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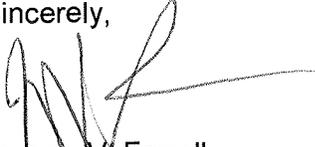
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**RE: Ivan Yotov v. Duquesne Light Company
Docket No. C-2016-2558226**

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Motion for Judgment on the Pleadings. 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)

LIT:610496-1 014657-158498

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IVAN YOTOV,

Complainant,

vs.

No: C-2016-2558226

DUQUESNE LIGHT COMPANY,

Respondent.

MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to 52 Pa. Code. § 5.102, Respondent Duquesne Light Company ("Duquesne Light"), by and through its attorneys, Tucker Arensberg, P.C., files this Motion for Judgment on the Pleadings:

I. OVERVIEW

1. This Complaint improperly seeks to re-litigate the exact same issues and cause of action that the Commission already resolved in Duquesne Light's favor. It is barred by res judicata, collateral estoppel, and by 66 Pa. C.S. § 316 and, therefore, must be dismissed.

II. FACTUAL AND PROCEDURAL BACKGROUND

2. Complainant admits that he seeks to re-litigate the same issues and cause of action against Duquesne Light that has already been conclusively resolved in Duquesne Light's favor by the Commission. See the first paragraph of Complainant's July 23, 2016 Letter attached to the Formal Complaint. Specifically, Complainant states: "I am filing **this** complaint for a **second time**. The first complaint was filed under Docket No. C-2015-2479258, **in which**

the PUC sided with Duquesne Light.” *Id.* (emphasis added). Since the Commission's decision regarding Complainant's prior complaint is the basis for Duquesne Light's Motion for Judgment on the Pleadings, its procedural history, as well as the facts the Commission established during the course of that proceeding, must be reviewed.

3. On April 28, 2015, Complainant filed a Formal Complaint (the “2015 Formal Complaint”) that alleged, like the pending Formal Complaint, that “Duquesne Light is unwilling to remove a hazardous tree next to their electric line.” *New Matter*, ¶ 12; Duquesne Light Exhibit B, ¶ 4.¹ See also, Ivan Yotov v. Duquesne Light Co., Docket No. C-2015-2479258. As relief, like in the pending action, Complainant requested in the 2015 Formal Complaint that the Commission “order Duquesne Light to remove the tree.” *New Matter*, ¶ 12; Duquesne Light Exhibit B, ¶ 5.

4. The tree that Complainant wanted Duquesne Light to remove in the 2015 Formal Complaint is the same tree that Complainant asks the Commission to order Duquesne Light to remove in the pending Formal Complaint. *New Matter*, ¶ 13; compare Duquesne Light Exhibit B and the pending Complaint.

5. Duquesne Light filed an Answer to Complainant's 2015 Formal Complaint. *New Matter*; ¶ 14; Duquesne Light Exhibit C. In its Answer, Duquesne Light denied that the tree in Complainant's yard posed any reliability or safety concerns and also alleged that because the tree is on Complainant's private property, Duquesne Light was not responsible for its removal. Duquesne Light Exhibit C at ¶¶ 4-5.

6. An Initial Telephonic Hearing was scheduled to take place relating to Complainant's 2015 Formal Complaint before Administrative Law Judge Joel Cheskis. *New Matter*, ¶ 15. Prior to the hearing, ALJ Cheskis served the Parties with a copy of the Prehearing Order, which, in pertinent part, stated: “The Hearing Room default phone system can only call

¹ The Duquesne Light exhibits referenced in this Motion are the ones that were attached to its Answer and *New Matter*.

two telephone numbers at one time. If it is necessary to call additional numbers for the hearing, alternative conferencing arrangements can be made.” New Matter, ¶ 15. Duquesne Light Exhibit D.

7. ALJ Cheskis conducted an initial telephonic hearing relating to Complainant’s 2015 Complaint on July 29, 2015. New Matter, ¶ 16; Duquesne Light Exhibit E. Complainant appeared *pro se* and presented one exhibit into the record. Duquesne Light also appeared, presented the testimony of two witnesses, and offered five exhibits that were admitted into the record. Duquesne Light Exhibit E.

8. Though Complainant was advised that alternate conferring arrangements could be made, Duquesne Light Exhibit D, Complainant did not offer the testimony of Walter Jarosh at the July 29, 2015 Initial Telephonic Hearing. New Matter, ¶ 17; Duquesne Light Exhibit E.

9. ALJ Cheskis rendered an Initial Decision on November 13, 2015, that dismissed Complainant’s 2015 Formal Complaint for Complainant’s failure to satisfy his burden of proof that Duquesne Light violated the Public Utility Code, a Commission Order or Regulation, or Duquesne Light’s Tariff by refusing to remove the tree from Complainant’s private property where no service interruption or danger to Duquesne Light’s facilities or to the public exists. New Matter, ¶ 18; Duquesne Light Exhibit F.

10. Complainant filed Exceptions to the Initial Decision on November 24, 2015. New Matter, ¶ 19; Duquesne Light Exhibit G. Duquesne Light filed Replies to Exceptions on December 1, 2015. New Matter, ¶ 20; Duquesne Light Exhibit H.

11. On April 15, 2016, Complainant filed a letter titled “Update” with the Commission that contained additional information and photographs. New Matter, ¶ 21; Duquesne Light Exhibit I. That same day, Duquesne Light filed a letter in response to Complainant’s “Update.” New Matter, ¶ 21; Duquesne Light Exhibit J.

12. The Commission rendered its Opinion and Order on May 19, 2015. New Matter, ¶ 22. Duquesne Light Exhibit A. **The Commission denied Complainant’s Exceptions,**

adopted ALJ Cheskis's Initial Decision, and dismissed Complainant's 2015 Formal Complaint in its entirety. New Matter, ¶ 22; Duquesne Light Exhibit A, p. 16.

13. In pertinent part, the Commission stated:

While we acknowledge that the core of the Complainant's argument and evidence is based largely on photographs and the several email exchanges between Mr. Jarosh and Duquesne, we agree with the ALJ when he clearly informed the Complainant during the hearing that the Complainant's evidence would be considered hearsay and did not carry sufficient weight to support the Complainant's position. The ALJ further noted that even when he considered the Complainant's evidence, the evidence clearly did not demonstrate that Duquesne was obligated to remove the tree in question from the Complainant's private property. **As in Lauth, supra, the ALJ ruled that Complainant failed to demonstrate that the tree must be removed to prevent an interruption in service or danger to Duquesne's facilities or to the public. We agree.**

New Matter, ¶ 23; Duquesne Light Exhibit A, pp. 12-13 (internal citations omitted; emphasis added).

14. The Commission also stated:

It is clear from the evidence on record that the tree is on the Complainant's private property and Duquesne is not obligated to remove the tree, especially since the tree does not pose a threat or danger to Duquesne's facilities or to the public. The record also indicates that Duquesne offered to assist the Complainant by removing the branch of the tree hanging over its facilities at no cost to the Complainant should he decide to remove the tree. The record also shows that pursuant to the Complainant's concerns regarding the tree, Duquesne Light promptly sent two of its certified arborists to inspect the tree on multiple occasions and they determined there was nothing wrong with the tree and that the tree posed no threat to the public or Duquesne's facilities. **We consider Duquesne's prompt response to the Complainant's concern over the tree to be adequate and reasonable service pursuant to Section 1501 of the Code.**

New Matter, ¶ 24; Duquesne Light Exhibit A, p. 14 (internal citations omitted; emphasis added).

15. With respect to Complainant's April 2016 "Update," the Commission stated:

"Even if we were to consider this additional information, the Complainant has not presented sufficient evidence to support his claim that Duquesne is responsible for removing the tree on his private property." New Matter, ¶ 25; Exhibit A, p. 15.

16. The Commission's Opinion and Order incorporated ALJ Cheskis's Findings of Fact, which included the following:

- a. "The tree that Complainant would like to have removed is located on his property." Duquesne Light Exhibit F, FOF 5.
- b. The only branch of the tree that hangs over the line "is not decaying." Duquesne Light Exhibit F, FOF 6 and 7.
- c. "The tree that Dr. Yotov would like Duquesne to remove is not a hazard to Duquesne's facilities." Duquesne Light Exhibit F, FOF 21.
- d. "The tree that Dr. Yotov would like Duquesne to remove from his property is healthy and grows straight and tall." Duquesne Light Exhibit F, FOF 23.
- e. The tree that 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." Duquesne Light Exhibit F, FOF 24.
- f. "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." Duquesne Light Exhibit F, FOF 22.²

17. Complainant did not appeal, or otherwise seek reconsideration of, the Commission's Opinion and Order. New Matter, ¶ 26.

18. Less than three months later after the Commission's Opinion and Order, Complainant filed the pending Formal Complaint seeking an order compelling Duquesne Light to remove the exact same tree that the Commission previously ruled that Duquesne Light had no responsibility to remove. New Matter, ¶ 27.

² These findings were incorporated into the Commission's decision because they were not expressly or by necessary implication modified or rejected by the Commission's Opinion and Order. Duquesne Light Exhibit A, pp. 7, 16.

19. The instant Formal Complaint contains substantively identical allegations to the 2015 Formal Complaint and submitted documentation that have already been placed before the Commission in connection with its adjudication of the 2015 Formal Complaint. Complaint, ¶¶ 4-5; Duquesne Light Exhibit B, ¶¶ 4-5. For example, the allegations in the body of the two complaints state:

	2015 Formal Complaint (Duquesne Light Exhibit B)	Pending Complaint
Complainant's allegations in paragraph four:	"Duquesne Light is unwilling to remove a hazardous tree next to their electric line. Please see the documentation attached to this form for details."	"Duquesne Light is unwilling to remove a hazardous tree next to its electric line. Please see the attached documentation for details."
Complainant's request for relief in paragraph five:	"I would like the PUC to order Duquesne Light to remove the tree."	"I request [sic] that PUC orders Duquesne Light to remove the tree."

20. Duquesne Light filed an Answer and New Matter, which again denied that the tree that is the subject of the Complaint, which is located on Complainant's private property, poses any reliability or safety problems. Furthermore, Duquesne Light pointed out that the Public Utility Commission explicitly ruled — just three months ago — that Duquesne Light was not required to remove the tree in Complainant's yard because "no service interruption or danger to Duquesne's facilities or the public exists." Yotov v. Duquesne Light Co., Docket No. C-2015-2479258 (Pa. P.U.C. Opinion and Order dated May 19, 2016).³

21. Duquesne Light's New Matter explicitly raised res judicata, collateral estoppel, and 66 Pa. C.S. § 316 as affirmative defenses. New Matter, ¶¶ 11, 32-33.

³ Duquesne Light's responsive pleading also attached as exhibits the relevant pleadings, orders, and other documents relating to Complainant's 2015 Formal Complaint.

22. Complainant did not file a written response to Duquesne Light's New Matter, though it was due on September 6, 2016. The pleadings are closed.

III. LAW AND ARGUMENT

A. **The Formal Complaint is properly disposed of on the pleadings.**

23. Complaints that are barred by the doctrines of res judicata and collateral estoppel are properly disposed of through motions for judgment on the pleadings. As noted in Martin v. PECO Energy Co., Docket No. C-2016-2541801, 2016 WL 4366786 (Pa. P.U.C. Aug. 2, 2016) (Hoyer, A.L.J.): "The Commission has held that the doctrine of *res judicata* is appropriately raised as an affirmative defense under the heading of 'new matter' and can be disposed of in a motion to dismiss or a motion for summary judgment. If it is determined that a moving party is entitled to a judgment as a matter of law, and there is no genuine issue of material fact, a motion for judgment on the pleadings or summary judgment will be granted."

24. Motions for judgment on the pleadings must also be viewed in light of Section 316 of the Public Utility Code, which states in relevant part:

Whenever the Commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

66 Pa. C.S. 316. That statute "prevents collateral attacks upon Commission orders." Martin, 2016 WL 4366786 at *3. The Commission's findings of fact in prior complaints "are conclusive on the parties, including the complainant. . . ." Warren v. Equitable Gas Co., Docket No. C-2014-2426795, 2014 WL 4060039, at *4 (Pa. P.U.C. July 29, 2014) (Melillo, A.L.J.).⁴

⁴ Since the Commission has already adjudicated the precise issues involved in this case, another hearing on the same subject matter is neither necessary nor in the public interest. As the presiding ALJ cogently noted in Warren, supra: "Moreover, Section 703(b) of the Code provides that the Commission may dismiss a complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. A hearing in this case would clearly not be in the public interest as any factual matters have already been decided and [the Respondent] is entitled to judgment as a matter of law." Warren, 2014 WL 4060039 at *4. See also, Martin, 2016 WL 4366786 at *4 ("Section 703 of the Public Utility Code, 66

B. The 2016 Formal Complaint is barred by the doctrine of res judicata.

25. The doctrine of res judicata or claim preclusion, which applies in Commission proceedings, “operates to prevent re-litigation of claims already litigated on the merits.” Sarno v. PECO Energy Co., Docket No. C-2012-2329048, 2012 WL 6891379 (Pa. P.U.C. Dec. 18, 2012) (Barnes, A.L.J.). See also, Cannon v. UGI Utilities, Inc., Docket No. C-20039724, 2004 WL 1567632 (Pa. P.U.C. April 2, 2004) (“Res judicata, or claim preclusion, prevents the litigation of a claim that has already been adjudicated, resulting in a final judgment on the merits.”). It reflects the “refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction.” Sarno, 2012 WL6891379.⁵

26. Res judicata may be invoked where the following four elements are met: (1) identity of the issues; (2) identity of the causes of action; (3) identity of the persons and parties to the action; and (4) identity or quality or capacity of the parties suing or sued. Martin, 2016 WL 4366786 ; Warren, 2014 WL 4060039 at *3. The essential inquiry is “whether the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and to be heard. Warren, 2014 WL 4060039 at *3.⁶

27. Each one of those elements is met here. First, the issues and the causes of action in the 2015 Formal Complaint and the instant Complaint are identical -- *i.e.* whether DLC must remove the tree that is located on Complainant’s private property and whether Duquesne Light acted reasonably in refusing to remove the tree. Both complaints are based on the

Pa.C.S. §703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. A hearing is not needed here. The issues presented in the instant complaint have all been litigated previously by Ms. Martin and PECO. Therefore, PECO is entitled to judgment as a matter of law.”).

⁵ The important policies “underlying the doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing certainty, and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation.” Sarno, 2012 WL6891379.

⁶ Res judicata applies to “matters which were actually litigated in a prior action, as well as those issues which should have been litigated in that action. . . .” Ingram v. PECO Energy Co., Docket No. C-2011-2246492, 2012 WL 3553210, at *5 (Pa. P.U.C. July 27, 2012) (Fordham, A.L.J.)

removal of the same tree and seek the same order from the Commission. The parties -- Mr. Yotov and Duquesne Light -- are identical and are acting in the same capacity as they were in the 2015 Formal Complaint.

28. Since all four elements of res judicata are present, the doctrine operates to bar this Complaint. Commission decisions make clear that Duquesne Light is entitled to judgment as a matter of law under these circumstances.

29. For example, in Ingram v. PECO Energy Co., Docket No. C-2011-2246492, 2012 WL 3553210 (Pa. P.U.C. July 27, 2012) (Fordham, ALJ), the Commission affirmed the grant of a motion for judgment on the pleadings based on res judicata under circumstances very similar to the instant case. In that case, just a few months after the Commission rejected the complainant's first complaint, the customer, like Complainant, filed a new complaint relating to the same issues. PECO filed an answer and new matter raising res judicata as an affirmative defense, which it followed with a motion for judgment on the pleadings that the presiding ALJ granted. After the complainant filed exceptions, the Commission affirmed dismissal of the second complaint, noting that "[s]ince the Commission entered a final order [in the prior proceeding], the Complainant cannot litigate that complaint again." Id. at *5.

30. Similarly, in Sarno, supra, PECO moved for the dismissal⁷ of a formal complaint on res judicata grounds because there had already been a final judgment on the same merits by the Commission in a prior complaint filed by the customer. ALJ Barnes granted judgment on the pleadings because the customer (like Complainant) already had a "fully litigated proceeding" after which the Commission issued a judgment on the merits. Specifically, the ALJ stated that the complainant had "an opportunity to be heard, in the context of the earlier Complaint proceeding, which involved the same facts regarding high billing and a payment arrangement that the Complainant alleges in this proceeding." Accordingly, the ALJ held that "dismissal at

⁷ PECO filed preliminary objections on res judicata grounds, but the presiding ALJ treated the objections as a motion for judgment on the pleadings.

the pleadings stage in this case is appropriate because there are no genuine issues of material fact and, based on the language of the Commission's Final Order dated August 16, 2012, Complainant is precluded from bringing her 2012 Complaint. Therefore, PECO is entitled to judgment as a matter of law."

31. Another case that demonstrates that dismissal is mandated here is Warren, supra. There, the complainant attempted to re-litigate her complaint that her tenant should be financially responsible for certain bills, which had already been rejected by the Commission in a prior complaint. The respondent moved for the dismissal of the new complaint on the grounds that it was barred by res judicata. ALJ Melillo agreed, noting that the "essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and to be heard." *Id.* at *3. The presiding ALJ noted that the complainant had a "full and fair opportunity to litigate the issues in the previous case, and her complaint was denied. *Id.* at *4. Granting judgment as a matter of law to the respondent, the ALJ held:

In this case, the Complaint, on its face, clearly involves the same issues as the prior complaint at Docket No. C-2013-2387379, the same causes of action, same parties, and same quality and capacity of the parties. In the earlier complaint, Ms. Warren requested that her tenant C.J. Washington be held responsible for her own gas usage and not the property owner. In her new Complaint, Complainant again requested that her tenant C.J. Washington be held responsible for her arrearage. Each of these complaints involves the same issue, which is whether Complainant is responsible for the tenant's usage. This issue was decided in the prior case.

Id. at *4.

32. In Cannon, 2004 WL 1567632, the Commission affirmed the grant of judgment on the pleadings on res judicata grounds to UGI because the complainant litigated the relevant claims in a prior proceeding and, like Complainant here, failed to meet her burden of proof. *Id.* at *2. A similar result was reached in Scott, supra, where the customer (like Complainant) sought to re-litigate a claim that she had previously lost before the Commission. The

Commission rejected the new complaint, stating: "As [the issue in dispute] has been determined after a full due process hearing and the Commission rendered a final decision, further consideration is precluded by the doctrine of res judicata, and these claims raised by the Complainant are dismissed." *Id.* at *5. See also, *McCarey v. PECO Energy Co.*, Docket No. C-2015-2503724, 2016 WL 2988859 (Pa. P.U.C. May 19, 2016) (affirming ALJ Salapa's grant of judgment on the pleadings on res judicata grounds); *Martin v. PECO Energy Co.*, Docket No. C-2015-2541801, 2016 WL 4366786 (Pa. P.U.C. Aug. 2, 2016) (Hoyer, ALJ) (dismissing complaint based on res judicata where the issues raised in the complaint were adjudicated by the Commission in a prior order).

33. For those reasons, the complaint must be dismissed because it, on its face, involves the same issues and causes of action already rejected by the Commission. See *Ingram v. PECO Energy Co.*, Docket No. C-2011-2246492, 2012 WL 3553210, at *5 (Pa. P.U.C. July 27, 2012) (Fordham, A.L.J.) ("When a final decision has been rendered in a prior proceeding, it is binding under the doctrine of claim preclusion, on any case brought subsequent to that time which involves the same parties and issues as raised previously.").⁸

⁸ That Complainant appeared *pro se* in the 2015 Formal Complaint does not alter this result or entitle him to a second hearing. As the Commission explained in *McCarey v. PECO Energy Co.*, Docket No. C-2015-2503724, 2016 WL 2988859 (Pa. P.U.C. May 19, 2016), a case in which the Commission affirmed the dismissal of a complaint on res judicata grounds: "While we are dismissing the Complaint in this case, we recognize that the Complainant is appearing *pro se* and that we are generally more accommodating to legal insufficiencies in *pro se* complaints and would not generally dismiss a *pro se* complaint without first providing a hearing during which the *pro se* complainant could further explain his or her position and the factual basis for the complaint. Such accommodation, however, must be within the bounds of due process. There are some cases, such as this case, nevertheless, where a hearing would not alter the inevitable conclusion that this Commission cannot provide the Complainant the relief requested." (internal citations omitted). See also, *Sarno*, 2012 WL 6891379 at *1 (affirming, on res judicata grounds, the dismissal of a *pro se* complaint where the Complainant was "provided with an opportunity to be heard, in the context of the earlier Complaint proceeding, which involved the same facts regarding high billing and a payment arrangement that the Complainant alleges in this proceeding.").

C. The Formal Complaint is barred by the doctrine of collateral estoppel.

34. The complaint is also barred by the doctrine of collateral estoppel, which is sometimes referred to as issue preclusion. In order for collateral estoppel to apply, four elements must be met: (1) the issue decided in the prior adjudication is identical with the one presented in the later action; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) the party against whom the plea is asserted has had a full and fair opportunity to litigate the issues in the prior action. Cuff v. PECO Energy Co., Docket No. C-2013-2370894, 2013 WL 4717038, *9 (Pa. P.U.C. Aug. 23, 2013) (Melillo, A.L.J.).

35. Each element is clearly met here. The issues in the two complaints are the same: Is Duquesne Light required to remove the tree that is the subject of the complaint? The first element is thus established. The Commission did enter a final judgment on the merits on the 2015 Formal Complaint, so the second element is satisfied. Duquesne Light Exhibit A. Finally, Dr. Yotov -- the party against whom collateral estoppel is being asserted -- was a party to the prior adjudication and had a full and fair opportunity to assert his claims in the 2015 Formal Complaint. While Mr. Yotov contends he is entitled to a second hearing so he can call an extra witness, he had every opportunity to do so in the 2015 Formal Complaint and, for whatever reason chose not do so. As the Commission has stated on numerous occasions: "Complainant in this case proceeded pro se by choice and bore the risk of doing so." Jones v. Philadelphia Gas Works, Docket No. C-2015-2493099, 2016 WL 637953, at *7 (Pa. P.U.C. Jan. 20, 2016) (Salapa, A.L.J.).⁹

⁹ See also, Howard v. Metropolitan Edison Co., Docket No. F-2012-2339667, 2013 WL 3754366, at *6 (Pa. P.U.C. June 18, 2013) (Barnes, A.L.J.); Rosenblum v. Bell Atlantic-Pennsylvania, Docket No. F-00236844, 1995 WL 945253, at *11 (Pa. P.U.C. entered on Sept. 29, 1995) (recognizing "as the Commonwealth Court has previously done, that any layperson choosing to represent himself in a legal proceeding must, to some reasonable extent, assume the risk that his lack of expertise and legal training will prove his undoing.") (citing sources; internal punctuation omitted).

36. Simply put, the issues that are necessary to resolution of the instant complaint have already been conclusively resolved by the Commission. The doctrine of collateral estoppel prevents Complainant from re-litigating them in the hopes of a different result.

D. Complainant cannot collaterally attack the Commission's ruling with respect to the 2015 Formal Complaint by filing a new complaint.

37. Section 316 of the Public Utility Code prevents collateral attacks on Commission orders. Martin, 2016 WL 4366786, at *3. In pertinent part, it provides: "Whenever the commission shall make any rule, finding, determination or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review." 66 Pa. C.S. § 316.

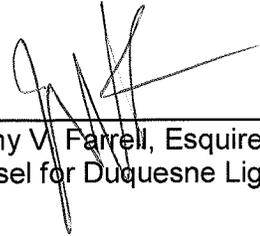
38. Here, the Commission's findings in the 2015 Formal Complaint are final because Complainant never appealed the decision nor petitioned for any sort of reconsideration. Complainant simply filed another complaint on the heels of the Commission's decision, but Commission precedent precludes Complainant from collaterally attacking the Commission's decision in such a manner.

39. In Cannon, supra, the Commission confronted the situation where, like here, a complainant filed a new formal complaint challenging the same acts that were litigated in a prior proceeding. Noting that its prior order "has not been set aside, annulled, or modified on judicial review," the Commission cited Section 316 for the proposition that the decision was not subject to collateral attack by the new complaint. Id. at *2.

40. For this additional reason, Duquesne Light is entitled to judgment as a matter of law on the pleadings.

WHEREFORE, Respondent Duquesne Light Company respectfully requests that the Commission sustain its Motion for Judgment on the Pleadings and dismiss the Complaint with prejudice.

TUCKER ARENSBERG, P.C.

A handwritten signature in black ink, appearing to read 'J. Farrell', is written over a horizontal line. The signature is stylized and somewhat cursive.

Jeremy V. Farrell, Esquire
Counsel for Duquesne Light Company

