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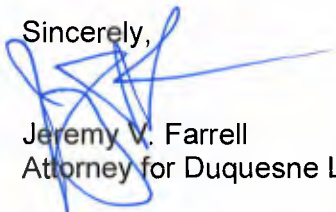
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Ivan Yotov v. Duquesne Light Company
Docket No. C-2015-2479258

Dear Secretary Chiavetta:

Duquesne Light Company's Reply Exceptions are enclosed for filing. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Jeremy V. Farrell
Attorney for Duquesne Light Company

Enclosure

cc: Ivan Yotov (with enclosure)
Office of Special Assistants (OSA), via email (with enclosure)

LIT:596810-1 014657-158498

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IVAN YOTOV)	
)	
)	
vs.)	Docket No. C-2015-2479258
)	
DUQUESNE LIGHT COMPANY,)	
)	
Respondent.)	

RESPONDENT DUQUESNE LIGHT COMPANY'S REPLIES TO EXCEPTIONS

TO THE HONORABLE COMMISSION:

AND NOW comes Respondent Duquesne Light Company ("Duquesne Light" or the "Company"), by and through its attorneys, Tucker Arensberg, P.C., and files the following Replies to Complainant's Exceptions to the Initial Decision of Administrative Law Judge Joel Cheskis:

I. INTRODUCTION

The Initial Decision properly dismissed a Formal Complaint that sought to compel Duquesne Light to remove a tree located on Complainant's private property that has not caused a service interruption and does not pose a safety threat to Duquesne Light's facilities or to the public.¹ Complainant's Exceptions rely primarily on uncorroborated hearsay statements that are insufficient under the law to undermine the Initial Decision. Even if the uncorroborated hearsay was considered, Complainant has nevertheless failed to carry his burden of proof as the undisputed facts demand judgment in favor of Duquesne Light. The tree in question is on Complainant's private property and does not pose a safety hazard to Duquesne Light's facilities or the public. Complainant should not be permitted to pass off the cost of the tree's removal to Duquesne Light's ratepayers.

¹ A copy of the Initial Decision is attached as Exhibit A.

II. FACTS

Complainant wants Duquesne Light to bear the cost and responsibility of removing a tree located in Complainant's yard² because Complainant believes the tree poses a safety hazard. Initial Decision, p. 1; FOF No. 5; Tr., pp. 15, 21.³ Duquesne Light's representatives (including two certified arborists and the supervisor of the Service Center encompassing Complainant's residence) examined the tree and surrounding electrical equipment on several occasions and determined that the tree poses no threat to Duquesne Light's facilities or to the public. FOF Nos. 10, 13; Tr., p. 19, 23, 28, 31, 33, 42. The same determination was reached when the tree was inspected during Duquesne Light's routine inspection and maintenance cycle in 2013. FOF No. 28; Tr., p. 36.

Duquesne Light takes safety concerns raised by its customers seriously. Duquesne Light's representatives have communicated at length with Complainant, Complainant's wife, and Complainant's representative (Walter Jarosh) regarding the tree in question. See FOF No. 12; Tr., pp. 22-24. Two members of Duquesne Light's vegetation management department, both of whom are certified arborists, inspected Complainant's tree on multiple occasions and verified that the tree does not pose a safety threat to Duquesne Light's facilities or to the public. Tr., pp. 19, 23, 25.⁴ Duquesne Light's investigation included not just an examination of the tree itself, but also the electrical equipment around the tree. Don Piasecki, who is the service center manager for the territory encompassing Complainant's property and who is in charge of inspecting Duquesne Light's lines to ensure they are safe, also visited the property and

² Copies of the tree at issue, which were admitted into the record during the initial telephonic hearing, are attached as Exhibit B to these Replies to Exceptions.

³ Copies of the referenced pages of the hearing transcript are attached as Exhibit C.

⁴ Mr. Barry is a supervisor of Duquesne Light's vegetation management department. FOF No. 8; Tr., p. 17-18. Mr. Barry has a bachelor's of science degree in Forest Science, and oversees contractors and deals with customers to ensure safe and reliable service. FOF No. 9; Tr., p. 18-19. He is a certified arborist with a utility specialist certification from the International Society of Arboriculture. Tr., p. 18.

confirmed that the tree poses no threat to the nearby power lines. FOF Nos. 29-31; Tr., pp. 45-46.

It is undisputed that the tree in question is on Complainant's private property. FOF No. 5; Tr., p. 15. It is a mature oak tree, which is significant because the tree will have minimal growth compared to younger trees. FOF No. 24; Tr., pp. 7, 31. As evidenced by the attached photographs and the testimony of Mr. Barry, the tree is healthy and it grows straight. FOF No. 23; Tr., pp. 30-31, 41. The tree does not lean. Tr., pp. 30-31.

Complainant's tree was inspected during Duquesne Light's 2013 routine inspection and maintenance cycle and was found to be in a safe condition at that time. FOF No. 28; Tr., pp. 35-36.⁵ As part of Duquesne Light's inspection and maintenance plan, Duquesne Light trims the trees near its electrical lines to a sufficient distance such that the normal, expected growth of each tree over the next four to five years would not threaten Duquesne Light's facilities. FOF No. 20; Tr., p. 27. During these inspection cycles, Duquesne Light will remove all or part of a tree if poses a threat to Duquesne Light's facilities based on the health, overall growth, and age of the tree (among other considerations). FOF Nos. 18-19; Tr., pp. 26-27. No such concerns were present during the 2013 inspection.

The tree trunk is about 12 to 15 inches away from Duquesne Light's line. FOF No. 6. A little over halfway up the tree, the trunk essentially forks into three separate branches. See Exhibit B. **There is only one branch that sits over Duquesne Light's electrical lines and Complainant does not contend that branch is decaying.** Tr., p. 15; see also, Exhibit B. As Complainant admitted during the hearing:

Q. My question was: You admit that there is only one branch over the line?

A. That is correct.

⁵ Duquesne Light has a routine maintenance cycle where the Company hires contractors every four to five years to trim trees and remove branches that are a danger to the Company's facilities. FOF No. 16; Tr., p. 26.

Q. And that is not the branch that you've stated is decaying; correct?

A. That is correct.

Tr., p. 15. Likewise, Duquesne Light's vegetation management supervisors have also determined that the branch that sits above Duquesne Light's line is safe and healthy. Tr., p. 30.⁶

Looking at pages 2 and 5 in Exhibit B as a frame of reference, the branch that Complainant believes is decaying is the branch in the center that leans to the right and away from Duquesne Light's lines. Tr., p. 14-15, 29. The branch, however, poses no threat to Duquesne Light's facilities or to the public. Tr., pp. 28-30. As Mr. Barry (whose credentials are outlined in footnote 4 above) explained during the hearing, even if that branch were to fail, it would fall in the direction that it is leaning, which is the opposite direction of Duquesne Light's facilities. FOF No. 22; Tr., pp. 28-30, 38. Even if the branch did fall in the direction of Duquesne Light's facilities, the lines would be protected by the healthy branch that sits above Duquesne Light's lines. Tr., pp. 29-30.

Duquesne Light's extensive investigation has revealed that the tree in Complainant's yard is safe, healthy, and does not pose a threat to Duquesne Light's facilities or to the public. FOF Nos. 5, 21; Tr., pp. 15, 28, and 31. If Complainant wants the tree to be removed, it is his responsibility (and not that of Duquesne Light's ratepayers) to pay for it.

⁶ In an attempt to assist its customer in the removal of this tree, Duquesne Light has offered to remove the branch overhanging Duquesne Light's line (at Duquesne Light's cost) if Complainant decides to proceed with the removal of the entire tree at his own expense. FOF Nos. 25-26; Tr., pp. 33, 41. Duquesne Light was willing to remove this branch because it was the most difficult portion of the tree to remove. Id. at 33. The offer is contingent on Complainant's removal of the entire tree because, as noted above, the tree poses no safety threats in its present condition. See FOF No. 21; Tr., pp. 28, 31.

III. LAW AND ARGUMENT

A. **The statements attributed to Walter Jarosh are uncorroborated hearsay, which is insufficient to justify the reversal of the Initial Decision.**

Complainant's Exceptions are based on the argument that the Initial Decision did not place sufficient emphasis on the statements of Walter Jarosh, who Complainant hired to examine the tree in question, that were set forth in various emails and letters to Duquesne Light. See Exceptions, pp. 2, 5; Tr., p. 8.⁷ Complainant attempted to offer the statements of Walter Jarosh in that correspondence to support Complainant's argument that the tree posed a safety hazard. See Tr., p. 8. Mr. Jarosh was not present at the hearing, so Duquesne Light was unable opportunity to cross-examine him as to the basis for his opinions. Tr., p. 8. Undersigned counsel, however, objected to the introduction of statements of Mr. Jarosh regarding the safety or integrity of the tree on grounds of hearsay. Tr., pp. 8, 10, 13, 15-16. ALJ Cheskis agreed that the statements of Mr. Jarosh were hearsay "because it's an out-of-court statement that's being offered to [prove] the truth of the matter asserted," but nevertheless overruled Duquesne Light's objection and admitted the correspondence containing Mr. Jarosh's statements into evidence. Tr., p. 8-9, 11. ALJ Cheskis did inform Complainant that he was "going to have a difficult time relying on much of Mr. Jarosh's testimony that you provided in your pre-served exhibits because of the fact that it's hearsay. . . ." Tr., p. 9.

Hearsay is an out of court statement offered to prove the truth of the matter asserted. Pa. R.E. 801. The statements of Mr. Jarosh that Complainant cites in his Exceptions are precisely that. Complainant offers the statements of Mr. Jarosh regarding the condition of the tree to prove that the tree is in a bad condition and, therefore, should be removed. Exceptions, pp. 2, 5. The statements are textbook hearsay. See Palumbo v. Equitable Gas Co., 98 Pa. P.U.C. 348 (July 15, 2003) (finding that undated letter regarding an inspection that a contractor

⁷ In fact, the thrust of Complainant's arguments is a mere copy and paste of the hearsay statements of Mr. Jarosh. Exceptions, pp. 2, 5.

performed of the duct work at a particular property constituted hearsay). The hearsay rule “is not a technical rule of evidence but a fundamental rule of law which administrative agencies must follow, particularly when facts crucial to the issue are to be placed upon the record.” Davis v. Equitable Gas Co., C-2011-2252493, 2012 WL 3838095 at *9 (Pa. P.U.C.) (Hunt, S.A.).

Mr. Jarosh’s statements that the tree in Complainant’s yard is unsafe and must be removed are not only uncorroborated in the record, but are also squarely contradicted by the testimony of Mr. Barry and Mr. Piasecki. Complainant’s Exceptions thus ask the Commission to overturn the well-reasoned decision of ALJ Cheskis based solely on uncorroborated hearsay. Such a result is not permitted by law. See, e.g. Castaneira v. PPL Electric Utilities Corp., F-2014-2404158, 2015 WL 4873763 at *12 (Pa. P.U.C. July 27, 2015) (Colwell, ALJ) (finding that uncorroborated hearsay is not a “permissible basis for a finding of fact or conclusion of any kind”.); Davis, 2012 WL 3838095 at *9 (holding that “uncorroborated hearsay cannot be used to support a finding of fact.”); Palumbo, 98 Pa. P.U.C. 348 (hearsay evidence, admitted over a party’s objection, is not, standing alone, enough to support a judgment); Fegley v. Pa. Power and Light Co., Docket No. C-00956732, 1996 WL 944850 at *7 (Pa. P.U.C. Jan. 24, 1996) (Schnierle, ALJ) (noting that “an adjudication of an administrative agency may not be founded wholly on hearsay.”). Complainant’s Exceptions are meritless and should be denied.

B. Complainant failed to carry his burden of proof that Duquesne Light violated the Public Utility Code.

Complainant, as the party seeking relief, has the burden of proof in this proceeding. 66 Pa. C.S. § 332(a). Complainant has failed to meet that burden because Complainant offered insufficient evidence that Duquesne Light violated the Public Utility Code, the Commissions regulations, or an order of the Commission.

The tree in question is on Complainant’s property. FOF No. 5; Tr., p. 15. It is a mature oak tree that is healthy and grows straight. FOF Nos. 23-24; Tr., pp. 7, 30-31. The tree’s size does not threaten Duquesne Light’s facilities. Tr., p. 31. The branch that hangs (which

Complainant does not contend is decaying) over Duquesne Light's line is healthy and in no danger of falling. FOF No. 7; Tr., pp. 15, 30. The branch that Complainant claims is decayed does not sit above Duquesne Light's lines nor does it lean in the direction of Duquesne Light's lines. See Exhibit B, pp. 2 and 5; Tr., p. 29. It is not going to fall towards Duquesne Light's lines and, even if it did, the lines are protected by the health branch above the line. Tr, p. 29. In light of these facts, ALJ Cheskis correctly determined that Complainant failed to carry his burden of demonstrating that the tree must be removed to prevent an interruption in service or danger to Duquesne Light's facilities or to the public. Initial Decision, p. 9. In fact, ALJ Cheskis noted that, in light of these facts, even accepting the hearsay statements of Mr. Jarosh, Complainant still failed to carry his burden of proving that Duquesne Light violated the Public Utility Code or one of the Commission's regulations. Id.

That Duquesne Light has not removed a tree on Complainant's private property that does not pose a threat to the public or to Duquesne Light's facilities does not subject it to liability. See Lauth v. Bell-Atlantic Pa., Inc. Docket No. C-00992926 (Final Order entered on October 10, 2000) (ruling that a utility company was not required to trim trees that did not interrupt service and that the utility company's policy of trimming trees on private property when it presents a safety problem or causes service interruption is a reasonable policy); Kawski v. Verizon Pennsylvania LLC, Docket No. C-2013-2384017, 2014 WL 2003290 (Pa. P.U.C. dated May 7, 2014) (Dunderdale, ALJ) (ruling that a utility company's refusal to remove a tree that did not place the utility's equipment at risk did not violate the Public Utility Code). The same result is demanded here.

The facts demonstrate that Duquesne Light acted reasonably in responding to Complainant. Duquesne Light thoroughly investigated Complainant's concerns both with respect to the tree and the surrounding electric facilities. The supervisors of Duquesne Light's vegetation management department, who are certified arborists, inspected Complainant's tree on several occasions and determined that it poses no safety threats. FOF Nos. 10, 13; Tr., p. 19, 23, 28,

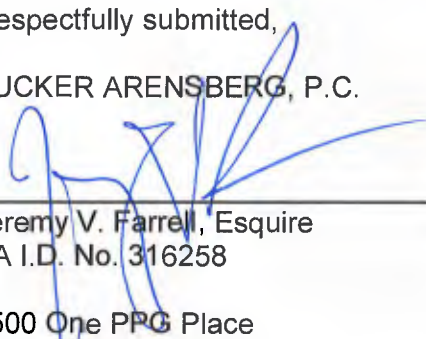
31, 33, 42. The supervisor of Duquesne Light's service center encompassing Complainant's residence personally inspected the Company's facilities around the tree and determined that they, too, are safe. FOF Nos. 29-31; Tr., pp. 45-46. Duquesne Light communicated at length with Complainant, Complainant's wife, and Complainant's agent regarding the tree in question. See FOF No. 12; Tr., pp. 22-24. Duquesne Light has been more than reasonable in addressing Complainant's concerns. As stated previously, the tree at issue is on Complainant's private property, does not pose a safety hazard to Duquesne Light's facilities or to the public, and Duquesne Light's has no responsibility to remove it. See, e.g., Lauth, supra; Kawski, supra. **IV.**

CONCLUSION

For the reasons set forth above, Respondent Duquesne Light Company respectfully requests that Complainant's Exceptions be denied and that the Initial Decision of Administrative Law Judge Cheskis be affirmed.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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Counsel for Respondent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ivan Yotov

v.

Duquesne Light Company

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C-2015-2479258

INITIAL DECISION

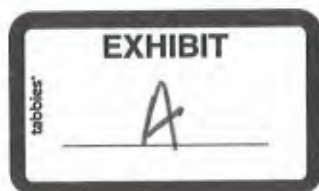
Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

This Decision denies a complaint of a customer who requested his electric distribution company be directed to remove a tree from his property that he believed posed a danger. The complaint will be denied because the customer has failed to carry his burden of demonstrating that the company violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff because the utility has no obligation to remove a tree from private property where no danger or service interruption exists.

HISTORY OF THE PROCEEDING

On April 27, 2015, Ivan Yotov filed with the Pennsylvania Public Utility Commission (Commission) a formal complaint against Duquesne Light Company (Duquesne or “the Company”), Docket Number C-2015-2479258. In his complaint, Dr. Yotov averred that Duquesne is unwilling to remove a hazardous tree next to his electric line. Dr. Yotov attached several documents to his complaint in support of his position, including pictures and various



correspondences with the Company. Dr. Yotov indicated in his complaint that he would like the Commission to order Duquesne to remove the tree.

On May 18, 2015, Duquesne filed an answer to Dr. Yotov's complaint. In its answer, Duquesne admitted or denied the various averments contained in the complaint and denied that the tree located in the back of Dr. Yotov's property and referenced in the complaint poses any reliability or safety problems. Duquesne added that its vegetation management personnel visited Dr. Yotov's property to view the tree and determined that there were no reliability or safety concerns or threats to Duquesne's facilities. Duquesne further denied that it is required to remove the tree and requested that the Commission dismiss the complaint with prejudice.

On June 24, 2015, the Commission issued a Telephonic Hearing Notice scheduling an Initial Telephonic Hearing for this matter for Wednesday, July 29, 2015 at 10:00 a.m. and assigning me as the Presiding Officer. On July 6, 2015, a Prehearing Order was issued establishing the procedural rules that would govern the hearing.

The hearing convened on July 29, 2015, as scheduled. Dr. Yotov appeared *pro se* and presented one exhibit that was admitted into the record. Jeremy Farrell, Esquire appeared on behalf of Duquesne and presented two witnesses who sponsored five exhibits that were admitted into the record. A transcript of fifty-five (55) pages was submitted to the Commission on August 20, 2015, at which time the record closed.

Dr. Yotov's complaint is ready for disposition. For the reasons discussed further below, Dr. Yotov's complaint will be denied.

FINDINGS OF FACT

1. The Complainant in this case is Ivan Yotov.
2. The Respondent in this case is Duquesne Light Company.

3. The Service Address is 144 Woodshire Road, Pittsburgh, PA.
4. Yotov Exhibit Number 1 is a compilation of pictures and various correspondences between Dr. Yotov and the Company. Tr. 16; Yotov Exh. No. 1.
5. The tree that Dr. Yotov would like to have removed is located on his property. Tr. 15.
6. The trunk of the tree is approximately 12-15 inches from the electric line and one branch hangs over the line. Tr. 15.
7. The branch that hangs over the line is not decaying. Tr. 15.
8. James Barry has worked for Duquesne for five years and is currently a supervisor of vegetation management. Tr. 17-18.
9. Mr. Barry is a certified arborist, has a Bachelor of Science degree in Forest Science and oversees contractors and deals with customers to ensure safe and reliable electric service. Tr. 18-19.
10. Mr. Barry has inspected the tree Dr. Yotov would like to have removed twice. Tr. 19.
11. Duquesne Exhibit Number 1 is a compilation of photographs Mr. Barry took in April, 2015 and July, 2015 of the tree Dr. Yotov would like Duquesne to remove from his property. Tr. 20; Duquesne Exh. No. 1.
12. Duquesne Exhibit Number 2 is an email chain between Dr. Yotov's wife and Mr. Barry in February, 2015. Tr. 22-23; Duquesne Exh. No. 2.

13. Bruce Woods, a certified arborist in Duquesne's vegetation management department, met with Mrs. Yotov on January 30, 2015 at the Yotov's residence. Tr. 23; Duquesne Exh. No. 2.

14. Duquesne Exhibit Number 3 is the trouble ticket or customer inquiry that Mr. Barry received from his supervisor after his supervisor received a letter from Mr. Jarosh, Dr. Yotov's expert, regarding the tree Dr. Yotov would like Duquesne to remove from his property. Duquesne Exh. No. 3; Tr. 24.

15. After receiving the trouble ticket, Mr. Barry visited Dr. Yotov's property to look at the tree and take photos. Tr. 25.

16. Duquesne has a routine maintenance cycle where the Company contracts with different contractors every four or five years to trim trees and remove branches or trees that are a danger to their facilities. Tr. 26.

17. The tree Dr. Yotov would like Duquesne to remove from his property was last examined as part of Duquesne's maintenance cycle in 2013. Tr. 26.

18. Duquesne will remove either an entire tree or a portion of a tree if it is determined that there is a threat to its facilities. Tr. 26.

19. Duquesne's decision whether to remove or trim a tree is made based on the health, overall growth and age of the tree, among other things. Tr. 27.

20. Trees are trimmed in a manner that Duquesne's facilities would not be impacted during the next four or five years. Tr. 27.

21. The tree Dr. Yotov would like Duquesne to remove from his property is not a hazard to Duquesne's facilities. Tr. 28, 31.

22. The specific portion of the tree that Dr. Yotov is concerned about is leaning away from Duquesne's facilities and will not come in contact with facilities if it falls. Tr. 28-30, 38; Duquesne Exh. No. 1.

23. The tree Dr. Yotov would like Duquesne to remove from his property is healthy and grows straight and tall. Tr. 30-31, 42; Duquesne Exh. No. 1.

24. The tree Dr. Yotov would like Duquesne to remove from his property has minimal growth because it is already a mature tree and will not grow as quickly as a younger tree. Tr. 31.

25. Duquesne Exhibit Number 4 is a letter Mr. Barry sent to Dr. Yotov dated April 7, 2015 indicating that Duquesne will remove the branch overhanging the electric facilities at no cost to Dr. Yotov to assist in his removing the tree. Tr. 33, 41; Duquesne Exh. No. 4.

26. Duquesne was willing to remove the branch overhanging the electric facilities because it was the most difficult portion of the tree to remove and Duquesne was willing to help with the removal of that branch but Dr. Yotov would pay for the removal of the remainder of the tree. Tr. 33.

27. Duquesne Exhibit Number 7 is the contact log that the contracted personnel complete when notifying customers of pending work and indicates that Dr. Yotov was notified of the work done in 2013. Tr. 34-35; Duquesne Exh. No. 7.

28. The tree Dr. Yotov would like Duquesne to remove from his property did not pose a safety hazard when it was inspected in 2013. Tr. 36.

29. Don Piasecki has worked for Duquesne for thirty-two years and is currently the service center manager for Duquesne's Edison service territory. Tr. 45.

30. Mr. Piasecki is in charge of inspecting Duquesne's service lines to ensure they are safe and visited Dr. Yotov's property on May 5, 2015 to investigate his complaint. Tr. 45-46.

31. Mr. Piasecki believes that there is no threat or other problem with the electric facilities in relation to the tree Dr. Yotov would like Duquesne to remove from his property. Tr. 46.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Dr. Yotov seeks an Order from the Commission directing Duquesne to remove a tree from his property. Dr. Yotov, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

Decisions of the Commission must be supported by substantial evidence.

2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth. Ct. 23, 480 A.2d 382 (Pa.Cmwlth. 1984).

In this case, Dr. Yotov testified that there is a large oak tree on his property that is close to the electric line and has a portion that is decaying. Tr. 7. Dr. Yotov indicated that he asked Duquesne to remove the tree but Duquesne refused. Tr. 7. Dr. Yotov explained that he hired Mr. Jarosh, a certified arborist, who inspected the tree and explained to Duquesne his opinion that the tree should be removed. Tr. 8. Dr. Yotov submitted a letter that Mr. Jarosh sent to Duquesne, along with pictures and other documents, in support of his position that Duquesne should remove the tree. *See*, Yotov Exh. No. 1. In response, Duquesne presented the testimony of two witnesses, Mr. Barry and Mr. Piasecki, who both work in Duquesne's vegetation management department. Mr. Barry and Mr. Piasecki presented testimony in support of Duquesne's position that the tree does not present any threat to Duquesne's facilities or the public and sponsored several exhibits that were admitted into the record that support that position.

Dr. Yotov's complaint will be dismissed because Dr. Yotov has failed to satisfy his burden to demonstrate that Duquesne's actions in any way violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff.

To begin, the Commission takes seriously its responsibility to ensure electric reliability. In particular, the General Assembly mandated that the Commission ensure levels of reliability that were present prior to the restructuring of the electric utility industry continue in the new competitive market. 66 Pa.C.S. § 2802(12); *see also*, Amended Reliability Benchmarks and Standards for the Electric Distribution Companies, Docket No. M-00991220 (Order entered

May 11, 2004); Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa.Code Chapter 57, Docket Number L-00030161 (Final Rulemaking Order entered May 20, 2004). In response to this legislative mandate, the Commission adopted various regulations designed to ensure the continued safety, adequacy and reliability of transmission and distribution of electricity in the Commonwealth. *See e.g.*, 52 Pa.Code §§ 57.191-198.

For example, Section 57.198 of the Commission's regulations requires an electric distribution company (EDC) to prepare and file with the Commission a biennial plan for the periodic inspection, maintenance, repair and replacement of its facilities that is designed to meet its performance benchmarks and standards. 52 Pa.Code § 57.198(a). Similarly, the Commission's regulations require that the plan must include a program for the maintenance of clearances of vegetation from the EDC's overhead distribution facilities. 52 Pa.Code § 57.198(f). The minimum inspection and treatment cycle for vegetation management is between 4-8 years for distribution facilities. 52 Pa.Code § 57.198(n)(1).

It is also relevant that all utility service is governed by Section 1501 of the Public Utility Code. This Section provides, in relevant part, that: "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. Dr. Yotov's complaint is also properly examined in light of Duquesne's obligations under Section 1501.

In general, most complaints filed against an EDC regarding their vegetation management practices involve situations where a tree is about to be removed or has already been removed by the EDC against the wishes of the property owner, there is a dispute over how the vegetation is managed (i.e., through the use of herbicides) or whether particular vegetation is within an EDC's right-of-way. Complaints regarding an EDC's vegetation management practices rarely involve a request from the property owner to have a tree removed from his or her property that was denied by the EDC, as is the case here.

In Lauth v. Bell-Atlantic Pa, Inc., Docket No. C-00992926 (Final Order entered on October 10, 2000) (Lauth), however, a tree on the complainant's property fell onto the telephone pole that was also located on the complainant's property. The pole to which the telephone line was attached also contained electrified wires and a transformer. There was no service interruption and the telephone company advised the complainant that, as the homeowner, he was responsible to remove or trim the tree. The complainant relied only upon language in a right-of-way agreement which gave both the telephone company and the electric company the right to trim or remove trees as necessary to clear the wires and other facilities. In the Initial Decision issued in that proceeding, the presiding officer stated: "Bell is required to provide adequate and safe telephone service. It is not required to trim or remove vegetation that may come into contact with its facilities if such contact does not interrupt telephone service Bell's policy of only trimming trees on private property when such vegetation presents a safety problem or causes service interruption is a reasonable policy." Id.; *see also*, Richard Kawski v. Verizon Pennsylvania LLC, Docket No. C-2013-2384017 (Initial Decision dated May 7, 2014).

In this case, Dr. Yotov's complaint will be denied because Dr. Yotov has failed to demonstrate that Duquesne has violated any provision of the Public Utility Code, any Commission Order or regulation or any Commission-approved utility tariff. 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.

Dr. Yotov's argument relies on the attachment Dr. Yotov included with his complaint, which was subsequently admitted in to the record as Yotov Exhibit Number 1. Although Yotov Exhibit Number 1 includes hearsay, which counsel for Duquesne objected to, even accepting the statements made in that Exhibit does not demonstrate that Duquesne is obligated to remove the tree in question from Dr. Yotov's property. The parties have agreed that the tree Dr. Yotov would like Duquesne to remove is located on his property. Tr. 15. The parties have agreed that the trunk of the tree is approximately 12-15 inches from the electric line. Yet, Dr. Yotov also testified in response to cross-examination that one branch hangs over the line and that branch is not decaying. Tr. 15. There is no evidence of any interruption to Dr. Yotov's service. Additionally, when examining pictures of the tree that were made part of the record, it

does not appear that the tree presents any threat to Duquesne's equipment or a threat to the public. Yotov Exh. No. 1; Duquesne Exh. No. 1. This includes the branch in question that Dr. Yotov asserts is decaying which Mr. Barry testified would not come in to contact with the electric facilities if it were to fall.

As Mr. Barry and Mr. Paisecki testified, they have both inspected the tree multiple times. Tr. 19, 45-46. Mr. Barry also testified regarding Duquesne's routine maintenance cycle where contractors are hired to trim and remove branches or trees every four or five years that pose a danger. Tr. 25. Mr. Barry testified that the Company decides whether to remove or trim a tree based on the health, the overall growth and the age of the tree. Tr. 26. 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. As such, Dr. Yotov has failed to carry his burden.

Duquesne is not responsible for trimming or removing trees on private property that do not pose a threat to the Company's facilities or to the public. There is no evidence of interruption of service or a general service issue beyond what may be present because the tree is near the electric facilities. As noted in the exhibits containing pictures of the property, this appears to be a heavily wooded area. It is likely that any other tree has decaying parts but this does not mean that Duquesne has to take them all down, even if they are close to the electric facilities or dangerous to the public. Furthermore, much of Duquesne's service territory likely contains wooded areas. The Commission requires EDCs to have maintenance cycles to help ensure reliability, among other reasons. Duquesne cannot be responsible for trimming or removing every tree throughout its service territory unless it is consistent with its maintenance cycle. There is no record evidence in this case demonstrating that Duquesne has acted contrary to its Commission-approved maintenance cycle, designed to reduce service outages and other

problems related to vegetation near electric facilities, by refusing to remove the tree from Dr. Yotov's property.

Similarly, when examining Dr. Yotov's complaint in light of Duquesne's obligations under Section 1501, *supra*, there is no record evidence supporting a finding that Duquesne's policy in general, or treatment of Dr. Yotov in particular, was in anyway inadequate, inefficient, unsafe or unreasonable.

Duquesne's vegetation management practice is similar to that in Lauth, *supra*. It is reasonable that Duquesne only remove or trim trees that pose a threat to its facilities or to the public and Dr. Yotov has not demonstrated here that either such circumstances are present. In particular, and as noted above, 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. Tr. 15. As a result, Dr. Yotov has failed to carry his burden of demonstrating that the tree poses a threat to the Company's facilities or to the public. It would be an unnecessary burden and expense if Duquesne, as well as other EDCs, were required to remove or trim trees where there is no interruption in service and no threat to the utilities' facilities or the public.

As such, Dr. Yotov's complaint will be denied because he has failed to satisfy his burden of demonstrating that Duquesne violated the Public Utility Code, a Commission Order or regulation or a Commission-approved tariff when denying Dr. Yotov's request to remove a tree from his property. Duquesne is under no obligation to remove a tree on private property where no service interruption or danger to Duquesne's facilities or the public exists.

CONCLUSIONS OF LAW

1. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

2. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

4. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

5. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

6. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

7. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth. Ct. 23, 480 A.2d 382 (1984).

8. The General Assembly mandated that the Commission ensure levels of reliability that were present prior to the restructuring of the electric utility industry continue in the new competitive market. 66 Pa.C.S. § 2802(12); *see also*, Amended Reliability Benchmarks and Standards for the Electric Distribution Companies, Docket No. M-00991220 (Order entered May 11, 2004); Rulemaking Re Amending Electric Service Reliability Regulations at 52 Pa.Code Chapter 57, Docket Number L-00030161 (Final Rulemaking Order entered May 20, 2004).

9. The Commission adopted various regulations designed to ensure the continued safety, adequacy and reliability of transmission and distribution of electricity in the Commonwealth. 52 Pa.Code §§ 57.191-198.

10. The Commission's regulations require an electric distribution company (EDC) to prepare and file with the Commission a biennial plan for the periodic inspection, maintenance, repair and replacement of its facilities that is designed to meet its performance benchmarks and standards. 52 Pa.Code § 57.198(a).

11. The Commission's regulations require that the plan must include a program for the maintenance of clearances of vegetation from the EDC's overhead distribution facilities. 52 Pa.Code § 57.198(f).

12. The minimum inspection and treatment cycle for vegetation management is between 4-8 years for distribution facilities. 52 Pa.Code § 57.198(n)(1).

13. A policy of only trimming trees on private property when such vegetation presents a safety problem or causes service interruption is a reasonable policy. Lauth v. Bell-Atlantic Pa, Inc., Docket No. C-00992926 (Final Order entered on October 10, 2000).

14. 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.

15. Dr. Yotov has failed to satisfy his burden to demonstrate that Duquesne violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff by refusing to remove a tree from his private property where no service interruption or danger to Duquesne's facilities or the public exists.

ORDER

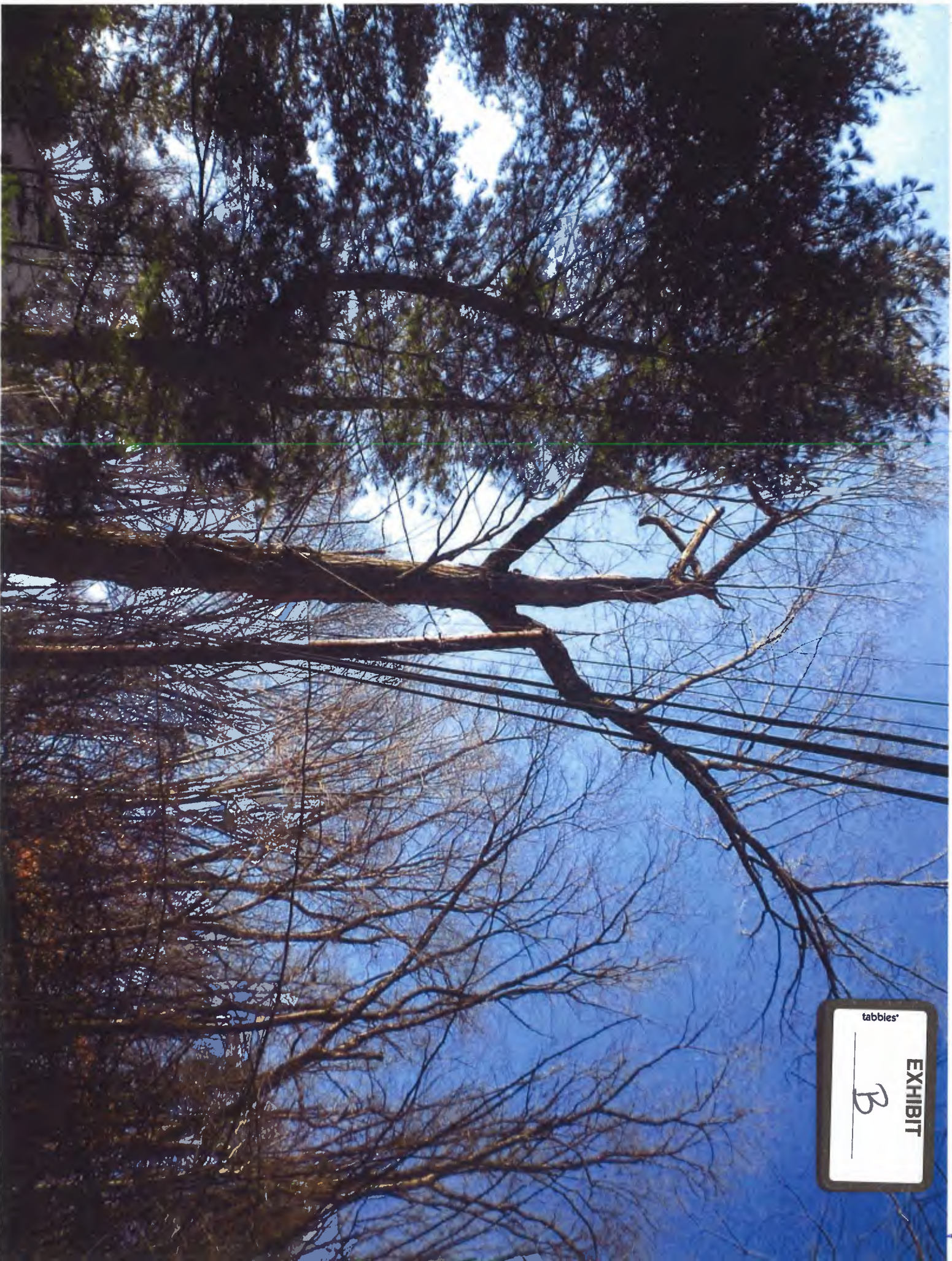
THEREFORE,

IT IS ORDERED:

1. That the formal complaint file by Ivan Yotov against Duquesne Light Company on April 27, 2015 at Docket Number C-2015-2479258 is hereby denied.
2. That this matter be marked closed.

Date: October 28, 2015

_____/s/
Joel H. Cheskis
Administrative Law Judge



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EXHIBIT

B



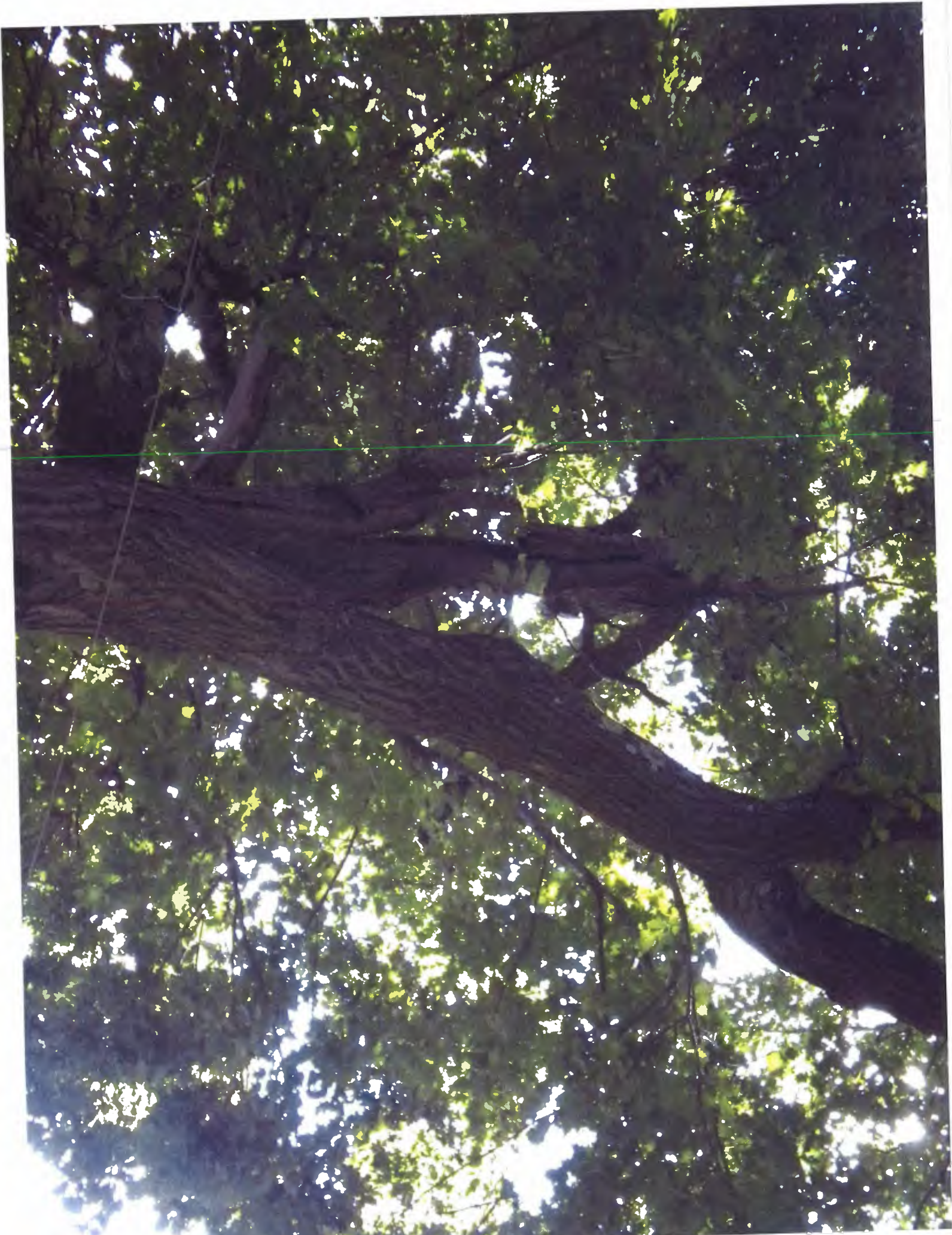














1 want to tell us.

2 THE WITNESS: Okay. I'll try. Would you
3 like me to start?

4 JUDGE CHESKIS: Go right ahead, yes.

5 DIRECT TESTIMONY

6 THE WITNESS: There's a oak tree in my back
7 yard.

8 JUDGE CHESKIS: I'm sorry. You said with a
9 large tree; is that right?

10 THE WITNESS: Large oak tree.

11 JUDGE CHESKIS: Large oak tree.

12 THE WITNESS: It's in my back yard very close
13 to an electric line, a distribution electric line maintained
14 by Duquesne Light.

15 The tree is not in a good condition. A
16 portion of it, there is decaying. It's hollow. You can see
17 through it. You can see light on the other side. It is
18 extremely close to the electric line, the distribution line,
19 which is a very high voltage. Because of that, we asked
20 Duquesne Light to take care of it.

21 Just to give a brief background, my wife
22 contacted Mr. Jim Barry, who is one of the vegetation
23 management team and explained to him the issue, and he
24 replied that, "No, we're not going to do anything about it.
25 This is not our responsibility." That was in February of

FORM 2



1 this year, after which we hired Mr. Walter Jarosh, who is a
2 certified arborist.

3 JUDGE CHESKIS: Can you please spell his last
4 name, please?

5 THE WITNESS: His last name is J-a-r-o-s-h.

6 JUDGE CHESKIS: And you said he's a certified
7 arborist?

8 THE WITNESS: He's a certified arborist,
9 correct. He came and inspected the tree and sent out a
10 letter to Ms. Jennifer Arkett, who is the manager of the
11 Vegetation Department at Duquesne Light, and explained to
12 her what the issue is.

13 MR. FARRELL: Your Honor, if I could offer an
14 objection, I think he's getting into hearsay here with Mr.
15 Jarosh's position regarding this tree.

16 JUDGE CHESKIS: Okay. Mr. Yotov, do you have
17 Mr. Jarosh there with you by any chance?

18 THE WITNESS: I'm sorry. What?

19 JUDGE CHESKIS: Is Mr. Jarosh with you?

20 THE WITNESS: No, he's not.

21 JUDGE CHESKIS: Okay. Mr. Farrell, I assume
22 that you're going to be objecting to a lot more, I guess, of
23 whatever Mr. Jarosh is going to provide in this case with
24 regards to his involvement; is that right?

25 MR. FARRELL: That's correct, Your Honor.

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JUDGE CHESKIS: Okay. So, Mr. Yotov, we do have a slight problem here with regards to Mr. Jarosh's involvement.

It is hearsay because it's an out-of-court statement that's being offered to provide the truth of the matter asserted.

Mr. Farrell, I do think I'm going to overrule your objection with regards to the testimony, but I'm going to have a difficult time relying on much of Mr. Jarosh's testimony that you provided in your pre-served exhibits because of the fact that it's hearsay, although the Commission's rules are a little bit flexible with that and in part because you're also appearing here today without counsel.

So, I just wanted to state that at the outset, because I think a lot of your case is probably going to rely on what Mr. Jarosh has told you, but, nonetheless, as I indicated, I am going to overrule the objection and if you could just please try and limit as much as you can your testimony to your particular experience with the company, I would appreciate that, Mr. Yotov.

THE WITNESS: Okay. Let me say that in the documents I provided to you, there is a written statement with a letter signed by Mr. Jarosh. There are several of them, one to Ms. Arkett, and then two other letters sent to

FORM 2

1 Mr. Barry. Are these not considered sufficient evidence
2 (inaudible).

3 JUDGE CHESKIS: I'm sorry. You said are they
4 not considered sufficient evidence, and then we didn't hear
5 what you said.

6 THE WITNESS: The letters that he wrote, that
7 he signed, are these not considered sufficient evidence of
8 his opinion? I'm just referring to his opinion. He's a
9 specialist here.

10 JUDGE CHESKIS: Right. Mr. Farrell, you
11 received a copy of Mr. Yotov's pre-served exhibits; is that
12 correct?

13 MR. FARRELL: I did, Your Honor.

14 JUDGE CHESKIS: And are you going to be
15 objecting to their admission?

16 MR. FARRELL: Yes, I am, Your Honor. I don't
17 have an opportunity to cross-examine Mr. Jarosh as to the
18 basis for his conclusions. It's hearsay.

19 JUDGE CHESKIS: Do you understand what he's
20 saying, Mr. Yotov?

21 THE WITNESS: Duquesne Light had plenty of
22 opportunity to talk to Mr. Jarosh. In several emails, Mr.
23 Jarosh specifically asked Mr. Barry, "Give me a call. Talk
24 to me. Provide me information." He was never contacted by
25 anybody from Duquesne Light.

1 JUDGE CHESKIS: Okay, but you really should
2 have Mr. Jarosh here as one of your witnesses, but just so
3 that we can get past this and move on, I do recognize that
4 these statements are hearsay, but at the same time I am
5 going to overrule the objection and allow you to proceed at
6 this time, Mr. Yotov.

7 Just keep in mind that it's going to be
8 difficult for me to rely on these documents as the basis of
9 my decision, but let's just move forward at this point and
10 we'll see how things go.

11 Are you okay with that, Mr. Farrell?

12 MR. FARRELL: Yes, Your Honor, as long as my
13 objection is noted for the record.

14 JUDGE CHESKIS: Right. I understand.

15 MR. FARRELL: Okay. Thank you.

16 JUDGE CHESKIS: Please continue, Mr. Yotov.

17 THE WITNESS: I don't know whether this is
18 the best way to proceed then. If you feel Mr. Jarosh should
19 be present, is it possible to reschedule the hearing so I
20 can arrange for that?

21 JUDGE CHESKIS: It is possible to reschedule
22 the hearing, but I'm going to admit these documents into the
23 record anyway. So, I don't think it's necessary to do that
24 at this time.

25 THE WITNESS: Okay. I just want to make

1 is too close to the line. So, therefore, by not taking care
2 of it, they're violating safety regulations and potentially
3 lying to this Commission. Again, he asked somebody to
4 contact him, but there was no response from Duquesne Light
5 at that point. So, that was on April 9th.

6 In the meantime, Ms. Arkett was copied to all
7 these emails. She never entered the conversation. So, a
8 few days later, I contacted her by email and asked her, "Can
9 I have your personal opinion?" And then she replied and
10 said, "Yeah, I concur with what Mr. Barry told you." So, at
11 that point, I had no other option but to file an official
12 complaint.

13 I just have to say all this is stated in
14 these letters; that this tree being 12 to 15 inches distance
15 from that line clearly violates any safety regulations, and
16 it's a tree that has been maintained by Duquesne Light.

17 In one of the statements, Mr. Jarosh said
18 that it is clear that the condition of the tree is a result
19 of the trimming. So, Duquesne Light is responsible for that
20 tree and is basically responsible for taking care of the
21 safety hazard that it creates.

22 MR. FARRELL: Your Honor, if I could just
23 reiterate my objection regarding the testimony of Mr.
24 Jarosh.

25 JUDGE CHESKIS: Okay. I appreciate that.

1 Mr. Yotov, do you have anything further at this time?

2 THE WITNESS: Just a comment on the solution
3 that was offered by Duquesne Light to cut -- there are three
4 branches, one of them directly overhanging the distribution
5 line. They offered to cut this one. By cutting the branch,
6 it will become even more dangerous. The decaying branch is
7 the one that is upright. They are not offering to take care
8 of that.

9 In any case, to me, the only safe solution to
10 the problem is to remove the entire tree because the tree is
11 dangerous. That's my point, and we have not been able to
12 reach any agreement on that.

13 JUDGE CHESKIS: Okay. Well, I appreciate
14 that, Mr. Yotov. I certainly appreciate you providing these
15 pre-served exhibits. Again, there is a lot of hearsay in
16 here, and I'm going to have to be careful when I go to write
17 the decision as to what I can and cannot rely on.

18 At this time, I'm going to ask, Mr. Farrell,
19 do you have any questions for Mr. Yotov at this time?

20 MR. FARRELL: Yes, Your Honor, just a few.

21 JUDGE CHESKIS: Go right ahead.

22 CROSS-EXAMINATION

23 BY MR. FARRELL:

24 Q. Mr. Yotov, can you hear me?

25 A. Yes, I can hear you.

1 Q. I just want to clarify a couple of things. You are
2 admitting that this tree is located on your property;
3 correct?

4 A. That's right.

5 Q. And you are admitting that there is only one branch
6 that hangs over the utility lines that you're disputing?

7 A. The stem of the tree is 12 to 15 inches from the
8 line, the stem, the whole trunk. So, even though there is
9 one branch overhanging, the entire trunk of the tree is very
10 close to the electric line.

11 Q. My question was: You admit that there is only one
12 branch over the line?

13 A. That is correct.

14 Q. And that is not the branch that you've stated is
15 decaying; correct?

16 A. That is correct.

17 MR. FARRELL: Your Honor, I don't have
18 anything else.

19 JUDGE CHESKIS: Okay. Mr. Yotov, you said
20 you wanted these pre-served exhibits admitted into the
21 record; is that correct?

22 THE WITNESS: Yes.

23 JUDGE CHESKIS: Mr. Farrell, do you have any
24 objection to that?

25 MR. FARRELL: Yes, Your Honor. I would just

1 reiterate my objection to any statements offered by Mr.
2 Jarosh since he is not here to testify today on the grounds
3 of hearsay.

4 JUDGE CHESKIS: Okay. Well, I appreciate
5 that and I'm going to take that under advisement. Having
6 said that, I'm going to mark this entire packet as Yotov
7 Exhibit No. 1, and it will be admitted into the record.

8 (Whereupon, the document was marked as Yotov
9 Exhibit No. 1 for identification, and was
10 received in evidence.)

11 MR. FARRELL: Okay.

12 JUDGE CHESKIS: Thank you very much for that,
13 Mr. Yotov. We're going to move on to the company now.

14 (Witness excused.)

15 JUDGE CHESKIS: Mr. Farrell, do you want to
16 call your first witness?

17 MR. FARRELL: Thank you, Your Honor.
18 Duquesne Light calls James Barry.

19 JUDGE CHESKIS: I'm sorry. Was that James or
20 Jane?

21 MR. FARRELL: James, J-a-m-e-s.

22 JUDGE CHESKIS: Okay. Sir, would you please
23 raise your right hand?

24 Whereupon,

25 JAMES BARRY

1 having been duly sworn, testified as follows:

2 JUDGE CHESKIS: We are getting a little bit
3 of an echo back there. I don't know if you could move
4 closer to the phone or if there's some other way to reduce
5 that.

6 THE WITNESS: Is this better?

7 JUDGE CHESKIS: That is better. Can you
8 please begin by stating and spelling your name for the
9 record?

10 THE WITNESS: James Barry, J-a-m-e-s,
11 B-a-r-r-y.

12 JUDGE CHESKIS: Okay. Again, Mr. Yotov, you
13 will have an opportunity to ask Mr. Barry any questions with
14 regards to what he testified to this morning. So, please
15 listen carefully.

16 Having said that, Mr. Farrell, would you
17 please go right ahead?

18 MR. FARRELL: Thank you, Your Honor.

19 **DIRECT EXAMINATION**

20 BY MR. FARRELL:

21 Q. Mr. Barry, who do you work for?

22 A. Duquesne Light Company.

23 Q. How long have you been with Duquesne Light?

24 A. Five years.

25 Q. What's your current job title?

1 A. Supervisor of Vegetation Management.

2 Q. Would you describe what the Vegetation Management
3 Department at Duquesne Light does?

4 A. Oversee our contractors and deal with customers,
5 insure safe, reliable electric service to our customers.

6 Q. When you use the word "vegetation," can you just
7 briefly explain what that means?

8 A. Trees, brush, anything growing at the time.

9 Q. In your role as the supervisor of that department,
10 can you explain what your basic job responsibilities are?

11 A. As I said, oversee our contractors, insure that they
12 are upholding the scope of work that they are to perform on
13 a daily basis and, once again, touch base with our customers
14 if there are any issues and follow through with it.

15 Q. So, your job responsibilities include inspecting
16 trees on customers' properties to determine whether or not
17 they pose any safety hazard to Duquesne Light property?

18 A. From time to time, yes.

19 Q. And do you have any advanced training or education in
20 the field of vegetation management?

21 A. Yes. I have a Bachelor of Science in Forest Science,
22 and I am also a certified arborist with a utility specialist
23 certification.

24 My training education was a forest science degree,
25 and I also have an International Society of Arboriculture

1 certification with a utility specialist certification as
2 well.

3 MR. YOTOV: Sorry. Are you saying you're a
4 certified arborist?

5 THE WITNESS: Correct.

6 MR. YOTOV: Okay.

7 MR. FARRELL: Did you get that, Your Honor?
8 Are we good to go?

9 JUDGE CHESKIS: Yes. Please go right ahead.

10 BY MR. FARRELL:

11 Q. Mr. Barry, are you personally familiar with the
12 issues that Mr. Yotov is raising through this complaint?

13 A. I am.

14 Q. And can you tell me how you've become familiar with
15 this?

16 A. I've been contacted by the Yotovs and I've been to
17 the property to observe the tree in question.

18 Q. And how many times have you inspected this particular
19 tree?

20 A. I've been there two times.

21 Q. Have you taken any photographs during your visits?

22 A. I have.

23 Q. I'd like to turn your attention to the documents that
24 have been collectively marked for identification purposes as
25 Exhibit 1. I represent for the record that is a nine-page

1 recall when you took those photographs?

2 A. I believe I took those last week. I don't have a
3 specific date.

4 Q. Do these photos fairly and accurately represent the
5 condition of the tree in the Yotovs' backyard?

6 A. It does.

7 Q. The first thing I'm going to ask, Mr. Barry, who owns
8 this particular tree?

9 A. The Yotovs own the tree.

10 Q. Why do you say that?

11 A. Where the tree resides.

12 Q. Where does it reside?

13 A. Along the back corner of the Yotovs' property.

14 Q. It is located on the property?

15 A. Correct.

16 Q. Are there any photographs which show that?

17 A. Photo two of Exhibit No. 1 shows the tree on the back
18 portion of the property. You can see the pole beyond the
19 tree.

20 Then, also, if you go to photo number six in Exhibit
21 No. 1, you can actually see the base of the tree. The pole
22 is beyond the tree and at the base of the tree you can see
23 the Yotovs' garden.

24 Q. Mr. Barry, could you explain how you first got
25 involved in investigating this particular tree?

1 A. I was contacted January 27th of this year by Ms.
2 Yotov expressing her concern for the tree in the rear of her
3 property.

4 Q. I'd like to turn your attention to the documents that
5 have been pre-marked for identification purposes as Exhibit
6 2. Let me know when you have those in front of you.

7 A. I have them.

8 (Whereupon, the document was marked as

9 Duquesne Exhibit No. 2 for identification.)

10 BY MR. FARRELL:

11 Q. Do you recognize these documents?

12 A. I do.

13 Q. What are they?

14 A. An email chain between Mrs. Yotov and myself
15 discussing the tree and our interactions with the tree.

16 Q. And who pulled and collected these documents?

17 A. I printed them out and pulled them from my email.

18 Q. Do you recall sending and receiving these emails with
19 Mrs. Yotov?

20 A. I do.

21 Q. You testified that Mrs. Yotov first contacted you on
22 January 27th. Is that reflected anywhere in Exhibit 2?

23 A. It is on the very last page, page four of Exhibit 2.

24 Q. And this would be the first email that you received
25 from Mrs. Yotov regarding this tree?

1 A. Correct.

2 Q. You don't have to read the actual email, but can you
3 tell me how you responded to the issues raised by Mrs.
4 Yotov?

5 A. I then placed a call to Mrs. Yotov discussing our
6 policies with her regarding trees that are brought to our
7 attention.

8 At that point, I was unable to meet with Mrs. Yotov,
9 so I sent my colleague, Mr. Bruce Woods, out to take a look
10 at the tree and discuss this with Ms. Maria Yotov.

11 Q. What is Mr. Woods' position?

12 A. He's also a supervisor in the Vegetation Management
13 Department here at Duquesne Light.

14 Q. Does he hold the same position as you do?

15 A. Correct.

16 Q. Is he a certified arborist?

17 A. He is.

18 Q. Do you know when his meeting with Mrs. Yotov took
19 place?

20 A. That was the same day that I placed my call. It was
21 January 30th of 2015.

22 Q. And then after Mr. Woods' visit with Mrs. Yotov, did
23 you continue to have a dialogue with the Yotovs regarding
24 this tree?

25 A. We did. We had several phone calls. Mrs. Yotov

1 emailed me and I would follow up with a phone call with her,
2 and after a while, she requested emails from me. So, then
3 we got into the email chain which is reflected in Exhibit 2.

4 Q. I'd like to turn you, Mr. Barry, please to the
5 document that has been pre-marked for identification
6 purposes as Exhibit 3. Let me know when you have that.

7 A. I have it.

8 (Whereupon, the document was marked as
9 Duquesne Exhibit No. 3 for identification.)

10 BY MR. FARRELL:

11 Q. Do you recognize this document?

12 A. I do.

13 Q. What is it?

14 A. This is a trouble ticket or a customer inquiry that
15 we get from our customers when they have concerns. This
16 specific inquiry came from my direct supervisor, Jennifer
17 Arkett, after she received a letter from Mr. Jarosh
18 regarding the tree in question.

19 Q. Taking a look at Exhibit 3, how can you tell that
20 this particular document relates to the tree on their
21 property?

22 A. At the very top, it gives the address, 144 Woodshire,
23 and then the owner at that address or the owner of the
24 account at Duquesne Light, which is Ivan Yotov.

25 Q. And in the course of performing your job

1 responsibilities, did you come to be in possession of this
2 document?

3 A. Yes. I got this directly from my boss.

4 Q. And what were her instructions to you?

5 A. It says here to get a look at the tree and advise her
6 of the findings and photos.

7 Q. And did you do that?

8 A. Yes.

9 Q. When did you go out to the Yotovs' property next?

10 A. At that point, I believe it was -- I spoke with Mr.
11 Yotov on the phone, and I wanted to meet with him in person
12 to review the tree and the photos with him. I believe it
13 was 4/1 is when I got the photos. Once again, Mr. Woods and
14 I met with Mr. Yotov.

15 Q. And that was on April 1st you said?

16 A. Correct.

17 Q. And that was a meeting that you and Mr. Woods had
18 with Mr. Yotov?

19 A. Correct.

20 Q. Before we talk about your specific meeting, I want to
21 talk a little bit about the vegetation management procedures
22 at Duquesne Light.

23 What procedures does vegetation management do to keep
24 the trees that are located at nearby facilities in a safe
25 condition?

1 A. We have a routine maintenance cycle that we perform
2 throughout the service territory every four to five years on
3 our distribution facilities.

4 At that point in time, we contract with different
5 contractors. They trim, they remove any branches or trees
6 that are a danger to our facilities. That four to five
7 years is based on the species and the growth rates at which
8 the trees can grow and once again come in contact or
9 interfere with our facilities.

10 Q. Has this tree that we're discussing here today, has
11 that been a part of Duquesne Light's routine maintenance?

12 A. It has been.

13 Q. When was the last time that it was subject to that?

14 A. 2013 was our last maintenance cycle.

15 Q. And did you have any involvement in that process?

16 A. I did.

17 Q. And what was that?

18 A. I was the inspector supervisor of the distribution
19 project that occurred along the Yotov property.

20 Q. Now, are there any circumstances under which Duquesne
21 Light will either agree to remove either an entire tree or a
22 portion of a tree?

23 A. We will if it causes a threat to our facilities.

24 Q. And would it be the vegetation management group that
25 determines whether or not any particular removal or special

1 maintenance needs to take place?

2 A. Correct. Our contractors identify the trees prior to
3 our involvement and at that point we deem whether or not it
4 is a threat and, if it is, then we will deal with it in the
5 manner that is necessary.

6 Q. What sort of factors do you look at when you consider
7 whether or not a tree poses a threat to Duquesne Light's
8 facilities?

9 A. Typically the health of the tree, the overall growth
10 and the age and how long we've been dealing with the tree.

11 Q. When you do the routine maintenance that you
12 described earlier, is there any sort of typical clearance
13 that the company likes to maintain?

14 A. Once again, best practices are applied and every four
15 to five years' worth of growth we try to maintain on our
16 facilities.

17 Q. What does that mean, four to five years of growth?

18 A. Based on species, the growth rate of the tree is
19 going to be what we determine. So, an oak would be
20 different than a maple tree.

21 Q. Am I understanding correctly that you would trim
22 enough back that over the course of the next four or five
23 years, then that would not impact Duquesne Light's
24 facilities?

25 A. Correct.

1 Q. Based on your inspection of the Yotovs' tree and your
2 education and training, do you believe that that tree
3 creates any unsafe hazards to Duquesne Light's facilities?

4 A. I do not feel that it creates a hazard to our
5 facilities.

6 Q. Let's turn back to the photographs shown on Exhibit
7 1. Looking at these photographs, can you just explain very
8 briefly what exactly are Duquesne Light's facilities that
9 are nearby this tree?

10 A. Yes. On photo two of Exhibit 1, you can see the very
11 top wire, it's actually harder to see, but just underneath
12 the very far left branch is our primary facility which is
13 4,000 volts, and underneath of that is a secondary wire or
14 two secondary wires and a neutral and that's energized to
15 280 volts.

16 Q. Now, would you explain why you believe that this tree
17 or any of its branches doesn't pose a threat to Duquesne
18 Light's facilities?

19 A. Yes. If you turn to photo five of Exhibit 1, you
20 have a more down-the-line photo of the tree in question, and
21 you can see the top portion of the tree that is in question
22 from the Yotovs and Mr. Jarosh, it's the top piece. You can
23 see that piece of that tree is leaning heavily back and
24 towards the right away from our facilities. If it were to
25 fail, it's not going to come in contact with.

1 Q. I just want to make a point of clarification. Can
2 you describe which part of the tree is contested by Mr.
3 Yotov based on your meetings with him?

4 A. Starting at the base, going straight to the sky, it's
5 the central part of the tree; not the branch on the left,
6 over top or overhanging our facilities or the branch over
7 right of the facilities. It's the one that goes straight up
8 and to the right.

9 Q. So, if you're looking at the middle of photograph
10 five, about halfway up, the single trunk splits into three
11 branches, and the Yotovs have been concerned about the
12 branch in the middle that sort of curves to the right?

13 A. Correct.

14 Q. Can you explain does that pose any safety hazard to
15 Duquesne Light's facilities?

16 A. Not to the Duquesne Light facilities.

17 Q. And why is that?

18 A. Because it is, one, protected by the branch
19 overhanging the facilities to the left. If it were to fail,
20 it's not going to fail forward and contact the facilities,
21 and it's heavily leaning away from the facilities as well.
22 So, in the likelihood of a failure, it's going to fail
23 backwards and to the right.

24 Q. And would that be in the direction of or away from
25 Duquesne Light's facilities?

1 A. It would be away from our facilities.

2 Q. You mentioned that the branch that we're discussing
3 is protected by the branch that would be on the left in
4 photograph five. Can you explain what you mean by that?

5 A. The tree itself is within 12 to 15 inches of this
6 primary facility. The proximity of that branch overhanging
7 is going to more or less knock that top branch. If it were
8 to fail in that direction, which I don't feel it is, it is
9 going to more or less tumble over top of the wire and not
10 come in contact with.

11 Q. The branch to the left that hangs over Duquesne
12 Light's facilities, have you conducted an investigation to
13 see whether or not that branch is in good health?

14 A. We've looked at that branch as much as the rest of
15 them, and it is a healthy branch.

16 Q. Is there any photograph in Exhibit 1 that would help
17 you explain that?

18 A. Yes. Photo number seven, I believe it is, the very
19 last photo in Exhibit 1 -- it looks like photo nine in
20 Exhibit 1, the very last photo, shows the health and vigor
21 of the tree. It's very green. It shows the branch that's
22 in question, and then even on photo number seven of Exhibit
23 1, you can also see the branch overhanging the facilities is
24 green and in good health.

25 Q. Is there any threat -- does this tree lean at all?

1 A. It does not. It actually grows straight and tall,
2 and that you can see in photo number five as well.

3 Q. Are there any growth issues that could be presented
4 by this tree that might impact Duquesne Light's facilities?

5 A. There is minimal growth with the very mature tree
6 that it is. If you turn to photo four of Exhibit No. 1, you
7 can see the re-sprout or the water sprouts from the last
8 maintenance cycle which would have occurred. It has been
9 two growing seasons.

10 Q. Can you explain what you mean by water sprouts?

11 A. Yes. If you follow up the main trunk of the tree,
12 there are hair-like branches that have grown out over our
13 maintenance cycle. They are about four to five inches
14 maximum. You can see that that's what we've maintained on
15 this very mature tree over the past two maintenance cycles.

16 Q. When you say the tree is mature, what's the
17 significance of that?

18 A. A mature tree isn't going to grow as quickly as a
19 younger tree.

20 Q. Is there any safety hazard to Duquesne Light's lines
21 as a result of the proximity of this tree to the lines?

22 A. No.

23 Q. Is there any safety hazard to Duquesne Light's lines
24 as a result of the size of this particular tree?

25 A. No.

1 sentence in, it says, "However, as we have discussed,
2 Duquesne Light is willing to remove, at no expense to you,
3 the branch overhanging our facilities to assist you in part
4 with the removal of your tree." Can you explain why
5 Duquesne Light took that position?

6 A. Just as more or less a branch to help the Yotovs in
7 the removal of this tree. Since it did not pose a threat to
8 our facilities, we were at least willing to help in the
9 removal and get that branch off that was in proximity to the
10 wires.

11 Q. What was the reasoning behind doing that only if the
12 Yotovs were going to be removing the tree?

13 A. Just to get the piece that was, you know, I guess the
14 worst in removing that tree overhanging our facilities.

15 Q. So, as the tree stands right now, does that
16 particular branch pose any safety hazard to Duquesne Light's
17 facilities?

18 A. It does not.

19 Q. If the tree were to be removed, would that pose any
20 difficulty?

21 A. It would be a more difficult branch to remove, and
22 that's why we offered to help in that instance.

23 Q. Who would pay for the removal on that?

24 A. The Yotovs would pay for the removal of the tree and
25 we would pay for the branch at that point in time.

1 A. I have.

2 Q. And you, I believe, testified you were the supervisor
3 of this particular maintenance job?

4 A. Yes.

5 Q. Let me turn you back to the entry at the bottom that
6 you were discussing earlier regarding the Yotovs. Can you
7 tell me what sort of maintenance was done on their property?

8 A. You can see the notification personnel noted that
9 there was a beech and an oak tree to be pruned for both
10 primary and secondary wires on the Yotov property.

11 Q. Can you just briefly explain for the record how you
12 see that was the work to be done?

13 A. In the box to the right, there are comments. It says
14 "beech and oak," and it has the pole number with the line
15 indicating the primary facilities in between the two. Pole
16 787-14 is the oak tree.

17 Q. During this inspection in 2013, is there any
18 indication that that tree posed any hazard to Duquesne
19 Light's facilities?

20 A. It did not at that time. If you reference the second
21 block down in the comments, there was a hazard ash tree and
22 a hazard beech tree on the property at 136 Woodshire Road.
23 That was identified and removed by the contractors at that
24 point in time.

25 Q. So, if the tree on the Yotovs' property were found to

1 have presented a hazard, would that be noted in this record?

2 A. Correct.

3 Q. And based on your personal recollection of this
4 inspection cycle, was there any safety hazard posed at the
5 time?

6 A. There was no threat.

7 MR. FARRELL: Your Honor, that's all that I
8 have for Mr. Barry.

9 JUDGE CHESKIS: Thank you very much for that.
10 Mr. Yotov, I know that there was a lot there, and I'm just
11 wondering if you have any questions for the witness at this
12 time, you can go ahead and ask them.

13 MR. YOTOV: Yes, I do.

14 **CROSS-EXAMINATION**

15 BY MR. YOTOV:

16 Q. Mr. Barry, can you tell me are there any regulations
17 that you have to follow with respect to maintaining a
18 minimum distance between the electric lines and any
19 vegetation?

20 A. We are regulated to maintain a clearance. There is
21 no set distance, but, once again, we do inspect and maintain
22 our lines on a four to five-year maintenance cycle.

23 Q. So, there are no specific regulations in terms of
24 distance and minimum distance?

25 A. Correct.

1 questions, Mr. Yotov?

2 MR. YOTOV: Yes.

3 BY MR. YOTOV:

4 Q. You stated that the middle branch, which is the one
5 Duquesne (inaudible) --

6 JUDGE CHESKIS: I'm sorry. The middle
7 branch, the one that Duquesne, is that what you said?

8 BY MR. YOTOV:

9 Q. The one that is decaying, the one that has the decay
10 that is hollow, the upright branch, Mr. Barry stated that if
11 this branch was to fall, it will fall away from the electric
12 line.

13 My question is: How can you be sure that this will
14 happen? There can be very different conditions causing a
15 branch to fall, including strong winds that can be blowing
16 in any direction. So, how can you make a statement like
17 that?

18 A. By observing the branch, Mr. Yotov. The weight and
19 the amount of the tree that is left on that branch, it is
20 going to -- when it does fail, in my opinion, it is going to
21 fail back and to the right, not towards our facilities.

22 Q. Okay. If you were to remove the overhanging branch
23 as you offered and if this was the only work done on the
24 tree, do you think the tree would be safer after you do
25 that?

1 very thick, black wires if you look at picture number two in
2 Exhibit 1, the very thick, black wires at the very bottom of
3 the pole -- or in the middle of the pole, I guess you should
4 say.

5 Then the group of three in the middle of the
6 tree up towards the top of the left branch would be our
7 secondary wires, the 240 I believe it was or 280, and then
8 the 4,000 volt wire.

9 JUDGE CHESKIS: Say that again.

10 THE WITNESS: The heavy black, thick wires at
11 the bottom of the pole are the cable and telephone wires.
12 The middle three wires towards the middle of the tree are
13 the secondary wires which are 240 volts with the neutral,
14 and then the very top wire is the primary of 4,000 volts.

15 JUDGE CHESKIS: Okay. So, I think you said
16 also that the company is willing to come and take off the
17 branch that is hanging over the wire, but which is not the
18 one that Dr. Yotov wants removed as part of the entire tree
19 being removed; is that correct?

20 THE WITNESS: If the Yotovs are to have the
21 entire tree removed, we would assist in removing the branch
22 directly over top of the wires.

23 JUDGE CHESKIS: So, I guess my question then
24 is: What really is the difference to the company in
25 bringing out a crew, turning off the wire, taking off that

1 branch that does hang over versus doing all of that and
2 taking down the rest of the tree?

3 THE WITNESS: To get to the branch that is
4 closest in proximity away from the wires for ease of the
5 removal for their qualified arborist to do the work.

6 JUDGE CHESKIS: But I'm saying if you're
7 already out there and you've already turned the line off --
8 I'm assuming you're going to have turn the line off to
9 remove that one branch -- why doesn't the company just take
10 down the whole tree for Dr. Yotov?

11 THE WITNESS: Because it doesn't pose a
12 concern for our facilities. It's an issue for the Yotovs,
13 and it's a courtesy measure for us to remove that branch for
14 them.

15 JUDGE CHESKIS: And, again, your position is
16 that the company is only concerned about the safety to its
17 facilities and not safety to the public or any other
18 property; is that right?

19 THE WITNESS: No. It's a healthy tree that
20 we don't feel is an issue at this time.

21 JUDGE CHESKIS: Okay. Are there any further
22 questions based on what I just asked?

23 MR. YOTOV: Not from me, Your Honor.

24 JUDGE CHESKIS: Mr. Farrell, do you have
25 anything further for this witness?

- 1 Q. Mr. Piasecki, who do you work for?
- 2 A. Duquesne Light Company.
- 3 Q. How long have you been with Duquesne Light?
- 4 A. Thirty-two years.
- 5 Q. And what is your current job title?
- 6 A. I'm a service center manager.
- 7 Q. Of what service center?
- 8 A. The Edison service territory.
- 9 Q. And does that service territory cover the area where
- 10 the Yotovs live?
- 11 A. Yes, O'Hara Township.
- 12 Q. Would you describe what your basic job
- 13 responsibilities are in that role?
- 14 A. I'm responsible for the operations of the service
- 15 center.
- 16 Q. Does that include inspecting Duquesne Light's lines
- 17 to insure that they're safe?
- 18 A. Yes, it does.
- 19 Q. And are you familiar with the lines in Duquesne
- 20 Light's facilities around the Yotovs' property?
- 21 A. Yes, I am. I was sent there to investigate that wire
- 22 and make sure it was safe.
- 23 Q. Do you recall when that was?
- 24 A. Tuesday, May 5th.
- 25 Q. Of what year?

1 A. 2015.

2 Q. Did you speak with anybody when you were there?

3 A. When I pulled up in front of the house, a woman had
4 pulled in just in front of me. It turned out I guess it was
5 Mrs. Yotov. I knocked at the door and just said, "I'm Don
6 from Duquesne Light." I was sent there by the legal
7 department, and I knew there was a case pending, so I wasn't
8 there to speak to her or talk about anything that was
9 pertinent to the case, and I asked if I could go back.

10 As a courtesy, we knock on the door and I tell them
11 I'm going back to look at a wire in the back.

12 Q. Did you examine the wire in the back of the Yotovs'
13 yard?

14 A. Yes, I did.

15 Q. And what were you looking to see?

16 A. To make sure that it was safe and there were no
17 issues with it.

18 Q. And what was your conclusion?

19 A. There wasn't any problem with the wire.

20 Q. Did the proximity of the tree to the wire pose any
21 threat to it?

22 A. No. There was no threat.

23 MR. FARRELL: That's all that I have for Mr.
24 Piasecki, Your Honor.

25 JUDGE CHESKIS: Okay. Thank you very much,

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IVAN YOTOV)
)
)
Complainant,)
vs.) Docket No. C-2015-2479258
)
DUQUESNE LIGHT COMPANY,)
)
Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participant listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

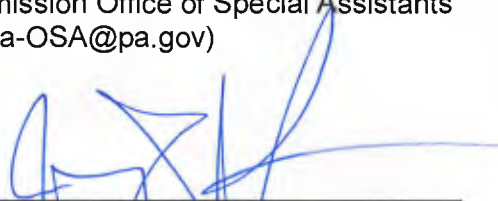
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Dated this 1st day of December 2015:

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