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August 24, 2015

VIA ELECTRONIC FILING

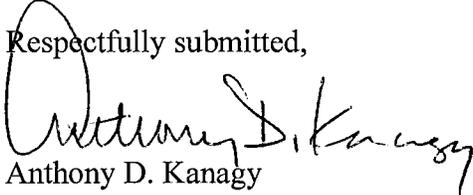
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed please find the Further 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)**

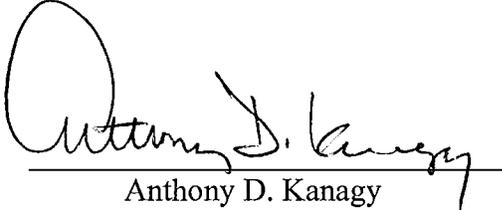
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL and FIRST CLASS MAIL

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Ricky L. Bertram, Esquire
General Counsel
Park Corporation
6200 Riverside Drive
Cleveland, OH 44135

Date: August 24, 2015


Anthony D. Kanagy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**FURTHER 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 Further Motion to Compel Answers to its Third Set of Interrogatories and Requests for Production of Documents (“Set III Discovery”) directed to Whemco-Steel Castings, Inc. (“Whemco”). The Further Motion to Compel requests that Administrative Law Judge Jeffrey A. Watson (the “ALJ”) direct Whemco to provide full and complete responses to Questions 4, 5, 6 and 8 of Set III as is required by 52 Pa. Code § 5.342(a)(4). Whemco initially filed objections to all of the Set III Discovery on July 29, 2015. On August 10, 2015, Duquesne Light filed a Motion to Compel Whemco to respond to the Set III Discovery. On August 14, 2015, Whemco filed its responses to the Set III Discovery in lieu of filing an Answer to Duquesne Light’s Motion to Compel. In the filing letter included with the responses, Whemco explained as follows:

In light of these Responses, Whemco-Steel Castings, Inc. will not be filing any response to Duquesne’s recently filed Motion to Compel with respect to Duquesne Interrogatories Set III, which is now moot. By copy of this letter only, we are advising Administrative Law Judge Watson that it will be unnecessary for him to rule on the Motion to Compel.

As explained below, Whemco's responses to Questions 4, 5, 6 and 8 of the Set III Discovery were non-responsive and not full and complete as is required by the Commission's regulations. Therefore, Duquesne Light's Motion to Compel is not moot, and Duquesne Light is filing this Further Motion to Compel with respect to Whemco's incomplete answers to Questions 4, 5, 6 and 8 of the Set III Discovery. In support of this Further 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"). Duquesne Light explained that Whemco's request for relief was barred, in substantial part, by the Commission-made rates doctrine. Duquesne Light further explained that it was not seeking Summary Judgment for the time period before April 21, 2011 because there were material facts in dispute related to whether refunds were appropriate for this time period (January 1, 2011 through April 20, 2011). 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.¹ Duquesne Light also noted in its Motion that it disputes Whemco’s request for refunds from January 1, 2011 to April 30, 2011 both on substantive bases and on the basis that Whemco’s allegations raised material issues of fact.

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.

¹ 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.

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 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, 2015.²

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 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 contained in the Polacek Affidavit and should be permitted to depose and 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

² 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.

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. In this regard, 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.³ A copy of Whemco's Objections is provided as Appendix B hereto.

12. On August 10, 2015, Duquesne Light filed a Motion to Compel Whemco to respond to the Set III Discovery. A copy of this Motion to Compel is provided as Appendix C.

13. Whemco did not file an Answer to Duquesne Light's August 10, 2015 Motion to Compel. Rather, on August 14, 2015, Whemco filed responses to the Set III Discovery and stated in its Filing Letter that Duquesne Light's August 10, 2015 Motion to Compel was moot.

14. As explained below, Whemco's responses to Questions 4, 5, 6 and 8 are non-responsive and/or incomplete and in violation of the Commission's regulations. 52 Pa. Code § 5.342(a)(4).

15. Duquesne Light has left a voice message with Whemco's counsel regarding this Further Motion to Compel, but the parties have not been able to informally resolve their issues.

16. Duquesne Light hereby files its Further Motion to Compel Whemco to fully and completely respond to Questions 4, 5, 6 and 8 of the Set III discovery questions.

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

II. WHEMCO SHOULD BE COMPELLED TO PROVIDE FULL AND COMPLETE RESPONSES TO QUESTIONS 4, 5, 6 AND 8.

A. Whemco Should Be Required To Provide Full And Complete Responses To Questions 4, 5 and 6 Rather Than Stating That Documents Speak For Themselves.

17. Duquesne Light Set III, Questions 4, 5 and 6 and Whemco's responses to these questions are as follows:

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?

Response:

The document speaks for itself.

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.”

Response:

The document speaks for itself.

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.

Response:

The document speaks for itself.

A copy of Whemco's responses to 4, 5 and 6 is provided in Appendix D.

18. Whemco has not provided full and complete responses to Questions 4, 5 and 6 but has only responded that “The document speaks for itself.” for each response.

19. Whemco's response that documents speak for themselves for Questions 4, 5 and 6 directly contradicts arguments that Whemco made with respect to Duquesne Light's responses to Whemco's Requests for Admission Set I in this same proceeding.

20. In the Whemco Requests for Admission Set I, Requests 4 and 6, Whemco asked Duquesne Light to admit facts as to what certain documents stated. Duquesne Light initially responded that the documents "speak for themselves." However, Whemco argued that these responses were insufficient, not appropriate in the discovery phase and did "not fairly address the substance of the Request." See Motion of Whemco-Steel Castings, Inc. To Determine Sufficiency of Duquesne Light Company Responses to Requests for Admission Set I, p. 6.

21. In addition, at the Prehearing Conference, Whemco's counsel argued as follows:

You know, in each of four and six, we were asking specifically in four about sample customer letters and what they do or do not provide with respect to making specific reference to then existing Rider Number 5 as applicable to Rate L customers. And number six, there was a similar question posed with respect to the press release that was identified as attachment 1-6 to Whemco's interrogatory to Duquesne. And each case, the answer was denied and said the customer letters or in the other one, the press release speaks for itself.

I think our point is that we think those were really nonresponsive and the answer is improper.

(Tr. at 20-21.)

22. It is improper for Whemco to state in discovery responses that documents "speak for themselves" when Whemco itself argued earlier in this proceeding that it was improper for Duquesne Light to state in discovery responses that documents "speak for themselves."

23. Moreover, the ALJ held that it was improper for Duquesne Light to respond to Whemco's Requests for Admission that documents speak for themselves. See *Interim Order Granting in Part and Denying in Part, the Motion of Whemco-Steel Castings, Inc. To Determine*

Sufficiency of Duquesne Light Company Responses to Requests for Admission Set I, dated June 1, 2015, p. 6. The same holding should apply to Duquesne Light's discovery questions to Whemco, and Whemco should be required to fully and completely respond to Questions 4, 5 and 6 of the Set III Discovery.

B. Whemco Should Not Be Permitted To Assert Privilege With Respect To The Response To Question 8.

24. Duquesne Light Set III, Question 8 and Whemco's response is 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.

Response:

- a. See the documents provided in response to Duquesne, Set II-7. Those items are the only documents or communications from 2007 that could be confirmed through a review of available McNees files.
- b. In December of 2014, I provided comments to Mr. Bertram (in house counsel at WHEMCO) regarding a draft of the Complaint. In early 2015, Ms. Schmittberger (associate at McNees) and I assisted Mr. Bertram and Mr. Slingluff of WHEMCO regarding documents and factual issues needed to respond to Duquesne's prior interrogatories to WHEMCO. Any input or communications between myself and/or Ms. Schmittberger and WHEMCO regarding the Complaint and discovery are subject to attorney-client and work-product privileges between McNees and WHEMCO. Ms. Schmittberger and I have engaged in conversations with the McNees internal firm counsel (Mr. Freedenberg)

regarding the Complaint and discovery, which are subject to attorney-client privilege.

- c. In May 2015, Mr. Freedenberg and I had a telephone call with WHEMCO's outside counsel regarding the potential provision of the affidavit. On June 8, 2015, I received a draft affidavit from WHEMCO's outside counsel based on information I had previously orally provided. I consulted with Mr. Freedenberg regarding the affidavit. I provided initial comments on June 25, 2015, and transmitted the final version to Mr. Bertram and WHEMCO's outside counsel on June 29, 2015. The substance of the communications between McNees and WHEMCO are subject to attorney-client and work-product privileges. The substance of the communications between Ms. Polacek and Mr. Freedenberg (the McNees firm counsel) are subject to attorney-client privilege.

25. As explained above, Whemco initially filed objections to all of the Set III Discovery including Question 8. Whemco objected to Interrogatory No. 8 "to the extent that it does not exclude matters that may be subject to privilege." Objections, p. 4.

26. In Duquesne Light's August 10, 2015 Motion to Compel, Duquesne Light explained as follows:

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.

27. Whemco did not file an answer to Duquesne Light's Motion to Compel but rather filed a letter indicating it was responding to the Set III Discovery. See Appendix D. Whemco has not disputed Duquesne Light's argument that there is no privileged relationship between Whemco and Ms. Polacek as to the subjects of Question 8. Therefore, Whemco must fully and completely answer Question 8.

28. In addition, Duquesne Light disagrees that there is any privileged relationship between Whemco and Ms. Polacek. Whemco is being represented by attorneys from Buchanan Ingersoll & Rooney PC in this proceeding. At no time prior to this answer has Whemco indicated that it was being represented by Ms. Polacek in this proceeding.

29. Moreover, even if there was a privileged relationship, Whemco has waived the privilege by submitting and relying on Ms. Polacek's testimony in her affidavit that was attached to Whemco's Motion for Summary Judgment that was filed on July 1, 2015, and by identifying her as a witness in Whemco's pre-hearing conference memo.

30. It is possible that Ms. Polacek's statements or documents provided to Whemco could be contrary to statements that Ms. Polacek made in her Affidavit in support of Whemco's Motion for Summary Judgment. Therefore, Whemco and Ms. Polacek should be compelled to provide to Duquesne Light all of the information requested in Question 8. Pennsylvania courts have held that privilege is waived where the "client places the confidential information at issue in the case." *Polly Rost v. State Board of Psychology*, 659 A.2d 626, 1995 Pa. Commw. LEXIS 246 (May 22, 1995) citing *Premack v. J.C.J. Ogor, Inc.*, 148 F.R.D. 140 (E.D. Pa. 1993). In this case, Whemco has placed any confidential information exchanged regarding the Complaint and the Affidavit between Whemco and Ms. Polacek at issue in the case by having Ms. Polacek testify in support of the Complaint.

31. Whemco has irrevocably waived any privilege by calling Ms. Polacek as a witness in the proceeding to defend Whemco's position and cannot be permitted to shield her from responding to relevant discovery responses by asserting privilege. This is fundamentally unfair. The United States District Court for the Eastern District of Pennsylvania has noted:

Based principally on notions of fairness, courts have imposed such a 'subject matter waiver' most often when the privilege holder has attempted to use the privilege as both 'a sword' and 'a shield' or when the party attacking the privilege will be prejudiced at trial.

Murray v. Gemphis Int'l, S.A., 217 F.R.D. 362, 2003 U.S. Dist. LEXIS 16169, **15-**16 (Order entered September 16, 2003).

32. Ms. Polacek has already answered one discovery question that contradicts her Affidavit. In the Affidavit, Ms. Polacek stated that she reviewed the DSP IV filing, including the supporting exhibits and testimony to determine the impact it would have on her clients. See Affidavit ¶ 14. However, in response to the Set III Discovery, Question 3, Ms. Polacek stated that she may not have reviewed all of the exhibits, stating as follows:

Based on my recollection, I reviewed at least a portion of the pro forma tariff, specifically, the changes to Rider 9, which set forth the default service option that would be available to Large C&I customers. I cannot say with certainty whether I reviewed other portions of the exhibit.

A copy of this discovery response is provided as Appendix E.

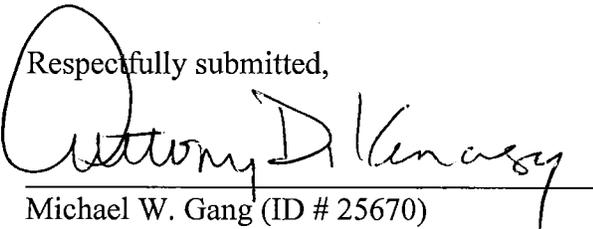
33. This discovery response has raised additional questions regarding the accuracy of the statements made in the Affidavit, and Whemco and Ms. Polacek should be required to fully respond to Question No. 8 so that Duquesne Light can examine additional facts related to the validity of both the Complaint and the Affidavit.

34. Whemco has waived any attorney-client or work-product privilege by calling Ms. Polacek as a fact witness in this proceeding. Whemco should be compelled to fully respond to Question 8.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Duquesne Light Company respectfully requests that Administrative Law Judge Jeffrey A. Watson grant this Motion to Compel and order Whemco Steel Castings, Inc. to fully answer Questions 4, 5, 6 and 8 of the Set III Discovery.

Respectfully submitted,



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Date: August 24, 2015

Attorneys for Duquesne Light Company

Appendix A



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July 17, 2015

VIA E-MAIL & REGULAR MAIL

Alan M. Seltzer, Esquire
Buchanan Ingersoll & Rooney PC
409 N. Second Street, Suite 500
Harrisburg, PA 17101-1357

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

Dear Counsel:

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

Sincerely,



Anthony D. Kanagy

ADK/skr
Enclosures

cc: Certificate of Service
Rosemary Chiavetta, Secretary (*letter and certificate of service only*)

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

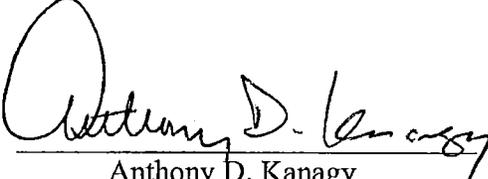
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL and FIRST CLASS MAIL

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General Counsel
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Cleveland, OH 44135

Date: July 17, 2015


Anthony D. Kanagy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

Pursuant to 66 Pa.C.S. § 333 and 52 Pa. Code §§ 5.341 *et seq.*, Duquesne Light Company (“Duquesne Light”), propounds the following Interrogatories and Requests for Production of Documents on (“Whemco”) – Set III.

INSTRUCTIONS AND DEFINITIONS

1. The “Responding Party,” “you,” or “your” means the party to which these interrogatories and requests for production of documents are propounded and/or all agents, affiliates, employees, consultants, and representatives acting on behalf of the Responding Party.
2. “Commission” means the Pennsylvania Public Utility Commission.
3. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.
4. To “identify” a business entity means to state the full name of such business, the form of the business, and its location or address.
5. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:
 - a. The title or other means of identification of each such document;

- 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

Buchanan Ingersoll & Rooney PC

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July 29, 2015

VIA EMAIL AND FIRST-CLASS MAIL

Michael W. Gang
Post & Schell PC
17 N. Second Street, 12th Fl.
Harrisburg, PA 17101-1601

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

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

Dear Counsel:

On behalf of Whemco-Steel Castings, Inc., attached are the Objections Of Whemco-Steel Castings, Inc. to Duquesne Light Company Interrogatories and Requests for Production of Documents—Set III in the above-captioned proceeding.

This document has been served on those parties indicated in the attached Certificate of Service.

Sincerely,

Alan M. Seltzer

Alan M. Seltzer *AMS*

AMS/tlg

Enclosure

cc: Rosemary Chiavetta, Secretary (*letter and Certificate of Service only via e filing*)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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?
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.

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.

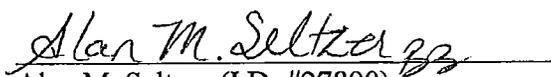
At this point in the proceeding, the presiding Administrative Law Judge has both the Whemco Motion and a separate Motion for Partial Summary Judgment from Duquesne (“Duquesne Motion”), along with appropriate Answers, before him for disposition. Granting either the Whemco Motion or the Duquesne Motion 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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

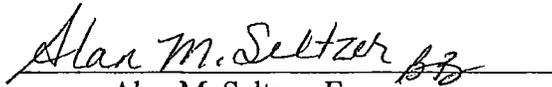
I hereby certify that I have this day served a true and correct copy of Objections of Whemco-Steel Castings, Inc. to Duquesne Light Company Interrogatories – Set II, upon the parties and in the manner listed below:

Via Email and First-Class Mail

Michael W. Gang
Anthony D. Kanagy
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Tishekia E. Williams
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Dated this 29th day of July, 2015.


Alan M. Seltzer, Esq.

Appendix C



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File #: 161587

August 10, 2015

VIA ELECTRONIC FILING

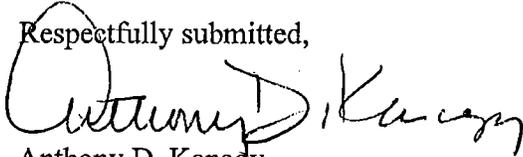
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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)**

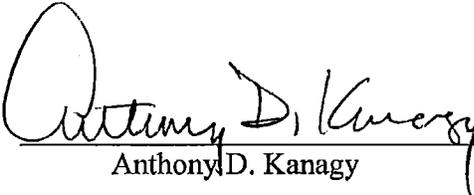
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL and FIRST CLASS MAIL

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John F. Povilaitis, Esquire
Buchanan Ingersoll & Rooney PC
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Harrisburg, PA 17101-1357

Ricky L. Bertram, Esquire
General Counsel
Park Corporation
6200 Riverside Drive
Cleveland, OH 44135

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.¹ Duquesne Light also noted in its Motion that it disputes Whemco’s request for refunds from January 1, 2011 to April 30, 2011.

¹ 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, 2015.²

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

² 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.³ 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.

³ 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.⁴

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.

⁴ 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.

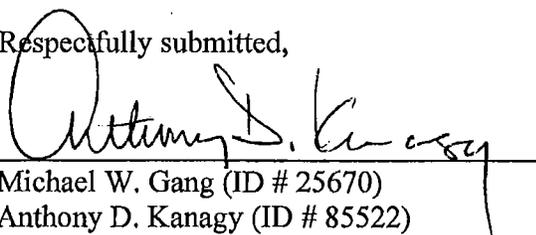
36. Whemco's general objection on privilege grounds should be denied because Whemco has failed to identify any grounds for why the response to Question 8 is privileged. Question 8 asks for communications between Whemco and Ms. Polacek related to the DSP IV proceeding, Whemco's Complaint and preparation 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.

Respectfully submitted,



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Robert H. Hoaglund II (ID # 313382)
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Date: August 10, 2015

Attorneys for Duquesne Light Company

Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

Pursuant to 66 Pa.C.S. § 333 and 52 Pa. Code §§ 5.341 *et seq.*, Duquesne Light Company (“Duquesne Light”), propounds the following Interrogatories and Requests for Production of Documents on (“Whemco”) – Set III.

INSTRUCTIONS AND DEFINITIONS

1. The “Responding Party,” “you,” or “your” means the party to which these interrogatories and requests for production of documents are propounded and/or all agents, affiliates, employees, consultants, and representatives acting on behalf of the Responding Party.
2. “Commission” means the Pennsylvania Public Utility Commission.
3. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.
4. To “identify” a business entity means to state the full name of such business, the form of the business, and its location or address.
5. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:
 - a. The title or other means of identification of each such document;

- 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

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.
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- 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.

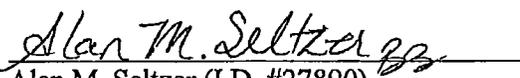
At this point in the proceeding, the presiding Administrative Law Judge has both the Whemco Motion and a separate Motion for Partial Summary Judgment from Duquesne ("Duquesne Motion"), along with appropriate Answers, before him for disposition. Granting either the Whemco Motion or the Duquesne Motion 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

Appendix D

Buchanan Ingersoll & Rooney PC

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August 14, 2015

VIA EMAIL AND FIRST-CLASS MAIL

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

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

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

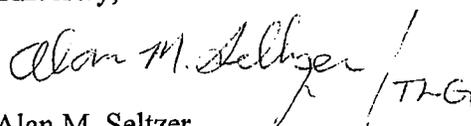
Dear Counsel:

Enclosed please find the Responses of Whemco-Steel Castings, Inc. to Duquesne Light Company Interrogatories and Requests for Production of Documents - Set III, in the above-captioned proceeding.

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

In light of these Responses, Whemco-Steel Castings, Inc. will not be filing any response to Duquesne's recently filed Motion to Compel with respect to Duquesne Interrogatories Set III, which is now moot. By copy of this letter only, we are advising Administrative Law Judge Watson that it will be unnecessary for him to rule on the Motion to Compel. The serving of these Responses is not an acknowledgement that there is any merit to Duquesne's Motion to Compel, and Whemco maintains its view that there are no material facts in dispute with respect to the pending Motions for Summary Judgment.

Sincerely,


Alan M. Seltzer

AMS/tlg
Enclosure

cc: Rosemary Chiavetta, Secretary (*letter and Certificate of Service only via efiling*)
Administrative Law Judge Jeffrey Watson (*letter and Certificate of Service only*)

Docket No. C-2014-2459527
Respondent: Pamela Polacek, Esquire
Position: Attorney, McNees Wallace &
Nurick LLC

WHEMCO-Steel Castings, Inc.
Response to Duquesne Light Company
Interrogatories and Requests for Production
Of Documents, Set III – 4

No. 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?

Response:

The document speaks for itself.

Docket No. C-2014-2459527
Respondent: Pamela Polacek, Esquire
Position: Attorney, McNees Wallace &
Nurick LLC

WHEMCO-Steel Castings, Inc.
Response to Duquesne Light Company
Interrogatories and Requests for Production
Of Documents, Set III – 5

No. 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.”

Response:

The document speaks for itself.

Docket No. C-2014-2459527
Respondent: Pamela Polacek, Esquire
Position: Attorney, McNees Wallace &
Nurick LLC

WHEMCO-Steel Castings, Inc.
Response to Duquesne Light Company
Interrogatories and Requests for Production
Of Documents, Set III – 6

No. 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.

Response:

The document speaks for itself.

Docket No. C-2014-2459527
Respondent: Pamela Polacek, Esquire
Position: Attorney, McNees Wallace &
Nurick LLC

WHEMCO-Steel Castings, Inc.
Response to Duquesne Light Company
Interrogatories and Requests for Production
Of Documents, Set III – 8

No. 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.

Response:

- a. See the documents provided in response to Duquesne, Set II-7. Those items are the only documents or communications from 2007 that could be confirmed through a review of available McNees files.
- b. In December of 2014, I provided comments to Mr. Bertram (in house counsel at WHEMCO) regarding a draft of the Complaint. In early 2015, Ms. Schmittberger (associate at McNees) and I assisted Mr. Bertram and Mr. Slingluff of WHEMCO regarding documents and factual issues needed to respond to Duquesne's prior interrogatories to WHEMCO. Any input or communications between myself and/or Ms. Schmittberger and WHEMCO regarding the Complaint and discovery are subject to attorney-client and work-product privileges between McNees and WHEMCO. Ms. Schmittberger and I have engaged in conversations with the McNees internal firm counsel (Mr. Freedenberg) regarding the Complaint and discovery, which are subject to attorney-client privilege.
- c. In May 2015, Mr. Freedenberg and I had a telephone call with WHEMCO's outside counsel regarding the potential provision of the affidavit. On June 18, 2015, I received a draft affidavit from WHEMCO's outside counsel based on information I had previously orally provided. I consulted

with Mr. Freedenberg regarding the affidavit. I provided initial comments on June 25, 2015, and transmitted the final version to Mr. Bertram and WHEMCO's outside counsel on June 29, 2015. The substance of the communications between McNees and WHEMCO are subject to attorney-client and work-product privileges. The substance of the communications between Ms. Polacek and Mr. Freedenberg (the McNees firm counsel) are subject to attorney-client privilege.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

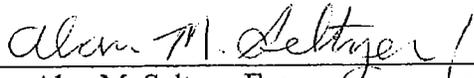
I hereby certify that I have this day served a true and correct copy of the Responses of Whemco-Steel Castings, Inc. to Duquesne Light Company Interrogatories and Requests for Production of Documents – Set III upon the parties and in the manner listed below:

Via Email and First-Class Mail

Michael W. Gang
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akanagy@postschell.com

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

Dated this 14th day of August, 2015.



Alan M. Seltzer, Esq. *ATL*

Appendix E

Docket No. C-2014-2459527
Respondent: Pamela Polacek, Esquire
Position: Attorney, McNees Wallace &
Nurick LLC

WHEMCO-Steel Castings, Inc.
Response to Duquesne Light Company
Interrogatories and Requests for Production
Of Documents, Set III – 3

No. 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?

Response:

Based on my recollection, I reviewed at least a portion of the pro forma tariff, specifically, the changes to Rider 9, which set forth the default service option that would be available to Large C&I customers. I cannot say with certainty whether I reviewed other portions of the exhibit. However, as noted in the response to Duquesne Interrogatory III-2, there was no specific mention of the Rider No. 5 termination relative to large customers in the petition or any supporting testimony filed by Duquesne in the proceeding at Docket No. P-00072247, including the witness who supplied and sponsored Exhibit NJDK-3.