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June 14, 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. Clearview Electric, Inc.; Docket No. C-2016-2543592

Dear Secretary Chiavetta:

On behalf of Clearview Electric, Inc., enclosed for filing is the Answer and New Matter of Clearview Electric, 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

3. Admitted. It is admitted that Clearview maintains a business address as set forth in this paragraph.

4. Admitted. It is admitted that Clearview is an electric generation supplier (“EGS”) licensed by Commission Order entered at Docket No. A-2010-2152506 on May 7, 2010 (“Licensing Order”) 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”). It is further averred that Clearview is also authorized by the Licensing Order to operate as an EGS in the service territories of Pennsylvania Power Company, West Penn Power Company and UGI Utilities, Inc. within Pennsylvania.

5. Admitted in part. It is admitted that Clearview is a public utility only for limited purposes as expressly provided in Code Sections 2809 and 2810, 66 Pa. C.S. §§ 2809-2810. The remaining allegations of this paragraph contain conclusions of law to which no response is required. It is averred that the Code Sections 102, 2809 and 2810, 66 Pa. C.S. §§ 102, 2809-2810, speak for themselves.

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

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

8. 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.

9. The allegations of this paragraph contain conclusions of law to which no response is required. It is averred that Code Section 3301, 66 Pa. C.S. § 3301, speaks for itself.

II. BACKGROUND

10. Admitted. It is admitted that consistent with the authority provided by the Licensing Order, Clearview initiated EGS service on the dates and in the service territories set forth in this paragraph.

11. Admitted in part and denied in part. It is admitted that I&E notified Clearview by letter dated April 23, 2014 that it had initiated an informal investigation. Upon reasonable investigation, Clearview is without information or knowledge sufficient to form a belief as to whether I&E initiated the informal investigation on April 17, 2014, and demands proof thereof, if relevant, at hearing. Further, it is specifically denied that the informal investigation was initiated “as a result of customer complaints received by the Commission’s Bureau of Consumer Services.” To the contrary, it is averred that the informal investigation was initiated as a result of *a single* informal complaint received by the Bureau of Consumer Services (“BCS”).¹ It is further averred that in the April 23, 2014 letter initiating this informal investigation, I&E noted its intention “to conclude this informal investigation within three (3) months.”²

12. Admitted in part and denied in part.

a. It is admitted that I&E served and Clearview responded to three sets of I&E data requests. By way of further answer, it is averred that I&E served its first set of data requests on Clearview on April 23, 2014, to which Clearview promptly provided responses on May 19, 2014. It is further averred that I&E served its second set of data requests on Clearview on July 25, 2014, to which Clearview promptly provided responses on August 11, 2014.

b. It is denied that I&E served and Clearview responded to “numerous informal requests for information.” To the contrary, it is averred that

¹ See Exhibit A, which is I&E’s letter initiating the informal investigation that references an informal complaint filed by Ms. Kathryn Ferguson.

² See Exhibit A.

I&E and Clearview had no additional communications, beyond the first and second set of data requests, **for over 18 months** until I&E served its third set of data requests on Clearview on February 16, 2016, to which Clearview promptly provided responses on March 3, 2016. Thereafter, Clearview received no communications from I&E until service of this Complaint. No informal data requests were served on Clearview by I&E at any time.

c. Upon reasonable investigation, Clearview 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.

13. Admitted in part and denied in part. It is admitted that Clearview offered multiple fixed rate plans to residential and commercial electric customers in Pennsylvania. It is specifically denied that Clearview has offered only one variable rate plan to residential and commercial electric customers in Pennsylvania. To the contrary, it is averred that Clearview has offered two different variable rate plans to residential and commercial electric customers in Pennsylvania. Specifically, it is further averred that Clearview offered a variable rate plan from June 2010 through May 31, 2013 containing a minimum and maximum rate and that Clearview offered a variable rate plan after May 31, 2013 containing no minimum or maximum rate.

14. Admitted. It is admitted that Clearview offered only a variable rate plan that contained a cap on the variable rate ("capped variable pricing plan") during the time from June 2010 through May 31, 2013.

15. Admitted. It is admitted that after May 31, 2013, Clearview revised its variable rate plan to remove the cap on the variable rate, and that this change applied only to new customers enrolled after that date.

16. Admitted. It is admitted that Clearview enrolled customers in its capped variable pricing plan in the service territories of Duquesne, PECO and PPL.

17. Admitted. It is admitted that Clearview issued a Disclosure Statement to each customer who enrolled in its capped variable pricing plan containing the language set forth in this paragraph. Specifically, Clearview's Disclosure Statement explained that the variable rate is based upon current market conditions and projected wholesale electric prices and included a price range from 8.9 cents to 17.9 cents per kWh.

18. Admitted in part and denied in part. It is admitted that Clearview implemented a Variable Rate Customer Enrollment Policy ("Policy") with an effective date of March 31, 2013 and that it revised this Policy on April 15, 2014.³ It is specifically denied that the Policy contained all of the provisions listed in this paragraph prior to April 15, 2014. To the contrary, it is averred that when Clearview became aware of the billing errors that are the basis of the Complaint, the Policy was revised to include: (i) protocols for the system to only allow increases or decreases within the range specified in a customer contract; (ii) the generation of exception reports identifying contracts that would exceed the pricing parameters; (iii) running queries when a change is made in a variable pricing to ensure customer rates are correct; and (iv) performing quarterly audits.

III. ALLEGED VIOLATIONS

19. Admitted in part and denied in part. It is admitted that Clearview provided data responses to I&E *two years ago* showing amounts that were billed in February, March and April 2014 to customers enrolled in its capped variable pricing plan in the service territories of PECO and PPL. It is further averred that an administrative error resulted in those customers being billed at an amount that exceeded the cap contained in their variable pricing plan. It is also further averred that upon becoming aware of the billing error, as a result of the informal

³ The entire Policy, as revised, is included as Exhibit B.

complaint filed by Ms. Henderson with BCS on March 26, 2014, Clearview immediately issued a full refund to Ms. Henderson and thereafter promptly queried all of its billing data, identified customers affected by the error and proactively refunded and credited overcharges to 4,157 customers in the amount of \$105,225.64. Upon reasonable investigation, Clearview is without information or knowledge sufficient to form a belief as to whether a “large” number of customers were billed at an amount that exceeded the cap contained in the variable pricing plan, and demands proof thereof, if relevant, at hearing.

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

21. The allegations of this paragraph are conclusions of law to which no response is required. It is averred that Section 54.4(a) of the Commission’s regulations, 52 Pa. Code § 54.4(a), speaks for itself.

PECO – February 2014 Customer Invoices

22. Admitted. It is admitted that PECO customers enrolled in Clearview’s variable rate pricing plan that was capped at 17.9 cents per kWh.

23. Admitted. It is admitted that Clearview billed some PECO customers the rate of 18.99⁴ cents per kWh in February 2014. It is further averred that this 1 cent per kWh overcharge occurred as a result of an administrative error, which was promptly rectified upon Clearview’s discovery.

24. Admitted. It is admitted that the customers referred to in Paragraph 23 were billed an amount that exceeded the cap in the variable rate pricing plan by 1 cent per kWh. It is

⁴ Although the Complaint alleges that Clearview charged some customers 18.9 cents per kWh, the responses provided to I&E’s data requests showed that Clearview charged some customers 18.99 cents per kWh. While this difference is nearly *de minimus* on a per kWh basis, it more meaningfully impacts the amount of total refunds and credits that were issued to customers by Clearview.

further averred that upon learning of this billing error, Clearview proactively and voluntarily refunded overcharges to customers.

25. Admitted. It is admitted that 2,029 bills were issued to PECO customers during February 2014 at the rate of 18.99 cents per kWh.

26. This paragraph contains a request for relief to which no response is required. By way of further answer, Clearview asserts that a \$125 civil penalty per bill is not justified by the allegations in the Complaint. The case cited by I&E as precedent for this amount of civil penalty is *Pa. PUC v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015) (“*HIKO Order*”), which involved an executive management level decision to intentionally charge customers prices that greatly exceeded the amounts guaranteed by their contracts, such that customers on average were overcharged in the amount of \$124. *HIKO Order* at 47-48. By contrast, Clearview’s 1 cent overcharges were the result of an administrative error, which was rectified promptly -- through the issuance of refunds -- when Clearview learned about the billing error.

PECO – March 2014 Customer Invoices

27. Admitted. It is admitted that PECO customers enrolled in Clearview’s variable rate pricing plan that was capped at 17.9 cents per kWh.

28. Admitted in part and denied in part. It is admitted that Clearview billed some PECO customers the rate of 18.99 cents per kWh in March 2014. It is further averred that this 1 cent per kWh overcharge occurred as a result of an administrative error, which was promptly rectified upon Clearview’s discovery. Upon reasonable investigation, Clearview is without information or knowledge sufficient to form a belief as to whether “many” customers were billed at an amount that exceeded the cap contained in the variable pricing plan, and demands proof thereof, if relevant, at hearing.

29. Admitted. It is admitted that the customers referred to in Paragraph 28 were billed an amount that exceeded the cap in the variable rate pricing plan by 1 cent per kWh. It is further averred that upon learning of this billing error, Clearview proactively and voluntarily refunded overcharges to customers.

30. Admitted. It is admitted that 3,202 bills were issued to PECO customers during March 2014 at the rate of 18.99 cents per kWh.

31. This paragraph contains a request for relief to which no response is required. By way of further answer, Clearview asserts that a \$125 civil penalty per bill is not justified by the allegations in the Complaint. The case cited by I&E as precedent for this amount of civil penalty involved an executive management level decision to intentionally charge customers prices that greatly exceeded the amounts guaranteed by their contracts, such that customers on average were overcharged in the amount of \$124. *HIKO Order* at 47-48. By contrast, Clearview's 1 cent overcharges were the result of an administrative error, which was rectified promptly -- through the issuance of refunds -- when Clearview learned about the billing error.

PECO – April 2014 Customer Invoices

32. Admitted. It is admitted that PECO customers enrolled in Clearview's variable rate pricing plan that was capped at 17.9 cents per kWh.

33. Admitted. It is admitted that Clearview billed some PECO customers the rate of 18.99 cents per kWh in April 2014. It is further averred that this 1 cent per kWh overcharge occurred as a result of an administrative error, which was promptly rectified upon Clearview's discovery.

34. Admitted. It is admitted that the customers referred to in Paragraph 33 were billed an amount that exceeded the cap in the variable rate pricing plan by 1 cent per kWh. It is

further averred that upon learning of this billing error, Clearview proactively and voluntarily refunded overcharges to customers.

35. Admitted. It is admitted that 3,300 bills were issued to PECO customers during April 2014 at the rate of 18.99 cents per kWh.

36. This paragraph contains a request for relief to which no response is required. By way of further answer, Clearview asserts that a \$125 civil penalty per bill is not justified by the allegations in the Complaint. The case cited by I&E as precedent for this amount of civil penalty involved an executive management level decision to intentionally charge customers prices that greatly exceeded the amounts guaranteed by their contracts, such that customers on average were overcharged in the amount of \$124. *HIKO Order* at 47-48. By contrast, Clearview's 1 cent overcharges were the result of an administrative error, which was rectified promptly -- through the issuance of refunds -- when Clearview learned about the billing error.

PPL – February 2014 Customer Invoices

37. Admitted. It is admitted that PPL customers enrolled in Clearview's variable rate pricing plan that was capped at 17.9 cents per kWh.

38. Admitted. It is admitted that Clearview billed some PPL customers the rate of 18.99 cents per kWh in February 2014. It is further averred that this 1 cent per kWh overcharge occurred as a result of an administrative error, which was promptly rectified upon Clearview's discovery.

39. Admitted. It is admitted that the customers referred to in Paragraph 38 were billed an amount that exceeded the cap in the variable rate pricing plan by 1 cent per kWh. It is further averred that upon learning of this billing error, Clearview proactively and voluntarily refunded overcharges to customers.

40. Admitted. It is admitted that 313 bills were issued to PPL customers during February 2014 at the rate of 18.99 cents per kWh.

41. This paragraph contains a request for relief to which no response is required. By way of further answer, Clearview asserts that a \$125 civil penalty per bill is not justified by the allegations in the Complaint. The case cited by I&E as precedent for this amount of civil penalty involved an executive management level decision to intentionally charge customers prices that greatly exceeded the amounts guaranteed by their contracts, such that customers on average were overcharged in the amount of \$124. *HIKO Order* at 47-48. By contrast, Clearview's 1 cent overcharges were the result of an administrative error, which was rectified promptly -- through the issuance of refunds -- when Clearview learned about the billing error.

PPL – March 2014 Customer Invoices

42. Admitted. It is admitted that PPL customers enrolled in Clearview's variable rate pricing plan that was capped at 17.9 cents per kWh.

43. Admitted. It is admitted that Clearview billed some PPL customers the rate of 18.99 cents per kWh in March 2014. It is further averred that this 1 cent per kWh overcharge occurred as a result of an administrative error, which was promptly rectified upon Clearview's discovery.

44. Admitted. It is admitted that the customers referred to in Paragraph 43 were billed an amount that exceeded the cap in the variable rate pricing plan by 1 cent per kWh. It is further averred that upon learning of this billing error, Clearview proactively and voluntarily refunded overcharges to customers.

45. Admitted. It is admitted that 753 bills were issued to PPL customers during March 2014 at the rate of 18.99 cents per kWh.

46. This paragraph contains a request for relief to which no response is required. By way of further answer, Clearview asserts that a \$125 civil penalty per bill is not justified by the allegations in the Complaint. The case cited by I&E as precedent for this amount of civil penalty involved an executive management level decision to intentionally charge customers prices that greatly exceeded the amounts guaranteed by their contracts, such that customers on average were overcharged in the amount of \$124. *HIKO Order* at 47-48. By contrast, Clearview's 1 cent overcharges were the result of an administrative error, which was rectified promptly -- through the issuance of refunds -- when Clearview learned about the billing error.

PPL – April 2014 Customer Invoices

47. Admitted. It is admitted that PPL customers enrolled in Clearview's variable rate pricing plan that was capped at 17.9 cents per kWh.

48. Admitted. It is admitted that Clearview billed some PPL customers the rate of 18.99 cents per kWh in April 2014. It is further averred that this 1 cent per kWh overcharge occurred as a result of an administrative error, which was promptly rectified upon Clearview's discovery.

49. Admitted. It is admitted that the customers referred to in Paragraph 43 were billed an amount that exceeded the cap in the variable rate pricing plan by 1 cent per kWh. It is further averred that upon learning of this billing error, Clearview proactively and voluntarily refunded overcharges to customers.

50. Admitted. It is admitted that 754 bills were issued to PPL customers during April 2014 at the rate of 18.99 cents per kWh.

51. This paragraph contains a request for relief to which no response is required. By way of further answer, Clearview asserts that a \$125 civil penalty per bill is not justified by the allegations in the Complaint. The case cited by I&E as precedent for this amount of civil penalty

involved an executive management level decision to intentionally charge customers prices that greatly exceeded the amounts guaranteed by their contracts, such that customers on average were overcharged in the amount of \$124. *HIKO Order* at 47-48. By contrast, Clearview's 1 cent overcharges were the result of an administrative error, which was rectified promptly -- through the issuance of refunds -- when Clearview learned about the billing error.

52. Denied. It is specifically denied that Clearview failed to provide notice to customers of a change in contract terms. To the contrary, it is averred that Clearview did not change customers' contract terms and that therefore the notice provisions of Section 54.10 of the Commission's regulations, 52 Pa. Code § 54.10, are inapplicable. It is further averred that administrative errors resulted in customers being billed an amount that exceeded the cap in their variable rate plan by 1 cent per kWh and that when this error was discovered, Clearview fully reimbursed affected customers and continued to honor the terms of service set forth in their original Disclosure Statements. By way of further answer, Clearview asserts that this paragraph contains conclusions of law to which no response is required and that the provisions of Section 54.10 of the Commission's regulations, 52 Pa. Code § 54.10, speak for themselves. It is further noted that Section 54.10 of the Commission's regulations, 52 Pa. Code § 54.10, did not go into effect until June 14, 2014, after the period of time covered by the allegations in the Complaint.

Requested Relief

53. This paragraph contains a request for relief to which no response is required. By way of further answer, Clearview 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 \$1,293,875 arising from billing errors in the amount of 1 cent per kWh affecting 4,157 customers for total overcharges of \$105,225.64, all of which was proactively, promptly and voluntarily returned to the customers upon Clearview's discovery of

the billing errors. Indeed, the Commission's statutory authority to impose civil penalties for continuing offenses is limited to \$1,000 per day under Code Section 3301, 66 Pa. C.S. § 3301. *See Rosi v. Bell-Atlantic – Pennsylvania, Inc., and Sprint Communications, L.P.*, Docket No. C-00992409 (“Since §3301 states clearly that this is a maximum amount, presumably a penalty of \$1,000.00 per day should be imposed only for the most egregious violations.”), at 10. *See also Pa. PUC, Bureau of Investigation and Enforcement v. Daniel and Darlene Applegate t/a Independent Security Cab*, 2016 WL 1559265 (Pa. PUC), Docket No. C-2015-2451749 (Initial Decision served April 12, 2016; Final Order entered May 23, 2016) (Code Section 3301 authorizes the Commission to impose a sum not exceeding \$1,000 per day on an entity violating the Code or regulations).

54. This paragraph contains a request for relief to which no response is required. By way of further answer, Clearview avers that no civil penalty may be imposed for violating an inapplicable regulation that was not even in effect during the time period that is the subject of this Complaint.

55. This paragraph contains a request for relief to which no response is required. By way of further answer, Clearview fully reimbursed all affected customers and will offer proof of same in this proceeding.

56. This paragraph contains a request for relief to which no response is required. By way of further answer, Clearview has already made changes to its system to ensure that such billing errors do not recur in the future and will offer proof of same in this proceeding.

NEW MATTER

57. The foregoing paragraphs are incorporated by reference.

58. The Complaint completely ignores the unintentional nature of the billing error; the relatively small amount of overcharges; the prompt and voluntary reimbursement of

customers *over two years ago* when the billing error was initially discovered; the proactive system changes implemented by Clearview *over two years ago* to prevent recurrence of this error; the chaotic Polar Vortex environment in which the billing error was made; and Clearview's lack of any prior compliance history.

59. Clearview has supplied electric generation services to tens of thousands of residential and small commercial customers in Pennsylvania on both fixed price and variable price plans since being licensed by the Commission in May 2010. During its six years of operation, Clearview has experienced very minimal complaint activity with a smattering of four formal complaints addressing minor "one-off" types of issues, which were either withdrawn or resolved through the filing of certificates of satisfaction.⁵ Similarly, the volume of informal complaints filed with BCS has been extremely low, particularly in comparison to the number of customers who are served. Specifically, from 2010 through 2015, only 190 informal complaints were filed with BCS against Clearview, which accounts for less than one-quarter percent of the total customers served by Clearview during that time period. Moreover, most of those informal complaints were closed without any finding of wrongdoing on the part of Clearview.

60. From June 2010 through May 31, 2013, Clearview offered variable rate plans that were based on current market conditions and projected wholesale electric prices.⁶ The Disclosure Statement provided that the price could range from 8.9 cents to 17.9 cents, plus all applicable taxes. After May 31, 2013, Clearview removed the minimum and maximum rates from the Disclosure Statement for newly-enrolled customers, but retained the language about basing variable rate plans on current market conditions and projected wholesale electric prices.

61. In January 2014, Pennsylvania -- along with other portions of Northeast United States -- experienced a phenomenon that became known as the "Polar Vortex." A "perfect

⁵ Docket Nos. C-2012-2335048, C-2013-2381987, C-2014-2411137, F-2015-2478664.

⁶ See Exhibit C, which is a sample Disclosure Statement used by Clearview during that time.

storm” occurred during the Polar Vortex, in which temperatures were frigid over a prolonged period, resulting in new records for winter electricity use through the service area of PJM Interconnection, LLC (“PJM”). Extremely high demand combined with particularly high forced generator outage rates to produce record high costs in the PJM-administered energy markets.⁷ The Commission has expressly acknowledged that as a result of the high PJM energy market prices, many EGSs serving Pennsylvania customers with variable-priced retail supply contracts needed to increase their retail prices to customers in order to recover the higher wholesale electric energy costs they incurred in January 2014.” *Review of Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (Order entered March 4, 2014).

62. During the Polar Vortex crisis, Clearview experienced more than five times its typical costs to serve its customer. In its efforts to address this extreme price volatility and struggling to remain financially viable in the marketplace, Clearview -- like many other EGSs -- raised its variable prices to reflect current market conditions and projected wholesale electric prices, as described in its Disclosure Statement.

63. Amidst this chaotic and unprecedented environment, Clearview passed a portion of its record-breaking wholesale costs through to *all* variable price customers, overlooking the fact that a fraction of its Pennsylvania customers continued to be on capped variable pricing plans. Having dispensed with capped variable pricing plans several months earlier, it was an administrative oversight on the part of Clearview that occurred at a time when the wholesale energy market was extremely volatile, challenging all market participants’ ability to continue

⁷The Federal Energy Regulatory Commission (“FERC”) noted that during one of the polar vortices that hit Pennsylvania in January 2014 in particular, electricity prices surged with the locational marginal prices being near or above \$2,000 per Mwh for a number of hours in PJM. *FERC Staff Report, Winter 2013-2014 Operations and Market Performance in RTOs and ISOs*, AD14-8-000, at 10 (April 1, 2014).

serving retail customers. Importantly, Clearview did not make an intentional decision to overcharge its customers.

64. Although Clearview regrets the billing error and the impact of that error on its customers, Clearview notes that customers were overcharged, on average, less than \$8.50. For a customer using 750 kWh per month, the supply portion of the bill should not have exceeded \$134.25. Due to the billing error, the customer's supply was billed a little more than 6 percent higher than it should have been. For the vast majority of the customers, a billing discrepancy of that magnitude, which roughly equates to Pennsylvania's sales tax, was unnoticeable and had no impact on them, financially or otherwise. Indeed, the Complaint does not allege any financial harm to customers.

65. Billing errors are fairly commonplace in the public utility industry⁸ and Clearview is unaware of the Commission's imposition of any civil penalties on public utilities on the basis of the number of affected bills.⁹ Not only does the civil penalty requested here of \$1.3 million far exceed any civil penalties previously imposed for billing errors, it also exceeds civil penalties imposed by the Commission for violations of its gas safety regulations which resulted in explosions, significant property damage, serious personal injury and even fatalities.¹⁰

66. In fact, the Commission's statutory authority to impose civil penalties for continuing offenses is limited to \$1,000 per day under Code Section 3301, 66 Pa. C.S. § 3301.

⁸ See, e.g., *PPL 2010-11 TSC Audit Report and Secretarial Letter*, Docket No. D-2011-2238984 (Released August 15, 2013).

⁹ See *Pa. PUC v. Pike County Light & Power 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" and no reference was made by the Commission to the number of incorrect bills that were issued by the public utility).

¹⁰ See *Pa. PUC v. UGI Penn Natural Gas, Inc.*, Docket No. M-2013-2338981 (Order entered September 26, 2013) (a civil penalty of \$1 million was levied due to a natural gas company's numerous departures from established gas safety standards, following five years of repeated violations); *Pa. PUC v. PPL Electric Utilities Corp.*, Docket No. M-2008-2057562 (Order entered March 31, 2009); *Pa. PUC v. UGI Utilities, Inc.*, Docket No. C-2012-2308997 (Order entered February 19, 2013); *Pa. PUC v. Philadelphia Gas Works*, Docket No. C-2011-2278312 (Order entered July 26, 2013). Indeed, the latter three proceedings against electric and natural gas companies for safety-related violations involving eight fatalities resulted in the imposition of a total civil penalty on the three companies of \$1.3 million.

Under Code Section 3301, the Commission may assess a penalty of up to \$1,000 per offense, with “each and every *day*’s continuance of the violation constituting a separate and distinct offense.” 66 Pa. C.S. § 3301(b) (emphasis added). In other words, the maximum penalty is \$1,000 *for each day* of a continuing offense. *See Rosi* (“Since §3301 states clearly that this is a maximum amount, presumably a penalty of \$1,000.00 per day should be imposed only for the most egregious violations.”), at 10; *Independent Security Cab* (Code Section 3301 authorizes the Commission to impose a sum not exceeding \$1,000 per day on an entity violating the Code or regulations).

67. Notably, as soon as Clearview discovered the billing error as a result of an informal complaint filed by a customer with BCS on March 26, 2014, it fully refunded the overcharge to the informal complainant on March 27, 2014. Clearview then immediately queried all of its billing data, identified other affected customers and proactively and voluntarily issued full refunds or credits to each and every affected customer. Former customers who were no longer being served by Clearview received refunds during July and August 2014. Current customers received credits on their bills each month until the full overcharge had been reimbursed, with the process beginning in July 2014 and ending in December 2014. It took several months for some customers to be fully reimbursed because Clearview issued credits that did not exceed the monthly supply charges.

68. On April 15, 2014, Clearview revised its Policy to include: (i) protocols for the system to only allow increases or decreases within the range specified in a customer contract; (ii) the generation of exception reports identifying contracts that would exceed the pricing parameters; (iii) running queries when a change is made in a variable pricing to ensure customer rates are correct; and (iv) performing quarterly audits. Clearview proactively and voluntarily

made these changes to prevent a recurrence of the billing error made in early 2014 amidst the Polar Vortex crisis.

69. Therefore, by the time I&E initiated its informal investigation on April 23, 2014, Clearview had already comprehensively addressed the billing error that was the subject of the informal complaint that led to the investigation. Clearview had begun the process to fully reimburse all affected customers and had modified its internal practices to ensure proper billing of customers going forward. Indeed, no such errors have recurred in over two years.

70. Clearview then fully cooperated with I&E's informal investigation, which was expected to be completed within three months, per the express terms of I&E's April 23, 2014 letter. During those three months, Clearview provided full and complete responses to I&E's data requests. Not hearing any further communications from I&E following the responses provided on August 11, 2014, and the lapse of over three months by that time, Clearview understandably assumed that the investigation was complete and that I&E was satisfied with the responses, including the full reimbursement to affected customers and the modifications to its existing practices.

71. After hearing nothing from I&E for *over eighteen months* about a matter that had been fully resolved from Clearview's perspective, it was shocked to receive yet another data request on February 16, 2016. Even more alarming was to be served by the Complaint on May 5, 2016, more than two years after the events that precipitated the initiation of the informal investigation had been fully resolved.

72. The filing of a Complaint two years later setting forth serious allegations while telling only a small portion of the story and publicly seeking the imposition of a \$1.3 million civil penalty is harmful to Clearview's reputation as an EGS operating in Pennsylvania and other states. Rather than being one of many EGSs that are the subject of Polar Vortex litigation, the

Complaint singled out Clearview two years later. The retail electric market is a highly competitive industry and EGSs face difficult hurdles in acquiring customers, particularly with the small profit margins that are available due to artificially low prices charged by EDCs. *See Investigation of Pennsylvania's Retail Electric Market*, Docket No. I-2011-2237952 (Order adopted February 13, 2013) ("*RMI Order*"), at 12-14. Any minor setback can adversely affect an EGS's ability to acquire and retain customers – the very core of its business. Being unnecessarily and aggressively attacked by a Complaint over fully resolved matters involving an unintentional billing error is a major setback.

73. Moreover, needing to expend limited resources to defend a Complaint about an administrative error for which customers have been made whole is harmful to Clearview's business by interfering with its day-to-day operations. The long delay makes it even more difficult to defend the Complaint because of personnel changes and memory lapses as to specific details that occurred over this two-year period.

74. Condoning unnecessary and over-reaching enforcement efforts that are harmful to Clearview's business and make it more difficult to operate as an EGS in Pennsylvania would be contrary to the Commission's stated objectives of promoting the development of the retail competitive market. *RMI Order*. Therefore, the Commission should dismiss the Complaint, on the basis that Clearview has fully resolved the unintentional billing error through refunds and modifications to its business practices, and allow Clearview to move forward with the operation of its EGS business.

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

Dated: June 14, 2016

Respectfully submitted,



Karen O. Moury
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Counsel for Clearview Electric, 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

April 23, 2014

Francis X. McGovern
CEO/President
Clearview Electric, Inc.
1201 Elm Street, Suite 3200
Dallas TX 75270

RE: Informal Investigation of Clearview Electric, Inc.'s Activities Relating to
Possible Violations of Chapters 52 and 54 of Title 52 of the Pennsylvania
Code Bp8CaseID# 2416711

Dear Mr. McGovern,

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 Clearview Electric, Inc. ("Clearview" or "Company") consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506; and 52 Pa. Code § 3.113. This investigation will focus on Clearview's enrollment and billing practices as an electric generation supplier ("EGS") in Pennsylvania.

I&E's investigation has been prompted by an informal complaint filed on March 26, 2014, with the Commission's Bureau of Consumer Services ("BCS") at BCS No. 3211583. The complainant, Ms. Kathryn Ferguson, alleged that Clearview had recently billed her customer account (Mr. Douglas Ferguson) for an amount in the supplier portion of her PECO Energy Company ("PECO") bill that was based on a generation rate contrary to the rate that was promised at the time of enrollment. Documentation provided to this customer by Clearview at the time of her enrollment as a Clearview EGS customer indicated that the customer was guaranteed a variable rate per kWh in a "range from 8.9 cents to 17.9 cents...." However, when this customer received her February 2014 bill, the generation rate charged was 18.99 cents per kWh. Clearly, the rate billed of 18.99 cents per kWh exceeds the range of 8.9 cents to 17.9 cents per kWh. I&E understands that in its response to the BCS investigation dated March 27, 2014, Clearview admitted that the customer was overcharged based on the range set forth in the customer's month-to-month contract and that a refund of \$32.65 was sent to the customer by letter dated March 27, 2014.

This claim raises a concern regarding Clearview's compliance with Commission regulations that require EGSs to bill prices that reflect the agreed upon prices in the disclosure materials provided to the customer upon enrollment. This incident suggests, among other things, that Clearview may be conducting enrollment and billing of its EGS

services contrary to the "Marketing and Sales Practices for the Retail Residential Energy Market" regulations at 52 Pa. Code §§ 52.111.1-111.14 and "Electricity Generation Customer Choice" regulations at 52 Pa. Code §§ 54.1, *et seq.*

I&E, acting under delegated authority, is initiating its investigation pursuant to *Delegation of Prosecutory Authority to the Bureaus with Enforcement Responsibilities*, Docket No. M-00940594 (Order entered on September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S.A. § 308.2(a)(11). Pursuant to 52 Pa. Code § 3.113(a), I&E's prosecutory staff is authorized to conduct prosecutory investigations regarding the condition and management of a public utility or other corporation 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 no violation or potential violation has occurred, the investigation will be terminated by letter. 52 Pa. Code § 3.113(b)(1). In the event that I&E determines 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. 52 Pa. Code § 3.113(b)(2).

During the conduct 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 email address of the appropriate individual. At this time, I&E has the following inquiries and document requests regarding this matter, as described above. With regard to the following inquiries relative to the Company's EGS operations in Pennsylvania, please provide responses to the undersigned on or before May 20, 2014:

1. List the electric distribution company ("EDC") service territories in Pennsylvania within which Clearview currently offers EGS services. For each EDC service territory, indicate the dates that Clearview: (1) was authorized to provide EGS service; and (2) initiated the provision of EGS service.
2. For each EDC service territory identified in response to Data Request No. 1, indicate the number of customers served by Clearview, as of February 1, 2014, March 1, 2014 and April 1, 2014, categorized by customer class.
3. With regard to the Clearview customers in PECO's service territory as of April 1, 2014, provide the number of PECO customers who receive supply from Clearview on a fixed rate per kWh and the number of PECO customers who receive supply from Clearview on a variable rate per kWh.

4. With regard to the Clearview customers in PECO's service territory as of April 1, 2014 who receive supply from Clearview on a variable rate per kWh as identified in response to Data Request No. 3, provide: 1) the number of customers that were guaranteed by Clearview at the time of enrollment to receive supply at a variable rate per kWh with a capped maximum; and 2) of those customers, the number of customers that continue to receive supply from Clearview at a variable rate per kWh with a capped maximum in effect as of April 1, 2014.
5. With regard to the customers who were guaranteed by Clearview at the time of enrollment to receive supply at a variable rate per kWh with a capped maximum where said cap remains in effect as of April 1, 2014, as identified in response to Data Request No. 4(2), identify each variable rate pricing offer and list the terms and conditions of each offer.
6. With regard to each variable rate pricing offer listed in response to Data Request No. 5, provide the number of customers to which each variable rate cap plan applies.
7. With regard to the customers who were guaranteed by Clearview at the time of enrollment to receive supply at a variable rate per kWh with a capped maximum where said cap remains in effect as of April 1, 2014, as identified in response to Data Request No. 4(2), provide all billing data provided to PECO by Clearview, or its third party agent acting on Clearview's behalf, for electric generation service supplied by Clearview to those customers and billed in January, February, March and April 2014.
8. Provide a copy of Clearview's policies and procedures intended to be followed by Clearview, or a third party agent acting on Clearview's behalf, to ensure that each Clearview customer is billed at the rate that the customer is obligated to receive pursuant to the enrollment documentation provided by Clearview and received by the customer.
9. With regard to the incident concerning the Ferguson account that was the subject of the BCS informal complaint at BCS No. 3211583 and which prompted this investigation, provide copies of Clearview's findings and conclusions from any internal investigation, inquiry or report conducted by Clearview regarding this matter.

Note: Some of the above data requests may be deemed by Clearview to direct a response that requires Clearview to provide confidential, customer-specific

information. Provide all such information in your responses, and mark responses "Confidential" as deemed necessary.

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 all 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.

Inquiries and communications regarding this investigation should be addressed to the undersigned as follows:

Michael L. Swindler, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
Telephone: (717) 783-6369
Fax: (717) 783-3458
Email: mwindler@pa.gov

Please be advised that it is the intention of I&E to conclude this informal investigation within three (3) months. Should the investigation not be concluded, or an amicable resolution of this informal investigation by execution of a settlement agreement not be reached by that time, I&E may file a formal complaint to proceed to a docketed, on-the-record proceeding. Thank you for your immediate attention to this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Michael L. Swindler
Prosecutor, I&E

cc: Wayne Scott, First Deputy Chief Prosecutor

EXHIBIT B



Clearview Energy
Effective Date: March 31, 2013

Clearview Policy #: 3313
Revised: April 15, 2014

CLEARVIEW ENERGY VARIABLE RATE CUSTOMER ENROLLMENT POLICY

Purpose:

The purpose of this policy is to outline the procedures taken to enroll variable rate electricity customers on the Clearview operating system.

Scope:

This policy covers the enrollment steps for boarding new customers to the Clearview platform.

Additional Authority:

In addition to internal guidelines, this policy must adhere to rules set by various utilities.

Responsible Party:

Director of IT, Executive Committee

POLICY

I. Policy Statement

Clearview is responsible for the timely and correct boarding of new variable rate customers on the Clearview platform and ensure that all rules governing individual utilities are adhered to so that customer transition is a seamless process.

II. Procedure

Customer enrollments are received daily from various sources including telemarketing sales vendors, door to door sales vendors, on-line enrollments and internal generated enrollments from Customer Service. The following steps are to ensure that customers are boarded correctly in the system to minimize rejections from the corresponding utilities.

1. Enrollments are received daily from electronic sources and placed into batch files.
2. A query creates a temporary table which categorizes the enrollments by utility and variable rate plan.
3. A customer profile is created from the enrollment information and this is sent to the utility to establish service with Clearview.

4. All customer contracts and the current variable rates are linked by utility and plan.
5. Customer information including: name, service address, phone number, account number, Clearview plan number and rate is sent to the utility for boarding.
6. Customers on variable rate contracts are updated by plan and utility as the rate changes are determined by the Pricing Committee.
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.
9. Any increase or decrease in a variable rate is noted in the individual customer record.
10. In the event a customer is overbilled due to the rate applied being above the price range, IT will submit a request to the utility to rebill or provide the customer with a refund.
11. In the event a customer is underbilled due to the rate applied being below the price range, IT will submit a request to the utility to rebill or adjust the Clearview bill on the subsequent billing cycle.
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.
13. Any exceptions will generate a report and be corrected by IT.
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.

EXHIBIT C

Disclosure Statement
for Electric Generation Suppliers

This is an agreement for electric generation service Clearview Electric Inc. and **customer's name and full address.**

Background

- We at Clearview Electric Inc. are licensed by the Pennsylvania Public Utility Commission to offer and supply electric generation services in Pennsylvania. Our PUC license number is A-2010-2152506.
- We set the generation prices and charges that you pay. The Public Utility Commission regulates distribution prices and services. The Federal Energy Regulatory Commission regulates transmission prices and services.
- You will receive a single bill from your electric distribution company ("EDC") that includes our generation supply charges as well as the EDC's delivery charges.
- Right of Recision - You may cancel this agreement at any time before midnight of the third business day after receiving this disclosure.

Definitions

- Generation Charge - Charge for production of electricity.
- Transmission Charge - Charge for moving high voltage electricity from a generation facility to the distribution lines of an electric distribution company.

Terms of Service

(a)	<u>Price</u> Variable	<u>Electricity</u> Price is variable by month, is based on PJM market conditions, and the current projected wholesale cost of electricity. Starting price is \$.09999 kWh.
(b)	<u>Length of Contract</u> Variable Price	Month to month
(c)	<u>Terms of Renewal</u> Variable Price	Month to month until cancelled with 30 days notice.
(D)	<u>Cancellation Fees</u> Variable Price	None

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/>.

(b) Nonbasic Service Prices – N/A.

3. Length of Agreement

You will buy your electric generation service for the above street address from CLEARVIEW ELECTRIC beginning on a date set by your electric distribution company (EDC). This agreement will renew monthly until cancelled at anytime by either party.

4. Special Terms and Conditions*N/A***5. Special Services -***N/A***6. Cancellation Provisions**

Customer may rescind this Agreement within three (3) business days after the signing or receipt of this Agreement, whichever comes first, by contacting Clearview Electric Inc. at 1-888-884-1760 or in writing. Customer is liable for all Clearview Electric Inc. charges until Customer returns to the local distribution utility or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill which will be trued-up subsequent to the final meter reading.

Customer may cancel this Agreement at anytime by providing 30 days verbal or written notice. Customers may contact Clearview Electric, Inc. at 1-888-884-1760 or at the address below to provide notice.

7. Renewal Provision*N/A***8. Agreement Expiration/Change in Terms**

If Customer has a fixed term agreement and it is approaching the expiration date, renewal period or if we propose to change terms of service, we will send you two (2) advance notices either in your bill or in separate mailings between 45 and 90 days before either the expiration date or the effective date of the changes. We will explain your options in these two (2) advance notices.

9. Dispute Procedures

Contact us with any questions concerning our terms of service. You may call the PUC if you are not satisfied after discussing your terms with us.

10. Contact Information

Generation Supplier Name:	<u>Clearview Electric, Inc.</u>
Address:	<u>PO Box 7310</u> <u>Dallas, TX 75209-0310</u>
Phone Number:	<u>1-888-884-1760</u>
Internet Address:	<u>www.clearviewpower.com</u>
Electric Distribution Company Name:	<u>PPL Electric Utilities</u>
Provider of Last Resort Name:	<u>PPL Electric Utilities</u>
Address:	<u>Two North Ninth Street</u> <u>Allentown, PA</u>
Phone Number:	<u>1-800-342-5775</u>
Public Utility Commission (PUC)	<u>Utility Choice Hotline</u>
Address:	<u>P.O. Box 3265 Harrisburg, PA 17105-3265</u>
Electric Competition Hotline Number:	<u>1-800-692-7380</u>
Universal Service Program Name:	<u>PPL Electric Utilities</u>
Phone Number:	<u>1-800-342-5775</u>

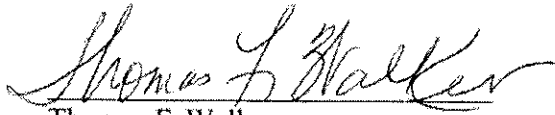
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT,	:	
Complainant	:	
	:	DOCKET NO. C-2016-2543592
v.	:	
	:	
CLEARVIEW ELECTRIC, INC.,	:	
Respondent.	:	

VERIFICATION

I, Thomas F. Walker, Regulatory, Clearview Electric, Inc., hereby state that the information set forth in the foregoing Answer and New Matter is true and correct to the best of my knowledge, information and belief. I understand that the statements here are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to the unsworn falsification to authorities).

June 14, 2016


Thomas F. Walker
Regulatory, Clearview Electric, Inc.

