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June 23, 2020

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 and Enforcement v.
Clearview Electric, Inc. d/b/a Clearview Energy;
Docket No. C-2020-3020127

Dear Secretary Chiavetta:

On behalf of Clearview Electric, Inc. d/b/a Clearview Energy is an Answer and New Matter in the above-captioned matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Karen O. Moury

Karen O. Moury

KOM/lww
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Clearview Electric, Inc. d/b/a Clearview Energy's Answer and New Matter upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

Stephanie M. Wimer, Esq.
Michael L. Swindler, Esq.
Bureau of Investigation & Enforcement
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
stwimer@pa.gov
mwindler@pa.gov

Dated: June 23, 2020

/s/ Karen O. Moury

Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, : Docket No. C-2020-3020127
Bureau of Investigation and Enforcement, :
Complainant :
v. :
Clearview Electric, Inc. d/b/a :
Clearview Energy, :
Respondent :

NOTICE TO PLEAD

**TO: Pa. Public Utility Commission
Bureau of Investigation and Enforcement**
Stephanie M. Wimer, Senior Prosecutor
Michael L. Swindler, Deputy Chief Prosecutor
stwimer@pa.gov
mwindler@pa.gov

You are hereby notified that a reply to the new matter in the enclosed **Answer and New Matter** of Clearview Electric, Inc. d/b/a Clearview Energy (“Clearview Energy”) must be filed within 20 days of the date of service.

All pleadings, such as a Reply to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Clearview Energy, and where applicable, the Administrative Law Judge presiding over the proceeding.

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Karen O. Moury, Esquire
Carl R. Shultz, Esquire
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/s/ Karen O. Moury

Karen O. Moury, Esquire

Date: June 23, 2020

Attorneys for Clearview Energy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	Docket No. C-2020-3020127
Complainant	:	
v.	:	
	:	
Clearview Electric, Inc. d/b/a	:	
Clearview Energy,	:	
Respondent	:	

**ANSWER AND NEW MATTER OF CLEARVIEW
ELECTRIC, INC. D/B/A CLEARVIEW ENERGY**

Pursuant to 52 Pa. Code § 5.61, Clearview Electric, Inc., d/b/a Clearview Energy (“Clearview”) submits this Answer to the Formal Complaint (“Complaint”) of the Bureau of Investigation and Enforcement (“I&E” or “Complainant”), which was filed with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on June 1, 2020 and which was served on Clearview by Secretarial Letter dated June 3, 2020. In support hereof, Clearview avers as follows.

ANSWER

I. Commission Jurisdiction and Authority

1. To the best of Clearview’s knowledge and belief, the name and contact information in Paragraph 1 of the Complaint are true and accurate.

2. To the best of Clearview’s knowledge and belief, I&E is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission’s jurisdiction.

3. To the best of Clearview's knowledge and belief, the name and contact information in Paragraph 3 of the Complaint are true and accurate.

4. Admitted.

5. Admitted.

6. The averments in Paragraph 6 of the Complaint are conclusions of law to which no response is required. By way of further answer, Sections 102, 2809 and 2810 of the Public Utility Code speak for themselves. 66 Pa.C.S. §§ 102, 2809-2810.

7. The averments in Paragraph 7 of the Complaint are conclusions of law to which no response is required. By way of further answer, Section 501(a) of the Public Utility Code speaks for itself. 66 Pa.C.S. § 501(a).

8. The averments in Paragraph 8 of the Complaint are conclusions of law to which no response is required. By way of further answer, Section 701 of the Public Utility Code speaks for itself. 66 Pa.C.S. § 701.

9. The averments in Paragraph 9 of the Complaint are conclusions of law to which no response is required. By way of further answer, Section 3301 of the Public Utility Code speaks for itself. 66 Pa.C.S. § 3301.

10. The averments in Paragraph 10 of the Complaint are conclusions of law to which no response is required. By way of further answer, Section 501(c) of the Public Utility Code speaks for itself. 66 Pa.C.S. § 501(c).

11. The averments in Paragraph 11 of the Complaint are conclusions of law to which no response is required. By way of further answer, the provisions of the applicable Commonwealth statutes and regulations speak for themselves.

II. Background

12. Upon reasonable investigation, Clearview is without sufficient information or knowledge to form a belief regarding the averments reported in PennLive.com on June 19, 2017 and demands proof thereof, if relevant, at hearing. As to the allegation contained in footnote 2 of Paragraph 12 that during the informal investigation, “Clearview did not deny that the incident occurred,” it is admitted. By way of further answer, it is averred that Clearview lacked and continues to lack information or knowledge to form a belief as to the averments regarding the incident and therefore had no basis upon which to admit or deny that it had occurred. It is further averred that the Complaint fails to make any allegations that Clearview failed to properly evaluate or apply the results of the criminal background check to this agent.

13. Upon reasonable investigation, Clearview is without sufficient information or knowledge to form a belief regarding the allegations of Paragraph 13 concerning the article drawing the attention of the Commission’s Office of Competitive Market Oversight (“OCMO”) and demands proof thereof, if relevant at hearing. Clearview admits that OCMO contacted Clearview to discuss the alleged incident and further admits that Clearview did not self-report the alleged incident to the Commission. By way of further answer, it is averred that Clearview was not aware of the alleged incident until it was contacted by OCMO and would therefore have been unable to “self-report” it to the Commission.

14. Admitted.

15. Admitted.

16. The averments in Paragraph 16 of the Complaint set forth legal conclusions to which no response is required. By way of further answer, Section 111.3(b) of the Commission’s regulations speaks for itself. 52 Pa. Code § 111.3(b).

17. Upon reasonable investigation, Clearview is without sufficient information or knowledge to form a belief regarding the allegations of Paragraph 17 concerning OCMO interactions with the Bureau of Consumer Services (“BCS”) and demands proof thereof, if relevant at hearing.

18. Admitted. Specifically, it is admitted that the sales team had temporarily ceased this practice around the time of the alleged incident. That team, which was in place two years ago, has been completely replaced.

19. The averments in Paragraph 19 of the Complaint set forth legal conclusions to which no response is required. By way of further answer, Sections 802 and 1307 of the Commission’s Procedures Manual speaks for itself.

20. Admitted in part and denied in part. It is admitted that I&E initiated an informal investigation of Clearview on March 14, 2018. Upon reasonable investigation, Clearview is without sufficient information or knowledge to form a belief regarding the remaining averments in Paragraph 20 concerning an alleged wallet incident or I&E’s review of quarterly reports submitted by Clearview and demands proof thereof, if relevant, at hearing. It is further averred that in the prior enforcement proceeding referenced in Paragraph 20, Clearview denied the allegations and admitted no violations in reaching a settlement of the matter.¹

21. Upon reasonable investigation, Clearview is without sufficient information or knowledge to form a belief regarding the allegations of Paragraph 21 concerning “numerous consumer complaints” or “some consumer complaints” regarding Clearview and demands proof thereof, if relevant at hearing.

¹ *Pa. P.U.C., 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).

22. Admitted in part and denied in part. It is admitted that I&E served and Clearview responded to three sets of I&E Data Requests as part of the informal investigation. Upon reasonable investigation, Clearview is without sufficient information or knowledge to form a belief regarding the allegations of Paragraph 22 concerning the results of I&E's investigation and demands proof thereof, if relevant at hearing.

23. Admitted in part and denied in part. It is admitted in part that Clearview relies on third-party marketing companies to complete criminal background investigations of agents. It is denied that the search of various criminal databases, which includes a 50-state background check, does not comply with the Commission's regulations to obtain criminal history records from the Pennsylvania State Police. By way of further answer it is averred that the criminal background investigations of agents performed by third-party marketing companies for Clearview fully vetted Pennsylvania's criminal history records. It is further averred that the Complaint contains no factual allegations to suggest that had Clearview reviewed other records besides those that were examined here that it would have concluded that the agent(s) referenced in Paragraphs 12 and 13 should not have been utilized for door-to-door sales and marketing activities.

24. Admitted. By way of further answer, it is averred that in June 2017, Clearview's sales team had temporarily ceased without the knowledge of Clearview's management to provide notifications of engaging in door-to-door sales and marketing activities. It is further averred that as of over two years ago, this sales team has been completely replaced

25. Admitted in part and denied in part. Upon reasonable investigation, Clearview is without sufficient knowledge or belief regarding I&E's investigation during the third and fourth quarters of 2017 and demands proof thereof, if relevant, at hearing. By way of further answer,

Clearview has independently reviewed these customer complaints and admits the factual averments regarding them contained in Paragraph 25.

26. Admitted in part and denied in part. It is denied that Clearview relies upon Choose Energy as a third party marketing agent. To the contrary, it is averred that Clearview in exchange for a monthly fee, Choose Energy lists Clearview offers on its website and refers interested customers to Clearview to enroll for those product offerings. By way of further answer, it is averred that Choose Energy² is an independent entity that operates in several jurisdictions presenting a variety of offers that are available from multiple electric suppliers. It is further averred that Pennsylvania is one of the states in which Choose Energy operates and consumers input their zip codes to view featured plans and other available offers. It is admitted that Clearview failed on one occasion to timely correct a price posted on Choose Energy's website, which resulted in one hundred thirty-seven (137) Pennsylvania customers being billed at a rate greater than the rate that was advertised on chooseenergy.com. By way of further answer, it is averred that Clearview presented these 137 customers with correct disclosure statements that contained the price that the customers were billed. Also, by way of further answer, it is averred that when Clearview learned of the error, it proactively and fully refunded the amounts paid by the customers to reflect the prices advertised by Choose Energy.

27. Admitted in part and denied in part, consistent with the answer provided in response to Paragraph 26.

28. Admitted in part and denied in part, consistent with the answer provided in response to Paragraph 26.

² <https://www.chooseenergy.com/>

29. Admitted in part and denied in part, consistent with the answer provided in response to Paragraph 26.

30. Admitted in part and denied in part, consistent with the answer provided in response to Paragraph 26.

31. Admitted in part and denied in part, consistent with the answer provided in response to Paragraph 26.

32. Admitted in part and denied in part, consistent with the answer provided in response to Paragraph 26.

33. Admitted in part and denied in part, consistent with the answer provided in response to Paragraph 26.

34. Admitted in part and denied in part, consistent with the answer provided in response to Paragraph 26..

35. Denied. Clearview's responses to the allegations in Paragraphs 1-34 are incorporated as if fully set forth herein. By way of further answer, Paragraph 35 contains a request for relief and conclusions of law to which no response is required. By way of further answer, Clearview is not responsible for the payment of a civil penalty absent proof that it violated the Commission's regulations which resulted in its agent engaging in fraudulent, deceptive or otherwise unlawful acts in the marketing Clearview's electric generation supplier services on June 15, 2017.

36. Denied. Clearview's responses to the allegations in Paragraphs 1-34 are incorporated as if fully set forth herein. By way of further answer, Paragraph 36 contains a request for relief and conclusions of law to which no response is required. It is further averred that Clearview took steps to have a third party perform criminal background investigations on its behalf

that fully considered the prospective agents' criminal history records from Pennsylvania. It is also further averred that Clearview did not fail to properly apply the results of the criminal background checks that were performed or fail to identify a result that should have precluded the agents referenced in the Complaint from engaging in door-to-door sales and marketing activities.

37. Admitted in part and denied in part. Clearview's responses to the allegations in Paragraphs 1-34 are incorporated as if fully set forth herein. By way of further answer, Paragraph 37 contains a request for relief and conclusions of law to which no response is required. It is admitted that Clearview's sales team conducted door-to-door sales and marketing activities in June 2017 without first notifying the Bureau of Consumer Services ("BCS") of these activities no later than the morning of the day the activity began. It is denied that Clearview was required by the regulations to notify BCS each and every day of this marketing campaign, and that therefore, its failure to provide notification before such activities began amounts to no more than one violation of the regulations. 52 Pa. Code § 111.14(a).

38. Admitted in part and denied in part. Clearview's responses to the allegations in Paragraphs 1-34 are incorporated as if fully set forth herein. By way of further answer, Paragraph 38 contains a request for relief and conclusions of law to which no response is required. It is admitted that Clearview's sales team conducted door-to-door sales and marketing activities in June 2017 without first notifying the local electric distribution company ("EDC") of these activities no later than the morning of the date that the sales and marketing activities began. It is denied that Clearview was required by the regulations to notify the EDC each and every day of this marketing campaign, and that therefore, its failure to provide notification to the EDC before such activities began amounts to no more than one violation of the regulations. 52 Pa. Code § 111.14(b).

39. Admitted in part and denied in part. Clearview's responses to the allegations in Paragraphs 1-34 are incorporated as if fully set forth herein. By way of further answer, Paragraph 39 contains a request for relief and conclusions of law to which no response is required. It is admitted that the ten customers identified in Paragraph 25 were switched without authorization. It is further averred that those customers have been proactively and fully made whole by Clearview.

40. Admitted in part and denied in part. Clearview's responses to the allegations in Paragraphs 1-35 are incorporated as if fully set forth herein. By way of further answer, Paragraph 40 contains a request for relief and conclusions of law to which no response is required. It is further averred that a failure on one occasion to correct a rate advertised on choosenergy.com does not warrant a finding of 137 violations of the Commission's regulations. It is also further averred that when Clearview discovered that it had inadvertently failed on one occasion to correct a rate advertised on chooseenergy.com and then billed customers at a rate matching the disclosure statement, it proactively took steps to bill customers (on a retroactive basis) at the advertised rate.

IV. Requested Relief

41. As Paragraph 41 contains only a request for relief, no response is required. By way of further answer, it is denied that Clearview should be required to pay a total civil penalty in the amount of \$208,000. By way of further answer, it is alleged that neither the Commission nor I&E has established a penalty schedule to guide the imposition of penalties for particular violations of the Public Utility Code or Commission regulations. No justification exists for assessing a flat \$1,000 civil penalty regardless of the nature of the alleged violation, particularly when some regulations impose requirements that do not affect the safety of the public or are otherwise of a relatively minor nature compared to other violations.

42. As Paragraph 42 contains only a request for relief, no response is required. By way of further answer, Clearview has already provided this refund.

43. As Paragraph 43 contains only a request for relief, no response is required. By way of further answer, Clearview is willing to pay this cancellation fee upon documentation by the customer.

44. As Paragraph 44 contains only a request for relief, no response is required. By way of further answer, Clearview has already paid the difference referenced herein.

45. As Paragraph 45 contains only a request for relief, no response is required. By way of further answer, Clearview agrees to revise its policies and implement changes as necessary to comply with the Commission's regulations.

46. As Paragraph 46 contains only a request for relief, no response is required.

WHEREFORE, Clearview Electric, Inc. d/b/a Clearview Energy respectfully requests that the Commission (i) dismiss the Complaint consistent with this Answer; (b) deny all of the relief requested by the Bureau of Investigation and Enforcement; and (c) grant any other relief to Clearview Energy that is deemed to be reasonable and appropriate.

NEW MATTER

47. Section 3301(a) of the Public Utility Code authorizes the Commission to impose a civil penalty in a sum not exceeding \$1,000 for a violation of the Public Utility Code, Commission regulation or Commission directive. 66 Pa.C.S. § 3301(a).

48. Section 3301(a) does not establish a penalty schedule that specifies the amount of the civil penalty between \$1 and \$1,000 that should be imposed for particular violations of the Public Utility Code, Commission regulation or Commission directive. 66 Pa.C.S. § 3301(a).

49. Pursuant to Section 3301 of the Public Utility Code, the Commission has not established a penalty schedule to specify an amount or a range of amounts of the civil penalty between \$1 and \$1,000 that should be imposed on electric generation suppliers for particular violations of the Public Utility Code, Commission regulation or Commission directive. To the extent that such a schedule has been established, it has not been published in the *Pennsylvania Bulletin* or by Commission order. See

50. Pursuant to any statutory or delegated authority as described in Paragraph 2 of the Complaint, the Bureau of Investigation and Enforcement has not established a penalty schedule to specify an amount or a range of amounts of the civil penalty between \$1 and \$1,000 that should be imposed on electric generation suppliers for particular violations of the Public Utility Code, Commission regulation or Commission directive. To the extent that such a schedule has been established, it has not been published in the *Pennsylvania Bulletin* or by Commission order.

51. By contrast, the Bureau of Investigation and Enforcement has disseminated criteria to regulated motor carriers that establish a penalty schedule or range to specific civil penalty amounts for particular violations of the Public Utility Code, Commission regulation or Commission directive.

52. Pursuant to Section 3301 of the Public Utility Code, the Commission has set forth various factors that should be taken into consideration in assessing the appropriate civil penalties for violations of the Public Utility Code, Commission regulation or Commission directive. See *Rosi v. Bell-Atlantic-PA, Inc. and Sprint Communications, L.P.*, Docket No. C-00992409 (Order entered March 16, 2006). These factors have been codified by the Commission through a Policy Statement published at 52 Pa. Code § 69.1201(c).

53. In seeking to impose a \$208,000 civil penalty against Clearview Energy, the Complaint does not consider any of the factors identified by the Commission to determine appropriate civil penalties for the nature of the alleged violations.

54. The lack of any penalty structure or consideration of the nature of the alleged violations in seeking a total civil penalty raises questions about whether Clearview Energy has been afforded sufficient due process regarding the computation of a proposed civil penalty. *See Harris v. Mexican Specialty Foods, Inc.* 564 F.3d 1301, 1311 (11th Cir. 2009).³

Respectfully submitted,

/s/ Karen O. Moury

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Date: June 23, 2020

Attorneys for Clearview Energy

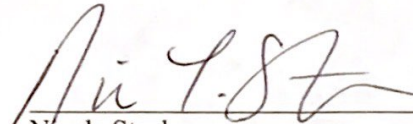
³ See, e.g., <http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol45/45-10/412.html> (DEP guidance on describing methods for assessing civil penalties).

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
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Complainant	:	
	:	
v.	:	C-2020-3020127
	:	
	:	
Clearview Electric, Inc., d/b/a	:	
Clearview Energy,	:	
Respondent	:	

VERIFICATION

I, Nicole Steele, Vice President of Clearview Electric, Inc., hereby state that the facts set forth in the Answer, are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove same at any hearing held in this matter. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.



Nicole Steele
Vice President
Clearview Electric, Inc.

Date: June 23, 2020