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August 10, 2015

***VIA ELECTRONIC FILING***

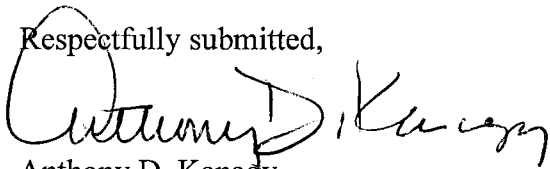
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**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 III, in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Anthony D. Kanagy

ADK/skr  
Enclosure

cc: Honorable Jeffrey Watson  
Certificate of Service

**CERTIFICATE OF SERVICE  
(Docket No. C-2014-2459527)**

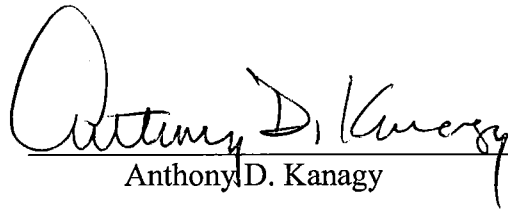
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL and FIRST CLASS MAIL**

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Date: August 10, 2015

  
Anthony D. Kanagy

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY  
DUQUESNE LIGHT COMPANY ON WHEMCO-STEEL CASTINGS, INC., SET III**

**TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:**

Duquesne Light Company (“Duquesne Light” or the “Company”) hereby files, pursuant to 52 Pa. Code § 5.342, this Motion to Compel Answers to its Third Set of Interrogatories and Requests for Production of Documents directed to Whemco-Steel Castings, Inc. (“Whemco”). Whemco has filed objections to all of the Set III Interrogatories. As explained herein, Whemco should be compelled to respond to the Set III Interrogatories. In support of this Motion, Duquesne Light states as follows:

**I. INTRODUCTION**

1. On December 23, 2014, Whemco filed the above-captioned Complaint with the Pennsylvania Public Utility Commission (“Commission”) alleging that Duquesne Light improperly eliminated Rider No. 5 Time-of-Day Discounts from the Company’s tariff.

2. On January 21, 2015, Duquesne Light filed its Answer and New Matter to Whemco’s Complaint. In its Answer and New Matter, Duquesne Light denied the substantive averments of Whemco’s Complaint and explained that the elimination of Rider No. 5 was lawful and in compliance with applicable Commission orders.

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

4. On July 1, 2015, Duquesne Light filed a Motion for Partial Summary Judgment (“Duquesne Light Motion”). In the Duquesne Light Motion, Duquesne Light explained that it disagreed with all allegations that Whemco was entitled to a refund related to the elimination of Rider No. 5 – Time of Day Discounts. Duquesne Light further explained that Whemco’s request for relief was barred, in substantial part, by the Commission-made rates doctrine. The elimination and replacement of Rider No. 5 – Time of Day Discounts became a Commission-made rate effective April 21, 2011, with the effective date of rates under Duquesne Light’s 2010 base rate proceeding at Docket No. R-2010-2179522 (“2010 Base Rate Case”). Once fixed by final Commission Order, Commission-made rates may not be changed retroactively, but may only be changed prospectively. *Cheltenham & Abington Sewage Co. v. Pa. PUC*, 344 Pa. 366, 25 A.2d 344, 338 (1942). When the Commission establishes Commission-made rates, the Commission is acting in its quasi-legislative capacity, and it does not have jurisdiction or authority to retroactively repeal the rates. *Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co., et al.*, 284 U.S. 370, 387-389 (January 4, 1932). Moreover, if there is an error in setting Commission-made rates, the error can be fixed prospectively but not retroactively because the utility is entitled to rely on the quasi-legislative act of the Commission in setting the rates until they are charged prospectively. Therefore, Whemco is not entitled to a refund after April 11, 2011 under the Commission-made rates doctrine under any circumstances.<sup>1</sup> Duquesne Light also noted in its Motion that it disputes Whemco’s request for refunds from January 1, 2011 to April 30, 2011.

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<sup>1</sup> In its Complaint, Whemco admits that its Rider No. 5 issue was resolved on May 1, 2014 with the setting of new rates in Duquesne Light’s 2013 base rate proceeding at Docket No. 2013-2372129. (Complaint ¶ 3.) Whemco filed its Complaint after the 2013 base rates became effective. Therefore, Whemco is not seeking any prospective relief for the time period after it filed its Complaint.

5. On July 1, 2015, Whemco also filed a Motion for Summary Judgment (“Whemco Motion”). In the Whemco Motion, Whemco argued that it is entitled to summary judgment and a refund based upon rates it would have paid if Rider No. 5 would have existed for the period January 2011 through April 2014. The Whemco Motion is based upon Whemco’s allegations that Rider No. 5 – Time of Day Discounts was improperly eliminated, allegedly without proper notice, for Large C&I customers.

6. Whemco attached two affidavits to its Motion, including the Affidavit of Christian Slingluff, Manager Purchasing of Whemco and Pamela C. Polacek, Esquire, an attorney with the law firm of McNees Wallace & Nurick LLC.

7. On July 17, 2015, Duquesne Light propounded its Set III discovery questions on Whemco. The Set III discovery questions are attached hereto as Appendix A. The Set III discovery questions concern disputed material issues of fact related to statements made in Ms. Polacek’s Affidavit supporting Whemco’s Motion for Summary Judgment that was filed on July 1, 2015.<sup>2</sup>

8. On July 21, 2015, Duquesne Light filed an Answer to Whemco’s Motion for Summary Judgment. Therein, Duquesne Light explained that the Polacek Affidavit raises substantial factual questions regarding why Ms. Polacek, an attorney who has represented Whemco, did not discern from her review of the tariff provided with Duquesne Light’s default service filing at Docket No. P-20072247 as Exhibit NJDK-3 that Duquesne Light was proposing to eliminate Rider No. 5 – Time of Day Discounts for all customers. Duquesne Light also explained that it had outstanding discovery questions to Whemco regarding the averments

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<sup>2</sup> It is Duquesne Light’s position that there are no material facts in dispute as to Duquesne Light’s Motion for Partial Summary Judgment that was also filed on July 1, 2015, and that the ALJ should grant this Motion.

contained in the Polacek Affidavit and should be permitted to cross-examine Ms. Polacek and have the opportunity to present evidence with regard to these factual issues.

9. Duquesne Light further explained that there are also material disputed factual issues regarding whether it was appropriate to make a distribution rate change in a default service proceeding. Ms. Polacek and Whemco argue that retail electric customers would not expect that changes to distribution rates would be made in a default service proceeding. However, parties have proposed and the Commission has approved non-generation rate changes in default service proceedings and other non-base rate proceedings. This is a disputed factual issue, and Duquesne Light should be permitted to seek discovery, depose and cross-examine Ms. Polacek and have the opportunity to present evidence regarding this disputed issue.

10. Moreover, Duquesne Light explained that Whemco was not entitled to a refund as a matter of law because the Commission has discretion whether to avoid refunds under Section 1312 of the Public Utility Code. There are material facts in dispute regarding why Whemco delayed filing its Complaint so long after the Rider No. 5 distribution discount was eliminated. Duquesne Light must be permitted to investigate and present testimony on this issue.

11. On July 29, 2015, Whemco filed its Objections to the Set III discovery.<sup>3</sup> A copy of Whemco's Objections is provided as Appendix B hereto.

12. Duquesne Light has had discussions with Whemco's counsel regarding the objections, but the parties have not been able to informally resolve their issues related to the objections.

13. Duquesne Light hereby files its Motion to Compel Whemco to respond to the Set III discovery questions.

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<sup>3</sup> Duquesne Light granted Whemco an extension to file its Objections to July 29, 2015.

**II. WHEMCO'S OBJECTIONS SHOULD BE DENIED.**

**A. Duquesne Light's Set III Discovery Questions Are Not Premature.**

14. Whemco's argument that the Set III discovery is premature is contrary to the Commission's regulations and should be denied.

15. The Commission's regulations give parties the right to ask discovery questions. Moreover, the Commission's regulations require parties to initiate discovery as early in proceedings as reasonably possible. 52 Pa. Code § 5.331(b).

16. Section 5.331(b) of the Commission's regulations further provides as follows:

In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier.

52 Pa. Code § 5.331(b).

17. Under Section 5.331(b), Duquesne Light's right to seek discovery commenced upon the filing of the Complaint and should not be suspended pending disposition of the Motions.

18. Whemco has not cited any Commission regulation or order that supports its argument that the discovery process should be suspended pending a decision on the Motions. When Whemco filed its Complaint, Duquesne Light's right to conduct discovery was established. Further, Duquesne Light is required under the Commission's regulations to initiate discovery as soon as reasonably possible.

19. Whemco argues that Ms. Polacek has not offered "prepared written testimony" in this proceeding and that if this case goes to hearing, Duquesne Light will have an opportunity to conduct discovery as to Ms. Polacek after her written testimony is filed. Whemco Objections, p.

3.

20. This argument should be denied for several reasons. First, Ms. Polacek's Affidavit constitutes testimony that is being relied upon by Whemco to support its position in this proceeding. Duquesne Light has a right to ask Ms. Polacek discovery regarding the statements that she made in the Affidavit. There is no requirement that Duquesne Light wait until "written testimony" is filed to ask interrogatories.

21. Duquesne Light seeks discovery regarding the issues raised in the Polacek affidavit because they are disputed material issues of fact in this proceeding. Moreover, Duquesne Light seeks answers to these questions in advance of conducting a deposition of Ms. Polacek. Duquesne Light should not be required to wait until the Motions are resolved before conducting a deposition of Ms. Polacek. Duquesne Light must be permitted to fully prepare its case in the event that the proceeding is not resolved by the Motions.<sup>4</sup>

22. Depending upon the procedural schedule that is adopted, Duquesne Light may not have sufficient time to get responses to necessary discovery and conduct a deposition of Ms. Polacek in advance of Duquesne Light's due date for responsive testimony. This would prejudice Duquesne Light's ability to present its case in this proceeding. Moreover, even if there was sufficient time built into the schedule, this would create the need for a substantially elongated litigation schedule.

23. Further, there is no requirement in the Commission's regulations that a party wait for testimony before asking discovery questions. To the contrary, the right to conduct discovery commences upon the filing of a complaint and parties are encouraged to conduct discovery as soon as reasonably possible.

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<sup>4</sup> As explained above, there are material issues of fact in dispute related to Whemco's Motion for Summary Judgment. There are no relevant material issues of fact in dispute as to Duquesne Light's Motion for Partial Summary Judgment concerning the bar against retroactive refunds under the Commission-made rate doctrine. Once rates are Commission-made, they are not, as a matter of law, subject to retroactive refund.

24. In its Objections, Whemco also argues that Duquesne Light could have filed counter-affidavits disputing the issues in the Whemco Motion “but did not avail itself of that opportunity.” Whemco Objections, p. 2. This argument is irrelevant as to Duquesne Light’s right to ask discovery. In addition, Duquesne Light did file the Affidavit of William V. Pfrommer as Appendix J to the Duquesne Light Answer in Support of Duquesne Light’s arguments. Moreover, Duquesne Light clearly explained in its Answer that there are material issues of disputed fact with respect to Whemco’s Motion for Summary Judgment, and further material issues of disputed fact with respect to the Polacek Affidavit. See Duquesne Light Answer, pp. 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, 24, 25 and 27.

25. Duquesne Light is clearly entitled to pursue discovery as to issues of disputed fact. Duquesne Light further notes that Whemco has not objected to any of the Set III interrogatories as irrelevant.

26. For these reasons, Whemco’s contention that Duquesne Light’s Set III discovery questions are premature is not a basis for denial of discovery and should be denied.

**B. Duquesne Light’s Set III, Question 7 Is Not Overly Broad.**

27. Duquesne Light Set III, Question 7 provides as follows:

7. Re: Affidavit of Pamela C. Polacek, Esquire, Paragraph 21: Is Ms. Polacek aware of any default service proceedings where a utility or a party to the proceeding proposed a distribution rate change? If yes:
  - a. List all such proceedings, including the docket number; and
  - b. Describe the distribution rate change proposal.

28. Whemco objects to this question to the extent that it requires Ms. Polacek to conduct legal research or review her firm’s files. Whemco argues that this question is overly broad, burdensome and would require an unreasonable investigation.

29. This question is not overly broad or burdensome, nor would it require Ms. Polacek to conduct an unreasonable investigation.

30. This question is directly related to Ms. Polacek's Affidavit, where she states that, from her experience,

“... default service cases generally do not address *distribution-related* rate and other matters.”

Polacek Affidavit, ¶ 21.

31. Whemco is relying on Ms. Polacek as an expert witness in this proceeding, and Ms. Polacek has reviewed and been involved in numerous default service proceedings in Pennsylvania. It is not overly broad or burdensome for Ms. Polacek to identify default service proceedings that she is aware of where a utility or a party proposed a distribution rate change in a default service proceeding. It is also perfectly reasonable and would not require an unreasonable investigation for Ms. Polacek to review her firm's files to respond to this question, especially where Ms. Polacek is stating in a sworn affidavit that, in her experience, default service cases generally do not address distribution related rate matters.

32. Further, the question does not ask Ms. Polacek to conduct legal research, but asks her to identify cases of which she is aware.

33. For these reasons, Whemco's Objection to Set III, Question 7 should be denied and Whemco should be required to respond to this question as stated.

**C. Whemco's Further Objection To Set III, Question 8 On The Basis Of Privilege Should Be Denied.**

34. Duquesne Light's Set III, Question 8 provides as follows:

8. Re: Affidavit of Pamela C. Polacek, Esquire: Please provide a copy of all communications, including but not limited to e-mails and memoranda, to and from both Whemco and Ms. Polacek (including all persons that are

working with or worked with Ms. Polacek and all attorneys at Ms. Polacek's law firm) regarding:

- a. Representation of Whemco in the DSP IV proceeding;
- b. Whemco's complaint; and
- c. Preparation of the Affidavit.

35. Whemco objects to this question to the extent it does not exclude matters that may be subject to privilege. Whemco Objections, p. 4.

36. Whemco's general objection on privilege grounds should be denied because Whemco has failed to identify any grounds for why the response to Question 8 is privileged. Question 8 asks for communications between Whemco and Ms. Polacek related to the DSP IV proceeding, Whemco's Complaint and preparation of Ms. Polacek's Affidavit. Ms. Polacek was not legal counsel for Whemco in the DSP IV proceeding and is not counsel for Whemco in this Complaint proceeding. Therefore, there is no privileged relationship between Whemco and Ms. Polacek. Moreover, to the extent Whemco argues that communications between Ms. Polacek and Whemco are privileged, Whemco has waived any privilege by calling Ms. Polacek as a witness.

37. Further, if Whemco sought to protect any communications from disclosure under privilege, it should have explained the basis for such privilege in its Objections. Whemco has not identified any basis for privilege in its Objections. Whemco should not be permitted to now claim a basis for privilege in its Answer because Duquesne Light will not have an opportunity to respond.

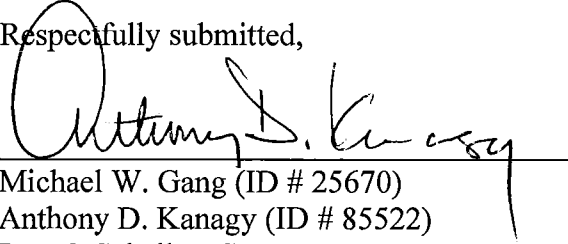
### III. CONCLUSION

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 the Set III Discovery.

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Duquesne Light Company  
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Date: August 10, 2015

Respectfully submitted,



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*Attorneys for Duquesne Light Company*

# Appendix A



- b. The date of each such document;
- c. The author, preparer or signer of each such document; and
- d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.).

In lieu of “identifying” any document, it shall be deemed a sufficient compliance with these interrogatories to attach a copy of each such document to the answers hereto and reference said document to the particular interrogatory to which the document is responsive.

6. “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 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.

7. “Communication” means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or

orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

8. "Date" means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

9. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

10. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

11. The answers provided should first restate the question asked and identify the person(s) supplying the information.

12. In answering these interrogatories, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party's attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party's own knowledge. If any of the interrogatories cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying the Responding Party's inability to answer the remainder, and stating whatever information the Responding Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

13. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 5 and state the basis of the objection.

14. If the Responding Party objects to part of an interrogatory and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that interrogatory. If the Responding Party objects to the scope or time period of an interrogatory and refuses to answer for that scope or time period, state the Responding Party's objection and answer the interrogatory for the scope or time period that the Responding Party believes is appropriate.

15. If, in connection with an interrogatory, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

16. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and, (c) the basis on which the privilege or other protection from disclosure is claimed.

17. These interrogatories are continuing and the Responding Party is obliged to change, supplement and correct all answers given to conform to new or changing information.

**INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO  
WHEMCO-STEEL CASTINGS, INC. – SET III**

1. Re: Affidavit of Pamela C. Polacek, Esquire: Does Ms. Polacek agree that a utility's tariff controls what rate the utility may charge? If no, please explain.
2. Re: Affidavit of Pamela C. Polacek, Esquire: Does Ms. Polacek agree that Duquesne Light provided a pro forma tariff that included changes to Rider No. 5 as Exhibit NJDK-3 with the initial Default Service filing at Docket No. P-00072247?
3. Re: Affidavit of Pamela C. Polacek, Esquire: Did Ms. Polacek review the pro forma tariff that was provided as Exhibit NJDK-3 with the Default Service filing at Docket No. P-00072247?
4. Re: Affidavit of Pamela C. Polacek, Esquire: Did Rider No. 5 of the pro forma tariff clearly state that it was applicable to Rate L?
5. Re: Affidavit of Pamela C. Polacek, Esquire: Does Ms. Polacek agree that Rider No. 5 in Exhibit NJDK-3 stated as follows:

“The availability and application of Rider No. 5 – Time of Day  
Discounts will terminate December 31, 2010.”

6. Re: Affidavit of Pamela C. Polacek, Esquire: Was there any language in Rider No. 5 in Exhibit NJDK-3 stating that Rider No. 5 would be retained for any customer class or rate schedule past December 31, 2010? If yes, please explain.
7. Re: Affidavit of Pamela C. Polacek, Esquire, Paragraph 21: Is Ms. Polacek aware of any default service proceedings where a utility or a party to the proceeding proposed a distribution rate change? If yes:
  - a. List all such proceedings, including the docket number; and
  - b. Describe the distribution rate change proposal.
8. Re: Affidavit of Pamela C. Polacek, Esquire: Please provide a copy of all communications, including but not limited to e-mails and memoranda, to and from both Whemco and Ms. Polacek (including all persons that are working with or worked with Ms. Polacek and all attorneys at Ms. Polacek's law firm) regarding:
  - a. Representation of Whemco in the DSP IV proceeding;
  - b. Whemco's complaint; and
  - c. Preparation of the Affidavit.

## Appendix B

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**OBJECTIONS OF  
WHEMCO-STEEL CASTINGS, INC. TO  
DUQUESNE LIGHT COMPANY INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS– SET III**

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WHEMCO-Steel Castings, Inc. (“Whemco”) hereby submits its Objections to the following written interrogatories and requests for production of documents, Set III, propounded July 17, 2015 (collectively, “Interrogatories”), 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 Interrogatories subject to these Objections and the related grounds therefor are set forth below:

1. Re: Affidavit of Pamela C. Polacek, Esquire: Does Ms. Polacek agree that a utility’s tariff controls what rate the utility may charge? If no, please explain.
2. Re: Affidavit of Pamela C. Polacek, Esquire: Does Ms. Polacek agree that Duquesne Light provided a pro forma tariff that included changes to Rider No. 5 as Exhibit NJDK-3 with the initial Default Service filing at Docket No. P-00072247?
3. Re: Affidavit of Pamela C. Polacek, Esquire: Did Ms. Polacek review the pro forma tariff that was provided as Exhibit NJDK-3 with the Default Service filing at Docket No. P-00072247?
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6. Re: Affidavit of Pamela C. Polacek, Esquire: Was there any language in Rider No. 5 in Exhibit NJDK-3 stating that Rider No. 5 would be retained for any customer class or rate schedule past December 31, 2010? If yes, please explain.
7. Re: Affidavit of Pamela C. Polacek, Esquire, Paragraph 21: Is Ms. Polacek aware of any default service proceedings where a utility or a party to the proceeding proposed a distribution rate change? If yes:
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8. Re: Affidavit of Pamela C. Polacek, Esquire: Please provide a copy of all communications, including but not limited to e-mails and memoranda, to and from both Whemco and Ms. Polacek (including all persons that are working with or worked with Ms. Polacek and all attorneys at Ms. Polacek’s law firm) regarding:
- a. Representation of Whemco in the DSP IV proceeding;
  - b. Whemco’s complaint; and
  - c. Preparation of the Affidavit.

**Objections:** Whemco objects to the foregoing Interrogatories on the ground that they are premature at this stage of the proceeding. The Interrogatories are directed to an affidavit submitted by Whemco on behalf of Pamela Polacek, Esquire (“Polacek Affidavit”) in support of its Motion for Summary Judgment (“Whemco Motion”) filed in this proceeding on July 1, 2015. Under applicable Commission regulations, Duquesne filed a timely Answer to the Whemco Motion on July 1, 2015 in which it could have filed counter-affidavits disputing all or any portion of the issues raised by Whemco in the Whemco Motion, but did not avail itself of that opportunity.

At this point in the proceeding, the presiding Administrative Law Judge has both the Whemco Motion and a separate Motion for Partial Summary Judgment from Duquesne (“Duquesne Motion”), along with appropriate Answers, before him for disposition. Granting either the Whemco Motion or the Duquesne Motion would obviate the need for further discovery in this proceeding, lending further support to Whemco’s assertion that the Interrogatories are premature at this stage of the proceeding.

In addition, the affiant at issue in the Interrogatories, Pamela Polacek, Esquire, has *not* yet offered any prepared written testimony in this proceeding. If this proceeding is not fully disposed of by either the Whemco Motion or the Duquesne Motion and goes to hearing, Duquesne will have a complete opportunity to conduct discovery relating to Ms. Polacek’s written testimony after it is filed. Thus, Duquesne would not be prejudiced in the least if the Interrogatories are held in abeyance, if and until actual written testimony is submitted by the parties and their substantive positions are further explained beyond what is set forth in their respective motions.

Whemco further objects to No. 7 of the Interrogatories to the extent it requires Ms. Polack to conduct legal research and/or evaluate her and her law firm’s files over her years of legal practice to respond to the overly broad request in Interrogatory No. 7. Such efforts would be burdensome and the legal issue requested can just as easily be researched by counsel for Duquesne. As such, answering Interrogatory No. 7 would require Ms. Polacek to make an unreasonable investigation, which would be both burdensome and expense to conduct. *See*, 52 Pa. Code § 5.361(a)(2) and (4).

Finally, Whemco also objects to Interrogatory No. 8 to the extent it does not exclude matters that may be subject to privilege. The Commission's discovery regulations specifically prohibit a party from seeking or obtaining discovery on matters that are privileged. *See*, 52 Pa. Code § 5.321(c) and § 5.361(a)(3).

Respectfully submitted,



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Dated: July 29, 2015