



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

May 13, 2021

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-2020-3020127
Joint Petition for Approval of Settlement

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement in the above-referenced proceeding as well as the following Appendices: (1) Appendix A – Proposed Ordering Paragraphs; (2) Appendix B - the Bureau of Investigation and Enforcement’s Statement in Support; and (2) Appendix C - the Statement in Support of Clearview Electric, Inc. d/b/a Clearview Energy.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie M. Wimer', is written over a light blue horizontal line.

Stephanie M. Wimer
Senior Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 207522

SMW/ac
Enclosures

cc: Kathryn G. Sophy, Director, OSA (*via email only - Word Version*)
Kimberly A. Hafner, Deputy Director - Legal, OSA (*via email only – Word Version*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via email only*)
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-2020-3020127
	:	
Clearview Electric, Inc. d/b/a	:	
Clearview Energy,	:	
Respondent	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Clearview Electric, Inc. d/b/a Clearview Energy (“Clearview” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the above-docketed I&E Complaint proceeding alleging violations of Chapters 54, 57 and 111 of Title 52 of the Pennsylvania Code, 52 Pa. Code §§ 54.1-54.204; 52 Pa. Code §§ 57.1-57.259; and 52 Pa. Code §§ 111.1-111.14. As part of this Settlement Agreement, I&E and Clearview (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification. Proposed Ordering Paragraphs are attached as Appendix A. Statements in Support of the Settlement expressing the individual views of I&E and Clearview are attached hereto as Appendix B and Appendix C, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Harrisburg, PA 17120, and Clearview with a principal place of business at 901 Main Street, Suite 4700, Dallas, TX 75202.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code ("Code"), 66 Pa.C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints 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 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

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

5. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law, regulation or order that the Commission has jurisdiction to administer.

6. Section 3301 of the 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 Code, the Commission's regulations and

orders. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

7. Clearview is a licensed electric generation supplier ("EGS") as defined by 66 Pa.C.S. § 2803. On May 7, 2010, at Docket No. A-2010-2152506, Clearview was granted Commission approval to operate as an EGS offering services as a supplier of electricity to residential, small commercial, large commercial, industrial and governmental customers in the electric distribution company ("EDC") service territories of Duquesne Light Company ("Duquesne"), Metropolitan Edison Company ("Met-Ed"), PECO Energy Company ("PECO"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company, PPL Electric Utilities ("PPL"), West Penn Power Company and UGI Utilities, Inc.

8. Clearview, as a licensed provider of electric generation supply service, is subject to the power and authority of the Commission pursuant to Sections 501 and 2809 of the Code, 66 Pa.C.S. §§ 501, 2809.

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

II. BACKGROUND

10. On June 19, 2017, PennLive.com reported in an online article¹ that an elderly person from Wiconisco Township, Dauphin County, PA reported to the Pennsylvania State Police the theft of his wallet, which contained cash, from his home during a door-to-door

¹ A link to the article follows: https://www.pennlive.com/news/2017/06/man_let_energy_company_reps_in_html

marketing presentation conducted by two sales agents representing Clearview.

11. The article drew the attention of the Commission's Office of Competitive Market Oversight ("OCMO"), which then contacted Clearview for information regarding the incident. While Clearview did not self-report the incident to the Commission, the Company was cooperative in providing information responsive to OCMO's inquiries.

12. The two aforementioned sales agents were employed by a third-party vendor used by Clearview to market the Company's electric generation supply services. In response to the incident, Clearview permanently removed the two agents from its marketing campaign.

13. In further reviewing 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 gentleman alleged his wallet was taken from his home, or any other date in June 2017.

14. 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.

15. Based on the information set forth above and pursuant to the Commission's internal procedures, OCMO referred the matter to I&E.

16. In addition to the information provided by OCMO, I&E reviewed 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.²

17. 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.

18. By letter dated March 14, 2018, I&E notified Clearview that it had initiated an informal investigation of the Company consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113.

19. I&E served Clearview with three (3) sets of data requests on March 14, 2018, May 8, 2018, and June 17, 2019, respectively.

20. Clearview responded to I&E's three (3) sets of data requests on April 3, 2018, May 29, 2018, and July 12, 2019, respectively.

21. The results of I&E's investigation, which included a review of the Company's responses to I&E's data requests, formed the basis for I&E's Formal Complaint that was filed with the Commission on June 1, 2020 at the above-referenced docket, in which I&E alleged that:

- a. Clearview relies on third-party marketing companies to complete criminal background investigations of agents before those agents work

² *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).

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.

- b. 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, Met-Ed, PECO, Penelec, and PPL. Clearview failed to notify BCS and the aforementioned EDCs of such activities, contrary to the Commission's regulations.
- c. 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 investigation 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 someone other than the customer is posing as the customer and

providing falsified authority to effectuate the switch.

- d. Clearview uses the website chooseenergy.com to market electric generation supply and enroll potential customers. 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.

22. In the Complaint, I&E seeks several requests for relief, including demands that the Commission impose a civil penalty upon Clearview in the amount of Two Hundred Eight Thousand Dollars (\$208,000), Clearview provide refunds to customers who were overbilled and/or switched to Clearview without consent, Clearview reimburse customers who were charged a cancellation fee from a prior supplier as a result of the Company's unauthorized switch, and Clearview revise the Company's policies and implement changes to its practices to address the aforementioned deficiencies.

23. On June 23, 2020, Clearview, through counsel, filed an Answer and New Matter to the Complaint. In its Answer, Clearview generally denied the factual averments alleged in I&E's Complaint. However, Clearview admitted that without the knowledge of management, its sales team, which has been completely replaced since then, had temporarily ceased the practice of notifying BCS and the local EDCs of Clearview's door-to-door marketing practices. Clearview also admitted to switching ten (10) customers to receive its electric generation supply without the customers' consent and had inadvertently failed to correct a price posted on the chooseenergy.com website, which resulted in one hundred thirty-seven (137) Pennsylvania customers being billed at a rate greater than the rate that was

advertised. Clearview noted that the disclosure statements sent to these customers contained prices that matched the prices that were billed.

24. On July 13, 2020, I&E filed its Reply to Clearview's New Matter specifically denying the viability of Clearview's assertions in its New Matter as defenses in this proceeding.

25. The Parties then engaged in a series of settlement discussions which culminated in the instant Settlement Agreement.

III. ALLEGED VIOLATIONS

26. Had this matter been fully litigated, I&E would have proffered evidence regarding the facts I&E claims above and legal arguments to demonstrate that Clearview committed the following violations:

- a. 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. If proven, I&E alleges that such conduct violates 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). (one count).
- b. 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. If proven, I&E alleges that such conduct violates 52 Pa. Code § 111.4(b) (related to agent qualifications and standards; criminal background investigations). (two counts).

- c. 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. If proven, I&E alleges that such conduct violates 52 Pa. Code § 111.14(a) (related to notification regarding marketing or sales activity). (29 counts).
- d. 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. If proven, I&E alleges that such conduct violates 52 Pa. Code § 111.14(b) (related to notification regarding marketing or sales activity). (29 counts).
- e. 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. If proven, I&E alleges that such conduct violates 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). (10 counts).

- f. 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. If proven, I&E alleges that such conduct violates 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).

27. Had this matter been fully litigated, Clearview would have alleged as follows:

- a. Clearview did not self-report the allegations regarding the theft of a wallet because it was not aware of the alleged incident until it was contacted by the Commission's OCMO.
- b. Clearview's reliance upon third-party marketing companies to complete criminal background investigations of its agents complies with the

Commission's regulations since the check includes a search of various criminal databases covering all 50 states. Further, no allegations have been raised that if Pennsylvania State Police records had been examined, Clearview would have concluded that the agents mentioned in the Complaint should not be utilized for door-to-door sales and marketing activities.

- c. Clearview's sales team in June 2017 had temporarily ceased, without the knowledge of Clearview's management, to provide notifications of engaging in door-to-door sales and marketing activities to the Commission's BCS and to EDCs.
- d. Clearview acknowledged that on one occasion, it failed to timely correct a price posted on Choose Energy's website, which resulted in one hundred thirty-seven Pennsylvania customers being billed at a rate greater than the rate that was advertised on chooseenergy.com. Clearview would have further alleged that it presented these 137 customers with disclosure statements that contained the price that customers were billed. In addition, Clearview would have shown that it when it became aware of the error, it proactively and fully refunded the amounts paid by the customers to reflect the price advertised by Choose Energy.
- e. The Commission does not have the statutory authority to direct Clearview to issue refunds. *See Blue Pilot Energy, LLC v. Pa. PUC*, 241 A.3d 1254 (2020), 2020 Pa. Commw. LEXIS 720.

IV. SETTLEMENT TERMS

28. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,³ the Parties held a series of discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to resolve this matter in a fair and reasonable manner without further litigation.

29. The Settlement is without admission and it is understood that this Settlement is a compromise of the allegations in the Complaint, which I&E intended to prove, and Clearview intended to disprove.

30. The Parties recognize that their positions and claims are disputed and, given that the outcome of a contested proceeding is uncertain, the parties further recognize the significant and more immediate benefits of amicably resolving the disputed issues through settlement as opposed to time-consuming and expensive litigation.

31. I&E and Clearview, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

- a. Clearview will pay a total civil penalty in the amount of Fifty-Nine Thousand Seven Hundred Fifty Dollars (\$59,750), pursuant to 66 Pa.C.S. § 3301. The civil penalty represents the following: \$1,000 to resolve the alleged violation of 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.9(b); \$2,000 to resolve the two (2) alleged violations of 52 Pa.

³ See 52 Pa. Code § 5.231(a).

Code § 111.4(b); \$10,875 to resolve the twenty-nine (29) alleged violations of 52 Pa. Code § 111.14(a); \$10,875 to resolve the twenty-nine (29) alleged violations of 52 Pa. Code § 111.14(b); \$10,000 to resolve the ten (10) alleged violations of 52 Pa. Code § 54.42(a)(9), 52 Pa. Code §§ 57.171-177 and 52 Pa. Code § 111.7; and \$25,000 to resolve the one hundred and thirty-seven (137) alleged violations of 52 Pa. Code § 54.4(a). Said payment shall be made within thirty (30) days of the date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania” and sent to:

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

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- b. Clearview has provided to each of the customers, who had one or more of the ten (10) accounts switched to Clearview’s electric generation supply service without authorization, a refund for the entire electric generation supply portion on the customer’s bill for the first two (2) billing periods that the customer was switched to Clearview, pursuant to 52 Pa. Code § 57.177(b). Clearview has provided evidence to I&E demonstrating the issuance of these refunds.

- c. Clearview agrees to refund cancellation fees or early termination fees imposed by other electric generation suppliers (“EGS”) and incurred by the customers who were switched to Clearview without authorization, pursuant to 52 Pa. Code § 57.177(c), upon request and the presentation of documentation by the customers. During the pendency of this proceeding and for a period of 180 days following approval of this Settlement Agreement, Clearview will provide evidence to I&E demonstrating the issuance of these refunds.
- d. Clearview has provided refunds to each of the customer accounts in the Duquesne Light Company and PECO Energy Company service territories for overcharges incurred between 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. Clearview has provided evidence to I&E demonstrating the issuance of these refunds.
- e. Clearview has revised its policies and 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 the Pennsylvania State Police, and that the Company notifies the Commission’s Bureau of Consumer Services and local electric distribution companies of door-to-door sales and marketing

activities no later than the morning of the day that such activities occur.

Clearview has provided the revised policies and practices to I&E.

32. Upon Commission approval of the Settlement in its entirety without modification and in consideration of the Company's payment of the total civil penalty in the amount of Fifty-Nine Thousand Seven Hundred Fifty Dollars (\$59,750), I&E shall be deemed to have released Clearview from all past claims that were made or could have been made for monetary and/or other relief based on the allegations set forth in I&E's Complaint.

33. I&E and Clearview jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E Complaint proceeding, and avoids the time and expense of litigation, which entails hearings, potential travel for the Company's out-of-state witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as **Appendix B** and **Appendix C** are Statements in Support submitted by I&E and Clearview, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

34. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the Parties. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

35. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) days after entry of an Order modifying the Settlement.

36. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this proceeding. It is further understood that, by entering into this Settlement Agreement, Clearview has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceeding that may arise as a result of the circumstances described in the Settlement.

37. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

38. If either party should file any pleading, including comments, in response to a tentative or final order of the Commission, the other party shall have the right to file a reply.

39. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate

the terms and conditions of this Settlement Agreement. This Settlement does not preclude the Parties from taking other positions in any other proceeding.

40. The Parties arrived at the Settlement after engaging in extensive settlement discussions. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Clearview Electric, Inc. d/b/a Clearview Energy respectfully request that the Commission issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.

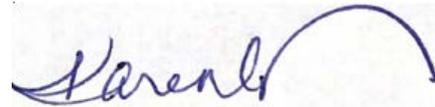
Respectfully Submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

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

By:

By:



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Senior Prosecutor
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Date: May 13, 2021

Date: May 13, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Settlement Petition filed on May 13, 2021 between the Commission’s Bureau of Investigation and Enforcement and Clearview Electric, Inc. d/b/a Clearview Energy is approved in its entirety without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, within thirty (30) days of the date this Order becomes final, Clearview Electric, Inc. d/b/a Clearview Energy shall pay a civil penalty of Fifty-Nine Thousand Seven Hundred Fifty Dollars (\$59,750). Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

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

3. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

4. That the above-captioned matter shall be marked closed upon receipt of the civil penalty.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Clearview Electric, Inc. d/b/a Clearview Energy (“Clearview,” “Respondent” or “Company”).¹ I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

¹ I&E and Clearview are collectively referred to herein as the “Parties.”

I. BACKGROUND

By letter dated March 14, 2018, I&E notified Clearview that it had initiated an informal investigation of the Company consistent with Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113. I&E advised Clearview that its investigation would focus on the Company's enrollment, marketing and sales, and billing practices as an electric generation supplier ("EGS") in Pennsylvania, which were brought to I&E's attention by the Commission's Office of Competitive Market Oversight ("OCMO").

OCMO reviewed a news article² reporting that an elderly person from Wiconisco Township, Dauphin County, Pennsylvania informed the Pennsylvania State Police that his wallet, which contained cash, had been taken from his home during a door-to-door marketing presentation conducted by two sales agents representing Clearview. OCMO then contacted Clearview for information regarding the incident. While Clearview did not self-report the incident to the Commission, the Company was cooperative in providing information responsive to OCMO's inquiries. The two aforementioned sales agents were employed by a third-party vendor used by Clearview to market the Company's electric generation supply services and, in response to the incident, Clearview promptly and permanently removed the two agents from its marketing campaign.

OCMO also alerted I&E that Clearview failed to provide the Commission's Bureau of Consumer Services ("BCS") with notification of its intention to conduct door-to-door sales and marketing activities on June 15, 2017, the date of the alleged wallet theft. When OCMO

² A link to the article follows: https://www.pennlive.com/news/2017/06/man_let_energy_company_reps_in_html

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.

Based on the information set forth above and pursuant to the Commission's internal procedures, OCMO referred the matter to I&E.

In addition to the information provided by OCMO, I&E reviewed 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 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.

I&E's investigation primarily consisted of service and review of three (3) sets of data requests to Clearview. The results of the investigation formed the basis for the allegations set forth in I&E's Formal Complaint ("Complaint"), which was filed on June 1, 2020, in which I&E alleged that:

- a. 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

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).

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;

- b. 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 electric distribution company ("EDC") service territories of Duquesne Light Company ("Duquesne Light"), Metropolitan Edison Company, PECO Energy Company ("PECO"), Pennsylvania Electric Company, and PPL Electric Utilities. Clearview failed to notify BCS and the aforementioned EDCs of such activities, contrary to the Commission's regulations;
- c. 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 investigation 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 contained audio recordings of third-party verifications in

which someone other than the customer is posing as the customer and providing falsified authority to effectuate the switch; and

- d. Clearview uses the website chooseenergy.com to market electric generation supply and enroll potential customers. Between October 2017 and February 2018, Clearview enrolled and billed one hundred thirty-seven (137) customers in the Duquesne Light and PECO service territories at a rate greater than the rate that was advertised on chooseenergy.com at the time of the customer's enrollment.

I&E's Complaint sought relief in the form of a civil penalty in the amount of \$208,000, refunds to customers who were overbilled and/or switched to Clearview without consent, reimbursement of cancellation fees imposed on customers from a prior supplier as a result of the Company's unauthorized switching, and revisions to policies and practices to address the aforementioned misconduct.

On June 23, 2020, Clearview filed an Answer to I&E's Complaint and raised New Matter. On July 13, 2020, I&E filed a Reply denying the averments raised in Clearview's New Matter.

I&E and Clearview then engaged in extensive settlement negotiations regarding the issues raised by the Complaint and the Company's responsive pleadings thereto. On May 13, 2021, I&E and Clearview filed a Joint Petition for Approval of Settlement resolving all issues between I&E and Clearview in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to the instant I&E Complaint proceeding. Notably, Clearview took prompt action to prohibit the two sales agents, who allegedly removed the prospective customer's wallet from his residence, from participating in Clearview's sales campaigns. Additionally, prior to the filing of I&E's Complaint, Clearview fully refunded the ten (10) customers who had been switched to receive electric generation supply service provided by Clearview without authorization and refunded each of the customer accounts in the Duquesne Light and PECO service territories for overcharges that occurred between October 2017 and February 2018. Furthermore, Clearview has been cooperative and proactive with I&E related to identifying policies and procedures that can be further improved to assist Clearview in complying with the Commission's regulations and to satisfy the commitments that I&E has required in the settlement process.

I&E intended to prove the factual allegations set forth in its investigation at hearing, to which the Company would have disputed. This Settlement Agreement results from the compromises of the Parties. Although I&E and Clearview may disagree with I&E's factual allegations, Clearview recognizes the seriousness of the allegations and has made substantial efforts to comply with the Commission's regulations in the future.

I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public

interest as it provides numerous revisions to Clearview’s policies and procedures as well as a civil penalty. As such, I&E respectfully requests that the Commission approve the Settlement without modification so that these public benefits may be realized expeditiously.

III. TERMS OF SETTLEMENT

Under the terms of the Settlement, I&E and Clearview have agreed as follows:

- a. Clearview will pay a total civil penalty in the amount of Fifty-Nine Thousand Seven Hundred Fifty Dollars (\$59,750), pursuant to Pa.C.S. § 3301. The civil penalty represents the following: \$1,000 to resolve the alleged violation of 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.9(b); \$2,000 to resolve the two (2) alleged violations of 52 Pa. Code § 111.4(b); \$10,875 to resolve the twenty-nine (29) alleged violations of 52 Pa. Code § 111.14(a); \$10,875 to resolve the twenty-nine (29) alleged violations of 52 Pa. Code § 111.14(b); \$10,000 to resolve the ten (10) alleged violations of 52 Pa. Code § 54.42(a)(9), 52 Pa. Code §§ 57.171-177 and 52 Pa. Code § 111.7; and \$25,000 to resolve the one hundred and thirty-seven (137) alleged violations of 52 Pa. Code § 54.4(a). Said payment shall be made within thirty (30) days of the date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania” and sent to:

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

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- b. Clearview has provided to each of the customers, who had one or more of the ten (10) accounts switched to Clearview's electric generation supply service without authorization, a refund for the entire electric generation supply portion on the customer's bill for the first two (2) billing periods that the customer was switched to Clearview, pursuant to 52 Pa. Code § 57.177(b). Clearview has provided evidence to I&E demonstrating the issuance of these refunds.
- c. Clearview agrees to refund cancellation fees or early termination fees imposed by other electric generation suppliers ("EGS") and incurred by the customers who were switched to Clearview without authorization, pursuant to 52 Pa. Code § 57.177(c), upon request and the presentation of documentation by the customers. During the pendency of this proceeding and for a period of 180 days following approval of this Settlement Agreement, Clearview will provide evidence to I&E demonstrating the issuance of these refunds.
- d. Clearview has provided refunds to each of the customer accounts in the Duquesne Light and PECO service territories for overcharges incurred between 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. Clearview has provided evidence to I&E demonstrating the issuance of these refunds.

- e. Clearview has revised its policies and 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 the Pennsylvania State Police, and that the Company notifies the Commission's Bureau of Consumer Services and local electric distribution companies of door-to-door sales and marketing activities no later than the morning of the day that such activities occur. Clearview has provided the revised policies and practices to I&E.

Upon Commission approval of the Settlement in its entirety without modification and in consideration of Clearview's payment of a monetary civil penalty and performance of the above-described terms, I&E agrees that it shall be deemed to have released Clearview from all past claims that were made or could have been made for monetary and/or other relief based on the allegations set forth in I&E's Complaint.

IV. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order

entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest." *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). I&E alleges that the conduct in this matter involves fraudulent, deceptive, or unlawful marketing acts committed by two Clearview sales agents, a failure to obtain criminal background histories from the appropriate governmental agency, *i.e.*, the Pennsylvania State Police, unauthorized switching, overbilling and a failure to notify

BCS and EDCs of the Company's door-to-door marketing activities. While the alleged violations pertaining to a failure to notify the Commission's BCS and the relevant EDCs of Clearview's intention to perform door-to-door marketing activities may be characterized as administrative errors, the remainder of the alleged misconduct is of a serious nature. I&E submits that the seriousness of the alleged violations averred in I&E's Complaint was considered in arriving at the civil penalty, refund provisions and other remedial relief set forth in the terms of the Settlement.

The second factor considered is whether the resulting consequences of Clearview's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). I&E submits that no personal injury or property damage occurred as a result of the alleged violations. Nevertheless, the outcome of the alleged violations resulted or may have resulted in adverse financial consequences. For example, the customers who were switched to receive electric generation supplied by Clearview without consent could have been charged a more expensive rate than the local EDC's price-to-compare ("PTC") or the rate of another generation supplier. Indeed, between October 2017 and February 2018, Clearview billed 137 customers in the Duquesne Light and PECO service territories a rate of one to two cents per kilowatt hour ("kWh") more than the advertised rate that led them to enroll with Clearview. Additionally, the fraudulent, deceptive and unlawful marketing conduct of the two Clearview sales agents allegedly resulted in a wallet containing cash that was removed from a prospective customer's residence. Accordingly, I&E avers that some customers experienced or may have experienced adverse financial consequences as a result of the actions of Clearview and such consequences should be deemed serious.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Whether Clearview’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties.

The fourth factor to be considered is whether the Company has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Prior to the filing of the instant Settlement agreement, Clearview fully refunded customers who were overbilled the difference between the rate that was advertised on choosenergy.com and the billed rate. Clearview also refunded the ten customer accounts that were switched without authorization the entire electric generation supply portion on the customers’ bills for the first two (2) billing periods that the customers were switched to Clearview, pursuant to 52 Pa. Code § 57.177(b). Proof of the issuance of the above-described refunds has been provided to I&E.

Clearview’s agreement to issue refunds as part of the settlement process represents a significant public benefit that might not otherwise be realized. Had this matter been fully litigated, the Commission’s ability to order Clearview to issue refunds to customers who were switched without consent or overbilled is questionable. *See Blue Pilot Energy, LLC v. Pa. Pub. Util. Comm’n*, 241 A.3d 1254 (Pa. Cmwlth. 2020) (holding, *inter alia*, that the Commission lacks the requisite express authority or necessary implied authority to order an EGS to issue refunds to its customers). Thus, Clearview’s provision of refunds to customers weighs heavily in favor of approving the Settlement Agreement as being in the public interest.

Moreover, with respect to addressing the overbilling allegations, Clearview entered into a comprehensive agreement with a third party in 2019 to manage its billing system and perform billing related functions. Clearview is paying a substantial cost to receive these services, which should aid in preventing future billing errors that are technical in nature.

Additionally, Clearview has revised its policies and procedures to ensure that criminal background checks include a review of the Pennsylvania State Police database. Clearview also emphasized to its sales team the requirement to notify BCS and the local distribution companies about its door-to-door sales and marketing activities no later than the morning of the date that such activities are anticipated to begin, pursuant to 52 Pa. Code § 111.14. Clearview's revised policies, procedures and internal communications to its sales teams have been provided to I&E.

Finally, Clearview promptly addressed the wallet theft incident by permanently removing the two sales agents who were involved from Clearview's marketing campaign. Clearview also cooperated with Pennsylvania State Police and OCMO concerning the incident.

Each of these modifications to Clearview's internal policies and procedures, as well as post incident remedial actions taken by Clearview, address the alleged conduct at issue, are designed to prevent similar incidents from occurring again and demonstrate a commitment to comply with the Commission's regulations.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). I&E's Complaint alleges that 10 customer accounts were switched to receive electric generation service provided by Clearview without the customers' authorization. Clearview received

customer complaints asserting the unauthorized switching of these accounts in the third and fourth quarters of 2017, with such unauthorized enrollments taking place in 2017. Between October 2017 and February 2018, Clearview billed 137 customers a rate greater than the rate that Clearview advertised on chooseenergy.com at the time of the customers' enrollments. For the majority of the month of June 2017, Clearview failed to notify in advance BCS and local EDCs of its intention to conduct door-to-door sales and marketing activities. On June 15, 2017, the fraudulent, deceptive and/or unlawful action of two Clearview agents resulted in the theft of a prospective customer's wallet during a door-to-door sales campaign. In summary, I&E avers that approximately 148 customers were adversely impacted by Clearview's misconduct over the course of several months in 2017.

The sixth factor to be considered relates to the compliance history of Clearview. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. *Id.* At least six customers have filed formal complaints against the Company alleging unauthorized switching, deceptive marketing, incorrect billing and/or an increase in rates.⁴ These matters were resolved by the filing of Certificates of Satisfaction pursuant to 52 Pa. Code § 5.24. One formal complaint filed against Clearview by a customer was dismissed when Clearview's Preliminary Objections were sustained.⁵ Accordingly, no formal complaints brought by customers have been sustained against the Company.

⁴ The six formal complaints are docketed as follows: C-2017-2616037, F-2016-2559912, F-2015-2478664, C-2014-2411137, C-2013-2381987 and C-2012-2335048.

⁵ *Fortunato Vangeli v. Clearview Electric, Inc.*, Docket No. F-2020-3021497 (Final Order entered December 15, 2020).

Clearview was also the subject of a former enforcement proceeding initiated by I&E wherein I&E alleged that Clearview issued 10,334 invoices in February, March and April 2014, containing charges that exceeded the rate in which customers enrolled. *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). The matter was amicably resolved by settlement of the Parties and Clearview paid a civil penalty in the amount of \$250,000, representing a “per violation” civil penalty of slightly more than \$24.

I&E acknowledges that the instant matter involves allegations pertaining to the same misconduct, *i.e.* overbilling. The Settlement considers this fact as I&E demanded, and Clearview agreed to pay, a civil penalty of slightly more than \$182 for each of the 137 overbilling violations. This amount is seven times greater than the “per violation” civil penalty that was received in the prior enforcement action.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that Clearview cooperated in the investigation, Complaint proceeding and settlement process in this matter and that such cooperation demonstrates a commitment consistent with compliance with the Commission’s regulations.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that a civil penalty amount of \$59,750, which is not tax deductible, in combination with the issuance of customer refunds and the monetary cost of Clearview’s performance of the remedial measures, especially its comprehensive agreement with a third party to upgrade its billing

system and manage billing related functions, is substantial and sufficient to deter Clearview from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). The Settlement Agreement between I&E and Clearview provides a civil penalty of \$1,000 for each of the 10 customer accounts that were physically switched to and received electric generation supply service from Clearview without the customers' authorization. This per account civil penalty is identical to the \$1,000 per account penalty imposed by the Commission in previous slamming matters where a customer's account was switched and received electric generation supply service from a company without the customer's authorization. *See Pa. Pub. Util. Comm'n, Law Bureau Prosecutory Staff v. MXenergy Electric, Inc.*, Docket No. M-2012-2201861 (Order entered August 29, 2013); *See also Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Energy Services Providers, Inc. d/b/a Pa. Gas & Electric and U.S. Gas & Electric, Inc. d/b/a Pa. Gas & Electric*, Docket No. M-2013-2325122 (Order entered October 2, 2014); and *See also Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Reliant Energy Northeast LLC d/b/a Reliant Energy, NRG Business Solutions, Reliant-NRG, NRG Residential Solutions, NRG Retail Solutions, NRG Home and NRG Business*, Docket No. M-2020-3006647 (Order entered March 25, 2021).

The Settlement Agreement also provides for a civil penalty of \$25,000 to resolve 137 alleged overbilling violations, which represents a "per violation" civil penalty of more than \$182 per count. As noted herein, *supra.*, this civil penalty amount considers that the instant matter is Clearview's second offense with respect to overbilling violations brought forth by I&E and it greatly exceeds the \$24 "per violation" civil penalty that was imposed by the Commission in *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v.*

Clearview Electric, Inc., Docket No. C-2016-2543592. The \$182 “per violation” civil penalty is also larger than the \$125 “per violation” imposed by the Commission in *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015), which was a fully litigated matter involving allegations that company management deliberately overcharged customers to save the company from financial peril – facts which are not present in the instant matter.

Regarding the allegations that Clearview failed to obtain criminal background histories from the Pennsylvania State Police of the two sales agents implicated in the June 2017 wallet theft incident, the Settlement provides for a \$2,000 civil penalty. This civil penalty, which is the statutory maximum pursuant to 66 Pa.C.S. § 3301, is larger than the \$425 “per violation” civil penalty imposed by the Commission in *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Vista Energy Marketing, L.P.*, Docket No. M-2018-2624484 (Order entered March 27, 2019) (related to an I&E investigation of an EGS finding that 124 sales agents were conditionally approved to conduct sales and marketing activities while the results of Pennsylvania State Police criminal background checks were pending).

The Settlement Agreement also provides for a civil penalty of \$1,000 to resolve the alleged violation of 52 Pa. Code § 54.43(f) and 52 Pa. Code § 111.9(b), which represent the maximum civil penalty authorized under 66 Pa.C.S. § 3301. Furthermore, regarding the allegations that Clearview failed to notify BCS and local EDCs of its door-to-door marketing activities, the Settlement provides for a “per violation” civil penalty of \$375, which I&E asserts is reasonable and sufficient to address what can be fairly characterized as an administrative error.

I&E submits that the instant Settlement Agreement should be viewed on its own merits as there are no past Commission decisions that are directly responsive to an identical situation. However, in looking at the relevant factors that are comparable to other matters involving allegations of unauthorized switching, fraudulent, deceptive or unlawful marketing acts, a failure to obtain criminal background histories from the appropriate governmental agency, overbilling and a failure to notify BCS and EDCs of the Company's door-to-door marketing activities, and comparing the allegations to the relief provided in the Settlement - specifically, a civil penalty and customer refunds - this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement

avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,



Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522
stwimer@pa.gov

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

Dated: May 13, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**STATEMENT OF CLEARVIEW ELECTRIC, INC.
D/B/A CLEARVIEW ENERGY IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code §§ 5.231, 5.232 and 69.1201, Clearview Electric, Inc. d/b/a Clearview Energy (“Clearview” or “Company”) files this Statement in Support of the Joint Petition for Approval of Settlement (“Settlement”) filed by Clearview and the Commission’s Bureau of Investigation and Enforcement (“I&E”). In support of the Settlement, Clearview offers the following information for the Commission’s consideration.

I. INTRODUCTION

At the outset, Clearview notes that the Settlement is consistent with the Commission's policy to encourage settlements.¹ Settlements conserve valuable resources of the Commission and the parties. Importantly, the focus of inquiry for determining whether a proposed settlement should be approved is not a "burden of proof" standard, as is utilized for contested matters.² Rather, the Commission reviews settlements to determine whether the terms are in the public interest.³

The Settlement fully satisfies the Formal Complaint ("Complaint") filed by I&E against Clearview on June 1, 2020 in the above-captioned matter. As the Settlement resolves the contentious issues that were raised in this proceeding concerning Clearview's alleged violations of Commission regulations and the appropriate level of any civil penalty, and provides for a fair and reasonable resolution of those issues, it is in the public interest. Clearview respectfully requests that the Commission approve the Settlement without modification.

Clearview is a licensed electric generation supplier ("EGS") supplying electricity to retail customers throughout Pennsylvania. The genesis of the Complaint was an instance in which two Clearview sales agents engaged in door-to-door sales and marketing activities on June 19, 2017, resulting in a report of the alleged theft by the agents of a prospective customer's wallet from his home. In response to the alleged incident, Clearview permanently removed the two agents, who were employed by a third-party vendor used by Clearview to market its electric generation services, from its campaign.

¹ 52 Pa. Code § 5.231(a).

² *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011).

³ *See, e.g., Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

Upon review of the incident, the Office of Competitive Market Oversight (“OCMO”) learned that Clearview had neglected to inform the Bureau of Consumer Services (“BCS”) of its door-to-door marketing campaign in June 2017 and referred the matter to I&E. In reviewing consumer complaints that were received by Clearview during that general timeframe, I&E identified instances in which consumers alleged that Clearview had billed a price that was higher than that advertised on a website chooseenergy.com. I&E followed up with data requests as part of an informal investigation, following which the pending Complaint was filed.

The key allegations of the Complaint are that: (1) although Clearview’s criminal background checks of agents engaged in door-to-door marketing and sales practices searched various databases and performed a 50-state review, they did not obtain criminal history records from the Pennsylvania State Police; (2) in June 2017, Clearview did not notify either BCS or the local electric distribution companies (“EDCs”) of their door-to-door sales and marketing activities; (3) during the third and fourth quarters of 2017, ten complaints involved accounts in which Clearview confirmed that the customer was switched without authorization; and (4) between October 2017 and February 2018, Clearview enrolled and billed 137 customers at a rate greater than advertised on chooseenergy.com at the time of the enrollment. I&E sought the imposition of a civil penalty in the amount of \$208,000, along with refunds to customers, the reimbursement of early termination fees incurred by customers who were switched, and the implementation of changes to Clearview’s policies and practices.

In response to the Complaint, Clearview denied some material factual averments, as well as the allegations that certain conducted violated the Commission’s regulations. However, Clearview acknowledged that without the knowledge of management, its sales team had temporarily ceased the practice of notifying BCS and the EDCs of Clearview’s door-to-door

marketing and sales practices. As to the criminal background checks, Clearview noted that it reviews databases covering all 50 states. Further, Clearview pointed to the absence of any allegations in the Complaint suggesting that if Pennsylvania State Police records had specifically been examined that the agents referenced in the Complaint would have been ineligible for door-to-door sales and marketing activities. Clearview also conceded to switching ten customers without consent and that it had inadvertently failed to correct a price posted on the chooseenergy.com website, which resulted in 137 Pennsylvania customers being billed at a rate greater than the price was advertised. However, Clearview emphasized that the disclosure statements sent to those customers contained prices that matched the billed prices. Clearview further contended that the Commission lacks the statutory authority to direct EGSs to issue refunds to customers.⁴ Nonetheless, Clearview asserted that when it became aware of the billing error, it proactively and fully refunded the amounts paid by the customers to reflect the price advertised on choosenergy.com.

Through this Settlement, without admitting any wrongdoing, Clearview has agreed to pay a civil penalty in the amount of \$59,750. The agreed-upon civil penalty includes the maximum amount of \$10,000 for the ten unauthorized switches that Clearview does not dispute. In addition, Clearview has already refunded the entire electric generation supply of these customers' bills for the first two billing periods and has committed to refund any cancellation or early termination fees that may have been imposed by other EGSs, upon request and the presentation of documentation by the customers. As an additional measure, Clearview has revised its policies and 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 the Pennsylvania State

⁴ *Blue Pilot Energy, LLC v. Pa. PUC*, 241 A.3d 1254 (2020), 2020 Pa. Commw. LEXIS 720.

Police, and that the Company notifies the Commission's BCS and local EDCs of door-to-door sales and marketing activities no later than the morning of the day that such activities occur.

Clearview believes that the terms and conditions of the Settlement provide for a fair and reasonable resolution of the issues. As such, Clearview submits that the Settlement is in the public interest and respectfully requests that the Commission approve it without modification.

II. DISCUSSION

A. Summary of Issues

Most of the essential facts are not in dispute. Rather, the controversy in this proceeding primarily centered on the appropriate amount of a civil penalty that Clearview should pay and whether certain practices identified by I&E amounted to violations of the Commission's regulations.

The criminal background checks performed by Clearview searched the databases of all 50 states. While those checks may not have specifically included a review of Pennsylvania State Police records, issues are in dispute as to whether they produced similar results and substantially complied with the regulations. Notably, I&E has not suggested that if Clearview's search had included a review of these records that the sales agents implicated in the alleged theft of a prospective customer's wallet would have been ineligible to participate in the door-to-door marketing and sales campaign in June 2017.

Further, Clearview has conceded that its sales team, without the knowledge of management, temporarily ceased providing notifications of its door-to-door marketing and sales activities to BCS and EDCs in 2017. Noting that this administrative requirement, as opposed to a consumer protection requirement, Clearview has contended that no harm resulted from its oversight. In addition, Clearview's position is that it should not be penalized for each of the 29

days in June 2017 when these notifications were not provided, but rather one time for BCS and one time for the EDCs in connection with that particular campaign.

Moreover, despite Clearview's admission that it charged one hundred thirty seven customers a price that was higher than that advertised on chooseenergy.com, Clearview has contended that this was unintentional, in that it occurred because of a timing issue in connection with updating the price on the website. Clearview has also noted that customers were billed a price that matched their disclosure statement and that it proactively refunded the difference between advertised and billed prices to the affected customers upon learning of the error.

Finally, Clearview has admitted to switching ten customers without proper authorization. It has fully refunded two months of supply charges to the affected customers and committed to refunding any early cancellation or termination fees incurred by the customers, upon the presentation of documentation.

B. Key Provisions of Settlement

1. Civil Penalties

Under the Settlement, Clearview agrees to pay a civil penalty of \$59,750, which consists of: (a) \$1,000 for the alleged theft of a prospective customer's wallet by the sales agents; (b) \$2,000 for the alleged shortcomings in Clearview's background checks; (c) \$21,750 for the 29 days in June 2017 that Clearview was engaged in door-to-door marketing and sales activities without providing notifications to BCS and the EDCs; (d) \$10,000 for 10 unauthorized enrollments; and (e) \$25,000 to resolve the allegations concerning the billed price not matching the price advertised on chooseenergy.com. (Settlement, Para. 31.a.).

2. Refunds

With respect to refunds to the 10 customers who were switched without authorization, the Settlement acknowledges that Clearview has provided a refund for the entire generation supply portion on the bill for the first two billing periods to those customers. Further, Clearview commits under the Settlement to refund a cancellation or termination fee incurred by any of these 10 customers as a result of being switched to Clearview, provided that the customer supplies documentation of incurring the fee. (Settlement, Para. 31.b. and c.).

In addition, the Settlement recognizes that Clearview has provided refunds to each of the 137 customer accounts where the billed price did not match the price advertised on chooseenergy.com. The amount of each refunds was for the difference between those prices. (Settlement, Para. 31.d.).

3. Modification of Policies and Practices

Further, Clearview has revised its policies and practices to ensure that customers are billed the prices for which they enrolled; that Clearview obtains and reviews criminal records of prospective sales agents obtained from the Pennsylvania State Police; and that the Company notifies the Commission's BCS and local EDCs of door-to-door sales and marketing activities no later than the morning of the day such activities occur. (Settlement, Para. 31.e.).

C. Settlement is in the Public Interest

1. Applicable Legal Standards

It is the Commission's policy to encourage settlements.⁵ Settlements conserve valuable resources of the Commission and the parties. Importantly, the focus of inquiry for determining

⁵ 52 Pa. Code § 5.231(a).

whether a proposed settlement should be approved is not a “burden of proof” standard, as is utilized for contested matters.⁶ Rather, the Commission reviews settlements to determine whether the terms are in the public interest.⁷

The Commission’s Policy Statement at 52 Pa. Code § 69.1201, which sets forth various factors and standards that are used in evaluating settled cases, is a codification of the Commission’s decision in *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*.⁸ These factors and standards are utilized by the Commission in determining if a proposed civil penalty is appropriate, as well as if an overall proposed settlement is reasonable and its approval is in the public interest.⁹ Although the same criteria are used in the evaluation of both litigated and settled cases, they are not applied in as strict a fashion to settled cases, and the parties in settled cases are afforded flexibility in reaching amicable resolutions as long as the settlement is in the public interest.¹⁰

2. Clearview’s Position

Had this matter been litigated, Clearview would have contended that the criminal background investigations conducted by third-party vendors complied with the Commission’s regulations since the review included a search of various criminal databases covering all 50 states. Additionally, Clearview would have shown that the use of Pennsylvania State Police records

⁶ *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011).

⁷ *See, e.g., Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

⁸ *Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company*, Docket No. C-00092409 (Order entered February 10, 2000).

⁹ 52 Pa. Code § 69.1201(a).

¹⁰ 52 Pa. Code § 69.1201(b).

would not have necessarily resulted in the particular sales agents being ineligible to join the door-to-door sales team. Further, Clearview would have presented evidence showing that it was unaware of the alleged theft of the prospective customer's wallet until notified by OCMO and therefore could not have self-reported these allegations. Upon learning of this alleged incident, Clearview would have shown that the two agents were immediately removed from the campaign.

In addition, Clearview would have pointed out that although its sales team temporarily ceased providing door-to-door marketing notifications to BCS and EDCs, this occurred without the knowledge of management. Clearview would have also presented evidence to show that the entire sales team has been replaced since then and that no harm occurred as a result of these notifications being overlooked, particularly since the purpose of the requirement is to assist BCS and the EDCs in responding to consumer inquiries.¹¹

With respect to Clearview's failure on one occasion to timely update a price posted on www.chooseenergy.com, which resulted in billed prices not matching the advertised price, Clearview would have shown that was not intentional, but rather an oversight. Clearview would have further demonstrated that the affected consumers received disclosure statements containing prices that matched the billed prices. Additionally, Clearview would have presented evidence showing that when it became aware of the error, it proactively and fully refunded customers for the difference between the price on www.chooseenergy.com and the billed price. While Clearview voluntarily took this step, the Company would have also asserted that the Commission lacks the statutory authority to direct the issuance of refunds by EGSs.¹²

¹¹ *Rulemaking Re: Marketing and Sales Practices for the Retail Residential Energy Market*, Docket No. L-2010-2208332 (Order entered October 24, 2012, at 54-55).

¹² *See Blue Pilot Energy, LLC v. Pa. PUC*, 241 A.3d 1254 (2020), 2020 Pa. Commw. LEXIS 720.

Further, Clearview would have advocated for the imposition of a lower civil penalty due to a number of factors. These factors include: (i) the use of the 50-state review of criminal background checks; (ii) the lack of any harm caused by Clearview's sales team in not providing the door-to-door notifications; (iii) Clearview's compliance history; (iv) the inadvertent nature of the majority of the alleged violations; (v) the proactive measures Clearview took to address billing errors; (vi) Clearview's modifications to its internal practices to prevent recurrences; and (vii) Clearview's cooperation with I&E during the informal investigation that preceded the filing of the Complaint.

By agreeing to pay a civil penalty of \$59,750, in lieu of advancing these arguments, Clearview made a practical business decision to enter into the Settlement so that it can focus on its EGS operations in Pennsylvania, as enhanced by the implementation of remedial measures. Taking this approach also enabled Clearview to avoid the uncertainty of litigation.

3. Application of Policy Statement

a. Seriousness of Allegations

The first factor that is considered under the Policy Statement is whether the allegations were of a serious nature, such as willful fraud or misrepresentation, as opposed to administrative or technical errors.¹³ Clearview acknowledges that allegations of switching customers without authorization are of a serious nature, and that the Commission has established a zero tolerance

¹³ 52 Pa. Code § 69.1201(c)(1).

policy for switching customers without their consent.¹⁴ The negotiated civil penalty of \$1,000 per alleged unauthorized switch reflects the seriousness of I&E's allegations.¹⁵

Clearview also recognizes the seriousness of the allegations concerning the billed prices not matching the advertised prices.¹⁶ The payment of a \$25,000 civil penalty as a result of an unintentional billing error affecting 137 customer accounts, which Clearview proactively rectified upon discovery, appropriately reflects the seriousness of these allegations. Clearview notes that in the *HIKO Order*, the Commission imposed a civil penalty of \$125 per violation, under a far different set of facts that included the EGS intentionally overcharging customers, whereas this Settlement involves an unintentional oversight in updating the website price and obligates Clearview to pay a higher civil penalty per alleged violation.

With respect to the alleged theft of a prospective customer's wallet by two sales agents engaged in marketing sales and practices, Clearview does not dispute the seriousness of this allegation. Accordingly, the agreement to pay a \$1,000 civil penalty, the maximum amount that the Commission is authorized to impose under Section 3301 of the Public Utility Code,¹⁷ is appropriate.

¹⁴ See *PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861 (Order entered December 5, 2013, at 3, 9) (Commission had previously rejected a settlement that called for a civil penalty of \$500 per unauthorized switch; in approving a settlement providing for a civil penalty of \$1,000 per unauthorized switch, Commission noted its long standing zero tolerance policy for such conduct).

¹⁵ See *MXenergy* at 9.

¹⁶ See *PUC, Bureau of Investigation and Enforcement v. HIKO Energy, LLC*, Docket No. C-2014-2431410 (Order entered December 3, 2015) ("*HIKO Order*"). Although that proceeding involved an EGS intentionally charging customers more than the capped price in the disclosure statement, Clearview understands that the Commission's regulations also require the billed price to match the advertised price. 52 Pa. Code § 54.4(a). Clearview is also aware of the importance, in a competitive retail market, of ensuring that customers are billed the price for which they enrolled.

¹⁷ 66 Pa. C.S. § 3301.

Similarly, Clearview understands the importance of conducting criminal background checks that comply with the Commission's regulations. While Clearview continues to believe that a 50-state review complied with those requirements, or at least produced substantially similar results, Clearview has agreed to pay the maximum civil penalty of \$1,000 for the alleged shortcomings in the review of the two sales agents' backgrounds.

As to the door-to-door sales and marketing notifications to BCS and the local EDCs, Clearview recognizes the need to ensure that these entities are prepared to respond to any consumer inquiries that may be received regarding such activities. Given that this requirement is administrative in nature and a failure to comply with it does not harm customers, Clearview believes that its commitment to pay a civil penalty of \$21,750 for 29 instances of failing to notify BCS and 29 instances of not notifying the local EDCs appropriately reflects the nature of these allegations.

b. Seriousness of Consequences

The second factor that is evaluated under the Policy Statement is whether the resulting consequences of the alleged actions were of a serious nature, such as whether personal injury or property damage was involved.¹⁸ No allegations have been raised about personal injury or damage. While the Commission has considered financial impact on consumers, the effects in this proceeding were minimal and quickly remedied by Clearview. Therefore, the consequences were not serious and this mitigating factor supports the negotiated civil penalty.¹⁹

¹⁸ 52 Pa. Code § 69.1201(c)(2).

¹⁹ See *MXenergy at 10*.

c. Intentional vs. Negligent

The third factor identified by the Policy Statement is whether the conduct at issue was deemed intentional or negligent.²⁰ Since this factor is only considered in evaluating litigated cases, it is not relevant in reviewing the Settlement.

d. Modifications to Practices and Procedures

The fourth factor that is considered under the Policy Statement is whether the regulated entity has made efforts to modify its internal practices and procedures to address the allegations at issue and prevent similar conduct in the future. These modifications may include improving company techniques.²¹

Clearview has revised its policies and 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 the Pennsylvania State Police; and that the Company notifies the BCS and the local EDCs of door-to-door sales and marketing activities no later than the morning of the day that such activities occur. Additionally, when Clearview discovered the billing error, it proactively refunded to affected customers the difference between the billed price and the price advertised on choosenergy.com. Further, Clearview has issued refunds of two months' of supply charges to the 10 customers whose accounts are alleged by I&E to have been switched without authorization. Clearview has also agreed to refund any early termination or cancellation fees that those customers incurred as a result of the switch, provided that the customer furnishes documentation.

²⁰ 52 Pa. Code § 69.1201(c)(3).

²¹ 52 Pa. Code § 69.1201(c) (4).

All of these measures demonstrate Clearview's commitment to addressing the allegations in the Complaint and to avoid similar incidents in the future. Therefore, this mitigating factor supports the negotiated civil penalty.²²

e. Number of Affected Customers

The fifth factor that is evaluated under the Policy Statement is the number of customers who were affected and the duration of the alleged violations.²³ Here, no customers were impacted by Clearview's failure to send door-to-door notifications to BCS and the local EDCs, and one prospective customer was affected by the alleged theft of wallet, as well as possibly by the criminal background check allegations. In addition, the 10 instances of alleged unauthorized enrollments is not a large number of affected customers, and given Clearview's refunds of supply charges, the duration of the alleged violations was not lengthy. Similarly, although 137 customer accounts were affected by the billing error, Clearview also quickly remedied the price difference between billed prices and those advertised on chooseenergy.com. Further, looking at it from the standpoint of the number of residential customers who are receiving electricity from an EGS, the percent of affected customers is so negligible as to be *de minimus*.²⁴ While Clearview does not offer this statistic to minimize the experiences of individual consumers whose accounts were switched without consent or were billed a price that was higher than the advertised price, this perspective does demonstrate that the proportion of affected customers was not large.²⁵ This mitigating factor supports the negotiated civil penalty.

²² See *MXenergy* at 10.

²³ 52 Pa. Code § 69.1201(c) (5).

²⁴ According to the March 2021 statistics, approximately 1.4 million residential customers are shopping for electricity. https://www.papowerswitch.com/media/4hobubjl/paps_shoppingnumbers033121.pdf

²⁵ *MXenergy* at 11.

f. Compliance History

The sixth factor is the compliance history of the regulated entity.²⁶ No formal complaints have been sustained against Clearview since it was licensed in 2010. Only seven formal complaints have been filed by consumers against Clearview during that time.²⁷ When formal complaints are filed, Clearview works with consumers to reach amicable resolutions that result in the complaints being fully satisfied and withdrawn. In one instance, the complaint lacked specificity as to what the consumer's allegations were, resulting in dismissal of the complaint.²⁸ Clearview takes a similar approach in handling informal complaints with BCS. Clearview's compliance record supports the negotiated civil penalty.²⁹

g. Cooperation During Informal Investigation

The seventh factor that is considered under the Policy Statement is whether the regulated entity cooperated with the Commission's informal investigation.³⁰ Clearview cooperated during the informal investigation, which preceded the filing of the Complaint, by timely responding to I&E's data requests. (Settlement, Paras. 19-20). This mitigating factor supports approval of the Settlement.³¹

²⁶ 52 Pa. Code § 69.1201(c) (5).

²⁷ <https://www.puc.pa.gov/utility/1111714>

²⁸ *Vangeli v. Clearview Electric, Inc.*, Docket No. F-2020-3021497 (Initial Decision issued October 30, 2020 and Final Order entered December 15, 2020).

²⁹ *MXenergy* at 11.

³⁰ 52 Pa. Code § 69.1201(c) (7).

³¹ *MXenergy* at 11.

h. Deterrent Nature of Civil Penalty and Consistency with Prior Decisions

The eighth and ninth factors that are evaluated under the Policy Statement are the amount of civil penalty that is necessary to deter future violations and past Commission decisions in similar situations.³² The civil penalty of \$1,000 per violation is the maximum amount that may be imposed by the Commission.³³ As Clearview agreed to pay a \$1,000 civil penalty in connection with the unauthorized enrollments, the alleged theft of a prospective customer's wallet, and the allegations concerning the adequacy of Clearview's criminal background checks, these penalties provide a sufficient deterrent. Also, \$1,000 is consistent with prior Commission decisions addressing investigations involving allegations of unauthorized switches.³⁴ The lower civil penalty amounts negotiated by I&E and Clearview for other alleged violations appropriately reflect the less serious nature of those allegations or the unintentional nature of Clearview's conduct, and are in line with prior civil penalties imposed by the Commission.³⁵

h. Other Relevant Factors

The tenth factor to consider is other "relevant factors."³⁶ It is in the public interest to approve the Settlement and avoid the expense and uncertainty of litigation. In addition, the Settlement provides for refunds to affected customers and reflects modifications to Clearview's business practices that will provide a public benefit to all prospective customers.³⁷

³² 52 Pa. Code § 69.1201(c) (8) and (9).

³³ 66 Pa. C.S. § 3301.

³⁴ See *MXenergy* at 11-12.

³⁵ See *HIKO Order*.

³⁶ 52 Pa. Code § 69.1201(c) (10).

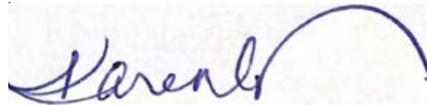
³⁷ *MXenergy* at 12.

i. Summary

An evaluation of the factors in the Policy Statement shows that the Settlement is in the public interest and that it should be approved without modification. Not only does the Settlement sufficiently address the issues raised in this proceeding, it allows Clearview to focus on its EGS operations.

WHEREFORE, based upon the foregoing, Clearview Electric, Inc. d/b/a Clearview Energy respectfully requests that the Commission approve the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,



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Dated: May 13, 2021

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2020-3020127
	:	
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).

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Dated: May 13, 2021