter.com/ETNbruce).





