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April 27, 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 of Duquesne Light Company for *In Camera* Review 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)**

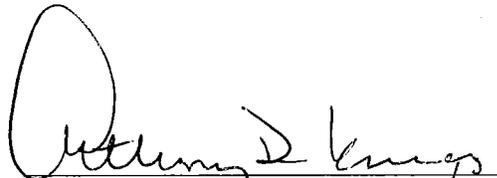
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL and REGULAR MAIL

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Date: April 27, 2016


Anthony D. Kanagy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Whemco-Steel Castings, Inc.

v.

Duquesne Light Company

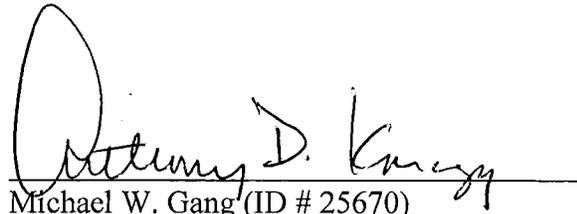
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Docket No. C-2014-2459527

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), YOU MAY FILE A REPLY TO THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Date: April 27, 2016

Attorneys for Duquesne Light Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION OF DUQUESNE LIGHT COMPANY FOR *IN CAMERA* REVIEW
TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:**

As explained herein, Duquesne Light Company (“Duquesne Light” or the “Company”) hereby files, pursuant to 52 Pa. Code § 5.103, this Motion for *In Camera* Review of the January 6, 2011 e-mail, which was provided by Whemco-Steel Castings, Inc. (“Whemco”) in redacted form as Attachment “Duquesne Set IV-12-2” in Whemco’s Supplemental Response to Question No. 12 of Duquesne Light’s Set IV Interrogatories and Requests for Production of Documents to Whemco (“Set IV Discovery”). The Motion for *In Camera* Review requests that Administrative Law Judge Jeffrey A. Watson (the “ALJ”) direct Whemco to furnish to the ALJ for *in camera* review a copy of the entire January 6, 2011 e-mail from Pam Polacek to Christian Slingluff regarding “New DLC Rates for Rate L, effective 4/1/11”. 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 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 Slingluff 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 Set IV Discovery on Whemco.

13. On March 14, 2016, Whemco filed its responses to the Set IV Discovery.

14. On March 24, 2016, Duquesne Light filed a Further Motion to Compel Whemco to fully and completely respond to Question 12 of the Set IV Discovery.

15. The ALJ issued an Interim Order granting in part and denying in part Duquesne Light's Further Motion to Compel on April 5, 2016 ("*Interim Discovery Order*"). In the *Interim Discovery Order*, the ALJ acknowledged that, based on the description Whemco provided of the subject e-mail, "New DLC rates for Rate L, effective 4/1/11", that Duquesne Light's interrogatory was proper and that the ALJ would consider a request from Duquesne Light for a "private confidential *in camera* review" of the e-mail to the extent that Duquesne Light believes that "Whemco has improperly redacted discoverable information." (*Interim Discovery Order*, p. 8.)

16. On April 13, 2016, Whemco filed a Supplemental Response to Question No. 12 of the Set IV Discovery in accordance with the *Interim Discovery Order*.

17. Duquesne Light hereby files its Motion for *In Camera* Review of the January 6, 2011 e-mail, which was provided in redacted form as Attachment "Duquesne Set IV-12-2" to Whemco's Supplemental Response to Question No. 12 of the Set IV Discovery.

II. *IN CAMERA* REVIEW OF THE JANUARY 6, 2011 E-MAIL PROVIDED AS "ATTACHMENT DUQUESNE LIGHT SET IV-12-2" IN WHEMCO'S SUPPLEMENTAL RESPONSE TO QUESTION NO. 12 OF THE SET IV DISCOVERY IS NECESSARY TO DETERMINE THE FULL CONTENTS OF THE E-MAIL.

18. Question No. 12 of the Set IV Discovery requested that Whemco provide a privilege log of all communications and/or documents that it asserts are subject to the attorney-client privilege or attorney work product doctrine.

19. In response to Question No. 12, Whemco provided a list of documents that it argued were privileged as attorney-client communications or attorney work product. Within that list was an entry described as a January 6, 2011 e-mail from Pam Polacek to Christian Slingluff regarding "New DLC rates for Rate L, effective 4/1/11".

20. In Duquesne Light's March 24, 2016 Further Motion to Compel, Duquesne Light argued that the January 6, 2011 e-mail was not subject to the attorney-client privilege or attorney work product doctrine because the e-mail contained information provided by Ms. Polacek to Whemco regarding Duquesne Light's 2010 base rate case, and Ms. Polacek did not represent Whemco in Duquesne Light's 2010 base rate case. (Polacek Deposition Tr., pp. 10-12.) Therefore, no attorney-client relationship existed.¹

21. In the ALJ's *Interim Discovery Order*, the ALJ concluded with respect to Question No. 12 of the Set IV Discovery that "the interrogatory regarding the 1/6/11 email is proper and a response is appropriate to the extent that the response does not contain privileged information or attorney-client work product." *Interim Discovery Order*, p. 8. The ALJ further instructed Whemco to redact any privileged information and to provide a copy of the redacted email to Duquesne Light. *Id.* The ALJ further stated that: "In the event that Duquesne Light subsequently avers, in a timely and appropriate motion that Whemco has improperly redacted discoverable information related to the subject matter of this order, a request for a private confidential *in camera* review or a motion for sanctions consistent with the Commission regulations will be considered." *Id.*

22. On April 13, 2016, Whemco provided a Supplemental Response to Question No. 12 of the Set IV Discovery in accordance with the *Interim Discovery Order* which included a redacted version of the 1/6/11 e-mail. A copy of this e-mail is provided as Appendix A. It is still

¹ On March 30, 2016, Duquesne Light served its Set VII Discovery on Whemco. Question No. 4 of the Set VII Discovery sought clarification regarding Whemco's response to Question No. 12 of the Set IV Discovery. Specifically, Duquesne Light asked Whemco to state whether the January 6, 2011 e-mail discussed settlement rates (or potential settlement rates) in Duquesne Light's 2010 base rate case or other distribution rates. On April 4, 2016, Whemco served its responses to the Set VII Discovery. However, Whemco's responses to the Set VII discovery do not address the issues raised by Duquesne Light in this Motion. In Whemco's response to the Set VII Discovery, Whemco continued to assert that the subject e-mail was privileged. Whemco also stated that the e-mail was related to the possible negotiation of a Rule 4 contract and that if Duquesne Light continued to challenge Whemco's privilege claims, Whemco would provide the e-mail to the ALJ for an *in camera* review.

unclear to Duquesne Light from reviewing the redacted version of the January 6, 2011 e-mail what subjects were discussed in the redacted portions of the e-mail. Specifically, it is not clear from the context of the redacted e-mail that the redacted portions address Rule 4. There is no way for Duquesne Light to determine from the redacted e-mail whether the redacted portions concern Rule 4 when the un-redacted portion of the e-mail addresses information concerning the rates from Duquesne Light's 2010 base rate case.

23. *In camera* review of the January 6, 2011 e-mail is necessary to determine the subject of the redacted portions of the e-mail Whemco provided in its Supplemental Response to Duquesne Light. Whemco should be required to provide the ALJ with a copy of the entire January 6, 2011 e-mail for *in camera* review.

24. Duquesne Light requests that the ALJ review the e-mail to determine whether the redacted content: (1) references the 2010 base rate case or the rates established for Whemco in that rate case, (2) establishes an attorney-client relationship between Ms. Polacek and Whemco regarding the 2010 base rate case; or (3) contains any other non-privileged information.

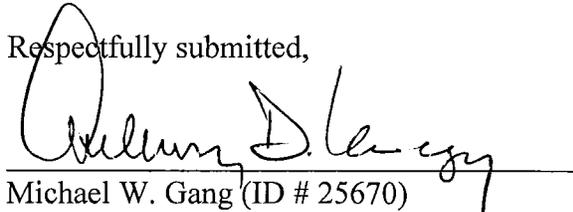
III. CONCLUSION

WHEREFORE, for the foregoing reasons, Duquesne Light Company respectfully requests that Administrative Law Judge Jeffrey A. Watson grant this Motion for *In Camera* Review and order Whemco Steel Castings, Inc. to furnish a copy of the subject e-mail to the ALJ.

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Date: April 27, 2016

Respectfully submitted,



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Attorneys for Duquesne Light Company

Appendix A

Chris Slingluff

From: Polacek, Pamela [PPolacek@mwn.com]
Sent: Thursday, January 06, 2011 3:36 PM
To: Chris Slingluff
Subject: New DLC Rates April 1 for Rate L
Attachments: Pamela Polacek (PPolacek@mwn.com).vcf

Chris:

Here are the rates that will take effect on April 1:

Rate L

Distribution

First 5,000 KW or less	\$34,900.00
Next 10,000 KW	\$6.91
Additional KW	\$6.73
All kWh	\$0.000000
Subtotal	

Untransformed Service Credit	\$0.75
Meter Fees	

Surcharges

Consumer Education, April-May, Bills	\$0.35
Consumer Education, June-March, Bills	\$0.35
Energy Efficiency, Bills (1)	\$795.00
Energy Efficiency, All kW (PLC) (1)	\$0.77
Subtotal	

So, to round out the analysis:

Pam

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