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April 24, 2015

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

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Petition for Reconsideration of the PP&L Industrial Customer Alliance ("PPLICA") concerning the above-referenced proceeding.

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

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

/lmc

Enclosure

c: Honorable Kandace F. Melillo (via e-mail and First Class Mail)
Certificate of Service (via e-mail and First Class Mail)

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CERTIFICATE OF SERVICE

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

VIA E-MAIL AND FIRST CLASS MAIL

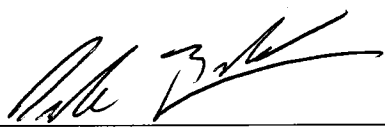
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Dated this 24th day of April, 2015, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION FOR RECONSIDERATION OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

Pursuant to Sections 703(f) of the Pennsylvania Public Utility Code, and Section 5.572 of the Pennsylvania Public Utility Commission's ("PUC" or Commission") regulations, the PP&L Industrial Customer Alliance ("PLLICA") files this Petition for Reconsideration of the Opinion and Order of the Commission entered April 9, 2015, in the above-captioned proceeding ("Petition"). 66 Pa. C.S. § 703(f); 52 Pa. Code § 5.572.

I. INTRODUCTION

1. On April 9, 2015, the Commission issued a Final Order addressing PPL's Distribution System Improvement Charge ("DSIC") ("DSIC Order"). This Petition for Reconsideration requests that the Commission reconsider its determination that PPL may include revenues from its Act 129 Compliance Rider ("ACR") and Competitive Enhancement Rider ("CER") as distribution revenue for purposes of calculating the 5% DSIC cap.

2. The DSIC Order provided a general summary of the relevant procedural history and is incorporated herein by reference.¹ As summarized in further detail therein, the Commission previously issued a Final Implementation Order setting forth procedures for complying with the requirements of Act 11 of 2012 ("Act 11"), and permitting Electric

¹ See DSIC Order, pp. 1-8.

Distribution Companies ("EDCs") to petition the Commission for a DSIC beginning January 1, 2013. PPL filed a Petition for approval of a DSIC on January 15, 2013. The Commission subsequently entered an Order on May 23, 2013, initially approving PPL's DSIC subject to refund as may be necessary following further review of issues raised by the Office of Consumer Advocate ("OCA") and PPLICA.

3. PPLICA and PPL proceeded to fully litigate PPL's proposals to apply the DSIC to LP-5 customers and include revenues from PPL's Act 129 Compliance Rider ("ACR") and Competitive Education Rider ("CER") as distribution revenue for purposes of calculating PPL's 5% DSIC cap and the DSIC rate.

4. On August 1, 2014, the presiding Administrative Law Judge ("ALJ") entered a Recommended Decision ("R.D.") approving PPL's DSIC on condition that: (1) PPL cease collecting the DSIC surcharge from LP-5 customers and issue refunds for prior DSIC collections from LP-5 customer retroactive to July 1, 2013; and (2) exclude ACR and CER revenues from PPL's DSIC calculation and issue appropriate refunds to customers retroactive to July 1, 2013.

5. PPL filed Exceptions on August 21, 2014, contesting the ALJ's findings with regard to the exclusion of ACR and CER revenues from the DSIC calculation. PPL did not further contest the ALJ's findings with regard the DSIC exemption for LP-5 customers. PPLICA filed Replies to PPL's Exceptions on September 2, 2014.

6. Following review of parties' Exceptions and Replies, the Commission entered the DSIC Order addressing the litigated issues. Unfortunately, while appropriately requiring PPL to exempt LP-5 customers from the DSIC, the Commission reversed the ALJ's well-reasoned R.D. and determined that the ACR and CER should not be distinguished from other revenues collected by distribution utilities.

7. PPLICA is concerned that the Commission's decision to include PPL's ACR and CER revenues its calculation of the DSIC cap and DSIC rates fails to comply with the express provisions of Act 11. As codified in Sections 1357(d)(1) and 1358(a)(1), both the DSIC cap calculation and the DSIC rates charged to customers are to be calculated based on the EDC's distribution rates. See 66 Pa. C.S. §§ 1357(d)(1), 1358(a)(1). Accordingly, the statute expressly contemplates that the Commission will engage in further scrutiny to distinguish between "distribution rates of the electric distribution company" and other rates of the electric distribution company. See 66 Pa. C.S. § 1358(a)(1). However, it appears that the Commission reversed the R.D. due in large part to an impression that PPLICA's requested relief diverged from that recommended in the R.D. The DSIC Order alleged that PPLICA sought to exclude ACR and CER revenues from the DSIC cap, while the R.D. recommended a finding that the DSIC charges should not be applied to ACR and CER revenue on customers' bills. PPLICA fully supports the R.D.'s conclusion that the DSIC surcharge should not apply to the ACR and CER revenues on customers' bills. See DSIC Order, pp. 54, 62. As a necessary corollary, the calculation of the DSIC cap would also exclude ACR and CER revenues. It appears that the Commission's DSIC Order overlooked the consistency between PPLICA's position and the R.D.

8. Additionally, in making its ultimate finding that modifying PPL's DSIC calculations to exclude ACR and CER revenues would conflict with the purpose of the DSIC, the Commission failed to consider the plain meaning of the statute and the intent of the General Assembly. Rather than direct the Commission to apply the DSIC to all revenues billed to customers by the electric distribution company, Act 11 unambiguously limits calculation of the DSIC cap and application of the DSIC surcharge to distribution rates. Moreover, a review of comments from legislative floor debates preceding passage of Act 11 evinces a legislative intent

to limit the revenues recovered through the DSIC to 5% of distribution revenues, with distribution revenues referring to revenues derived from utilities' electric, natural gas, or water delivery services. In defining distribution revenues to additionally include revenues from non-distribution services, the Commission failed to give effect to the statute or the General Assembly's documented intent.

9. Because of the issues noted above and discussed more fully herein, PPLICA respectfully submits this Petition for Reconsideration of the DSIC Order.

II. LEGAL STANDARDS

10. Section 703(f) of the Public Utility Code authorizes the Commission to reopen the record in a proceeding to clarify or reconsider a prior Order.² Similarly, Section 5.572 of the Commission's Regulations sets for the procedures for petitioning for reconsideration of a Commission Order.

11. The Commission enumerated its standard for reconsidering orders in Duick v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. 553, 559 (1982). In pertinent part, the Commission stated that a "petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part," and that the Commission "expect[s] to see raised in such petitions... new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." Id.

12. PPLICA submits that each argument or consideration set forth in this Petition is either new and novel, was overlooked, or not addressed by the Commission in rendering the DSIC Order. Therefore, the standards of Duick have been satisfied, and PPLICA respectfully

² See 66 Pa. C.S. § 703(f).

requests that the Commission exercise its discretion to grant this Petition for Reconsideration and issue a new or amended order incorporating the changes discussed herein. PPLICA also reserves the right to pursue an appeal of any and all issues previously raised in its briefs, Exceptions or Reply Exceptions, regardless of whether those items are discussed herein.

III. ARGUMENT

A. In finding that the ALJ's recommended disposition differed from PPLICA's recommendation, the Commission misconstrued PPLICA's position because PPLICA fully supports the well-reasoned analysis in the R.D.

13. The Commission overlooked statutory provisions in Section 1357(d)(1) and 1358(a)(1) of the Public Utility Code, resulting in the incorrect assertion that the R.D. reached a different conclusion from that requested by PPLICA. See DSIC Order, p. 61. To the extent this assertion had any bearing on the Commission's ultimate disposition of PPL's DSIC, PPLICA requests that the Commission reconsider the DSIC Order and enter an Order on Reconsideration directing PPL to exclude the ACR and CER revenues from both the DSIC cap and the DSIC rate calculation.

14. The DSIC Order injected a degree of confusion into the matters at issue by drawing unfounded distinctions between the relief requested by PPLICA and the findings from the R.D. Specifically, the DSIC Order sought to distinguish PPLICA's position from the R.D as follows:

As an initial matter, we note that the ALJ's recommended decision in this matter differs from those changes to PPL's DSIC tariff sought by PPLICA. PPLICA argued that the ACR and CER should be removed from the calculation of the DSIC cap. The ALJ recommended that the DSIC rate be modified and refunds be issued.

DSIC Order, p. 61. To the contrary, the R.D. merely adopted the consistent position advocated by PPLICA throughout PPL's DSIC proceeding. First, Act 11 expressly compels EDCs to

calculate the surcharge rates billed to customers in the same manner that the surcharge will be applied (i.e., to the same applicable cost elements that appear on the bill). Second, even if Act 11 did not contain such express language, cost causation and statutory construction principles would compel the same result.

15. Although PPLICA's briefs referenced inclusion of the ACR and CER in the calculation of PPL's 5% DSIC cap, this position is consistent with the R.D., and indeed would necessitate a parallel adjustment to PPL's DSIC rates, just as the R.D.'s conclusion that the DSIC would not apply to those elements on the bill would necessitate a parallel adjustment to the calculation of the DSIC cap. Act 11 clearly requires EDCs to calculate the 5% DSIC cap based on applicable distribution rates and apply DSIC charges to the same rates. Section 1357 of the Public Utility Code evidences the required correlation between the DSIC cap calculation and the DSIC rate calculation, stating that:

The distribution system improvement charge shall be expressed as a percentage carried to two decimal places and shall be applied in a manner consistent with section 1358 (relating to customer protections) to each customer under the utility's applicable rates and charges.

66 Pa. C.S. § 1357(d)(1) (Emphasis added). Under the plain language of Act 11, the DSIC charges must be applied to each customer's applicable rates and charges consistent with the customer protections set forth in Section 1358, which in turn requires EDCs to calculate the 5% DSIC cap based on its applicable distribution rates. As the statute requires the rates to be charged in a manner consistent with the calculation of the cap, PPL would be expressly prohibited from excluding the ACR or CER from the cap calculation, but applying DSIC charges to billed ACR and CER revenues. Similarly, the statement in the DSIC Order that "removing the ACR and CER revenues from the DSIC rate formula would not reduce the total eligible system improvement costs that are recovered from all ratepayers on a monthly basis," is also only

partially correct. Although the allowable costs would not change, the DSIC rate would change and PPL would likely reach the maximum cap sooner, thereby limiting the amount recovered from ratepayers on a monthly basis. See DSIC Order, p. 2. More importantly, the relative responsibility of each customer and each customer class will change. PPL Main Brief, p. 20 (showing that LP-5 customer pay a disproportionately high percentage of PPL's DSIC expense compared to the class's distribution charges due to assessment of the DSIC on ACR revenues). The most fair and appropriate interclass allocation of distribution system investment cost responsibility is based on each class's responsibility for distribution service revenues, as determined in the most recent rate case. After all, when those investments are rolled into rates during the next rate case, the distribution service cost allocators will determine each class's responsibility, not the ACR allocators or CER allocators.

16. Moreover, the explicit statutory language requiring EDCs to apply the DSIC to the same distribution rates incorporated in the calculation of the DSIC cap only codifies what cost causation principles would implicitly require. EDCs already have an obligation to design rates consistent with cost causation principles. See Lloyd v. Pa. Pub. Util. Comm'n, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006). A finding that the revenues applied to calculate the DSIC cap could differ from the billed revenues subject to DSIC charges would contradict the Commission's longstanding support for cost-based rates.

17. Accordingly, to the extent that the Commission based its ultimate determination upon the perceived distinction between the impact of excluding ACR and CER revenues from rate of the cap, PPLICA respectfully requests that the Commission reconsider the findings from the DISC Order.

B. The Commission's interpretation of statutory customer protections limiting EDCs' DSIC recoveries overlooked or failed to consider principles of statutory construction.

18. The DSIC Order found that exclusion of the ACR and CER revenues from the DSIC would contravene the purpose of the DSIC by reducing the revenues available for infrastructural improvements to PPL's distribution system. In reaching this conclusion, the Commission overlooked or failed to consider the principles of statutory construction requiring the Commission to interpret unambiguous language in accordance with its plain meaning and interpret any ambiguous language consistent with the intent of the legislature. The unambiguous language in Sections 1357(d)(1) and 1358(a) of the Public Utility Code merit reconsideration of the determination to include ACR and CER revenues within the DSIC cap and rate calculations. Even accepting, arguendo, that the statutory language is ambiguous, the documented legislative intent to limit DSIC charges to customers also favors reconsideration of the DSIC Order's treatment of ACR and CER revenues. Both the plain language of the statute and the documented legislative intent must take priority over any policy interests in maximizing available DSIC expenditures.

19. The DSIC Order adopted a narrow analysis of the public interest matters related to the demarcation between distribution revenues and revenues from non-distribution charges. Specifically, the DSIC Order addressed only the potential incentive for more frequent rate cases, petitions to increase the 5% DSIC cap, or reductions to the rate of PPL's infrastructural replacements. See DSIC Order, p. 62. The DSIC Order entirely omitted discussion on the unambiguous statutory protections designed to mitigate unfair rate burdens from the DSIC, and the legislative comments to the same effect. See id. As discussed at length in PPLICA's briefs, Act 11 balanced the dual objectives of funding utility infrastructure and protecting consumers

from undue charges with unambiguous language limiting recovery of DSIC costs from customers. See PPLICA M.B., p. 16. Even if the customer protections in Act 11 are deemed ambiguous, consideration of the legislative history would compel the same result. Therefore, any consequences of compliance with the customer protections set forth in Section 1558 would not subvert the goals of Act 11, but would instead fulfill statutory directives from the General Assembly.

20. The Commission's approval of PPL's proposal to include ACR and CER revenues within the calculation of the DSIC cap or charges resulted from a failure to appropriately apply principles of statutory construction. The DSIC Order appears to concur with PPL's reasoning that a plain language interpretation of Act 11 must include all revenues appearing on a distribution bill except public fire protection service for water utilities and state tax adjustment surcharge revenues, which are the only explicitly excluded riders in the statute. *See* DSIC Order, pp. 49-50. This interpretation fails to comply with the principles of statutory construction, which initially require that unambiguous language be interpreted consistent with its plain meaning. 1 Pa. C.S. § 1921(b) (affirming that "[w]hen 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 plain meaning of excluding public fire protection and state tax adjustment surcharge revenues is just that, an explicit exclusion of revenues from two rates. See PPLICA Reply Brief, p. 11. The General Assembly clarified that such explicit restrictions did not bar further exclusions by the Commission, stating 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." See id. citing 66 Pa. C.S. § 1357(d)(1).

21. The Commission must also apply the plain language of the limitation of the DSIC applicability to "distribution rates." As explained in PPLICA's briefs, the term "distribution rates" is not an ambiguous term. It can only mean rates charged for distribution services, not any other non-distribution unbundled charge assessed by the EDC as alleged by the DSIC Order. See PPLICA Reply Brief, pp. 10-11; cf DSIC Order, p. 62. To reach any other conclusion would necessitate inclusion of clearly unrelated riders in the DSIC calculations, such as PPL's Generation Supply Charges or Transmission Service Charge. See PPLICA Reply Brief, pp. 12-13.³

22. In the event that the Commission determines that the statute is ambiguous as to the inclusion of ACR and CER revenues in the DSIC, a review of comments from the General Assembly reinforce the necessity to exclude ACR and CER revenues from the DSIC calculations. See Bierman v. Pennsylvania Liquor Control Bd., 145 A.2d 876 (1958) (stating that legislative floor debates are not dispositive of legislative intent, but may aid the court in ascertaining legislative intent); see also 1 Pa. C.S. § 1921 (establishing that "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly"). State Senator Lisa Boscola emphasized the dual purpose of the DSIC, stating that "this legislation strikes a balance, a balance that enables our utilities to rebuild our aging infrastructure at an accelerated pace while protecting our ratepayers from massive charges." See 6 Leg. Journal HB 1294, 196th (Statement from Senator Boscola). State Senator Robert Tomlinson further described the relationship between distribution rates and the DSIC cap as follows:

We did not want to just let this go off without the PUC being involved, so we added several changes to this. One is we added a cap, a 5-percent cap that you

³ As explained in PPLICA's briefs, because smart meters are distribution-related, revenues from PPL's Smart Meter Rider can be incorporated into the calculation of the DSIC cap and rate. See PPLICA Main Brief, p. 26 n. 54.

could go back and get up to a 7.5-percent cap, but that cap is of the distribution charges to the utility, not the total bill, but whatever it takes that utility to distribute that gas or electricity or to send that pipe out for the wastewater.

See 6 Leg. Journal HB 1294, 196th (Statement from Senator Tomlinson) (Emphasis added). Senator Tomlinson's comments mirror PPLICA's position that the General Assembly's use of the term "distribution revenues" was intended to denote the cost of distribution service rather than create a mechanism allowing EDCs calculate a DSIC based on any charge appearing on a customer's distribution bill. See id.

23. Importantly, Senator Tomlinson's interpretation of the term "distribution charges" mirrors the below definition of "distribution rates" offered on-the-record by PPLICA Witness Richard Baudino:

"Distribution rates" are paid by customers for "distribution service," which is transmitting electricity to customers at distribution voltages. In my opinion, some of PPL's riders are unrelated to PPL's distribution services and should not be considered applicable riders for purposes of establishing PPL's DSIC revenues.

See R.D., p. 49; citing PPLICA St. No. 1, p. 5. In contrast to Senator Tomlinson's and Mr. Baudino's definitions of distribution rates or charges, revenues from the CER and ACR are not distribution charges required to deliver electricity to customers, but constitute policy-driven surcharges designed to respectively fund end-user conservation programs and retail market enhancement programs. See PPLICA M.B., pp. 12-16.

24. In light of the unambiguous statutory language and alternatively, the compelling legislative comments, PPLICA would respectfully disagree with certain statements offered by Commissioner Gladys M. Brown at the April 9, 2015, Public Meeting.⁴ Commissioner Brown supported inclusion of the ACR and CER revenues in PPL's DSIC calculations partly because

⁴ PPLICA agrees with Commissioner Brown's assessment that the General Assembly left the determination of applicable "distribution clauses and riders" to the Commission's discretion. See Statement of Commissioner Gladys M. Brown, pp. 1-2. However, PPLICA disagrees with the contention that the General Assembly's deference to the PUC's analysis supports inclusion of ACR and CER revenues within the DSIC calculations.

"[i]t will merely extend the DSIC investment period between rate cases, or, increase the DSIC expenditure pace." Statement of Commissioner Gladys M. Brown, p. 2. Similarly, the DSIC Order expressed concern that excluding PPL's ACR and CER revenues from its DSIC could result in further litigation, delay infrastructural improvements, or force the Company to petition for a higher DSIC cap. DSIC Order, p. 62.

25. Such concerns cannot take precedence over the Commission's duty to apply the DSIC consistent with Act 11 and the legislative comments confirming that the term "distribution rates" relates to revenues derived from the provision of delivery services, not all revenues appearing on a distribution bill. See 66 Pa. C.S. §§ 1357(d)(1), 1358(a); see also 6 Leg. Journal HB 1294, 196th (Statement from Senator Tomlinson). The extensive customer protections set forth in Section 1358 of the Public Utility Code indicate that the DSIC was meant to be a very limited tool designed to address regulatory lag for EDCs, but preserve base rate cases as the primary funding process for EDCs' infrastructural improvements. See 66 Pa. C.S. § 1358. This intent was articulated by State Senator Mary Jo White as follows:

My big concern with this bill that gave me major heartburn was that I wanted to be sure that when the consumer is paying an extra little fee on their bill every month, what they are getting is over and above what the utility is supposed to be doing anyway.

[text omitted]

Also, I think it is important to note that this is not replacing rate cases. Rate cases will still go on, and the beauty of a rate case, it may be cumbersome, it may take time, but it looks at the entire universe of a utility's financial picture, and that is part of the obligation of our PUC. These are regulated utilities. They have a guaranteed rate of return, and in exchange, they submit to a complete review of their business operations periodically.

6 Leg. Journal HB 1294, 196th (Statement from Senator White) (Emphasis added). While including ACR and CER revenues would increase the funds available for expenditure through

the DSIC, the statutory language limiting the DSIC revenues to distribution rates anticipated that the DSIC expenditures would not encompass all revenues billed to distribution customers, but only those billed for distribution services. Accordingly, concerns for maximizing the amount of investment available for DSIC expenditures should not take precedence over appropriate application of the customer protections established by the General Assembly.

26. For the reasons set forth above, the Commission should reverse the DSIC Order as necessary to preserve the General Assembly's intent in balancing the impact of DSIC charges by limiting both the DSIC cap and charges to revenues from distribution services provided to the customer.

IV. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission reconsider its Order of April 9, 2015, and direct PPL to: (1) exclude Act 129 Compliance Rider and Competitive Enhancement Rider revenues from its calculation of the DSIC cap and rate; and (2) issue refunds for prior collection of DSIC charges associated with Act 129 Compliance Rider or Competitive Enhancement Rider revenues retroactive to July 1, 2013.

Respectfully submitted,

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By



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Dated: April 24, 2015