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June 6, 2013

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

VIA ELECTRONIC FILING

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


Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Motion of the PP&L Industrial Customer Alliance for Judgment on the Pleadings on Applicability of the Distribution System Improvement Charge to Rate Schedule LP-5 in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

Enclosures
c: Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Docket No. P-2012-2325034

Page 2

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Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

Dated this 6th day of June, 2013, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.102, the PP&L Industrial Customer Alliance ("PPLICA") has filed a Motion for Judgment on the Pleadings in the above-referenced matter. You are hereby notified that any written response must be filed within twenty (20) days of the service of the Motion, consistent with Commission procedural regulations at 52 Pa. Code § 5.201(a).

Your Answer must be verified and the original sent to:

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



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Counsel to the PP&L Industrial Customer Alliance

Dated: June 6, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION OF PP&L INDUSTRIAL CUSTOMER ALLIANCE
FOR JUDGMENT ON THE PLEADINGS AS TO
APPLICABILITY OF THE DISTRIBUTION SYSTEM IMPROVEMENT CHARGE TO
RATE SCHEDULE LP-5**

Pursuant to 52 Pa. Code § 5.102(a), the PP&L Industrial Customer Alliance ("PPLICA") hereby moves for judgment on the pleadings on the grounds that there is no genuine issue of material fact as to whether customers of PPL Electric Utilities Corporation served under Rate Schedules LP-5 take service at transmission voltage rates. Therefore, PPLICA is entitled to judgment as a matter of law and LP-5 customers should be excluded from PPL's proposed Distribution System Improvement Charge ("DSIC").

I. PROCEDURAL HISTORY

1. On May 10, 2012, the Commission entered a Tentative Implementation Order at Docket No. M-2012-2293611 ("Tentative Order") setting forth initial guidelines for, inter alia, establishing DSICs for electric distribution companies ("EDCs") such as PPL.

2. On May 31, 2012, the Commission received Comments to the Tentative Order from PPLICA, in concert with other Industrial Customer Groups,¹ and various other parties. The

¹ The Industrial Customer Groups are comprised of PPLICA, the Industrial Energy Consumers of Pennsylvania ("IECPA"), the Columbia Industrial Interveners ("CII"), the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"); the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), and the West Penn Power Industrial Interveners ("WPPII").

Industrial Customer Group requested that the Commission exempt EDC customers taking service at transmission voltage rates from DSIC charges because such customers do not use the distribution system or benefit from infrastructural upgrades to distribution plant. Comments of the Industrial Customer Group, Docket No. M-2012-2293611, p. 3. PPL also filed Comments on May 31, 2012, but did not address the application of DSIC rates to transmission voltage customers. *See generally* Comments of PPL Electric Utilities Corporation, Docket No. M-2012-2293611.

3. On August 2, 2012, the Commission entered the Final Implementation Order at Docket No. M-2012-2293611 ("Implementation Order"), which modified several provisions of the Tentative Order pursuant to Comments received from parties. The Implementation Order confirmed the terms and conditions applicable to EDC DSICs, including concurring that the DSICs should not be applied to customers served at transmission voltage. Implementation Order, p. 46.

4. Pursuant to the Implementation Order, PPL subsequently filed a Long Term Infrastructure Improvement Plan ("LTIIIP") on September 18, 2013. The LTIIIP identified PPL's projected infrastructure improvements eligible for recovery through a DSIC. Additionally, on January 15, 2013, PPL filed Supplement No. 127 to Electric – Pa. P.U.C. No. 201, proposing to implement a DSIC applicable to all customers, including LP-5 customers, effective May 1, 2013.

5. On February 4, 2013, PPLICA filed a Petition to Intervene and Answer requesting further investigation of PPL's proposed DSIC. PPLICA's Answer opposed the Company's proposal to apply the DSIC to customers served on Rate Schedule LP-5.

6. On May 23, 2013, the Commission entered an Order in the above-captioned docket ("May 23 Order") approving PPL's DSIC effective July 1, 2013, but reserving several

outstanding issues for litigated proceedings, including the application of PPL's DSIC to LP-5 customers. May 23 Order, pp. 14-15. Per the terms of the May 23 Order, the approved DSIC is subject to refund as necessary following resolution of the litigated issues.

II. GROUNDS FOR JUDGMENT ON THE PLEADINGS – NO ISSUE AS TO A MATERIAL FACT

7. A judgment on the pleadings is to be granted "if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving participant is entitled to judgment as a matter of law one or more, but not all outstanding issues." 52 Pa. Code § 5.102(d)(2); *see also Day v. Volkswagenwerk Aktiengesellschaft*, 318 Pa. Super. Ct. 225, 231, 464 A.2d 1313, 1316 (1983).

8. The May 23 Order preserved only the factual question of whether PPL's LP-5 customers are served at transmission voltage, noting that the question of law regarding the exception of transmission voltage customers from a DSIC was settled by the Final Implementation Order. *See* May 23 Order, pp. 14-15.

9. As recounted in the May 23 Order, the Commission previously determined that customers served at transmission voltage rates are properly excluded from DSIC charges. The Commission's Implementation Order clearly and reasonably concluded that:

With regard to the issue of applying a DSIC surcharge to EDC customers receiving service at transmission voltages, we are in general agreement with EAP and other commenters that *a DSIC surcharge should not be applied to such customers. We are aware, however, that the difference between distribution voltage and transmission voltage varies by EDC.* DSIC surcharges are to be applied to any customers served from higher voltage facilities which are included within the EDC's distribution plant for

ratemaking purposes. We expect each EDC proposing a DSIC to address this issue in its tariff.

Implementation Order, p. 46. The Commission's findings unequivocally exempted transmission voltage customers taking service exclusively at transmission voltage from DSIC charges and preserved the issue to be addressed in individual EDC tariffs only as necessary to factually identify customers served at transmission voltage.

10. Despite the Commission's prior finding, PPL filed its DSIC proposing to recover DSIC costs from LP-5 customers. As noted above, the Company's filing prompted PPLICA to file an Answer citing the Implementation Order and requesting that the Commission uphold the exemption of transmission voltage customers from DSIC charges. PPLICA Answer, p. 6.

11. Consistent with the Implementation Order, the May 23 Order recognized that transmission voltage customers should not be subject to DSIC charges, but determined that "whether PPL customers under Rate Schedule LP-5 are taking service at transmission voltage rates and should be included under the DSIC charge should be investigated further." May 23 Order, p. 14. Therefore, the only remaining issue to be determined by Commission investigation is whether customers taking service under Rate Schedule LP-5 are served by transmission facilities.

12. The discovery propounded in this proceeding by PPLICA, the cost of service study submitted by PPL in its most recent base rate case, and PPL's tariff definition of LP-5 customers each confirm that LP-5 customers take service exclusively at transmission voltage and that no issue of material fact exists on this matter. As evidenced by the below excerpt, PPL's response to PPLICA Interrogatory II-1 discloses that none of the DSIC-eligible infrastructure improvements proposed through PPL's LTIP will benefit LP-5 customers:

Q.1. Please reference page 14 of PPL's Long Term Infrastructure Improvement Plan, filed as Exhibit 2 to the proposed DSIC. Please identify the proposed infrastructure improvements to PUC-jurisdictional equipment and facilities directly serving customers on Rate Schedules LP-5 or IS-T, and the projected expenditures associated with each such improvement.

A.1. The Table on page 14 of PPL Electric's proposed Long Term Infrastructure Improvement Plan does not include proposed infrastructural improvements to PUC-jurisdictional equipment and facilities directly serving customers on Rate Schedules LP-5 or IS-T.

See Exhibit 1. As evidenced by PPL's response, the \$705 million in total capital improvements projected through PPL's LTIIP provides no benefits to LP-5 customers because LP-5 customers are not served by PPL's distribution facilities.² *See Id.*

13. In addition to the absence of any actual benefits from PPL's DSIC-eligible improvements, the cost allocation study submitted as Exhibit JMK-1 to PPL's 2012 base rate filing at Docket No. R-2012-2290597 ("Exhibit JMK-1"), further confirms that LP-5 customers are not served by distribution facilities. In the 2012 rate case, PPL allocated no costs to LP-5 customers for distribution substations, overhead lines, underground lines, line transformers, or distribution services. Exhibit JMK-1, p. 38.

14. PPL did allocate meter costs to LP-5 customers, but such expenses cannot constitute use of the distribution system for purposes of a DSIC. First, the Model Tariff

² PPLICA notes that PPL's response to PPLICA Interrogatory II-I references Rate Schedule IS-T. Although Rate Schedule IS-T customers would take service at transmission voltage in the same manner as LP-5 customers, it is PPLICA's understanding that Rate Schedule IS-T was eliminated as part of PPL's base rate filing at Docket No. R-2012-2290597. *See Supplement 125 to Electric Pa. P.U.C. No. 201, p. 30C.*

approved through the Final Implementation Order does not include meters within the definition of distribution plant eligible for recovery through a DSIC. Implementation Order, Appendix A. Similarly, PPL's LTIIP does not propose any improvements to meters. PPL LTIIP, p. 14. Moreover, a finding that use of distribution meters alone constitutes use of the distribution system would effectively and unreasonably invalidate the entire exemption. Therefore, the fact that PPL allocated meter costs to LP-5 customers does not obfuscate the overarching reality that the substations, lines, and transformers serving LP-5 customers are not included as distribution plant for PPL's ratemaking purposes.

15. Finally, the tariff definition of LP-5 service further reinforces the fact that LP-5 customers do not utilize PPL's distribution system. As set forth in PPL's tariff, Rate Schedule LP-5 "is for large general service supplied from available lines of 69,000 volts or higher, with the customer furnishing and maintaining all equipment necessary to transform the energy from the line voltage." Supplement 125 to Electric Pa. P.U.C. No. 201, p. 28. As LP-5 customers provide all distribution equipment necessary to take service from PPL's transmission voltage lines, such customers do not use PPL's distribution system or derive any benefits therefrom.

III. CONSIDERATION OF THIS MOTION AT THIS TIME IS IN THE PUBLIC INTEREST.

16. For the reasons stated above, consideration of this Motion at this time is in the public interest. PPL's discovery responses, recent cost allocation study, and tariff language collectively remove all doubt as to whether LP-5 customers utilize PPL's distribution system. However, absent further action pursuant to this Motion, LP-5 customers will be assessed DSIC charges as of July 1, 2013, consistent with the Commission's May 23 Order approving PPL's proposed DSIC subject to refund. While the Commission has ordered PPL to issue refunds as necessary following an investigation into whether LP-5 customers should be subject to the DSIC,


PPLICA submits that the applicability of DSIC charges to LP-5 customers is solely a matter of law and therefore appropriately resolved without prolonged evidentiary hearings. Prompt resolution of this issue is particularly appropriate where Commission action could avoid unjust charges to customers properly exempt from PPL's DSIC or, alternatively, minimize the amount of such undue charges by ruling on this Motion as shortly after July 1, 2013, as practicable. In addition, ruling at this time will limit the amount of refunds that must be issued and, by extension, limit the potential intraclass cost shifting that could occur if the customers in the class or their consumption characteristics change during the litigation of other issues in this proceeding.

WHEREFORE, for the reasons stated above, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission

- (a) Grant this Motion for Judgment on the Pleadings;
- (b) Issue an Order directing PPL to submit a tariff supplement fully excluding customers taking service on LP-5 from any DSIC charges in a manner sufficient to implement the exemption prior to the July 1, 2013, DSIC effective date or, alternatively, as soon afterwards as practicable;
- (c) Require PPL to fully refund any DSIC charges applied to LP-5 customers promptly upon issuance of a Commission Order granting this Motion; and
- (d) Provide other such relief as it deems necessary.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to the PP&L Industrial Customer Alliance

Dated: June 6, 2013

**PPL Electric Utilities Corporation
Response to Interrogatories of the
PP&L Industrial Customer Alliance, Set II
Dated April 11, 2013
Docket No. P-2012-2325034**

- Q.1. Please reference page 14 of PPL's Long Term Infrastructure Improvement Plan, filed as Exhibit 2 to the proposed DSIC. Please identify the proposed infrastructural improvements to PUC-jurisdictional equipment and facilities directly serving customers on Rate Schedules LP-5 or IS-T, and the projected expenditures associated with each such improvement.
- A.1. The Table on page 14 of PPL Electric's proposed Long Term Infrastructure Improvement Plan does not include proposed infrastructural improvements to PUC-jurisdictional equipment and facilities directly serving customers on Rate Schedules LP-5 or IS-T.

**PPL Electric Utilities Corporation
Response to Interrogatories of the
PP&L Industrial Customer Alliance, Set II
Dated April 11, 2013**

Docket No. P-2012-2325034

- Q.2. For any expenditures identified in the Response to PPLICA II-1, please provide:
- A. The FERC account to which such plant or expenditure is assigned.
 - B. The allocator used by PPL in the Cost of Service Study ("COSS") submitted by PPL in its 2010 rate case at Docket No. R-2010-2161694.
 - C. An explanation of why the particular expense or plant should be jurisdictionalized as PUC-regulated distribution rather than FERC-regulated transmission.
- A.2. Not applicable. See PPL Electric's response to Question 1 of the Interrogatories of PP&L Industrial Customer Alliance, Set II, dated April 1, 2013.