Kimberly A. Klock
Assistant General Counsel

PPL
Two North Ninth Street
Allentown, PA 18101-1179
Tel. 610.774.5696 Fax 610.774.4102
KKlock@pplweb.com

E-File

July 22, 2022

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17120-3265

Re: Distribution System Improvement Charge – Implementation Order to Address All Issues Pertaining to the Distribution System Improvement Charge Calculations Required in the Pennsylvania Supreme Court's Decision in *McCloskey v. Pa. PUC,* 255 A.3d 416 (Pa. 2021)
Docket No. M-2012-2293611

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PPL Electric Utilities Corporation ("PPL Electric") is PPL Electric's Comments on the April 22, 2022 Secretarial Letter issued in the above-captioned proceeding.

Pursuant to 52 Pa. Code § 1.11, the enclosed document is to be deemed filed on July 22, 2022, which is the date it was filed electronically using the Commission's E-filing system.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

Kimberly A. Klock

Kimberly A. Klock

Enclosure

cc via email: Certificate of Service
Erin Laudenslager
David Huff

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Distribution System Improvement Charge – Implementation Order to Address All Issues Pertaining to the Distribution System Improvement Charge Calculations Required in the Pennsylvania Supreme Court's Decision in McCloskey v. Pa. PUC, 255 A.3d 416 (Pa. 2021)	: : : : : : : :	Docket No. M-2012-2293611

COMMENTS OF
PPL ELECTRIC UTILITIES CORPORATION ON THE
APRIL 22, 2022 SECRETARIAL LETTER

I. INTRODUCTION AND BACKGROUND

By Secretarial Letter entered April 22, 2022, the Public Utility Commission ("Commission") requested comments on Distribution System Improvement Charge - Implementation Order to address all issues pertaining to the distribution system improvement charge calculations ("DSIC") required in the Pennsylvania Supreme Court's decision in *McCloskey v. Pa. PUC*, 255 A.3d 416 (Pa. 2021). Comments to the Secretarial Letter are to be filed within 90 days[1] from the date of publication in the Pennsylvania Bulletin, *i.e.*, on or before July 22, 2022. Specifically, the Commission invited comment from interested parties on a list of bulleted issues and key topics prior to holding a working group meeting in order to provide a forum for discussion and feedback from stakeholders.

[1] Comments on the April 22, 2022 Secretarial Letter were initially due May 23, 2022. A Secretarial Letter issued May 18, 2022 granted a 90-day extension to July 22, 2022.

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 ("Act 11"), which, among other things, amended Chapter 13 of Title 66 of the Public Utility Code to make the DSIC available for electric distribution companies ("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).

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 long-term infrastructure improvement plan ("LTIIP") and DSIC, and gave guidance to utilities for meeting the Commission's standards. The *Final Implementation Order* also adopted a model tariff, which set forth the DSIC formula to be used by public utilities.

On September 18, 2012, PPL Electric Utilities Corporation ("PPL Electric") filed an LTIIP with the Commission, pursuant to Section 1352 of the Code, 66 Pa.C.S. § 1352, which was approved. On January 15, 2013, PPL filed a Petition for Approval of a DSIC, pursuant to 66 Pa.C.S. § 1353. Several parties filed comments on the Company's DSIC Petition, including the Office of Consumer Advocate ("OCA"), which argued that the DSIC formula should reflect the impact of accumulated deferred income taxes ("ADIT"). By Opinion and Order entered May 23, 2013, the Commission approved PPL Electric's DSIC Petition and, as part of that Order, rejected the OCA's arguments regarding the treatment of ADIT. 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, including whether to reflect ADIT in the DSIC formula. *See, e.g., Final Implementation Order*, pp. 37-38. Consistent with the Commission's rulings before the Supreme Court's *McCloskey* decision, ADIT has not been reflected in public utilities' DSIC calculations.

PPL Electric appreciates the opportunity to provide comments to the Secretarial Letter. PPL Electric believes that its familiarity and experience with its Commission-approved DSIC will provide the Commission with a valuable perspective on the questions in the Secretarial Letter. PPL Electric has organized these comments to follow the structure of the Commission's Secretarial Letter and address four key topics. Additionally, PPL Electric supports the comments filed by the Energy Association of Pennsylvania.

II. COMMENTS

A. Changes to be made to the current model DSIC tariff, including the necessary computation, reconciliation and other language to implement the directive of the Court to recognize incremental Accumulate Deferred Income Taxes (ADIT) and state tax depreciation deductions for accelerated depreciation in quarterly calculations of DSIC charges.

In *McCloskey*, the Pennsylvania Supreme Court concluded in FirstEnergy's 2016 base rate proceeding that Section 1301.1(a) of the Pennsylvania Public Utility Code "applies to DSICs and requires the Utilities to revise their DSIC calculations to include income tax deductions and credits to reduce rates charged to consumers." *McCloskey*, p. 11. Specifically, utilities would need to recognize incremental ADIT and State Tax Flow Through ("STFT") in quarterly calculations of DSIC charges.

As such, PPL Electric supports the following revisions (as indicated in red below) to the Formula for the DSIC calculation in Part 2., Section D. of the model DSIC tariff:

$$\frac{((DSI * PTRR) + STFT + Dep + e) \times 1/(1-T)}{PQR}$$

Where:

DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation and associated accumulated deferred income taxes pertaining to property-related book/tax depreciation timing differences resulting from the use of IRC 26 U.S. Code Section 168 accelerated depreciation.

PTRR = Pre-tax return rate applicable to DSIC-eligible property.

Dep = Depreciation expense related to DSIC-eligible property.

STFT = (State Tax Flow Through) Pre-tax flow through calculated on book-tax timing differences between accelerated tax depreciation and book depreciation, net of federal tax.

E = Amount calculated (+/-) under the annual reconciliation feature or Commission audit, as described below.

PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) from applicable customers.

T=If applicable, Pennsylvania Gross Receipts Tax rate in effect during the billing month, expressed in decimal form.

PPL Electric supports adding language to the DSI component of the calculation in order to take into consideration ADIT, in compliance with the Supreme Court interpretation in *McCloskey*. The new language adds, "and associated accumulated deferred income taxes pertaining to property-related book/tax depreciation timing differences resulting from the use of IRC 26 U.S. Code Section 168 accelerated depreciation" to the DSI component.

PPL Electric also supports adding an STFT component to the calculation to comply with the Supreme Court interpretation in *McCloskey*. STFT is defined as the "pre-tax flow through calculated on book/tax timing differences between accelerated tax depreciation and book depreciation, net of federal tax." Adding STFT as a separate component within the computation makes it possible to leave the pre-tax return rate (PTRR) unchanged. The PTRR contains the statutory federal and state income tax rates. PPL Electric uses a similar calculation in the Smart Meter Rider – Phase 2, where the STFT is a separate component, as approved by the Commission on September 3, 2015. *See Opinion and Order in the Petition of PPL Electric Utilities Corporation for Approval of Its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2014-2430781 (Order entered September 3, 2015).

B. Elements of the formula required for calculating quarterly DSIC updates needed to determine: (1) the state income tax effects of book-tax timing differences created by placing in service eligible property included in the DSIC calculation; and (2) ADIT that reflects the book-tax timing differences created by placing in service eligible property included in the DSIC, and to do so that such revisions to the formula for calculating the DSIC do not require unduly complicated computations but permit reasonable review and audit of DSIC charges and their supporting calculations

PPL Electric agrees that the revisions to the formula, as well as the tax calculations, should not require unduly complicated computations. PPL Electric previously argued, and the PA PUC agreed, that "the DSIC is intended to be a straightforward mechanism which is easy to calculate, easy to audit and which does not require a full rate case analysis." *Final Implementation Order*, p. 38. PPL Electric has stated what the new formula should look like in Section II.A, above.

C. Determination of the revisions to the DSIC calculations and the potential refund/recoupment of overcharges dated back to August 2016, the date that Act 40 added Section 1301.1 to the Code:

- **Should a refund/recoupment be required;**
- **Timing of any required refund/recoupment (When should the recoupment begin?)**
- **Amortization period of any refund/recoupment;**
- **Impact of the refund/recoupment on the utilities DSIC cap for each utility;**
- **Should interest be applied, and if so, at what rate and the weighting for when interest is to be applied**

PPL Electric does not believe that the new DSIC formula can or should be applied retroactively. Retroactive application of the new DSIC formula raises several legal issues, including, but not limited to, Section 1301.1(c) of the Public Utility Code's restriction on when Section 1301.1 can be applied,[2] retroactive ratemaking,[3] single-issue ratemaking,[4] Commission-made rates,[5] and the four-year statute of limitations for refunds under Section 1312(a) of the Public Utility Code.[6]

In addition, even if the Commission could order the utilities to apply the new DSIC formula retroactively and award refunds based on that new formula (either back to August 2016 or for a

[2] 66 Pa. C.S. § 1301.1(c) (stating that the statute "shall apply to all cases where the final order is entered after the effective date of this section").

[3] *See Popowsky v. Pa. PUC*, 868 A.2d 606, 609 (Pa. Cmwlth. 2004) ("The PUC clearly may not establish rates which are calculated to retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations.") (citation omitted).

[4] *See Pa. Indus. Energy Coalition v. Pa. PUC*, 653 A.2d 1336, 1350 (Pa. Cmwlth. 1995) ("Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case.").

[5] *See Cheltenham & Abington Sewerage Co. v. Pa. PUC*, 25 A.2d 334, 336 (Pa. 1942); *West Penn Power Co. v. Pa. PUC*, 100 A.2d 110, 114 (Pa. Super. 1953).

[6] 66 Pa. C.S. § 1312(a).

different period), Pennsylvania courts have repeatedly held that the Commission's power to award refunds is discretionary.[7] There are several reasons why, even if the Commission has the power to award refunds based on the new DSIC formula rates, the Commission should exercise that discretion and not order retroactive refunds.

First, this calculation, going back 6 years and done on a quarterly basis, would be overly complicated and burdensome. It would not be possible to find a "one size fits all approach," given the fact that many utilities have gone in for a rate case since 2016, and their DSIC rates would have been rolled into base rates.

Second, the DSIC rate resets to zero if a utility's Quarterly Earnings report shows that the utility is earning a rate of return that exceeds the PUC's allowable rate of return.[8] DSIC revenue directly impacts a utility's return on equity. If DSIC revenue is adjusted retroactively, it would also impact all the utility's quarterly earnings reports. It is possible that there could be a scenario where a lower DSIC rate, and thus, lower DSIC revenue, could trigger a company's ROE to dip below the allowed ROE. As a result, the Quarterly Earnings reports for any refund period would need to be redone as well, since the return on equity reflected on these reports drives whether or not a utility is able to utilize their DSIC rate.

(D) Standards to establish a reconciliation process for timing differences and issues for determining the proper level of ADIT and state income taxes for book-tax timing issues created by placing in service eligible property included in the DSIC.

[7] *See Emporium Water Co. v. Pa. PUC*, 859 A.2d 20, (Pa. Cmwlth. 2004) ("[T]he Commission's authority to order refunds pursuant to Section 1312(a) of the Code is discretionary."); *Nat'l Fuel Gas Distrib. Corp. v. Pa. PUC*, 464 A.2d 546, 555-56 (Pa. Cmwlth. 1983) ("Whether to require a refund under Code Section 1312 of monies previously collected by a utility is a matter charged by Subsection (a) of that provision to the sound discretion of the Commission and the principle last stated is, as we will indicate, directly controlling in the instant case.").

[8] *See* 66 Pa. C.S. § 1358(b)(3).

PPL Electric does not believe that a reconciliation is necessary at this time. The reconciliation of DSIC revenues and DSIC costs as stated in the model tariff is sufficient. DSIC assets can be identified in PPL Electric's plant accounting system, so PPL Electric is able to capture and track actual book cost and the related book depreciation within the system. PPL Electric uses an Excel spreadsheet to capture this activity at a FERC plant account level to support the filing of the DSIC. PPL Electric proposes to create a case in its tax system, separate from the case that contains all assets, and PPL Electric will add the actual book activity for the DSIC assets from the Excel file into the unique tax system case. By isolating the DSIC assets in a separate tax case, PPL Electric can calculate the actual tax depreciation and utilize the actual book depreciation on the DSIC assets to calculate the deferred tax and state flow-through impacts. Because the tax system calculates an annual tax depreciation amount on monthly book additions, PPL Electric will allocate the annual tax deprecation calculated each period (monthly or quarterly) across the remaining months of the year to be more in line with how book depreciation is reflected. By the end of each year, the DSIC will be completely supported by the cumulative net book and net tax amounts reflected in the tax system.

It is important to note that tax depreciation cannot be tied to any specific income tax return filing since the income tax return filings reflect the tax depreciation of all assets at a summary level. Since the components of the DSIC computation are all based on actual information strictly related to the DSIC assets, and the cumulative net book plant in the tax system can be reconciled to the cumulative net book plant in the plant system and the Excel spreadsheets used to support the DSIC filing, then there is no reconciliation to take place. PPL Electric uses a similar approach in the Smart Meter Rider – Phase 2.

The only time a reconciliation may be needed is if legislation is passed that changes the way tax depreciation is calculated on a retrospective basis (*i.e.*, bonus depreciation changes in the fourth quarter of the year, although bonus is not currently available to utilities). If a legislative change occurred, PPL Electric would program its tax system to calculate tax depreciation using the new tax law in effect and proposes to true up the change in tax depreciation and related deferred taxes in the next appropriate DSIC filing. In addition, if legislation is passed to change the income tax rates, PPL Electric recommends changing the income tax rates in the DSIC filing in the period they are effective (*i.e.*, not enacted) and also recommends that the rate change on deferred tax liabilities be handled through a different mechanism that considers all assets and not strictly DSIC assets.

III. CONCLUSION

PPL Electric appreciates the opportunity to provide comments to the Secretarial Letter.

Respectfully submitted,

Kimberly A. Klock

Kimberly A. Klock (ID #89716)
Michael J. Shafer (ID #205681)
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Voice: 610-774-5696
Fax: 610-774-4102
E-mail: kklock@pplweb.com
E-mail: mjshafer@pplweb.com

Date: July 22, 2022

Counsel for PPL Electric Utilities Corporation

CERTIFICATE OF SERVICE

(Docket No. M-2012-2293611)

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

VIA ELECTRONIC MAIL

Steven Gray, Esquire
Teresa Wagner
Erin K. Fure
Office of Small Business Advocate
555 Walnut Street, 1st floor
Harrisburg, PA 17101
sgray@pa.gov
tereswagne@pa.gov
efure@pa.gov

Patrick Cicero, Esquire
Erin L. Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street, Forum Pl. 5th floor
Harrisburg, PA 17101-1923
pcicero@paoca.org
egannon@paoca.org

Richard Kanaskie, Esquire
Allison Kaster
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street, 2nd floor west
Harrisburg, PA 17105-3265
rkanaskie@pa.gov
akaster@pa.gov

Renardo Hicks
PA Public Utility Commission
Law Bureau
Keystone Building
400 North Street
Harrisburg, PA 17120
rehicks@pa.gov

John Kelchner
Nate Johnson
Citizens Electric Company
1775 Industrial Blvd.
Lewisburg, PA 17837
kelchnerj@citizenselectric.com
johnsonn@citizenselectric.com

Pamela Polacek
Melissa Sullivan
C&T Enterprises, Inc.
1775 Industrial Blvd.
Lewisburg, PA 17837
Ppolacek@ctenterprises.org
melissas@ctenterprises.org

Amy E. Hirakis, Esquire
Nicole Paloney
Columbia Gas
121 Champion Way, Suite 100
Canonsburg, PA 15317
ahirakis@nisource.com
npaloney@nisource.com

Dominick A. Sisinni, Esquire
Sheila Suarez
National Fuel Gas Distribution Corporation
PO Box 2081
Erie, PA 16512
sisinnid@natfuel.com
suarezs@natfuel.com

Kent Murphy, Esquire
Michael Swerling
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
murphyke@ugicorp.com
swerlingm@ugicorp.com

Terrance J. Fitzpatrick, Esquire
Donna Clark, Esquire
Energy Association of PA
800 North Third Street. Suite 205
Harrisburg, PA 17101
tfitzpatrick@energypa.org
dclark@energypa.org

Anthony Gay
Ben Yin
PECO
2301 Market Street
Philadelphia, PA 19101
Anthony.gay@exeloncorp.com
Ben.yin@exeloncorp.com

Tori Giesler
Kim Bortz
FirstEnergy Service Company
2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001
tgiesler@firstenergycorp.com
kbortz@firstenergycorp.com

Russell Miller
Leatherstocking Gas Company
330 West William Street
Corning, NY 14830
rmiller@corninggas.com

Kimberly Joyce, Esquire
Aqua Pennsylvania
762 West Lancaster Avenue
Bryn Mawr, PA 19010
kajoyce@essential.co

Mike Zimmerman
Dave Ogden
Matt Simpson
Duquesne Light Company
411 Seventh Avenue 16-1
Pittsburgh, PA 15219
mzimmerman@duqlight.com
dogden@duqlight.com
msimpson@duqlight.com

Ed Rogers
Valley Energy
523 S. Keystone Avenue
Sayre, PA 18840
erogers@ctenterprises.org

Barney Farnsworth
Wellsboro Electric Company
33 Austin Street
Wellsboro, PA 16901
barneyf@ctenterprises.org

JT Hand
The York Water Company
130 East Market Street
York, PA 17405-7089
jth@yorkwater.com

Andrew Wachter
Carol Scanlon
People's Gas
375 North Shore Drive
Pittsburgh, PA 15212
Andrew.wachter@peoples-gas.com
Carol.scanlon@peoples-gas.com

Bryan Marco
Craig Berry
Laura Storino
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122
Bryan.marco@pgworks.com
Craig.berry@pgworks.com
Laura.storino@pgworks.com

Edward Verbraak
Pike County Light & Power Company
105 Schneider Lane
Milford, PA 18337
everbraak@pclpeg.com

Susan Simms Marsh, Esquire
Elizabeth Rose Triscari
Teresa Harrold
Pennsylvania American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
Susan.marsh@amwater.com
Elizabeth.triscari@amwater.com
Teresa.harrold@amwater.com

Anthony C. DeCusatis, Esquire
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
adecusatis@morganlewis.com

Scott J. Rubin, Esquire
Law Office of Scott J. Rubin
4627 Chandlers Forde
Sarasota, FL 34235-7118
Scott.j.rubin@gmail.com

Adeolu A. Bakare, Esquire
Charis Mincavage, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
abakare@mwn.com
cmincavage@mwn.com

Michael Perlow, Jr.
EKMLLC
443 Main Street
East Greenville, PA 18041
mike@michaelperlowjr.com

Theodore S. Robinson, Esquire
Citizen Power
5274 Duncan Street
Pittsburgh, PA 15201
robinson@citizenpower.com

Thomas J. Sniscak, Esquire
Hawke McKeon and Sniscak LLP
100 N. Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com

Date: July 22, 2022

Kimberly A. Klock

Kimberly A. Klock