

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PA 17120**

**Ivan Yotov**  
v.  
**Duquesne Light Company**

**Public Meeting held November 8, 2017  
2558226 – OSA  
Docket Number C-2016-2558226**

**MOTION OF COMMISSIONER DAVID W. SWEET**

This case comes to us on exceptions to the Initial Decision (ID) of Administrative Law Judge David A. Salapa (ALJ) which granted the Motion for Judgment on the Pleadings filed by Duquesne Light Company and dismissed the Complaint of Ivan Yotov based on a finding that the Complaint had already been adjudicated in a prior docket.<sup>1</sup> The ALJ conducted an analysis which showed that Mr. Yotov's prior complaint was filed to require that Duquesne Light remove a tree from his property because it was dangerous. In the prior complaint, Duquesne Light provided sufficient evidence to support its position that the tree was no danger to the line, that the tree was located on Mr. Yotov's property, and that removal of the tree was his responsibility. That complaint was dismissed and the time to open the record or appeal the Commission's action has long since passed.

Mr. Yotov filed the present complaint seeking to provide additional information to the Commission, specifically information that had been excluded from the prior docket as unsupported hearsay. The ALJ recognized that this is not a valid reason to allow another proceeding on the same subject and dismissed the second complaint.

As to the application of the doctrine of *res judicata* here, I agree with the ALJ that the issues and causes of action raised by the Complainant in the instant complaint and in the prior complaint case are identical. In each case, the Complainant alleges that the tree located on his property and near Duquesne Light's distribution lines is hazardous and should be removed by the company. The remaining two requirements for *res judicata* have also been satisfied; shared identity of: persons and parties to the action, and the quality or capacity of the parties suing or sued. The pleadings in this case show that there is no genuine issue as to a material fact with respect to the company's obligation to remove the tree on the Complainant's property.

Mr. Yotov subsequently filed two photos of the tree, with a paragraph which states, "I am writing to request that the record of the case be open so I can submit an additional evidence." He goes on to reiterate the complaint's allegation that the tree is a dangerous tree. This is not new evidence, it is a restatement of the complaint, which is itself properly barred by the doctrine of *res judicata* as well as Section 316 of the Public Utility Code. There is no evidentiary record to reopen in the second docket.

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<sup>1</sup> C-2015-2479258, Final Order entered May 19, 2016.

Because the second complaint is already barred from being heard at all, the letter seeking that the record be opened would need to open the record of the first complaint. Obviously, the time period for reopening the record in the first docket has long since passed, as has the opportunity for appellate review. In short, the actions requested by Mr. Yotov are time-barred and inappropriate for review now. Accordingly, the ID should be affirmed, the complaint dismissed, and the request to reopen the record denied.

THEREFORE,

I MOVE:

1. That the Initial Decision of Administrative Law Judge David A. Salapa be affirmed.
2. That the request to reopen the record is denied.
3. That the Office of Special Assistants prepare an appropriate order consistent with this Motion.
4. That a copy of the Final Order be served on the Commission's Bureau Investigation & Enforcement, Division of Electric Safety for review and any action that it deems to be appropriate.

**November 8, 2017**  
**Date**



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**David A. Sweet**  
**Commissioner**