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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
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BUREAU OF
INVESTIGATION
&
ENFORCEMENT

October 15, 2024

Via Electronic Filing
Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Brief of the Bureau of Investigation and Enforcement in the above-captioned proceeding.

Copies are being served on parties per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

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Enclosures

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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT

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Dated: October 15, 2024

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I. INTRODUCTION

The Bureau of Investigation and Enforcement ("I&E") incorporates by reference the Introduction section contained in its Main Brief filed on October 1, 2024.[1] On October 1, 2024, I&E, PPL Electric Utilities Corporation ("PPL Electric" or "Company"), the Office of Consumer Advocate ("OCA"), and the Office of Small Business Advocate ("OSBA") filed Main Briefs in this matter. Therefore, I&E now files this Reply Brief pursuant to the procedural schedule established in this case.

II. STATEMENT OF THE CASE

As more fully articulated in I&E's Main Brief,[2] PPL Electric filed a Petition requesting that the Pennsylvania Public Utility Commission ("Commission") waive the Company's distribution system improvement charge ("DSIC") cap of 5% of billed distribution revenues and increase the maximum allowable DSIC from 5% to 9% for bills rendered on or after January 1, 2025. I&E opposes PPL Electric's waiver request and recommends that the Commission deny PPL Electric's Petition.

III. LEGAL STANDARDS

As more fully articulated in I&E's Main Brief,[3] PPL Electric has the burden of producing a preponderance of substantial evidence to support its argument that (1) a waiver of the 5% statutory DSIC cap is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service"[4] and (2) that a DSIC rate up to 9% of billed distribution revenues is "just and reasonable."[5] As the prosecutory arm of the Commission representing the public interest in this

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1 I&E Main Brief, pp. 1-2.
2 *Id.* at pp. 2-3.
3 *Id.* at pp. 3-5.
4 66 Pa. C.S. § 1358(a)(1).
5 66 Pa. C.S. § 315(a).

matter,[6] I&E has and continues to assert that PPL Electric has failed to meet its burden and therefore the relief requested in PPL Electric's Petition must be denied.

IV. SUMMARY OF ARGUMENT

As stated in I&E's Main Brief,[7] the Commission has the authority and discretion to grant a waiver of the statutory 5% DSIC cap if it is necessary to ensure that the utility will be able to provide and maintain safe and reliable service. As discussed in I&E's Main Brief,[8] I&E does not believe that the evidence presented in this case supports a finding that a waiver of PPL Electric's DSIC cap is necessary for the Company to continue to provide and maintain safe and reliable service.

I&E argued in its Main Brief[9] that the DSIC is not intended to replace base rate proceedings nor allow a utility to circumvent base rate case scrutiny and asserted that the length of time since PPL Electric's last rate case is an important factor for the Commission's review in this proceeding.

I&E also argued in its Main Brief[10] that it has supported waivers of utilities' DSIC caps in prior cases but differentiated those cases from the instant proceeding as the utilities in those cases faced different safety and reliability issues compared to PPL Electric. Finally, I&E argued in its Main Brief[11] that PPL Electric's proposed DSIC cap increase to 9% is not just and reasonable and would negatively impact customers' bills and the Company's cost of service without the benefits of full base rate case review.

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6 *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852, p. 5 (Order Entered August 11, 2011).
7 66 Pa. C.S. § 1358(a)(1).
8 I&E Main Brief, pp. 7-9.
9 *Id.* at pp. 9-13.
10 *Id.* at pp. 13-16.
11 *Id.* at pp. 16-19.

While I&E does not support PPL Electric's request, I&E also argued that if Administrative Law Judge ("ALJ") Arlene Ashton and the Commission find that PPL Electric has satisfied its burden and grants a waiver of its 5% DSIC cap, I&E recommends that the Commission approve a temporary DSIC cap maximum of 7.5% consistent with previous waivers.[12]

V. ARGUMENT

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

The parties acknowledge that the statutory standard for granting a waiver of the 5% DSIC cap is whether the waiver is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service."[13] I&E, OCA, and OSBA all agree that PPL Electric has failed to meet this standard.[14] PPL Electric continues to argue that waiver of its DSIC cap is necessary to address the reliability challenges it faces due to more frequent and severe weather events and the rising cost of materials.[15] The Company also tries to discredit the opinions of I&E witness Joseph Kubas and OCA witness Jerome Mierzwa by stating that they cite to outdated data and that neither are safety reliability experts.[16] PPL Electric believes that because waiver of the DSIC cap is expressly permitted in the statute and the other parties have not disputed the safety and reliability issues the Company is facing that it is entitled to a waiver of its DSIC cap.[17]

PPL Electric fundamentally misunderstands the purpose of the DSIC and the Commission's authority and discretion to grant a waiver of the DSIC cap. While Section 1358

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[12] I&E Main Brief, pp. 20-21.
[13] 66 Pa. C.S. § 1358(a)(1).
[14] I&E Main Brief, pp. 7-9; OCA Main Brief, pp. 10-12, 20; OSBA Main Brief, p. 10.
[15] PPL Electric Main Brief, pp. 12-14.
[16] *Id.* at pp. 18-19.
[17] PPL Electric Main Brief, pp. 14, 18.

of the Public Utility Code authorizes a waiver of the DSIC cap, this waiver should be granted on a case-by-case basis and only when the record supports that the utility **cannot** ensure and maintain safe and reliable service without the waiver. Both I&E witness Kubas and OCA witness Mierzwa concluded after review of the Company's filing that there is no indication that the Company will not be able to continue to provide safe and reliable service to customers if the requested DSIC increase is not approved or that Third Long-Term Infrastructure Improvement Plan ("LTIIP") investments will not be made if the waiver is not granted.[18] While Mr. Kubas is not an electric safety expert, he is an expert in the area of utility ratemaking and found that the proper avenue for PPL Electric to address its safety and reliability concerns is through filing a rate case, not raising its DSIC cap.[19]

The Commission seemingly agrees, noting in its July 11, 2024 Order approving PPL Electric's Modified Third LTIIP:

> The Commission notes that the DSIC is not intended to displace or impact a company's baseline (meaning pre-DSIC and pre-LTIIP) budgets for O&M and capital improvements. In fact, the DSIC and LTIIP are to reflect an acceleration of infrastructure replacement over the utility's historic level of capital improvement, or to maintain an already accelerated rate of infrastructure replacement. The issue of PPL's apparent decreasing O&M expenditures, including vegetation management expenditures, are beyond the scope of this Petition and Order, **but we highlight these issues here for such consideration as may be warranted by parties to PPL's next base rate case.**[20]

The single most telling piece of evidence indicating that PPL Electric does not need a waiver of its DSIC cap in order to continue to provide safe and reliable service is that in response

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18 I&E Main Brief, p. 8.

19 *Id.* at p. 9.

20 *Petition of PPL Electric Utilities Corporation for Approval of Major Modifications to its Existing Long-Term Infrastructure Improvement Plan*, Docket No. P-2022-3034972, p. 21 (Order entered July 11, 2024) (emphasis added).

to OCA Interrogatories Set I, Question 9, the Company stated that it will comply with its Modified Third LTIIP regardless of whether the DSIC cap is waived.[21] PPL Electric has not disputed that it could satisfy its safety and reliability concerns by filing a base rate case. Just because the Company has elected to try to address these issues via its DSIC as opposed to the proper avenue of a base rate case does not mean that the Commission must approve the request.

As stated by the OCA in its Main Brief,[22] the ultimate issue in this proceeding is ratemaking. PPL Electric claims that the most effective way to address its safety and reliability concerns is through its DSIC.[23] It is true that the purpose of the DSIC is to recover the reasonable and prudently incurred costs related to the repair, improvement, and replacement of the eligible property of a utility's distribution infrastructure. It is also true that a DSIC proceeding is generally less burdensome than a base rate proceeding. However, the DSIC is meant to provide this recovery in between rate cases, not prolong the filing of a base rate case as PPL Electric appears to be trying to do here.

The Commission has repeatedly stated that the DSIC is not a substitute for base rate filings and highlighted the importance of base rate case review.[24] This principle was reinforced in the 2018 Newtown Artesian Water Company ("NAWC") case where the Commission considered the fact that NAWC had not filed a base rate case in six years when it denied the company's DSIC waiver request and found that lengthening the interval between rate cases by waiving the DSIC cap was not consistent with its past policy or the intent of Act 11 of 2012 ("Act 11").[25] PPL Electric has not filed a base rate case in over nine years and although it has

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21 I&E Main Brief, p. 9.
22 OCA Main Brief, p. 8.
23 PPL Electric Main Brief, pp. 12, 14, 17, 22.
24 I&E Main Brief, p. 10.
25 I&E Main Brief, pp. 10-13.

the discretion and capacity to do so, the Company has instead attempted to obtain additional funding through a misuse of the DSIC beyond its intended purpose.[26] PPL Electric argues that the DSIC is meant to reduce regulatory lag and the frequency of rate case filings.[27] However, neither I&E nor the Commission support lengthy rate case intervals but instead encourage utilities to be on a regular rate case cycle.[28]

PPL Electric misconstrues I&E and OCA's arguments regarding the importance of base rate filings and base rate scrutiny. Neither I&E nor OCA argue that the filing of a base rate case is a condition prior to obtaining a waiver of the DSIC cap. Rather, I&E and OCA rightfully assert that the recency of a utility's last base rate case is an important factor that the Commission should consider in its review of the instant proceeding.[29] In doing so, the Commission should adhere to its past policy and the intent of Act 11 and deny PPL Electric's request.

PPL Electric insists that obtaining additional funding via its DSIC will be less impactful on ratepayers than if it were to file a base rate case.[30] As I&E acknowledged in its Main Brief,[31] it is likely that PPL Electric's rates will increase if the Company files a rate case given the length of time since its last filing. However, this argument ignores the important benefits and protections found in the base rate process such as a comprehensive review of all the components of a utility's operation that comprise the revenue requirement, a heightened level of scrutiny from the interested parties and the Commission compared to a DSIC proceeding, and a full assessment of customer impact by class.[32]

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26 *Id.* at p. 12.
27 PPL Electric Main Brief, p. 21.
28 I&E Main Brief, pp. 10-13.
29 I&E Main Brief, pp. 10-13; OCA Main Brief, pp. 17-18.
30 PPL Electric Main Brief, pp. 22, 26-28.
31 I&E Main Brief, p. 19.
32 *Id.* at pp. 9, 19.

PPL Electric continues to downplay the potential customer impact and cost of service issues if its request is approved.[33] I&E witness Kubas believes that the proposed 9% DSIC cap will have a significant impact on residential and larger use customers, especially considering that this increase will not be subject to base rate scrutiny.[34] As further discussed in I&E's Main Brief,[35] I&E is not arguing that the Company's current class cost of service is unreasonable and that it must conduct a class cost of service study prior to obtaining a DSIC cap waiver or that its existing rates are unjust and unreasonable. Mr. Kubas' point is merely that it is reasonable to think that the class costs of service have changed in the nine years since the Company's last rate case and therefore this data should be updated to ensure that any existing disparity is not worsened by the Company's proposed DSIC cap increase.[36] PPL Electric's DSIC rate, like all utilities' rates, must be just and reasonable.[37] It is I&E's position that the Company's proposed DSIC cap maximum of 9% does not meet this standard.

As I&E stated in its Main Brief,[38] PPL Electric has an obligation under the Public Utility Code to provide safe and reliable service to its customers. I&E does not want to discourage PPL Electric from obtaining the funding it claims it needs to address safety and reliability issues. That being said, it is I&E's position that PPL Electric's attempt to obtain this funding via its DSIC is inappropriate and would encourage the Company to file a base rase case to address these issues. This position is echoed by the other statutory advocates and aligns with the intent and purpose of Act 11 and the Commission's interpretation of the DSIC statute.

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33 PPL Electric Main Brief, pp. 22, 25-28.
34 I&E Main Brief, pp. 16-17.
35 *Id.* at p. 18.
36 *Id.*
37 66 Pa. C.S. § 1301(a).
38 I&E Main Brief, p. 20.

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

I&E argues that PPL Electric has not met its burden in this case and therefore its request should be denied. If ALJ Ashton and the Commission find that PPL Electric has met the legal standard to obtain a waiver of its 5% DSIC cap, I&E recommends that the Commission approve a temporary DSIC cap maximum of 7.5% instead of the Company's requested 9%. The Commission has never approved a DSIC cap waiver beyond 7.5% for an investor-owned utility and the record in this case does not warrant an exception.[39] Additionally, the Company has agreed that if a waiver is granted, it should only be applicable for a specified period of either the duration of the Company's Third LTIIP (applicable through December 31, 2027) or the effective date of new distribution rates resulting from a distribution base rate case, whichever were to occur first.[40]

VI. CONCLUSION AND REQUEST FOR RELIEF

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

Alternatively, if ALJ Ashton recommends and the Commission grants PPL Electric's Petition, the Bureau of Investigation and Enforcement respectfully requests that the Commission order (1) that PPL Electric's DSIC cap be raised to a maximum of 7.5% consistent with previous DSIC cap waivers; and (2) that the length of time the DSIC waiver would apply be either the duration of the PPL Electric's Third LTIIP (applicable through December 31, 2027) or the

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[39] *Id.* at pp. 20-21.
[40] *Id.* at p. 21.

effective date of new distribution rates resulting from a distribution base rate case, whichever were to occur first.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Brief** dated October 15, 2024, in the manner and upon the persons listed below.

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