

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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February 4, 2013

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17101

RE: Petition of PPL Electric Utilities  
Corporation For Approval of a  
Distribution System Improvement Charge  
Docket No. P-2012-2325034

Dear Secretary Chiavetta:

Attached for electronic filing is the Answer of the Office of Consumer Advocate to the Petition of PPL Electric Utilities Corporation for Approval of a DSIC. in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Erin L. Gannon".

Erin L. Gannon  
Assistant Consumer Advocate  
PA Attorney I.D. #83487

Attachment

cc: Commissioner Robert F. Powelson, Chairman  
Commissioner John F. Coleman, Jr., V. Chairman  
Commissioner James H. Cawley  
Commissioner Wayne E. Gardner  
Commissioner Pamela A. Witmer  
Bohdan Pankiw, Law Bureau  
David Screven, Law Bureau  
Paul Diskin, Bureau of Technical Utility Services  
Erin Laudenslager, Bureau of Technical Utility Services

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation :  
For Approval of a Distribution System : Docket No. P-2012-2325034  
Improvement Charge :

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ANSWER OF THE OFFICE OF CONSUMER ADVOCATE  
TO THE  
PETITION OF PPL ELECTRIC UTILITIES CORPORATION

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I. INTRODUCTION

Pursuant to Section 5.61 of the Pennsylvania Code, 52 Pa. Code § 5.61, the Office of Consumer Advocate (OCA) provides the following Answer to the Petition of PPL Electric Utilities Corporation for Approval of a Distribution System Improvement Charge (DSIC). Through its Petition, PPL Electric Utilities Corporation (PPL or Company) seeks permission to implement a surcharge of up to 5% on all customers, under Section 1353 of the Public Utility Code, 66 Pa. C.S. § 1353. This surcharge would recover return and depreciation on certain plant placed in service between base rate filings. As set forth more fully below, the Company's proposed Tariff Supplement No. 127 to Tariff-Electric Pa. P.U.C. No. 201 attached to the Petition is contrary to Pennsylvania statute, case law and established Public Utility Commission policy. The Commission should deny PPL's Petition as filed. The OCA requests that the Commission suspend the Company's proposed Tariff Supplement No. 127 and order a full hearing and investigation pursuant to the OCA complaint filed at this docket against the Tariff Supplement.

## II. THE OCA'S ANSWER

This is the second request by a utility to implement a DSIC under a new statute and the Commission's Final Implementation Order.<sup>1</sup> PPL's proposed DSIC will increase rates for service and presents several important issues. The Petition should be denied, and Tariff Supplement No. 127 should be rejected as filed. This matter should be referred to the Office of Administrative Law Judge for development of an evidentiary record.

While the OCA continues to review PPL's filing,<sup>2</sup> the OCA has identified the following preliminary concerns with the proposed surcharge:

1. The proposed DSIC computation, by ignoring the balance of accumulated deferred income taxes associated with DSIC investments, will allow PPL to earn a return on an investment balance that exceeds PPL's actual investment in DSIC eligible plant.
2. The calculation of the state income tax component of the DSIC revenue requirement determination requires further examination to ensure that it is consistent with the actual taxes paid doctrine.
3. PPL's level of earnings should be investigated to ensure that the proposed DSIC rate will not cause the Company to exceed the rate of return recently allowed by Commission Order entered December 28, 2012 at Docket No. R-2012-2290597.
4. PPL's proposal that the Commission put DSIC rates into effect prior to conclusion of its investigation and any evidentiary hearings requires further consideration.

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<sup>1</sup> Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Order (Aug. 2, 2012) (Final Implementation Order).

<sup>2</sup> The OCA notes that PPL's original Petition for Approval to Implement a Distribution System Improvement Charge was filed in Docket No. P-2012-2325034 on January 15, 2013 (PPL Petition). On January 22, 2013, PPL filed revisions to its Petition, proposed tariff, testimony and schedules to reflect an increased DSIC rate of 0.29%. For simplicity, the OCA's reference to PPL's Petition and materials included in that filing should be understood to incorporate the Company's revisions.

5. PPL's proposed form of customer notice should be reviewed to determine that it is consistent with Act 11 and the requirements of the Final Implementation Order.

Each of these concerns is discussed more fully below.

The OCA's first concern is the Company's failure to reflect accumulated deferred income taxes (ADIT) in its calculation of the DSIC. Supp. 127 to Tariff Electric – Pa. P.U.C. No. 201 at 19Z.17 – 19Z.18 (Proposed Tariff). The DSIC is intended to be an exception to the prohibition against single-issue ratemaking; however, that single issue must be calculated fairly and correctly. To make the DSIC calculation correct (to allow recovery only for costs actually incurred by the utility), the rate base on which the pretax return is calculated must reflect an offset for accumulated deferred income taxes. If the balance of ADIT is not recognized, PPL will be allowed to earn a return on DSIC plant incorrectly assuming that all of that plant was paid for with investor-supplied capital when, in fact, it was partially paid for with zero cost capital in the form of ADIT. The calculation of investment on which PPL is entitled to earn a return for DSIC purposes should be no different from how the balance would be calculated for purposes of base rates. That is, the eligible balance should equal plant less accumulated depreciation on that plant less ADIT associated with that plant.

The OCA is also reviewing the Company's calculation of state income taxes in the DSIC revenue requirement determination to ensure that ratepayers receive the full benefit of tax deductions. The actual taxes paid doctrine provides that a utility is only permitted to charge rates which reflect its actual tax expense for any given year. Barasch v. Pa. P.U.C., 507 Pa. 496, 491 A.2d 94 (1985); Pittsburgh v. Pa. P.U.C., 182 Pa. Super. 551, 128 A.2d 372 (1956); Public Systems v. F.E.R.C., 709 F.2d 73, 76 (6th Cir.1983).

The third concern identified by the OCA is whether the Company's proposed DSIC rate would cause the Company to earn more than the return on equity authorized in its last base rate proceeding. See Pa. P.U.C. v. PPL Electric Utilities Corp., Docket No. R-2012-2290597, Order (Dec. 28, 2012). Act 11 requires that if a utility's most recent quarterly earnings report showed that it will earn a rate of return that would exceed the utility's permitted rate of return used to calculate its fixed costs under the DSIC, the DSIC for that utility be reset to zero. 66 Pa. C.S. § 1358(b)(3). PPL implemented new rates on January 1, 2013, which were designed to recover an equity cost rate of 10.4%. In its Petition, PPL seeks to recover a projected additional \$633,399 to reflect property placed in service for the period January 1, 2013 through March 31, 2013. PPL seeks for its DSIC to become effective on May 1, 2013. The size of this increase coupled with the proximity of the initial DSIC period to the end of the Company's future test year in its base rate case raises concerns about how close PPL is to an over-recovery position. Therefore, this matter should be closely scrutinized to be sure that PPL is not over-earning through its DSIC in violation of Act 11.

The fourth concern identified by the OCA is the Company's proposal to put DSIC rates into effect subject to refund. PPL Petition at 6. The Company argues that this will avoid any gap in including DSIC-eligible property in rate base and allow it to use end of quarter data to compute the pre-tax return component of the DSIC. Id. at 5. It should be noted that PPL's current base rates took effect only one month ago, on January 1, 2013. Supplement No. 125 to Tariff - Electric Pa. P.U.C. No. 201. The DSIC rate calculated in the Petition is intended to recover \$633,339. PPL Exh. BLJ-1. The OCA submits that the "gap" with which PPL is concerned is not significant and does not, of itself, support a request to implement rates subject to refund. The OCA submits that PPL's request should be fully examined to ensure that it serves

the purpose of allowing the Company to accelerate infrastructure investment. Further, as noted above, the OCA has raised concerns with regard to PPL's level of earnings. This provides additional cause to wait to implement rates until all issues identified by the OCA and any other parties participating in the proceeding can be fully investigated.

The OCA's fifth concern is PPL's proposal to provide notice to customers of quarterly changes in the DSIC through an article in "Connect," which is a newsletter the Company includes in monthly bill mailings. PPL raised this proposal in response to the Commission's Tentative Implementation Order in Docket No. M-20122293611 and asked the Commission to change the language in its draft model tariff accordingly. Final Implementation Order at 25. The Commission declined to change its model tariff language, stating:

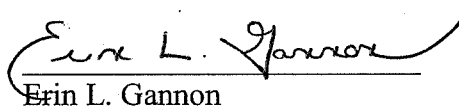
NFGD, First Energy and EAP all suggest that the Final Implementation Order should follow the straightforward language from the proposed model tariff, which required a bill insert on the initial filing of the DSIC and a bill message on subsequent changes. We agree and clarify that the notice requirements set forth in the proposed model tariff governs.

Id. at 26. The model tariff provides that, after the first billing, "[c]ustomers shall be notified of changes in the DSIC by including appropriate information on the first bill they receive following any change." Final Implementation Order, App. A at 8. The OCA continues to consider whether PPL's proposed form of notice for quarterly changes (after the initial DSIC is implemented) is consistent with the Commission's directives.

### III. CONCLUSION

The surcharge proposed by PPL is contrary to Pennsylvania case law, as well as several well-established principles of sound ratemaking and may be contrary to statute and the Commission's Act 11 Final Implementation Order. The surcharge as proposed would also constitute bad regulatory policy. The OCA respectfully requests that the Commission reject the proposed surcharge, for the reasons set forth above.

Respectfully submitted,



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Dated: February 4, 2013  
165160

CERTIFICATE OF SERVICE

Petition of PPL Electric Utilities Corporation :  
For Approval of a Distribution System : Docket No. P-2012-2325034  
Improvement Charge :

I hereby certify that I have this day served a true copy of the foregoing document, Answer of the Office of Consumer Advocate to the Petition of PPL Electric Utilities Corporation for Approval of a DSIC, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 4th day of February 20123.

SERVICE BY EMAIL & FIRST CLASS MAIL

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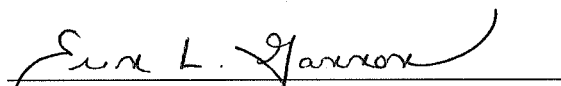
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