

April 15, 2016

Via Electronic Filing and E-Mail

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:

Please accept this letter as Duquesne Light Company's Reply to Complainant's "Update" dated April 14, 2016, for filing in the above-captioned matter. A copy of this document has been served upon Complainant in accordance with Commission regulations.

By way of background, the Initial Decision of Administrative Law Judge Joel Cheskis properly dismissed this Formal Complaint, in which Complainant sought to compel Duquesne Light to remove (at the Company's expense) a tree that is located on Complainant's private property, has not caused a service interruption, and does not pose a safety threat. Complainant filed Exceptions to the Initial Decision on November 24, 2015. Duquesne Light filed Replies on December 1, 2015. Approximately five and a half months later, Complainant filed an "Update" claiming that a branch fell off the tree, which he contends supports his demand that Duquesne Light remove the tree.¹ A copy of Complainant's "Update" is attached as Exhibit A.

Complainant's "Update" is an improper attempt to introduce evidence into the record through the Exception process, which is not allowed under the Commission's regulations except under very narrow circumstances that do not apply here. Specifically, Section 5.431 of the Commission's regulations, 52 Pa. Code § 5.431(b), provides that after the record is closed, additional matters may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion. No such motion was made here and Complainant has not attempted to establish good cause for the consideration of this extraneous information.

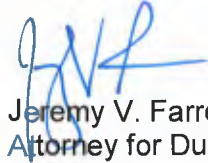
Simply put, Complainant's extra-record allegations are improper attempts to introduce new evidence and argument months after the official close of the record and long after Complainant's Exceptions have been briefed. This Commission has ruled time and again that such evidence may not be considered during the Exception process. See, e.g., Dr. Hubert C. Huh v. PECO Energy Co., F-2013-2386249, 2015 WL 302145 at *6 (Pa. P.U.C. Jan. 15, 2015) (refusing to consider extra-record information in the complainant's exceptions because, after the record was closed, complainant made no request under the regulations to support consideration

¹ As noted at page 5 of Duquesne Light's Replies to Complainant's Exceptions, Complainant is certainly free to remove the tree if he so desires, but, if he chooses to remove the tree, it is his responsibility (and not that of Duquesne Light's customers) to pay for it.

of the additional material); Mary Jane Hodak v. Pennsylvania Electric Company, C-2011-2274277, 2013 WL 392700 at *5 (Pa. P.U.C. Jan. 24, 2013) (holding that extra-record attachments and information submitted after the record was closed cannot be relied upon unless the conditions in Section 5.431 are met); Amir Williams v. Verizon Pennsylvania, Inc., F-01790520, 2006 WL 6611457 at *3-4 (Pa. P.U.C. July 20, 2006) (ruling that complainant's exceptions should be stricken on the grounds that they are an inappropriate attempt to introduce never evidence through the Exception process). Since this information cannot be considered under the Code and well-established law, the "Update" should be stricken.

Thank you for your attention to this matter. Please do not hesitate to contact me with any questions.

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:604317-1 014657-158498

Update on case C-2015-2479258, Ivan Yotov vs. Duquesne Light Company

April 14, 2016

At 7:40 pm this evening a large chunk of the tree under question fell while we were out in the yard. The chunk fell 5 yards from my wife. We were lucky that no one was hurt. The weather was sunny and calm. Below are some photos I took immediately after the chunk fell. This event confirms that this is an extremely dangerous tree that has to be removed immediately.

Ivan Yotov



