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June 14, 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 Compel Answers to Interrogatories and Requests for Production of Documents Propounded Upon Duquesne Light Company 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**

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

**MOTION OF
WHEMCO-STEEL CASTINGS, INC. TO
COMPEL ANSWERS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION
OF DOCUMENTS PROPOUNDED UPON DUQUESNE LIGHT COMPANY**

WHEMCO-Steel Castings, Inc. (“Whemco”), by and through its attorneys, hereby files the following Motion to Compel Answers to Interrogatories and Requests for Production of Documents Propounded Upon Duquesne Light Company (“Motion”), pursuant to Section 5.342 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.342, and in connection therewith represents as follows:

I. Introduction

1. Through this Motion, Whemco seeks to compel *for the second time* full and complete responses to certain interrogatories previously issued by Whemco to Duquesne Light Company (“Duquesne”). These interrogatories were issued in preparation for Whemco’s submission of its rebuttal testimony on June 14, 2016 and, given Duquesne’s failure to provide timely and complete responses, Whemco may need to supplement its written rebuttal testimony which is due and will be filed on June 14, 2016, contemporaneously with this Motion. Duquesne’s failure to provide responsive answers to Whemco’s interrogatories is needlessly occupying the time, resources and expense of the litigants as well as the presiding Administrative

Law Judge (“ALJ”) in a manner that is inconsistent with the overall purpose of the Commission’s rules on discovery.

II. Background

2. 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 its Rate L customers a certain distribution-rate related discount contained in Rider No. 5 of Duquesne’s then-prevailing and Commission approved retail electric service tariff. The Formal Complaint further alleged that the wrongful termination of the Rider No. 5 discount was the result of the improper implementation of a settlement of a default service proceeding that covered the period January 1, 2008 through December 31, 2010 at Docket No. P-00072247 (“Default Service Proceeding”).

3. As a result of Duquesne’s improper and unlawful implementation of the settlement in the Default Service Proceeding and termination of the distribution-related rate discount contained in Rider No. 5 applicable to Rate L customers like Whemco, Whemco’s electric distribution service bills from Duquesne more than doubled as of January 2011. This 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.

4. The Formal Complaint seeks, among other things, a refund from Duquesne under Section 1312 of the Public Utility Code (“Code”), 66 Pa. C. S. § 1312, in the amount of \$2,480,374.16, plus interest on all unpaid amounts.

5. On January 21, 2015, Duquesne filed an Answer and New Matter denying the material allegations in the Formal Complaint.

6. On February 10, 2015, Whemco filed a Reply to Duquesne's New Matter, denying the material allegations therein.

7. Prior to the appointment of an Administrative Law Judge ("ALJ") and the issuance of a Hearing Notice, the parties had commenced active discovery in this proceeding. On February 11, 2015, Whemco propounded its first set of interrogatories upon Duquesne.

8. On March 27, 2015, the Commission issued a formal notice of an evidentiary hearing in this matter for May 7, 2015, along with the appointment of ALJ Jeffrey A. Watson as the presiding officer.

9. Discovery has been ongoing and dynamic in this proceeding by both parties and has included written interrogatories, requests of admission, and depositions.

10. On May 17, 2016, Whemco issued Set III Interrogatories and Requests for Production of Documents ("Interrogatories") on Duquesne. There are twenty-six questions in the Interrogatories, based on the testimony of Duquesne witness William V. Pfrommer whose testimony was filed on May 2, 2016.

11. When it became clear that Duquesne's answers to the Interrogatories were incomplete and/or unresponsive, Whemco timely filed a Motion to Compel answers on June 8, 2016 ("June Motion").

12. Instead of filing an Answer to the June Motion, on June 13, 2016 Duquesne advised it was filing answers to Set III Nos. 3, 4, 8, 18 and 20 and that it "anticipates" filing an answer to Whemco Set III-2 on June 14, 2016.

13. This Motion seeks full and complete answers to the following questions in the Interrogatories: Nos. 2, 8, 18, and 20 ("Disputed Discovery"). The updated "responses"

provided by Duquesne to the Disputed Discovery on June 13, 2016 are set forth in Exhibit A hereto and incorporated by reference herein.

III. Argument

A. Whemco is entitled to (i) Full and Complete Answers to the Disputed Discovery and (ii) Update its Written Rebuttal Testimony Submitted on June 14, 2016 after Review of Duquesne's Further Revised Answers to the Disputed Discovery.

14. Interrogatory No. 8 asks Duquesne to provide any specific documents it has in its possession or is aware of that establishes or confirms that any party/participant in the DSP IV proceeding in 2007 had any knowledge or awareness the Duquesne intended to eliminate the Rider No. 5 discount applicable to Rate L customers in that proceeding. Duquesne's revised answer to this interrogatory discusses legal or constructive notice, but does not discuss what Duquesne has or is aware of regarding customers' knowledge about the proposed elimination of the Rider No. 5 discount applicable to Rate L customers. Duquesne either has such information or knowledge today or it does not have such information. The revised "answer" is evasive and non-responsive.

15. Based on witness Pfrommer's testimony stating that other non-Whemco Rate L customers participated in the DSP IV proceeding, Interrogatory No. 18 asks Duquesne (i) if any of these other customers were aware of the proposed elimination of the Rider No. 5 discount in that proceeding and (ii) to provide all documents in Duquesne's possession that suggest these parties were aware of the proposed elimination Rider No. 5 discount. Duquesne's revised answer makes a general reference to the tariff and compliance filing made by Duquesne, but does not indicate (i) if these are the only documents Duquesne claims are responsive to the interrogatory and, more importantly, (ii) *does not* provide any explanation of how such documents suggest "actual awareness" of the Rider No. 5 discount proposed elimination for the

referenced customers, as requested in Interrogatory No. 18. This interrogatory is asking for documents Duquesne has in its possession suggesting that the customers referenced in Mr. Pfrommer's direct testimony were aware (and not "should have been" aware as alleged) of the elimination of the Rider No. 5 discount.

16. Similar to Interrogatory No. 18, Interrogatory No. 20 asks if any party to the DSP IV proceeding showed awareness of the proposed elimination of the Rider No. 5 discount at the time the DSP IV tariff compliance filing was made or was later approved by the Commission. Duquesne's revised answer continues to state that any party reviewing the documents "should have been aware" of the proposed elimination of the Rider No. 5 discount. That is not the question, which is whether Duquesne possessed knowledge that any party was actually aware of the proposed elimination of the Rider No. 5 discount at the two identified milestones. Once again, Duquesne's revised answer to Interrogatory No. 20 is unresponsive and must be corrected.

17. As noted above, the absence of complete and timely responses to the Disputed Discovery at this stage of the proceeding is prejudicial to Whemco because it prevents Whemco from using the responses to the Disputed Discovery in its rebuttal testimony. Accordingly, Whemco (i) reserves its right to update its written rebuttal testimony that will be filed today (*i.e.*, June 14, 2016) upon its receipt and review of full and complete answers from Duquesne to the Disputed Discovery and (ii) requests that the ALJ permit Whemco to update its written rebuttal as necessary based upon its review of the answers to the Disputed Discovery.

18. Since Duquesne has yet to provide any response to Whemco Set III-2, Whemco does not know whether any such response will be needed in its rebuttal testimony that is due to be filed today, *i.e.*, June 14, 2016. Whemco therefore reserves its right to update its rebuttal

testimony to be filed today after the receipt and review of Duquesne's revised response to Whemco Set III-2.

IV. Conclusion

19. Section 5.342(a) of the Commission's regulations, 52 Pa. Code § 5.342(a), requires that answers to interrogatories (i) be in writing; (ii) identify the name and position of the individual who provided the answer; (iii) be submitted as an answer and not as an exhibit or in another form; and (iv) *answer each interrogatory fully and completely unless an objection is made.*

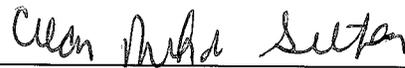
20. Duquesne's revised answers to the Disputed Discovery do not contain full and complete answers as noted above. Critically, Duquesne *did not object* to the Disputed Discovery and Whemco is therefore legally entitled to receive full and complete answers. The failure to provide such full and complete answers is a direct violation of 52 Pa. Code § 5.342(a), which must be remedied immediately.

21. It is unfair to allow Duquesne to evade providing direct, accurate and legally sufficient responses to the Disputed Discovery that were not the subject of prior valid objections. Whemco carefully and narrowly tailored the Interrogatories to elicit information it believed to be relevant to the preparation of its rebuttal testimony. Duquesne's incomplete and/or non-responsive answers to the Disputed Discovery need to be immediately corrected so Whemco has the benefit of the answers to this proper discovery in its rebuttal testimony.

WHEREFORE, WHEMCO-Steel Castings, Inc. hereby respectfully requests that the ALJ grant this Motion in its entirety and (i) direct Duquesne to provide complete and timely answers to Nos. 2, 8, 18, and 20 of the Interrogatories and (ii) allow Whemco to update its rebuttal testimony filed on June 14, 2016, if necessary, after its review and evaluation of further revised Duquesne responses to the Disputed Discovery.

Respectfully submitted,

Dated: June 14, 2016



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Attorneys for WHEMCO-Steel Castings, Inc.

Exhibit A

**Updated Responses of Duquesne Light Company to
Interrogatories and Requests for Production of Documents
to Duquesne - Set III Regarding Testimony of William V. Pfrommer**

8. Identify, describe, explain and provide any data, information or documents Duquesne has in its possession or is aware of establishing or confirming that any party/participant in the DSP IV proceeding had knowledge or awareness at any time during that proceeding that Duquesne Light intended to eliminate the Rider No. 5 discount applicable to Rate L customers in that proceeding.

Response:

All such documents that Duquesne Light is aware of at this time are in the public file in the DSP IV proceeding, including the tariff and testimony. Duquesne Light cannot be certain that these are the only documents due to the passage of time and Whemco's substantial delay in filing its Complaint. The tariff and testimony confirm that participants in the DSP IV proceeding had constructive notice that Duquesne Light intended to eliminate Rider No. 5 for all customers and should have been aware that it was being eliminated.

**Updated Responses of Duquesne Light Company to
Interrogatories and Requests for Production of Documents
to Duquesne - Set III Regarding Testimony of William V. Pfrommer**

18. Ref: page 12, lines 15-16: To the best of Duquesne's knowledge, were either of the two referenced customers, any other Duquesne Light Customer, or any party in the DSP IV proceeding aware of the proposed elimination of the Rider No. 5 discount during the conduct of the DSP IV proceeding?
- a. Identify and provide any and all documents in Duquesne's possession and/or filed in the DSP IV Proceeding suggesting that either of the two referenced customers were aware of the proposed elimination of the Rider No. 5 discount during the conduct of the DSP IV proceeding.

Response:

- The Company did not assess customer awareness of the DSP IV filing. As explained on the revised response to Question 8, parties had constructive notice of the elimination of Rider No. 5 and clearly should have been aware that Rider No. 5 was being eliminated by simply looking at the proposed tariff. Duquesne Light is not aware that any party advised the Company during the DSP IV proceeding that it had actual knowledge of the elimination of Rider No. 5. However, as the DSP IV proceeding occurred approximately 9 years ago, it is impossible for Duquesne Light to know if any party advised the Company that they had actual knowledge of the elimination of Rider No. 5 during the conduct of the DSP IV proceeding, including Commission approval of the compliance filing.
- e. The tariff that was filed with the DSP IV filing clearly provided that Rider No. 5 – Time of Day Discounts was being eliminated for all customers. The same tariff provision was included in the DSP IV Compliance filing and was approved by the Pennsylvania Public Utility Commission.

**Updated Responses of Duquesne Light Company to
Interrogatories and Requests for Production of Documents
to Duquesne - Set III Regarding Testimony of William V. Pfrommer**

20. Ref: page 13, lines 16-18: To the best of Duquesne's knowledge, was any party in the DSP IV proceeding aware of the proposed elimination of the Rider No. 5 (i) at the time the DSP IV tariff compliance filing was made and (ii) later approved by the Commission? Provide all documents in support of your answer.

Response:

See the revised response to Set III, Question 18. Any party that reviewed the compliance filing should have been aware that Rider No. 5 – Time of Day Discounts was being eliminated for all rate schedules as is evident from the clear language in the tariff that was marked with a (C). The compliance filing was provided as DLC Exhibit WVP-11.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WHEMCO-STEEL CASTINGS, INC.

v.

DUQUESNE LIGHT COMPANY

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DOCKET NO. C-2014-2459527

CERTIFICATE OF SERVICE

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

Via Email and First-Class Mail

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Dated this 14th day of June, 2016.



Alan M. Seltzer, Esq.