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December 11, 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 Exceptions to the Recommended Decision in the above-referenced proceeding.

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

Respectfully submitted,

Devin Ryan

DR/dc
Attachments

cc: The Honorable Arlene Ashton (*via Email aashton@pa.gov*)
Office of Special Assistants (*via Email ra-OSA@pa.gov*)
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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____
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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

EXCEPTIONS OF PPL ELECTRIC UTILITIES CORPORATION TO THE RECOMMENDED DECISION

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Dated: December 11, 2024

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I. INTRODUCTION AND BACKGROUND

On April 26, 2024, 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 revenues and increase the maximum allowable DSIC to 9% for bills rendered on or after January 1, 2025. A DSIC cap of 9% is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service for the benefit of PPL Electric's customers and as required by Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501.

On November 21, 2024, the Commission issued Administrative Law Judge Arlene Ashton's ("ALJ") Recommended Decision ("RD"). Although the RD found that "PPL Electric's commitment to improving system reliability is laudable," the RD recommended that the Commission deny the Petition because the Company purportedly "failed to present evidence to demonstrate that an increase to the DSIC cap is necessary and in the public interest at this time." (RD at 1, 29-45.)

The Commission should grant these Exceptions and approve the Company's Petition in its entirety. The sole issue before the Commission is whether the proposed DSIC cap waiver and increase to 9% is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service. *See* 66 Pa. C.S. § 1358(a)(1). On that point, PPL Electric presented overwhelming evidence that its reliability performance has been deteriorating largely due to more frequent and severe weather events and aging infrastructure. (PPL MB at 12-14.) Based on the latest available data, PPL Electric will not meet the Commission's reliability benchmarks for System Average Interruption Duration Index ("SAIDI"), Customer Average Interruption Duration Index ("CAIDI"), and System Average Interruption Frequency Index ("SAIFI") in 2024. (PPL MB at 12-13.) Specifically, <u>PPL Electric has missed the Commission's SAIDI benchmark in nine quarters since 2021 and has failed to meet the Commission's CAIDI benchmark in every quarter</u>

since 2020. (PPL MB at 12.) Also, despite historically meeting its SAIFI benchmark, PPL Electric is projected to have a Commission SAIFI performance of 1.23 in 2024, well above the 0.98 benchmark. (PPL MB at 13.)

Meanwhile, PPL Electric continues to deal with rising supply costs caused by inflation and supply chain constraints, which are being driven by commodity shortages, transportation costs, and increased industry demand. (PPL MB at 14.) As an example, the procurement costs for transformers between 2016 and 2020 averaged approximately $590,000 but since 2021 have averaged over $1 million. (PPL MB at 14.) PPL Electric must absorb these increased costs within its existing budgets for projects that are designed to improve service reliability. (PPL MB at 14.) Because PPL Electric continues to invest in DSIC-eligible projects focused on reliability despite these cost increases, the Company has exceeded the DSIC cap in every quarter from the First Quarter of 2023 to present. (PPL MB at 14.)

PPL Electric is strongly committed to addressing these declining trends and to improving its electric service reliability performance. (PPL MB at 6, 10-11, 14-15.) Through its Petition, the Company presented the most effective, efficient, and targeted solution for doing so. (PPL MB at 6, 10-11, 14-15.) With the proposed waiver and increase of the 5% DSIC cap, PPL Electric can: (1) accelerate its investments in both Long-Term Infrastructure Improvement Plan ("LTIIP") and non-LTIIP projects that will harden the distribution system and improve electric service reliability; and (2) free up additional funding for projects not included in the Company's LTIIP that can improve reliability of service. (PPL MB at 10-11.) Indeed, with Commission approval of the proposed DSIC cap waiver, PPL Electric can increase and accelerate infrastructure investments that consistently improve SAIFI, SAIDI, and CEMI performance, including new electronic reclosers, low tension primary network cable, equipment, and structures, substations, reliability and protection and control. (PPL MB at 14.) PPL Electric's proposal also will free up funding for projects that are not in the Company's LTIIP, such as additional vegetation management, installation of grid modernization devices, new substations, batteries, and 3-phase tie lines. (PPL MB at 14-15.) Together, these LTIIP and non-LTIIP projects are designed to improve the distribution system's reliability and resiliency. (PPL MB at 14-15.)

At the same time, PPL Electric's proposal properly balances the need for additional revenues to address the reliability challenges with the impact on customers. (PPL MB at 22.) Under PPL Electric's proposal, the average customer in every customer class would experience a minimal increase in their monthly bills, with the changes to the price likely to be more gradual than immediate increases to 9%. (PPL MB at 27.) Also, critical customer protections that exist within the DSIC would remain in place, especially Section 1358(b)(3)'s requirement to reset the DSIC to zero if the Company is overearning. (PPL MB at 22.) This is critical because an increase in the DSIC cap results in a higher cap on *revenues* under Section 1358(a)(1) of the Public Utility Code; it does not increase Section 1358(b)(3)'s cap on *earnings* at which point the DSIC would reset to zero. *See* 66 Pa. C.S. § 1358(a)(1), (b)(3). Thus, the DSIC cap waiver's impact on customers would be minimal and greatly exceeded by the improvements in electric service reliability that would flow from the Company's proposal. (PPL MB at 22.)

Yet, the RD agreed with the other parties' arguments that the Company's proposal should be denied. (RD at 1, 29-45.) More specifically, the RD concluded that a waiver of the DSIC cap of 5% is unnecessary for PPL Electric to ensure and maintain adequate, efficient, safe, and reasonable service because: (1) PPL Electric stated it would "comply with its Modified Third LTIIP regardless of whether the DSIC cap is waived"; (2) the Company filed its last base rate case in 2015, so it "would be more appropriate for the Company to seek additional revenues to fund system enhancements through a base rate filing"; (3) PPL Electric's proposed increase in the DSIC cap to 9% would be "a significant increase in the burden of monthly and annual utility costs to be borne by the Company's customers"; and (4) while an increase in the DSIC cap to a "level less than 9.0% would reduce the financial impact of the increase on PPL Electric's customers, it would not be premised on a rigorous and complete analysis of the Company's operations and financial condition." (RD at 32, 38, 42-43.) However, as explained in these Exceptions, the Commission should reject each of these proffered reasons.

First, the RD's reliance on PPL Electric's statement that the Company will comply with its LTIIP is misplaced. (RD at 32, 43.) Section 1358(a)(1) of the Public Utility Code does not require the Company to demonstrate that it is unable to comply with its Modified Third LTIIP without the requested DSIC cap waiver. The controlling question is whether a waiver and increase of the DSIC cap is necessary to "ensure and maintain" adequate, efficient, safe, reliable, and reasonable service. 66 Pa. C.S. § 1358(a)(1). Moreover, PPL Electric has a legal obligation to comply with its Commission-approved LTIIP. *See* 52 Pa. Code § 121.8(a)-(b). Therefore, the Company's statement that it would comply with its Modified Third LTIIP is nothing astounding. PPL Electric was merely affirming that it would comply with its LTIIP as required under the Commission's regulations. Furthermore, by focusing on this statement, the RD overlooked how the Company's proposal would enable PPL Electric to accelerate its investments in the LTIIP projects. (PPL MB at 14.) A base level of compliance with the LTIIP should not be a reason to deny the Company's proposal, especially when it would enable PPL Electric to accelerate the LTIIP projects and, by extension, improve electric service reliability.

Second, the RD erred in finding that the Company's proposal should be rejected because PPL Electric filed its last base rate case in 2015. (RD at 32-38, 42-43.) As the RD recognized, the Public Utility Code contains no requirement that a rate case be filed for a DSIC cap waiver to be granted. (RD at 38.) Also, the prior cases on DSIC cap waivers cited by the other parties, including the Newtown Artesian Water Company ("NAWC") case, actually support Commission approval of the Petition. (PPL RB at 11-14.) The Company also is not using the Petition as a substitute for a base rate case filing. (PPL MB at 21.) Instead, PPL Electric is seeking to supplement its revenue to accelerate and invest in LTIIP work and non-LTIIP work that is designed to measurably improve electric service reliability. (PPL MB at 21.) Additionally, in a base rate case, PPL Electric would be proposing an increase in operating revenues sufficient to provide the Company with a reasonable opportunity to earn a reasonable return of and on its investments.[1] Between base rate cases, however, there would be no "cap" on the revenue earned through distribution rates. (PPL MB at 22.) Conversely, while PPL Electric's DSIC cap waiver proposal would increase revenues, it would not increase the cap on earnings set forth in Section 1358(b)(3) of the Public Utility Code. *See* 66 Pa. C.S. § 1358(b)(3).

In addition, the Company's proposed increase in the DSIC cap waiver is estimated to recover approximately $45 million per year, whereas the base rate increases requested by PPL Electric's peer utilities in 2024 ranged from approximately $133 million to $502 million. (PPL MB at 22.) The RD also failed to recognize how the Company's proposal aligns with the DSIC's purpose, which is to: (1) "promote the acceleration of utility infrastructure improvement projects" by "reduc[ing] regulatory lag and financing costs for debt incurred to complete infrastructure improvement projects" in between base rate cases; and (2) reduce the frequency of base rate cases. (PPL MB at 21.) The legislative history also notes how without the DSIC, "utilities are forced to

[1] *See, e.g.*, *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002); *Pa. Gas & Water Co. v. Pa. PUC*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975); *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692-93 (1923); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

repeatedly litigate costly utility rate cases, costing millions of dollars, that [are] being passed on to . . . consumers and ratepayers here in Pennsylvania. (PPL MB at 21.) As such, the RD conflicts with the DSIC's purpose and fails to consider the broader scope and impact of a distribution base rate case.

Third, the RD incorrectly found that the Company's proposal would lead to "a significant increase in the burden of monthly and annual utility costs to be borne by the Company's customers." (RD at 42.) As observed previously, the average customer in every customer class would experience a minimal increase in the monthly bill that would be greatly outweighed by the service reliability improvements stemming from the Company's proposal. (PPL MB at 27.) Specifically, increasing the maximum DSIC rate to 9% is expected to result in an estimated increased customer cost of approximately $2.37 per month at the cap, representing a 1.4% increase in the overall residential customer bill. (PPL MB at 27.) As for commercial and industrial customers, PPL Electric calculated 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). (PPL MB at 27.) 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 MB at 27.)

Fourth, the RD erred by not finding that the DSIC cap should, at the very least, be increased substantially above the current 5% cap. (PPL MB at 28.) Although a DSIC cap less than the Company's original request would not permit PPL Electric to address the reliability challenges on its distribution system as efficiently and effectively as a 9% DSIC cap, the Commission has demonstrated its willingness to grant an increase in the DSIC cap to as high as 7.5% in both settled and litigated DSIC cap waiver petitions when it has determined that such an increase would still help the utilities meaningfully respond to safety and reliability challenges. (PPL MB at 28.) Using PPL Electric's Modified Third LTIIP, for every 0.5% of an increase in the DSIC cap, residential customers would see an approximately $0.30 increase in their monthly bill (*i.e.*, 0.17%), with Rate GS-1, GS-3, and LP-4 customers seeing monthly bill increases of approximately $0.14 (*i.e.*, 0.07%), $1.19 (*i.e.*, 0.09%), and $13.32 (*i.e.*, 0.48%), respectively. (PPL MB at 28-29.) Meanwhile, for every 0.5% increase in the DSIC cap, the Company would receive on average approximately $5 million in incremental annual revenue to address the reliability challenges on its distribution system, provided that PPL Electric is not overearning as determined by Section 1358(b)(3) of the Public Utility Code. (PPL MB at 29.) If the RD was concerned about the amount of the requested increase, then an increase to a level below 9% but substantially above the current 5% cap would have been appropriate. However, the RD's conclusion that no increase is warranted, despite the substantial reliability challenges facing the Company, lacks justification.

Finally, the RD relied, at various points, on the Reply Brief submitted by the PP&L Industrial Customer Alliance ("PPLICA"). (RD at 28-30, 41.) PPL Electric filed a Motion to Strike PPLICA's Reply Brief because PPLICA failed to engage in discovery, submit any testimony or exhibits, or file a Main Brief and, therefore, waived any arguments that it sought to raise in its Reply Brief. (RD at 3.) Although the ALJ denied PPL Electric's Motion to Strike,[2] the Company maintains that based under well-established Commission precedent, PPLICA's Reply Brief should have been stricken. Therefore, the RD's reliance on the arguments set forth in PPLICA's Reply Brief was in error.

[2] *See Petition of PPL Electric Utilities Corp. for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Revenues*, Docket No. P-2024-3048732 (Order dated Nov. 14, 2024) ("*Order on Motion to Strike*").

For these reasons, and as explained in more detail below, PPL Electric respectfully requests that the Commission grant these Exceptions and approve the Company's Petition in its entirety.

II. EXCEPTIONS

A. EXCEPTION NO. 1: THE RD ERRED IN FINDING THAT THE COMPANY'S PROPOSAL IS NOT NECESSARY TO ENSURE AND MAINTAIN ADEQUATE, EFFICIENT, SAFE, RELIABLE, AND REASONABLE SERVICE

Contrary to the RD, the Commission should find that PPL Electric's proposed waiver and increase of the DSIC cap is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service and, therefore, should be approved. (*See* RD at 1, 29-45.) In particular, the Company needs the DSIC cap waiver to address the significant reliability challenges on its system in an efficient, effective, and timely manner. (PPL MB at 12.)

1. PPL Electric's Proposal Is Needed to Address the Reliability Challenges on PPL Electric's Distribution System

As explained in PPL Electric's Main Brief, the Company's reliability performance has deteriorated over recent years. (PPL MB at 12.) PPL Electric has missed the Commission's SAIDI benchmark in nine quarters since 2021 and has failed to meet the Commission's CAIDI benchmark in every quarter since 2020. (PPL MB at 12.) The Company's reliability has continued to trend downward in the months since the Petition in this case was filed on April 26, 2024. (PPL MB at 13.) In April 2024, PPL Electric was projected to miss the Commission's SAIFI benchmark for 2024 with an estimated performance of 0.982 versus a target of 0.98. (PPL MB at 13.) However, based on actual performance data available at the time of rebuttal testimony in August 2024, the Company has projected a Commission SAIFI performance of 1.23 for 2024, well above the 0.98 benchmark. (PPL MB at 13.) The Company's CAIDI and SAIDI performance also deteriorated, with year-end projections increasing substantially from 265 and 260, respectively, to 301 and 370, respectively. (PPL MB at 13.) "Both of those metrics would be in excess of the Commission's benchmarks for CAIDI and SAIDI of 145 and 142, respectively." (PPL MB at 13.) The Company's Customers Experiencing Multiple Interruptions ("CEMI") performance projection also doubled from 4% to 8%. (PPL MB at 13.)

It is difficult for PPL Electric to maintain and improve service reliability due to several factors, including severe weather events, aging infrastructure, and rising supply costs. (PPL MB at 13.) With respect to severe weather events, PPL Electric's service territory is being particularly impacted. (PPL MB at 13.) As the Commission observed in its *2022 Pennsylvania Electric Reliability Report*, PPL Electric saw 36 total storms in 2022, "which is the second most on record in terms of PUC storm cases and third most for PUC Storm customers interrupted." (PPL MB at 13.) The Company also experienced a total of 45 storms in 2023, surpassing the previous high of 42 storms in 2021, as noted recently in the Commission's *2023 Pennsylvania Electric Reliability Report*. (PPL MB at 13-14.)

In addition, the cost of materials has increased due to inflation and supply chain constraints, which are being driven by commodity shortages, transportation costs, and increased industry demand. (PPL MB at 14.) For example, the procurement costs for transformers between 2016 and 2020 averaged approximately $590,000. (PPL MB at 14.) Since 2021, however, those costs have averaged over $1 million. (PPL MB at 14.) Industry demand also remains at the highest levels seen in the last five years and continues to drive higher costs and extend lead times for distribution units from vendors. (PPL MB at 14.) Those cost increases force PPL Electric to absorb these increased costs within its existing budgets for projects that are designed to improve service reliability. (PPL MB at 14.) Because PPL Electric continues to invest in DSIC-eligible projects focused on reliability despite these cost increases, the Company currently exceeds the 5% cap on a regular basis. (PPL MB at 14.)

PPL Electric's proposal to increase the DSIC cap from 5% to 9% will help the Company address its reliability issues in an effective and efficient manner by: (1) timely recovering its investments in projects that will support and improve reliability of service that are outlined in PPL Electric's LTIIP; and (2) freeing up funding for additional projects that can improve service reliability but are not set forth in the LTIIP. (PPL MB at 14.) If the Commission approves the Company's proposed DSIC cap waiver, PPL Electric can increase and accelerate infrastructure investments that consistently improve SAIFI, SAIDI, and CEMI performance, including new electronic reclosers, low tension primary network cable, equipment, and structures, substations, reliability and protection and control. (PPL MB at 14.) Moreover, Commission approval of the Company's proposal will free up funding for PPL Electric to pursue projects that are not in the Company's LTIIP, such as additional vegetation management, installation of grid modernization devices, new substations, batteries, and 3-phase tie lines. (PPL MB at 14-15.) These projects are expected to improve the reliability and, therefore, improve customer experience.[3] (PPL MB at 15.)

Further, the Commission has acknowledged the important role the DSIC cap waiver can play in improving reliability. For example, the Commission approved a settlement that increased Pennsylvania Power Company's ("Penn Power") DSIC cap from 5% to 7.5% when Penn Power was struggling to meet the Commission's reliability benchmarks.[4] (PPL MB at 17.) The Commission had determined, in its Periodic Review of Penn Power's LTIIP, that Penn Power's

[3] The Commission has recently recognized the importance of PPL Electric pursuing these investment in its *2023 Pennsylvania Electric Reliability Report* and its Management and Operations Audit of PPL Electric at Docket No. D-2023-3039488. (PPL MB at 15-16.)

[4] *See Petition of Pa. Power Co. 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, at 21-22 (Recommended Decision dated Feb. 5, 2020) ("*Penn Power RD*"), *adopted without modification*, Docket No. P-2019-3012628 (Order entered Mar. 12, 2020) ("*Penn Power Order*") (collectively referred to herein as "*Penn Power*").

reliability performance had deteriorated and changes to the LTIIP I were necessary in order to "maintain and improve reliability," going so far as to remind the company that a DSIC cap waiver was available to help utilities achieve reliability goals.[5] (PPL MB at 17.) Accordingly, the deterioration of Penn Power's reliability metrics was the driving force of the Commission's approval of its DSIC cap waiver.[6] (PPL MB at 17.) PPL Electric seeks a waiver and increase of the DSIC cap now so that the Company can efficiently and effectively respond to the reliability challenges on its system before its reliability performance deteriorates even further. (PPL MB at 17.)

Despite this overwhelming evidence supporting PPL Electric's Petition, the RD ultimately recommended that the Commission deny the Company's proposal. As explained in the following sections, the RD's grounds for denying PPL Electric's Petition lack merit and should be rejected.

2. PPL Electric's Statement that It Will Comply with Its LTIIP Is Not Grounds for Denying the Company's Petition

In recommending the denial of PPL Electric's proposal, the RD relied on the Company's statement that it will comply with its Modified Third LTIIP regardless of whether the DSIC cap is waived. (RD at 31-32.) Although the RD did not conclude that this statement alone is enough to deny PPL Electric's Petition, the RD reasoned that it supported denial of the Company's proposal. (RD at 32, 43.)

The Commission should reject the RD's reliance on this statement as grounds for denying PPL Electric's Petition. As explained in the Company's Reply Brief, Section 1358(a)(1) of the

[5] *Periodic Review of Pennsylvania Power Company's Long-Term Infrastructure Improvement Plan*, Docket No. P-2018-3000948, p. 17 (Order entered September 20, 2018) ("*Penn Power LTIIP Review Order*"). The *Penn Power LTIIP Review Order* analyzed Penn Power's compliance with the reliability benchmarks of SAIFI, CAIDI, SAIDI, and Momentary Average Interruption Frequency Index ("MAIFI"), finding that Penn Power was largely failing to meet these established benchmarks and performance standards and reminding Penn Power that a DSIC cap waiver was available to help utilities achieve reliability goals. *See id.*, pp. 14-19.

[6] *Penn Power RD*, p. 22.

Public Utility Code does not require the Company to demonstrate that it is unable to comply with its Modified Third LTIIP without the requested DSIC cap waiver. (PPL RB at 6-7.) Rather, the controlling question is whether a waiver and increase of the DSIC cap is necessary to "ensure and maintain" adequate, efficient, safe, reliable, and reasonable service. 66 Pa. C.S. § 1358(a)(1).

Here, as detailed above, PPL Electric fully demonstrated that the DSIC cap waiver and increase is needed to address the reliability challenges on its distribution system, which are largely caused by more frequent and severe weather events and aging infrastructure. (PPL MB, pp. 12-17; PPL RB at 7.) Specifically, PPL Electric's proposal would leverage and accelerate both LTIIP and non-LTIIP projects to improve reliability of service. (PPL RB at 7.) Moreover, the fact that the Company would comply with its LTIIP, as required under the Commission's regulations, is neither surprising nor controlling. *See* 52 Pa. Code § 121.8(a)-(b). Through this statement, PPL Electric was merely affirming that it would comply with its LTIIP as required under the Commission's regulations. Also, by focusing on this statement, the RD overlooked how the Company's proposal would enable PPL Electric to accelerate its investments in the LTIIP projects. (PPL MB at 14.) Ultimately, the bare minimum of compliance with a Commission-approved LTIIP should not be a reason to deny the Company's proposal, particularly when that proposal would enable PPL Electric to accelerate the LTIIP projects and improve electric service reliability.

3. The Company Need Not, and Should Not Be Forced to, File a Base Rate Case before Receiving a Waiver of the DSIC Cap

The RD also erred in agreeing with the other parties that PPL Electric should file a base rate case, instead of pursuing the DSIC cap waiver, if it needs additional revenues to address the reliability challenges on its distribution system. (RD at 32-38, 42-43.) Although the RD correctly concluded that "filing a rate case is not a condition to the filing of a DSIC waiver request," the RD nevertheless determined that "it would be more appropriate for the Company to seek additional revenues to fund system enhancements through a base rate filing" because the Company last filed a base rate case in 2015. (RD at 37-38.) According to the RD:

> While timing of a base rate filing is wholly within PPL Electric's control, the Company's choice not to do so is relevant here, particularly in light of the PPL Electric's indication that with or without a waiver, it does not plan to file a base rate case before 2026.
>
> The Company's decision to file for a waiver and delay a base rate filing until 2026 calls into question its need for a DSIC waiver and lends credibility to I&E's claim that PPL Electric's waiver request was driven by the Company's failure to file a base rate case. Moreover, by the Company's own admission, a waiver in this proceeding would extend the period from its last rate filing until 2026, at the earliest, with new rates likely to be effective in 2027.
>
> Considering the Commission's numerous pronouncements on the timing of rate filings, the consumer protection afforded by the scrutiny of the Company's finances and operations in a base rate case, and the lesser and more limited scrutiny available in this proceeding, I find that it would be more appropriate for the Company to seek additional revenues to fund system enhancements through a base rate filing.

(RD at 38.) The RD went on to state that "[t]he Company is, of course, free to renew its request for a DSIC cap waiver and increase in the context of its next base rate case filing or thereafter, in either case, the timing of such a filing would be entirely in its control." (RD at 43.)

PPL Electric should not be forced to file a base rate case before receiving a waiver of the DSIC cap. Nothing in the Public Utility Code requires a public utility to file a base rate case within a certain number of years before being granted a waiver and increase of the DSIC cap of 5%. (PPL MB at 11, 20.) Instead, it is within the Commission's authority and discretion to grant PPL Electric a waiver of the 5% limit "in order to <u>*ensure and maintain*</u> adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1358(a)(1) (emphasis added). This statutory safeguard to ensure and maintain reliable service is precisely the reason the Company has filed its Petition. (PPL MB at 20.) Although Act 11 of 2012 requires a public utility to file a base rate case within the past five years before petitioning to establish a DSIC, it contains no similar requirement that a public utility must file a base rate case within a certain number of years before receiving a waiver of the DSIC cap. *See* 66 Pa. C.S. §§ 1353(b)(4), 1358(a)(1). As such, the statute confirms that the General Assembly considered if and when rate cases should be filed and if and under what conditions there should be opportunity for a waiver. (PPL MB at 31.) In the end, the General Assembly chose not to condition a DSIC cap waiver on the timing of a utility's most recent rase case filing. (PPL MB at 31.)

Also, by concluding that a base rate case should be filed instead, the RD is turning the DSIC's purpose on its head. (PPL MB at 21.) As confirmed by Act 11's legislative history, the DSIC was intended to: (1) "promote the acceleration of utility infrastructure improvement projects" by "reduc[ing] regulatory lag and financing costs for debt incurred to complete infrastructure improvement projects" in between base rate cases; and (2) reduce the frequency of base rate cases. (PPL MB at 21.) The legislative history also notes how without the DSIC, "utilities are forced to repeatedly litigate costly utility rate cases, costing millions of dollars, that [are] being passed on to . . . consumers and ratepayers here in Pennsylvania. (PPL MB at 21.) Thus, the RD conflicts with the DSIC's purpose and fails to consider the broader scope and impact of a distribution base rate case.

Furthermore, PPL Electric has not proposed the DSIC cap waiver as a substitute for a base rate proceeding. (PPL MB at 21.) The Company is seeking to supplement its revenue to accelerate and invest in LTIIP work and non-LTIIP work that is designed to measurably improve electric service reliability. (PPL MB at 21.) By requesting a DSIC cap waiver, PPL Electric is balancing continued investment in reliability with customer bill impacts. (PPL MB at 21.) Waiver of the DSIC cap supports the theory of gradualism in that customers may see an increase up to 9% over time. (PPL MB at 21.) On the other hand, customers would be more impacted by a base distribution rate case because the Company would seek to recover all costs and not just those related to the LTIIP. (PPL MB at 22.) In fact, the DSIC cap increase from 5% to 9% as requested by the Company is estimated to recover approximately $45 million per year. (PPL MB at 22.) This is a far cry from the base rate increases requested by PPL Electric's peer utilities in 2024, which ranged from approximately $133 million to $502 million. (PPL MB at 22.)

In addition, Commission approval of a DSIC cap waiver still "caps" the return on equity that PPL Electric can earn at the level stated in the Commission's quarterly financial report, while there is no such "cap" on the revenue earned under distribution base rates between base rate cases. (PPL MB at 22.) This is critical because an increase in the DSIC cap results in a higher cap on ***revenues*** under Section 1358(a)(1) of the Public Utility Code; it does not increase Section 1358(b)(3)'s cap on ***earnings*** at which point the DSIC would reset to zero. *See* 66 Pa. C.S. § 1358(a)(1), (b)(3). Therefore, under PPL Electric's proposal, the DSIC would still reset to zero "if in any quarter, data filed with the commission in" PPL Electric'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." *Id.* § 1358(b)(3). Moreover, in a base rate case, PPL Electric would be proposing an increase in operating revenues sufficient to provide the Company with a reasonable opportunity to earn a reasonable return of and on its investments.[7] Between base rate cases, however, there would be no "cap" on the revenue earned through distribution rates. (PPL MB at 22.) Thus, approval of the DSIC cap waiver and increase would be more effective and less burdensome (on both the Commission, stakeholders, and customers) than a base rate case. (PPL MB at 22.)

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[7] *See* note 1, *supra*.

PPL Electric's proposed DSIC cap waiver also is distinguishable from the Newton Artesian Water Company ("NAWC") proceeding, which OCA has cited as support for the theory that Commission precedent requires utilities to file a rate case within a certain time frame to justify a waiver. (PPL MB at 23.) In that case, NAWC had not filed a rate case in 6 years and tried to justify its proposed waiver of the DSIC cap based on: (1) its annual revenue shortfall if the DSIC rate were not increased; and (2) three other water utilities were granted DSIC cap waivers.[8] The Commission was not persuaded by these arguments.[9] Further, NAWC had only exceeded the DSIC cap in two consecutive quarters and had base rates that were designed based on a Future Test Year ("FTY"),[10] not a Fully Projected Future Test Year ("FPFTY").[11] The Commission determined that "if NAWC filed a base rate case utilizing the FPFTY, NAWC could be permitted to recover a larger portion of LTIIP expenses and reduce its reliance on DSIC recovery."[12] Consequently, the Commission did not base its decision solely on the fact that NAWC had not filed a base rate case in the last 6 years. (PPL MB at 23.)

Here, PPL Electric's situation is readily distinguishable from NAWC's proposal. (PPL MB at 23.) PPL Electric is not simply proposing to increase the DSIC cap to make up for any annual revenue shortfall. (PPL MB at 23.) The requested waiver is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service, particularly to address the significant reliability challenges on the Company's distribution system. (PPL MB at 23.) Further, unlike NAWC, PPL Electric has exceeded the DSIC cap in 14 quarters (as compared to the two

[8] *Pa. PUC v. Newtown Artesian Water Co.*, Docket Nos. R-2017-2624240, *et al.*, pp. 10-11 (Order enter July 12, 2018) ("*NAWC*").

[9] *Id.*, pp. 20-21.

[10] *See Pa. PUC v. Newtown Artesian Water Co.*, Docket Nos. R-2011-2230259, *et al.*, 2011 Pa. PUC LEXIS 7, at *1 (Recommended Decision dated Sept. 12, 2011), *adopted*, Docket Nos. R-2011-2230259 (Order entered Oct. 14, 2011).

[11] *NAWC*, pp. 13, 22.

[12] *Id.*

consecutive quarters experienced by NAWC) and has base rates that are designed based on a FPFTY. (PPL MB at 23-24.) Therefore, although the Commission did call attention to the length of time since NAWC last filed a base rate case, these other critical facts distinguish the *NAWC* decision from PPL Electric's proposal. (PPL MB at 24.)

Moreover, the Company's "strong financial condition" does not support denying PPL Electric's Petition. (RD at 43.) Although the Company's reported earnings made it ineligible to charge a DSIC for 7 of those 14 quarters, the RD failed to give proper weight for <u>when</u> those 7 quarters occurred. (RD at 21, 37.) In fact, all 7 of those quarters occurred before January 1, 2023, with the most recent of those 7 quarters being the Fourth Quarter of 2022. (PPL MB at 24.) From the First Quarter of 2023 to present, the Company has reached its DSIC cap, which means that PPL Electric has already experienced earnings erosion. (PPL MB at 24.) Critically, it is not 2022. (PPL MB at 24.) PPL Electric is seeking a DSIC cap waiver and increase today when the Company has reached the DSIC cap of 5% for 7 straight quarters. (PPL MB at 24.) Also, as noted previously, the Company's proposed DSIC cap waiver and increase, if granted, would have no effect on the statutory requirement to reset the DSIC if the Company is overearning in any quarter. *See* 66 Pa. C.S. § 1358(b)(3). The Company is requesting an increase in the cap on revenues, not an increase on the cap on earnings. As such, these arguments based on the Company's reported earnings should be rejected.

Lastly, to the extent any party claims that the DSIC cap increase would exacerbate any class cost of service changes that occurred since 2015, that argument should also be rejected. (PPL MB at 25.) The base rate case process establishes cost responsibility, and that cost responsibility remains in place until a new rate case is filed. (PPL MB at 25.) For example, there are no Section 1307 automatic adjustment clauses that require an updated class cost of service study. (PPL MB at 25.) If I&E's and OSBA's witnesses were correct, then all Section 1307 mechanisms, including the DSIC, would have been rejected. (PPL MB at 25.) Also, there is no evidence that the Company's current class cost of service is unreasonable. (PPL MB at 25.) Existing rates, including the underlying cost and revenue allocation and rate design, are presumed to be just and reasonable, and parties have a "very heavy burden" to prove that existing rates are unjust and unreasonable.[13] (PPL MB at 25.) 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.[14] (PPL MB at 25.)

4. The Company's Proposal Will Not Produce a Significant or Unreasonable Increase in Customers' Rates

The RD also incorrectly determined that the Company's proposal would produce "a significant increase in the burden of monthly and annual utility costs to be borne by the Company's customers." (RD at 42.) Although PPL Electric's Petition, if granted, would generate approximately $45 million in additional revenues annually (RD at 39), those revenues are needed to ensure and maintain adequate, efficient, safe, reliable, and reasonable service. *See* Section II.A.1, *supra*.

Moreover, when analyzing the actual average impacts on monthly customer bills, the requested increase in the DSIC rate is not "exceptional." (RD at 42.) The current monthly cost of the DSIC at the maximum surcharge rate of 5% for a residential customer using 1,000 kWh per month is approximately $2.96 per month. (PPL MB at 27.) Increasing the maximum DSIC rate

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[13] *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).

[14] Also, nothing in the record supports the RD's finding that PPL Electric's decision to file for a waiver has "delay[ed] a base rate filing until 2026." (RD at 38.) Although the Company explained that it does not expect to file a base rate case before 2026 with or without the DSIC cap waiver, no record evidence supports the RD's conclusion that the filing of PPL Electric's Petition has delayed the Company's next base rate case until 2026. (RD at 38.)

to 9% is expected to result in an estimated increased customer cost of approximately $2.37 per month at the cap, representing a 1.4% increase in the overall residential customer bill. (PPL MB at 27.) As for commercial and industrial customers, PPL Electric calculated 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). (PPL MB at 27.) 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 MB at 27.) Notwithstanding, because the DSIC rate fluctuates based on plant-in-service and revenue projected, changes to the price are likely to be more gradual than an immediate increase to 9%. (PPL MB at 27.) Thus, the Company's proposal would have a minimal impact on the average bill for customers in every customer class, and this impact is greatly exceeded by the benefits that would flow from the DSIC cap waiver.

B. EXCEPTION NO. 2: THE RD SHOULD HAVE CONCLUDED THAT, AT THE VERY LEAST, THE COMPANY SHOULD BE GRANTED AN INCREASE IN THE DSIC CAP TO A LEVEL SUBSTANTIALLY ABOVE 5%

At the very least, the RD should have concluded that the Company's DSIC cap should be increased substantially above the current 5% until the effective date of rates established in the Company's next base rate case or the end of the Company's 2023-2027 LTIIP, whichever occurs first. (PPL MB at 28.) Although a DSIC cap less than the Company's original request would not permit PPL Electric to address the reliability challenges on its distribution system as efficiently and effectively as a 9% DSIC cap, the Commission has demonstrated its willingness to grant an increase in the DSIC cap to as high as 7.5% in both settled and litigated DSIC cap waiver petitions when it has determined that such an increase would still help the utilities meaningfully respond to safety and reliability challenges.[15] (PPL MB at 28.) Using PPL Electric's recently approved modified Third LTIIP, for every 0.5% of an increase in the DSIC cap, residential customers would see an approximately $0.30 increase in their monthly bill (*i.e.*, 0.17%), with Rate GS-1, GS-3, and LP-4 customers seeing monthly bill increases of approximately $0.14 (*i.e.*, 0.07%), $1.19 (*i.e.*, 0.09%), and $13.32 (*i.e.*, 0.48%), respectively. (PPL MB at 28-29.) Meanwhile, for every 0.5% increase in the DSIC cap, the Company would receive on average approximately $5 million in incremental annual revenue to address the reliability challenges on its distribution system, assuming the Company's return on equity ("ROE") is below the Commission's allowed DSIC ROE. (PPL MB at 29.)

Nonetheless, the RD determined that "an increase in PPL Electric's DSIC to a percentage less than 9.0% is not warranted here" due to the amount of time since the Company last filed a base rate case. (RD at 42-43.) As explained previously, that fact does not justify denying PPL Electric's Petition. Furthermore, to the extent that the RD were concerned about the impact of the Company's proposal on customers' bills, there was ample record evidence to support an increase in the DSIC cap to a level substantially above 5% but less than the requested 9%. Thus, to the

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[15] *See Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket Nos. R-2008-2079310, *et al.*, 2009 Pa. PUC LEXIS 263 (Order entered July 23, 2009); *Petition of Pennsylvania-American Water Co. for Approval to Implement a Tariff Supplement to Tariff Water-PA P.U.C. No. 4 Revising the Distribution System Improvement Charge*, Docket Nos. P-00062241, *et al.*, 2007 Pa. PUC LEXIS 42 (Order entered Aug. 14, 2007); *Petition of Pennsylvania Power Co. 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 (Recommended Decision dated Feb. 5, 2020), *adopted without modification*, Docket No. P-2019-3012628 (Order entered Mar. 12, 2020); *Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges*, Docket Nos. P-2015-2501500, *et al.* (Order entered Jan. 28, 2016), *reconsideration granted*, Docket Nos. P-2015-2501500, *et al.* (Order entered July 6, 2016); *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 (Order entered May 10, 2017), *reconsideration denied*, Docket No. P-2016-2537609 (Order entered Sept. 21, 2017); *Petition of UGI Penn Natural 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-2016-2537594 (Order entered May 10, 2017).

extent that the Commission agrees with the RD that an increase to 9% is unwarranted, the Commission should increase the Company's DSIC cap to an amount substantially above 5%, as it has done in several prior cases.[16]

C. <u>EXCEPTION NO. 3</u>: THE RD ERRED IN RELYING ON PPLICA'S REPLY BRIEF BECAUSE SUCH BRIEF SHOULD HAVE BEEN STRICKEN CONSISTENT WITH WELL-ESTABLISHED COMMISSION PRECEDENT

The RD should have disregarded PPLICA's Reply Brief instead of relying upon it. (RD at 28-30, 41.) Although the ALJ denied PPL Electric's Motion to Strike PPLICA's Reply Brief,[17] the ALJ's failure to strike the Reply Brief was in error. In denying the Company's Motion to Strike, the ALJ solely focused on the language of Section 5.502(c) of the Commission's regulations, which states that "[a] party may file a response brief to the initial brief."[18] The ALJ further declared that "[w]hether PPLICA engaged in discovery, provided testimony or filed a Main Brief does not impact is [sic] ability to file a Reply Brief in this proceeding or its rights as an intervenor."[19]

However, the RD erred in relying on PPLICA's Reply Brief, because that brief should have been stricken consistent with well-established Commission precedent. As explained in PPL Electric's Motion to Strike, "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."[20] This

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[16] *See* note 15, *supra*.

[17] *Order on Motion to Strike*, p. 2.

[18] *Id.* (quoting 52 Pa. Code § 5.502(c)).

[19] *Id.*

[20] *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) ("*City of Lancaster 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) ("*NAWC 1990*") (finding a party does "not have a substantive right to raise entirely new issues in a <u>reply brief</u> 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

principle applies to both moving and non-moving parties.[21] Therefore, while Section 5.502(c) of the Commission's regulations states that a party may file a response brief to an initial brief, that regulation does not authorize a party to raise arguments that they waived by failing to file such an initial brief. *See* 52 Pa. Code § 5.502(c).

Here, PPLICA's Reply Brief was the first time that PPLICA filed anything expressing its opposition to the Company's request for a waiver of the 5% DSIC cap. (PPL Motion to Strike, p. 6.) PPLICA's late-filed Petition to Intervene contained no contention that the Petition for a DSIC Cap Waiver should be denied. (PPL Motion to Strike, p. 6.) Moreover, after intervening in the case, PPLICA did not serve any discovery, submit testimony, or file a Main Brief in this proceeding. (PPL Motion to Strike, p. 7.) Then, for the first time in its Reply Brief, PPLICA argued 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 at 2-4.)

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an opportunity to respond."), *adopted as modified*, 1994 Pa. PUC LEXIS 110, at *29 (Order entered July 12, 1994). 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.

[21] *See NAWC 1990*, 1990 Pa. PUC LEXIS at *6 (finding that the protestant, *i.e.*, the non-moving party, did not have "a substantive right to raise entirely new issues in a <u>reply brief</u> where these issues could have or should have been raised in the party's initial brief"); *City of Lancaster 2007*, 2007 Pa. PUC LEXIS at *43-44 (concluding that the City, *i.e.*, the moving party, waived issues raised in its Reply Brief by not setting them forth in its Main Brief); *see also Apollo Gas*, 1994 Pa. PUC LEXIS at *6-7 (granting the motion to strike of Apollo Gas, *i.e.*, the moving party, to strike certain portions of the Exceptions filed by Equitable, *i.e.*, the non-moving party, due to Equitable's failure to raise those arguments in its Main Brief).

As explained in PPL Electric's Motion to Strike, PPLICA could have and should have raised all of these issues and arguments in a Main Brief. (PPL's Motion to Strike, pp. 7-9.) Instead, PPLICA asserted them in a Reply Brief when the Company would have no opportunity to respond. (PPL's Motion to Strike, p. 9.) As such, PPLICA's actions contravened well-established Commission precedent, and the RD should have disregarded PPLICA's arguments accordingly.

III. <u>CONCLUSION</u>

WHEREFORE, the Pennsylvania Public Utility Commission should grant PPL Electric Utilities Corporation's Exceptions and enter a Final Order consistent with these Exceptions that (1) grants a waiver of the current Distribution System Improvement Charge cap of 5% of billed revenues and (2) approves an increase the maximum allowable Distribution System Improvement Charge from 5% to 9% of billed revenues.

Respectfully submitted,

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