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January 11, 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 Summary Judgment 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 Summary Judgment 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 11, 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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**NOTICE TO PLEAD**

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To: Michael L. Swindler, Esq.  
Stephanie M. Wimer, Esq.  
Bureau of Investigation & Enforcement  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

You are hereby notified that pursuant to 52 Pa. Code 5.102, a written response to the enclosed Motion for Summary Judgment of Clearview Electric, Inc. is due within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,



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Karen O. Moury  
PA Attorney I.D. # 36879  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Fl.  
Harrisburg, PA 17101  
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Dated: January 11, 2016

**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 SUMMARY JUDGMENT**

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TO ADMINISTRATIVE LAW JUDGE ELIZABETH BARNES:

Clearview Electric, Inc. (“Clearview” or “Company”) files this Motion for Summary Judgment pursuant to Section 5.102(a) of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 5.102(a), and in connection therewith avers as follows:

**I. INTRODUCTION**

1. Clearview is an electric generation supplier (“EGS”) licensed by the Commission since 2010 at Docket No. A-2010-2152506 to supply electricity or electric generation services to residential, small commercial, large commercial, industrial and governmental customers throughout the Commonwealth of Pennsylvania.

2. On May 4, 2016, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Formal Complaint (“Complaint”) against Clearview, alleging that the Company violated Section 54.4(a), which requires billed prices to reflect prices in disclosure statements. 52 Pa. Code §54.4(a).

3. Prior to June 1, 2013, disclosure statements issued to Clearview customers who enrolled in variable price plans contained a per kWh price range of 8.9 cents to 17.9 cents, plus all applicable taxes. During the months of February 2014, March 2014 and April 2014, Clearview charged the price of 18.99 cents per kWh to 4,157 customers who received disclosure statements containing a price range.

4. The attached Affidavit of Frank McGovern, President of Clearview (“McGovern Affidavit”), demonstrates that Clearview’s billed prices in February 2014, March 2014 and April 2014 were consistent with the pricing information set forth in the disclosure statement. Specifically, when the applicable gross receipts tax (“GRT”) of 5.9% is applied to the price of 17.9 cents per kWh, the effective unit rate for electricity would be 19.022 cents per kWh.

5. The price of 18.99 cents per kWh was below the price cap of 17.99 cents per kWh, plus all applicable taxes, in Clearview’s disclosure statement. Therefore, Clearview did not violate Section 54.4(a) of the Commission’s regulations and the Complaint should be dismissed.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

6. On May 4, 2016, the Bureau of Investigation and Enforcement (“I&E”) filed a Complaint against Clearview.

7. On June 14, 2016, Clearview filed an Answer and New Matter.

8. On July 5, 2016, I&E filed a Reply to New Matter.

9. Administrative Law Judge (“ALJ”) Barnes convened a prehearing conference on September 12, 2016.

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

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

11. Under a Procedural Order issued on December 6, 2016, the Administrative Law Judge established January 9, 2017 as the filing date for Clearview's rebuttal testimony.

12. Clearview served rebuttal testimony of Mr. Frank McGovern,<sup>2</sup> Ms. Nicole Steele,<sup>3</sup> Mr. Thomas Walker<sup>4</sup> and Mr. Frank Lacey<sup>5</sup> on January 9, 2017.

13. I&E's surrebuttal testimony is due on February 13, 2017.

14. Evidentiary hearings are scheduled for March 21-22, 2017.

### **III. ARGUMENT**

#### **A. Applicable Legal Standard**

15. The Commission's Rules of Administrative Practice and Procedure permit parties to file preliminary motions. 52 Pa. Code §§5.101-103. Specifically, the Commission's regulations at 52 Pa. Code §5.102(a) permit any party to move for summary judgment after the pleadings are closed, but within such time as not to delay a hearing. A motion for summary judgment must be based on the pleadings, depositions, answers to interrogatories, admissions and supporting affidavits. 52 Pa. Code §5.102(c). The presiding officer must grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

16. Summary judgment is properly granted where the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no

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<sup>2</sup> Clearview Statement No. 1 (proprietary and non-proprietary versions).

<sup>3</sup> Clearview Statement No. 2.

<sup>4</sup> Clearview Statement No. 3.

<sup>5</sup> Clearview Statement No. 4.

genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Pennsylvania State Univ. of County of Centre*, 532 Pa. 142, 144-145, 615 A.2d 303, 304 (1992).

17. In the case of a motion for summary judgment, the moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1978). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Company v. Pike Coal Company*, 412 A.2d 466 (Pa. 1979). Summary judgment will be granted only where the right is clear and free from doubt.

18. The non-moving party in a motion for summary judgment must allege facts showing that an issue for trial exists. *Stover v. The United Telephone Company of Pennsylvania*, 1992 Pa. PUC Lexis 103, Docket No. C-00923833 (Order entered July 21, 1992). The Commission has interpreted 52 Pa. Code § 5.102(c) in conformity with Rule 1035 (now Rule 1035.1) of the Pennsylvania Rules of Civil Procedure. *South River Power Partners, L.P. v. West Penn Power Company*, Docket No. C-00935287 (Order entered November 6, 1996). In civil practice, a non-moving party may not rely solely upon denials in its pleadings, but must submit some materials to establish that a genuine issue of material facts exists. *Nicastro v. Cuyler*, 467 A.2d 1218 (Pa. Cmwlth. 1983); *Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc.*, 467 A.2d 330 (Pa. Super. 1983); *Geriot v. Council of Borough of Darby*, 457 A.2d 202 (Pa. Cmwlth. 1983); *see also*, Pa. R.C.P. 1035.3, providing that “[s]ummary judgment may be entered against the non-moving party who does not respond.” Pa. R.C.P. 1035.3(d).

19. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa. C.S. §703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. PUC*, 540 A.2d 1006 (Pa. Cmwlth. 1988); *White Oak Borough Authority v. Pa. PUC*, 103 A.2d 502 (Pa. Super. 1954).

**B. No Genuine Issue of Material Fact Exists**

20. A review of the pleadings, as supplemented by the Affidavit accompanying this Motion, demonstrates that no genuine issue of material fact exists and that when the facts alleged by I&E are accepted as true, no violation of Section 54.4(a) of the Commission's regulations has been shown.

21. Prior to June 1, 2013, the disclosure statements that Clearview sent to customers who enrolled on a variable rate plan contained an initial price; noted that the price would vary on a monthly basis; explained the conditions of variability as being the current market conditions and projected wholesale energy prices; and set forth a per kWh price range of 8.9 cents to 17.9 cents, plus all applicable taxes ("legacy disclosure statements").<sup>6</sup>

22. Starting on June 1, 2013, the disclosure statements that Clearview sent to customers who had enrolled on a variable rate plan contained an initial price; noted that the price would vary on a monthly basis; and explained the conditions of variability as being the current market conditions and projected wholesale energy prices ("updated disclosure statements"). No price range was included in the updated disclosure statements.<sup>7</sup>

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<sup>6</sup> I&E Statement No. 1 at 19; I&E Exhibit 5; Affidavit ¶ 5. A full copy of the legacy disclosure statement is attached to the McGovern Affidavit as Exhibit A.

<sup>7</sup> McGovern Affidavit ¶ 6.

23. During February, March and April 2014, 4,157 customers who had received the legacy disclosure statements were charged the price of 18.99 cents per kWh. This price appeared on 10,334 invoices or bills during that time period.<sup>8</sup>

24. The applicable gross receipts tax (“GRT”) for electricity sales is 5.9% and the formula to calculate the appropriate tax is:<sup>9</sup>

$$\text{Effective Unit Cost} = \frac{\text{Taxable Amount}}{1 - \text{GRT Rate}}$$

Due to a gross-up factor, the actual GRT rate is 6.27%. Adding the applicable GRT to the 17.9 cent cap in the legacy disclosure statements would produce an effective total cost of electricity of 19.022 cents per kWh.<sup>10</sup> This calculation is shown mathematically as:

$$\frac{17.9}{1 - 0.059} = 19.022$$

25. Although Clearview has characterized the charge of 18.99 cents as a billing error, overcharge or overbilling from a business or operational perspective, the price of 18.99 cents per kWh is less than 19.022 cents per kWh.<sup>11</sup> Clearview’s characterization of the billing event does not change the facts or affect whether Clearview violated the Commission’s regulations. As the price of 18.99 cents per kWh is within the acceptable price range set forth in the disclosure

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<sup>8</sup> I&E Statement No. 1 at 50; McGovern Affidavit ¶ 7.

<sup>9</sup> See Pennsylvania Power Switch website “Frequently Asked Questions-Tax”: <http://www.papowerswitch.com/frequently-asked-questions> (Excerpt attached as Appendix I); See also See recap of CHARGE Conference Call for January 7, 2010 at: [http://www.puc.pa.gov/electric/docs/OCMO/CHARGE\\_Recap010710.doc](http://www.puc.pa.gov/electric/docs/OCMO/CHARGE_Recap010710.doc) (Issue 1, second topic) (Copy attached as Appendix II).

<sup>10</sup> McGovern Affidavit ¶ 8.

<sup>11</sup> McGovern Affidavit ¶¶ 9, 11.

statement, the Complaint fails to set forth facts that support a finding that Clearview violated Section 54.4(a) of the Commission's regulations and should be dismissed without hearing.

**C. No Jurisdiction To Interpret Contracts**

26. To the extent that the Commission disagrees with the position of Clearview that the price of 18.99 cents per kWh is within the acceptable price range set forth in the disclosure statement, such determination would require it to interpret the language of the contract, which is beyond the Commission's statutory authority.

27. As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Public Utility Code. *See City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) ("We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission's power is statutory; and the legislative grant of power in any particular case must be clear."); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

28. It is well-settled that the Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

29. Nothing in the Code confers jurisdiction on the Commission to regulate EGS prices. To the contrary, in enacting the Competition Act, the General Assembly made it clear that the price

of generation supply is exempt from regulation, noting that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. §2802(5). Indeed, the Commission has recognized its lack of jurisdiction to regulate prices charged by EGSs. *See Commonwealth of Pennsylvania, et al. v. IDT Energy, Inc.*, Docket No. C-2014-2427657, Docket No. C-2014-2427657 (Order entered December 18, 2014) (*IDT Interloctuary Order*); *CRH Catering Company, Inc. v. Blue Pilot Energy, LLC*, Docket No. P-2014-2451865 (Order entered February 24, 2015), at 16 (it is “well-settled that the Commission does not have traditional ratemaking authority over competitive supplies and cannot regulate competitive supply rates”).

30. Moreover, nothing in the Code authorizes the Commission to interpret the terms and conditions of a private contract between an EGS and its customers. Indeed, the Commission has concluded that its jurisdiction over EGSs “does not extend to interpreting the terms and conditions of a contract between an EGS and a customer to determine whether a breach has occurred or setting the rates an EGS can charge.” *Office of Small Business Advocate v. FirstEnergy Solutions Corp.*, Docket No. P-2014-2421556 (Order entered January 26, 2015), at 18.

31. Matters involving contract interpretation are for courts of competent jurisdiction. *See Allport Water Auth. V. Winburne Water Co.*, 258 Pa. Super. 555, 393 A.2d 673 (Pa. Super. 1978) (Commission lacks jurisdiction to address disputes involving private contracts; *Adams et al. v. Pa. PUC*, 819 A.2d 631 (Pa. Cmwlth. 2003). Indeed, as the case law envisions, Pennsylvania county courts of common pleas have resolved contractual disputes between EGSs and their customers. *See, e.g., Tech Met, Inc. et al. v. Strategic Energy, LLC* (Court of Common Pleas of Allegheny County – Civil Division, Docket No. GD-05-030407, Memorandum and Order of Court

entered June 4, 2014) (a copy of Order granting summary judgment in favor of EGS is attached as Appendix III).

32. While recognizing its limited statutory authority in the area of EGS pricing and contracts, the Commission has found that it may determine whether an EGS's prices conformed to the disclosure statement. *See IDT Interlocutory Order* at 24-25. Due to the interlocutory nature of that order, and the fact that a settlement that was later approved by Commission Order entered on June 30, 2016, the Commission ultimately did not address the question of whether the EGS's prices conformed to the disclosure statement. Based upon the case law cited above, Clearview submits that the Commission clearly may not interpret contracts.

33. In *PA PUC, Bureau of Investigation and Enforcement v. HIKO Energy LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015), the Commission found that the EGS had violated Section 54.4(a) by charging a price that did not match the price that was promised in the disclosure statement. However, in that case, the Commission was not required to interpret any language in the disclosure statement since it was undisputed that the prices charged by the EGS exceeded a guaranteed introductory rate in the contract.

34. In this proceeding, it is undisputed that that Clearview charged a price of 18.99 cents per kWh to customers who received a disclosure statement, which contained a per kWh price range of 8.9 cents to 17.9 cents, plus all applicable taxes. Further, it is beyond dispute that when the applicable GRT of 5.9% is added to 17.9 cents, the effective unit rate would be 19.022 cents per kWh, which is higher than the price charged by Clearview. Any additional examination of the language in the disclosure statement by the Commission would venture into impermissible contract interpretation.

35. The ultimate question that must be answered – either by a court or by the Commission – is whether 18.99 cents per kWh was permitted under the contract that contained a price ceiling of 17.9 cents per kWh plus all applicable taxes.<sup>12</sup> The Commission should find that the price of 18.99 cents per kWh was permissible under the disclosure statement since simple mathematics show that adding the GRT to the price ceiling produces an effective unit rate that exceeds the price charged by Clearview.

36. To the extent that it is necessary to go further and determine what is meant by the remainder of the “language which states that “[t]his price includes Transmission Charges and Estimated Total State Taxes, including the Gross Receipts Tax, but excludes applicable state and local Sales Taxes,”<sup>13</sup> it is imperative that such analysis be performed by a court of competent jurisdiction.

37. In a legal proceeding involving an interpretation of this language, Clearview would argue that the phrase “[t]his price” in the sentence quoted in Paragraph 36 refers to the initial price of 9.9999 cents per kWh. Alternatively, Clearview would contend that “[t]his price” refers to the total price that is produced by the 8.9 cent to 17.9 cent price range, plus all applicable taxes, and then note that it does not include applicable state and local sales taxes. In either scenario or any other interpretation that I&E may advance or the Commission may consider, contract interpretation is required – which the Commission has clearly found that it may not do.

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<sup>12</sup> Courts have found that they may not read words into a contract that change its unambiguous meaning. See *Silvis et al. v Ambit Energy LP, et al.*, 2016 WL 1086703 (March 21, 2016); *Orange, et al. v. Starion Energy PA, Inc.*, 2016 WL 1043618 (March 16, 2016).

<sup>13</sup> McGovern Affidavit, Exhibit A.

**D. No Legal Obligation to Include GRT in Ceiling Price**

38. Moreover, Clearview was under no legal or regulatory obligation to include GRT in the price ceiling that it included in the disclosure statement. Indeed, although Clearview's initial price in the disclosure statement is an all-inclusive price that includes GRT,<sup>14</sup> the Commission has no regulations requiring the initial or ceiling price to include GRT. *See* 52 Pa. Code §54.5.

39. Rather, the Commission's Office of Competitive Market Oversight ("OCMO") has given guidance to the industry to include GRT in the marketed price, relying on a definition of "price to compare" ("PTC") in the default service regulations, which indicates that the PTC is "equal to the sum of all unbundled generation and transmission related charges." 52 Pa. Code §54.182.<sup>15</sup> Not only does the cited definition of PTC appear in regulations that apply to default services that are provided by electric distribution companies, it also does not specify that GRT is part of the PTC or contain any requirement for EGSs to include GRT in an initial or ceiling price. Moreover, the informal guidance offered by OCMO regarding the components for inclusion in EGS marketed prices does not establish binding rules or enforceable standards. *See Pa. Human Relations Commission v. Norristown Area School Dist.*, 473 Pa. 334, 350; 374 A.2d 671, 679 (1977); *Woods Services, Inc. v. Dep't of Public Welfare*, 803 A.2d 260, 265 (Pa. Cmwlth. 2002).

40. Similarly, the Commission's only guidance about what must be included in an EGS's initial price is in an order regarding fixed price labels. *Use of Fixed Price Labels for Products with a Pass-Through Clause*, Docket No. M-2013-2362961 (Order entered November

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<sup>14</sup> McGovern Affidavit ¶ 10. In fact, on the disclosure statement, the phrase "plus all applicable taxes" does not appear next to the initial price; rather it is included only with the price range.

<sup>15</sup> *See* recap of CHARGE Conference Call for January 7, 2010 at: [http://www.puc.pa.gov/electric/docs/OCMO/CHARGE\\_Recap010710.doc](http://www.puc.pa.gov/electric/docs/OCMO/CHARGE_Recap010710.doc) (Issue 1, first topic) (Attached as Appendix II).

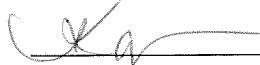
14, 2013) (“*Fixed Means Fixed Order*”). In the *Fixed Means Fixed Order*, the Commission expressed its expectation that the price an EGS presents to a residential or small business customer be “all-inclusive” and include “all of the pricing components found in the PTC for default customers (generation, transmission where applicable, gross receipts tax, etc.)” *Id.* at 28. Not only was the guidance issued well after the use of Clearview’s legacy disclosure statements had been discontinued, the *Fixed Means Fixed Order* likewise cannot be relied upon to establish enforceable standards and in fact acknowledges as much even with respect to the use of fixed price labels. *Id.* at 24. Moreover, the focus of the Commission’s “all-inclusive” price was to promote an apples-to-apples comparison between EDC PTCs and EGS initial prices. *Id.* at 28.

41. As Clearview was not required to include GRT in the ceiling price, and the disclosure statement expressly indicated that all applicable taxes would be added to the price cap, Clearview’s subsequent charges of 18.99 cents per kWh conformed to the disclosure statement and did not violate any Commission regulations.

#### **IV. CONCLUSION**

WHEREFORE, based upon the foregoing, Clearview Electric, Inc. respectfully requests that the Administrative Law Judge grant this Motion for Summary Judgment and dismiss the Complaint filed by the Bureau of Investigation and Enforcement.

Respectfully submitted,



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Karen O. Moury  
I.D. No. 36879  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
717.237.6036  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)

Dated: January 11, 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	:	

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**AFFIDAVIT OF FRANK MCGOVERN IN SUPPORT OF  
CLEARVIEW ELECTRIC, INC.'S MOTION FOR SUMMARY JUDGMENT**

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I, Frank McGovern, being duly sworn according to law, depose and say the following:

1. My name is Frank McGovern, and my business address is 1201 Elm Street, Suite 3200, Dallas, Texas.
2. I am President of Clearview Electric, Inc. (“Clearview” or “Company”).
3. As President of Clearview, I am responsible for all facets of the business, including retail pricing.
4. I am familiar with the disclosure statements that have been used by Clearview in connection with customers on variable price plans and with the amount of gross receipts tax that is assessed on sales of electricity in Pennsylvania.
5. Prior to June 1, 2013, the disclosure statements that Clearview sent to customers who enrolled on a variable rate plan contained an initial price; noted that the price would vary on a monthly basis; explained the conditions of variability as being the current market conditions and

projected wholesale energy prices; and set forth a per kWh price range of 8.9 cents to 17.9 cents, plus all applicable taxes (“legacy disclosure statements”). A copy of the legacy disclosure statement is attached here to as Exhibit A.

6. Starting on June 1, 2013, the disclosure statements that Clearview sent to customers who had enrolled on a variable rate plan contained an initial price; noted that the price would vary on a monthly basis; and explained the conditions of variability as being the current market conditions and projected wholesale energy prices (“updated disclosure statements”). No price range was included in the updated disclosure statements.

7. During February, March and April 2014, 4,157 customers who had received the legacy disclosure statement were charged the price of 18.99 cents per kWh. This price appeared on 10,334 invoices during that time period.

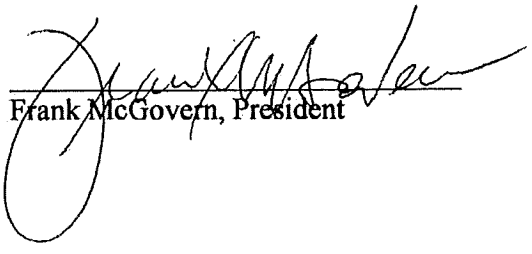
8. The applicable gross receipts tax (“GRT”) is 5.9%. Adding the applicable GRT to the 17.9 cent cap in the legacy disclosure statements produces an effective total cost of electricity of 19.022 cents per kWh.

9. The price of 18.99 cents per kWh is less than 19.022 cents per kWh and is therefore within an acceptable range that is consistent with the legacy disclosure statements.

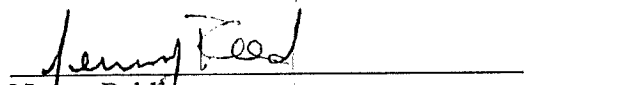
10. Clearview’s initial variable price on the legacy and updated disclosure statements includes GRT.

11. When Clearview discovered that it had charged customers more than 17.9 cents per kWh, the Company treated this as a billing error from a business or operational perspective.

12. I am authorized to submit this Affidavit for and on behalf of Clearview and represent that the facts set forth herein are true and correct to the best of my knowledge, information and belief.

  
Frank McGovern, President

Sworn and subscribed before me this 10<sup>th</sup>  
day of January 2017

  
Notary Public  
My Commission expires on: July 23, 2020

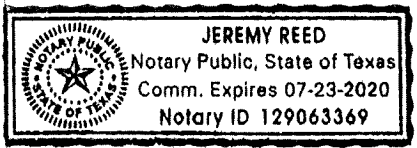


EXHIBIT A

**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.

**Defnitions**

- 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) | <b><u>Price</u></b><br>Variable                    | <b><u>Electricity</u></b><br>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) | <b><u>Length of Contract</u></b><br>Variable Price | Month to month   |
| (c) | <b><u>Terms of Renewal</u></b><br>Variable Price   | Month to month until cancelled with 30 days notice.  |
| (D) | <b><u>Cancellation Fees</u></b><br>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 of 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>

## APPENDIX I

## What is gross receipts tax (GRT) on sales of electric energy? --

Gross receipts tax is paid by both electric distribution companies and electric generation suppliers on the basis of the company's or the supplier's gross receipts from the sale of electric generation supply within the Commonwealth of Pennsylvania. Electric distribution companies and electric generation suppliers include the GRT as part of the cost of electric generation supply.

By law, the current GRT rate in Pennsylvania is 5.90 percent. However, since the tax is embedded in the cost of electric generation supply, electric distribution companies and electric generation suppliers apply a gross-up factor to determine the amount of GRT that must be paid to Pennsylvania. As a result, electric distribution companies and electric generation suppliers pay GRT to Pennsylvania in the amount of 6.27 percent on the base price of electric generation supply. This gross-up factor, resulting in a GRT of 6.27 percent, is calculated by the following formula:  $1/1-5.90$  percent.

For example, if an electric distribution company or electric generation supplier charges a customer \$100 per month for electric generation supply, application of the 5.90 percent GRT rate results in an electric generation supply charge of \$105.90. Because the electric distribution company or electric generation supplier owes GRT to Pennsylvania on the basis of total gross receipts in the amount of \$105.90, it must apply a gross-up factor to the base price of \$100. Application of this gross-up factor results in a GRT liability of 6.27 percent. To recover this full amount from consumers, electric distribution companies or electric generation suppliers must collect \$106.27 for electric generation supply.

As a consumer, it is important to understand that, even if an electric generation supplier quotes the GRT rate of 5.90 percent, the electric generation supplier is still obligated to pay Pennsylvania GRT in the amount of 6.27 percent on the base price of electric generation supply. Consumers should ensure that any GRT rate communicated by electric generation suppliers in offers or price quotes matches the GRT amount that is included in electric generation supply charges on bills.

Excerpt from <http://www.papowerswitch.com/frequently-asked-questions> – January 10, 2017.

## APPENDIX II

# CHARGE Conference Call

January 7, 2010

Call-in number: 1-866-618-6746 and Access Code: 6060145

## Recap of Discussion

### 1. Gross Receipts Tax (GRT)

#### Inclusion of GRT in Price to Compare

- OCA has asked that EGSs include GRT in PTC for residential offers on website
- OCMO clarified that GRT should be included in PTC for all purposes, including marketing materials and offers made to consumers, to permit apples-to-apples comparisons— per 52 Pa. Code §54.182, which says that PTC includes all unbundled generation and transmission related charges; EGS can give details on separate components
- In reviewing residential disclosure statements, BCS recommends to EGSs that they include language along the lines of: “This price includes Transmission Charges and Estimated Total State Taxes, but excludes applicable Sales Taxes”; in this language, price = price to compare
- Question has arisen as to whether GRT should be included in PTC for all purposes regardless of customer class, i.e., residential, commercial or industrial
  - 54.182 defines PTC as “equal to the sum of all unbundled generation and transmission related charges” and does not differentiate between different customer classes”
  - PPL confirmed that it includes the GRT in the PTC for all classes of customers
  - OCMO indicated that GRT should be included, regardless of the class

#### Calculation of GRT

- GRT is 5.9% and according to PPL’s website, it is applied as follows:  $Price = (Taxable\ Amount)/(1 - GRT)$
- At least one EGS may be calculating it by multiplying the kwh rate times the tax rate (1.059)
- Consensus was that it should be consistently calculated in accordance with the formula on PPL’s website to minimize confusion among customers and to ensure that it is a competitively neutral component of the overall charge

#### Showing GRT on Bill

- Questions have arisen about how GRT is shown on bill
- Per 52 Pa. Code §56.15(4), residential bills should indicate that a GRT is being charged and include a reasonable estimate of the charge
  - Discussion ensued about PPL’s bill ready system and the need for EGSs to populate tax fields with estimated state tax fields, including capital, corporate, franchise taxes in EDI 810s that are transmitted for consolidated billing – spelled out in Implementation Guide

- Rate ready billing may be handled differently – Brandon will check
- EGSs were encouraged to join EDEWG for assistance with EDI issues; can contact Annunciata Marino at the PUC for more information
- PPL will check on how GRT is shown on commercial and industrial customers' bills

## **2. Large C&I Customers**

- EGSs asked for clarification of the rules for disclosure statements/offers/marketing materials/contracts for large C&I customers
  - Points were raised about the sophistication of large C&I customers but it was also acknowledged that many customers are in between “small business” and “large C&I” customers
- OCMO referred EGSs to 52 Pa.Code §54.1 for the scope of the customer information requirements
  - 54.2 (definitions) and 54.3 (standards and pricing practices) apply to all customers
  - 54.4-54.9 (bill format, disclosure statements, privacy, complaint handling, etc.) apply only to residential and small business customers
- Please see 54.3, which requires EGSs to use common and consistent terminology in customer communications, including marketing, billing and disclosure statements
- Additional discussion will ensue at the next meeting
- Question arose about components of RTP rate for large C&I customers – PPL will look into posting/publishing them

## **3. Price to Compare**

- Questions arose about the proper components of PTC
- Will discuss in more detail during next meeting

## **4. CHARGE and Retail Market Working Group Roles**

- OCMO clarified roles of CHARGE and RMWG
- CHARGE: quick informal resolution and sharing of information to ease the process for consumers to navigate the market, electric generation suppliers to enter and participate in the market, and default service providers to receive what they need to make timely switches, and to enhance the ability of the PUC, EGSs and DSPs to respond to consumer inquiries
- Retail Market Working Group: address longer term issues that will promote the development of a competitive market
- Participants need not be concerned with where to raise an issue since CHARGE and RMWG are communicating and coordinating
- May be possible to merge at a later time when short-term issues are not so pressing

## 5. Third Party Marketing Services Providers

- OCMO gave reminder to EGSs about responsibility for actions of unlicensed third parties providing marketing and sales support services, i.e. door-to-door sales and telemarketing, 52 Pa. Code §54.43

## 6. EGS Call Centers

- Consumers have indicated that they have not been able to reach EGSs due to heavy call volumes
- Several EGSs noted that they have been monitoring wait times and have taken steps to add call center staff so as to more timely answer consumers' calls

## 7. Low-Income Customers

- Question arose about whether recipients of low income subsidies in PPL eligible to shop and still receive the subsidies
  - Customers on customer assistance programs (CAPs) - PPL's is called OnTrack, will be able to receive discounts even if they switch to an EGS, but the mechanics are still being worked out
  - For LIHEAP customers, all EGSs currently serving residential customers are participating in PPL's POR program so they can receive those benefits while being served by an EGS since they can be terminated for non-payment
    - If an EGS isn't in PPL's POR program, there may be complications because EGSs are not vendors

## 8. Budget Billing

- Some customers on budget billing have been told that they will lose that arrangement if they switch to an EGS
- PPL confirmed that customer will remain on budget billing with the EDC for their distribution charges even if they switch to an EGS
- To receive budget billing for supply portion, customer needs to tell EGS
- PPL is working on an arrangement to allow supply portion to be budget billed by EGS – requires extensive programming for permanent fix
- In the interim, PPL pays EGS the full amount even though it is billing the customer a fixed amount
- Question arose about the terms and conditions of budget billing and OCMO referred EGSs to 52 Pa. Code §56.12(7) where it requires equal monthly payments; no other requirements than what is set forth in that regulation

## **9. Rate Mitigation Plans**

- Questions also arose about whether EGSs need to do anything to ensure that customers get full advantage of deferral and pre-payment plans
- Consensus was that EGS's only obligation is to inform customers that they will not lose any money as a result of switching

## **10. Migration Statistics**

- OCA currently posts migration statistics on a quarterly basis
- Suggestion has been made to have migration statistics available on a monthly basis
- If Commission receives this information from EDCs and EGSs, we can make it available more frequently
- OCMO will talk to OCA about whether there are any plans to post this information more often

## **11. 814 Enrollment Transaction**

- Question has arisen as to the appropriate date to be included on the electronic enrollment transaction
- PPL indicates that contract date should be used rather than the date when the enrollment transaction was sent
- Use of contract date ensures that customer who chooses multiple EGSs in a single period is switched to the last EGS they chose
- Use of date when enrollment transaction is sent can lead to EGSs holding enrollments and can result in slamming if customer is switched to the wrong EGS
- It was noted that Allegheny goes with enrollment date, whereas PECO does it the same way as PPL
- EDEWG should address it, and meanwhile EGSs should follow practice of EDC in whose territory they are serving

## **12. Rescission and Confirmation Periods**

- Consumers have a 3-day rescission period have after receiving the disclosure statement from the EGS, per 52 Pa. Code 54.5(d) – this applies only to residential and small business customers
- EDCs give consumers 10-days in the confirmation letter sent under 57.173(2) to indicate if that is an error or they did not authorize the change – this applies to all customers
- Care should be taken to have consistent references to the 3-day rescission period and 10-day confirmation period
- While EDC understandably wants to avoid getting involved in consumer-EGS dispute or contract, efforts should be made by all market participants to ensure that consumers (especially residential and small business) are satisfied with outcome
- OCMO referred to customer dispute procedures for slamming in 57.177

## APPENDIX III

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TECH MET, INC., ALFRED  
POZZUTO, G. MONEY, INC.,  
d/b/a NORTH PARK  
CLUBHOUSE, MR. MAGIC  
CAR WASH, INC., and  
JOHN TIANO, on their own  
behalf and on behalf of all  
others similarly situated,

Plaintiffs

vs.

STRATEGIC ENERGY, LLC,

Defendant

CIVIL DIVISION

NO. GD-05-030407

MEMORANDUM AND ORDER OF COURT

HONORABLE R. STANTON WETTICK, JR.

Counsel for Plaintiffs:

Phillip A. Goldblum, Esquire  
Suite 160  
285 E. Waterfront Drive  
Homestead, PA 15120

Counsel for Defendants:

Kevin C. Abbott, Esquire  
Nicolle R. Snyder Bagnell, Esquire  
Reed Smith Center  
225 Fifth Avenue  
Pittsburgh, PA 15222-2716

MEMORANDUM AND ORDER OF COURT

WETTICK, J.

This is a breach of contract class action brought against defendant, Strategic Energy, LLC ("Strategic") on behalf of all Pennsylvania commercial/business customers who entered into a Power Supply Coordination Service Agreement ("Service Agreement") with Strategic.<sup>1</sup> Plaintiffs contend that they have been overcharged.

Strategic is an electricity supplier. Strategic purchases electricity in large blocks from Duquesne Light or other sources which it resells to customers pursuant to the terms and conditions of its Service Agreement with the customer. With limited exceptions, through the Service Agreement, Strategic guarantees its customers that the price for electricity will not exceed a specified amount (the price set forth on its Pricing Attachment) for five years.<sup>2</sup>

Plaintiffs contend that Strategic has charged them amounts in excess of the amounts permitted by the Service Agreement. They seek to recover the difference between the amount paid for the electricity and the lesser amount permitted by the Service Agreement.

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<sup>1</sup>Attachment 1 is the Service Agreement between Strategic and Tech-Met Services, Inc. The other named plaintiffs executed similar writings; but see p. 5.

<sup>2</sup>Strategic contends that when electricity was undergoing deregulation in 2000, there was much uncertainty regarding electricity costs. The benefit of buying from Strategic, as opposed to buying directly from Duquesne Light, was to achieve price certainty in an uncertain market. (12/9/13 Argument T. 23.)

Strategic contends that its prices have never exceeded the amounts permitted by the Service Agreement.

The subject of this Memorandum and Order of Court is Strategic's motion for summary judgment seeking dismissal of plaintiffs' Complaint on the ground that plaintiffs were never overcharged.

Relevant discovery has been completed. Thus, the issue is whether the evidence, construed in plaintiffs' favor, will support a verdict in plaintiffs' favor.

The prices that Strategic may charge its customers are governed by the following provisions of the Service Agreement:

**4. PSC Services Fee:**

The PSC Services Fee is 0.3 cents per kilowatt-hour for each kilowatt-hour of Electricity provided under this Agreement. The PSC Services Fee is included in the price paid by the Buyer.

**7. Price:**

The Price to be paid by Buyer for the Electricity and BSC Services provided hereunder during the Term of this Agreement shall not exceed that set forth on the Pricing Attachment below. All pricing terms are inclusive of applicable costs for Energy, Capacity, Transmission, Ancillary Services, Delivery Services, applicable taxes up to the Point of Delivery, overhead expenses as defined by Strategic Energy, and the PSC Services Fee.

**STRATEGIC'S INTERPRETATION**

Strategic contends that under the Service Agreement (Attachment 1), the price it may charge shall not exceed the price set forth "on the Pricing Attachment" (Attachment 2). Plaintiffs do not challenge the evidence showing that Strategic has never charged a

price that exceeded that set forth on the Pricing Attachment. Thus, according to Strategic, summary judgment should be entered dismissing plaintiffs' Complaint.

#### PLAINTIFFS' INTERPRETATION

According to plaintiffs, the price set forth in the Pricing Attachment is only a ceiling. The actual price, if it does not exceed the ceiling, consists of the sum of Duquesne Light's costs for energy, capacity, transmission, ancillary services, delivery services, applicable taxes up to the point of delivery, overhead expenses as defined by Strategic Energy and PSC Services Fee. Under this interpretation of ¶ 7, the maximum price that Strategic may charge is the amount of Duquesne Light's actual costs plus 0.3 cents per kilowatt-hour.

#### COURT'S INTERPRETATION

I find that the only reasonable reading of ¶ 7 is that offered by Strategic.

The first sentence of ¶ 7 permits Strategic to charge the amount set forth in the Pricing Attachment. The second sentence protects the buyer by explaining that the price set forth in the Pricing Attachment includes costs which Strategic incurs for energy, capacity, transmission, ancillary services, delivery services, applicable taxes up to the point of delivery, overhead expenses as defined by Strategic, and the PSC Services Fee.

Paragraph 4 describes the PSC Services Fee and reiterates that it is included in the price paid by the buyer.

Plaintiffs contend that the first sentence of ¶ 7 only establishes a maximum price that may be charged because ¶ 7 states that the price "shall not exceed that set forth in

the Pricing Attachment below." (Emphasis added.) According to plaintiffs, a contract uses the phrase "shall not exceed" only when there is another method for calculating price that may be less than the price set forth in the Pricing Attachment.

However, the Service Agreement cannot be read in the manner which plaintiffs propose unless the Service Agreement also provides for a lesser price under certain circumstances. In other words, it could not have been the intention of the parties for the first sentence of ¶ 7 to be construed as only setting a maximum price if the Agreement does not also include a lesser price that shall be charged under some circumstances.

Plaintiffs apparently propose that the second sentence of ¶ 7 be read as follows: "The price to be paid by the Buyer for the electricity and PSC services provided under the Service Agreement shall be the sum of the costs Strategic incurs for energy, capacity, transmission, ancillary services, delivery services, applicable taxes up to the point of delivery, overhead expenses as defined by Strategic Energy, and the PSC Services Fee."

However, this is not a reasonable construction of the second sentence of ¶ 7. There is nothing in the language of ¶ 7 that in any way suggests that the price shall be based on Strategic's costs. Thus, I am left with a single method governing the price that may be charged.

If ¶ 7 consisted of only the first sentence, the only reasonable construction of the Agreement would be that Strategic is permitted to charge the amount set forth in the Pricing Attachment. This is so because pricing is governed by ¶ 7, and this is the only provision governing the price to be paid. Where a second sentence is added that does

not refer to the price to be paid, there is no difference between the two-sentence paragraph and the one-sentence paragraph.

A contract shall be construed to give meaning to each sentence in ¶ 7. This is accomplished only if the second sentence is construed as describing costs that are included in the price to be paid by the buyer as set forth in the Pricing Attachment. The language of the second sentence does not support any other construction that gives meaning to both sentences.

At least one of the Service Agreements between plaintiffs and Strategic, at ¶ 7, included a second paragraph which reads as follows:

If, during the term of this Agreement, regulatory changes create additional charges, not currently included in the Price, which Buyer would be subject to regardless of whether Buyer was receiving service from Strategic Energy, the Host Utility or any other provider of electric service ("Incremental Charge"), and Strategic Energy is unable to mitigate such incremental Charge, then Strategic Energy shall pass through such Incremental Charge to be paid by Buyer above the Price.

Plaintiffs contend that the inclusion of this second paragraph supports plaintiffs' position that the price to be paid consists of the sum of the costs. However, this additional paragraph is equally consistent with an interpretation that the price to be paid shall not exceed that set forth in the Pricing Attachment, but Strategic may pass on an incremental charge to be paid by the buyer "above the Price."

While I base my ruling on the language of the Agreement, I agree with Strategic that parol evidence also supports its construction of ¶ 7.

Strategic buys electricity at different times and at different prices. None of the purchases can be traced to specific customers. Thus, there is no way to calculate the costs of energy for individual customers.

The Service Agreements between Strategic and plaintiffs do not require Strategic to purchase only from Duquesne Light. Furthermore, it appears that Strategic does not purchase exclusively from Duquesne Light. These purchases from other sellers are not segregated from Strategic's purchases from Duquesne Light. (12/9/13 Argument T. 12.) Plaintiffs never explain how costs of energy will be calculated in these circumstances.

There is testimony in the record that where Strategic successfully managed down the price (see definition of *Power Supply Coordination (PSC) Services* at ¶ 5 of the Service Agreement), Strategic did not charge the full amount provided for in the first sentence of ¶ 7. (Wilson Dep. T. 124-28.) This is consistent with the use of the phrase *shall not exceed* in the first sentence of ¶ 7.

Finally, common sense dictates that Strategic would not have agreed to provide price certainty over a five-year period for a nominal payment of .3 cents per kilowatt-hour per month. See Deposition of Vogel at 148-49 and Exhibit G of Vogel Deposition— .3% of monthly charge for 6200 kilowatts is \$18.60.

#### CONCLUSION

In this case, there are only two interpretations offered by the parties. The language of the Service Agreement offers no support for calculating a price based on the sum of Strategic's costs for energy, capacity, transmission, ancillary services, delivery services, applicable taxes up to the point of delivery, overhead expenses as defined by Strategic Energy, and the PSC Services Fee. This leaves a construction supported by the language of ¶ 7, namely "the Price to be paid by the Buyer for the

Electricity and PSC Services provided hereunder during the Term of this Agreement shall not exceed that set forth in the Pricing Attachments below.”

For these reasons, I grant defendant's motion for summary judgment and dismiss plaintiffs' Complaint with prejudice.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TECH MET, INC., ALFRED  
POZZUTO, G. MONEY, INC,  
d/b/a NORTH PARK  
CLUBHOUSE, MR. MAGIC  
CAR WASH, INC., and  
JOHN TIANO, on their own  
behalf and on behalf of all  
others similarly situated,

Plaintiffs

vs.

STRATEGIC ENERGY, LLC,

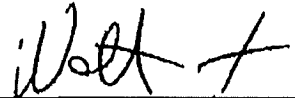
Defendant

NO. GD-05-030407

ORDER OF COURT

On this 4 day of June, 2014, it is hereby ORDERED that defendant's motion for summary judgment is granted, and plaintiffs' Complaint is dismissed with prejudice.

BY THE COURT:



WETTICK, J.