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June 16, 2025

Via Electronic Filing

Matthew L. Homsher, 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 Homsher:

Enclosed for electronic filing please find the Motion to Dismiss 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: Hon. Mary D. Long (malong@pa.gov)
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the enclosed Motion to Dismiss 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: June 16, 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 **Motion to Dismiss** of Energy Harbor, LLC, must be filed within 20 days of the date of service.

All pleadings, such as a reply to the Motion to Dismiss, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Energy Harbor and the Administrative Law Judge presiding over the proceeding.

File with:

Matthew L. Homsher, 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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213 Market Street, 8th Floor
Harrisburg, PA 17101
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/s/ Lauren M. Burge

Lauren M. Burge, Esquire

Counsel for Energy Harbor, LLC

Date: June 16, 2025

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION TO DISMISS
OF ENERGY HARBOR, LLC**

Pursuant to 52 Pa. Code § 5.103, Energy Harbor, LLC (“Energy Harbor” or “Respondent”) submits this Motion to Dismiss the Formal Complaint of Joseph Hessom (“Complainant”). In the alternative, Energy Harbor requests that this Motion be treated as a Motion for Summary Judgment. The bases for this Motion are that: (1) the Complainant’s claims were brought outside the statute of limitations, and therefore the Pennsylvania Public Utility Commission (“Commission” or “PUC”) lacks jurisdiction; and (2) the factual averments in Energy Harbor’s New Matter, to which Mr. Hessom filed no reply, should be deemed admitted pursuant to the Commission’s regulations at 52 Pa. Code § 5.63. In support of this Motion, Energy Harbor states as follows:

I. INTRODUCTION

1. The Complainant filed a Formal Complaint against Energy Harbor with the Commission, which was served on Energy Harbor on March 6, 2025.

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 in early 2025 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. On March 26, 2025, Energy Harbor filed a timely Answer and New Matter to the Complaint, as well as Preliminary Objections. These filings are incorporated herein by reference.

4. 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.

5. Consistent with Energy Harbor’s New Matter, Respondent submits 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.

6. A Reply to the New Matter was due by April 15, 2025, but Mr. Hessom did not file any response. A failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed admitted.¹

¹ 52 Pa. Code § 5.63.

7. On May 14, 2025, Administrative Law Judge Mary D. Long issued an Interim Order dismissing Energy Harbor’s Preliminary Objections, but providing that Energy Harbor may file dispositive motions by June 16, 2025. The Interim Order also recognized that Mr. Hessom did not reply to Energy Harbor’s New Matter or answer the Preliminary Objections. Energy Harbor now timely submits this Motion.

II. MOTION TO DISMISS

8. To act on the Complaint, the Commission must have jurisdiction.² The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly as contained in the Public Utility Code.³ The Commission must act within, and cannot exceed, its jurisdiction.⁴ Jurisdiction may not be conferred by the parties where none exists.⁵

9. 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.⁶

10. The statute of limitations in Section 3314(a) cannot be waived. Section 3314(a) divests the Commission of jurisdiction for matters that are brought outside the three-year statute

² See 52 Pa. Code §§ 5.101(a)(1); 5.102.

³ 66 Pa. C.S. §§ 101 *et seq.* See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); see also *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Opinion and Order (May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

⁴ *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945).

⁵ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

⁶ See *Duquesne Light Co. v. Pa. PUC*, 611 A.2d 370 (Pa.Cmwth. 1992).

of limitations.⁷

11. As discussed in Energy Harbor's Answer and New Matter, which is incorporated herein by reference, 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.

12. Because Mr. Hessom did not file a timely Reply to Energy Harbor's New Matter, the relevant facts may be deemed admitted.⁸ This includes the fact that Mr. Hessom enrolled with FES/Energy Harbor in 2011.

13. When these factual averments are deemed admitted due to the Complainant's failure to reply to the new matter, consistent with the Commission's regulations, it is clear that 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, including the Complainant's enrollment with FES/Energy Harbor in 2011 which is the focus of this Complaint.

⁷ 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.

⁸ 52 Pa. Code § 5.63.

III. CONCLUSION

WHEREFORE, Energy Harbor respectfully requests that the Commission (a) grant Energy Harbor's Motion; (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: June 16, 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 **Motion to Dismiss** 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: June 16, 2025

/s/ Martine Trinka

Martine Trinka
Counsel, Retail Operations
Energy Harbor, LLC