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May 17, 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 Motion of WHEMCO-Steel Castings, Inc. to Strike Portions of Duquesne Light Company Testimony 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**

Administrative Law Judge
Jeffrey A. Watson

WHEMCO-STEEL CASTINGS, INC. :
 :
 :
 :
 :
 :
DUQUESNE LIGHT COMPANY :

DOCKET NO. C-2014-2459527

NOTICE TO PLEAD

TO: Michael W. Gang Anthony D. Kanagy Post & Schell PC 17 N. Second Street, 12 th Fl. Harrisburg, PA 17101-1601	Tishekia E. Williams Krysia M. Kubiak Duquesne Light Company 411 Seventh Avenue, 16 th Fl. Pittsburgh, PA 15219
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Pursuant to 52 Pa. Code § 5.103(b), you are hereby notified to file a written response to the enclosed Motion to Strike Portions of Duquesne Light Company Testimony within twenty (20) days from service of this Notice. If you do not file a written response denying the enclosed Motion to Strike, the Pennsylvania Public Utility Commission may rule on this Motion without further input.


File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Alan M. Seltzer
John F. Povilaitis
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101

Dated: May 17, 2016



Alan M. Seltzer, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION OF WHEMCO-STEEL CASTINGS, INC. TO STRIKE PORTIONS OF
DUQUESNE LIGHT COMPANY TESTIMONY**

TO ADMINISTRATIVE LAW JUDGE (“ALJ”) JEFFREY A. WATSON:

WHEMCO-Steel Castings, Inc. (“Whemco”), by and through its attorneys, hereby files the following Motion To Strike Portions of Duquesne Light Company Testimony (“Motion”), pursuant to Section 5.103 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.103, and in connection therewith represents as follows:

I. Introduction

1. This Motion concerns portions of recent direct testimony filed in this proceeding by Duquesne Light Company (“Duquesne”) witness William V. Pfrommer and labeled as Duquesne Statement No. 1.

2. While Mr. Pfrommer’s testimony attempts to rebut Whemco’s allegations that Duquesne wrongfully terminated a discount applicable to customers served under Rate Schedule L in a 2007 default service proceeding at Commission Docket No. P-00072247 (“DSP Proceeding”), portions of it goes beyond that issue by addressing the merits and substance of the rider that was unlawfully and improperly terminated in that 2007 Commission proceeding. However, since the core of Whemco’s complaint about Duquesne’s conduct and actions in the DSP proceeding relate *to procedure and due process* (i.e., notice and opportunity to be heard) and *not* the merits of the rider itself, portions of Mr. Pfrommer’s testimony in Duquesne

Statement No. 1 are completely irrelevant to the issues in this case and are an improper attempt to divert attention from the real due process violations at issue in this case that warrant substantial refunds to Whemco.

II. Background

3. On December 23, 2014 Whemco filed with the Commission a formal complaint against Duquesne (“Formal Complaint”) alleging, among other things, that Duquesne wrongfully terminated as of December 31, 2010 for Rate L customers a distribution-rate discount contained in Rider No. 5 of Duquesne’s then-prevailing and Commission approved retail electric service tariff as a result of the improper implementation of a settlement of the DSP Proceeding that covered the period January 1, 2008 through December 31, 2010 at Docket No. P-00072247.

4. As a result of Duquesne’s improper and unlawful implementation of the settlement in the Default Service Proceeding and termination of the distribution rate discount contained in Rider No. 5 applicable to Rate L customers like Whemco (“Rider No. 5”), Whemco’s electric distribution service bills from Duquesne more than doubled as of January 2011. The loss of the discount contained in Rider No. 5 caused Whemco’s demand, for billing purposes, to increase from a monthly average of 7,287 kilowatts (“kW”) in 2010 to a monthly average of 18,256 kW in 2011.

5. The Formal Complaint seeks, among other things, a refund from Duquesne under Section 1312 of the Public Utility Code (“Code”) in the amount of \$2,480,374.16, plus interest on all unpaid amounts.

6. On May 2, 2016, Duquesne submitted testimony from William V. Pfrommer, Duquesne Light Statement No. 1, in accordance with the litigation and procedural schedule

established by the ALJ in the Third Prehearing Order dated February 25, 2016. As noted above, Mr. Pfrommer's testimony in part attempts to rebut Whemco's claims and in testimony submitted on January 19, 2016 that Duquesne improperly and unlawfully terminated Rider No. 5. A copy of Duquesne Light Statement No. 1 (without filed Exhibits or attachments) is attached hereto as Appendix A.

III. Argument

A. Portions of Duquesne Light Statement No. 1 are Irrelevant to this Proceeding and Must be Stricken.

7. The portions of Mr. Pfrommer's testimony that are the subject of this Motion and should be stricken from the record are set forth below:

In addition, Whemco has not cited any substantive reasons, either in its Complaint, in its pleadings in this case or in its testimony, that Rider No. 5 – Time-of-Day Discounts was a reasonable rate and should have been retained.

(Duquesne Light Statement No. 1, page 4, lines 18-20).

Q. Why did the Company propose to eliminate Rider No. 5 – Time of Day Discounts?

A. Rider No. 5 – Time of Day Discounts provided customers an opportunity to reduce their demand charges based upon the time of day that the customer's monthly peak occurred. This Rider was a legacy of pre-restructuring rate design when the Company owned generation, and when distribution, transmission and generation rates were bundled.

Rates were unbundled in the restructuring proceeding, but further actions were required to make the unbundled rates reasonable and to reflect appropriate cost of service principles. In the Company's DSP III proceeding at Docket No. P-00032071, the Company eliminated the Time of Day Discount for generation service for Large C&I default service customers to make a more vanilla default service offering and to promote shopping. DII participated in that proceeding. The complete elimination of the Time of Day discount in the DSP IV proceeding at Docket No. P-000772247 was a continuation of the Company's efforts started in the restructuring proceeding and continued in DSP III to eliminate legacy rate

designs. The Commission has continued to review restructuring related issues in various proceedings after restructuring.

Q. Was Rider No. 5 – Time of Day Discounts justified as applied to distribution rates?

A. No. The Company's costs to provide distribution service are not dependent on the time of day the distribution service is used by an individual customer. Distribution costs are allocated to customer classes based upon cost of service studies. Cost of service studies do not rely on the time of day as a factor in allocating costs to customer classes or rate schedules. The Company is under the obligation to provide the capacity to the customer regardless of when the customer demands it. Therefore, it is unreasonable to have a distribution rate discount that is based on the time of day service is used.

(Duquesne Light Statement No. 1, page 9, lines 17-23 and page 10, lines 1-22).

8. Mr. Pfrommer's testimony is not the first time Duquesne has attempted to improperly interject into this proceeding the underlying rationale for its desire to eliminate Rider No. 5. In the Interim Order dated June 4, 2015 (attached hereto as Appendix B), the ALJ considered Duquesne's attempt in discovery to require Whemco to state what Whemco would have argued in opposition to the proposed elimination of Rider No. 5 in the DSP Proceeding (i.e., Duquesne Interrogatory Set II-2) and the reasons Whemco believes electric consumers should receive distribution rate discounts for using or not using electricity at different times of the day (i.e., Duquesne Interrogatory Set II-3). Whemco argued then, as it does now, that the Formal Complaint in this proceeding is not attempting to litigate or address the substantive reasons why Duquesne might have wanted to eliminate Rider No. 5 for distribution customers in the DSP Proceeding or otherwise. On the contrary, the Formal Complaint does challenge *the way and manner* Duquesne improperly elected to eliminate Rider No. 5 in the generation-related DSP Proceeding with no notice or opportunity to Whemco and other similarly situated customers to meaningfully understand and consider challenging the substantive relief sought by Duquesne

with respect to Rider No. 5. Whether Whemco would have challenged the elimination of Rider No. 5 and on what basis *is not what this proceeding is about*. This case *is about* Whemco's claim that Duquesne completely denied Whemco *the opportunity* to consider the impact and effect of Duquesne's attempted elimination of Rider No. 5's discount applicable to Whemco and potentially challenge it before its improper elimination was presented to Whemco as a *fait accompli*.

9. The portion of Mr. Pfrommer's testimony referenced above that must be stricken attempts to do what Duquesne was not permitted to do in discovery – i.e., litigate the merits of eliminating Rider No. 5, ostensibly to obscure Duquesne's clear legal errors in the *way* in which it eliminated Rider No. 5 in the DSP Proceeding.

10. The rationale and holding contained in the ALJ's Interim Order dated June 4, 2015 could not be more compelling and dispositive of this Motion:

Duquesne Light has failed to establish that the information sought in its motion is relevant "to the subject matter involved in the pending litigation." Under the circumstances, such information is not directly relevant to the issues presented by this proceeding nor are the discovery requests reasonably calculated to lead to the discovery of admissible evidence. Whemco essentially avers that , through its Complaint, it is seeking refunds for alleged *procedural and legal errors* relating to Duquesne's conduct in improperly eliminating Rider No. 5 by allegedly failing to provide adequate notice and by eliminating the Rider in a default service proceeding. Duquesne has simply failed to establish that the information sought, as stated, is relevant or reasonably calculated to lead to the discovery of admissible evidence related to the claims asserted by Whemco in this proceeding.

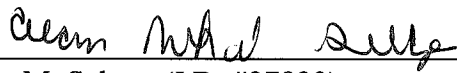
(Appendix B, Interim Order dated June 4, 2015, pp. 10-11) (emphasis in original).

11. If the identified portions of Mr. Pfrommer's testimony are not stricken, Whemco will be put at risk of being described by Duquesne as failing to rebut Duquesne's evidence on the substantive merits of the Rider No. 5 discount which, as noted above, are not within the scope of or relevant to the Formal Complaint.

WHEREFORE, for the reasons specified above, Whemco requests that this Motion be granted in its entirety and that the ALJ (i) strike portions of the direct testimony of Duquesne witness William V. Pfrommer as specified above (i.e., Duquesne Light Statement No. 1, page 4, lines 18-20, page 9, lines 17-23 and page 10, lines 1-22), and (ii) grant Whemco such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Date: May 17, 2016


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Attorneys for WHEMCO-Steel Castings, Inc.

Appendix A

1 **I. INTRODUCTION**

2 **Q. Please state your full name and business address.**

3 A. My name is William V. Pfrommer. My business address is Duquesne Light
4 Company, 411 Seventh Avenue, Pittsburgh, PA 15219.

5
6 **Q. What is your position at Duquesne Light Company?**

7 A. I am employed by Duquesne Light Company ("Duquesne Light" or the
8 "Company") as the Senior Manager, Rates and Tariff Services.

9
10 **Q. What are your current responsibilities?**

11 A. I am responsible for overseeing the Company's retail rates and wholesale
12 transmission rates. In addition, it is my responsibility to ensure the rates are
13 properly applied to customer bills.

14
15 **Q. Please provide your educational background and describe your professional
16 experience.**

17 A. I received a Bachelor of Science Degree in Mechanical Engineering from Grove
18 City College in 1978 and a Masters in Business Administration from the
19 University of Pittsburgh in 1989. I was employed by Westinghouse Air Brake
20 Company in 1978 and performed various duties as a staff engineer. I began my
21 career at the Company in 1982 as a Project Engineer in the Engineering and
22 Construction Division at the Beaver Valley Power Station. Over the last 30 years,
23 I have held staff, supervisory and managerial positions in engineering, nuclear

1 construction, customer technical services, marketing and rates. In the Rate
2 Department at Duquesne Light, I was responsible for the calculations to unbundle
3 the rates to support the implementation of electric utility restructuring and
4 customer choice in Pennsylvania. As General Manager of Rates at AquaSource,
5 Inc., the previous water and wastewater subsidiary of DQE, Inc., I was
6 responsible for providing direction to regional controllers on all regulatory
7 matters, and maintaining the tariffs in the 12 states where AquaSource had utility
8 operations. I have testified on rate design matters before the Pennsylvania Public
9 Utility Commission ("Commission") and Federal Energy Regulatory Commission
10 ("FERC"). A list of proceedings in which I have submitted testimony is provided
11 in Appendix A.

12

13 **Q. What is the purpose of your direct testimony?**

14 A. The purpose of my testimony is to explain the actions taken by the Company to
15 eliminate a tariff provision, explain how that tariff change was communicated to
16 customers, and demonstrate that the Company applied the tariff charges correctly
17 and in compliance with Commission orders.

18

19 **Q. Are you sponsoring any exhibits as part of your direct testimony?**

20 A. Yes. I am sponsoring the following exhibits:

DLC Exhibit WVP-1	Rate L January 2008 to Present
DLC Exhibit WVP-2	Rider No. 5 – Time of Day Discounts
DLC Exhibit WVP-3	DSP IV Filing Letter
DLC Exhibit WVP-4	DSP IV Press Release

DLC Exhibit WVP-5	PA Bulletin Notice
DLC Exhibit WVP-6	DII Solicitation to Whemco for DSP IV
DLC Exhibit WVP-7	Invitations to 12/11/2007 Meeting
DLC Exhibit WVP-8	Pfrommer Testimony in DSP IV
DLC Exhibit WVP-9	Exhibit NJDK-3 to DLC St. 5 in DSP IV
DLC Exhibit WVP-10	DSP IV Settlement Stipulation
DLC Exhibit WVP-11	DSP IV Compliance Filing
DLC Exhibit WVP-12	Secretarial Letter Approving DSP IV Compliance Filing
DLC Exhibit WVP-13	Affidavit in 2010 Base Rate Case Certifying Compliance with Notice Requirements
DLC Exhibit WVP-14	DII Solicitation to Whemco for 2010 Base Rate Case
DLC Exhibit WVP-15	Whemco Discovery Responses
DLC Exhibit WVP-16	Proposed Tariff in 2010 Base Rate Case
DLC Exhibit WVP-17	2010 Base Rate Case Settlement
DLC Exhibit WVP-18	Whemco Discovery Response
DLC Exhibit WVP-19	Whemco Discovery Response

1

2 **Q. Please explain how these exhibits were prepared.**

3 A. These exhibits were prepared either by me or under my direct supervision. They
4 were prepared, to the best of my knowledge, in accordance with Commission
5 requirements and practice.

6

7 **Q. Please summarize the issues in this proceeding.**

8 A. The primary issues in this case involve whether Duquesne Light provided
9 sufficient notice of the elimination of Rider No. 5 – Time-of-Day Discounts in its
10 Default Service IV proceeding at Docket No. P-00072247 (“DSP IV
11 proceeding”), and if Duquesne Light did not provide sufficient notice, what
12 refund, if any, should be provided to Whemco. As I explain below, Duquesne

1 Light provided sufficient notice to customers that Rider No. 5 – Time-of-Day
2 Discounts was being eliminated in the DSP IV proceeding, and no party objected
3 to the elimination of Rider No. 5 during that proceeding. The Settlement
4 Stipulation in the DSP IV proceeding authorized the elimination of Rider No. 5 –
5 Time-of-Day Discounts, and the Tariff compliance filing reflected the elimination
6 of Rider No. 5 – Time-of-Day Discounts. No party objected to the Settlement
7 Stipulation or the DSP IV Compliance filing and both were approved by the
8 Commission.

9 I note that Duquesne Light’s DSP IV proceeding was filed on January 25,
10 2007. The elimination of Rider No. 5 – Time-of-Day Discounts became effective
11 on January 1, 2011 and Whemco filed its Complaint in this proceeding in
12 December 2015. Whemco’s substantial delay in filing its complaint,
13 approximately 8 years after the DSP IV proceeding was filed and 4 years after the
14 elimination of Rider No. 5 – Time-of-Day discounts became effective, has
15 significantly prejudiced Duquesne Light’s ability to defend itself in this
16 proceeding. Many employees that worked on the DSP IV proceeding are no
17 longer employed by the Company, and many Company records no longer exist.
18 In addition, Whemco has not cited any substantive reasons, either in its
19 Complaint, in its pleadings in this case or in its testimony, that Rider No. 5 –
20 Time-of-Day Discounts was a reasonable rate and should have been retained.
21 Whemco’s entire claim relies on an alleged procedural defect in the provision of
22 notice that occurred over 8 years before the filing of its complaint. Even if the
23 Company’s notice of the elimination of Rider No. 5 was insufficient, which I

1 disagree with, Whemco should not be entitled to a refund. Duquesne Light has at
2 all times charged Whemco the rates that were contained in the Company's
3 Commission-approved tariff.
4

5 **II. DUQUESNE LIGHT'S SERVICE TO WHEMCO**

6 **Q. Please explain Duquesne Light's service to Whemco.**

7 A. Whemco is a Duquesne Light customer with industrial plants located in Midland
8 and West Homestead, Pennsylvania. The Midland Facility is a Large Commercial
9 and Industrial ("Large C&I") customer located in Duquesne Light's service
10 territory.
11

12 **Q. Under what distribution rates has Duquesne Light provided service to**
13 **Whemco?**

14 A. From January 2008 through December 31, 2010, Whemco's Midland Facility was
15 billed for electric distribution service under Duquesne Light's then effective Rate
16 Schedule L and Rider No. 5 – Time-of-Day Discounts. A true and correct copy of
17 Duquesne Light's Commission-approved tariffs for Rate Schedule L for the
18 period of January 2008 through the present is attached as DLC Exhibit WVP-1.
19 A true and correct copy of Duquesne Light's Commission-approved tariff for
20 Rider No. 5 – Time-of-Day Discounts for the period of January 2008 through
21 December 31, 2010, is attached as DLC Exhibit WVP-2. From January 1, 2011
22 onward, Whemco has taken service from Duquesne Light under Rate L, without
23 the Rider No. 5 – Time of Day Discount.

1

2 **Q. Please explain Rider No. 5 – Time of Day Discounts.**

3 A. Rider No. 5 – Time-of-Day Discounts provided distribution discounts to
4 customers served by Rate Schedules GS/GM, GL, L and by Rates GMH and GLH
5 during the months of June, July, August and September. The Rider No. 5 on-peak
6 period was between the hours of 10:00 AM and 9:00 PM Monday through
7 Thursday and between 10:00 AM and 5:00 PM Friday excluding New Year's Day,
8 Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas
9 Day that were observed on a weekday. A customer's demand charges are based
10 on their billing demand. The billing demand for a customer on Rider No. 5 –
11 Time-of-Day Discounts was the lower of the on-peak demand or one-third the off-
12 peak demand.

13

14 **III. DSP IV PROCEEDING**

15 **Q. Please explain the notice that the Company provided to customers of the DSP**
16 **IV Proceeding.**

17 A. Initially I note that notice of the DSP IV proceeding was provided to customers
18 over 9 years ago. Therefore, the Company cannot be certain of all notices that
19 were provided or what the content of the notices was. For example, the Company
20 no longer has copies of the newspaper publication or bill inserts that were sent to
21 customers.

22 However, based upon Company records, the Company provided notice of
23 the DSP IV filing to customers through a press release, newspaper publication and

1 a bill insert. A copy of the Company's DSP IV filing letter, which explains these
2 customer notices, is provided as DLC Exhibit WVP-3. A copy of the press
3 release for the DSP IV proceeding is provided as DLC Exhibit WVP-4. Notice of
4 the DSP IV Proceeding was also published in the Pennsylvania Bulletin. See
5 DLC Exhibit WVP-5. In addition, Whemco received notice of the DSP IV
6 proceeding from its counsel, Ms. Polacek. Whemco was invited to participate in
7 the DSP IV proceeding with a large customer group, the Duquesne Industrial
8 Intervenors ("DII"), but elected not to participate. See DLC Exhibit WVP-6.

9 I note that multiple, diverse parties participated in the DSP IV proceeding,
10 including the Office of Trial Staff (now the Bureau of Investigation and
11 Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), the Office of
12 Small Business Advocate ("OSBA"), numerous electric generation suppliers,
13 Citizen Power, Inc., Citizens for Pennsylvania's Future ("PennFuture"), the
14 Pennsylvania Large Energy Users Coalition ("PALEUC") and DII.
15 Representatives from every customer class participated in the DSP IV proceeding,
16 including multiple groups representing customers from the Large C&I customer
17 class, including two Large C&I customers who were receiving the Rider No. 5 –
18 Time of Day Discount. No customer or party, including the two Large C&I
19 customers who were taking service under Rider No. 5 – Time of Day Discounts,
20 complained about the notice that was provided regarding the DSP IV proceeding
21 until Whemco filed its complaint approximately 8 years after the DSP IV
22 proceeding was filed.

1 **Q. Did the Company hold any meetings with customers to discuss the DSP IV**
2 **filing?**

3 A. Yes. The Company invited all customers on Rate Schedules GL, GLH, L and
4 HVPS to a meeting on December 11, 2007 to discuss the DSP IV filing. Copies
5 of draft invitations to this meeting are provided as DLC Exhibit WVP-7. After
6 investigation, the Company has determined that final versions of these
7 communications to customers are no longer available.

8
9 **Q. What other ways could customers have reviewed the DSP IV filing?**

10 A. It is the Company's practice to post all tariff filings on its website. This process
11 applies to pending tariff changes and to approved tariff changes. In addition,
12 upon request, customers are permitted to review the Company's tariff filings at
13 the Company's office. Further, customers can review all tariff filings at the
14 Commission.

15
16 **Q. Whemco states that these customer notices did not advise customers that**
17 **Rider No. 5 – Time-of-Day Discounts was being eliminated. Is this unusual?**

18 A. No, this is not unusual. Customer notices provide general notice of a utility filing.
19 Customers then have the opportunity to review the filing and the proposed tariff
20 to determine how the filing may impact them. I also note that in many filings,
21 other parties make proposals that are not included in the utility's filing.
22 Therefore, the notice is often a general notice to customers of a filing and does not
23 advise customers of all issues that may be addressed in a proceeding. The

1 obligation is then on the customer to review the filing, and especially the tariff, to
2 determine how the filing may impact them.

3
4 **Q. Did Duquesne Light's DSP IV filing advise customers that Rider No. 5 –
5 Time-of-Day Discounts was proposed to be eliminated?**

6 A. Yes, in several places. In my Direct Testimony which accompanied the DSP IV
7 filing, I stated that the Company proposed to completely eliminate Rider No. 5 –
8 Time-of-Day Discounts, effective January 1, 2010. See DLC Exhibit WVP-8, p.
9 10. In addition, the Company provided a pro forma tariff with its initial filing that
10 was attached as Exhibit NJDK-3 to Duquesne Light St. No. 5. The pro forma
11 tariff plainly and clearly stated that “The availability and application of Rider No.
12 5 – Time-of-Day Discounts will terminate December 31, 2010”. See DLC
13 Exhibit No. WVP-9. This Sentence was clearly marked with a “(C)” to designate
14 a change to an existing tariff as is required by the Commission’s regulations at 52
15 Pa. Code § 53.22.

16
17 **Q. Why did the Company propose to eliminate Rider No. 5 – Time of Day
18 Discounts?**

19 A. Rider No. 5 – Time of Day Discounts provided customers an opportunity to
20 reduce their demand charges based upon the time of day that the customer’s
21 monthly peak demand occurred. This Rider was a legacy of pre-restructuring rate
22 design when the Company owned generation, and when distribution, transmission
23 and generation rates were bundled.

1 Rates were unbundled in the restructuring proceeding, but further actions
2 were required to make the unbundled rates reasonable and to reflect appropriate
3 cost of service principles. In the Company's DSP III proceeding at Docket No. P-
4 00032071, the Company eliminated the Time of Day Discount for generation
5 service for Large C&I default service customers to make a more vanilla default
6 service offering and to promote shopping. DII participated in that proceeding.
7 The complete elimination of the Time of Day discount in the DSP IV proceeding
8 at Docket No. P-000772247 was a continuation of the Company's efforts started
9 in the restructuring proceeding and continued in DSP III to eliminate legacy rate
10 designs. The Commission has continued to review restructuring related issues in
11 various proceedings after restructuring.

12
13 **Q. Was Rider No. 5 – Time of Day Discounts justified as applied to distribution**
14 **rates?**

15 A. No. The Company's costs to provide distribution service are not dependent on the
16 time of day the distribution service is used by an individual customer.
17 Distribution costs are allocated to customer classes based upon cost of service
18 studies. Cost of service studies do not rely on the time of day as a factor in
19 allocating costs to customer classes or rate schedules. The Company is under the
20 obligation to provide the capacity to the customer regardless of when the
21 customer demands it. Therefore, it is unreasonable to have a distribution rate
22 discount that is based on the time of day service is used.

23

1 **Q. Whemco argues that your testimony only mentions the elimination of Rider**
2 **No. 5 – Time-of-Day Discounts under the “Small Customer Rate Design”**
3 **section and not the “Large Customer Supply Rates” section. Why is this?**

4 A. Looking back at my testimony from 9 years ago, my best recollection is that the
5 Small Customer Rate Design section of my testimony was the first section where
6 it was appropriate to discuss the elimination of Rider No. 5 – Time-of-Day
7 Discounts. I clearly stated in that Section that Rider No. 5 – Time-of-Day
8 Discounts was being completely eliminated. Therefore, I did not see a need to
9 repeat this. Further, the pro forma tariff stated that Rider No. 5 – Time-of-Day
10 Discounts would terminate on December 31, 2010, and clearly did not provide
11 that it would remain in place for any customer classes or rate schedules. The
12 Tariff alone provides sufficient notice to customers of the Company’s intent to
13 eliminate Rider No 5 – Time of Day Discounts. In addition, the statement in my
14 testimony that Rider No. 5 – Time of Day Discounts was being completely
15 elimination put any reasonable person on notice to review the tariff.

16
17 **Q. Does Whemco acknowledge that the tariff in the DSP IV proceeding**
18 **proposed to eliminate Rider No. 5 – Time of Day Discounts for all rate**
19 **schedules, including Rate L?**

20 A. Yes. Whemco’s witness, Ms. Polacek admits in her testimony that the pro forma
21 tariff that was filed with the DSP IV proceeding proposed to eliminate Rider No.
22 5 – Time of Day Discounts for Large C&I customers like Whemco. (Whemco St.
23 No. 2, p. 12).

1

2 **Q. What is the importance of the proposed tariff?**

3 A. The proposed tariff is the most important document in the filing. The tariff
4 controls all rates that the Company is authorized to charge customers, and the
5 Company cannot charge a rate that is not authorized by the tariff.

6

7 **Q. Do you think that it is reasonable for a party to ignore the tariff in a utility
8 filing?**

9 A. Certainly not. One of the most basic principles of utility regulation is that the
10 tariff controls what rate can be charged. I do not think that it is reasonable for any
11 party to ignore a tariff in a utility's filing.

12

13 **Q. Did any Large C&I customers that were receiving Rider No. 5 – Time-of-Day
14 Discounts participate in the DSP IV proceeding?**

15 A. Yes. There were two customers that were receiving a discount under Rider No. 5
16 that participated in the DSP IV proceeding through the customer group PALEUC,
17 and both of these customers were represented by PALEUC counsel.

18

19 **Q. Did these customers object to the elimination of Rider No. 5 – Time of Day
20 Discounts?**

21 A. No. Neither of these two customers, nor any other customer, nor any party in the
22 DSP IV proceeding objected to the elimination of Rider No. 5 – Time of Day
23 Discounts.

1

2 **Q. Did the DSP IV Settlement Stipulation authorize the elimination of Rider**
3 **No. 5 – Time of Day Discounts?**

4 A. Yes. Section 7 of the Settlement Stipulation titled “TARIFF MODIFICATIONS”
5 provides as follows:

6 Duquesne Light is authorized to implement the changes to
7 its Tariff Electric Pa. P.U.C. No. 24 that are reflected in
8 Exhibit NJDK-3 of Duquesne Light St. No. 5 except that
9 the tariff will be further modified to reflect the changes that
10 are required by this Stipulation.

11 DLC Exhibit WVP-10.

12 The version of Rider No. 5 – Time of Day Discounts that was provided as
13 Exhibit NJDK-3 in the initial DSP IV proceeding was not modified by the
14 stipulation and was the same version that was included in the Tariff Compliance
15 Filing that was made on July 12, 2007. See DLC Exhibit WVP-11.

16 In addition, no party objected to the DSP IV tariff compliance filing, and it
17 was approved by the Commission by Secretarial Letter dated January 16, 2008.
18 See DLC Exhibit WVP-12.

19

20 **IV. 2010 BASE RATE CASE**

21 **Q. What is the significance of Duquesne Light’s 2010 base rate proceeding at**
22 **Docket No. R-2010-2179522?**

23 A. The elimination of Rider No. 5 – Time of Day Discounts became a Commission
24 made rate on April 21, 2011 with the effective date of rates in the 2010 Base Rate
25 case. I have been advised by counsel that Commission made rates are not subject

1 to refund. Therefore, the 2010 Base Rate case is significant if the Commission
2 determines that Duquesne Light did not provide sufficient notice of the
3 elimination of Rider No. 5 – Time of Day Discounts in the DSP IV proceeding. If
4 the Commission determines that Duquesne Light did not provide sufficient notice
5 of the elimination of Rider No. 5 – Time of Day Discounts in the DSP IV
6 proceeding, the Commission can only award refunds from January 1, 2011 to
7 April 21, 2011.

8
9 **Q. When did Duquesne Light file its 2010 base rate case?**

10 A. Duquesne Light filed its 2010 base rate case on July 23, 2010.

11
12 **Q. Was Rider No. 5 – Time of Day Discounts still in effect when Duquesne Light
13 filed its 2010 base rate case?**

14 A. Yes. Rider No 5 – Time of Day Discounts was in effect when the 2010 base rate
15 case was filed.

16
17 **Q. Did the Company fulfill all Commission notice requirements for the 2010
18 base rate case?**

19 A. Yes. The Company met all Commission notice requirements including providing
20 bill inserts to all customers. A Commission-stamped copy of the Company's
21 affidavit certifying compliance with the notice requirements for the 2010 base rate
22 case is provided as DLC Exhibit No. WVP-13.

1 **Q. Did Whemco choose to participate in the 2010 Base Rate Case?**

2 A. No. Whemco was solicited by legal counsel to participate in the 2010 base rate
3 proceeding. A copy of this solicitation is provided as DLC Exhibit No. WVP- 14.
4 In discovery, Whemco stated that it does not know why it did not participate in
5 the 2010 Base Rate Case. DLC Exhibit No. WVP-15.

6
7 **Q. Did the parties in the 2010 base rate case conduct a comprehensive**
8 **investigation of Duquesne Light's rates in that proceeding?**

9 A. Yes. The parties engaged in substantial discovery in the proceeding. Many
10 parties, including the statutory parties and DII, engaged experts to review and
11 analyze the Company's filing and to proposed adjustments to the Company's
12 rates. I note that DII's expert conducted an extensive evaluation of Large C&I
13 rates and submitted testimony in the proceeding. Five of DII's members were
14 Large C&I Customers that were receiving the Rider No. 5 – Time of Day
15 Discount in December 2010 when they were participating in the 2010 base rate
16 case. In addition, three of these five customers had multiple accounts on Rider
17 No. 5 – Time of Day Discounts. Parties submitted several rounds of testimony,
18 and multiple parties established positions regarding the Company's revenue
19 requirement.

20
21 **Q. Was it clear from the rate filing that Rider No. 5 – Time of Day Discounts**
22 **was eliminated?**

1 A. Yes. The proposed tariff filed in the 2010 base rate case did not include Rider
2 No. 5 – Time of Day Discounts and, instead, proposed to replace the rider with a
3 new Rider No. 5 – Universal Service Charge. See DLC Exhibit WVP-16.

4
5 **Q. Did parties have the opportunity to address issues regarding Rider No. 5 –**
6 **Time of Day Discounts in the 2010 base rate case?**

7 A. Yes. When the Commission suspended the 2010 base rate case filing, the
8 Commission instituted an investigation into both Duquesne Light's current and
9 proposed rates. Rider No. 5 – Time of Day Discounts was a current rate at the
10 time that the 2010 base rate case was filed. In addition, several parties performed
11 extensive analysis of the Large C&I rates in the 2010 base rate case.

12
13 **Q. Please explain the analysis of Large C&I rates performed by the parties.**

14 A. DII hired a consultant to review the Large C&I rates. This consultant, Mr.
15 Richard A. Baudino presented several rounds of testimony regarding Large C&I
16 rates, including Rate Design for Rate L and other Large C&I rate schedules, cost
17 of service issues, revenue allocation issues, Rule 4 contract issues and back-up
18 service issues. As I explained above, DII represented five Large C&I customers
19 that were receiving the Rider No. 5 – Time of Day Discount during the 2010 base
20 rate case. In addition, both OTS and OCA hired experts to review the Company's
21 revenues and expenses and both proposed adjustments thereto.

22
23 **Q. How was the 2010 base rate case resolved?**

1 A. This case was resolved through what is commonly referred to as a “black box”
2 settlement. Under this settlement, the Company was granted a rate increase of
3 \$45.7 million which was considerably less than the Company’s original request of
4 \$87.3 million. Other than Universal Service costs, consumer education costs,
5 pensions and other post employment benefits, the settlement did not specify
6 specific revenue adjustments, expense adjustments or the rate of return that was
7 authorized under the settlement. Rather, the parties in the proceeding performed a
8 comprehensive review of the Company’s revenues and expenses and reached a
9 compromise as to the level of revenue increase for the Company. A copy of the
10 settlement is provided as DLC Exhibit WVP-17.

11

12 **Q. When was the 2010 base rate case settlement filed with the Commission?**

13 A. This settlement was filed with the Commission on January 7, 2011. The
14 settlement included a specific provision stating that the settlement rates were
15 Commission-made rates. See DLC Exhibit WVP-17, p. 16, ¶ 58.

16

17 **Q. When does Whemco allege that it first became aware of the elimination of**
18 **Rider No. 5 – Time of Day Discounts?**

19 A. Whemco states that it first became aware of the elimination of Rider No. 5 – Time
20 of Day Discounts on December 8, 2010. (Whemco St. No. 1, p. 5). This is
21 approximately one month before the 2010 base rate case settlement was filed. I
22 also note that Ms. Polacek, DII’s counsel in the 2010 base rate case, stated that

1 she was aware that Rider No. 5 – Time of Day Discounts was eliminated on
2 December 13, 2010. See DLC Exhibit WVP-18.

3

4 **Q. Did Whemco attempt to intervene in the 2010 base rate case?**

5 A. No, Whemco did not attempt to intervene and did not object to the 2010 base rate
6 case settlement.

7

8 **Q. Was the 2010 base rate case Settlement approved by the Commission?**

9 A. Yes, it was approved by Commission Order entered on February 24, 2011.

10

11 **Q. Did the Company make a tariff compliance filing resulting from the 2010
12 base rate case?**

13 A. Yes, the tariff compliance filing was made on April 12, 2011.

14

15 **Q. Did the tariff compliance filing include Rider No. 5 – Time of Day Discounts?**

16 A. No. It included the new Rider No. 5 – Universal Service Charge which was filed
17 with the initial base rate filing and approved by the unanimous settlement that was
18 agreed to or not opposed by all parties in the proceeding.

19

20 **Q. Did any party or customer object to the 2010 base rate compliance filing?**

21 A. No, and the rates in the compliance filing became effective for service rendered
22 on and after April 21, 2011.

23

1 **Q. Did the Company attempt to mitigate the effects of the 2010 base rate**
2 **increase and the elimination of Rider No. 5 – Time of Day discounts for**
3 **Whemco?**

4 A. Yes. The Company had extensive negotiations with Whemco to attempt to give
5 them a special reduced rate under Rule 4 of the Company’s tariff and offered a
6 Rule 4 rate to Whemco. However, Whemco elected not to enter into that contract.
7 See DLC Exhibit WVP-19.

8

9 **V. RESPONSE TO WHEMCO’S DIRECT TESTIMONY**

10 **Q. Please describe this section of your testimony.**

11 A. In the sections above, I present the Company’s direct case, which refutes most of
12 the allegations contained in Whemco’s Direct Testimony. In this section, I
13 address specific statements made by Whemco’s witnesses that are not addressed
14 above.

15

16 **Q. On page 3 of his Direct Testimony, Mr. Slingluff state that “Whemco owns**
17 **all of the electric power distribution facilities at the Midland Facility from**
18 **the low side of a dedicated 138 kilovolt (“kV”) substation owned by**
19 **Duquesne.” (Whemco St. No. 1, p. 3). Is this statement correct?**

20 A. No, it is not correct. Duquesne Light owns the transformer on the low side of this
21 substation that transforms the power from 138 kV down to 23 kV. Duquesne
22 Light has recently confirmed that it owns this transformer and further determined
23 that Whemco does not qualify for the “Service Voltage 138 kV and Greater” rate

1 under Rate L, but rather qualifies for the “Service Voltage Less than 138 kV” rate
2 under Rate L because the Company provides distribution service at 23 kV not 138
3 kV. Duquesne Light has sent Whemco a letter explaining this.

4
5 **Q. On page 6 of his Direct Testimony, Mr. Slingluff states that Whemco was not**
6 **aware that the DSP IV proceeding could impact distribution rates. Is this a**
7 **relevant factor in this case?**

8 A. No. Whemco received notice of the DSP IV filing from a customer bill insert,
9 through the Pennsylvania Bulletin and from DII counsel. See DLC Exhibits
10 WVP-3, 5 and 6. Duquesne Light indicated in its testimony and in the tariff that
11 was filed with the DSP IV proceeding that Rider No. 5 – Time of Day Discounts
12 was being eliminated. Whemco had an obligation to review the filing to
13 determine what impact the filing may have on it.

14
15 **Q. Whemco also argues that it is not permissible to change non-shopping rates**
16 **in a default service proceeding. Is Whemco correct?**

17 A. No. There have been several default service cases where rates have changed for
18 all customers, including shopping customers. In PECO’s 2014 default service
19 proceeding, the Commission adopted PECO’s proposal to recover certain
20 transmission service charges through a non-bypassable charge for all distribution
21 customers. Likewise, in the FirstEnergy Companies’ 2014 default service
22 proceeding, the Commission authorized the FirstEnergy Companies to include a

1 non-bypassable Default Service Supply Rider that recovered certain transmission
2 costs from all distribution customers.

3 Other parties have also raised non-bypassable rate change issues in default
4 service proceedings. In PECO's 2012 default service proceeding, RESA
5 proposed that PECO recover certain non-market based transmission charges
6 through a non-bypassable rider applicable to shopping and non-shopping
7 customers. A similar proposal was made in PPL Electric Utilities' 2012 default
8 service proceeding.

9 In addition, distribution rate issues have been addressed in other non-base
10 rate proceedings. For example, PPL Electric Utilities Corporation and other
11 EDCs made distribution rate changes in their restructuring proceedings. In a later
12 proceeding, PP&L Industrial Customer Alliance ("PPLICA") challenged
13 distribution tariff changes that were made in the restructuring proceedings. The
14 Commission held that the tariff changes were approved as part of the Settlement
15 Agreement in the Restructuring Proceeding.

16

17 **Q. On page 7 of her testimony, Ms. Polacek states that she reviewed the**
18 **testimony and exhibits in the DSP IV proceeding and was not able to discern**
19 **that Rider No. 5 – Time of Day Discounts was being eliminated for all**
20 **customers. Please respond.**

21 A. As I explain above, my testimony stated that Rider No. 5 – Time of Day
22 Discounts was being completely eliminated. In addition, the tariff that was
23 provided as an Exhibit to the DSP IV filing clearly indicated that Rider No. 5 –

1 Time of Day Discounts was being completely eliminated. Ms. Polacek admits
2 this on page 12 of her testimony.

3

4 **Q. On page 14 of her testimony, Ms. Polacek states that Duquesne Light is**
5 **relying on Section 9A of the General Stipulation for authorization to**
6 **eliminate Rider No. 5 – Time of Day Discounts. Is this accurate?**

7 A. Not completely. While Section 9A does authorize the elimination of Rider No. 5
8 Time of Day Discounts, as I explain above Section 7 authorized the Company to
9 implement the tariff changes that were provided in Exhibit NJDK-3. Duquesne
10 Light filed the same changes to Rider No. 5 – Time of Day Discounts in its
11 Compliance filing that were provided in the DSP IV filing as Exhibit NJDK-3.

12

13 **Q. On pages 10 – 11 of his Direct Testimony, Mr. Rosenthal states that**
14 **Duquesne Light didn't adjust kW demands or revenues for the elimination of**
15 **Rider No. 5 – Time of Day Discounts in the 2010 base rate case. Please**
16 **respond.**

17 A. This was an oversight in the 2010 base rate case and likely happened because
18 Rider No. 5 – Time-of-Day Discounts was still in effect at the time of the filing.
19 However, I do not agree that this is relevant. Mistakes happen in projecting
20 revenues and expenses in rate cases. Sometimes revenues are higher than
21 projected and other times they are lower than projected. The same thing happens
22 with expenses. Moreover, as I explain above, the Company reached a black box

1 settlement of the 2010 base rate case at a significantly lower revenue requirement
2 than originally requested by the Company.

3

4 **Q. Does this conclude your direct testimony?**

5 A. Yes, it does.

6

1
2
Appendix A
William V. Pfrommer
Rate and Regulatory Proceedings

3 **Pennsylvania Public Utility Commission:**

4 Docket No. M-2015-2515375 - Petition for Approval of Energy Efficiency and
5 Conservation Plan Phase III
6 Docket No. P-2015-2497267 - Petition for Approval to Modify its Smart Meter
7 Procurement and Installation Plan
8 Docket No. P-2014-2418242 – Default Service Program and Procurement Plan for the
9 Period June 1, 2015 through May 31, 2017
10 Docket No. R-2013-2372129 – Distribution Base Rate Case
11 Docket No. M-2013-2350946 – Petition for Approval and Modification of
12 Company’s 2014-2016 Universal Service and Energy Conservation Plan
13 Docket No. M-2012-2334399 - Energy Efficiency and Conservation Phase II Plan
14 Docket No. P-2012-2301664 – Default Service Program and Procurement Plan for the
15 Period June 1, 2013 through May 31, 2015
16 Docket No. R-2010-2179522 – Distribution Base Rate Case
17 Docket No. P-2009-2135500 - Provider of Last Resort (POLR V)
18 Docket No. M-2009-2093217 - Act 129 Energy Efficiency and Conservation and
19 Demand Response Plan
20 Docket No. M-2009-2123948 - Act 129 Smart Meter Procurement and Installation
21 Plan
22 Docket No. P-2008-2079461 – Special Permission to File a Tariff Supplement on
23 Less than 60 Days Notice (POLR IV)
24 Docket No. P-00072247 - Provider of Last Resort (POLR IV)
25 Docket No. R-00061346 – Distribution Base Rate Case
26 Docket No. P-00032071 - Provider of Last Resort (POLR III)
27

28 **Federal Energy Regulatory Commission:**

29 Docket No. ER14-1258-000 – Depreciation Rate Update Filing
30 Docket No. ER13-1220-000 – Monthly Deferred Tax Adjustment Charge
31 Docket No. ER08-1309-000 – Changes to the MISO Open Access Transmission
32 Tariff to integrate the Company into the Midwest Independent System Operator Inc.
33 Docket No. ER05-85-000 – Changes to the PJM Open Access Transmission Tariff to
34 integrate the Company into the PJM Interconnection, L.L.C.
35

36 **Other:**

37 Cause No. 42416, Filed April 14, 2003, Indiana Utility Regulatory Commission –
38 Petition of Utility Center, Inc., d/b/a AquaSource
39 Cause No. 41968, Filed March 30, 2001, Indiana Utility Regulatory Commission – In
40 the Matter of Utility Center, Inc., d/b/a AquaSource
41 Docket Nos. 2000-1074-UCR and 2000-1075-UCR, Filed June 15, 2000 – Texas
42 Natural Resource Conservation Commission, Applications of AquaSource Utility,
43 Inc. to Change its Water and Sewer Tariffs and Rates

Appendix B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Whemco-Steel Castings, Inc.	:	
	:	
v.	:	C-2014-2459527
	:	
Duquesne Light Company	:	

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

On December 23, 2014, Whemco-Steel Casting, Inc., (Complainant or Whemco) filed a formal complaint against Duquesne Light Company, (Respondent, Company, Duquesne or Duquesne Light) averring, inter alia, that Complainant paid substantially in excess of what it should have paid to Respondent for electric distribution provided from January of 2011 through April of 2014. As relief, Complainant seeks, among other things, a refund of \$2,480,374.16, with interest for the alleged overcharges. On January 21, 2015, Respondent filed an answer and new matter to the formal complaint, denying that Complainant has over paid Respondent for electric distribution service provided from January of 2011 through April of 2014. Respondent raises various affirmative defenses in its new matter. On February 10, 2015, Complainant filed a reply to new matter of Respondent.

On April 17, 2015, Complainant filed a Motion of Whemco-Steel Casting, Inc. To Determine Sufficiency of Duquesne Light Company Responses to Requests For Admission Set 1 (Motion). Complainant sought an order that the answers to request for admissions R-1 through R-17 did not comply with 52 Pa.Code § 5.350, and accordingly that the answers to those requests are deemed admitted.

A telephone hearing notice was issued on March 27, 2015, scheduling an initial hearing in this proceeding for May 7, 2015 at 10:00 a.m. An interim order was issued on April 21,

2015, converting the initial hearing to a prehearing conference. A hearing notice was issued on April 15, 2015, converting the initial hearing to a prehearing conference. By interim order dated April 23, 2015, Respondent was directed to file any response to the motion by 3:00 p.m. on May 5, 2015, and ordered that argument on the motion and any response, would be heard at the time of the prehearing conference on May 7, 2015.

The prehearing conference was convened as scheduled on May 7, 2015. Prior to hearing argument on the motion, the parties were asked to confer in an effort to resolve the outstanding issues regarding the motion. The Parties were able to agree, with regard to responses to requests for admissions 1, 2, 3, 9, 10 and 11, that the parties would confer and amend the responses, or in the alternative, request a ruling on the motion regarding those responses at the prehearing conference in this proceeding.

The Parties indicated that they could not resolve their dispute regarding responses to requests for admission 4, 5, 6, 7, 8 and 12 through 17. Accordingly, the Parties argued their respective positions regarding those responses. An interim order granting in part and denying in part, the motion of Whemco to determine the sufficiency of Duquesne Light's responses was entered on June 1, 2015. In addition, a prehearing order was entered on June 2, 2015.

On May 18, 2015, Duquesne Light filed a Motion to Compel Answers to Interrogatories and Requests for Production of Documents Propounded by Duquesne Light Company on Whemco-Steel Castings, Inc., Set II. Whemco filed an answer to the motion on May 26, 2015.

Duquesne Light filed its motion, pursuant to 52 Pa.Code § 5.342 regarding Questions 2 and 3. On April 29, 2015, Duquesne Light served its Interrogatories and Requests for Production of Documents, Set II ("Set II Discovery") on Whemco.

On May 8, 2015, Whemco filed its objections to Questions 2, 3, 5 and 9 of the Set II Discovery. Duquesne Light avers it held discussions with Whemco regarding the Objections. As a result of these discussions, Duquesne Light has agreed to withdraw Questions 5 and 9. However, the parties were not able to reach a compromise regarding Questions 2 and 3.

Duquesne Light – Set II Question No. 2 provides as follows:

If Whemco had participated in Duquesne Light's default service proceeding at Docket No. P-00072247 and opposed elimination of Rider No. 5, explain every substantive reason that Whemco would have alleged supporting its position.

Whemco filed the following objection:

Objection: Whemco objects to the foregoing written interrogatory on the ground that it is based on a speculative premise, compounded by a request for speculative information. As the question clearly and correctly indicates, Whemco did not participate in the referenced 2007 default service proceeding so the question is based on a speculative premise. In addition and because it did not participate in such proceeding, Whemco has no way to provide a substantive answer to such a hypothetical and speculative interrogatory. The interrogatory is also seeking information that is not relevant to the subject matter of this proceeding, including any claim or defense in this proceeding, since this case is not about what action Whemco would have potential taken *if* it had participated in the referenced default service proceeding and is not likely to lead to the discovery of admissible evidence. *See*, 52 Pa. Code § 5.321(c).

Whemco argues that Duquesne is seeking information about Whemco's supposed opposition to the elimination of the Rider No. 5 time of day discounts in Duquesne's 2007-2008 default service proceeding at Docket No. P-00072247 ("Default Service Proceeding"). Whemco argues that this interrogatory contains the unstated premise that had Whemco chosen to participate in the Default Service Proceeding it would have been able to discern that elimination of the Rider No. 5 time of day discount from Rate L was an issue in the case. Whemco asserts that premise is itself highly speculative because the issue of eliminating the Rider No. 5 discount applicable to Rate L customers like Whemco was neither mentioned in the petition filed by Duquesne instituting the Default Service Proceeding nor addressed in the testimony from Duquesne. Accordingly, pursuant to 52 Pa.Code § 5.321, Whemco objected to the Interrogatories on both relevance and speculative grounds, as well as that the interrogatories would require Whemco to engage in a hypothetical analysis lacking in factual support.

In support of this position, Whemco argues that it never participated in the Default Service Proceeding, never took any position on any issues in that proceeding since it was not a participant, did not know about any attempt in the Default Service Proceeding to eliminate the Rider No. 5 distribution rate discount from Rate Schedule L, and has never taken any position, for or against, the elimination of the Rider No. 5 time of day discounts. Thus, to answer this interrogatory, Whemco argues, would cause Whemco to engage in classic speculation, i.e., the forming of a theory or conjecture without firm evidence. Moreover, the speculation is retroactive as Duquesne seeks a 2007 era opinion from Whemco regarding a position it never took.

Whemco argues that a party is not entitled to conduct discovery requiring a party opponent to speculate about matters for which it cannot reasonably develop a response.¹

Whemco argues that its position on any attempted elimination of the Rider No. 5 discount in the Default Service Proceeding over 8 years ago is not relevant to the core issue in the formal complaint filed by Whemco in this proceeding. Whemco explains that it is seeking refunds based on its assertions that Duquesne improperly terminated the Rider No. 5 distribution rate discount applicable to Whemco as a large commercial and industrial customer in the Default Service Proceeding by, among other things: (i) including distribution rate relief in a generation-related case; (ii) failing to provide lawful and constitutional advance notice to Whemco of the intended termination of the Rider No. 5 discount for Rate L customers like Whemco and failing to disclose the potential rate impact of such elimination on Whemco; (iii) failing to effect the termination of the Rider No. 5 discount in the Default Service Proceeding because there was no testimony or other evidentiary support for such relief; and (iv) failing to enter into a General Stipulation in the Default Service Proceeding that could lawfully and effectively terminate the Rider No. 5 discount applicable to large commercial and industrial customers like Whemco given the other errors noted above.

¹ Whemco cites *Kerns v. Methodist Hospital*, 574 A.2d 1068 (Pa.Super. Ct. 1990) (holding that a subpoena to the Philadelphia Police Department requesting any records indicating the occurrence of criminal assaults in the area “was unquestionably speculative” and that a request for production of all of a hospital’s security log books for time periods prior to the assault was “likewise unquestionably speculative”).

Whemco argues that no claim or requested relief in its Complaint raises or is predicated upon Whemco's position on the merits of termination of the Rider No. 5 discount applicable to large commercial and industrial customers like Whemco in the Default Service Proceeding. On the contrary, Whemco argues that it seeks refunds in the Formal Complaint associated with the *way* in which Duquesne attempted to eliminate Rider No. 5, not what Whemco's position would have been had it been a participant in the Default Service Proceeding, i.e., the merits of the elimination of time of day rates for distribution service. Accordingly, Whemco concludes that this interrogatory is simply not relevant to any issue in this case or likely to lead to admissible information. *See*, 52 Pa.Code § 5.321(c).

Since Whemco was not a party to the Default Service Proceeding, it argues that it has never taken a position on the elimination of the Rider No. 5 distribution rate discount and, as the Rider No. 5 discount *no longer exists*, it would literally be impossible and completely speculative for Whemco now in 2015 to opine on the elimination of the Rider No. 5 discount that occurred, unlawfully in Whemco's view, back in 2007 and 2008 during the Default Service Proceeding.

Whemco further contends that Duquesne's reliance on *Pa.P.U.C. v. Pennsylvania Gas and Water Co.*, 1982 Pa. PUC LEXIS 48, 56 Pa. PUC 433, 49 P.U.R.4th 356 (Order entered October 29, 1982) ("*PG&W*") as *requiring* the Commission to consider the merits of eliminating Rider No. 5 in determining whether to award or not reward a refund is misplaced. Whemco argues that *PG&W* is completely distinguishable from this proceeding on its facts, as *PG&W* involved a multi-stage base rate proceeding and not a claim like this proceeding from a single customer for a refund based on the unlawful termination of a specific tariffed rate. Further, Whemco argues the refunds at issue at *PG&W* involved the totality of base rates allegedly charged to *all customers* which were later found to be unlawful. In this proceeding, Whemco argues its refund claim is based, not on an improperly allowed option in a base rate case, but upon the unlawful elimination of a specific tariff provision applicable to Whemco as a large commercial and industrial customer.

Whemco further argues that by focusing on the "merits" of the elimination of the Rider No. 5 distribution discount, Duquesne is diverting attention away from the fact that the

Formal Complaint is seeking refunds for alleged *procedural and legal errors* relating to Duquesne's efforts in the Default Service Proceeding that have nothing to do with Duquesne's, Whemco's or even the Commission's view about whether time of day rates should or should not be included in distribution service.

With regard to Duquesne Light's proposal to reword the question, Whemco argues that the new question is neither new nor addresses the fundamental objection to these interrogatories. Whemco argues this revised question "assumes" that Whemco has substantive objections to the elimination of Rider No. 5. Whemco asserts that it has taken no position on the issue because it is *not* an element of the Formal Complaint in this proceeding. Moreover, Whemco argues the Rider No. 5 discount for large commercial and industrial customers like Whemco no longer exists, having been unlawfully terminated as part of the Default Service Proceeding. Accordingly, Whemco asserts that its opinion about a no longer existing rate discount is most assuredly not relevant to this proceeding.

Duquesne Light argues that the interrogatories number two and three are relevant to this proceeding. According to Duquesne, the questions seek to ascertain Whemco's position regarding the actual merits of the elimination of Rider No. 5 Time of Day rate for distribution service. In its Complaint, Whemco argues that Duquesne Light improperly eliminated Rider No. 5 by allegedly failing to provide adequate notice and by eliminating the Rider in a default service proceeding. Duquesne asserts that these are all procedural arguments. Duquesne Light argues, the questions are relevant because this proceeding also requires review of the merits of eliminating Rider No. 5.

Duquesne Light argues that even if Whemco's arguments that Duquesne Light failed to provide adequate notice or that Rider No. 5 should not have been eliminated in a default service proceeding are accepted, the ALJ and the Commission still must consider the merits of eliminating Rider No. 5 in determining whether to award a refund or not award a refund. Whether Whemco received appropriate notice is not outcome determinative with regard to whether it is entitled to refunds. Further, Duquesne argues that Whemco's potential disagreement with Duquesne Light's legal theory is not an appropriate ground to refuse to respond to a discovery request. Duquesne argues that this question is relevant and likely to lead

to the discovery of admissible evidence and that in the event that the ALJ disagrees with this conclusion, a complete record should still be created to allow the Commission to make a decision regarding the merits of eliminating Rider No. 5, if the Commission determines that it is appropriate to review the merits.

Duquesne argues, this question is not improperly speculative. One of Whemco's primary arguments in this case is that it did not participate in the DSP IV proceeding at Docket No. P-00072247 because it did not have notice that Rider No. 5 was being eliminated for Rate L Customers. Duquesne asserts, it is relevant to know what Whemco's position would have been if it had participated. However, in order to address Whemco's concerns regarding speculation, Duquesne Light indicated its willingness to reword the question to state as follows: "Explain all of Whemco's substantive objections to the elimination of Rider No. 5." Duquesne Light indicated, if Whemco would agree to answer this question, Duquesne Light will agree to withdraw questions 2 and 3.

Duquesne Light Set II, Question 3, provides as follows:

Fully explain all reasons why Whemco believes electric customers should receive distribution rate discounts for using or not using electricity at different times of the day.

Whemco raised the following objection:

Objection: Whemco objects to the foregoing written interrogatory on the ground that seeks broad and generic information about discounts relating to using electricity at different times of the day which is *not* an issue, claim or defense in this proceeding. Whemco has not proposed or supported Duquesne's distribution rate utilizing a discount for use of electricity at different times of the day. Accordingly, this interrogatory is seeking information that is not relevant to the subject matter of this proceeding, including any claim or defense in this proceeding since this case is not about Whemco's generic views of these time-of-use issues. Whemco asserted in its Formal Complaint in this proceeding that Duquesne, among other things, failed to lawfully and properly terminate the Rider No. 5 discount applicable to Rate L customers like Whemco in Duquesne's 2007 default service proceeding and thereafter failed to execute a contract under Rule 4 of Duquesne's tariff that the parties were negotiating in an effort to, among other things, ameliorate the substantial and adverse rate

impacts on Whemco by the elimination of the Rider No. 5 discount effective January 1, 2011. *See*, 52 Pa. Code § 5.321(c).

Whemco argues that Interrogatory No. 3 is objectionable on the same bases and reasons identified above. Whemco argues that, similar to Interrogatory No. 2, the question does not relate to any issue or claim in this case because Whemco has not advanced a position it is obligated to defend regarding the merits of customers utilizing time of day distribution rates.

Whemco argues it has not taken any substantive position in the Formal Complaint or otherwise regarding whether or not customers should be entitled to time of day distribution rate discounts, which is not related to the Complaint and the relief requested therein. Therefore, Whemco argues it should not be required to create a substantive position on this issue.

Duquesne Light avers that Whemco is arguing that Duquesne Light unlawfully terminated Rider No. 5, which provided, among other things, a distribution rate discount to customers for using electricity at different times of the day. In Paragraphs 23 and 24 of its Complaint, Whemco states as follows:

23. Rider No. 5 was intended to provide, among other things, discounts to customers served on the identified Rate Schedules for distribution service. The Rider specifically applied as follows: “Applicable to Rates GS/GM, GL and L and to Rates GMH and GLH during the months of June, July, August and September only.”

24. Rider No. 5 used on-peak demand measurements between the hours of 9:00 AM and 9:00 PM for the purpose of computing a customer’s billing demands for rate application rather than larger demands that may have occurred during non on-peak hours.

Duquesne asserts that Whemco avers in its Complaint that Duquesne Light unlawfully terminated Rider No. 5 which provided time of day discounts for distribution service. Duquesne argues it is clearly relevant for Whemco to explain why it believes that it is appropriate or not appropriate for customers to receive distribution rate discounts for using electricity at different times of the day. Duquesne argues the ALJ and the Commission should consider the substantive merits for eliminating Rider No. 5 in reaching any decision in this proceeding, the Commission has discretion to decide whether to grant a refund or not grant a

refund under Section 1312 of the Public Utility Code, 66 Pa.C.S. § 1312, and should not base its decision solely on procedural issues, especially when Rider No. 5 was eliminated so long ago.

The scope of permissible discovery in Commission proceedings is governed by the Commission's rules at 52 Pa.Code § 5.321. The presiding officer in any proceeding has broad discretion regarding the scope of discovery. For example, 52 Pa.Code § 5.321(b) specifically gives the presiding officer the authority to "vary provisions of this subchapter as justice requires."

There is little doubt that the Commission's regulations are intended to encourage discovery. Discovery can only be undertaken with respect to matters that are not privileged and which are "relevant to the subject matter involved in the pending action ..." ² 52 Pa.Code § 5.321(c). The Pennsylvania courts have said that "[e]vidence is relevant, if it tends to make a fact at issue more or less probable." *LaVerne R. Martin v. Larry Soblotney*, 502 418, 466 A. 2d 1022, 1034 (Pa. 1983).

Whemco points out that the Commission has limited a party's inquiry into issues which are not relevant to the issues in a pending matter. *Application of Newtown Artesian Water Company and Indian Rock Water Company*, 1990 Pa. PUC LEXIS 83, involved a proposed merger of two companies along with the abandonment of service by Indian Rock Water Company. Newtown Township ("Township") petitioned to intervene in the merger case and filed a separate eminent domain case with the Commission. The Township submitted interrogatories in the merger proceeding concerning ratemaking matters and additional discovery in the eminent domain case. The merging companies objected to the interrogatories, and the Township filed a Motion to Compel. The Township believed it was entitled to pursue discovery "as to what costs can be saved if Indian Rock is acquired by eminent domain." The ALJ denied the Motion to Compel and reasoned "[T]he saving of costs in a separate, legal proceeding on eminent domain is not relevant to the pending merger application proceeding. To argue in favor of discovery because of discovery's potential effect on a separate proceeding is a blatant

² The Commission's rules also indicate that discovery may be conducted with respect to matters that, although they may be inadmissible at hearing, may nevertheless be permitted as long as the information sought appears reasonably calculated to lead to discovery of admissible evidence.

admission that the discovery sought is inappropriate and irrelevant to the case at bar.” 1990 Pa. PUC LEXIS 83 at 7.

Whemco further cites, Re Structural Separation of Bell Atlantic-Pennsylvania, Inc Retail and Wholesale Operations, 2000 Pa. PUC LEXIS 49, where the issue in the proceeding was limited to the form of structural separation of Bell Atlantic-Pennsylvania, Inc’s retail and wholesale operations. Bell Atlantic-Pennsylvania propounded thirteen interrogatories on NEXTLINK Pennsylvania, Inc. seeking to examine NEXTLINK’s business activities in Pennsylvania. NEXTLINK objected by claiming that the information sought was not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. In resolving Bell Atlantic-Pennsylvania’s Motion to Compel, the Commission ruled that Bell Atlantic-Pennsylvania sought information regarding the *need* for (not the form of) structural separation, a matter previously litigated before the Commission, and beyond the scope of the present proceeding. 2000 Pa. PUC LEXIS 49 at 18-19.

The Commission's regulations at 52 Pa.Code § 5.321(c) define the scope of permissible discovery as follows:

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Duquesne Light has failed to establish that the information sought in its motion is relevant "to the subject matter involved in the pending action." Under the circumstances, such information is not directly relevant to the issues presented by this proceeding nor are the discovery requests reasonably calculated to lead to the discovery of admissible evidence. Whemco essentially avers that, through its Complaint, it is seeking refunds for alleged *procedural and legal errors* relating to Duquesne’s conduct in improperly eliminating Rider

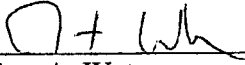
No. 5 by allegedly failing to provide adequate notice and by eliminating the Rider in a default service proceeding. Duquesne Light has simply failed to establish that the information sought, as stated, is relevant or reasonably calculated to lead to the discovery of admissible evidence related to the claims asserted by Whemco in this proceeding. Furthermore, Whemco correctly argues that the discovery sought by Duquesne Light is too speculative, as drafted, under the circumstances.

THEREFORE,

IT IS ORDERED:

That the Motion to Compel Answers to Interrogatories and Requests for production of Documents Propounded by Duquesne Light Company on Whemco-Steel Castings, Inc., Set II filed on May 18, 2015 is Denied.

Date: June 4, 2015



Jeffrey A. Watson
Administrative Law Judge

C-2014-2459527 - WHEMCO-STEEL CASTINGS INC v. DUQUESNE LIGHT COMPANY

Revised 4-21-15

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