



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

July 5, 2016

**Via Electronic 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-2016-2543592

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Reply of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission to the New Matter of Clearview Electric, Inc. in the above referenced case. 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,

Stephanie M. Wimer  
Prosecutor  
PA Attorney ID No. 207522

Enclosures

cc: As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	C-2016-2543592
	:	
Clearview Electric, Inc.	:	
Respondent	:	

**REPLY OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT  
TO THE NEW MATTER OF CLEARVIEW ELECTRIC, INC.**

NOW COMES, the Bureau of Investigation and Enforcement (I&E or Complainant) of the Pennsylvania Public Utility Commission (Commission) by and through its prosecuting attorneys, and files this Reply to the New Matter of Clearview Electric, Inc. (Clearview or Company or Respondent), pursuant to 52 Pa. Code § 5.63. In support thereof, I&E avers as follows:

**I. INTRODUCTION**

On May 4, 2016, I&E filed a Formal Complaint against Clearview at Docket No. C-2016-2543592, alleging that the Company violated Chapter 54 of the Commission's regulations pertaining to electricity generation customer choice, 52 Pa. Code §§ 54.1, *et seq.* I&E avers that it initiated an informal investigation of Clearview as a result of customer complaints received by the Commission's Bureau of Consumer Services (BCS) related to allegations that Clearview billed rates that were higher than the rates promised by the Company at the time customers were enrolled. I&E avers that its investigation determined that Clearview billed a large number of customers in the PECO Energy

Company (PECO) and PPL Electric Utilities (PPL) service territories a unit rate for electricity supply that exceeded the maximum capped variable rate of \$0.179 per Kilowatt-hour (kWh) that the customers were entitled to receive pursuant to the terms and conditions of the capped variable pricing plan in which they had enrolled. I&E alleges that Clearview overcharged customer accounts on 10,351 separate occasions between February and April 2014. I&E further alleges that Clearview failed to provide the requisite notice to affected customers of the change in contract terms prior to billing customers in excess of the guaranteed capped discounted rate the customers were entitled to receive.

Accordingly, I&E seeks appropriate relief, including that the Commission: (1) find Respondent to be in violation of 52 Pa. Code § 54.4(a), which requires that prices billed by an electric generation supplier (EGS) reflect the marketed and agreed-upon prices in the disclosure statement, for each of the 10,351 occasions where Clearview overcharged customer accounts; (2) find Respondent to be in violation of 52 Pa. Code § 54.10, pertaining to the requirement to provide notice of a change in terms of a contract for residential and small business 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 measures set forth in the Complaint; (5) direct Respondent to provide proof that refunds have been issued to each affected customer; and (6) order such other relief as the Commission may deem to be appropriate.

On June 14, 2016, Respondent, through counsel, filed an Answer and New Matter at the above docket.<sup>1</sup> In its pleading, Clearview admits that it billed PECO and PPL customers in excess of the guaranteed capped discounted rate the customers were entitled to receive and offers various excuses for overcharging its customers in 2014.

For the reasons stated herein, I&E contends that Respondent's Answer and New Matter are without merit and should be denied, and I&E's Complaint should be sustained.

## **II. REPLY TO NEW MATTER**

57. Denied. To the extent that Respondent attempts to incorporate any and all assertions made in Paragraphs 1-56 as "New Matter," this is denied. Pursuant to 52 Pa. Code § 5.62, affirmative defenses must be set forth under the heading of "New Matter." New matter is limited to material facts that are not merely denials of the averments of the preceding pleadings. 52 Pa. Code § 5.62(b). Respondent cannot avoid this requirement by incorporating all paragraphs of its Answer as "New Matter." I&E rejects this attempt and denies all allegations made in Paragraphs 1-56 of Respondent's Answer.

58. Denied. Upon reasonable investigation, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, Clearview admits that it overcharged customers on at least 10,351 occasions over a three-month period in more than one Electric Distribution Company (EDC) service territory. The sheer quantity and duration of Clearview's violations render it improbable that these overcharges were

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<sup>1</sup> By Secretarial Letter dated May 18, 2016, Respondent was granted an extension of time until June 14, 2016 to respond to I&E's Complaint.

anything *but* intentional in nature. It is troubling that Clearview's erroneous billings would have continued unfettered *ad infinitum* had an outside complaint not brought these overcharges to the Commission's attention. Further, for such overcharges to continue month after month without triggering any safeguard mechanism is a massive breach of Clearview's obligation to abide by the Commission's regulations pertaining to billing practices, which require, *inter alia*, EGSs to bill prices that reflect the marketed prices and agreed upon prices in the disclosure statement. This matter is not a minor, one-time, innocent mistake that the Company discovered and quickly corrected. Rather, the billing overcharges occurred on a massive scale that went completely unnoticed by the Company and the Company's policies were devoid of any internal safeguards to identify the overcharges, notify the Commission and customers, and correct the billing errors.

59. Denied. Upon reasonable investigation, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, I&E's instant investigation found that Clearview overcharged customers on at least 10,351 occasions over a three-month period of time. Each customer affected by Clearview's overcharges has the opportunity to bring a separate formal complaint before the Commission or an informal complaint before BCS, and I&E avers that such complaints would be successful on the merits.

60. Admitted.

61. Denied. It is denied that extreme weather presents any justification for Clearview to overcharge customers who were guaranteed to receive a maximum capped

variable rate of \$0.179 per kWh regardless of weather conditions and any implication otherwise is expressly denied. By way of further answer, it is curious that on one hand, Clearview characterizes its action of overcharging customers as being an “unintentional”<sup>2</sup> billing error while, on the other hand, Clearview now appears to reason that overcharging customers due to higher wholesale electric energy costs during the winter of 2014 was excusable. Clearview’s flawed logic is transparent, lacks merit and is insincere.

62. Denied. Upon reasonable investigation, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. I&E hereby incorporates its response to Paragraph 61. By way of further answer, Clearview was strictly prohibited from increasing its rates for customers who were enrolled in the capped variable rate pricing plan pursuant to the terms and conditions of Clearview’s own Disclosure Statement.

63. Admitted in part and denied in part. It is admitted that Clearview charged customers in excess of the guaranteed maximum capped variable rate that they were entitled to receive. The remaining averments of Paragraph 63 are denied. By way of further answer, I&E hereby incorporates its responses to Paragraphs 61 and 62.

64. Denied. Upon reasonable investigation, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. It is specifically denied that customers were not adversely impacted by Clearview’s actions in overcharging in excess of the guaranteed maximum capped variable rate they were entitled to receive. By way of further answer,

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<sup>2</sup> See Paragraph 58 of Clearview’s New Matter.

the Commission has held that I&E is “not required to present evidence of actual injury or harm because the unlawful conduct by its nature was injurious to the public.”<sup>3</sup>

65. Denied. It is expressly denied that billing errors are acceptable, commonplace and not subject to a civil penalty. Clearview’s assertion that the \$1.3 million civil penalty sought by I&E in the instant Complaint far exceeds any civil penalty previously imposed by the Commission for billing errors is also specifically denied. In *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015) (*HIKO*), I&E sought a civil penalty of \$14.7 million and the Commission ultimately imposed a \$1.8 million civil penalty on *HIKO* for precisely the same conduct that occurred during the winter of 2014 – billing in excess of the guaranteed discounted rate the customer was entitled to receive pursuant to the terms and conditions of the disclosure statement. Furthermore, the cases cited by Clearview in Paragraph 65 pertain to matters that were settled rather than litigated. The Commission has held that it is inappropriate to consider a settlement, which is intended to be an amicable resolution of disputed claims, as precedent in any subsequent proceeding.<sup>4</sup> Therefore, the civil penalties imposed in those matters are inapplicable to the instant litigated proceeding. Additionally, matters pertaining to gas safety violations are subject to a civil penalty range that is capped and thus completely inapplicable to civil penalties in EGS matters. *See* 66 Pa.C.S. § 3301(c). For example, the *Pa. Pub. Util. Comm’n v. UGI Utilities, Inc. – Gas Division*, Docket No. C-2012-

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<sup>3</sup> *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Uber Technologies, Inc., et al.*, Docket No. C-2014-2422723 (Opinion and Order entered May 10, 2016) at 53, citing *Pa. Pub. Util. Comm’n v. Israel*, 52 A.2d 317, 321 (Pa. 1947).

<sup>4</sup> Order at 56; *See Pa. Pub. Util. Comm’n v. Bell Telephone Co. of Pa.*, 68 Pa. P.U.C. 430 (1988).

2308997 (Order entered February 19, 2013) and *Pa. Pub. Util. Comm'n. v. Philadelphia Gas Works*, Docket No. C-2011-2278312 (Order entered July 26, 2013) cases resulted in a \$500,000 civil penalty in each matter because the Commission was prohibited by the Public Utility Code (Code) from assessing a civil penalty greater than \$500,000 at the time the incidents occurred.

66. Denied. Clearview has misinterpreted the clear statutory language of Section 3301(a) and (b) of the Code, 66 Pa.C.S. § 3301(a)-(b). Pursuant to Section 3301(a), the Commission is authorized to impose a civil penalty of up to \$1,000 for each violation. 66 Pa.C.S. § 3301(a). Section 3301(b) of the Code expressly states that “[e]ach and every day’s continuance in the violation . . . shall be a separate and distinct offense.” 66 Pa.C.S. § 3301(b). Thus, the Commission is authorized to impose a civil penalty of up to \$1,000 for each violation and each day’s continuance of that violation. *See also Newcomer Trucking, Inc. v. Pa. Pub. Util. Comm’n*, 531 A.2d 85 (Pa. Cmwlth. 1987) (holding that Section 3301 of the Code authorizes the Commission to impose a civil penalty of up to \$1,000 for *each and every discrete violation*, regardless of the number of violations occurred); *Pa. Pub. Util. Comm’n, Bureau of Transp. and Safety v. Corey Transport, LLC*, Docket No. C-2010-2155103 (Initial Decision issued February 9, 2012; Final Order entered March 22, 2012) (imposing a \$2,000 civil penalty for two violations that occurred on the same day).

67. Denied. Upon reasonable investigation, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

68. Denied. Upon reasonable investigation, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

69. Denied. Upon reasonable investigation, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

70. Admitted in part and denied in part. It is admitted that Clearview responded to I&E's data requests. It is denied that I&E was under any legal obligation to conclude the informal investigation within three months when a three-year statute of limitations applies with regard to violations of the Commission's regulations and I&E timely filed the instant Complaint within three years from the date that Clearview overcharged its customers. *See* 66 Pa.C.S. § 3314 (relating to a limitation of actions). Further, it is unclear why Clearview would assume that I&E had closed the informal investigation when such action must be taken by letter and no such communication was sent by I&E. *See* 52 Pa. Code § 3.113(b)(1) (providing that informal investigations will be terminated by letter to satisfy the requirements of the Sunshine Act, 65 Pa.C.S. Chapter 7). I&E even advised Clearview of this requirement on the second page of its letter dated April 23, 2014 to Clearview, which has been attached to Clearview's Answer and New Matter as "Exhibit A." ("Should I&E determine that no violation or potential violation has occurred, the investigation will be terminated by letter. 52 Pa. Code § 3.113(b)(1)").

71. Denied. I&E hereby incorporates its response to Paragraph 70.

72. Denied. For an EGS serving the citizens in this Commonwealth to have absolutely no safeguard in place to prevent overcharges in express violation of its agreements with customers, overcharge customers on 10,351 separate occasions over a three-month period of time, and then complain that I&E “unnecessarily and aggressively” attacked the Company’s reputation by enforcing the law is outrageous. I&E avers that if Clearview’s reputation as an EGS in Pennsylvania has been severely damaged, then so be it. By way of further answer, it is I&E’s duty to investigate and enforce such violations and the filing of the instant Complaint was entirely proper. Any assertion that I&E “singled out” Clearview is expressly denied. I&E uniformly enforces violations of the Commission’s regulations committed by all EGSs.

73. Denied. Upon reasonable investigation, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, I&E permissibly filed the instant Complaint within the three-year statute of limitations pursuant to 66 Pa.C.S. § 3314.

74. Denied. Overcharging customers who were promised that they would receive a maximum capped variable rate upon enrollment with Clearview is contrary to fostering a “robust retail energy market in Pennsylvania.”<sup>5</sup> It is the Commission’s responsibility to “effectively monitor and enforce the market” and serve as a “retail energy market watchdog”<sup>6</sup> and the Commission should do so here by sending a clear

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<sup>5</sup> *HIKO*, (Statement of Chairman Gladys M. Brown).

<sup>6</sup> *Id.*

message to Clearview that it will not tolerate widespread overbilling, specifically, 10,351 instances of overbilling. Therefore, the Commission should sustain the Complaint and impose the civil penalty sought by I&E as well as grant all other requested relief.

**WHEREFORE**, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that the Office of Administrative Law Judge and the Commission dismiss Respondent's New Matter and find Respondent to be in violation of each and every count set forth in the Complaint.

Respectfully submitted,



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Stephanie M. Wimer  
Prosecutor  
PA Attorney ID No. 207522

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

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

Dated: July 5, 2016



Pennsylvania Public Utility  
Commission, Bureau of Investigation  
and Enforcement,  
Complainant

v.

Clearview Electric, Inc.,  
Respondent

Docket No. C-2016-2543592

### 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 and Electronic Mail:

Karen O. Moury, Esq.  
Buchanan, Ingersoll and Rooney, P.C.  
409 North Second Street  
Suite 500  
Harrisburg, PA 17101-1357  
[karen.moury@bipc.com](mailto:karen.moury@bipc.com)

*Counsel for Clearview Electric, Inc.*



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  
717.772.8839  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

Dated: July 5, 2016