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March 14, 2016

VIA ELECTRONIC FILING

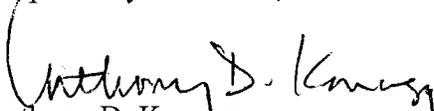
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed please find the Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents Propounded by Duquesne Light Company on Whemco-Steel Castings, Inc., Sets IV and V 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)

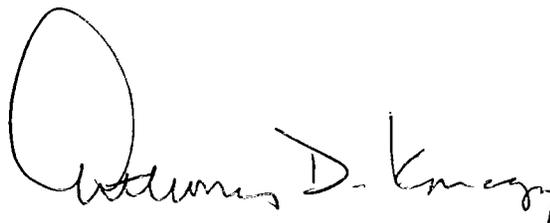
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL and REGULAR MAIL

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Date: March 14, 2016

A handwritten signature in black ink, appearing to read "Anthony D. Kanagy". The signature is written in a cursive style with a large, prominent initial "A".

Anthony D. Kanagy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION TO DISMISS OBJECTIONS AND COMPEL ANSWERS TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY DUQUESNE LIGHT COMPANY ON
WHEMCO-STEEL CASTINGS, INC., SETS IV AND V**

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 Dismiss Objections and Compel Answers to its Fourth and Fifth Sets of Interrogatories and Requests for Production of Documents directed to Whemco-Steel Castings, Inc. (“Whemco”). Whemco has filed objections to Question 11 of Duquesne Light’s Set IV Interrogatories and Questions 9, 19 and 26 of Duquesne Light’s Set V Interrogatories. The parties have been unable to informally resolve their disagreement regarding these questions. Therefore, Duquesne Light is filing this Motion to Compel Whemco’s responses. 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 (“Rider No. 5”) 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. A prehearing conference was held before Administrative Law Judge Jeffrey A. Watson (the "ALJ") on May 7, 2015.

5. On July 1, 2015, Duquesne Light and Whemco filed competing Motions for Summary Judgment.

6. On July 21, 2015, Duquesne Light and Whemco filed Answers to the respective Motions for Summary Judgment.

7. On September 10, 2015, the ALJ issued Interim Orders denying Duquesne Light's and Whemco's Motions for Summary Judgment.

8. A further prehearing conference was held before the ALJ on January 8, 2016.

9. On January 19, 2016, Whemco served the direct testimony of Pamela C. Polacek, Christian Slingsluff and Robert A. Rosenthal.

10. Duquesne Light conducted the depositions of all three Whemco witnesses on February 9, 10 and 24, 2016.

11. The parties have engaged, and continue to engage, in discovery throughout this proceeding.

12. On February 23, 2016, Duquesne Light served its Interrogatories and Requests for Production of Documents, Set IV ("Set IV Discovery") and Interrogatories and Requests for Production of Documents, Set V ("Set V Discovery") on Whemco.

13. On March 3, 2016, Whemco filed its objections to Question 11 of the Set IV Discovery and Questions 9, 19 and 26 of the Set V Discovery. A copy of Whemco's Objections is attached as Appendix A hereto.

14. The parties have not been able to reach a compromise regarding these discovery requests. Therefore, Duquesne Light is filing the Motion to Compel Whemco's responses.

II. WHEMCO'S OBJECTIONS LACK MERIT AND SHOULD BE DENIED.

A. DUQUESNE LIGHT'S SET IV, QUESTION 11 SEEKS NON-PRIVILEGED INFORMATION THAT IS RELEVANT TO THIS PROCEEDING AND WHEMCO SHOULD BE REQUIRED TO ANSWER THIS QUESTION.

15. Duquesne Light – Set IV Question No. 11 provides as follows:

Did Ms. Polacek, including the expert witness hired by Ms. Polacek, her firm, or her clients, review the impact of the rates in the 2010 base rate case at Docket No. R-2010-2179522 on Rate L customers? If yes,

a. Fully explain what analysis was conducted.

b. Provide a copy of all analyses.

c. Did Ms. Polacek or the consultant consider the impact of the elimination of Rider No. 5 – Time of Day Discounts on Rate L customers?

d. Did Ms. Polacek or her consultant prepare any documents related to Rider No. 5 – Time of Day Discounts during the time between when the 2010 base rate case was filed and when the compliance filing was approved by the Commission? If yes, provide a copy of all such documents.

16. Whemco objects to Question No. 11 as irrelevant to the subject matter of this proceeding and further argues that the question requests privileged information. Whemco also asserts that this question is beyond the scope of Ms. Polacek's direct testimony and not likely to lead to the discovery of admissible evidence.

17. Under 52 Pa. Code § 5.321(c), discovery is permitted when the information sought relates to the claim or defense of the party seeking discovery or to the claim or defense of another party.

18. The Commission generally provides wide latitude in discovery matters. *See Pa. P.U.C. v. The Peoples Natural Gas Co.*, 62 Pa. P.U.C. 56 (Order Entered Aug. 26, 1986); *Pa. P.U.C. v. Equitable Gas Co.*, 61 Pa. P.U.C. 468 (Order Entered May 16, 1986).

19. Contrary to Whemco's claims, Question No. 11 is relevant to this proceeding. The question seeks to ascertain Ms. Polacek's level of review of the rates in Duquesne Light's 2010 base rate case at Docket No. R-2010-2179522. Ms. Polacek has testified that she participated in Duquesne Light's 2010 base rate case. (Polacek Deposition Tr. at p. 51). Ms. Polacek has also testified in the instant case as to the elimination of Rider No. 5. (Whemco Statement No. 2 at pp. 4-5). Although the elimination of Rider No. 5 was approved effective January 1, 2011, in Duquesne Light's 2007 Default Service Proceeding, Rider No. 5 was still in effect at the time that the rate case was filed. Further, in the base rate case, the Commission opened an investigation into all of Duquesne Light's rates, including its then existing rates, which included Rider No. 5. *Order Suspending Proposed Tariff Supplement and Initiating Investigation*, Docket No. R-2010-2179522, (Order entered September 16, 2010). Duquesne Light contends that the elimination of Rider No. 5 became a Commission-made rate effective April 21, 2011, with the effective date of rates under the Commission's Order in Duquesne Light's 2010 base rate proceeding.¹ Whemco disputes this contention. Therefore, the extent of any review and/or analysis Ms. Polacek or her consultants undertook of the proposed rates in Duquesne Light's 2010 base rate case, including with respect to the impact of the elimination of

¹ This is significant because Commission-made rates are not subject to refund. *See Cheltenham & Abington Sewage Co. v. Pa. PUC*, 344 Pa. 366, 25 A.2d 344, 338 (1942); *Arizona Grocery Co. v. Atchison, Topeka & Santa Fe Railway Co., et al.*, 284 U.S. 370, 387-389 (January 4, 1932).

Rider No. 5 on Rate L customers and how such customers could have mitigated that elimination by participation in the 2010 rate case, is a relevant issue in this proceeding. Therefore, Duquesne Light's interrogatory is likely to lead to the discovery of admissible evidence.

20. Duquesne Light disagrees with Whemco's assertion that the interrogatory is objectionable on the basis that Ms. Polacek's direct testimony does not specifically contain information regarding the 2010 base rate case. Whether Ms. Polacek's direct testimony contains information related to Duquesne Light's 2010 base rate case is irrelevant because the topics addressed in Duquesne Light's 2010 base rate proceeding are an issue in this case. Duquesne Light is not restricted in its discovery to issues raised by Ms. Polacek's testimony. It was the decision of Whemco to file its testimony prior to the completion of discovery. Duquesne Light is arguing in this case that the elimination of Rider No. 5 became a Commission-made rate upon the effective date of new rates in the 2010 base rate case. In addition, Whemco Witness Robert Rosenthal testified regarding his opinion of the effects of the 2010 base rate case and whether it addressed the elimination of Rider No. 5. (Whemco Statement No. 3 at pp. 9-11). Ms. Polacek participated in the 2010 base rate case and may have relevant, first-hand knowledge on these issues. Duquesne Light is not limited to seeking information from only the witness who submitted direct testimony addressing the issue. The Company may ask questions regarding issues in the case of any witness who has first-hand knowledge, regardless of whether the particular witness submitted direct testimony on the issue.

21. Question No. 11 does not seek privileged information. Question 11 asks for analyses conducted by Ms. Polacek or her consultants regarding the impact of the rates in the Company's 2010 base rate case on Rate L customers. Ms. Polacek was not legal counsel for Whemco in the 2010 base rate case, and Whemco did not participate in that proceeding.

Therefore, no privileged relationship existed between Ms. Polacek and Whemco with respect to the 2010 base rate case, and Whemco cannot claim privilege for the information sought.

22. In further support for its objection to Question No. 11, Whemco asserts that Duquesne Light already has in its possession the testimony of Mr. Baudino, Ms. Polacek's consultant in the Company's 2010 base rate case. However, Question No. 11 seeks to ascertain Ms. Polacek's, as well as her consultant's, level of review and/or analyses of the rates in the 2010 base rate case and the impact of the rates on Rate L customers. This type of analysis could have been conducted and not included in testimony.

23. Finally, in further objection to this interrogatory, Whemco asserts that Ms. Polacek "has no way of determining" what her consultant reviewed in Duquesne Light's 2010 base rate proceeding. It is reasonable to expect that Ms. Polacek would have knowledge regarding what information was reviewed by her consultant, who worked with her during the 2010 base rate proceeding. Furthermore, Ms. Polacek's response is likely to lead to the discovery of admissible evidence.

B. DUQUESNE LIGHT'S SET V, QUESTION 9 IS REASONABLE AND SEEKS INFORMATION THAT IS RELEVANT TO THIS PROCEEDING AND WHEMCO SHOULD BE REQUIRED TO ANSWER THE QUESTION.

24. Duquesne Light Set V – Question 9, provides as follows:

Provide copies of all documents in Whemco's possession addressing the subject of cost differential between different shifts for Whemco's facilities, including Whemco's affiliated production facilities.

25. Whemco objects to this question as "over broad" and requiring Whemco to conduct an "unreasonable investigation." Whemco further asserts that the information sought is irrelevant and that no Whemco facility, other than the Midland facility, is at issue in this proceeding.

26. Duquesne Light disagrees with Whemco's assertions that the information sought in this interrogatory is irrelevant. Whemco's witness Robert Rosenthal has testified regarding the economic effects of eliminating Rider 5 on Whemco's operations during on-peak versus off-peak hours. (Whemco Statement No. 3 at pp. 5, 8-9). Specifically, Mr. Rosenthal attempts to calculate the amount Whemco would have owed Duquesne Light had Whemco not moved its melting operation from off-peak to on-peak hours. (Whemco Statement No. 3 at p. 8-9). Question No. 9 seeks to obtain information regarding the price differentials between different shifts for Whemco's facilities, including possible cost savings associated with moving operations to on-peak hours, which is directly relevant to the issues raised in Mr. Rosenthal's testimony and is likely to lead to the discovery of admissible evidence.

27. Further, Question No. 9 is not over broad. It is reasonable to expect that Whemco would have in its possession information regarding the cost differential between different shifts for Whemco's facilities. Mr. Rosenthal has testified that Whemco moved its operations to on-peak hours, and Duquesne Light is entitled to discover information directly related to this testimony. Section 5.361 prohibits only those requests that are *unreasonably* burdensome. Producing information that is within Whemco's possession and that directly relates to issues raised in Whemco's direct testimony would not create an undue burden on Whemco.

C. DUQUESNE LIGHT'S SET V, QUESTION 19 SEEKS INFORMATION THAT IS NOT PRIVILEGED AND WHEMCO SHOULD BE REQUIRED TO ANSWER THE QUESTION.

28. Duquesne Light, Set V – Question No. 19 provides as follows:

With respect to your response to Interrogatory No. II – 6, please explain how Whemco became “aware generally of a possible legal claim in the Fall of 2013”?

- a. *Identify each and every step Whemco took in 2014 to “assess” the claim?*

b. *Identify each and every step Whemco took in 2014 to attempt to resolve the matter with Duquesne?*

29. Whemco objects to Question No. 19 as seeking information that is subject to the attorney client privilege.

30. The information sought by Duquesne Light is not protected by the attorney client privilege. Question No. 19 seeks to determine the steps Whemco, not Whemco's attorneys, took to assess the possible legal claim related to the elimination of Rider No. 5. The question does not ask for any specific information related to the content of Whemco's discussions with its attorneys. Rather, the question is limited to what steps Whemco took in order to determine whether to pursue a possible legal claim. The attorney client privilege does not extend to general information regarding the actions Whemco took to assess the potential claim.

D. DUQUESNE LIGHT'S SET V, QUESTION 26 IS REASONABLE AND SEEKS INFORMATION THAT IS RELEVANT AND WHEMCO SHOULD BE REQUIRED TO ANSWER THE QUESTION.

31. Duquesne Light, Set V – Question No. 26 provides as follows:

Does Whemco prepare written business forecasts as referenced in Slingluff Deposition Exhibit No. 3?

a. If the answer to the preceding interrogatory is in the affirmative, produce all business forecasts for the years 2009 – 2013.

32. Whemco objects to Question No. 26 as “over broad” and “irrelevant” to this proceeding.

33. Duquesne Light disagrees that Question No. 29 is irrelevant to this proceeding. Mr. Slingluff has referenced Whemco's “business forecasts” in relation to a possible Rule 4 contract. (Slingluff Deposition Tr. at pp. 22-23, Ex. 3). Question No. 29 requests information related to the business forecasts referenced by Mr. Slingluff and seeks to discern the content of these forecasts. This information is directly relevant to Mr. Slingluff's assertions regarding the

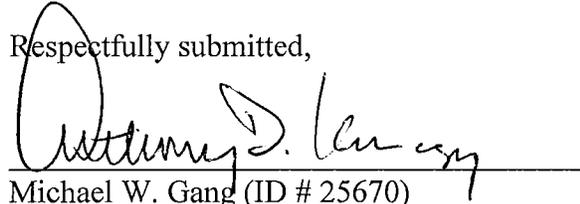
relationship between Whemco's business forecasts and the possibility of a Rule 4 contract and is likely to lead to the discovery of admissible evidence.

34. Duquesne Light also disagrees that Question No. 29 is over broad. It is reasonable to expect that Whemco would have in its possession business forecasts prepared by Whemco employees. The question is limited to a five-year timeframe, from 2009-2013, which further supports that the question is reasonable and would not require an unduly burdensome investigation. As stated previously, Section 5.361 prohibits only those requests that are *unreasonably* burdensome. The fact that Whemco will have to exert some effort in producing the requested information is not a valid basis for objecting to the interrogatory. 52 Pa. Code § 5.361.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Duquesne Light Company respectfully requests that Administrative Law Judge Jeffrey A. Watson grant this Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents and order Whemco Steel Castings, Inc. to fully answer Question 11 of Duquesne Light's Set IV Interrogatories and Questions 9, 19 and 26 of Duquesne Light's Set V Interrogatories.

Respectfully submitted,



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Date: March 14, 2016

Attorneys for Duquesne Light Company

Appendix A

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March 3, 2016

VIA EMAIL AND FIRST-CLASS MAIL

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

Dear Counsel:

Enclosed please find the Objections of WHEMCO-Steel Castings, Inc. to Duquesne Light Company Interrogatories – Sets IV and V in the above-captioned proceeding.

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

Sincerely,



Alan M. Seltzer

AMS/tlg
Enclosure

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

**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 – SETS IV AND V**

WHEMCO-Steel Castings, Inc. (“Whemco”) hereby submits its Objections to specific questions in Duquesne Light Company’s (“Duquesne”) written interrogatories Sets IV and V, propounded February 23, 2015, identified below pursuant to Section 5.342(c) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.342(c).

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

Duquesne Set IV-11:

11. Did Ms. Polacek, including the expert witness hired by Ms. Polacek, her firm, or her clients, review the impact of the rates in the 2010 base rate case at Docket No. R-2010-2179522 on Rate L customers? If yes,
 - a. Fully explain what analysis was conducted.
 - b. Provide a copy of all analyses.
 - c. Did Ms. Polacek or the consultant consider the impact of the elimination of Rider No. 5 – Time of Day Discounts on Rate L customers?
 - d. Did Ms. Polacek or her consultant prepare any documents related to Rider No. 5 – Time of Day Discounts during the time between when the 2010 base rate case was filed and when the compliance filing was

approved by the Commission? If yes, provide a copy of all such documents.

Objection: Whemco believes this interrogatory, addressed to its expert witness Pamela Polacek, is objectionable on at least the following bases: (i) it is irrelevant and beyond the scope of Ms. Polacek's Direct Testimony which does not address or even mention the 2010 Duquesne base rate case; (ii) Whemco was not represented by Ms. Polacek in the 2010 Duquesne base rate case and did not participate in that case either individually or as a member of a large customer coalition; (iii) Duquesne already has in its possession the testimony of the consultant (i.e., Mr. Baudino) in the 2010 base rate case, which contains the extent of the analysis submitted in that proceeding and which did not address the Rider No. 5 discount; (iv) Ms. Polacek has no way of determining what the consultant for the non-Whemco clients she represented in the 2010 Duquesne base rate case may have reviewed other than what is referenced in his prepared testimony; (v) Ms. Polacek's analysis and that of her consultant was in the course of her legal representation of parties not in this proceeding and she is under no obligation to reveal such privileged and confidential information; (vi) because the Rider No. 5 discount had already been eliminated in the 2007 DSP IV proceeding *before* the 2010 base rate case had been filed, the Rider No. 5 discount was not an issue in the 2010 Duquesne base rate case.

As noted in Duquesne's compliance filing made in connection with the 2010 base rate proceeding, the elimination of the Rider No. 5 discount had occurred in the 2007 DSP IV proceeding and by Duquesne's own admission was not an issue in the 2010 base rate proceeding. Ms. Polacek has already confirmed in prior discovery that she was unaware of the elimination of the Rider No. 5 discount for large customers until the December 2010 timeframe and unaware of any analysis that Rider No. 5 may have been unlawfully eliminated until the December 2014 timeframe, both of which occurred after the litigation of the Duquesne 2010 base rate case.

However, Duquesne is free to make any arguments it believes pertinent/relevant to this proceeding regarding the 2010 base rate proceeding based on the actual state of the record of that proceeding.

The scope of discovery in Commission proceeding is neither unbounded nor completely open-ended. On the contrary, under 52 Pa. Code § 5.321 discovery must be “relevant to the subject matter involved in the pending action...” For the reasons specified above, the details relating to rate adjustments that may or may not have taken place in a 2010 Duquesne base rate case that Ms. Polacek is *not* addressing in her Direct Testimony in this proceeding and for which Whemco was not even a party are not relevant to this proceeding under any reasonable interpretation of 52 Pa. Code § 5.321 and are not reasonably calculated to lead to the discovery of admissible evidence.

Duquesne Set V-9:

9. Provide copies of all documents in Whemco’s possession addressing the subject of cost differential between different shifts for Whemco’s facilities, including Whemco’s affiliated production facilities.

Objection: This question is over broad since it relates to and seeks *all* documents addressing the subject of cost differentials between different shifts for Whemco’s facilities, has no time period specified and purports to cover facilities other than the Whemco’s Midland facility (i.e., the only facility impacted by and the subject of the complaint in this proceeding). These other facilities are completely unrelated and irrelevant to the subject matter of this proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321. Nor has Duquesne offered any explanation or rationale for the necessity or relevancy of this question after Whemco provided informal objections to this interrogatory. Given the unreasonable breadth of this interrogatory, it would require Whemco to engage in and

conduct an unreasonable investigation in violation of the limitations on discovery specified in 52 Pa. Code § 5.361.

Duquesne Set V-19

19. With respect to your response to Interrogatory No. II – 6, please explain how Whemco became “aware generally of a possible legal claim in the Fall of 2013”?
- a. Identify each and every step Whemco took in 2014 to “assess” the claim?

Objection: Whemco has already advised Duquesne that around the Fall of 2013 Whemco had requested Buchanan Ingersoll & Rooney to review the issue of the elimination of the Rider No. 5 Discount. The specific “assessment” and related “steps” made by Whemco with respect to a possible legal claim against Duquesne are subject to the attorney client privilege and attorney work-product doctrine and not discoverable.

Duquesne Set V-26

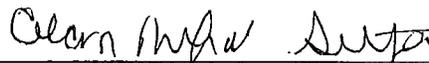
26. Does Whemco prepare written business forecasts as referenced in Slingluff Deposition Exhibit No. 3?
- a. If the answer to the preceding interrogatory is in the affirmative, produce all business forecasts for the years 2009 – 2013.

Objection: This interrogatory is over broad to the extent it seeks Whemco’s business forecasts for any period other than the time in which Rule 4 and related discussions were under way between Whemco and Duquesne in 2011-2012. All other forecasts are irrelevant to this proceeding. Duquesne has not offered any explanation or rationale for the necessity or relevancy of this information after Whemco provided its informal objections to this interrogatory. The scope of discovery in Commission proceedings is neither unbounded nor completely open-ended. On the contrary, under 52 Pa. Code § 5.321 discovery must be “relevant to the subject matter

involved in the pending action..." The requested forecasts for years other than 2011-2012 are not relevant to the issues in this proceeding or any reasonable defense.

Respectfully submitted,

Dated: March 3, 2016



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Attorneys for WHEMCO-Steel Castings, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

Via Email and First-Class Mail

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kkubiak@duqlight.com

Dated this 3rd day of March, 2016.



Alan M. Seltzer, Esq.