

Exceptions to the initial decision by Judge Joel Cheskis on case C-2015-2479258, Ivan Yotov vs. Duquesne Light Company

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Filed by Ivan Yotov

I disagree with the statement of Judge Cheskis that I have failed to prove that Duquesne Light's actions violate the Public Utility Code. As noted in the decision, the code states:

“Every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees and the public.” 66 Pa.C.S. § 1501.

The judge further states:

“Dr. Yotov has failed to demonstrate that the tree must be removed to prevent an interruption in service or danger to Duquesne's facilities or the public.”

The above statement appears to be based on:

“Mr. Barry added that the portion of the tree that Dr. Yotov is concerned about is leaning away from Duquesne's facilities and will not come in contact with the facilities if it fell. Tr. 28-30, 38; Duquesne Exh. No. 1. Rather, Mr. Barry testified that the tree Dr. Yotov would like removed from his property is healthy and grows straight and tall. Tr. 30-31, 42. Both Mr. Barry and Mr. Paisecki concluded that the tree Dr. Yotov would like Duquesne to remove from his property is not a hazard to Duquesne's facilities. Tr. 28, 31. This testimony effectively rebuts the evidence submitted by Dr. Yotov. “

and

“Dr. Yotov agreed that the trunk of the tree is approximately 12-15 inches away from the line and that the branch hanging over the wires is not decaying.”

The judge appears to agree with the statement by Mr. Barry that “the tree Dr. Yotov would like removed from his property is healthy and grows straight and tall.” and the conclusion by Mr. Barry and Mr. Paisecki that “the tree Dr. Yotov would like Duquesne to remove from his property is not a hazard to Duquesne’s facilities.”

The judge appears to entirely dismiss the preponderance of evidence that I presented that the tree in question is in a bad condition. I quote from the March 15, 2015 letter from certified arborist Walter Jarosh to Jennifer Arkett, which was included in the evidence I presented at the hearing:

“A large oak tree on the utility right-of way at the right rear of their property has a large section of dead top directly above the energized electric distribution line, and less than 6 feet from the pole. The distribution line is on the rear side of the tree 12 to 15 inches from the trunk, and their service line is on the opposite side of the tree originating near the pole. From the ground, daylight is visible through a split in the upright vertical trunk portion that is above all these wires and pole.(photo #4) “

I have attached the above mentioned photo below:



The above statement and photo clearly show that the upright branch is decaying. Below I attach a recent photo that shows that the condition of the tree has worsened since the above photo was taken. Notice the large piece of wood that has split from the upright branch and is resting on the right branch.



The above evidence clearly shows that the tree is in a bad condition and that the statement by Mr. Barry that “the tree Dr. Yotov would like removed from his property is healthy and grows straight and tall.” is false.

The next issue is whether the tree poses danger to the Duquesne Light facilities and the public. The judge appears to base his decision on the fact that the left branch, which is overhanging the line, is

not decaying. First, it is not clear if this branch is not decaying, since no one has inspected it closely. This should be Duquesne Light's responsibility, since the branch is just inches above their high voltage line. More importantly, the decaying upright branch is in clear danger of falling. The judge appears to accept the statement by Mr. Barry that "the portion of the tree that Dr. Yotov is concerned about is leaning away from Duquesne's facilities and will not come in contact with the facilities if it fell." In fact, there is no way to predict which way the branch will fall, especially if there is wind. The upright branch is not leaning in either direction, as seen from the photos, and there is a high possibility that if it falls, it may fall onto the line, since the tree is so close to the line, and the branch is higher than the line. I am also quoting from April 9, 2015 e-mail from Mr. Jarosh to Mr. Barry, which emphasizes this possibility:

"If he as a homeowner and I as a certified arborist can look at the tree and see the potential for a defective decayed trunk directly above your line to drop onto the line that is under it, causing damage and potential failure, it is suggested that you reexamine the tree and reevaluate your decision. I carefully examined that tree with a 410 ft at 1000 yds. pair of Minolta binoculars and can attest that there is decay present and light visible thru the main upright trunk. When you can see light thru the trunk or limb portion of a tree it is time to have that portion removed."

and further down:

"It has been my experience that the tree limbs above the distribution cable will fail once the decay exceeds the structural capability of the wood and gravity brings that large portion of the tree down on the line."

The second quote is significant, because it states that decay in the upright branch will eventually cause the branch overhanging the line to fall. No one questions that if this branch falls, it would be onto the line.

An important consideration about public safety is that the line is directly above a metal fence installed by the adjacent VA property, which would be electrified, should a high voltage line falls on top of it.

All the above shows clearly that the tree under question is in a bad shape and that there is a high likelihood that some or all of its branches fall onto the high voltage electric line. This constitutes serious danger to both the Duquesne Light facilities and to the public, which is in violation of the Public Utility Code, as quoted above. Therefore I respectfully disagree with Judge Cheskis's decision and ask for a reconsideration.



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