COMMONWEALTH OF PENNSYLVANIA

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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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to the Petition of PPL Electric Utilities Corporation, in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Emily A. Farren
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Certificate of Service

CERTIFICATE OF SERVICE

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 hereby certify that I have this day filed electronically on the Commission's electronic filing system and served a true copy of the following document, the Office of Consumer Advocate's Answer to Petition, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 16th day of May 2024.

<u>SERVICE BY E-MAIL ONLY</u>

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555 Walnut Street
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Date: May 16, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE PETITION OF PPL ELECTRIC UTILITIES CORPORATION

Pursuant to Section 5.61 of the Pennsylvania Code, 52 Pa. Code § 5.61, the Office of Consumer Advocate (OCA) provides the following Answer to the Petition of PPL Electric Utilities Corporation for a Waiver of the Distribution System Improvement Charge Cap (Waiver Petition), in the above-captioned proceeding.

I. INTRODUCTION

On April 26, 2024, PPL Electric Utilities Corporation (PPL or the Company) filed a Petition through which it seeks approval from the Pennsylvania Public Utility Commission (Commission) to increase the maximum allowable Distribution System Improvement Charge (DSIC) from 5% to 9%.[1]

Governor Corbett signed Act 11 of 2012 into law on February 14, 2012. Act 11, *inter alia*, amended Chapter 13 of Title 66 of the Public Utility Code to grant the Commission authority to allow utilities to implement a DSIC, which would "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." 66 Pa. C.S. § 1353(a). Act 11 also included certain consumer protections, including a requirement that the DSIC

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[1] Petition at 1.

may not exceed 5% of amounts billed to customers. 66 Pa. C.S. § 1358(a)(1). Section 1358 allows the Commission to grant a waiver of the 5% limit "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." *Id*.

PPL's DSIC was approved by Commission Order on May 23, 2013 and included a 5% cap on billed distribution rate revenues. Petition at 7. PPL's initial Long Term Infrastructure Improvement Plan (LTIIP) was approved on January 10, 2013 for the period 2013-2017.[2] The Commission's periodic review of PPL's first LTIIP found that it was sufficient and the Company had substantially adhered to its plan.[3] PPL's second LTIIP was approved on December 21, 2017 for the period 2018-2022.[4] During the Commission's review of PPL's third LTIIP, PPL averred it will have spent approximately $732 million – an approximate 19% underspend – in DSIC-eligible expenditures; PPL's third LTIIP (LTIIP III) was approved on December 22, 2022, for the period 2023-2027.[5] PPL filed a Petition for Approval of Major Modifications to its third LTIIP on January 17, 2024. Petition at 7.

The OCA submits that no waiver should be granted. As discussed below, PPL has not demonstrated in its Petition that a waiver to increase the cap to 9% is necessary for purposes of Section 1358(a)(1). If PPL's Petition is not denied based on the pleadings, the OCA requests that the Commission refer the Petition to the Office of Administrative Law Judge for development of an evidentiary record and Initial Decision.

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[2] *Petition of PPL Electric Utilities Corp. for Approval of a Long-Term Infrastructure Improvement Plan,* P-2012-2325034 (Jan. 10, 2013), https://www.puc.pa.gov/pcdocs/1208064.doc.

[3] *Periodic Review of PPL Electric Utilities Corporation's Long-Term Infrastructure Improvement Plan*, M-2015-2505631 (May 5, 2016), https://www.puc.pa.gov/pcdocs/1437869.docx.

[4] *Petition of PPL Electric Utilities Corp. for Approval of its Second Long-Term Infrastructure Improvement Plan,* P-2017-2622393, (Dec. 21, 2017), https://www.puc.pa.gov/pcdocs/1547615.docx.

[5] *Petition of PPL Electric Utilities Corporation for Approval of its Third Long-Term Infrastructure Improvement Plan*, P-2022-3034972 (Dec. 22, 2022), https://www.puc.pa.gov/pcdocs/1768519.pdf.

II. ANSWER

The 5% cap was included in Act 11 to protect consumers. Although the Commission does have statutory authority to waive the 5% cap, a waiver can only be granted "to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1358(a)(1). The statute also includes the requirement that DSIC recovery is limited to plant placed in service during the prior quarter, thus limiting eligible costs to plant already placed in service or "used and useful." 66 Pa. C.S. §§ 1357(a)(l)(ii), (a)(2), (b)(l). This limitation is an essential consumer protection, given that these costs are recovered *without* the prudence review required for other capital costs. For the following reasons, the OCA submits that PPL has not met the statutory standard for waiver nor shown that the Commission should exercise its discretion to allow a DSIC rate up to 9%.

1. The Company Has Not Shown that a Higher DSIC Rate Is Necessary to Recover Its Planned Infrastructure Investment or to Continue to Provide Safe, Reliable, and Reasonable Service.

PPL states its "current ability to optimize the potential of the DSIC is limited by the 5% cap." Petition at 11. However, if the Company has concerns about recovering the costs associated with its LTIIP III or, if approved, its Modified LTIIP, PPL may file a base rate case, roll its DSIC into base rates for recovery and reset the DSIC rate to zero, since any waiver applies only to the recovery of the return and depreciation on incremental investment, between base rate cases and, even more narrowly, outside of the 12-month period after the future test year. 66 Pa. C.S. §§ 315(e), 1358(b)(1).

In its review of prior requests to increase water utility's DSIC caps, the Commission has looked at the utility's known, historic filing frequency and tried to achieve a reasonable balance between the "Company's efforts to make improvements to its distribution system while encouraging the Company to make reasonably frequent base rate filings." *Petition of Pennsylvania-American Water Company for Approval to Implement a Tariff Supplement to Tariff*

Water-PA P.U.C. No. 4, 2007 PaPUC LEXIS 42 (Aug. 14, 2007), Order at *32 (*PAWC*). The Commission's focus has been on whether an increase to the DSIC cap could result in a utility avoiding a rate case for an extended period. *Pa. PUC v. Aqua Pennsylvania, Inc. (Aqua)*, 2009 PaPUC LEXIS 263 (July 23, 2009), Order at *27-28 ("Aqua asserts that, under its current pattern of filing base rate cases approximately every two years, the 5% DSIC surcharge cap is reached in about eighteen months. Aqua reasons that the increase in the DSIC cap to 7.5% will not unduly lengthen the time between base rate cases"). The Commission repeatedly found this balance where the approval of the DSIC cap increase would encourage reasonably frequent base rate cases of approximately two to three years. *PAWC* at *32; *see also Petition of United Water Pennsylvania, Inc. for Approval of a Tariff Supplement to Revise its Maximum DSIC to 7.5% of Billed Revenues*, P-2013-2389331 (Dec. 19, 2013), Order at 6 ("increased pace of main replacement will necessitate a revised maximum DSIC rate of 7.5% in order to maintain a base rate case filing cycle of two to three years").

PPL has not filed a rate case in nearly ten years.[6] The DSIC cap is the primary consumer safeguard to ensure that utilities cannot evade base rate review for extended periods. 66 Pa. C.S. § 1358(a)(1); *PAWC* at *21. It was for precisely this reason that the Commission rejected a request by Newtown Artesian Water Company where, at the time of its request, that utility had not filed a base rate case for 6 years. *Pa. PUC v. Newtown Artesian Water Co.*, R-2017-2624240, C-2017-2626954 (July 12, 2018), Order on Remand at 20 (distinguishing from utilities granted DSIC cap increases that were filing base rate cases regularly and in a timely manner) (*NAWC*).[7] The Commission's order is instructive:

[6] PPL's most recent base rate case was filed in 2015, with new rates effective January 2016. Docket No. R-2015-2469275.

[7] https://www.puc.pa.gov/pcdocs/1802478.pdf

> We are not persuaded that NAWC is entitled to a DSIC cap increase simply because it will encounter a shortfall if the cap is not increased. We agree with the ALJ that NAWC has the option to file a base rate case to recover the under-recovery but has decided not to do so. NAWC argues that increasing the cap will allow it to further delay the filing of a base rate case until 2021 or ten years after its last filing. We are persuaded by the OCA's argument that lengthening the interval between rate cases by waiving the DSIC cap is not consistent with our past policy or the intent of the statutory cap waiver provision.
>
> A base rate proceeding ensures that all aspects of a utility's operations are examined to determine the appropriate revenue requirement necessary for a utility to provide safe and reliable service to its customers while providing an opportunity for the utility to earn a fair rate of return. The DSIC does not afford the parties the opportunity for this extensive review. The DSIC is designed to identify and recover the distribution system improvement costs incurred between base rate proceedings, which are a narrow subset of the Company's total cost of service. For example, after a base rate case, if a utility has a net gain in the number of customers, that additional revenue is not reflected in rates until the next base rate case. Similarly, if a utility reduces operating expenses or borrowing costs, these lower costs are not reflected in rates until the Company files another base rate case. An increase to the DSIC will increase the time interval between rate cases which may allow the Company to collect additional revenue and retain the cost savings for a longer period of time instead of incorporating these savings in customer rates.

NAWC at 20-21 (denying Exceptions filed by NAWC and sustaining the OCA's Formal Complaint). Consistent with Commission precedent and based on the fact that PPL has not filed a base rate case since 2015 and, as discussed further below, does not project filing a base rate case for at least three more years, PPL's request for a cap waiver should be denied.

Moreover, even where the depreciation and return are not recovered through the DSIC, PPL's existing base rates may already be providing a sufficient return on its total investment (DSIC-eligible and non DSIC-eligible).[8] Review of PPL's quarterly DSIC filings since its most recent base rate increase took effect shows the Company was not eligible to charge a DSIC for

[8] That is how other utilities have added hundreds of millions of dollars in plant additions without filing a base rate case and without a DSIC. *See Pa. PUC v. PECO Energy Co. – Gas Div.*, R-2008-2028394 (Sept. 17, 2008), R.D. at 14-15 (PECO did not file a base rate case in 21 years, during which it increased its rate base by nearly $700 million without a DSIC); *Petition of Columbia Gas of Pa., Inc. for a Waiver of the DSIC Cap*, P-2016-2521993 (Oct. 12, 2016), R.D. at 15 (according to the utility, in 2007, before the passage of Act 11, Columbia doubled its replacement rate for aging mains) (*Columbia Waiver*).

protracted periods because its quarterly earnings reports showed PPL would earn a rate of return in excess of the DSIC earnings cap. 66 Pa. C.S. § 1358(b)(3).[9]

The OCA submits that maintaining the existing 5% DSIC cap still allows PPL access to a source of revenue to fund its infrastructure investment, and, in PPL's next base rate case, the depreciated original cost of all plant investment will be included in rate base, if otherwise prudent, and the Company will realize the return of and the return on its investment. 66 Pa. C.S. § 1358(b). Although the Company may prefer to increase its DSIC cap to 9%, the Company has made no showing that the DSIC cap must be increased to continue to provide safe, reliable, and reasonable service.

2. PPL's Request Is Substantially Higher and Differs Markedly from Previous Waivers Granted by the Commission.

Since the inception of the DSIC in 2012, the Commission approved only one request by an electric utility for waiver of the DSIC cap.[10] The OCA notes that DSIC rates for electric utilities, like natural gas utilities, are a percentage of distribution rates only. Here, PPL has requested a 9% DSIC cap, nearly twice the statutory cap. The Commission has never approved a DSIC cap waiver to a level of more than 7.5% for an investor-owned utility.[11] Further, in the cases where the

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[9] *See, e.g., PPL Electric Utilities Corp. Calculation and Supplement No. 343 to Tariff Electric PA. P.U.C. No. 201 for the Distribution System Improvement Charge*, M-2022-3035407 (Sept. 20, 2022), Tariff Filing, Sch. A. ("The DSIC rate has been set to 0.00% due to earnings that exceeded 9.45% for the twelve months ended June 30, 2022"), https://www.puc.pa.gov/pcdocs/1759130.pdf.

[10] *See Petition of Penn 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%*, P-2019-3012628 (Mar. 12, 2020), Order at 2 (*Penn Power Waiver*) (approving the proposed joint petition for settlement of a temporary DSIC cap of up to 7.5% until the effective date of new base rates or the conclusion of its then-current LTIIP, after Penn Power requested a waiver to 11.81%).

[11] By statute, water utility DSIC rates are capped at 7.5%. 66 Pa. C.S. § 1358(a)(2). The Commission has granted a temporary waiver up to 8.84% for a city-owned utility, Philadelphia Gas Works. *See Petition of Philadelphia Gas Works for a Waiver of the DSIC Cap*, P-2015-2501500 (July 6, 2016), Order on Reconsideration at 26-28 (*PGW Waiver*) (approving a temporary DSIC cap of 8.84% for up to two years in order for the utility to recoup amounts related to transition to an annualized and levelized DSIC, followed by a reduction of the DSIC cap to 7.5%).

Commission has granted a DSIC cap waiver to an investor-owned utility under Section 1358(a)(1), it has made the waiver temporary.[12] PPL has made no evidentiary showing that it warrants an increase of nearly twice that permitted by statute and on a permanent basis.

3. PPL's Projected DSIC Rates Are Overstated.

A basis for PPL's request is that it anticipates its "DSIC would exceed 5% in every quarter for the remainder of its 2023-2027 LTIIP, potentially reaching as high as 11.84% under the current LTIIP and 14.53% under the modified LTIIP." Petition at 5, 21; *see* PPL Elec. St. 2 at 6-7. The OCA submits that the Company's projections are overstated, as reaching an 11.84% or 14.53% DSIC rate at the end of 2027 assumes that PPL will not file a base rate case during the LTIIP period. If PPL does not seek to increase its base rates until the end of 2027, that means the Company avoided base rate review for twelve (12) years. As discussed in Section II.1. above, that is unreasonable.

4. Additional Notice Is Warranted and Should Be Directed.

PPL states that it has served the statutory parties and posted the instant Petition on its website and PPL requested that the Commission publish notice of the filing in the Pennsylvania Bulletin and set a reasonable deadline for intervention. PPL states that, if the Commission concludes that additional notice would be appropriate, the Company will provide such additional notice as the Commission may direct. The OCA submits that, if the Commission does not deny

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[12] The Commission stated:

> However, we emphasize that the increase of UGI-CPG's DSIC rate to 7.5% is not a permanent rate change. Determining the appropriate DSIC rate, and, in particular, whether the waiver permitting 7.5% recovery will continue, should be an issue when UGI-CPG files a new LTIIP at the end of 2018. Accordingly, we shall approve a waiver of the 7.5% DSIC rate until UGI-CPG's next LTIIP filing, absent a statutory reason to reduce or suspend the DSIC.

Petition of UGI Central Penn Gas, Inc. for a Waiver of the DSIC Cap, P-2016-2537609 (May 10, 2017), Order at 65-66 (*CPG Waiver*); *see also Petition of UGI Penn Natural Gas, Inc. for a Waiver of the DSIC Cap*, P-2016-2537594 (May 10, 2017), Order at 60-61 (*PNG Waiver*).

this Petition outright, PPL should provide direct notice to customers that it seeks approval to increase their DSIC rate through a bill insert – the same notice required when PPL initially sought approval of a DSIC with a 5% cap. *See Implementation of Act 11 of 2012*, M-2012-2293611 (Aug. 2, 2012), Final Implementation Order at 25-26 (*DSIC FIO*).[13] Along with the additional notice, customers should be provided with additional time to comment on the proposed increase. This notice requirement is particularly important given the amount of time since PPL's last base rate filing impacting customers' distribution bills.

III. Specific Responses to Numbered Paragraphs

1-11. Admitted.

12. Denied in part. The OCA agrees that the DSIC includes important customer protections. Additional ratepayer dollars are not the only source of initially funding aging infrastructure and investment into the distribution system.

13-17. Admitted.

18. Denied as stated. Respondent's allegations include conclusions of law which require no response. As discussed above, PPL has made no showing that a higher DSIC rate is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service" for purposes of Section 1358(a)(1). If the Commission does not deny the Petition outright, the Company should be required to prove through sworn testimony at hearings that an increase in the DSIC is needed to further accelerate infrastructure improvements and that the increase is just and reasonable under the Public Utility Code.

19. Admitted.

[13] https://www.puc.pa.gov/pcdocs/1186846.doc

20. Denied. The DSIC is one means of recovering infrastructure improvement costs. The DSIC itself cannot ensure that customers receive safe and reliable service. Additional ratepayer dollars are not the only source of initially funding aging infrastructure. It is the role of Company management to ensure that a level of safe, adequate and reliable service is maintained within the just and reasonable level of revenues allowed by the Commission.

21-27. Admitted in part. The OCA disagrees that these statements support the instant Petition.

28-29. Neither admitted nor denied. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

30-31. Denied. The stated purpose of the DSIC is to allow recovery of certain infrastructure costs incurred between base rate cases and not to increase the time between base rate cases. Further, many economic and financial factors together determine the frequency of a utility's base rate increase requests and the costs incurred in the review of those requests. Some of those factors are within the control of the Company.

32-69. Neither admitted nor denied. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

70. Denied. The DSIC is only one means of recovering infrastructure improvement costs.

71. Denied. There is no basis for the Commission to approve PPL's requested waiver and the Petition should be denied.

72. Denied. The Commission approved a joint petition for settlement *after* concluding Penn Power's LTIIP was insufficient; there is no such finding concerning PPL's third LTIIP.[14] As discussed in Section II, these and other facts presented here distinguish PPL's situation and proposals from other proceedings where waiver requests have been granted. Also as discussed in Section II, where the Commission has considered requests for DSIC cap waivers, it has considered historic base rate filing frequency and tried to achieve a reasonable balance that encourages the Company to make reasonably frequent base rate filings. *See*, *e.g.*, *PAWC* at *32.

73-75. Admitted.

76. Denied. As discussed *supra*, the facts as presented by PPL here do not mirror those presented in previously approved DSIC cap waiver petitions.[15]

77. Neither admitted nor denied. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

78. Admitted in part. The DSIC is only one means of recovering infrastructure improvement costs for service reliability.

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[14] *See Petition of Penn 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%*, P-2019-3012628 (Mar. 12, 2020), Order at 2 (*Penn Power Waiver*) (approving the proposed joint petition for settlement of a temporary DSIC cap of up to 7.5% until the effective date of new base rates or the conclusion of its then-current LTIIP, after Penn Power requested a waiver to 11.81%).

[15] *See* note 8, *supra*.

79-80. Neither admitted nor denied. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

81. Denied. The Commission approved a joint petition for settlement *after* concluding Penn Power's LTIIP was insufficient; there is no such finding concerning PPL's third LTIIP.[16]

82. Admitted.

83-86. Neither admitted nor denied. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

87-88. Denied. Increasing customers' bills by an additional $2.37 per month over and above the maximum 5% DSIC level is significant. Moreover, the same customer may be paying a DSIC of 5% or 7.5% on each of his/her regulated utility bills, *i.e.* natural gas, water and wastewater. If the Petition is not denied outright, PPL should be required to show that greater rate increases between base rate cases are just and reasonable and necessary for the Company to maintain safe and adequate service.

89. Denied. There is no basis for the Commission to approve PPL's requested waiver and the Petition should be denied.

90-91. Admitted.

92-93. Denied. The OCA submits that, if the Commission does not deny this Petition outright, PPL should provide direct notice to customers that it seeks approval to increase their

[16] *Id.*

DSIC rate through a bill insert – the same notice required when PPL initially sought approval of a DSIC with a 5% cap. *See DSIC FIO* at 25-26. Along with the additional notice, customers should be provided with additional time to comment on the proposed increase. This notice requirement is particularly important given the amount of time since PPL's last base rate filing impacting customers' distribution bills.

IV. CONCLUSION

The OCA submits that a waiver of the 5% cap with an increase to 9% is unreasonable. The 5% cap was included in Act 11 to provide consumer protection. Never has the Commission approved a waiver of the cap for an investor-owned utility above 7.5% and only on a temporary basis. The cap may only be exceeded if the utility demonstrates that a higher level is necessary "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. §1358(a)(1). There is no evidence that PPL is unable to replace its infrastructure at an accelerated pace by filing base rate cases – more often than once a decade – using the Act 11 fully projected future test year mechanism and a DSIC within the 5% cap. Waiver any time a utility reaches or anticipates reaching the 5% cap and elects not to file a base rate case erodes the consumer protection provided by the General Assembly through the DSIC cap.

The OCA submits that PPL's Petition be denied for the reasons discussed above. If not, the Petition requires full examination, with the development of an evidentiary record, to ensure compliance with Act 11.

WHEREFORE, for all the foregoing reasons, the instant Petition should be denied.

Respectfully Submitted,

/s/ *Emily A. Farren*
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PA Attorney I.D. #322910

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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	:	

VERIFICATION

I, Patrick M. Cicero, hereby state that the facts set forth in the Office of Consumer Advocate's Answer to PPL Electric Utilities Corporation's Petition for a Waiver of the Distribution System Improvement Charge, are true and correct (or are true and correct to the best of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: May 16, 2024

Signature: ______________________
Patrick M. Cicero
Consumer Advocate

Address: Office of Consumer Advocate
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