



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

IN REPLY PLEASE
REFER TO OUR FILE

May 4, 2016

Via E-filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Clearview Electric, Inc.
Docket No. C-2016-

Dear Secretary Chiavetta:

Enclosed please find the Formal Complaint of the Bureau of Investigation and Enforcement in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "L. Swindler". The signature is written in a cursive, slightly slanted style.

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Enclosure

cc: As per certificate of service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, BUREAU OF	:	
INVESTIGATION AND ENFORCEMENT,	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2016-_____
	:	
CLEARVIEW ELECTRIC, INC.,	:	
Respondent	:	

FORMAL COMPLAINT

NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (I&E), by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, and files this Formal Complaint against Clearview Electric, Inc. (Clearview or Company or Respondent), alleging violations of the Public Utility Code and/or Pennsylvania Code. In support of its Formal Complaint, I&E respectfully represents the following:

I. COMMISSION JURISDICTION AND AUTHORITY

1. The Pennsylvania Public Utility Commission (Commission), with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the

Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§101, *et seq.*

2. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities.

Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities,

Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11). Complainant's attorneys are as follows:

Michael L. Swindler
Deputy Chief Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
717.783.6369
mwindler@pa.gov

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

3. Respondent is Clearview Electric, Inc., which maintains a business address of P.O. Box 130659, Dallas, TX 75313.

4. Clearview is a jurisdictional electric generation supplier (EGS)¹ licensed by the Commission at Docket No. A-2010-2152506 to operate in the Pennsylvania electric distribution company (EDC) service territories of Duquesne Light Company (Duquesne), Metropolitan Edison Company (Met-Ed), PECO Energy Company (PECO), Pennsylvania Electric Company (Penelec) and PPL Electric Utilities (PPL).

5. Clearview, as an EGS in Pennsylvania, is a public utility as defined by Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, only for the limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-10.

6. Clearview, as a provider of electric generation service for compensation, is subject to the power and authority of the Commission and must observe, obey and comply with the Commission's regulations and orders pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c).

7. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Clearview in its capacity as an EGS serving consumers in Pennsylvania.

8. Section 501(a) of the Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

9. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject

¹ "Electric generation supplier" is defined in Section 2803 of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812 (Competition Act); *See also*, 52 Pa. Code § 57.171.

to the Commission's authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine of up to \$1,000 for each violation and for each day's continuance of such violation(s).

II. BACKGROUND

10. Clearview initiated EGS service in Pennsylvania's EDC service territories chronologically as follows: PPL (June 9, 2010), PECO (January 3, 2011), Duquesne (February 25, 2012), Met-Ed (April 27, 2013) and Penelec (August 9, 2013).

11. I&E initiated an informal investigation of Clearview on April 17, 2014, as a result of customer complaints received by the Commission's Bureau of Consumer Services related to allegations that Clearview billed rates that were higher than the rates promised by the Company at the time customers were enrolled.

12. I&E served and Clearview responded to three sets of I&E data requests in addition to numerous informal requests for information. The allegations set forth below are the result of I&E's investigation, including the Company's responses to I&E's data requests.

13. In the marketing of electric supply to potential customers, Clearview offered multiple fixed rate and one variable rate EGS pricing plans to residential and commercial electric customers in Pennsylvania.

14. The sole variable rate pricing plan offered to residential and commercial electric customers in Pennsylvania from June 2010 to May 2013 provided that the customer would experience a variable rate that could range from 8.9 cents to 17.9 cents

per Kilowatt-hour (kWh). In other words, the variable rate for this plan was capped at \$0.179/kWh (“capped variable pricing plan”).

15. After May 2013, Clearview revised its variable pricing plan offered to new customers to remove the minimum and maximum rate per kWh. However, the terms of the pricing plan, including that the variable rate would be capped at \$0.179/kWh, remained in effect for customers already enrolled in Clearview’s capped variable pricing plan prior to May 2013. In other words, the capped rate was “grandfathered” for existing customers of the pricing plan.

16. Clearview enrolled customers in its capped variable pricing plan in the service territories of Duquesne, PECO and PPL. As such, for each customer enrolled in Clearview’s capped variable pricing plan prior to May 2013, Clearview guaranteed that the customer’s price for electric supply from Clearview would never exceed \$0.179/kWh.

17. Clearview issued a Disclosure Statement to each customer who enrolled in its capped variable pricing plan which stated, in pertinent part:

2. (a) Basic Service Prices – *Itemize Basic Services you are billing for and their prices.*

You will pay a variable rate per kWh for electric generation service. Variable rate is based upon current market conditions and projected wholesale electric prices. Price per kWh can range from 8.9 cents to 17.9 cents, plus all applicable taxes. This price includes Transmission Charges and Estimated Total State Taxes, including the Gross Receipts Tax, but excludes applicable state and local Sales Taxes. All pricing can be viewed at <http://www.clearviewenergy.com/>.

18. Clearview’s written “ENERGY VARIABLE RATE CUSTOMER ENROLLMENT POLICY” statement applicable to each customer who enrolled in its capped variable pricing plan stated, in pertinent part:

POLICY

- II. Procedure
- 7. If the customer contract has a range with a minimum and maximum price per kWh, the system will only allow increases or decreases within that range.
- 8. An exception report is generated identifying all contracts that would exceed the pricing parameters.
- 12. A query is to be run anytime there is a change in the variable pricing to ensure that each customer rate is correct according to the rate plan and utility.
- 14. Quarterly audits are to be performed to insure that rates and plans are correct in the system.
- 15. Any exceptions will be addressed by the Executive Committee.

III. VIOLATIONS

19. Clearview admitted in its data responses that from January 2014 through April 2014, Clearview billed a large number of customers enrolled in Clearview’s capped variable pricing plan within the service territories of PECO and PPL a unit rate for electricity supply that exceeded the maximum price of \$0.179/kWh that was guaranteed at the time of each customer’s enrollment as a Clearview capped variable pricing plan customer.

20. Clearview failed to bill prices to reflect the marketed prices and the agreed upon prices in the Disclosure Statement in that Clearview guaranteed in its Disclosure

Statement to customers enrolled in its capped variable pricing plan that the customer would experience a capped or maximum rate of \$0.179/kWh but, instead, Clearview charged these enrolled customers a rate per Kilowatt-hour that exceeded the guaranteed maximum rate.

21. The applicable Commission regulation, 52 Pa. Code § 54.4(a), reads:

- (a) EGS prices billed must reflect the marketed prices and the agreed upon prices in the disclosure statement.

The violations specifically alleged pursuant to 52 Pa. Code § 54.4(a) are as follows:

PECO – February 2014 Customer Invoices¹

22. PECO customers enrolled in Clearview’s capped variable rate pricing plan were guaranteed a rate not to exceed \$0.179 per kWh.

23. In PECO’s February 2014 electric bills, some customers enrolled in Clearview’s capped variable rate pricing plan were charged a generation rate of \$0.189 per kWh, even though the customers’ rate was guaranteed to be capped at \$0.179 per kWh.

24. The generation rate billed by Clearview of 18.9 cents per kWh was, therefore, not within the range of 8.9 cents to 17.9 cents per kWh, as guaranteed by the written terms and conditions of Clearview’s Disclosure Statement to the customers enrolled in the capped variable rate pricing plan.

¹ “Customer invoice” refers to the retail electric bill sent to a Clearview customer by the EDC serving that service territory. The relevant portion of the bill for purposes of this complaint is that portion which contains Clearview’s supply-related charges for the electric customer enrolled in Clearview’s capped variable pricing plan.

25. I&E's investigation revealed that Clearview customers enrolled in this price offering were billed on the February 2014 invoice at the rate of 18.9 cents per kWh a net total of 2,029 times² and were therefore overcharged.

26. I&E's proposed civil penalty for this violation pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, is \$125 per violation (2,029) or \$125 for each instance in PECO's service territory where a customer was overbilled on the February 2014 invoice, in violation of 52 Pa. Code § 54.4(a).³

PECO – March 2014 Customer Invoices

27. PECO customers enrolled in Clearview's capped variable rate pricing plan were guaranteed a rate not to exceed \$0.179 per kWh.

28. In PECO's March 2014 electric bills, many customers enrolled in Clearview's capped variable rate pricing plan were charged a generation rate of \$0.189 per kWh, even though the customers' rate was guaranteed to be capped at \$0.179 per kWh.

29. The generation rate billed by Clearview of 18.9 cents per kWh was, therefore, not within the range of 8.9 cents to 17.9 cents per kWh, as guaranteed by the

² The net total number of violations is derived from the total number of spreadsheet entries indicating a billing at \$0.189 per kWh, minus those entries that were charged and then debited back, cancelling out the entries, minus those entries with a quantity line item of zero, thus resulting in a charge amount of zero.

³ Calculation of the number of violations of Section 54.4(a) on the basis of the number of invoices in which the price billed did not match the customer information is consistent with this Commission's Opinion and Order in *Pa. Pub. Util. Com'n, v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015) ("*HIKO Order*"). See, *HIKO Order* at 25.

written terms and conditions of Clearview's Disclosure Statement to the customers enrolled in the capped variable rate pricing plan.

30. I&E's investigation revealed that Clearview customers enrolled in this price offering were billed on the March 2014 invoice at the rate of 18.9 cents per kWh a net total of 3,202 times and were therefore overcharged.

31. I&E's proposed civil penalty for this violation pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, is \$125 per violation (3,202), or \$125 for each instance in PECO's service territory where a customer was overbilled on the March 2014 invoice, in violation of 52 Pa. Code § 54.4(a).

PECO – April 2014 Customer Invoices

32. PECO customers enrolled in Clearview's capped variable rate pricing plan were guaranteed a rate not to exceed \$0.179 per kWh.

33. In PECO's April 2014 electric bills, some customers enrolled in Clearview's capped variable rate pricing plan were charged a generation rate of \$0.189 per kWh, even though the customers' rate was guaranteed to be capped at \$0.179 per kWh.

34. The generation rate billed by Clearview of 18.9 cents per kWh was, therefore, not within the range of 8.9 cents to 17.9 cents per kWh, as guaranteed by the written terms and conditions of Clearview's Disclosure Statement to the customers enrolled in the capped variable rate pricing plan.

35. I&E's investigation revealed that Clearview customers enrolled in this price offering were billed on the April 2014 invoice at the rate of 18.9 cents per kWh a net total of 3,300 times and were therefore overcharged.

36. I&E's proposed civil penalty for this violation pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, is \$125 per violation (3,300), or \$125 for each instance in PECO's service territory where a customer was overbilled on the April 2014 invoice, in violation of 52 Pa. Code § 54.4(a).

PPL – February 2014 Customer Invoices

37. PPL customers enrolled in Clearview's capped variable rate pricing plan were guaranteed a rate not to exceed \$0.179 per kWh.

38. In PPL's February 2014 electric bills, some customers enrolled in Clearview's capped variable rate pricing plan were charged a generation rate of \$0.189 per kWh, even though the customers' rate was guaranteed to be capped at \$0.179 per kWh.

39. The generation rate billed by Clearview of 18.9 cents per kWh was, therefore, not within the range of 8.9 cents to 17.9 cents per kWh, as guaranteed by the written terms and conditions of Clearview's Disclosure Statement to the customers enrolled in the capped variable rate pricing plan.

40. I&E's investigation revealed that Clearview customers enrolled in this price offering were billed on the February 2014 invoice at the rate of 18.9 cents per kWh a net total of 313 times and were therefore overcharged.

41. I&E's proposed civil penalty for this violation pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, is \$125 per violation (313), or \$125 for each instance in PPL's service territory where a customer was overbilled on the February 2014 invoice, in violation of 52 Pa. Code § 54.4(a).

PPL – March 2014 Customer Invoices

42. PPL customers enrolled in Clearview's capped variable rate pricing plan were guaranteed a rate not to exceed \$0.179 per kWh.

43. In PPL's March 2014 electric bills, many customers enrolled in Clearview's capped variable rate pricing plan were charged a generation rate ranging of \$0.189 per kWh, even though the customers' rate was guaranteed to be capped at \$0.179 per kWh.

44. The generation rate billed by Clearview of 18.9 cents per kWh was, therefore, not within the range of 8.9 cents to 17.9 cents per kWh, as guaranteed by the written terms and conditions of Clearview's Disclosure Statement to the customers enrolled in the capped variable rate pricing plan.

45. I&E's investigation revealed that Clearview customers enrolled in this price offering were billed on the March 2014 invoice at the rate of 18.9 cents per kWh a net total of 753 times and were therefore overcharged.

46. I&E's proposed civil penalty for this violation pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, is \$125 per violation (753), or \$125 for each instance in PPL's service territory where a customer was overbilled on the March 2014 invoice, in violation of 52 Pa. Code § 54.4(a).

PPL – April 2014 Customer Invoices

47. PPL customers enrolled in Clearview's capped variable rate pricing plan were guaranteed a rate not to exceed \$0.179 per kWh.

48. In PPL's April 2014 electric bills, some customers enrolled in Clearview's capped variable rate pricing plan were charged a generation rate of \$0.189 per kWh, even though the customers' rate was guaranteed to be capped at \$0.179 per kWh.

49. The generation rate billed by Clearview of 18.9 cents per kWh was, therefore, not within the range of 8.9 cents to 17.9 cents per kWh, as guaranteed by the written terms and conditions of Clearview's Disclosure Statement to the customers enrolled in the capped variable rate pricing plan.

50. I&E's investigation revealed that Clearview customers enrolled in this price offering were billed on the April 2014 invoice at the rate of 18.9 cents per kWh a net total of 754 times and were therefore overcharged.

51. I&E's proposed civil penalty for this violation pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301, is \$125 per violation (754), or \$125 for each instance in PPL's service territory where a customer was overbilled on the April 2014 invoice, in violation of 52 Pa. Code § 54.4(a).

52. In addition, Clearview failed to provide notice to customers of a change in contract terms in that the specific term of Clearview's capped variable rate pricing plan that the rate would range from 8.9 cents to 17.9 cents per kWh was changed to include rates that exceeded the maximum 17.9 cents per kWh without prior communication of

this change provided to affected customers. If proven, this is a violation of 52 Pa. Code § 54.10, which reads, in pertinent part:

An EGS shall provide the following notices to customers prior to the expiration of a fixed term contract or prior to a change in contract terms:

- (1) An initial notice shall be provided to each affected customer 45 to 60 days prior to ...the effective date of the proposed change in terms.

Requested Relief

53. I&E proposes that Clearview pay a civil penalty of \$125 for each of the 10,351 violations of 52 Pa. Code § 54.4(a), as set forth, *supra*, for a civil penalty of One Million Two Hundred Ninety-three Thousand Eight Hundred Seventy-five dollars (\$1,293,875).

54. I&E proposes that Clearview pay an additional civil penalty of \$56,125 for failure to provide notice to affected customers of a change in contract terms, in violation of 52 Pa. Code § 54.10, as set forth, *supra*. Accordingly, the total cumulative civil penalty sought by I&E against Clearview is \$1,300,000.

55. I&E proposes that Clearview provide proof that refunds to each of the customer accounts in PECO and PPL service territories for overcharges incurred from February through April 2014 have already been provided, consisting of the cumulative difference between the amount each customer was billed and the maximum guaranteed rate the customer was entitled to receive pursuant to Clearview's capped variable rate pricing plan.

56. I&E proposes that Clearview make revisions and/or provide proof of revisions to Clearview's variable rate customer enrollment policy in order to address the failure of Clearview's existing policy to recognize rates which exceed the maximum rate promised to customers, the failure of Clearview's system to alert the Company to rates that exceed permissible pricing parameters and the failure of Clearview's system to run a query at the time of a variable rate change to alert the Company to rates that exceed permissible pricing parameters.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement hereby requests that the Commission: (1) find Respondent to be in violation of 52 Pa. Code § 54.4(a) for each of the 10,351 counts set forth herein; (2) find Respondent in violation of 52 Pa. Code § 54.10 for each of the affected customers; (3) impose a cumulative civil penalty upon Respondent in the amount of One Million Three Hundred Thousand dollars (\$1,300,000); (4) suspend the authority of Respondent to do business as an EGS in Pennsylvania until Respondent has complied with all monetary and non-monetary remedial measures set forth herein; (5) direct Respondent to provide proof that refunds have been provided to each affected customer, consisting of the cumulative difference between the amount the customer was billed and the guaranteed capped discounted rate the customer was entitled to receive for invoices from February 2014 through April 2014; and (6) order such other relief as the Commission may deem to be appropriate.

Respectfully submitted,


Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: May 4, 2016

NOTICE

A. You must file an Answer within twenty (20) days of the date of service of this Complaint. The date of service is the mailing date as indicated at the top of the Secretarial Cover Letter for this Complaint and Notice, 52 Pa. Code §1.56(a). An Answer is a written explanation of circumstances wished to be considered in determining the outcome. The Answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this Complaint. Your Answer must be verified and the original **shall be mailed to:**

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

Or may be sent by overnight delivery to:
400 North Street, 2nd Floor
Harrisburg, Pennsylvania 17120

Additionally, please serve a copy on:

Michael L. Swindler, Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17105-3265

B. If you fail to answer this complaint within twenty (20) days, the Bureau of Investigation and Enforcement will request that the Commission issue a Secretarial Letter imposing a penalty. The penalty could include a fine, the suspension or revocation of your certificate of public convenience or other remedy.

C. You may elect not to contest this complaint by paying the fine proposed in this Complaint by certified check or money order. Payment must be made to the **Commonwealth of Pennsylvania** and should be forwarded to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an Answer, which admits or fails to deny the allegations of the Complaint, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The judge is not bound by the optional fine set forth above.

F. If you are a corporation, you must be represented by legal counsel. See, 52 Pa. Code § 1.21.

G. If you have questions regarding this Complaint or if you would like an alternative format of this Complaint (for persons with disabilities), please contact the Compliance Office at (717) 787-1227.

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
v. : Docket No. C-2016-
Clearview Electric, Inc. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail:

Thomas F. Walker
Regulatory
Clearview Energy
P.O. Box 130659
Dallas, TX 75313



Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: (717) 783-6369

Dated: May 4, 2016