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June 6, 2016

***VIA ELECTRONIC FILING***

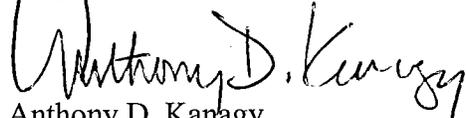
Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed please find the Answer of Duquesne Light Company to Motion of Whemco-Steel Castings, Inc. to Strike Portions of Duquesne Light Company's Testimony 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)**

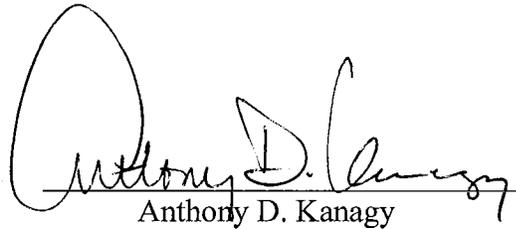
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL and REGULAR MAIL**

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Date: June 6, 2016

  
Anthony D. Kanagy

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

**TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:**

Duquesne Light Company (“Duquesne Light” or the “Company”) hereby files, pursuant to 52 Pa. Code § 5.103, this Answer to Whemco-Steel Castings, Inc.’s (“Whemco”) Motion to Strike Portions of Duquesne Light Company’s Testimony. As explained herein, Whemco’s Motion to Strike should be denied because Duquesne Light’s Testimony is proper, relevant evidence in support of its defense in this proceeding. 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. Duquesne Light also explained why Rider No. 5 was properly eliminated.

3. On February 10, 2015, Whemco filed an Answer to Duquesne Light's New Matter.

4. On January 19, 2016, Whemco served the Direct Testimony of Pamela C. Polacek, Christian Slingsluff and Robert A. Rosenthal.

5. Duquesne Light submitted the Direct Testimony of William V. Pfrommer on May 2, 2016.

6. On May 17, 2016, Whemco filed a Motion to Strike Portions of Duquesne Light Company's Testimony ("Motion to Strike").

7. Throughout the course of this proceeding, the parties have engaged in discovery and the ALJ has ruled on various discovery motions.

8. Duquesne Light hereby files this Answer requesting that Whemco's Motion to Strike be denied for the reasons set forth herein.

**II. DUQUESNE LIGHT'S TESTIMONY IS PROPER AND SHOULD NOT BE STRICKEN BECAUSE IT IS DIRECTLY RELEVANT TO DUQUESNE LIGHT'S DEFENSE IN THIS PROCEEDING.**

9. In its Motion to Strike, Whemco challenges the following portions of Duquesne Light witness Pfrommer's testimony:

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 demand 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).

10. Whemco argues that the above-quoted portions of Mr. Pfrommer's testimony should be stricken because they are "irrelevant" to this proceeding. Whemco further states that its Complaint challenges only the manner in which Rider No. 5 was eliminated, not the merits of eliminating Rider No. 5. Therefore, Whemco erroneously concludes that Duquesne Light should not be permitted to submit testimony regarding the merits of eliminating Rider No. 5.

11. The fact that Whemco did not raise the merits of eliminating Rider No. 5 in its Complaint is not a valid basis on which to strike Duquesne Light's Testimony. Written

testimony in proceedings before the Commission is not limited to evidence that directly relates to arguments presented by the complainant. The Commission's regulations provide guidance on admissible evidence. Evidence may "relate to the claim or **defense** of the party seeking discovery or to the claim or **defense** of another party. . ." 52 Pa. Code § 5.321(c) (emphasis added). Clearly, the standard for admissible evidence is not limited to how the complainant attempts to frame its case. It also encompasses the respondent's defenses.

12. Duquesne Light's testimony regarding the merits of eliminating Rider No. 5 is proper and should not be stricken because this testimony is directly relevant to Duquesne Light's defense in this proceeding. It is Duquesne Light's position that, even if the Commission were to find that Rider No. 5 was improperly eliminated, which it should not, the Commission should consider the merits of eliminating Rider No. 5 in order to determine whether refunds are appropriate. The only way the Commission can make such a determination is if Duquesne Light is permitted to address the merits of the elimination of Rider No. 5 for the record. If the Commission decides to make a determination regarding the merits of eliminating Rider No. 5, it should have a full and complete record on which to base its decision.

13. The Commission has discretion regarding whether to award refunds. *Pa. P.U.C. v. Pennsylvania Gas and Water Co.*, 1982 Pa. PUC LEXIS 48, 56 Pa. PUC 433 (Order entered October 29, 1982), citing *Magee Carpet Co. v. Pa. P.U.C.*, 102 A.2d 229, 235 (Pa. Super. 1954) (Commission is not mandated to award refunds, "although it has the 'power and authority' to do so") and *Lancaster Ice Mfg. Co. v. Pa. P.U.C.*, 138 A.2d 262, 268 (Pa. Super. 1958) ("Commission is not without discretion in exercising its equitable powers").

14. Mr. Pfrommer's Testimony supports Duquesne Light's position that Rider No. 5 was properly eliminated by explaining the substantive reasons for the elimination of Rider No. 5,

and, specifically, why it is unreasonable to have a distribution rate discount that is based on the time of day service is used. *See* Duquesne Light St. No. 1, p. 9, l. 17-23 and p. 10, l. 1-22.

15. Duquesne Light is entitled to present testimony in support of its defense and is not limited to presenting testimony on Whemco's claims. Whemco is improperly attempting to limit the evidence in this proceeding to its narrowed view of the issues. Striking Duquesne Light's testimony on the basis that the merits of Rider No. 5 were not discussed in Whemco's complaint would lead to unreasonable results where parties are not entitled to present evidence in support of their defense simply because the defense was not "raised" in the complainant's direct case.

16. As additional support for its argument, Whemco points to the ALJ's June 4, 2015 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 ("*Interim Discovery Order*"). However, the ALJ's *Interim Discovery Order* is not dispositive of Whemco's Motion to Strike. The *Interim Discovery Order* ruled on competing discovery motions by Whemco and Duquesne Light regarding the following interrogatory in Duquesne Light's Set II Discovery to Whemco:

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.

17. In the *Interim Discovery Order*, the ALJ noted that Duquesne Light's interrogatory was improper because it called for Whemco to speculate regarding the position it would have taken had it challenged Rider No. 5's elimination, and it was not relevant to Whemco's claim of procedural error. *Interim Discovery Order*, pp. 10-11.

18. Whether Duquesne Light was permitted to ask Whemco a discovery question regarding *Whemco's* opinion has no effect on whether Duquesne Light should be permitted to

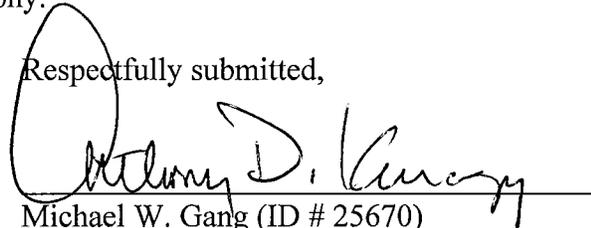
submit testimony in support of its *own* defense in this proceeding. Whemco's attempt to use the *Interim Discovery Order* in support of its Motion to Strike is improper because the instant scenario is entirely different from the circumstances of the *Interim Discovery Order*, i.e. seeking information from Whemco regarding a position it would have taken on the elimination of Rider No. 5 versus affirmatively presenting Duquesne Light's own position on the elimination of Rider No. 5 as it relates to Duquesne Light's defense in this proceeding. In addition, Duquesne Light's Testimony is not speculative but provides substantial evidence supporting the elimination of Rider No. 5.

19. Whemco's Motion to Strike should not be granted because it would deny Duquesne Light a fair opportunity to present one of its defenses, which would severely prejudice Duquesne Light. Further, if Whemco's Motion to Strike were granted, the Commission would be left with an incomplete record on which to base its decision.

### III. CONCLUSION

WHEREFORE, for the foregoing reasons, Duquesne Light Company respectfully requests that Administrative Law Judge Jeffrey A. Watson deny Whemco's Motion to Strike Portions of Duquesne Light Company's Testimony.

Respectfully submitted,



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Date: June 6, 2016

*Counsel for Duquesne Light Company*