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June 8, 2015

VIA EFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

On behalf of Whemco-Steel Castings, Inc., I have enclosed for electronic filing the Application of Whemco-Steel Castings, Inc. for Authorization to (I) Take the Deposition of Kim Titley, a Non-Party, and (II) the Issuance of a Subpoena in Connection Therewith, in the above-captioned proceeding.

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

Sincerely,



Alan M. Seltzer

AMS/tlg
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**APPLICATION OF WHEMCO –STEEL CASTINGS, INC. FOR AUTHORIZATION TO
(I) TAKE THE DEPOSITION OF KIM TITLEY, A NON-PARTY, AND (II) THE
ISSUANCE OF A SUBPOENA IN CONNECTION THEREWITH**

WHEMCO-STEEL Castings, Inc. (“Whemco”) hereby files the following Application For Authorization to (i) Take the Deposition of Kim Titley, a Non-Party, and (ii) the Issuance of a Subpoena in Connection Therewith (“Application”), pursuant to this Commission’s regulations at 52 Pa. Code §§ 5.343, 5.344 and 5.421(a)(2) as follows:

I. INTRODUCTION

1. On December 23, 2014 Whemco filed with the Commission a formal complaint against Duquesne (“Formal Complaint”) alleging, among other things, that Duquesne Light Company (“Duquesne”) (Whemco and Duquesne are collectively referred to as the “Parties”) wrongfully terminated as of December 31, 2010 for Rate L customers a certain distribution-rate related discount contained in Rider No. 5 of Duquesne’s then-prevailing and Commission approved retail electric service tariff as a result of the improper implementation of a settlement of a default service proceeding that covered the period January 1, 2008 through December 31, 2010 at Docket No. P-00072247 (“Default Service Proceeding”).

2. As a result of Duquesne’s improper and unlawful implementation of the settlement in the Default Service Proceeding and termination of the distribution-related rate discount contained in Rider No. 5 applicable to Rate L customers like Whemco, Whemco’s

electric distribution service bills from Duquesne more than doubled as of January 2011. This caused Whemco's demand, for billing purposes, to increase from a monthly average of 7,287 kilowatts ("kW") in 2010 to a monthly average of 18,256 kW in 2011.

3. The Formal Complaint seeks, among other things, a refund from Duquesne under Section 1312 of the Public Utility Code ("Code") in the amount of \$2,480,374.16, plus interest on all unpaid amounts.

4. On January 21, 2015, Duquesne filed an Answer and New Matter denying the material allegations in the Formal Complaint.

5. On February 10, 2015, Whemco filed a Reply to Duquesne's New Matter, denying the material allegations therein.

6. Prior to the appointment of an Administrative Law Judge ("ALJ") and the issuance of a Hearing Notice, the parties had commenced active discovery in this proceeding. On February 11, 2015, Whemco propounded its first set of interrogatories ("Interrogatories") upon Duquesne.

7. Duquesne provided answers to the Interrogatories in two separate filings – i.e., March 3, 2015 and March 10, 2015.

8. On March 9, 2015, Whemco propounded on Duquesne Requests for Admission in accordance with the provisions of 52 Pa. Code § 5. 350(a).

9. On March 27, 2014, the Commission issued a formal notice of an evidentiary hearing in this matter for May 7, 2015, along with the appointment of ALJ Jeffrey A. Watson as the presiding officer.

10. Duquesne filed responses to Whemco's Requests for Admission on March 30, 2015.

11. Based on its view that Duquesne's responses to Whemco's Requests for Admission were faulty and not in compliance with the Commission's regulations, on April 17, 2015 Whemco filed with the Commission a Motion to Determine the Sufficiency of Duquesne's Responses to Requests for Admission Set I.

12. The presiding ALJ issued an order dated April 21, 2015 which, among other things, converted the May 7, 2015 evidentiary hearing into a prehearing conference and directed the parties to file a pre-hearing conference memorandum prior to 3:00 PM on May 4, 2015.

13. On April 23, 2015, the presiding ALJ issued an Interim Order directing, among other things, that (i) the Parties attempt to resolve the matters raised in Whemco's Motion to Determine the Sufficiency of Duquesne's Responses to Requests for Admission and, failing such resolution, (ii) oral argument on said motion be conducted at the May 7, 2015 prehearing conference.

14. On May 7, 2015, the initial prehearing conference was conducted and, among other things, it was agreed that discovery would continue in the proceeding and any case dispositive motions would be filed on or before July 1, 2015. In addition, the parties argued issues relating to Whemco's Motion to Determine the Sufficiency of Duquesne's Responses to Requests for Admission. Following the initial prehearing conference, the Parties resolved their disagreements over several of the Requests for Admission. The ALJ was notified that a ruling would be necessary on the remaining disputed admission requests.

15. On June 2, 2015, Whemco served its second set of interrogatories on Duquesne. In an Interim Order dated June 1, 2015, the ALJ granted in part and denied in part Whemco's Motion to Determine Sufficiency of Duquesne's responses to its Requests for Admission Set I.

16. In a Prehearing Order dated June 2, 2015, the ALJ established, among other things, a tentative litigation schedule for the filing of preliminary case-dispositive motions, discovery protocols, etc.

II. GROUNDS FOR APPROVAL OF THE NOTICE AND THE SUBPOENA

17. Section 5.421(a)(2) of the Commission's regulations permits a party to submit a written application for a subpoena to the presiding officer. 52 Pa. Code § 5.421(a)(2). The application for a subpoena must specify as nearly as possible the general relevance, materiality and scope of the testimony or documentary evidence sought, including specification of the documents desired. 52 Pa. Code § 5.421(b)(2). The Commission regulations at 52 Pa. Code § 5.344(a) and Section 333(b)(2) the Public Utility Code, 66 Pa. C. S. § 333(b)(2) also require a party to file an application to take a deposition upon oral examination. Pursuant to Section 5.343(a) of the Commission's regulations, a person who is not a party is not required to appear unless subpoenaed. 52 Pa. Code §5.343(a). Mr. Kim Titley, the person Whemco seeks to depose, is not a party to this proceeding. This Application complies with the Commission's legal requirements governing depositions.

18. As a result of discovery conducted to date, Whemco believes it is necessary to take the deposition of Mr. Titley, a retired Duquesne employee, who acted as the Duquesne account representative for Whemco at all times pertinent to the matters described in the Formal Complaint.

19. Kim Titley has not been identified as a witness for Duquesne if this case proceeds to hearing and is not represented by counsel. However, Whemco believes determining the nature and extent of Mr. Titley's knowledge of the issues relating to the elimination of the Rider No. 5 discount for Rate L customers like Whemco, the Rule 4 contract negotiations between Duquesne

and Whemco and other related matters may be relevant to the issues raised in the Formal Complaint.

20. The deposition of Kim Titley will inquire into matters relating to his interactions, statements and communications (written and oral) with Whemco from approximately 2010 through December 2013 regarding (i) the Formal Complaint filed in the above referenced matter by Whemco; (ii) the rate and other impacts on Whemco resulting from the elimination of the discount contained in Rider No. 5 of Duquesne' retail electric tariff applicable to Rate Schedule L and Whemco; (iii) Whemco's efforts to obtain rate relief from Duquesne following the elimination of the discount in Rider No. 5 applicable to Whemco; (iv) negotiations, discussions and documents exchanged between Whemco and Duquesne regarding the execution of a Rule 4 contract under and in accordance with Duquesne's then-prevailing retail electric tariff; and (v) such other matters reasonably related to the inquiries specified in subparagraphs (i)-(iv) above. All of these issues are directly relevant and pertinent to the Formal Complaint and relief requested therein.

21. A proposed form of Notice of Deposition to Kim Titley is attached hereto as Exhibit A and made a part hereof.

22. A proposed form of subpoena to Kim Titley is attached hereto as Exhibit B and made a part hereof. The proposed form of subpoena is the one customarily used in Commission proceedings and was obtained directly from the Commission's website. The subpoena is necessary to compel both the appearance of Kim Titley and the production of requested documents at the deposition. Since Kim Titley is not a "party" to this proceeding, the Notice of Deposition is not sufficient to compel the production of documents. *See*, 52 Pa. Code § 5.343(d).

23. Whemco specifically requests that the ALJ approve the Notice of Deposition and Subpoena, attached hereto as Exhibits A and B, respectively.

24. Whemco specifically requests authorization to conduct the deposition of Kim Titley on Wednesday, June 24, 2015 at 10:00 AM at the offices of Whemco's outside counsel in Pittsburgh, Pennsylvania. The date, time and location of the deposition have already been communicated to Duquesne's counsel in this proceeding *and* to the proposed deponent, Kim Titley, and neither objects to the deposition being scheduled on June 24, 2015 as noted above.

25. In order to accommodate the deposition on June 24, 2014, Whemco specifically requests, in accordance with 52 Pa. Code § 1.2(c) of the Commission's regulations (regarding liberal construction of Commission regulations) that the ALJ expressly waive the otherwise applicable twenty (20) day notice of deposition provided in 52 Pa. Code § 5.343(a) upon Duquesne and the presiding officer since the deposition of Kim Titley has been agreed to by both Duquesne and Kim Titley and such waiver will not adversely affect a substantive right of any party to this proceeding.

WHEREFORE, Whemco requests that the presiding Administrative Law Judge grant this Application, order the taking of the deposition of Kim Titley at the time, date and location specified in the attached Notice of Deposition, approve the form of Notice of Deposition and subpoena attached to this Application, authorize the issuance of a subpoena in connection therewith, and grant Whemco such other relief as is just and reasonable under the circumstances.

Respectfully submitted,



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John F. Povilaitis (I.D. #28944)
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Attorneys for WHEMCO-Steel Castings, Inc.

Exhibit A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE OF DEPOSITION OF KIM TITLEY

To: Kim Titley
252 East Solomon Court
Zelienople, PA 16063

Please take notice that the deposition upon oral examination will be taken of Kim Titley by WHEMCO-Steel Castings, Inc. (“Whemco”) by counsel, under and in accordance with the regulations of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code §§ 5.343, 5.347 and 5.348, at the offices of Buchanan Ingersoll & Rooney PC, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, PA 15219-1410 on June 24, 2015 at 10:00 a.m. before a person authorized to administer oaths and as otherwise required in accordance with the provisions of 52 Pa. Code § 5.346.

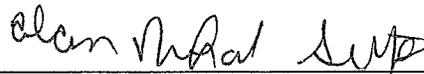
The deposition will inquire into matters relating to Kim Titley’s interactions, statements and communications (written and oral) with Whemco from approximately 2010 through December 2013 regarding (i) the Formal Complaint filed in the above referenced matter by Whemco (attached to this Notice as Appendix 1); (ii) the rate and other impacts on Whemco resulting from the elimination of the discount contained in Rider No. 5 of Duquesne Light Company’s (“Duquesne”) retail electric tariff applicable to Rate Schedule L and Whemco; (iii) Whemco’s efforts to obtain rate relief from Duquesne following the elimination of the discount in Rider No. 5 applicable to Whemco; (iv) negotiations, discussions and Documents (as defined in Appendix 2 hereof) exchanged between Whemco and Duquesne regarding the execution of a

Rule 4 contract under and in accordance with Duquesne's then-prevailing retail electric tariff; and (v) such other matters reasonably related to the inquiries specified in subparagraphs (i)-(iv) above.

By separate subpoena, Kim Titley is being asked to provide and bring to the aforesaid deposition all Documents currently in his possession relating to the items identified in subparagraphs (i)-(iv) above.

The aforesaid deposition shall be taken for the purposes of discovery relating to the Formal Complaint pursuant to the Commission regulations at 52 Pa. Code 52 Pa. Code §§ 5.343, 5.3465, 347 and 5.348 and shall continue until appropriately terminated.

Respectfully submitted,



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Attorneys for WHEMCO-Steel Castings, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

COMPLAINT

WHEMCO-Steel Castings, Inc. (“Whemco”), by and through its attorneys, Alan Michael Seltzer, John F. Povilaitis and Buchanan Ingersoll & Rooney, PC, files this complaint against Duquesne Light Company (“Duquesne”) in accordance with Section 701 of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C. S. § 701 and in connection therewith represents as follows:

I. Introduction and Summary of Relief Requested

1. This Complaint arises from certain Duquesne conduct and omissions, including violations of a prior order of the Pennsylvania Public Utility Commission (“Commission”), the effect of which is to have caused Whemco to pay for electric distribution service in amounts substantially in excess of what Whemco should have paid to Duquesne for electric distribution service provided from January 2011 through April 2014 at Whemco’s steel production facility located in Midland, Pennsylvania.

2. In order to remedy Duquesne’s conduct and omissions, this Complaint seeks an order from the Commission directing Duquesne to immediately refund to Whemco the sum of

\$2,480,374.16 for overcharges for electric distribution service through April 2014, with interest, in accordance with Code Section 1312, 66 Pa. C. S. § 1312.¹

3. Duquesne's overcharges to Whemco for electric distribution service ceased as of May 1, 2014 when Duquesne's Supplement No. 91 to Electric –PA. P.U.C. No. 24 ("Current Tariff") went into effect for Whemco, a customer served under Rate Schedule L-Large Power Service ("Rate L").

II. The Parties

4. The Complainant, Whemco, is a Delaware corporation with plants in Midland, Pennsylvania ("Midland Facility"), and West Homestead, Pennsylvania. Whemco produces cast steel backup rolls for various rolling mill applications. Major casting products include slag pots for ferrous and non-ferrous applications and coiler drums for steckel mills (a type of rolling mill) applications. Whemco also supplies mill housings, large chocks, die blocks, and a variety of components for the mining, material handling, and power generation industries.

5. Duquesne is a private Pennsylvania public utility and electric distribution company based in Pittsburgh, Pennsylvania that provides electric distribution services to customers in its Pennsylvania-based service territory. Duquesne presently provides, and at all relevant times has provided, electric distribution services to the Midland Facility under Rate L.

III. The Midland Facility

6. As of September 15, 2014, Whemco had 160 employees in Pennsylvania, 93 at the Midland Facility and another 67 in the West Homestead plant. Whemco is part of the

¹ Code Section 1312 provides in pertinent part as follows: "[i]f, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by the patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of such excessive payment."

WHEMCO group of companies which, as of September 15, 2014, collectively employed 534 people in Pennsylvania.

7. The Midland Facility consumes approximately 1.5 million kilowatt-hours (“kWh”) of electricity monthly based on average market conditions, and operates generally during Duquesne’s off-peak hours of 9:00 PM to 9:00 AM.

8. The Midland Facility receives electric distribution services from and is located within Duquesne’s service territory.

9. The Midland Facility’s electric service voltage from Duquesne is 138 kilovolts (“kV”).

10. Whemco owns all of the electric power distribution facilities at the Midland Facility from the low side of a dedicated 138 kV substation owned by Duquesne.

11. Under the internal electric distribution system at the Midland Facility, Whemco distributes electricity throughout the Midland Facility via the 138 kV connection, absorbs all electrical line and transformation losses, maintains its distribution facilities, repairs and replaces any worn out equipment, and upgrades any equipment as needed.

IV. Duquesne Rate L

12. Prior to the Current Tariff, the Midland Facility took electric distribution service from Duquesne under Rate L pursuant to various Duquesne retail tariffs and/or supplements on file with and approved by the Commission (individually and collectively, “Prior Tariff”). Under the Prior Tariff, Rate L was available to all standard electric service taken by customers whose “contract demand”² was not less than 5,000 kilowatts (“kW”). The Midland Facility’s service characteristics made it eligible to be served by Rate L pursuant to the Prior Tariff.

² Contract demand is the maximum electrical capacity in kW that Duquesne is required by contract to deliver to any

13. Under the Prior Tariff, Duquesne's Rate L had a three tiered design for the demand charges as follows:

- First 5,000 kW of less of Demand: \$34,900/month
- Next 10,000 kW of Demand: \$6.91/kW
- Additional kW of Demand \$6.73/kW

V. Relevant Facts

14. On January 25, 2007, Duquesne filed a petition at Docket No. P- 00072247 for Commission approval of a plan to supply default generation service to non-shopping customers for the period from January 1, 2008 through December 31, 2010 ("Default Service Plan"). The Default Service Plan contained Duquesne's comprehensive plan under which it proposed to provide default *generation* service to its non-shopping customers for the period 2008 through 2010.

15. Although Duquesne may have provided notice to customers of the filing of the Default Service Plan through a press release, newspaper publication and a bill insert, to Whemco's knowledge, those forms of notice did not indicate or otherwise advise existing customers like Whemco that the proceeding could in any way affect the rates or other terms and conditions of *distribution* service to them under Duquesne's then existing Prior Tariff.

16. Whemco did not participate in any fashion in the Default Service Plan proceeding before the Commission.

17. On April 26, 2007, Duquesne and other parties to the Default Service Plan proceeding filed with the Commission for its approval a general stipulation purporting to resolve

particular customer.

all the issues in that proceeding (“General Stipulation”). The General Stipulation is attached hereto as Appendix A and incorporated by reference herein.

18. In addition to containing various other general and miscellaneous provisions, the General Stipulation is organized into three distinct sections corresponding to the three major classes of customers: residential (Rate Schedules RS, RA and RH), small commercial and industrial (Rate Schedules GS/GM and GMH), and large commercial and industrial (Rate Schedules GL, GLH, L and HVPS).

19. Under the section of the General Stipulation labeled “Small C&I³ Customers, the parties to the Default Service Plan proceeding expressly provided that “Rider No. 5, Time of Day Discounts, will terminate on December 31, 2010.” Appendix A, ¶2 G, p. 3.

20. There is no provision in the section of the General Stipulation labeled “Large C&I⁴ Customers” purporting to terminate or take any other action relative to the customer discount provided by Rider No. 5, Time of Day Discounts (“Rider No. 5”), or any other Time of Day provisions which were then a part of the Prior Tariff, i.e., Duquesne’s retail electric service tariff on file with the Commission in 2007 when the General Stipulation was executed.

21. Under the terms of the General Stipulation, the large commercial and industrial rate schedules include Rates GL, GLH, HVPS and Rate L, the latter being the rate schedule under which Whemco was (and still is today) receiving electric distribution service from Duquesne for the Midland Facility.

³ Under the terms of the General Stipulation, “Small C&I” refers to small commercial and industrial customers. Appendix A, ¶2 A, p. 2.

⁴ Under the terms of the General Stipulation, “Large C&I” refers to large commercial and industrial customers. Appendix A, ¶3 A, p. 3.

22. According to the Prior Tariff, Rider No. 5 specifically applied to Rates GS/GM, GL, L, GMH and GLH. Attached hereto as Appendix B is Rider No. 5 that was in existence as of December 2010.

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 9:00AM 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.

25. Whemco received an e-mail from Duquesne’s account representative, Kim Titley, on December 8, 2010 advising that Rider No. 5 would be ending on December 31, 2010. The content of that e-mail was as follows:

Reading through the Electric Service tariff, in preparation for the rate decision that is currently in front of the PA PUC, I just realized that the Duquesne Light Rider 05 (time of day use) which Midland Plant makes extensive use of, expires on December 31, 2010 (this year). An act 129 time of use provision will eventually be inserted into the tariff as a replacement, but there is no projected time frame for this to happen. As of January, this will have a big impact on the Midland plant. I wanted to give you a heads up. Call me if you have questions.

26. The aforesaid email was particularly disconcerting to Whemco because the reference to Act 129-related changes regarding time of day rates, the key focus of the then terminating Rider No. 5, would not have impacted Whemco’s *distribution or delivery* charges since Act 129 focuses on the procurement of electric *generation*.

27. On December 16, 2010, Duquesne issued Supplement No. 39 to Tariff Electric No. 24, which cancelled and terminated Rider No. 5 with respect to Rate L customers, including Whemco, as of January 1, 2011 pursuant to Third Revised Page No. 84 to Duquesne's then existing retail electric service tariff on file with the Commission. However, at no time did Duquesne cancel or terminate the time of day discounts contained in another of its large commercial and industrial rate class schedules, i.e., Rate HVPS.

28. Prior to January 1, 2011, Whemco was receiving a demand rate discount using on-peak demand measurement or minimum bill calculation for distribution service from Duquesne under Rider No. 5, which discount ceased on and after January 1, 2011.

29. Commencing with the February 2011 electric service bill, Whemco's off-peak demand was used by Duquesne for billing distribution services rather than lower on-peak demands which were used in computing the time of day discounts provided to customers by Rider No. 5.

30. Whemco experienced more than a doubling of its bill from Duquesne for electric distribution service provided as of January 2011, upon termination of Rider No. 5, when Whemco's demand, for billing purposes, increased from a monthly average 7,287 kW in 2010 to a monthly average of 18,256 kW in 2011. This 11,000 kW/month incremental billing demand added over \$65,000 a month in demand charges to Whemco's monthly distribution service bill from Duquesne.

31. Shortly after receiving its February 2011 bill for January 2011 electric distribution service from Duquesne, Whemco contacted Duquesne to address how it could reduce the staggering increase in monthly charges for electric distribution service to the Midland Facility.

Whemco continued to pay these greatly increased distribution charges and did so until the Current Tariff went into effect.

32. In late 2012, representatives from Duquesne advised Whemco that, as a result of the termination of Rider No. 5 for Rate L customers like Whemco, the time when Whemco conducted its melting operations at the Midland Facility (i.e., either during on-peak or off-peak hours) would have no impact on Whemco's monthly electric distribution charges from Duquesne for that facility.

33. In reasonable and justifiable reliance upon Duquesne's representations specified in paragraph 32, Whemco made minor modifications to its operations in 2013 believing that such changes would not increase its monthly distribution charges from Duquesne for the Midland Facility.

**COUNT NO. 1 – UNLAWFUL IMPLEMENTATION/VIOLATION OF
COMMISSION ORDER**

34. Whemco incorporates the allegations in paragraphs 1-33 above as if set forth completely herein.

35. In a Recommended Decision dated May 8, 2007 ("Recommended Decision"), the Administrative Law Judge ("ALJ") in the Default Service Plan proceeding approved, among other things, the General Stipulation without modification. Thereafter, on June 21, 2007, the Commission adopted the Recommended Decision ("Commission Order").

36. In purported compliance with the Commission Order, on December 7, 2007 Duquesne made a compliance filing with the Commission which, among other things, included a termination date for cancelling Rider No. 5 with respect to *all customer classes* that were previously receiving time of day discounts thereunder.

37. Since the General Stipulation approved by the ALJ and the Commission expressly provided only for the termination of Rider No. 5 with respect to “Small C&I Customers”, Duquesne’s termination of said Rider No. 5 for Rate L customers like Whemco (that are not “Small C&I Customers”) constituted a direct and material violation of the Commission Order and constitutes unreasonable service under Code Section 1501, 66 Pa. C. S. § 1501.

38. As a direct and proximate result of Duquesne’s (i) violation of the Commission Order by unlawfully terminating the Rider No. 5 discounts to Whemco, and (ii) misleading and improper guidance to Whemco regarding when it could conduct steel melting operations at the Midland Facility without experiencing increases in monthly distribution charges, Whemco has suffered substantial and excessive losses by virtue of overpaying for electric distribution service provided by Duquesne to the Midland Facility.

39. For electric distribution service provided by Duquesne to Whemco from January 2011 through April 2014, Whemco has overpaid Duquesne for electric distribution service in the amount of \$2,480,374.16.

40. In accordance with provisions of Code Section 1312, 66 Pa. C. S. § 1312, Whemco is entitled to refunds from Duquesne in the amount of \$2,480,374.16, for electric distribution service provided by Duquesne to Whemco from January 2011 through April 2014, together with the legal rate of interest on all unpaid amounts.

WHEREFORE, Whemco requests the Commission enter an order finding that (i) Duquesne violated the terms of the General Stipulation and Commission Order by terminating Rider No. 5, Time of Day Discounts with respect to Whemco, (ii) such violation constitutes unreasonable service under Code Section 1501, (iii) Duquesne provided misleading and improper guidance to Whemco regarding when it could conduct steel melting operations at the

Midland Facility without experiencing increases in monthly distribution charges, (iv) Whemco is entitled to refunds from Duquesne in the amount of \$2,480,374.16, for electric distribution service provided by Duquesne to Whemco from January 2011 through April 2014, together with the legal rate of interest on all unpaid amounts, and (v) Whemco is entitled to such other relief as may be just and reasonable under the circumstances.

COUNT NO. 2 - INSUFFICIENT NOTICE TO WHEMCO

41. Whemco incorporates the allegations in paragraphs 1-40 above as if set forth completely herein.

42. At no time did Duquesne, the Commission or any of the parties to the General Stipulation provide any notice to Whemco that such stipulation, if and when approved, could potentially and adversely impact its Rider No. 5 Time of Day discounts that were then in effect with respect to electric distribution service from Duquesne.

43. Such notice was essential to protect and preserve Whemco's due process rights since Whemco was not a party to the Default Service Plan proceeding and Whemco could not have reasonably expected that Duquesne, the settling parties and/or the Commission would have effected a change to a component of Duquesne's *distribution* rates and design in a proceeding that was fundamentally focused on the procurement of *generation* for Duquesne's provider of last resort/default service.

44. The failure to provide adequate notice to Whemco as stated in paragraphs 42 and 43 above constitutes a violation of Whemco's constitutional right to procedural due process guaranteed under the United States and the Commonwealth of Pennsylvania constitutions.

45. Duquesne knew, or in the exercise of reasonable care should have known, that the elimination of Rider No. 5 with respect to Whemco would have a substantial, material and adverse impact on Whemco's payments for electric distribution service provided by Duquesne.

46. Given the substantial, material and adverse impacts on Whemco resulting from the termination of the Rider No. 5, Duquesne should have developed and implemented a program to provide several advance notices to Whemco that the Rider No. 5 discounts would be terminating as of December 31, 2010.

47. Duquesne failed to develop and implement a program to provide such advance notice to Whemco that the Rider No. 5 discounts would be terminating as of December 31, 2010.

48. Whemco received an e-mail from Duquesne on December 8, 2010 advising that the Rider No. 5 would be ending, but that was insufficient notice to allow Whemco adequate time to address and explore other options to mitigate the excessive increases it was about to experience in the next month in its electric distribution rate for the Midland Facility.

49. As a direct and proximate result of Duquesne's failure to provide adequate and sufficient advance notice to Whemco of approval of the General Stipulation and/or the termination of Rider No. 5 discounts, Whemco has suffered substantial and excessive losses, which severely impacted its profitability and competitive position in its industry, by virtue of overpaying for electric distribution service provided by Duquesne to the Midland Facility.

WHEREFORE, Whemco requests the Commission enter an order finding that (i) Duquesne failed to provide Whemco adequate and sufficient advance notice of the approval of the General Stipulation and/or termination of the Rider No. 5 Time of Day discounts, (ii) such conduct or omission(s) constitute(s) unreasonable service under Code Section 1501, (iii) Whemco is entitled to refunds from Duquesne in the amount of \$2,480,374.16, for electric

distribution service provided by Duquesne to Whemco from January 2011 through April 2014, together with the legal rate of interest on all unpaid amounts, and (iv) Whemco is entitled to such other relief as may be just and reasonable under the circumstances.

**COUNT NO. 3 – UNREASONABLE DELAY AND BAD FAITH IN THE
CONDUCT OF NEGOTIATIONS**

50. Whemco incorporates the allegations in paragraphs 1-49 above as if set forth completely herein.

51. Beginning in early 2011, Whemco diligently and in good faith engaged in numerous efforts with Duquesne, including telephone calls, email and letter exchanges, and in-person meetings, to mitigate the substantial, excessive and unlawful electric distribution charges it has been billed by Duquesne subsequent to and as a result of the termination of Rider No. 5.

52. In particular, Whemco requested that Duquesne consider and offer to Whemco a contract under Rule 4 of the Prior Tariff (“Rule 4”).

53. Rule 4 allows Duquesne, in its sole discretion, to enter into “special contracts” with commercial or industrial customers having electric load of at least 100 kW to address changing business needs or operating conditions, for incremental sales of at least 100 kW from existing or new industrial customers, or to address less expensive competitive alternatives for energy to be used for applications other than space heating.

54. Whemco believes that the abrupt, unreasonable, unlawful and substantial increase in its charges for electric distribution service at the Midland Facility caused by Duquesne’s conduct and omissions described above constitutes precisely the “changing business needs or operating conditions” that qualify Whemco for a special contract under Rule 4.

55. Although Duquesne never indicated that Whemco did not qualify for a Rule 4 special contract, its conduct – including repeated requests for changing and different information, making unreasonable demands on Whemco, and delay in promptly evaluating information provided by Whemco – demonstrates that Duquesne had no interest in attempting to mitigate the substantial and material increase in electric distribution rates which Whemco incurred at the Midland Facility since early 2011 when Rider No. 5 was wrongfully and erroneously eliminated by Duquesne.

56. Whemco attempted in good faith to negotiate a Rule 4 contract with Duquesne since early 2011 but, through no fault of its own, Whemco was unable to complete negotiations because of Duquesne's failure to act in good faith and in a timely manner.

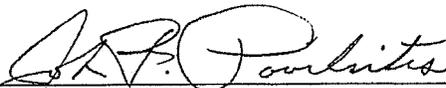
57. In fact, during the course of Whemco's over two year attempt to complete a Rule 4 contract, Duquesne unsuccessfully sought authorization from the Commission in its 2010 rate proceeding at Docket No. R-2010-2179522 to terminate Rule 4 from the Prior Tariff. Such conduct further demonstrates Duquesne's lack of interest in negotiating in good faith with Whemco to complete a Rule 4 contract that mitigates the effects on Whemco and its business operations at the Midland Facility of the substantial and material increase in electric distribution rates which Whemco incurred at the Midland Facility since early 2011 when Rider No. 5 was erroneously eliminated by Duquesne.

58. As a direct and proximate result of Duquesne's failure to negotiate a Rule 4 contract with Whemco in good faith and in a timely manner, Whemco has suffered substantial and excessive losses, which severely impacted its profitability and competitive position in its industry, by virtue of overpaying for electric distribution service provided by Duquesne to the Midland Facility.

59. Duquesne's failure to negotiate a Rule 4 contract with Whemco in good faith and in a timely manner constitutes unreasonable service and violates Code Section 1501, 66 Pa. C. S. § 1501.

WHEREFORE, Whemco requests the Commission enter an order finding that (i) Duquesne failed to negotiate a Rule 4 contract with Whemco in good faith and in a timely manner, (ii) such conduct and/or omission(s) constitute(s) unreasonable service under Code Section 1501, (iii) Whemco is entitled to refunds from Duquesne in the amount of \$2,480,374.16, for electric distribution service provided by Duquesne to Whemco from January 2011 through April 2014, together with the legal rate of interest on all unpaid amounts, and (iv) Whemco is entitled to such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



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Attorneys for WHEMCO-Steel Castings, Inc.

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Exhibit B



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In the Matter of:

Docket No. C-2014-2459527

WHEMCO-STEEL CASTINGS, INC.

:

:

v.

:

:

DUQUESNE LIGHT COMPANY

SUBPOENA

To: Kim Titley,
252 East Solomon Court
Zelienople, PA 16063

(Name and Address)

Pursuant to the authority of this Commission under §§309, 331(d)(2) and 333(j) of the Public Utility Code:

1. YOU ARE ORDERED by the Commission to come to One Oxford Centre 301 Grant Street, 20th Floor, at Pittsburgh, Pennsylvania 15219, on June 24, 2015 at ten o'clock (10:00 AM), in the above case, to testify on behalf of WHEMCO-STEEL CASTINGS, INC. ("Whemco") and to remain until excused;

2. And bring with you and produce the following: All documents (as defined in Attachment A hereto) pertaining to (i) the Formal Complaint filed in the above referenced matter by Whemco; (ii) the rate and other impacts on Whemco resulting from the elimination of the discount contained in Rider No. 5 of Duquesne's retail electric tariff applicable to Rate Schedule L and Whemco; (iii) Whemco's efforts to obtain rate relief from Duquesne following the elimination of the discount in Rider No. 5 applicable to Whemco and Duquesne's responses thereto; (iv) negotiations and discussions between Whemco and Duquesne (including yourself) regarding the execution of a Rule 4 contract under and in accordance with Duquesne's then-prevailing retail electric tariff and the elimination of the discount contained in Rider No. 5 of Duquesne' retail electric tariff applicable to Rate Schedule L and Whemco; and (v) such other matters reasonably related to the inquiries specified in subparagraphs (i)-(iv) above.

This subpoena is issued subject to the provisions of 52 Pa. Code §5.421 (with regard to issuance, notice, service and witness fees).

BY THE COMMISSION

Date _____

Administrative Law Judge

Commonwealth of Pennsylvania

)

) **SS:**

Count of

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AFFIDAVIT OF SERVICE

Before me, the undersigned authority, personally appeared _____
who, being duly sworn according to law, deposes and says that he/she served a true and correct
copy of the within SUBPOENA upon _____
by handing the same to him/her at _____ on the
_____ day of _____, 2015 at _____ a.m./p.m.

(Signature)

Sworn to and subscribed before me
this _____ day of _____, 2015

Notary Public

Definition of Document

“Document” means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any emails, paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

