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March 26, 2025

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
400 North Street
Harrisburg, PA 17120

Re: Joseph Hessom v. Energy Harbor, LLC, Docket No. C-2025-3053792

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Preliminary Objections on behalf of Energy Harbor, LLC with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Lauren M. Burge

Lauren M. Burge

Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the enclosed 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

Joseph Hessom
4148 Frederick Drive
New Kensington, PA 15068
jhessom@comcast.net

Date: March 26, 2025

/s/ Lauren M. Burge

Lauren M. Burge, Esquire

Counsel for Energy Harbor, LLC

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Hessom,	:	
	Complainant	:
	:	
v.	:	Docket No. C-2025-3053792
	:	
Energy Harbor, LLC	:	
	Respondent	:
	:	

NOTICE TO PLEAD

TO: Joseph Hessom
4148 Frederick Drive
New Kensington, PA 15068

You are hereby notified that a reply to the enclosed **Preliminary Objections** of Energy Harbor, LLC, must be filed within 20 days of the date of service.

All pleadings, such as a reply to the Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Energy Harbor, 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
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Deanne M. O'Dell, Esquire
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/s/ Lauren M. Burge

Lauren M. Burge, Esquire

Counsel for Energy Harbor, LLC

Date: March 26, 2025

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Hessom,	:	
	Complainant	:
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	:	
Energy Harbor, LLC	:	
	Respondent	:
	:	

**PRELIMINARY OBJECTIONS
OF ENERGY HARBOR, LLC**

Pursuant to 52 Pa. Code § 5.101, Energy Harbor, LLC (“Energy Harbor” or “Respondent”) submits these Preliminary Objections to the Formal Complaint of Joseph Hessom (“Complainant”), which the Pennsylvania Public Utility Commission (“PUC” or “Commission”) served on Energy Harbor on March 6, 2025. In support of these Preliminary Objections, Energy Harbor avers as follows:

I. INTRODUCTION

1. Contemporaneously with the filing of these Preliminary Objections, Energy Harbor has filed an Answer with New Matter to the Complaint, which is incorporated herein by reference. Energy Harbor’s Answer denies the material allegations set forth in the Complaint.

2. In his Formal Complaint, Mr. Hessom claims that Energy Harbor provided unauthorized electric generation supply service. The Complainant alleges that he received letters from Energy Harbor and West Penn Power indicating that he had switched to receive service from Energy Harbor, which he believes was inaccurate. The Complaint raises concerns about an alleged switch occurring without his consent or knowledge, and further alleges that Energy Harbor has in some way accessed his “personal information” to effectuate this switch. The Complainant requests various forms of relief, including the passage of new or additional

legislation and/or regulations, as well as Energy Harbor being prevented from doing business in Pennsylvania.

3. As explained in Energy Harbor’s Answer, the Complainant in fact began receiving electric generation supply service from FirstEnergy Solutions Corp. (“FES”) after initially enrolling in 2011. In 2020, FES went through bankruptcy proceedings and its name was subsequently changed to Energy Harbor. The name change did not affect Mr. Hessom’s service, and he continued to be served by FES/Energy Harbor for over 13 years, until March 4, 2025, when service was terminated at his request.

4. Energy Harbor submits, pursuant to 52 Pa. Code § 5.101(a), that Commission action regarding the Complainant’s enrollment with FES/Energy Harbor is barred by the statute of limitations in 66 Pa. C.S. Section 3314(a). Section 3314(a) requires an action to be brought within three years from the date at which the liability arose. The Complainant began receiving service from FES/Energy Harbor in 2011 which is well beyond the three-year statute of limitations. Therefore, the Commission lacks jurisdiction to address these claims.

II. PRELIMINARY OBJECTIONS

A. Applicable Legal Standards

5. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections.¹ The Commission’s procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Id.*

6. 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 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).

- (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.

7. 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.² However, the Commission need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.³

8. 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.⁴

9. Energy Harbor 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.

² *County of Allegheny v. Cmwlt. of Pa.*, 490 A.2d 402 (Pa. 1985).

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

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

B. Allegations Beyond the Statute of Limitations

10. Section 3314(a) of the Public Utility Code, 66 Pa. C.S. § 3314, provides a general limitation period of three years for any action under the Public Utility Code, except as otherwise provided.⁵

11. The statute of limitations at 66 Pa. C.S. § 3314 is non-waivable. Section 3314(a) divests the Commission of jurisdiction for matters that are brought outside the three-year statute of limitations.⁶

12. As discussed in Energy Harbor's Answer, Mr. Hessom began receiving electric generation supply from FES/Energy Harbor in 2011 after submitting an enrollment online. The enrollment occurred well beyond the three-year statute of limitations at 66 Pa. C.S. § 3314.

13. The Formal Complaint makes allegations regarding actions or inactions that occurred more than three years before March 6, 2025, when the Complainant filed this action.

14. Those allegations that are outside the three-year statute of limitations must be dismissed. This includes the Complainant's enrollment with FES/Energy Harbor in 2011.

⁵ See *Duquesne Light Co. v. Pa. PUC*, 611 A.2d 370 (Pa.Cmwth. 1992).

⁶ See, e.g., *Jahnene Hasty v. Philadelphia Gas Works*, Docket No. C-2014-2419203, Final Order (Act 294) entered January 27, 2015 adopting the Initial Decision dated November 18, 2014.

III. CONCLUSION

WHEREFORE, Energy Harbor respectfully requests that the Commission (a) grant Energy Harbor's Preliminary Objections; (b) dismiss the Complaint in its entirety; and (c) grant any other relief in favor of Energy Harbor that the Commission deems just and proper.

Respectfully submitted,

/s/ Lauren M. Burge

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dodell@eckertseamans.com

Dated: March 26, 2025

Counsel for Energy Harbor, LLC

Verification

I, Martine Trinka, am Counsel, Retail Operations for Energy Harbor, LLC (“Energy Harbor”), 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 Energy Harbor 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 unsworn falsification to authorities).

Dated: March 26, 2025

/s/ Martine Trinka

Martine Trinka
Counsel, Retail Operations
Energy Harbor, LLC