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June 17, 2016

VIA EFILING

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

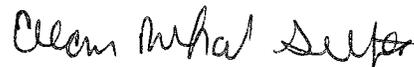
Re: WHEMCO-Steel Castings, Inc. v. Duquesne Light Company
Docket No. C-2014-2459527

Dear Secretary Chiavetta:

On behalf of WHEMCO-Steel Castings, Inc., I have enclosed for electronic filing the Motion of WHEMCO-Steel Castings, Inc. to Require Duquesne Light Company to Submit Written Surrebuttal Testimony and Cancel Scheduled Evidentiary Hearings 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

testimony. As such, the only way to ameliorate the potential due process and other potential adverse impacts on Whemco is to (i) postpone and reschedule the Evidentiary Hearings and (ii) direct Duquesne to submit its “oral” surrebuttal testimony in written form to the ALJ and Whemco sufficiently in advance of the new evidentiary hearings to allow meaningful opportunity to address the substance of such testimony, either in cross-examination and/or additional Whemco testimony.

3. If this Motion is granted, Whemco, Duquesne and the ALJ can promptly establish new hearing dates and when Duquesne’s further written testimony should be submitted.

4. Whemco advised Duquesne of its concerns with respect to the Interim Order and, at the request of the ALJ, contacted Duquesne in advance of filing this Motion in an attempt to resolve Whemco’s concerns about the adverse impacts of the Interim Order. Duquesne rejected Whemco’s suggestion that the Evidentiary Hearings be postponed and rescheduled and that Duquesne submit its oral surrebuttal testimony in writing. Instead, Duquesne stated it would not oppose Whemco’s request to conduct oral rejoinder in response to Duquesne’s oral surrebuttal. Whemco does not believe that Duquesne’s suggestion is a meaningful resolution of the serious due process issues Whemco has with being required to respond to oral surrebuttal for the first time at the Evidentiary Hearing as directed by the Interim Order.

II. ARGUMENT

A. Given the Ruling in the Interim Order, Whemco’s Due Process Rights will be Violated if It is Required to Respond to Duquesne’s Oral Surrebuttal Testimony at the Evidentiary Hearings.

5. The Commission’s regulations clearly establish the ground rules for the handling, presentation and order of evidence at hearings. First, the ALJ has complete control over the

receipt of evidence at hearings as provided in 52 Pa. Code Section 5.403: “[t]he presiding officer shall have all necessary authority to control the receipt of evidence. . . .” 52 Pa. Code § 5.403.

6. Second, 52 Pa. Code § 5.403(a)(2) gives the ALJ the authority to impose appropriate “limitations” on various aspects of evidence at hearings, including “limitations on the production of further evidence” (52 Pa. Code § 5.403(a)(2)(iii)) and “other necessary limitations.” (52 Pa. Code § 5.403(a)(2)(iv)). The ALJ has clear legal authority to direct that the Evidentiary Hearings be cancelled and that Duquesne be required to submit its surrebuttal testimony in written form.

7. The unfairness of the Interim Order and its adverse and prejudicial impacts on Whemco are palpable and clearly justify postponing the Evidentiary Hearings and requiring Duquesne to submit its surrebuttal testimony in writing. While Duquesne would have had from June 14, 2016 (when it received Whemco’s *written rebuttal* testimony) to the start of hearings on June 23rd (i.e., 9 days) to plan and prepare its surrebuttal testimony, Whemco under the Interim Order would be required to *immediately* respond to new Duquesne testimony with either cross-examination and/or new evidence of its own. This instantaneous time frame for evaluating and responding is unfair and prejudicial particularly since Whemco as the moving party has the right to have the last word on the evidence in the proceeding.

8. The ALJ’s broad authority to control all aspects of the evidentiary record should be exercised in the context of the Commission’s regulations at 52 Pa. Code Section 5.242 (Order of Procedure) that provide in pertinent part that “[i]n a proceeding, the party having the burden of proof, shall open and close unless otherwise directed by the presiding officer.” 52 Pa. Code § 5.242(a). There is no doubt as the complainant in this proceeding Whemco – and not Duquesne – has the burden of proof to support the allegations and relief requested in its complaint. Indeed,

as the “proponent” of the demand for refunds associated with Duquesne’s unlawful termination of the Rider No. 5 discount applicable to Rate L customers like Whemco in its 2007 default service proceeding at Docket No. P-00072247, Whemco has the burden of proof under Section 332(a) of the Public Utility Code, 66 Pa. C. S. § 332(a). If Duquesne is permitted to provide oral surrebuttal testimony as directed by the Interim Order, Whemco will be deprived of its right, as the party with the ultimate burden of proof, to “close” as required by 52 Pa. Code § 5.242(a).

9. Thus, the appropriate remedies to address these fundamental due process violations – given the ruling in the Interim Order -- are to: (i) require Duquesne to submit its surrebuttal testimony in writing to Whemco and the ALJ sufficiently in advance of the newly scheduled hearings to allow Whemco a reasonable opportunity to prepare cross-examination or further testimony and (ii) postpone and reschedule the Evidentiary Hearings.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, Whemco respectfully requests that the ALJ grant the relief requested in this Motion as well as such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: June 17, 2016



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Attorneys for WHEMCO-Steel Castings, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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 Require Duquesne Light Company to Submit Written Surrebuttal Testimony and Cancel Scheduled Evidentiary Hearings upon the parties and in the manner listed below:

Via Email and First-Class Mail

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Dated this 17th day of June, 2016.



Alan M. Seltzer, Esq.