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STATE OF NEW HAMPSHIRE



PUBLIC UTILITIES COMMISSION
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

TDD Access: Relay NH
1-800-735-2964

Tel. (603) 271-2431

FAX No. 271-3878

Website:
www.puc.nh.gov

16PUC 16FF317411:16

February 16, 2017

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: DE 17-002, Clearview Electric, Inc. d/b/a Clearview Energy, Investigation and Show Cause Hearing on Penalties and Suspension or Revocation of CEPS Registration Request for Approval of Stipulation and Settlement Agreement

Dear Ms. Howland:

Please find enclosed for filing with the Commission the original and six copies of a Stipulation and Settlement Agreement (Settlement Agreement) executed by Clearview Electric, Inc. d/b/a Clearview Energy, the Office of the Consumer Advocate, and Commission Staff, pursuant to N.H. Code Admin. Rules Puc 203.20. Although the three electric distribution utility parties are not signatories to the Settlement Agreement, they have indicated that they either agree with or do not object to nor oppose the terms and conditions set forth therein.

The executed Settlement Agreement memorializes the terms of settlement outlined for the Commission during the hearing in this proceeding held on January 31, 2017. The Settlement Agreement effectively resolves the key issues regarding the subject matter of this docket.

Commission Staff, on behalf of the settling parties, respectfully requests that the Commission consider and approve the Settlement Agreement, without the need for any further evidentiary hearing.

Sincerely,

A handwritten signature in cursive script that reads "David Wiesner".

David K. Wiesner
Staff Attorney

Enclosure
cc: Docket File
Service List

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

**CLEARVIEW ELECTRIC, INC. d/b/a CLEARVIEW ENERGY
Investigation and Show Cause Hearing on Penalties
and Suspension or Revocation of CEPS Registration**

Docket No. DE 17-002

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement is entered into this 15th day of February, 2017, by and among Clearview Electric, Inc. d/b/a Clearview Energy (Clearview), the Office of the Consumer Advocate (OCA), and the Staff of the Public Utilities Commission (Staff) (hereinafter referred to individually as a Party and collectively as the Parties). This Stipulation and Settlement Agreement resolves certain issues regarding the subject matter of this proceeding.

I. INTRODUCTION AND BACKGROUND

1. On January 5, 2017, the Commission issued an Order of Notice commencing this proceeding, based on Staff's recommendation filed in Docket DE 16-837 that the Commission consider taking enforcement action against Clearview, potentially including the assessment of fines and/or the suspension or revocation of its registration as a competitive electric power supplier (CEPS), as warranted. The Commission's Order of Notice required the mandatory participation as parties in this docket of Liberty Utilities (Granite State Electric) Corp., d/b/a Liberty Utilities (Liberty), Unitil Energy Systems, Inc. (Unitil), and Public Service Company of New Hampshire, d/b/a Eversource Energy (Eversource) (Liberty, Unitil, and Eversource are collectively referred to as the Utilities). On January 13, 2017, the OCA filed a letter of participation pursuant to RSA 363:28.

2. Staff's recommendation memorandum filed in Docket DE 16-837 describes a number of complaints lodged by customers with Unitil personnel and/or with the Commission's Consumer Services and External Affairs Division regarding Clearview's marketing and sales activities. The complaints described include allegations that Clearview sales representatives, among other things, misrepresented themselves as employees or affiliates of the electric distribution company, switched customers without their authorization (i.e. "slamming"), failed to leave customers' premises when requested or failed to abide by "no solicitation" signs, failed to identify themselves or to provide proof of identity, or failed to disclose to prospective customers that they would lose the applicable Electric Assistance Program (EAP) discount on energy costs if they switched electric supply service to Clearview. Staff's memorandum also references customer complaints implicating the Commission's rules regarding third party verification of customer enrollments.

3. The allegations described in the complaints summarized in Staff's memorandum, if proven, represent violations of the Commission's rules governing CEPS, in particular, N.H. Code Admin. Rules Puc 2004.04 (a) (in-person customer solicitation), Puc 2004.05(e) (verbal authorization of customer enrollment), and Puc 2004.10(b) (slamming complaints), and/or the applicable statutory provisions of RSA 374-F:7, I and III (covering, among other things, unfair or deceptive acts or practices by CEPS in the marketing, sale, or solicitation of electricity supply or related services), and RSA 374:28-a (prohibiting slamming of energy-related service customers).

4. Representatives of the Parties and the Utilities attended a technical session on January 24, 2017 and a hearing on the merits was scheduled for January 31, 2017. The Parties agreed to the basic terms and conditions of a settlement proposal and that settlement proposal was

described by the Parties and by Staff witness Amanda Noonan at the hearing held on that date. A written term sheet was presented to the Commission and admitted into evidence as Exhibit 1 prior to the conclusion of that hearing. At the hearing, the Utilities indicated that they either agreed with or did not object to the terms and conditions of the proposed settlement. This Stipulation and Settlement Agreement is intended to memorialize in definitive form the agreement of the Parties with respect to the settlement.

II. SETTLEMENT TERMS AND CONDITIONS

In consideration of the foregoing premises, the Parties hereby stipulate and agree as follows:

1. Clearview represents that it ceased all marketing and sales activities in New Hampshire effective as of February 1, 2017, and agrees that it will conduct no further such activities in New Hampshire.

2. On and after February 9, 2017, Clearview shall not submit any new customer enrollment requests to the electric distribution utilities, with the exception of the implementation of certain “drops” and/or “enrollments” as required to accomplish customer name changes, changes in service location within the utility’s service territory, and similar situations (*i.e.*, account changes that do not involve changes to the identity of the account holder).

3. Electronic data interchange (EDI) transactions associated with pending requests for service made prior to February 1, 2017 may be processed over the eight days following that date. The electric distribution utilities may block any new EDI enrollments on or after February 9, 2017. EDI drops and enrollments required for the utility to implement customer name changes, changes in service location within the utility’s service territory, and similar situations may be processed as necessary as those transactions are considered transfers of enrollment rather than a

new enrollment. To implement any rate changes for customers continuing to be served by Clearview, Clearview may submit an EDI transaction to the electric distribution utilities for processing in the normal course of business. Clearview represents that on or before February 7, 2017, it provided to the utilities the names of all customers with pending enrollment requests and/or the names of those customers for whom an enrollment request was rejected for their respective service territories. No later than February 14, 2017, Clearview shall mail notices to any customers not successfully enrolled prior to February 9, 2017, informing them that they will not become Clearview customers.

4. Clearview may continue to serve existing retail electricity supply customers through the balance of the customers' existing contracts or enrollments and/or until such customers choose alternate supply service from another CEPS or through utility default service.

5. Clearview shall not attempt to renegotiate or modify existing customer contracts, shall not attempt to "win back" any former customers, and shall not attempt to "save" any existing customers, whether through communications initiated by those existing customers or communications initiated by Clearview or its representative(s).

6. Clearview shall waive assessment and collection of any early termination fee (ETF) otherwise applicable under the terms of customer fixed rate contracts. Clearview represents that no ETFs are applicable under the terms and conditions of any of its variable rate contracts.

7. Upon the expiration of any fixed rate customer contracts, the customer accounts may roll over to a variable rate price structure if and to the extent provided for in the existing terms and conditions of the fixed rate contract, and upon notice provided to customers consistent with RSA 374-F:4-b, IV.

8. Clearview shall not seek Commission permission to resume any marketing and sales activities in New Hampshire prior to February 1, 2019. In seeking such permission, Clearview shall first submit to Staff and the OCA a detailed written proposal to resume marketing and sales activities, and shall at a minimum include, without limitation, detailed and specific plans and timing for the proposed resumption of marketing and sales activities, a description of Clearview's complaint history in other states and jurisdictions during and since the end of the most recent calendar year, and a summary of the status of any regulatory proceedings in other states and jurisdictions that are currently pending or were concluded during the preceding 36 months.

9. Staff shall review the written proposal, consult with the OCA, and provide Staff's recommendation to the Commission whether to approve or deny Clearview's proposal, with a copy of such recommendation furnished to the OCA. In connection with its review of any such written proposal submitted by Clearview, Staff shall consider, among other things, the number and type of complaints concerning Clearview or its principals, if any, filed with a state licensing or registration agency, attorney general's office or other governmental consumer protection agency during and since the end of the most recent calendar year in every state and other jurisdiction in which Clearview has conducted business relating to the sale of electricity, and any sanctions or other action, including informal investigations, taken by another state or other jurisdictional regulatory agency, attorney general's office or other governmental consumer protection agency in the 36 months immediately preceding the Clearview application.

10. Commission Staff shall process Clearview's currently pending application for renewal of its CEPS license in the normal course, subject to the terms of this Stipulation and Settlement Agreement. Subject to compliance with the terms and conditions of this Stipulation

and Settlement Agreement, Staff shall not use the complaints and allegations that are the subject of this docket against Clearview in connection with its currently pending application for CEPS registration renewal.

11. Clearview shall not be required to post price or other contract information on the Commission's shopping comparison website because Clearview will not be soliciting and enrolling new customers in New Hampshire, until such time, if any, that Clearview is approved to resume marketing and sales activities in New Hampshire. Additionally, Clearview shall remove the product and pricing information currently listed on the Commission's website not later than February 14, 2017.

12. Clearview shall, on or before April 3, 2017, provide adequate notice on its website directed to new and existing customers of its termination of marketing and sales activities in New Hampshire, in addition to information directed to existing customers related to any relevant matters such as, for example, environmental disclosures.

13. The Utilities have confirmed they will notify Staff if they receive complaints or inquiries regarding Clearview's customer service or other activities in their service territories. Clearview shall provide weekly written reports to Staff of all complaints and of any inquiries related to the subject matter of Staff's investigation in this proceeding.

14. If Clearview intends to withdraw from conducting business in New Hampshire, it shall submit to Staff a detailed written plan for notice to customers and transition of customers to utility default service as of a specified date if such customers do not select an alternative electricity supply source prior to that date. The proposed withdrawal and transition plan shall be submitted for Staff review and approval not less than ninety (90) days prior to the proposed effective date of Clearview's withdrawal.

15. Clearview shall make payments to customers to remedy their loss of the EAP discount to any customer who (i) has left Clearview's electricity supply, and/or (ii) contacts Clearview to discontinue electricity supply service with Clearview based on the loss of the EAP discount. Within ten (10) business days following the effective date of this Stipulation and Settlement Agreement, Clearview shall provide written notice by U.S. mail to all utility EAP customers who switched to Clearview informing those customers of the opportunity to claim the remedy payment described above by calling Staff within 30 days of the date of the notice, after which time no such remedy amount would be payable to any such customer. The form of that written notice shall be submitted to Staff for review and approval prior to mailing to customers.

16. This proceeding shall remain open, but hearing on the merits shall be held in abeyance pending satisfaction in full by Clearview of all terms and conditions of this Stipulation and Settlement Agreement. Upon full satisfaction of all such terms and conditions, Staff shall notify the Commission and the docket will be closed and Staff shall not recommend any further sanctions or enforcement action against Clearview based on the complaints and allegations that are the subject of this proceeding.

III. MISCELLANEOUS PROVISIONS

The Parties further agree to the following miscellaneous provisions:

1. Binding on Parties. The Parties agree to support the terms and conditions contained herein. The Parties understand and acknowledge that this Stipulation and Settlement Agreement is subject to adoption and approval by the Commission.

2. Integrated Terms of Settlement. This Stipulation and Settlement Agreement represents an integrated resolution of issues raised in this proceeding. Accordingly, the effectiveness of this Stipulation and Settlement Agreement is conditioned on the Commission's

adoption and approval of this Stipulation and Settlement Agreement in its entirety, without condition or modification. If the Commission does not adopt and approve this Stipulation and Settlement Agreement in its entirety and without modification or condition, the Parties shall have an opportunity to amend or terminate this Stipulation and Settlement Agreement. If terminated, this Stipulation and Settlement Agreement shall be deemed withdrawn and shall not constitute a part of the record in any proceeding or be used for any purpose.

3. Procedure. The Parties shall cooperate in submitting this Stipulation and Settlement Agreement promptly to the Commission for approval so that it may be implemented in a timely manner. The Parties shall request that the Commission approve this Stipulation and Settlement Agreement without the need for any further evidentiary hearing, but each Party shall make a witness or witnesses available as necessary to answer questions in support of this Stipulation and Settlement Agreement, or provide such other support as the Commission requests, if the Commission schedules any further hearing with respect to this matter. The Parties agree to cooperate, in good faith, in the development of any such other information as may be necessary to support and explain the basis of this Stipulation and Settlement Agreement and to develop and supplement the record accordingly.

4. No Binding Precedent. The Parties enter into this Stipulation and Settlement Agreement to avoid further expense, uncertainty, and delay in resolving issues raised in this proceeding. By its execution of this Stipulation and Settlement Agreement, no Party shall be deemed to have accepted or consented to the facts, principles, methods, concepts, or theories employed in arriving at the terms of this Stipulation and Settlement Agreement, and, except to the extent expressly set forth in this Stipulation and Settlement Agreement, no Party shall be deemed to have agreed that such terms are or would be appropriate for resolving matters at issue

in any different proceeding or context. Each Party shall be free to take the same or a different position on any of the issues resolved hereby in any such different proceeding or context. This Stipulation and Settlement Agreement constitutes the settlement of disputed claims. It does not and shall not constitute an admission of liability by Clearview and shall not be used by Staff or any other Party in any litigation or proceeding for that purpose.

5. Confidentiality. This Stipulation and Settlement Agreement is the product of confidential settlement negotiations. The content of these negotiations, including any documents prepared during the course of such negotiations for the purpose of reaching a settlement, shall be privileged and all offers of settlement shall be without prejudice to the position of any Party presenting such offer. However, the public hearing conducted by the Commission on January 31, 2017, including any exhibits admitted into evidence at the hearing, shall not be subject to confidential treatment.

6. Execution. This Stipulation and Settlement Agreement may be executed by the Parties in one or more counterparts, and through original and/or electronic or facsimile signatures, and as so executed this Stipulation and Settlement Agreement shall constitute one and the same agreement. This Stipulation and Settlement Agreement constitutes the complete agreement of the Parties and may not be amended except by a written instrument signed by all of the Parties. The effective date of this Stipulation and Settlement Agreement shall be the date of its approval by the Commission.

7. Utilities' Acknowledgements. Although the Utilities are not signatories to this Stipulation and Settlement Agreement, the Utilities have indicated that they either agree with or do not object to nor oppose the terms and conditions set forth herein. Unitil has further

acknowledged that the settlement provided for herein effectively resolves all issues raised in its complaint docketed as DE 16-837.

WHEREFORE, the Parties recommend that the Commission issue an order adopting and approving the terms of this Stipulation and Settlement Agreement in resolution of issues raised in this proceeding, in the manner specified hereinabove.

Respectfully submitted,

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

By: 
Name: FRANCIS X. MCEIBNER
Title: PRESIDENT
Duly Authorized

Office of the Consumer Advocate

By: _____
D. Maurice Kreis, Esq., Consumer Advocate

Staff of the Public Utilities Commission

By: _____
David K. Wiesner, Esq., Staff Attorney

acknowledged that the settlement provided for herein effectively resolves all issues raised in its complaint docketed as DE 16-837.

WHEREFORE, the Parties recommend that the Commission issue an order adopting and approving the terms of this Stipulation and Settlement Agreement in resolution of issues raised in this proceeding, in the manner specified hereinabove.

Respectfully submitted,

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

By: _____

Name: _____

Title: _____

Duly Authorized

Office of the Consumer Advocate

By: 

D. Maurice Kreis, Esq., Consumer Advocate

Staff of the Public Utilities Commission

By: 

David K. Wiesner, Esq., Staff Attorney

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov
amanda.noonan@puc.nh.gov
bmondschein@pullcom.com
customerservice@clearviewenergy.com
david.goyette@puc.nh.gov
david.wiesner@puc.nh.gov
donald.kreis@oca.nh.gov
james.brennan@oca.nh.gov
leszek.stachow@puc.nh.gov
margaret.raymond@puc.nh.gov
matthew.fossum@eversource.com
merrett@unitil.com
michael.sheehan@libertyutilities.com
pradip.chattopadhyay@oca.nh.gov
regulatory@ClearviewEnergy.com
rorie.patterson@puc.nh.gov
taylorp@unitil.com
tom.frantz@puc.nh.gov

Docket #: 17-002-1 Printed: February 16, 2017

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:

DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429

- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.