

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

January 31, 2017 - 10:00 a.m.
Concord, New Hampshire

NHPUC FEB10'17 AM 8:36

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.*

PRESENT: Chairman Martin P. Honigberg, Presiding
Commissioner Robert R. Scott
Commissioner Kathryn M. Bailey

Sandy Deno, Clerk

APPEARANCES: Reptg. Clearview Electric d/b/a
Clearview Energy:
Brad N. Mondschein, Esq. (Pullman..)

Reptg. Liberty Utilities (Granite
State Electric) Corp.:
Michael J. Sheehan, Esq.

Reptg. Public Service of New Hampshire
d/b/a Eversource Energy:
Matthew J. Fossum, Esq.

Reptg. Unitil Energy Systems, Inc.:
Patrick H. Taylor, Esq.

Court Reporter: Steven E. Patnaude, LCR No. 52



**CERTIFIED
ORIGINAL TRANSCRIPT**

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APPEARANCES: (C o n t i n u e d)

Reptg. Residential Ratepayers:
D. Maurice Kreis, Esq., Consumer Adv.
Office of Consumer Advocate

Reptg. PUC Staff:
David K. Wiesner, Esq.
Amanda Noonan, Dir./Cons. Services..
David Goyette, Electric Division

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P R O C E E D I N G

[Hearing commenced at 11:29 a.m.]

CHAIRMAN HONIGBERG: We're here this morning in Docket DE 17-002, which is investigation into the conduct of Clearview Energy as a competitive electric power supplier. Those of you who are here regularly know I do not like to read from orders of notice, but I will do so to a limited extent here.

On December 23rd, 2016, Commission Staff filed a memorandum in Docket DE 16-837 regarding a complaint filed by Unitil Energy Systems against Clearview Energy. In its memorandum, Staff recommended that the Commission expand the scope of that docket to include a review of complaints received by the Commission, including those from customers of Eversource and Liberty, as well as any other complaints received directly by Eversource and Liberty. Staff further recommended that, based on the findings of that expanded investigation, the Commission consider taking enforcement action against Clearview, potentially including

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1 the assessment of fines and/or suspension or
2 revocation of its registration as a competitive
3 electric power supplier as warranted.

4 The allegations described in the
5 complaint summarized in Staff's memorandum, if
6 proven, would represent violations of numerous
7 Commission's rules and New Hampshire statutes.

8 We are here for a hearing on the
9 merits of the allegations, and it was filed as
10 a show cause order, but, as I understand it,
11 Staff will have the burden of proof in regards
12 to the allegations.

13 I also believe we made the EDCs
14 mandatory parties to this docket, and I see
15 representatives of those companies here as
16 well.

17 So, before we do anything else, and I
18 understand you do have some information for us,
19 but, before we do that, let's take appearances,
20 starting with Staff. We'll start with Staff.

21 MR. WIESNER: Since we have the
22 burden, thank you, Mr. Chairman. Dave Wiesner,
23 Staff attorney. With me today are Amanda
24 Noonan, the Director of the Consumer Services

1 and External Affairs Division; Rorie Patterson,
2 who's the Assistant Director of that Division;
3 and also at the table is David Goyette of the
4 Electric Division.

5 CHAIRMAN HONIGBERG: All right. For
6 Clearview?

7 MR. MONDSCHHEIN: Good morning,
8 Commissioners. Brad Mondschein, from Pullman &
9 Comley, on behalf of Clearview Electric. And
10 with me is Frank McGovern, who is the President
11 and owner of Clearview Energy. And sitting
12 next to Mr. McGovern is Nicole Steele, who is
13 the Vice President of Regulatory Affairs and --

14 MS. STEELE: Quality Assurance.

15 MR. MONDSCHHEIN: -- and Quality
16 Assurance. We have other staff here, but I
17 don't need to put all them into the record.
18 Thank you.

19 CHAIRMAN HONIGBERG: Off the record.

20 *[Brief off-the-record discussion*
21 *ensued.]*

22 CHAIRMAN HONIGBERG: All right.
23 Other appearances?

24 MR. SHEEHAN: Good morning,

1 Commissioners. Mike Sheehan, on behalf of
2 Liberty Utilities (Granite State Electric)
3 Corp. And with me is Heather Tebbetts.

4 MR. FOSSUM: Good morning,
5 Commissioners. Matthew Fossum, here for Public
6 Service Company of New Hampshire doing business
7 as Eversource Energy.

8 MR. TAYLOR: Good morning. Patrick
9 Taylor, on behalf of Unitil Energy Systems,
10 Incorporated. With me today are Dan Goodwin
11 and Stephen Merrett.

12 MR. KREIS: Good morning. I am D.
13 Maurice Kreis. I am the head of the Office of
14 the Consumer Advocate. We represent the
15 interests of residential utility customers
16 pursuant to RSA 363:28.

17 CHAIRMAN HONIGBERG: That represents
18 all the parties, correct, Mr. Wiesner?

19 MR. WIESNER: Yes.

20 CHAIRMAN HONIGBERG: All right. What
21 are we doing here, Mr. Wiesner? Enlighten me.

22 MR. WIESNER: Well, Mr. Chairman, I'm
23 pleased to report that we reached a Settlement
24 Agreement this morning with the Company. And I

1 believe that the OCA is also supportive of that
2 Settlement. It has not been reduced to
3 writing. I can describe it in broad terms.
4 The key material terms can be easily described.
5 And, then, we would propose to have a witness,
6 Ms. Noonan, speak to some of the details and
7 some of the rationale for entering into that
8 agreement.

9 We only reached it this morning. So,
10 I believe that I should ask for a rule waiver
11 to have it considered by the Commission,
12 because typically settlement agreements are
13 supposed to be filed in advance of the hearing,
14 and we did not have an opportunity to do it.
15 The expectation would be that a detailed
16 agreement would be worked out between the
17 Parties and signed and filed with the
18 Commission within ten business days of today.

19 So, I could either begin to
20 describing the terms of the Settlement. One of
21 the other things we want to make sure we do
22 today is provide an opportunity, if the
23 Commission is willing to entertain them, for
24 public commenters to speak with respect to

1 their experience with Clearview.

2 We had some folks who came here today
3 expecting to participate in some way in the
4 merits hearing, and we did want to make sure
5 that there was an opportunity for them to
6 speak, if that pleases the Commission?

7 CHAIRMAN HONIGBERG: Well, it is our
8 practice to receive public comment in hearings
9 like this. We fully anticipated receiving
10 public comment. We probably would have, in the
11 normal course, done that first, so that the
12 members of the public could offer their
13 comments and then be able to leave, if they
14 have other things to do, as most of us do.

15 Is that consistent with how you want
16 to proceed?

17 MR. WIESNER: Either way. I could
18 either summarize the terms of the Settlement
19 now, and that might be helpful to public
20 commenters who want to speak to the Settlement,
21 or we can go directly to their public comment.

22 CHAIRMAN HONIGBERG: No. I think it
23 makes sense for you to summarize the Agreement
24 so people hear that.

1 But, before you do that, let me get a
2 sense of how many people are here to offer
3 public comment. We have the sign-in sheet, but
4 the sign-in sheet has a number of names on it,
5 of party representatives, utility
6 representatives, I think there was some
7 confusion about what the purpose of the sign-in
8 sheet was.

9 So, let me just get a show of hands.
10 How many people are here as members of the
11 public to provide comment?

12 *[Show of hands.]*

13 CHAIRMAN HONIGBERG: I think I see
14 just two hands. Is that right?

15 Okay. So, that won't take long then.
16 So, let me, before you do the terms of the
17 Settlement, Mr. Wiesner, I want to make sure
18 we're clear on the process going forward. That
19 we will need to make some judgment and evaluate
20 the terms of the Settlement and make sure their
21 consistent with the standards that we require.
22 And we're going to do that based on the
23 description that the witnesses will provide,
24 and then the written Agreement, when it's

1 submitted?

2 MR. WIESNER: Yes.

3 CHAIRMAN HONIGBERG: So, we would
4 not --

5 MR. WIESNER: That's the way I
6 thought of it.

7 CHAIRMAN HONIGBERG: I didn't mean to
8 interrupt. That would mean we would not need
9 to come back for another hearing, once the
10 Agreement is reduced to writing?

11 MR. WIESNER: That's correct. I
12 mean, the material terms will be addressed
13 today, both in statements by counsel, as well
14 as by Ms. Noonan on the stand. And, then, the
15 details of the Agreement will be submitted with
16 the signed Agreement within ten business days.
17 But without, in my conception of this process,
18 without any further need for an evidentiary
19 hearing regarding the terms of the Settlement.

20 CHAIRMAN HONIGBERG: All right.
21 That's helpful. Thank you. And I saw
22 Mr. Mondschein nodding his head while you were
23 speaking. So, that looks good.

24 MR. MONDSCHHEIN: Yes. Thank you.

1 CHAIRMAN HONIGBERG: All right. So,
2 Mr. Wiesner, then why don't you describe the
3 terms of the Settlement.

4 MR. WIESNER: I mean, simply, the
5 core of this proceeding targeting Clearview
6 really is about its marketing practices, and
7 the problems that have surfaced, alleged
8 complaints regarding those marketing practices.
9 So that the key provision of the Settlement is
10 that the Company would agree to immediately
11 cease all marketing activities and not sign up
12 any new customers in the state. And, to be
13 specific about that, no further EDI
14 transactions would be submitted to switch
15 customers to Clearview electric service after
16 today.

17 CHAIRMAN HONIGBERG: What would
18 happen with existing customers?

19 MR. WIESNER: Existing customers
20 would continue to be served by the Company, and
21 with the expectation that, I'll just note, that
22 the Company's registration as a competitive
23 supplier in the state expires as of March 21st,
24 they have filed a renewal application. And,

1 assuming that that renewal application is found
2 to meet all of the specific requirements for
3 eligibility as a CEPS in the state, that would
4 be renewed. And they would continue to serve
5 those existing customers, basically, until
6 those customers, one way or the other, leave
7 Clearview service, sort of a wind-down through
8 attrition, if you will, without a specified end
9 point.

10 It is possible, and we will provide
11 for this through some detail in the Settlement
12 Agreement, it is possible that the Company at
13 some point may make a business decision to
14 voluntarily withdraw from the state. Our
15 expectation is that they would come to the
16 Commission, at least to the Commission Staff,
17 with a plan for how that will be implemented,
18 so that there's an orderly transition of any
19 remaining customers. An opportunity for them,
20 for example, to choose alternative competitive
21 suppliers or be switched to default service,
22 with a timeline established pursuant to the
23 plan and notices provided to the customers.

24 In the meantime, this proceeding --

1 this docket would be held open, the hearing
2 would be held in abeyance. So, if problems
3 arise, if the Settlement is not satisfied, we
4 could come back here and have a hearing on the
5 merits on allegations old and new with respect
6 to the Company's practices in the state.

7 CHAIRMAN HONIGBERG: Thank you, Mr.
8 Wiesner.

9 Mr. Mondschein and Mr. Kreis, is that
10 consistent with your understanding?

11 MR. MONDSCHHEIN: I believe, David,
12 there's one additional part to that Settlement,
13 which is that Clearview is agreeing to not --
14 to disband, for lack of a better word, on new
15 customers, it will be for some period of time,
16 after which they could come back to the
17 Commission and ask for permission to then take
18 on new customers in some role. We have not yet
19 worked out what that timeframe is, but it would
20 have to be subject to, we believe, Staff
21 approval, to basically either amend the
22 Settlement or somehow change the terms of the
23 Settlement. But that we haven't yet worked out
24 the timeframe of what that would be. But there

1 would be some opportunity to come back and say
2 "we want to do X", "we want to participate in
3 New Hampshire through this or that means", and
4 ask for Staff to approve that at that time.

5 MR. WIESNER: That's correct. And I
6 apologize for the oversight in not noting that
7 in my description of the Settlement. We have
8 informally referred to that as a "stay-out"
9 provision. But, as Attorney Mondschein notes,
10 there would be an exception, or at least there
11 would be an opportunity past a certain point in
12 time, currently unspecified, for the Company to
13 seek to once again resume marketing activities
14 in the state, with prior review and approval at
15 some level of detail by Commission Staff.

16 CHAIRMAN HONIGBERG: Commissioner
17 Bailey.

18 CMSR. BAILEY: Mr. Mondschein, what
19 happens to your registration in March?

20 MR. MONDSCHHEIN: It's expected that
21 the registration, if it's otherwise in
22 compliance with New Hampshire regulations and
23 laws, it would be approved.

24 CMSR. BAILEY: So, it's only the

1 Settlement Agreement that will prevent you from
2 serving customers?

3 MR. MONDSCHHEIN: Correct. And, well,
4 with the -- with the enforcement mechanism of
5 having this hearing reinstated, and this
6 hearing going forward on the allegations that
7 are presented before you today, and any
8 additional allegations that maybe come up
9 afterwards.

10 CMSR. BAILEY: And do each of you
11 have a timeframe for this stay-out in mind? Or
12 is that yet to be negotiated? And is it
13 possible that you won't agree?

14 MR. MONDSCHHEIN: It's still yet to be
15 negotiated. I can't imagine we won't agree. I
16 believe we'll come to an agreement on that. I
17 don't see an issue. I can't imagine we
18 wouldn't agree.

19 CHAIRMAN HONIGBERG: Mr. Kreis.

20 MR. KREIS: Mr. Chairman, one other
21 issue that the Parties haven't had a chance to
22 talk about this morning, and that we ought to
23 figure out how we want to approach, is the
24 pending Motion for Protective Order.

1 I guess the OCA's position is that
2 the motion should be denied at this point.

3 CHAIRMAN HONIGBERG: Well, let's deal
4 with that separately, okay?

5 MR. KREIS: Sure. Understood.

6 CHAIRMAN HONIGBERG: But, in terms of
7 the Settlement, Mr. Kreis, was there anything
8 else that either Mr. Wiesner or Mr. Mondschein
9 characterized in way you weren't comfortable
10 with or omitted?

11 MR. KREIS: No. I am perfectly
12 comfortable with the terms as they have been
13 laid out.

14 CHAIRMAN HONIGBERG: All right. Are
15 we ready then to receive public comment?

16 *[No verbal response.]*

17 CHAIRMAN HONIGBERG: I sense we are.
18 The two people who appear to me to be
19 identified as members of the public -- I'm
20 sorry, I'm not going to do well with this name,
21 I'm afraid, Daniel Finocchiaro?

22 MR. FINOCCHIARO: Yes.

23 CHAIRMAN HONIGBERG: And Ian Donovan?

24 CAPT. DONOVAN: Correct.

1 CHAIRMAN HONIGBERG: All right. So,
2 Mr. Finocchiaro, why don't you go first. And,
3 as long as you have a microphone near to you,
4 and the red light on, it will work beautifully.

5 MR. FINOCCHIARO: Thank you very
6 much. So, my statement was, I believe, filed,
7 but I would like to read it.

8 My name is Danny Finocchiaro and my
9 address is 357 Seames Drive, Manchester, New
10 Hampshire. I'm a customer of Eversource
11 Energy.

12 On or about August 9th, 2016, I
13 contacted the New Hampshire Public Utilities
14 Commission. I contacted the PUC because, on or
15 about August 7th, 2016, a representative of
16 Clearview Energy, by the name of Lloyd Putnam,
17 visited my home. The Clearview representative
18 attempted to solicit my enrollment in
19 Clearview's electric supply service. The
20 Clearview representative wore no badges or
21 insignia of any kind and provided no
22 identification. The Clearview representative
23 told me that he was making house calls to see
24 if my Eversource bill was correct.

1 Based on the way the representative
2 initiated the conversation, it seemed as though
3 he was working for Eversource. When I told the
4 Clearview representative that I was not
5 interested in anything, he stated that he was
6 "not selling anything". I showed the Clearview
7 representative my Eversource bill. The
8 Clearview representative told me that the bill
9 was incorrect. The Clearview representative
10 asked to use my phone to call and correct my
11 bill on speaker phone.

12 While the Clear -- and when they
13 called, there was no sign to being Clearview, I
14 should elaborate that.

15 I showed the Clear -- excuse me.
16 While the Clearview representative was on the
17 phone, I realized that he was attempting to
18 change my electric supply services. The
19 Clearview representative stated words to the
20 effect that changing my electric supply service
21 would lock in a price for the winter.

22 When I spoke with the representative
23 on the phone, over speaker phone, I told the
24 representative not to make any changes to my

1 account.

2 When I got off the telephone, I told
3 the Clearview representative at my home to
4 leave. When I told the Clearview
5 representative to leave, he stated "to not
6 mistake him" -- excuse me for this -- "for a
7 pussy".

8 After the Clearview representative
9 left, I called Clearview to ensure that no
10 changes were made to my account. The Clearview
11 representative on the phone stated the words --
12 stated words to the effect that my negative
13 experience was not the first negative customer
14 experience with Clearview. The representative
15 on the phone stated the words to the effect "If
16 the Company did things normally and were up
17 front with people, this would never happen."
18 The representative on the phone stated words to
19 the effect that the Company outsourced for its
20 door-to-door sales people and "who knows who or
21 what quality they are."

22 So, I'd like to only add one thing.
23 If, by chance, they were to apply for
24 reinstatement in the future, I strongly suggest

1 that you research their practices outside of
2 New Hampshire, because, in my personal opinion,
3 they are completely unethical and have no
4 business to do business in New Hampshire.

5 Thank you very much.

6 CHAIRMAN HONIGBERG: Thank you,
7 Mr. Finocchiaro.

8 Mr. Donovan.

9 CAPT. DONOVAN: All right. Would you
10 like me to read the statement that I submitted
11 or do you want me to just explain it?

12 CHAIRMAN HONIGBERG: I leave that up
13 to you. I'd just ask, if you do choose to read
14 it, read it slowly, to that it gets caught all
15 by the reporter here.

16 CAPT. DONOVAN: Okay. All right. My
17 name is Ian Donovan. I am employed by the
18 Hillsboro Police Department. My business
19 address is 22 Municipal Drive, Hillsboro, New
20 Hampshire. I have worked for the police
21 department for 12 years. I presently serve as
22 a Captain. I have served in that role for four
23 years. In my duties as Captain, I regularly
24 interact with members of the public directly,

1 and I supervise the work of 11 officers who
2 also regularly interact directly with the
3 public. Much of our contact with the public is
4 through telephone calls.

5 In and around November 2016, the
6 Department received calls of concern regarding
7 door-to-door sales by Clearview Energy. On or
8 about November 25th, 2016, I contacted New
9 Hampshire Public Utilities Commission. I
10 contacted the Public Utilities to confirm that
11 Clearview was a legitimate power company
12 registered to do business in New Hampshire.
13 The citizens who contacted the Police
14 Department reported that they were concerned
15 that Clearview's activities were a scam.

16 In the course of my official duties,
17 I met with one young male who claimed to be a
18 Clearview employee. He provided a valid New
19 Hampshire Hawkers and Peddlers license.
20 However, he failed to provide accurate
21 identification for himself. The Clearview
22 employee was carrying another person's
23 identification.

24 The incident report that is attached

1 to my statement is a true and accurate copy of
2 the records kept in the usual course of my
3 Department's duties.

4 I have also provided -- I have six
5 incidences that we documented of complaints
6 from residents in our town, the way the --
7 basically, the door-to-door sales practices
8 were handled.

9 And, in the first report, the
10 specific one, these people actually said that
11 the Clearview employee represented himself as
12 Eversource. In the other five complaints that
13 were documented, they were just not happy with
14 the way that they were being approached, in an
15 aggressive sales tactic.

16 These complaints actually began at
17 the end of August, and ran through most of the
18 Fall of 2016.

19 And only my intention to contact the
20 Public Utilities Commission was mainly just to
21 confirm that they were a legitimate company, so
22 that we could inform the public that they were
23 not there to scam them or whatever they were
24 doing. So, that was the main intent.

1 CHAIRMAN HONIGBERG: Thank you,
2 Captain. We appreciate your coming here today.

3 CAPT. DONOVAN: Thank you.

4 CHAIRMAN HONIGBERG: I am correct
5 there are no other members of the public who
6 wish to provide comment today?

7 *[No verbal response.]*

8 CHAIRMAN HONIGBERG: All right.
9 We'll close that portion of the hearing.

10 Mr. Wiesner, are we ready to hear
11 from the witnesses regarding the Settlement?

12 MR. MONDSCHHEIN: Mr. Honigberg?

13 CHAIRMAN HONIGBERG: Mr. Mondschein,
14 yes.

15 MR. MONDSCHHEIN: Could I just speak
16 to Mr. Wiesner for one minute? Something else
17 has come up that we realize may affect the
18 Settlement. So, I just wanted to clarify
19 something with Mr. Wiesner for one moment, if
20 you don't mind?

21 CHAIRMAN HONIGBERG: Sure. Let's go
22 off the record.

23 MR. MONDSCHHEIN: Thank you.

24 *[Atty. Mondschein and Atty.]*

1 *Wiesner conferring, as well as*
2 *other parties.]*

3 CHAIRMAN HONIGBERG: All right. Back
4 on the record.

5 All right. Is there anything we need
6 to know, based on the conversations that were
7 just taking place?

8 MR. WIESNER: Yes. I apologize for
9 that, Mr. Chairman.

10 There was a detailed point, which is
11 an important one, in particular, because I
12 earlier spoke to -- spoken to the issue of EDI
13 processing and the sort of end date for EDI
14 processing to switch new customers to
15 Clearview. It was pointed out to us that there
16 are some number of customers who are already in
17 the pipeline to be enrolled with Clearview as a
18 result of previous sign-ups. And, of course,
19 they have a rescission period under the
20 Commission's rules, which we try to respect and
21 accommodate by pushing out that date by, I
22 believe, eight calendar days.

23 I think I would invite Attorney
24 Mondschein to describe on the record what the

1 Company is proposing to do.

2 MR. MONDSCHHEIN: Thank you. So, we
3 have some customers who are in the queue for
4 lack of a better word, and there's 59 of them.
5 They will all be processed, at the latest,
6 eight days, calendar days, from today. We are
7 going to provide each of the utilities a list
8 of those names that are within their territory
9 so they know who exactly these customers are.
10 And, therefore, those processes will still go
11 through. And, then, so, the cut-off for the
12 EDI will be eight days from today, and will
13 only include, in the next eight days, those
14 list of customers.

15 CHAIRMAN HONIGBERG: Okay. Are we
16 ready to hear from witnesses? Please say
17 "yes".

18 MR. WIESNER: I believe we are. And
19 we only have one witness, who is Amanda Noonan,
20 if you're --

21 CHAIRMAN HONIGBERG: All right.
22 While Ms. Noonan takes her place in the witness
23 box, I'll tell the utilities that, you know,
24 after Ms. Noonan is done, you'll certainly have

[WITNESS: Noonan]

1 an opportunity to ask questions. If you have
2 concerns or want to express support, you'll
3 have a chance to do that. You are mandatory
4 parties to this proceeding.

5 Does that make sense to all of you,
6 Mr. Taylor, Mr. Sheehan, Mr. Fossum?

7 MR. FOSSUM: Yes, it does.

8 CHAIRMAN HONIGBERG: And I see
9 nodding heads. That's good. I appreciate
10 that.

11 Mr. Patnaude.

12 (Whereupon **Amanda O. Noonan** was
13 duly sworn by the Court
14 Reporter.)

15 CHAIRMAN HONIGBERG: Mr. Wiesner.

16 **AMANDA O. NOONAN, SWORN**

17 **DIRECT EXAMINATION**

18 BY MR. WIESNER:

19 Q. Ms. Noonan, for the record would you please
20 state your name and position with the
21 Commission.

22 A. Certainly. My name is Amanda Noonan. I'm the
23 Director of the Consumer Services and External
24 Affairs Division.

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[WITNESS: Noonan]

1 Q. And how long have you held that position?

2 A. Approximately 14 months in that position.

3 Q. And prior to that, you held a similar position
4 with the Commission?

5 A. Yes. For 18 years.

6 Q. And you have testified before the Commission
7 before?

8 A. Yes, I have.

9 Q. Could you please briefly describe your role in
10 investigating the complaints against Clearview.

11 A. Certainly. The Consumer Services Division
12 receives phone calls from customers with
13 questions about their utility service, as well
14 as competitive energy supply service. We began
15 to receive an uptick of calls regarding
16 Clearview Energy in August. By mid -- probably
17 the middle to the third week in September, it
18 was significant enough that I reached out to
19 Clearview to ask them what action they were
20 taking, what steps they were taking to correct
21 these issues that we were receiving.

22 We received an action plan from Clearview,
23 but we continued to receive customer
24 complaints. And, so, we began the process of

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[WITNESS: Noonan]

1 compiling those complaints and putting together
2 part of the information that was ultimately
3 filed in the proceeding opened when Unitil
4 filed its complaint in October, end of October
5 2016.

6 Since that time, we've put those together,
7 we've looked at the issues. We filed a
8 recommendation with the Commission in December,
9 and have had conversations with Clearview since
10 then regarding the matters raised in that memo.

11 Q. And, with respect to the Settlement that's been
12 described this morning, can you please briefly
13 summarize why Staff has concluded that that's a
14 reasonable approach that provides benefits to
15 customers?

16 A. The overwhelming theme, for lack of a better
17 word, of the calls that we received from
18 customers had to do with the marketing -- what
19 they perceived as the marketing practices of
20 the Clearview representatives at their door.
21 The Settlement that was reached this morning
22 eliminates completely those problematic
23 marketing issues.

24 By allowing Clearview to continue to serve

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1 those customers that have enrolled and have not
2 left their service, it ensures that there's no
3 harm to those customers if the rate that
4 they're on is advantageous to them, more
5 advantageous perhaps than another rate in the
6 market or the default service rate of their
7 utility provider.

8 All the rates are variable rates. There
9 are no early termination fees. So, customers
10 could leave at any time with no harm. And, for
11 customers that perhaps, you know, selected
12 Clearview because of their green energy
13 product, they're able to continue with that
14 selection for as long as they choose.

15 It provides a smoother transition for
16 customers through all of those things that I
17 just described. The condition that Staff
18 review any exit plan, when Clearview gets to a
19 point perhaps that the number of customers it's
20 serving is no longer sufficient for it to
21 continue to do business in New Hampshire and
22 incur the regulatory fees and assessments that
23 it would incur as a registered supplier, will
24 help ensure that there's adequate notice to

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1 customers before Clearview exits the market,
2 and provide, again, a smooth transition for
3 those customers to whatever service offering
4 they choose at that point.

5 The provision regarding a stay-out I think
6 provides some additional protections to
7 customers in the State of New Hampshire. It
8 sends an appropriate message to the competitive
9 energy supply market in New Hampshire about the
10 Commission's commitment to ensuring that we
11 have a robust competitive energy supply market
12 with adequate consumer protections, so that
13 consumers can have faith in the decisions that
14 they make and know that they're being
15 protected, and continue to feel comfortable
16 making a choice of energy supply, if they so
17 choose.

18 Q. Thank you, Ms. Noonan. And, in your opinion,
19 are the Settlement terms, as they have been
20 described here today, subject to being detailed
21 with more specificity in the final written
22 Agreement, are they just and reasonable and
23 serve the public interest?

24 A. Yes. I believe they do.

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[WITNESS: Noonan]

1 MR. WIESNER: I have no further --

2 **CONTINUED BY THE WITNESS:**

3 A. They are and they do.

4 MR. WIESNER: Sorry. I have no
5 further questions of this witness.

6 CHAIRMAN HONIGBERG: You ask a
7 compound question, you get multiple answers,
8 Mr. Wiesner.

9 Which of the other parties would like
10 to ask questions of Ms. Noonan? Let me see who
11 wants -- anyone?

12 *[Show of hands.]*

13 CHAIRMAN HONIGBERG: Mr. Sheehan
14 does. Mr. Fossum does. Anybody else?

15 *[No verbal response.]*

16 CHAIRMAN HONIGBERG: All right.
17 Mr. Sheehan, why don't you go first.

18 MR. SHEEHAN: I was actually going to
19 say "I don't have any questions of Ms. Noonan."

20 CHAIRMAN HONIGBERG: There you go.
21 Mr. Fossum.

22 MR. FOSSUM: Thank you. I just have,
23 well, two questions, I guess.

24 **CROSS-EXAMINATION**

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[WITNESS: Noonan]

1 BY MR. FOSSUM:

2 Q. The first one is, if I could confirm, I believe
3 I just heard Ms. Noonan say that there is "no
4 cancellation fee for customers who might leave
5 Clearview". Did I hear that correctly?

6 A. Yes. We asked the question of Clearview as to
7 the rate that the customers that are currently
8 enrolled what rate they were on. We understand
9 they're all on a variable rate, and there is no
10 early termination fee associated with that
11 variable rate.

12 MR. FOSSUM: Okay. I guess this is a
13 somewhat loose hearing, I'll just note that I
14 pulled up the Commission's energy supplier
15 shopping page, and, under Clearview Energy, it
16 does list "cancellation fees" for customers.
17 So, I don't know quite what that means for the
18 customers covered by the Settlement Agreement.
19 But, to the extent that Eversource might
20 receive a telephone call from a customer
21 concerned about a fee, we'd like to give them
22 correct information.

23 And, so, I guess I'm looking for --
24 maybe I'm re-asking the question, I'm just

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[WITNESS: Noonan]

1 looking for confirmation that any customers
2 currently on Clearview's service should not
3 expect a cancellation fee if they leave, you
4 can pull out at any time?

5 CHAIRMAN HONIGBERG: There's some
6 hubbub up in the front of the room, Mr. Fossum,
7 while that's going on. So, I think there may
8 be an answer from the Company.

9 So, Mr. Mondschein.

10 MR. MONDSCHHEIN: Thank you, Mr.
11 Chairman. So, what I understand is that there
12 is a product that is offered by Clearview that
13 does have an early termination fee. However,
14 we believe that there are no customers actually
15 on that product. We don't believe there are.
16 If there happens to be anyone on that product,
17 but right now sitting here we don't believe
18 there are, that that early termination fee will
19 be taken down and there will be none assessed.

20 CHAIRMAN HONIGBERG: All right. Are
21 we clear on that one, Mr. Fossum?

22 MR. FOSSUM: Yes. Thank you.

23 CHAIRMAN HONIGBERG: All right.

24 MR. FOSSUM: I only had one other

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[WITNESS: Noonan]

1 question.

2 BY MR. FOSSUM:

3 Q. For our purposes, for Eversource, if, say,
4 after this, the eight-day period that we
5 discussed or that I've heard discussed this
6 morning, we get a call from a customer who has
7 either been approached by someone claiming to
8 be a representative of Clearview, is there a
9 preferred method for referring that customer?
10 Should that customer be referred to Clearview,
11 to the Commission, in the event that we get
12 such a contact?

13 A. So, we would like to know about that, if you
14 get such a call. I'm assuming the Company
15 would like to know also. But we would notify
16 them if you direct the customer to us.

17 MR. FOSSUM: Thank you.

18 MR. MONDSCHHEIN: Mr. Honigberg, may I
19 say something else?

20 CHAIRMAN HONIGBERG: Certainly, Mr.
21 Mondschein.

22 MR. MONDSCHHEIN: I think if anyone
23 sitting in this room hears that there's anyone
24 out in the field claiming to be a Clearview

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[WITNESS: Noonan]

1 representative, not only should they be
2 contacting the Company and the PUC, they should
3 be calling their local police department and
4 have the person arrested.

5 CHAIRMAN HONIGBERG: All right.
6 Commissioner Scott.

7 CMSR. SCOTT: Thank you.

8 BY CMSR. SCOTT:

9 Q. Does the Settlement -- Ms. Noonan, thank you.
10 Does the Settlement envision any kind of public
11 outreach or communication with the public?

12 A. That would be a detail that we didn't discuss
13 this morning that might come up in the course
14 of hammering out an actual written Settlement
15 Agreement.

16 Q. Okay. And, in particular, and I don't know
17 this, but it sounds like the Company has,
18 obviously, been going door-to-door and handing
19 out information. So, is it a concern, from
20 your Division's aspect, that somebody who
21 hasn't signed up yet, they're not part of the
22 59 in queue, --

23 A. Uh-huh.

24 Q. -- but they take a while to make a decision and

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1 they make the call after, is that a concern?
2 Or would it -- is it your understanding, would
3 Clearview be still manning the phones or --

4 A. So, yes. I think Clearview will still be
5 manning the phones, because they do business in
6 other states. But our understanding is that
7 Clearview will make whatever changes it needs
8 to make to its website to shut down any website
9 enrollments for New Hampshire, and that will be
10 done today, within the next 24 hours. And that
11 any calls that may trickle in, those customers
12 would be advised "No, we're very sorry. We're
13 not offering a product in New Hampshire
14 anymore."

15 Q. And I'll --

16 MR. MONDSCHHEIN: I'm sorry,
17 Commissioner Scott, if I may? If there's also
18 a -- an EDI would have to be generated to the
19 electric distribution companies to make that
20 switch. And the electric distribution
21 companies are going to block anything eight
22 days from today, so that wouldn't go through.

23 CMSR. SCOTT: Thank you.

24 BY CMSR. SCOTT:

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[WITNESS: Noonan]

1 Q. And to the clarify my questions on customer
2 outreach or potential customer outreach is just
3 to eliminate the confusion for them. I
4 understand, certainly, --

5 A. Uh-huh.

6 Q. -- they couldn't physically be moved after
7 this. So, in a similar vein, what I think I
8 heard is the Company would effectively, lacking
9 any approval in the future to come back, the
10 Company was talking about a wind-down, is that
11 your understanding?

12 A. Yes. That's correct.

13 Q. So, is there any concern, should I be worried
14 about the existing customers and them knowing
15 that's out there? Does that cause any
16 concerns?

17 A. As part of the Settlement, Clearview has agreed
18 to come in a as yet unspecified amount of time
19 prior to any such exit from the state to
20 present an exit plan to Staff for review. And,
21 at that point in time, we would be very careful
22 about sufficient notice to customers to provide
23 them with opportunities to make whatever
24 changes they choose to make at that point.

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[WITNESS: Noonan]

1 CMSR. SCOTT: Okay. Thank you.

2 That's all I have.

3 CHAIRMAN HONIGBERG: Commissioner
4 Bailey.

5 CMSR. BAILEY: Thank you.

6 BY CMSR. BAILEY:

7 Q. It sounds like your expectation is that they
8 will exit the market. But, from my discussion
9 with Mr. Mondschein, it didn't sound like that
10 to me.

11 A. Uh-huh.

12 Q. What gives you the idea that they're going to
13 exit the market?

14 A. I think that either of the two things could
15 happen, honestly. The Company has a certain
16 number of customers enrolled right now. How
17 long it would take for those customers to leave
18 their service through attrition is anybody's
19 guess. And if -- we talked -- Attorney Wiesner
20 talked about a stay-out provision, Attorney
21 Mondschein talked about a stay-out provision.
22 If that period expires before the volume of
23 customers that the Company continues to serve
24 reaches a point where financially it makes no

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1 sense for them to continue to serve in the
2 state, they may want to look at asking the
3 Commission to let them have another chance in
4 New Hampshire with a different type of --
5 perhaps a different type of marketing plan or
6 approach.

7 So, one or the other could happen. That
8 they could leave the market before the stay-out
9 period ends, or they could still be here when
10 the stay-out period ends, and then they'd
11 reevaluate where they stand at that point.

12 Q. Okay.

13 A. I can't give you a definite what's going to
14 happen.

15 Q. Okay. Thank you. The Settlement Agreement
16 does not provide for any fines, is that
17 correct?

18 A. That's correct.

19 Q. If the Company did not follow the Agreement, --

20 A. Uh-huh.

21 Q. -- and part of the Agreement is to hold the
22 hearing in abeyance, --

23 A. Uh-huh.

24 Q. -- we would not be waiving our ability to fine

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[WITNESS: Noonan]

1 them, if they were called back in here. Is
2 that part of the Settlement?

3 A. It's not a term that we talked about this
4 morning. And I think I would leave it to
5 attorney Wiesner to comment on whether the
6 Commission would be restricting its options in
7 any way. My understanding is that the
8 Commission would not. But I'll leave it to
9 Mr. Wiesner.

10 CHAIRMAN HONIGBERG: You're
11 disclaiming legal authority here, Ms. Noonan?

12 WITNESS NOONAN: I am. I am. I am
13 not an attorney, and I was disclaiming all
14 legal authority.

15 CMSR. BAILEY: As I was asking the
16 question, I was thinking "Oh, this is a legal
17 question, shoot."

18 Mr. Wiesner.

19 MR. WIESNER: If I may address that,
20 I think that is correct. We did not discuss
21 that in detail, and that's probably a detailed
22 point that should be covered in the definitive
23 written Settlement Agreement.

24 But I think the way I've thought of

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1 it is, if there are problems that the
2 Settlement is not complied with, if there are
3 marketing activities which are inconsistent
4 with the commitments that the Company has made,
5 then this proceeding would come back to life,
6 we'd have a hearing, and all remedies would be
7 available to the Commission at that time.

8 CHAIRMAN HONIGBERG: I actually
9 thought you did, I thought maybe both of you
10 indicated that that was the case. That,
11 basically, we'd be agreeing to hold this one,
12 this -- the resolution is a resolution of this
13 docket. But, if the Company were to violate
14 the terms of the Agreement, it would not be a
15 valid agreement anymore, the docket could be
16 reopened, and the proceeding would pick up from
17 where we left off.

18 And, Mr. Mondschein, you agree with
19 that?

20 MR. MONDSCHHEIN: I do agree.

21 CHAIRMAN HONIGBERG: There you go,
22 Ms. Noonan. Maybe you do have a future as a
23 lawyer after all.

24 WITNESS NOONAN: There you go. It

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[WITNESS: Noonan]

1 rubs off after all those years.

2 BY CMSR. BAILEY:

3 Q. What do you think you will be able to do if you
4 can't reach agreement with the Company on the
5 length of time for the stay-out?

6 A. So, I think that if we can't, once we get into
7 the details and hammering out all the details
8 of a settlement agreement, if we find we can't
9 get there, unfortunately, I think then we would
10 be back at having a hearing on the merits.

11 Q. Okay. All right. And the written Settlement
12 is going to be finished within ten business
13 days?

14 A. Yes.

15 Q. Is that correct? Okay.

16 A. Sooner, if we can do it, but ten business days.

17 CMSR. BAILEY: Okay. All right.

18 Thank you. That's all I have.

19 WITNESS NOONAN: Uh-huh.

20 BY CHAIRMAN HONIGBERG:

21 Q. Ms. Noonan, what's the order of magnitude of
22 how many customers the Company has in the state
23 today?

24 A. More than 10,000, less than 20.

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1 Q. Okay. What's a typical length of time for you
2 to get notice for a wind-down plan?

3 A. We don't have a typical length of time for that
4 to happen.

5 Q. Have we had wind-down plans in the past?

6 A. No.

7 Q. In fact, most of the time when these things
8 happen, they happen on an emergency basis?

9 A. That's correct.

10 Q. So, a process you're going to get to think
11 about as this Agreement is reduced to writing,
12 is that what you're saying?

13 A. Yes.

14 CHAIRMAN HONIGBERG: I think that's
15 all the questions I have.

16 Mr. Wiesner, do you have any further
17 questions for Ms. Noonan?

18 MR. WIESNER: I do not. I will
19 observe that our proposed rules, which have
20 been subject to public comment, do provide for
21 a process for voluntary withdrawal. And it's
22 possible that they may provide some guidance
23 to the Parties in working out the details of
24 the Settlement Agreement.

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[WITNESS: Noonan]

1 CHAIRMAN HONIGBERG: All right. I
2 think, Ms. Noonan, you can probably return to
3 your seat. Thank you. Oh, actually, yes, we
4 gave everybody a chance, right? We gave you
5 companies a chance.

6 Mr. Taylor?

7 MR. TAYLOR: I just had one question,
8 if I may.

9 CHAIRMAN HONIGBERG: Go for it.

10 MR. TAYLOR: A follow-up question.

11 **CROSS-EXAMINATION (resumed)**

12 BY MR. TAYLOR:

13 Q. This goes to the question of the customers that
14 stay on, and I think this concept of "winding
15 down", potentially winding down. And we were
16 wondering if the Company, meaning Clearview,
17 would be permitted to renegotiate contracts
18 with those customers, or if that would fall
19 into the category of marketing that's
20 prohibited going forward?

21 A. So, I think that question depends upon what
22 Clearview's response is to whether they have
23 any customers on that fixed term contract. If
24 all their customers are on variable rate

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1 contracts, then there's no renegotiation of a
2 contract. If they are on a fixed rate/fixed
3 term contract, without having gotten into that
4 level of detail, my view would be that, when
5 that fixed term/fixed rate contract ends, that
6 customer's enrollment with Clearview also ends.

7 Q. Okay. And I think, just as a follow-up to
8 that, I think what we had in mind was perhaps a
9 customer, who may be on a variable rate,
10 indicating that they were going to drop
11 service, that they may then be offered some
12 additional or some sort of -- some different
13 product. I'm not sure if that's something that
14 would actually be the case.

15 A. Uh-huh.

16 Q. But I'm wondering if that's something that
17 would be contemplated under the Settlement or
18 if that would be prohibited?

19 A. Yes. Again, a level of detail we didn't get
20 into this morning. But my understanding of the
21 Company's commitment is that that would not
22 occur. If a customer chooses to leave, they
23 would leave.

24 MR. TAYLOR: Thank you very much.

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1 CHAIRMAN HONIGBERG: All right. Now,
2 Ms. Noonan, I think you can return to your
3 seat.

4 We still have the confidentiality to
5 discuss. Although, my sense is that we have a
6 written motion requesting confidential
7 treatment. We have time for those who oppose
8 it to file written responses. I did look at
9 the motion that came in this morning, and the
10 attachments to it. I didn't form any strong
11 opinions one way or the other.

12 But wouldn't it make sense, Mr.
13 Kreis, for those who want to oppose the motion
14 to file a response? We wouldn't rule,
15 probably, until you had a chance to do that.

16 MR. KREIS: I am comfortable with
17 that approach, if you are. I suppose,
18 alternatively, we could address that in the
19 Settlement Agreement as well.

20 CHAIRMAN HONIGBERG: Who was going to
21 speak? Mr. Mondschein.

22 MR. MONDSCHHEIN: Mr. Honigberg, thank
23 you. You know, another approach could be we're
24 not having the hearing today. Those documents

1 were filed under proprietary for the purposes
2 of the hearing. I'd be just as happy to
3 withdraw the motion, and ask that the documents
4 be returned or destroyed that were filed. And,
5 if we need to go to a hearing another day, we
6 reinstate the motion.

7 CHAIRMAN HONIGBERG: Yes. We're not
8 crazy about doing that. But it's something you
9 can discuss with Staff and Mr. Kreis. It may
10 be that you can reach an agreement on what to
11 do and how to deal with those documents. I
12 think we're inclined not to rule on that now.
13 If you can work it out, that's great.

14 I have to tell you, I am -- I share
15 Commissioner Bailey's concern, that there is a
16 material term that you guys haven't worked out.
17 And I've been in mediations where the parties
18 felt they had an agreement, didn't get it
19 reduced sufficiently to writing, and 24 hours
20 later they didn't have an agreement anymore.

21 So, I don't know what level of
22 writing you guys have at this point. I don't
23 know -- I don't know how much -- how productive
24 it would be for you to try to hammer out as

1 many remaining details as you can while you're
2 here today. And the length of the stay-out
3 would be one of them.

4 I think Mr. Taylor raises an
5 interesting point about what the Company may or
6 may not do when it receives a call from one of
7 its existing and then continuing customers.
8 What can it say or not say? Does that -- does
9 Staff or the Parties want to put something in
10 the Agreement to nail that down?

11 I'm not sure, as I sit here, that we
12 should actually close this proceeding right
13 now. I'm inclined to ask if it would make more
14 sense to leave it open. Two -- actually, all
15 three of us are going to need to take a break,
16 and all of you are going to need to get
17 something to eat, and see if you can get more
18 of -- more of it reduced, so that everybody is
19 comfortable that the true essential terms are
20 done, and that we'll have an agreement, not
21 just in principle right now, but a solid
22 agreement later today that everybody will be
23 comfortable with tomorrow and the day after
24 that. That was more of a question.

1 So, actually, Commissioner Bailey,
2 looks like she wants to pipe up.

3 CMSR. BAILEY: It's a question for
4 you, Mr. Chairman. So, are you thinking that
5 we could come back in later in the day and hear
6 about the terms that they weren't able to
7 articulate right now, and then they would go
8 reduce it to writing? Or are you looking for
9 them to put it into writing today?

10 CHAIRMAN HONIGBERG: I would say, if
11 they can put it in writing, they should. Now,
12 that doesn't mean they have all of the terms
13 that are part of the Settlement Agreement, all
14 the boilerplate that necessarily works or some
15 of the details. But the essential terms would
16 be reduced to writing to the greatest extent
17 possible. And we would be available to come
18 back to hear about them later today.

19 CMSR. BAILEY: I would agree with
20 that approach.

21 CHAIRMAN HONIGBERG: What do the
22 parties think of that? Off the record.

23 *[Brief off-the-record comment.]*

24 CHAIRMAN HONIGBERG: Mr. Wiesner, you

1 have --

2 MR. WIESNER: I was just going to
3 say, you know, during this hearing, we've
4 identified a couple of open issues, which could
5 be seen as detailed points or, you know,
6 potentially could, you know, jeopardize the
7 basic settlement. I'm optimistic that we can
8 get there and close those gaps, whether it's
9 this afternoon or at some other point. But,
10 you know, there's no guarantee that that will
11 happen.

12 We can spend a little bit more time
13 together trying to iron out those details. I
14 believe that we will never cover everything
15 that we can think of if we have more time.
16 And, over the course of ten business days, I'm
17 sure there's more detail that will appear in
18 the final written Agreement that we're not able
19 to agree to today.

20 CHAIRMAN HONIGBERG: You are
21 undoubtedly correct. And I don't know what
22 you've discussed with respect, for example, the
23 stay-out provision. But, if Staff is thinking
24 "a decade", and the Company is thinking "two

1 months", that seems to be a very difficult gap
2 to bridge. But, if the discussion is "18
3 months" versus "24 months", that's a very
4 different type of level of disagreement, and I
5 don't know what you've discussed. But the fact
6 that there is no agreement on that point, and
7 we didn't hear numbers like that, makes me, and
8 I know Commissioner Bailey and Commissioner
9 Scott, concerned that, while you think you have
10 a deal, you don't.

11 So, I think, while people are here
12 and they had the day blocked off, it may well
13 make sense to see how much more you can get
14 done while striking -- striking while the iron
15 is hot, as it were.

16 I see nodding heads. It's nice to
17 have people agree with me every once in a
18 while.

19 MR. MONDSCHHEIN: We can -- look,
20 we're here, we could try it.

21 I would say, though, to try and
22 reduce it to a writing might be difficult. I
23 think, if we come back with some more verbal
24 commitments and put those on the record, I

1 think that would be preferrable.

2 But I understand what you're asking
3 for, and I don't see why we can't do that. And
4 we won't take up your time until we need you to
5 come back and tell you what we've done.

6 CHAIRMAN HONIGBERG: I appreciate
7 that, Mr. Mondschein. Really, what we're
8 talking about is a term sheet.

9 MR. MONDSCHHEIN: Exactly.

10 MR. WIESNER: I mean, it's bullet
11 points that you would have and you would read
12 into the record.

13 MR. MONDSCHHEIN: Exactly.

14 CHAIRMAN HONIGBERG: I guess I'm also
15 inclined to make sure that the utilities are
16 part of your discussion, because things come
17 up. Questions like the one that you resolved
18 off the record early in the hearing this
19 morning, and having to have your conversations
20 with Mr. Fossum and Mr. Sheehan and Mr. Taylor.
21 And, then, you know, the issue Mr. Taylor
22 raised, which I think probably was dealt with.
23 But there may be others that, as you discuss
24 it, they will say "well, what about this?" And

1 you can think about that, and maybe come up
2 with an answer while everybody is here.

3 So, all right. I think people are in
4 general agreement. So, what we're going to do
5 then is break. It's 12:25 right now. I know
6 we'll generally be unavailable probably until
7 close to two o'clock, you know, it might be a
8 little bit earlier than that, maybe quarter to
9 two. But that's probably when the
10 Commissioners will be available again. One of
11 us might be available earlier than that, if you
12 need a read on something. And we'll plan on
13 getting back together at some point this
14 afternoon?

15 *[Multiple parties nodding in the*
16 *affirmative.]*

17 CHAIRMAN HONIGBERG: All right. With
18 that, we will adjourn this hearing and resume
19 later.

20 MR. MONDSCHHEIN: Thank you.

21 CHAIRMAN HONIGBERG: Thank you all.

22 *[Recess taken at 12:29 p.m. and*
23 *the hearing resumed at 4:10*
24 *p.m.]*

1 CHAIRMAN HONIGBERG: All right. Who
2 wants to tell us where we are here at 4:10 in
3 the afternoon?

4 MR. WIESNER: Mr. Chairman, we spent
5 some time this afternoon, per the Commission's
6 suggestion, working on some more of the details
7 of this Settlement. We have a term sheet,
8 which has significantly more detail than was
9 described this morning. And I can provide that
10 to the Commissioners, if you'd like. And I can
11 also describe it, and then we can see if there
12 are any questions. We were not thinking that
13 we needed additional testimony from the Staff's
14 witness, but --

15 CHAIRMAN HONIGBERG: My sense is,
16 unless there's some significant departure from
17 what she testified to earlier, that probably
18 won't be necessary, especially if the Parties
19 in the room essentially stipulate that that's
20 what the situation is.

21 Would anyone disagree with that?

22 *[No verbal response.]*

23 CHAIRMAN HONIGBERG: I don't see
24 anyone who disagrees with that.

1 All right. So, do you want to
2 provide us with something in writing, is that
3 what you were suggesting, Mr. Wiesner?

4 MR. WIESNER: Yes. We have a term
5 sheet that we can provide, and I think that
6 might be helpful. I can also summarize some of
7 the key points that are covered here, that, I
8 mean, some of them are things you heard about
9 before, this morning, and others are detailed
10 points which we've now included. And they
11 cover such things as the period of the
12 "stay-out", as we referred to it this morning,
13 as well as some more detail about what type of
14 customers are considered "existing customers",
15 and what changes may be made with respect to
16 them, and some detail regarding EDI
17 transactions and how they will be processed by
18 the utilities. So, I believe --

19 CHAIRMAN HONIGBERG: So, is the
20 writing going to be an exhibit or are you just
21 providing it to us for information, and the
22 record will be whatever it is you say and
23 Mr. Patnaude records?

24 MR. WIESNER: I think it -- either

1 way. I'm not sure that's a good answer. But,
2 you know, the understanding here is that this
3 is a term sheet, it needs to be fleshed out
4 into a detailed Agreement, which as we
5 described this morning, would be memorialized
6 in a definitive written Settlement Agreement
7 that would be filed with the Commission within
8 ten business days.

9 CHAIRMAN HONIGBERG: Let's mark this.
10 There's no exhibits in this yet, is there?
11 This would be "Exhibit 1"?

12 MR. WIESNER: So, this will be
13 "Exhibit 1".

14 (The document, as described, was
15 herewith marked as **Exhibit 1** for
16 identification.)

17 MR. WIESNER: And, so, maybe I'll
18 just take a quick march through it without
19 reading every word.

20 The first paragraph is Clearview's
21 commitment to essentially immediately cease all
22 marketing and sales activities in the state,
23 with a specific date of February 1st, tomorrow.

24 Then, Paragraph 2 is Clearview's

1 commitment not to send any new enrollment
2 requests to the utilities. However, the
3 parenthetical notes certain situations where
4 drops or enrollments in the EDI system are used
5 to effect customer name changes, address
6 changes, and similar such situations, which do
7 not involve enrolling a new customer.

8 Paragraph 3 is the eight days that we
9 talked about this morning with respect to EDI
10 enrollments and the utilities' authorization to
11 block any EDI enrollments that occur on or
12 after February 9th. Again, except for the
13 types of EDI transactions that would be used to
14 effect customer name changes, *etcetera*, that do
15 not involve enrollment of new customers.

16 Four (4) is Clearview's authorization
17 to continue to serve existing customers through
18 the balance of their existing contract terms,
19 or until those customers choose alternative
20 service.

21 Paragraph 5 clarifies that, by
22 stating that "Clearview will not attempt to
23 renegotiate or modify existing contract terms"
24 with its customers, nor attempt to "save"

1 existing customers", or attempt to "win back"
2 any former customers. Those terms are in
3 quotes, and we would hope to define those more
4 specifically in the definitive Agreement.

5 I'll just -- my understanding is
6 "saving" an existing customer, is the customer
7 calls up Clearview and says "I'm considering
8 leaving Clearview's electricity supply", and
9 that -- and then the Company, in the absence of
10 this prohibition, might agree to lower the rate
11 charged to that customer in order to keep them
12 as an enrolled customer. So, this is a
13 commitment not to do that. Basically, the
14 existing contracts, as written, run their
15 course without modification.

16 Paragraph 6 is the prohibition on any
17 early termination fees, ETFs. There aren't
18 many, as we understand it, because most of the
19 Company's contracts are variable rate
20 contracts. But, if there are any, they would
21 be waived.

22 Paragraph 7 is a confirmation that
23 fixed contracts can roll over into a variable
24 pricing structure, pursuant to the existing

1 terms of the fixed contract. And that is
2 consistent with what I said earlier, which is
3 contracts, as written, run their course without
4 modification.

5 Paragraph 8 is a long one, which I
6 will not read to you, but it is basically the
7 two-year stay-out provision. For 24 months,
8 Clearview will not even ask the Commission for
9 permission to resume marketing and sales
10 activities in New Hampshire. After that time
11 period, the Company can propose to resume
12 marketing and sales activities, and the plan,
13 the timelines, and specifics of that proposal
14 will be provided to the Commission at that
15 time, reviewed by Staff, pursuant to the
16 criteria, the non-exhaustive criteria that is
17 specified in Paragraph 8, make a recommendation
18 to the Commission, and then the Commission
19 would act on that recommendation by order or
20 secretarial letter.

21 Paragraph 9 is basically a
22 confirmation that the Commission will process
23 the pending renewal application for Clearview
24 to extend its registration term, or I should

1 say "renew its registration term" in the normal
2 course. And a confirming sentence that
3 basically says "subject to Clearview's
4 compliance with the Settlement Agreement, this
5 proceeding will not be used against Clearview
6 in connection with the pending application for
7 registration renewal".

8 Paragraph 10 is essentially
9 confirmatory of the fact that Clearview will no
10 longer be providing new customer service in the
11 state, and therefore will not be able -- will
12 not have its offerings entered on the
13 Commission's shopping comparison website.

14 Paragraph 11 is a commitment by the
15 Company "within a reasonable period of time",
16 it says, which we understand to be 60 days or
17 less. And we'll, I think, incorporate that
18 specific timeframe into the definitive
19 Agreement to provide adequate notice on its
20 website, essentially informing any potential
21 new customers that Clearview is no longer
22 signing up new customers in the state, but
23 providing information for existing customers
24 related to, as an example, environmental

1 disclosures that are required by statute.

2 Paragraph 12 basically directs
3 utilities to provide Commission Staff with
4 notification regarding complaints or inquiries
5 that they receive regarding Clearview's
6 customer service or other activities, and as
7 well a commitment by Clearview to report to
8 Staff complaints and inquiries that are related
9 to the subject matter of Staff's investigation
10 in this proceeding.

11 Paragraph 13 is the transition plan
12 requirement. Basically, if Clearview were to
13 intend to leave the state, as we had described
14 and discussed somewhat this morning, they would
15 provide a plan to effect that transition no
16 less than 90 days prior to the intended
17 effective date. And the plan would cover
18 notice to customers informing them of their
19 right to select an alternative supplier, or, in
20 lieu of that, be transferred to utility default
21 service.

22 Fourteen (14) is a provision that
23 would require the Company to make payments to
24 remedy losses incurred by customers who

1 switched to Clearview at a time when they were
2 entitled to EAP discounts. That is a
3 commitment which has no time limit on it. So,
4 a customer who has left Clearview's supply, or
5 a customer who contacts Clearview to
6 discontinue Clearview's service, due to the
7 loss of the EAP discount would be effectively
8 made whole.

9 And Paragraph 15, finally, affirms
10 what we described this morning, which is docket
11 remains open, but the hearing is held in
12 abeyance, pending full satisfaction by
13 Clearview of the terms and conditions of the
14 Settlement. Upon such full satisfaction, Staff
15 would notify the Commission and the docket
16 would be closed at that time.

17 CHAIRMAN HONIGBERG: Thank you,
18 Mr. Wiesner.

19 Mr. Mondschein, is that a fair
20 summary of how things went?

21 MR. MONDSCHHEIN: Yes, it is. Thank
22 you very much.

23 CHAIRMAN HONIGBERG: All right. I
24 see Mr. Kreis is no longer here, but is Mr.

1 Kreis on board with this?

2 MR. WIESNER: My understanding is
3 he's on board with it. He's not seen the
4 details of this Term Sheet. But we understand
5 that he's in agreement with the basic structure
6 of the Settlement.

7 CHAIRMAN HONIGBERG: Mr. Taylor?
8 Mr. Sheehan?

9 MR. TAYLOR: No objection.

10 MR. SHEEHAN: The same. And
11 Mr. Fossum had to leave, and he expressed
12 general support for this as well.

13 CHAIRMAN HONIGBERG: I was going to
14 ask if anybody could speak for Mr. Fossum.

15 Do the Commissioners have questions?

16 *[No verbal response.]*

17 CHAIRMAN HONIGBERG: I have a
18 question.

19 On Paragraph 10, just as it
20 contemplates something on Clearview's website,
21 indicating that they're not taking New
22 Hampshire customers, would it be sensible to
23 state that as well on the Commission's website?
24 Because, if I'm in the market, and my neighbor

1 says "I have Clearview, I love it. It's great.
2 It's wind. You feel good about it every day.
3 You should look into it." And I want to
4 compare to how it shakes out, it won't be on
5 the Commission's website.

6 MR. WIESNER: One of the things that
7 we would certainly do is the Commission's
8 website has a listing of registered suppliers.
9 And, in some cases, there's a notation that
10 those suppliers are not currently serving
11 customers or soliciting new customers. And I
12 think a similar notification would be put on
13 the Commission's website where Clearview is
14 listed.

15 So, they would be registered, but
16 there would be a notification to customers that
17 they're not currently accepting new customers.
18 And whether -- I'm not sure whether we'd
19 consider there should be any other notice or
20 communication on the Commission's website?

21 *[Court reporter interruption.]*

22 MR. WIESNER: Sorry.

23 MS. NOONAN: I don't think that we
24 had contemplated any other time of notice,

1 other than the change in the listing of
2 suppliers, Clearview's need to update the
3 website to remove its products. Just those two
4 changes.

5 CHAIRMAN HONIGBERG: Okay. Fair
6 enough. Commissioner Bailey.

7 CMSR. BAILEY: Thank you. In
8 Paragraph 8, when Clearview comes back after 24
9 months and seeks Staff's recommendation to be
10 allowed to re-enter the market, one of the
11 things that Staff shall consider is "the number
12 and type of complaints concerning the applicant
13 or its principals, if any, filed with the state
14 licensing/registration, attorney general's
15 office," *etcetera*.

16 Will this Settlement be a record for
17 other states who are looking at Clearview of
18 complaints in New Hampshire? How does that
19 work?

20 MS. NOONAN: So, I can't speak to how
21 Clearview would disclose this on their
22 applications in other states. We do
23 periodically get requests from other states for
24 information about the types and numbers or

1 numbers and types of complaints that we've
2 received regarding an applicant in their state,
3 and that information would be disclosed.

4 CMSR. BAILEY: Okay. Thank you.
5 And, then, just one other area. On Item 14,
6 the discounts to EAP customers. Do those
7 customers who have already discontinued service
8 have to ask for the refund in order to get it?

9 MS. NOONAN: Yes. That's correct. A
10 customer who has EAP would need to contact the
11 Commission and/or Clearview to get their EAP
12 discount reimbursed to them for the period of
13 time that they didn't receive it.

14 CMSR. BAILEY: So, all those customer
15 complaints that you listed in the Staff memo
16 that were from customers who had an EAP
17 discount, will they be reimbursed?

18 MS. NOONAN: To the extent that there
19 are customers that have not yet been, those
20 customers will be.

21 CMSR. BAILEY: Okay. All right.
22 Thank you.

23 CHAIRMAN HONIGBERG: All right. I
24 think that about covers it. With this Term

1 Sheet in place, I think, and the agreement of
2 the Parties, including the utilities and the
3 OCA, that this reflects everyone's desires, the
4 record that was made earlier, does anyone feel
5 we need anything else to put on the record in
6 order to determine, once the final Agreement is
7 submitted, that the Settlement is in the public
8 interest?

9 *[No verbal response.]*

10 CHAIRMAN HONIGBERG: I think we're
11 good, Mr. Wiesner. And I'm hoping you'll agree
12 with me?

13 MR. WIESNER: I was hoping you would
14 say it first. Thank you. I think the record
15 is sufficiently complete. I do not expect that
16 the definitive Agreement will be materially
17 different, although it may have additional
18 detail.

19 CHAIRMAN HONIGBERG: Anyone else?
20 Everyone's pushing their microphones away.

21 Mr. Mondschein, you're reaching for
22 the button.

23 MR. MONDSCHHEIN: I just wanted to
24 thank the Commission Staff for helping getting

1 this completed today, and for their patience
2 with us in working this out.

3 CHAIRMAN HONIGBERG: I also want to
4 thank the Parties, everyone who was here all
5 day today, including the members of the public
6 who were here all morning, for their patience
7 to work this out. Because it does sound like,
8 as is often the case, the Settlement doesn't
9 make everybody ecstatic, but it least it leaves
10 everybody satisfied that -- where they've
11 gotten a result that's acceptable or they
12 wouldn't accept it.

13 Is there anything else we need to do
14 before we close the record?

15 *[No verbal response.]*

16 CHAIRMAN HONIGBERG: Seeing none.
17 We'll adjourn. We'll await filing of the
18 definitive Agreement, and then issue an order
19 as quickly as we can. Thank you all.

20 CMSR. BAILEY: Thank you.

21 MR. MONDSCHHEIN: Thank you.

22 ***[Whereupon the hearing was***
23 ***adjourned at 4:25 p.m.]***