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May 4, 2015

VIA ELECTRONIC FILING

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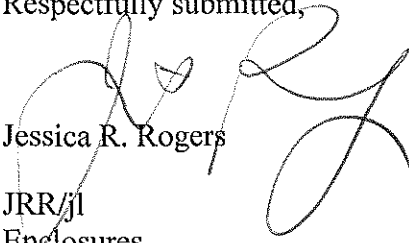
Re: Petition of PPL Electric Utilities Corporation For Approval of a Distribution System Improvement Charge - Docket No. P-2012-2325034

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of PPL Electric Utilities Corporation to the Petition for Reconsideration of the PP&L Industrial Customer Alliance, in the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,


Jessica R. Rogers

JRR/jl
Enclosures

cc: Honorable Kandace F. Melillo
Certificate of Service

CERTIFICATE OF SERVICE

Docket No. P-2012-2325034

I hereby certify that true and correct copies of the foregoing have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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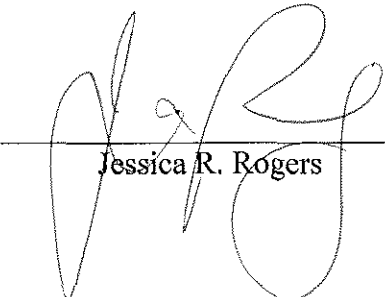
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Date: May 4, 2015



Jessica R. Rogers

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION
TO THE PETITION FOR RECONSIDERATION OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), pursuant to 52 Pa. Code § 5.572(e), hereby answers the “Petition for Reconsideration of the PP&L Industrial Customer Alliance” (“Petition”). For the reasons set forth below, the Petition filed by the PP&L Industrial Customer Alliance (“PPLICA”) should be denied.

I. SUMMARY

PPLICA’s Petition asks the Pennsylvania Public Utility Commission (“Commission”) to reconsider its April 9, 2015 Order in the above-captioned proceeding and to require PPL Electric to exclude from the calculation of revenues in the distribution system improvement charge (“DSIC”) two distribution rate riders: the Act 129 Compliance Rider (“ACR”) and the Competitive Enhancement Rider (“CER”). PPLICA’s Petition does not meet the well-established standards for reconsideration. In large measure, the Petition simply restates the same arguments previously made by PPLICA before the Administrative Law Judge (“ALJ”), as well as in PPLICA’s Reply Exceptions, and which were considered and rejected by this Commission. PPLICA now contends that the Commission somehow “overlooked” the plain language of the statute, the legislative history, and PPLICA’s arguments when in fact the Commission

specifically addressed each of these in its Opinion and Order in *Petition of PPL Electric Utilities Corporation for Approval of a Distribution Improvement Charge*, Docket No. P-2012-2325034 (Order entered April 9, 2015) (“*DSIC Order*”). PPLICA’s Petition should be denied for several reasons:

- PPLICA’s assertion that the Commission relied upon its erroneous request for relief is incorrect. The Commission clearly placed no weight on the contradiction between PPLICA’s request for relief and the ALJ’s determination in her Recommended Decision (“RD”), and it did not play a role in the final determination to reject PPLICA’s adjustment. Therefore, it cannot be grounds for granting reconsideration.
- PPLICA’s claim that the Commission failed to properly interpret the statutory language and legislative history of Act 11 of 2012 (“Act 11”) is not supported by the Commission’s order or the underlying evidence in this proceeding. On the contrary, PPL Electric has shown throughout this proceeding that the plain language of the statute supports the inclusion of the ACR and CER, and that inclusion of those riders accomplishes the legislative intent of the General Assembly to encourage utilities to aggressively accelerate infrastructure repair and replacement through the enactment of Act 11.
- PPLICA fails to meet the legal standard for granting reconsideration, because PPLICA fails to raise any new or novel arguments, and instead supplements the arguments it raised previously before the ALJ and the Commission with additional cites to the Legislative Journal – references that were available to PPLICA throughout this proceeding. New citations in support of old arguments do not meet the Commission’s standard for granting reconsideration.

PPLICA has provided no legitimate basis for the Commission to reconsider its well-reasoned prior decision in this proceeding. There is no reasonable basis to conclude that the ACR and CER are not distribution rates. These riders recover costs associated with necessary functions undertaken by electric distribution companies in order to provide distribution service. Exclusion of these riders from the calculation of revenues would undermine the effectiveness of Act 11 by dramatically shortening the period of time before a utility hits the DSIC cap. For these reasons and as detailed further below, PPLICA’s Petition should be denied.

II. ANSWER

1. Admitted.
2. Admitted.
3. Denied. The referenced order speaks for itself, and PPL Electric denies any characterizations of the *DSIC Order* by PPLICA.
4. Denied as stated. The referenced RD speaks for itself, and PPL Electric denies any characterizations of the RD by PPLICA.
5. Denied as stated. The Exceptions filed by PPL Electric speak for themselves, and PPL Electric denies any characterizations by PPLICA.
6. Denied. The referenced order speaks for itself, and PPL Electric denies any characterizations of the *DSIC Order* by PPLICA.
7. Denied. PPLICA's argument that the Commission was incorrect in its decision to include the ACR and CER in the calculation of the DSIC is in error. PPLICA places great weight on the Commission's brief mention of the inconsistency between PPLICA's request for relief and the ALJ's recommendation. However, PPLICA's reliance on this brief mention of PPLICA's error in its request for relief is clearly not grounds for reconsideration on the merits. First, and as noted by the Commission in footnote 5 on page 61 of the *DSIC Order*, the mistake was PPLICA's, because its request for relief was inconsistent with the testimony from its own expert witness. Second, as correctly concluded by the Commission, PPLICA's error would not have impacted the outcome of the case. The exclusion of ACR and CER would not have impacted DSIC costs already recovered, *i.e.*, there would have been no refund issued to non-Rate

Schedule LP-5 customers.¹ The only result of the exclusion of ACR and CER from distribution revenues is that PPL Electric would reach the DSIC cap much sooner than it would if PPLICA's adjustments were rejected. It is clear from the plain language in the *DSIC Order* that the Commission did not rely upon PPLICA's error in its rejection of PPLICA's adjustment. Therefore, the mere mention of that error does not constitute sufficient grounds for reconsideration.

8. Denied. PPLICA's claim that the Commission failed to consider the plain language of Act 11 and the intent of the General Assembly is clearly erroneous. Throughout this proceeding, PPLICA has maintained that the Commission has the authority to determine which riders should be included in the DSIC calculation. (*See, e.g.*, Petition, p. 9.) In its *DSIC Order* the Commission looked specifically at the language of the statute, the intent of the General Assembly, and the facts presented by the parties as to these riders, and concluded that PPLICA's adjustment to exclude the ACR and CER should be rejected. PPLICA's assertion that the Commission did not consider the statutory language and the intent of the General Assembly is plainly incorrect and should be rejected.²

PPLICA misidentifies the issue before the Commission, which is whether the ACR and CER are distribution rates. If the ACR and CER are distribution rates, then they are included in the calculation of revenues in the DSIC based on the plain language of the statute. Act 11 provides that:

[T]he distribution system improvement charge may not exceed 5% of the amount billed to customers under the ... distribution rates of the electric distribution company....

¹ Pursuant to the *DSIC Order*, Rate Schedule LP-5 customers are excluded from being charged the DSIC, and will receive refunds of all charges collected from July 1, 2013. All discussion of the calculation and application of the DSIC in this Answer excludes Rate Schedule LP-5 customers.

² PPLICA even acknowledges in Paragraph 18 of its Petition that the Commission "found that exclusion of ACR and CER revenues from the DSIC would contravene the purpose of the DSIC." (Petition, p. 8.)

66 Pa.C.S. § 1358(a)(1) (emphasis added). The statutory definition of a rate includes, “every individual, or joint fare, toll, charge, rental or other compensation whatsoever of any public utility....” *See* 66 Pa.C.S. § 102. PPL Electric charges three types of Section 102 rates: generation, transmission, and distribution rates. The ACR and CER are non-bypassable riders that all customers who receive distribution service from PPL Electric must pay. They cannot be avoided through shopping, unlike generation and transmission rates. Therefore, the ACR and CER are a component in PPL Electric’s distribution rates. Distribution rates produce distribution revenues, which is the relevant inquiry in this proceeding.

In addition, PPL Electric would not incur the costs recovered in both the ACR and CER but for its role as a provider of distribution services. (PPL Electric St. 3-R, p. 10.) The ACR recovers costs associated with Act 129, which requires large electric distribution companies to file energy conservation plans with the Commission designed to achieve specified demand and energy reduction targets. Cost recovery for Act 129 is guaranteed through the ACR. (PPL Electric St. 3-R, p. 10.) The programs provided as a result of the CER are targeted at distribution customers, and the costs are related to educating customers. (PPL Electric St. 3-R, p. 9.) The ACR and the CER are Commission-approved riders that recover charges specifically apportioned to electric distribution companies. As PPL Electric’s witness testified, if these costs were not recovered through riders, they would be included and recovered in the Company’s Section 1308 distribution rates. (PPL Electric St. 3-R, p. 9.) In that instance, the revenues would not be accounted for any differently than other base distribution revenues. Further, for billing purposes, both the CER and ACR are combined with general residential distribution service rates and included as a single line item on the residential customer’s bill for “distribution service.” (PPL Electric St. 3-R, p. 11.)

On this basis, it is PPLICA's impermissibly narrow definition of distribution revenues which does not comport with the definition of a rate under § 102 of the Public Utility Code, or with the fact that all distribution customers of PPL Electric pay the ACR and CER on a non-bypassable basis.

Further, the Commission's conclusion that the DSIC was intended to strike a balance between encouraging accelerated investment in infrastructure while also requiring periodic rate cases, rather than more frequent rate cases, is clearly supported by the language of the statute and the legislative history. Therefore, PPLICA's conclusion that the Commission's determination is inconsistent with the intent of the General Assembly is incorrect.

9. Denied. PPL Electric denies that the Petition should be granted, because PPLICA has failed to present any new or novel arguments, or considerations which have been overlooked or not addressed by the Commission. PPLICA's Petition (1) focuses on dicta that was not relied upon by the Commission in its decision to reject PPLICA's adjustments to PPL Electric's DSIC; and (2) relies upon arguments already expressly considered and rejected by the Commission. Therefore, PPLICA's Petition should be denied.

10. It is admitted that PPLICA has provided the correct references to Section 703(g) of the Public Utility Code and Section 5.572 of the Commission's Regulations.

11. It is admitted that PPLICA has properly quoted a portion of the Commission's decision in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. PUC 553 (1982) ("*Duick*").

12. The averments of Paragraph No. 12 are denied. To the contrary, the arguments and consideration set forth in PPLICA's Petition in support of reconsideration do not meet the applicable standard for reconsideration. PPLICA's arguments on reconsideration are not new and novel and were not overlooked as demonstrated by fact that the Commission fully addressed

all of PPLICA's relevant arguments. *DSIC Order*, pp. 47-63. PPLICA's arguments for reconsideration merely rehash the issues presented previously to the Commission, now supported with numerous, but completely irrelevant quotes from the Legislative Journal, all of which were clearly available to PPLICA at prior stages of this proceeding. PPLICA's failure to provide these cites to the Legislative Journal timely should not now be grounds for reconsideration, particularly where they do not provide any evidentiary value and only serve to support previously raised and rejected arguments.

The Commission outlined its standard for reconsideration in *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553 (1982), wherein it found that “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. . . .” and that what it “expect[s] to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.” 56 Pa. PUC at 559 (quoting *Pa. R.R. Co. v. Pub. Serv. Comm’n*, 179 A. 850, 854 (Pa. Super. Ct. 1935); see also *Application of Laser Northeast Gathering Company, LLC for Approval to Begin to Offer, Render, Furnish or Supply Natural Gas Gathering and Transporting or Conveying Service by Pipeline to the Public in Certain Townships of Susquehanna County, Pennsylvania*, Docket No. A-2010-2153371., Pa., 2011 Pa. PUC LEXIS 1303, *19 (Aug. 25, 2011) (denying petitions for reconsideration because the petitioners “have repeated the same arguments that they have already made throughout the proceeding”); *Peluso v. Pennsylvania Power Company.*, 2011 Pa. PUC LEXIS 275, *10, 16 (Oct. 28, 2011) (denying the petition for reconsideration because the complainant failed to raise any new or novel arguments and agreeing with the utility that the complainant “seeks to justify reconsideration by ‘recycling’ arguments he made at the evidentiary hearing and which were

considered and rejected” in the Commission’s previous order); *Application of Pa. Elec. Co. for Approval to Locate and Construct the Bedford North-Osterburg East 115 kv HV Transmission Line Project Situated in Bedford and E. St. Clair Twps., Bedford Cnty., Pa.*, 2013 Pa. PUC LEXIS 418, *4-5 (July 16, 2013) (holding that the petition did not satisfy the *Duick* standards because the petitioner neither raised a new or novel argument nor “alleged that she has discovered new evidence that was unavailable to her prior to the issuance” of the previous order). Therefore, the standards for reconsideration set forth in *Duick* have not been met.

13. The averments of Paragraph No. 13 of the Petition are denied. Paragraph No. 7 of this Answer is incorporated by reference.

14. Denied. PPLICA is mistaken in its assertion that the *DSIC Order* injected any confusion into this matter. As clearly laid out by the Commission in the Order, it was PPLICA who injected confusion into the proceeding, by requesting relief that differs from the issue set for hearing, as well as the evidence and arguments presented before the ALJ. However, it is clear from the Commission’s Order that PPLICA’s error was not the foundation for the Commission’s decision, and therefore PPLICA’s reliance on it as grounds for reconsideration should be rejected.

15. Denied. PPLICA inaccurately states that the Commission’s conclusions in the *DSIC Order* are “only partially correct,” because, according to PPLICA, “PPL would likely reach the maximum cap sooner.” (PPLICA Petition, pp. 6-7.) However this is exactly what the Commission found on page 62 of its *DSIC Order*. Additionally, PPLICA makes an argument that appears to be based on class cost allocation principles that would be presented in a base rate proceeding. It is quite clear that the General Assembly intended for the DSIC to depart from traditional cost allocation methodology by allocating costs equally to all rate classes. *See* 66

Pa.C.S. § 1358(d)(1). As a result, this reasoning is insufficient to show that the Commission's rates are unjust and unreasonable and should be rejected.

16. Denied. PPLICA's argument that revenues applied to calculate the DSIC cap should not differ from billed revenues subject to the DSIC is irrelevant, as the Commission did not make such a finding in its *DSIC Order*, and no party proposed it in prior pleadings. Further, PPLICA's reference to *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006) is irrelevant to this proceeding, as that case addressed ratemaking in the context of a base rate proceeding under 1308(d), and such analysis is not applicable to a limited surcharge established by the General Assembly through statute.

17. Denied. PPL Electric denies that the Petition should be granted, because the Commission did not place any weight upon PPLICA's erroneous request for relief in its determination to reject PPLICA's adjustment.

18. Denied for the reasons set forth in response to Paragraph No. 8 of this Answer, which is incorporated by reference.

19. Denied. PPL Electric incorporates Paragraph No. 8 of this Answer herein by reference. By way of further response, PPLICA erroneously contends that the Commission's Order "omitted discussion" of the statutory protections offered to customers. PPLICA's argument is inaccurate, as the Commission was clearly aware of the impact that inclusion or exclusion of the ACR and CER would have on the operation of the 5% DSIC cap that limits charges to customers. The fact that the Commission determined that the public interest was most benefitted by the inclusion of the ACR and CER to allow for more infrastructure investment prior to a cap increase or a base rate proceeding plainly demonstrates that the Commission was considering the impact this would have on customers and the goal of Act 11 to accelerate

infrastructure repair and replacement. Further, PPLICA's allegation that including the ACR and CER, as found in the Commission's *DSIC Order*, circumvents the customer protections afforded by Act 11 is incorrect. Rather, the Commission's treatment is appropriate and applies the protections as described in the statute, because the ACR and CER are distribution rates that produce distribution revenues.

20. Denied for the reasons set forth in Paragraph No. 8 of this Answer, which is incorporated by reference. By way of further response, PPLICA's arguments contradict themselves. PPLICA acknowledges that the statute clearly does not identify the ACR and CER as exclusions from the revenue calculation, and that only State Tax Adjustment Surcharge and fire protection service are identified specifically. (Petition, p. 9.) PPLICA also acknowledges that the Commission was endowed with the authority to make certain determinations and adjustments to the DSIC mechanism, including a determination on whether to exclude additional charges and riders. (*Id.*) PPLICA cannot then claim, as it does in Paragraph 20, that the statute clearly requires the exclusion of ACR and CER solely because the Commission has exercised its authority contrary to the way sought by PPLICA.

Further, PPLICA mischaracterizes PPL Electric's argument in stating the DSIC "must include all revenues appearing on a distribution bill." (*Id.*) PPL Electric has argued that the statute requires that all distribution rates charged to distribution customers be included in the DSIC. Many distribution customers have other charges on their electric bills, including transmission and generation charges. PPL Electric includes in the DSIC only those non-bypassable charges that are recovered from all customers, including shopping customers.

21. Denied. PPL Electric incorporates Paragraph No. 8 of this Answer herein by reference. PPLICA's overly narrow definition of a distribution rate is not supported by the

statute or the Public Utility Code. More importantly, PPLICA's claim that reaching the Commission's conclusion would "necessitate inclusion of clearly unrelated riders in the DSIC calculations, such as PPL's Generation Supply Charges or Transmission Service Charge" is contrary to the evidence in this proceeding. As described in PPL Electric's testimony, and in its Exceptions, all PPL Electric rates are either distribution, transmission, or generation rates, and transmission and generation rates are not included in the DSIC. (PPL Electric St. 3-R, p. 8.) PPLICA's statement in Paragraph No. 21 to the contrary is untrue and misleading.

22. Denied. PPLICA's reliance on excerpts from the Legislative Journal, for the first time in its Petition for Reconsideration, should be rejected. PPLICA cites these references for the first time in its Petition for Reconsideration, despite PPL Electric's inclusion of excerpts from the Legislative Journal as exhibits submitted with its rebuttal testimony during the evidentiary phase in this proceeding. PPLICA's use of the Legislative Journal excerpts is untimely, and they should be rejected for that reason alone. *See, e.g., Smith v. Pa. PUC*, 192 Pa. Super. 424, 431 (Pa. Super. Ct. 1960); *Pa. PUC v. Duquesne Light Co.*, 1981 Pa. PUC LEXIS 49, *3 (July 7, 1981); *Application of Pa. Elec. Co. for Approval to Locate and Construct the Bedford North-Osterburg East 115 kv HV Transmission Line Project Situated in Bedford and E. St. Clair Twps., Bedford Cnty., Pa.*, 2013 Pa. PUC LEXIS 418, *4-5 (July 16, 2013). Further, it is readily apparent that PPLICA's underlying argument is neither new or novel, because PPLICA compares the excerpts presented in Paragraph No. 22 to a quote on the same subject from its own witness' prepared testimony. *See* Paragraph No. 23. This shows that PPLICA already presented this issue to the Commission, and should not be given a second opportunity to raise the same argument in a slightly altered context when it was fully capable of providing these excerpts as exhibits during the evidentiary phase of this proceeding.

Moreover, the excerpts do not provide new information on the issue that was before the Commission. Simply put, Senator Boscola's comment calls for a balance between utility and customer interests, and Senator Tomlinson's statement supports the inclusion of only those costs necessary to provide distribution service to customers. The Commission clearly considered the appropriate balance between encouraging accelerated infrastructure repair and replacement and the cost to customers, and determined that exclusion of the ACR and CER would not strike the appropriate balance and would impede utilities from undertaking the accelerated repairs sought by Act 11.³ Thus, the Commission exercised the discretion PPLICA acknowledges that it was endowed with and used its best judgment to strike the appropriate balance embodied in Senator Boscola's comment.

In considering necessary costs discussed by Senator Tomlinson, the evidence produced by PPL Electric in this proceeding shows that these riders are a necessary cost of providing distribution service to its customers, and it would not incur those costs but for its role as the distribution provider. First, the ACR and CER rates are clearly not associated with generation or transmission. If these rates were generation or transmission rates, they would be bypassable and would not be paid for by shopping customers. However, the ACR and CER are plainly non-bypassable. The non-bypassable nature of these riders, alone, evidences the Commission's opinion that these are necessary components of distribution service.

In addition, these charges are part of the Company's distribution service tariff and are approved by the Commission. (PPL Electric St. 3-R, p. 9.) Paragraph No. 8 of this Answer, which is incorporated by reference, describes fully the substantial evidence provided by PPL Electric in this proceeding which shows that the ACR and CER are distribution rates that

³ PPLICA relies on Senator White's comments, in Paragraph 25. However, those comments show that the General Assembly was seeking to accelerate infrastructure replacement over historic levels, and that such interest was a primary concern in the adoption of Act 11.

produce distribution revenues, and that these riders are necessary to the provision of distribution service. PPLICA's use of the Legislative Journal only serves to affirm the Commission's conclusion that riders that recover costs that are necessary to the provision of distribution service should be included in the calculation of distribution revenues for DSIC purposes.

23. Denied. PPL Electric incorporates Paragraph No. 8 of this Answer herein by reference.

24. Denied. The statement of Commissioner Brown and the referenced *DSIC Order* speak for themselves, and PPL Electric denies any characterizations of them by PPLICA.

25. Denied. PPLICA is in error when it argues that the Commission gave precedence to illegitimate concerns over appropriate statutory interpretation. As PPLICA's excerpts acknowledge, Act 11 was intended to balance the interests of accelerated infrastructure repair and replacement with customer protections. The comment provided by Senator White in PPLICA's Paragraph No. 25 acknowledges this balance, and also notes that rate cases should still occur "periodically." The Commission is responsible for striking the appropriate balance to ensure that the DSIC allows utilities sufficient cost recovery to accelerate their investment so that they may rely on periodic, rather than annual, rate cases. The Commission's DSIC Order does exactly that.

PPL Electric is investing more than \$130 million dollars in infrastructure repair and replacement each year. (PPL Electric Long-Term Infrastructure Improvement Plan, p. 14.) Even including the ACR and CER in the DSIC calculation, as the Company has been doing since its DSIC was made effective on July 1, 2013, the Company still had to file for new base rates on March 31, 2015 at Docket No. R-2015-2469275, as well as request an increase in its DSIC cap from 5% to 7.5% in a Petition filed on March 31, 2015 at Docket No. P-2015-2474714. It is

clear that inclusion of distribution rate riders such as the ACR and CER does not obviate the need for base rate proceedings. Rather, such inclusion strikes a balance between the greatly accelerated pace of investment in infrastructure and the need for annual base rate proceedings, which is an expensive and unduly burdensome measure taken by other utilities in Pennsylvania to meet the critical need to address aging infrastructure.

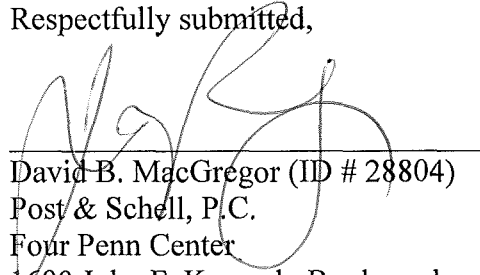
PPLICA has admitted that the statutory language does not identify the ACR and CER specifically. PPLICA has also admitted that the Commission has the authority to decide which riders should be excluded. At the outset of this proceeding, PPLICA asked the Commission to exercise its discretion to exclude the ACR and CER based on PPLICA's definition of the term "distribution revenue." The Commission has exercised its discretion consistent with the statutory definition of a rate, with the statutory language which does not specifically exclude the ACR and CER, and with the legislative intent to encourage significant increases in investment on infrastructure while still protecting customers. PPLICA's arguments in its Petition repeat the previously considered arguments focusing on the language of the statute and the intent of the General Assembly, and are therefore not new or novel. PPLICA has failed to meet the standard in *Duick*. The Petition should be rejected.

26. Denied. PPL Electric denies that the Petition should be granted, because PPLICA has failed to meet the legal standard required for reconsideration. PPLICA's Petition (1) focuses on dicta that was not relied upon by the Commission in its decision to reject PPLICA's adjustments to PPL Electric's DSIC; and (2) relies upon arguments already expressly considered and rejected by the Commission. Therefore, PPLICA's Petition should be denied.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the "Petition for Reconsideration of the PP&L Industrial Customer Alliance" be denied.

Respectfully submitted,



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Date: May 4, 2015

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