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March 30, 2021

**Via Electronic Filing**

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

Re: Deborah Hansen v. PECO Energy Company,  
Clearview Electric, Inc. and Ambit Northeast LLC  
Docket No. C-2021-3024433

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Preliminary Objections of Clearview Electric, Inc. 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: 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 Only**

Deborah S. Hansen  
513 Yale Ave.  
Swarthmore, PA 19081  
debshansen@hotmail.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: March 30, 2021

*Karen O. Moury*

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Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah Hansen,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2021-3024433
	:	
PECO Energy Company,	:	
Clearview Electric, Inc. and	:	
Ambit Northeast LLC	:	
Respondents	:	

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**NOTICE TO PLEAD**

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**To: Deborah S. Hansen**  
513 Yale Ave.  
Swarthmore, PA 19081  
debshansen@hotmail.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, 8<sup>th</sup> Floor  
Harrisburg, PA 17101

*Karen O. Moury*

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Karen O. Moury, Esquire

Date: March 30, 2021

Attorney for Clearview Electric, Inc.

**BEFORE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah Hansen, :  
Complainant :  
 :  
v. : Docket No. C-2021-3024433  
 :  
PECO Energy Company, :  
Clearview Electric, Inc. and :  
Ambit Northeast LLC, :  
Respondents :

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

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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 Deborah Hansen (“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 under the Commission’s regulations until further directed by the presiding officer or the Commission, or unless the Complainant files an Amended Complaint.<sup>1</sup> In support of these Preliminary Objections, Clearview states as follows:

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<sup>1</sup> 52 Pa. Code § 5.101(e)(1)-(2).

## **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 March 10, 2021 and March 19, 2021. Clearview is timely filing these Preliminary Objections consistent with the March 10, 2021 service date.

3. In the Complaint, the Complainant alleges that her EGS was changed without her consent. She further alleges that she “had been with Clearview for many years”<sup>2</sup> before being switched to another EGS.

4. None of the allegations contained in the Complaint are directed at Clearview.

5. Moreover, the Complaint does not request that Clearview be required to grant the Complainant any relief.

6. Therefore, the Complaint against Clearview 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.<sup>3</sup> The Commission’s procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

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;

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<sup>2</sup> Complaint at ¶ 4.

<sup>3</sup> 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).

- (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.<sup>4</sup> However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup>

12. 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

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<sup>4</sup> *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

<sup>5</sup> *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

<sup>6</sup> *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

<sup>7</sup> 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 557 (Pa. Cmwlth. 1989).

an amended pleading is filed in response to a preliminary objection alleging insufficient specificity in a pleading, the preliminary objection will be deemed to be moot.<sup>8</sup>

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

13. 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.<sup>9</sup>

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.”<sup>10</sup>

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.<sup>11</sup>

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.<sup>12</sup>

17. The Complaint filed in this proceeding does not contain any allegations of wrongdoing by Clearview or seek any relief from Clearview. The gist of the Complaint is that the Complainant was switched without consent from Clearview to another EGS and that the electric distribution company should develop a confirmation system before making changes to the account.

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<sup>8</sup> 52 Pa. Code § 5.101(e).

<sup>9</sup> 52 Pa. Code § 5.101(a)(3).

<sup>10</sup> 66 Pa.C.S. § 701.

<sup>11</sup> 52 Pa. Code § 5.22(a)(5)-(6).

<sup>12</sup> *Podolak v. Tobyhanna Tp. Bd. of Supervisors*, 37 A.3d 1283, 1288-89 (Pa. Cmwlth. 2012).

The Complainant also offers suggestions for improvements to the electric choice program in Pennsylvania. The Complaint merely references Clearview as the Complainant's former EGS and does not allege any actions of or omissions by Clearview.<sup>13</sup>

18. Even if all assertions in the Complaint are accepted as true, they do not present a case in which Clearview could be found to have violated any provision of the Public Utility Code, Commission regulations or a Commission order. Further, as to Clearview, the Complaint does not contain a clear and concise statement of the act or omission being complained of and a clear and concise statement of the relief sought. As such, the Complaint does not contain factual averments enabling Clearview to prepare a defense.

19. Since the Complaint does not allege any wrongdoing on the part of Clearview or seek any relief from Clearview, Clearview should not be required to expend resources to file an Answer to the Complaint or participate in a hearing and the further litigation of the Complaint.

#### **IV. CONCLUSION**

WHEREFORE, on the basis of the foregoing, Clearview Electric, Inc. respectfully requests dismissal of the Complaint filed by Deborah Hansen and any other relief deemed appropriate.

Respectfully submitted,

*Karen O. Moury* \_\_\_\_\_

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

Date: March 30, 2021

Attorney for Clearview Electric, Inc.

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<sup>13</sup> The only reference to Clearview other than as her former EGS is that when she called, a representative allegedly tried to enroll her at a higher rate than she had been on previously. That factual allegation, even if true, does not support a finding that Clearview violated any regulations, and Complainant seeks no relief from Clearview.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah Hansen,  
Complainant

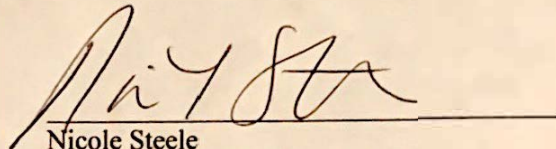
v.

PECO Energy Company,  
Clearview Electric, Inc. and  
Ambit Northeast LLC,  
Respondents

Docket No. C-2021-3024433

**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: March 30, 2021