



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

September 8, 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  
**I&E Prehearing Memorandum**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Prehearing Memorandum 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 blue ink, appearing to read "S. M. Wimer".

Stephanie M. Wimer  
Prosecutor  
PA Attorney ID No. 207522

Enclosures

cc: Honorable Elizabeth H. Barnes  
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-2016-2543592
	:	
Clearview Electric, Inc.,	:	
Respondent	:	

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**PREHEARING CONFERENCE MEMORANDUM OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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**TO ADMINISTRATIVE LAW JUDGE ELIZABETH H. BARNES:**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) respectfully submits the following Prehearing Conference Memorandum in the above-captioned proceeding pursuant to the Amended Prehearing Conference Order of the presiding Administrative Law Judge (“ALJ”) dated August 3, 2016.

**I. BACKGROUND**

On May 4, 2016, I&E filed a Formal Complaint against Clearview Electric, Inc. (“Clearview,” “Respondent” or “Company”) 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.

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 Commission regulations pertaining to the requirement to provide notice of a change in terms of a contract; (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 Answer, Clearview admits overcharging customers and asserts that the overcharges are the result of an administrative error. Clearview denies that it

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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.

failed to provide notice to customers of a change in contract terms. The Company disagrees with the civil penalty that I&E seeks to impose.

On July 5, 2016, I&E replied to Clearview's New Matter denying the material averments made therein.

By notice dated July 28, 2016, this matter was scheduled for an Initial Hearing on September 12, 2016 at 10:00 AM in Harrisburg before ALJ Elizabeth H. Barnes. A Prehearing Order dated July 28, 2016 was served to the parties on August 1, 2016.

On August 3, 2016, I&E filed an unopposed Motion to Convert the Initial Hearing scheduled for September 12, 2016 into a Prehearing Conference.

By Amended Prehearing Conference Order dated August 3, 2016, the Initial Hearing was converted into a Prehearing Conference scheduled for September 12, 2016, and the parties were directed to serve prehearing conference memoranda on or before September 8, 2016.

## **II. I&E PREHEARING CONFERENCE MEMORANDUM**

### **A. Service List and Distribution List**

The following prosecutor should be entered on the service list for I&E:

Stephanie M. Wimer  
Prosecutor  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 772-8839  
(717) 783-3458 (fax)  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

I&E respectfully requests that the following person be added to any e-mail distribution lists in this matter: Michael L. Swindler, Deputy Chief Prosecutor, [mwindler@pa.gov](mailto:mwindler@pa.gov).

B. Statement Regarding Possible Settlement Of Case

The parties met in early July to discuss the possibility of a settlement and have exchanged confidential settlement communications since that initial in-person meeting. I&E is of course willing to discuss an amicable resolution that would be subject to the approval of the Commission. In the event that such a resolution cannot be reached, I&E is prepared to fully litigate this matter.

C. Proposed Modifications to the Commission's Discovery Regulations

I&E does not propose any modifications to the Commission's regulations pertaining to discovery at 52 Pa. Code §§ 5.321 *et seq.*

D. Proposed Schedule for Litigation

Since the allegations of overbilling set forth in I&E's Complaint are largely based on billing data provided by Clearview and such overbillings were admitted by Clearview in its Answer, I&E does not foresee a need to hold public input hearings in order to gather customer testimony to provide evidence for I&E's allegations.

In order to facilitate the efficient and timely resolution of this matter, I&E proposes the following litigation schedule:

October 19, 2016	I&E's written direct testimony served
November 30, 2016	Clearview's written rebuttal testimony served
January 9, 2017	I&E's written surrebuttal testimony served
January 30, 2017	Close of discovery
February 15-16, 2017	Evidentiary hearing in Harrisburg
March 20, 2017	All parties file and serve Main Briefs
April 10, 2017	All Parties file and serve Reply Briefs

I&E is amenable to working with counsel for Clearview to develop a schedule for this proceeding.

E. I&E Witnesses

I&E expects to call the following expert witness who is highly experienced in EGS matters in Pennsylvania:

Daniel Mumford  
Director  
Office of Competitive Market Oversight  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 783-1957  
[dmumford@pa.gov](mailto:dmumford@pa.gov)

Mr. Mumford is expected to testify about all relevant matters related to I&E's informal investigation, including the billing data provided by Clearview in response to I&E's data requests that shows 10,351 instances of overcharging during a four-month period, and the absence of advance notice that Clearview was required to provide to customers to notify them of the billing increase. It is expected that Mr. Mumford's testimony will support the relief that I&E seeks.

I&E reserves the right to call additional witnesses and will advise accordingly.

F. Issues

The following is a list of issues that I&E intends to address in this proceeding. I&E reserves the right to address other issues, as it deems appropriate, if any such relevant issues arise.

1. Clearview's alleged violation of Section 54.4(a) of the Commission's regulations, 52 Pa. Code § 54.4(a), by billing EGS prices that exceeded the capped variable rate pricing plan guaranteed by Clearview in the Disclosure Statement provided to customers.
2. Clearview's alleged failure to provide notice to customers of a change in contract terms in that the specific term of Clearview's capped variable rate pricing plan was changed to include rates that exceeded the maximum capped amount without prior communication of the change to customers, which constitutes a violation of Section 54.5(g)(1) of the Commission's regulations, 52 Pa. Code § 54.4(g)(1), as was in effect between September 15, 2007 and June 13, 2014.<sup>2</sup>
3. I&E's requested relief in the form of a civil penalty of \$125 per overcharge – the precise amount of which is supported by recent precedent in a nearly identical matter,<sup>3</sup> a civil penalty for the failure to notify customers of the change in the capped variable rate pricing plan, refunds to customers consisting of

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<sup>2</sup> See 37 Pa. Bull. 4996 (September 15, 2007). I&E's Complaint alleges that such action violates Section 54.10 of the Commission's regulations, 52 Pa. Code § 54.10. Section 54.10 became effective on June 14, 2014, subsequent to the period of time that I&E alleges Clearview overcharged customers. I&E is prepared to correct this legal technicality either through an amendment to the Complaint or through the direct testimony of I&E's witness. However, the substance of I&E's allegations regarding the failure to provide customers with notice of the change in terms of the capped variable rate pricing plan were covered under a nearly identical regulation that was in effect during the time that the violations occurred.

the overcharged amount, and revisions to Clearview's billing system and policies to prevent rates from exceeding the maximum rate promised to customers.

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

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Date: September 8, 2016

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<sup>3</sup> *Pa. Public Util. Comm'n, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015).

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.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)

*Counsel for Clearview Electric, Inc.*



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Prosecutor  
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Dated: September 8, 2016