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September 14, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Fortunato Vangeli v. Clearview Electric, Inc.
Docket No. F-2020-3021497

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Clearview Electric Inc.'s Preliminary Objections with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Karen O. Moury
Karen O. Moury

KOM/lww

Enclosure

cc: Hon. Charles E. Rainey, Jr., w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of Clearview Electric Inc.'s Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and First Class Mail

Fortunato Vangeli
1382 Steven Lane
Lansdale, PA 19446
domvangeli@yahoo.com

Hon. Charles E. Rainey, Jr.
Chief Administrative Law Judge
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
bobbwillia@pa.gov

Dated: September 14, 2020

Karen O. Moury

Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Fortunato Vangeli,	:	
Complainant	:	
	:	
v.	:	Docket No. F-2020-3021497
	:	
Clearview Electric, Inc.,	:	
Respondent	:	

NOTICE TO PLEAD

To: Fortunato Vangeli
1382 Steven Lane
Lansdale, PA 19446
domvangeli@yahoo.com

You are hereby notified that an Answer to the enclosed **Preliminary Objections** of Clearview Electric, Inc. must be filed within 10 days of the date of service.

All pleadings, such as an Answer to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Clearview Electric, Inc. and the Office of Administrative Law Judge.

File with:

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

With a copy to:

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

/s/ Karen O. Moury

Karen O. Moury, Esquire

Date: September 14, 2020

Attorney for Clearview Electric, Inc.

BEFORE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Fortunato Vangeli, :
Complainant :
 :
v. : Docket No. C-2019-3013711
 :
Clearview Electric, Inc., :
Respondent :

**PRELIMINARY OBJECTIONS
OF CLEARVIEW ELECTRIC, INC.**

TO: CHIEF ADMINISTRATIVE LAW JUDGE CHARLES E. RAINEY, JR.:

Pursuant to 52 Pa. Code § 5.101(a)(3) of the regulations of the Pennsylvania Public Utility Commission (“Commission”), Clearview Electric, Inc. (“Clearview”) submits the following Preliminary Objections to the Complaint of Fortunato Vangeli (“Complainant”) requesting dismissal of the Complaint. The basis for Clearview’s request is that the Complaint contains insufficient specificity to allow Clearview to ascertain what it is alleged to have done in violation of the Public Utility Code, Commission regulations or Commission order. Clearview is not simultaneously filing an Answer since such is not required until further directed by the presiding officer or the Commission, or unless the Complainant files an Amended Complaint. 52 Pa. Code § 5.101(e)(1)-(2). In support of these Preliminary Objections, Clearview states as follows:

I. INTRODUCTION

1. Clearview is an electric generation supplier (“EGS”), licensed by the Commission to supply electricity to retail customers throughout Pennsylvania, at Docket No. A-2010-2152506.
2. The Complaint was served on Clearview by the Commission on August 24, 2020.

3. Complainant checked two boxes in Paragraph 4 indicating that he would like a payment agreement and alleging that incorrect charges are on his bill. In the requested relief section in Paragraph 5, he notes that he is seeking monetary compensation.

4. The Complaint contains no further detail or allegations. As a result, Clearview is at a loss to determine which bill(s) Complainant believes contain incorrect charges or why he believes he is entitled to monetary compensation. With respect to his request for a payment agreement, he is no longer a customer of Clearview, and payment agreements are only available from electric distribution companies. Therefore, Clearview is unable to respond to or prepare a defense to the Complaint.

5. Making it even more difficult to surmise what “problem” Complainant is complaining about is the fact that Clearview supplied electricity to Complainant for eight years and recently issued a courtesy check to him to resolve a dispute regarding his enrollment.

6. The Complaint contains insufficient specificity to allow Clearview to ascertain what it is alleged to have done in violation of the Public Utility Code, Commission regulations or Commission order. Accordingly, the Complaint should be dismissed.

II. ARGUMENT

A. Applicable Legal Standards

7. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections.¹ The Commission’s procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

¹ 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

8. Under Section 5.101(a) of the Commission’s regulations, preliminary objections must specifically state the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding;
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter;
- (3) Insufficient specificity of a pleading;
- (4) Legal insufficiency of a pleading;
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and
- (7) Standing of a party to participate in the proceeding.

9. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.² However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.³

10. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.⁴

² *County of Allegheny v. Cmwth. of Pa.*, 490 A.2d 402 (Pa. 1985).

³ *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwth. 2007).

⁴ *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwth. 1996).

11. The filing of preliminary objections 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.⁵

B. Insufficient Specificity of Pleading, 52 Pa. Code § 5.101(a)(3).

12. Under Section 5.101(a)(3) of the Commission’s regulations, preliminary objections may be filed against a complaint alleging insufficient specificity of a pleading.⁶

13. If a preliminary objection alleges insufficient specificity in a pleading, an answer is not required until further directed by the presiding officer or the Commission. Alternatively, if an amended pleading is filed in response to a preliminary objection alleging insufficient specificity in a pleading, the preliminary motion will be deemed to be moot.⁷

14. Section 701 of the Public Utility Code permits any person to “complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.”⁸

15. Under Section 5.22 of the Commission’s regulations, a complaint must contain a clear and concise statement of the act or omission being complained of and a clear and concise statement of the relief sought.⁹

⁵ 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989).

⁶ 52 Pa. Code § 5.101(a)(3).

⁷ 52 Pa. Code § 101(e); 52 Pa. Code § 5.91(b). In either event, Clearview reserves the right to file another set of preliminary objections along with the filing of its answer, raising other issues that should result in dismissal of the Complaint.

⁸ 66 Pa.C.S. § 701.

⁹ 52 Pa. Code § 5.22(a)(4).

16. To withstand a preliminary objection alleging insufficient specificity, a pleading must contain averments of all the facts that the complaining party will have to prove in order to prevail and enable the responding party to prepare a defense.¹⁰

17. The Complaint in this proceeding does not contain any allegations or details that enable Clearview to respond or defend. Similarly, it does not contain a clear and concise statement of an act or omission by Clearview about which Complainant is complaining.

18. Further, Clearview supplied electricity to Complainant for eight years, from 2012 to 2020, and it is unreasonable to expect Clearview to review all bills sent to Complainant during that time to determine whether any of them might have contained incorrect charges.

19. Clearview is also unable to respond to Complainant's request for relief for monetary compensation. When Complainant disputed his 2012 enrollment earlier this year, Clearview was unable to find the transaction documents, which it is required to retain for only six billing cycles.¹¹ As a courtesy to Complainant, Clearview issued a check in the amount of \$2,828.01 on February 28, 2020, which Complainant cashed. This amount represented the difference between Clearview's price and the default service rate during the entire time Clearview served Complainant.¹² Clearview has no way of determining why Complainant seeks further monetary relief.

¹⁰ *Podolak v. Tobyhanna Tp. Bd. of Supervisors*, 37 A.3d 1283, 1288-89 (Pa. Cmwlth. 2012).

¹¹ 52 Pa. Code § 111.7(b)(4) ("A supplier shall maintain a record of a verification in the system that is capable of retrieving the record by customer name and account period of time equivalent to at least six billing cycles." The purpose of this requirement is to review disputed enrollments).

¹² This is far more than Clearview would have been required to refund to Complainant had it been determined that his account was switched without consent. 52 Pa. Code § 57.177(b). (When a customer files a dispute regarding an enrollment within the first two billing periods and the investigation establishes that the change occurred without consent, the supplier is required to refund two months of supply charges).

20. With respect to Complainant's request for a payment agreement, he is no longer a customer of Clearview and owes Clearview no money. Moreover, payment agreements for outstanding balances on utility bills are only available from electric distribution companies, which handle billing, collection and termination activities for residential customers.¹³

21. Since the Complaint contains no factual allegations to which Clearview can respond, and makes requests for relief that make no sense, the Complaint contains insufficient specificity to allow Clearview to ascertain what it is alleged to have done in violation of the Public Utility Code, Commission regulations or Commission order. Therefore, it should be dismissed without Clearview being required to expend the resources to file an Answer and prepare a defense.

IV. CONCLUSION

WHEREFORE, on the basis of the foregoing, Clearview Electric, Inc. respectfully requests dismissal of the Complaint filed by Fortunato Vangeli and such other relief as may be deemed appropriate.

Respectfully submitted,

/s/ Karen O. Moury

Karen O. Moury
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Harrisburg, PA 17101
kmoury@eckertseamans.com
717.237.6036

Date: September 14, 2020

Attorney for Clearview Electric, Inc.

¹³ See 66 Pa. Code §§ 1405, 1406 and 2807(c).

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Fortunata Vangeli
Complainant

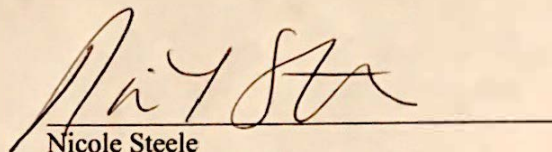
v.

F-2020-3021497

Clearview Electric, Inc.
Respondent

VERIFICATION

I, Nicole Steele, Vice President of Clearview Electric, Inc., hereby state that the facts set forth in the Preliminary Objections, 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: September 14, 2020