

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Respondent Clearview Electric Inc. (Clearview) filed a Motion for Summary Judgment on January 11, 2017. The Motion seeks that the underlying Complaint be dismissed and judgment entered in favor of the Respondent. Complainant Bureau of Investigation and Enforcement (I&E) filed an Answer on January 31, 2017. The motion is ripe for a decision.

The Commission's regulations at 52 Pa. Code §5.102(d)(1) set forth the standard of review for summary judgment motions:

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answer to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa.Code § 5.102(d)(1).

When deciding on a motion for summary judgment, all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thompson Coal Co. v. Pike Coal Co.*, 488 Pa. 198, 412 A.2d 466 (1979). However, once a motion for summary judgment is properly made and supported, it is generally accepted that the nonmoving party may not simply rest upon the mere allegations or denials of its pleading, but must set forth facts

showing that there is a genuine issue for trial. *Fiffick v. GAF Corporation*, 603 A.2d 208 (Pa. Super. 1991) (Discussing the Pennsylvania Rules of Civil Procedure); *Anderson v. Liberty Lobby, Inc., Inc.*, 477 U.S. 242 (1986) (Discussing the Federal Rules of Civil Procedure).

When disposing of a Motion for Summary Judgment, the record must be examined in the light most favorable to the nonmoving party giving the nonmoving party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 313 Pa. Superior Ct. 54, 56, 459 A.2d 406, 408 (1983). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979).

Respondent claims 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. Motion at 5. Respondent further contends the Commission has no jurisdiction to interpret contracts between electric generation suppliers (EGSSs) and their customers and that Clearview had no legal obligation to include GRT in the ceiling price. Therefore, since 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. Motion at 11-12.

Complainant replies that whether Clearview's customers were charged prices in accordance with a disclosure statement within the meaning of 42 Pa. C.S. § 54.4(a) remains an issue in dispute. Although Clearview now offers an affidavit of Frank McGovern, President of Clearview, which asserts the charge was acceptable in accordance with the disclosure statement, this affidavit alone without consideration of other evidence is insufficient to find there are no genuine issues as to material fact.

I am persuaded to agree with Complainant. An affidavit is an insufficient basis for summary judgment. *Borough of Nanty-Glo v. Am.Sur. Co.*, 309 Pa. 236 (1932). Credibility of the affiant is still a matter for the fact finder. Complainant has not yet had an opportunity to serve surrebuttal testimony, which is due February 13, 2017, or to move for the admission any of

its witness' testimony. There remains a genuine issue as to whether Clearview violated Section 54.4(a), 52 Pa. Code §54.4(a), by failing to bill a rate set forth in Clearview's disclosure statement on 10,334 invoices. The facts surrounding the issue appear to be in dispute at this time. Accordingly, the Motion for Summary Judgment shall be denied.

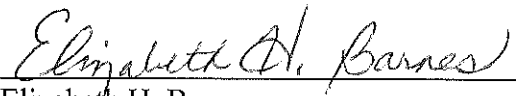
ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Clearview Electric, Inc. For Summary Judgment is denied.

Date: February 1, 2017



Elizabeth H. Barnes
Administrative Law Judge

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