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File #: 161587

May 18, 2015

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Whemco-Steel Castings, Inc. v. Duquesne Light Company
Docket No. C-2014-2459527

Dear Secretary Chiavetta:

Enclosed please find the Motion to Compel Answers to Interrogatories and Requests for Production of Documents Propounded by Duquesne Light Company on Whemco-Steel Castings, Inc., Set II. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Anthony D. Kanagy

ADK/skr
Enclosure

cc: Certificate of Service
Honorable Jeffrey Watson

CERTIFICATE OF SERVICE

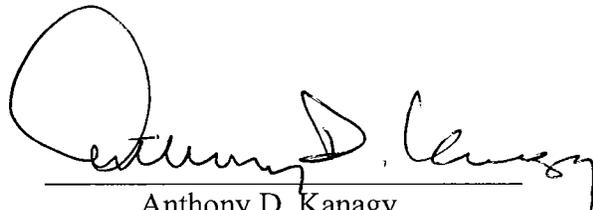
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL:

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Date: May 18, 2015



Anthony D. Kanagy

3. On February 10, 2015, Whemco filed an Answer to Duquesne Light's New Matter.

4. On April 29, 2015, Duquesne Light served its Interrogatories and Requests for Production of Documents, Set II ("Set II Discovery") on Whemco.

5. A prehearing conference was held before Administrative Law Judge Jeffrey A. Watson on May 7, 2015.

6. On May 8, 2015, Whemco filed its objections to Questions 2, 3, 5 and 9 of the Set II Discovery. A copy of Whemco's Objections is attached as Appendix A hereto.

7. Duquesne Light has held discussions with Whemco regarding the Objections. As a result of these discussions, Duquesne Light has agreed to withdraw Questions 5 and 9. However, the parties have not been able to reach a compromise regarding Questions 2 and 3. Therefore, Duquesne Light is filing the Motion to Compel answers to Questions 2 and 3.

II. WHEMCO'S OBJECTIONS TO QUESTIONS 2 AND 3 LACK MERIT AND SHOULD BE DENIED.

A. DUQUESNE LIGHT'S SET II, QUESTION 2 SEEKS INFORMATION THAT IS RELEVANT TO THIS PROCEEDING AND WHEMCO SHOULD BE REQUIRED TO ANSWER THIS QUESTION.

8. Duquesne Light – Set II Question No. 2 provides as follows:

If Whemco had participated in Duquesne Light's default service proceeding at Docket No. P-00072247 and opposed elimination of Rider No. 5, explain every substantive reason that Whemco would have alleged supporting its position.

9. Whemco objects to this question as speculative and further argues that the question is not relevant to the subject matter of this proceeding, including any claims or defense. Whemco further argues that this question is not likely to lead to the discovery of admissible evidence.

10. Contrary to Whemco's claims, interrogatories number two and three are relevant to this proceeding. The questions seek to ascertain Whemco's position regarding the actual merits of the elimination of Rider No. 5 Time of Day rate for distribution service. In its Complaint, Whemco argues that Duquesne Light improperly eliminated Rider No. 5 by allegedly failing to provide adequate notice and by eliminating the Rider in a default service proceeding. These are all procedural arguments. However, the questions are relevant because this proceeding also requires review of the merits of eliminating Rider No. 5.

11. Under Section 1312 of the Public Utility Code, the Commission has discretion to award refunds or not to award refunds. *Pa. P.U.C. v. Pennsylvania Gas and Water Co.*, 1982 Pa. PUC LEXIS 48, 56 Pa. PUC 433, 49 P.U.R.4th 356, Order entered October 29, 1982. Even if Whemco's arguments that Duquesne Light failed to provide adequate notice or that Rider No. 5 should not have been eliminated in a default service proceeding are accepted, which Duquesne Light disagrees with,¹ the ALJ and the Commission still must consider the merits of eliminating Rider No. 5 in determining whether to award a refund or not award a refund. Whether Whemco received appropriate notice is not outcome determinative with regard to whether it is entitled to refunds. Further, Whemco's potential disagreement with Duquesne Light's legal theory is not an appropriate ground to refuse to respond to a discovery request. This question is relevant and likely to lead to the discovery of admissible evidence.²

12. Likewise, this question is not improperly speculative. One of Whemco's primary arguments in this case is that it did not participate in the DSP IV proceeding at Docket No. P-

¹ To reiterate, Duquesne Light asserts that Whemco had sufficient legal notice of the proposed elimination of Rider No. 5 Time of Day Discounts. In July 2007, Duquesne Light filed the proposed tariff changes with the Commission and posted the proposed supplement to its publicly available website.

² In the event that the ALJ disagrees with this conclusion, a complete record should still be created to allow the Commission to make a decision regarding the merits of eliminating Rider No. 5, if the Commission determines that it is appropriate to review the merits.

00072247 because it did not have notice that Rider No. 5 was being eliminated for Rate L Customers. As explained above, it is relevant to know what Whemco's position would have been if it had participated. Whemco should not be able to simply rely on procedural arguments in this case to attempt to get a refund for a Rider that should have been eliminated for substantive reasons. This is especially relevant when Whemco waited approximately eight years after the DSP IV proceeding was filed and four years after the Complainant knew that the Rider was eliminated to file its Complaint.

13. However, in order to address Whemco's concerns regarding speculation, Duquesne Light is willing to reword the question to state as follows: "Explain all of Whemco's substantive objections to the elimination of Rider No. 5." If Whemco will agree to answer this question, Duquesne Light will agree to withdraw questions 2 and 3.

B. DUQUESNE LIGHT'S SET II, QUESTION 3 SEEKS INFORMATION THAT IS RELEVANT TO THIS PROCEEDING AND WHEMCO SHOULD BE REQUIRED TO ANSWER THE QUESTION.

14. Duquesne Light Set II, Question 3, provides as follows:

Fully explain all reasons why Whemco believes electric customers should receive distribution rate discounts for using or not using electricity at different times of the day.

15. Whemco objects to this question as seeking broad and generic information about rate discounts relating to using electricity at different times of the day and claims that this is not an issue in this proceeding. Whemco further argues that this question seeks information that is not relevant to this proceeding.

16. Duquesne Light disagrees with Whemco's assertions that this question is irrelevant. Whemco is arguing that Duquesne Light unlawfully terminated Rider No. 5, which provided, among other things, a distribution rate discount to customers for using electricity at different times of the day. In Paragraphs 23 and 24 of its Complaint, Whemco states as follows:

23. Rider No. 5 was intended to provide, among other things, discounts to customers served on the identified Rate Schedules for distribution service. The Rider specifically applied as follows: “Applicable to Rates GS/GM, GL and L and to Rates GMH and GLH during the months of June, July, August and September only.”

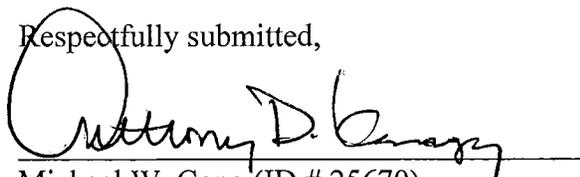
24. Rider No. 5 used on-peak demand measurements between the hours of 9:00 AM and 9:00 PM for the purpose of computing a customer’s billing demands for rate application rather than larger demands that may have occurred during non on-peak hours.

17. Whemco argues in its Complaint that Duquesne Light unlawfully terminated Rider No. 5 which provided time of day discounts for distribution service. It is clearly relevant for Whemco to explain why it believes that it is appropriate or not appropriate for customers to receive distribution rate discounts for using electricity at different times of the day. (See also the response to Question 2 above.) The ALJ and the Commission should consider the substantive merits for eliminating Rider No. 5 in reaching any decision in this proceeding. As explained above, the Commission has discretion to decide whether to grant a refund or not grant a refund under Section 1312 of the Public Utility Code, 66 Pa. C.S. § 1312, and should not base its decision solely on procedural issues, especially when Rider No. 5 was eliminated so long ago.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Duquesne Light Company respectfully requests that Administrative Law Judge Jeffrey A. Watson grant this Motion to Compel and order Whemco Steel Castings, Inc. to fully answer Questions 2 and 3 of the Set II Discovery or in the alternative answer the substitute question presented in Paragraph 13 of this Motion.

Respectfully submitted,



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Date: May 18, 2015

Attorneys for Duquesne Light Company

Appendix A

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May 8, 2015

VIA EMAIL AND FIRST-CLASS MAIL

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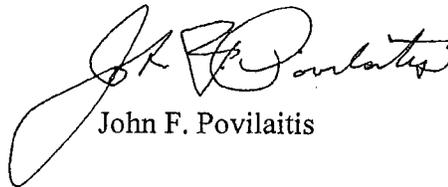
Re: Whemco-Steel Castings, Inc. v. Duquesne Light Company
Docket No. C-2014-2459527

Dear Counsel:

Enclosed please find the Objections of Whemco-Steel Castings, Inc. to Duquesne Light Company Interrogatories – Set II in the above-captioned proceeding.

Copies have been served on those parties indicated in the attached Certificate of Service.

Sincerely,



John F. Povilaitis

AMS/bb
Enclosure
cc: Rosemary Chiavetta, Secretary (*letter and Certificate of Service only via efilng*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WHEMCO-STEEL CASTINGS, INC.	:	
	:	
v.	:	DOCKET NO. C-2014-2459527
	:	
DUQUESNE LIGHT COMPANY	:	

**OBJECTIONS OF
WHEMCO-STEEL CASTINGS, INC. TO
DUQUESNE LIGHT COMPANY INTERROGATORIES – SET II**

WHEMCO-Steel Castings, Inc. (“Whemco”) hereby submits its Objections to the following written interrogatories Set II, propounded April 29, 2015, by Duquesne Light Company (“Duquesne”), pursuant to Section 5.342(c) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.342(c).

The specific interrogatories subject to these Objections and the related grounds therefor are set forth below:

No. 2 - *If Whemco had participated in Duquesne Light’s default service proceeding at Docket No. P-00072247 and opposed elimination of Rider No. 5, explain every substantive reason that Whemco would have alleged supporting its position.*

Objection: Whemco objects to the foregoing written interrogatory on the ground that it is based on a speculative premise, compounded by a request for speculative information. As the question clearly and correctly indicates, Whemco did not participate in the referenced 2007 default service proceeding so the question is based on a speculative premise. In addition and because it did not participate in such proceeding, Whemco has no way to provide a substantive answer to such a hypothetical and speculative interrogatory. The interrogatory is also seeking information that is not relevant to the subject matter of this proceeding, including any claim or defense in this proceeding, since this case is not about what action Whemco would have potential

taken *if* it had participated in the referenced default service proceeding and is not likely to lead to the discovery of admissible evidence. *See*, 52 Pa. Code § 5.321(c).

No. 3 – *Fully explain all reasons why Whemco believes electric customers should receive distribution rate discounts for using or not using electricity at different times of the day.*

Objection: Whemco objects to the foregoing written interrogatory on the ground that seeks broad and generic information about Whemco’s views of rate discounts relating to using electricity at different times of the day which is *not* an issue, claim or defense in this proceeding. Whemco has not proposed or supported Duquesne’s distribution rate utilizing a discount for use of electricity at different times of the day. Accordingly, this interrogatory is seeking information that is not relevant to the subject matter of this proceeding, including any claim or defense in this proceeding since this case is not about Whemco’s generic substantive views of these time-of-use rates. Whemco asserted in its Formal Complaint in this proceeding that Duquesne, among other things, failed to lawfully and properly terminate an existing Rider No. 5 discount applicable to Rate L customers like Whemco in Duquesne’s 2007 default service proceeding. *See*, 52 Pa. Code § 5.321(c).

No. 5 - *Provide copies of all contracts between Whemco and EGSs for default supply from January 1, 2011 through May 1, 2014.*

Objection: Whemco objects to the foregoing written interrogatory on the ground that seeks contracts for Whemco and electric generation suppliers (“EGS’s”) for the referenced period. First, the interrogatory is overly broad to the extent it seeks to obtain contracts that Whemco may have entered into with EGS’s that are unrelated to the Midland Facility at issue in the proceeding. Second, this interrogatory is seeking information (i.e., EGS contracts) that is/are not relevant to the subject matter of this proceeding, including any claim or defense in this proceeding since this case is not about Whemco’s contracts with EGS’s for generation service

during the period in which Duquesne was over-billing Whemco for electric distribution charges after the improper elimination of the Rider No. 5 discount applicable to Rate Schedule L customers like Whemco on and after January 1, 2011. Whemco asserted in its Formal Complaint in this proceeding that Duquesne, among other things, failed to lawfully and properly terminate the Rider No. 5 distribution charge discount applicable to Rate L customers like Whemco in Duquesne's 2007 default service proceeding and thereafter failed to execute a contract under Rule 4 of Duquesne's tariff that the parties were negotiating in an effort to, among other things, ameliorate the substantial and adverse rate impacts on Whemco by the elimination of the Rider No. 5 distribution charge discount effective January 1, 2011. *See*, 52 Pa. Code § 5.321(c). Furthermore, since Whemco's service for EGS service is billed through Duquesne, it is already aware of the EGS charges Whemco has paid.

No. 9 - *From January 1, 2006 to present, did Whemco ever consider taking default service from Duquesne Light? If yes,*

- a. Provide a summary of all documents, emails and notes of this subject.*
- b. Provide all studies and/or analyses related to this subject.*
- c. Provide all correspondence related to this subject.*
- d. Identify the person or persons responsible for choosing whether Whemco would take default service or EGS supply service from January 1, 2006 to present. If there is more than one person, list all persons and the time period for which they held this responsibility.*

Objection:

Whemco objects to the foregoing written interrogatory on the ground that seeks information that is speculative (i.e., whether Whemco "considered" something) and irrelevant to the issues in this proceeding. The issue of whether Whemco ever considered or actually took default service from Duquesne is not in this proceeding. Accordingly, this interrogatory is seeking information and documents that are not relevant to the subject matter of this proceeding,

including any claim or defense in this proceeding since this case is *not* about Whemco taking default service, a *generation* service, during the period in which Duquesne was over-billing Whemco for electric distribution charges after the improper elimination of the Rider No. 5 *distribution charge* discount applicable to Rate Schedule L customers like Whemco on and after January 1, 2011. Whemco asserted in its Formal Complaint in this proceeding that Duquesne, among other things, failed to lawfully and properly terminate the Rider No. 5 distribution charge discount applicable to Rate L customers like Whemco in Duquesne's 2007 default service proceeding and thereafter failed to execute a contract under Rule 4 of Duquesne's tariff that the parties were negotiating in an effort to, among other things, ameliorate the substantial and adverse rate impacts on Whemco by the elimination of the Rider No. 5 distribution charge discount effective January 1, 2011. *See*, 52 Pa. Code § 5.321(c).

May 8, 2015

Respectfully submitted,



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WHEMCO-STEEL CASTINGS, INC.	:	
	:	
v.	:	DOCKET NO. C-2014-2459527
	:	
DUQUESNE LIGHT COMPANY	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of Objections of Whemco-Steel Castings, Inc. to Duquesne Light Company Interrogatories – Set II, upon the parties and in the manner listed below:

Via Email and First-Class Mail

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Dated this 8th day of May, 2015.



John F. Povilaitis, Esq.