

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**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**

**Order Approving Stipulation and Settlement Agreement**

**ORDER NO. 25,994**

**February 28, 2017**

**APPEARANCES:** Pullman & Comley LLC, by Brad N. Mondschein, Esq., on behalf of Clearview Electric, Inc. d/b/a Clearview Energy; Matthew J. Fossum, Esq., on behalf of Public Service Company of New Hampshire, d/b/a Eversource Energy; Michael J. Sheehan, Esq., on behalf of Liberty Utilities (Granite State Electric) Corp., d/b/a Liberty Utilities; Patrick H. Taylor, Esq., on behalf of Unitil Energy Systems, Inc.; the Office of Consumer Advocate by D. Maurice Kreis, Esq., on behalf of residential ratepayers; and David K. Wiesner, Esq., on behalf of Commission Staff.

In this Order, the Commission approves a Stipulation and Settlement Agreement (Settlement Agreement) among certain parties that provides for Clearview Electric, Inc. d/b/a Clearview Energy (Clearview) to suspend all marketing and sales activities in New Hampshire for a period of at least two years, while permitting Clearview to continue to serve its existing retail electricity customers in the State without modification or extension of their existing contracts or enrollments. This matter will remain open, but the hearing on the merits will be held in abeyance pending Clearview's full satisfaction of all settlement terms and conditions.

**I. PROCEDURAL BACKGROUND**

On January 5, 2017, the Commission issued an Order of Notice commencing this proceeding, based on Commission 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). Staff's recommendation memorandum described a number of complaints lodged by customers with Until Energy Systems, Inc. (Unutil), and/or with the Commission's Consumer Services and External Affairs Division regarding Clearview's marketing and sales activities. The Order of Notice stated that the Commission would take administrative notice of the filings made in Docket DE 16-837.

The complaints described in Staff's recommendation memorandum included allegations that Clearview sales representatives, among other things, misrepresented themselves as employees or affiliates of the electric distribution company, switched customers without their authorization, 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 referenced customer complaints implicating the Commission's rules regarding third party verification of customer enrollments.

The Order of Notice noted that the allegations described in the complaints summarized in Staff's memorandum, if proven, would represent violations of the Commission's rules governing CEPS, including, 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).

The Order of Notice required the mandatory participation as parties in this docket of Public Service Company of New Hampshire, d/b/a Eversource Energy (Eversource), Liberty

Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty), and Unitil. On January 13, 2017, the Office of Consumer Advocate (OCA) filed a letter of participation pursuant to RSA 363:28.

Representatives of the parties attended a technical session on January 24, 2017, and a hearing on the merits was scheduled for January 31, 2017. Prior to the hearing on that date, 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 during the hearing. A written term sheet was presented to the Commission and admitted into evidence as Exhibit 1 prior to the conclusion of the hearing.

The Settlement Agreement, which memorialized in definitive form the agreement of Clearview, the OCA, and Staff with respect to the settlement terms and conditions, was filed with the Commission on February 16, 2017. Although Eversource, Liberty, and Unitil did not sign the Settlement Agreement, the Settlement Agreement acknowledges that those parties either agree with or do not object to the terms and conditions set forth therein. The settling parties requested that the Commission approve the Settlement Agreement without the need for any further evidentiary hearing.

## **II. SETTLEMENT AGREEMENT TERMS AND CONDITIONS**

In the Settlement Agreement, Clearview, the OCA, and Staff agreed to the following terms and conditions:

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 [electric distribution 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. POSITIONS OF THE PARTIES**

At hearing, Staff witness Amanda Noonan, Director of the Consumer Services and External Affairs Division, testified in support of the settlement terms generally agreed to by the parties. Transcript of January 31, 2017 hearing (Tr.) at 30-33. Ms. Noonan stated that the settlement would eliminate completely Clearview's problematic marketing issues, while permitting existing customers to stay with Clearview if they wish to do so based on advantageous pricing or otherwise. Tr. at 30-31. She emphasized that the settlement would provide for a "smoother transition for customers," whether Clearview continues indefinitely to serve existing customers or later seeks to leave the New Hampshire market pursuant to an approved "exit plan." Tr. at 31-32. She also highlighted the "stay out" provision, pursuant to which Clearview would not seek to resume marketing and sales activities for a specified period of time, stating that this provision "sends an appropriate message to the competitive energy supply market in New Hampshire about the Commission's commitment to ensuring that we have a robust competitive energy supply market with adequate consumer protections." Tr. at 32. Ms. Noonan opined that the settlement terms are just and reasonable and in the public interest. Tr. at 32-33.

Staff counsel described the proposed settlement terms and conditions as set forth in Exhibit 1, and indicated those terms and conditions would be further detailed in a definitive Settlement Agreement to be filed with the Commission. Tr. at 58-64. Clearview affirmed its

support for the settlement terms and conditions as outlined in Exhibit 1, and Eversource, Liberty, and Unitil also expressed either their general support for, or lack of objection to, the proposed settlement terms. Tr. at 64-65.

In its filing letter on behalf of the settling parties dated February 16, 2017, Staff requested that the Commission approve the Settlement Agreement without the need for any further evidentiary hearing.

#### **IV. COMMISSION ANALYSIS**

The Commission encourages parties to settle issues through negotiation and compromise because it is an opportunity for creative problem solving, allows the parties to reach a result in line with their expectations, and is often a better alternative to litigation. *Concord Steam Corporation*, Order No. 25,966 (November 10, 2016) at 13 (citing *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities*, Order No. 25,797 (June 26, 2015), *Granite State Electric Co.*, Order No. 23,966 at 10 (May 8, 2002)); *see also* RSA 541-A:31, V(a) (“informal disposition may be made of any contested case ... by stipulation [or] agreed settlement”). Nevertheless, we must independently determine that the result comports with “applicable standards.” Order No. 25,797 at 11 (citing *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 24,972 at 48 (May 29, 2009) (“we must scrutinize settlement agreements thoroughly regardless of whether a party appears at hearing to raise objections”). We conduct this analysis through a transparent process to ensure that a just and reasonable result has been reached. *Id.*; *see also* N.H. Code Admin. Rules Puc 203.20(b) (Commission shall approve a settlement that is “just and reasonable and serves the public interest”).

Under RSA 374-F:7 and N.H. Code Admin. Rules Puc 2005.01, a CEPS may be assessed penalties or have its registration suspended or revoked, after notice and an opportunity to be heard, if the Commission finds that the CEPS has in a specified number of instances violated any

of the provisions of Puc 2004 or any applicable state statute. The complaints and allegations that resulted in the institution of this proceeding, if proven, would represent violations of the Commission's rules governing CEPS and would warrant the assessment of penalties and/or the suspension or revocation of Clearview's CEPS registration. The proposed settlement terms and conditions would forestall those potential conclusions and results.

We have reviewed the Settlement Agreement and the testimony and representations regarding the key terms and conditions of the settlement, and we find that the terms and conditions of the Settlement Agreement are just and reasonable and serve the public interest as required by RSA 541-A:31, V (a) and Puc 203.20(b).<sup>1</sup> We are satisfied that the proposed settlement terms and conditions achieve a just and reasonable balancing of relevant interests. Under the settlement Clearview will cease the marketing and sales activities, which led to the complaints and allegations that are the subject of this proceeding, while continuing to serve its existing retail electricity customers in the State without modification or extension of their existing contracts or enrollments.

It is expected that Clearview will remain registered as a CEPS, unless it makes a future business decision to withdraw its registration, at which time an orderly process for transition of its remaining customers would be proposed for review and approval by Staff and implementation by Clearview. If Clearview determines, after a minimum two-year "stay out" period, that it wishes to resume marketing and sales activities in New Hampshire, it may submit to Staff a detailed written proposal to resume such activities. Any such proposal by Clearview would be reviewed by Staff, which would file a recommendation with the Commission regarding approval

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<sup>1</sup> Pursuant to Puc 203.20(f), we accept the Settlement Agreement even though it was not filed at least five days prior to the hearing, as required under Puc 203.20(e), because such acceptance promotes the orderly and efficient conduct of the proceeding and will not impair the rights of any party to the proceeding.



or denial of the proposal. This proceeding will remain open, but the hearing on the merits will be held in abeyance pending Clearview's full satisfaction of all settlement terms and conditions.

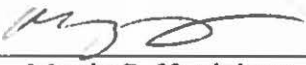
Based on the foregoing analysis, we approve the Settlement Agreement without the need for any further evidentiary hearing.

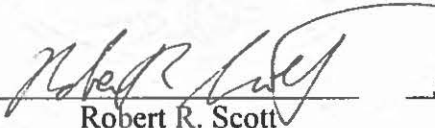
**Based upon the foregoing, it is hereby**


**ORDERED**, that the Stipulation and Settlement Agreement among Clearview, the OCA, and Staff, which provides for Clearview to suspend all marketing and sales activities in New Hampshire for a period of at least two years, while permitting Clearview to continue to serve its existing retail electricity customers in the State without modification or extension of their existing contracts or enrollments, is APPROVED; and it is

**FURTHER ORDERED**, that this proceeding shall remain open, but the hearing on the merits shall be held in abeyance pending satisfaction in full by Clearview of all terms and conditions of the Settlement Agreement.

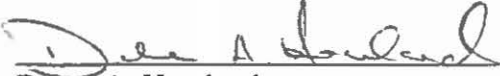
By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of February, 2017.

  
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Martin P. Honigberg  
Chairman

  
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Robert R. Scott  
Commissioner

  
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Kathryn M. Bailey  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director