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File #: 207003

October 18, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265

**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:

Attached for filing, please find PPL Electric Utilities Corporation's Motion to Strike the Reply Brief of the PP&L Industrial Customer Alliance in the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DR/skr
Attachment

cc: The Honorable Arlene Ashton (*via email*)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: October 18, 2024

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Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), ANSWERS TO MOTIONS ARE DUE WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWER SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.



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Dated: October 18, 2024

Attorneys for PPL Electric Utilities Corp.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION OF PPL ELECTRIC UTILITIES CORPORATION TO
STRIKE THE REPLY BRIEF OF
THE PP&L INDUSTRIAL CUSTOMER ALLIANCE**

TO ADMINISTRATIVE LAW JUDGE ARLENE ASHTON:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) files, pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.103, this Motion to Strike the Reply Brief of the PP&L Industrial Customer Alliance (“PPLICA”) because PPLICA’s Reply Brief improperly raises issues and arguments that could have and should have been raised in a Main Brief. By waiting to raise them for the first time in its Reply Brief, PPLICA has denied PPL Electric the opportunity to respond and has violated the Company’s due process rights.

In support thereof, PPL Electric states as follows:

I. BACKGROUND

1. On April 26, 2024, PPL Electric filed the above-captioned Petition with the Commission.

2. On May 16, 2024, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention, Public Statement, and Verification at the above-captioned docket.

3. Also on May 16, 2024, the Commission's Bureau of Investigation and Enforcement ("I&E") and the Office of Consumer Advocate ("OCA") filed Answers to the Petition.

4. Throughout the course of the proceeding, Formal Complaints were filed on behalf of Michael L. Sperazza (C-2024-3049979), Paula Mercuri (C-2024-3050027), Angela Pesola (C-2024-3050205), John Theisen (C-2024-3050443), Sharon Frankenfield (C-2024-30450646), and John Gadomski (C-2024-3050661).

5. On May 28, 2024, an Initial Telephonic Prehearing Conference Notice was issued, scheduling a telephonic prehearing conference for June 3, 2024, at 10:00 before Administrative Law Judge Arlene Ashton (the "ALJ").

6. On May 29, 2024, the ALJ issued a Prehearing Order, which, among other things, directed the parties to file Prehearing Conference Memoranda on or before 10:00 AM on May 31, 2024.

7. On May 31, 2024, PPL Electric, OCA, I&E, and OSBA filed Prehearing Conference Memoranda.

8. The initial Prehearing Conference was held as scheduled on June 3, 2024. At the Prehearing Conference, the ALJ and the parties discussed, *inter alia*: (1) the form, content, timing, and means of publication or distribution of notice of the proceeding to the public and PPL Electric's customers, (2) identification of issues to be resolved; (3) the procedural schedule; (4) discovery modifications; (5) the need for public input hearings; and (6) the timing and duration of evidentiary hearings. Because a consensus was not reached on any of these issues, except for the need for public input hearings, the ALJ directed the parties to resolve the outstanding issues and report the outcome of their discussions to the ALJ.

9. On June 11, 2024, the parties reported to the ALJ that the parties had reached full agreement on the procedural and litigation schedule, discovery modifications, and the form and content of notices of the proceeding to the public and PPL Electric's customers.

10. On June 18, 2024, the ALJ issued the Prehearing Order #2, which memorialized the procedural matters agreed upon by the parties, including the procedural schedule and discovery modifications.

11. On June 29, 2024, notice of the Petition was published in the Pennsylvania Bulletin.

12. On July 10, 2024, the PP&L Industrial Customer Alliance ("PPLICA") filed a Petition to Intervene.

13. On July 18, 2024, OCA, I&E, and OSBA served their written direct testimony.

14. On July 22, 2024, a Notice of Telephonic Hearing on Evidence and Oral Rejoinder Testimony was issued, scheduling telephonic hearings for September 4 and 5, 2024, at 10:00 AM.

15. On July 25, 2024, the ALJ issued an Order Granting Petition to Intervene and Consolidating Dockets, which granted PPLICA's Petition to Intervene and consolidated the Formal Complaints filed by Mr. Sperazza, Ms. Mercuri, and Ms. Pesola at Docket No. P-2024-3048732.

16. On July 30, 2024, the parties held a settlement conference as required under the litigation schedule set forth in Prehearing Order #2.

17. On August 13, 2024, PPL Electric served its rebuttal testimony. No other party served rebuttal testimony.

18. On August 27, 2024, I&E, OCA, and OSBA served surrebuttal testimony. No other party served surrebuttal testimony.

19. On August 28, 2024, the ALJ issued an Interim Order Consolidating Dockets, which consolidated the Formal Complaints filed by Mr. Theisen, Ms. Frankenfield, and Mr. Gadomski at Docket No. P-2024-3048732.

20. On August 30, 2024, PPL Electric served its rejoinder testimony. No other party served rejoinder testimony.

21. On September 4, 2024, the evidentiary hearing was held as scheduled.

22. On September 5, 2024, a Cancellation Notice was issued, which canceled the second day of hearings scheduled for September 5, 2024.

23. Also on September 5, 2024, the ALJ issued a Briefing Order setting forth requirements for the briefs to be submitted in this proceeding.

24. On October 1, 2024, Main Briefs were submitted by PPL Electric, OSBA, OCA, and I&E. PPLICA did not submit a Main Brief.

25. On October 15, 2024, Reply Briefs were submitted by PPL Electric, OCA, I&E, and PPLICA. OSBA submitted a letter in lieu of a Reply Brief.

II. MOTION TO STRIKE

26. PPLICA's Reply Brief should be stricken because it improperly raises issues and arguments that PPLICA could have and should have been raised in a Main Brief.

27. "It is well settled that a party is deemed to have waived its right to assert any issue not addressed during the proceeding or in post hearing Initial Briefs." *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at *7 (Order dated Feb. 10, 1994) ("*Apollo Gas*"); *see also Pa. PUC v. City of Lancaster – Sewer Fund*, 2007 Pa. PUC LEXIS 783, at *44 (Order on Remand entered Jan. 31, 2007) ("[I]ssues not raised by a party in its Main Brief are deemed to have been

waived”) (citing *Apollo Gas*); *Application of Newtown Artesian Water Co. and Indian Rock Water Co.*, 1990 Pa. PUC LEXIS 83, at *6 (Order dated June 20, 1990) (finding a party does “not have a substantive right to raise entirely new issues in a reply brief where these issues could have or should have been raised in the party’s initial brief.”) (emphasis in original); *Application of Shenango Valley Water Co.*, 1994 Pa. PUC LEXIS 111, at *25 (Recommended Decision dated Jan. 25, 1994) (rejecting argument raised for the first time in a party’s reply brief, finding that the “argument could and should have been raised in its Main Brief, so [the opposing party] would have an opportunity to respond.”), *adopted as modified*, 1994 Pa. PUC LEXIS 110, at *29 (Order entered July 12, 1994).¹

28. Here, PPLICA waived its right to assert any of the issues and arguments set forth in its Reply Brief because it failed to raise them in testimony or a Main Brief.

29. Indeed, PPLICA’s Reply Brief is the first time that PPLICA filed anything expressing its opposition to the Company’s request for a waiver of the 5% DSIC cap. (Reply Brief, p. 2.)

30. PPLICA’s late-filed Petition to Intervene contains no contention that the Petition for a DSIC Cap Waiver should be denied. Rather, the Petition to Intervene states simply that “[t]he PUC’s disposition of PPL’s Petition in this instance may impact the rates PPLICA members pay for electric service, specifically as it relates to the proposed cost recovery for expenses incurred under PPL’s DSIC.” (PPLICA’s Petition to Intervene ¶ 2.)

¹ PPL Electric notes that in *Allegheny Power*, the Commission denied The Pennsylvania State University’s motion to strike the West Penn Power Industrial Intervenors’ (“WPPII”) reply brief because the issues raised in WPPII’s reply brief were addressed in West Penn Power Company d/b/a Allegheny Power’s main brief. *Petition of West Penn Power Co. d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of its Costs through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, 2009 Pa. PUC LEXIS 2237, at *109-13 (Order entered Oct. 23, 2009) (“*Allegheny Power*”). However, WPPII filed a main brief in that case and thus, under *Apollo Gas*, preserved its right to assert any issue addressed during the proceeding or in post-hearing briefs. See *id.* at *10; *Apollo Gas*, 1994 Pa. PUC LEXIS 45, at *7. Critically, PPLICA did not file a Main Brief in this proceeding, unlike WPPII in *Allegheny Power*. Therefore, *Allegheny Power* provides no support for PPLICA to counter this Motion to Strike.

31. After intervening in the case, PPLICA did not serve any discovery, submit testimony, or file a Main Brief in this proceeding.

32. Now, for the first time in its Reply Brief, PPLICA argues that: (1) I&E's "alternative proposal" for a temporary DSIC cap waiver should be denied; (2) the Company's requested waiver would result in a "magnified" bill impact for larger LP-4 customers; and (3) the waiver should not be approved without an evaluation of PPL Electric's current cost of service, considering the period since the Company's last rate case. (PPLICA's Reply Brief, pp. 2-4.)

33. PPLICA could have and should have raised all of these issues and arguments in testimony or a Main Brief.

34. First, although PPLICA claims that its Reply Brief was submitted "to address I&E's alternative proposal for approval of a temporary waiver of the 5% DSIC Cap" in I&E's Main Brief (Reply Brief, p. 1), this "alternative proposal" actually comes from the Company's own rebuttal testimony clarifying its proposed DSIC cap waiver:

The Company recognizes that in other matters in which the Commission has approved a DSIC cap waiver, there was a specified duration. PPL Electric would be amenable to a specified period of either the duration of the Company's Third LTIP (applicable through December 31, 2027, and included for cost recovery in the DSIC mechanism for the rates effective April 1, 2028, which include plant-in-service for December 2027, January 2028 and February 2028) or the effective date of new distribution rates resulting from a distribution base rate case, whichever were to occur first.

(PPL Electric St. No. 2-R, p. 4.)

35. Therefore, PPL Electric, not I&E, clarified the period of the Company's requested waiver in its rebuttal testimony.

36. As such, PPLICA could and should have submitted testimony or a Main Brief responding to the temporary waiver period if it opposed the proposal.

37. Second, PPLICA had the opportunity to raise arguments related to large customer bill impacts in testimony or a Main Brief.

38. Specifically, in its Reply Brief, PPLICA contends that the “quantified average impact [of the increased DSIC cap] would be magnified for the large LP-4 customers.” (PPLICA’s Reply Brief, p. 3.)

39. However, the Company discussed the bill impact of the proposed waiver on large usage customers’ bills, including Rate LP-4 customers, in its rebuttal testimony:

[T]he Company will provide that a Rate LP-4 customer using 200,000 kWh, 1,000 kW, and ICAP demand of 1,000 kW may see a distribution bill increase of 3.8% (LP-4 customers are on real-time pricing for generation and transmission rates, so a total bill estimate has not been calculated). Additionally, a Rate GS-1 customer using 1,500 kWh would see a \$1.14/month increase or a total bill increase 0.6%, and a Rate GS-3 customer using 10,000 kWh and 40 kW would see a \$9.51/month increase or a total bill increase of 0.7%.

(PPL Electric St. No. 2-R, pp. 20-21.)

40. If PPLICA wanted to address the DSIC cap waiver’s impact on large customers’ bills, PPLICA could and should have presented testimony or filed a Main Brief.

41. Third, PPLICA argues that “the staleness of the Company’s most recent class cost of [service] study can and should be considered in assessing the reasonableness of the proposed waiver” and urges the Commission to “refrain from imposing substantial rate increases on customers through a DSIC cap waiver, temporary or otherwise, without an evaluation of PPL’s current cost-of-service.” (PPLICA’s Reply Brief, pp. 3-4.)

42. Again, the Company addressed this cost of service issue in its rebuttal testimony, stating, in pertinent part:

Moreover, there is no evidence that the Company’s current class cost of service is unreasonable. I have been advised by counsel that existing rates, including the underlying cost and revenue

allocation and rate design, are presumed to be just and reasonable and that parties have a “very heavy burden” to prove that existing rates are unjust and unreasonable. *Cup v. Pa. PUC*, 556 A.2d 470, 472 (Pa. Cmwlth. 1989); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981); *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) (citations omitted). The length of time between base rate cases does not suddenly transform existing rates from being presumed just and reasonable to being presumed unjust and unreasonable.

Further, this is another new and unwritten condition that the parties are seeking to impose on the decision to approve PPL Electric’s DSIC Cap Waiver Petition. The requirement for a class cost of service study is not included in the statute and has not been contemplated by the Commission in any of the proceedings or Orders issued implementing a DSIC mechanism or approving a waiver. There were no limits or requirements put in place that a distribution base rate case much be filed every X years in order for a utility to continue to use a DSIC mechanism or any other Section 1307 automatic adjustment clause.

(PPL Electric St. No. 2-R, pp. 11-12.)

43. Accordingly, PPLICA could and should have raised arguments regarding the timing of the Company’s last rate case or the necessity for an updated cost of service study in testimony or in a Main Brief.

44. In sum, PPLICA had a full and fair opportunity to raise all of its issues and arguments in testimony or a Main Brief.

45. PPLICA decided instead to “sandbag” PPL Electric by asserting them in a Reply Brief when the Company would have no opportunity to respond.

46. PPLICA’s actions contravene well-established Commission precedent and have violated the Company’s due process rights.

47. For these reasons, the ALJ should strike PPLICA’s Reply Brief in its entirety.

III. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Arlene Ashton strike the Reply Brief of the PP&L Industrial Customer Alliance.

Respectfully submitted,



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Dated: October 18, 2024

Attorneys for PPL Electric Utilities Corp.

VERIFICATION

I, BETHANY L. JOHNSON, being the Sr. Director - Regulatory at PPL Services Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: October 18, 2024


Bethany L. Johnson