

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Hessom

v.

Energy Harbor, LLC

:
:
:
:
:

C-2025-3053792

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision grants a motion to dismiss a complaint because it is barred by the statute of limitations.

HISTORY OF THE PROCEEDINGS

On March 6, 2025, Joseph Hessom (Complainant) filed a Formal Complaint against Energy Harbor, LLC (Energy Harbor), an electric generation supplier (EGS). Mr. Hessom alleged that he received a letter on February 19, 2025, notifying him that Energy Harbor was providing him with electric generation service. Mr. Hessom further alleged that he never elected to receive service from Energy Harbor. He stated that he believed Energy Harbor was fraudulently provided with his personal information and that he never signed a consent form. As 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 denied that Mr. Hessom was fraudulently switched. Energy Harbor averred 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 New Matter, Energy Harbor contended 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 argued 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.

On May 14, 2025, I issued an interim order dismissing the preliminary objections. I reviewed the standards for granting preliminary objections and observed that, unlike a motion for summary judgment or a motion to dismiss, only the facts alleged in the complaint are considered in resolving preliminary objections.¹ Additional facts added by the proponent of the preliminary objection may not be considered. Since Energy Harbor's preliminary objections were grounded in averments in its Answer, I dismissed the preliminary objections as the improper procedural vehicle but permitted Energy Harbor to file an appropriate dispositive motion.

¹ *E.g., Stilp v. Commonwealth*, 910 A.2d 775, 791 (Pa. Cmwlth. 2006).

On June 16, 2025, Energy Harbor filed a motion to dismiss Mr. Hessom's complaint and included a notice to plead. Mr. Hessom did not respond to the motion to dismiss. The motion is now ripe for disposition and will be granted.

FINDINGS OF FACT

1. The Complainant is Joseph Hessom, whose address is 4148 Frederick Drive, New Kensington, Pa., 15068. Complaint ¶ 1.
2. The Respondent is Energy Harbor, LLC (Energy Harbor). Answer ¶ 1.
3. Energy Harbor is an electric generation supplier (EGS) which holds a license to supply electric generation services to customers in Pennsylvania, including customers within West Penn Power's service territory. Answer ¶ 2.
4. Complainant enrolled and began receiving electric generation supply service from FirstEnergy Solutions Corp (FES) in 2011. Answer ¶ 10; Motion to Dismiss ¶ 11.
5. In 2020, FES went through bankruptcy proceedings, and its name was changed to Energy Harbor. Answer ¶ 3.
6. After FES changed its name to Energy Harbor, payments to Energy Harbor were included as a line item on Complainant's monthly bill until he terminated service. Answer ¶ 5.

7. The Complainant was a customer of FES/Energy Harbor for 13 years, with no interruption of service until service was terminated on March 14, 2025. Answer ¶ 12.

8. The Complainant has since switched his service provider to West Penn Power. Complaint ¶ 12.

DISCUSSION

Energy Harbor filed a motion to dismiss Mr. Hessom's complaint. Motions to dismiss are not expressly authorized by the Commission's regulations. Therefore, it is appropriate to apply the standards for motions for summary judgment to review Energy Harbor's motion.²

The Commission's Rules of Administrative Practice and Procedure provide for the filing of motions for summary judgment and judgment on the pleadings, and provide in relevant part:

§ 5.102 Motions for summary judgment and judgment on the pleadings.

(a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(d) *Decisions on Motions.*

² See *MackLuckie v. Palmco Energy PA, LLC*, Docket No. C-2014-2402558 (Opinion and Order entered Dec. 4, 2014) (*MackLuckie*).

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.^[3]

The Commission has interpreted Section 5.102 of its regulations in conformity with the Pennsylvania Rules of Civil Procedure.⁴ To prevail, the moving party must show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.⁵ Summary judgment will only be granted when the right to relief is clear and free from doubt.⁶ When ruling on a motion for summary judgment, the Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences.⁷ All doubts regarding the existence of a genuine issue of material fact are resolved against the moving party.⁸

To establish that a genuine issue of material facts exists, the non-moving party must allege facts demonstrating that an issue for trial exists.⁹ Additionally, the non-

³ 52 Pa. Code §§ 5.102(a), (d)(1).

⁴ *South River Power Partners, L.P. v. West Penn Power Co.*, Docket No. C-00935287 (Opinion and Order entered Nov. 6, 1996).

⁵ *MackLuckie*.

⁶ *Id.*

⁷ *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1976).

⁸ *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979).

⁹ *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Commonwealth v. Diamond Shamrock Chemical Co.*, 391 A.2d 1333 (Pa. Cmwlth. 1978); *Stover v. The United Tel. Co. of Pa.*, Docket No. C-00923833 (Order entered July 21, 1992).

moving party may not solely rely upon denials in pleadings but must also submit materials to establish that a genuine issue of material fact exists.¹⁰

Mr. Hessom has failed to establish a genuine issue of material fact because he did not answer Energy Harbor's New Matter, nor did he respond to the motion to dismiss his complaint. The Commission's rules of Administrative Practice and Procedure provide:

§ 5.63. Replies to answers seeking affirmative relief or new matter.

(a) Unless otherwise ordered by the Commission, replies to answers seeking affirmative relief or to a new matter shall be filed with the Commission and served within 20 days after the date of service of the answer, but not later than 5 days prior to the date set for the commencement of the hearing.

(b) Failure to file a timely reply to the new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.^[11]

I am mindful that Mr. Hessom is unrepresented, and that the Commission is often reluctant to rule unfavorably against such litigants on technical grounds.¹² However, Mr. Hessom has had multiple opportunities to respond to Energy Harbor's allegations and has not availed himself of that opportunity. In short, he has not evidenced any interest in explaining his position. Accordingly, the relevant facts stated in Energy

¹⁰ *Nicastro v. Cuyler*, 467 A.2d 1218 (Pa. Cmwlth. 1983); *Pa. Gas & Water Co. v. Nenna & Frain, Inc.*, 467 A.2d 330 (Pa. Super. 1983); *Geriot v. Council of Borough of Darby*, 457 A.2d 202 (Pa. Cmwlth. 1983).

¹¹ 52 Pa. Code § 5.63.

¹² *See, e.g., Destefano v. Peoples Nat. Gas Co.*, 56 Pa.P.U.C. 489 (1982); *Halpern v. The Bell Tel. Co. of Pa.*, Docket No. C-00923950 (Opinion and Order entered Oct. 19, 1992); *Schlinder v. The Bell Tel. Co. of Pa.*, Docket No. F-00161252 (Opinion and Order entered Mar. 26, 1993).

Harbor's New Matter are deemed admitted.¹³ Mr. Hessom has failed to dispute Energy Harbor's allegation that he enrolled for service more than three years before filing his complaint and that the relief he is seeking is not within the Commission's jurisdiction.

Mr. Hessom's allegations arose beyond the statute of limitations and the Commission lacks the jurisdiction to provide him the relief he is seeking.¹⁴ Section 3314(a) of the Public Utility Code provides, in relevant part, no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefore arose. Mr. Hessom enrolled with FES in 2011. FES became Energy Harbor in 2020. Therefore Mr. Hessom's March 6, 2025, complaint was filed well beyond the three-year general limitation set out in 66 Pa.C.S. § 3314(a).¹⁵ Therefore, the Commission has no jurisdiction to resolve the claims made in Mr. Hessom's complaint.¹⁶

In sum, there are no facts alleged, or materials submitted by Mr. Hessom that demonstrate a genuine factual dispute which would require a hearing. Where there are no disputed questions of fact and the issue to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing.¹⁷ Accordingly, Energy Harbor's motion is granted and Mr. Hessom's complaint will be dismissed.

¹³ 52 Pa. Code § 5.63.

¹⁴ New Matter ¶¶ 11-17.

¹⁵ New Matter ¶¶ 11-14.

¹⁶ See, e.g. *Kovarikova v. Pa. Am. Water Co.*, Docket No. C-2017-2592131 (Opinion and Order entered Aug. 34, 2018).

¹⁷ *Painter v. Pa. Pub. Util. Comm'n*, 116 A.3d 749 (Pa. Cmwlth. 2015); *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n*, 817 A.2d 593 (Pa. Cmwlth. 2003); *Diamond Energy, Inc. v. Pa. Pub. Util. Comm'n*, 653 A.2d 1360 (Pa. Cmwlth. 1995); *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 557 (Pa. Cmwlth. 1989).

CONCLUSIONS OF LAW

1. Failure to file a timely reply to the new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted. 52 Pa. Code § 5.63.

2. No prosecutions on account of any matter or thing mentioned in this part shall be maintained unless brought within three years from the date at which the liability therefore arose. 66 Pa.C.S. § 3314.

3. The cause of action alleged in the Formal Complaint arose more than three years before the complaint was filed. 66 Pa.C.S. § 3314.

4. The Commission does not have jurisdiction to resolve a dispute which arose more than three years before the complaint was resolved. 66 Pa.C.S. § 3314; *Kovarikova v. Pa. Am. Water Co.*, Docket No. C-2017-2592131 (Opinion and Order entered Aug. 34, 2018).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss filed by Energy Harbor, LLC on June 16, 2025, is granted.

