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October 15, 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 Reply 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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Enclosures

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 System Improvement Charge Cap of 5% of Billed Revenues	:	Docket No. P-2024-3048732

I hereby certify that I have this day filed electronically on the Commission's electronic filing system and served a true copy of the following document, the Office of Consumer Advocate's Reply 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 15th day of October 2024.

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Dated: October 15, 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 Billed Revenues	: : :	Docket No. P-2024-3048732

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. LEGAL STANDARDS 1

A. Burden of Proof 1

B. Just and Reasonable Rates and Due Consideration of Consumer Interests 2

C. DSIC and Waiver of the Statutory 5% Cap 2

III. STATEMENT OF THE CASE 3

IV. SUMMARY OF ARGUMENT 3

V. ARGUMENT 4

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. 4

1. PPL Electric Failed to Prove, With Substantial Evidence, that a Waiver of the Statutory 5% DSIC Cap is Necessary 4

2. The Issue in this Proceeding is Ratemaking and Not Whether PPL Electric Should Take Additional Actions to Improve Reliability. 6

3. PPL Electric Should Not be Permitted to Recover an Additional $45 Million Per Year Through an Automatic DSIC Adjustment to Customers' Bills When it has Not Filed a Base Rate Case in Nearly Ten Years. 7

4. The DSIC Surcharge is Distinctively Different Than Base Rates and the Two Should Not be Conflated. 9

B. If PPL Electric Met the Legal Standard, What Percentage Over the 5% Cap is Appropriate. 11

VI. CONCLUSION 13

TABLE OF AUTHORITIES

Page(s)

Administrative Decisions

Pa. PUC v. Aqua Pennsylvania, Inc.,
R-2008-2079310, 2009 Pa. PUC LEXIS 263 (July 23, 2009)....7, 8

Pa. PUC v. Duquesne Light Company,
Docket No. R-2024-3046523 (October 1, 2024)....10

Pa. PUC v. FirstEnergy Pennsylvania Electric Company,
Docket No. R-2024-3047068....10

Pa. PUC v. Pennsylvania Power Company,
Docket No. R-2016-2537355....8

Pa. PUC v. Philadelphia Gas Works,
Docket No. P-2009-2139884....8

Pa. PUC v. UGI Utilities, Inc. – Gas Division, Central Rate District,
Docket No. R-2010-2214415....9

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)....1, 8

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 (Order entered July 11, 2007)....8

Petition of Philadelphia Gas Works for a Waiver of the DSIC Cap,
Docket No. P-2015-2501500....8

Petition of UGI Central Penn Gas, Inc. for a Waiver of the Distribution System Improvement Charge (DSIC) Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues,
Docket No. P-2016-2537609....8

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)....8, 11

Statutes

1 Pa. C.S. § 1932 9

66 Pa. C.S. §§ 315(a), 332(a), 1301 2

66 Pa. C.S. § 1301 3

66 Pa. C.S. §§ 1308, 1353 .... 9, 13

66 Pa. C.S. § 1308(d) 10, 11

66 Pa. C.S. §§ 1350, 1351, 1358(a) 2

66 Pa. C.S. § 1358 .... 2, 4

66 Pa. C.S. § 1358(a) 9

66 Pa. C.S. § 1358(a)(1) 2

Other Authorities

James H. Cawley & Norman J. Kennard, *A Guide to Utility Ratemaking*, 90 (Pa. PUC 2018) 9

I. INTRODUCTION

On October 1, 2024, the Office of Consumer Advocate (OCA), the Bureau of Investigation & Enforcement (I&E), the Office of Small Business Advocate (OSBA), and PPL Electric Utilities Corporation (PPL Electric or the Company) filed main briefs. In accordance with the schedule established by ALJ Ashton, the OCA submits this Reply Brief.

In this Reply Brief, the OCA addresses the arguments advanced by PPL Electric in its Main Brief. The OCA specifically incorporates by reference the arguments from its Main Brief illustrating PPL Electric produced no substantial evidence in support of its argument that the Commission should grant a waiver of the statutory 5% Distribution System Improvement Charge (DSIC) rate cap. PPL Electric's preference to increase the rate cap to optimize its revenue sources is an insufficient statutory argument or policy basis for the Commission to grant a waiver and increase the cap to 9%, nearly twice the statutory limit. Its request should be denied.

II. LEGAL STANDARDS

A. Burden of Proof

Perhaps it is telling that PPL Electric failed to acknowledge its burden of proof in this proceeding, nevertheless, it is worth reiteration, in short form: (1) the burden of proof always remains on the party seeking affirmative relief from the Commission, here, PPL Electric; and (2) the proponent in the proceeding must persuade the Commission by a preponderance of the substantial evidence that the relief sought is proper and justified. *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% (Penn Power Waiver Petition)*, Docket No. P-2019-3012628

(Order entered March 12, 2020) (*Penn Power Order*) (adopting Recommended Decision[1] (R.D.)) (R.D. at 24); 66 Pa. C.S. §§ 315(a), 332(a), 1301; OCA M.B. at 2; Bureau of Investigation & Enforcement's Main Brief (I&E M.B.) I&E M.B. at 3. Here, this means that PPL Electric must come forward with substantial evidence in support of its position that a waiver of the statutory 5% DSIC rate cap is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1358(a)(1).

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

PPL Electric also bears the burden of proving the justness and reasonableness of its DSIC, its application to the various customer classes, and all inputs to its calculation. *Penn Power Order* (R.D. at 25); 66 Pa. C.S. §§ 315(a), 332(a), 1301; OCA M.B. at 4; I&E M.B. at 4.

C. DSIC and Waiver of the Statutory 5% Cap

PPL Electric diminished the importance of the statutory 5% cap when it merely stated section 1358 "sets out specific audit and reconciliation procedures" as a consumer protection. PPL Electric's Main Brief (PPL Electric M.B.), PPL Electric M.B. at 5. The Company failed to acknowledge: (1) the purpose of the DSIC is to allow utilities to recover a portion of the reasonable and prudent costs incurred to repair, improve and replace certain eligible property that is part of the utility's distribution system; and (2) a waiver to increase the statutory 5% DSIC rate cap may *only* be granted when a utility shows that the 5% DSIC rate cap is not sufficient to support planned levels of plant replacement and DSIC-eligible spending corresponding to the utility's LTIIP. *Penn Power Order* (R.D. at 25); 66 Pa. C.S. §§ 1350, 1351, 1358(a). Again, as set forth in OCA's and I&E's main briefs, 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

[1] R.D. available at https://www.puc.pa.gov/pcdocs/1654264.pdf (last visited October 9, 2024).

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. *Penn Power Order* (R.D. at 25); 66 Pa. C.S. § 1301; OCA M.B. at 6; I&E at 4.

III. STATEMENT OF THE CASE

PPL Electric clearly wants to fund more of its LTIIP and non-LTIIP investments with DSIC-revenue because it recently reached the statutory 5% DSIC rate cap. PPL Electric M.B. at 24. If all that a utility needed to request a rate cap increase is to state its preference to assess an additional **$45 million per year** surcharge on its customers and spend that DSIC revenue, the General Assembly could have authorized the waiver standard to be purely at the Commission's discretion. Instead, the General Assembly chose to require that to exceed the cap, a utility must: (1) seek a waiver; and (2) produce substantial evidence that a wavier is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

Here, the facts presented by PPL Electric do not demonstrate that a waiver is necessary for PPL Electric to ensure and maintain service. Instead, the facts show that PPL Electric can and will meet its obligations under its Modified Third LTIIP regardless of whether the DSIC rate cap is waived. *See* OCA Exhibit JDM-2; OCA Exhibit JDM-1SR. Nothing in the record shows that PPL Electric requires the additional $45 million annually that it seeks to collect from customers to meet its obligations. Even assuming that PPL Electric's current revenue was insufficient, nothing in the record shows that PPL Electric is incapable of filing a general rate case where all its costs, efficiencies and expenses could be reviewed as a whole.

IV. SUMMARY OF ARGUMENT

The issue in this proceeding is not whether the Commission should exercise its discretion to accede to a Company's preferred way of funding its non-LTIIP projects or non-DSIC eligible expenditures such as effective vegetation management or Predictive Failure Technology (PFT).

Instead, the issue in this proceeding is whether PPL Electric met its burden of proof to demonstrate that a waiver is necessary and, thus, whether the Commission should exercise its discretion to grant a waiver of the statutory 5% DSIC rate cap. PPL Electric produced no evidence that without a waiver, it cannot meet its statutory obligations. While it prefers a one-sided approach to collect $45 million per year from customers in lieu of the scrutiny of a base rate case, PPL Electric made no showing that a waiver of the statutory 5% rate cap is necessary to provide adequate, efficient, safe, reliable and reasonable service at just and reasonable rates to all its customers. After all, PPL Electric admitted that with or without a waiver of the statutory 5% DSIC cap, it will fulfill the requirements of its Modified Third LTIIP. OCA St. 1 at Exh. JDM-5 (PPL Electric's Response to OCA-I-14); OCA M.B. at 19. Because the Company failed to prove, with substantial evidence, that a waiver of the statutory 5% rate cap is necessary, the Commission should deny PPL Electric's request.

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 Electric Failed to Prove, With Substantial Evidence, that a Waiver of the Statutory 5% DSIC Cap is Necessary.

PPL Electric *states* it presented "substantial evidence on its reliability performance" and "overwhelming evidence about how the DSIC cap waiver is needed to improve service reliability," unfortunately for the Company this statement is not grounded in the record evidence. PPL Electric M.B. at 5, 7. Instead, in the instant matter, PPL Electric failed to prove a waiver of the 5% statutory cap is *necessary* to ensure and maintain adequate, efficient, safe, reliable and reasonable service under section 1358 of the Public Utility Code. 66 Pa. C.S. § 1358; PPL Electric M.B. at *passim*.

The statute and Commission precedent, as summarized herein and the OCA's Main Brief, dictates the utility requesting a waiver must demonstrate *necessity*. OCA M.B. at 15, 17, 19, 21-23. Rather than meet its burden of proof to establish that a waiver is necessary, PPL Electric discusses all the reasons why it *prefers* to recover its investments through the DSIC surcharge mechanism rather than base rates. Indeed, PPL Electric sets aside the statutorily based purpose of the DSIC, to allow utilities to recover a portion of the reasonable and prudent costs incurred to repair, improve and replace certain eligible property that is part of the utility's distribution system, and expounds on reasons beyond the scope of the statutory purpose. For example, PPL Electric asserts that increasing the statutory 5% DSIC rate cap:

- Benefits the Company by "freeing up funding for additional projects that can improve service reliability *but are not set forth in the LTIIP*," PPL Electric M.B. at 2, 14. (emphasis added).
- Is "the most effective, efficient, and targeted solution," PPL Electric M.B. at 1, 6.
- Prevents the Company from being "unduly constrained by the 5% cap," PPL Electric M.B. at 6.
- "Will help the Company," PPL Electric M.B. at 14.
- "Will help facilitate" and "put the Company in a much better position," PPL Electric M.B. at 16.

None of these statements – nor any other record evidence – demonstrates that a waiver of the statutory 5% DSIC rate cap is necessary for the Company to ensure and maintain adequate, efficient, safe, reliable and reasonable service rather than a mere preference of the utility Furthermore, a waiver to increase the statutory 5% DSIC rate cap may *only* be granted when a utility shows that the initial 5% DSIC rate cap is not sufficient to support planned levels of plant replacement and DSIC-eligible spending corresponding to the utility's LTIIP. *Penn Power Order* (R.D. at 25). PPL Electric cannot show that the 5% cap is not sufficient, given its admission that the Company can and will meet its obligations under its Modified Third LTIIP, regardless of whether the DSIC cap is waived and increased as proposed. *See* OCA Exhibit JDM-2; OCA Exhibit JDM-1SR. Without such evidence, the Commission should deny PPL Electric's request.

2. <u>The Issue in this Proceeding is Ratemaking and Not Whether PPL Electric Should Take Additional Actions to Improve Reliability.</u>

PPL Electric claimed its "testimony on electric service reliability and the need for the DSIC cap waiver should be given more weight" than the testimony of the OCA or I&E. PPL Electric M.B. at 19. However, OCA and I&E expert witnesses need not be electric safety experts to understand or render an expert opinion on *ratemaking* and the impact of a waiver of the statutory 5% DSIC rate cap. By way of further background, OCA witness Mierzwa holds a master's degree in business administration with a concentration in finance and provided testimony on more than 450 occasions in proceedings involving among other things utility class cost of service and rate design analysis, sales and rate forecasting, and revenue requirement analysis. OCA St. 1 at 1-2. As OCA witness Mierzwa stated:

> The issue in this proceeding is ratemaking. It is not whether PPL should take additional actions to improve system reliability, but how the costs associated with the additional actions to improve system reliability should be recovered through rates. That is, should PPL be allowed to recover additional costs through an automatic DSIC adjustment to customers' bills when it has not filed a base rate case in nearly 10 years?

OCA St. 1 at 2.

I&E witness Kubas possesses over 30 years of experience in ratemaking analysis and found raising the DSIC cap to be unnecessary to address the Company's investments. I&E M.B. at 9. There is no dispute in this case about whether PPL Electric can or should meet its electric safety and reliability concerns as set forth in the Commission's most recent audit and Modified LTIIP III, since the Company said that it can and will do so with or without a DSIC waiver either via a base rate case, or for its LTIIP commitments, without a base rate case. I&E M.B. at 9; I&E St. 1-SR at 15; OCA Exhibit JDM-2; OCA Exhibit JDM-1SR.

Instead of confronting this, PPL Electric tries to lodge a weight-of-the-evidence argument against expert witnesses with vast experience in ratemaking proceedings. This is a red herring and should be dismissed as such by the Commission.

3. <u>PPL Electric Should Not be Permitted to Recover an Additional $45 Million Per Year Through an Automatic DSIC Adjustment to Customers' Bills When it has Not Filed a Base Rate Case in Nearly Ten Years.</u>

To its credit, PPL Electric last filed a rate case in 2015. However, PPL Electric cannot use that fact as a backdoor to collect an additional $45 million per year from customers via a surcharge. While the OCA agrees with PPL Electric's assertion "there is no statutory requirement that a public utility seeking a DSIC cap waiver must have filed a base rate case in a certain number of years," PPL Electric M.B. at 10, 11, this statement ignores Commission precedent on this issue. The Company blows past, with much haste, key distinguishing facts from those at hand here. Though, PPL Electric conceded, "the Commission did call attention to the length of time since [Newtown Artesian Water Company] NAWC last filed a base rate case," the Company failed to sufficiently consider Commission precedent, precedent addressed in OCA's and I&E's main briefs, and worthy of recitation here. PPL Electric M.B. at 24; OCA M.B. at 17, 21-23; I&E M.B. at 10.

The Commission thus far only authorized the cap waiver to provide relief where utilities were filing base rate cases on a frequent basis and nevertheless 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*); *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 *30-32 (Order entered July 11, 2007) (*PAWC 2007*); *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 sought 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. *PAWC 2007* at *32; *Aqua* at *27-28; *United Water* at 6.

Also instructive is a brief review of the time of filing petitions for waiver in cases PPL Electric referenced in its main brief: (1) prior to Pennsylvania Power Company's petition for a waiver of the DSIC rate cap, filed on August 30, 2019, its last-filed base rate case, filed on April 28, 2016, preceded the waiver petition by 3 years; (2) prior to Philadelphia Gas Works' petition for a waiver of the DSIC rate cap, filed on September 1, 2015, its last-filed base rate case, filed on December 18, 2009, preceded the waiver petition by less than 6 years; and (3) prior to UGI Central Penn Gas' petition for a waiver of the DSIC rate cap, filed on March 31, 2016, its last-filed base rate case, filed on January 14, 2011, preceded the waiver petition by 5 years. PPL Electric M.B. at 17, 28. *See also, Penn Power Waiver Petition*, Docket No. P-2019-3012628; *Pa. PUC v. Pennsylvania Power Company*, Docket No. R-2016-2537355; *Petition of Philadelphia Gas Works for a Waiver of the DSIC Cap*, Docket No. P-2015-2501500; *Pa. PUC v. Philadelphia Gas Works*, Docket No. P-2009-2139884; *Petition of UGI Central Penn Gas, Inc. for a Waiver of the*

Distribution System Improvement Charge (DSIC) Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues, Docket No. P-2016-2537609; *Pa. PUC v. UGI Utilities, Inc. – Gas Division, Central Rate District*, Docket No. R-2010-2214415.

Thus, Commission precedent – while not setting a brightline rule regarding when a utility must file a rate case preceding a waiver petition – nevertheless clearly considers the temporal connection when weighing whether a waiver of the statutory 5% DSIC rate cap is appropriate. Here, the passage of nearly ten years since PPL Electric's last-filed base rate case should be weighed against granting the Company's petition for a waiver.

4. <u>The DSIC Surcharge is Distinctively Different Than Base Rates and the Two Should Not be Conflated.</u>

The Company's attempt to compare its petition for a waiver of the statutory 5% DSIC rate cap to 2024 base rate proceedings filed by its peer utilities lacks substance. PPL Electric M.B. at 22. The section 1308 base rate process is "the tried-and-true arbiter of the balance between revenues, expenses, and investment in setting a proper earnings level," as opposed to the DSIC, a surcharge mechanism. 66 Pa. C.S. §§ 1308, 1353; James H. Cawley & Norman J. Kennard, *A Guide to Utility Ratemaking*, 90 (Pa. PUC 2018). Again, all rates must be just and reasonable. 1 Pa. C.S. § 1932; 66 Pa. C.S. § 1358(a); OCA M.B. at 4; I&E M.B. at 4.

The Company stated a waiver of the statutory 5% DSIC rate cap to 9% is "estimated to recover approximately $45 million per year" and alleges this $45 million per year is a "far cry from the base rate increases requested by PPL Electric's peer utilities in 2024, which range from approximately $133 million to $502 million." PPL Electric M.B. at 22. It is worth noting that the proposed joint petitions for settlement in the two instances PPL Electric references indicate its peer utilities base rate increases will be, if approved, $225 million, not $502 million and a net increase of $53 million, not $133 million, respectively. PPL Electric M.B. at 22. *See also, Pa. PUC v. FirstEnergy Pennsylvania Electric Company*, Docket No. R-2024-3047068 (Joint Petition for Approval of Settlement of All Issues) (FirstEnergy Joint Petition) (FirstEnergy Joint Petition at 2)[2] and *Pa. PUC v. Duquesne Light Company*, Docket No. R-2024-3046523 (*Duquesne Light Company* Recommended Decision (*DLC* R.D.)) (October 1, 2024) (recommended approval of the joint petition for approval of settlement without modification) (*DLC* R.D. at 1).[3] These joint petitions for settlement came about following months of litigation between the parties, whereas the OCA: engaged several expert witnesses to provide multiple rounds of testimony; conducted multiple rounds of discovery; and accessed the respective utilities' expenses and revenues in the full, traditional ratemaking setting to ensure just and reasonable rates for all customers. *FirstEnergy* Joint Petition at 380-415; *DLC* R.D. at 42-45. The full, traditional ratemaking setting also allows the OCA to raise concerns about customer billing, low-income customer assistance, and quality of service issues. OCA M.B. at 15-17. None of that occurred in this proceeding.

Should PPL Electric file a base rate case, then perhaps this attempted comparison to its peers, in the context of a full, traditional base ratemaking setting, makes sense. Nevertheless, the Commission should reject the Company's assertion that because a ***$45 million per year*** surcharge, assessed without full regulatory scrutiny, is less than its peer utilities requested in section 1308(d) base rate increases, its proposal is warranted or just and reasonable.

PPL Electric alleged, "a base rate case would be more costly, time-intensive, and burdensome for the Company, interested stakeholders, and the Company's customers," the Company further characterized and concluded, "a base rate case would involve an increase in

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[2] FirstEnergy Joint Petition available at https://www.puc.pa.gov/pcdocs/1848725.pdf.

[3] *Duquesne Light Company* Recommended Decision available at https://www.puc.pa.gov/pcdocs/1851123.pdf.

distribution base rates to recover all of the Company's jurisdictional capital costs and expenses." PPL Electric M.B. at 7. PPL Electric forgot a crucial aspect of the full, traditional ratemaking process: the opportunity for simultaneous review of all aspects of its ***revenues***, expenses and capital costs for the same timeframe. OCA M.B. at 7; I&E M.B. at 6; I&E 1SR at 19. To the extent PPL Electric is experiencing deteriorating reliability performance due to severe storms and decreased vegetation management efforts and is accessing its coffers to "free up additional funding for projects not included in the Company's LTIIP," it can file a base rate case. PPL Electric M.B. at 6, 13. Commencing a full, traditional ratemaking proceeding as laid out in section 1308(d) is the solution to PPL Electric's identified problems, without stripping customers of important, statutory consumer protections. 66 Pa. C.S. § 1308(d); OCA M.B. at 8, 15, 18; I&E M.B. at 12, 19.

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

PPL Electric failed to meet its burden of proof to show that a waiver of the statutory DSIC 5% rate cap is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service. OCA M.B. at 20; I&E M.B. at 20; OSBA M.B. at 5. Thus, it is not entitled to a waiver. PPL Electric's apparent concession from the requested 9% cap to a 7.5% cap, because the Commission has "demonstrated its willingness to grant an increase in the DSIC cap to as high as 7.5% . . . when it has determined that such an increase would still help the utilities meaningfully respond to safety and reliability challenges," PPL Electric M.B. at 28, ignores PPL Electric's burden of proof in this matter, as the Company presented no evidentiary basis for the Commission to find that a waiver is necessary for the Company to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

Furthermore, PPL Electric demonstrated no nexus of any amount of money – not 1%, 2%, 3% or 4% – above its current 5% DSIC recovery is necessary to ensure and maintain reliability. Thus, there is no foundation for finding that 7.5% is necessary, much less any evidentiary basis for finding that 9% is necessary for the Company to ensure and maintain reliability. While I&E stated that *if* the Commission approves a waiver, the cap increase should be limited to 7.5%, on a temporary basis, *e.g.*, the duration of the Company's Third LTIIP, *see* I&E M.B. at 20, it is clear from the entirety of I&E's main brief that its position is that PPL Electric failed to meet its burden of proof and that this proffered alternative was rooted in collaring the harm caused by, if granted, a waiver of the statutory 5% DSIC rate cap. I&E M.B. at 5, 20, 22.

Simply put, the OCA's position is that PPL Electric failed to meet its burden of proving that *any* amount over the 5% statutory rate cap is necessary or would produce a just and reasonable rate for its customers, because the Company failed to show that a waiver is necessary for it to ensure and maintain adequate, efficient, safe, reliable and reasonable service. Since the record lacks any basis upon which the Commission could conclude that a 2.5% increase above the existing 5% is just, reasonable or necessary, much less find support in the record that a 4% increase is just, reasonable or necessary, the Commission should deny PPL Electric's request to provide *any* increase above the currently authorized, statutorily set 5% DSIC rate cap.

VI. CONCLUSION

The statutory 5% DSIC rate cap is crucial consumer protection that prevents the 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, and as set forth more fully in the OCA's Main Brief, the Company failed to meet its burden to demonstrate the waiver of the statutory 5% DSIC cap or that its request to increase it to 7.5% or 9% is necessary or just and reasonable. PPL Electric's request to waive the DSIC's statutory 5% cap of billed distribution revenues should be denied.

Respectfully submitted,

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