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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

May 16, 2024

Via Electronic Filing
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Petition of PPL Electric Utilities Corporation for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Revenues
Docket No. P-2024-3048732
I&E Answer

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Answer of the Bureau of Investigation and Enforcement** in the above-captioned proceeding.

Copies are being served on parties per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Allison C. Kaster

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Chief Prosecutor
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ACK/ac
Enclosures

cc: Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Revenues	: : : :	Docket No. P-2024-3048732

ANSWER OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT

I. INTRODUCTION

On April 26, 2024, PPL Electric Utilities Corporation ("PPL Electric" or the "Company") filed the above-captioned Petition requesting waiver of the Company's Distribution System Improvement Charge ("DSIC") cap of 5% of billed distribution revenues and requesting an increase of the maximum allowable DSIC from 5% to 9% for bills rendered on or after January 1, 2025. The Bureau of Investigation and Enforcement ("I&E") hereby files this timely Answer opposing the Company's request.[1]

II. ANSWER

Governor Corbet signed Act 11 of 20212 into law on February 14, 2012, which granted the Commission the authority to allow utilities to implement a DSIC to "provide for the 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."[2] Act 11 contained several consumer protections that regulated

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1 52 Pa. Code § 5.61.
2 66 Pa. C.S. § 1353(a).

utilities must satisfy in order to implement a DSIC.[3] One important protection is the DSIC cap, which imposes a 5% cap on the total amount of billed distribution revenues that can be collected:

> [T] he distribution system improvement charge may not exceed 5% of the amount billed to customers under the applicable rates of the wastewater utility or distribution rates of the electric distribution company, natural gas distribution company or city natural gas distribution operation.[4]

Section 1358(a)(1) allows the Commission to grant a waiver of the 5% cap "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service."[5]

Increasing the DSIC cap from 5% to 9% is not warranted as it is driven by PPL Electric's failure to file a base rate case. Filing a base rate case is important because it resets the DSIC to zero. Section 1358(b)(1) states, "the distribution system improvement charge shall be reset at zero as of the effective date of new base rates that provide for prospective recovery of the annual costs previously recovered under the distribution system improvement charge."[6] PPL Electric's most recent base rate case was filed nine years ago on March 31, 2015 and its DSIC was reset when its new rates became effective on January 1, 2016.[7] As a result, PPL Electric was able to recover infrastructure investment through the DSIC and did not reach the 5% cap until April 2021. PPL Electric had the option to file a subsequent base rate case to reset the DSIC when it was

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3 66 Pa. C.S. § 1358.
4 66 Pa. C. S. § 1353(a)(1).
5 66 Pa. C.S. § 1353(a)(1).
6 66 Pa. Code § 1358(b)(1).
7 *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Order entered November 15, 2015).

approaching the 5% cap. The timing of a rate filing is wholly within the control of the Company as there are many economic and financial factors to consider, one of which is DSIC recovery. I&E presumes that PPL Electric conducted such an analysis and chose not to file a rate case as it reached the 5% cap in April 2021 or any time after. That choice is within PPL Electric's discretion; however, this important statutory consumer protection should not waived due to the Company's decision to not seek rate relief.

The importance of base rate filings in conjunction with the DSIC is embedded in the statute because, in order to implement a DSIC, a utility must certify that a Section 1308(d) base rate case has been filed within five years prior to the filing date of the DSIC petition.[8] Section 1353(b)(5) further provides:

> If a base rate case has not been filed within five years prior to the date of the filing of the petition, the utility must file a base rate case in order to be eligible for a distribution system improvement charge.[9]

While I&E recognizes that PPL Electric already has a DSIC in place, the reasoning behind the Section 1308(d) base rate case certification is important when evaluating an increase of this magnitude. As explained in the Commission's DSIC Tentative Implementation Order, the Section 1308(d) base rate case certification requirement for DSIC eligibility:

> [E]nsures that a full presentation of the utility's current revenues, expenses, rate base, and rate of return has been provided to the Commission and the public for review, potential challenge, and settlement or adjudication. If no rate base case has been filed within five years prior to the date the

[8] 66 Pa. C. S. § 1353(b)(4).
[9] 66 Pa. C. S. § 1323(b)(5).

> DSIC petition is filed, the utility must file a Section 1308(d) base rate case to become DSIC eligible. *See* 66 Pa. C.S. § 1353(b)(5). These provisions ensure that the DSIC process is not used to avoid the comprehensive financial review that takes place in the context of a base rate case.[10]

A "full presentation" of the Company's "current" ratemaking components will not occur if the Company's request is granted. The Tentative Implementation Order made clear that the five-year certification was designed to ensure that the DSIC is not used to circumvent the comprehensive base rate review; however, that is exactly what will occur if PPL Electric's request is granted. The DSIC was intended to provide recovery of allowable system improvements between base rate filings; however, it was not intended to replace base rate proceedings or circumvent base rate case scrutiny.

I&E recognizes that the Commission is authorized to grant a waiver of the 5% cap; however, PPL Electric has not demonstrated increasing the cap to 9% is necessary for purposes of Section 1358(a)(1).[11] PPL Electric's Petition avers that this investment is needed given that it has missed the Customer Average Interruption Duration Index benchmark in every quarter since 2020 and the System Average Interruption Duration Index benchmark since 2021.[12] PPL Electric also cites to more frequent and severe weather events and the rising cost of materials as further challenges to maintaining and improving reliability of service.[13] I&E does not dispute that approval of PPL Electric's request to increase the DSIC cap to 9% will allow for greater investment in reliability and

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10 *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, Tentative Implementation Order, p. 12 (Order entered May 11, 2012).
11 66 Pa. C.S. § 1353(a)(1).
12 PPL Electric Petition para. 35.
13 PPL Electric Petition para. 44-49.

allow it to more easily absorb these increasing costs. This alone is not sufficient to eliminate the protection provided by the 5% cap because allowing utilities to waive the 5% maximum rather than file a base rate case will render this important consumer protection meaningless.

To be clear, I&E has supported such requests in prior proceedings. For example, I&E supported Philadelphia Gas Works ("PGW") requested approval to increase its DISC to 7.5% to increase its pipeline replacement efforts.[14] Of particular significance in that proceeding was a Commission Staff Report,[15] which was a joint effort by the Commission's Bureaus of Technical Utility Services, Audits, and I&E, that recommended PGW seek a DSIC increase above 5% as one means of addressing the acceleration of its main replacement program. The Commission Bureaus recognized that waiver was necessary because 66% of PGW's distribution system was comprised of at-risk main and PGW's hazardous leak rates that were more than double of any other regulated natural gas distribution company.[16] Even with clear evidence of PGW's substantial infrastructure issues, the Commission only permitted PGW to increase its DSIC to 7.5%, not 9% as requested by PPL Electric. Similarly, I&E entered into a settlement with Pennsylvania Power Company ("Penn Power") to increase its DISC cap above 5%. I&E recognized that Penn Power demonstrated that waiver of the 5% cap was

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[14] *Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges,* Docket No. P-2015-2501500 (Order entered January 28, 2016).

[15] Pennsylvania Public Utility Commission Staff Report: Inquiry into Philadelphia Gas Works' Pipeline Replacement Program (April 31, 2015).

[16] *Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges,* Docket No. P-2015-2501500, p. 13 (Order entered January 28, 2016).

necessary because, in the Commission's Periodic Review of Penn Power's LTIIP, the Commission determined that changes to its LTIIP were necessary to maintain and improve reliability give the deterioration in reliability performance from 2016 through the second quarter 2018.[17] Like PGW's DSIC waiver, the Commission permitted Penn Power to increase the maximum allowable cap to 7.5%.[18]

Finally, it is important to remember that the statutory requirement that rates be just and reasonable also applies to the DSIC rate.[19] The Company estimates that the bill impact of its requested increase to 9% will be an additional $2.37 per month for residential customers using 1,000 kWh.[20] PPL Electric believes this is a moderated amount and states that the proposed 9% cap was selected to have a "minimal impact" on customers.[21] I&E disagrees and believes that the monthly bill impact is significant, especially in light of the fact that this monthly increase will come without undergoing full base rate scrutiny.

For the above reasons, I&E submits that PPL Electric has not demonstrated that the 5% DISC cap should be waived and that its requested 9% DSIC rate is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service."[22] The

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[17] *Petition of Pennsylvania Power Company for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution Rate Revenue and Approval to Increase the Maximum Allowable Distribution System Improvement Charge Cap to 11.81%*, Docket No. P-2019-3012628, p. 11 (Recommended Decision dated February 5, 2020).

[18] *Petition of Pennsylvania Power Company for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution Rate Revenue and Approval to Increase the Maximum Allowable Distribution System Improvement Charge Cap to 11.81%*, Docket No. P-2019-3012628 (Order entered March 12, 2020).

[19] 66 Pa. C.S § 1301.

[20] PPL Electric Petition para. 87.

[21] PPL Electric Petition para. 84.

[22] 66 Pa. C.S. § 1358(a)(1).

DSIC is working as it should and exceeding the 5% cap is the result of the long stretch between the Company's base rate filings. I&E recognizes that the increased cap will be more convenient and allow PPL Electric to recover its infrastructure investments more quickly; however, that is not a compelling justification to waive an important consumer protection.

III. CONCLUSION

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that the instant Petition be denied. If the Petition is not denied, I&E requests that this matter be referred to the Office of Administrative Law Judge to determine whether the requested waiver and 9% DSIC cap is just and reasonable under the Public Utility Code.

Respectfully submitted,

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Dated: May 16, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities	:	
Corporation for a Waiver of the	:	Docket No. P-2024-3048732
Distribution System Improvement	:	
Charge Cap of 5% of Billed Revenues	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Answer** dated May 16, 2024, in the manner and upon the persons listed below.

Served via Electronic Mail Only

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