

COMMONWEALTH OF PENNSYLVANIA



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November 26, 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 Main Brief of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served on the parties as indicated on the Certificate of Service.

Respectfully submitted,

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

Erin L. Gannon
Assistant Consumer Advocate
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Attachment

cc: Honorable Kandace Melillo
Certificate of Service

177031

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation	:		
For Approval of a Distribution System	:	Docket Nos.	P-2012-2325034
Improvement Charge	:		C-2013-2346390

MAIN BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

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DATED: November 26, 2013

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Main Brief pursuant to the Procedural Order of Administrative Law Judge Kandace F. Melillo (ALJ) dated July 2, 2013.

A. Background.

On February 14, 2012, Governor Corbett signed Act 11 of 2012 (Act 11 or Act) into law. Act 11 amends, *inter alia*, Chapter 13 of the Public Utility Code to permit water and wastewater utilities, electric distribution companies (EDCs), natural gas distribution companies (NGDCs) and city natural gas operations to petition the Public Utility Commission (Commission) for implementation of a Distribution System Improvement Charge (DSIC). See 66 Pa. C.S. §§ 1350-1360. See also In re: Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Final Implementation Order (Aug. 2, 2012) (Final Implementation Order). Act 11 provides that a DSIC is intended to provide for “timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. § 1353.

In order to implement a DSIC, a utility must submit the following to the Commission: (1) an initial tariff; (2) evidence demonstrating that a DSIC is in the public interest and will facilitate the utility’s compliance with the Public Utility Code, Commission orders and regulations and other State and Federal requirements; (3) a Long-Term Infrastructure Improvement Plan (LTIIP); (4) certification that a base rate case has been filed within the previous five years; and (5) any other information required by the Commission. 66 Pa. C.S. § 1353(b). The Act provides that the Commission “shall, after notice and opportunity to be heard, approve, modify or reject the [DSIC] and initial tariff.” 66 Pa. C.S. § 1355.

The DSIC must be calculated to recover the fixed cost of eligible utility property and shall consist of depreciation and pretax return. 66 Pa. C.S. § 1357(a). Eligible utility property is

property that has (1) not been previously reflected in rate base and (2) been placed in service during the three-month period ending one month prior to the effective date of the DSIC. *Id.* The DSIC must be updated quarterly. 66 Pa. C.S. § 1357(a)(2). A utility must file supporting data for each quarterly update with the Commission at least ten days prior to the effective date of the update and serve a copy on the OCA and the Office of Small Business Advocate. 66 Pa. C.S. § 1357(d)(3).

Act 11 provides certain limitations on the utilities with regard to the implementation of a DSIC. *See* 66 Pa. C.S. § 1358. Specifically, a DSIC initially may not exceed 5% of the distribution rates of EDCs, NGDCs or city natural gas operations. 66 Pa. C.S. § 1358(a)(1). Further, a DSIC shall be reset to zero, *inter alia*, (1) upon the effective date of new base rates and (2) if, in any quarter, the data filed with the Commission shows that the utility will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under its DSIC. 66 Pa. C.S. § 1358(b). Additionally, Act 11 sets out specific audit and reconciliation procedures, including that any over-collections of eligible costs through the DSIC must be refunded to customers with interest. *See* 66 Pa. C.S. § 1358(e)

The Act requires the Commission to prescribe by regulation or order specific procedures to be followed to approve a DSIC. 66 Pa. C.S. § 1358(d). *See also* Final Implementation Order. In the Final Implementation Order, the Commission set forth specific customer notice requirements regarding the filing of a DSIC petition, the Commission's disposition of a DSIC petition and quarterly updates to the DSIC rate. *See* Final Implementation Order at 26. The Commission also clarified certain of the Act's provisions, including that (1) the Act's percentage rate caps are bill limitations as applied to the distribution charges on each EDC, NGDC or city natural gas operation customer's bill, not to aggregated billing revenue and (2) for companies

using the Commission's quarterly earnings report in determining whether a DSIC must be reset to zero, the cap shall be aligned to the "Adjusted Results" column in the report. Id. at 42, 43. Attached to the Final Implementation Order is a model DSIC tariff.

B. Procedural History.

On September 18, 2012, PPL Electric Utilities Corporation (PPL or Company) filed a Long Term Infrastructure Improvement Plan (LTIIIP) pursuant to Section 1352 of the Public Utility Code, 66 Pa. C.S. § 1352. The OCA and PPL Industrial Customer Alliance (PPLICA) filed Comments on the LTIIIP with the Commission on October 9, 2012.¹ By Order entered on January 10, 2013, the Commission approved PPL's LTIIIP.

On January 15, 2013, pursuant to Section 1353, PPL filed a Petition for Approval of a Distribution System Improvement Charge (DSIC) (DSIC Petition) and proposed Tariff Supplement No. 127. See 66 Pa. C.S. § 1353. Thereafter, on January 22, 2013, PPL filed revisions to its DSIC Petition. The OCA filed an Answer, Notice of Intervention, Formal Complaint and Public Statement on February 4, 2013. On the same date, PPLICA filed a Petition to Intervene and an Answer to the DSIC Petition. On February 8, 2013, Eric Joseph Epstein filed Comments, a Notice of Intervention and an Answer to PPL's DSIC Petition. On March 22, 2013, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Answer. Formal Complaints against the DSIC were filed by the following PPL customers: Alan D. Whitehouse, John E. Hoag, Pamela Mosconi, Stephen Juliano and James Weaver. Nineteen individual customers and two customer groups submitted letters in opposition to PPL's DSIC Petition.

¹ On October 8, 2012, PECO Energy Company filed a Petition to Intervene, which was denied by Order entered January 10, 2013.

PPL is an EDC serving approximately 1.4 million customers in all or portions of 29 counties in eastern and central Pennsylvania. DSIC Petition at 2. In its DSIC Petition and in testimony, PPL asserted that it developed its proposed Tariff Supplement No. 127 in compliance with the Model Tariff attached to the Commission's Final Implementation Order (Model Tariff). DSIC Petition at 6 (revised); PPL St. 1 at 8. PPL witness Johnson, however, describes in her direct testimony that PPL proposes to modify the Model Tariff to reflect a tax component related to Pennsylvania Gross Receipts Tax. PPL St. 3 at 4. PPL requested that its initial DSIC be implemented for bills rendered on or after May 1, 2013. DSIC Petition at 5. PPL calculated its proposed initial DSIC using a 10.4% return on equity (ROE) based on the Commission's decision in PPL's most recent base rate case. PPL Exh. Rev. BLJ-1, Sched. 3; see also Pa. PUC v. PPL Elec. Util. Corp., Docket No. R-2012-2290597, Order at 82, 98-99 (Dec. 28, 2012) (PPL 2012).

PPL proposed to provide customer notice of quarterly changes to the DSIC through an article in *Connect*, the Company's monthly newsletter included with customer bills. DSIC Petition at 7; PPL St. 3 at 9. PPL incorporated into its Tariff Supplement No. 127 the specific consumer protection provisions required by Act 11 and the Commission's Model Tariff. DSIC Petition at 7. PPL asserts that its proposed DSIC tariff is in the public interest because it will ensure that customers will continue to receive safe and reliable service. DSIC Petition at 7-8.

Specifically, PPL originally proposed an initial DSIC rate of 0.29%. See DSIC Petition at Tariff Suppl. No. 127 at Original Page No. 19Z.16 (revised). See also PPL St. 3 at 6 (revised) and PPL Exh. Rev. BLJ-1, Sched. 1. According to PPL witness Johnson, PPL's initial DSIC rate was calculated as follows: (1) the net original costs of eligible property scheduled to be placed into service from January through March 2013 was identified; (2) depreciation expense

associated with such property was calculated using the annual accrual rates employed in PPL 2012; and (3) pre-tax return was calculated using statutory state and federal income tax rates, PPL's projected capital structure and cost of long-term debt at March 31, 2013 and 10.4% return on equity. PPL St. 3 at 5 (revised). The sum of these were then divided by PPL's projected quarterly revenues for the period and then adjusted for gross receipts tax. Id.

By Order entered May 23, 2013 at this docket, the Commission approved PPL's DSIC Petition, subject to the resolution of the matters raised in the present litigation. See Petition of PPL Electric Utilities Corporation for Approval of a Distribution System Improvement Charge, Docket No. P-2012-2325034, Order at 19-20 (May 23, 2013) (May 23 Order). The Commission approved the Company's recovery of DSIC revenues subject to recoupment and/or refund pending final resolution of the issues raised in the parties' Petitions and Answers. Id. On June 20, 2013, PPL filed a Tariff Supplement No. 135 pursuant to the Commission's May 23 Order, with a DSIC rate of 0.43% for the effective period July 1, 2013 through September 30, 2013. On July 2, 2013, PPL filed First Revised Page No. 19Z.18 and First Revised Page No. 19Z.19 to Tariff Supplement No. 135.

On June 6, 2013, PPLICA filed a Motion for Judgment on the Pleadings seeking an order directing PPL to exclude Rate LP-5 customers from the DSIC. On June 26, 2013, PPL filed an Answer to PPLICA's Motion. By Order entered July 5, 2013, ALJ Melillo denied PPLICA's Motion.

A Prehearing Conference was convened on July 1, 2013. In her Procedural Order dated July 2, 2013, in this matter, the ALJ consolidated all complaints filed against PPL's DSIC Petition for hearing and disposition. Pursuant to the established litigation schedule in this matter,

the OCA served the Direct and Surrebuttal² Testimonies of Thomas S. Catlin.³ These Testimonies were moved into the record at the hearing on October 29, 2013.⁴ The OCA now provides this Main Brief in accordance with the ALJs' Procedural Order of July 2, 2013. In accordance with the ALJ's Briefing Order dated October 29, 2013, attached hereto as Appendix A are the OCA's Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs.

² The OCA served Mr. Catlin's Surrebuttal Testimony on October 7, 2013. Thereafter, on October 25, 2013, the OCA served Mr. Catlin's revised Surrebuttal Testimony. Mr. Catlin's Surrebuttal Testimony dated October 25, 2013 was admitted into the record in this matter at the hearing on October 29, 2013 instead of the Surrebuttal Testimony dated October 7, 2013, which was not admitted into the record.

³ Mr. Catlin is a principal of Exeter Associates, Inc., a firm specializing in public utility issues. Mr. Catlin earned a Bachelor of Science degree in physics and math from the State University of New York at Stony Brook in 1974 and a Master of Science degree in water resources engineering and management from Arizona State University in 1976. Mr. Catlin's work at Exeter involves review and analysis of utility rate filings, utility affiliate relations, alternative regulatory mechanisms and regulatory restructuring issues. Mr. Catlin's education and experience is set out in more detail in OCA St. 1 at 1-3.

⁴ Appendix B to this Main Brief contains a list of the testimony sponsored by the OCA and admitted into the record in this proceeding.

II. LEGAL STANDARD

PPL bears the burden of proof to establish the justness and reasonableness of every element of its proposed Distribution System Improvement Charge. As set forth in Section 315(a) of the Public Utility Code:

Reasonableness of rates – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. C.S. § 315(a). The Commonwealth Court interprets this principle as follows:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.

Lower Frederick Twp. v. Pa. PUC, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980). (Citations omitted). See also Brockway Glass v. Pa. PUC, 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a prima facie case, the party with the burden must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983) (Burleson). Thus, a utility has an affirmative burden to establish the justness and reasonableness of every component of its rate request.

The OCA points out that Pennsylvania law is clear that there is no similar burden for a party proposing an adjustment to a utility rate filing. See e.g. Berner v. Pa. PUC, 382 Pa. 622, 116 A.2d 738 (1955) (Berner). In Berner, the Pennsylvania Supreme Court stated:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations and that is the burden which the utility patently failed to carry.

Berner, 382 Pa. at 631, 116 A.2d at 744. The Commission recognizes this standard in its rate determinations. See Pa. PUC v. Equitable Gas Co., 57 PaPUC 423, 471 (1983). See also University of Pa. v. Pa. PUC, 86 Pa. Commw. 410, 485 A.2d 1217 (1984). Thus, it is unnecessary for the OCA (or any challenger) to prove that PPL's proposed rate is unjust, unreasonable or not in the public interest. To prevail in its challenge, Pennsylvania law requires only that the OCA show how PPL failed to meet its burden of proof.

In conclusion, PPL must affirmatively demonstrate the reasonableness of every element of its proposed DSIC calculation and demonstrate that its proposed rate is just, reasonable and in the public interest. The OCA will show that PPL has failed to satisfy its statutory burden in the manner set forth below.

III. SUMMARY OF ARGUMENT

In 2012, the General Assembly amended Chapter 13 of the Public Utility Code to permit wastewater utilities, electric distribution companies, natural gas distribution companies and city natural gas operations to implement a DSIC. See 66 Pa. C.S. §§ 1350-1360. The issue in this proceeding is how the DSIC rate should be calculated to meet the requirements of Act 11 and the mandate of Chapter 13 that all rates be just and reasonable, consistent with all applicable law and ratemaking principles. 66 Pa. C.S. §§ 1301, 1350-1360. The particular concerns raised by the OCA and addressed in this brief, are that the DSIC rate should not be calculated to recover (1) a return on dollars that were not invested by shareholders and (2) state taxes that were not paid by the utility. OCA St. 1 at 4-5, 9-10. The premise underlying each is that when a utility receives tax benefits, those benefits accrue to the ratepayers by reducing the revenue requirement that rates are calculated to recover. Id.

PPL proposes that the DSIC revenue requirement should be calculated as if those tax benefits do not exist. PPL St. 3-R at 1-7; OCA St. 4-R at 7-8. In its view, it is sufficient that the rates established in the utility's next base rate case will recognize those tax benefits. Instead, the OCA submits that if a utility enjoys the privilege of establishing a surcharge rate to recover plant investment without filing a base rate case, the tax benefits associated with that plant investment must also be reflected in the surcharge rate. OCA St. 1 at 5, 9; OCA St. 1-S at 4. As discussed, herein, this is consistent with the existing jurisprudence of Chapter 13, in which Act 11 was established. Nothing within Act 11 expressly provides otherwise. See, e.g., 1 Pa. C.S. § 1932 (the rules of statutory construction provide that statutes are to be construed in harmony with existing law and as part of a general and uniform system of jurisprudence); Popowsky v. Pa. PUC, 869 A.2d 1144, 1159 (Pa. Commw. Ct. 2005) (Popowsky 2005) (all provisions of the Code

that relate to ratemaking must be read together) see also Erie Sch. Dist. Appeal, 39 A.2d 271, 155 Pa. Super. 564 (1944); Northern Tier Solid Waste Auth. v. Dep't of Revenue, 860 A.2d 1173 (2004) (Northern Tier).

The express language of the statute limits DSIC recovery to costs incurred by utilities. 66 Pa. C.S. §§ 1351, 1353. Federal income tax benefits associated with DSIC plant investment generate zero-cost funds that partially pay for that plant investment, *i.e.* not all of the plant investment must be financed or paid for by shareholders. OCA St. 1 at 4-5. State income tax benefits associated with DSIC plant investment reduce the Company's taxable income, so the Company does not incur state taxes at the full statutory rate. OCA St. 1 at 8-9. The DSIC calculation must reflect the tax benefits associated with DSIC investment or the rate will recover costs not incurred by the Company, in violation of Act 11 and the requirement that rates be just and reasonable.

IV. ARGUMENT

A. Accumulated Deferred Income Taxes.

1. Introduction.

The Commission allowed PPL's Act 11 DSIC tariff to go into effect on July 1, 2013. PPL's tariff provides that the rate base upon which the Company is allowed to earn a return is equal to the balance of DSIC-eligible plant less the accumulated depreciation on that plant. The rate base formula does not deduct ADIT associated with DSIC-eligible plant as an offset. OCA St. 1 at 4-5; DSIC Petition at Tariff Supp. 127 at Original Page No. 19Z.18. ADIT is generated by the difference between federal taxes actually paid by the Company and the federal taxes it records for ratemaking and represents a zero-cost source of capital. OCA St. 1 at 4-5. By not deducting applicable ADIT, PPL's formula assumes that all of the plant was paid for with investor supplied capital when it was partially paid for with zero cost capital in the form of deferred taxes. The resulting DSIC revenue requirement will, therefore, include a return as if there were no zero-cost capital.

PPL has offered no evidence or argument to refute the conclusion that the failure to recognize ADIT can overstate the investment balance in the DSIC calculation and allow the Company to earn a return on funds that were not supplied by investors. Instead, PPL's arguments against recognizing ADIT are that calculating the ADIT associated with DSIC-plant investment is too complex and, therefore, not intended by Act 11 or adopted by the Commission in prior orders, and that ADIT is fully recognized through the earnings cap. PPL St. 3-R at 1-7; PPL St. 4-R at 4-8; PPL St. 3-RJ at 2-6.

The OCA will rebut each of these arguments below. The bottom line, however, is that the rates charged to PPL's customers must be calculated correctly – whether they are base rates or surcharge rates. It is not just and reasonable for a utility to earn a return on dollars that its

shareholders did not invest. In order to limit recovery to costs incurred by the Company, PPL's DSIC tariff should be modified to read:

DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation and accumulated deferred income taxes.

OCA St. 1 at 7. (Emphasis indicates new language).

2. ADIT Must Be Included in the DSIC Formula to Ensure That Rates Are Just and Reasonable.

As provided in its proposed tariff, PPL's surcharge is intended to allow the utility to recover a *pre-tax* return rate applicable to the original cost of eligible projects net of accrued depreciation. DSIC Petition at Tariff Supp. 127 at Original Page No. 19Z.18 (Formula). Specifically, every dollar of equity return in the DSIC is "grossed up" to include federal and state income taxes at the full statutory state and federal income tax rates. *Id.* at Original Page No. 178; PPL St. 3-S at 5-6. PPL is not actually paying that level of taxes to the government, however. PPL is allowed to take tax deductions for accelerated and bonus depreciation that have the potential to significantly reduce the income on which it must pay income taxes. OCA St. 1 at 5-6. The Internal Revenue Code prohibits PPL from flowing through those tax reductions in rates on a current basis. I.R.C. §§ 167, 168. OCA witness Catlin explained how this law creates ADIT:

Accumulated deferred income taxes arise because certain income tax deductions such as accelerated tax depreciation and bonus tax depreciation must be normalized under the provisions of the United States Internal Revenue Code. That is, utilities such as PPL are allowed to take tax deductions for accelerated and bonus depreciation that significantly reduce the income on which they must pay income taxes. However, under the normalization provisions of the Internal Revenue Code, those tax reductions are not allowed to be flowed through in rates on a current basis. Instead, income taxes for ratemaking purposes are calculated using book depreciation instead of tax depreciation as a deduction.

The resulting difference between the taxes actually paid (taking into account accelerated and bonus depreciation) and the income taxes for ratemaking (taking into account book depreciation) generates what is known as deferred income

taxes. ADIT is simply the cumulative balance of the deferred taxes generated over time. ADIT represents a source of zero cost capital because the utility has paid less in taxes to the federal government than it has collected in rates. Under standard ratemaking practice, the balance of ADIT is recognized as a source of zero cost capital, as it is in Pennsylvania and most other states, or included in capital structure with a zero cost.

OCA St. 1 at 4-5.

Under standard ratemaking procedure, as practiced in Pennsylvania and every other state and federal regulatory jurisdiction in the country, the balance of deferred federal taxes is treated as a reduction in the utility's rate base or included in capital structure with a zero cost, so that customers do not pay a return on non-investor supplied capital. OCA St. 1 at 4-5. In the general ratemaking context, this issue has been addressed repeatedly and consistently. As stated in a leading utility treatise:

Most regulatory commissions have treated accumulated income tax deferrals as a cost-free source of funds. It must be kept in mind that, for cost-of-service purposes, current and deferred federal income taxes are treated as part of the revenue-requirements calculation. However, the accumulated deferred income taxes are then used to reduce rate base, to produce a cost-free source of funds to the utility ratepayer.

Robert L. Hahne, Gregory E. Aliff, Accounting for Public Utilities § 3.02(2) (1983) This principle is stated even more succinctly in Bonbright's Principles of Public Utility Rates, which states:

We never have seen a plausible defense for a claim to the enjoyment of a profit on funds not contributed by the corporate investors.... there is no need to concede to stockholders a return on capital contributed, in effect, either by the taxpayers or by the ratepayers.

James C. Bonbright, Albert L. Danielsen, David R. Kamerschen, Principles of Public Utility Rates 288 (1988). See also Martin T. Farris and Roy J. Sampson, Public Utilities: Regulation, Management, and Ownership 114 (1973) ("This tax deferral is, in effect, an interest-free loan to the utility, since depreciation allowances are normally reinvested in the firm").

The Pennsylvania Commission and other state and federal regulatory commissions have recognized this principle as well. For example, in a 1979 West Penn Power rate case involving the Pleasants Unit 1 Generating Station, the Commission addressed the issue of deducting ADIT from rate base as follows:

If this amount is not deducted from rate base, the stockholders will be earning a return on money they never provided. . . .

Under West Penn's proposal, the stockholders would be permitted to retain the tax benefits on which they would earn a return; and the ratepayers would be obligated to provide a return to the stockholders on funds made available by the federal government.

We agree with the consumer advocate, that simple equity to the ratepayers, commission policy regarding treatment of accelerated depreciation benefits, and consistent treatment of such depreciation for both book and rate-making accounts, require that additional deduction in this regard be made to rate base.

Pa. PUC v. West Penn Power Co., 32 PUR4th 245, 264-65, 53 PaPUC 410, 430-31 (1979) (West Penn). The Commission reached the identical conclusion in a case involving the PECO Salem Nuclear Plant. Pa. PUC v. Philadelphia Elec. Co., 31 PUR4th 15, 44-45, 52 PaPUC 772, 802-03 (1978) (PECO) (The utility's treatment "runs afoul of the well-settled commission principle that tax depreciation benefits must either be flowed through to the benefit of the ratepayer, or if not, then deducted from rate base").

In adopting an adjustment to rate base to reflect ADIT, the Kansas Corporation Commission rejected a utility's argument that there should be no ADIT recognition because it was not addressed in prior orders relating to the underlying amortized operating expense. Western Resources, Inc. v. State Corp. Comm'n of Kan., 30 Kan. App. 2d 348, 365, 42 P.3d 162, 174 (Kan. Ct. of App. 2002). In its decision, which was affirmed by the appellate court, the commission stated:

As Staff indicates, including ADIT in rate base is standard to recognize for ratemaking purposes the cost-free capital provided from ratepayers related to differences between when expenses are deducted for regulatory and income tax purposes. There would be no need to specifically refer to such an adjustment in an Order. Including ADIT in rate base is a well-recognized regulatory accounting concept that is applied in a variety of situations to account for deferred income tax benefits related to rate base assets or for timing differences between when expenses are deductible for income tax purposes and financial reporting purposes.

Id. See also Florida Progress Corp. v. Commissioner of Internal Revenue, 114 T.C. 587, 589-90, 2000 U.S. Tax Ct. LEXIS 42 (June 30, 2000); aff'd by Florida Progress Corp. v. Commissioner of Internal Revenue, 2003 U.S. App. LEXIS 21294 (11th Cir. 2003). The Florida Public Service Commission and the Federal Energy Regulatory Commission recognize ADIT as zero cost capital so that the customers do not pay a return. Specifically:

Customers of Florida Power receive the economic benefit of all deferred income taxes for as long as they are held by Florida Power. The FERC treats deferred income tax as a reduction to the capital rate base used to calculate the approved rate of return on Florida Power's invested capital. The FPSC treats deferred income tax as zero cost capital, meaning that deferred income tax is used to fund services for the benefit of the ratepayers and no return is collected because it was the ratepayers who supplied the capital. Customers get the resulting economic benefit in reduced rates.

Id.

Consistent with standard ratemaking practice, the OCA's position is that ADIT must be recognized in calculating the rate base to which the DSIC pre-tax return rate will apply. The rate base and revenue requirement for DSIC plant additions should be calculated the same way that rate base and revenue requirement are calculated for base rate purposes. It is no more appropriate for ratepayers to pay a return on zero cost capital in rates established between base rate cases than it is in rates established in a base rate case. OCA St. 1 at 5. Indeed, as set forth more fully below, utilities with similar DSIC-type mechanisms across the country routinely and correctly reflect ADIT as an offset to the increased rate base that would otherwise be included in rates. As Mr. Catlin explained:

The DSIC represents an approved exception to the rule against single issue ratemaking that allows the utility to recover the capital-related revenue requirement of specific plant additions that are added to plant in service between rate cases. As an allowed single issue ratemaking item, the calculation of the DSIC rate base and revenue requirement should be consistent with how the rate base and revenue requirement associated with that DSIC-eligible plant would be calculated if that plant was being recovered in a base rate case. In a base rate case, it is recognized that rate base must be reduced to reflect ADIT related to the plant, otherwise ratepayers would be paying the utility a return on funds that were not supplied by investors. The treatment of ADIT in the DSIC should be no different. That is, the DSIC rate base and revenue requirement must be reduced to reflect the balance of ADIT associated with DSIC plant. To do otherwise would allow PPL to earn a pre-tax return on investment which is financed with zero-cost capital, not with investor supplied capital.

Id.

3. The Impact of ADIT on Rates Can Be Significant.

The balance of ADIT associated with DSIC-eligible plant is potentially significant. OCA

St. 1 at 6. OCA witness Catlin stated:

In addition to the balances of ADIT that have historically been generated by accelerated tax depreciation, the new IRS repair allowance rules and federal bonus depreciation have the potential to generate significant amounts of deferred income taxes related to DSIC-eligible plant.

Id. PPL did not identify the amount of ADIT associated with DSIC-eligible plant in response to the OCA's discovery. OCA St. 1 at 6. The Company's practice is to prepare estimates of ADIT for the current year at the end of each calendar year. The amounts reported to investors in PPL Corporation's quarterly financial statements are based on the prior year's amounts for the first three quarters of the year. Id.; PPL St. 4-R at 4-5.

Because PPL is unable to provide the amounts of ADIT associated with DSIC-eligible plant on a current basis, Mr. Catlin recommended that the rate base deduction be estimated using the same procedure the Company uses for its quarterly financial statements. He explained:

I am proposing that PPL use the same procedure that it uses for financial reporting purposes. That is, PPL should estimate to the best of its ability the ADIT associated with DSIC-eligible plant additions through the first three quarters of

each calendar year. Then, at the end of the year, it can true up its DSIC calculations to reflect the actual ADIT balances at the same time it prepares its annual reconciliation for each calendar year.

OCA St. 1 at 6.

Currently, the Company is in a “loss carry forward position,” *i.e.* it has unutilized federal net operating losses. OCA St. 1 at 7. As a result, PPL will not be able to take the tax deductions attributable to the DSIC plant until a future date when it does have taxable income. *Id.* Explicitly recognizing ADIT in the DSIC formula, however, will ensure that when PPL does have taxable income and realizes a cash benefit from the ADIT funds, the DSIC rate base will be reduced so that ratepayers will not be required to pay a return on those taxpayer-supplied funds.⁵ This is consistent with Section 1353, which provides for recovery of costs “incurred” by the utility. 66 Pa. C.S. § 1353. Accordingly, the definition of DSI shown on Original Page No. 19Z.18 of PPL’s proposed Tariff Supplement 127 should be modified to read:

DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation *and accumulated deferred income taxes.*

OCA St. 1 at 7 (Emphasis indicates new language).

In summary, PPL’s loss carry forward position is temporary. OCA St. 1 at 7. The DSIC formula established in this proceeding – the first Act 11 DSIC proceeding in Pennsylvania for an electric utility – should establish the correct formula for the calculation of net investment on which PPL is entitled to earn a return. Then, when PPL is no longer in a loss carry forward position, the tariff will provide for the appropriate adjustment to DSIC rate base and revenue requirement.

⁵ When the Company is in a loss carry forward position, the loss carry forward offsets any amounts of ADIT the Company does not have income to use. OCA St. 1 at 4-5, 7. The net effect is that the ADIT does not exist until the loss carry forward is eliminated by having taxable income. This is not reason to ignore the ADIT; it just means that recognition of ADIT will not reduce the DSIC rate base at this time. *Id.* at 7

4. Rates Must Be Calculated Correctly Whether They Are Recovered Through Surcharges or Base Rates.

PPL argues that reflecting ADIT would make the DSIC calculation too complex, thereby defeating its purpose. The Company's specific concerns relate to the complexity of determining if it is in a tax loss situation and quarterly calculation of ADIT related to plant investment, and the use of estimates. PPL St. 3-R at 2, 5-7; PPL St. 4-R at 5-8; PPL St. 3-RJ at 3-4. The Company also argues that its tariff includes an earnings cap, which makes the correction to rate base unnecessary. PPL St. 3-R at 4; PPL St. 3-RJ at 5. For the reasons discussed below, the OCA submits that these arguments do not justify approval of a surcharge that will allow the Company to charge ratepayers for return on non-investor supplied funds.

a. Reflecting ADIT In The DSIC Calculation Is Not Overly Complex.

PPL witness Johnson argues that the DSIC should be simple and easy to calculate and that deducting ADIT would add unnecessary complexities. PPL St. 3-R at 5-7; Final Implementation Order at 39; May 23, 2013 Order at 11. The inclusion of ADIT is neither unnecessary nor overly complex. Rather, it is a necessary correction that is universally accepted as an essential element of just and reasonable rates. The fact is that utilities in Georgia, Kansas, Kentucky, Maine, Maryland (proposed), Massachusetts, Missouri, Nebraska, New Jersey, Rhode Island and Utah calculate ADIT balances associated with incremental investment for their DSIC-type cost recovery mechanisms.⁶ OCA St. 1-S at 2-3. This demonstrates that recognizing ADIT is not too complicated and is common practice for the calculation of rates that recover

⁶ In re Atlanta Gas Light Co.'s Pipeline Replacement Program, 2009 GaPUC LEXIS 245, *10; Kan. Stat. Ann. § 66-2202; Application of Columbia Gas of Ky., Inc. for an Adjustment in Rates, 2009 KyPUC LEXIS 1140, *49 (Kentucky Order); Ky. Rev. Stat. Ann. § 278.509; CMR 65-407-675; Mo. Rev. Stat. § 393.1009; R.R.S. Neb. §§ 66-1866. Annual Filing of South Jersey Gas Co. to Adjust Its Capital Investment Recovery Tracker, 2011 NJPUC LEXIS 67, *35; In re Narragansett Elec. Co. d/b/a National Grid, 2011 RIPUC LEXIS 22, *8; In the Matter of the Application of Questar Gas Co. to Increase Distribution Non-Gas Rate and Charges, 2010 UTPUC LEXIS 133*42-43.

infrastructure costs. OCA witness Catlin has explained how PPL can also make the ADIT adjustment without undue complexity. OCA St. 1 at 6; *supra* at 16-17.

PPL also argues that in single-issue ratemaking you look only at one element of the ratemaking formula but recognizing ADIT requires that the utility identify whether it is in an overall tax loss position. PPL St. 3-R at 5. The Company contends that this identification requires quarterly recalculation of all elements of the Company's ratemaking formula in order to implement a DSIC. *Id.* OCA witness Catlin has addressed both contentions.

First, the "single issue" here is recovery of a capital cost, which by statute, includes not only plant investment but the associated pre-tax return, specifically including federal income taxes. 66 Pa. C.S. § 1357(a)(3), (b)(1). The revenue requirement needed to recover that capital cost and pre-tax return cannot be correctly valued without deducting ADIT. OCA witness Catlin explained:

Act 11 allows PPL and other electric and gas companies to isolate the costs associated with DSIC-eligible plant and separately recover those costs. This approved exception to the general prohibition against single issue ratemaking does not mean that PPL should be allowed to calculate the DSIC surcharge in a way that overstates the costs associated with that investment.

OCA St. 1-S at 4. Thus, to the extent that additional calculations are necessary to establish a DSIC rate that meets the requirements of Act 11 and Section 1301, they cannot be ignored on the basis that it is simpler not to make them.

Second, it is not necessary for PPL to prepare quarterly estimates of its tax/loss gain position that are not otherwise prepared, particularly because there is a reconciliation component to the DSIC. OCA St. 1-S at 4. If PPL is unable to determine whether it is currently in a tax loss position, OCA witness Catlin recommended that the Company either estimate its position or assume that it is in a tax loss position for purposes of deducting ADIT in its quarterly DSIC. OCA St. 1-S at 4. Mr. Catlin explained:

At the end of each tax year, PPL should be able to determine or reasonably estimate whether it is in a tax loss position or not, and should also be able to estimate the extent of its loss carry-forwards going forward. To the extent that there is uncertainty, PPL can prepare its DSIC filings assuming that it is in a tax loss position and not include a rate base deduction for ADIT. If it is later determined that PPL is not in a tax loss position, it can true-up its DSIC calculations to account for the appropriate level of ADIT as part of its annual DSIC reconciliation.

OCA St. 1-S at 4. The Company already files annual and quarterly reports on its results of operations and related income tax expense with the Securities and Exchange Commission. PPL St. 4-R at 4. In addition, PPL prepares annual federal and state tax returns. Id. at 5. Making an annual determination whether or not it is in a tax loss position, thus, should not require an unreasonable amount of time or additional work by the Company. Cf. PPL St. 3-RJ at 3; PPL St. 4-R at 6-7. Moreover, the Company's overall tax loss position does not become part of the DSIC calculation itself; it is a yes or no answer that determines whether or not it is necessary to include ADIT in the DSIC calculation for the relevant time period.

Likewise, it is not necessary for PPL to conduct an exact quarterly analysis of property eligible for tax deduction in order to recognize ADIT in the DSIC calculation. Cf. PPL St. 4-R at 5-7. Rather, if PPL is unable to project the exact amounts of ADIT associated with DSIC-eligible plant on a current basis, Mr. Catlin recommended that PPL use the same procedure that it uses for financial reporting purposes. Specifically, he stated:

PPL should estimate to the best of its ability the ADIT associated with DSIC-eligible plant additions through the first three quarters of each calendar year. Then, at the end of the year, it can true up its DSIC calculations to reflect the actual ADIT balances at the same time it prepares its annual reconciliation for each calendar year.

OCA St. 1 at 6.

The OCA submits that an annual calculation and reconciliation of ADIT associated with DSIC investment is practicable and is utilized by other utilities in other states. In fact, Union

Light, Heat and Power Company in Kentucky performed an annual calculation of ADIT related to plant recovered in its infrastructure surcharge. In re: An Adjustment of the Gas Rate of the Union Light, Heat and Power Co., 246 PUR4th 1, 29, 31-32 (KyPSC 2005) (Union Light) (approving continuation of the utility's infrastructure surcharge for the remaining years of its 10-year accelerated main replacement program). The OCA mentions this utility and proceeding specifically because it was the only other state utility proceeding in which PPL witness Torok states that he has previously testified. At the time, Mr. Torok was Vice President of Tax for the utility's parent corporation. PPL St. 4-R at 2; Union Light at 6.

PPL witnesses Johnson and Torok make additional arguments about the use of quarterly estimates. With regard to estimating the Company's tax loss position, Ms. Johnson argues that a loss in the first quarter may be completely reversed in a subsequent quarter. PPL St. 3-R at 6. The fact is, however, that the Company ultimately has only one annual tax position. Mr. Catlin stated:

Ms. Johnson's argument implies that PPL's tax position is likely to vary significantly from quarter to quarter. However, the fact remains that PPL only files a tax return annually.

OCA St. 1-S at 4. As OCA witness Catlin recommended, PPL should use its annual estimate and then true-up to actual in its next annual reconciliation. Id.

With regard to estimating the tax benefits associated with DSIC investment, PPL witness Johnson raises the concern that the definitive ADIT adjustment will not be known with certainty at the time the quarterly DSICs take effect and suggests that this violates the requirement that plant can only be included in the DSIC mechanism when it is completed, in service and its costs are known. PPL St. 3-R at 4. First, Act 11 recognizes that there will be over and under-recovery through the surcharge and provides for reconciliation, recoupment and refund. 66 Pa. C.S. § 1358(d), (e). As with other adjustment mechanisms, there is the potential for fluctuations in the

rate. See, e.g., 66 Pa. C.S. § 1307(f). The Act specifically provides, as acknowledged by Ms. Johnson, for the use of estimates. PPL St. 3-R at 4; 66 Pa. C.S. § 1357(d). According to PPL, estimates are also used in the quarterly earnings reports that are used to trigger the reset provision of Section 1358(b)(3). PPL St. 4-R at 4-5; 66 Pa. C.S. § 1358(b)(3). Second, the recognition of ADIT has no bearing on the requirement of Section 1357 that plant be in service prior to recovery in rates. 66 Pa. C.S. § 1357. ADIT relates to the calculation of the Company's return on the cost of those plant additions that are in service and operates to prevent the DSIC rate from including return on plant additions that were not funded by the Company. OCA St. 1 at 4-5.

Given the reconcilable nature of the DSIC, the alleged inability to calculate the exact ADIT on a quarterly basis is not a reason to ignore ADIT altogether. Mr. Catlin explained:

PPL's proposal to simply ignore ADIT and state income tax flow-through will result in the Company continually charging amounts in excess of the costs associated with the DSIC-eligible investment that it is allowed to recover through the DSIC surcharge.

OCA St. 1-S at 5. As discussed in Section IV.A.2 above, the DSIC rate, like every rate approved by the Commission must be just and reasonable. In order to comply with that requirement and the express limitation of Act 11 that costs recovered through the surcharge are incurred by the utility, the DSIC rate base must be adjusted for applicable ADIT.

b. The Earnings Cap Does Not Prevent The DSIC Rate From Being Overstated.

PPL's proposed DSIC includes an earnings cap, which determines if the Company can or cannot impose a surcharge during a given quarter. PPL St. 3-R at 4. Specifically, it provides:

The DSIC also will be reset at zero if, in any quarter, data filed with the Commission in PPL Electric's then most recent Annual or Quarterly Earnings reports (Schedule D-2) show that PPL Electric would earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC as described in the pre-tax return section.

DSIC Petition at Tariff Suppl. 127 at Original Page No. 19Z.19; 66 Pa. C.S. § 1358(b)(3). PPL witness Johnson suggests that the earnings cap compensates for the fact that ADIT and state income tax benefits are not flowed to customers through the DSIC rate. PPL St. 3-R at 4; PPL St. 3-RJ at 5. She argues that these items are reflected in the Company's quarterly earnings reports and will thus assure that ADIT and state income taxes are "fully reflected" in determining whether PPL is eligible to charge a DSIC. To be clear, the earnings cap will prevent a utility from charging a DSIC when its reported quarterly earnings exceed the rate of return authorized in its last base rate case or in the Commission's Quarterly Earnings Report. *Id.*; 66 Pa. C.S. § 1357(b)(2)-(3). Those earnings reports, however, are not subject to the type of review and scrutiny that occur in a rate case and the question of whether or not a utility is "overearning" may be a product of a myriad of factors unrelated to the DSIC. That is why PPL witness Johnson qualifies her argument with "all else being equal." PPL St. 3-R at 4. If PPL is underearning due to an increase in postage and salary expenses, for example, the earnings cap would not prevent the Company from overstating the surcharge revenue requirement and improperly charging ratepayers a return on funds that were not supplied by investors. *See* OCA St. 1-S at 3.

c. Summary.

PPL has provided no reasonable basis to create a lesser standard of ratemaking for recovery of capital addition costs through surcharge rates than for recovery through base rates. Failure to recognize ADIT is not justified by the "complexity" of this calculation (which is being made by numerous other utilities with DSIC-type mechanisms across the Nation) and it is not corrected by the earnings cap. As in the many other states that have addressed this issue, there is simply no question that it is appropriate and necessary to offset the cost of DSIC-eligible plant additions with the accumulated deferred income taxes associated with that plant.

5. PPL's Argument That the Statute Does Not Support the Inclusion of ADIT in the DSIC Is Misplaced.

PPL witness Johnson argues that the General Assembly expressed intent that there should be no adjustment for taxes. PPL St. 3-R at 2. Ms. Johnson does not reference any provision of the statute in support of her claim, only legislative history. Pennsylvania's rules of statutory interpretation provide that legislative history is considered only when the legislative intent is not clear. 1 Pa. C.S. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit").

The legislative intent is clear from the statute. Act 11 was established within Chapter 13 of the Public Utility Code and its requirement that all rates be just and reasonable.⁷ 66 Pa. C.S. § 1301. The statute specifies that only costs "incurred" by the utility shall be recovered through the surcharge. 66 Pa. C.S. §§ 1351, 1353. There is no proscription against recognition of ADIT within Act 11. To the contrary, the General Assembly stated plainly that it expected the Commission to address many of aspects of the DSIC mechanism. 66 Pa. C.S. § 1358(c) ("nothing under this subchapter shall be construed as limiting the existing ratemaking authority of the Commission"); 66 Pa. C.S. § 1357(c) ("rates of the utility to provide for recovery of the depreciation and pretax return fixed costs of eligible property, as approved by the commission") (emphasis added); 66 Pa. C.S. § 1358(a)(2) (The Commission may amend or revoke practices and procedures of a water utility operating under a distribution system improvement charge prior to the effective date of Act 11). It is, thus, consistent with the language of Act 11 and Section 1301 that the Commission approve a DSIC rate that is calculated to recover only costs incurred by PPL.

⁷ 1 Pa. C.S. § 1932 (statutes relating to the same things "shall be construed together, if possible, as one statute). See Popowsky 2005.

Further, the legislative history does not show that including ADIT in the DSIC calculation is inconsistent with legislative intent. Ms. Johnson references a statement that the DSIC legislation sought to memorialize “the current PUC procedure and process used to evaluate water utility requests for a DSIC.” PPL St. 3-R at 2. The statement was made in the context of describing Senate amendments to the bill and distinguishing them from the House version of the bill and explains that “[m]any of the Senate amendments are not substantively different than the provisions of the House-passed bill, where other Senate amendments memorialize in statute the current PUC (Public Utility Commission) procedure and process used to evaluate water utility requests for a DSIC.” 2012 Legisl. Journal – House at 155 (Feb. 7, 2012). Act 11 specifies that Commission rules and orders relating to DSICs established prior to Act 11 remain in effect only for the water utilities, while also giving the Commission authority to amend or revoke the orders. See 66 Pa. C.S. § 1358(a)(2). Specifically, Section 1358(a)(2) states:

All proceedings, orders and other actions of the commission related to a distribution system improvement charge granted to a water utility and all practices and procedures of a water utility operating under a distribution system improvement charge prior to the effective date of this paragraph shall remain in effect unless specifically amended or revoked by the commission.

66 Pa. C.S. § 1358(a)(2). Section 1358(a)(2) clearly shows that the General Assembly did not intend for the Commission’s existing DSIC rules and procedures for the water companies to automatically apply to electric distribution companies, natural gas distribution companies, city natural gas operations or wastewater companies.

Company witness Johnson also states that the legislature “specifically rejected a proposed amendment to include tax adjustments.” PPL St. 3-R at 2. The pages from the House Legislative Journal attached to Ms. Johnson’s testimony relate to an amendment proposed to limit DSIC recovery to “net increases” in eligible property. PPL Exh. BLJ-1R; 2011 Legisl.

Journal – House at 1909 (Oct. 3, 2011). In other words, rate increases should not be permitted under a DSIC unless there was an overall increase in the “net” plant in the applicable plant categories, *e.g.*, accumulated depreciation and retirements. Here, the issue is the appropriate calculation of taxes related to the plant that is being recovered in the DSIC rate. In addition, PPL ignores the response of Representative Reichley to the proposed amendment. *Id.* at 1910. With regard to that amendment, he opined that the details of the DSIC implementation should be left to the Commission:

And while the approach being offered by [Rep. Mundy] seems to be rather straightforward and simplistic, in reality this inclusion of accumulated depreciation, which is a fairly complex and highly technical issue, is one best left to the Public Utility Commission for evaluation when determining any alternative rate mechanism being proposed, not for the legislature to start monkeying around and throwing our 2 cents in when in reality the experts need to be dealing with this.

Id. (emphasis added). Thus, to the extent that this discussion of accumulated depreciation is relevant to the calculation of taxes, the legislative history is consistent with the plain language of Act 11, which allows the Commission to implement the specific rate mechanisms for recovery of eligible costs incurred by the utilities, subject to the overriding requirement that the rates must comply with all provisions of the Public Utility Code and the courts’ interpretations, Commission regulations, case precedent and ratemaking principles that bear upon it. 66 Pa. C.S. §§ 1301, 1351, 1353.

6. Nothing in the Model Tariff or Tariffs Approved Prior to Act 11 Limits the Commission’s Authority to Correct for ADIT Going Forward.

PPL’s witness Johnson argues that reflecting ADIT as an offset to rate base is inconsistent with the Final Implementation Order and the water utility tariffs approved by the Commission in 1996. PPL St. 3-R at 3. As OCA witness Catlin explained, however, recognition

of ADIT is necessary to correctly calculate the surcharge rate base on which utilities can earn a return. OCA St. 1 at 4-7. Mr. Catlin testified:

[T]he DSIC rate base and revenue requirement must be reduced to reflect the balance of ADIT associated with DSIC plant. To do otherwise would allow Columbia to earn a pre-tax return on DSIC investment which is financed with zero-cost capital, not with investor supplied capital.

OCA St. 1 at 5. The evidentiary record developed in this proceeding demonstrates the need for this correction. Moreover, the corrected calculation method recognizes the experience and developments in other states in refining the DSIC formula that was created in Pennsylvania 16 years ago.

The Commission's Final Implementation Order and model tariff were developed based on one working group meeting and two rounds of written comments by interested parties, without the benefit of an evidentiary record. Final Implementation Order at 2-3. This proceeding is the Commission's first opportunity to review a proposed DSIC by an electric utility under Act 11. In its May 23 Order, the Commission allowed PPL's DSIC to go into effect but specifically referred issues related to the impact of ADIT associated with DSIC investments "for further disposition."⁸ May 23 Order at 11. The Commission is not bound to the language of its Act 11 model tariff; it may choose to modify that language in accordance with its final resolution of this proceeding. This was the case for PGW. There, the Commission approved a final tariff for PGW that differs from the model tariff – even though the model tariff was developed for that one utility specifically. Final Implementation Order at Model Tariff; Petition of Philadelphia Gas Works for Approval of a Distribution System Improvement Charge, P-2012-2337737, Order at 10 (May 9, 2013).

⁸ As discussed in the following section, the Commission also referred the calculation of the state income tax component of the DSIC revenue requirement to the OALJ for further disposition. May 23 Order at 11, 18-20.

With regard to the water utility tariffs approved prior to the passage of Act 11, Mr. Catlin pointed out two important differences between the situation now and when Pennsylvania established the first water DSIC in the country more than 16 years ago:

We have the benefit of that time and experience in Pennsylvania and nationwide to use in crafting the DSIC pursuant to Act 11. We also have different circumstances, i.e. new IRS repair allowance rules and bonus depreciation, which increase the importance of properly calculating the DSIC.

OCA St. 1-S at 3.

As noted, Pennsylvania was the first state to implement a DSIC mechanism for any type of utility. Since that time, however, legislatures, commissions and utilities in at least 11 other states have authorized or implemented infrastructure investment surcharges that deduct ADIT from the surcharge rate base either by statute, regulation, or simply as a routine matter of course. OCA St. 1-S at 3 (Maine and Missouri (water), Georgia, Kansas, Kentucky, Maryland (proposed), Massachusetts, Missouri, Nebraska, New Jersey, Rhode Island, and Utah (gas)). In each of those states, ratepayers are protected from paying a return on zero cost capital resulting from ADIT between rate cases, just as they are protected when base rates are set. *Id.* OCA St. 1-S at 3.

Commissions in Maine, Massachusetts, Georgia, Kentucky, New Jersey, Rhode Island and Utah have approved infrastructure investment recovery mechanisms that reflect ADIT in the surcharge calculation without a specific statutory requirement to do so.⁹ CMR 65-407-675; In re Atlanta Gas Light Co.'s Pipeline Replacement Program, 2009 GaPUC LEXIS 245, *10; Kentucky Order at *49; Annual Filing Of South Jersey Gas Co. To Adjust Its Capital Investment Recovery Tracker, 2011 NJPUC LEXIS 67, *35; In re Narragansett Elec. Co. d/b/a National

⁹ Other states have incorporated recognition of accumulated deferred income taxes in statutes implementing DSIC-type mechanisms. Mo. Rev. Stat. § 393.1009; Kan. Stat. Ann. § 66-2202; R.R.S. Neb. §§ 66-1866.

Grid, 2011 RIPUC LEXIS 22, *8; In the Matter of the Application of Questar Gas Co. to Increase Distribution Non-Gas Rate and Charges, 2010 UTPUC LEXIS 133, *42-43. Indeed, these ADIT offsets are not even questioned in these decisions; they are treated as a routine matter and taken as a matter of course.

In this proceeding, the Commission has the benefit of an evidentiary record, which demonstrates the need to correctly calculate surcharge revenue requirement and the impact of ADIT on ratepayers, as well as the collective experience of other states that have implemented a DSIC-type mechanism, to ensure that the DSIC established for PPL does not permit the Company to charge ratepayers a return on non-utility supplied investment.

7. Conclusion.

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 by 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 deferred taxes. The calculation of investment on which PPL is entitled to earn a return for DSIC purposes should be the same as 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.

B. State Income Taxes.

The OCA has also identified a correction that must be made to PPL's calculation of state income taxes in the DSIC revenue requirement determination. The Company developed its pre-tax rate of return by grossing up the equity component of its overall return to account for both state and federal income taxes at the full statutory rates. DSIC Petition at Tariff Supp. 127 at Original Page No. 19Z.17; PPL St. 3-S at 5-6; OCA St. 1 at 8. The amount of state income taxes that PPL will pay on DSIC revenues, however, will be affected by tax deductions related to the DSIC investment, in particular the accelerated depreciation and, when applicable, bonus depreciation.¹⁰ OCA St. 1 at 8. Because PPL will not pay state income taxes on the full amount of its equity return, these deductions should be taken into account in determining state taxable income and state income tax expense. The state income tax rate used to calculate DSIC revenue requirement should reflect the state income tax expense actually incurred.

As discussed with regard to ADIT, the Internal Revenue Code provides that federal income tax benefits cannot be flowed through in rates on a current basis – the difference between book and actual taxes is accumulated instead in a deferred account. OCA St. 1 at 4-5. The federal prohibition against the flow-through of depreciation tax benefits does not apply to state taxes however. With respect to state income tax deductions in Pennsylvania the law is clear. That is, state income tax deductions must be reflected in rates on a current basis, consistent with the “actual taxes paid” doctrine. Id. at 8, 10. The Pennsylvania Superior Court addressed this principle:

The commission in 1932 very properly held that the utility was not entitled to an allowance on account of a tax which it had not been called upon to pay and which there was then no evidence that it would be required to pay.” Our statement is

¹⁰ In base rate proceedings, PPL flows through the benefit of accelerated depreciation and bonus depreciation for state income tax purposes. OCA St. 1 at 8. Historically, Pennsylvania has recognized 100 percent federal bonus depreciation but no bonus depreciation when federal bonus depreciation is at the 50 percent level. Id.

applicable to the present situation, where the utility has not been called upon to pay the tax which it saved by reason of the use of accelerated depreciation, and where there is no evidence that it will ever be called upon to do so within the reasonably foreseeable future.

Pittsburgh v. Pa. PUC, 182 Pa. Super. 551, 577-79, 128 A.2d 372, 384 (1956) (Pittsburgh I).

The Pennsylvania Supreme Court rendered the seminal decision regarding the flow-through of income tax benefits in Barasch v. Pa. P.U.C., where it determined that the Commission could only find rates “just and reasonable” if those rates are based on actual taxes paid. 507 Pa. 496, 521, 491 A.2d 94, 107 (1985) (Penn Power). While the Court recognized that federal “normalization” rules prohibited the immediate flow-through of certain federal tax benefits, the Court required the utility to flow through state income tax benefits to ratepayers on a current basis. Id., 507 Pa. at 504-05, 518, 520-22, 491 A.2d at 98, 101, 105-07. It held:

We believe that the Pennsylvania version of the “actual taxes paid” doctrine, as developed in Pittsburgh I and II and the Commission in its earlier cases, accurately interprets the statutory requirement that rates be “just and reasonable,” found in 66 Pa. C.S. § 1301.

Id. at 521-22, 491 A.2d at 107. Weeks later, the Court affirmed this position in the context of consolidated taxes, finding that where an expense is not actually incurred, be it for taxes or otherwise, it is improper to include it in the rates charged to the ratepayers. Barasch v. Pa. PUC, 507 Pa. 561, 493 A.2d 653 (1985) (UGI) (“When the PUC approves hypothetical expenses not actually incurred, it commits an error of law”); see also Popowsky v. Pa. PUC, 695 A.2d 448, 455 (Pa. Commw. Ct. 1997).

Consistent with Penn Power, this Commission has recognized that flow-through of the benefits associated with utilizing accelerated depreciation in the calculation of state income taxes is “mandated.” Pa. PUC v. Metropolitan Edison Co., 60 PaPUC 349, 398 (1985). Moreover, as stated by the Commission:

[UGI] stands for the proposition that the Commission does not have the authority to permit the inclusion of hypothetical expenses not incurred, and more specifically, establishes the “actual taxes paid” doctrine, prohibiting a utility from collecting “phantom taxes.”

Pa. PUC v. Jackson Sewer Corp., 2001 PaPUC LEXIS 53, *47.

In base rate cases, PPL correctly flows through the state income tax benefits of accelerated depreciation and bonus depreciation for state income tax purposes. OCA St. 1 at 8, n.2. The OCA submits, however, that as a matter of Pennsylvania law, the Company must calculate the state income tax revenue requirement for the DSIC plant additions in the same manner. OCA St. 1 at 9. It is no more lawful or appropriate for ratepayers to pay phantom state income taxes in rates established between base rate cases than it is in rates established in a base rate case. OCA St. 1 at 9-10. The requirement of just and reasonable rates applies to *every* rate approved by the Commission. 66 Pa. C.S. § 1301. Reflecting actual state income taxes paid in the DSIC is also consistent with Act 11, which limits recovery to costs incurred by the Company. 66 Pa. C.S. §§ 1351, 1353(a); see Section IV.A.3-5, *supra*.

PPL raises two principal objections to making an adjustment to state income taxes in the pre-tax return calculation – that taxes should not be calculated on a stand-alone basis and that quarterly calculations of tax liability are too burdensome and require estimates that are subject to reconciliation. For the reasons discussed below and in the context of ADIT, the OCA submits that these arguments do not justify approval of a surcharge calculation that will allow the Company to charge ratepayers for state income taxes that it will not pay.

First, Company witness Torok points out that the Company pays taxes based on its deductions associated with all of its plant in service, not just incremental plant additions within one year. PPL St. 4-R at 5. It is correct that DSIC revenues and costs are part of the Company’s overall taxable income for state income tax reporting purposes. OCA St. 1-S at 6. However, Act

11 allows PPL and other utilities to isolate the costs associated with DSIC-eligible plant and separately recover those costs. It would be inconsistent and inappropriate to calculate state income taxes associated with DSIC-eligible plant without flowing through the tax deductions associated with the same plant. (The OCA would also note that PPL does not claim that it is not able to calculate tax deductions associated with the incremental plant additions on an annual basis because those amounts are already calculated in conjunction with the calculation of the tax deductions associated with DSIC-eligible plant for federal income tax purposes. PPL St. 4-R at 2-3, 6.)

Second, Company witnesses Torok and Johnson also oppose the flow-through of tax benefits to customers because they claim that it would complicate the DSIC. PPL St. 4-R at 5-7. Most of their testimony regarding complications addresses the identification of PPL's tax loss position. PPL St. 3-R at 5-6; PPL St. 3-RJ at 3-5; PPL St. 4-R at 7-8. It is not necessary to know the Company's overall tax position, however, in order to flow-through state income taxes in the DSIC rate. OCA witness Catlin explained:

I would note that the flow-through of tax deductions for state income tax purposes is independent of PPL's tax loss position because the calculation is based on the taxable income generated by the DSIC.

OCA St. 1-S at 4.

Mr. Torok lists the incremental calculations that would be necessary to determine the property eligible for tax deductions on a quarterly basis, which the Company does not currently perform because it uses some estimates rather than detailed analysis for its quarterly financial reporting purposes. PPL St. 4-R at 7. The Company's witnesses point out that even more work would be required to make these calculations on a non-calendar basis, which is due to the timing difference between quarterly periods for its DSIC and its financial reports. PPL St. 4-R at 7; PPL St. 3-R at 5. It is not necessary for PPL to prepare quarterly estimates of the tax deductions

associated with DSIC-eligible plant that are not otherwise prepared. OCA St. 1-S at 4. Mr. Catlin addressed the Company's concerns in his testimony:

I am proposing that PPL use the same procedure that it uses for financial reporting purposes in determining the flow through deductions for state income tax purposes. That is, PPL should estimate to the best of its ability the accelerated depreciation and bonus depreciation deductions associated with DSIC-eligible plant additions through the first three quarters of each calendar year. Then, at the end of the year, it can true up its DSIC calculations to reflect the actual deductions at the same time it prepares its annual reconciliation for each calendar year.

OCA St. 1 at 9-10. It is not necessary for PPL to conduct an exact quarterly analysis of property eligible for tax deduction in order to flow through state income tax deductions in the DSIC calculation. If the amounts change, they can be trued-up as part of the annual DSIC reconciliation process. OCA St. 1-S at 5.

Third, as discussed with regard to ADIT, the use of reconciliation is provided for by Act 11, as are fluctuations in the DSIC rate or reset due to earnings, which could result from changes in any component of the DSIC calculation. 66 Pa. C.S. §§ 1357, 1358. Notwithstanding the potential that estimates will require true-up, the flow-through of state income tax benefits is a requirement of just and reasonable rates. Penn Power, 507 Pa. at 521, 491 A.2d at 107.

The Company also argues that it should not be required to flow through state income tax benefits in the DSIC because Section 1357(b)(1) provides for recovery of pre-tax return using statutory federal and state income tax rates. PPL St. 3-S at 5-6; PPL St. 3-R at 4; 66 Pa. C.S. § 1357(b)(1). Although the plain language of the statute does not require utilities to use "statutory" income tax rates, PPL argues that it was the General Assembly's intent because an amendment to include tax adjustments was rejected. PPL St. 3-R at 2. As discussed on pages 25 to 26 above, however, the amendment addressed changes in overall plant valuation and not the calculation of the income tax expense that is being recovered in the DSIC. PPL Exh. BLJ-1R; 2011 Legisl. Journal – House at 1909 (Oct. 3, 2011). Further, it must be presumed that the

General Assembly intended for DSICs established pursuant to Act 11 to comply with the existing requirement of Section 1301 that every rate – whether established in a Section 1308 base rate proceeding or a Section 1350 surcharge – be just and reasonable. 66 Pa. C.S. §§ 1301, 1308, 1353; Northern Tier, 860 A.2d 1173 (“statutes are to be construed in harmony with the existing law and as part of a general and uniform system of jurisprudence”). The Pennsylvania Supreme Court has determined that just and reasonable rates must reflect actual taxes paid and, conversely, that rates that do not reflect actual taxes paid cannot be just and reasonable for purposes of Section 1301. Penn Power at 521.

In addition, PPL contends that adjusting state income taxes to reflect actual taxes paid is not consistent with the Commission’s Final Implementation Order and model tariff. PPL St. 3-R at 2; PPL St. 3-S at 5-6. If that were the case, the Order would be inconsistent with appellate law prohibiting the recovery of phantom taxes in rates and Act 11’s requirement that the DSIC recover only costs incurred. See Penn Power; UGI; 66 Pa. C.S. §§ 1351, 1353. The Order does not address the issue of adjusting the tax rate, however, and the model tariff does not specify that the statutory rate be applied without adjustment. Final Implementation Order, App. A. That is why the OCA did not recommend that the language in PPL’s proposed tariff be modified with respect to this issue, just that the utility make the adjustment as part of its calculation of the gross-up for pre-tax return. OCA St. 1 at 8-10.

The OCA points out that the Company’s treatment of gross receipt taxes is not consistent with its strict literal interpretation of the model tariff. Mr. Catlin explained:

The DSIC rate formula set forth in the Implementation Order includes no provision for recovering gross receipts taxes as part of the DSIC as PPL has proposed. I have not objected to that modification because I recognize that PPL will pay gross receipts taxes on its DSIC revenues. However, a strict interpretation of the model tariff, as PPL proposes with regard to ADIT and state

income tax flow-through, would preclude the recovery of gross receipts as part of the DSIC surcharge rate.

OCA St. 1-S at 2.

In addition to the foregoing, Company witness Johnson raises several of the same arguments that the OCA rebutted with regard to correctly calculating the DSIC revenue requirement to reflect deferred federal income taxes. She argues that no water utilities have flowed through state tax benefits in their DSICs. PPL St. 3-R at 3-4; PPL St. 3-RJ at 2. The OCA would note, however, that existing water utility DSICs were authorized by prior legislation. Moreover, in Act 11, the General Assembly specified that Commission rules and orders relating to pre-Act 11 DSICs remain in effect only for those water utilities and recognized that the Commission could amend or revoke the practices and procedures. 66 Pa. C.S. § 1358(a)(2). PPL's DSIC is the first to be approved for an electric distribution company under the new legislation and one of the first for which an evidentiary record has been developed addressing the need to correctly reflect the state income tax rate and the impact on ratepayers. See Petition of Columbia Gas of Pa., Inc. for Approval of a Distribution System Improvement Charge, 303 PUR4th 298 (PaPUC 2013).

The Company argues further that its quarterly earnings reports include the tax effects of all plant additions and, therefore, that the actual state income taxes paid by PPL related to DSIC additions do not need to be flowed through in the DSIC rate. PPL St. 3-R at 4; PPL St. 3-RJ at 5. As discussed in Section IV.A.4.b, however, the earnings cap can only prevent a utility from charging a DSIC when its reported quarterly earnings exceed a certain rate of return. The earnings cap does not prevent utilities from overstating the surcharge revenue requirement and improperly charging ratepayers for state income taxes not actually paid by the utility. OCA St. 1-S at 3.

In summary, the Commonwealth's highest court has held that no rate is just and reasonable if it does not reflect actual taxes paid by the utility. Act 11 also imposes the requirement that fixed costs, which include pre-tax return, recovered through the DSIC must have been "incurred" by the utility. PPL's state income tax expense for DSIC revenues will be affected by applicable tax deductions for accelerated depreciation and bonus depreciation related to the DSIC investment. To make the DSIC calculation correct (to allow recovery only for costs actually incurred by the utility), PPL's pre-tax rate of return must recognize the flow-through of state income tax deductions associated with the investments that are recovered through the DSIC.

V. CONCLUSION

For the reasons set forth in this Main Brief, PPL Electric Utilities Corporation's proposed initial DSIC tariff must be revised. The Company should be directed to change its tariff and DSIC calculation consistent with the OCA's recommendations.

Respectfully Submitted,



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DATED: November 26, 2013
177119

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs

Proposed Findings of Fact

Jurisdiction

1. The OCA's Formal Complaint, docketed at C-2013-2346390, was filed against a proposed rate.

ADIT

2. In its May 23 Order, the Commission allowed PPL's DSIC to go into effect but specifically referred issues related to the impact of Accumulated Deferred Income Taxes (ADIT) associated with DSIC investments "for further disposition." May 23 Order at 11.

3. ADIT balances are generated by the difference between federal taxes actually paid by the Company and the federal taxes it recorded for ratemaking. OCA St. 1 at 4-5. Under Commission ratemaking practice, ADIT is reflected as an offset to rate base in determining the revenue requirement. OCA St. 1 at 5. ADIT represents a source of zero cost capital to the utility. Id.

4. The rate base formula in PPL's initial DSIC tariff does not recognize the balance of ADIT associated with DSIC-eligible plant as an offset to DSIC rate base. OCA St. 1 at 4.

5. PPL's proposed calculation can overstate the DSIC investment balance and allow PPL to earn a return on funds that were not invested by shareholders. DSIC Petition at Tariff Supp. 127 at Original Page No. 19Z.18; OCA St. 1 at 4-5.

6. OCA witness Catlin was not able to identify the balance of ADIT associated with the DSIC-eligible investment for the Company's rate that went into effect on July 1, 2013, because PPL does not prepare any ADIT estimates for the current year until the end of the calendar year. OCA St. 1 at 6, citing PPL responses to OCA-II-1, OCA-II-2.

7. Currently, the Company is in a "loss carry forward position," *i.e.* it has unutilized federal net operating losses, largely due to the new IRS repair allowance rules and bonus depreciation, and PPL will not be able to take the tax deductions attributable to the DSIC plant until some future time when it does have taxable income. OCA St. 1 at 7.

8. PPL's loss carry forward position is temporary. OCA St. 1 at 7, citing PPL response to OCA-II-2.

9. The model tariff and the Commission's Final Implementation Order were developed based on one working group meeting and two rounds of written comments by interested parties, without the benefit of an evidentiary record. Final Implementation Order at 2-3.

10. Other commissions have also approved infrastructure investment recovery mechanisms that reflect ADIT in the surcharge calculation without a specific statutory requirement. OCA St. 1-S at 3; Western Resources, Inc. v. State Corp. Comm'n of Kan., 30 Kan. App. 2d 348, 42 P.3d 162 (Kan. Ct. of App. 2002); Florida Progress Corp. v. Commissioner of Internal Revenue, 114 T.C. 587, 2000 U.S. Tax Ct. LEXIS 42 (June 30, 2000), aff'd by Florida Progress Corp. v. Commissioner of Internal Revenue, 2003 U.S. App. LEXIS 21294

(11th Cir. 2003). See also OCA St. 1-S at 2-3; CMR 65-407-675; In re Atlanta Gas Light Co.’s Pipeline Replacement Program, 2009 GaPUC LEXIS 245, *10; Annual Filing Of South Jersey Gas Company To Adjust Its Capital Investment Recovery Tracker, 2011 NJPUC LEXIS 67, *35; In re Narragansett Elec. Co. d/b/a National Grid, 2011 RIPUC LEXIS 22, *8; In the Matter of the Application of Questar Gas Company to Increase Distribution Non-Gas Rate and Charges, 2010 UTPUC LEXIS 133, *42-43.

11. Utilities in other states utilize an annual calculation and reconciliation of ADIT associated with DSIC investment. See e.g. In re: An Adjustment of the Gas Rate of the Union Light, Heat and Power Co., 246 PUR4th 1.

12. The earnings cap does not prevent utilities from overstating the surcharge revenue requirement and improperly charging ratepayers a return on funds that were not supplied by investors. OCA St. 1-S at 3.

13. Act 11 specifies that only costs “incurred” by the utility shall be recovered through the DSIC. 66 Pa. C.S. §§ 1351, 1353.

14. Act 11 specifies that Commission rules and orders relating to DSICs established prior to Act 11 remain in effect only for the water utilities, while also giving the Commission authority to amend or revoke the orders. 66 Pa. C.S. § 1358(a)(2).

State Taxes

15. The Company developed its pre-tax rate of return by grossing up the equity component of its overall return to account for both state and federal income taxes at the full statutory rates. DSIC Petition at Tariff Supp. 127 at Original Page No. 19Z.17; PPL St. 3-S at 5-6; OCA St. 1 at 8.

16. The amount of state income taxes that PPL will pay on DSIC revenues will be affected by tax deductions related to the DSIC investment, in particular the accelerated depreciation and, when applicable, bonus depreciation. OCA St. 1 at 8.

17. State income tax deductions must be reflected in rates on a current basis, consistent with the “actual taxes paid” doctrine. OCA St. 1 at 8, 10.

18. Reflecting actual state income taxes paid in the DSIC is consistent with Act 11, which limits recovery to costs incurred by the Company. 66 Pa. C.S. §§ 1351, 1353(a).

19. It is not necessary for PPL to conduct an exact quarterly analysis of property eligible for tax deduction in order to flow through state income tax deductions in the DSIC calculation; if the amounts change, they can be trued-up as part of the annual DSIC reconciliation process. OCA St. 1-S at 5.

Proposed Conclusions of Law

Jurisdiction

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa. C.S. § 1102(a)(2), 1103(a).

Burden of Proof

2. Section 332(a) of the Public Utility Code provides that the proponent of a rule or order from the Commission has the burden of proof. 66 Pa.C.S. §332(a).

3. PPL has not met its burden of proving that its DSIC rate is calculated to produce just and reasonable rates pursuant to Chapter 13. 66 Pa. C.S. §1301.

4. PPL has not met its burden of proving that its failure to offset rate base with ADIT related to the DSIC-eligible plant to correctly calculate the DSIC rate base on which it is entitled to earn a return produces just and reasonable rates, meets the requirement of Act 11 that the DSIC recover costs incurred by the utility, or complies with longstanding precedent in Pennsylvania and nationwide that ratepayers should not pay a return on funds that were not supplied by investors. 66 Pa. C.S. §§ 1301, 1350 *et seq*; Pa. PUC v. West Penn Power Co., 32 PUR4th 245, 53 PaPUC 410 (1979); Pa. PUC v. Philadelphia Elec. Co., 31 PUR4th 15, 52 PaPUC 772 (1978).

5. PPL has not met its burden of proving that its failure to reflect actual state taxes paid in determining DSIC revenue requirement is consistent with the actual taxes paid doctrine and the requirement of Act 11 that the DSIC recover costs incurred by the utility. 66 Pa. C.S. §§ 1301, 1350 *et seq.*; Barasch v. Pa. PUC, 507 Pa. 496, 491 A.2d 94 (1985).

Proposed Ordering Paragraphs

IT IS HEREBY ORDERED THAT:

1. PPL is directed to modify its tariff, containing the revised language below, to be effective on ten days' notice:

DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation and accumulated deferred income taxes.

2. PPL is directed to modify its pre-tax rate of return in the DSIC calculation to recognize the flow-through of state income tax benefits associated with the investments that are recovered through the DSIC. Revenues collected pursuant to that tariff will be refunded based on the Commission's resolution in this Order.

3. The Complaint of the Office of Consumer Advocate is sustained.

177008

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 :

Testimony of the
Office of Consumer Advocate

1. OCA Statement No. 1 – The Direct Testimony of Thomas S. Catlin dated August 15, 2013 (admitted into the record on October 29, 2013).
2. OCA Statement No. 1-S – The Surrebuttal Testimony of Thomas S. Catlin dated October 25, 2013 (admitted into the record on October 29, 2013).

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 Main Brief of the Office of Consumer Advocate 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 26th day of November 2013.

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