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December 2, 2016

**Via Electronic Filing**

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation & Enforcement v.  
Clearview Electric Inc., Docket No. C-2016-2543592

Dear Secretary Chiavetta:

On behalf of Clearview Electric Inc., I have enclosed for electronic filing its Motion For Modifications to Procedural Schedule in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Sincerely,



Karen O. Moury

KOM/lww  
Enclosure

cc: Hon. Elizabeth H. Barnes, w/enc.  
Certificate of Service w/enc.

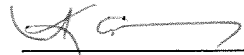
**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of Clearview Electric's Motion for Modifications to Procedural Schedule upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email and/or First Class Mail**

Michael L. Swindler, Esq.  
Stephanie M. Wimer, Esq.  
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Dated: December 2, 2016



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Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**MOTION OF CLEARVIEW ELECTRIC, INC.  
FOR MODIFICATIONS TO PROCEDURAL SCHEDULE**

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TO ADMINISTRATIVE LAW JUDGE ELIZABETH BARNES:

Clearview Electric, Inc. (“Clearview”) files this unopposed Motion for Modifications to the Procedural Schedule (“Motion”), pursuant to Section 1.15 of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 1.15, and in connection therewith avers as follows:

**I. INTRODUCTION**

1. Clearview submits this request for modifications to the procedural schedule so that it has sufficient time to adequately prepare rebuttal testimony to respond to the direct testimony served by the Bureau of Investigation and Enforcement (“I&E”) on October 26, 2016. I&E has authorized Clearview to represent that it does not oppose this Motion. Additionally, the parties have consulted and agreed upon proposed briefing dates for consideration by Administrative Law Judge (“ALJ”) Elizabeth Barnes.

2. The proposed changes to the procedural schedule are as follows:

	<b>Current Date</b>	<b>Proposed Date</b>
I&E Direct Testimony	October 26, 2016	N/A
Clearview Rebuttal Testimony	December 7, 2016	January 9, 2017
I&E Surrebuttal Testimony	January 9, 2017	February 13, 2017
Evidentiary Hearings	February 15-16, 2017	March 21-22, 2017
Main Briefs	N/A	May 3, 2017
Reply Briefs	N/A	May 26, 2017

3. Clearview has acted diligently in an effort to timely serve its rebuttal testimony in accordance with the procedural schedule established for this proceeding. Given the high stakes of this proceeding, including the magnitude of the proposed civil penalty and the requested suspension of Clearview's license, it is imperative that Clearview have sufficient time to adequately prepare its rebuttal testimony.

4. The primary reasons supporting this request for modifications to the procedural schedule are: 1) in reviewing I&E's interrogatory responses that were served on Clearview on November 29, 2016, Clearview determined that it was necessary to serve another round of discovery on I&E in order to ensure that its rebuttal testimony comprehensively addresses I&E's direct testimony; 2) I&E's direct testimony contains a discussion about the status of Clearview's bond in December 2015, which was not alleged in the Complaint filed on May 5, 2016 and requires research to fully address; and 3) in preparing rebuttal testimony, Clearview has uncovered an issue, which involves an extensive manual review of Clearview's records that may require the filing of supplemental discovery responses to I&E's interrogatories and incorporation into Clearview's rebuttal testimony.

5. In addition, Clearview notes that the requested modifications to the procedural schedule will afford the parties additional time to engage in settlement discussions, which are encouraged by the Commission's regulations.

6. Clearview respectfully requests that ALJ Barnes approve the proposed modifications to the procedural schedule. To the extent that the ALJ's schedule conflicts with the proposed dates for the evidentiary hearings, Clearview will work with I&E and the ALJ to select mutually convenient dates.

## **II. BACKGROUND**

7. Clearview Electric is an electric generation supplier licensed by the Commission since May 7, 2010 at Docket No. A-2010-2152506 to supply electricity or electric generation service to retail customers throughout the Commonwealth of Pennsylvania.

8. On May 5, 2016, I&E filed a Complaint alleging that from February through April 2014, Clearview issued bills to consumers in the service territories of PECO Energy Company and PPL Electric Utilities that contained prices that exceeded the ceiling price in the disclosure statement by one cent per kWh.

9. Through the Complaint, I&E sought a \$125 civil penalty for each bill containing an error and requested that the Commission impose a civil penalty in the amount of \$1,293,875. In addition, I&E alleged that Clearview changed contract terms without providing notice in violation of Section 54.10 of the Commission's regulations, 52 Pa. Code § 54.10. The total cumulative civil penalty sought by the Complaint is \$1,300,000. The Complaint also requests that Clearview be directed to issue refunds to consumers and that Clearview's license be suspended pending compliance with monetary and non-monetary penalties directed by the Commission.

10. Clearview filed an unopposed request for an extension of time to file responsive pleadings, which was granted by Secretarial Letter dated May 18, 2016.

11. Clearview timely filed an Answer and New Matter on June 14, 2016. In the Answer and New Matter, Clearview explained: (i) the different terms and conditions in variable plans that it has offered to residential and commercial customers in Pennsylvania; (ii) how the one cent per kWh billing error, which resulted in total overcharges of \$105,225.64 to 4,157 customers, occurred in early 2014; (iii) its proactive efforts to issue full refunds in the amount of \$105,225.64 to all affected consumers, which was completed by the end of 2014; and (iv) changes that were made to its internal practices in April 2014 to ensure that such an error does not recur. Clearview also noted that the provisions of the Commission's regulations regarding advance notices of proposed changes in contract terms are inapplicable since Clearview did not propose to change any contract terms.

12. Clearview further challenged the civil penalty proposed by I&E as being inconsistent with the factors set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201, particularly as those factors were applied by the Commission in *PA PUC v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015).

13. I&E filed a Reply to New Matter on July 5, 2016.

14. Clearview and I&E filed prehearing memoranda on September 8, 2016.

15. ALJ Barnes convened a prehearing conference on September 12, 2016.

16. On September 23, 2016, ALJ Barnes issued a Procedural Order establishing a procedural schedule for this proceeding.

17. By this Motion, Clearview proposes the following changes to the procedural schedule, which are unopposed by I&E:

	<b>Current Date</b>	<b>Proposed Date</b>
I&E Direct Testimony	October 26, 2016	N/A
Clearview Rebuttal Testimony	December 7, 2016	January 9, 2017
I&E Surrebuttal Testimony	January 9, 2017	February 13, 2017
Evidentiary Hearings	February 15-16, 2017	March 21-22, 2017
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### III. DISCUSSION

18. Requests for continuances may be granted by the presiding officer “for good cause” under Section 1.15 of the Commission’s regulations, 52 Pa. Code § 1.15.

19. The Commission has held that good cause exists where the movant has acted diligently in preparing its case but requires additional time to prepare and present its case adequately. *See, e.g., Pa. P.U.C., Bureau of Transportation and Safety v. USA Express Moving & Storage*, A-00117215C0701, 2010 WL 1458129 (Pa. P.U.C. April 8, 2010); *Petition of UGI Utilities, Inc. – Gas Div. for an Extension of Time*, No. P-00072269, 2007 WL 1307904 (Pa. P.U.C. Apr. 24, 2007).

20. Although Clearview has acted diligently in an effort to serve rebuttal testimony in accordance with the procedural schedule established in this proceeding, Clearview is seeking modifications to ensure that it has sufficient time to adequately prepare rebuttal testimony to respond to the direct testimony served by I&E on October 26, 2016.

21. The stakes are very high in this proceeding due to the magnitude of the civil penalty requested by I&E in the Complaint and because of the request for a suspension of Clearview’s license pending payment of a Commission-ordered civil penalty. *See Cmwlth. of PA, et al. v. Respond Power LLC*, Docket No. C-2014-2427659 (Order Granting Second Motion for Continuance dated December 29, 2014, at page 6).

22. While Clearview appreciates the timely service of I&E's interrogatory responses on November 29, 2016, the Company has found that incorporating them into the rebuttal testimony is taking longer than previously anticipated, particularly due to the additional factors noted below.

23. In reviewing I&E's interrogatory responses and after consultation with I&E regarding certain responses, Clearview determined that it was necessary to serve another round of discovery on I&E in order to ensure that Clearview's rebuttal testimony comprehensively addresses I&E's direct testimony. That discovery was served on December 1, 2016, with responses due on December 21, 2016.

24. Additionally, I&E's direct testimony contains allegations about the status of Clearview's bond in December 2015, which were not set forth in I&E's Complaint filed on May 5, 2016. As Clearview was only made aware of these allegations upon receipt of I&E's direct testimony, it needs additional time to adequately address those matters in its rebuttal testimony.

25. Also, while preparing rebuttal testimony, Clearview uncovered an issue that may require the filing of supplemental discovery responses to I&E's interrogatories and incorporation into Clearview's rebuttal testimony. As this discrepancy was only discovered on November 30, 2016, Clearview has not yet had an opportunity to manually review the records of 4,157 customers to ascertain its impact on this proceeding.<sup>1</sup>

26. Finally, granting these proposed modifications would afford the parties additional time to engage in settlement discussions in an effort to reach an amicable resolution of the issues in this proceeding. Such efforts are consistent with the Commission's policy of encouraging settlements. 52 Pa. Code § 5.231.

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<sup>1</sup> Clearview has explained this issue in greater detail to I&E.

WHEREFORE, Clearview Electric, Inc. respectfully requests that the Administrative Law Judge grant this Motion for Modifications to the Procedural Schedule.

Respectfully submitted,



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Dated: December 2, 2016

Counsel for Clearview Electric, Inc.