



COMMONWEALTH OF PENNSYLVANIA

October 1, 2024

E-FILED

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:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-referenced proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Sharon E. Webb

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

cc: Mark D. Ewen
Parties of Record

**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 :**

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Sharon E. Webb
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**For: NazAarah Sabree
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Dated: October 1, 2024

I. Introduction

On April 26, 2024, PPL Electric Utilities Corporation (“PPL” or the “Company”) filed a Petition for a Waiver of the Distribution System Improvement Charge (“DSIC”) Cap of 5% of Billed Distribution Revenues (“*Petition*”) with the Commission. In this proceeding, PPL proposed that it be permitted to increase its DSIC Cap to 9%

On May 16, 2024, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention to the *Petition*.

On June 3, 2024, a Prehearing Conference was held before Administrative Law Judge (“ALJ”) Arlene Ashton. On June 18, 2024, ALJ Jones issued Prehearing Order # 2 setting forth the procedural schedule in this case.

On July 18, 2024, the OSBA served the Direct Testimony of Mark D. Ewen. On August 27, 2024, the OSBA served the Surrebuttal Testimony of Mr. Ewen.

On September 4, 2024, an Evidentiary Hearing was held before ALJ Ashton.

The OSBA submits this Main Brief in accordance with the procedural schedule set forth in the ALJ’s Prehearing Order # 2.

II. Summary of Argument

Act 11 of 2012 provided a significant consumer protection by establishing a five percent cap on the DSIC. While Act 11 allows the Commission to grant a waiver to that cap, the plain language of the legislation requires the Company to demonstrate that, without the waiver, it has no other options for providing reasonable service. The Company admits it does not meet this standard. Furthermore, a careful reading of the statute indicates that the criteria for granting a DSIC and granting a waiver are not identical, nor would such an interpretation be logical or consistent with the legislative history. If the Commission determines that it has an obligation to

develop its own standards for waiving the DSIC cap, no metric proposed by any party, such as frequency of base rates cases, incremental cost to consumers, or the relative riskiness of PPL's distribution system, meet the standard.

III. Argument

A. Act 11 of 2012

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 ("Act 11"), which amended Title 66 of the Pennsylvania Consolidated Statutes.

Section 1350 of the Public Utility Code states:

This subchapter shall provide an **additional mechanism** for a distribution system to recover costs related to the repair, improvement and replacement of eligible property.

66 Pa. C.S. § 1350 (emphasis added). Section 1351 of the Public Utility Codes defines

"Distribution system" as:

A system owned or operated by a utility. The term includes a natural gas distribution company, a city natural gas distribution operation, an electric distribution company, a water utility and a collection system for a wastewater utility.

66 Pa. C.S. § 1351. Section 1351 of the Public Utility Code also defines "Distribution system improvement charge" as:

A charge imposed by a utility to recover the reasonable and prudent costs incurred to repair, improve or replace eligible property that is part of the utility's distribution system.

Id. Section 1353(a) of the Public Utility Code states:

Except as provided under this subchapter, after January 1, 2013, a utility may petition the commission for, or the commission, 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.**

66 Pa. C.S. § 1353(a) (emphasis added). Section 1358(a)(1) of the Public Utility Code

(“Consumer protections; Limitation”), the statutory language at issue in this proceeding, states:

Except as provided under paragraph (2), the 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. The commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility **in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.**

66 Pa. C.S. § 1358 (emphasis added).

Act 11, however, did not modify the duties placed upon an electric distribution company (“EDC”) such as PPL by Section 1501 of the Public Utility Code:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay.

66 Pa. C.S. § 1501 (emphasis added).

B. The *Petition’s* Request for a Waiver of the DSIC Cap

PPL requested that the Company be granted a waiver of the five percent DSIC cap:

Pursuant to Section 1358(a) of the Public Utility Code, PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) files this Petition requesting that the Pennsylvania Public Utility Commission (“Commission”) waive the Company’s Distribution System Improvement Charge (“DSIC”) cap of 5% of billed revenues and increase the maximum allowable DSIC to 9% for bills rendered on or after January 1, 2025, because a higher DSIC cap is necessary **to ensure and maintain adequate, efficient, safe, reliable, and reasonable service for the benefit of PPL Electric’s customers and** as required by Section 1501, 66 Pa. C.S. § 1501.

Petition at 1, (emphasis added).

PPL attempted to justify its request for the waiver in the first full unnumbered Paragraph on Page 5.:

The Company found that the Company's DSIC would exceed 5% in every quarter for the remainder of the 2023-2027 LTIP, potentially reaching as high as 11.84% under the current LTIP and 14.54% under the modified LTIP...For these reasons...the Commission should approve this Petition **because the proposed increase in the DSIC cap from 5% to 9% of billed revenues is reasonable, in the public interest, and will ensure that the Company can provide and maintain adequate, efficient, safe, reliable and reasonable service.**

Petition, at Pages 5-6 (emphasis added). As noted herein above PPL's obligation to provide adequate, efficient, safe and reliable service is required by Section 1501 of the Public Utility Code.

Lastly, PPL attempts to justify the waiver request by noting to its January 17, 2024, Application for Major Modifications to its third LTIP. (Docket No. P-2022-3034972). However, as noted by OSBA witness Ewen, in approving PPL's Modified LTIP, the Commission expressed concern with the Company's reliability metrics, customer interruptions, and vegetation-caused outages, the latter related to the Company's decreasing O&M and vegetation management expenses since 2013. The Commission provided the following:

The issue of PPL's apparent decreasing O&M expenditures, including vegetation management expenditures, are beyond the scope of this Petition and Order, but we highlight these issues here for such consideration as may be warranted by parties to PPL's next base rate case.¹

¹ Opinion and Order, Pennsylvania Public Utility Commission, Docket No. P-2022-3034972, Order at 21. (Order entered July 11, 2024)

PPL readily admits that an EDC such as itself has a choice of two “mechanisms” through which it can recover the “prudent costs incurred to repair, improve or replace eligible property” in that its distribution system: (1) a base rate proceeding, which the Company last filed in 2015 (Docket No. R-2015-2469275); or (2) the use of a DSIC up to the explicit limitations established by the statute.

It bears repeating that PPL, has, in fact, a DSIC currently in place that charges the Company’s customers five percent of billed distribution revenues. *Petition*, at 1.

C. The Standard to Grant a Waiver of the DSIC Cap

PPL, as set forth above, has requested a waiver of the five percent DSIC cap and to increase the cap to 9% of billed distribution revenues. *Petition*, at 1. The first issue to address is the standard for the granting of that waiver. As set forth above, the Section 1358(a)(1) specifies that “[t]he commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” The OSBA respectfully submits that the plain language of this provision implies that the Company must demonstrate that the waiver is necessary in order for the utility to provide reasonable service, and therefore the utility has no other options for providing the necessary service. As discussed further below, this interpretation of this provision of the statute is also consistent with the legislative history. Moreover, the Company readily admits that it will meet its service obligations regardless of whether a waiver is granted, and therefore a waiver is not necessary. OSBA Statement No. 1, at 3.

Title 1, Section V (“Statutory Construction”), of the Pennsylvania Consolidated Statutes provides the rules when addressing issues of statutory interpretation and construction. Section 1921 (“Legislative intent controls”) states:

The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.

1 Pa. C.S. § 1921(a).

Section 1922 (“Presumptions in ascertaining legislative intent”) provides guidance on how to ascertain legislative intent:

In ascertaining the intention of the General Assembly in the enactment of a statute the following presumptions, among others, may be used:

(1) That the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.

(2) That the General Assembly intends the entire statute to be effective and certain.

(3) That the General Assembly does not intend to violate the Constitution of the United States or of this Commonwealth.

(4) That when a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language.

(5) That the General Assembly intends to favor the public interest as against any private interest.

1 Pa. C.S. § 1922.

Section 1924 (“Construction of titles, preambles, provisos, exceptions and headings”) provides guidance on the use of titles for a particular statute:

The title and preamble of a statute may be considered in the construction thereof. Provisos shall be construed to limit rather

than to extend the operation of the clauses to which they refer. Exceptions expressed in a statute shall be construed to exclude all others. The headings prefixed to titles, parts, articles, chapters, sections and other divisions of a statute shall not be considered to control but may be used to aid in the construction thereof.

1 Pa. C.S. § 1924.

Section 1939 (“Use of comments and reports”) provides guidance for the use of the legislative record when attempting to determine intent:

The comments or report of the commission, committee, association or other entity which drafted a statute may be consulted in the construction or application of the original provisions of the statute if such comments or report were published or otherwise generally available prior to the consideration of the statute by the General Assembly, but the text of the statute shall control in the event of conflict between its text and such comments or report.

1 Pa. C.S. § 1939

The OSBA respectfully submits that combining the guidance for statutory interpretation, as set forth above, results in a high standard for the granting of a waiver of the DSIC cap. First, Section 1922(5) states that the public should be favored over a utility when interpreting Section 1358. Second, Section 1924 states that the title of Section 1358 “Customer protections” and Section 1358(a) “Limitation” can assist in the interpretation in that statute. Third, in accordance with Section 1939, insight into the legislative intent behind the passage of Act 11, and specifically the consumer protections of Section 1358, can be found in the legislative record.

Senator Lisa Boscola supported the passage of the-House Bill No. 1294 (which ultimately became Act 11) in her testimony before the Senate:

Mr. President, we have seen two deadly utility line explosions in Pennsylvania in the past 13 months, so we need to deal with our crumbling utility infrastructure, and we needed to do it yesterday. Through the amendments made to this House bill by Senator Tomlinson and me, we are giving utilities the means to cut through bureaucratic regulatory lag time to get this work underway and

underway quickly. Replacing aging pipes and power lines will improve efficiency, safety, and reliability for our ratepayers and as an added bonus, the public works initiative will spur economic development and help get people back to work, truly a win-win.

It is important to note that utilities already recover the cost of infrastructure upgrades through base rates. In other words, we are already paying for these costs. This bill merely enables our utilities to save money, which in turn saves our ratepayers money by avoiding lengthy and expensive rate cases. Currently, utility infrastructure rebuilding efforts are being stalled by prohibitive regulatory lag time, so it is imperative that we do all we can to remove these unnecessary and costly delays.

Mr. President, along with streamlining the process for utilities, **I am confident that this bipartisan proposal strongly imposes the consumer protections that we fight for continuously** in the Committee on Consumer Protection and Professional Licensure. Senator Tomlinson and I sometimes play good cop/bad cop and we do a really good job at that. I thank him so much for allowing me to express some of the concerns that came over from the House that I did not think was best for the bill, but I think we made it a pretty good bill.

One of the key components of the bill is the consumer protections part that puts a 5% cap on the DSIC. Now, not only does this cap protect ratepayers from exorbitant utility bills but it insures that the DSIC provided for in this legislation does not replace rate cases in Pennsylvania. It was never intended to do that.

Remarks of Senator Lisa Boscola, Legislative Journal – Senate, January 25, 2012, at 72
(emphasis added).

Senator Mary Jo White stated:

The DSIC is a wonderful concept. It enables us to put a **small surcharge** on an electric bill that is used to go out to the bond market, particularly in these times of relatively cheap money, and come up with a lot of extra cash to put into the infrastructure right now, not wait for another rate case. It is a wonderful idea, **if consumer protections are in there, and I believe that they are.**

Remarks of Senator Mary Jo White, Legislative Journal – Senate, January 25, 2012, at 73
(emphasis added).

In the House of Representatives, Representative Robert Godshall spoke of the DSIC cap consumer protections, as follows:

The bill also sets a cap on the level of eligible project costs that may be recovered through a DSIC. For such fixed utilities, DSIC **recovery is capped at 5 percent** of the total amount billed to customers through base rates. For water utilities the recovery is capped at 7 ½ percent.

Remarks of Representative Robert Godshall, Legislative Journal – House, February 7, 2012, at 155 (emphasis added).

Representative Phyllis Mundy stated:

The Senate placed a cap of 5 percent on that amount that utilities can automatically raise their rates and also required them to have filed a base-rate case within the previous 5 years.

Remarks of Representative Phyllis Mundy, Legislative Journal - House, February 7, 2012, at 156.

Representative Saylor also spoke in favor of the bill:

While affording utilities the tools that they need to make their updates to their systems, this is creating, as I said earlier, good family-sustaining jobs, and this bill **ensures that consumers are protected as we move forward. They include a 5-percent cap** that would be imposed upon the amount collected from consumers.

Remarks of Representative Saylor, Legislative Journal – House, February 7, 2012, at 157 (emphasis added).

Thus, the legislative record demonstrates that these members of the General Assembly were well aware and supportive of the consumer protection provided by the 5% cap on DSIC revenues, and that this explicit provision was an integral component of the legislation.

Significantly, Senator Boscola cited the five percent cap as protecting consumers from

“exorbitant utility bills.” Moreover, little, if any, of the discussion surrounding this legislation involved the need for or implications of waiving the explicit five percent cap.

Consequently, using the guidance provided by Title 1, Chapter 19, as set forth above, the OSBA concludes that the legislature set a high bar for a utility that wants a waiver to the five percent DSIC cap. The interpretation of Section 1358 recommended by the OSBA is consistent both with the specific language of the statute and with the legislative intent. The OSBA respectfully submits that a waiver can only be granted “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service” when a utility cannot meet that standard without the waiving of the five percent DSIC cap.

The OSBA respectfully submits that the ALJ and the Commission must exercise extreme care when considering waiving the five percent DSIC cap for an investor-owned utility. What is a 9% request today can easily be a 25% request tomorrow; particularly if the Company’s very weak proposed standards for granting a waiver are adopted.

While the Commission has addressed similar petitions previously, those cited by PPL in support of its petition can, and must be distinguished. The Commission’s grant of a waiver in the case of Philadelphia Gas Works (“PGW”)(at Docket No. P-2015-2501500), and UGI CPG (Docket No. P-2016-2537594) was based on a combination of factors including poor utility financial condition (PGW) and gas safety (PGW and UGI-CPG). Specifically, in ruling on PGW’s Petition, the Commission noted the following:

The record reflects that 66% of PGW’s 3,000 miles of gas main infrastructure consists of at-risk cast iron and unprotected steel mains. This percentage is among the highest of any natural gas distribution company in Pennsylvania.

PGW Order at 41. (Order entered January 28, 2016)

Similarly, in the case of UGI-CPG’s waiver request, the Commission considered the testimony of I&E and UGI-CPG’s gas safety experts. Order at 26 (Order entered September 21, 2017).

The Penn Power’s DSIC waiver petition was resolved by a settlement.² The Commission “vigorously, and without equivocation, reject[s] considering a settlement as precedent, as to any subsequent issue, in any proceeding.”³ To that end, any reliance on Penn Power in this case must be rejected.

² 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%, Order at Docket No. P-2019-3012628. (Order entered March 12, 2020)

³ *HIKO Energy, LLC v Pa. PUC*, 209 A.3d 246 (quoting *The Bell Tel Co. of PA.*, 1988 Pa. PUC LEXIS 572 at *19(*Bell*)(emphasis in original)(*HIKO*))

IV. Conclusion

Wherefore, the OSBA respectfully requests that the ALJ and the Commission deny PPL Electric's Petition waive the five percent DSIC cap in its entirety.

Respectfully submitted,

/s/ Sharon E. Webb

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For: NazAarah Sabree
Small Business Advocate

Dated: October 1, 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 true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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