

December 9, 2016

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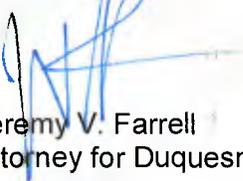
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Duquesne Light Company's Reply to Exceptions is 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:615387-1 014657-158498

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IVAN YOTOV,

Complainant,

vs.

No: C-2016-2558226

DUQUESNE LIGHT COMPANY,

Respondent.

**RESPONDENT DUQUESNE LIGHT COMPANY'S REPLY TO EXCEPTIONS**

Respondent Duquesne Light Company ("Duquesne Light" or the "Company"), by and through its attorneys, Tucker Arensberg, P.C., files the following Reply to Complainant's Exceptions to the Initial Decision of Administrative Law Judge David A Salapa:

**I. OVERVIEW**

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 earlier this year. Administrative Law Judge David Salapa ("ALJ Salapa") correctly determined that the complaint is barred by the doctrine of res judicata and collateral estoppel. Complainant's Exceptions should be rejected and the Initial Decision affirmed in its entirety.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

Complainant admits in his Formal Complaint 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 stated: "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 was the basis for Judge Salapa’s Order granting Duquesne Light’s Motion for Judgment on the Pleadings, the prior case’s procedural history, and the facts the Commission established during the course of that proceeding, must be reviewed.

**A. Complainant’s 2015 Formal Complaint**

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.” Exhibit B, ¶ 4.<sup>1</sup> 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.” Exhibit B, ¶ 5; Duquesne Light New Matter, ¶ 12.

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. Compare Exhibit B and the pending Complaint; Duquesne Light New Matter, ¶ 13.

Duquesne Light filed an Answer to Complainant’s 2015 Formal Complaint. Exhibit C; Duquesne Light New Matter, ¶ 14. 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. Exhibit C at ¶¶ 4-5.

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<sup>1</sup> The exhibits referenced throughout this document are the ones that were attached to Duquesne Light’s Answer and New Matter and, later, to the Company’s Motion for Judgment on the Pleadings. Copies of all documents referenced in Duquesne Light’s Reply to Exceptions are collected in the attached Appendix for convenience.

An Initial Telephonic Hearing was scheduled to take place relating to Complainant's 2015 Formal Complaint before Administrative Law Judge Joel Cheskis. Duquesne Light New Matter, ¶ 15. Prior to the hearing, ALJ Cheskis served the Parties with a Prehearing Order, which, in pertinent part, stated: "The Hearing Room default phone system can only call two telephone numbers at one time. If it is necessary to call additional numbers for the hearing, alternative conferencing arrangements can be made." Exhibit D; Duquesne Light New Matter, ¶ 15.

ALJ Cheskis conducted an initial telephonic hearing relating to Complainant's 2015 Complaint on July 29, 2015. Exhibit E; Duquesne Light New Matter, ¶ 16. 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. Exhibit E. Although Complainant was advised that alternate conferring arrangements could be made, Exhibit D, Complainant did not offer the testimony of Walter Jarosh at the July 29, 2015 Initial Telephonic Hearing. Exhibit E; Duquesne Light New Matter, ¶ 17.

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. Exhibit F; Duquesne Light New Matter, ¶ 18.

Complainant filed Exceptions to the Initial Decision on November 24, 2015. Exhibit G; Duquesne Light New Matter, ¶ 19. Duquesne Light filed Replies to Exceptions on December 1, 2015. Exhibit H; Duquesne Light New Matter, ¶ 20. On April 15, 2016, Complainant filed a letter titled "Update" with the Commission that contained additional information and photographs. Exhibit I; Duquesne Light New Matter, ¶ 21. That same day, Duquesne Light

filed a letter in response to Complainant's "Update." Exhibit J; Duquesne Light New Matter, ¶ 21.

The Commission rendered its Opinion and Order on May 19, 2015. Exhibit A; Duquesne Light New Matter, ¶ 22. **The Commission denied Complainant's Exceptions, adopted ALJ Cheskis's Initial Decision, and dismissed Complainant's 2015 Formal Complaint in its entirety.** Exhibit A, p. 16. 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.**

Exhibit A, pp. 12-13 (internal citations omitted; emphasis added).

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.**

Exhibit A, p. 14 (internal citations omitted; emphasis added).

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.

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.” Exhibit F, FOF 5.
- b. The only branch of the tree that hangs over the line “is not decaying.” 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.” 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.” 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.” 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.” Exhibit F, FOF 22.<sup>2</sup>

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

**B. Complainant’s 2016 Formal Complaint**

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

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<sup>2</sup> 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. Exhibit A, pp. 7, 16.

exact same tree that the Commission previously ruled that Duquesne Light had no responsibility to remove. Duquesne Light New Matter, ¶ 27.

The instant Formal Complaint contains substantively identical allegations to the 2015 Formal Complaint and relies on documentation that has already been placed before the Commission in connection with its adjudication of the 2015 Formal Complaint. For example, the allegations in the two complaints state:

	<b>2015 Formal Complaint (Exhibit B)</b>	<b>Pending Formal Complaint</b>
<b>Complainant's allegations in paragraph four:</b>	"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."
<b>Complainant's request for relief in paragraph five:</b>	"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."

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 earlier -- 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). 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. Complainant did not file a written response to Duquesne Light's New Matter. Initial Decision, p. 5, FoF No. 6.

### III. LAW AND ARGUMENT

#### A. **The Initial Decision correctly ruled that the Formal Complaint is barred by the doctrine of res judicata.**

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.<sup>3</sup>

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 v. PECO Energy Co., Docket No. C-2016-2541801, 2016 WL 4366786 (Pa. P.U.C. Aug. 2, 2016 (Hoyer, A.L.J.); 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.). 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.<sup>4</sup>

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

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<sup>3</sup> 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.

<sup>4</sup> 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.)

acted reasonably in refusing to remove the tree. Both complaints are based on the 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.

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

Similarly, in Sarno, supra, PECO moved for the dismissal<sup>5</sup> 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

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<sup>5</sup> PECO filed preliminary objections on res judicata grounds, but the presiding ALJ treated the objections as a motion for judgment on the pleadings.

that the Complainant alleges in this proceeding.” Accordingly, the ALJ held that “dismissal at 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.”

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.

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 v. Pennsylvania American Water Co., Docket No. C-2016-

2522902, 2016 WL 3361902, at \*3 (Pa. P.U.C. May 18, 2016) (Long, ALJ) 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).

Complainant's Exceptions, which challenge only a single sentence in the Initial Decision, are woefully insufficient to evade application of res judicata. Complainant's Exceptions are grounded in the theory that the Commission should have given dispositive weight to the hearsay testimony of Walter Jarosh (who Complainant chose not to call during the telephone hearing in the 2015 Formal Complaint) and the facts in Complainant's "Update." Not only does Complainant's argument fail to negate any of the elements of res judicata, but the Commission has already rejected Complainant's arguments. See Exhibit A, p. 15 ("*Even if we were to consider [Complainant's Update], the Complainant has not presented sufficient evidence to support his claim that Duquesne is responsible for removing the tree on his private property.*") (emphasis added); Exhibit A, p. 13 ("*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....We agree.") (emphasis added). Simply put, Complainant had a full and fair opportunity to be heard in the 2015 proceedings, but failed to prove that Duquesne Light was obligated to remove Complainant's tree at the Company's expense. The doctrine of *res judicata* is designed specifically to prevent Complainant from taking a second bite at the apple through filing another complaint. Warren, 2014 WL 4060039 at \*3; 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.").<sup>6</sup>

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

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

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<sup>6</sup> 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.").

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.).

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. Exhibit A. Finally, Mr. 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.).<sup>7</sup>

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

**C. ALJ Salapa correctly disposed of the Complaint on the pleadings.**

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

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<sup>7</sup> 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).

(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.”

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.).<sup>8</sup>

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.

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<sup>8</sup> Furthermore, 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 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.”).

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. In short, ALJ Salapa was correct to dismiss the pending Formal Complaint on the pleadings.

**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 Salapa be affirmed.

Respectfully submitted,

TUCKER ARENSBERG, P.C.



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Jeremy V. Farrell, Esquire  
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(412) 594-3938

Counsel for Respondent



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IVAN YOTOV,	)	
	)	
	)	
Complainant,	)	
vs.	)	Docket No. C-2016-2558226
	)	
DUQUESNE LIGHT COMPANY,	)	
	)	
Respondent.	)	

**APPENDIX TO RESPONDENT'S REPLY TO EXCEPTIONS**

Respondent's Exhibit A - PUC May 19, 2016 Opinion and Order
Respondent's Exhibit B - Yotov's April 27, 2015 Complaint
Respondent's Exhibit C - Duquesne Light Company's Answer to Formal Complaint
Respondent's Exhibit D - July 6, 2015 Prehearing Order
Respondent's Exhibit E - July 29, 2015 Hearing Transcript and Exhibits
Respondent's Exhibit F - Judge Joel Cheskis' October 28, 2015 Initial Decision
Respondent's Exhibit G - Yotov's Exceptions to Initial Decision
Respondent's Exhibit H - Duquesne Light Company's Replies to Exceptions
Respondent's Exhibit I - Yotov's Update on case C-215-2479258

Respectfully submitted,

TUCKER ARENSBERG, P.C.

  
\_\_\_\_\_  
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Counsel for Respondent, Duquesne Light  
Company

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held May 19, 2016

Commissioners Present:

Gladys M. Brown, Chairman  
Andrew G. Place, Vice Chairman  
John F. Coleman, Jr.  
Robert F. Powelson

Ivan Yotov

C-2015-2479258

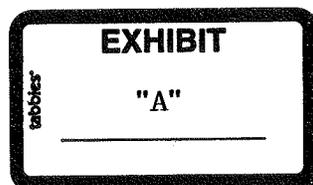
v.

Duquesne Light Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Ivan Yotov (Complainant or Dr. Yotov) filed on November 24, 2015, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Joel H. Cheskis issued on November 13, 2015, in the above-captioned proceeding. Replies to Exceptions were filed by Duquesne Light Company (Duquesne or



the Company) on December 1, 2015.<sup>1</sup> For the reasons stated below, we shall deny the Complainant's Exceptions and adopt the ALJ's Initial Decision, consistent with this Opinion and Order.

### **History of the Proceeding**

On April 28, 2015, the Complainant filed a Formal Complaint (Complaint) against Duquesne in which he alleged that Duquesne refused to remove a hazardous tree next to the Company's electric lines near his house.<sup>2</sup> For relief, the Complainant requested that the Commission direct Duquesne to remove the tree. Complaint at 2-3.

On May 18, 2015, Duquesne filed an Answer to the Complaint (Answer). In its Answer, Duquesne denied that the tree in the Complainant's backyard posed any reliability or safety problems. Duquesne averred that its vegetation management personnel visited the Complainant's property and determined that there was no reliability or safety concern or threat to the Company's facilities with the tree. In addition, Duquesne stated that because the tree is on the Complainant's property, the Company is not responsible for its removal. Answer at 1-2.

On July 29, 2015, a telephonic hearing was convened as scheduled. The Complainant appeared *pro se* and presented one exhibit that was admitted into the record.

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<sup>1</sup> On November 25, 2015, the Commission's Secretary issued a Secretarial Letter to the Parties, stating that the Complainant's timely-filed Exceptions did not contain a certificate of service or other indication that the Complainant served the Respondent with the Exceptions. Thus, the Secretary's Bureau enclosed a copy of the Exceptions and notified the Respondent that any Replies to Exceptions would be due by December 14, 2015.

<sup>2</sup> Attached to the Complainant were several documents in support of the Complainant's argument, including pictures and various exchanges of correspondence with the Company. I.D. at 1-2.

Duquesne was represented by counsel, who presented the testimony of two witnesses and offered five exhibits which were admitted into the record. The record in this case contains a fifty-five page transcript and six exhibits. The record was closed on August 20, 2015.

In his Initial Decision, issued on November 13, 2015, the ALJ dismissed the Complaint for failure of the Complainant to satisfy his burden of demonstrating that Duquesne violated the Public Utility Code (Code), a Commission Order or Regulation, or Duquesne's tariff by refusing to remove the tree from the Complainant's private property where no service interruption or danger to Duquesne's facilities or the public exists. I.D. at 14. As noted, *supra*, the Complainant filed Exceptions on November 24, 2015. Duquesne filed Replies to Exceptions on December 1, 2015.

On April 15, 2016, the Complainant filed a letter entitled "Update on case C-2015-2479258, Ivan Yotov v. Duquesne Light Company" (April 2016 Letter), which contained additional information and photographs. On the same date, Duquesne filed a letter in response to the Complainant's April 2016 Letter.<sup>3</sup>

### **Background**

The Complainant resides at 144 Woodshire Road, Pittsburgh, Pennsylvania (Service Address). The Complainant averred that he has a large oak tree in his backyard that is located very close to Duquesne's high voltage line. According to the Complainant,

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<sup>3</sup> Because the Complainant's April 2016 Letter was submitted well after the close of the record in this proceeding, we will not consider it herein. *See*, 52 Pa. Code § 5.431. It is axiomatic that this Commission must base its decisions on the evidence in the record, and we are prohibited from looking beyond the record for evidence not previously supplied to support a desired finding of fact or conclusion of law. Even if we were to consider the April 2016 Letter, it would not likely change our disposition regarding the responsibilities of the Parties in this case.

the tree needs to be removed because it is not in good condition as a portion of the tree is decaying. Tr. at 7. The Complainant stated that in February 2015, his wife contacted Duquesne regarding the tree but was told it is the Complainant's responsibility to remove the tree because the tree is located on his property. The Complainant averred that following the conversation with Duquesne, he hired an International Society of Arboriculture (ISA) certified arborist, Mr. Walter Jarosh (Mr. Jarosh), to inspect the tree. According to the Complainant, Mr. Jarosh confirmed that the tree poses a danger to Duquesne's facilities and should be removed. Tr. at 7-8. The Complainant further asserted that per Mr. Jarosh, the current condition of the tree can be attributed to Duquesne's trimming activities on the tree and so Duquesne should be held responsible for taking care of the tree. According to the Complainant, the trunk of the tree is approximately twelve to fifteen inches from Duquesne's distribution lines, and the arborist advised him that this distance is also a safety violation. Tr. at 13. The Complainant also indicated that the tree has three branches, one of which hangs directly over Duquesne's distribution lines. According to the Complainant, Duquesne offered to cut the branch hanging over its distribution lines but refused to remove the entire tree. However, the Complainant wants Duquesne to remove the entire tree because it is a threat to his property and Duquesne's facilities. Tr. at 14.

Duquesne, on the other hand, indicated that pursuant to a call made by the Complainant's wife regarding this matter, Mr. James Barry (Mr. Barry) and Mr. Bruce Woods (Mr. Woods) visited the Service Address twice to inspect the tree and found no issues with the tree.<sup>4</sup> Tr. at 19, 22-23 and 25; Duquesne Exhs. 1 and 2. According to Duquesne, it maintains and performs routine vegetation maintenance cycles every four to

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<sup>4</sup> Mr. Barry and Mr. Woods are both ISA certified arborists. Mr. Barry, who is also a supervisor of Duquesne's vegetation management department, holds a Bachelor of Science in Forest Science and is an ISA certified arborist with a utility specialist certification. Mr. Woods, who is also in Duquesne's vegetation management department, is also ISA certified. Tr. at 18-19 and 23; Duquesne Exh. 2.

five years on its distribution facilities across its service territory consistent with its vegetation management standards approved by the Commission. Tr. at 26-28 and 31; Duquesne Exh. 4. Duquesne contended that the tree in question was maintained in the Company's last maintenance cycle in 2013.<sup>5</sup> Duquesne averred that the tree poses no threat and is not a hazard to its distribution facilities.<sup>6</sup> *Id.* Furthermore, Duquesne maintained that the branch of the tree hanging over its distribution facilities is healthy and does not pose a threat to its facilities. Tr. at 29-30. Duquesne averred that it decides whether or not to remove or trim a tree by considering, among other things, the health, overall growth, and age of the tree.<sup>7</sup> Tr. at 27. Duquesne asserted that the tree in question is a mature oak tree with minimal growth compared to younger trees. Tr. at 7 and 31. Duquesne asserted that while the tree is not a hazard to its facilities, if the Complainant wants it removed, the Company will, as a courtesy, help remove the overhanging branch of the tree at no expense to the Complainant. Tr. at 32-33. Duquesne averred that this offer is based on the fact that the branch of the tree hanging over its facilities will be the most difficult to remove since it is hanging over the Company's energized lines. Tr. at 28, 31, 33 and 41.

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<sup>5</sup> According to Duquesne, as part of its inspection and maintenance plan, it 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 its facilities. Tr. at 27.

<sup>6</sup> Duquesne's distribution facilities include a 4,000 volts primary line and two secondary lines that are energized to 280 volts. Tr. at 28; Duquesne Exh. 7.

<sup>7</sup> Duquesne averred that during its inspection cycles, it, among other things, removes all or part of a tree if the tree is deemed to pose a threat to the Company's facilities based on the health, overall growth, and the age of the tree. Duquesne indicated that no such concerns were present during the 2013 inspection of the tree in question. Tr. at 18-19 and 26-27.

## Discussion

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that Duquesne is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by Duquesne. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. *Mill v. Pa P.U.C.* 447 A.2d 1100 (Pa. Cmwlth. 1982). 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. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer shifts to Duquesne. If the evidence presented by Duquesne is of co-equal value or "weight," the burden of proof has not been satisfied. The Complainant now have to provide some additional evidence to rebut that of Duquesne. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

## ALJ's Initial Decision

ALJ Cheskis made thirty-one Findings of Fact and reached fifteen Conclusions of Law. I.D. at 2-6, 11-14. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In his analysis, the ALJ compared this case to *Lauth*.<sup>8</sup> The ALJ explained that in *Lauth*, a tree on the complainant's property fell onto a telephone pole that was also located on the complainant's property. The pole to which the telephone line was attached also contained electric wires and a transformer. According to the ALJ, similar to this case, in *Lauth* there was no service interruption and the telephone company in that case advised the complainant that as the homeowner, he was responsible for removing or trimming the tree. The ALJ, however, pointed out that in *Lauth*, the complainant relied only upon language in a right-of-way agreement which gave both the telephone company and the electric distribution company (EDC) the right to trim or remove trees as necessary to clear the wires and other facilities. The ALJ indicated that in the Initial Decision issued in *Lauth*, the presiding officer stated: "Bell [Telephone Company] 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." I.D. at 9.

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<sup>8</sup> *Lauth v. Bell-Atlantic Pa, Inc.*, Docket No. C-00992926 (Final Order entered on October 10, 2000) (*Lauth*).

In the instant proceeding, the ALJ found that the exhibit which the Complainant relied on for his argument includes hearsay that was objected to by Duquesne's counsel during the hearing. The ALJ noted that even when he considered the statements in the Complainant's exhibit, there was still not enough evidence to demonstrate that Duquesne is obligated to remove the tree because both Duquesne and the Complainant testified that the tree is located on the Complainant's property. *Id.* at 9. Further, the ALJ explained that while both Parties agree the trunk of the tree is approximately twelve to fifteen inches from Duquesne's electric line, the Complainant did testify that the branch that hangs over the electric line is healthy and not decayed. In addition, the ALJ noted that based on several photographs of the tree presented as evidence in this case, the tree does not pose any threat or danger to Duquesne's facilities or the public. *Id.* at 9-10, citing Tr. at 15; Complainant Exh.1; Duquesne Exh. 1.

Additionally, the ALJ noted that Duquesne's certified arborists have inspected the tree on multiple occasions and have found that the tree poses no danger to either Duquesne's facilities or the public. *I.D.* at 10, citing Tr. at 19 and 45-46. According to the ALJ, Duquesne 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. Duquesne's certified arborist testified that the tree in question is healthy and grows straight and tall, posing no threat to Duquesne's facilities. *I.D.* at 10, citing Tr. at 26, 28, 30-31 and 42. Duquesne also testified that the branch of the tree the Complainant claims is decaying is leaning away from Duquesne's facilities and would not come in contact with the facilities even if it fell. *I.D.* at 10, citing Tr. at 26, 28-30, 38; Duquesne Exh. 1. Based on the foregoing, the ALJ found that the testimonies of Duquesne's witnesses rebutted the evidence presented by the Complainant. *I.D.* at 9.

Furthermore, the ALJ explained that although Duquesne can be required to trim or remove a tree if there is a threat to Duquesne's facilities or the public, unlike the utilities in *Lauth*, there is no standing agreement in this case that required Duquesne to

trim or remove trees on the Complainant's private property. The ALJ also noted that although the Commission requires EDCs to have vegetation management plans that delineate the utilities' maintenance cycles to help ensure reliability, Duquesne cannot be held responsible for trimming or removing every tree throughout its service territory unless such an action is consistent with the Company's maintenance cycle. Specifically, the ALJ pointed out that nothing in the record demonstrates that Duquesne acted contrary to its Commission-approved vegetation management plan and maintenance cycle by refusing to remove the tree from the Complainant's private property. *Id.* at 10-11.

The ALJ continued that, as in *Lauth, supra*, Duquesne's vegetation management plan requires the Company to remove or trim trees if they pose a threat to its facilities or the public. According to the ALJ, in this case, the Complainant did not demonstrate that such circumstances existed. The ALJ opined that it would be an unnecessary burden and expense to Duquesne and other EDCs if they were required to remove or trim trees where there is no interruption in service and no threat to the utilities facilities or the public. Additionally, the ALJ opined that 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. *Id.* For these reasons, the ALJ concluded that the Complainant failed to carry his burden of proof that the tree must be removed to prevent an interruption in service or that the tree presents a danger to Duquesne's facilities or the public. *Id.* at 10.

### **Exceptions and Replies**

Any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlt. 1993);

*see also, generally, University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).*

In his Exceptions, the Complainant disagrees with the ALJ's conclusion that the Complainant failed to prove that Duquesne violated the Code, a Commission Order or Regulation or a Commission-approved Company tariff by refusing to remove the tree from the Complainant's private property. The Complainant reiterates his argument that the tree poses a threat and is a danger to both Duquesne's facilities and the public. Exc. at 1-6.

The Complainant avers that the ALJ erred by relying on Duquesne's testimony in reaching a conclusion with no consideration of the testimony and evidence put forth by the Complainant. The Complainant believes the ALJ's conclusion is essentially based on Duquesne's testimony, which states that "the tree Dr. Yotov would like removed from his property is healthy and grows tall," and "the tree Dr. Yotov would like Duquesne to remove from his property is not a hazard to Duquesne's facilities." Exc. at 1-2. The Complainant disagrees with the ALJ's conclusion because it appears to be based on the fact that Duquesne testified that the branch of the tree hanging over its distribution line is not decaying. *Id.* at 4-5. The Complainant contends that no one has inspected that branch of the tree closely to ascertain that it is not decaying. Moreover, the Complainant asserts that the decaying branch is in danger of falling on Duquesne's electric lines and is a clear danger to the Company's facilities and the public. The Complainant further avers that the tree is Duquesne's responsibility since a branch is hanging right over Duquesne's electric distribution lines. *Id.* at 5.

The Complainant emphasizes his concern on the likelihood of the tree branch falling on Duquesne's distribution line by quoting a section of an email Mr. Jarosh sent to Duquesne on April 9, 2015, which states:

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

*Id.*, citing Complainant Exh.1.

For all of the above reasons, the Complainant requests that we reconsider the ALJ's Initial Decision.

In its Replies to Exceptions, Duquesne retorts that the Complainant's statements which are based on emails and photographs from Mr. Jarosh are considered uncorroborated hearsay and are insufficient to justify a reversal of the ALJ's Initial Decision. R. Exc. at 6. Duquesne asserts that although the ALJ overruled the Company's objection to the Complainant's evidence during the hearing, the ALJ clearly explained to the Complainant that the statements from Mr. Jarosh presented as evidence by the Complainant constituted hearsay because "it's an out-of-court statement that's being offered to [prove] the truth of the matter asserted."<sup>9</sup> *Id.*, citing Tr. at 8-10, 11, 13 and 15-16. Further, Duquesne avers that the ALJ also explained to the Complainant that "he was going to have a difficult time relying on much of Mr. Jarosh's testimony that you provided in pre-served exhibits because of the fact that it's hearsay... ." R. Exc. at 6, citing Tr. at 9.

Duquesne also submits that although the Complainant relies on Mr. Jarosh's statements that the tree is unsafe and must be removed, these statements were not only uncorroborated in the record but were also countered by Duquesne's witnesses who are both certified arborists. *Id.* at 7. Duquesne avers that the tree in question is on

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<sup>9</sup> Duquesne notes that the Complainant's argument is mostly a mere copy and paste of Mr. Jarosh's emails which are considered hearsay statements. R. Exc. at 6, citing Exc. at 2 and 5.

the Complainant's private property and that it is a mature oak tree that is healthy, grows straight and does not threaten Duquesne's facilities. In addition, Duquesne notes that the branch of the tree hanging over its distribution lines is healthy and is not in danger of falling. According to Duquesne, the branch of the tree the Complainant claims is decaying does not sit above its distribution lines, nor does it lean in the direction of the Company's distribution lines. Duquesne asserts that even if the branch in question falls, it will not fall towards its facilities and even if it falls towards its facilities, the lines will be protected by the healthy branch above them. R. Exc. at 7-8, citing Tr. at 15, 23-24, 29, 30-31.

Additionally, Duquesne avers that, consistent with *Lauth*, it is not the Company's responsibility to remove a tree on a private property, especially, when the tree does not pose a threat to the public or to Duquesne's facilities. Further, Duquesne contends that it acted reasonably in responding to the Complainant's concerns regarding the tree by promptly sending out two of its certified arborists to inspect the tree on multiple occasions. According to Duquesne, both investigators determined that the tree posed no threat to the public or Duquesne's facilities. For these reasons, Duquesne asserts that the Complainant failed to carry his burden of proof to demonstrate that the Company violated the Code. Duquesne, therefore, requests that the Commission deny the Complainant's Exceptions. R. Exc. at 8-9, citing Tr. at 19, 22-24, 28, 29-31, 33 and 45-46.

### **Disposition**

Upon our consideration of the record in this proceeding, we will deny the Complainant's Exceptions. First of all, we disagree with the Complainant's Exception that the ALJ relied on Duquesne's testimony rather than the Complainant's testimony in reaching a conclusion in this case. Although the Complainant highlighted specific statements made by Duquesne's witnesses during the hearing, which he believes forms

the basis of the ALJ's conclusion, we are not convinced by the Complainant's argument. In our view, the ALJ's decision was well thought out and based on his consideration and analysis of the record evidence, and more specifically, on the testimonies or evidence from the two certified arborists who testified on behalf of the Company as well as the certified arborist who testified on behalf of the Complainant. 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. I.D. at 9. As in *Lauth, supra*, the ALJ ruled that the 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.

We also agree with the ALJ's finding that even when the Complainant presented evidence that he believed was sufficient to satisfy his burden of proof in this case, the testimonies put forward by Duquesne rebutted the evidence presented by the Complainant. I.D. at 9-10. Consequently, because the evidence presented by Duquesne was of co-equal value or "weight," and the Complainant failed to provide additional evidence to rebut that of Duquesne, we are of the opinion that the Complainant failed to satisfy his burden of proof to demonstrate that Duquesne violated the Code, a Commission Order or Regulation, or a Commission-approved Company tariff by refusing to remove the tree from the Complainant's private property where no service interruption or danger to Duquesne's facilities or the public exists. As such, the Complainant's Exception on this matter is denied.

We also disagree with the Complainant's Exception that Duquesne is responsible for removing the tree because a branch of the tree hanging over Duquesne's facilities is in bad condition and there is a high probability that some or all of the tree's branches may fall on Duquesne's high voltage line.<sup>10</sup> Based on our review of the record evidence, both the Complainant and Duquesne testified that the tree is located on the Complainant's private property. Although the Complainant disagrees with the Company, Duquesne has insisted that the branch of the tree hanging over its facilities is healthy and poses no danger to its facilities or the public. Duquesne also indicated that should the decaying branch fall, it will fall to the opposite side of the Company's facilities because it leans in that direction, and that even if the decaying branch falls towards its facilities, the healthy branch above the Company's electric lines would protect the lines. R. Exc. at 7-8.

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 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.<sup>11</sup> Tr. at 33 and 41. The record also shows that pursuant to the Complainant's concerns regarding the tree, Duquesne 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. Tr. at 19 and 45-46. We consider Duquesne's prompt response to the Complainant's concern regarding the tree to be adequate and reasonable service pursuant

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<sup>10</sup> The Complainant avers this constitutes a danger to both Duquesne's facilities and the public and is also a violation of the Code.

<sup>11</sup> Duquesne avers that it is willing to help the Complainant because the branch hanging over its facilities will be the most difficult to remove since it is hanging over lines that are energized. Tr. at 28, 31, 33 and 41.

to Section 1501 of the Code, 66 Pa. C.S. § 1501.<sup>12</sup> For these reasons, we find that the Complainant failed to satisfy his burden of proof regarding his claim that Duquesne is responsible for the removal of the tree on his private property. As such, this Exception is also denied.

Lastly, the Complainant raised a new issue stating that the condition of the tree has worsened since the hearing. In support of this argument, the Complainant submitted with his Exceptions, a recent photograph of the tree taken on November 20, 2015. R. Exc. at 4. This additional information concerning the current status of the tree was submitted by the Complainant after the close of the record and thus is considered extra-record evidence, which we will not consider in reaching a disposition on this matter pursuant to Section 5.431(b) of our Regulations, 52 Pa. Code § 5.431(b), because good cause has not been shown for such consideration. 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.

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<sup>12</sup> Section 1501 of the Code, 66 Pa. C.S. § 1501, states as follows:

**§1501. Character of service and facilities**

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 service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa. C.S. § 1501.

In light of the above, we shall deny the Complainant's Exceptions and adopt the ALJ's Initial Decision that dismissed the Complaint based on the Complainant's failure to demonstrate that Duquesne violated the Code, a Commission Order or Regulation, or a Commission-approved Company tariff by refusing to remove a tree from the Complainant's private property where no service interruption or danger to Duquesne's facilities or the public exists.

### **Conclusion**

Consistent with the foregoing discussion, we shall deny the Complainant's Exceptions and adopt the Initial Decision of ALJ Cheskis, which denies the Complaint in its entirety; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions of Ivan Yotov, filed on November 24, 2015, to the Initial Decision of Administrative Law Judge Joel H. Cheskis are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Joel H. Cheskis, issued November 13, 2015, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint filed by Ivan Yotov on April 28, 2015, against Duquesne Light Company is dismissed in its entirety, consistent with this Opinion and Order.

4. That the record at Docket No. C-2015-2479258 be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: May 19, 2016

ORDER ENTERED: May 19, 2016



3. **Type of Utility Service**

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC                       WASTEWATER/SEWER
- GAS                                       TELEPHONE/TELECOMMUNICATIONS (local, long distance)
- WATER                                       MOTOR CARRIER (e.g. taxi, moving company, limousine)
- STEAM HEAT

4. **Reason for Complaint**

**What kind of problem are you having with the utility or company?** Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. **Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).                      Duquesne Light is unwilling to remove a hazardous tree next to their electric line.

Please see the documentation attached to this form for details.

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

**5. Requested Relief**

**How do you want your complaint to be resolved?** Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

I would like PUC to order Duquesne Light to remove the tree.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. **Protection From Abuse (PFA)**

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. **Prior Utility Contact**

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. **Legal Representation**

If you are filing a Formal Complaint as an individual on your own behalf, you are **not** required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer **in this matter**, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (if known) \_\_\_\_\_

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are **required** to have a lawyer represent them at a hearing **and** to file any motions, answers, briefs or other legal pleadings.

9. **Verification and Signature**

**You must sign your complaint.** Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. **If you do not sign the Formal Complaint, the PUC will not accept it.**

**Verification:**

I Ivan Yotov, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

*Ivan Yotov*

April 27, 2015

\_\_\_\_\_  
(Signature of Complainant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
**Title of authorized employee or officer** (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. **Two Ways to File Your Formal Complaint**

**Electronically.** You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

**Note:** If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

**Mail.** Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

Note: Formal Complaints sent by fax or e-mail will **not** be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.



**PENNSYLVANIA**  
PUBLIC UTILITY COMMISSION

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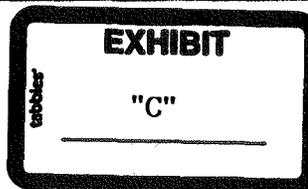
Print this page for your records. The date filed on will be the current day if the filing occurs on a business day before or at 4:30 PM Harrisburg, PA time. It will be the next business day if the filing occurs after 4:30 PM Harrisburg, PA time or on weekends or holidays.

*If your filing exceeds 250 pages, you are required to submit one paper copy of the filing within 3 business days of submitting the electronic filing. This paper copy can be mailed to: Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120 . Please print a copy of this page and attach it to the paper copy of your filing as the first page.*

eFiling Confirmation	
Docket Number:	C-2015-2479258
Description:	IVAN YOTOV V. DUQUESNE LIGHT COMPANY
Transmission Date:	5/18/2015 3:56:17 PM
Filed On:	5/18/2015 3:56:17 PM
eFiling Confirmation Number:	1592477

**Uploaded File List**

File Name	Document Class	Document Type
Yotov.PDF	Communication	Answer to Formal Complaint



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May 18, 2015

*Via Electronic Filing*

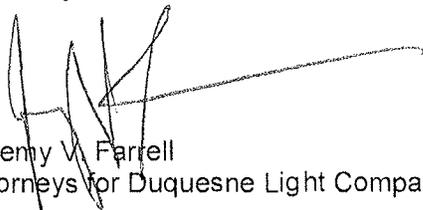
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed please find Duquesne Light Company's Answer to Formal Complaint. A copy of this document has been served upon Complainant in accordance with Commission regulations.

Sincerely,



Jeremy V. Farrell  
Attorneys for Duquesne Light Company

Enclosure

cc: Ivan Yotov (with enclosure)

LIT:586817-1 014657-158498



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IVAN YOTOV,

Complainant,

vs.

No: C-2015-2479258

DUQUESNE LIGHT COMPANY,

Respondent.

**ANSWER TO FORMAL COMPLAINT**

TO THE HONORABLE COMMISSION:

AND NOW comes Respondent, Duquesne Light Company, by and through its attorneys, Tucker Arensberg, P.C., hereby files the within Answer to Formal Complaint, stating as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Duquesne Light denies all material allegations in the Complaint unless specifically admitted and specifically denies that the tree located in the back of Complainant's property and referenced in the Complaint poses any reliability or safety problems. By way of background, Complainant contacted Duquesne Light and requested that Duquesne Light remove a tree at the back of his property. Duquesne Light's Vegetation Management then visited Complainant's property to view the tree. Duquesne Light's Vegetation Management determined that the tree is not a threat to Duquesne Light's electric facilities and posed no reliability or safety concerns. Furthermore, the subject tree belongs to Complainant.

Finally, the communications attached to the Complaint are written documents that speak for themselves. Duquesne Light denies Complainant's representations regarding the documents.

5. Duquesne Light denies that Respondent is required to remove the tree for the reasons set forth in response to paragraph 4 of the Complaint, which is fully incorporated by reference.

6. No response required. By way of further response, after reasonable investigation, Respondent is without knowledge or information sufficient to form a belief that a court has not granted a "Protection from Abuse" order.

7(a). It is admitted that this formal complaint is not appeal from a decision of the PUC's Bureau of Consumer Services (BCS).

7(b). It is admitted that Complainant has spoken to Respondent about this complaint.

7(c). No response is required.

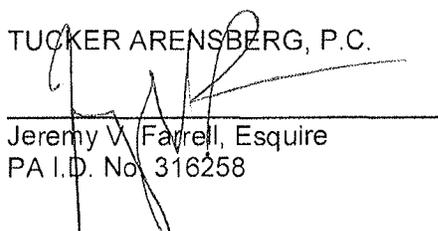
8. No response is required.

9. No response is required to Complainants' verification and signature.

WHEREFORE, Respondent, Duquesne Light Company, respectfully requests that the Pennsylvania Public Utility Commission deny the relief sought by Complainant in the Formal Complaint, and dismiss the Formal Complaint with prejudice.

Respectfully submitted,

TUCKER ARENSBERG, P.C.

  
\_\_\_\_\_  
Jeremy V. Farrell, Esquire  
PA I.D. No. 316258

1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 594-3938  
Counsel for Respondent

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IVAN YOTOV,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

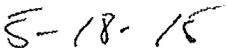
Respondent.

No: C-2015-2479258

VERIFICATION

I, Mike Doran, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
Mike Doran

  
\_\_\_\_\_  
Date

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IVAN YOTOV,

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

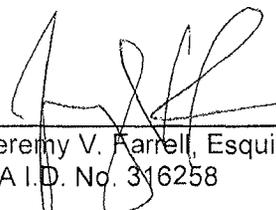
No: C-2015-2479258

**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):

Ivan Yotov  
144 Woodshire Road  
Pittsburgh, PA 15215

Dated this 18<sup>th</sup> day of May, 2015

  
\_\_\_\_\_  
Jeremy V. Farrell, Esquire  
PA I.D. No. 316258

1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 594-3938  
(412) 594-5619 (fax)  
jfarrell@tuckerlaw.com

Counsel for Respondent, Duquesne Light  
Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ivan Yotov

v.

Duquesne Light Company

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C-2015-2479258

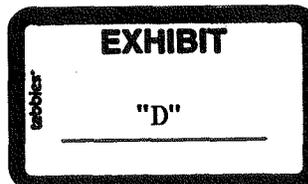
**PREHEARING ORDER**

By Telephonic Hearing Notice dated June 24, 2015, the Pennsylvania Public Utility Commission (Commission) scheduled an Initial Telephonic Hearing for this matter for Wednesday, July 29, 2015, at 10:00 a.m. and assigned me as the Presiding Officer. I will initiate the Hearing by calling the parties at the telephone numbers included on the Notice at 10:00 a.m.

**You must be available when I call you or you may lose this case. If you will be at a telephone number that is different than the number on the hearing notice, you must notify me of that telephone number at least seven (7) days before the hearing.** In addition, the parties shall comply with the following requirements:

1. Commission policy promotes settlements. 52 Pa. Code §5.231(a). **The utility is directed to contact the complainant at least seven (7) days before the scheduled hearing to discuss possible settlement of this case.** Even if the parties are unable to settle this case, they may still resolve some of the questions or issues during their discussions. If the parties reach an agreement on all issues, a formal hearing will not be necessary and the scheduled hearing will be cancelled.

2. A request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) days prior to



the hearing. 52 Pa.Code §1.15(b). Requests for changes of hearing dates must be sent to me and all parties of record. My address is:

Joel H. Cheskis  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, Pa. 17105-3265  
Telephone: (717) 787-1399  
Fax: (717) 787-0481  
Email: [jcheskis@pa.gov](mailto:jcheskis@pa.gov)

Changes are granted only in situations where good cause exists.

3. If a party intends to present any documents or exhibits for consideration, it must provide one copy to the other parties and three (3) copies to me at least five days prior to the hearing. This includes a copy of a Protection from Abuse (PFA) Order if you marked the “yes” response on the Complaint form that asks if you are a victim under a PFA. A party should properly pre-mark exhibits for identification purposes.

4. Although the hearing is being conducted telephonically for the convenience of the parties, the hearing is a formal proceeding and will be conducted in accordance with the Commission’s Rules of Practice and Procedure.

5. Pursuant to 52 Pa. Code §§1.21 & 1.22, an individual is not required to have a lawyer present for the Formal complaint process before the Public Utility Commission. You may represent yourself.

6. If you are a partnership, corporation, trust, association, or governmental agency or subdivision, an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, must represent you in this proceeding.

7. Unless you are an attorney, you may not represent someone else. Attorneys shall enter their appearance in accordance with the provisions of 52 Pa. Code §1.24(b).

8. The Customer is responsible for payment of current bills pending the resolution of this complaint, if applicable. Failure to make payments may result in the termination of utility service.

9. Pursuant to 52 Pa Code § 1.24, parties must promptly report to the Commission and the other parties a change in address that occurs during the course of the proceeding.

10. **If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.**

11. The Complainant bears the burden of proof and must demonstrate by a preponderance of the evidence that he is entitled to the relief requested in the complaint.

12. If you, or anyone you plan to call as a witness on your behalf, has a limited ability to speak or understand English or are deaf or hearing-impaired, a qualified interpreter can be provided upon your request. If you need an interpreter, please contact the scheduling office for the Office of Administrative Law Judge at (717) 787-1399 at least ten (10) days before the hearing to make your request. The AT&T Relay Service number for persons who are deaf or hearing-impaired is 1-800-654-5988.

13. The Hearing Room default phone system can only call two telephone numbers at one time. If it is necessary to call additional numbers for the hearing, alternative conferencing arrangements can be made.

14. That a finding of a violation of a Commission Order, regulation or statute may result in the imposition of a civil penalty consistent with 66 Pa. C.S. § 3301 or other provision of the Public Utility Code.

Date: July 6, 2015

---

Joel H. Cheskis  
Administrative Law Judge

C-2015-2479258 - IVAN YOTOV v. DUQUESNE LIGHT COMPANY  
REVISED 7/7/15

IVAN YOTOV PHD  
144 WOODSHIRE RD  
PITTSBURGH PA 15215  
412.983.0425

-ACCEPTS ELECTRONIC SERVICE-

JEREMY V FARRELL ESQUIRE  
TUCKER ARENSBERG PC  
1500 ONE PPG PLACE  
PITTSBURGH PA 15222  
412.594.3938

-ACCEPTS ELECTRONIC SERVICE-



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WITNESS INDEX

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Ivan Yotov	7	14	--	--
James Barry	17	36	--	--
Don Piasecki	44	47	48	--

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FORM 2

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FORM 2

P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

This is the time and place the Pennsylvania Public Utility Commission has set for a hearing in the case captioned Ivan Yotov, Y-o-t-o-v, versus Duquesne Light Company at Docket Number C-2015-2479258.

My name is Joel Cheskis. I'm the Administrative Law Judge the Commission has assigned to preside over this matter and render a decision for it to consider.

Appearing by phone this morning is the complainant, Mr. Yotov. Good morning, Mr. Yotov.

MR. YOTOV: Good morning, Your Honor.

JUDGE CHESKIS: As well as counsel for the company, Mr. Jeremy Farrell. Good morning, Mr. Farrell.

MR. FARRELL: Good morning, Your Honor.

JUDGE CHESKIS: The parties were given an opportunity to have brief settlement discussions prior to going on the record this morning. They had explained that they have already engaged in extensive settlement discussions prior to today and did not see the need to continue that this morning, so we are moving forward with the formal hearing at this time.

Before we do that, I wanted to explain, especially for Mr. Yotov's benefit since he's appearing

FORM 2

1 today without counsel, that even though this hearing is  
2 being conducted telephonically for the convenience of the  
3 parties, it will be conducted in accordance with the  
4 Commission's rules and regulations.

5 I also wanted to explain that we'll begin by  
6 swearing you in, Mr. Yotov, and you will have an opportunity  
7 to explain to the Commission on the record this morning  
8 anything that you want the Commission to know about your  
9 complaint, and by that I mean that nothing technically that  
10 you have provided us so far has been made a part of the  
11 record, including what you put in your complaint as well as  
12 your pre-served exhibits. So, anything you want us to know,  
13 you'll have to tell us this morning.

14 Once you're done with that, Mr. Farrell will  
15 have an opportunity on behalf of the company to ask you any  
16 clarifying questions with regards to what you testified to.  
17 This is commonly referred to as cross-examination, although  
18 hopefully it will be nothing like what we see on TV or in  
19 the movies.

20 Once that is done, Mr. Farrell will be able  
21 to present the company's response to your testimony on  
22 behalf of the company.

23 Mr. Farrell, do you have a witness with you?

24 MR. FARRELL: Yes, Your Honor. Actually, I  
25 have three.

1 JUDGE CHESKIS: Three witnesses. Okay. So,  
2 he has three witnesses with him that he will present at that  
3 time.

4 Mr. Yotov, I recommend that you listen  
5 carefully during their testimony, because you'll have an  
6 opportunity to ask any clarifying questions that you may  
7 have with regards to what the witnesses testified to.

8 Once we get done with those things, then  
9 we'll probably allow for brief closing statements, and then  
10 I can explain what's going to happen to this case once this  
11 hearing is concluded.

12 Does anybody have any questions about what  
13 we're going to do today?

14 MR. FARRELL: No, Your Honor.

15 MR. YOTOV: No questions.

16 JUDGE CHESKIS: Okay. So, having said that,  
17 Mr. Yotov, are you prepared to testify today?

18 MR. YOTOV: Yes, I am.

19 JUDGE CHESKIS: Would you please raise your  
20 right hand?

21 Whereupon,

22 IVAN YOTOV

23 having been duly sworn, testified as follows:

24 JUDGE CHESKIS: Like I said, if you could  
25 speak loudly and slowly, we'll be happy to hear whatever you

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.

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

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

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

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

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

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 sure, because I'm going to refer to the letter from Mr.  
2 Jarosh. He's a specialist. So, if there is going to be a  
3 problem with admitting these documents, then I don't know if  
4 I'm okay with that.

5 JUDGE CHESKIS: Okay. Let me say two things  
6 then, and I'm sorry that we're going on this divergence  
7 here, but we are having a difficult time understanding you  
8 today.

9 So, I think, and correct me if I'm wrong, but  
10 I think most of what you're going to be doing is just  
11 stating what's contained in these pre-served exhibits; is  
12 that correct?

13 THE WITNESS: That is correct.

14 JUDGE CHESKIS: Okay. So, in lieu of your  
15 testimony, can we just admit these exhibits into the record  
16 and consider that to be your testimony?

17 THE WITNESS: Yes; that is fine, yes.

18 JUDGE CHESKIS: Is there anything beyond what  
19 you have provided in these pre-served exhibits that you want  
20 to state for the record before we go any further?

21 THE WITNESS: Just to say that after the  
22 series of records and emails and the last one that Mr.  
23 Jarosh sent to Mr. Barry on April 9th, it was a long email  
24 again asking for an explanation from Duquesne Light why  
25 they're taking that side and, in particular, that this tree

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 exhibit. Let me know when you have those in front of you.

2 A. I've got them.

3 (Whereupon, the document was marked as

4 Duquesne Exhibit No. 1 for identification.)

5 JUDGE CHESKIS: Can I just interrupt you for  
6 one second? We are again having some difficulty hearing  
7 both of you. I don't know if you need to move closer to the  
8 phone or just speak up or just speak more slowly, but that  
9 would be appreciated.

10 BY MR. FARRELL:

11 Q. Do you recognize these documents, Mr. Barry?

12 A. I do.

13 Q. What are they?

14 A. Photos that I have taken of the tree when I've been  
15 to the property.

16 Q. And this is the tree that is located in the Yotovs'  
17 backyard?

18 A. Correct.

19 Q. And you took these photographs?

20 A. I did.

21 Q. And do you recall when you took them?

22 A. Yes. I took the pictures of this tree when I met  
23 with Mr. Yotov. I believe I was there April 1st of 2015.

24 Q. And I see that pages seven, eight and nine show the  
25 tree in a little bit of a different condition. Do you

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 Q. Now, after your meeting with Mr. Yotov, did you  
2 inform him of your conclusions?

3 A. We did at that time.

4 Q. I'd like to turn you to what has been pre-marked for  
5 identification purposes as Exhibit 4.

6 A. Okay.

7 (Whereupon, the document was marked as

8 Duquesne Exhibit No. 4 for identification.)

9 BY MR. FARRELL:

10 Q. Do you recognize this document?

11 A. I do.

12 Q. What is this?

13 A. This is actually in response to Mr. Jarosh and Dr.  
14 Yotov's question about the tree and what Duquesne Light was  
15 willing to do to help them in the removal of their tree.

16 Q. Let's take a step back. Who prepared this letter?

17 A. I did.

18 Q. And when did you do that?

19 A. April 7th.

20 Q. Did you have any recollection that you had prepared  
21 this letter?

22 A. I do.

23 Q. And you sent it to Dr. Yotov?

24 A. Yes.

25 Q. I see I think it's in the first paragraph, the third

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 Q. I want to turn your attention, Mr. Barry, to a  
2 document pre-marked for identification purposes as Exhibit  
3 7. Let me know when you have that.

4 A. I have it.

5 (Whereupon, the document was marked as  
6 Duquesne Exhibit No. 7 for identification.)

7 BY MR. FARRELL:

8 Q. Do you recognize this document?

9 A. I do.

10 Q. What is it?

11 A. This is a contact log that our contracted personnel  
12 fill out when notifying our customers of pending work. At  
13 the bottom of the page, you can see the Yotovs were  
14 notified.

15 Q. Let's take a step back. When was this particular  
16 document prepared?

17 A. In 2013.

18 Q. Where do you see that?

19 A. It doesn't have the 2013, but this is when the  
20 maintenance cycle was completed was in 2013.

21 Q. And this is the routine maintenance cycle that we  
22 were discussing earlier?

23 A. Correct.

24 Q. Have you seen this document as part of your job  
25 duties?

FORM 2

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 Q. Are you aware that in the past, the line in question  
2 was broken? There was a patch. It was mentioned in one of  
3 the letters by Mr. Jarosh, and that most likely was caused  
4 by a branch from that same tree falling on the line.

5 MR. FARRELL: Your Honor, we had a very hard  
6 time hearing that question.

7 JUDGE CHESKIS: Can you please restate the  
8 question?

9 BY MR. YOTOV:

10 Q. Okay. In one of the emails from Mr. Jarosh that he  
11 sent to you, he mentioned that the distribution line was  
12 patched near the tree which indicated it was broken in the  
13 past and most likely the damage was caused by a fallen  
14 branch from that tree. So, that means that this had  
15 happened in the past, the branch of a tree falling on top of  
16 the line. Are you aware or do you have a record of this in  
17 your company of this and when was this patch made?

18 MR. FARRELL: Your Honor, I'm going to object  
19 to that question just on the fact that it is based on the  
20 testimony of Mr. Jarosh who is not here.

21 JUDGE CHESKIS: Let me ask you, Mr. Barry.  
22 Are you aware of any other work that has been done on this  
23 line?

24 THE WITNESS: I do not, no.

25 JUDGE CHESKIS: Do you have any other

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 A. No.

2 Q. I'm sorry. What did you say?

3 A. For our facility?

4 Q. Are you only concerned for the safety of your  
5 facility, Mr. Barry?

6 MR. FARRELL: Your Honor, I'm sorry. I  
7 didn't hear that question.

8 JUDGE CHESKIS: Let's ask the first question.  
9 Give me one second. I think we should be calling you Dr.  
10 Yotov, so I apologize for that.

11 Mr. Barry, I think the question was: If the  
12 one branch that is hanging over the wires is removed, do you  
13 consider the tree to be safer as a result of that?

14 THE WITNESS: I don't think it's going to  
15 make it less safe because it will still be a healthy tree.

16 JUDGE CHESKIS: Then I think the second  
17 question was, and this was a question I actually was going  
18 to ask, also, that you have said a couple of times in your  
19 testimony that your concern is with regards to the safety  
20 pertaining to the company's facilities, but I think Dr.  
21 Yotov's question is: Shouldn't you be concerned about more  
22 than just the company's facilities?

23 THE WITNESS: We should be, yes.

24 JUDGE CHESKIS: Do you have any other  
25 questions, Dr. Yotov?

1 MR. YOTOV: No, I don't.

2 JUDGE CHESKIS: Okay. Well, thank you for  
3 that. Again, I do have a couple of other questions myself.  
4 With regards to the first six pictures in Exhibit 1, all the  
5 trees are bare. I'm assuming that's because it was the  
6 wintertime; is that correct?

7 THE WITNESS: Correct. Those were pictures I  
8 took with Mr. Woods I believe it was April 1st of 2015.

9 JUDGE CHESKIS: What is the voltage of this  
10 line?

11 THE WITNESS: 4,000 volts and 280 on the  
12 secondary -- 240; I'm sorry.

13 JUDGE CHESKIS: You were talking at one point  
14 about I guess there are three different groups I would  
15 consider of lines. Are these all electric lines or are  
16 there like other telephone or cable wires that are running  
17 across this pole?

18 THE WITNESS: There are other utilities  
19 located on the pole as well.

20 JUDGE CHESKIS: Just in general, again, I  
21 think because there are three groups of lines, can you just  
22 characterize which ones are yours, which ones may be the  
23 telephone company's and which one may be the cable  
24 company's?

25 THE WITNESS: The cable and telephone are the

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 MR. FARRELL: Nothing that we haven't  
2 covered, Your Honor.

3 JUDGE CHESKIS: Okay. Mr. Barry, thank you  
4 very much for your time here today. You are excused.

5 (Witness excused.)

6 JUDGE CHESKIS: Mr. Farrell, if you'd like to  
7 call your next witness, why don't you do that at this time?

8 MR. FARRELL: Your Honor, we just have one  
9 more.

10 JUDGE CHESKIS: Before you do that, I do want  
11 to admit these other exhibits into the record as well. I  
12 think you were talking about Exhibits 1, 2, 3, 4 and 7; is  
13 that right?

14 MR. FARRELL: Yes. I withheld Exhibit 5  
15 because I believe those were contained within the exhibits  
16 that were admitted from Mr. Yotov. I did that to not be  
17 duplicative, but if you'd prefer, I can have Mr. Barry  
18 authenticate those quickly, but I believe they were already  
19 admitted.

20 JUDGE CHESKIS: Okay. Dr. Yotov, do you have  
21 any objection to the admission of what has been previously  
22 identified as Duquesne Exhibits 1 through 4 and 7?

23 MR. YOTOV: No, Your Honor.

24 JUDGE CHESKIS: Okay. So, those documents  
25 will be admitted.

1 (Whereupon, the documents marked as Duquesne  
2 Exhibits Nos. 1, 2, 3, 4 and 7 were received  
3 in evidence.)

4 JUDGE CHESKIS: I apologize for that  
5 interruption, Mr. Farrell. Why don't you call your next  
6 witness?

7 MR. FARRELL: Your Honor, did we have Exhibit  
8 3 in there as well?

9 JUDGE CHESKIS: Yes, I said 1 through 4.

10 MR. FARRELL: One through four; okay. I  
11 apologize. Duquesne Light calls Don Piasecki.

12 JUDGE CHESKIS: Can you spell that for us,  
13 please?

14 MR. PIASECKI: It's P-i-a-s-e-c-k-i.

15 JUDGE CHESKIS: Sir, would you please raise  
16 your right hand?

17 Whereupon,

18 DON PIASECKI

19 having been duly sworn, testified as follows:

20 JUDGE CHESKIS: You've already stated and  
21 spelled your name for the record. So, we'll skip that. Mr.  
22 Farrell, why don't you go right ahead?

23 MR. FARRELL: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. FARRELL:

- 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,

1 Mr. Farrell. Dr. Yotov, do you have any questions for this  
2 witness?

3 MR. YOTOV: Yes, I do, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. YOTOV:

6 Q. (Inaudible.)

7 JUDGE CHESKIS: I'm sorry. We didn't  
8 understand that. If you could just speak loudly and slowly,  
9 I'd appreciate it.

10 MR. YOTOV: Okay.

11 BY MR. YOTOV:

12 Q. My question is did you notice that there was a patch  
13 on the wire near the tree which indicated that the wire was  
14 broken in the past and had to be fixed?

15 A. Yeah. That's called a tension splice.

16 Q. Okay. So, you noticed that?

17 A. Yes.

18 Q. Do you have any idea when the damage occurred and  
19 what caused it?

20 A. Something brought it down. It could be most likely  
21 during a storm.

22 Q. Do you have any record of when it happened?

23 A. Not really.

24 Q. Is somebody keeping records of these events at  
25 Duquesne Light?

1 A. Yes. That would be somewhere around. It's related t  
2 one of the storms. Which one in particular, I couldn't tell  
3 you. We have frequent storms that come through.

4 Q. So, storms cause trees to fall and break the electric  
5 lines.

6 MR. FARRELL: Your Honor, I'm sorry. I  
7 didn't catch that.

8 JUDGE CHESKIS: Can you please restate that?

9 BY MR. YOTOV:

10 Q. I'm just saying that storms cause trees to fall and  
11 break their electric lines and cause trouble. That's what I  
12 can conclude.

13 MR. FARRELL: Objection, Your Honor. He's  
14 asking him to speculate.

15 JUDGE CHESKIS: I understand. Please go  
16 ahead, Dr. Yotov.

17 MR. YOTOV: I don't have any other questions.

18 JUDGE CHESKIS: Okay. Thank you very much.  
19 I don't have any questions either. Do you have anything  
20 further for this witness?

21 MR. FARRELL: Just very briefly, Your Honor.

22 **REDIRECT EXAMINATION**

23 BY MR. FARRELL:

24 Q. Mr. Piasecki, the fact that there is a tension splice  
25 on a line, does that mean that the line is unsafe?

1 A. No, not at all.

2 MR. FARRELL: That's it, Your Honor.

3 JUDGE CHESKIS: Okay. Thank you very much,  
4 Mr. Piasecki. You're excused.

5 (Witness excused.)

6 JUDGE CHESKIS: Do you have anything further  
7 on behalf of the company, Mr. Farrell?

8 MR. FARRELL: I do not, Your Honor.

9 JUDGE CHESKIS: Okay. So, we're not going to  
10 be admitting what has been previously marked as Exhibit No.  
11 6; is that right?

12 MR. FARRELL: Correct. I did not talk about  
13 Exhibit 6.

14 JUDGE CHESKIS: Or 5?

15 MR. FARRELL: Correct.

16 JUDGE CHESKIS: Thank you both very much for  
17 your time here this morning as well as the witnesses. I am  
18 going to allow for brief closing statements at this time,  
19 but before I do that, I wanted to explain, especially again  
20 for Dr. Yotov's benefit since he is appearing here today  
21 without counsel, what the process is going to be now that  
22 this hearing is concluded.

23 That is that it will take about three weeks  
24 for the transcript of this morning's hearing to be submitted  
25 to the Commission. At that time, the record in this case

1 will officially be closed and a 90-day clock will start that  
2 will be the period in time that I will have to write what's  
3 called an initial decision. The initial decision is my  
4 disposition of this case based on the record that was  
5 developed this morning.

6 If anybody disagrees with that initial  
7 decision, they will have an opportunity to file what are  
8 called exceptions to the initial decision. If exceptions  
9 are filed, the other party will have an opportunity to file  
10 what are called reply exceptions.

11 The process for submitting exceptions and  
12 reply exceptions will be explained in a cover letter that  
13 will accompany the initial decision, which, like I said,  
14 will come out in about 100 days.

15 If exceptions are filed, then the initial  
16 decision, the exceptions and reply exceptions will be  
17 submitted to the five Commissioners of the Public Utility  
18 Commission for their review and disposition of this case as  
19 the final word on behalf of the Commission.

20 Of course, any decisions of the Public  
21 Utility Commission are appealable to the Pennsylvania  
22 Commonwealth Court.

23 If there are no exceptions filed to the  
24 initial decision, then the initial decision will become  
25 final.

1 Does anybody have any questions with regards  
2 to the process that we will be following once this hearing  
3 is concluded?

4 MR. FARRELL: No, Your Honor.

5 MR. YOTOV: No, Your Honor.

6 JUDGE CHESKIS: Okay. Dr. Yotov, would you  
7 like to make a brief closing statement at this time?

8 MR. YOTOV: Just to emphasize my stand here  
9 that this is clearly a dangerous tree, as indicated by the  
10 official report by Mr. Jarosh, which is decaying. Clearly,  
11 branches have fallen in the past and have caused the line to  
12 break. It is only a matter of time for this to happen  
13 again.

14 The proposed solution of removing this one  
15 branch will only make the tree more dangerous, and nobody  
16 can predict in what direction branches are going to fall and  
17 it so close to the line.

18 Something that didn't come up is that the  
19 line overhangs a VA hospital fence which is metal and if the  
20 line falls on it, the whole fence is going to be  
21 electrified.

22 So, I think that Duquesne Light should be  
23 concerned more not just with their facility, but with the  
24 safety of the public. That's all I have.

25 JUDGE CHESKIS: Okay. Thank you very much,

1 Dr. Yotov. Mr. Farrell, would you like to make a closing  
2 statement at this time?

3 MR. FARRELL: Thank you, Your Honor; just a  
4 few things that I'd like to highlight, the first of which is  
5 that this tree belongs to the Yotovs. It is located in  
6 their yard.

7 The photographs introduced by Duquesne Light  
8 and the testimony of Mr. Barry have made abundantly clear  
9 that this tree is safe, period. It poses no threat to our  
10 line. It poses no threat to anything. The tree was  
11 maintained in 2013. There were no problems noted then. It  
12 has been inspected several times since then and there have  
13 been no problems with the tree noted.

14 We are not denying that the tree is big or  
15 that the tree is located close to the line, but it's healthy  
16 and it poses no threat, no safety hazards whatsoever.

17 If Mr. and Mrs. Yotov want to have the tree  
18 removed, that's their prerogative, but it's their  
19 responsibility. It's not something that should be passed  
20 along to Duquesne Light's ratepayers, especially where it  
21 poses no threat to Duquesne Light's facilities.

22 The evidence has shown that Duquesne Light  
23 has been entirely reasonable in inspecting, investigating  
24 and responding to the Yotovs' complaints, which include  
25 several in-person meetings, various telephone calls and

1 emails.

2 The tree has been inspected. The wires have  
3 been inspected and everything has checked out as safe.  
4 Therefore, we ask that the complaint be dismissed.

5 JUDGE CHESKIS: Okay. Thank you for that.  
6 Again, thank you, both of you, as well as the witnesses and  
7 the court reporter for her time here this morning.

8 Before we go off the record, I did just want  
9 to make an additional request to consider settlement  
10 discussions. Again, the Commission strongly encourages  
11 settlements, and I wanted to note that again before we go  
12 off the record.

13 Even though we've had this hearing, it  
14 doesn't preclude any settlements from taking place. It will  
15 take a few months before the initial decision is issued, so  
16 that gives you some additional time to have settlement  
17 discussions to the extent that maybe there was something  
18 said on the record this morning that may help break any log  
19 jam that has otherwise been preventing settlements. So, if  
20 a settlement is reached, then please let me know that as  
21 soon as possible.

22 Otherwise, is there anything further for the  
23 record this morning?

24 MR. FARRELL: Nothing from Duquesne Light,  
25 Your Honor.

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MR. YOTOV: Nothing from me, Your Honor.

JUDGE CHESKIS: Okay. Again, thank you very much. Have a great day. This hearing is adjourned. We are off the record.

(Whereupon, at 11:07 a.m., the hearing was adjourned.)

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FORM 2

C E R T I F I C A T E

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

COMMONWEALTH REPORTING COMPANY, INC.

By: Sandra J. Milus  
Sandra J. Milus

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FORM 2

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Ivan Yotov  
144 Woodshire Rd  
Pittsburgh, PA 15215  
[ivanyotov11@gmail.com](mailto:ivanyotov11@gmail.com)  
April 20, 2015

I am filing a formal complaint to PUC against Duquesne Light for not being willing to remove a hazardous tree that is very close to their electric line and thus creates a serious risk for personal injury and/or property damage. Below you will find a letter from a certified arborist Walter Jarosh to Jennifer Arkett, Vegetation Manager at Duquesne Light, describing the problem. Following is a sequence of e-mails between Mr. Jarosh, Duquesne Light representatives, and myself. I requested from Duquesne Light to remove the hazardous tree according to PUC safety regulations, but the company refuses to do so. I ask the PUC to enforce the safety regulations by requiring Duquesne Light to remove the tree.

March 15, 2015

Walter Jarosh, ISA Certified Arborist  
Walter Jarosh Consulting, LLC  
106 McClintock Drive  
McMurray, PA 15317  
724.941.4111  
Cell 412 951- 2120  
[jarosh@hotmail.com](mailto:jarosh@hotmail.com)  
[walterjaroshllc.webs.com](http://walterjaroshllc.webs.com)

Jennifer Arkett  
Manager of Vegetation Management  
Duquesne Light Company  
411 Seventh Avenue  
Pittsburgh, PA 15219  
1 888-393-7100

**RE: Danger Tree near Duquesne Light Distribution Line  
Return Receipt**

Dear Ms. Arkett:

I am requesting your assistance to eliminate a potential hazard.

I have been retained by Dr. Ivan and Maria Yotov, of 144 Woodshire Road, Pittsburgh, PA, 15215, to inspect and document a potentially dangerous tree situation to the Duquesne Light distribution line, utility pole #787/14, service line to their residence and the Yotov rear property. A large oak tree on the utility right-of way at the right rear of their property has a large section of dead top directly above the energized electric distribution line, and less than 6 feet from the pole. The distribution line is on the rear side of the tree 12 to 15 inches from the trunk, and their service line is on the opposite side of the tree originating near the pole. From the ground, daylight is visible through a split in the upright vertical trunk portion that is above all these wires and pole.(photo #4) A cyclone fence surrounding the VA hospital is under and turns a corner directly under the wires. The normal compliment of phone and cable lines is also on the pole and crosses their property with and directly under the Duquesne distribution line.

There is the potential for a large portion of this tree to fall and break the energized distribution line causing it to fall into their rear yard or onto the cyclone fence. Should a large portion of this top fall, it also may cause damage to the pole, and other wires. Mrs. Yotov has a concern for personal injury or a potential fire if a failed portion of the tree breaks the energized distribution wire when they are using their rear patio or dry vegetation conditions exist.

I have attached several photos to help identify the tree and wires. The wire closest to the tree in photos # 1, 2 and 5 is the energized distribution wire.

Mrs. Yotov can be contacted at her home phone number 412 983-0425, or via email [mariayotov11@gmail.com](mailto:mariayotov11@gmail.com). I am available if have any questions. Thank you.

Walter Jarosh  
Consultant  
ISA Certified Arborist - PD 0179A

Cc: Dr. Ivan and Maria Yotov



**PHOTO # 1**



**PHOTO # 2**



**PHOTO # 3**

2.



PHOTO # 4

3.



PHOTO # 5

Apr 6, 2015

**Ivan Yotov <ivanyotov11@gmail.com>**

to jarkett

Ms. Arkett,

I am following up on the letter to you from Mr. Walter Jarosh from March 15, 2015 regarding a hazardous tree near an electric line in the back of my property. As I informed Mr. Barry last week, the only acceptable solution for me is the removal of the tree by Duquesne Light. Please let me know your decision. I would like to resolve the issue as soon as possible.

Ivan Yotov  
144 Woodshire Rd  
Pittsburgh, PA 15215



## **Duquesne Light**

*Our Energy...Your Power*

April 7, 2015  
James R Barry Jr  
Duquesne Light Company, Vegetation Management  
2825 New Beaver Avenue Pittsburgh, Pa 15233  
412.393.7811  
JBarry@Duqlight.com

Dear Dr. Yotov:

In response to your request for assistance, I am writing to inform you, as you know, Duquesne Light's Vegetation Management Department has been in contact with your household multiple times concerning this matter. As we have stated in each discussion, the tree in question does not pose a threat to our facilities at this time. However, as we have discussed, Duquesne Light is willing to remove, at no expense to you, the branch overhanging our facilities to assist you in part with the removal of your tree. All debris from this limb will remain on your property.

Upon completion of this work, you can elect to remove the remainder of your tree not posing a threat to our facilities at your own expense. Please ensure your contractor of choice is a qualified line clearance tree professional as described in the informational brochure we provided you.

James R Barry Jr.  
Supervisor Vegetation Management  
PD1978-AU  
Desk: 412.393.7811

CC: Walter Jarosh, Jennifer Arkett, Bruce Woods

**From:** Walter Jarosh [mailto:[jarosh@hotmail.com](mailto:jarosh@hotmail.com)]  
**Sent:** Wednesday, April 08, 2015 11:16 PM  
**To:** Barry, James R  
**Cc:** Arkett, Jennifer E.; Woods, Bruce H.  
**Subject:** RE: Attention to the Attachment - Duquesne Light's Repsonse

Jim Barry:

Dr. Yotov contact me today and was not satisfied that only one branch would be removed from the tree. I read a copy of your letter and it seems that is your resolve.

I am a little confused on the clearances required for tree trimming on a distribution line. The distribution line going thru the rear of the Yotov property is **12 to 15 inches** from the trunk of the oak tree and the one large branch extends over the cable (line)to the rear well over the VA property adjacent to the Yotov property. As a pure safety issue for a climber, this line has been installed too close to the tree or the tree has grown in diameter since the installation. Unless you plan to remove all of the tree above the lines, and create the required clearance then one can not be assured that the tree does not pose a threat to your line. Should an issue arise in the future this documented request could make it difficult for Duquesne Light to defend. The cyclone fence surrounding the VA facility and running thru the back yards is a real concern should a large oak limb break the cable and have it drop on and electrify the fence directly under it.

For Dr. Yotov to remove the tree, can the trunk be reduced so it complies with accepted line clearances for the distribution wire which is 8 feet for some other utilities. I am not able to locate any published Public Utility Commission standards for accepted tree distances from a distribution line and asked Dr. Yotov not to contact them at this point as it may create an issue for Duquesne Light. What trimming clearance standards do you include in your bid documents to contractors. How does the trunk of this tree differ from your normal line clearances. Let me know you thoughts. Feel free to give me a call at 412 951 2120 and fill me in as I am not sure I understand all of your discussions with Dr. Yotov and I would like to better inform and help him resolve this issue. Thank you.

Walter Jarosh  
Walter Jarosh Consulting LLC  
412 951 2120

**Barry, James R <JBarry@duqlight.com>**

Apr 9, 2015

to Walter, me, Jennifer, Bruce

Walter Jarosh:

It is unfortunate that Dr. Yotov is dissatisfied with Duquesne Light's offer of assistance made to him in the removal process of his tree. However, as per my correspondence dated 4/7/2015, our offer to remove the limb, at no expense to the Yotovs, overhanging our facilities and leave the resulting debris is our resolve. We have exercised our due diligence in this matter and are willing to absorb the cost of addressing the limb that potentially could interfere with the electric service of our customers. Removal of the remainder of the tree remains the financial responsibility of the property owner, not Duquesne Light rate payers.

Additionally, as I noted, if the Yotov's decide to remove their tree because of their concerns of damage to their property or the VA's fence line, they must be responsible and utilize only line clearance qualified tree professionals for this job because of their tree's proximity to utility lines. We will be glad to work with their qualified contractor of choice or serve as their contractor of choice to remove this tree, at their personal expense.

Thank you for your understanding in this matter.

Regards,

Jim Barry

----- Forwarded message -----

From: **Walter Jarosh** <[jarosh@hotmail.com](mailto:jarosh@hotmail.com)>

Date: Thu, Apr 9, 2015 at 11:13 PM

Subject: RE: Attention to the Attachment - Duquesne Light's Response

To: "Barry, James R" <[jbarry@duqlight.com](mailto:jbarry@duqlight.com)>

Cc: "[ivanyotov11@gmail.com](mailto:ivanyotov11@gmail.com)" <[ivanyotov11@gmail.com](mailto:ivanyotov11@gmail.com)>

Jim Barry:

You failed to answer one of my questions. What distance does Duquesne light require their contractors to trim limbs and trees away from a distribution line.? I would appreciate knowing what is normally required in your specifications to contractors so I can better understand your reluctance to remove the upper portion of the tree with the decayed trunk that is directly above the distribution cable, and the distance Duquesne Light would normally trim trees away from their lines. Also, can you suggest a contractor with the necessary qualifications that Duquesne Light would approve to work on a tree within their right-of way and within 12 to 15 inches of their distribution line. In your reply you offer to serve as their contractor of choice to remove this tree. To clarify the Yotov's request, it is remove all the portions of the tree so it is the required distance from the line and does not pose a danger to the line. That will make it safe. I am certain that it will be necessary to have the contractor approved by Duquesne Light to perform and further work on that tree and protect your facility. If you looked carefully at the line, you would have observed a repair splice in the line very near the tree, indicating that the line was broken in the past. Does your records reflect the reason for this past repair? My bet is that it was caused by failure of the upper most portion of tree. The repair should be tied to the pole number.

Dr. Yotov's concern is not with the tree causing damage to his property or the VA fence, but the tree breaking the distribution cable and the potential for personal injury or damage to his house from an energized line falling on his property. As a representative of the Duquesne Light rate payers, in your position, you also have a responsibility to insure the safety associated with the distribution lines that pass over the Yotov property and traverse the neighborhood. If he as a homeowner and I as a certified arborist can look at the tree and see the potential for a defective decayed trunk directly above your line to drop onto the line that is under it, causing damage and potential failure, it is suggested that you reexamine the tree and reevaluate your decision. I carefully examined that tree with a 410 ft at 1000 yds. pair of Minolta binoculars and can attest that there is decay present and light visible thru the main upright trunk. When you can see light thru the trunk or limb portion of a tree it is time to have that portion removed. Your resolve does not include removal of that portion of the tree nor trimming for any specified clearance. It is my opinion that it is not the Yotov's responsibility. Additionally, I contend that the current unbalanced condition of the tree and presence of the decay in the tree are a direct result of past trimming done by the utility. No one else has been doing past work in that tree. Do not suddenly now disavow an responsibility for the current condition of the tree.

The Yotov's frequently use their rear patio during summer months. It has been my experience that the tree limbs above the distribution cable will fail once the decay exceeds the structural capability of the wood and gravity brings that large portion of the tree down on the line. You nor I can predict those results, but there is a greater potential for negative not positive results.

I believe Mr. Yotov will be filing a formal complaint with the PUC to have the tree trimmed to specifications and safely addressed.

I see you are on linked-in. Would you like to connect?

Walter Jarosh  
I.S.A Certified Arborist  
Consultant

Feel free to contact me on my cell phone 412 951 2120.

Have you ever thought of having the media on site and doing a story explaining to them why the property owner and not the utility is responsible to trim this tree on the utility right of way around the energized lines to correct a hazardous condition. It might be a good story for you to pursue.

**Ivan Yotov <ivanyotov11@gmail.com>**

Apr 13, 2015

to JArkett

Ms. Arkett,

You have been copied on most of the e-mails and I am forwarding the latest e-mail from Walter Jarosh to Jim Barry. I would like to hear from you regarding the Duquesne Light decision and I hope that you reconsider the original decision communicated by Mr. Barry. If I don't get a response from you by the end of the day on Wednesday, I will file a formal complaint with the PUC.

Ivan Yotov

**Arkett, Jennifer E. <JArkett@duqlight.com>**

Apr 17, 2015

to me, James

Mr. Yotov,

I am in receipt of the majority of the correspondence regarding your concerns over your tree. As well, I concur with the decision communicated to you upon several occasions with regard to your responsibilities for this tree as the property owner. However, should you decide to address your tree, please feel free to have your qualified line clearance contractor contact Jim Barry for the assistance offered in his previous correspondence which you have attached below.

Sincerely,

Jennifer Arkett

Manager, Vegetation Management

Duquesne Light Company

2825 New Beaver Avenue, N6-VM

Pittsburgh, PA 15233

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ivan Yotov

v.

Duquesne Light Company

:  
:  
:  
:  
:

C-2015-2479258

**INITIAL DECISION**

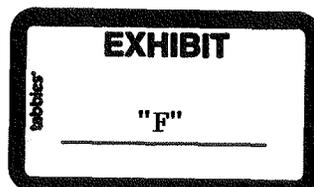
Before  
Joel H. Cheskis  
Administrative Law Judge

**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 Kowski 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

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

November 24, 2015

Filed by Ivan Yotov

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

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

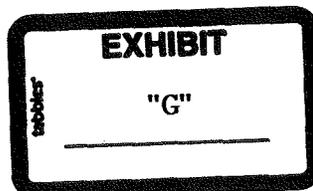
The judge further states:

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

The above statement appears to be based on:

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

and



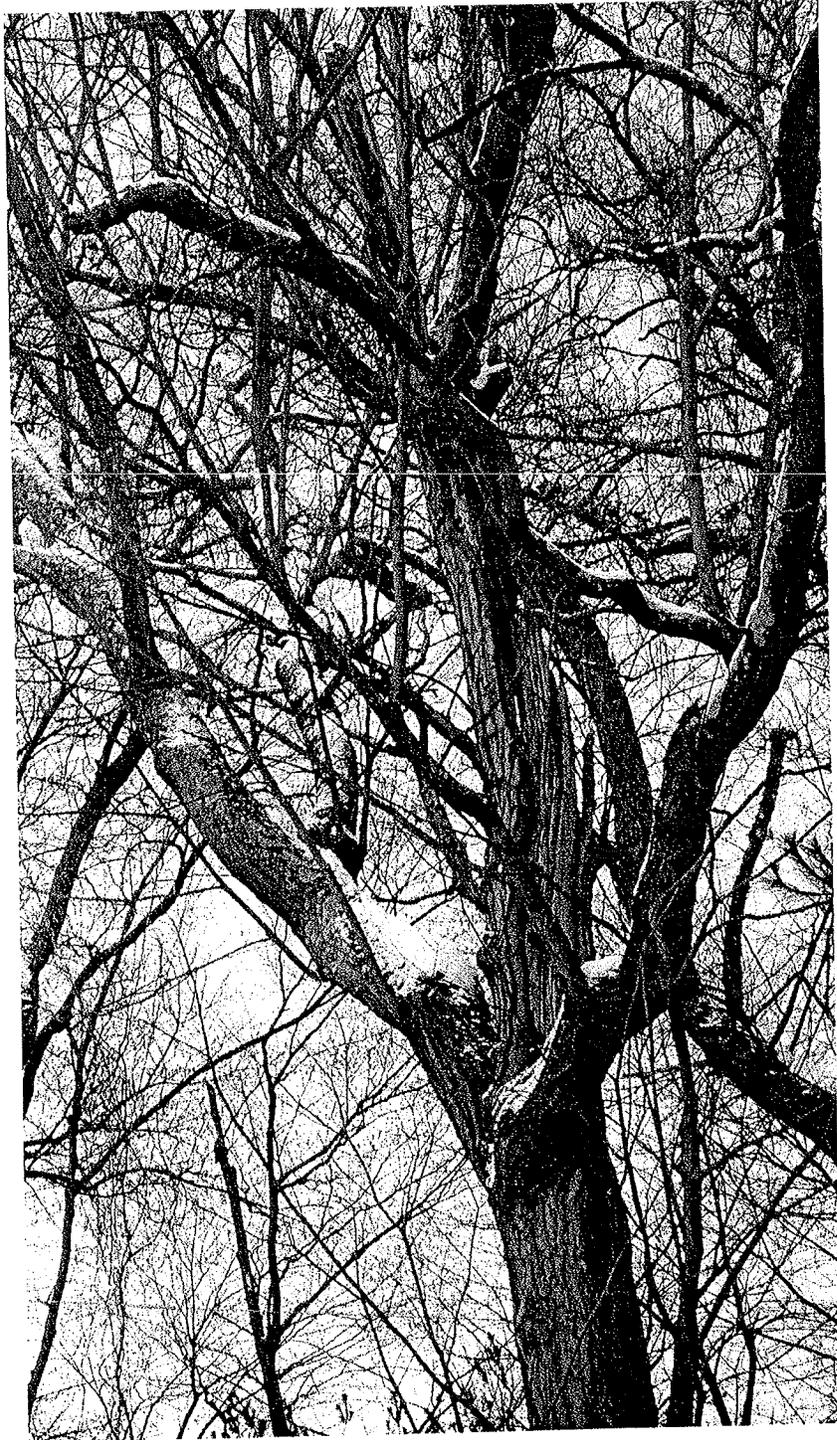
“Dr. Yotov agreed that the trunk of the tree is approximately 12-15 inches away from the line and that the branch hanging over the wires is not decaying.”

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

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

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

I have attached the above mentioned photo below:



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



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

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

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

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

and further down:

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

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

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

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

A handwritten signature in cursive script that reads "Ivan Yotov".

Ivan Yotov  
144 Woodshire Rd  
Pittsburgh, PA 15215



**PENNSYLVANIA**  
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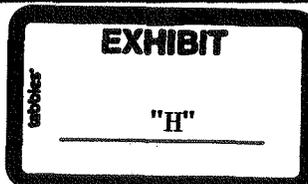
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December 1, 2015

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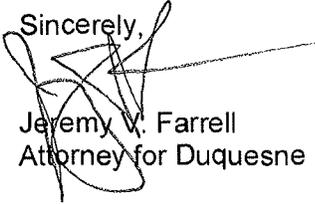
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Complainant,

vs.

DUQUESNE LIGHT COMPANY,

Respondent.

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Docket No. C-2015-2479258

**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.<sup>1</sup> 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.

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<sup>1</sup> 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 yard<sup>2</sup> because Complainant believes the tree poses a safety hazard. Initial Decision, p. 1; FOF No. 5; Tr., pp. 15, 21.<sup>3</sup> 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.<sup>4</sup> 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

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<sup>2</sup> 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.

<sup>3</sup> Copies of the referenced pages of the hearing transcript are attached as Exhibit C.

<sup>4</sup> 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.<sup>5</sup> 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.

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<sup>5</sup> 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.<sup>6</sup>

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.

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<sup>6</sup> 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.<sup>7</sup> 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

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<sup>7</sup> 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,

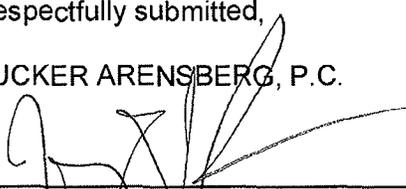
31, 33, 42. The supervisor of Duquesne Light's service center encompassing Complainant's residence personally inspected the Company's facilities around the tree and determined that they, too, are safe. FOF Nos. 29-31; Tr., pp. 45-46. Duquesne Light communicated at length with Complainant, Complainant's 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.



---

Jeremy V. Farrell, Esquire  
PA I.D. No. 316258

1500 One PPG Place  
Pittsburgh, PA 15222  
(412) 594-3938

Counsel for Respondent

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ivan Yotov

v.

Duquesne Light Company

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C-2015-2479258

**INITIAL DECISION**

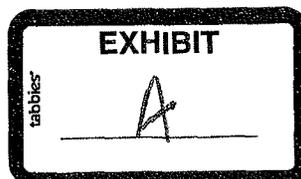
Before  
Joel H. Cheskis  
Administrative Law Judge

**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

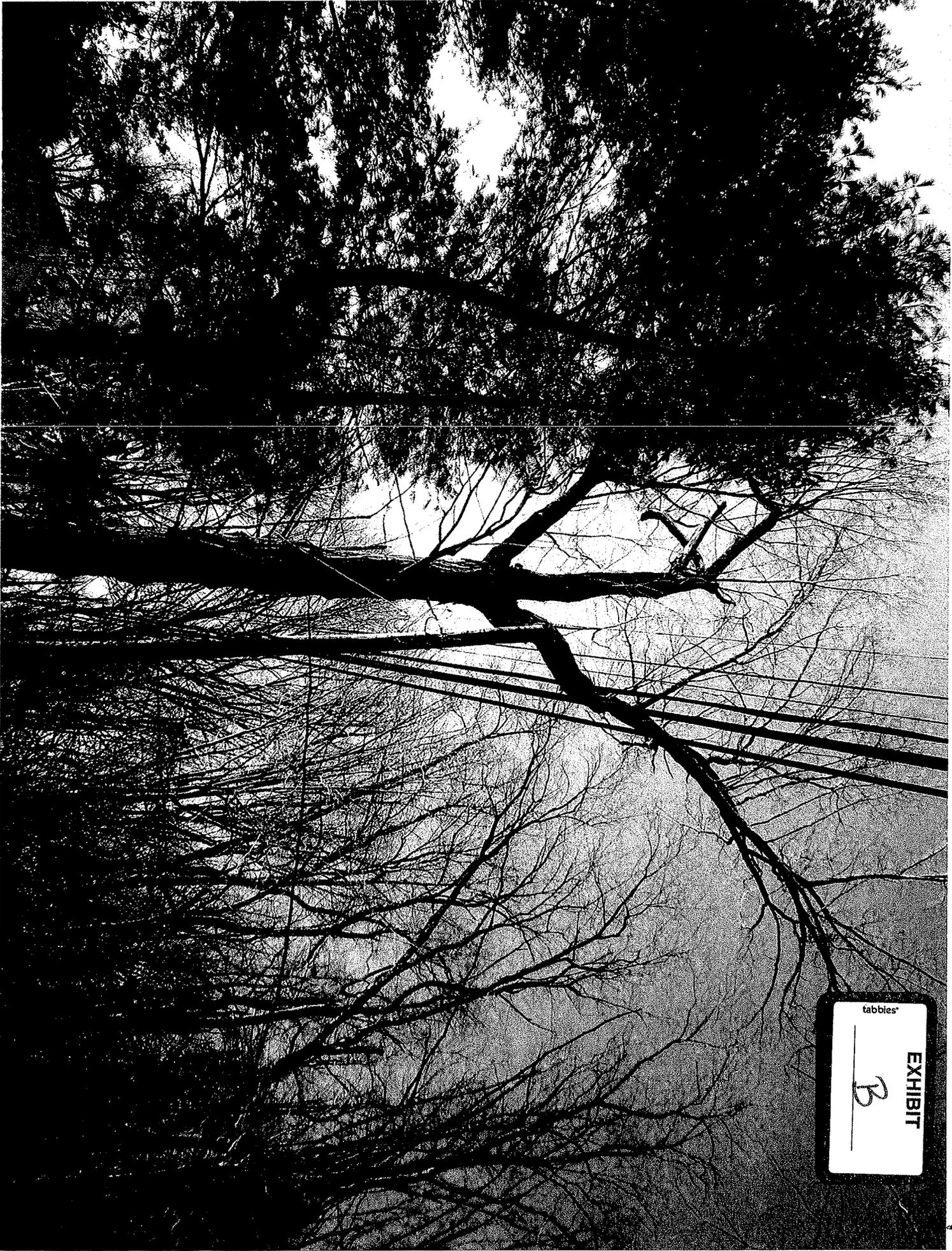
THEREFORE,

IT IS ORDERED:

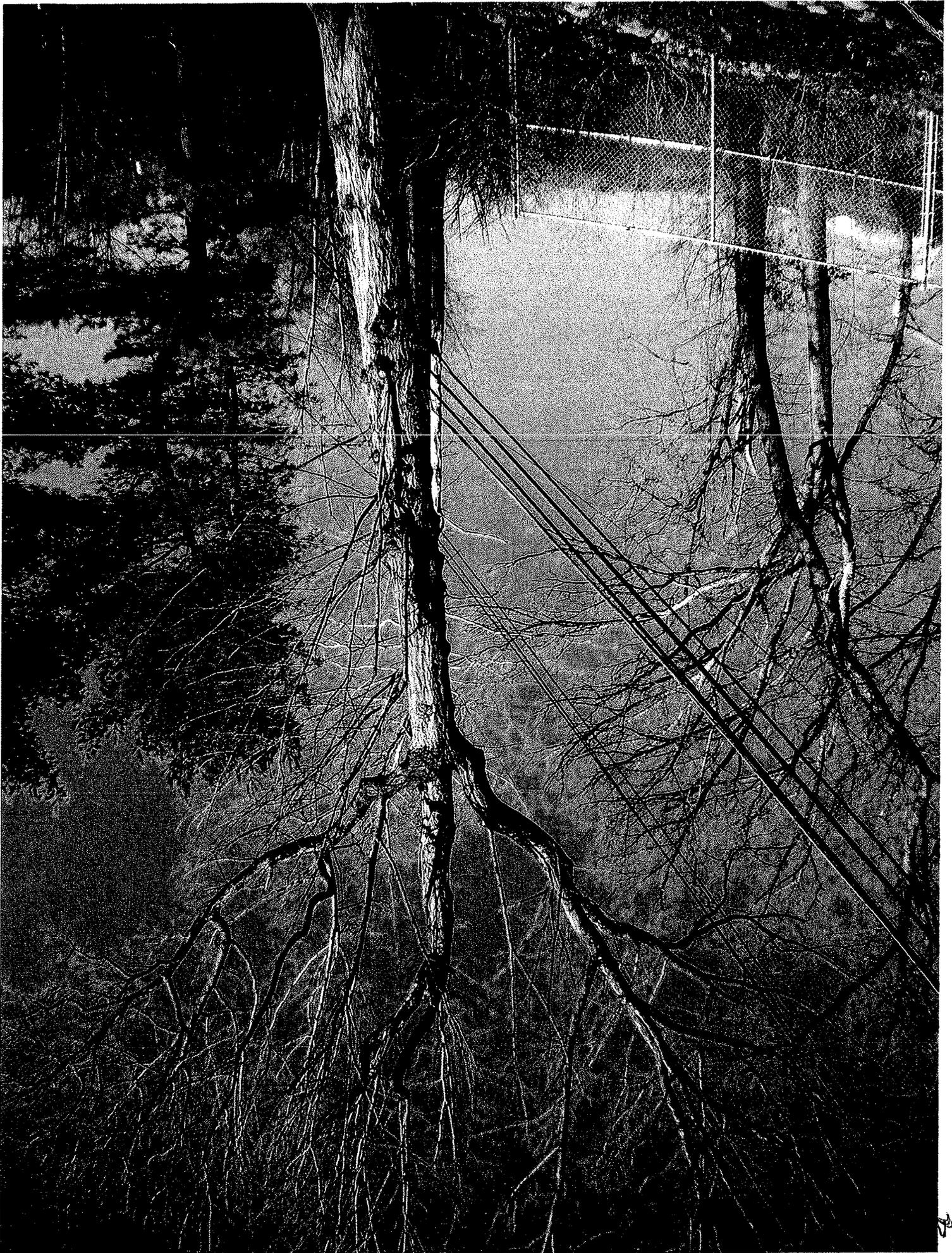
1. That the formal complaint file by Ivan Yotov against Duquesne Light Company on April 27, 2015 at Docket Number C-2015-2479258 is hereby denied.
2. That this matter be marked closed.

Date: October 28, 2015

\_\_\_\_\_/s/  
Joel H. Cheskis  
Administrative Law Judge



tabbles®  
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?

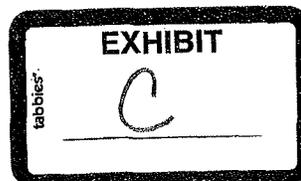
10 THE WITNESS: Large oak tree.

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



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.

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

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

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

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

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

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

FORM 2

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,



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

