

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held February 20, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman, Statement  
Kimberly Barrow, Vice Chair, Statement, Dissenting  
Kathryn L. Zerfuss, Dissenting  
John F. Coleman, Jr.  
Ralph V. Yanora

Petition of PPL Electric Utilities  
Corporation for a Waiver of the  
Distribution System Improvement Charge  
Cap of 5% of Billed Revenues

P-2024-3048732

Michael L. Sperazza  
Paula Mercuri  
Angela Pesola  
John Theisen  
Sharon Frankenfield  
John Gadomski

C-2024-3049979  
C-2024-3050027  
C-2024-3050205  
C-2024-3050443  
C-2024-3050646  
C-2024-3050661

v.

PPL Electric Utilities Corporation

**OPINION AND ORDER**

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## **BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of PPL Electric Utilities Corporation (PPL or Company), filed on December 11, 2024, in the above-captioned proceeding. The Exceptions were filed in response to the Recommended Decision (R.D. or Recommended Decision) of Administrative Law Judge (ALJ) Arlene Ashton, which the Commission served on the Parties on November 21, 2024. Replies to Exceptions were filed on December 23, 2024, by the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), and PP&L Industrial Customer Alliance (PPLICA). For the reasons discussed below, we shall grant, in part, and deny, in part, PPL's Exceptions, modify the Recommended Decision of ALJ Ashton, and dismiss the Formal Complaints (Complaints)<sup>1</sup> filed in this proceeding, consistent with this Opinion and Order.

### **I. Background**

On February 14, 2012, then Governor Tom Corbett signed into law Act 11 of 2012 (Act 11), which amended Chapters 3, 13 and 33 of the Public Utility Code (Code). 66 Pa.C.S. § 101, *et seq.* Act 11, *inter alia*, established a mechanism that upon Commission approval, allows certain utilities, including electric distribution companies (EDCs), such as PPL, to implement a distribution system improvement charge (DSIC) to recover reasonable and prudent costs incurred to repair, improve, or replace certain eligible distribution property that is part of the utility's distribution system. *See* 66 Pa.C.S. §§ 1350-1360. On August 2, 2012, the Commission entered its Order in *Implementation of Act 11 of 2012*, Docket Number M-2012-2293611 (*Final*

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<sup>1</sup> As noted below, six *pro se* Complainants filed Complaints in this proceeding.

*Implementation Order*), which established procedures and guidelines necessary to implement Act 11 and included a Model Tariff for DSIC filings.

## **II. History of the Proceeding**

On April 26, 2024, PPL filed a Petition for a Waiver of the (DSIC) Cap of 5% of Billed Revenues (Petition). In the Petition, PPL requested that the Commission grant a waiver of Section 1358(a) of the Code, 66 Pa.C.S. § 1358(a), to increase the current DSIC cap from 5% to 9% of billed revenues, effective on or after January 1, 2025. Petition at 1, 5; R.D. at 2.

On May 16, 2024, I&E filed an Answer to the Petition. Also, on May 16, 2024, the OCA filed an Answer to the Petition. Additionally, on May 16, 2024, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention, a Public Statement, and a Notice of Appearance. R.D. at 2.

On June 3, 2024, a Telephonic Prehearing Conference was convened as scheduled.<sup>2</sup> PPL was represented by counsel, and I&E, the OCA, and the OSBA participated in the hearing. During the hearing, the procedural schedule and dates for evidentiary hearings were discussed. On June 18, 2024, the ALJ issued Prehearing Order No. 2, which memorialized the discussions from the hearing.<sup>3</sup> R.D. at 2.

Between July 5, 2024 and July 19, 2024, the following six individuals filed separate Complaints in response to PPL's Petition: (1) Michael L. Sperazza

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<sup>2</sup> By Initial Telephonic Prehearing Conference Notice dated May 28, 2024, an Initial Call-In Telephonic Prehearing Conference was scheduled for June 3, 2024, at 10:00 a.m.

<sup>3</sup> On June 18, 2024, an Errata to Prehearing Order No. 2 was issued correcting the due date for Reply Briefs. R.D. at 2.

(Mr. Sperazza), at Docket No. C-2024-3049979; (2) Paula Mercuri (Ms. Mercuri), at Docket No. C-2024-3050027; (3) Angela Pesola (Ms. Pesola), at Docket No. C-2024-3050205; (4) John Theisen (Mr. Theisen), at Docket No. C-2024-3050443; (5) Sharon Frankenfield (Ms. Frankenfield), at Docket No. C-2024-3050646; and (6) John Gadomski (Mr. Gadomski), at Docket No. C-2024-3050661. R.D. at 2.

On July 10, 2024, PPLICA filed a Petition to Intervene (Petition to Intervene). On July 25, 2024, the ALJ issued an Order Granting PPLICA's Petition to Intervene and Consolidating the Formal Complaints filed by Mr. Sperazza, Ms. Mercuri, and Ms. Pesola with the instant proceeding. On August 28, 2024, the ALJ issued an Order consolidating the Formal Complaints filed by Mr. Theisen, Ms. Frankenfield, and Mr. Gadomski with the instant proceeding. R.D. at 2-3.

On September 4, 2024, a telephonic evidentiary hearing was held as scheduled.<sup>4</sup> During the hearing: (1) the testimony and exhibits listed in Appendix A of the Recommended Decision were admitted into the record; (2) all cross-examination was waived by the Parties; and (3) the telephonic evidentiary hearing scheduled for September 5, 2024, was cancelled. R.D. at 3, Appendix A; *see also* Tr. at 136.

On October 1, 2024, PPL, I&E, the OCA, and the OSBA each filed a Main Brief. Also, on October 1, 2024, PPLICA filed a letter indicating that it would not be submitting a Main Brief. On October 15, 2024, PPL, I&E, the OCA, and PPLICA each filed a Reply Brief. Also, on October 15, 2024, the OSBA filed a letter indicating that it would not be submitting a Reply Brief. R.D. at 3.

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<sup>4</sup> By Telephonic Hearing Notice dated July 22, 2024, a Call-In Telephonic Hearing was scheduled for September 4, 2024, and September 5, 2024, at 10:00 a.m. for both days.

On October 15, 2024, the record closed upon the ALJ receiving Reply Briefs, or notice of the intent not to file a Reply Brief, from all of the Parties. R.D. at 3.

On October 18, 2024, PPL filed a Motion to Strike PPLICA's Reply Brief (PPL Motion). PPL's Motion was accompanied by a Notice to Plead advising PPLICA that an Answer was due within twenty (20) days of the date of service of PPL's Motion, or by November 7, 2024. In its Motion, PPL argued that, essentially, the ALJ should strike PPLICA's Reply Brief in its entirety based on Commission precedent and because PPLICA did not serve any discovery, submit testimony, or file a Main Brief. PPL Motion at 7-9. PPLICA did not file an Answer to PPL's Motion.

On November 14, 2024, the ALJ issued an Order denying PPL's Motion (Order to Deny Motion). R.D. at 3. In her Order to Deny Motion, the ALJ found that pursuant to 52 Pa. Code § 5.502(c), the only prerequisite to the filing of a reply brief is the filing of an initial brief by the party with the burden of proof. The ALJ determined that, in the instant proceeding, PPL had the burden of proof and filed a Main Brief. Accordingly, the ALJ found that no limitations were imposed on PPLICA's participation in this matter. As such, the ALJ denied the Motion. Order to Deny Motion at 2.

In the Recommended Decision issued on November 21, 2024, the ALJ recommended that the Commission deny PPL's request to waive its DSIC cap of 5%, and increase its DSIC cap to 9%, of billed revenues. R.D. at 1, 43.

As previously noted, PPL filed Exceptions on December 11, 2024.<sup>5</sup> On December 23, 2024, I&E, the OCA, the OSBA, and PPLICA filed Reply Exceptions.<sup>6</sup>

### **III. Discussion**

#### **A. Legal Standards**

##### **1. Burden of Proof**

In this proceeding, PPL seeks approval of a waiver for its DSIC cap of 5% of billed distribution revenues, and an increase of the cap to 9%. As such, the Company has the burden of proving that its proposed DSIC waiver and increase complies with the legal requirements set forth in 66 Pa.C.S. § 1358(a)(1). The proponent of a rule or order in any Commission proceeding bears the burden of proof, 66 Pa.C.S. § 332(a), and therefore, the Company has the burden of proving its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Company's evidence must be more convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of

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<sup>5</sup> Also, on December 11, 2024, I&E, the OCA, the OSBA, and PPLICA each filed a letter indicating that they would not be filing Exceptions.

<sup>6</sup> Pursuant to 52 Pa. Code § 5.535, Replies to Exceptions were due within ten days of the date that Exceptions were due, or December 21, 2024. It is noted that December 21, 2024, was a Saturday. Therefore, Replies to Exceptions were due Monday, December 23, 2024.

the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by a utility of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the utility shifts to the other parties. If the evidence presented by the other parties is of co-equal value or “weight,” the burden of proof has not been satisfied. The Company now has to provide some additional evidence to rebut that of the other parties. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001). However, a party that offers a proposal in addition to what is sought by the original filing bears the burden of proof for such a proposal. *Pa. PUC, et al. v. Metropolitan Edison Co.*, Docket No. R- 00061366C0001 (Opinion and Order entered January 11, 2007); *Joint Default Service Plan for Citizens’ Electric Company of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013*, Docket Nos. P-2009-2110798 and P-2009-2110780 (Opinion and Order entered February 26, 2010).

## **2. Applicable Act 11 Standards**

As previously discussed, the DSIC mechanism allows certain utilities, including EDCs, such as PPL, to recover the costs related to the repair, improvement, and replacement of eligible property. 66 Pa.C.S. § 1350. Section 1351 of the Code sets forth the definition for “eligible property” for each utility type, including EDCs. 66 Pa.C.S. § 1351. Section 1351(1) provides as follows:

- (1) For [EDCs], eligible property shall include:
  - (i) Poles and towers.
  - (ii) Overhead and underground conductors.
  - (iii) Transformers and substation equipment.
  - (iv) Any fixture or device related to eligible property under subparagraphs (i), (ii) and (iii), including insulators, circuit breakers, fuses, reclosers, grounding wires, crossarms and brackets, relays, capacitors, converters and condensers.
  - (v) Unreimbursed costs related to highway relocation projects where an [EDC] must relocate its facilities.
  - (vi) Other related capitalized costs.

66 Pa.C.S. § 1351(1).

As a precondition to implementing a DSIC, Act 11 requires that a utility file a Long-Term Infrastructure Improvement Plan (LTIIIP) with the Commission, which specifies the information to be included in the LTIIIP. 66 Pa.C.S. § 1352.

Section 1353(a) of the Code explains the process for requesting approval of a DSIC and allows a utility to petition the Commission for approval of a DSIC “to provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa.C.S. § 1353(a).

Section 1357(a) of the Code establishes that the DSIC shall be calculated to allow for the recovery of the fixed cost of eligible property that has not “been reflected in the utility’s rates or rate base” and has been “placed in service during the three-month period ending one month prior to the effective date of the [DSIC].” 66 Pa.C.S.

§ 1357(a)(1)(i),(ii). Section 1357 of the Code also addresses the elements of the DSIC calculation, which is described as follows:

(d) Calculation.

(1) The [DSIC] shall be expressed as a percentage carried to two decimal places and shall be applied in a manner consistent with section 1358 (relating to customer protections) to each customer under the utility's applicable rates and charges. The charge shall not be applied to amounts billed for public fire protection service by water utilities and the State tax adjustment surcharge.

(2) The [DSIC] shall be calculated by dividing one-fourth of the annual fixed costs associated with all eligible property under the [DSIC] by the projected revenue for the quarterly period during which the distribution system will be collected. The projected revenues shall not include revenues from public fire protection service earned by water utilities and the State tax adjustment surcharge.

(3) Supporting data for each quarterly update shall be filed with the commission and served upon the commission, the [OCA] and the [OSBA] at least ten days prior to the effective date of the update.

66 Pa.C.S. § 1357(d).

Section 1358 of the Code provides various customer protections. Section 1358(a)(1), 66 Pa.C.S. § 1358(a)(1), which establishes a general rate cap, is particularly significant to this proceeding because it provides that a DSIC may not exceed 5% of distribution rates billed for an EDC. However, upon petition, the Commission may grant a waiver of the 5% limit in order for the EDC "to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa.C.S. § 1358(a)(1).

Section 1358(c) of the Code, 66 Pa.C.S. § 1358(c), provides that, absent an express limitation on existing ratemaking authority, the Commission retains its full and existing ratemaking authority. Accordingly, the Commission has the full power and authority under the Code to examine, investigate, and audit any and all aspects regarding the data, operation, and implementation of the DSIC to the same extent that it would review a non-DSIC rate matter. As such, Section 1301 of the Code, which requires that “[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with regulations or orders of the commission,” applies to the DSIC rate in this proceeding. 66 Pa.C.S. § 1301(a). Section 1358(e) requires that all DSICs shall be subject to audit by the Commission and an annual reconciliation based on a period consisting of the twelve months ending December 31 of each year. The Commission may also permit quarterly reconciliation. 66 Pa.C.S. § 1358(e)(1)(i),(ii).

## **B. PPL’s Petition**

### **1. Overview**

By its Petition, PPL seeks a waiver of Section 1358(a) of the Code, 66 Pa.C.S. § 1358(a), to increase the DSIC cap from 5% to 9% of billed distribution revenues effective on or after January 1, 2025. According to PPL, this waiver and increase is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service for PPL’s customers, as required by Section 1501 of the Code, 66 Pa.C.S. § 1501. PPL asserted that the Company currently faces issues and challenges to maintain and improve reliability of service, including, *inter alia*: (1) more frequent and severe weather events in its service territory; and (2) increased materials costs, which, in turn, force the Company to absorb such costs within its budgets for projects that are designed to improve service reliability. Petition at 1-2.

According to PPL, an increase to the DSIC cap will help the Company to address these issues by timely recovering its investments in projects that will support and improve reliability of service, as outlined in the Company's current LTIIIP, and its *Petition for Approval of Major Modifications in its Existing Long-Term Infrastructure Improvement Plan*, at Docket No. P-2022-3034972.<sup>7</sup> Petition at 3; *see also* PPL Exh. SDS-1. Further, PPL asserted that its proposed DSIC cap increase will free up funding for additional projects that can improve service reliability but are not set forth in the LTIIIP or Modified LTIIIP. Moreover, PPL averred that if the proposed DSIC cap waiver is approved, then the Company can increase and accelerate infrastructure investments that consistently improve PPL's performance in the reliability benchmarks of System Average Interruption Frequency Index (SAIFI), System Average Interruption Duration Index (SAIDI), Customer Average Interruption Duration Index (CAIDI) and Customers Experiencing Multiple Interruptions (CEMI), including, *inter alia*, vegetation management and Predictive Failure Technology (PFT). Petition at 3. Furthermore, PPL asserted that while a DSIC cap higher than 9% is justifiable based on its analysis, a DSIC cap of 9% would facilitate the necessary investments on its distribution system while having a minimal impact on customers' bills. *Id.* at 5.

I&E, the OCA, the OSBA and PPLICA opposed PPL's Petition and raised a number of issues regarding PPL's DSIC cap waiver request. Alternatively, I&E proposed that if the Commission grants the Petition, then the Commission limit the DSIC cap to a maximum of 7.5%, instead of PPL's requested 9%. I&E M.B. at 20. The OCA and PPLICA each opposed I&E's alternative proposal. OCA R.B. at 12; PPLICA R.B. at 2.

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<sup>7</sup> Subsequent to the filing of the Petition in the instant proceeding, the Commission approved modifications to PPL's LTIIIP (Modified LTIIIP). *See Petition of PPL Electric Utilities Corp. for Approval of Major Modifications to its Existing Long-Term Infrastructure Improvement Plan*, Docket No. P-2022-3034972 (Opinion and Order entered July 11, 2024) (*Modified LTIIIP Order*).

## 2. Positions of the Parties

### a. PPL's Position

As discussed, *supra*, PPL averred that its current ability to optimize the potential of the DSIC is limited by the 5% cap. As such, PPL submitted that a waiver and increase of the Company's DSIC cap to 9% is necessary to improve and maintain service reliability because it will allow the Company: (1) to timely recover and accelerate investments in projects that will support and improve reliability of service that are outlined in the Company's LTIP; and (2) to free up funding for additional projects that are not included in the Company's LTIP but can improve service reliability. PPL M.B. at 10-11 (citing PPL Exh. 1 at 11; PPL St. 1 at 10-13; *Modified LTIP Order*).

PPL claimed that increasing the DSIC cap to 9% will have a minimal impact on customers' bills. PPL M.B. at 11 (citing PPL Exh. 1 at 12; PPL St. 2-R at 20-21; PPL St. 2 at 6-7). Further, PPL noted that it is open to a DSIC cap waiver period of either the duration of the Company's current LTIP (applicable through December 31, 2027, for cost recovery in the DSIC mechanism for the rates effective April 1, 2028, which includes plant-in-service for December 2027, January 2028 and February 2028), or the effective date of new distribution rates resulting from a distribution rate case, whichever would occur first. PPL St. 2-R at 4. Accordingly, PPL submitted that pursuant to 66 Pa.C.S. § 1358(a)(1), a waiver and increase of the DSIC cap is necessary to: (1) ensure and maintain adequate, efficient, safe, reliable, and reasonable service; and (2) address the reliability challenges on its system in an efficient, effective, and timely manner. PPL M.B. at 12 (citing 66 Pa.C.S. § 1358(a)(1)).

PPL referred to the Commission's reliability benchmarks for SAIDI and CAIDI to submit that the Company has failed to meet the SAIDI benchmark in nine quarters since 2021, and the CAIDI benchmark in each quarter since 2020. PPL St. 1

at 7. Further, PPL submitted that based on updated actual performance data since the Petition was filed, the Company's reliability performance continues to trend downward, primarily due to storm impacts. Specifically, PPL noted that the Company's initial 2024 year-end projections for SAIFI, CAIDI, and SAIDI, of 0.982, 265, and 260, respectively, have increased to 1.23, 301, and 370, respectively, in excess of the Commission's benchmarks of 0.98, 145, and 142, respectively. Moreover, PPL noted that the Company's projected CEMI performance doubled from 4% to 8%. PPL M.B. at 12-13; PPL St. 1-R at 5-6. Accordingly, PPL submitted that approval of the proposed DSIC cap waiver will allow the Company to increase and accelerate infrastructure investments that consistently improve its SAIFI, CAIDI, SAIDI, and CEMI performance, including investments in, *inter alia*, new electronic reclosers; low tension primary network cable, equipment and structures; substations; and protection and control. PPL St. 1 at 10-11.

PPL also asserted that several factors make it difficult for the Company to maintain and improve reliability of service, including: (1) the severity and frequency of weather events; (2) aging infrastructure, and (3) rising supply and materials costs due to inflation and supply chain constraints, which are driven by commodity shortages, transportation costs, and increased industry demands. PPL M.B. at 13-14 (citing PPL St. 1 at 8-9; PPL Exh. 1 at 2; OCA Exh. 1 at 70). Specifically, PPL noted that the Company has been forced to absorb recent increases in cost of materials within its existing budgets for projects that are designed to improve service reliability. As such, PPL submitted that the Company currently exceeds the 5% cap on a regular basis because it continues to invest in DSIC-eligible reliability projects. PPL M.B. at 14 (citing PPL St. 1 at 9).

PPL also averred that approval of its proposal will provide funding for the Company to pursue projects that are not in the Company's LTIIP, including: (1) vegetation management; (2) installation of grid modernization devices;

(3) new substations; (4) batteries; and (5) 3-phase tie lines. According to PPL, vegetation management is important to reducing vegetation-caused outages but should be supplemented with long-term investments on the distribution system that insulate the grid from outages caused by vegetation that cannot be addressed through traditional vegetation management. As such, PPL submitted that the Company's proposal will facilitate both capital and operating and maintenance (O&M) solutions for improving reliability of service. PPL St. 1-R at 9-10.

PPL also referred to the Commission's 2023 Pennsylvania Electric Reliability Report (Reliability Report) to note the Commission's recognition of the Company's pursuit of investments in reliability and resiliency. PPL M.B. at 15 (citing OCA Exh. 1 at 88). Further, PPL referred to the Commission's *Management and Operations Audit of PPL Electric Utilities Corporation*, at Docket No. D-2023-3039488, issued July 11, 2024 (*PPL Audit*), to note that in response to two recommendations for improving reliability performance, the Company will: (1) expand and increase programs to address and eliminate CEMIs of 10 outages or more; and (2) accelerate several circuit hardening projects. Therefore, PPL submitted that the DSIC cap waiver will facilitate the acceleration of these projects and put the Company in a better position to implement the recommendations set forth in the *PPL Audit*. PPL St. 1-R at 8-9; PPL SDS 3-R at 9, 11.

PPL also submitted that the Commission has previously approved a DSIC cap waiver for Pennsylvania Power Company (Penn Power), from 5% to 7.5%, based on, essentially, the deterioration of Penn Power's reliability performance. PPL M.B. at 17 (citing *Petition of Pennsylvania Power Company for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution Rate Revenue and Approval to Increase the Maximum Allowable Distribution System Improvement Charge Cap to 11.81%*, Docket No. P-2019-3012628 (Recommended Decision issued February 11, 2020) (*2020 Penn Power Recommended Decision*) at 22, *adopted without modification* (Final Order entered March 12, 2020) (*2020 Penn Power Order*);

*Periodic Review of Pennsylvania Power Company's Long-Term Infrastructure Improvement Plan*, Docket No. M-2018-3000948 (Final Order entered September 20, 2018) (*2018 Penn Power Order*) at 14-19). As such, PPL posited that it should not have to wait until the Company's service reliability deteriorates even further before it can respond to such issues and stop the downward trend in its reliability performance. PPL R.B. at 13.

Regarding the appropriate DSIC percentage over the current 5% cap, PPL submitted that, essentially, an increase to 9% is reasonable to accelerate infrastructure repairs and replacements to improve reliability while balancing customer affordability. PPL M.B. at 26-28. Further, PPL submitted that the Commission should, at a minimum, increase the DSIC cap substantially above the current 5% cap 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 St. 2-R at 21. Moreover, PPL referred to several Commission proceedings to assert that the Commission has demonstrated its willingness to grant an increase in the DSIC cap to as high as 7.5% in settled and litigated DSIC cap waiver petitions when it determined that such an increase would aid the utility to respond to safety and reliability challenges. PPL St. 2-R at 21-22 (citing *2020 Penn Power Order*; *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket Nos. R-2008-2079310, *et al.* (Opinion and Order entered July 23, 2009) (*2009 Aqua Order*); *Petition of Pennsylvania-American Water Company 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.* (Opinion and Order entered August 14, 2007) (*2007 PAWC Order*); *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.* (Opinion and Order entered January 28, 2016) (*2016 PGW Order*), *reconsideration granted* (Opinion and 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 (Opinion and Order entered May 10, 2017) (*2017 UGI-CPG Order*), *reconsideration denied* (Order entered September 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 (Opinion and Order entered May 10, 2017) (*2017 UGI-PNG Order*)).

**b. I&E's Position**

I&E opposed PPL's request. I&E posited that PPL failed to meet its burden of proving that a waiver is necessary to ensure that the Company will be able to provide and maintain safe and reliable service, as there is no indication that the Company will be unable to continue to provide safe and reliable service to customers if the requested DSIC increase is not approved. I&E M.B. at 5, 7-8, 20, 22 (citing I&E St. 1 at 8; 66 Pa.C.S. § 1358(a)(1)). I&E noted that PPL, in response to the OCA's interrogatories, stated that it will comply with its Modified LTIP regardless of whether the DSIC cap is waived. I&E M.B. at 5, 9 (citing OCA Exhs. JDM-1SR, JDM-2). Further, I&E noted that although PPL has the discretion to file a base rate case if it finds that its current revenues are inadequate to cover the costs of infrastructure investments, and the Company's most recent base rate case was more than nine years ago, PPL chose to file the instant Petition instead. I&E M.B. at 6, 12-13 (citing *Pa. PUC v. PPL Electric Utilities Corporation*, Docket Nos. R-2015-2469275, *et al.* (Opinion and Order entered November 19, 2015) (*2015 PPL Order*)). Moreover, in disagreement over PPL's comparison of its DSIC filing to other proceedings where the Commission approved DSIC cap increases, I&E asserted that those waivers were found to be necessary to address safety and reliability issues, whereas PPL has not demonstrated such a need in this proceeding. I&E M.B. at 6, 13-15 (citing *2016 PGW Order*; *2020 Penn Power Order*; *2017 UGI-CPG Order*).

Additionally, I&E submitted that in the alternative, if the Commission grants PPL's request for a DSIC cap waiver, then the Commission should approve a temporary DSIC cap maximum of 7.5%. I&E M.B. at 7.

I&E also noted that the Commission's review of a DSIC filing is not as comprehensive as its review of a base rate filing, where the Commission examines all of the components of a utility's operation that make up the revenue requirement. In addition, I&E argued that because the DSIC is based on percentage of revenue and not the cost of providing service to a customer class, any subsidy that exists under base rates is not adjusted with the DSIC. I&E M.B. at 9-10 (citing I&E St. 1 at 11-13). Further, I&E pointed out that: (1) PPL's reported earnings made the Company ineligible to charge a DSIC for seven (7) of the fourteen (14) quarters that PPL exceeded the DSIC cap; (2) 28 quarters elapsed before the Company charged a 5% DSIC; and (3) the Fully Projected Future Test Year (FPFTY) in PPL's last base rate proceeding ended on December 31, 2016, or more than eight years ago. I&E M.B. at 11-12 (citing OCA St. 1-SR at 9; PPL St. 2-R at 7-8).

Additionally, I&E referred to the proceeding in *Pa. PUC v. Newtown Artesian Water Company*, Docket Nos. R-2017-2624240, C-2017-2626954 (Opinion and Order entered July 27, 2018) (*2018 NAWC Order*), to note that Newtown Artesian Water Company (NAWC), at the time of its request for a DSIC cap waiver, had not filed a base rate case in six (6) years, and the Commission considered this fact in its rejection of NAWC's request. Specifically, I&E noted that the Commission disagreed with NAWC's argument that its request for a DSIC cap increase should not be distinguished from three water utilities that were granted an increase to 7.5%, because those utilities had been filing base rate cases regularly and timely. I&E M.B. at 10-11 (citing *2018 NAWC Order* at 20-21).

Applying this to the instant proceeding, I&E posited that PPL's request to increase its DSIC from 5% to 9% is unwarranted because it is based on the Company's failure to file a base rate case. I&E pointed out that because PPL filed its most recent base rate case more than nine years ago, on March 31, 2015, with the DSIC reset to zero effective January 1, 2016, the Company was able to recover infrastructure investment through the DSIC and did not reach the 5% cap until April 2021. I&E M.B. at 12 (citing I&E St. 1 at 16; *2015 PPL Order*; 66 Pa.C.S. § 1358(b)(1)). Further, I&E argued that as PPL's DSIC was approaching the 5% cap in April 2021, the Company chose not to file a subsequent rate case to reset the DSIC. I&E M.B. at 12. As such, I&E submitted that while there is no statutory requirement that a utility file a base rate case prior to obtaining a waiver of the DSIC cap, the recency of a utility's last base rate case is a consideration when assessing whether a DSIC's cap should be waived. Moreover, I&E submitted that lengthening the time between PPL's rate cases by waiving the Company's DSIC cap is not consistent with Act 11. I&E M.B. at 13 (citing *2018 NAWC Order*).

I&E also disagreed with PPL's references to cases where the Commission approved DSIC cap increases for other utilities. Specifically, I&E referred to the proceeding for the *2016 PGW Order* to note that Philadelphia Gas Works (PGW) is a municipal gas utility regulated by the Commission under a cash flow formula, meaning that its DSIC does not include a profit component and is, therefore, different from an investor-owned utility's DSIC. I&E noted that in that proceeding, it supported PGW's requested DSIC increase to 7.5% to increase its pipeline replacement efforts. I&E M.B. at 14 (citing *2016 PGW Order* at 13). Further, I&E referred to the proceeding for the *2020 Penn Power Order* to note that it entered into a settlement agreement with Penn Power to increase its DSIC cap above 5% because the Commission determined that changes to Penn Power's LTIP were necessary to maintain and improve reliability. I&E M.B. at 14-15 (citing *2020 Penn Power Recommended Decision* at 11; *2020 Penn Power Order* at 2). Moreover, I&E referred to the proceeding for the *2017 UGI-CPG Order* to note that it agreed with UGI Central Penn Gas (UGI-CPG) that

a waiver of the DSIC Cap was warranted and UGI-CPG demonstrated that additional DSIC funding would address safety concerns identified by I&E's Gas Safety Division. I&E M.B. at 15 (citing *2017 UGI-CPG Order* at 16). Furthermore, I&E noted that unlike the cases cited by PPL, where the Commission granted, and I&E supported, DSIC cap waivers based on a necessity to address safety and reliability concerns, PPL has not demonstrated such a need here. Additionally, I&E noted that the Commission has only approved one DSIC cap waiver request by an electric utility, and it has never approved a DSIC cap waiver beyond 7.5% for an investor-owned utility. I&E M.B. at 7, 15-16, 20-21 (citing OCA St. 1 at 11-12; *2020 Penn Power Order*; *2017 UGI-CPG Order*; *2016 PGW Order*).<sup>8</sup>

Additionally, I&E submitted that PPL's DSIC rate increase proposal is not just and reasonable because: (1) such an increase would occur without undergoing base rate scrutiny; (2) large usage customers will experience a significant bill impact; and (3) the DSIC is a separate surcharge and increasing the cap does not address the potential disparity in the revenue that each class should contribute to overall revenue. I&E M.B. at 16-17 (citing I&E St. 1-SR at 27; I&E St. 1 at 13, 21; 66 Pa.C.S. § 1301(a)). Further, I&E asserted that an extended period between base rate cases could result in a customer class bearing a disproportionate and unreasonable share of DSIC charges. I&E continued that the 5% DSIC cap prevents cost of service disparity issues from worsening over time because reaching the cap is part of the utility's evaluation to file a base rate case where class cost of service issues can be evaluated. Moreover, I&E asserted that it is reasonable to think that the class costs of service have changed in the nine years since PPL's last base

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<sup>8</sup> On page 16 of I&E's Main Brief, I&E stated the following: "For these reasons, I&E PPL Electric satisfied its burden in this case." I&E M.B. at 16. However, we note that I&E, in its Main Brief, submitted its assertion, multiple times, that PPL failed to meet its burden of proving that a waiver of the 5% DSIC cap is necessary to ensure that the Company will be able to provide and maintain safe and reliable service. See I&E M.B. at 5, 7-8, 20, 22. Therefore, we shall consider I&E's ambiguous statement on page 16 of its Main Brief to an inadvertent misstatement.

rate case, and such outdated data should be updated to ensure that any existing disparity does not worsen. As such, I&E submitted that it would be in the public interest for the Company to file a rate case, given the amount of time since PPL's last rate case.

I&E St. 1-SR at 11-14.

I&E added that although a DSIC would be simpler for PPL to recover a new plant addition, a base rate case would evaluate all ratemaking components and establish just and reasonable rates by class. I&E continued that a rate increase following a comprehensive review from the interested Parties, and the Commission, including an assessment of customer impact by class, is preferable to the limited scrutiny found in the instant proceeding. As such, I&E reinforced its position that if PPL truly believes that it needs additional funding to ensure and maintain safe and reliable service, then it should file a base rate case, rather than seek a waiver of the 5% DSIC cap in the instant proceeding. I&E M.B. at 19-20 (citing I&E St. 1-SR at 21).

**c. The OCA's Position**

The OCA likewise opposed PPL's DSIC waiver request. Like I&E, the OCA argued that PPL has failed to meet its burden of demonstrating that a waiver of the 5% DSIC cap is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service. OCA M.B. at 8-10 (citing 66 Pa.C.S. § 1358(a)(1)). The OCA took the position that the record demonstrates that PPL: (1) has generally positive reliability metrics; (2) needs to improve service reliability by increasing its spending on vegetation management, which is a major cause of outages on the Company's distribution system but is not DSIC-eligible; (3) seeks to invest in a PFT program, which is not DSIC-eligible; (4) can file a base rate case for relief, to provide the opportunity for simultaneous review of all aspects of its revenues, expenses, and capital costs for the same time period; (5) has a history of earning excess or sufficient returns on investment; and (6) has maintained and controlled a positive trend for its SAIFI benchmark

performance, which the Commission has defined as “the level of performance that the EDC should strive to achieve and maintain.” OCA M.B. at 7, 11-13 (citing OCA Exh. 1 at 69-71, 92; Tr. at 120-34). Accordingly, the OCA submitted that a waiver of the statutory 5% cap and the application of a 9% increase is unjust and unreasonable because PPL has failed to demonstrate that the 5% DSIC cap is insufficient to support plant replacement and DSIC-eligible spending that corresponds to its Modified LTIP. OCA M.B. at 8-9.

The OCA referred to the Commission’s Reliability Report to submit that: (1) trees and vegetation were the top cause of outages and service interruptions that negatively impact electrical reliability metrics; and (2) outages caused by vegetation have nearly doubled since 2013. OCA M.B. at 10, 12 (citing OCA Exh. 1 at 69-70). Further, the OCA referred to the *Modified LTIP Order* to note that since 2013: (1) PPL has decreased its overall O&M expenses, including its vegetation management expenses; (2) trees were the number one cause of outages; and (3) vegetation-caused outages have nearly doubled. OCA M.B. at 12 (citing *Modified LTIP Order* at 20-21). As such, the OCA submitted that to provide better service and reliability, PPL should focus on increasing its vegetation management expense, which is funded through base rates and is not eligible for recovery through the DSIC surcharge. OCA M.B. at 10, 13-14 (citing OCA Exh. 1 at 71; Tr. at 119-20, 129-30, 133, Gadamiski Exhs).

The OCA also submitted that PPL is not entitled to a waiver of the 5% DSIC cap to shift revenue from base rates to non-DSIC eligible expenses. In response to PPL’s concerns about LTIP or Modified LTIP cost recovery and funding for projects that improve service reliability, the OCA noted that the Company may file a base rate case, roll its DSIC into base rates, and reset its DSIC to zero. Further, the OCA noted that the Commission has held that the DSIC is not intended to displace or impact a company’s pre-DSIC and pre-LTIP budgets for O&M and capital improvements.

OCA M.B. at 15 (citing Petition at 3, 11; *Modified LTIP Order* at 9, 21; 66 Pa.C.S. §§ 315(e), 1358(b)(1)).

Similar to I&E, the OCA also submitted that a waiver of the DSIC statutory cap is not reasonable or appropriate because PPL has not filed a base rate case since 2015, and, therefore, the Company's current base rates no longer represent the Company's actual investment, expenses, and revenues. OCA M.B. at 9, 15-16 (citing OCA St. 1 at 14; I&E St. 1 at 14; *2015 PPL Order*; 66 Pa.C.S. §§ 1358(a)(1), 1653(b)). Further, the OCA cited the *2018 NAWC Order* to posit that there has been insufficient base rate scrutiny of: (1) PPL's reductions in expenses or borrowing costs; (2) growth in load or customers; (3) the Company's riders; and (4) other revenue sources. OCA M.B. at 9, 17-18 (citing *2018 NAWC Order* at 20-21). Moreover, the OCA noted that if PPL does not believe that it needs to file a rate case until 2026 "with or without approval of a DSIC cap increase," then there is no reason for the Commission to grant the Company's request for a waiver of the 5% DSIC cap. OCA M.B. at 18 (citing OCA Exh. JDM-2). Accordingly, the OCA echoed the position of I&E that PPL's request for a DSIC cap waiver should be denied based on Commission precedent and because the Company has not filed a base rate case since 2015, and does not intend to file one before 2026, with or without approval of a DSIC cap increase. OCA M.B. at 18 (citing OCA Exh. JDM-2).

Additionally, the OCA submitted that similar to other utilities which added plant without filing a base rate case and without a DSIC, the Company's existing base rates have provided a sufficient return on investment (DSIC-eligible and non DSIC-eligible), even where the depreciation and return are not recovered through the DSIC, and above the 5% cap that PPL is already collecting, without a waiver. OCA M.B. at 18-19 (citing *Pa. PUC v. PECO Energy Company – Gas Division*, Docket No. R-2008-2028394 (Recommended Decision issued September 17, 2008) at 14-15 (Final Order entered October 29, 2008); *Petition of Columbia Gas of Pennsylvania, Inc. for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution*

*Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues*, Docket No. P-2016-2521993 (Recommended Decision issued October 12, 2016) at 15 (Opinion and Order entered December 22, 2016)). Further, the OCA noted that with a 5% DSIC cap in place since July 2013, PPL failed to reach the 5% cap until April 2021. OCA M.B. at 19 (citing OCA St. 1 at 7; I&E St. 1 at 16). Moreover, the OCA highlighted that although PPL claimed that the 5% cap limits its current ability to optimize the potential of the DSIC, the Company has stated that it will move forward with its infrastructure replacement schedule and Modified LTIP plan “with or without the DSIC cap waiver.” OCA M.B. at 8, 19-20 (citing OCA Exh. JDM-1).

The OCA also referred to the testimony of the OCA’s witness, Mr. Jerome D. Mierzwa, to note that since PPL’s 2015 base rates took effect, the Company’s quarterly DSIC filings demonstrate that it was not eligible to charge a DSIC for protracted periods, including eighteen quarters since April 2017, based on quarterly earnings reports indicating that PPL would earn a rate of return (ROR) in excess of the DSIC earnings cap. Further, the OCA noted that PPL will still recover its Modified LTIP investments if the DSIC remains at the 5% cap. OCA M.B. at 8, 19-20 (citing OCA St. 1 at 14; OCA Exh. JDM-5; *PPL Electric Utilities Corporation Calculation and Supplement No. 343 to Tariff Electric PA. P.U.C. No. 201 for the Distribution System Improvement Charge*, Docket No. M-2022-3035407). Moreover, the OCA noted that there is no indication that PPL will be unable to continue to provide safe, reliable, and reasonable service to customers if the Company’s request for a DSIC increase or cap waiver is not approved. Furthermore, the OCA averred that the Company demonstrates the sufficient capital necessary to address reliability metrics given PPL’s ROR of at least 8.12% since its last base rate case. OCA M.B. at 20 (citing OCA Exhs. JDM-1SR, JDM-5; I&E St. 1).

As such, the OCA submitted that PPL failed to meet its burden of proving that a waiver of the DSIC cap is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service. Accordingly, the OCA submitted that PPL's Petition for waiver and increase of the DSIC cap to 9% should be denied. OCA M.B. at 9-12, 20, 23 (citing 66 Pa.C.S. § 1358(a)(1)). Moreover, the OCA submitted that "if PPL has crossed the threshold as an initial matter," then the Company's request for a 4% increase is not supported by substantial evidence and substantially higher and materially different from prior Commission proceedings where waivers were granted. OCA M.B. at 20-21.

The OCA also challenged PPL's argument that the Commission has granted DSIC cap waivers to other utilities, countering that such approvals are not applicable, or were approved under different circumstances. Like I&E, the OCA noted that the Commission has never approved a waiver of the DSIC cap above the 7.5% cap for an investor-owned utility, other than on a temporary basis where the waiver was justified by the record.<sup>9</sup> OCA M.B. at 9, 21 (citing I&E St. 1 at 7; 66 Pa.C.S. § 1358(a)(2)). Further, the OCA noted that the Commission has only used the cap waiver to provide relief where the utility: (1) was filing base rate cases on a frequent basis and still reaching the 5% DSIC cap; and (2) provided evidence that an increase to the DSIC cap was necessary to accelerate infrastructure replacement. OCA M.B. at 21-22 (citing *2009 Aqua Order* at \*27-28; *2007 PAWC Order* at \*6, 24, 30-32; *Petition of United Water Pa., Inc. for Approval of a Tariff Supplement to Revise its Maximum DSIC To 7.5% of Billed Revenues*, Docket No. P-2013-2389331 (Order entered December 19, 2013) at 3, 6). Moreover, the OCA noted that the only DSIC waiver authorized for an EDC occurred upon the Commission's approval of a proposed joint petition for settlement of Penn Power's petition for a waiver of its DSIC cap to 11.81%, after the Commission determined, during a mid-course review, that Penn Power's LTIP was no longer

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<sup>9</sup> The OCA noted that the cap for a water utility DSIC is 7.5%. OCA M.B. at 21 (citing 66 Pa.C.S. § 1358(a)(2)).

adequate to maintain and improve the reliability of its distribution infrastructure, and the settlement provided for a temporary DSIC cap up to 7.5% until the effective date of new base rates or the conclusion of its then-current LTIIP. OCA M.B. at 22-23 (citing *2020 Penn Power Order* at 2; *2018 Penn Power Order* at 13-14).

The OCA further argued that, contrary to PPL's assertion that the impact of any DSIC waiver on customers' bills will be minimal, consumers are concerned about the affordability of their electric bills if the Commission were to grant the Petition. OCA M.B. at 23-24 (citing Tr. at 119, 133). Furthermore, the OCA claimed that PPL failed in its Petition to address the impact of its waiver request on large usage customers. OCA M.B. at 24 (citing I&E St. 1 at 21-22). Moreover, the OCA asserted that the DSIC surcharge mechanism requires all customers to pay more, thereby allowing PPL to quickly recover plant additions without the ability for all interested parties to evaluate whether other cost decreases and input changes should be reflected and netted against the requested increase and review the costs by rate class. As such, the OCA submitted that the lapse in time between rate cases could result in a class bearing a disproportionate and unreasonable share of DSIC charges among the rate classes. OCA M.B. at 24 (citing I&E St. 1-SR at 11-12).

Finally, the OCA explained that it does not endorse I&E's alternative proposal to approve a temporary DSIC cap maximum of 7.5%. In the OCA's view, this alternative proposal is "rooted in collaring the harm" that would be caused should the Commission grant a DSIC cap increase to the Company. OCA R.B. at 12.

**d. The OSBA's Position**

The OSBA also opposed PPL's DSIC cap waiver request. The OSBA noted that the Commission has expressed concern with PPL's: (1) reliability metrics; (2) customer interruptions; and (3) vegetation-caused outages related to the Company's

decreasing O&M and vegetation management expenses since 2013. OSBA M.B. at 4 (citing *Modified LTIIP Order*). Further, the OSBA asserted that Section 1358(a)(1) of the Code implies that the Company must demonstrate that the waiver is necessary in order to provide reasonable service, and therefore, “the utility has no other options for providing the necessary service.” OSBA M.B. at 5 (citing 66 Pa.C.S. § 1358(a)(1)). Moreover, the OSBA noted PPL’s admission that it will meet its service obligations regardless of whether a waiver is granted. As such, the OSBA took the position that a waiver is not necessary. OSBA M.B. at 5 (citing OSBA St. 1 at 3). Furthermore, the OSBA referred to the cases cited by PPL in support of its Petition. According to the OSBA these cases are distinguishable from PPL’s request in the instant proceeding because: (1) the *2016 PGW Order* and the *2017 UGI-CPG Order* were based on a combination of factors including poor financial condition (PGW) and gas safety (PGW and UGI-CPG); (2) in the *2017 UGI-CPG Order*, the Commission considered the testimony of I&E and UGI-CPG’s gas safety experts; and (3) in the *2020 Penn Power Order*, Penn Power’s DSIC waiver petition was resolved by a settlement. OSBA M.B. at 10-11 (citing *PGW 2016 Order* at 41; *2017 UGI-CPG Order* at 26; *2020 Penn Power Order*). Accordingly, the OSBA submitted that the ALJ and the Commission should deny PPL’s Petition. OSBA M.B. at 12.

**e. PPLICA’s Position**

PPLICA also opposed PPL’s DSIC cap waiver request, concurring with the arguments raised by I&E, the OCA, and the OSBA, *supra*. PPLICA R.B. at 2. However, similar to the OCA, PPLICA further opposed I&E’s alternative recommendation that any approval of the waiver should be on a temporary basis “of either the duration of the Company’s Third LTIP (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.” PPLICA R.B. at 2-3 (citing I&E M.B. at 21). PPLICA averred that approval of this alternative proposal would still allow PPL to unreasonably increase rates for

customers outside of the base rate case process. Further, PPLICA asserted that granting a waiver of the DSIC cap on a temporary basis would still require customers to pay higher rates without any opportunity to comprehensively examine the Company's financial condition through a base rate case. Moreover, PPLICA insisted that the Commission should refrain from imposing substantial rate increases through a DSIC cap waiver, temporary or otherwise, given that PPL's most recent cost of service study is out-of-date and that PPL has not filed a base rate case since 2015. As such, PPLICA submitted that this alternative recommendation should be denied and the Commission should deny the Petition in its entirety. PPLICA R.B. at 3-4.

### **C. ALJ's Recommended Decision**

In the Recommended Decision, ALJ Ashton made twenty-five Findings of Fact (FOF) and reached ten Conclusions of Law (COL). R.D. at 4-7; 43-44. The FOF and COL are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

#### **1. The OSBA's Interpretation of the Act 11 Waiver Provision**

At the outset, the ALJ addressed the OSBA's interpretation of the Act 11 waiver provisions as conditioning the grant of a waiver on a demonstration by the utility that it has no other option for providing necessary service. R.D. at 31 (citing OSBA M.B. at 5). The ALJ opined that the OSBA's interpretation of the Act 11 waiver provisions could be read as setting a standard for granting a DSIC waiver. The ALJ found that the OSBA did not demonstrate that the Commission has ever adopted this interpretation. Further, the ALJ noted that the other opponents of the Petition did not embrace the OSBA's interpretation and presented other arguments in support of their position that PPL failed to sustain its burden of proof in this matter. Accordingly, the

ALJ declined to recommend that the Commission adopt the OSBA's interpretation of the standard granting a waiver. R.D. at 31.

## **2. The Timing of PPL's Most Recent Base Rate Case Filing**

The ALJ considered the timing of PPL's most recent base rate filing. The ALJ noted that a rate case is not a condition to the filing of a DSIC waiver request. However, the ALJ found that in evaluating PPL's request for a DSIC waiver, and in light of the legislative history relating to the passage of Act 11 and the Commission's consistent policy statements, the DSIC mechanism and waiver process should not be used to avoid the more comprehensive scrutiny of a base rate filing. R.D. at 37-38.

The ALJ also noted the record evidence that PPL: (1) last filed a base rate case in March 2015, with new rates effective January 1, 2016; and (2) did not, and chose not to, file a base rate case, even though it had the option to file a subsequent base rate case to reset the DSIC when it was approaching the 5% cap in April 2021. The ALJ pointed out that the Company chose not to file a rate case even though the timing of such a filing is within the Company's control, especially given PPL's indication that it does not plan to file a base rate case before 2026, with or without a waiver. R.D. at 38.

The ALJ reasoned that PPL's decision to file for a waiver and delay a base rate filing until 2026 raises the question of the Company's need for a DSIC waiver and lends credibility to I&E's claim that PPL's waiver request was driven by its failure to file a base rate case. The ALJ noted that by PPL'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. Accordingly, the ALJ found that a base rate filing would be more appropriate for PPL to seek additional revenues to fund system enhancements, given the Commission's numerous pronouncements on such filings; the consumer protection afforded by the scrutiny of the Company's finances and operations

in a base rate case; and the lesser, more limited scrutiny available in this proceeding. R.D. at 38.

### **3. Whether Rates Will Be Reasonable if the Waiver is Granted**

Regarding whether PPL's rates would be reasonable if the DSIC waiver is granted, the ALJ was persuaded by the arguments presented by I&E and the OCA. As such, the ALJ found that PPL failed to meet its burden of proving that increasing the DSIC waiver to 9% is just and reasonable. Similarly, the ALJ found that PPL failed to meet its burden of proving that its rates will remain just and reasonable if an increase in the DSIC cap is approved. R.D. at 42.

The ALJ also found that a utility's request for DSIC waiver is neither automatic nor an entitlement, even though Act 11 provides a mechanism for a utility's DSIC cap to be increased above 5%. Further, the ALJ highlighted that although granting a petition for waiver is not conditional upon the timing of the petitioner's most recent base rate case, PPL's base rates and operations have not undergone comprehensive and detailed scrutiny since it last filed a base rate case in 2015. Moreover, the ALJ found PPL's requested increase of the DSIC cap from 5% to 9% of billed distribution revenues "exceptional," as it represents an 80% increase over the Company's current DSIC. Furthermore, the ALJ noted that all Parties agreed that such an increase would generate more than \$45 million annually in additional revenues, which, according to the ALJ, represents a significant increase in utility costs to be borne by customers. R.D. at 42.

### **4. Whether a DSIC Cap of Greater than 5% but Lesser Than 9% is Appropriate**

The ALJ also found that an increase in PPL's DSIC to a percentage that is greater than 5% but less than 9% is not warranted. The ALJ determined that the

arguments cited by I&E and the OCA against granting the waiver also support denying a lesser increase in PPL's DSIC to 7.5%. Specifically, the ALJ reasoned that an increase of PPL's DSIC to a level greater than 5% but less than 9% would not be premised on a thorough and complete analysis of PPL's financial condition and operations. Further, the ALJ recognized that current rates and surcharges would likely remain in effect until 2027, given PPL's indication that, with or without the waiver, it does not intend to file a base rate case before 2026. Moreover, the ALJ noted that such a period exceeds 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 case filings. R.D. at 42-43.

Accordingly, the ALJ found that PPL failed to present evidence to show that an increase to the DSIC cap is necessary and in the public interest, given PPL's strong financial condition and its assurance that it will meet its LTIIP obligations without a waiver. The ALJ noted that PPL can renew its request for a DSIC cap waiver and increase in its next base rate case filing or thereafter, the timing of which would be entirely under PPL's control. R.D. at 43.

Therefore, the ALJ concluded that PPL failed to sustain its burden of proving that: (1) a waiver of the 5% DSIC cap is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service; and (2) an increase of the DSIC cap, from 5% to 9%, is just and reasonable. Thus, the ALJ recommended that the Commission deny PPL's Petition. R.D. at 43, 44, COL Nos. 8, 10 (citing 66 Pa.C.S. §§ 315(a); 1358(a)(1)), and 45, Ordering Paragraph No.1.

## **D. Exceptions and Replies**

### **1. PPL Exception No. 1 and Replies**

#### **a. PPL's Reliability Performance**

In its Exception No. 1, PPL repeats its position that the Company's proposed waiver and increase of the DSIC cap is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service. Exc. at 8 (citing R.D. at 1, 29-45). PPL maintains that the Company's reliability performance has deteriorated in recent years and the DSIC cap waiver will address significant reliability challenges on its system in an efficient, effective, and timely manner. Specifically, PPL stresses its argument, *supra*, that the Company has failed to meet the Commission's SAIDI benchmark in nine quarters since 2021 and the Commission's CAIDI benchmark in every quarter since 2020. Further, PPL maintains that the Company's reliability has continued to trend downward since the Petition was filed. Specifically, PPL restates that in April 2024, the Company was projected to miss the Commission's 2024 SAIFI benchmark of 0.98, with an estimated performance of 0.982; however, by August 2024, the Company projected an estimated 2024 SAIFI performance of 1.23. Similarly, PPL repeats that the Company's year-end projections for CAIDI and SAIDI increased from 265 and 260, respectively, to 301 and 370, respectively, in excess of the Commission's benchmarks of 145 and 142, respectively. PPL Exc. at 8-9 (citing PPL M.B. at 13). Moreover, PPL repeats that the Company's projected CEMI performance doubled from 4% to 8%. PPL Exc. at 8-9 (citing PPL M.B. at 12-13).

PPL also restates its assertion that maintaining and improving service reliability is difficult due to: (1) the severity and frequency of weather events; (2) aging infrastructure, and (3) rising supply and materials costs due to inflation and supply chain constraints, which are driven by commodity shortages, transportation costs, and increased

industry demands. Specifically, PPL refers to the Commission's Reliability Report to note that the Company saw: (1) 36 storms in 2022, the second most storms on record in terms of Commission storm cases, and third most for Commission storm customers interrupted; and (2) 45 storms in 2023, which surpassed the previous high of 42 storms in 2021. PPL Exc. at 9 (citing PPL M.B. at 13-14). Further, PPL notes that transformer procurement costs, which averaged approximately \$590,000 between 2016 and 2020, averaged over \$1 million since 2021. Moreover, PPL avers that industry demand remains at its highest level in the last five years and continues to drive costs higher and extend lead times for distribution units. Furthermore, PPL repeats that the Company has been forced to absorb cost increases within its existing budgets for projects that are designed to improve service reliability. As such, PPL maintains that the Company regularly exceeds the 5% cap because it continues to invest in DSIC-eligible reliability projects.

PPL Exc. at 9 (citing PPL M.B. at 14).

PPL also remains of the opinion that increasing the DSIC cap from 5% to 9% will help to address its reliability issues by: (1) timely recovering investments in projects that will support and improve reliability of service that are outlined in the Company's LTIP; and (2) freeing up funding for additional projects that can improve service reliability but are not set forth in the Company's LTIP. Further, PPL maintains that if the Commission approves the proposed DSIC cap waiver, then the Company can increase and accelerate infrastructure investments that consistently improve SAIFI, SAIDI, and CEMI performance. Moreover, PPL reiterates its claim that its proposal will free up funding for the Company to pursue investments in projects that are not in the LTIP, but have been recently recognized by the Commission as expected to improve reliability and customer experience, such as: (1) vegetation management; (2) installation of grid modernization devices; (3) new substations; (4) batteries; and (5) 3-phase tie lines. PPL Exc. at 10 (citing PPL M.B. at 14-16; *PPL Audit*).

PPL further repeats that the Commission has previously acknowledged the importance of the DSIC cap waiver for improving a utility's reliability performance. PPL Exc. at 10-11 (citing PPL M.B. at 17; *2020 Penn Power Order*; *2020 Penn Power Recommended Decision* at 22; *2018 Penn Power Order* at 14-19). PPL maintains that it seeks a waiver and increase of the DSIC cap now, before further deterioration of the Company's reliability performance, to effectively and efficiently respond to reliability challenges on its system. Therefore, PPL argues that there is overwhelming evidence to support PPL's Petition and to reverse the recommendation of the ALJ that the Petition be denied. PPL Exc. at 11 (citing PPL M.B. at 17).

In reply, I&E maintains its position that PPL has 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. I&E R. Exc. at 2 (citing I&E M.B. at 7-9; I&E St. 1-SR at 14-16; I&E St. 1 at 8; OCA M.B. at 10-12, 20; OSBA M.B. at 10).

In its reply, the OCA counters that the preponderance of record evidence shows that trees are a top cause of system outages and that outages negatively affect reliability of service to PPL's customers. The OCA continues that the remedy to such outages is not additional investment in infrastructure, but a "more rigorous" plan for vegetation management, which is not DSIC-eligible. OCA R. Exc. at 4-5 (citing OCA R.B. at 4; OCA M.B. at 13-14; 66 Pa.C.S. § 1351).

The OCA agrees with the ALJ's recognition that PPL: (1) does not need the waiver to maintain efficient, safe, reliable and reasonable service; and (2) intends to accelerate investments in both LTIIP and non-LTIIP projects should the waiver be granted. OCA R. Exc. at 5 (citing R.D. at 12). Further, the OCA agrees with the ALJ's reliance on the facts of record to conclude that: (1) PPL could satisfy the Company's safety and reliability concerns, as well as the Commission's concerns described in the

*PPL Audit*, by filing a base rate case; (2) PPL, by its own admission, will comply with its Modified LTIIIP, regardless of whether the DSIC cap is waived; and (3) PPL failed to meet its burden of proof to demonstrate that a waiver is necessary. OCA R. Exc. at 5 (citing R.D. at 32; I&E St. 1 at 8). Moreover, the OCA contends that PPL’s attempt to persuade the Commission to grant the DSIC waiver to free up funds to be used toward non-LTIIIP expenses goes against the purpose of the DSIC (*i.e.*, to allow utilities to recover a portion of the reasonable and prudent costs incurred to repair, improve and replace certain eligible property that is part of the utility’s distribution system). OCA R. Exc. at 5 (citing OCA R.B. at 4-5; OCA M.B. at 13-14).

The OCA avers that PPL has failed to persuade the ALJ that funding non-LTIIIP projects is an appropriate use of any waiver of the statutory 5% DSIC cap. As such, the OCA agrees with the ALJ that PPL failed to sustain its burden of proving that a waiver is necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service. OCA R. Exc. at 5 (citing R.D. at 44; OCA R.B. at 5, 12; OCA M.B. at 11-12; 66 Pa.C.S. §§ 315(a), 1358(a)(1)).

**b. PPL’s Compliance with LTIIIP**

PPL also disagrees with the ALJ’s reliance on the Company’s statement that it will comply with its Modified LTIIIP, regardless of whether the DSIC cap is waived, as a basis for recommending that the Commission deny the Petition. PPL Exc. at 11 (citing R.D. at 31-32, 43). PPL argues that the Company is not required to demonstrate that it is unable to comply with its Modified LTIIIP without the requested DSIC cap waiver. PPL Exc. at 11-12 (citing PPL R.B. at 6-7). Further, PPL asserts that 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. PPL Exc. at 12 (citing 66 Pa.C.S. § 1358(a)(1)). Moreover, PPL insists that it has fully demonstrated that its proposed DSIC cap waiver and increase are necessary: (1) to address the reliability

challenges on its distribution system, which are largely caused by more frequent and severe weather events and aging infrastructure; and (2) to improve reliability of service by accelerating investments in both LTIP and non-LTIP projects. Accordingly, PPL argues that the Company's proposal should not be denied based on its compliance with the LTIP. PPL Exc. at 12 (citing PPL R.B. at 7; PPL M.B. at 12-17; 52 Pa. Code § 121.8(a)-(b)).

In reply, I&E avers that PPL's statement to the OCA, that it will comply with its LTIP regardless of whether its DSIC cap is waived, demonstrates that a waiver of the Company's DSIC cap is not necessary to ensure and maintain safe and reliable service. I&E R. Exc. at 2 (citing OCA JDM-1SR). I&E argues that PPL bears the burden of proving that a waiver of its DSIC cap is necessary pursuant to Section 1358 of the Code, and, if the Company cannot provide safe and reliable service without a waiver of its DSIC cap, then it could have stated in its interrogatory response to the OCA that it will not be able to comply with its LTIP without the waiver. Further, I&E adds that PPL did not dispute that it could satisfy its safety and reliability concerns by filing a base rate case. I&E R. Exc. at 2-3 (citing R.D. at 43; I&E M.B. at 7-9; 66 Pa.C.S. § 1358(a)(1)).

In its replies, the OCA reinforces its position that the ALJ appropriately weighed PPL's statement that it will comply with its Modified LTIP regardless of whether the DSIC cap is waived. According to the OCA, this, in part, is because PPL's current annual distribution revenue is approximately \$1.136 billion, and thus, the DSIC cap already allows PPL to collect approximately \$56.8 million in annual DSIC revenue. OCA R. Exc. at 6 (citing R.D. at 5, 25; OCA Exh. JDM-1; I&E St. 1 at 16). Moreover, the OCA reiterates that PPL's ROR of at least 8.12% since its last rate case in 2015 demonstrates that the Company has sufficient capital necessary to address reliability concerns. Accordingly, the OCA contends that the ALJ correctly found that PPL's request for a waiver of the DSIC cap is not warranted, based on the Company's financial ability to comply with its LTIP. OCA R. Exc. at 6 (citing OCA M.B. at 20).

**c. Whether PPL Should File a Base Rate Case**

PPL also disagrees with the ALJ's finding that because the Company last filed a base rate case in 2015, the Company should seek additional revenues to fund system enhancements through a base rate filing. PPL Exc. at 12-13 (citing R.D. at 37-38). PPL contends that it should not be forced to file a base rate case before receiving a waiver of the DSIC cap because: (1) a public utility is not required to file a base rate case within a certain number of years before such a waiver and increase is granted; and (2) it is within the Commission's authority to grant such a waiver, to ensure and maintain reliable service. PPL Exc. at 13-14 (citing PPL M.B. at 11, 20; 66 Pa.C.S. §§ 1353(b)(4), 1358(a)(1)).

PPL asserts that based on Act 11, the DSIC is intended: (1) to accelerate utility infrastructure improvement projects by reducing regulatory lag and financing costs for debt incurred to complete such projects in between base rate cases; and (2) to reduce the frequency and cost of base rate cases. PPL contends that its proposed DSIC cap waiver is not a substitute for a base rate proceeding, but instead represents an attempt to supplement the Company's revenue to accelerate and invest in LTIIP and non-LTIIP projects that are meant to improve service reliability while balancing such investments with customer bill impacts. Moreover, PPL argues that a waiver of the DSIC cap supports the theory of gradualism because customers may see up to a 9% increase over time while, with a base rate case, customers would be more impacted by the Company's attempt to recover all costs. Specifically, PPL notes that the requested DSIC cap increase is estimated to recover approximately \$45 million annually, when compared to the base rate increases requested by other utilities in 2024, which ranged from approximately \$133 million to \$502 million. PPL Exc. at 14-15 (citing PPL M.B. at 21-22).

PPL also argues that upon approval of the waiver, the return on equity that the Company can earn is capped 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. According to PPL, this is critical because an increase in the DSIC cap results in a higher cap on revenues, pursuant to Section 1358(a)(1) of the Code, and does not increase the cap on earnings, at which point the DSIC would reset to zero, pursuant to Section 1358(b)(3). Therefore, PPL continues, the DSIC would still reset to zero if data in its most recent annual or quarterly earnings report show that the Company will earn a ROR that would exceed the allowable ROR used to calculate its fixed costs under the DSIC. PPL Exc. at 15 (citing PPL M.B. at 22; 66 Pa.C.S. § 1358(a)(1), (b)(3)). Moreover, PPL notes that in a base rate case, the Company would be proposing an increase in operating revenues sufficient to provide a reasonable opportunity to earn a reasonable return on its investments. PPL Exc. at 15 (citing *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002); *Pa. PUC v. Pennsylvania Gas and Water Company*, 341 A.2d 239, 251 (Pa. Cmwlth. 1975); *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679, 692-93 (1923); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)). Therefore, PPL avers that approval of the DSIC cap waiver and increase would be more effective and less burdensome than a base rate case because there would be no cap on the revenue earned through distribution rates between base rate cases. PPL Exc. at 15 (citing PPL M.B. at 22).

PPL also refers to the proceeding for the *2018 NAWC Order* to argue that the Commission did not base its decision on NAWC not filing a base rate case in the prior six years. PPL continues that NAWC: (1) attempted to justify its proposed DSIC cap waiver based on its annual revenue shortfall if the DSIC were not increased, and three other water utilities that were granted DSIC cap waivers; (2) exceeded the DSIC cap in two consecutive quarters; and (3) had base rates that were designed based on a Future Test Year. PPL Exc. at 16 (citing PPL M.B. at 23; *2018 NAWC Order* at 10-11, 13, 20-22; *Pa. PUC v. Newtown Artesian Water Company*, Docket Nos. R-2011-2230259, *et al.*, (Recommended Decision issued September 12, 2011), *adopted without modification*

(Order entered October 14, 2011)). PPL contends that in the instant proceeding, unlike NAWC's proposal, the Company: (1) is not proposing to increase the DSIC cap to make up for an annual revenue shortfall; (2) has exceeded the DSIC cap in fourteen (14) quarters; and (3) has base rates that are designed on a FPPTY. Thus, PPL argues that the decision in the *2018 NAWC Order* is distinguishable from the Company's DSIC proposal, even though the Commission acknowledged the length of time since NAWC last filed a base rate case. PPL Exc. at 16-17 (citing PPL M.B. at 23-24).

PPL also argues that the ALJ failed to give proper weight to the fact that the seven (7) quarters in which the Company's reported earnings made it ineligible to charge a DSIC occurred prior to January 1, 2023, with the fourth quarter of 2022 being the most recent of those seven quarters. PPL Exc. at 17 (citing R.D. at 21, 37, 43; PPL M.B. at 24). PPL continues that from the first quarter of 2023 to the present, the Company experienced "earnings erosion" because the DSIC cap was reached. PPL Exc. at 17 (citing PPL M.B. at 24). Further, PPL notes that if the Company is overearning in any quarter, the Company's proposed DSIC cap waiver and increase, if granted, would have no effect on the statutory requirement to reset the DSIC. PPL Exc. at 17 (citing 66 Pa.C.S. § 1358(b)(3)). Moreover, PPL reiterates that the Company is requesting an increase in the cap on revenues, and not on earnings. As such, PPL posits that arguments based on the Company's reported earnings should be rejected. PPL Exc. at 17.

Similarly, PPL disagrees with any argument that the DSIC cap increase would exacerbate any class cost of service changes that occurred since 2015. To the contrary, PPL argues that the base rate case process establishes cost responsibility which remains in place until a new rate case is filed, and there are no automatic adjustment clauses under Section 1307 that require an updated class cost of service study. PPL Exc. at 17 (citing PPL M.B. at 25). Further, PPL argues that there is no evidence that the Company's current class cost of service is unreasonable, and existing rates are

presumed to be just and reasonable, with a burden placed on the Parties to prove that existing rates are unjust and unreasonable. PPL Exc. at 18 (citing PPL M.B. at 25; *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)). Moreover, PPL argues that no record evidence supports the ALJ’s finding that the Company’s decision to file a request for waiver has “delay[ed] a base rate filing until 2026.” PPL Exc. at 18, fn.14 (citing R.D. at 38).

In reply, I&E argues that PPL misunderstands the purpose of the DSIC and is attempting to use the DSIC waiver as a substitute for a base rate proceeding. I&E R. Exc. at 3-4 (citing PPL Exc. at 12-14). I&E maintains that since the inception of the DSIC, the Commission has repeated 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 when compared to a DSIC filing. I&E R. Exc. at 4 (citing I&E M.B. at 9-10; I&E St. 1 at 11-12). Moreover, I&E repeats that the Commission has previously considered the recency of a utility’s last base rate filing in its review of DSIC cap waiver requests. I&E R. Exc. at 4 (citing *2018 NAWC Order* at 20-21).

I&E maintains that PPL’s DSIC cap waiver request is driven by the Company’s failure to file a base rate case, repeating that PPL could have filed its first rate case since March 31, 2015 (with new rates that became effective January 1, 2016), as soon as it reached the 5% cap in April 2021, or any time thereafter, but chose not to and has stated that it does not plan to file a base rate case before 2026, regardless of whether the waiver is granted. I&E R. Exc. at 4-5 (citing I&E St. 1 at 16; *2015 PPL Order*). I&E argues that the Commission should not support PPL’s decision to seek additional funding via its DSIC and avoid base rate scrutiny for nearly a decade. Rather, I&E continues, the Commission should “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.” I&E R. Exc. at 5. Moreover, I&E notes that the ALJ agreed with I&E’s position that the DSIC mechanism and waiver process should not be used to avoid base rate filing scrutiny and that PPL’s most recent base rate filing is a factor that should be considered in evaluating the Petition. I&E R. Exc. at 5-6 (citing R.D. at 37-38).

I&E also refers to the *2018 NAWC Order* to aver that PPL is in a much stronger financial position than NAWC was at the time of its waiver request, and the Commission ultimately denied that request. I&E R. Exc. at 6 (citing I&E M.B. at 11-12). Further, I&E clarifies that it is not arguing that PPL’s current class cost of service is unreasonable, that the Company must conduct a class cost of service study to obtain a DSIC cap waiver, or that its existing rates are unjust and unreasonable. Rather, I&E repeats that it is reasonable to think that the class costs of service have changed since PPL’s last rate case. As such, I&E maintains that such data should be updated to ensure that any existing disparity is not worsened by the Company’s proposed DSIC cap increase. I&E R. Exc. at 6-7 (citing I&E M.B. at 18).

In its replies, the OCA argues that PPL failed to meet, with substantial evidence, its burden of proving a waiver of the DSIC cap is necessary, adding that a waiver of the statutory 5% DSIC cap is not automatic, nor is it an entitlement. OCA R. Exc. at 7 (citing R.D. at 42-43; OCA R.B. at 4, 11; OCA M.B. at 10, 20). The OCA argues that PPL ignores both Commission precedent and the record evidence in this proceeding. OCA R. Exc. at 7 (citing OCA R.B. at 7-9; OCA M.B. at 15-19; 66 Pa.C.S. § 1358(a)(1)). Further, the OCA agrees with the ALJ that it would be more appropriate for PPL to seek additional revenues to fund system improvements through a base rate filing, given: (1) the timing of rate filings; (2) the consumer protection afforded by the scrutiny of the Company’s finances and operations in a base rate case; and (3) the lesser and more limited scrutiny available in this proceeding. OCA R. Exc. at 7 (citing R.D. at 37-38). Moreover, the OCA notes that the Commission specifically distinguished

NAWC from the requests by other water utilities, as those other utilities “have been filing base rates [sic] cases regularly and in a timely manner.” OCA R. Exc. at 7 (citing R.D. at 36; OCA R.B. at 8; OCA M.B. at 17; *2018 NAWC Order* at 20).

The OCA concurs with the ALJ’s reasoning that PPL’s decision to request a waiver of the 5% DSIC cap and delay a base rate filing until at least 2026 calls into question whether the DSIC waiver is necessary. OCA R. Exc. at 7 (citing R.D. at 38). The OCA submits that this finding is supported by: (1) PPL’s failure to file a base rate case to reset the DSIC to zero soon after April 2021, when the Company reached the 5% DSIC cap; and (2) PPL’s own admission that a waiver in the instant proceeding would extend the period from its last rate filing until 2026. OCA R. Exc. at 7-8.

**d. Whether PPL’s Proposed DSIC Cap Increase is Reasonable**

PPL also disagrees with the ALJ’s determination that the Company’s proposal would produce an exceptional DSIC rate and a significant increase in monthly and annual utility costs to be borne by the Company’s customers. PPL contends that while the instant Petition, if granted, would generate approximately \$45 million in additional revenues annually, those revenues are necessary to ensure and maintain adequate, efficient, safe, reliable, and reasonable service. PPL Exc. at 18 (citing R.D. at 39, 42). Further, PPL maintains its assertion that granting its Petition will have a minimal impact on its customers’ bills. In this regard, PPL argues that increasing the maximum DSIC rate to 9%: (1) for a residential customer using 1,000 kWh per month is expected to result in a cost increase of \$2.37 per month, representing a 1.4% increase in the overall residential customer bill; and (2) for commercial and industrial customers: (a) a Rate LP-4 customer on real-time pricing for generation and transmission rates and using 200,000 kWh, 1,000 kW, and ICAP demand of 1,000 kW, is expected to result in a distribution bill increase of 3.8%; (b) a Rate GS-1 customer using 1,500 kWh would see a cost increase of \$1.14 per month, or a total bill increase of 0.6%; and (c) a Rate GS-3

customer using 10,000 kWh and 40 kW, would see an increase of \$9.51 per month, or a total bill increase of 0.7%. PPL Exc. at 18-19 (citing PPL M.B. at 27). Moreover, PPL avers that gradual price changes are more likely than an immediate increase to 9% because the DSIC rate fluctuates based on plant-in service and projected revenue. Therefore, PPL claims that the benefits that result from the DSIC cap waiver would exceed the minimal impact on the average customer bill. PPL Exc. at 19.

In reply, I&E repeats its position that PPL's proposed DSIC rate increase is not just and reasonable because: (1) PPL's proposal will have a significant impact on customers, particularly large use customers; and (2) the increase would come without undergoing full base rate scrutiny. I&E R. Exc. at 7 (citing I&E M.B. at 16-17; I&E St. 1-SR at 27-28; I&E St. 1 at 21; 66 Pa.C.S. § 1301(a)). I&E notes that the ALJ agreed with I&E's arguments on this matter. I&E R. Exc. at 7 (citing R.D. at 42). Further, I&E points out that PPL has continually tried to justify its request in its Petition by arguing that the DSIC waiver is the most efficient way to address its safety and reliability concerns while being the least burdensome on customers. In response to this assertion, I&E counters that the base rate process and the DSIC itself offer important benefits and protections. I&E R. Exc. at 8 (citing PPL M.B. at 12, 14, 17, 22). Moreover, I&E notes that the Commission has consistently recognized the DSIC cap waiver proceeding and the traditional Section 1308(d) base rate proceeding as being separate processes to be used by utilities when appropriate. Furthermore, I&E points out that the ALJ agreed with I&E's argument that granting PPL's proposed DSIC cap waiver is not appropriate, and remains of the opinion that the Company should instead address its safety and reliability concerns by filing a base rate case. I&E R. Exc. at 8.

In its replies, the OCA concurs with the ALJ's conclusion that PPL failed to meet its burden of proving that its rates will remain just and reasonable if the statutory 5% DSIC cap increase is approved. OCA R. Exc. at 8 (citing R.D. at 42-44; 66 Pa.C.S. §§ 315(a), 1301; R.D. at 43-44; OCA R.B. at 1-3; OCA M.B. at 2-5). The OCA notes

that the ALJ highlighted that all of the Parties agreed that increasing the statutory DSIC cap from 5% to 9% of distribution revenues would generate more than \$45 million annually in additional revenues, which represents a significant increase in the burden of monthly and annual utility costs for the Company's customers. OCA R. Exc. at 8 (citing R.D. at 42).

The OCA also argues that the record evidence demonstrates that customers would experience a significant financial impact, but not necessarily a benefit with improvements to reliability. Specifically, the OCA cites residential consumer testimony to point out the impact on residential customers. OCA R. Exc. at 9 (citing Tr. at 119-20, 132-33, 139; OCA M.B. at 23). Further, the OCA repeats its assertion that PPL failed to present a projection in its filing about the impact a waiver of the statutory 5% DSIC cap would have on large usage customers. The OCA pointed to the testimony of I&E's witness, Mr. Joseph Kubas, that such customers would experience a projected annual increase of \$1,359.92 if the DSIC rate is increased to 9%. OCA R. Exc. at 9-10 (citing I&E St. 1 at 21-22; OCA M.B. at 24). Accordingly, the OCA argues that the evidentiary record supports the ALJ's conclusion that a waiver of the statutory 5% DSIC cap represents a significant increase in the burden of monthly and annual utility costs, to be borne by the Company's customers. OCA R. Exc. at 10 (citing R.D. at 42; OCA M.B. at 23-24).

## **2. PPL Exception No. 2 and Replies**

In its Exception No. 2, PPL reinforces its claim that the Company's DSIC cap should be substantially increased above the current 5% cap until the effective date of rates in the Company's next base rate case or the end of the Company's current LTIP (*i.e.*, through December 31, 2027), whichever occurs first. PPL maintains that the Commission, in settled and litigated DSIC cap waiver petitions, has demonstrated its willingness to grant an increase to the DSIC cap as high as 7.5% upon its determination

that such an increase would aid the utility in responding to safety and reliability challenges. PPL Exc. at 19-20 (citing PPL M.B. at 28; *2009 Aqua Order*; *2007 PAWC Order*; *2020 Penn Power Order*; *2016 PGW Order*; *2017 UGI-CPG Order*; *2017 UGI-PNG Order*). Further, PPL proffers that under its Modified LTIP, for every 0.5% increase in the DSIC cap: (1) residential customer bills would increase \$0.30 (*i.e.*, 0.17%) per month; and (2) Rate GS-1, GS-3, and LP4 customer bills would increase approximately \$0.14, \$1.19, and \$13.32 (*i.e.*, 0.07%, 0.09%, and 0.48%) per month, respectively. PPL Exc. at 20 (citing PPL M.B. at 28-29). Moreover, PPL argues that the amount of time since its last base rate case filing does not justify denying the Petition. PPL Exc. at 20 (citing R.D. at 42-43). Furthermore, PPL insists that the record evidence supports an increase of the DSIC cap to a level above 5%, but less than the requested 9%. Therefore, PPL contends that the Commission should increase the DSIC cap to an amount above 5%. PPL Exc. at 20-21.

In reply, I&E avers that although the Commission has granted, and I&E has supported, DSIC waivers in prior settled and litigated cases, the DSIC cap waiver should be granted on a case-by-case basis. I&E R. Exc. at 9 (citing I&E M.B. at 13-16). I&E notes the ALJ's finding that "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." I&E R. Exc. at 9 (citing R.D. at 42). Further, I&E notes that the utilities in those prior settled and litigated cases faced significant safety and reliability issues that warranted waivers of their DSIC cap, whereas PPL has failed to meet its burden of proof in the instant proceeding. I&E R. Exc. at 9 (citing I&E M.B. at 15, OCA M.B. at 21). Moreover, I&E points to the ALJ's finding that approval of a DSIC waiver for PPL would be inappropriate given the length of time since the Company's last base rate case. I&E R. Exc. at 9-10 (citing R.D. at 42-43). Accordingly, I&E agrees with the ALJ that a DSIC waiver is not warranted here, given the lengthy interval since PPL's last base rate case filing, when compared to other waiver cases and the Commission's repeated policy in support of regular base rate case filings. I&E R. Exc. at 10.

In its replies, the OCA concurs with the ALJ that PPL failed to sustain its burden of proving that a waiver is necessary or that the resulting rates would be just or reasonable. Namely, the OCA asserts that: (1) the Company's ROR has not been below 8.12% since its last base rate case; (2) the Company's current class cost of service has not been reviewed since 2015; (3) the Company has stated that it will comply with its Modified LTIIP regardless of whether the DSIC cap is waived to *any* percent over the statutory 5% DSIC cap; (4) the rates produced by a 9% DSIC would not be just and reasonable; and (5) the Company does not intend to file a base rate case until at least 2026. OCA R. Exc. at 10 (citing R.D. at 6-7, 43-44). The OCA also agrees with the ALJ that PPL failed to sustain its burden of proving that: (1) a waiver of the statutory 5% DSIC cap is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service; or (2) an increase of the statutory 5% DSIC cap to 9% is just and reasonable. OCA R. Exc. at 10-11 (citing R.D. at 44; 66 Pa.C.S. §§ 315(a), 1358(a)(1)).

### **3. PPL Exception No. 3 and Replies**

In its Exception No. 3, PPL disagrees with the ALJ's denial of PPL's Motion, arguing that the ALJ's failure to strike PPLICA's Reply Brief was in error. PPL Exc. at 21 (citing R.D. at 28-30, 41; Order to Strike Motion at 2). PPL refers to several cases to contend that PPLICA's Reply Brief should have been stricken because, essentially, PPLICA did not file a Main Brief in this proceeding. PPL Exc. at 21-22 (citing *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS, at \*7 (Opinion and Order entered February 10, 1994) (*Apollo Gas*); *Pa. PUC v. City of Lancaster – Sewer Fund*, 2007 Pa. PUC LEXIS 783, at \*44 (Order on Remand entered January 31, 2007) (*City of Lancaster*); *Application of Newtown Artesian Water Co. and Indian Rock Water Co.*, 1990 Pa. PUC LEXIS 83, at \*6 (Order dated June 20, 1990) (*Indian Rock*); *Application of Shenango Valley Water Co.*, 1994 Pa. PUC LEXIS 111, at \*25 (Recommended Decision issued February 17, 1994) (*Shenango*), *adopted as modified*, 1994 Pa. PUC LEXIS 110, at \*29 (Opinion and Order entered July 12, 1994);

*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 (Opinion and Order entered October 23, 2009) (Allegheny Power).*

PPL also argues that although Section 5.502(c) of the Commission's Regulations, 52 Pa. Code § 5.502(c), states that a party may file a response brief to an initial brief, it does not authorize a party to raise arguments that they waived by failing to file such an initial brief. PPL Exc. at 22 (citing 52 Pa. Code § 5.502(c)). Further, PPL notes that PPLICA's Reply Brief was the first time that PPLICA expressed any opposition to the Company's request for a DSIC cap waiver. Moreover, PPL argues that after PPLICA filed its Petition to Intervene, PPLICA did not serve any discovery, submit testimony, or file a Main Brief. Furthermore, PPL refers to its Motion to reiterate that PPLICA could have, and should have, raised issues and arguments in a Main Brief rather than in a Reply Brief where the Company would not have an opportunity to respond. PPL Exc. at 22-23 (citing PPL Motion at 6-7, 9). Accordingly, PPL posits that the ALJ should have disregarded PPLICA's arguments because PPLICA's actions violate Commission precedent. PPL Exc. at 23.

In reply, I&E explains that it takes no position on this issue, noting that even if the Commission finds that the ALJ erred in denying PPL's Motion, it will not change the positions of the statutory advocates, the Commission policy, and the intent of Act 11, all of which support denial of PPL's proposed waiver. I&E R. Exc. at 10.

In its replies, the OCA disagrees with PPL's challenge to the ALJ's Order to Strike Motion, countering that the ALJ correctly held that a party to a Commission proceeding is entitled to publish a reply brief so long as the petitioner has filed its initial

brief.<sup>10</sup> OCA R. Exc. at 11 (citing Order to Strike Motion at 1-2). The OCA also disagrees with the Company's argument that the ALJ inappropriately relied on PPLICA's Reply Brief. In the OCA's view, this argument should be dismissed as contrary to applicable law. OCA R. Exc. at 11, fn.3 (citing PPLICA R.B. at 3-4; R.D. at 41).

The OCA also counters that the ALJ did not err in denying PPL's Motion or in repeating or considering PPLICA's position. OCA R. Exc. at 12 (citing R.D. at 28-30). Specifically, the OCA agrees with the ALJ's reasoning, pursuant to 52 Pa. Code § 5.502(c), that the only prerequisite to the filing of a Reply Brief is the filing of an "initial" brief by the party with the burden of proof. OCA R. Exc. at 12 (citing Order to Strike Motion at 2; 52 Pa. Code § 5.502(c),(d)). Further, the OCA notes that the ALJ, throughout her Order to Strike Motion, reminded PPL that it has the burden of proof in this matter. OCA R. Exc. at 12-13 (citing Order to Strike Motion at 2). Moreover, the OCA disagrees with PPL's citations to several cases in support of the Company's allegation that the ALJ is "ignoring well-established precedent." OCA R. Exc. at 13, fn.4, 14 (citing PPL Exc. at 21; *City of Lancaster* at 38; *Indian Rock* at \*5; *Apollo Gas* at 7; *Allegheny Power* at 112). Specifically, the OCA highlights that in the instant case, unlike the circumstances in *Shenango*, PPLICA endorsed the position of PPL's opponents in its Reply Brief and relied on the other Parties' main briefs, evidence, and arguments to support its position. Therefore, the OCA continues, PPL was not denied the opportunity to respond to either the evidence, or the arguments that PPLICA endorsed in its Reply Brief. OCA R. Exc. at 13-14 (citing *Shenango*; *Commonwealth v. Karn*, 2010 Pa. Commw. Unpub. LEXIS 201, at \*9 (Commw. Ct. March 8, 2010)). As such, the OCA takes the position that PPL's argument that the ALJ should have ignored PPLICA in the Recommended Decision is incorrect and should be dismissed as contrary to the

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<sup>10</sup> The OCA notes that the proper procedural method for PPL to challenge the Order to Strike Motion would have been by petition for interlocutory review to the Commission. OCA R. Exc. at 11, fn.2 (citing 52 Pa. Code §§ 5.301-5.303).

applicable law. OCA R. Exc. at 14-15 (citing *In re Adoption of M.J.*, 311 A.3d 575 (Pa. Super. 2023)).

In reply, PPLICA echoes the ALJ's determination that a party to a proceeding may file a Reply Brief responding to issues raised in an Initial Brief. PPLICA contends that PPL's argument is predicated on its argument that PPLICA "waived its right to assert an issue not addressed during the proceeding or in post hearing Initial Briefs." PPLICA R. Exc. at 2 (citing PPL Exc. at 21). PPLICA notes that it responded to an issue asserted by I&E in its Main Brief, which is permitted pursuant to Section 5.502 of the Commission's Regulations, and it did not assert any new issue in its Reply Brief. Further, PPLICA argues that PPL has cited to cases where parties raised entirely new issues that were not raised in Main Briefs. PPLICA R. Exc. at 2-3 (citing *Apollo Gas*). PPLICA continues that, here, where it did not assert an independent argument, but relied on the record evidence in this proceeding to oppose a proposal asserted by I&E, it was entitled to file a Reply Brief to such effect. PPLICA R. Exc. at 3.

PPLICA also disagrees with PPL's statement that the ALJ "relied" on PPLICA's Reply Brief in recommending that the Commission reject the Petition. PPLICA R. Exc. at 3 (citing PPL Exc. at 21). PPLICA counters that the Commission may rely on reply briefs in responding to arguments from parties' main briefs, and therefore, the ALJ was not prohibited from relying on PPLICA's Reply Brief. PPLICA R. Exc. at 3 (citing 52 Pa. Code § 5.502). PPLICA notes that the ALJ relied on the arguments advanced by the witnesses of I&E and the OCA, although the ALJ referenced PPLICA's Reply Brief. PPLICA R. Exc. at 3 (citing R.D. at 42). Accordingly, PPLICA argues that PPL's Exception on this matter is in error and contrary to due process rights afforded to litigants under Pennsylvania law. PPLICA R. Exc. at 3.

## E. Disposition

We note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Based on our review of the record, the positions of the Parties, and the applicable law, we will grant, in part, and deny, in part, PPL's Exceptions, and modify the ALJ's recommendation, consistent with the following discussion. More specifically, we shall grant PPL an increase in the DSIC cap from 5% to 7.5% of billed distribution revenues until the effective date of rates established in the Company's next base rate case or until the end of the Company's 2023-2027 LTIP, whichever occurs first.

Regarding PPL's reliability performance, we agree with the Company that it has established that a waiver of its 5% DSIC cap is necessary for the Company to continue to ensure and maintain safe and reliable service. As previously noted, PPL has failed to meet 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. In our view, the Commission should not admonish PPL for not meeting reliability metrics, while simultaneously denying the Company the tools necessary to improve those metrics.

We also find it compelling that PPL's ability to maintain and improve its service reliability is also becoming increasingly difficult due to: (1) the severity and frequency of weather events; (2) aging infrastructure; and (3) rising supply and materials costs due to inflation and supply constraints, which are driven by commodity shortages, transportation costs, and increased industry demands. As a result, the Company regularly

exceeds the 5% DSIC cap because it continues to invest in DSIC-eligible reliability projects. As such, we find that a waiver of the 5% DSIC cap in this instance is necessary and appropriate for PPL to maintain safe and reliable service to its customers.

Regarding the Company's compliance with its LTIIIP, we agree with PPL that it is not required to demonstrate that it is unable to comply with its Modified LTIIIP without the requested DSIC cap waiver. The Commission should not wait until PPL's performance metrics are at the point of failure through LTIIIP non-compliance before providing the Company with a DSIC cap waiver. The Commission has the authority and discretion to grant such a waiver, to ensure and maintain reliable service. In this instance, we find that granting a DSIC waiver will not only accelerate infrastructure improvements by PPL, but it will also assist with customer affordability by reducing the frequency and cost of rate cases the Company incurs. We also note that the DSIC process offers numerous consumer protections through comprehensive scrutiny of PPL's LTIIIP and Asset Optimization Plans (AOPs).

Next, as to whether the Company should file a base rate case, we agree with PPL and I&E that there is no statutory requirement that a utility file a base rate case prior to obtaining a waiver of the 5% DSIC cap. Additionally, a public utility is not required to file a base rate case within a certain number of years before such a waiver and increase is granted. PPL noted that the requested DSIC cap increase from 5% to 9% is estimated to recover additional revenues of approximately \$45 million annually. PPL compared this to the base rate increases requested by other electric utilities in 2024, which ranged from approximately \$133 million to \$502 million in their respective base rate case filings. *See* PPL M.B. at 22. Alternatively, an increase in the DSIC cap from 5% to 7.5%, which we shall approve on a temporary basis, is estimated to recover additional revenues of approximately \$28 million annually.

We also agree with PPL that the DSIC cap waiver would result in a minimal impact on the average customer bill. For example, PPL avers that for every 0.5% increase in the DSIC cap, residential customer bills would increase by \$0.30. Thus, if the DSIC cap is set at 7.5%, the average residential customer bill increase will be approximately \$1.50 a month.<sup>11</sup> *See* PPL M.B. at 28. We find that this increase is necessary for PPL to maintain safe and reliable service for its customers. Additionally, we note that the resulting increase from the implementation of a DSIC cap waiver is a much more affordable option for customers when compared to the increase that would result from rates approved in a base rate case filing. Further, as previously set forth, the DSIC review process also offers robust customer protections through the LTIP and AOP review procedures.

In light of the above, we shall grant PPL's Exception No. 1 and shall grant PPL's Exception No. 2, in part. Accordingly, we shall grant, in part, PPL's request for a waiver of the 5% DSIC cap and shall permit the Company to increase its DSIC cap to 7.5% until the effective date of rates established in the Company's next base rate case or the end of the Company's 2023-2027 LTIP, whichever occurs first. We find that this limited temporary waiver is reasonable and in the public interest.

Finally, to the extent that PPL argues that the ALJ erred in denying PPL's Motion and failed to strike PPLICA's Reply Brief, we find that the ALJ, in the Order to Deny PPL's Motion, properly applied 52 Pa. Code § 5.502(c). As previously noted, the ALJ found that the only prerequisite to the filing of a reply brief is the filing of an initial brief by the party with the burden of proof, and PPL, as the party with the burden of proof in this proceeding, filed a Main Brief. Consequently, the ALJ found that whether PPLICA engaged in discovery, provided testimony, or filed a Main Brief does not impact

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<sup>11</sup> An increase in the DSIC cap from 5% to 7.5% represents five increases of 0.5%.  $\$0.30 \times 5 = \$1.50$ .

its ability to file a reply brief or its rights as an intervenor. *See* Order to Strike Motion at 2. We concur. Therefore, we shall deny PPL's Exception No. 3.

#### **IV. Conclusion**

Based upon our review of the record and the applicable law, we shall grant, in part, and deny, in part, PPL Electric Utilities Corporation's Exceptions, and modify the Recommended Decision, consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions of PPL Electric Utilities Corporation, filed on December 11, 2024, to the Recommended Decision of Administrative Law Judge Arlene Ashton, issued on November 21, 2024, at Docket No. P-2024-3048732, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Arlene Ashton, issued on November 21, 2024, at Docket No. P-2024-3048732, is modified, consistent with this Opinion and Order.

3. That the Petition filed on April 26, 2024, by PPL Electric Utilities Corporation, at Docket No. P-2024-3048732, seeking a waiver of its Distribution System Improvement Charge cap of 5% and approval to increase the Distribution System Improvement Charge cap up to 9% of billed revenues, is granted, in part, and denied, in part, consistent with this Opinion and Order.

4. That the following Formal Complaints at the respective docket numbers are dismissed and marked closed by the Commission's Secretary's Bureau:

<u>Complainant(s)</u>	<u>P-2024-3048732</u>
Michael L. Sperazza	C-2024-3049979
Paula Mercuri	C-2024-3050027
Angela Pesola	C-2024-3050205
John Theisen	C-2024-3050443
Sharon Frankenfield	C-2024-3050646
John Gadomski	C-2024-3050661

5. That this proceeding, at Docket No. P-2024-3048732, be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: February 20, 2025

ORDER ENTERED: February 28, 2025