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November 23, 2020

**Via Electronic Filing**

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

Re: Gerard J. Corcoran v. Ambit Northeast, LLC  
Docket No. C-2020-3022527

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Ambit Northeast, LLC's ("Ambit") Preliminary Objections with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Lauren M. Burge*

Lauren M. Burge

LMB/lww

Enclosure

cc: Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this date I served a copy of Ambit Northeast's Preliminary Objections upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

### **Via Email Only**

Gerard Corcoran  
3338 Princeton Ave.  
Philadelphia, PA 19149  
[Cork1013@gmail.com](mailto:Cork1013@gmail.com)

Hon. Charles E. Rainey, Jr.  
Chief Administrative Law Judge  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[bobbwillia@pa.gov](mailto:bobbwillia@pa.gov)

Dated: November 23, 2020

*Lauren M. Burge*

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Lauren M. Burge, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GERARD CORCORAN,	:	
	Complainant	:
		: Docket No. C-2020-3022527
v.	:	
	:	
AMBIT NORTHEAST, LLC,	:	
	Respondent	:
	:	

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**NOTICE TO PLEAD**

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**TO: Gerard J. Corcoran**  
3338 Princeton Avenue  
Philadelphia, PA 19149

You are hereby notified that a reply to the new matter in the enclosed **Preliminary Objections** of Ambit Northeast, LLC, must be filed within 10 days of the date of service.

All pleadings, such as a Reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Ambit Northeast, LLC, and where applicable, the Administrative Law Judge presiding over the proceeding.

File with:\*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

With a copy to:

Lauren M. Burge, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219  
[lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)

\*Due to the COVID-19 pandemic, the Pennsylvania Public Utility Commission is encouraging individuals to eFile documents. Information regarding eFiling with the Commission is available at <https://www.puc.pa.gov/efiling/default.aspx>."

*/s/ Lauren M. Burge*

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Lauren M. Burge, Esquire

Attorney for  
Ambit Northeast, LLC

Date: November 23, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GERARD CORCORAN,	:	
	Complainant	:
		Docket No. C-2020-3022527
v.	:	
	:	
AMBIT NORTHEAST, LLC,	:	
	Respondent	:
	:	

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**AMBIT NORTHEAST, LLC's  
PRELIMINARY OBJECTIONS**

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Pursuant to 52 Pa. Code § 5.101(a), Ambit Northeast, LLC (“Ambit” or “Respondent”) submits these Preliminary Objections to the Formal Complaint of Gerard Corcoran (“Mr. Corcoran” or “Complainant”), which the Pennsylvania Public Utility Commission (“PUC” or “Commission”) served on Ambit on October 21, 2020. In support of these Preliminary Objections, Ambit avers as follows:

**I. INTRODUCTION**

1. Contemporaneously with the filing of these Preliminary Objections, Ambit has filed an Answer to the Complaint, which is incorporated herein by reference.

2. Paragraph 4 of the Complaint alleges that Mr. Corcoran was switched to receive electric generation supply from Ambit without his authorization. Paragraph 5 of the Complaint requests that the Pennsylvania Public Utility Commission (“Commission”), *inter alia*, prohibit Ambit from providing service to the Complainant’s property located in Ventnor, New Jersey.

3. Ambit submits, pursuant to 52 Pa. Code § 5.101(a), that the Commission lacks jurisdiction to address any allegations or requests for relief associated with the Complainant’s New Jersey address. Therefore, any such claims must be dismissed.

## II. PRELIMINARY OBJECTIONS

### A. Applicable Legal Standards

4. The Commission's Rules of Rules of Administrative Practice and Procedure permit the filing of preliminary objections.<sup>1</sup> The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

5. Under Section 5.101(a) of the Commission's regulations, preliminary objections must specifically state the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding;
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter;
- (3) Insufficient specificity of a pleading;
- (4) Legal insufficiency of a pleading;
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action;
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution; and
- (7) Standing of a party to participate in the proceeding.

6. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.<sup>2</sup> However, the

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<sup>1</sup> 52 Pa. Code § 5.101(a)(1)-(7). *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>2</sup> *County of Allegheny v. Cmwlth. of Pa.*, 490 A.2d 402 (Pa. 1985).

Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.<sup>3</sup>

7. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.<sup>4</sup>

8. Ambit submits these preliminary objections pursuant to 52 Pa. Code § 5.101(a)(1) based on the lack of Commission jurisdiction over the specific issues presented. The Commission lacks jurisdiction over those claims which are outside the three (3) year statute of limitations, and therefore such issues and claims must be dismissed.

**B. Allegations Regarding a New Jersey Service Address are Outside the Commission's Jurisdiction.**

9. To act on the Complaint, the Commission must have jurisdiction.<sup>5</sup> The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code.<sup>6</sup> The Commission must act within, and cannot exceed, its jurisdiction.<sup>7</sup> Jurisdiction may not be conferred by the parties where none exists.<sup>8</sup> Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.<sup>9</sup>

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<sup>3</sup> *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007).

<sup>4</sup> *Department of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Commission*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

<sup>5</sup> *See* 52 Pa. Code § 5.101(a)(1), 5.102.

<sup>6</sup> *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Opinion and Order entered May 28, 2008; *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

<sup>7</sup> *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945).

<sup>8</sup> *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

<sup>9</sup> *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), appeal denied, 637 A.2d 293 (Pa. 1993).

10. The Commission clearly does not have jurisdiction over service provided outside of Pennsylvania. Therefore, to the extent the Complaint requests relief applicable to a service address located in New Jersey, such claims must be dismissed for lack of jurisdiction.

### III. CONCLUSION

WHEREFORE, Ambit respectfully requests that this Commission (a) grant Ambit's preliminary objections; (b) dismiss the Complaint; and (c) grant any other relief to Ambit that is deemed to be reasonable and appropriate.

Respectfully submitted,

*/s/ Lauren M. Burge*

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Lauren M. Burge, Esquire  
PA Attorney I.D. #311570  
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November 23, 2020

Attorney for  
Ambit Northeast, LLC

**Verification**

I, Martine Trinka, am Counsel, Retail Operations for Ambit Northeast, LLC (“Ambit”), and I hereby state that the facts set forth in the foregoing **Preliminary Objections** are true and correct to the best of my knowledge, information and belief and that I expect Ambit to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to sworn falsification to authorities).

Dated: November 23, 2020

  
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Martine Trinka  
Counsel, Retail Operations  
Ambit Northeast, LLC