

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALDERWOODS (PENNSYLVANIA), INC., a
wholly owned subsidiary of SERVICE
CORPORATION INTERNATIONAL, t/a
BURTON L. HIRSCH FUNERAL HOME,

Complainant,

v.

DUQUESNE LIGHT COMPANY,

Respondent.

No: C-2016-2522634

**RESPONDENT'S MOTION TO STRIKE
COMPLAINANT'S PRELIMINARY
OBJECTIONS TO JURISDICTION**

Filed on Behalf of the Respondent,
Duquesne Light Company

Counsel of Record for This Party:

Bradley S. Tupi, Esquire
Pa. Id. No. 28682

Erin Beckner Conlin, Esquire
Pa. Id. No. 94086

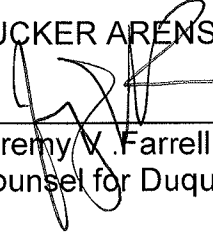
Jeremy V. Farrell, Esquire
Pa. Id. No. 316258

TUCKER ARENSBERG, P.C.
1500 One PPG Place
Pittsburgh, PA 15222
(412) 566-1212
(412) 594-5619 - FAX
btupi@tuckerlaw.com
ebeckner@tuckerlaw.com
jfarrell@tuckerlaw.com

NOTICE TO PLEAD

**YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THIS MOTION
WITHIN TWENTY (20) DAYS OF SERVICE OR A JUDGMENT MAY BE ENTERED
AGAINST YOU.**

TUCKER ARENSBERG, P.C.



Jeremy V. Farrell, Esquire
Counsel for Duquesne Light Company

to the PUC under the doctrine of primary jurisdiction and that the Superior Court refused to disturb this ruling. The PUC lacks authority to reconsider what two courts have already decided. Gerrow v. John Royle & Sons, 572 Pa. 134, 140-42 (Pa. 2002) (“Judges of coordinate jurisdiction sitting in the same case should not overrule each others’ decisions”).

4. The underlying action relates to a fire at the Burton L. Hirsch Funeral Home in Squirrel Hill on January 10, 2009. This litigation is now almost seven years old.

5. This is the fourth time Complainant has challenged the PUC’s jurisdiction. Complainant has already lost this argument three times: twice before the Honorable Paul F. Luty¹ in the Court of Common Pleas of Allegheny County and once before the Superior Court. See Complainant’s Preliminary Objections, ¶¶ 32, 36, 40.

6. Because the question of the PUC’s jurisdiction has already been decided, it is now the law of the case and cannot be disturbed. Tyro Industries, Inc. v. James A. Wood, Inc., 614 A.2d 279, 284 (Pa. Super. 1992) (“Law of the case means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case”).

7. The PUC has the authority to dismiss a pleading for legal sufficiency. 52 Pa. Code § 5.101. Respondent submits that Complainant’s Preliminary Objections are legally insufficient on their face because they contradict prior rulings of the Common Pleas Court and the Superior Court in this action.

8. Complainant’s Preliminary Objections should be rejected *ab initio*. This action should proceed on the merits before the PUC as directed by the Court of Common Pleas of Allegheny County.

¹ The Court of Common Pleas entertained extensive arguments and briefings on the issue of the PUC’s jurisdiction, first in the form of Duquesne Light’s Motion to Bifurcate and then in connection with Hirsch’s Motion for Reconsideration. See *generally* Exhibits M and N to Complainant’s Preliminary Objections. The parties briefed the issue again in connection with Complainant’s Petition for Review with the Superior Court, attached to the Preliminary Objections as Exhibit P.

WHEREFORE, Respondent, Duquesne Light Company, respectfully requests that the Commission grant its Motion to Strike Preliminary Objections by entering the attached Order.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

By: _____

Bradley S. Tupi, Esquire

Pa. Id. No. 28682

Erin Beckner Conlin, Esquire

Pa. Id. No. 94086

Jeremy V. Farrell, Esquire

Pa. Id. No. 316258

Counsel for Respondent,
DUQUESNE LIGHT COMPANY

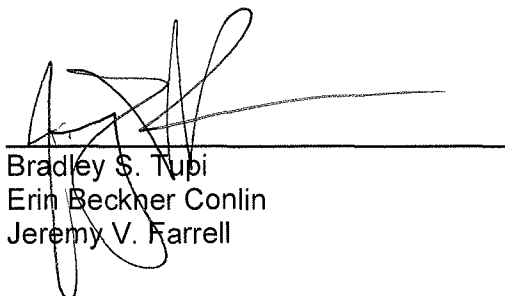
LIT:599272-3 014657-139188

CERTIFICATE OF SERVICE

I certify that on this 19th day of January , 2016, I served a true and correct copy of this Respondent's Motion to Strike Complainant's Preliminary Objections to Jurisdiction upon the counsel listed below, in accordance with the requirements of §1.54 (relating to service by a party) by email and first class, U.S. mail, postage prepaid, as follows:

Peter T. Parashes, Esquire
Parashesp@whiteandwilliams.com
Alan J. Charkey, Esquire
Charkeya@whiteandwilliams.com
White and Williams, LLP
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, PA 19103

The document was filed electronically on the Commission's electronic filing system.



Bradley S. Tubi
Erin Beckner Conlin
Jeremy V. Farrell