

**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 :

**REPLY BRIEF OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE
REVISED AS OF MAY 1, 2014**

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Armstrong World Industries, Inc.
General Dynamics-OTS Scranton
Hercules Cement Company
Linde LLC

SAPA Extrusions, Inc.
The Hershey Company
TIMET North America
Wegmans Food Markets, Inc.

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| Dated: May 1, 2014~~December 20, 2013~~

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
A. Procedural History	1
B. Summary of Argument	2
II. ARGUMENT	3
A. PPL's interpretation of Act 11 contradicts the Commission's Implementation Order and should be rejected.	3
1. The language in Act 11 is not unambiguous as to application of the DSIC to specific circumstances and rates.	3
2. The Implementation Order clearly and definitively exempted both natural gas bypass customers and transmission voltage customers from DSIC charges.	6
3. Summary	7
B. PPL's assertion that LP-5 customers "are distribution customers" is irrelevant to the critical question of whether the higher voltage facilities serving LP-5 customers are included in PPL's distribution rates for ratemaking purposes.	8
C. Contrary to PPL's oversimplified analysis of "distribution costs" the Commission should evaluate PPL's riders and exclude any rider recovering costs for non-distribution services from PPL's DSIC Cap calculation.	10
III. CONCLUSION.....	14

I. INTRODUCTION

A. Procedural History

On February 14, 2012, Governor Corbett signed into law House Bill 1294, or Act 11 of 2012 ("Act 11" or "Act"). Among other effects, Act 11 amended Chapter 13 of Title 66 of the Code, 66 Pa. C.S. §§ 1350, et seq., to allow the Pennsylvania Public Utility Commission ("Commission" or "PUC") to approve a Distribution System Improvement Charge ("DSIC") for Electric Distribution Companies ("EDCs").

On August 2, 2012, the Commission issued a Final Implementation Order setting forth the procedures for complying with the requirements of Act 11, and permitting EDCs to petition the Commission for a DSIC beginning January 1, 2013.¹

On January 15, 2013, PPL filed with the Commission Supplement No. 127 to Electric – Pa. P.U.C. No. 201, proposing to implement a DSIC.² On May 23, 2013, the Commission issued an Order approving PPL's DSIC effective July 1, 2013, but assigning several outstanding issues to the Office of Administrative Law Judge ("OALJ") for hearing and a recommended decision, including the application of PPL's DSIC to customers served by PPL's Rate Schedule LP-5.³ A Prehearing Conference was held on July 1, 2013, before Administrative Law Judge ("ALJ") Kandace F. Melillo.

An evidentiary hearing was held in this proceeding on October 29, 2013, for the purposes of presenting testimony. During this hearing, the PP&L Industrial Customer Alliance ("PPLICA") entered PPLICA Statement No. 1, Direct Testimony and Exhibits of Richard A.

¹ Implementation of Act 11 of 2012; Docket No. M-2012 -2293611, Final Implementation Order (Aug. 2, 2012) (hereinafter, "Implementation Order"). Prior to entering the Implementation Order, the Commission issued a Tentative Implementation Order seeking comments from parties. Implementation of Act 11 of 2012; Docket No. M-2012 -2293611, Tentative Implementation Order (May 10, 2012) (hereinafter, "Tentative Order").

² Petition of PPL Electric Utilities Corporation for Approval of a Distribution System Improvement Charge; Docket No. P-2012-2325034 (hereinafter, "DSIC Petition").

³ Petition of PPL Electric Utilities Corporation for Approval of a Distribution System Improvement Charge; Docket Nos. P-2012-2325034, et al., Opinion and Order (May 23, 2013) (hereinafter "May 23 Order").

Baudino ("PPLICA Stmt. No. 1"), PPLICA Statement No. 1-SR, Surrebuttal Testimony of Richard A. Baudino ("PPLICA Stmt. No. 1-SR"), and PPLICA Hearing Exhibit No. 1 into the record, and the parties confirmed the process for submitting Briefs.

On November 26, 2013, PPLICA filed a Main Brief addressing issues identified for litigation in the Commission's May 23 Order. Additionally, PPLICA received Main Briefs from PPL and the Office of Consumer Advocate ("OCA"). Pursuant to the procedural schedule, PPLICA submits this Reply Brief addressing arguments raised in PPL's Main Brief.

B. Summary of Argument

PPLICA is an ad hoc group of energy-intensive customers receiving electric service from PPL primarily under Rate Schedules LP-4 and LP-5.⁴ PPLICA members consume substantial amounts of electricity in their manufacturing and operational processes, and these electric costs are a significant element of their respective costs of operation. Any modification to PPL's electric rates, including implementation of a DSIC, can impact PPLICA members' costs of operations. For these reasons, PPLICA has taken an active role in this proceeding and filed a Main Brief requesting that the Commission exempt LP-5 customers from the DSIC and prohibit PPL from including revenues from its Act 129 Compliance Riders ("ACR") and, Competitive Enhancement Rider ("CER"), ~~and Net metering rider ("NMR")~~ in its DSIC Cap calculation. PPLICA hereby submits the following response to arguments raised by PPL.

First, the Commission should dismiss PPL's attempt to disregard the Commission's clear directive to exempt transmission voltage customers from DSIC charges unless the higher voltage facilities are included in the EDC's base rates. PPL's attempt to invalidate the Commission's

⁴ Some PPLICA members also have accounts on Rate Schedule GS-3.

well-reasoned findings from the DSIC Implementation proceedings are unsupported by Act 11 or the Commission's general obligation to provide just and reasonable rates to customers.

Second, the Commission should reject PPL's overly broad definition of distribution rates. As proposed in PPLICA's Main Brief, the Commission should examine the underlying purpose of PPL's riders and determine whether PPL has furnished evidence showing that the costs of each individual rider provides services related to PPL's distribution system and is properly included in the DSIC Cap calculation. Consistent with the analysis set forth in PPLICA's Main Brief, the Commission should exclude revenue from PPL's ACR ~~and~~, CER, ~~and~~ NMR from its 5% DSIC Cap calculation.

II. ARGUMENT

A. PPL's interpretation of Act 11 contradicts the Commission's Implementation Order and should be rejected.

PPL's Main Brief interprets Act 11 in a manner contrary to the Commission's Implementation Order. PPL argues that the DSIC must be applied to all customers, including those taking service at transmission voltage. The Commission thoroughly examined the appropriate application of a DSIC to transmission voltage customers in its informal working groups and formal Act 11 Implementation process. As the Commission appropriately determined that Act 11 permits recognition of circumstances where application of a DSIC is improper, PPL's attempt to subvert the Commission's directive and apply its DSIC to LP-5 customers should be rejected.

1. The language in Act 11 is not unambiguous as to application of the DSIC to specific circumstances and rates.

PPL argues that Act 11 mandates application of the DSIC to LP-5 customers. The Company alleges that "[t]he clear and unambiguous language of Act 11 provides that the DSIC is

to be applied 'equally to all customer classes.'"⁵ To the contrary, PPLICA submits that the plain language in Act 11 affords sufficient discretion authorizing the Commission to exempt certain customers from the DSIC. As the Commission properly exercised its authority and recognized a necessity to exempt certain transmission voltage customers from DSIC charges, PPLICA requests that the Commission deny PPL's attempt to circumvent the Implementation Order.

The language in Section Pa. C.S. § 1358(d)(1) affords the Commission with sufficient discretion to address circumstances where application of a DSIC would not further the public interest. Although Section 1358(d) specifies that a DSIC shall apply "equally to all customer classes," the statute also directs the Commission to apply the DSIC consistent with the Section 1358(a), which limits calculation of a DSIC to "applicable" rates.⁶ Contrary to PPL's claims, the statutory language is therefore not unambiguous. As such, the Commission must fulfill its duty of interpreting and carrying out the provisions of the Public Utility Code in accordance with the Pennsylvania Laws of Statutory Construction, which presume that the General Assembly "does not intend a result that is absurd, impossible of execution or unreasonable."⁷ Consistent with its statutory duty, the Commission previously allocated significant resources to consider and address the appropriate application of a DSIC to transmission voltage customers under Act 11.

The application of a DSIC to transmission voltage customers was first discussed in the Commission's informal DSIC working group, subsequently raised in the Tentative Order, and appropriately resolved in the Implementation Order. In the Tentative Order, the Commission outlined concerns expressed amongst participants in the DSIC working group, stating:

⁵ PPL Main Brief, p. 33.

⁶ 66 Pa. C.S. § 1358(d); see also 66 Pa. C.S. § 1358(a)

⁷ 66 Pa. C.S. § 501; 1 Pa. C.S. § 1922(1).

Section 1358(d)(1) provides that a DSIC rate is to be “applied equally to all customer classes as a percentage of each customers billed revenue” relative to distribution or service rates. Several informal comments were made on this point during the working group meeting suggesting that application of a uniform DSIC rate to every customer class may not be appropriate where, for example, a natural gas customer is the beneficiary of a lower rate designed to retain load or where the electric customer takes service at the transmission level of service.⁸

The Tentative Order expressed uncertainty as to the flexibility under Act 11 for exempting certain customers from DSIC rates and invited comment on the appropriate treatment of natural gas bypass and transmission voltage customers.⁹ Following entry of the Tentative Order, two parties commented on the application of DSIC rates to transmission voltage customers. PPLICA joined in comments submitted by the Industrial Customer Groups ("ICG"), which stated:

...customers receiving service via: (1) only transmission voltage levels; (2) a natural gas bypass; and (3) negotiated rates should not be considered true "distribution" customers subject to the DSIC. To apply the DSIC to transmission voltage or bypass customers would unjustly, unreasonably, and inappropriately result in non-distribution customers remitting costs to improve a fixed utility's distribution.¹⁰

In addition to the ICG, the Energy Association of Pennsylvania, which is an association of electric, natural gas, and water utilities, commented on the application of a DSIC under Section 1358(d) as follows:

Nothing in the language cited above indicates an intention to overturn existing policies such as recovery of costs based upon cost-causation, non-discrimination, or other general ratemaking principles embodied in chapter 13 of the Public Utility Code. The Commission's tentative interpretation could lead to the anomalous result that customer classes could be impacted differently when costs are recovered via a DSIC as opposed to when these costs are rolled into base rates. For these reasons, an unduly rigid interpretation of this language would be contrary to the public interest and should not be adopted by the Commission.¹¹

⁸ Tentative Order, p. 18.

⁹ Id.

¹⁰ Comments of the Industrial Customer Groups, Docket No. M-2012 -2293611 (March 31, 2012), p. 3 ("ICG Comments") (Emphasis added).

¹¹ Comments of the Energy Association of Pennsylvania, Docket No. M-2012 -2293611 (March 31, 2012), p. 7 ("EAP Comments") (Emphasis added).

Upon review of the ICG and EAP Comments, the Commission appropriately exercised its discretion to interpret Act 11 in a manner consistent with its broad authority to ensure just and reasonable public utility rates and entered the Implementation Order finding that DSIC charges shall not apply to transmission voltage customers.¹²

PPLICA concurs with the ICG and EAP Comments and submits that PPL has applied precisely the overly rigid analysis that was rejected by the Implementation Order. As recounted in PPLICA's Main Brief, the record in this proceeding establishes that LP-5 customers are served by higher voltage facilities that are not included in PPL's distribution rates for ratemaking purposes.¹³ Accordingly, PPL's LP-5 customers are squarely within the bounds of the transmission voltage exemption conferred by the Implementation Order.

2. The Implementation Order clearly and definitively exempted both natural gas bypass customers and transmission voltage customers from DSIC charges.

PPL claims that natural gas bypass customers were exempted from DSIC rates because such entities can opt-out of service from a natural gas distribution company, but alleges that transmission voltage customers were afforded "different treatment."¹⁴ This contention is unsupported and without merit.

PPL's Main Brief suggests that the Implementation Order exempted natural gas customers with competitive options "because such customers can completely opt out of taking service from a natural gas distribution company."¹⁵ PPL then claims that the Commission provided different treatment for transmission voltage customers by confirming that "DSIC

¹² See 66 Pa. C.S. § 1301; Implementation Order, p. 46.

¹³ PPLICA Main Brief, pp. 7-12.

¹⁴ PPL Main Brief, p. 33.

¹⁵ Id.

charges are to be applied to any customers served from higher voltage facilities which are included within the EDC's distribution plant."¹⁶ This is a misreading of the Implementation Order.

The Commission applied the same cost-of-service principles in granting both exemptions. Following review of Comments from ICG and EAP, the Commission agreed that "Act 11 does not overturn the existing requirements of recovery based on cost-causation and non-discrimination."¹⁷ Accordingly, both natural gas bypass and transmission voltage customers were exempted as a rule, with additional guidelines established for EDCs to apply DSIC charges to customers that may be transmission voltage customers in name, but may actually use higher voltage facilities that are included in the EDC's distribution plant for ratemaking purposes.¹⁸ Although the specific language of each exemption reflects industry-specific differences between natural gas bypass and transmission voltage services, the Commission's ultimate determination on the application of a DSIC to natural gas bypass and transmission voltage customers was uniform and not based on separate reasoning as suggested by PPL.

3. Summary

PPL has retread arguments already addressed and disposed of by the Commission. The Commission interpreted Act 11 and set forth the guidelines applicable to EDCs, including the established exemption for certain transmission voltage customers. Consistent with the Implementation Order and the May 23 Order approving PPL's DSIC, the only issue before the ALJ and the Commission, with regard to LP-5 customers, is whether the higher voltage facilities serving LP-5 customers are included in PPL's distribution plant for ratemaking purposes.

¹⁶ PPL Main Brief, pp. 33-34.

¹⁷ Implementation Order, p. 46; see also ICG Comments, p. 3; EAP Comments, p. 7.

¹⁸ Id.

B. PPL's assertion that LP-5 customers "are distribution customers" is irrelevant to the critical question of whether the higher voltage facilities serving LP-5 customers are included in PPL's distribution rates for ratemaking purposes.

As discussed at length in PPLICA's Main Brief, PPL persistently mischaracterizes the Commission's exemption of DSIC customers by refusing to address the sole issue of whether LP-5 customers are served from "higher voltage facilities that are not included within the EDC's distribution plant for ratemaking purposes."¹⁹ PPL continues to raise irrelevant observations establishing only the obvious fact that LP-5 customers are indeed customers of a distribution company. However, as established in PPLICA's Main Brief, the Commission determined that transmission voltage customers, despite taking some degree of service from an EDC, should not pay the DSIC if the higher voltage facilities serving the customers are not included in the EDCs distribution plant.

PPL's Main Brief misstates the critical question now before the Commission. PPL initially acknowledges the Commission's directive that "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."²⁰ However, PPL then concludes that "the relevant inquiry here is whether Rate Schedule LP-5 customers are distribution customers for ratemaking purposes."²¹ PPL's distortion of the Commission's statement is a non-sequitur and omits the dispositive inquiry of whether the higher voltage facilities serving particular customers are included in EDCs distribution plant for ratemaking purposes.

Interpreting the Commission's language to simply inquire whether customers served by higher voltage facilities are distribution customers for ratemaking purposes renders the language

¹⁹ Implementation Order, p. 46.

²⁰ PPL Main Brief, pp. 33-34.

²¹ Id.

meaningless. All jurisdictional customers served by PPL or any other EDC are, at some level, distribution customers. The Commission acted with complete awareness of this relationship, stating:

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.²²

Accordingly, the Commission did not restrict the transmission voltage exemption to a fictional or abstract transmission voltage customer completely detached from even EDC administrative, billing, and metering services.²³ Rather, the Commission recognized that customers served exclusively by transmission voltage facilities may be customers of the EDC, but would not benefit from distribution system improvements implemented through a DSIC.²⁴ The Commission determined that transmission voltage customers should only be charged DSIC rates if the higher voltage substations, transformers, and lines serving them are included in an EDC's distribution rates for ratemaking purposes.²⁵

Rather than address the pertinent question, PPL's Main Brief mischaracterizes PPLICA's testimony, claiming that PPLICA's witness argued that "Rate Schedule LP-5 customers are not allocated any distribution plant costs under PPL Electric's class cost of service study."²⁶ However, PPLICA's Witness identified the distribution cost items allocated to LP-5 customers and concluded that none of the higher voltage facilities serving LP-5 customers are included in PPL's distribution plant.²⁷

²² Implementation Order, p. 46.

²³ See *id.*

²⁴ *Id.*; See also PPLICA Main Brief, p. 10.

²⁵ See Implementation Order, p. 46

²⁶ PPL Main Brief, p. 34.

²⁷ PPLICA Main Brief, pp. 8-9.

Consistent with the Implementation Order and the May 23 Order approving PPL's DSIC, the ALJ and the Commission should find that the higher voltage facilities serving PPL's LP-5 customers are not included the Company's distribution plant for ratemaking purposes, order PPL to exclude LP-5 customers from the DSIC retroactive to July 1, 2013, and direct the Company to issue the appropriate refunds.

C. Contrary to PPL's oversimplified analysis of "distribution costs" the Commission should evaluate PPL's riders and exclude any rider recovering costs for non-distribution services from PPL's DSIC Cap calculation.

PPL's Main Brief advocates an overly broad definition of "applicable" distribution costs, which would unreasonably allow the Company to include any revenue collected from all distribution customers regardless of the underlying purpose served by the charge. The Company requests Commission approval to include revenues from its Smart Meter Rider ("SMR"), Universal Service Rider ("USR"), ACR, CER, and NMR in its DSIC Cap calculation. Although Act 11 and the Commission's Model Tariff indicate that only "applicable" riders should be included in the DSIC Cap calculation, PPL contends that each of its proposed riders is charged to distribution customers and therefore "applicable."²⁸ As set forth in PPLICA's Main Brief, the Commission's duty to limit DSIC revenues to 5% of distribution costs should compel a more discerning examination of PPL's revenues to distinguish revenues received from distribution services from revenues collected by the distribution company, but primarily dedicated to non-distribution services. The Distribution System Improvement Charge should apply only to the rates charged for distribution service.²⁹

²⁸ See PPLICA Main Brief, p. 12 citing Implementation Order, Model Tariff.

²⁹ Of the five riders proposed for inclusion in PPL's DSIC Cap calculation, the record in this proceeding establishes that the ACR and CER are not distribution-related and should be excluded from the DSIC Cap calculation.

PPL's contention that all riders other than public fire protection and the state tax adjustment surcharge should be included in the DSIC is not supported by Act 11 or the Model Tariff.³⁰ The identification of public fire protection and the state tax adjustment surcharge as specific riders that must be excluded from the DSIC does not eliminate the Commission's authority to exclude other riders. As noted in PPLICA's Main Brief, Act 11 clarified that "[e]xcept as otherwise expressly provided under this subchapter, nothing under this subchapter shall be construed as limiting the existing ratemaking authority of the commission."³¹ Accordingly, the Commission informed EDCs that DSIC Cap calculations should include "applicable" riders, preserving discretion to evaluate each DSIC filing to determine what riders are applicable for recovery through a DSIC.³²

PPL's proposal to calculate the DSIC Cap including revenues from any rider recovered by a distribution company through a distribution tariff ignores the practical reality that revenues recovered by a distribution company are not necessarily related to distribution services. PPL generally argues that costs associated with the Company's ACR and CER are applicable distribution rates because the costs would be recovered through base distribution rates if the respective riders were not in place.³³ With regards to the ACR, PPL further claims that costs of energy conservation programs were historically recovered through base distribution rates.³⁴ The premise of this argument is illogical. PPLICA's Main Brief emphasized that an analysis of whether a charge is "applicable" to distribution rates should turn on the underlying "purpose of each rider."³⁵ This is a necessary approach for an unbundled rate environment.³⁶

³⁰ PPL Main Brief, p. 36.

³¹ PPLICA Main Brief, p. 13.

³² Implementation Order, Model Tariff.

³³ PPL Main Brief, p.

³⁴ Id.

³⁵ PPLICA Main Brief, p. 14.

³⁶ Id.

PPL similarly claims that ACR and CER costs should be included in the DSIC Cap calculation because PPL books revenue from both riders to FERC's Uniform Systems of Accounts for distribution service.³⁷ PPL's testimony indicates that ACR and CER revenues are booked to FERC accounts 440, 442, 444-447, and 456.³⁸ Each of these accounts is a billing account, reflecting nothing more than the conceded fact that the CER and ACR are collected through PPL's distribution tariff.³⁹ As stated in PPLICA's Main Brief, the Commission should examine the underlying purposes of a rider to determine whether the revenues are "applicable" to PPL's distribution system prior to including such revenues in the DSIC Cap calculation.⁴⁰

The importance of evaluating the underlying purpose of PPL's rider charges becomes evident by considering past recovery of generation and transmission charges prior to restructuring. Prior to restructuring, PPL recovered generation and transmission charges through base rates. As referenced in PPL's Main Brief, the Company also recovered energy and conservation program costs through base rates prior to implementation of the ACR.⁴¹ Using PPL's rationale, generation and transmission costs were distribution costs until restructuring because PPL recovered all costs from customers on a non-bypassable basis. Of course, this reasoning makes no sense. Even when rates were bundled, generation costs were inherently different from distribution costs because they did not recover costs for services related to the distribution system. Similarly, energy and conservation program and retail market enhancement

³⁷ PPL Main Brief, p. 37.

³⁸ PPL Main Brief, p. 37 citing PPL Stmt. No. 3-R, pp. 8-9.

³⁹ See FERC Uniform Systems of Account available at <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=054f2bfd518f9926aac4b73489f11c67&rgn=div5&view=text&node=18:1.0.1.3.34&idno=18>.

⁴⁰ PPLICA Main Brief, pp. 24-25.

⁴¹ PPL Main Brief, p. 38.

costs, whether recovered through base rates or a rider, do not recover costs for services related to the distribution system.⁴²

For the reasons described above, PPL's ACR and CER revenues are not "applicable" distribution costs and are properly excluded from PPL's DSIC Cap calculation. ~~For more specific reasons discussed in PPL's Main Brief, PPL has also failed to provide evidence, as required by the Commission's May 23 Order, showing that the NMR should be included in the DSIC Cap calculation.~~⁴³ Accordingly, the Commission should Order PPL to remove revenues associated with incorporation of the ACR and CER, ~~and NMR~~ from its DSIC Cap calculation retroactive to July 1, 2013, and direct PPL to issue the appropriate refunds to customers.

⁴² See PPLICA Main Brief, pp. 15-17 (clarifying that the ACR and CER collect revenues intended to benefit wholesale energy and capacity markets and competitive generation sales).

⁴³ PPL Main Brief, pp. 23-24.

III. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Order PPL to exempt Rate Schedule LP-5 customers from PPL's DSIC as customers served from transmission voltage facilities that are not included in PPL's distribution rates for ratemaking purposes;
- (2) Order PPL to exclude all revenues from its Act 129 Compliance Riders and Competitive Enhancement Rider, ~~and Net metering rider~~ from calculation of the 5% DSIC cap;
- (3) Order PPL to issue refunds for all DSIC revenues collected in contravention of the Commission's findings in this docket retroactive to July 1, 2013; and
- (4) Provide any other relief deemed necessary and reasonable.

Respectfully submitted,

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