



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 1, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Clearview Electric, Inc. d/b/a Clearview Energy
Docket No. C-2020-
I&E Formal Complaint

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Formal Complaint** on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above referenced matter. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephanie M. Wimer".

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

SMW/ac
Enclosures

cc: 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-2020-
	:	
Clearview Electric, Inc. d/b/a	:	
Clearview Energy	:	
Respondent	:	

NOTICE

A. You must file an Answer within twenty (20) days of the date of service of this Complaint. The date of service is the date as indicated at the top of the Secretarial Letter. See 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. Pursuant to *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified on March 20, 2020), you must eFile your Answer using the Commission’s website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage.

Additionally, please electronically serve a copy on:

Stephanie M. Wimer, Senior Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
stwimer@pa.gov

B. If you fail to answer this Complaint within twenty (20) days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the civil penalty and other requested relief.

C. You may elect not to contest this Complaint by paying the civil penalty within twenty (20) days and performing the corrective actions set forth in the requested relief. A certified check, cashier’s check or money order should be payable to the “Commonwealth of Pennsylvania” and mailed to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

Your payment is an admission that you committed the alleged violations and an agreement to cease and desist from committing further violations. Upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer, which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the civil penalty and granting the requested relief as set forth in the Complaint.

E. If you file an Answer which contests the Complaint, the matter will proceed before the assigned presiding Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at (717) 787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
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	:	
Clearview Electric, Inc. d/b/a	:	
Clearview Energy	:	
Respondent	:	

FORMAL COMPLAINT

NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission, by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, and files this Formal Complaint (“Complaint”) against Clearview Electric, Inc. d/b/a Clearview Energy (“Clearview,” “Company” or “Respondent”) alleging violations of the Pennsylvania Code, which were discovered in connection with an I&E investigation that was prompted by a news article reporting that Clearview agents, while conducting door-to-door marketing of the Company’s electric generation supply service, stole a wallet containing cash belonging to an elderly man at the gentleman’s residence. In support of its Complaint, I&E respectfully avers as follows:

I. Commission Jurisdiction and Authority

1. The Pennsylvania Public Utility Commission (“Commission” or “PUC”), with a mailing address of 400 North Street, Harrisburg, PA 17120, is a duly constituted

agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.* (“Code”).

2. Complainant is the Commission’s Bureau of Investigation and Enforcement, which is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

3. Complainant’s prosecuting attorneys are as follows:

Stephanie M. Wimer
Senior Prosecutor
stwimer@pa.gov

Michael L. Swindler
Deputy Chief Prosecutor
mwindler@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120

4. Respondent is Clearview Electric, Inc. d/b/a Clearview Energy with a principal place of business at 901 Main Street, Suite 4700, Dallas, TX 75202.

5. Clearview is a jurisdictional electric generation supplier (“EGS”)¹ licensed by the Commission at Docket No. A-2010-2152506 to operate in all Pennsylvania electric distribution company (“EDC”) service territories.

6. As an EGS in Pennsylvania, Clearview is a public utility as defined by Section 102 of the Public Utility Code, 66 Pa.C.S. § 102, only for the limited purposes as described in Sections 2809 and 2810 of the Competition Act, 66 Pa.C.S. §§ 2809-2810.

7. Section 501(a) of the Public Utility Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

8. Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints for violations of any law or regulation that the Commission has jurisdiction to administer or enforce.

9. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission’s authority for violations of the Public Utility Code or Commission regulations or both. Section 3301 further allows for the imposition

¹ “Electric generation supplier” or “electricity supplier” is defined, in pertinent part, in Section 2803 of the Electricity Generation Customer Choice and Competition Act (“Competition Act”), 66 Pa.C.S. §§ 2801-2815, as:

A person or corporation, including municipal corporations which choose to provide service outside their municipal limits except to the extent provided prior to the effective date of this chapter, brokers and marketers, aggregators or any other entities, that sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company or that purchases, brokers, arranges or markets electricity or related services for sale to end-use customers utilizing the jurisdictional transmission and distribution facilities of an electric distribution company.

66 Pa.C.S. § 2803.

of a separate fine of up to \$1,000 for each violation and for each day's continuance of such violation.

10. Clearview, as a licensed EGS in Pennsylvania, is subject to the power and authority of the Commission and must observe, obey and comply with the Commission's regulations and orders pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c).

11. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this Complaint and the actions of Clearview acting in its capacity as an EGS serving customers in Pennsylvania.

II. Background

A. OCMO's Referral to I&E

12. On June 19, 2017, PennLive.com reported in an article posted on the website that a 77-year old man from Wiconisco Township, Dauphin County, PA informed Pennsylvania State Police that on June 15, 2017, two men identifying themselves as representing Clearview entered his home. During a 10-minute long conversation, the two representatives from Clearview took a wallet containing cash that had been placed on a counter. The Clearview representatives then left in a vehicle. The

PennLive.com article is accessible at the following link:

https://www.pennlive.com/news/2017/06/man_let_energy_company_reps_in.html²

13. The article drew the attention of the Commission’s Office of Competitive Market Oversight (“OCMO”), which then contacted Clearview to discuss the incident. Clearview did not self-report the incident to the Commission.

14. On June 20, 2017, a Clearview customer relations specialist provided an initial response on behalf of the Company, advising OCMO that it was researching the incident and would report back with findings.

15. On June 27, 2017, the same Clearview customer relations specialist provided a more detailed response to OCMO, in which the Company indicated that a 50-state background check is performed on all agents prior to employment, including the two agents implicated in the incident. These two agents were employed by a third party vendor utilized by Clearview to market the Company’s electric generation supply services and were permanently removed from Clearview’s marketing campaign. Clearview also indicated that it was cooperating with Pennsylvania State Police concerning the incident.

16. As an EGS licensed in Pennsylvania, Clearview is responsible for fraudulent, deceptive or unlawful marketing acts performed by its agents even if those

² One of the two agents was charged with theft by unlawful taking – movable property, a misdemeanor of the first degree. *Commonwealth of Pa. v. Darwin Mejias*, Docket No. MJ-12301-CR-0000154-2018. The matter was bound over to the Court of Common Pleas of Dauphin County where it remains pending. *Commonwealth of Pa. v. Darwin Mejias*, Docket No. CP-22-CR-0003554-2019. While the criminal matter has not yet been resolved, it is important to note that Clearview did not deny that the incident occurred to OCMO or I&E during I&E’s investigation.

agents are employed by outside, third-party vendors. *See* 52 Pa. Code § 111.3(b).

17. In further researching this matter, OCMO consulted with the Commission's Bureau of Consumer Services ("BCS"), which advised that it received no notification from Clearview of the Company's intention to conduct door-to-door sales and marketing activities on June 15, 2017, the date that the wallet was taken, or on any other date in June 2017 contrary to 52 Pa. Code § 111.14(a) (requiring an EGS to notify BCS no later than the morning of the day that door-to-door sales and marketing activity begins).

18. When OCMO raised the issue pertaining to a lack of door-to-door sales and marketing notifications from Clearview to BCS, Clearview committed to providing such notifications in the future.

19. Pursuant to Sections 802 and 1307 of the Commission's Procedures Manual, OCMO referred this matter to I&E for review and evaluation to determine if initiating an investigation was appropriate.

B. I&E's Informal Investigation

20. I&E initiated an informal investigation of Clearview on March 14, 2018, as a result of the information provided by OCMO related to the wallet theft incident as well as consumer complaints that were received by Clearview and disclosed to I&E on quarterly reports pursuant to Paragraph 42(b) of a Settlement Agreement between Clearview and I&E entered on April 21, 2017, which resolved a prior enforcement proceeding initiated by I&E related to allegations that Clearview billed customers a rate

that exceeded the rate set forth in the Company's disclosure statements.³

21. Numerous consumer complaints suggested that customers were enrolled to receive electric generation service supplied by Clearview without authorizing any switch to Clearview. Additionally, some consumer complaints alleged that Clearview billed a rate higher than the price advertised on www.chooseenergy.com, which is a website that certain customers used to enroll with Clearview.

22. As part of the investigation, I&E served and Clearview responded to three (3) sets of I&E Data Requests. The allegations set forth below are the results of I&E's investigation.

23. Clearview relies on third-party marketing companies to complete criminal background investigations of agents before those agents work on behalf of Clearview. While Clearview's background check policy indicates that its third-party marketers search various criminal databases and perform a 50-state background check, such searches do not specifically include obtaining criminal history records from the Pennsylvania State Police, as required by the Commission's regulations.

24. I&E's investigation also found that in June 2017, the month in which the alleged wallet theft occurred, Clearview agents engaged in door-to-door sales and marketing activities on all days during that month except on Sunday, June 25, 2017. Door-to-door sales and marketing activities occurred in the EDC service territories of Duquesne Light Company ("Duquesne Light"), Metropolitan Edison Company ("Met-

³ *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Clearview Electric, Inc.*, Docket No. C-2016-2543592 (Final Order entered June 30, 2017 approving settlement agreement without modification).

Ed”), PECO Energy Company (“PECO”), Pennsylvania Electric Company (“Penelec”), and PPL Electric Utilities, Inc. (“PPL”). Clearview failed to notify BCS and the aforementioned EDCs of such activities, contrary to the Commission’s regulations.

25. I&E’s investigation further discovered that during the third and fourth quarters of 2017, Clearview received approximately fifty (50) customer complaints alleging that customers were switched to received electric generation supplied by Clearview without first providing authorization. Upon Clearview’s inquiry into those fifty (50) customer complaints, ten (10) complaints involved accounts in which Clearview confirmed that the customer was switched without his or her authorization. Three (3) out of the ten (10) complaints in which Clearview confirmed that an unauthorized switch occurred contained audio recordings of third-party verifications in which it is clear that someone other than the customer is posing as the customer and providing falsified authority to effectuate the switch.

26. I&E’s investigation also found that Clearview uses the website chooseenergy.com to market electric generation supply and enroll potential customers. Clearview’s data request responses demonstrate that between October 2017 and February 2018, Clearview enrolled and billed one hundred thirty-seven (137) customers in the Duquesne Light and PECO service territories a rate greater than the rate that was advertised on chooseenergy.com at the time of the customer’s enrollment. The specific instances of Clearview’s overbilling are set forth in the following paragraphs:

i. PECO Customer Invoices

27. For invoices billed in November 2017, Clearview billed fifty-five (55)

PECO customers who were promised to receive a fixed rate of 0.0659 per kilowatt hour (“kWh”) as advertised on chooseenergy.com, a fixed rate of 0.0829 per kWh.

28. For invoices billed in December 2017, Clearview billed sixty-nine (69) PECO customers who were promised to receive a fixed rate of 0.0659 per kWh as advertised on chooseenergy.com, a fixed rate of 0.0829 per kWh.

29. For invoices billed in January 2018, Clearview billed five (5) PECO customers who were promised to receive a fixed rate of 0.0659 per kWh as advertised on chooseenergy.com, a fixed rate of 0.0829 per kWh.

ii. Duquesne Light Customer Invoices

30. For invoices billed in October 2017, Clearview billed one Duquesne Light customer who was promised to receive a fixed rate of 0.0749 per kWh as advertised on chooseenergy.com, a fixed rate of 0.0829 per kWh.

31. For invoices billed in November 2017, Clearview billed one Duquesne Light customer who was promised to receive a fixed rate of 0.0749 per kWh as advertised on chooseenergy.com, a fixed rate of 0.0829 per kWh.

32. For invoices billed in December 2017, Clearview billed one Duquesne Light customer who was promised to receive a fixed rate of 0.0749 per kWh as advertised on chooseenergy.com, a fixed rate of 0.0829 per kWh.

33. For invoices billed in January 2018, Clearview billed three (3) Duquesne Light customers who were promised to receive a fixed rate of 0.0749 per kWh as advertised on chooseenergy.com, a fixed rate of 0.0879 per kWh.

34. For invoices billed in February 2018, Clearview billed two (2) Duquesne

Light customers who were promised to receive a rate of 0.0749 per kWh as advertised on chooseenergy.com, a fixed rate of 0.0879 per kwh.

III. Violations

Count 1

35. All allegations in paragraphs 1-34 are incorporated as if fully set forth herein.

Clearview, through the action of its agent or agents, engaged in fraudulent, deceptive or otherwise unlawful acts in the process of marketing Clearview's electric generation supplier services in that on June 15, 2017, a prospective customer's wallet containing cash was taken by an agent or agents conducting door-to-door sales on behalf of Clearview.

This is a violation of 52 Pa. Code § 54.43(f) (related to standards of conduct and disclosure for licensees) and 52 Pa. Code § 111.9(b) (related to door-to-door sales). I&E's proposed civil penalty for this violation is \$1,000.

Counts 2-3

36. All allegations in paragraphs 1-34 are incorporated as if fully set forth herein.

Clearview impermissibly allowed the two agents implicated in the wallet theft incident to conduct door-to-door sales and marketing activities on June 15, 2017, in that Clearview did not first obtain and review their criminal history records from the Pennsylvania State Police.

This is a violation of 52 Pa. Code § 111.4(b) (related to agent qualifications and standards; criminal background investigations). I&E's proposed civil penalty for this violation is \$2,000 (multiple counts).

Counts 4-32

37. All allegations in paragraphs 1-34 are incorporated as if fully set forth herein.

Clearview violated the Commission's regulations pertaining to marketing and sales practices for the retail residential energy market in that on each and every day of June 2017, except for June 25, 2017, Clearview conducted door-to-door sales and marketing activities without first notifying BCS no later than the morning of the day that the activity began.

This is a violation of 52 Pa. Code § 111.14(a) (related to notification regarding marketing or sales activity). I&E's proposed civil penalty for this violation is \$29,000 (multiple counts).

Counts 33-61

38. All allegations in paragraphs 1-34 are incorporated as if fully set forth herein.

Clearview violated the Commission's regulations pertaining to marketing and sales practices for the retail residential energy market in that on each and every day of June 2017, except for June 25, 2017, Clearview conducted door-to-door sales and marketing activities without first notifying the local distribution company with general, nonproprietary information about the activities no later than the morning of the date that the sales and marketing activities began.

This is a violation of 52 Pa. Code § 111.14(b) (related to notification regarding marketing or sales activity). I&E's proposed civil penalty for this violation is \$29,000 (multiple counts).

Counts 62-71

39. All allegations in paragraphs 1-34 are incorporated as if fully set forth herein.

During the third and fourth calendar year quarters of 2017, Clearview switched ten (10) customers to receive electric generation service supplied by Clearview without the customers' authorization in that the customers did not consent to being switched.

This is a violation of 52 Pa. Code § 54.42(a)(9) (permitting a civil penalty to be imposed upon a supplier who transfers a customer without the customer's consent); 52 Pa. Code §§ 57.171-177 (related to the standards for changing a customer's electricity generation supplier); and 52 Pa. Code § 111.7 (related to customer authorization to transfer account; transaction; verification; documentation). I&E's proposed civil penalty for this violation is \$10,000 (multiple counts).

Counts 72-208

40. All allegations in paragraphs 1-34 are incorporated as if fully set forth herein.

Clearview violated the Commission's regulations pertaining to electricity generation customer choice information in that Clearview marketed a certain fixed rate for its electric generation service in the Duquesne Light and PECO service territories on chooseenergy.com and then billed customers a rate greater than the rate that was advertised on chooseenergy.com at the time of the customers' enrollments.

This is a violation of 52 Pa. Code § 54.4(a) (requiring that EGS prices billed reflect the marketed prices). I&E's proposed civil penalty for this violation is \$137,000 (137 counts).

IV. Requested Relief

41. I&E proposes that Clearview pay a civil penalty of One Thousand Dollars (\$1,000) for each of the two-hundred eight (208) counts set forth in this Complaint for a total civil penalty of Two Hundred Eight Thousand Dollars (\$208,000) pursuant to 66 Pa.C.S. § 3301(a)-(b).

42. I&E proposes that Clearview provide a complete refund for any bills rendered during the first two (2) billing periods to any customer who was switched to receive electric generation supplied by Clearview without consent pursuant to 52 Pa. Code § 57.177(b).

43. I&E proposes that Clearview reimburse any customer who was charged a cancellation fee from a prior supplier as a result of Clearview's unauthorized switch pursuant to 52 Pa. Code § 57.177(c).

44. I&E proposes that Clearview provide refunds to each of the customer accounts in the Duquesne Light and PECO service territories for overcharges incurred from October 2017 and February 2018, consisting of the cumulative difference between the amount each customer was billed and the amount each customer was entitled to receive pursuant to the advertised rate on chooseenergy.com.

45. I&E proposes that Clearview revise the Company's policies and implement changes to the Company's practices to ensure that customers are billed the rate for which they enrolled, that the Company obtains and reviews criminal background checks of prospective sales agents from, among other governmental agencies, the Pennsylvania State Police, and that the Company notifies BCS and local distribution companies of door-to-door sales and marketing activities no later than the morning of the day that such activities occur.

46. I&E proposes that the Commission order such other remedy as the Commission may deem to be appropriate.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement hereby requests that the Commission: (1) find Respondent to be in violation of the Pennsylvania Code for each of the two-hundred eight (208) counts set forth herein; (2) impose a civil penalty upon Respondent in the amount of Two Hundred Eight Thousand Dollars (\$208,000); (3) direct Respondent to refund and/or reimburse customers in the manner requested herein; (4) direct Respondent to perform the non-monetary remedial measures as set forth herein; and (5) order such other remedies as the Commission may deem to be appropriate.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120


Dated: June 1, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
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Complainant	:	
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Clearview Energy	:	
Respondent	:	

VERIFICATION

I, Daniel J. Mumford, Director, Office of Competitive Market Oversight, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Daniel Mumford
Director
Office of Competitive Market Oversight
Pennsylvania Public Utility Commission
400 North Street
3rd Floor, North
Harrisburg, PA 17120

Date: June 1, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Clearview Electric, Inc. d/b/a	:	
Clearview Energy	:	
Respondent	:	

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 Electronic Mail:⁴

Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com

*Counsel for Clearview Electric, Inc.
d/b/a Clearview Energy*



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 772-8839
stwimer@pa.gov

Date: June 1, 2020

⁴ Service by Commission staff shall be performed electronically only, given the Commission's inability to run normal mailing operations due to COVID-19. See *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified on March 26, 2020).