



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

October 1, 2024

**Via Electronic Filing**

Secretary Rosemary Chiavetta  
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 Main Brief**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Main Brief 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.

Respectfully,

A handwritten signature in blue ink that reads 'Allison C. Kaster'.

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cc: Administrative Law Judge Arlene Ashton (*via email* – [aashton@pa.gov](mailto:aashton@pa.gov))  
Per Certificate of Service

**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 :

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**MAIN BRIEF OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: October 1, 2024

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## **I. INTRODUCTION**

On April 26, 2024, PPL Electric Utilities Corporation (“PPL Electric” or “Company”) filed a Petition requesting that the Pennsylvania Public Utility Commission (“Commission”) waive the Company’s distribution system improvement charge (“DSIC”) cap of 5% of billed distribution revenues and increase the maximum allowable DSIC from 5% to 9% for bills rendered on or after January 1, 2025.

On May 16, 2024, the Bureau of Investigation and Enforcement (“I&E”) and the Office of Consumer Advocate (“OCA”) filed Answers to the Petition. On May 16, 2024, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention, Public Statement, and Notice of Appearance.

A telephonic prehearing conference was held on June 3, 2024 before Administrative Law Judge (“ALJ”) Arlene Ashton during which the procedural schedule and dates for evidentiary hearings were discussed and later memorialized in the Prehearing Order dated June 18, 2024.<sup>1</sup>

On July 10, 2024, the PP&L Industrial Customer Alliance (“PPLICA”) filed a Petition to Intervene. From July 5-10, 2024, three individuals filed separate Formal Complaints in response to the petition: Michael L. Sperazza, docketed at C-2024- 3049979; Paula Mercuri, docketed at C-2024-30500272; and Angela Pesola, docketed at C-2024-3050206. On July 18, 2024, a Formal Complaint was filed by John Theisen, docketed at C-2024-3050443. On July 19, 2024, two additional Formal Complaints were filed: Sharon

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<sup>1</sup> An Errata to the Prehearing Order was issued on June 18, 2024 correcting the due date for Reply Briefs to October 15, 2024.

Frankenfield, docketed at C-2024-30450646; and John Gadomski, docketed at C-2024-3050661.

On July 25, 2024, an Order was issued granting PPLICA's Petition to Intervene and consolidating the Formal Complaints filed by Mr. Sperazza, Ms. Mercuri, and Ms. Pesola with the instant proceeding. On August 28, 2024, an Order was issued consolidating the Formal Complaints filed by Mr. Theisen, Ms. Frankenfield, and Mr. Gadomski with the instant proceeding.

The telephonic evidentiary hearing scheduled on September 4, 2024 was held during which the parties' testimonies and exhibits were admitted into the record. I&E submitted the following:

- I&E Statement No. 1 – Direct Testimony of Joseph Kubas
- I&E Statement No. 1-SR – Surrebuttal Testimony of Joseph Kubas

All cross-examination was waived by the parties and the telephonic evidentiary hearing scheduled on September 5, 2024 was cancelled. Therefore, I&E now files this Main Brief pursuant to the procedural schedule established in this case.

## **II. STATEMENT OF THE CASE**

In 1996, the Commission adopted and the General Assembly codified the DSIC which allowed water utilities to petition the Commission to recover the reasonable and prudently incurred costs related to the repair, improvement, and replacement of the eligible property of the utility's distribution infrastructure. Act 11 of 2012 ("Act 11") amended Chapter 13 of the Public Utility Code ("Code") to allow jurisdictional electric distribution

companies, natural gas distribution companies, wastewater utilities, and city natural gas operations to petition the Commission for approval to implement a DSIC.

Section 1353 of the Code provides that the Commission, upon petition or after notice and hearing, “may approve the establishment of a distribution system improvement charge 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.”<sup>2</sup> Act 11 contained several consumer protections regarding the DSIC, including a 5% cap on the total amount of billed distribution revenues that can be collected.<sup>3</sup> Water utility DSIC rates are capped at 7.5%.<sup>4</sup> The Commission may grant a waiver of the 5% cap upon petition “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.”<sup>5</sup>

PPL Electric seeks Commission approval to waive its DSIC cap of 5% and increase its cap to 9%. I&E opposes PPL Electric’s waiver request and recommends that the Commission deny PPL Electric’s Petition for the reasons stated herein.

### **III. LEGAL STANDARDS**

It is axiomatic that the burden of proof in any proceeding involving a utility’s existing or proposed rates is on the utility.<sup>6</sup> This burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with evidence to support a particular

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<sup>2</sup> 66 Pa. C.S. § 1353(a).

<sup>3</sup> 66 Pa. C.S. § 1358(a)(1).

<sup>4</sup> 66 Pa. C.S. § 1358(a)(2).

<sup>5</sup> 66 Pa. C.S. § 1358(a)(1).

<sup>6</sup> See 66 Pa. C.S. §§ 315(a), 1301; *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa. Commw. 1981); *Lower Frederick Twp. v. Pennsylvania Public Utility Commission*, 409 A.2d 505 (Pa. Commw. 1980).

position.<sup>7</sup> The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast.<sup>8</sup> PPL Electric must satisfy its burden of proof by presenting a preponderance of evidence.<sup>9</sup> A preponderance of the evidence is such evidence that is more convincing, by even the smallest amount, than that presented by another party.<sup>10</sup> If a preponderance of evidence is submitted, the burden of going forward with competing evidence shifts to opposing parties to produce credible evidence of at least equal weight.

While the burden of going forward and producing evidence may shift back and forth between the parties, the ultimate burden of persuasion remains with the Company, and the Commission must ensure that any adjudication is supported by substantial evidence. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>11</sup>

Therefore, ultimately and considering all of the above, PPL Electric has the burden of producing a preponderance of substantial evidence to support its argument that (1) a waiver of the 5% statutory DSIC cap is necessary “to ensure and maintain adequate, efficient, safe, reliable and reasonable service”<sup>12</sup> and (2) that a DSIC rate up to 9% of billed distribution revenues is “just and reasonable.”<sup>13</sup> Furthermore, PPL Electric must carry this burden of producing substantial evidence in the face of all of the substantial evidence produced by the opposing parties.

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<sup>7</sup> *In re: Loudenslager’s Estate*, 240 A.2d 477 (Pa. 1968).

<sup>8</sup> *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa. Commw. 1993).

<sup>9</sup> *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Commw. 1990).

<sup>10</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>11</sup> *Norfolk & Western Ry. Co. v. Pennsylvania Public Utility Commission*, 413 A.2d 1037 (Pa. 1980).

<sup>12</sup> 66 Pa. C.S. § 1358(a)(1).

<sup>13</sup> 66 Pa. C.S. § 315(a).

I&E serves as the Commission's prosecutory bureau for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge.<sup>14</sup> I&E has actively participated in this case as its outcome will have an impact on PPL Electric's rates. I&E asserts that PPL Electric has failed to meet its burden and therefore the relief requested in PPL Electric's Petition must be denied.

#### **IV. SUMMARY OF ARGUMENT**

The single most important factor in determining whether the Commission should grant a waiver of the 5% DSIC cap is whether the waiver is necessary to ensure that the utility will be able to provide and maintain safe and reliable service.<sup>15</sup> I&E asserts that PPL Electric has failed to meet this burden. I&E witness Joseph Kubas performed an extensive review of PPL Electric's filing and found that there is no indication that the Company will not be able to continue to provide safe and reliable service to customers if the requested DSIC increase is not approved.<sup>16</sup> PPL Electric even stated in response to OCA interrogatories that it will comply with its Modified Third Long-Term Infrastructure Improvement Plan ("LTIIP") regardless of whether the DSIC cap is waived.<sup>17</sup> By the Company's own admission, a waiver of its DSIC cap is not necessary to provide and maintain safe and reliable service.

Another important consideration is the recency of PPL Electric's last base rate filing. I&E witness Kubas presented testimony discussing the importance of the comprehensive

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<sup>14</sup> *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852, p. 5 (Order Entered August 11, 2011).

<sup>15</sup> 66 Pa. C.S. § 1358(a)(1).

<sup>16</sup> I&E Statement No. 1, p. 8.

<sup>17</sup> OCA Exhibit JDM-2; OCA Exhibit JDM-1SR.

review conducted in base rate cases.<sup>18</sup> Since the DSIC's inception, the Commission has stated that the DSIC is not a substitute for base rate filings.<sup>19</sup> The Commission has also previously considered how recently a utility filed a base rate case in its review of DSIC cap waiver requests.<sup>20</sup> PPL Electric's most recent base rate case was over nine years ago.<sup>21</sup> The Company has the ability and the discretion to file a base rate filing if it finds that its current revenues are inadequate to cover the costs of infrastructure investments; instead, PPL Electric has chosen to file the instant Petition. PPL Electric's request should not be granted simply because it has chosen to avoid the base rate process. The DSIC was intended to provide recovery of allowable system improvements between base rate filing, not to replace base rate proceedings or circumvent base rate case scrutiny.

PPL Electric has compared its filing to other cases where the Commission approved DSIC cap increases.<sup>22</sup> However, these cases are factually distinguishable from the instant proceeding because those waivers were found to be necessary to address safety and reliability issues, whereas PPL Electric has not demonstrated such a need in this case. Finally, it is important to consider the customer impact if PPL Electric's request is granted.

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<sup>18</sup> I&E Statement No. 1, p. 11.

<sup>19</sup> *Petition of Pennsylvania-American Water Company for Approval to Implement a Tariff Supplement Establishing a Distribution System Improvement Charge*, Docket No. P-00961031, p. 15 (Order entered August 26, 1996).

<sup>20</sup> *See Pa. PUC v. Newtown Artesian Water Co.*, Docket No. R-2017-2624240 (Order entered July 12, 2018).

<sup>21</sup> *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Order entered November 15, 2015).

<sup>22</sup> *See 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); *See also 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. 2 (Order entered March 12, 2020); *See also Petition of UGI Central Penn Gas, Inc. for a Waiver of the Distribution System Improvement Charge (DSIC) Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues*, Docket No. P-2016-2537609 (Order entered May 10, 2017).

I&E witness Kubas presented testimony discussing why the proposed residential rate increase does not meet the “just and reasonable” standard and expressed concern over the potential bill impact on large use customers and cost of service issues.<sup>23</sup>

Therefore, in consideration of the above, the record evidence presented in this proceeding supports a finding that PPL Electric’s request for a waiver of its 5% DSIC cap should be denied. If ALJ Ashton and the Commission find that PPL Electric has satisfied its burden and grants a waiver of its 5% DSIC cap, I&E recommends that the Commission approve a temporary DSIC cap maximum of 7.5% instead of the Company’s requested 9%. The Commission has never approved a DSIC cap waiver beyond 7.5% for an investor-owned utility<sup>24</sup> and PPL Electric is not facing the same level of safety and reliability concerns seen with other utilities who were granted increases that capped at 7.5%.<sup>25</sup> A 9% DSIC cap is not warranted given the evidence presented in this case and therefore I&E recommends a 7.5% DSIC cap consistent with previous waivers.

## V. ARGUMENT

### A. **Whether PPL Electric met the legal standard to show a waiver of the DSIC 5% cap is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service under Section 1358.**

The statutory standard for granting a waiver of the 5% DSIC cap is whether the

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<sup>23</sup> I&E Statement No. 1, pp. 13, 21-22.

<sup>24</sup> OCA Statement No. 1, pp. 11-12.

<sup>25</sup> *See 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); *See also 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); *See also Petition of UGI Central Penn Gas, Inc. for a Waiver of the Distribution System Improvement Charge (DSIC) Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues*, Docket No. P-2016-2537609 (Order entered May 10, 2017).

waiver is necessary “to ensure and maintain adequate, efficient, safe, reliable and reasonable service.”<sup>26</sup> I&E asserts that PPL Electric has not met this standard. PPL Electric avers that this investment is needed given that it has missed the Customer Average Interruption Duration Index (“CAIDI”) benchmark in every quarter since 2020 and the System Average Interruption Duration Index (“SAIDI”) benchmark since 2021.<sup>27</sup> 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.<sup>28</sup> However, I&E witness Joseph Kubas noted that in the Third LTIP Review Order issued on December 22, 2022, the Commission determined that the Company’s reliability performance has improved and that the changes to the LTIP were necessary to continue to maintain and improve reliability.<sup>29</sup> Mr. Kubas found that there is no indication that the Company will not be able to continue to provide safe and reliable service to customers if the requested DSIC increase is not approved or that LTIP investments will not be made if the waiver is not granted.<sup>30</sup> OCA witness Jerome Mierzwa came to the same conclusion.<sup>31</sup>

Company witness Steven D. Selkregg tries to discredit Mr. Kubas’ recommendation by claiming that Mr. Kubas is not a safety reliability expert, that no party disputed the safety and reliability issues the Company is facing, and by pointing to the Commission’s most recent Management and Operations Audit<sup>32</sup> (“2024 Audit”) of PPL Electric for further

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<sup>26</sup> 66 Pa. C.S. § 1358(a)(1).

<sup>27</sup> PPL Electric Petition, p. 12.

<sup>28</sup> *Id.* at p. 14.

<sup>29</sup> *Petition of PPL Electric Utilities Corporation for Approval of its Third Long-Term Infrastructure Improvement Plan*, Docket No. P-2022-3034972 (Order entered December 22, 2022).

<sup>30</sup> I&E Statement No. 1, p. 8.

<sup>31</sup> OCA Statement No. 1, p. 14; OCA Statement No. 1-SR, p. 4.

<sup>32</sup> PPL Electric Utilities Corporation Management and Operations Audit, Docket No. D-2023-3039488 (June 2024).

support.<sup>33</sup> However, Mr. Kubas has over 30 years of experience in ratemaking analysis and found raising the DSIC cap to be unnecessary to address these investments.<sup>34</sup> Mr. Kubas also notes that the Company did not dispute that it could satisfy its safety and reliability concerns and the Commission's concerns described in the 2024 Audit by filing a base rate case as discussed below.<sup>35</sup>

Perhaps most telling is that in response to OCA Interrogatories Set I, Question 9, the Company stated that it will comply with its Modified Third LTIP regardless of whether the DSIC cap is waived.<sup>36</sup> Based on the foregoing, it is I&E's position that a waiver of PPL Electric's DSIC cap is not necessary for the Company to provide and maintain safe and reliable service for its customers.

The 5% cap of billed distribution revenues is one of several consumer protections established by Act 11. Another important consumer safeguard is certification by the utility that a base rate case has been filed within five years prior to the date of the filing of the petition.<sup>37</sup> 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.<sup>38</sup>

I&E witness Kubas discussed why the DSIC should not be a substitute for base rate cases, stating that the Commission's review of a DSIC filing is not as comprehensive as its review in a base rate filing where all the components of a utility's operation that comprise the revenue requirement are examined.<sup>39</sup> Additionally, Mr. Kubas noted that because the DSIC

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<sup>33</sup> PPL Electric Statement No. 1-R, pp. 4-9.

<sup>34</sup> I&E Statement No. 1-SR, p. 15.

<sup>35</sup> *Id.* at p. 16.

<sup>36</sup> OCA Exhibit JDM-2; OCA Exhibit JDM-1SR.

<sup>37</sup> 66 Pa. C.S. § 1353(b)(4).

<sup>38</sup> 66 Pa. C.S. § 1353(b)(5).

<sup>39</sup> I&E Statement No. 1, pp. 11-12.

is based on a percentage of revenue and not the cost of providing service to a particular customer class, any subsidy that exists under base rates is not adjusted with the DSIC.<sup>40</sup>

In its 1996 decision establishing the DSIC for water utilities, the Commission acknowledged that the DSIC is not a substitute for base rate filings:

[T]he provision of a 5% of billed revenues cap on the maximum amount of any DSIC insures that the surcharges mechanism will not evade the Section 1308 base rate process and its intensive top-to-bottom review of all company revenue, expense, rate base and return claims. . . . In other words, the 5% cap will insure that the surcharge will not allow the company to avoid a base rate review of eligible property in perpetuity.<sup>41</sup>

In 2012, the Commission reiterated the importance of base rate filings in the DSIC Tentative Implementation Order:

The DSIC filing must also include certification that a Section 1308(d) base rate case has been filed within the past 5 years. *See* 66 Pa. C.S. § 1353(b)(4). This ensures 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 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.<sup>42</sup>

The Commission has previously considered how recently a utility filed a base rate case in its review of DSIC cap waiver requests. In 2018, the Commission rejected Newtown Artesian Water Company's ("NAWC") request to increase its DSIC cap from 5% to 7.5%.

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<sup>40</sup> *Id.* at 13.

<sup>41</sup> *Petition of Pennsylvania-American Water Company for Approval to Implement a Tariff Supplement Establishing a Distribution System Improvement Charge*, Docket No. P-00961031, p. 15 (Order entered August 26, 1996).

<sup>42</sup> *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, Tentative Implementation Order, p. 12 (Order entered May 11, 2012).

At the time of its request, NAWC had not filed a base rate case in six years. The Commission stated:

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.**<sup>43</sup>

When NAWC argued that its request for a DSIC cap increase should not be distinguished from the three water utilities (Aqua Pennsylvania, Inc., Pennsylvania American Water Company, and United Water Pennsylvania, Inc.) that were granted an increase to 7.5%, the Commission disagreed, noting that those utilities “have been filing base rates cases regularly and in a timely manner.”<sup>44</sup>

Company witness Bethany L. Johnson tries to distinguish the instant proceeding from the NAWC case by claiming that, unlike NAWC, PPL Electric has been meeting its overall LTIP project completions and accelerating them, has exceeded the DSIC cap in 14 quarters as opposed to NAWC’s two consecutive quarters, and has base rates that are designed based on a Fully Projected Future Test Year (“FPFTY”).<sup>45</sup> However, OCA witness Mierzwa notes that PPL Electric’s reported earnings made it ineligible to charge a DSIC for 7 of those 14 quarters, that it took 28 quarters before the Company charged a DSIC of 5%, and that the FPFTY in PPL Electric’s last base rate proceeding ended on December 31, 2016, about 8

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<sup>43</sup> *Pa. PUC v. Newtown Artesian Water Co.*, Docket No. R-2017-2624240, p. 20 (Order entered July 12, 2018) (emphasis added).

<sup>44</sup> *Pa. PUC v. Newtown Artesian Water Co.*, Docket No. R-2017-2624240, p. 21 (Order entered July 12, 2018).

<sup>45</sup> PPL Electric Statement No. 2-R, pp. 7-8.

years ago.<sup>46</sup> The length of time since NAWC's last rate case was not the sole factor the Commission considered when it denied NAWC's request, but it certainly was considered, as it should be in this case.

PPL Electric's request to increase its DSIC cap from 5% to 9% is not warranted as it is ultimately driven by the Company's failure to file a base rate case. Filing a base rate case is important because it resets the DSIC to zero.<sup>47</sup> PPL Electric's most recent base rate case was filed over nine years ago on March 31, 2015 and its DSIC was reset when its new rates became effective on January 1, 2016.<sup>48</sup> As a result, PPL Electric was able to recover infrastructure investment through the DSIC and did not reach the 5% cap until April 2021.<sup>49</sup> PPL Electric had the option to file a subsequent base rate case to reset the DSIC when it was approaching the 5% cap. The timing of a rate filing is wholly within the control of the utility 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 be waived due to the Company's decision to not seek rate relief. 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.

Company witness Johnson asserts that I&E and the other parties have attached conditions to the granting of the waiver that do not exist in the statute, including a

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<sup>46</sup> OCA Statement No. 1-SR, p. 9.

<sup>47</sup> 66 Pa. C.S. § 1358(b)(1).

<sup>48</sup> *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Order entered November 15, 2015).

<sup>49</sup> I&E Statement No. 1, p. 16.

requirement that a utility must file a base rate case within a certain number of years before obtaining a waiver of the DSIC cap.<sup>50</sup> I&E recognizes that there is no statutory requirement that a utility must file a base rate case prior to obtaining a waiver of the DSIC cap. That being said, the recency of a utility's last base rate case is a factor worth considering when assessing whether a utility's DSIC cap should be waived, as the Commission did in the NAWC case. There is nothing preventing PPL Electric from filing a base rate case; rather, PPL Electric has elected to try to obtain additional funding through the instant proceeding as opposed to a base rate case. The Commission should find here as it did in the NAWC case that lengthening the time between PPL Electric's rate cases by waiving its DSIC cap is not consistent with its past policy or the intent of Act 11.

Additionally, while there is also no statutory or regulatory standard that dictates when a utility must file for a rate increase, I&E does not support lengthy rate case intervals as too much time between rate cases can impact reasonable rates as class cost of service changes with time and can impact safety as LTIIP improvements could be impacted by funds availability.<sup>51</sup> I&E would encourage PPL Electric to file a base rate case instead of trying to obtain additional funding via its DSIC.

PPL Electric has cited to cases where the Commission approved DSIC cap increases for Philadelphia Gas Works ("PGW"), Pennsylvania Power Company ("Penn Power"), and UGI Central Penn Gas, Inc. ("UGI-CPG") in support of its Petition.<sup>52</sup> However, there are considerable differences between these cases and the instant proceeding.

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<sup>50</sup> PPL Electric Statement No. 2-R, pp. 4-6.

<sup>51</sup> I&E Statement No. 1, p. 15.

<sup>52</sup> PPL Electric Petition, pp. 4-5.

PGW is a municipal gas utility regulated by the Commission under a cash flow formula, meaning its DSIC does not include a profit component and is therefore different from an investor-owned utility's DSIC. Additionally, I&E supported PGW's requested DSIC increase to 7.5% to increase its pipeline replacement efforts.<sup>53</sup> Of particular significance in that proceeding was a Commission Staff Report,<sup>54</sup> 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 because a significant portion 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.<sup>55</sup> Even with clear evidence of PGW's substantial infrastructure issues, the Commission only permitted PGW to increase its DSIC to 7.5%.<sup>56</sup>

Similarly, I&E entered into a settlement with Penn Power to increase its DSIC cap above 5% because in the Commission's Periodic Review of Penn Power's LTIP, the Commission determined that changes to its LTIP were necessary to maintain and improve reliability given the deterioration in reliability performance from 2016 through the second

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<sup>53</sup> *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).

<sup>54</sup> Pennsylvania Public Utility Commission Staff Report: Inquiry into Philadelphia Gas Works' Pipeline Replacement Program (April 31, 2015).

<sup>55</sup> *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, pp. 13-14 (Order entered January 28, 2016).

<sup>56</sup> *Id.* at p. 71.

quarter 2018.<sup>57</sup> Like PGW's DSIC cap waiver, the Commission permitted Penn Power to increase the maximum allowable cap to 7.5%.<sup>58</sup>

In UGI-CPG's case, I&E agreed that waiver of the DSIC cap was warranted and recognized that the Company demonstrated in its modified LTIIP that the additional DSIC funding would address the safety concerns identified by I&E's Gas Safety Division.<sup>59</sup> The Commission agreed and determined that the safety and reliability concerns were similar to those raised in the PGW proceeding.<sup>60</sup> Consistent with the previous waivers, the Commission permitted an increase to 7.5%, not 10% as requested by UGI-CPG.<sup>61</sup>

Company witness Johnson claimed in rebuttal that I&E considers the 5% cap "immovable."<sup>62</sup> This claim is inaccurate as noted by Mr. Kubas' testimony and the fact that I&E supported DSIC cap waivers in the aforementioned cases.<sup>63</sup> However, whether to grant a waiver of a utility's DSIC cap should be assessed on a case-by-case basis and permitted only when appropriate. The Commission granted, and I&E supported, DSIC cap waivers in the PGW, Penn Power, and UGI-CPG cases because it found that it was necessary to address safety and reliability issues. PPL Electric has not demonstrated such a need in this case. As discussed by OCA witness Mierzwa, the Commission has only approved one DSIC cap

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<sup>57</sup> *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).

<sup>58</sup> *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. 2 (Order entered March 12, 2020).

<sup>59</sup> *Petition of UGI Central Penn Gas, Inc. for a Waiver of the Distribution System Improvement Charge (DSIC) Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues*, Docket No. P-2016-2537609, p. 16 (Order entered May 10, 2017).

<sup>60</sup> *Id.* at 65.

<sup>61</sup> *Id.* at 73.

<sup>62</sup> PPL Electric Statement No. 2-R, p. 2.

<sup>63</sup> I&E Statement No. 1, pp. 4, 17-20.

waiver request by an electric utility and it has never approved a DSIC cap waiver beyond 7.5% for an investor-owned utility.<sup>64</sup> For these reasons, I&E PPL Electric satisfied its burden in this case.

It is also important to consider the potential customer impact if PPL Electric's request is granted. The Company avers that if the maximum DSIC rate is increased to 9%, the average residential customer's bill would increase by \$2.37 per month, or \$28.44 per year, for residential customers using 1,000 kilowatt-hours ("kWh") per month.<sup>65</sup> PPL Electric believes this is a moderated amount and states that the proposed 9% cap was selected to have a "minimal impact" on customers.<sup>66</sup> PPL Electric attempted to minimize the bill impact in rebuttal by stating that every 0.5% increase in the DSIC results in a \$0.30 per month increase in a residential customer's bill.<sup>67</sup>

The statutory requirement that rates be just and reasonable also applies to the DSIC rate.<sup>68</sup> I&E witness Kubas does not believe that the proposed residential rate increase is just and reasonable, especially in light of the fact that this monthly increase will come without undergoing full base rate scrutiny.<sup>69</sup> Mr. Kubas also noted the significant bill impact for larger usage customers, demonstrating that under the requested maximum DSIC rate of 9%, the average LP-4 customer would pay \$3,059.84 ( $\$33,998 \times 22 \times 0.09$ ), which is an additional \$1,359.92 per year.<sup>70</sup> PPL Electric suggested that the Commission should disregard this comparison and focus on the large customer total bill impact for the General Service-1 ("GS-

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<sup>64</sup> OCA Statement No. 1, pp. 11-12.

<sup>65</sup> PPL Electric Petition, p. 21.

<sup>66</sup> *Id.* at 20.

<sup>67</sup> PPL Electric Statement No. 2-R, pp. 21-22.

<sup>68</sup> 66 Pa. C.S. § 1301(a).

<sup>69</sup> I&E Statement No. 1, p. 21; I&E Statement No. 1-SR, p. 27.

<sup>70</sup> I&E Statement No. 1, p. 21; I&E Statement No. 1-SR, p. 27.

1”), General Service-3 (“GS-3”) and Large General Service-4 (“LP-4”) class customers.<sup>71</sup> However, Mr. Kubas opines that it is important to consider the impact on the average LP-4 customer’s bill because large demand and usage charges vary with usage and generation rates, which are not established by the Commission, meaning it is appropriate to consider the increase to base rates separately.<sup>72</sup>

Mr. Kubas also expressed concern regarding cost of service issues if PPL Electric’s request is granted, stating that because the DSIC is a separate surcharge, increasing the cap does not address the potential disparity in the revenue that each class should contribute to overall revenue.<sup>73</sup> Company witness Johnson argues that both I&E and OSBA are incorrect on the cost of service issue since the class cost responsibility remains in place until a new rate case is filed and that neither a DSIC mechanism nor any other surcharge mechanism “freezes” anything, stating that no part of the Section 1307 automatic adjustment clauses requires an updated class cost of service study (“COSS”) and that if I&E and OSBA are correct, all Section 1307 mechanisms, including the DSIC, would have been rejected.<sup>74</sup> Mr. Kubas opines that both I&E and OSBA correctly assert that an extended period between base rate cases could result in a class bearing a disproportionate and unreasonable share of DSIC charges because the calculations for each class are just projections in a base rate case and change over time, meaning that while base rates are “frozen,” the disparity that existed when rates were established could change over nine years, such that applying a surcharge percentage to existing revenues could aggravate a scenario where subsequent changes were

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<sup>71</sup> PPL Electric Statement No. 2-R, pp. 20-21.

<sup>72</sup> I&E Statement No. 1-SR, p. 28.

<sup>73</sup> I&E Statement No. 1, p. 13.

<sup>74</sup> PPL Electric Statement No. 2-R, p. 11.

causing a particular class to now be substantially exceeding its cost of service.<sup>75</sup> While Mr. Kubas agrees that no Section 1307 automatic adjustment clause requires an updated COSS, he argues that the 5% DSIC rate cap aids in preventing cost of service disparity issues from becoming worse over time as reaching the cap is part of the utility's evaluation to file a base rate case where class cost of service issues can be evaluated.<sup>76</sup>

Ms. Johnson claims that there is no evidence that the Company's current class cost of service is unreasonable and that the length of time between base rate cases does not suddenly transform existing rates from being presumed just and reasonable to being presumed unjust and unreasonable.<sup>77</sup> It is true that rates previously approved by the Commission are *prima facie* just and reasonable.<sup>78</sup> However, Mr. Kubas does not argue that PPL Electric's current rates are unjust and unreasonable, rather, he reasonably concludes that nine-year-old data is outdated and should be updated to ensure that any existing disparity is not worsened.<sup>79</sup> Ms. Johnson further claims that I&E and the other parties are attempting to impose another condition that a class cost of service study must be conducted before a utility can obtain a waiver of the DSIC cap even though there is not statutory requirement.<sup>80</sup> I&E recognizes that there is no statutory requirement that a utility must conduct a class cost of service study prior to obtaining a DSIC cap waiver, but again notes that Mr. Kubas merely stated that it is reasonable to think that the class costs of service have changed in the nine years since the Company's last rate case.<sup>81</sup>

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<sup>75</sup> I&E Statement No. 1-SR, pp. 11-12.

<sup>76</sup> *Id.* at p. 12.

<sup>77</sup> PPL Electric Statement No. 2-R, pp. 11-12.

<sup>78</sup> *See Zucker v. Pennsylvania Public Utility Commission*, 401 A.2d 1377 (Pa. 1979).

<sup>79</sup> I&E Statement No. 1-SR, p. 13.

<sup>80</sup> PPL Electric Statement No. 2-R, p. 12.

<sup>81</sup> I&E Statement No. 1-SR, p. 13.

Finally, Ms. Johnson references the Commission's DSIC Final Implementation Order in support of her claim that a DSIC filing is less burdensome than a rate case and the House Legislative Journal regarding the debate on Act 11 presumably to indicate that the Legislature felt infrastructure recovery was more important than any other cost concerns when the DSIC was established.<sup>82</sup> Mr. Kubas agrees that a DSIC filing is generally less burdensome than a rate case, but finds that a rate case would be in the public interest given the length of time since PPL Electric's last rate filing.<sup>83</sup> Mr. Kubas also notes that the cited journal comment provides no support for the Company's request given that it predates current storm conditions and was made prior to the implementation of a storm recovery surcharge at PPL Electric.<sup>84</sup>

I&E would again reiterate that PPL Electric should file a base rate case instead of seeking to increase its DSIC cap. As noted by Mr. Kubas, while a DSIC surcharge would be simpler for PPL Electric to recover new plant additions, a base rate case would evaluate all ratemaking components and establish just and reasonable rates by class.<sup>85</sup> Since it has been over nine years since PPL Electric's last base rate case, it is likely that customers' rates will increase if the Company files for a revenue increase. However, a rate increase following a comprehensive review from the interested parties and the Commission including an assessment of customer impact by class is preferable to the more limited scrutiny found in the instant proceeding.

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<sup>82</sup> PPL Electric Statement No. 2-R, pp. 12-13.

<sup>83</sup> I&E Statement No. 1-SR, p. 14.

<sup>84</sup> *Id.* at p. 12.

<sup>85</sup> *Id.* at p. 21.

As a regulated public utility, PPL Electric has an obligation to provide safe and reliable service to its customers. Prudent investments in a utility's distribution system are certainly part of that mandate, and I&E does not want to discourage these investments from being made. However, I&E disagrees that a waiver of PPL Electric's 5% DSIC cap is needed or warranted to make these investments. The record does not indicate that a waiver of the DSIC cap is necessary in order to ensure and maintain safe and reliable service, and indeed, the Company has already committed to make the investments identified in its Modified Third LTIP regardless of whether the DSIC cap is waived. If PPL Electric truly believes it needs additional funding to address these concerns, it should instead file a base rate case. The DSIC is not meant to be a substitute for base rate filings and PPL Electric should not be allowed to circumvent the base rate process simply because it would prefer to obtain funding through the DSIC. I&E has and will continue to support the waiver of a utility's DSIC cap when it is appropriate and necessary to address safety and reliability concerns. I&E finds that PPL Electric has failed to meet that burden in this case.

**B. If PPL Electric met the legal standard, what percentage over the 5% cap is appropriate.**

If ALJ Ashton and the Commission find that PPL Electric has met the legal standard to obtain a waiver of its 5% DSIC cap, I&E recommends that the Commission approve a temporary DSIC cap maximum of 7.5% instead of the Company's requested 9%. Act 11 gives the Commission discretion to grant a waiver of the 5% DSIC cap, but it does not provide a formula for calculating an increase above the 5% cap. As previously discussed, the Commission has never approved a DSIC cap waiver beyond 7.5% for an investor-owned

utility.<sup>86</sup> PGW, Penn Power, and UGI-CPG were all permitted to increase their DSIC caps to 7.5% and those utilities faced much different safety and reliability concerns compared to PPL Electric, particularly PGW.<sup>87</sup> I&E does not find that it would be in the public interest to permit PPL Electric to raise its DSIC cap to 9%, nearly double the statutory limit, when the record does not support such a significant increase, especially when considering that the Company has the ability to address its revenue concerns through the filing of a base rate case.

Additionally, I&E witness Kubas expressed concern that PPL Electric's Petition did not specify whether the proposed 9% cap was temporary or permanent.<sup>88</sup> As noted by OCA witness Mierzwa, in every case where the Commission has granted a DSIC cap waiver to an investor-owned utility, it has made the waiver temporary.<sup>89</sup> Company witness Johnson stated that PPL Electric would be amenable to a specified period of either the duration of the Company's Third LTIP (applicable through December 31, 2027) or the effective date of new distribution rates resulting from a distribution base rate case, whichever were to occur first.<sup>90</sup> If the Commission approves PPL Electric's request, I&E recommends that the waiver should be temporary under the parameters described by Ms. Johnson.<sup>91</sup>

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<sup>86</sup> OCA Statement No. 1, pp. 11-12.

<sup>87</sup> *See 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); *See also 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); *See also Petition of UGI Central Penn Gas, Inc. for a Waiver of the Distribution System Improvement Charge (DSIC) Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues*, Docket No. P-2016-2537609 (Order entered May 10, 2017).

<sup>88</sup> I&E Statement No. 1, pp. 8-9.

<sup>89</sup> OCA Statement No. 1, p. 12.

<sup>90</sup> PPL Electric Statement No. 2-R, p. 4.

<sup>91</sup> I&E Statement No. 1-SR, p. 7.

## VI. CONCLUSION AND REQUEST FOR RELIEF

PPL Electric has failed to meet its burden of proof with respect to its request for a waiver of its 5% DSIC cap. For the reasons stated herein, the Bureau of Investigation & Enforcement respectfully requests that Administrative Law Judge Arlene Ashton and the Commission deny PPL Electric's Petition.

Alternatively, if ALJ Ashton recommends and the Commission grants PPL Electric's Petition, the Bureau of Investigation and Enforcement respectfully requests that the Commission order (1) that PPL Electric's DSIC cap be raised to a maximum of 7.5% consistent with previous DSIC cap waivers; and (2) that the length of time the DSIC waiver would apply be either the duration of the PPL Electric's Third LTIP (applicable through December 31, 2027) or the effective date of new distribution rates resulting from a distribution base rate case, whichever were to occur first.

Respectfully submitted,



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Dated: October 1, 2024

**List of the Bureau of Investigation and Enforcement's  
Sponsored Testimony and Exhibits**

1. I&E Statement No. 1 – Direct Testimony of Joseph Kubas
2. I&E Statement No. 1-SR – Surrebuttal Testimony of Joseph Kubas

**Proposed Findings of Fact**

1. PPL Electric's DSIC was approved by the Commission on May 23, 2013 and its cap was set at the statutory standard of 5% of billed distribution revenues. OCA St. No. 1, p. 3.
2. PPL Electric's Third LTIP was approved by the Commission on December 22, 2022 for the period of 2023-2027. OCA St. No. 1, p. 4.
3. In its Review Order approving PPL Electric's Third LTIP, the Commission determined that the Company's reliability performance has improved and that the changes to the LTIP were necessary to continue to maintain and improve reliability. I&E St. No. 1, p. 8.
4. PPL Electric filed a Petition to Modify its Third LTIP on January 17, 2024, which was subsequently approved by the Commission on July 11, 2024. OCA St. No. 1, p. 4.
5. PPL Electric stated that it will comply with its Modified Third LTIP regardless of whether the DSIC cap is waived. OCA Exhibit JDM-2; OCA Exhibit JDM-1SR.
6. PPL Electric's most recent base rate case was filed over nine years ago on March 31, 2015 and its DSIC was reset when its new rates became effective on January 1, 2016. I&E St. No. 1, p. 16.
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. *Id.*
8. The Commission has only approved one DSIC cap waiver request by an electric utility and it has never approved a DSIC cap waiver beyond 7.5% for an investor-owned utility. OCA St. No. 1, pp. 11-12.
9. In every case where the Commission has granted a DSIC cap waiver to an investor-owned utility, it has made the waiver temporary. *Id.* at p. 12.

**Proposed Conclusions of Law**

1. As the petitioner, PPL Electric has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a).
2. To meet its burden of proof in this proceeding, PPL Electric must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party.” *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
3. The Commission may, upon petition, grant a waiver of the statutory DSIC cap of 5% for a jurisdictional electric distribution company “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. § 1358(a)(1).
4. PPL Electric has failed to demonstrate that a waiver of its 5% DSIC cap is necessary to ensure and maintain safe and reliable service, and therefore, no waiver of the DSIC cap can be granted. 66 Pa. C.S. § 1358(a)(1).
5. PPL Electric’s DSIC rate must be “just and reasonable.” 66 Pa. C.S. § 1301(a).
6. PPL Electric has failed to demonstrate that its proposal to raise its DSIC rate of 5% of billed distribution revenues to 9% is just and reasonable, and therefore, its request should be denied.

**Proposed Ordering Paragraphs**

Therefore, it is Ordered that:

1. PPL Electric Utilities Corporation's Petition requesting that the Commission waive its DSIC cap of 5% of billed distribution revenues and increase the maximum allowable DSIC from 5% to 9% for bills rendered on or after January 1, 2025 is denied.

Alternatively,

Therefore, it is Ordered that:

1. PPL Electric Utilities Corporation is approved to increase its maximum allowable DSIC to 7.5% of billed distribution revenues until December 31, 2027, or the effective date of new distribution rates resulting from a distribution base rate case, whichever were to occur first.

**List of Acronyms**

Distribution System Improvement Charge – DSIC  
Bureau of Investigation and Enforcement – I&E  
Office of Consumer Advocate – OCA  
Office of Small Business Advocate – OSBA  
Administrative Law Judge – ALJ  
PP&L Industrial Customer Alliance – PPLICA  
Long-Term Infrastructure Improvement Plan – LTIIP  
Customer Average Interruption Duration Index – CAIDI  
System Average Interruption Duration Index – SAIDI  
Newtown Artesian Water Company – NAWC  
Fully Projected Future Test Year – FPFTY  
Philadelphia Gas Works – PGW  
UGI Central Penn Gas, Inc. – UGI-CPG  
Kilowatt-hour – kWh  
General Service-1 – GS-1  
General Service-3 – GS-3  
Large General Service-4 – LP-4  
Cost of Service Study – COSS

**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 **Main Brief** dated October 1, 2024,  
in the manner and upon the persons listed below.

**Served via Electronic Mail Only**

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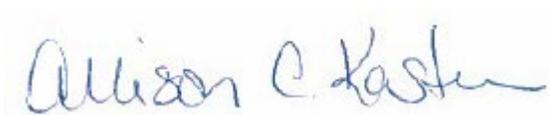
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