

COMMONWEALTH OF PENNSYLVANIA



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October 1, 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:

Enclosed for e-filing please find enclosed the Main Brief of the Office of Consumer Advocate in the captioned proceeding.

Copies will be served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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cc: The Honorable Arlene Ashton (*Via Email Only*)  
Certificate of Service (as indicated)

CERTIFICATE OF SERVICE

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

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 Main Brief, 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 1st day of October 2024.

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Dated: October 1, 2024

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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MAIN BRIEF  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION

### A. Description of the Office of Consumer Advocate

The Office of Consumer Advocate (OCA) is the statutory advocate with the authority and duty to represent the interest of consumers as a party before the Pennsylvania Public Utility Commission (Commission) in public utility rate requests. 71 P.S. § 309-4. The OCA seeks to ensure that any rate considered during this proceeding is just and reasonable, as well as consistent with Pennsylvania statutes and case law, the Commission's regulations, and Commission orders.

### B. Procedural History

On April 26, 2024, PPL Electric Utilities Corporation (PPL Electric or Company) filed a Petition for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Revenues (Petition) proposing to increase its existing Distribution System Improvement Charge (DSIC) cap from 5% to 9% for bills rendered on or after January 1, 2025. PPL Electric has a service territory of about 10,000 square miles and serves approximately 1.46 million customers. OCA Hearing Exh. 1 (Commission's 2023 Pennsylvania Electric Reliability Report) (Reliability Report) at 68.

PPL Electric's Long-Term Infrastructure Improvement Plan (LTIIP) for the period of 2018-2022 was approved on December 21, 2017. *Petition of PPL Electric Utilities Corp. for Approval of its Second Long-Term Infrastructure Improvement Plan*, P-2017-2622393, (Dec. 21, 2017). PPL Electric filed a Petition for Approval of Major Modifications to its third LTIIP on January 17, 2024 (Modified LTIIP), which the Commission approved, in part, and denied, in part by an order entered July 11, 2024. *Petition of PPL Electric Utilities Corporation for Approval of Major Modifications to its Existing Long-Term Infrastructure Improvement Plan*, Docket No. P-2022-3034972, Opinion & Order at 23 (July 11, 2024). (*Modified LTIIP III Order*).

On May 16, 2024, the OCA and the Bureau of Investigation and Enforcement (I&E) each filed their respective Answers in opposition to the Petition. Additionally on May 16, 2024, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention. The PPL Industrial Intervenors (PPLICA) filed a Petition to Intervene on July 11, 2024. Six consumer Formal Complaints were filed by Paula Mercuri, John Thiesen, Michael Sperazzi, Angela Pesola, Sharon M. Frankfield, and John Gadomski.

Administrative Law Judge (ALJ) Ashton held a Prehearing Conference on June 3, 2024.

The OCA submitted the Direct Testimony of OCA witness Jerome D. Mierzwa on July 18, 2024 and the Surrebuttal Testimony of Mr. Mierzwa on August 27, 2024. On September 3, 2024, the OCA submitted the Errata to Mr. Mierzwa's Surrebuttal Testimony.

The ALJ held an evidentiary hearing on Wednesday, September 4, 2024, and the OCA's testimony and exhibits were admitted into the record. Two Formal Complainants, Ms. Gadomski and Mr. Thiesen, provided sworn testimony at the hearing regarding their concerns with the proposed increase to the DSIC. In addition, Ms. Gadomski entered into the record Mr. Gadomski's Formal Complaint as Gadomski Hearing Exhibit 1. The hearing on Thursday, September 5, 2024, was subsequently cancelled. In accordance with the schedule established by the ALJ, the OCA submits this Main Brief.

## **II. LEGAL STANDARDS**

### **A. Burden of Proof**

In seeking a Commission order to increase rates by more than \$45 million per year, PPL bears the burden of proof to establish the justness and reasonableness of every element of the proposed increase to its DSIC cap. 66 Pa. C.S. §§ 315(a), 332(a). The evidence necessary to meet that burden must be substantial, legally credible, and cannot be mere "suspicion" or "scintilla" of

evidence. *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980); *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990) (*Lansberry*).

The party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983) (*Burleson*). Even where a party has established a prima facie case, the party with the burden must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Id.* Furthermore, it is well-established that the “degree of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence.” *Lansberry* at 602.

The “term ‘burden of proof’ is comprised of two distinct burdens, the burden of production and the burden of persuasion.” *Hurley v. Hurley*, 754 A.2d 1283, 1285 (Pa. Super. 2000) (*Hurley*). The burden of production dictates which party has the duty to introduce enough evidence to support a cause of action. *Id.* at 1286. The burden of persuasion determines which party has the duty to convince the finder-of-fact that a fact has been established. *Id.* “The burden of persuasion never leaves the party on whom it is originally cast.” *Id.*; see also *Pa. PUC v. Equitable Gas Co.*, 57 Pa. PUC 423, 471 (1983).

The burden of proof does not shift to parties challenging the rate increase, but rather must be met by the utility. *Pa. PUC v. Pa.-American Water Co.*, 2004 Pa. PUC LEXIS 29 at \*16-18 (Order entered Jan. 29, 2004) (citing *Berner v. Pa. PUC*, 116 A.2d 738, 744 (Pa. 1955)). The Commission recognizes in its rate determinations that the burden of proof will not shift to a complainant or intervener that is challenging the requested rate increase. *Pa. PUC v. Equitable Gas Co.*, 57 Pa. PUC 423, 471 (1983); see also *University of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa.

Cmwlth. 1984); *Pa. PUC v. PPL Elec. Util. Corp.*, Docket No. R-00049255 (Order entered Dec. 22, 2004).

B. Just and Reasonable Rates and Due Consideration of Consumer Interests

As a matter of law, a public utility's rates must be just and reasonable and in conformity with regulations or orders of the Commission. 66 Pa. C.S. § 1301(a). The Commission "has broad discretion in determining whether rates are reasonable" and "is vested with discretion to decide what factors it will consider in setting or evaluating a utility's rates." *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996) (*Popowsky 1996*) (emphasis added). Section 1358(a) of the Code, 66 Pa. C.S. § 1358(a), must be interpreted consistent with the requirement that rates be "just and reasonable." 1 Pa. C.S. § 1932. *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) (*Penn Power Order*) (adopting Recommended Decision<sup>1</sup> (R.D.)) (R.D. at 25).

The Commission's discretion to determine if a requested rate is just and reasonable includes the "power to make and apply policy" concerning the appropriate balance between rates charged to consumers and returns allowed to utility investors. *Popowsky v. Pa. PUC*, 665 A.2d 808, 812 (Pa. 1995). A utility's cost of providing service guides the ratemaking process. *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019-21 (Pa. Cmwlth. 2006) (*Lloyd*). Additional important ratemaking concerns include quality of service and rate affordability. *Pa. PUC v. Columbia Gas of Pa., Inc.*, Docket No. R-2020-3018835 (Order Feb. 19, 2021) (*Columbia 2021*), at 46-47 (citing 66 Pa. C.S. §§ 523,

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<sup>1</sup> R.D. available at <https://www.puc.pa.gov/pcdocs/1654264.pdf> (last visited September 29, 2024).

526(a)) (citing also *Lloyd* at 1020 and *Pa. PUC v. Twin Lakes Util., Inc.*, Docket No. R-2019-3010958 (Order Mar. 26, 2020) at 48, 80).

In addition, given that a utility’s DSIC cap waiver and increase request will substantially affect the interests of consumers, the Commission must “consistent with its other statutory responsibilities, take such action with due consideration to the interests of consumers.” 71 P.S. § 309-5.

C. DSIC and Waiver of the Statutory 5% Cap

Section 1353 permits eligible<sup>2</sup> electric utilities to charge a DSIC on consumer bills, if certain conditions exist,<sup>3</sup> to recover reasonable and prudent costs incurred to repair, improve, or replace certain eligible property that is part of the utility’s distribution system. 66 Pa. C.S. § 1353.

An electric utility’s DSIC is capped at 5% of distribution rates unless the Commission grants a waiver of the cap. 66 Pa. C.S. § 1358(a)(1). The Commission cannot waive the cap unless the utility demonstrates by a preponderance of the evidence that, without waiver, it cannot ensure and maintain adequate, efficient, safe, reliable and reasonable service. 66 Pa. C.S. § 1358(a)(1).

Specifically, Section 1358 states:

(1) 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 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(a)(1) (emphasis added).

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<sup>2</sup> To be eligible to implement the DSIC, a utility must have filed a base rate case within five years prior to the date of filing a petition for implementation of a DSIC and must submit a Long-Term Infrastructure Improvement Plan (LTIIP). 66 Pa. C.S. § 1353(b)(5) 66 Pa. C.S. § 1352(a); 52 Pa. Code §§ 121.4, 6, 7.

<sup>3</sup> The DSIC charge is reset to zero as of the effective date of new base rates and if, in any quarter, data filed with the commission in the utility’s most recent annual or quarterly earnings report show that the utility will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the distribution system improvement charge. 66 Pa. C.S. §§ 1358(b)(1), (3).

Stated differently, a waiver to increase the 5% DSIC cap rate may only be granted if a utility shows that the statutory 5% DSIC rate cap is not sufficient to support planned levels of plant replacement and DSIC-eligible spending corresponding to the utility's LTIP. *Penn Power Order* (R.D. at 25). Thus, the utility must demonstrate by a preponderance of the evidence that: (1) DSIC revenue in excess of the statutory 5% cap is necessary for the utility to ensure and maintain adequate, efficient, safe, reliable and reasonable service; and (2) the amount requested in excess of the statutory 5% cap is appropriate and just and reasonable. *Id.*; 66 Pa. C.S. § 1301.

### **III. STATEMENT OF THE CASE**

Once a utility has been approved to implement a DSIC, the statutory 5% cap is a ceiling that cannot be crossed absent a very specific showing that doing so is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service. PPL Electric requests the Commission waive this important consumer protection so that it can charge customers a DSIC nearly twice that on an indefinite basis but has not met the related criteria showing that it is entitled to a waiver. OCA St. 1 at 12. An increase of the DSIC cap from 5% to 9% will cost consumers approximately \$45 million each year. OCA St. 1SR at 13. To justify its request, the Company claims that it has experienced decreased reliability due in major part to storm outages, and if the DSIC cap waiver were approved, PPL Electric can increase and accelerate infrastructure investments that consistently improve System Average Interruption Frequency Index (SAIFI), System Average Interruption Duration Index (SAIDI), Customer Average Interruption Duration Index (CAIDI), and Customers Experiencing Multiple Interruptions (CEMI) performance, such as targeted vegetation removal of trees outside of the Right of Way (ROW), additional non-wires alternatives similar to Dynamic Line Rating (DLR) technology and Battery Energy Storage Systems (BESS), vehicle-mounted camera systems, drones, ground rovers, and Predictive Failure Technology (PFT), as set forth in the Modified LTIP. Petition at ¶¶ 47, 64.

However, the record shows that the Company: (1) has generally positive reliability metrics; (2) to improve reliability, needs to increase its vegetation management spending, which is not DSIC-eligible (3) has a desire to invest in a PFT program, which is not DSIC-eligible; (4) can file a base rate case for rate relief to provide the opportunity for simultaneous review of all aspects of its revenues, expenses and capital costs for the same time period; and (5) demonstrates a clear history of earning excess or sufficient returns on investment.

More specifically, the record shows that PPL Electric's SAIFI benchmark performance, defined by the Commission as "the level of performance that the EDC should strive to achieve and maintain," trend has been positive, which PPL Electric has sustained and controlled. Reliability Report at 69, 92. PPL Electric is considered an excellent SAIFI benchmark performer, due in part to its increased use of system automation (Smart Grid) devices. *Id* at 69.

Additionally, the record shows that poor vegetation management is a major cause of outages on the Company's distribution system, impacting reliability of service to consumers. Reliability Report at 70-71. PPL Electric decreased its operations and management (O&M) expenses, including vegetation management. *Modified LTIP III Order* at 9; I&E St. 1SR at 29. However, continued and increased efforts in vegetation management by the Company can improve its outage response times and overall system reliability. Reliability Report at 71; Tr. at 120-134. An increase in vegetation management expense would not be recoverable through the DSIC. 66 Pa. C.S. § 1351. Additionally, while the Company plans to invest approximately \$84.4 million in its PFT program to improve system reliability, the Commission determined that the PFT program is also not DSIC-eligible. OCA St. 1 at 12; *Modified LTIP III Order* at 9.

Given the apparent causation between the Company's decreased spending trend in O&M vegetation management expenses and its reliability metrics, the Commission indicated that a base

rate proceeding is the proper setting in which to evaluate the related issues together. OSBA St. 1 at 6. All parties would benefit in reviewing the recovery of projects, plant, related expense, debt costs, and return on equity in totality and by class through a base rate case, as it is a better opportunity for all variables (e.g., revenues, expenses, rate base, etc.) to be analyzed and to ensure costs are correctly assigned to classes and rates are just and reasonable. I&E 1SR at 19.

Finally, the financial data in this case demonstrates PPL Electric's sufficient revenue and funding to ensure and maintain adequate, efficient, safe, reliable and reasonable service without increasing rates by \$45 million annually. With a rate of return of at least 8.12% since 2015, the Company holds the capital necessary to address its proffered reliability metrics challenges. OCA St. 1 at Exh. JDM-5 (PPL Electric's Response to OCA-I-14). Indeed, in 18 quarters, quarterly earnings reports rendered the Company ineligible to charge a DSIC at all, as the reports showed PPL Electric would earn a rate of return in excess of the DSIC earnings cap. OCA St. 1 at 14, Exh. JDM-5 (citing PPL Electric's Response to OCA-I-14, Attachment 1).

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

The issue in this proceeding is ratemaking. That is, how PPL Electric should meet its continued and ongoing obligations to provide adequate, efficient, safe, reliable and reasonable service. PPL Electric asserts that it needs additional DSIC revenue to meet these obligations and chose to petition for a DISC waiver of approximately \$45 million per year (4% above the statutory cap) rather than to file a section 1308(d) rate case. Tellingly, PPL Electric admits that with or without a waiver, it will continue to fulfill the requirements of its modified LTIP, thus, this case is not about whether PPL Electric should continue to improve benchmark reliability metrics performance; PPL Electric committed to do so and is capable of doing so.

The obligation to provide adequate, efficient, safe, reliable and reasonable service, at just and reasonable rates, falls squarely on PPL Electric and the record in this case fails to show that

the statutory 5% DSIC rate cap is insufficient to support planned levels of plant replacement and DSIC-eligible spending corresponding to its modified LTIP. Customers are entitled to safe and reliable service at just and reasonable rates but a waiver of the DSIC statutory cap is not a reasonable or appropriate remedy for PPL Electric, given the Company has not faced base rate case scrutiny – scrutiny a DSIC waiver petition lacks – from the Commission and other parties in nearly 10 years.

The 5% cap is a statutory limitation included in the DSIC mechanism as an important consumer protection, as it prevents utilities from bypassing the full, traditional ratemaking process that ensures that the DSIC serves its intended, statutory function, which is to supplement – rather than supplant – base rate proceedings. 66 Pa. C.S. §§ 1350, 1353, 1357(a)(1)(i), 1358. Section 1358 does not empower the Commission to waive the cap unless, without the waiver, the utility cannot ensure and maintain adequate, efficient, safe, reliable and reasonable service. 66 Pa. C.S. § 1358(a)(1). PPL Electric must affirmatively demonstrate the justness and reasonableness of every element of its proposed DSIC rate and demonstrate that its proposed rate is in the public interest. The OCA will show that PPL Electric has failed to satisfy its statutory burden in the manner set forth below.

PPL Electric has not met its burden of demonstrating that its proposed waiver of the statutory 5% cap and increase to 9% is either necessary or just and reasonable. Never has the Commission approved a waiver of the cap for an investor-owned utility above 7.5% and then, it has only done so on a temporary basis where the record justified the waiver. 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). PPL failed to

make this showing. The OCA submits that a waiver of the statutory 5% cap with an increase to 9% is unjust and unreasonable.

The Company attempts to justify its waiver request claiming that storms are the culprit to its decreased reliability. Petition at ¶ 47. However, this claim ignores that trees and vegetation are a top outage cause that negatively impacts electrical reliability metrics. Reliability Report at 70. While programs related to grid modernization and system resiliency are included in LTIPs, programs related to vegetation management are **not** included, per the definition of “eligible property” in 66 Pa. C.S. § 1351. The method of funding for vegetation management is through non-DSIC revenue that can only be increased through a base rate case. Reliability Report at 71.

The single-issue surcharge authority of the DSIC should be used cautiously, as it imposes additional burdens on ratepayers without the benefit of a full base rate proceeding. Simply put, PPL Electric’s Petition for waiver of Section 1358 and the proposal to increase the DSIC cap to 9% of billed distribution revenues should be denied.

## V. ARGUMENT

### A. Whether PPL Electric Met the Legal Standard to Show a Waiver of the Distribution System Improvement Charge 5% Cap is Necessary to Ensure and Maintain Adequate, Efficient, Safe, Reliable and Reasonable Service Under Section 1358.

#### 1. PPL Failed to Prove that it Cannot Ensure and Maintain Adequate, Efficient, Safe, Reliable and Reasonable Service Without a Waiver of the DSIC Cap.

PPL Electric failed to meet its burden of proving that waiver of the DSIC statutory 5% cap is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service. The 5% revenue cap is a statutory limitation to protect consumers from unbridled spending and prevents utilities from bypassing the full, traditional ratemaking process. This limitation ensures that the DSIC serves its intended, statutory function, which is to supplement – rather than supplant – base rate proceedings in the maintenance of reliable service. *Modified LTIP III Order* at 21; 66

Pa. C.S. §§ 1350, 1353, 1357(a)(1)(i). The intent of the DSIC cap “is to limit public utilities and prevent substantial increases to base rates on a customer’s bill without first engaging in a thorough evaluation in a base rate proceeding.” *Penn Power Order* (R.D. at 22). While the statute allows the Company to request a waiver of the cap, the Commission may only grant such a waiver if doing so is necessary “*in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.*” 66 Pa C.S. § 1358(a)(1) (emphasis added). Without such showing in the record of this case, the Commission should deny PPL Electric’s request.

In this proceeding, the OCA, OSBA and I&E presented evidence showing that a DSIC cap waiver is not necessary, and PPL Electric failed to carry its burden of production and persuasion to show that waiver of the DSIC statutory 5% cap is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

More specifically, the record shows that PPL Electric’s SAIFI benchmark performance, defined by the Commission as “the level of performance that the EDC should strive to achieve and maintain,” trend has been positive, which PPL Electric has sustained and controlled. Reliability Report at 69, 92. PPL Electric is considered an excellent SAIFI benchmark performer, due in part to its increased use of system automation (Smart Grid) devices. *Id* at 69. Additionally, the record in this proceeding shows that with a DSIC cap waiver the Company plans to invest approximately \$84.4 million in its PFT program to improve system reliability. OCA St. 1 at 12. However, the Commission determined that the PFT program is not DSIC-eligible. *Modified LTIP III Order* at 9. Given that investment in a PFT program is ineligible for recovery through the DSIC, PPL’s plans to invest in it does not justify increasing the DSIC cap.

Furthermore, the record in this proceeding shows that in order to improve reliability, the Company most likely needs to increase its vegetation management spending. As discussed further

below in the next subheading, the record shows that poor vegetation management is a major cause of outages on the Company's distribution system, impacting reliability of service to consumers. OCA Hearing Ex. 1 at 70-71. PPL Electric decreased its O&M expenses, including vegetation management. *Modified LTIP III Order* at 9; I&E St. 1SR at 29. However, continued and increased efforts in vegetation management by the Company can improve its outage response times and overall system reliability. Reliability Report at 71; Tr. at 120-134. Clearly, an increase in vegetation management expense would not be recoverable through the DSIC. 66 Pa. C.S. § 1351. Given that increased spending on vegetation management is ineligible for recovery through the DSIC, PPL has not met its burden of proving a need to increase the DSIC cap.

2. PPL Electric's Waiver Request Ignores Fundamental Cost Causation Principles as Increased Vegetation Management Is Likely Needed to Improve System Reliability.

PPL Electric has arduously sought to show its 2022 SAIDI and CAIDI benchmark numbers somehow justify PPL Electric's requested waiver. However, the Reliability Report noted that trees were the top cause of outages and service interruptions, stating as follows:

Trees were the top cause of outages and customer minutes interrupted. Approximately 70% of CMI [Customer Minutes Interrupted] is caused by trees and approximately 14% of CMI is caused by equipment failure. The Commission notes a concern with the sharp increase in tree-related outages for PPL from 2015 to present. The Commission is concerned that possible reductions, or insufficient increases, in vegetation management expenditures may be responsible for this increase in tree-related issues. Management should review the present efforts and strategies to evaluate effectiveness.

Reliability Report at 69. Trees have been the top cause of service outages/interruptions and vegetation-caused outages have nearly doubled since 2013. *Id.* Yet, PPL Electric has decreased its overall O&M expenses and specifically its vegetation management expenses since 2013. *Modified LTIP III Order* at 20-21.

By highlighting the connection between the Company's decreasing O&M and vegetation expenditures and its reliability metrics – factors that would go unaddressed through an increase in the DSIC – the Commission signaled that a base rates proceeding is the proper setting in which to evaluate the related issues together. *See* OSBA St. 1 at 6 (citing the *Modified LTIPP III Order* at 20-21). In fact, the Commission noted that the number one cause of outages and, thus, decreased reliability performance was trees, noting that “annual vegetation-caused outages have approximately doubled since 2013.” *Modified LTIPP III Order* at 21. Further, as noted by the Commission, beginning in December 2013, PPL Electric's SAIFI benchmark performance trend has been positive. Reliability Report at 69. This positive performance trend, below the benchmark performance upper-control-limit-line, has been consistently sustained by PPL Electric, and is considered under control. *Id.* PPL Electric is considered an excellent SAIFI benchmark performer. *Id.* This trend is also indicative of PPL Electric's increasing use of system automation (Smart Grid) devices. *Id.*

Thus, by decreasing spending on vegetation management while experiencing more vegetation-caused outages, PPL Electric ignores the basic principle of cost causation. What is should be focused on and spending time to fix is increased vegetation management, an expense that is can only fund through base as vegetation management expenses are not considered eligible property recoverable through the DSIC surcharge.

The Company attempts to justify its request for outages claiming that storms are the culprit. Petition at ¶ 47. However, this claim ignores and/or glosses over the fact that trees are a top outage cause that negatively affects electrical reliability to PPL Electric customers. Reliability Report at 70. While programs related grid modernization and system resiliency are included in the Modified

LTIP III, programs related to vegetation management are *not* included, per the definition of “eligible property” in section 1351:

Eligible property is property that is part of a distribution system and eligible for repair, improvement and replacement of infrastructure under this subchapter. Included property shall be as follows: for electric distribution companies, eligible property shall include: (i) Poles and towers. (ii) Overhead and underground conductors. (iii) Transformers and substation equipment. (iv) Any fixture or device related to eligible property under subparagraphs (i), (ii), (iii), including insulators, circuit breakers, fuses, reclosers, grounding wires, crossarms and brackets, relays, capacitors, converters and condensers. (v) Unreimbursed costs related to highway relocation projects where an electric distribution company must relocate its facilities. (vi) Other related capitalized costs.

66 Pa. C.S. § 1351.

At the evidentiary hearing, testimonial evidence was presented to support that the Company should focus on its vegetation management to better service and reliability. Consumer Gadomski testified that, in her neighborhood, there is a 7.4 mile stretch that contains 29 dead trees, of which are documented in pictures attached to Ms. Gadomski’s complaint, which was entered into the record. Tr. 120, Gadomski Compl. Exhs. This Consumer alleges that the Company has not been maintaining the lines, cutting down the trees, and that she has personally observed trees laying on the lines, which is unsafe. Tr. 120, 129. The trees “just snap” and are found along the road as well. Tr. 130. Consumers are concerned that, should the Commission grant this petition, they will be unable to afford their utility bill, especially seniors and retirees. Tr. 119. In the words of Consumer Gadomski, speaking as to safe and reliable service, “[i]f [the Company] wants to raise prices, and even if people can’t really afford them, [then] at least do a better job.” Tr. 133.

3. Lengthening the Interval Between Rate Cases by Waiving the DSIC Cap Is Not Consistent with Commission’s Past Policy or the Intent of the Statutory Cap Waiver Protection.

PPL Electric stated its “current ability to optimize the potential of the DSIC is limited by the 5% cap.” Petition at 11. This, of course, is irrelevant. PPL Electric is not entitled to a waiver in order “optimize” the use of the DSIC by shifting revenue that is collected from base rates to non-DSIC eligible expenses; instead, the Commission may only grant a waiver “*in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.*” 66 Pa C.S. § 1358(a)(1) (emphasis added). If the Company has concerns about recovering the costs associated with its Modified LTIP or to “free up funding for additional project that can improve services reliability but are not set forth in the LTIP or Modified LTIP”, PPL Electric 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. *Modified LTIP III Order* at 9, 21; Petition at 3; 66 Pa. C.S. §§ 315(e), 1358(b)(1). Further, the Commission held “that the DSIC is not intended to displace or impact a company’s baseline (meaning pre-DSIC and pre-LTIP) budgets for O&M and capital improvements.” *Modified LTIP III Order* at 21. Stated differently, the Company’s request to recover approximately ***\$45,000,000.00 per year*** without the prudence review of a base rate proceeding should not be permitted.

PPL Electric has not filed a rate case in nearly ten years, as its most recent base rate case was filed in 2015, with new rates effective January 2016. Docket No. R-2015-2469275. The DSIC cap of 5% is the primary consumer safeguard to ensure that utilities cannot evade base rate review for extended periods. 66 Pa. C.S. § 1358(a)(1); *Petition of Pennsylvania-American Water Co. for Approval to Implement a Tariff Supplement to Tariff Water – Pa. P.U.C. No. 4 Revising the DSIC*, P-00062241, 2007 Pa. PUC LEXIS 42 at \*21 (Order entered July 11, 2007) (*PAWC 2007*).

It is instructive, that to be eligible for a DSIC in the first instance, a utility must have filed a base rate case within 5 five years and have an approved LTIP. 66 Pa. C.S. § 1353(b). This protection was meant to ensure that there is a reliable benchmark of revenue, earnings, and expenses from which to attach the DISC. While PPL Electric met these criteria after 2013 with the filing of its first LTIP, PPL Electric's current base rates were set so long ago, they no longer reasonably represent the Company's actual investment, expenses and revenues. OCA St. 1 at 14. Nearly **ten years** have passed since PPL Electric has filed its last base rate case in 2015. I&E St. 1 at 14. After nearly ten years, transparency and accountability are better achieved by the Company filing a base rate case so that all aspects of its operations are reviewed before revenue is increased, as opposed to simply granting a rider rate increase. I&E St. 1SR, at 10. As evidenced by I&E in its testimony, this lapse in time between base cases could result in a class bearing a disproportionate and unreasonable share of DSIC charges among the rate classes. I&E St. 1SR at 11-12. The Commission should not rely on nine-year-old cost data, as it is outdated and should be updated to ensure that each class of service is recovering the cost of providing service to that class under current revenues and costs so that applying a surcharge does not make any disparity worse. I&E St. 1SR at 13.

Additionally, I&E witness Kubas called attention to the Company's August 2024 Investor Meeting presentation, which addresses PPL Electric's Pennsylvania operating segment, a graph was provided showing that the Company has decreased the ratio of O&M costs to revenue steadily from a 29% level in 2015 to a level of 20% in 2023. I&E St. 1SR at 29. At this level of declining O&M share, there would certainly be changes to the cost of service by class that cannot be evaluated with this DSIC cap waiver request. I&E St. 1SR at 29. Also, in the Company's August 2024 Investor's presentation and on the same page, the Company projects reducing pole inspection

hours by up to 12,500 hours per year, which seems contrary to its expressed concerns regarding safety performance. I&E St. 1SR at 29. This contradictory information is the very reason why base rate case scrutiny is required before increasing rates.

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*) The Commission's order is instructive:

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). The same reasoning applies to PPL Electric. There has been insufficient scrutiny of PPL Electric's reductions in expenses or borrowing costs, growth in load or customers, as well as

scrutiny of the Company's riders and other revenue sources. PPL Electric clearly wants to avoid this scrutiny as it has not been in for a rate case since 2015 and has stated in this proceeding that "[c]urrently, PPL Electric does not expect to file a distribution base rate case before 2026 either with or without approval of a DSIC cap increase." OCA St. 1 at Exh. JDM-2 (PPL Electric's Response to OCA-I-9). If PPL Electric does not believe that it needs to file a rate case until 2026 "with or without approval of the DSIC cap increase" then there is simply no reason for the Commission to grant the increase. In contrast, as stated in I&E witness Kubas' direct testimony, "if the Company believes it needs additional revenue for the continued provision of safe and reliable service it should file a base rate case," as traditionally, utilities in Pennsylvania have recovered the cost of infrastructure improvements through base rate cases, in which all of the utilities' investments, expenses, and revenues are examined at the same point in time. I&E St. 1 at 2; I&E St. 1SR at 15-16.

Consistent with Commission precedent and considering PPL has not filed a base rate case since 2015 and does not project filing a base rate case before 2026 either with or without approval of a DSIC cap increase, PPL Electric's request for a cap waiver should be denied. OCA St. 1 at Exh. JDM-2 (PPL Electric's Response to OCA-I-4).

4. Existing Base Rates and the DSIC Statutory Cap of 5% Have Provided PPL a Sufficient Return in the Past; And to the Extent That Is No Longer the Case, PPL Can File a Base Rate Case.

Even where the depreciation and return are not recovered through the DSIC, above the 5% that PPL Electric is already collecting without a waiver, PPL Electric's existing base rates have provided a sufficient return on its total investment (DSIC-eligible and non DSIC-eligible). This is how the system works – a combination of base rates set pursuant to a rate case, along with a DSIC subject to the 5% cap, provide revenue to support efficient, safe, and reliable service which is how PPL and other utilities have added hundreds of millions of dollars in plant additions without filing

a base rate case and without a DSIC. *See e.g., 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); *and, 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*).

The record in this case shows that that PPL Electric has had a 5% DSIC cap in place since July 2013. OCA St. 1 at 7. The Company failed to reach the 5% cap until April 2021. I&E St. 1 at 16. PPL Electric’s current annual distribution revenue is approximately \$1.136 billion and the 5% maximum DSIC rate allows the Company to collect approximately \$56.8 million in DSIC revenue. I&E St. 1 at 16. Despite this annual revenue, PPL Electric stated that its “current ability to optimize the potential of the DSIC is limited by the 5% cap.” PPL Electric’s Petition at ¶ 31. However, in response to discovery, PPL Electric stated that it will move forward with its infrastructure replacement schedule and Modified LTIP III plan “with or without the DSIC cap waiver.” OCA St. 1 at Exh. JDM-1 (PPL Electric’s Response to OCA-I-9).

More specifically, review of PPL Electric’s quarterly DSIC filings since its 2015 approved base rates took effect shows that the Company was not eligible to charge a DSIC for protracted periods because its quarterly earnings reports showed PPL Electric would earn a rate of return in excess of the DSIC earnings cap. OCA St. 1 at Exh. JDM-5 (PPL Electric’s Response to OCA-I-14). In fact, since April 2017, PPL Electric was not eligible to charge a DSIC in 18 quarters. OCA St. 1 at 14, Exh. JDM-5; 66 Pa. C.S. § 1358(b)(3).<sup>4</sup> Moreover, if PPL Electric’s DSIC remains at

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<sup>4</sup> *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”), available at <https://www.puc.pa.gov/pdocs/1759130.pdf>.

the statutory cap of 5%, the Company will still recover its modified LTIP III investments, as OCA witness Mierzwa explained:

Maintaining the existing five percent DSIC cap allows PPL access to a source of revenue to fund its infrastructure investment, and, in PPL Electric'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 nine percent, the Company made no claim or showing that the DSIC cap must be increased to continue to provide safe, reliable, and reasonable service.

OCA St. No. 1 at 14. PPL itself seems to acknowledge that it does not need a waiver, as it stated it will comply with its Modified Third LTIP "with or without the DSIC cap waiver" and there is no indication that the Company will not be able to continue to provide safe, reliable, and reasonable service to customers if the requested DSIC increase is not approved. OCA St. SR1 at Exh. JDM-1SR (PPL Electric's Response to OCA I-9); I&E St. 1 Moreover, the Company's Rate of Return of at least 8.12% since its last rate case in 2015 demonstrates enough capital necessary to address reliability metrics. OCA St. 1 at Exh. JDM-5 (PPL Electric's Response to OCA-I-14).

In sum, PPL Electric failed to meet the legal standard to show a waiver of the 5% statutory cap is necessary for the Company to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

**B. If PPL Electric Met the Legal Standard, What Percentage Over the 5% Cap is Appropriate.**

**1. PPL Has Not Met the Legal Standard for Waiver, and PPL Electric's Requested 9% DSIC Cap Is Not Supported by Substantial Evidence in the Record.**

For the reasons discussed above, PPL Electric has not met its burden of proof to show that a waiver of the statutory DSIC 5% cap is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service. For this reason alone, the Petition should be denied. However, even if PPL has crossed the threshold as an initial matter, it's choice of a 4% increase

in the cap is arbitrary and not supported by substantial evidence in the record. PPL Electric has not met its burden of proving that a 9% cap – nearly twice the statutory cap – is appropriate or would produce a just and reasonable rate.

2. PPL Electric's Request Is Substantially Higher and Differs Markedly from Previous Waivers Granted by the Commission and PPL Has Not Demonstrated That It Is Appropriate.

PPL Electric's request for a 9% cap is substantially higher and differs markedly from previous waivers granted by the Commission, and PPL Electric has not demonstrated that such a departure is appropriate here or supported by the facts. While PPL Electric argues that the DSIC waiver was granted to other utilities, said DSIC cap waiver approvals to other regulated utilities are either not applicable or were approved under different circumstances. I&E St. 1 at 7. The Commission has never approved a DSIC cap waiver to more than 7.5% for an investor-owned utility. 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%). A survey of the small number of instances where the Commission authorized a waiver is instructive.

To that end, the Commission has only utilized the cap waiver to provide relief where utilities were filing base rate cases on a frequent basis and still reaching the 5% DSIC cap. *See Pa. PUC v. Aqua Pennsylvania, Inc.*, R-2008-2079310, 2009 Pa. PUC LEXIS 263 at \*27-28 (July 23, 2009) (*Aqua*); *PAWC 2007* at \*30-32; *Petition of United Water Pa., Inc. for Approval of a Tariff Supplement to Revise its Maximum DSIC To 7.5% of Billed Revenues*, P-2013-2389331, Order at

6 (Dec. 19, 2013) (*United Water*). Specifically, the Commission has 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.” *PAWC 2007* at \*32. 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. *Id.*; *Aqua* at \*27-28; *United Water* at 6.

Furthermore, the other utilities who have been granted a waiver provided evidence that the increase to the DSIC cap was necessary to accelerate infrastructure replacement. *See Aqua* (holding that an increase to the DSIC cap would allow Aqua to accelerate replacement of 1,500 miles of critical pipe); *PAWC 2007* at \*6, 24 (approving an incremental increase to PAWC’s DSIC cap based, *inter alia*, on PAWC’s claim that the increase would support its efforts to accelerate replacement of its older small-diameter mains); *United Water* at 3 (determining that an increase of the DSIC cap “will enable UWPA to accelerate further its main replacement program”). PPL Electric, as noted above, maintains it will comply with its modified LTIP regardless of whether the Commission approves its proposal. OCA St. 1 at Exh. JDM-1 (PPL Electric’s Response to OCA-I-9). For this and the other reasons discussed above, PPL Electric’s position is materially different from prior water utility proceedings where the Commission approved an increase to the DSIC cap.

The only DSIC waiver authorized for an electric distribution company occurred upon the Commission’s approval of a proposed Joint Petition for Settlement of Penn Power Company’s Petition for a waiver of the DSIC statutory cap, after the Commission determined, during a mid-course review, that Penn Power’s LTIP was no longer adequate to maintain and improve the reliability of its distribution infrastructure. *See Periodic Review of Pennsylvania Power*

*Company's Long-Term Infrastructure Improvement Plan*, Docket No. M-2018-30000948 (Final Order Entered Sept. 20, 2018) (LTIIIP Review Order), pp. 13-14. The LTIIIP Review Order shows Penn Power's DSIC reaching 4.66% by the final quarter of 2020, the end of its then-effective LTIIIP. The Commission-approved settlement provided for a temporary DSIC cap of up to 7.5% until the effective date of new base rates or the conclusion of its then-current LTIIIP, after Penn Power requested a waiver to 11.81%. *Penn Power Order* at 2.

Juxtaposed to the waivers granted as summarized herein, PPL Electric did not demonstrate that it is in poor financial condition and/or demonstrably unsafe operating conditions.

3. A 4% Increase to the DSIC Statutory 5% Cap Would Increase Unaffordability for Consumers and, Therefore Would Produce Unjust and Unreasonable Rates.

PPL Electric summarily concluded its "proposal appropriately balances the need for timely cost recovery of investments with the impact on customers' bill" by suggesting that a 9% cap would increase the DSIC for a residential customer using 1,000 kWh per month by \$2.37 and a general services (GS) Rate GS-3 customer using 10,000 kWh and 40 kW would see a \$9.51 per month increase. PPL Electric's Petition at 5; PPL Electric St. 2-R at 21. However, consumers are concerned that, should the Commission grant this petition, they will be unable to afford their utility bill, especially seniors and retirees. Tr. P. 119, 133. Consumer Gadomski testified about the current lack of affordability of her monthly bills,

It's a very bad hardship for seniors. Medicare, everything has gone up. Our insurances, Blue Cross and Blue Shield . . . I know ourselves, we pay between \$14,000 and \$15,000 a year. Your medicine costs how much more. Your house taxes. Ours are at least up to \$4,500. Car insurance has gone up over \$2,800. Gas for your vehicles, at least 20 to 30 percent. Your groceries are outrageous, from at least 28 to 50 percent or more. You have cable. You have phone. You have Internet. You have heating. You have of course, PP&L and it is a hardship. And we end up being in the red at the end of every month. And I don't know where all these utilities and companies expect seniors, who are hit the hardest, to actually – to keep getting this money from. We would not like to have to move out of our homes because of constant people raising prices that really are not really attainable for us.

Tr. at 119.

Residential customers aside, PPL Electric's Petition failed to address the impact on large usage customers. I&E witness Kubas testified on such a projected impact,

There is no mention in the filing of the impact of increasing the maximum DSIC rate to 9% on large usage customers. Based on the settlement in the last base rate case, the LP-4 class revenue of \$38.928 million was collected from 1,145 LP-4 customers, resulting in an average annual LP-4 distribution bill of approximately \$33,998 ( $\$38,928,00 / 1,145$ ). Under the current maximum DSIC rate of 5%, the average LP-4 customer would pay \$1,699.91 ( $\$33,998 \times 0.05$ ) per year. Under the requested maximum DSIC rate of 9%, the average LP-4 customer would pay \$3,059.84 ( $\$33,998 \times 0.09$ ), which is an additional \$1,359.92 per year. . . . Increasing the DSIC to 9% would significantly impact larger usage customers. Depending on a customer's usage, increasing the maximum DSIC rate from 5% to 9% would result in a large increase for larger usage customers in any rate class. Regardless of the rate class, larger usage customers would be required to accept a significant bill impact without the benefit of a cost of service study that could mitigate present rates.

I&E St. 1 at 21-22.

The DSIC surcharge mechanism requires all customers, regardless of rate class, to pay more so PPL Electric can quickly recover plant additions without the ability for all interested parties to evaluate whether other cost decreases and input changes should be reflected and netted against the requested increase and review the costs by rate class, as this lapse in time between rate cases could result in a class bearing a disproportionate and unreasonable share of DSIC charges among the rate classes. I&E St. 1SR at 11-12.

## **VI. CONCLUSION AND REQUEST FOR RELIEF**

The statutory 5% DSIC cap is a consumer protection that prevents DSIC from overriding the traditional ratemaking process of filing for base rate increases under Section 1308 of the Public Utility Code. For the reasons set forth above, the Company has not met its burden to demonstrate the need for the waiver of the 5% statutory cap or that its request to increase it to 9% is appropriate

or just and reasonable. PPL's request to waive the DSIC's statutory 5% cap of billed distribution revenues and increase to 9% of billed distribution revenues should be denied.

Respectfully Submitted,

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

**OCA Appendix A**  
**List of Admitted OCA Testimony and Exhibits**

1. OCA Statement 1, Direct Testimony of Jerome D. Mierzwa with Exhibits JDM-1 through JDM-6, filed on July 18, 2024.
2. OCA Statement 1SR, Surrebuttal Testimony of Jerome D. Mierzwa with Exhibit JDM-1SR, filed on August 27, 2024.
3. OCA's Errata to the Surrebuttal Testimony of Jerome D. Mierzwa, filed on August 29, 2024.
4. OCA Hearing Exhibit 1, Pennsylvania Electric Reliability Report (Reliability Report) of 2023 Authored by the Commission's Bureau of Technical Utility Services.

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**OCA Appendix B  
Proposed Findings of Fact**

1. PPL Electric has a service territory of about 10,000 square miles and serves approximately 1.46 million customers. Reliability Report at 68.
2. The issue in this proceeding is ratemaking. OCA St. 1SR at 2.
3. Traditionally, utilities in Pennsylvania have recovered the cost of infrastructure improvements through base rate cases, in which all the utilities' investments, expenses, and revenues are examined at the same point in time. I&E St. 1 at 2.
4. At issue in this proceeding is whether a waiver of the 5% DSIC cap is appropriate is a condition precedent to determining the appropriate level of the cap. OCA St. 1SR at 8.
5. On April 26, 2024, the Company filed a Petition requesting that the Commission waive the Company's current DSIC cap of 5% of billed distribution revenue and increase the maximum allowable DSIC charge to 9% of billed distribution revenue for an indefinite period. OCA St. 1 at 2. PPL Electric provided no reason why it warrants an increase of nearly twice that permitted by statute and on an indefinite basis. OCA St. 1 at 12.
6. Although the Company may prefer to increase its DSIC cap to 9%, the Company has made no claim or showing that the DSIC cap must be increased to continue to provide safe, reliable, and reasonable service. OCA St. 1 at 14.

7. There is no indication that the Company will not be able to continue to provide safe, reliable, and reasonable service to customers if the requested DSIC increase is not approved. I&E St. 1 at 8.
8. PPL Electric's current base rates were set so long ago, they no longer reasonably represent the Company's actual investment, expenses and revenues. OCA St. 1 at 14.
9. There is no indication that LTIP investments will not be made if the waiver is not granted. I&E St. 1 at 8.
10. PPL Electric last filed for a base rate increase in Docket No. R-2015-2469275 in March 2015 for new base rates effective in January 2016. OCA St. 1 at 9.
11. PPL Electric does not expect to file a distribution base rate case before 2026 either with or without approval of a DSIC cap increase. OCA St. 1 at Exh. JDM-2 (PPL Electric's Response to OCA-I-9).
12. PPL Electric seeks a DSIC waiver to timely recover investments in projects as outlined in its Modified LTIP and to free up funding for additional projects. Petition at 3.
13. PPL Electric operated with a 5% DSIC cap in place since July 2013. OCA St. 1 at 7.
14. PPL Electric failed to reach the 5% cap until April 2021. I&E St. 1 at 16.
15. PPL Electric's current annual distribution revenue is approximately \$1.136 billion and a 5% maximum DSIC rate allows the Company to collect approximately \$56.8 million in DSIC revenue. I&E St. 1 at 16.
16. Despite its annual revenue, PPL Electric stated that its "current ability to optimize the potential of the DSIC is limited by the 5% cap." Petition at ¶ 3.

17. PPL Electric indicated that it will move forward with its infrastructure replacement schedule and Modified LTIIP III plan “with or without the DSIC cap waiver.” OCA St. 1 at Exh. JDM-1 (PPL Electric’s Response to OCA-I-9).
18. Since April 2017, PPL Electric was not eligible to charge a DSIC in 18 quarters because its quarterly earnings reports showed PPL Electric would earn a rate of return in excess of the DSIC earnings cap. OCA St. 1 at Exh. JDM-5 (PPL Electric’s Response to OCA-I-14).
19. PPL’s reported earnings made it ineligible to charge a DSIC for 7 of the 14 quarters that the Company alleges it has exceeded the DSIC cap. OCA St. 1SR at 2, PPL St. 2SR at 8.
20. Beginning in December 2013, PPL Electric’s SAIFI benchmark performance trend has been positive. Reliability Report at 69.
21. This positive performance trend, below the benchmark performance upper-control-limit-line, has been consistently sustained by PPL Electric, and is considered under control. Reliability Report at 69.
22. PPL Electric is considered an excellent SAIFI benchmark performer. Reliability Report at 69.
23. This trend is also indicative of PPL Electric’s increasing use of system automation (Smart Grid) devices. Reliability Report at 69.
24. PPL Electric’s rolling 12-month SAIFI at the end of 2023 was 0.78, which was an improvement from its performance in 2022. Reliability Report at 69.
25. Tree Related and Equipment Failures are the top two outage causes that negatively affect electrical reliability to PPL Electric customers. Reliability Report at 70.

26. The Commission recommended that PPL continue and increase efforts in vegetation management, equipment replacement and upgrades through the LTIP, and a continuing emphasis on improving response times. Reliability Report at 71.
27. Consumer Gadomski testified that in her neighborhood, there is a 7.4 mile stretch that contains 29 dead trees, of which are documented in pictures attached to Ms. Gadomski's complaint, which was entered into the record. Tr. 120; Gadomski Hearing Exh. 1.
28. Consumer Gadomski testified that the Company has not been maintaining the lines, cutting down the trees, and trees are on the lines which is unsafe. Tr. 120.
29. Consumers are concerned that, should the Commission grant this petition, they will be unable to afford their utility bill, especially seniors and retirees. Tr. 119.
30. In its Order addressing the Modified LTIP III, the Commission determined that the PFT program is not DSIC-eligible, so if the Company wants to seek recovery of those costs it can only do so by filing a base rate proceeding. *Modified LTIP III Order* at 9.
31. DSIC cap waiver approvals for other utilities are either not applicable or were approved under different circumstances. *See* I&E St. 1 at 7.
32. While it is true that the increased DSIC funds could only be spent on DSIC-eligible plant, it would free up other rate base funds that PPL Electric could direct anywhere, including to shareholder return. OCA St. 1SR at 11.
33. By highlighting the connection between the Company's decreasing O&M, specifically for vegetation expenditures, and its reliability metrics, the Commission signaled that a base rates proceeding is the proper setting in which to evaluate the related issues together. *See* OSBA St. 1 at 6.

34. PPL Electric decreased the O&M costs to revenue ratio steadily from a 29% level in 2015 to a level of 20% in 2023. I&E St. 1SR at 29.
35. By decreasing the O&M costs to revenue ratio from 29% to 20%, there are changes to the cost of service by class that cannot be evaluated with this DSIC cap waiver request. *See* I&E St. 1SR at 29.
36. PPL Electric projects reducing pole inspection hours by up to 12,500 hours per year, which seems contrary to its expressed concerns regarding safety performance. I&E St. 1SR at 29.
37. Increasing residential rates, for customers using 1,000 kWh per month, by approximately \$28.44 annually without undergoing full base rate scrutiny is not just and reasonable. I&E St. 1 at 21.
38. The Company's rate of return has not been below 8.12% since its last rate case in 2015, demonstrating that the Company has the capital necessary to address its reliability challenges. OCA St. 1 at Exh. JDM-5 (PPL Electric's Response to OCA-I-14).

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**OCA Appendix C  
Proposed Conclusions of Law**

1. PPL Electric Utilities Corporation (PPL) is a “public utility” and an “electric distribution company” as defined in Sections 102 and 2803 of the Pennsylvania Public Utility Code. 66 Pa. C.S. §§ 102, 2803.
2. PPL bears the burden of proof to establish the justness and reasonableness of every element of the proposed increase to its DSIC cap pursuant to 66 Pa. C.S. § 315(a).
3. “[T]he proponent of a rule or order has the burden of proof.” 66 Pa. Cons. Stat. Ann. § 332.
4. “The term ‘burden of proof’ is comprised of two distinct burdens, the burden of production and the burden of persuasion.” *Hurley v. Hurley*, 754 A.2d 1283, 1285 (Pa. Super. Ct. 2000).
5. The burden of production dictates which party has the duty to introduce enough evidence to support a cause of action. *Hurley v. Hurley*, 754 A.2d 1283 at 1286.
6. The burden of persuasion determines which party has the duty to convince the finder-of-fact that a fact has been established. *Hurley v. Hurley*, 754 A.2d 1283 at 1286.
7. “The burden of persuasion never leaves the party on whom it is originally cast.” *Hurley v. Hurley*, 754 A.2d 1283 at 1286; *See also Pa. PUC v. Equitable Gas Co.*, 57 Pa. PUC 423, 471 (1983).

8. “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” *Lower Frederick Twp. v. Pa. PUC*, 409 A.2d 505, 507 (1980).
9. The Supreme Court of Pennsylvania has stated that even where a party establishes a prima facie case by producing enough evidence to support a cause of action, the party does not satisfy its burden of persuasion unless the elements of that cause of action are proven with substantial evidence. *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983).
10. A utility has an affirmative burden to produce enough evidence to establish every component of its request. *Pa. PUC v. Pa.-American Water Co.*, 2004 Pa. PUC LEXIS 29 at \*16-18 (Order entered Jan. 29, 2004) (citing *Berner v. Pa. PUC*, 116 A.2d 738, 744 (Pa. 1955)).
11. The DSIC rate, like all rates, must be just and reasonable. 66 Pa. C.S. § 1301.
12. In order to implement a DSIC, a utility must submit the following to the Commission: (1) an initial tariff; (2) evidence demonstrating that a DSIC is in the public interest and will facilitate the utility’s compliance with the Public Utility Code, Commission orders and regulations and other State and Federal requirements; (3) a Long-Term Infrastructure Improvement Plan (LTIIIP); (4) certification that a base rate case has been filed within the previous five years; and (5) any other information required by the Commission. 66 Pa. C.S. § 1353(b).
13. Act 11 provides that the Commission “shall, after notice and opportunity to be heard, approve, modify or reject the [DSIC] and initial tariff.” 66 Pa. C.S. § 1355.
14. The DSIC must be calculated to recover the fixed cost of eligible utility property and shall consist of depreciation and pretax return. 66 Pa. C.S. § 1357(a).

15. Eligible utility property is property that has (1) not been previously reflected in rate base and (2) been placed in service during the three-month period ending one month prior to the effective date of the DSIC. 66 Pa. C.S. § 1357(a).
16. For electric distribution companies, eligible property shall include: (i) Poles and towers; (ii) Overhead and underground conductors; (iii) Transformers and substation equipment; (iv) Any fixture or device related to eligible property under subparagraphs (i), (ii) and (iii), including insulators, circuit breakers, fuses, reclosers, grounding wires, crossarms and brackets, relays, capacitors, converters and condensers; (v) Unreimbursed costs related to highway relocation projects where an electric distribution company must relocate its facilities; and Other related capitalized costs. 66 Pa. C.S. § 1351.
17. Act 11 establishes a framework for recovery, setting certain limits on the types and amount of costs that are recoverable through the surcharge and requiring that only reasonable and prudent costs incurred be included. 66 Pa. C.S. §§ 1351, 1353, 1357, 1358.
18. Act 11 provides certain limitations on the utilities with regard to the implementation of a DSIC. *See* 66 Pa. C.S. § 1358.
19. A DSIC initially may not exceed 5% of the distribution rates of EDCs, NGDCs or city natural gas operations. 66 Pa. C.S. § 1358(a)(1).
20. A DSIC shall be reset to zero, inter alia, (1) upon the effective date of new base rates and (2) if, in any quarter, the data filed with the Commission shows that the utility will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under its DSIC. 66 Pa. C.S. § 1358(b).

21. Act 11 sets out specific audit and reconciliation procedures, including that any over-collections of eligible costs through the DSIC must be refunded to customers with interest. *See* 66 Pa. C.S. § 1358(e).
22. Act 11 requires the Commission to prescribe by regulation or order specific procedures to be followed to approve a DSIC. 66 Pa. C.S. § 1358(d); *see also Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (August 2, 2012) (Final Implementation Order).
23. The Commission set forth specific customer notice requirements regarding the filing of a DSIC petition, the disposition of a DSIC petition and quarterly updates to the DSIC rate. *See Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (August 2, 2012) (Final Implementation Order).
24. A company must demonstrate exactly what is “at risk” asset-wise that will be replaced with the incremental funds and tie its prioritization to maintaining adequate, efficient, safe, reliable and reasonable service. 66 Pa. C.S. §§ 1352(a)(6), 1358(a)(1); *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (August 2, 2012) (Final Implementation Order).
25. The Commission also clarified certain of the Act’s provisions, including that (1) the Act’s percentage rate caps are bill limitations as applied to the distribution charges on each EDC, NGDC, or city natural gas operation customer’s bill, not to aggregated billing revenue and (2) for companies using the Commission’s quarterly earnings report in determining whether a DSIC must be reset to zero, the cap shall be aligned to the “Adjusted Results” column in the report. Final Implementation Order at 42-43.
26. A waiver to increase the 5% DSIC rate cap imposed by statute may be granted when a utility shows that the initial 5% DSIC rate cap is not sufficient to support its planned levels

of plant replacement and DSIC-eligible spending corresponding to the utility's LTIIIP. 66 Pa. C.S. § 1358(a); *see also, Pa. Pub. Util. Comm'n v. Aqua Pennsylvania, Inc.*, Docket No. R-2008-2079310 (Order entered July 23, 2009).

27. While programs related grid modernization and system resiliency are included in the LTIIIP III, programs related to vegetation management are not included, per the definition of "eligible property" in section 1351. 66 Pa. C.S. § 1351.
28. The 5% Cap imposed for DSIC recovery is an important consumer protection. 66 Pa. C.S. § 1358.
29. To be eligible to implement a DSIC, a utility must have filed a base rate case within five years prior to the date of filing a petition for implementation of a DSIC. As an additional precondition to the implementation of a DSIC, Act 11 requires that a utility must file a Long-Term Infrastructure Improvement Plan ("LTIIIP"). 66 Pa. C.S. § 1353(b).
30. On granting a waiver, Commission precedent looks at whether the party requesting the waiver has recently filed a rate case.
31. Cost recovery is not addressed in the LTIIIP review process. *Modified LTIIIP III Order*.
32. The function of the DSIC is not to replace, but to supplement, a utility's base rate case recovery of capital investments.
33. "The Commission notes that the DSIC is not intended to displace or impact a company's baseline (meaning pre-DSIC and pre-LTIIIP budgets for operating and management costs ("O&M") and capital improvements. *Modified LTIIIP III Order* at 9.
34. A utility cannot implement a DSIC mechanism until it files a long-term infrastructure improvement plan ("LTIIIP") with the Commission, and the LTIIIP is approved. 66 Pa. C.S. § 1353.

35. The purpose of an LTIP filing is to require the public utility to present the manner in which the utility will accelerate the replacement of its aging infrastructure to ensure that the utility is planning and executing capital expenditures that will maintain and improve the efficiency, safety, adequacy and reliability of existing distribution infrastructure. *Modified LTIP III Order* at. 9; 66 Pa. C.S. § 1327; 52 Pa. Code § 121.1.
36. There is no overall prudence or efficiency review in DSIC recovery, unlike general distribution rate cases. *Compare* Section 1355 to Section 1309, 66 Pa. C.S. §§ 1355.
37. The DSIC is reset to zero as of the effective date of new base rates that include the DSIC-eligible plant. 66 Pa. C.S. § 1358(b).
38. The DSIC provides for the recovery of a subset of utility expenditures. That is, only the costs associated with certain distribution system improvement projects and only a percentage of those costs are eligible for recovery through the DSIC. 66 Pa. C.S. § 1357.
39. The DSIC is a surcharge that allows for recovery of cost not previously included in the last base rate case for distribution system improvement projects. 66 Pa. C.S. § 1357(1)(i).

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**OCA Appendix D  
Proposed Ordering Paragraphs**

**IT IS ORDERED:**

1. That PPL Electric’s Petition for Waiver of DSIC is hereby denied..
2. That the following formal complaints at the respective docket numbers be dismissed and marked closed by the Commission’s Secretary’s Bureau:

<u>Complainant(s)</u>	<u>Docket Number</u>
Paula Mercuri	C-2024-3050027
Michael Sperraza	C-2024-3049977
Angela Pesola	C-2024-3050205
John Thiessen	C-2024-3040443
Sharon Frankenfield	C-2024-3050646
John Gadomski	C-2024-3050661

3. This docket shall be marked closed by the Secretary’s Bureau.

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**OCA Appendix E**  
**List of Commonly Used Acronyms**

<b>ACRONYM</b>	<b>MEANING</b>
BESS	Battery Energy Storage Systems
CAIDI	Customer Average Interruption Duration Index
CEMI	Customers Experiencing Multiple Interruptions
DLR	Dynamic Line Rating
DSIC	Distribution System Improvement Charge
EDC	Electric Distribution Company
LTIP	Long-Term Infrastructure Improvement Plan
NGDC	Natural Gas Distribution Company
O&M	Operations and Management
PPL or PPL Electric	PPL Electric Utilities Corporation
PFT	Predictive Failure Technology
ROW	Right of Way
SAIDI	System Average Interruption Duration Index
SAIFI	System Average Interruption Frequency Index