COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF INVESTIGATION & ENFORCEMENT

December 23, 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 Replies to Exceptions

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's Replies to Exceptions 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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ACK/ac
Enclosures

cc: Administrative Law Judge Arlene Ashton (*via email – aashton@pa.gov*)
Office of Special Assistants *(via email – ra-OSA@pa.gov)*
Per Certificate of Service

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

THE BUREAU OF INVESTIGATION AND ENFORCEMENT
REPLIES TO EXCEPTIONS

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Dated: December 23, 2024

I. INTRODUCTION

On November 21, 2024, Administrative Law Judge ("ALJ") Arlene Ashton issued a Recommended Decision ("RD") in the above-captioned proceeding recommending that the Pennsylvania Public Utility Commission ("Commission") deny PPL Electric Utilities Corporation's ("PPL Electric" or "Company") Petition requesting that the Commission waive its 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. On December 11, 2024, PPL Electric filed Exceptions to the ALJ's Recommended Decision. Therefore, the Bureau of Investigation and Enforcement ("I&E") now files these Replies to Exceptions recommending that the Commission affirm the Recommended Decision and reject the Exceptions of PPL Electric to the extent recommended below.

II. I&E REPLIES TO EXCEPTIONS OF PPL ELECTRIC

A. I&E Reply to PPL Electric Exception No. 1: The RD correctly found that the Company's proposal is not necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service (RD pp. 1, 29-45).

PPL Electric argues that the RD should have found that the Company's proposed waiver of its DSIC cap of 5% is necessary to ensure and maintain safe and reliable service.[1] PPL Electric continues to cite to increasing reliability challenges and maintains that waiver of its DSIC cap is the most efficient and effective option to address these

[1] PPL Electric Exceptions, pp. 8-11.

concerns.[2] As discussed by I&E witness Joseph Kubas in his testimony[3] and in I&E's Main Brief,[4] PPL Electric failed to meet its burden of proof in establishing that a waiver of its DSIC cap is necessary for the Company to continue to ensure and maintain safe and reliable service. The Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") came to the same conclusion.[5]

PPL Electric asserts that the Commission should reject the RD's reliance on the Company's statement that it will comply with its Modified Third Long-Term Infrastructure Improvement Plan ("LTIIP") as grounds for denying the Company's Petition.[6] PPL Electric claims that its affirmation that it will comply with its LTIIP as required under Commission Regulations should not be a reason to deny its proposal and that the RD overlooked how the waiver would enable the Company to accelerate its investments in the LTIIP projects.[7]

As discussed in I&E's Main Brief,[8] PPL Electric stated in response to OCA Interrogatories Set I, Question 9 that it will comply with its LTIIP regardless of whether its DSIC cap is waived. I&E cited to this response in its argument because it shows, by PPL Electric's own admission, that a waiver of the Company's DSIC cap is not necessary to ensure and maintain safe and reliable service. Pursuant to Section 1358 of the Public Utility Code, PPL Electric bears the burden of proving that a waiver of its DSIC cap is

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[2] PPL Electric Main Brief, pp. 12-17.
[3] I&E Statement No. 1, p. 8; I&E Statement No. 1-SR, pp. 14-16.
[4] I&E Main Brief, pp. 7-9.
[5] OCA Main Brief, pp. 10-12, 20; OSBA Main Brief, p. 10.
[6] PPL Electric Exceptions, p. 11.
[7] *Id.* at 12.
[8] I&E Main Brief, p. 9.

necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service."[9] If the Company truly cannot provide safe and reliable service without a waiver of its DSIC cap, it could have stated in its interrogatory response that it will not be able to comply with its LTIIP without the waiver. This response is just one factor I&E considered in its argument[10] and the ALJ considered in the RD[11] that a waiver of PPL Electric's DSIC cap is not necessary for the Company to ensure and maintain safe and reliable service. Additionally, while the DSIC cap waiver would enable PPL Electric to accelerate its LTIIP investments, the Company did not dispute that it could satisfy its safety and reliability concerns by filing a base rate case.[12]

PPL Electric next argues that the RD erred in finding that the Company 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.[13] PPL Electric erroneously claims that it is being "forced" to file a base rate case as a prerequisite to obtaining a DSIC cap waiver and that the RD "is turning the DSIC's purpose on its head."[14] I&E argues that PPL Electric fundamentally misunderstands the purpose of the DSIC and is attempting to use the DSIC waiver beyond its intended purpose. I&E agrees with PPL Electric that there is no statutory requirement that a utility must file a base rate case prior to obtaining a waiver of the DSIC cap and does not dispute the legislative history of Act

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[9] 66 Pa. C.S. § 1358(a)(1).
[10] I&E Main Brief, pp. 7-9.
[11] RD, p. 43.
[12] I&E Main Brief, p. 9.
[13] PPL Electric Exceptions, p. 12.
[14] *Id.* at pp. 13-14.

11 of 2012 ("Act 11").[15] That being said, I&E disagrees with PPL Electric's assertion that it is not using its proposed DSIC cap waiver as a substitute for a base rate proceeding when that is exactly what the Company appears to be doing.

As discussed by I&E witness Kubas in his testimony[16] and in I&E's Main Brief,[17] the Commission has repeated since the DSIC's inception that the DSIC is not a substitute for base rate filings and has emphasized the importance of base rate scrutiny because it is a more comprehensive review compared to a DSIC filing. The Commission has previously considered the recency of a utility's last base rate filing in its review of DSIC cap waiver requests as seen in the 2018 Newtown Artesian Water Company ("NAWC") case where, at the time of its request, NAWC had not filed a base rate case in six years.[18] While PPL Electric continues to try to distinguish its situation from NAWC's in that proceeding, the most important aspects from the Commission's decision in that case are the fact that the Commission did consider the recency of NAWC's last base rate filing as a relevant factor in its decision and the Commission noted the importance of utilities being on a regular rate case cycle.[19]

I&E asserts that PPL Electric's DSIC cap waiver request is driven by the Company's failure to file a base rate case. PPL Electric's most recent base rate case was filed over nine years ago on March 31, 2015 and its new rates became effective on

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15 *Id.* at p. 14.
16 I&E Statement No. 1, pp. 11-12.
17 I&E Main Brief, pp. 9-10.
18 *Pa. PUC v. Newtown Artesian Water Co.*, Docket No. R-2017-2624240, p. 20 (Order entered July 12, 2018).
19 *Id.* at pp. 20-21.

January 1, 2016.[20] PPL Electric could have filed a rate case as it reached the 5% cap in April 2021 or any time after but chose not to,[21] and the Company has stated that it does not plan to file a base rate case before 2026 regardless of whether the waiver is granted.[22] The decision to file a base rate case is entirely within PPL Electric's discretion, but it has elected to seek additional funding via its DSIC. The Commission should not support PPL Electric's decision to avoid base rate scrutiny for nearly 10 years (or over 10 years if PPL Electric does not file a base rate case before 2026). The Commission should instead adhere to its policy of encouraging timely rate case filings and its interpretation of the DSIC as a mechanism to provide for recovery between rate filings, not replace them.

The ALJ agreed with I&E's arguments, stating in the RD:

> While I agree with PPL that filing a rate case is not a condition to the filing of a DSIC waiver request, in light of the legislative history relating to the passage of Act 11 and the Commission's consistent policy statements I must conclude that the DSIC mechanism and waiver process should not be used a means to avoid the more comprehensive scrutiny of a base rate filing. Consequently, I also conclude that the timing of PPL Electric's most recent base rate filing is a factor that should and will be considered in evaluating PPL Electric's Petition.
>
> The record in this matter demonstrates that PPL last filed a base rate case in March 2015, with new rates effective January 1, 2016. In addition, undisputed evidence indicates that PPL approached the 5% DSIC cap in April 2021. Although PPL had the option to file a subsequent base rate case to reset the DSIC when it was approaching the 5% cap it did not file a base rate case and has chosen not to do so. 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

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20 *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Order entered November 15, 2015).

21 I&E Statement No. 1, p. 16.

22 OCA Exhibit JDM-2; OCA Exhibit JDM-1SR.

> 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.
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> 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.[23]

PPL Electric continues to deny that its current financial condition warrants denial of its proposal.[24] As discussed in I&E's Main Brief,[25] PPL Electric is in a much stronger financial position compared to NAWC at the time of its waiver request, a request that the Commission denied. PPL Electric also continues to deny that its proposal would not exacerbate potential cost of service issues.[26] As discussed in I&E's Main Brief,[27] I&E is not arguing that PPL Electric'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, but rather 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

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[23] RD, pp. 37-38.
[24] PPL Electric Exceptions, p. 17.
[25] I&E Main Brief, pp. 11-12.
[26] PPL Electric Exceptions, pp. 17-18.
[27] I&E Main Brief, p. 18.

and therefore this data should be updated to ensure that any existing disparity is not worsened by the Company's proposed DSIC cap increase.

Lastly, PPL Electric argues that the RD erred in determining that the Company's proposal would produce a significant or unreasonable increase in customers' rates.[28] As stated by Mr. Kubas in his testimony[29] and in I&E's Main Brief,[30] PPL Electric's proposal will have a significant impact on customers, particularly large use customers. The statutory requirement that rates be just and reasonable also applies to the DSIC rate.[31] I&E does not find that PPL Electric's proposed DSIC rate increase is just and reasonable, especially considering that this increase would come without undergoing full base rate scrutiny.[32]

The ALJ agreed with I&E's arguments, stating in the RD:

> I find the arguments presented by OCA and I&E on this issue persuasive and conclude that PPL failed to meet is burden of proving that the DSIC waiver to 9% is just and reasonable. Likewise, I find that PPL failed to meet is burden of proving that its rates will remain just and reasonable if a DSIC cap increase is approved. . . .
>
> Furthermore, the DSIC cap increase requested in the proceeding is exceptional. The increase from 5% to 9% of distribution revenues is an 80% increase over PPL Electric's current DSIC. All parties agree that annually, such an increase would generate more than $45 Million in additional revenues for PPL Electric. That figure represents a significant increase in the burden of monthly and annual utility costs to be borne by the Company's customers.[33]

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28 PPL Electric Exceptions, pp. 18-19.
29 I&E Statement No. 1, p. 21; I&E Statement No. 1-SR, pp. 27-28.
30 I&E Main Brief, pp. 16-17.
31 66 Pa. C.S. § 1301(a).
32 I&E Main Brief, p. 16.
33 RD, p. 42.

As stated by the OCA in its Main Brief,[34] the ultimate issue in this proceeding is ratemaking. PPL Electric has continually tried to justify its proposal by arguing that the DSIC waiver is the most efficient way to address its safety and reliability concerns while being the least burdensome on its customers.[35] I&E agrees that a DSIC filing is generally less burdensome than a rate case and that rates will likely increase if the Company files a rate case given the length of time since its last filing. However, it is important to recognize the important benefits and protections found in the base rate process as well as the overall purpose of the DSIC. The Commission has consistently recognized the DSIC cap waiver proceeding and the traditional Section 1308(d) base rate proceeding as separate processes to be utilized by utilities when appropriate. I&E has argued, and the ALJ agreed, that granting PPL Electric's proposed DSIC cap waiver is not appropriate and that the Company should instead address its safety and reliability concerns by filing a base rate case. Based on the foregoing, the Commission should reject PPL Electric's Exception No. 1.

B. I&E Reply to PPL Electric Exception No. 2: The RD appropriately concluded that the Company should not be granted an increase in the DSIC cap to a level substantially above 5% (RD pp. 42-43).

PPL Electric argues that 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.

[34] OCA Main Brief, p. 9.
[35] PPL Electric Main Brief, pp. 12, 14, 17, 22.

PPL Electric asserts that because the Commission has previously granted increases to DSIC caps as high as 7.5%, a waiver of its 5% cap is warranted in this case given its safety and reliability challenges.[36] While it is true that the Commission has granted, and I&E has supported, waivers of utilities' DSIC caps in both settled and litigated cases in the past,[37] it is important to note that the DSIC cap waiver should be granted on a case-by-case basis. As stated by the ALJ in the RD, "while Act 11 provides a mechanism for a utility's DSIC cap to be increased above 5%, a waiver is not automatic, nor is it an entitlement."[38] I&E argues that the utilities in those cases faced significant safety and reliability issues that warranted waivers of their DSIC caps whereas PPL Electric has failed to meet its burden of proof in the instant proceeding.[39] As noted by the OCA in its Main Brief,[40] "the Commission has only utilized the cap waiver to provide relief where utilities were in poor financial condition and/or demonstrably unsafe operating conditions, filing base rate cases on a frequent basis and still reaching the 5% DSIC cap."

In the RD, the ALJ found that approving a DSIC waiver for PPL Electric would be inappropriate given the length of time since the Company's last base rate case:

> The arguments cited by I&E and OCA against the grant of a waiver also support the denial of a lesser increase in PPL Electric's DSIC to 7.5%. While it is true that an increase of PPL Electric's DSIC 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. Given PPL Electric's indication that it does not intend to file a base

36 PPL Electric Exceptions, pp. 19-21.
37 I&E Main Brief, pp. 13-16.
38 RD, p. 42.
39 I&E Main Brief, p. 15.
40 OCA Main Brief, p. 21.

> rate case before 2026 with or without the DSIC waiver, current rates and surcharges would likely remain in effect until sometime in 2027, some 12 years after the Company's last rate filing. Such a period exceeds by far the relevant period presented in previous waiver cases approved by the Commission and those articulated by the Commission in policy statements relating to the timing of rate filings. As a result, I conclude that an increase in PPL Electric's DSIC to a percentage less than 9.0% is not warranted here. [41]

I&E agrees with the ALJ's recommendation that a DSIC waiver is not warranted here given the lengthy interval since the Company's last rate filing compared to other waiver cases and the Commission's repeated policy in support of regular rate filings. Based on the foregoing, the Commission should reject PPL Electric's Exception No. 2.

C. I&E Reply to PPL Electric Exception No. 3: Whether or not PPLICA's Reply Brief is considered, the evidentiary record supports denial of PPL Electric's DSIC waiver request. (RD pp. 28-30, 41).

PPL Electric asserts that the RD should have disregarded PP&L Industrial Customer Alliance's ("PPLICA") Reply Brief instead of relying upon it and that the ALJ erred in denying PPL Electric's Motion to Strike PPLICA's Reply Brief.[42]

I&E takes no position on PPL Electric's Exception No. 3. Even if the Commission finds that the ALJ erred in denying PPL Electric's Motion to Strike PPLICA's Reply Brief and in relying on PPLICA's Reply Brief in the RD, it does not change the well-supported positions of the statutory advocates as well as Commission policy and the intent of Act 11, all of which support denial of PPL Electric's proposed waiver request.

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41 RD, pp. 42-43.
42 PPL Electric Exceptions, pp. 21-23.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the Recommended Decision of Administrative Law Judge Arlene Ashton be adopted by the Commission pursuant to the I&E Replies to Exceptions set forth above.

Respectfully submitted,

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Dated: December 23, 2024

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	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Replies to Exceptions** dated December 23, 2024, in the manner and upon the persons listed below.

Served via Electronic Mail Only

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