Buchanan Ingersoll & Rooney PC

Alan M. Seltzer

717 237 4862
alan.seltzer@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

July 21, 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 Answer of Whemco-Steel Castings, Inc. to the Motion of Duquesne Light Company for Partial Summary Judgment, 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	:	

ANSWER OF
WHEMCO-STEEL CASTINGS, INC. TO THE MOTION OF DUQUESNE LIGHT COMPANY FOR PARTIAL SUMMARY JUDGMENT

TO ADMINISTRATIVE LAW JUDGE ("ALJ") JEFFREY A. WATSON:

WHEMCO-Steel Castings, Inc. ("Whemco"), by and through its attorneys, hereby files the following Answer to the Motion of Duquesne Light Company ("Duquesne") For Partial Summary Judgment ("Duquesne Motion"), pursuant to Section 5.102(b) of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 5.102(b), and in connection therewith represents as follows:

I. INTRODUCTION

1. On July 1, 2015, Duquesne and Whemco each filed a separate motion for summary judgment seeking to dispose of all the material legal issues raised by the Formal Complaint filed by Whemco against Duquesne on December 23, 2014 ("Formal Complaint").[1]

2. As noted in Whemco's Motion for Summary Judgment ("Whemco Motion")[2], in the Formal Complaint, Whemco alleged, among other things, that Duquesne wrongfully terminated as of December 31, 2010 for Rate L customers a distribution-rate discount contained in Rider No. 5 of Duquesne's then-prevailing Commission approved retail electric service tariff

[1] Duquesne's motion for summary judgment is styled as a request for partial summary judgment based on the commission-made rates doctrine that it contends prevents any refund to Whemco, even if Whemco's complaint allegations are sustained. Duquesne also reserves its claim that there are other bases that would justify denial of Whemco's request for refund. Duquesne Motion, pp. 1-2.

[2] The Whemco Motion is incorporated by reference herein.

as a result of the improper implementation of a settlement of Duquesne default service proceeding filed with the Commission at Docket No. P-00072247 ("Default Service Proceeding").

3. The Whemco Motion systematically demonstrated that, as a result of Duquesne's improper and unlawful implementation of the settlement in the Default Service Proceeding and termination of the distribution 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. The loss of the discount contained in Rider No. 5 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.

4. However, rather than address the numerous legal errors leading to Duquesne's wrongful and unlawful termination of the distribution-related rate discount contained in Rider No. 5 applicable to Rate L customers like Whemco, the Duquesne Motion attempts to divert the Administrative Law Judge's ("ALJ") attention from the undeniable facts that lead to the relief sought in the Whemco Motion (i.e., a finding that Duquesne wrongfully and unlawfully terminated the Rider No. 5 discount applicable to Rate L customers and that Whemco is entitled to a refund under 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). This diversion is accomplished by Duquesne's implausible, unsupported and incorrect legal theory that the establishment of new Duquesne base rates in *April 2011* retroactively insulated Duquesne from any legal challenge to a rate change that wrongly occurred and was fully complete in *2008* as part of the Default Service Proceeding when the Rider No. 5 distribution-related rate discount was slated in 2008 to end on December 31, 2010.

5. The Duquesne Motion attempts to discredit the Whemco Motion with repeated unsupported assertions that it *disputes* Whemco's claims that the lack of due process and other legal errors in the termination of the distribution rate discount contained in Rider No. 5 support the Code Section 1312 refund for motion purposes.[3] However, simply claiming that you are "disputing" a fact is *not sufficient* to discredit -- let alone overcome -- a motion for summary judgment on the grounds that disputed facts exist.

6. Pennsylvania law is clear that a party opposing a motion for summary judgment must allege facts showing that a true factual issue for trial exists. *First Mortgage Co. of Pennsylvania v. McCall, supra*; *Commonwealth v. Diamond Shamrock Chemical Co.*, 391 A.2d 1333 (Pa. Cmwlth. 1978); *Stover v. The United Telephone Co. of Pennsylvania*, Docket No. C-00923833 (Order entered July 21, 1992). The Commission has interpreted 52 Pa. Code § 5.102(c) in conformity with the Pennsylvania Rules of Civil Procedure (Pa. R.C.P.), *South River Power Partners, L.P. v. West Penn Power Company*, Docket No. C-00935287 (Order entered November 6, 1996). In civil practice, a non-moving party (like Duquesne is with respect to the Whemco Motion) may not rely solely upon denials in its pleadings, but must submit some materials to establish that a genuine issue of material fact exists. *Nicastro v. Cuyler*, 467 A.2d 1218 (Pa. Cmwlth. 1983); *Pennsylvania Gas & Water Co. v. Nenna & Frain, Inc.*, 467 A.2d 330 (Pa. Super. 1983); *Geriot v. Council of the Borough of Darby*, 457 A.2d 202 (Pa. Cmwlth. 1983); *see also*, Pa. R.C.P. 1035.3. Summary judgment may be entered against a non-moving party who does not respond. Pa. R.C.P. 1035.3(d). *Pennsylvania Pub. Util. Comm'n, Bureau of Investigation & Enforcement*, C-2012-2297092, (Final Order entered Mar. 6, 2014). Simply stating that it disputes the facts clearly supportive of the relief sought in the Whemco Motion

[3] *See*, e.g., Duquesne Motion, footnote No. 4, p. 7; footnote No. 5, p. 8.

without showing how conflicting facts create a true dispute is insufficient as a matter of law to defeat that motion.

7. Indeed, based on the Whemco Motion and this Answer it is clear that Whemco is entitled as a matter of law to the relief requested in its motion and that the Duquesne Motion must be denied.

II. ARGUMENT

A. The Proper Focus of this Proceeding is a Tariff Change that Occurred in 2007-2008 and not 2010.

8. A side by side comparison of the Whemco Motion and the Duquesne Motion is a clear study in contrasts. The Whemco Motion properly focuses on the factual and legal backdrop in 2007 and 2008 when Duquesne wrongfully introduced a distribution-related rate change in a default service proceeding (addressing procurement of generation) and then attempted to effect the termination and elimination of the discount in Rider No. 5 applicable to Rate L customers like Whemco without implementing proper notice intended to ensure fundamental due process protections. The result was the elimination of the Rider No. 5 discount without Whemco knowing anything about the default service proceeding in which this fundamental new rate change was taking effect.

9. On the other hand, the Duquesne Motion completely ignores the 2007 and 2008 time period and the fateful default service proceeding in which the Rider No. 5 discount was actually eliminated, preferring to focus on the outcome of its 2010 base rate proceeding as if that proceeding can shield it from the legal errors that had occurred three years earlier during the 2007-2008 Default Service Proceeding.

10. However, choosing to ignore the only relevant time period to the Formal Complaint (i.e., 2007-2008) does not vitiate the underlying legal problems identified in the Whemco Motion entitling Whemco to the refunds sought in the Formal Complaint.

11. The record is abundantly clear that Duquesne's 2010 base rate case had nothing to do with the elimination and termination of the Rider No. 5 discount in Rider L. As described in the affidavit of Robert A. Rosenthal, attached hereto as Appendix A and incorporated by reference herein ("Rosenthal Affidavit"), the only mention of the elimination and termination of the Rider No. 5 discount in Rider L in that rate case was a representation in Duquesne's December 16, 2010 compliance filing for the establishment of new base rates, which stated in pertinent part as follows:

> Rider No. 5 – Time of Day Discounts. This Rider was removed from the Tariff in compliance with the POLR IV proceeding at Docket No. P-00072247 and settlement agreement in that proceeding at paragraph 2G.[4]

12. As the Rosenthal Affidavit further notes, the above language from the December 16, 2010 compliance filing in the 2010 base rate proceeding confirms that the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L occurred in the 2007 Default Service Proceeding and not in Duquesne's 2010 base rate case.[5] Therefore, the relevant and appropriate time period for resolving the preliminary motions filed by both Whemco and Duquesne can only be 2007 and not 2010. Indeed, by 2010, the Rider No. 5 discount had already been wrongfully terminated. The Administrative Law Judge should not be diverted by Duquesne's efforts to shift the focus of this proceeding via the Duquesne Motion to a completely irrelevant time period. In July of 2010 when Duquesne filed its base rate case, Whemco was unaware that the 2007 Default Service Proceeding eliminated its Rider No. 5 discount. It was

[4] Rosenthal Affidavit, ¶ 12.
[5] Rosenthal Affidavit, ¶ 13.

not until December of 2010, six months after the base rate case commenced litigation and about the time the case was settled, that Whemco was advised by Duquesne that its rates were about to leap upward.[6] The 2010 Rate Case was clearly not a fresh opportunity for Whemco to argue for restoration of the Rider No. 5 discount.

B. The "Commission-Made Rate Doctrine" Does Not Support Duquesne's Requested Relief.

13. The essence of the Duquesne Motion is that the rates established in Duquesne's 2010 base rate proceeding at Commission Docket No. R-210-2179522 filed on July 23, 2010 ("2010 Rate Case"), shield Duquesne from responsibility for any refunds associated with the unlawful termination/elimination of Rider No. 5 – Time of Day Discounts associated with Rate L that occurred over two years earlier in a completely unrelated proceeding. Not surprisingly, Duquesne does not cite a single case in support of this erroneous theory.

14. Instead of reasoned analysis linking the "commission-made rate doctrine" to this proceeding, Duquesne provides general assertions about the doctrine which, when subjected to analysis, demonstrate why this doctrine cannot possibly support the relief requested in the Duquesne Motion. Quite the opposite is true.

15. First, Duquesne correctly observes that a key characteristic of Commission-made rates is that they are "implemented after an exhaustive evidentiary presentation of the company's expenses and their reasonableness, the fair value of the utility's property used and useful in the public service, and the return on that value."[7] The Duquesne Motion goes on to state that the "[a]pproval of settlement rates in a base rate proceeding results in the establishment of Commission-made rates when the record is sufficiently developed so as to enable the

[6] Slingluff Affidavit, ¶ 15.
[7] Duquesne Motion, ¶ 43, pp. 11-12 {citations omitted}.

Commission to make determinations regarding a utility's expenses, the fair value of property used and useful in the public service, and an appropriate return on that property."[8]

16. The establishment of an adequate record and due process protections provided to customers are essential to creating Commission-made rates. However, Duquesne ignores the critical and undisputed facts that Whemco was not a party to the 2010 Rate Case[9] and that base rate proceeding did not address in a "sufficiently developed" record the elimination or termination of the Rider No. 5 discount which, by Duquesne's own admission occurred years earlier in the 2007 Default Service Proceeding.[10]

17. In other words, the elimination or termination of the Rider No. 5 discount applicable to Whemco *was not an issue* in the 2010 Rate Case and no "Commission-made rate" with respect to *the Rider No. 5 discount* was or could have been created in that base rate proceeding. As the Rosenthal Affidavit undeniably confirms:

- Duquesne did not mention in its rate case filing the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L;
- Duquesne made no adjustment for normalization or annualization of KW demands or revenue reflecting increases from the elimination of the Rider No. 5 – Time of Day Discounts for Rate L in either the Historic or Future Test Year claims despite its known mid-year occurrence;[11]
- Neither Duquesne nor other parties in the 2010 Rate Case submitted written testimony on the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L;
- Neither the presiding Administrative Law Judge nor the Commission issued any orders or rulings mentioning the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L in the 2010 Rate Case; and

[8] Duquesne Motion, ¶ 44, p. 12 {citations omitted}.
[9] Duquesne Motion, ¶ 19, p. 6.
[10] Rosenthal Affidavit, ¶ 13.
[11] If in fact the elimination of the Rider No. 5 discount for Rate L customers like Whemco was truly an issue in the 2010 Rate Case (which is clearly was not), there would have been the need to make some form of test year adjustment of customer demands or revenues to address such elimination. As the Rosenthal Affidavit notes, no such adjustment was made in the 2010 Rate Case, again confirming that the Rider No. 5 discount was not an issue in that case.

- The Rider No. 5 at issue in the 2010 Rate Case concerned Universal Service; a subject completely unrelated to Rate L distribution service discounts.[12]

18. Thus, Duquesne's extended discussion about the establishment of Commission-made rates in the Duquesne Motion is just that – irrelevant discussion about a principle and doctrine that is completely inapposite and which diverts the Administrative Law Judge's attention away from the legal errors that occurred years earlier in Duquesne's 2007 Default Service Proceeding.

19. The key point is that had Whemco actually participated in the 2010 Rate Case there would have been nothing it could have done to address what had already been accomplished in 2007 in the Default Service Proceeding. Duquesne's statements in the Duquesne Motion regarding compliance with the Commission's notice and other procedural requirements (e.g., Duquesne Motion, ¶ 47) with respect to the 2010 Rate Case are similarly irrelevant since there was nothing in that case addressing the elimination or termination of the Rider No. 5 discount with respect to Whemco.[13]

20. Duquesne is left to argue that Whemco should have participated in the 2010 Rate Case because, if it had reviewed the rate filing it would have noticed that the former Rider No. 5 (that had been terminated back in the 2007 Default Service Proceeding) was now labeled "Universal Service Rider." This argument is unsustainable because the substitution of a new Rider No. 5 was not a substantive issue in that case since the former Rider No. 5 discount had long since been terminated. In other words, there was no change to the former Rider No. 5 discount applicable to Whemco in the 2010 Rate Case, despite Duquesne's erroneous suggestion to the contrary.

---

[12] Rosenthal Affidavit, ¶ 11.
[13] Rosenthal Affidavit, ¶ 11.

21. The Duquesne Motion fails to acknowledge that the Commission-made rate doctrine applies *only* to those elements of a utility's base rate case that are *actually reviewed and approved* by the Commission. After the Commission reviews and approves the rates, they enjoy a presumption of reasonableness and cannot be attacked at a later point in time and are not subject to refund. The Commission explained the doctrine and its application as follows:

> We note that the "Commission made rate" doctrine arose in the context of disputes over a public utility's liability for reparations (or refunds) when a subsequent commission determination was made concerning the justness and reasonableness of existing rates. *Cheltenham-Abington Sewage Co. v. Pa. P.U.C.*, 344 Pa. 366, 25 A.2d 334 (1942), appeal dismissed and cert. denied, 317 U.S. 588 (1942).
>
> *Cheltenham* followed the principle enunciated by the Supreme Court of the United States in *Arizona Grocery Co. v. Atchism, T. & S. F. Ry.*, 284 U.S. 370, 52 S. Ct. 183 (1932). That principle is that a public service commission, when determining just and reasonable rates, performs a quasi-legislative function. When the determination is made that rates are no longer just and reasonable, this pronouncement, in the capacity of its quasi-judicial function, may not retroactively repeal a prior enactment. *See*, *Lancaster Ice Co. v. Pa. P.U.C.*, 185 Pa. Superior Ct. 615, 138 A.2d 262 (1958) - the Commission made rate doctrine exists for the protection of the utility from unfair reparations.
>
> The characteristics of Commission made rates are that *they are implemented after an exhaustive evidentiary presentation of the company's expenses and their reasonableness, the fair value of the utility's property used and useful in the public service, and the return on that value. Equitable Gas Company v. Pa. P.U.C.*, 106 Pa. Commonwealth Ct. 240, 526 A.2d 823 (1986). It is the antecedent Commission approval, prior to the implementation of the rate, which triggers the judicially created immunity from retroactive alteration. *Metropolitan Edison Co. v. Pa. P.U.C.*, 62 Pa. Commonwealth Ct. 460, 437 A.2d 76 (1981).

Pa. P.U.C. et al. v. Columbia Gas of Pennsylvania, Inc., Docket Nos. R-901873 et al., (Final Order entered October 31, 1991 holding that rates agreed in a settlement qualify as Commission-made rates if after reviewing the record in such a matter, the Commission can conclude "that it is adequately developed so as to enable us to independently review and make determinations concerning the Respondent's expenses, and their reasonableness, the fair value of the

Respondent's property used and useful in the public service and the commensurate return on that value.") (emphasis added) ("Columbia Gas"). The Duquesne Motion fails to satisfy this basic requirement of Pennsylvania law with respect to Commission-made rates because at no time was the elimination of the Rider No. 5 discount the subject of an "adequately developed record" that would allow the Commission to make a truly independent assessment of the issue – either in the 2007 Default Service Proceeding (as demonstrated in the Whemco Motion) or in the 2010 Rate Case.

22. The Commission and the Pennsylvania courts have carefully circumscribed the Commission-made rate doctrine so that it is not blindly adhered to and wrongly applied to limit rate relief when the underlying rate issue was not in fact thoroughly examined by the Commission. For example, in *Equitable Gas Co. v. Pa. P.U.C.*, 526 A.2d 823 (Pa. Cmwlth. 1987) ("Equitable Gas"), the Commonwealth Court affirmed the Commission's ruling that the gas utility's gas cost rate ("GCR") developed under Code Section 1307 was not a Commission-made rate because the GCR was not "subject to exhaustive PUC review to determine reasonableness." *Id.* at 830. The Commonwealth Court explained that a GCR approval procedure encompasses only "a few weeks . . . to provide for changes in one component of a utility's cost of providing service without the long and exhaustive review of 'Commission-made' rates." *Id.* at 830-831. The Commonwealth Court concluded that the utility "could not validly expect that the GCR costs were insulated from retroactive modification because they were not stamped with antecedent PUC approval." *Id.* at 831.

23. In another gas cost case, *Re: North Penn Gas Company*, Docket No. R-850279 (Final Order entered January 29, 1986), the Commission explained the effect on ratepayers who are not provided adequate and reasonable notice of a rate:

> Undeniably the premise supporting the doctrine that "commission made" rates cannot be retroactively changed is the fact that both the utility and the ratepayer must have some standard on which they can rely upon in forming, respectively, their distribution and consumption patterns. Ratepayers generally plan their consumption based upon what they perceive to be the highest cost for a unit of energy. *If the price is retroactively raised beyond what they expected, they have relied upon previous information to their detriment.*

(emphasis added). In *Re: North Penn Gas*, the Commission retroactively lowered the gas utility's cost recovery rate billed to customers in order to more closely resemble the utility's actual gas costs on the premise that a gas cost recovery rates are not Commission-made rates. *Id.*

24. The Duquesne Motion relies on *Equitable* and *Columbia Gas* for the general establishment of the Commission-made rate doctrine, but ignores the crucial reasoning in each case. Both cases clearly and unequivocally hold that *only* those aspects of a public utility's base rate case that undergo exhaustive scrutiny by the Commission of the utility's expenses and rate recovery systems achieve the protection available under the Commission-made rate doctrine. *Equitable Gas*, 526 A.2d at 830-831; *Columbia Gas*. Duquesne cites no case showing that the Commission-made rate doctrine can be used as a shield against the prior unlawful withdrawal of customer rate discount that was never the subject of full due process to impacted customers, the subject of supportive testimony in an evidentiary hearing, active litigation on the merits, and express consideration by the Commission. Duquesne provides no legal basis establishing that the doctrine is applicable to the facts in this case, especially when the elimination of the Rider No. 5 discount was never litigated in the 2010 Rate Case.[14]

25. Duquesne is simply wrong as a matter of law and fact that the elimination and replacement of Rider No. 5 (which occurred in 2007 in the Default Service Proceeding by

[14] Rosenthal Affidavit, ¶ 11.

Duquesne's own admission} became a Commission-made rate in April 2011, thereby barring any claim by Whemco for refunds.[15]

WHEREFORE, for the reasons specified above, Whemco requests that (i) the Duquesne Motion be denied in its entirety, (ii) the Whemco Motion be granted in its entirety and (iii) the ALJ find that (x) Duquesne failed to terminate the discount provision of Rider No. 5 applicable to Whemco as a Rate Schedule L customer in the Default Service Proceeding and, therefore (y) Whemco is entitled to refunds from Duquesne under Code Section 1312 in the amount of $2,480,374.16, plus interest on all unpaid amounts, representing Whemco's over-payment of electric distribution service charges to Duquesne for the period January 2011 through April 2014.

Respectfully submitted,

Dated: July 21, 2015

Alan M. Seltzer (I.D. #27890)
John F. Povilaitis (I.D. 28944)
Buchanan Ingersoll & Rooney PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
Phone: 717 237 4800
Fax: 717 233 0852
E-mail: john.povilaitis@bipc.com
E-mail: alan.seltzer@bipc.com

Ricky L. Bertram
General Counsel
Park Corporation
6200 Riverside Drive
Cleveland, Ohio 44135
Telephone: 216 265-2658
Facsimile: 216 265-2632
E-Mail rbertram@parkcorp.com

Attorneys for WHEMCO-Steel Castings, Inc.

[15] Duquesne Motion, ¶ 57.

Appendix A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Affidavit of Robert A. Rosenthal

I, Robert A. Rosenthal, provide this affidavit in the above referenced proceeding under penalty of perjury, and in connection therewith depose and say the following:

I. Preliminary Information

1. My name is Robert A. Rosenthal and I am President of R.A. Rosenthal, Inc., a single person consulting firm based at 5245 Strathmore Drive, Mechanicsburg, PA 17050.

2. I offer consulting services to utility companies and customers. My activities have ranged from informal consultation phone calls to submitting reports and testimony on a range of issues from utility finance and organization, depreciation, regulatory policy, rate calculations and line extensions.

3. I am very familiar with tariff rates of electric utilities, having worked as an employee of the Pennsylvania Public Utility Commission ("Commission") for over 30 years, primarily in the ratemaking area.

4. I have been a witness in electric rate cases focusing on cost of service and rates, and supervised a team of engineers and analysts in cases involving plant valuation, depreciation and rate structure. I also served as an advisor to former Commission Chairman John M. Quain as a specialist in electric and natural gas matters and as an advisor to former Commissioner Joseph Rhodes as a specialist in electric and water matters.

5. I concluded my career with the Commission as Director of the then Bureau of Fixed Utility Services that handled informal tariff matters, compliance, utility finances and reporting for electric, natural gas, telecommunications, water and wastewater industries. I also managed the Commission's emergency response liaison team in coordination with the Pennsylvania Emergency Management Agency.

II. Nature of Engagement

6. I have been engaged by Whemco (i) to examine Whemco's steel production operations at its facility located in Midland, Pennsylvania ("Midland Facility"), specifically electric distribution billings from Duquesne Light Company ("Duquesne") and, for purposes of this affidavit, (ii) to evaluate the complete Commission proceeding relating to Duquesne's base rates at Commission Docket No. R-2010-2179522 ("2010 Rate Case").

7. For background purposes, I was advised initially that Whemco had experienced significant increases in its electric distribution bills beginning in 2011 when Duquesne eliminated the Rider No. 5 – Time of Day Discounts option associated with Rate L, the Duquesne rate schedule under which Whemco was receiving electric distribution service at the Midland Facility.

8. I conducted a detailed review of all documents filed with the Commission in connection with the 2010 Rate Case by Duquesne and all other parties, and all orders issued by the presiding Administrative Law Judge or the Commission. This included, but not limited to, the actual Duquesne base rate filing made in accordance with the Commission base rate case filing regulations, all testimony submitted in the proceeding by all parties, including Duquesne, all orders issued by the Commission or the presiding Administrative Law Judge in that proceeding, the General Stipulation/Settlement that terminated the 2010 Rate Case proceeding and the compliance filing made by Duquesne.

9. The purpose of the review specified in Paragraph 8 above was to determine if, in the 2010 Rate Case, Duquesne discussed, addressed in testimony, or supported in the case in any manner the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L. I was specifically attempting to determine if Duquesne sought, and/or if the Commission granted, any relief, with respect to the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L in the 2010 Rate Case.

10. In connection with the investigation described generally in Paragraph 8 above, I reviewed the Commission's on-line docket for the 2010 Rate Case and then evaluated each document specified on the docket. I also reviewed hard copy documents from the 2010 Rate Case.

11. As a result of my review and analysis of the 2010 Rate Case the following facts are clear:

- Duquesne did not mention in its rate case filing the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L;
- Duquesne made no adjustment for normalization or annualization of KW demands or revenue reflecting increases from the elimination of the Rider No. 5 – Time of Day Discounts for Rate L in either the Historic or Future Test Year claims despite its known mid-year occurrence;
- Neither Duquesne nor other parties in the 2010 Rate Case submitted written testimony on the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L;

- Neither the presiding Administrative Law Judge nor the Commission issued any orders or rulings mentioning the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L in the 2010 Rate Case.

- The Rider No. 5 at issue in the 2010 Rate Case concerned Universal Service; a subject completely unrelated to Rate L distribution service discounts.

12. The only mention in the 2010 Rate Case about the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L is in Duquesne's December 16, 2010 compliance filing for the establishment of new base rates as follows:

> "Rider No. 5 – Time of Day Discounts. This Rider was removed from the Tariff in compliance with the POLR IV proceeding at Docket No. P-00072247 and settlement agreement in that proceeding at paragraph 2G."

13. The above language from the December 16, 2010 compliance filing in the 2010 Rate Case confirms that the elimination or termination of Rider No. 5 – Time of Day Discounts associated with Rate L occurred in an unrelated Commission proceeding in 2007 at Docket No. P-00072247 and not in the 2010 Rate Case.

14. The statements contained in this affidavit and true and correct.

Dated: July 20 , 2015

Robert A. Rosenthal

Commonwealth

Of Pennsylvania)

County of Cumberland) SS:

On this, the 20th day of July, 2015, before me a notary public, the undersigned officer, personally appeared Robert A. Rosenthal, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

NOTARIAL SEAL
NANCY STRANGER, NOTARY PUBLIC
WORMLEYSBURG BOROUGH, CUMBERLAND COUNTY
MY COMMISSION EXPIRES JUNE 8, 2018

Notary Public

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 the Answer of Whemco-Steel Castings, Inc. to the Motion of Duquesne Light Company for Partial Summary Judgment upon the parties and in the manner listed below:

Via Email and First-Class Mail

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 Fifth Avenue
Pittsburgh, PA 15222
jeffwatson@pa.gov

Tishekia E. Williams
Duquesne Light Company
411 Seventh Avenue, 16th Fl.
Pittsburgh, PA 15219
twilliams@duqlight.com

Michael W. Gang
Anthony D. Kanagy
Post & Schell PC
17 N. Second Street, 12th Fl.
Harrisburg, PA 17101-1601
mgang@postschell.com
akanagy@postschell.com

Dated this 21st day of July, 2015.

Alan M. Seltzer, Esq.