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E-Filing

December 21, 2015

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

**Re: Comments of PPL Electric Utilities Corporation to the
Tentative Supplemental Order,
Docket No. M-2012-2293611**

Dear Ms. Chiavetta:

Enclosed for filing on behalf of PPL Electric Utilities Corporation ("PPL Electric") is an original of PPL Electric's comments in the above-captioned proceeding. These comments are being filed pursuant to the Order entered on November 5, 2015 in the above captioned proceeding.

Pursuant to 52 Pa. Code § 1.11, the enclosed document is to be deemed filed on December 21, 2015, which is the date it was filed electronically using the Commission's E-filing system.

If you have any questions regarding these comments, please call me at (610) 774-4254 or Bethany Johnson – Manager, Regulatory Operations at (610) 774-7011.

Very truly yours,

Paul E. Russell

Enclosures

cc via email: Tanya J. McCloskey, Esquire
Mr. John R. Evans
J. Edward Simms, Esquire
Mr. David Screven
Ms. Erin Laudenslager
Ms. Lori Burger

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Act 11 of 2012 : Docket No. M-2012-2293611

**COMMENTS OF
PPL ELECTRIC UTILITIES CORPORATION
TO THE TENTATIVE SUPPLEMENTAL IMPLEMENTATION ORDER**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

By Order entered November 5, 2015, the Public Utility Commission (“Commission”) requested comments on the Tentative Supplemental Implementation Order regarding implementation of the distribution system improvement charge (“DSIC”) under Act 11 of 2012. 66 Pa.C.S. §§ 1350-1360. The Tentative Supplemental Implementation Order was published in the *Pennsylvania Bulletin* on November 21, 2015. See 45 Pa.B. 6772. Comments to the Tentative Supplemental Implementation Order are to be filed within 30 days from the date of publication in the *Pennsylvania Bulletin*, i.e., on or before December 21, 2015. Consistent with the Tentative Supplemental Implementation Order, PPL Electric Utilities Corporation (“PPL Electric”) herein submits these Comments for the Commission’s consideration.

PPL Electric is a “public utility” and an “electric distribution company” (“EDC”) as those terms are defined in the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission. PPL Electric furnishes electric distribution, transmission, and provider of last resort electric supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-

nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), effective in sixty days, which, among other things, amended Chapter 13 of Title 66 of the Public Utility Code to make the DSIC available for EDCs, natural gas distribution companies (“NGDCs”), wastewater utilities, and city natural gas operations. *See* 66 Pa.C.S. §§ 1350-1360. Act 11 provides utilities with the ability to implement a DSIC to recover reasonable and prudent costs incurred to repair, improve, or replace certain eligible property that is part of the utility’s distribution system. 66 Pa.C.S. § 1353. Eligible property for purposes of the DSIC is defined in Section 1351(1) of the Public Utility Code, 66 Pa.C.S. § 1351(1).

Certain limitations are included in Act 11; specifically, the DSIC initially may not exceed 5% of distribution rates, and is to be reset to zero upon the effective date of new base rates and if overearning is shown in any quarter. 66 Pa.C.S. §§ 1358(a)(1) and (b). Act 11 also sets out specific audit and reconciliation procedures, including refunds with interest to customers of any over-collections.

As a precondition to implementation of a DSIC, each utility is required to file a Long-Term Infrastructure Improvement Plan (“LTIIIP”) with the Commission. *See* 66 Pa.C.S. § 1352. Section 1356 of the Public Utility Code also requires a utility with an approved DSIC to file Annual Asset Optimization Plans (“AAOP”). *See* 66 Pa.C.S. § 1356.

On August 2, 2012, the Commission issued its *Final Implementation Order*, at Docket No. M-2012-2293611, establishing procedures necessary to implement Act 11. The *Final Implementation Order* adopted the requirements established in Act 11, provided additional

standards that each utility must meet in developing a LTIP and DSIC, and gave guidance to utilities for meeting the Commission's standards.

On September 18, 2012, PPL filed a LTIP with the Commission, pursuant to Section 1352 of the Code, 66 Pa.C.S. § 1352. PPL Electric's LTIP was approved by the Commission on January 10, 2013. On January 15, 2013, PPL filed a Petition for Approval of a DSIC, pursuant to 66 Pa.C.S. § 1353. PPL Electric's DSIC was approved by the Commission on May 23, 2013, and by Order entered November 5, 2015.¹ PPL Electric filed AAOPs on March 28, 2014 at Docket No. M-2014-2413271 and on March 2, 2015 at M-2015-2469861, which were accepted by the Commission.

PPL Electric was the first Pennsylvania EDC to implement a Commission-approved DSIC. PPL Electric acknowledges that certain discrete issues regarding the implementation of the DSIC have been raised in various proceedings. PPL Electric applauds the Commission's continued efforts to provide greater guidance and clarity to implementation of the DSIC mechanism under Act 11. PPL Electric appreciates the opportunity to provide comments to the Tentative Supplemental Implementation Order. PPL Electric believes that its familiarity and experience with its Commission-approved DSIC will provide the Commission with a valuable perspective on the proposals in the Tentative Supplemental Implementation Order.

As explained below, PPL Electric generally supports the proposals in the Tentative Supplemental Implementation Order, but offers the following limited comments for the Commission's consideration to provide further guidance and clarity. PPL Electric has organized these comments to follow the structure of the Commission's Tentative Supplemental Implementation Order.

¹ The November 5, 2015 Order modified PPL Electric's DSIC to implement a Refund and Recoupment Plan to refund DSIC revenue collected from Rate Schedule LP-5 customers between July 1, 2013 and June 1, 2015, and to recoup the refund amounts from all other rate classes.

II. COMMENTS

A. Uniform Financial Earnings Reports Requirements

Under Act 11, the DSIC rate is reset to zero if, in any quarter, the data reflected in the utility's most recent quarterly earnings report show that the utility will earn a rate of return ("ROR") that would exceed the allowable ROR used to calculate its fixed costs under the DSIC mechanism. *See* 66 Pa.C.S. §1358(b)(3). To implement this statutory provision, the Commission currently compares the filed return on equity ("ROE") figure from schedule D-2 of the utilities' quarterly earnings report to the allowable equity return rate for computation of the DSIC rate to determine if the utility can continue to recover through its DSIC mechanism the fixed costs of the eligible property reflected in its next quarterly DSIC update or if its DSIC rate must be adjusted. *See* Tentative Supplemental Implementation Order, p. 5. PPL Electric believes that the Commission's current approach is appropriate and should be continued.

The Commission proposes that all jurisdictional utilities that have implemented a DSIC mechanism, including those utilities that are not required to file earnings reports under 52 Pa. Code § 71.3, be required to file quarterly earnings reports with the Commission. PPL Electric believes this is a reasonable condition on those utilities that have implemented a DSIC mechanism and recommends that it be adopted.

B. Customer Protections

Act 11 includes various consumer protection provisions, including the requirement that a DSIC rate reset to zero under certain circumstances. Specifically, the DSIC rate is reset to zero on the effective date of new base rates that provide for the prospective recovery of the fixed annual costs previously recovered under the utility's DSIC mechanism. 66 Pa.C.S. § 1358(b)(1). Additionally, the DSIC rate is reset to zero if, in any quarter, data filed with the Commission in the utility's most recent quarterly or annual earnings financial report shows that the utility will

earn a return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC. 66 Pa.C.S. § 1358(b)(3). In the Tentative Supplemental Implementation Order, the Commission seeks comments on the rules and procedures to be followed when a utility is required to reset the DSIC rate to zero.

1. Proposed Tariff Supplement to Reset DSIC Rate to Zero

The Commission proposes that a utility should be required to file a tariff supplement pursuant to Section 1308(a) of the Code resetting its DSIC rate to zero if the following occur: (1) upon the effective date of new base rates and (2) an overearning is indicated in the utility's most recent quarterly financial earnings report. PPL Electric supports these proposals and recommends that they be adopted.

The Commission proposes that the utility should incorporate a reference to resetting its DSIC rate to zero within the tariff supplement requesting a general rate increase under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d). PPL Electric supports this proposal and recommends that it be adopted.

The Commission proposes that utilities should file their tariff supplement reflecting a zero DSIC rate simultaneously with the filing of their next quarterly DSIC update, effective upon ten-day's notice.² Given the date of filing the quarterly earnings reports (60 days or 90 days after the end of the quarter), utilities will not know if they are over-earning until the following quarterly filing, *i.e.*, there is a one quarter lag. For example, the first quarterly earnings report is due by May 31 each year. PPL Electric files its DISC to be effective on April 1, July 1, October 1, and January 1. In this example, if the first quarter earnings report filed May 31 shows overearning, PPL Electric could not set its DISC to zero until the July 1 effective date of the

² On page 9 of the Tentative Supplemental Implementation Order, the Commission lists dates of financial quarterly earnings reports. PPL Electric assumes that these dates are the end of quarter dates for the reports, not the filing dates.

DSIC. Although there will be a one quarter lag in the adjustment to the DSIC, this lag appears to be unavoidable, and PPL Electric supports the Commission's proposal and recommends that it be adopted.

2. DSIC Rate Reset to Zero Upon Effective Date of New Base Rates

When new base rates become effective following a general rate increase under Section 1308(d) of the Code, 66 Pa.C.S. § 1308(d), the utility is required to reset its DSIC rate to zero as of the effective date of the new base rates. *See* 66 Pa. C.S. § 1358(b)(1). After resetting the DSIC rate to zero following the effective date of new base rates, only the fixed costs of new eligible property that was not previously reflected in base rates or recovered in the utility's rates may be reflected in a subsequent quarterly DSIC update. 66 Pa.C.S. § 1358(b)(2).

The General Assembly has authorized utilities to utilize a future test year or a fully projected future test year ("FPFTY") as the baseline for setting new base rates. *See* 66 Pa. C.S. § 315. If a utility has used a future test year or FPFTY, the new base rates should provide for the prospective recovery of the annual costs of all eligible property placed into service by the end of the test year, including plant eligible to be recovered under the utility's DISC mechanism. Consequently, for a utility using a future test year or FPFTY, the DSIC would be reset to zero upon the effective date of the new base rates and would not be available during the "stay-out" period because the utility cannot utilize its DSIC mechanism until *new* eligible property that has not been reflected in the utility's rates or rate base is present.

In the Tentative Supplemental Implementation Order, the Commission proposes to clarify the "stay-out" period. Specifically, the Commission proposes that if a utility has surpassed the prospective recovery amount associated with the eligible plant placed in service and previously reflected in the utility's base rates as a result of using a future test year or FPFTY, it is then eligible to begin to recover again the fixed costs associated with any new repair, replacement or

improvement of eligible property reflected in a quarterly DSIC update. PPL Electric supports this proposal and recommends that it be adopted.

The Commission also seeks comment on the appropriate criterion to determine whether the prospective recovery amount has been surpassed, which would indicate when the stay-out period has ended and the utility may again continue to recover the fixed costs of eligible property reflected in the quarterly DSIC update. The Commission proposes that this criterion should be based upon the total aggregate dollar amount associated with the prospective eligible property placed in service as determined and set forth in the final order establishing the new base rates. PPL Electric notes that it does not separately identify DSIC eligible property in its base rate case filing data and submits that to do so would be difficult. Thus, the final Commission order establishing its base rates is not likely to identify the total aggregate dollar amount associated with the prospective DSIC eligible property placed in service as of the end of the FPFTY.

As an alternative, PPL Electric proposes that the DSIC be reset to zero upon implementation of new base rates, and that utilities be eligible to include plant additions in the DSIC once eligible account balances exceed the levels projected for the end of the FPFTY used in the base rate case. PPL Electric notes that the Commission has recently approved two base rate case settlements that implement this same proposal.³

The Commission also proposes that utilities should continue to file quarterly DSIC updates reflecting the eligible property placed into service that was associated with a repair, replacement or improvement during the stay-out period even though they are unable to recover such costs. PPL Electric opposes this recommendation. PPL Electric submits that this proposed new reporting requirement would not serve any purpose if the costs cannot be reflected in the

³ See *Pa. PUC v. PPL Electric Utilities Corporation*, Docket Nos. R-2015-2469275, *et al.* (Order entered November 19, 2015); *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2015-2468056, *et al.* (Order entered December 3, 2015).

DSIC. This proposed new reporting requirement also could complicate and confuse the calculation of the DSIC in the future. For these reasons, PPL Electric recommends that this proposal not be adopted.

3. Resetting DSIC Rate To Zero Due To Overearnings

When a utility's financial earnings report indicates an overearning for a particular 12-month period, Act 11 requires that the utility's approved DSIC rate be reset to zero. *See* 66 Pa. C.S. § 1358(b)(3). The Commission states that if the overearning period lasts only one quarter and then ceases, the utility can again begin to recover the fixed costs for its cumulative eligible property less depreciation in the next quarterly DSIC update. PPL Electric agrees, but notes that there will be a one quarter lag before the utility can begin to recover costs through the DSIC given the date of filing the quarterly earnings reports (60 days or 90 days after the end of the quarter) and the fact that utilities will not know if the over-earning period has ended until the following DSIC filing date, *i.e.*, a one quarter lag.

In its Tentative Supplemental Implementation Order, the Commission identified an issue related to how the cumulative nature of the DSIC mechanism is impacted if overearnings persist for two or more successive quarters going forward. To address this issue, the Commission proposes that during the successive overearnings period, a utility with a DSIC mechanism is prohibited from recovering the current fixed costs of the eligible property that it had placed into service prior to the time that the successive overearnings period began to occur. PPL Electric supports this proposal and recommends that it be adopted.

Once the successive overearnings period ends, the Commission proposes that the utility should be permitted to recover the current fixed costs of all eligible property after a successive overearnings period ceases. The Commission explains that DSIC recovery for quarters subsequent to the period of overearnings may include the cumulative cost impact of DSIC

eligible costs since the last base rate case; however, there would be no recovery through the 1307(e) reconciliation process of the otherwise DSIC eligible costs that were incurred during the period the utility experienced overearnings. PPL Electric supports this proposal and recommends that it be adopted.

Finally, if a utility is overearning over a successive and consecutive period of time, the Commission proposes that the utility should be required to file a tariff supplement under Section 1308 of the Public Utility Code to address its overearnings so that the utility can continue to use its DSIC to recover the fixed costs of the eligible property it has placed in service. PPL Electric strongly opposes this proposal.

The Commission has the statutory authority, upon its own motion, to open an investigation to determine whether existing rates are just and reasonable. *See* 66 Pa.C.S. § 1309. The Commission also has the statutory authority to set temporary, interim rates during its investigation of existing rates. *See* 66 Pa.C.S. § 1310. There is nothing in the Public Utility Code, however, that requires a utility to file a base rate case under Section 1308 if it is overearning. To the extent that the Commission believes that a utility's rates are unjust or unreasonable, it already has the statutory remedy to open an investigation under Section 1309 of the Public Utility Code and to implement temporary rates under Section 1310 of the Public Utility Code.

Whether a utility elects to seek rate relief under Section 1308 of the Public Utility Code involves many, many factors above and beyond the utility's earnings. It is well-established that the Commission should not act as the super board of directors for a utility and interfere in the internal management of a utility company. *See Bell Tele. Co. v. Driscoll*, 21 A.2d 912, 916-17 (Pa. 1941) (citations omitted); *Metro. Edison Co. v. Pa. PUC*, 437 A.2d 76, 80 (Pa. Cmwlth.

1981) (citations omitted). PPL Electric submits that adopting this proposal would exceed the Commission's authority and place the Commission in the position of making internal management decisions for the utility regarding the timing and appropriateness of seeking rate relief under Section 1308 of the Public Utility Code.

Further, preparing the data and filing requirements necessary to submit a base rate case under Section 1308 requires significant time and effort. This effort could all become moot and a waste of ratepayer-funded resources if the successive periods of overearning end during the interim time required to prepare, submit and litigate the base rate filing. Not only would this be a significant burden on the utility, it also would be a significant burden on other parties that participate in the base rate case proceedings.

Requiring a utility to file a base rate case anytime it experiences successive periods of overearning could result in the utility being put in a position of under earning, thereby necessitating another base rate case filing under Section 1308. A utility may be reluctant to implement a DSIC if doing so could put the utility in a position of under earning. Further, this proposal could result in an endless cycle of base rate cases, which could effectively render the DSIC unavailable due to the statutory stay-out period following a base rate case under Section 1308. PPL Electric submits that more frequent base rate cases under Section 1308 was not the intended purpose and goal of the General Assembly when it enacted Act 11. Indeed, the General Assembly already contemplated the situation where a utility may be overearning by adopting limitations on the use of the DSIC.

For these reasons, PPL Electric strongly opposes the proposal in the Tentative Supplemental Implementation Order that a utility should be required to file a tariff supplement

under Section 1308 of the Public Utility Code if it is experiencing overearnings over a successive and consecutive period of time.

4. Residual E-Factor Portion of the DSIC Rate Upon a Reset of the DSIC Rate

When the DSIC rate is reset to zero the utility cannot continue to recover under its DSIC mechanism the fixed costs of any eligible property that has been placed in service. The Commission proposes that the utility have the ability to recover or refund the ongoing E-Factor and/or the residual E-factor amounts when the DSIC rate is reset to zero. Permitting utilities to recover or refund the under/over DSIC collections while the DSIC rate is reset to zero will ensure that the utility is made whole for DSIC eligible expenditures and/or customers are not overcharged for the DSIC eligible expenditures. PPL Electric therefore supports this proposal and recommends that it be adopted.

The Commission also proposes that utilities with ongoing DSIC mechanisms should file a tariff supplement that revises their DSIC tariffs so that language is incorporated therein that allows the utility to file interim revisions to resolve the residual over/under collection or E-factor amount after the DSIC rate is reset to zero. PPL Electric believes this is a reasonable proposal that will properly allow over/under collections of the DSIC to be recovered/refunded as appropriate and without the need for a subsequent filing when the DSIC rate is reset to zero. PPL Electric therefore supports this proposal and recommends that it be adopted.

C. Computation of the DSIC Rate Cap

Section 1358(a)(1) of the Public Utility Code provides that a DSIC may not exceed 5% of billed revenues. 66 Pa.C.S. § 1358(a)(1). The Tentative Supplemental Implementation Order seeks comments on whether it is in the public interest to exclude the E-factor reconciliation component from the computation of the DSIC rate cap.

PPL Electric recommends that the E-factor reconciliation component be excluded from the computation of the DSIC rate cap. The 5% cap in Section 1358(a)(1) is intended to limit the charges billed by the utility under the DSIC for the current recovery period. The E-factor, on the other hand, is related to the over/under collection of DSIC eligible costs for the prior DSIC recovery period. Notably, the prior DSIC recovery period did not, and could not, exceed the 5% rate cap; otherwise, the DSIC would not have been available. Thus, the E-factor for the DSIC is designed to refund/recover any over/under collections during a period when the 5% rate cap was not in place. Stated otherwise, the E-factor component from the prior recovery period should be excluded from the DSIC rate cap for the current recovery period because it related to the time period in which the utility was authorized to charge and collect the designated DSIC rate.

For these reasons, PPL Electric recommends that the E-factor reconciliation component be excluded from the computation of the DSIC rate cap.

III. CONCLUSION

PPL Electric appreciates the opportunity to provide comments to the Tentative Supplemental Implementation Order. For the reasons explained above, PPL Electric generally supports the proposals in the Tentative Supplemental Implementation Order, but respectfully requests that the Pennsylvania Public Utility Commission modify several of its proposals consistent with these comments.

Respectfully submitted,



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