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September 11, 2024

Via Electronic Filing

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

Re: Sarah Cotellessee v. Clearview Electric, Inc.
Docket No. F-2024-3050038

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Clearview Electric Inc's Motion to Dismiss with regard to the above-referenced matter.

Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Bryce R. Beard Esq.

BRB/red
Enclosure

cc: Cert. of Service w/enc.
Administrative Law Judge F. Joseph Brady (via email)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing **Motion to Dismiss** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

Sarah Cotellesse
1114 Woodbridge Way
West Chester, PA 19380
scotellesse@yahoo.com

Date: September 11, 2024

/s/ Bryce R. Beard

Bryce R. Beard, Esquire
Counsel for Clearview Electric, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sarah Cotellesse,	:		
	Complainant,	:	
	:		
v.	:	Docket No. F-2024-3050038	
	:		
Clearview Electric, Inc.,	:		
	Respondent.	:	

NOTICE TO PLEAD

To: Sarah Cotellesse
1114 Woodbridge Way
West Chester, PA 19380
scotellesse@yahoo.com

You are hereby notified that an Answer or other responsive pleading to the enclosed **Motion to Dismiss** of Clearview Electric, Inc. (“Clearview”) must be filed within 20 days of the date of service, unless the presiding Administrative Law Judge directs the filing of a response sooner.

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

File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
<https://efiling.puc.pa.gov/>

With copy to:

Karen O. Moury, Esquire
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/s/ Bryce R. Beard

Bryce R. Beard, Esquire

Date: September 11, 2024

Attorneys for Clearview Electric, Inc.

**BEFORE THE
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	:	
	:	
Clearview Electric, Inc.,	:	
	:	
Respondent.	:	

**CLEARVIEW ELECTRIC, INC.’S
MOTION TO DISMISS THE COMPLAINT**

Pursuant to 52 Pa. Code § 5.103, Clearview Electric, Inc. (“Clearview”) files this Motion to Dismiss the Complaint of Sarah Cotellesse (“Complainant” or “Ms. Cotellesse”). Due to the jurisdictional matters involved in this Motion, Clearview requests that Your Honor issue an Order on this Motion *prior to any evidentiary hearing* to define the scope of evidence to be presented by the parties and limit matters to only those which are justiciable by the Commission.

By way of background, in her Complaint, Ms. Cotellesse is disputing her account’s enrollment with Clearview to provide her electric generation supply services. Complaint at ¶ 4. By way of relief, Complainant seeks a refund for the services Clearview provided since her enrollment. Complaint at ¶¶ 4 and 5.

As provided in Clearview’s verified Answer and New Matter, Mr. Cotellesse enrolled with Clearview on January 17, 2012, with an effective service start date of February 29, 2012. Her enrollment, therefore, took place *over 12 years prior* to the filing of her formal complaint on June 18, 2024.

As discussed herein, 66 Pa. C.S. § 3314(a) provides a general limitation period of three years for any action filed under the Public Utility Code. Therefore, as a matter of law, the

Commission is divested of all jurisdiction for any claims raised by Complainant more than three years prior to the filing of her Formal Complaint, or all claims pre-dating June 18, 2021.

Even when viewed in the light most favorable to Ms. Cotellesse, there is no genuine issue of material fact justiciable by the Commission regarding Complainant's January 17, 2012 enrollment with Clearview. The enrollment falls outside the Commission's the Statute of Limitations and her request of relief in the form of refunds based thereon cannot be granted. Therefore, Clearview respectfully requests that Your Honor and the Commission dismiss the Complaint.

In the alternative to complete dismissal, Clearview requests that Your Honor otherwise appropriately limit any evidentiary hearing in this matter to only matters justiciable by the Commission which occurred on or after June 18, 2021 consistent with 66 Pa. C.S. § 3314(a). This would include limiting the scope of the proceeding to preclude discussion or the presentation of evidence regarding the January 17, 2012 enrollment which serves both administrative and judicial efficiency where no relief on the January 17, 2012 enrollment can be granted. Additionally, as a matter of law, the Commission lacks the authority to order a refund of Clearview's electric generation supplier charges, save for very limited circumstances which are not present in this matter. Therefore, if Your Honor does not fully dismiss this proceeding as requesting relief outside the Commissions statute of limitations period, Clearview requests that Your Honor issue an order appropriately recognizing that the Commission cannot award Complainant with damages or refunds of the rates for Clearview's services. In support of this Motion, Clearview states as follows:

I. LEGAL STANDARD

1. The Commission's Rules of Administrative Practice and Procedure permit the filing of motions for relief that is desired. A motion must set forth the ruling or relief sought, and state the grounds therefor, as well as the statutory or other authority upon which it relies. 52 Pa. Code § 5.103(a).

2. A formal complaint must set forth "the act or thing done or omitted to be done" by a public utility "in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or any regulation or order of the commission." 66 Pa.C.S. § 701; 52 Pa. Code § 5.22(a)(4).

3. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). 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 PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlt. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992).

4. The Commission's regulations related to a motion to dismiss serves judicial economy where no factual dispute exists. If no factual dispute exists, a hearing is wholly unnecessary. 66 Pa.C.S. § 703(b). *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d 557 (Pa. Cmwlt. 1989).

5. Section 3314(a) of the Public Utility Code provides a general limitation period of three years for any action filed under the Public Utility Code, except as otherwise provided. 66 Pa. C.S. § 3314(a); *See Duquesne Light Co. v. Pa. PUC*, 611 A.2d 370 (Pa.Cmwlt. 1992).

6. The statute of limitations in Section 3314(a) cannot be waived. Section 3314(a) divests the Commission of jurisdiction for matters that are brought outside of the three-year statute of limitations. *See, e.g., Jahnene Hasty v. Philadelphia Gas Works*, Docket No. C-2014-2419203, (Final Order entered January 27, 2015 adopting the Initial Decision dated November 18, 2014).

7. It is fundamental that the Commission lacks the statutory authority to hear claims on or award damages. *Byer v. Peoples Natural Gas Co.*, 380 A.2d 383 (Pa. Super. 1977); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977); *DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980).

8. Pennsylvania law has long held that damages are a question for the trial courts. *See Miller Oral Surgery, Inc. v. Dinello*, 416 Pa. Super. 310, 611 A.2d 232 (1992) (finding award of lost profits as damages); *see also Delahanty v. First Pennsylvania Bank, N.A.*, 318 Pa. Super. 90, 126, 464 A.2d 1243, 1261 (1983).

9. The Commission has consistently dismissed claims for alleged monetary damages and compensation for lack of jurisdiction. *See e.g. Carlson v. Equitable Gas Company*, Docket No. C-20078025, Opinion and Order (Order Entered June 10, 2008)(*citing DeFrancesco v. Western Pennsylvania Water Company*, 499 Pa. 374, 453 A.2d 595 (1982)).

10. The Commission also lacks statutory authority to grant the relief requested by the Complaint for a refund of supply charges. *Blue Pilot Energy, LLC v. Pa. Public Utility Commission*, 241 A.3d 1254, 1267 (October 27, 2020); *Paul W. Kerr v. Energy Plus Holdings LLC*, Docket No. F-2022-3032332 (Order Granting in Part and Denying in Part Preliminary Objections dated July 7, 2022, at p. 7).

II. ARGUMENT

11. As provided in Clearview's verified Answer and New Matter, Complainant enrolled with Clearview on January 17, 2012. In her complaint, Complainant disputes this enrollment or that she ever "agreed to any change" in her electric supplier. Complaint at ¶ 4. Even accepting this fact as true, Complainant is disputing her enrollment with Clearview which took place over 12 years prior to the filing of her Formal Complaint. Her request for relief, therefore, falls outside the Commission's three year statute of limitations. 66 Pa. C.S. § 3314(a)

12. The three year statute of limitations in Section 3314(a) cannot be waived. Indeed, Section 3314(a) divests the Commission of jurisdiction for matters that are brought outside of the three-year statute of limitations, here regarding any matters that predated June 18, 2021. *See, e.g., Jahnene Hasty v. Philadelphia Gas Works*, Docket No. C-2014-2419203, (Final Order entered January 27, 2015 adopting the Initial Decision dated November 18, 2014).

13. As the Commission lacks jurisdiction to hear the matter regarding Complainant's January 17, 2012, enrollment with Clearview, judicial economy is best served by dismissing the complaint as no factual dispute exists within the Commission's jurisdiction, making, a hearing on Complainant's enrollment with Clearview wholly unnecessary.

14. While Clearview maintains that Complainant's enrollment with Clearview cannot be addressed by the Commission as it occurred over 12 years ago, Clearview has reviewed its historic records and has in-fact located Ms. Cotellesse's January 17, 2012 Third Party Verification validating her enrollment with Clearview. This record was provided to the Commissions Bureau of Consumer Services who dismissed her informal complaint.

15. Clearview recognizes that the Complainant may bring claims for any matter within the statute of limitations, or any matter which occurred after June 18, 2021. To the extent

that Your Honor does not dismiss the Complaint in its entirety, Clearview requests that Your Honor issue an appropriate order limiting the scope of any evidentiary hearing held in this proceeding to only those matters justiciable by the Commission within the statute of limitations provided by 66 Pa. C.S. § 3314.

16. To the extent that this matter is not dismissed in its entirety, Clearview requests that Your Honor issue an order precluding any claims regarding the January 17, 2012 enrollment. Clearview requests such ruling to appropriately set the scope of the evidentiary record and so as to make clear what Clearview must address in response to the Complaint on the records.

17. To the extent that this matter is not dismissed in its entirety, Clearview also requests that Your Honor issue an order limiting the scope of this proceeding to preclude the Complainant's presentation of evidence regarding damages. In particular, the Complaint at ¶ 5 alleges that she was "grossly overbilled" and is seeking a reimbursement of all overpaid charges. Complaint at ¶ 5. This requested relief amounts to a claim for damages which the Commission is not empowered to grant. Clearview, therefore, requests the Your Honor issue an appropriate order to limit the scope of evidence to preclude any requests for damages in this proceeding which will conserve valuable administrative resources and promote judicial economy.

18. Lastly, and again to the extent that this matter is not dismissed in its entirety, Clearview requests that Your Honor issue an order recognizing that the Commission lacks authority to grant the relief requested by Complainant – a refund of supply charges. The only instance in which the Commission's regulations provide for a refund of EGS supply charges occurs: (i) when the enrollment is disputed *within the first two billing periods* since the customer should reasonably have known of a change of the supplier; and (ii) the dispute investigation

establishes that the change occurred without the customer's consent.¹ Even accepting the factual averments in the Complaint as true, for purposes of ruling on this Motion, the Complainant has not disputed her enrollment within the first two billing periods since her January 17, 2012 enrollment. Therefore, the Commission is not empowered to order a refund of Clearview's EGS charges in the first step of the analysis. However, as noted previously, Clearview has a record of Complainant's third party verification validating her enrollment and proving that the enrollment occurred with Complainant's consent on January 17, 2012 which was provided to the Commission's Bureau of Consumer Services during the Informal Complaint. As such, Clearview, requests that Your Honor issue an appropriate order to limit the scope of evidence to preclude any requests for refund of Clearview's charges in this proceeding which will conserve valuable administrative resources and promote judicial economy.

CONCLUSION

WHEREFORE, Clearview Electric, Inc., respectfully requests that Your Honor issue an order prior to the evidentiary hearing that dismisses the Complaint against Clearview Electric, Inc. in its entirety as beyond the Commission's statute of limitations in 66 Pa. C.S. § 3314(a). Alternatively, if not dismissed entirely, Clearview requests that Your Honor limit the scope of this proceeding and the evidentiary hearing to preclude testimony on: 1) the January 17, 2012 enrollment; and 2) alleged damages or requests refunds of Clearview Electric, Inc.'s supply charges as both fall outside the Commission's jurisdiction. Clearview further requests that Your Honor issue an order containing any other relief deemed appropriate.

¹ 52 Pa. Code § 57.177(b); 52 Pa. Code § 59.97(b).

Respectfully submitted,

/s/ Bryce R. Beard

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