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File #: 167272

December 22, 2016

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: National Railroad Passenger Corporation v. PPL Electric Utilities Corporation  
Docket No. C-2016-2580526**

**PPL Electric Utilities Corporation Supplement No. 213 to Tariff - Electric Pa.  
P.U.C. No. 201 - Docket No. R-2016-2569975**

Dear Secretary Chiavetta:

Enclosed for filing, please find the Preliminary Objections of PPL Electric Utilities Corporation to the Complaint of National Railroad Passenger Corporation, in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'C. Wright', is written over a horizontal line.

Christopher T. Wright

CTW/jl  
Enclosures

cc: Certificate of Service

**CERTIFICATE OF SERVICE**


**(Docket Nos. C-2016-2580526 & R-2016-2569975)**

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 E-MAIL & FIRST CLASS MAIL**

Pamela C. Polacek, Esquire  
Adeolu A. Bakare, Esquire  
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PO Box 1166  
Harrisburg, PA 17108-1166  
*Counsel to National Railroad Passenger Corporation*

Date: December 22, 2016

  
\_\_\_\_\_  
Christopher T. Wright

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

National Railroad Passenger Corporation	:	
Complainant	:	
	:	
v.	:	Docket No. C-2016-2580526
	:	
PPL Electric Utilities Corporation	:	
Respondent.	:	
	:	
PPL Electric Utilities Corporation	:	Docket No. R-2016-2569975
Supplement No. 213 to Tariff – Electric	:	
Pa. P.U.C. No. 201	:	

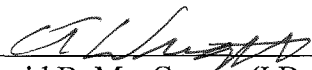
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**NOTICE TO PLEAD**

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**YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTIONS WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTIONS MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR PPL ELECTRIC UTILITIES CORPORATION.**

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Date: December 22, 2016

Counsel for PPL Electric Utilities Corporation

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

National Railroad Passenger Corporation	:	
Complainant	:	
	:	
v.	:	Docket No. C-2016-2580526
	:	
PPL Electric Utilities Corporation	:	
Respondent.	:	
	:	
PPL Electric Utilities Corporation	:	Docket No. R-2016-2569975
Supplement No. 213 to Tariff – Electric	:	
Pa. P.U.C. No. 201	:	

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**PRELIMINARY OBJECTIONS OF  
PPL ELECTRIC UTILITIES CORPORATION  
TO THE COMPLAINT OF  
NATIONAL RAILROAD PASSENGER CORPORATION**

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**TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

PPL Electric Utilities Corporation (“PPL Electric”) files herewith its Preliminary Objections, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that the Commission dismiss in part the above-captioned Complaint filed by the National Railroad Passenger Corporation (“Amtrak”). In support thereof, PPL Electric states as follows:

## **I. BACKGROUND**

1. PPL Electric is a “public utility” and an “electric distribution company” (“EDC”) as those terms are defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

2. 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.

3. On March 31, 2015, PPL Electric filed its 2015 distribution base rate case at Docket No. R-2015-2469275. Therein, PPL Electric proposed, among other things, to increase the monthly distribution charge for Rate Schedule LPEP from \$37,100.00 per month to \$252,647.17 per month.

4. The proposed increase in the Rate Schedule LPEP distribution charge was due to substantial capital upgrades required to PPL Electric’s facilities at the Conestoga Substation. *See* Complaint, Exhibit B, ¶ 1.

5. As proposed in the 2015 base rate case, the upgrades needed at the Conestoga Substation were initially to be completed and placed in-service on or before December 31, 2016, *i.e.*, before the end of the fully projected future test year.

6. Amtrak is the only customer taking service under Rate Schedule LPEP. *See* Complaint, Exhibit B, p. 2.

7. The PP&L Industrial Customer Alliance intervened in the 2015 base rate case on behalf of, among others, Amtrak.

8. During the 2015 base rate case, Amtrak opposed the proposed increase to Rate Schedule LPEP.

9. On September 16, 2015, PPL Electric and Amtrak entered into a Mutual Settlement Agreement. *See* Complaint, Exhibit B.

10. On September 3, 2015, a Joint Petition for Settlement was filed in PPL Electric's 2015 base rate case ("2015 Settlement") at Docket No. R-2015-2469275.

11. The PP&L Industrial Customer Alliance joined the 2015 Settlement on behalf of Amtrak.

12. With respect to Rate Schedule LPEP, the 2015 Settlement provided as follows:

29. PPL Electric and National Railroad Passenger Corporation ("Amtrak") agree that for purposes of settlement of this proceeding the customer charge for Rate Schedule LPEP will be reduced from the proposed \$252,647.17 per month to \$126,323.59 per month, effective January 1, 2016, subject to further resolution of the issues as described in Paragraphs 30 and 31 below.

30. PPL Electric and Amtrak agree to continue to work together to resolve all open issues regarding the upgrade of the Conestoga Substation, including possible alternative resolution regarding the final scope, timing, and costs of the upgrades needed for the Conestoga Substation. PPL Electric and Amtrak agree to make good faith efforts to conclude the negotiations and execute a final agreement by no later than September 1, 2016.

31. PPL Electric and Amtrak agree that PPL Electric will submit a further tariff filing for Rate Schedule LPEP to reflect (i) the negotiated agreement ultimately reached by PPL Electric and Amtrak or (ii) the fact PPL Electric and Amtrak were unable to reach an agreement by September 1, 2016.

*See* 2015 Settlement, ¶¶ 29-31.

13. On November 19, 2015, the Pennsylvania Public Utility Commission ("Commission") approved the 2015 Settlement and *pro forma* tariff pages attached thereto. *See Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Order entered Nov. 19, 2015).

14. The Rate Schedule LPEP monthly distribution charge of \$126,323.59 per month became effective on January 1, 2016.

15. PPL Electric's currently effective tariff provides that the monthly distribution charge for Rate Schedule LPEP is \$126,323.59 per month. A true and correct copy of PPL Electric's current Commission-approved tariff for Rate Schedule LPEP is attached as Appendix A.

16. Pursuant to the 2015 Settlement, PPL Electric and Amtrak continued to work together to resolve all open issues regarding the upgrade of the Conestoga Substation. *See* Complaint, ¶ 12.

17. PPL Electric and Amtrak were unable to reach an agreement regarding the upgrade of the Conestoga Substation by September 1, 2016. *See* Complaint, ¶ 14.

18. On October 5, 2016, PPL Electric filed Supplement No. 213 to Tariff – Electric Pa. P.U.C. No. 201 (“Supplement No. 213”), which was docketed with the Commission at Docket No. R-2016-2569975.

19. At no time prior to October 5, 2016, did PPL Electric file any tariff supplement seeking Commission approval to change the Rate Schedule LPEP monthly distribution charge from the \$126,323.59 per month approved in the 2015 Settlement.

20. Supplement No. 213 proposes an annual increase of approximately \$2.320 million in the distribution revenues received from Rate Schedule LPEP. Supplement No. 213 proposes to increase the Rate Schedule LPEP monthly distribution charge from the \$126,323.59 per month approved in the 2015 Settlement to \$319,671.00 per month.

21. As proposed in Supplement No. 213, the proposed increase in the Rate Schedule LPEP monthly distribution charge will become effective on the date the Conestoga Substation upgrade is completed and placed in service.

22. On December 19, 2016, Amtrak filed the above-captioned Complaint at Docket No. C-2016-2580526.

23. In its Complaint, Amtrak opposes the increase to the Rate Schedule LPEP monthly distribution charge proposed in Supplement No. 213.

24. In the Complaint, Amtrak requests a refund for services rendered under Rate LPEP during the period of September 1, 2016 through December 31, 2016, for any invoices paid by Amtrak that exceed \$37,100 per month. *See* Complaint, ¶¶ 22(iii), 35-44.

25. In the Complaint, Amtrak also requests a refund for services rendered under Rate LPEP during the period of January 1, 2016 through August 31, 2016, for any invoices paid by Amtrak that exceed \$37,100 per month. *See* Complaint, ¶¶ 22(iv), 45-49.

26. PPL Electric herein files these Preliminary Objections to Amtrak's Complaint. For the reasons explained below, PPL Electric respectfully requests that Paragraphs 22(iii)-(iv), 35-49 and Conclusion subparagraphs (iii)-(iv) of Amtrak's Complaint, and the associated requests for refund, be denied in their entirety due to: (a) failure to state a claim upon which relief may be granted because Amtrak's requests for refunds are barred as a matter of law; (b) failure to state a claim upon which relief may be granted because Amtrak's requests for refunds are barred by the express terms of the 2015 Settlement; (c) failure to state a claim upon which relief may be granted because Amtrak's requests for refunds are barred by the express terms of the Agreement between PPL Electric and Amtrak; and (d) failure of the pleading to conform with Chapter 5 of the Commission's regulations.



## II. STANDARD OF REVIEW

27. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) *Failure of a pleading to conform to this chapter* or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) *Legal insufficiency of a pleading.*
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a) (emphasis added).

28. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwltth.*, 910 A.2d 775, 781 (Pa. Cmwltth. 2006) (citing *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwltth. 2005); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwltth. 2007). For preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

### **III. PRELIMINARY OBJECTIONS**

#### **A. PRELIMINARY OBJECTION No. 1 – Amtrak’s Requests for Retroactive Refunds Are Barred by the Commission-Made Rate Doctrine**

29. PPL Electric incorporates by reference Paragraphs 1 through 28 as if fully set forth herein.

30. In its Complaint, Amtrak requests a refund for services rendered under Rate LPEP during the period of September 1, 2016 through December 31, 2016, for any invoices paid by Amtrak that exceed \$37,100 per month. *See* Complaint, ¶ 22(iii), ¶¶ 35-44, and Conclusion subparagraph (iii).

31. Section B of the “New Matter” to Amtrak’s Complaint requests a refund for services rendered under Rate LPEP during the period of January 1, 2016 through August 31, 2016, for any invoices paid by Amtrak that exceed \$37,100 per month. *See* Complaint, ¶¶ 22(iv), 45-49, and Conclusion subparagraph (iv).

32. Amtrak’s requests for retroactive refunds are barred by the “Commission-made rate doctrine.”

33. The “Commission-made rate doctrine” provides, among other things, that rates and tariff provisions, once fixed by final Commission order, may not be changed retroactively. *Cheltenham & Abington Sewage Co. v. Pa. PUC*, 344 Pa. 366, 25 A.2d 334, 338 (1942); *see also Duquesne Light Co. v. Pa. PUC*, 507 A.2d 433, 438 n.10 (Pa. Cmwlth. 1986) (the “Commission-made rate doctrine” prevents the Commission from ordering refunds of monies collected by a utility under authority of a prior Commission-approved tariff).

34. Further, it is well established that Commission-approved tariffs have the force and effect of law and are legally binding on the utility as well as the customer. *See PECO Energy*

*Co. v. Twp. of Upper Dublin*, 922 A.2d 996, 1004 (Pa. Cmwlth. 2007); *Kossman v. Pa. PUC*, 694 A.2d 1147, 1151 (Pa. Cmwlth. 1997); *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995).

35. The only rates PPL Electric may lawfully charge are those set forth in its Commission-approved tariff. *Pennsylvania Electric Co. v. Pa. PUC*, 633 A.2d 281, 284 (Pa. Cmwlth. 1995) (citing *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981)).

36. The Rate Schedule LPEP monthly distribution charge of \$126,323.59 per month was set forth in the 2015 Settlement at Docket No. R-2015-2469275.

37. The Commission approved the 2015 Settlement and *pro forma* tariff pages attached thereto, including the monthly customer charge for Rate Schedule LPEP. *See Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Order entered Nov. 19, 2015).

38. The Rate Schedule LPEP monthly distribution charge of \$126,323.59 per month became effective on January 1, 2016.

39. PPL Electric's currently effective tariff provides that the monthly distribution charge for Rate Schedule LPEP is \$126,323.59 per month. *See Appendix A.*

40. Based on the foregoing, as a matter of law the Rate Schedule LPEP monthly customer charge of \$126,323.59 set forth in PPL Electric's currently effective Commission-approved tariff is legally binding and may only be changed prospectively through an appropriate tariff filing approved by the Commission.

41. Accordingly, Amtrak's request for a refund of the Rate Schedule LPEP charges paid during the period of September 1, 2016 through December 31, 2016, is barred as a matter of

law. Therefore, Amtrak has failed state a claim in Paragraphs 22(iii), 35-44, and the Conclusion subparagraph (iii) of the Complaint upon which relief may be granted.

42. Similarly, Amtrak's request for a refund of the Rate Schedule LPEP charges paid during the period of January 1, 2016 through August 31, 2016, is barred as a matter of law. Therefore, Amtrak has failed state a claim in Paragraph 22(iv), 45-49, and the Conclusion subparagraph (iv) of the Complaint upon which relief may be granted.

43. Because Amtrak is not entitled to the retroactive refunds requested in Paragraphs 22(iii)-(iv), 35-49, and Conclusion subparagraphs (iii)-(iv) of Amtrak's Complaint, these portions of the Complaint and associated requests for relief should be dismissed.

WHEREFORE, PPL Electric respectfully requests that Paragraphs 22(iii)-(iv), 35-49, and Conclusion subparagraphs (iii)-(iv) of the Complaint and Amtrak's requests for a refund of the Rate Schedule LPEP charges be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(4) for legal insufficiency.

**B. PRELIMINARY OBJECTION No. 2 – The Relief Requested in Amtrak's "New Matter" is a Violation and Breach of the 2015 Settlement**

44. PPL Electric incorporates by reference Paragraphs 1 through 43 as if fully set forth herein.

45. The \$126,323.59 monthly customer charge for Rate Schedule LPEP was set forth in the 2015 Settlement.

46. The PP&L Industrial Customer Alliance joined the 2015 Settlement on behalf of Amtrak.

47. The Commission approved the 2015 Settlement and *pro forma* tariff pages attached thereto, including the monthly customer charge for Rate Schedule LPEP. *See Pa. PUC*

v. *PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Order entered Nov. 19, 2015).

48. Nothing in the 2015 Settlement provides the customer charge for Rate Schedule LPEP would revert back to \$37,100.00 per month if PPL Electric and Amtrak were unable to resolve all open issues regarding the upgrade of the Conestoga Substation by September 1, 2016.

49. Nothing in the 2015 Settlement authorizes PPL Electric to charge a rate for Rate Schedule LPEP other than the \$126,323.59 per month approved in the 2015 Settlement.

50. Nothing in the 2015 Settlement authorizes Amtrak to pay a different monthly customer charge for Rate Schedule LPEP than the \$126,323.59 per month approved in the 2015 Settlement.

51. Amtrak's request for a retroactive refund of the of the \$126,323.59 monthly customer charge for Rate Schedule LPEP is a violation and breach of the express terms of the 2015 Settlement agreed to by Amtrak.

52. Accordingly, Amtrak's request for a refund of the Rate Schedule LPEP charges paid during the period of September 1, 2016 through December 31, 2016, is barred by the express terms of the 2015 Settlement. Therefore, Amtrak has failed state a claim in Paragraphs 22(iii), 35-44, and the Conclusion subparagraph (iii) of the Complaint upon which relief may be granted.

53. Similarly, Amtrak's request for a refund of the Rate Schedule LPEP charges paid during the period of January 1, 2016 through August 31, 2016, is barred by the express terms of the 2015 Settlement. Therefore, Amtrak has failed state a claim in Paragraphs 22(iv), 45-49, and the Conclusion subparagraph (iv) of the Complaint upon which relief may be granted.

54. Because Amtrak is not entitled to the retroactive refunds requested in Paragraphs 22(iii)-(iv), 35-49, and the Conclusion subparagraphs (iii)-(iv) of Amtrak's Complaint, these portions of the Complaint and associated requests for relief should be dismissed.

WHEREFORE, PPL Electric respectfully requests that Paragraphs 22(iii)-(iv), 35-49, and Conclusion subparagraphs (iii)-(iv) of the Complaint and Amtrak's requests for a refund of the Rate Schedule LPEP charges be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(4) for legal insufficiency.

**C. PRELIMINARY OBJECTION No. 3 – The Relief Requested in Amtrak's "New Matter" is a Violation and Breach of the Agreement between PPL Electric and Amtrak**

55. PPL Electric incorporates by reference Paragraphs 1 through 54 as if fully set forth herein.

56. During the course of the 2015 base rate case, PPL Electric and Amtrak entered into the Agreement dated September 16, 2015 regarding the upgrades to the Conestoga Substation. *See* Complaint, Exhibit B.

57. In the Agreement, PPL Electric and Amtrak agreed that "the \$126.323.59 customer charge shall be effective on January 1, 2016, subject to further resolution of the issues as described in Paragraphs 7 through 9 [of the Agreement]." *See* Complaint, Exhibit B, ¶ 6.

58. PPL Electric and Amtrak agreed to continue to work together to resolve all open issues regarding the upgrade of the Conestoga Substation by September 1, 2016. *See* Complaint, Exhibit B, ¶ 7.

59. PPL Electric and Amtrak agreed that, in the event PPL Electric and Amtrak were able to reach a final agreement by September 1, 2016, "PPL Electric will submit a further tariff

filing for Rate Schedule LPEP to reflect the negotiated agreement ultimately reached by PPL Electric and Amtrak.” *See* Complaint, Exhibit B, ¶ 8.

60. PPL Electric and Amtrak agreed that, if PPL Electric and Amtrak were unable to reach an agreement by September 1, 2016, PPL Electric would (i) undertake all improvements needed for the Conestoga Substation that are in its opinion necessary or proper to provide safe and reliable service to Amtrak, and (ii) “make an appropriate tariff filing to fully recover those costs.” *See* Complaint, Exhibit B, ¶¶ 7-9.

61. Nothing in the Agreement provides the customer charge for Rate Schedule LPEP would revert back to \$37,100.00 per month if PPL Electric and Amtrak were unable to resolve all open issues regarding the upgrade of the Conestoga Substation by September 1, 2016.

62. Nothing in the Agreement authorizes PPL Electric to charge a rate for Rate Schedule LPEP other than the \$126,323.59 per month approved in the 2015 Settlement.

63. Nothing in the Agreement authorizes Amtrak to pay a different monthly customer charge for Rate Schedule LPEP than the \$126,323.59 per month approved in the 2015 Settlement.

64. Amtrak’s request for a retroactive refund of the of the \$126,323.59 monthly customer charge for Rate Schedule LPEP is a violation and breach of the express terms of the Agreement between PPL Electric and Amtrak.

65. Accordingly, Amtrak’s request for a refund of the Rate Schedule LPEP charges paid during the period of September 1, 2016 through December 31, 2016, is barred by the express terms of the Agreement. Therefore, Amtrak has failed state a claim in Paragraphs 22(iii), 35-44 and the Conclusion subparagraph (iii) of the Complaint upon which relief may be granted.

66. Similarly, Amtrak's request for a refund of the Rate Schedule LPEP charges paid during the period of January 1, 2016 through August 31, 2016, is barred by the express terms of the Agreement. Therefore, Amtrak has failed state a claim in Paragraphs 22(iv), 45-49 and the Conclusion subparagraph (iv) of the Complaint upon which relief may be granted.

67. Because Amtrak is not entitled to the retroactive refunds requested in Paragraphs 22(iii), 22(iv), and 35-49 and Conclusion subparagraphs (iii) and (iv) of Amtrak's Complaint, these portions of the Complaint and associated requests for relief should be dismissed.

WHEREFORE, PPL Electric respectfully requests that Paragraphs 22(iii)-(iv), 35-49, and Conclusion subparagraphs (iii)-(iv) of the Complaint and Amtrak's requests for a refund of the Rate Schedule LPEP charges be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(4) for legal insufficiency.

**D. PRELIMINARY OBJECTION No. 4 – Amtrak's "New Matter" to its Own Complaint Fail to Conform with Chapter 5 of the Commission's Regulations**

68. PPL Electric incorporates by reference Paragraphs 1 through 67 as if fully set forth herein.

69. In its Complaint, Amtrak raises "new matter" to its own Complaint. *See* Complaint, pp. 11-13.

70. Section 5.1(a) of the Commission's regulations identifies the pleadings that are permissible in Commission proceedings. Although Section 5.1(a)(2) permits a party to submit new matter in Commission proceedings, new matter is to be submitted with an answer. *See* 52 Pa. Code § 5.1(a).

71. New matter is governed by Section 5.62 of the Commission's regulations, which provides as follows:



§ 5.62. Answers seeking affirmative relief or raising new matter.

(a) *Answers* seeking affirmative relief. In its *answer*, a respondent may seek relief against other parties in a proceeding if common questions of law or fact are present. The *answer* must conform to this chapter for answers generally and set forth:

- (1) The facts constituting the grounds of complaint.
- (2) The provisions of the statutes, rules, regulations or orders relied upon.
- (3) The injury complained of.
- (4) The relief sought.

(b) *Answers* raising new matter. An affirmative defense shall be pleaded in an *answer* or other responsive pleading under the heading of “New Matter.” A party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading.

52 Pa. Code § 5.62 (emphasis added).

72. Pursuant to Section 5.62, new matter may be submitted *with an answer* to seek affirmative relief, raise an affirmative defense, or set forth material facts that are not merely a denial of the averments of a pleading.

73. There is nothing in the Commission’s regulations that authorizes “new matter” to be submitted with a complaint. In fact, there are no other provisions of the Commission’s regulations that authorize “new matter.”

74. Based on the foregoing, Amtrak’s attempt to include “new matter” in its Complaint is procedurally improper under the Commission’s regulations.


WHEREFORE, PPL Electric respectfully requests that Sections A and B of the New Matter to the Complaint be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(2) for failure to conform to Chapter 5 of the Commission’s regulations.

**IV. CONCLUSION**

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Paragraphs 22(iii)-(iv), 35-49, and Conclusion subparagraphs (iii)-(iv) of Amtrak's Complaint and Amtrak's requests for a refund of the Rate Schedule LPEP charges be summarily dismissed pursuant to 52 Pa. Code §§ 5.101(a)(2) and (4).

Respectfully submitted,

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Date: December 22, 2016

Counsel for PPL Electric Utilities Corporation

# **Appendix “A”**

**RATE SCHEDULE LPEP  
POWER SERVICE TO ELECTRIC PROPULSION**

**(C)**

**APPLICATION RATE SCHEDULE LPEP**

This Rate Schedule is available for electric propulsion service from the Company's high voltage lines of 69,000 volts or higher, when the customer furnishes and maintains all equipment necessary to transform the energy from line voltage. No new applications will be accepted after January 1, 2000.

**NET MONTHLY RATE**

**Distribution Charge**

\$126,323.59 per month (Customer Charge)

**(I)**

**Transmission Service Charge**

The Transmission Service Charge included in this Tariff applies to all KW and/or KWH billed under this Rate Schedule.

**Generation Supply Charge -2**

The Generation Supply Charge -2 included in this Tariff applies to all KWH billed under this Rate Schedule.

**MINIMUM CHARGE**

The Monthly Minimum Distribution Charge is the Customer Charge.

**BILLING KW**

The Billing KW for the Transmission component is based on the customer's peak load contribution to the PJM peak load.

**RIDERS**

The Riders included in this Tariff that apply to this Rate Schedule are listed in the Rider Matrix on Page 14D.

(Continued)

RATE SCHEDULE LPEP (CONTINUED)

(C)

STATE TAX ADJUSTMENT SURCHARGE

The State Tax Adjustment Surcharge included in this Tariff is applied to charges under this Rate Schedule.

PAYMENT

(C)

The above net rate applies when bills are paid on or before the due date specified on the bill, which is not less than 15 days from the date bill is mailed via the U.S. Postal Service or mailed electronically. When not so paid, the gross rate applies which is the above net rate plus 5% on the first \$200.00 of the then unpaid balance of the monthly bill and 2% on the remainder thereof.

CONTRACT PERIOD

Service under this Rate Schedule is for an initial term of one (1) year from the date service is first rendered, unless the Company and the customer mutually agree to a different term in the contract for service.