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January 5, 2017

**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:

Enclosed for electronic filing please find Clearview Electric, Inc.'s Motion for Issuance of Protective Order along with a proposed Protective Order regarding the above-referenced matter. Copies to be served in accordance with 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 Issuance of Protective Order 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.  
Bureau of Investigation & Enforcement  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[mwindler@pa.gov](mailto:mwindler@pa.gov)  
[stwimer@pa.gov](mailto:stwimer@pa.gov)

Dated: January 5, 2017



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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 ISSUANCE OF PROTECTIVE ORDER**

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TO ADMINISTRATIVE LAW JUDGE ELIZABETH BARNES:

Clearview Electric, Inc. (“Clearview”) files this Motion for Issuance of a Protective Order (“Motion”) pursuant to Section 5.365 of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 5.365, and in connection therewith avers as follows:

1. On May 4, 2016, the Bureau of Investigation and Enforcement (“I&E”) filed a Complaint against Clearview.
2. On June 14, 2016, Clearview filed an Answer and New Matter.
3. On July 5, 2016, I&E filed a Reply to New Matter.
4. Administrative Law Judge (“ALJ”) Barnes convened a prehearing conference on September 12, 2016. At that time, Clearview noted in the prehearing memorandum that a protective order may be requested later in the proceeding.

5. I&E served the direct testimony of Mr. Daniel Mumford on October 26, 2016.<sup>1</sup>

6. Under a Procedural Order issued on December 6, 2016, the Administrative Law Judge established January 9, 2017 for the filing of a rebuttal testimony by Clearview. Hearings are scheduled for March 21-22, 2017.

7. In the preparation of rebuttal testimony, Clearview has identified three pieces of information which it seeks to have treated as proprietary. This includes the total amount of Clearview's bond that is currently on file with the Commission, any inferences regarding the amount of gross operating revenues for the prior twelve-month period and the number of customers served by Clearview.

8. Under 52 Pa. Code §§ 5.362(a)(7) and 5.365, the ALJ may issue a Protective Order to limit or prohibit disclosure of confidential commercial information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. In applying this standard, relevant factors to be considered include: the extent to which disclosure would cause unfair economic or competitive damage; the extent to which the information may already be known by others; and the potential value of such information to the party and the party's competitors. 52 Pa. Code §§ 5.365(a)(1)-(3).

9. In providing the amount of the bond to I&E during discovery, Clearview neglected to mark it as confidential and therefore it appears in Mr. Mumford's direct testimony.<sup>2</sup> Also, on the same page, Mr. Mumford's testimony draws an inference from the bond amount as to the amount of gross operating revenues for the prior twelve-month period.

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<sup>1</sup> I&E Statement No. 1.

<sup>2</sup> I&E Statement No. 1 at 53.

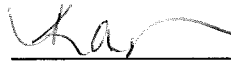
10. Because of the inference that may be drawn between the amount of the bond and the amount of gross intrastate operating revenues, Clearview submits that both references are commercially sensitive information and should be treated in a proprietary manner. Financial information and competitively sensitive data of EGSs are routinely treated as confidential by the Commission, commencing with the licensing process. *See* 52 Pa. Code § 54.32(f); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670 (Order dated March 16, 2012). *See also* *Petition of MidAmerican Energy Company for Reduction in Bonding Requirement*, Docket No. A-2010-2201370, Secretarial Letter issued October 20, 2015 (company marked gross operating revenue data as confidential and such treatment was honored by the Commission).

11. As to the number of customers that are served by Clearview, this data point does not appear in Mr. Mumford's direct testimony but it will appear in Clearview's rebuttal testimony. Clearview will mark it as proprietary and asks that it be treated in such a manner throughout the remainder of this proceeding. As with information about revenues, the Commission has routinely treated customer count data as confidential. *See Retail Electricity Choice Activity Reports*, Docket No. L-00070184 (Order entered August 8, 2008) (confirming that information related to individual EGS market share be kept confidential); 52 Pa. Code § 54.204. *See also Commonwealth et al. v. Blue Pilot Energy, LLC*, Docket No. C-2014-2427655 (Initial Decision served July 7, 2016).

12. I&E has authorized Clearview to represent that it does not oppose this Motion.

WHEREFORE, Clearview Electric, Inc. respectfully requests that the Administrative Law Judge grant this Motion for Issuance of Protective Order and issue the attached draft Protective Order to ensure the confidential treatment of the amount of the bond, the inferred level of gross operating revenues and the number of customers served by Clearview.

Respectfully submitted,



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Dated: January 5, 2017

Counsel for Clearview Electric, Inc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PROTECTIVE ORDER**

Upon consideration of the Motion for Issuance of Protective Order that was filed by Clearview Electric, Inc.,

**IT IS ORDERED THAT:**

1. The Motion is hereby granted with respect to all materials and information identified in Paragraph 2 below (“Proprietary Information”), which will be presented during the above-captioned proceeding pending before the Pennsylvania Public Utility Commission (“Commission”).

2. The materials subject to this Protective Order are the amount of Clearview’s current bond on file with the Commission, any inferences drawn from that amount concerning the level of gross intrastate operating revenues for a twelve-month period, and the number of customers served by Clearview.

3. Proprietary Information produced in this proceeding shall be made available only to the Commission and Commission staff. Commission staff includes: (i) the Bureau of Investigation and Enforcement (“I&E”) prosecutors who have entered an appearance in this proceeding; (ii) a paralegal, administrative assistant or other employee associated for the purposes

of this proceeding with an I&E prosecutor described in subparagraph (i); (iii) I&E's witnesses in this proceeding; or (iv) an employee or other representatives of I&E with significant responsibility in this proceeding. To the extent that Proprietary Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Protective Order.

4. No other persons may have access to the Proprietary Information except as authorized by order of the Commission or the presiding Administrative Law Judge.

5. Proprietary Information shall not be used except as necessary for the conduct of this proceeding.

6. Any public reference to the Proprietary Information shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

7. Any part of the record in this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination and argument, and including reference thereto, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through Clearview's agreement or pursuant to an order of the Commission.

Dated:

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Elizabeth Barnes, Administrative Law Judge