

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terrence Magursky	:	
	:	
v.	:	F-2023-3039205
	:	
Clearview Electric, Inc.	:	

**INITIAL DECISION**

Before  
Michael J. Mroczka  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of an electric generation supply service customer for failure of Complainant to meet the burden of proof that Clearview Electric, Inc. violated the Public Utility Code, a Commission regulation, or a Commission Order.

**HISTORY OF THE PROCEEDING**

On March 8, 2023, Terrence Magursky (Complainant or Mr. Magursky) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Clearview Electric, Inc. (Clearview, Company or Respondent).<sup>1</sup> In his Complaint, Mr. Magursky checked the box requesting a payment agreement. Mr. Magursky also explained under “requested relief” that “Clearview electric did not notify me of a [sic] increase in my rate. I would be happy to pay the rate that was charged before the company quadrupled my rate. I have since discontinued my service with them and have gone back to my old supplier Duquesne

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<sup>1</sup> The Complaint is a timely appeal of a decision by the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3887122. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

light.” While he checked the box requesting a payment arrangement, it is clear from the statement under “requested relief” and the testimony, that Mr. Magursky was alleging that Clearview provided unreasonable service or violated the Public Utility Code, a Commission regulation, or a Commission Order by overcharging him for his service and/or failing to notify him of an increase in his rate and was requesting a refund.

On April 12, 2023, Clearview filed a timely Answer to the Formal Complaint which admitted in part and denied in part various material allegations of the Complaint.<sup>2</sup> In its Answer, Respondent denied that they were required to provide notice of the price change under the Public Utility Code, Commission regulations or a Commission Order. Clearview further alleged that the Commission does not regulate the supply prices charged by electric generation suppliers.

By Hearing Notice dated April 14, 2023, an Initial Call-In Telephonic Hearing was scheduled for May 31, 2023, and the matter was assigned to me.

On May 31, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on his own behalf, and offered no exhibits for the record.<sup>3</sup> Attorney Bryce Beard, Esq., appeared on behalf of Clearview and presented the testimony of one witness, Nicole Steele, Vice-President of Regulatory Affairs and Human Resources for Clearview Renewables, the managing company of Clearview Electric, Inc. Ms. Steele sponsored the following three exhibits, which were admitted into the record:

- Clearview Exhibit 1 – March 1, 2022, Enrollment - Intro Letter and TOS
- Clearview Exhibit 2 – Variable Rate Change Notice dated October 29, 2022
- Clearview Exhibit 3 – Variable Rate Change Notice dated December 29, 2022

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<sup>2</sup> The Formal Complaint was served on Clearview on March 23, 2023.

<sup>3</sup> During the hearing, I provided Complainant ten days to submit any exhibits that he may wish to be entered into the record as late-filed exhibits. Complainant did not submit any late-filed exhibits.

The record closed on June 27, 2023, upon the filing of the 45-page transcript with the Commission.

### FINDINGS OF FACT

1. The Complainant is Terrence Magursky, who resides at 429 Greensburg Pike, Pittsburgh, Pennsylvania 15221 (Service Address). Tr. 8.
2. The Respondent is Clearview Electric, Inc., an electric generation supplier (EGS) authorized to supply electricity to retail customers throughout Pennsylvania under a license issued by the Commission at Docket No. A-2010-2152506. Tr. 20.
3. The Respondent provided residential electric generation supply service to Complainant at the Service Address. Tr. 8, 20.
4. Complainant enrolled for Respondent's service on January 22, 2022. Tr. 21.
5. Complainant enrolled for a program called March to Green Assurance Nine Plan (Plan), which went into effect on March 2, 2022. Tr. 21-22; Clearview Ex. 1.
6. The terms of service were available to Complainant prior to enrolling in the Plan. Tr. 23.
7. Respondent mailed a welcome letter and terms of service to Complainant on March 1, 2022. Tr. 22-24; Clearview Ex. 1.
8. The Plan was a variable plan that had a promotional rate not to exceed \$0.0859 per kilowatt hour (kWh) for the first nine billing cycles. Following the first nine billing cycles, the rate would be the standard variable kilowatt hour rate. Clearview Ex. 1; Tr. 21, 24.

9. The variable kilowatt hour rate and base fees may fluctuate month to month. Tr. 24; Clearview Ex. 1 at 2.
10. Complainant received the promotional rate for ten billing cycles. Tr. 25.
11. On October 28, 2022, Respondent sent a letter to Complainant informing him that his rate would be changing from \$0.0859/kWh to \$0.2439/kWh on his next billing cycle. Tr. 26; Clearview Ex. 2.
12. For the eleventh billing cycle, December 15, 2022, to January 17, 2023, the rate increased to \$0.2439/kWh. Tr. 25-26.
13. On December 29, 2022, Respondent sent a letter to Complainant informing him that his rate would be changing form \$0.2439/kWh to \$0.2999/kWh on his next billing cycle. Tr. 26-27; Clearview Ex. 3.
14. Complainant cancelled the agreement on February 7, 2023, and reverted to Duquesne Light as his supplier. Tr. 12.
15. The terms of service and rate change notices were not returned to Respondent as undeliverable. Tr. 28.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

### Notice

Complainant argues that since his rate was always \$0.0859/kWh it was a fixed rate. Tr. 8. He further argues that Clearview changed his rate without giving him notice. Tr. 9. However, neither the promotional rate nor the rate increase at the end of the promotional rate period constitute a fixed duration contract nor a change in contract terms. As an EGS, Clearview is required to provide notice of a rate increase in the following situations under the Pennsylvania Code:

**§ 54.10. Notice of contract expiration or change in terms for residential and small business customers.**

An EGS shall provide the following notices to customers *prior to the expiration of a fixed duration contract or prior to a change in contract terms*:

(1) An initial notice shall be provided to each affected customer 45 to 60 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. For customers who have elected to receive electronic communications from the EGS, the notice shall be transmitted in the manner chosen by the customer. The initial notice must include:

(i) A general description of the proposed change in terms of service.

(ii) The date a change shall be effective or when the fixed duration contract is to expire.

(iii) An explanation of why a change in contract terms is necessary.

(iv) A statement indicating when a follow-up options notice shall be issued with details regarding the proposed change.

(v) A statement explaining that the options notice must discuss the customer's options to the proposed change in terms of service or expiring fixed duration contract.

(vi) A statement indicating whether the existing fixed duration contract has a cancellation fee, and an explanation of the fee amount and how to avoid the fee, including a notice that the customer is not subject to the cancellation fee if the customer terminates the contract at any time after the customer receives the options notice required under § 54.10(2).

(2) An options notice shall be provided, by first class mail, to each affected customer at least 30 days prior to the expiration date of the fixed duration contract or the effective date of the proposed change in terms. The options notice must include:

(i) A statement advising the customer of the specific changes being proposed by the EGS and informing the customer of how to exercise the customer's options, including the customer's ability to accept the proposed changes, to choose another product offering from the customer's existing EGS, to select another EGS or to return to default service.

(ii) Information regarding new pricing or renewal pricing including the price to be charged, per kilowatt-hour, for the first billing cycle of generation service:

(A) If a customer fails to respond to the options notice and is converted to a month-to-month contract, the EGS shall provide a disclosure statement under § 54.5 (relating to disclosure statement for residential and small business customers).

(I) Notice of a subsequent change in pricing shall be provided to the customer at least 30 days prior to the new price being charged.

(II) For customers who have elected to receive electronic communications from the EGS, notice of the change in pricing shall be transmitted in the manner chosen by the customer. For all other customers, notice shall be provided by first class mail.

(B) If a customer fails to respond to the options notice and is entered into a new fixed duration contract, the EGS shall provide the fixed, per kilowatt-hour price to be charged and term length of the contract.

(iii) The telephone numbers and Internet addresses, as applicable, for the Office of Consumer Advocate, the Commission and PaPowerSwitch.com.

(iv) Language clearly visible on the front of the envelope used to provide the options notice stating that it contains important information regarding the expiration or changes in terms of the customer's electric supply contract.

(v) A statement indicating whether the existing fixed duration contract has a cancellation fee and, if so, that the customer is not subject to the cancellation fee if the customer terminates the contract at any time between the date of the options notice and the expiration date of the fixed duration contract.

(3) When a customer fails to respond to either notice, the following apply:

(i) A fixed duration contract shall be converted to one of the following:

- (A) A month-to-month contract, either at the same terms and conditions or at revised terms and conditions, as long as the contract does not contain cancellation fees.
  - (B) Another fixed duration contract, as long as the new contract includes a customer-initiated cancellation provision that allows the customer to cancel at any time, for any reason, and does not contain cancellation fees.
- (ii) The converted contracts shall remain in place until the customer chooses one of the following options:
- (A) Select another product offering from the existing EGS.
  - (B) Enroll with another EGS.
  - (C) Return to the default service provider.

52 Pa. Code § 54.10 (emphasis added). As emphasized, the notice requirements of 52 Pa. Code § 54.10 apply to fixed duration contracts or a change in contract terms.

The terms of service, which were available to Complainant prior to enrollment in the Plan and which were mailed to Complainant prior to the Plan going into effect, provided that the Plan was a variable plan that had a promotional rate not to exceed \$0.0859 per kilowatt hour (kWh) for the first nine billing cycles. Following the first nine billing cycles, the rate would be the standard variable kilowatt hour rate. Clearview Ex. 1; Tr. 21-22, 24. The rate increase after the first nine billing cycles was always possible, if not probable, under the contract terms. Therefore, the rate increase is not a change in contract terms requiring notice be provided to Complainant. 52 Pa. Code § 54.10.

The terms of service also stated the Contract was for a variable term, or month-to-month duration, and allowed for Complainant to cancel at any time, without penalty. Clearview Ex. 1; Tr. 23. Given the month-to-month duration of the contract, Clearview was not required to provide notice prior to any expiration date of the contract. 52 Pa. Code § 54.10(2).

Although not required, Clearview provided notice of the rate increase to Mr. Magursky. Prior to the price increase from \$0.0859/kWh to \$0.2439/kWh, on October 28, 2022,

Clearview sent a letter to Mr. Magursky advising that the price would increase to \$0.2439/kWh. Tr. 26; Clearview Ex. 2. Subsequently, on December 29, 2022, Respondent sent a letter to Complainant informing him that his rate would be changing from \$0.2439/kWh to \$0.2999/kWh on his next billing cycle. Tr. 26-27; Clearview Ex. 3. Clearview's witness explained that although it was not required to send a notice, Clearview became aware that the increase for Mr. Magursky and some other customers would be significant, so Respondent sent out a notice to warn them of the upcoming increase. Tr. 25. Mr. Magursky argues that he never received the notice letters. Tr. 9, 14. However, the letters were not returned to Clearview as undeliverable. Tr. 28. Further, as explained above, the letters were not required in the first place. 52 Pa. Code § 54.10.

Complainant has not met his burden of proving that Clearview failed to provide notice of the rate increase or that Clearview was required to provide prior notice of the rate increase. Therefore Mr. Magursky's Complaint will be dismissed.

#### Rate Increase

In his Complaint, Mr. Magursky wrote that he "would be happy to pay the rate that was charged before the company quadrupled [his] rate," I interpret Mr. Magursky's request for relief as a request for refund of the difference in the price at \$0.0859/kWh and the prices at \$0.2439/kWh and \$0.2999/kWh.

In review of *Rules, Policies and Consumer Education Measures Regarding Variable Rate Retail Electric Products*, Docket No. M-2014-2406134 (Order entered Mar. 4, 2014) (*Variable Rate Order*), the Commission stated that the rates consumers pay in the retail electric market are governed by the terms of the contract with their EGS. The Commission emphasized that it was "important for consumers in variable rate contracts to review the terms and conditions of those contracts to determine if they were at risk for large rate increases at any given time." *Variable Rate Order* at 3.

The Commission does not have jurisdiction to regulate the rates charged by an EGS, such as the Respondent, or order a refund of unreasonable rates. *See, Blue Pilot Energy, LLC v. Pa. Pub. Util. Comm'n*, 241 A.3d 1254 (Pa. Cmwlth. 2020); *Coalition for Affordable Util. Servs. and Energy Efficiency in Pa. v. Pa. Pub. Util. Comm'n*, 120 A3d 1087 (Pa. Cmwlth. 2015). Rather, these rates are governed by private contract between the EGS and the customer. The Commission lacks the jurisdiction to rule on the parties' responsibilities under a private agreement or the authority to award damages under that agreement. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

Since the Commission lacks jurisdiction to regulate the rates charged by the Respondent or rule on the parties' responsibilities under their private agreement, the Commission cannot order the Respondent to refund any charges for electric generation supply service to the Complainant. Therefore, Mr. Magursky's Complaint will be dismissed.

#### CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.

2. The Commission does not have jurisdiction to regulate the rates charged by an EGS, such as the Respondent, or order a refund of unreasonable rates. *Blue Pilot Energy, LLC v. Pa. Pub. Util. Comm'n*, 241 A.3d 1254, 1265-68 (Pa. Cmwlth. 2020); *Coalition for Affordable Util. Servs. and Energy Efficiency in Pa. v. Pa. Pub. Util. Comm'n*, 120 A3d 1087, 1101 (Pa Cmwlth. 2015).

3. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

4. An EGS shall provide certain notices to customers prior to the expiration of a fixed duration contract or prior to a change in contract terms. 52 Pa. Code § 54.10.

5. The contract between Complainant and Respondent was not a fixed duration contract. 52 Pa. Code § 54.10.

6. The rate increase was not a change in contract terms. 52 Pa. Code § 54.10.

7. The Complainant has failed to carry his burden of proving that Clearview Electric, Inc. violated the Public Utility Code, a Commission regulation, or a Commission Order. 66 Pa.C.S. §§ 332(a), 701.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Terrence Magursky in Terrence Magursky v. Clearview Electric, Inc. at Docket No. F-2023-3039205 is dismissed.

2. That Docket No. F-2023-3039205 be marked closed.

Date: September 21, 2023

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/s/  
Michael J. Mroczka  
Special Agent