

**Alan M. Seltzer**

717 237 4862  
alan.seltzer@bipc.com

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

March 29, 2016

**VIA EFILING**

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

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

Dear Secretary Chiavetta:

On behalf of WHEMCO-Steel Castings, Inc., I have enclosed for electronic filing the Answer of WHEMCO-Steel Castings, Inc. to Further Motion to Compel Answers to Interrogatories and Requests for Production of Documents Propounded by Duquesne Light Company, Sets IV and V in the above-captioned proceeding.

This document has been served as indicated in the attached Certificate of Service.

Sincerely,



Alan M. Seltzer

AMS/tlg  
Enclosure

cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

WHEMCO-Steel Castings, Inc. (“Whemco”) hereby responds to the Motion to Compel (“Duquesne Motion”) filed by Duquesne Light Company (“Duquesne”) on March 24, 2016, pursuant to the Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code § 5.342(g)(1) as follows:

**I. INTRODUCTION**

1. The Duquesne Motion and this Answer have their genesis in a discovery dispute between Duquesne and Whemco regarding certain interrogatories and Requests for Production of Documents propounded by Duquesne upon Whemco on February 23, 2016 in Set IV and Set V, specifically all or portions of Set IV No. 12 and Set V No. 11 (collectively, “Disputed Discovery”).<sup>1</sup>

2. As the presiding Administrative Law Judge (“ALJ”) is well aware, discovery has been active and well underway since this proceeding was commenced by Whemco’s complaint filed against Duquesne on December 23, 2014. Since that time, Duquesne has issued six sets of interrogatories and Requests for Production of Documents on Whemco, conducted oral depositions of all three of Whemco’s witnesses, and issued Requests for Admission.

---

<sup>1</sup> Duquesne has also propounded a Set VI of interrogatories on Whemco.

3. In an effort to bring this case to a reasonably timely conclusion, Whemco has diligently and timely answered all of Duquesne's non-objectionable discovery and made its witnesses available for depositions, including two expert witnesses, which is itself a rarity in Pennsylvania Public Utility Commission ("Commission") proceedings. Whemco's witnesses were in fact deposed by Duquesne on February 9, 10 and 24.

4. The Disputed Discovery represents two interrogatories propounded upon it by Duquesne in Sets IV and V that have been answered but which Duquesne believes were non-responsive and/or not complete. (Duquesne Motion, ¶ 15).

5. Whemco filed timely answers to the Disputed Discovery on March 14, 2016.

6. Duquesne did not contact Whemco prior to filing the Duquesne Motion to discuss any possible concerns about the sufficiency of the answers to the Disputed Discovery. Thus, Whemco was not given the opportunity to consider the concerns raised by Duquesne before the commencement of formal action before the presiding ALJ. As provided further below, Whemco is prepared to partially answer the Disputed Discovery and submit the balance of the dispute to the ALJ for an *in camera* review to facilitate a prompt resolution.

## **II. BACKGROUND**

7. On February 23, 2016 Duquesne served the interrogatories and Request for Production of Documents Set IV and V upon Whemco. Set IV consisted of twelve (12) interrogatories (excluding subparts) and Set V consisted of twenty-six (26) interrogatories (excluding subparts). As noted above, the Disputed Discovery constitutes two questions in Sets IV and V.

8. The Duquesne Motion seeks to compel Whemco “to fully and completely respond to Question 12 of Set IV Discovery and Question 11 of Set V Discovery.” (Duquesne Motion, ¶ 17).

9. For ease of reference, the Disputed Discovery subject to the Duquesne Motion are set forth below:

**Duquesne Set IV-12:**

To the extent that Whemco argues that the attorney-client privilege or attorney work-product doctrine applies to any of the questions asked in this Set IV discovery, provide a privilege log of all communications and/or documents. Include in the privilege log a document identifying number, the date of the communication/document, the author of the communication/document, the recipient(s) of the communication/document, a summary of all subjects of the communication/document, a designation of the privilege that is being claimed for each communication/document and the reasons why Whemco believes the communication/document is privileged.

**Duquesne Set V-11:**

Identify all individual cost savings that Whemco achieved by moving its melting to on-peak hours. Identify each cost saving by type of cost, amount saved and time period for each individual cost saving.

**III. WHEMCO RESPONSES**

**A. Duquesne Set IV-12**

10. Whemco provided a detailed Privilege Log to Duquesne in response to Duquesne Set IV-12.

11. As noted in paragraph 19 of the Duquesne Motion, Duquesne seeks more detailed information about two specific emails, one dated September 21, 2010 and the other dated January 6, 2011, both of which were identified as privileged.

12. Upon further review, Whemco agrees with Duquesne that the September 21, 2010 email from Pamela Polacek, Esq. to Christian Slingluff at Whemco is not privileged. This email refers to entities that could potentially be clients of Ms. Polacek. In the review of the

voluminous materials that was required because of the request for a Privilege Log, this email was mistakenly initially classified as privileged because of the reference to clients. The September 21, 2010 email provides general information about the impact of Duquesne's then 2010 base rate case on Rate L customers in an effort to determine if Whemco was interested in participating in that proceeding. Whemco will provide this email to Duquesne.

13. However, upon further review, Whemco maintains its position that the email dated January 6, 2011 Pamela Polacek, Esq. to Christian Slingluff at Whemco is fully subject to the attorney client privilege and attorney work product doctrines and cannot be provided to Duquesne. As such, this email remains subject to all the privileges previously asserted and as noted in the Privilege Log. This email contains analyses from Pamela Polacek, Esq. performed during her representation of Whemco in its efforts to develop a contract under Rule 4 of Duquesne's tariff to ameliorate the impacts of the Rider No. 5 discount applicable to Rate L customer being eliminated by Duquesne effective January 1, 2011 and provided to Whemco's representative, Christian Slingluff, as her client. This confidential and privilege email updated and analyzed information that had previously been provided to Whemco by Duquesne's then account representative to Whemco, Kim Titley (who is referenced in the email), as part of the Rule 4 discussions. If Duquesne continues to insist upon discovery of the January 6, 2011 email, Whemco is prepared to make the document available to the ALJ for a private confidential *in camera* review to confirm Whemco's claim of privilege and protection from discovery asserted in this proceeding.

**B. Duquesne Set V-11**

14. Whemco reasonably believed that the calculation provided to Duquesne in response to Duquesne Set V-11 was fully responsive to the interrogatory. As noted above,

Duquesne did not reach out to Whemco with its concerns and facilitate a possible informal resolution prior to filing the Duquesne Motion. Whemco will develop and timely serve on Duquesne an actual cost savings recognizing that (i) only a few minutes were generally moved to the on-peak period and not the entire shift and (ii) the wage differential between shifts as noted in the current response to Duquesne Set V-11 is so minimal that the actual cost savings for the entire relevant period is expected to be less than \$13.00.

**IV. CONCLUSION**

15. Whemco should not be compelled to fully respond to Duquesne Set IV-12 in its entirety for the reasons specified herein. Otherwise, Whemco will provide responses to the Disputed Discovery consistent with the representations contained above.

WHEREFORE, Whemco requests that the ALJ (i) deny the Duquesne Motion consistent with the terms of this Answer and (ii) grant Whemco the relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: March 29, 2016



---

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

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

Attorneys for WHEMCO-Steel Castings, Inc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the Answer of WHEMCO-Steel Castings, Inc. to Further Motion to Compel Answers to Interrogatories and Requests for Production of Documents Propounded by Duquesne Light Company, Sets IV and V, upon the parties and in the manner listed below:

**Via Email and First-Class Mail**

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

Tishekia E. Williams  
Krysia M. Kubiak  
Duquesne Light Company  
411 Seventh Avenue, 16<sup>th</sup> Fl.  
Pittsburgh, PA 15219  
[twilliams@duqlight.com](mailto:twilliams@duqlight.com)  
[kkubiak@duqlight.com](mailto:kkubiak@duqlight.com)

Michael W. Gang  
Anthony D. Kanagy  
Post & Schell PC  
17 N. Second Street, 12<sup>th</sup> Fl.  
Harrisburg, PA 17101-1601  
[mgang@postschell.com](mailto:mgang@postschell.com)  
[akanagy@postschell.com](mailto:akanagy@postschell.com)

Dated this 29<sup>th</sup> day of March, 2016.



\_\_\_\_\_  
Alan M. Seltzer, Esq.