

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Hessom

v.

Energy Harbor, LLC

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C-2024-3053792

**INTERIM ORDER  
DISMISSING PRELIMINARY OBJECTIONS**

On March 6, 2025, Joseph Hessom (Complainant) filed a formal complaint against Energy Harbor, LLC, an electric generation supplier (EGS). Mr. Hessom alleges that he received a letter on February 19, 2025, notifying him that Energy Harbor was now providing him with an electric generation service. Mr. Hessom further alleges that he never elected to receive service from Energy Harbor. He states that he believes Energy Harbor was fraudulently provided with his personal information and that he never signed a consent form. As a relief, among other things, he wants the Commission to forbid Energy Harbor from doing business in Pennsylvania.

Energy Harbor filed an answer and new matter on March 26, 2025. Energy Harbor denies that Mr. Hessom was fraudulently switched. Energy Harbor avers that Mr. Hessom initially enrolled as a customer of FirstEnergy Solutions Corp. (FES), Energy Harbor's predecessor, over 13 years ago. According to Energy Harbor he has received numerous renewal notices. Energy Harbor terminated service to Mr. Hessom on March 4, 2025, at his request. In the new matter, Energy Harbor contends that Mr. Hessom's complaint is barred by the statute of limitations and the Commission does not have jurisdiction to grant the relief requested in the complaint.

Energy Harbor also filed preliminary objections. Energy Harbor argues that Mr. Hessom's complaint must be dismissed because the Commission lacks jurisdiction by virtue of the three-year statute of limitations in the Public Utility Code.

Mr. Hessom did not reply to Energy Harbor's new matter or answer the preliminary objections. Energy Harbor's preliminary objections were assigned to me by Motion Judge Notice on April 30, 2025.

Preliminary objections are permitted under Commission regulations.<sup>1</sup> Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.<sup>2</sup>

The standard for consideration of preliminary objections has been repeated many times. In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.<sup>3</sup> All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party.<sup>4</sup> Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.<sup>5</sup>

Energy Harbor argues that Section 3314 of the Public Utility Code bars the complaint because an action must be "brought within three years from the date at which liability arose." <sup>6</sup> According to Energy Harbor, Mr. Hessom has been a customer since 2011, therefore he cannot now complain that he was fraudulently enrolled. Energy Harbor moves to dismiss the

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<sup>1</sup> 52 Pa. Code § 5.101.

<sup>2</sup> Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>3</sup> *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

<sup>4</sup> *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

<sup>5</sup> *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002).

<sup>6</sup> 66 Pa. C.S. § 3314.

complaint because the running of the statute of limitations deprives the Commission of jurisdiction.

Energy Harbor's preliminary objections will be dismissed. Unlike a motion for summary judgement or a motion to dismiss, only the facts alleged in the complaint are considered in resolving preliminary objections.<sup>7</sup> Additional facts added by the proponent of the preliminary objection may not be considered.

The facts supporting Energy Harbor's motion are premised solely on Energy Harbor's averments in its answer. There is nothing in Mr. Hesson's complaint which indicates that he was a customer of FES or Energy Harbor in 2011. Mr. Hesson stated that he never elected to receive service from Energy Harbor. For the purposes of preliminary objections, this fact must be viewed as true. If proven by evidence at a hearing, the Commission can grant relief to the Complainant. Therefore, Energy Harbor's preliminary objections will be dismissed. This dismissal is without prejudice to file an appropriate motion.

THEREFORE,

IT IS ORDERED:

1. That the preliminary objections of Energy Harbor, LLC seeking dismissal of the complaint are dismissed.

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<sup>7</sup> *E.g., Stilp v. Commonwealth*, 910 A.2d 775, 791 (Pa. Cmwlth. 2006).



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