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File #: 167272

December 29, 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 is the Motion of PPL Electric Utilities Corporation to Strike Certain Portions of the Complaint of the National Railroad Passenger Corporation, in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

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

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Date: December 29, 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	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), YOU MAY FILE A REPLY TO THE ENCLOSED MOTION WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Date: December 29, 2016

Counsel for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

National Railroad Passenger Corporation	:	
Complainant	:	
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Supplement No. 213 to Tariff – Electric	:	
Pa. P.U.C. No. 201	:	

**MOTION OF PPL ELECTRIC UTILITIES CORPORATION
TO STRIKE CERTAIN PORTIONS OF THE COMPLAINT OF
THE NATIONAL RAILROAD PASSENGER CORPORATION**

TO THE PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation (“PPL Electric”) files this Motion to Strike certain portions of the above-captioned Complaint filed by the National Railroad Passenger Corporation (“Amtrak”) pursuant to 52 Pa. Code § 5.103 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations. 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. Amtrak is the only customer taking service under Rate Schedule LPEP. *See* Complaint, Exhibit B, p. 2.

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

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

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

9. 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.

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

11. 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.

12. 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).

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

14. 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.

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

16. 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.

17. 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.

18. 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.

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

20. In its Complaint, Amtrak opposes the increase to the Rate Schedule LPEP monthly distribution charge proposed in Supplement No. 213. Amtrak also requests a retroactive refund for services rendered under Rate LPEP during the period of January 1, 2016 through December 31, 2016, for any invoices paid by Amtrak that exceed \$37,100 per month. *See* Complaint, ¶¶ 22(iii)-(iv), 35-49.

21. Pertinent to this Motion, in several places Amtrak’s Complaint references and discloses confidential negotiations between Amtrak and PPL Electric that were undertaken pursuant to the 2015 Settlement. *See* Complaint ¶¶ 12, 31(ii)-(iii), and 38.

22. PPL Electric herein files this Motion to respectfully request that the Commission strike Paragraphs 12, 31(ii)-(iii), and 38 of Amtrak’s Complaint.

II. MOTION TO STRIKE

23. PPL Electric incorporates Paragraphs 1 through 22 as though fully set forth herein.

24. As required by the 2015 Settlement and the Mutual Settlement Agreement between PPL Electric and Amtrak dated September 16, 2015 (hereinafter, the “Agreement”), 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, ¶ 12 and Ex. B, ¶7.

25. As reflected in the Agreement and 2015 Settlement, the purpose of these negotiations between Amtrak and PPL Electric was to: (i) resolve the parties’ dispute arising from PPL Electric’s 2015 base rate case regarding the proposed increase of the monthly distribution charges for Rate Schedule LPEP, *i.e.*, resolve existing litigation; and (ii) to attempt to resolve the open issues regarding the upgrades to the Conestoga Substation and the monthly distribution charges for Rate Schedule LPEP, *i.e.*, avoid future litigation.

26. As stated in the Complaint, PPL Electric and Amtrak entered into negotiations in an effort to resolve the open issues regarding the upgrades to the Conestoga Substation and the monthly distribution charges for Rate Schedule LPEP. However, PPL Electric and Amtrak were unable to reach an agreement by the September 1, 2016 deadline.

27. In Paragraphs 12, 31(ii)-(iii), and 38 of the Complaint, Amtrak references and discloses specific discussions and negotiations among PPL Electric and Amtrak intended to resolve the open issues regarding the upgrades to the Conestoga Substation and the monthly distribution charges for Rate Schedule LPEP.

28. The discussions and negotiations referenced in Paragraphs 12, 31(ii)-(iii), and 38 of the Complaint were undertaken to avoid and in anticipation of future litigation regarding the

upgrades to the Conestoga Substation and the monthly distribution charges for Rate Schedule LPEP.

29. The discussions and negotiations referenced in Paragraphs 12, 31(ii)-(iii), and 38 of the Complaint are confidential and should not be disclosed in a public pleading or offered as evidence.

30. Section 5.231(d) of the Commission's regulations provides that offers of settlement are not admissible in evidence against counsel or a party claiming the privilege. 52 Pa. Code § 5.231(d).

31. In *Pa PUC, v Pennsylvanian Electric Company*, Docket Nos. Docket Nos. R-80051197, C-80072106, (Order entered December 4, 1980) the Commission stated:

The rule of evidence which excludes unaccepted settlement offers is well established and is based upon two considerations: (1) the recognition that the relevance of unaccepted proposals of settlement is limited at best; and (2) public policy favors excluding such evidence in order to foster settlements. *See Redevelopment Authority of the City of Philadelphia v Pennsylvania Electric Co.* (1979) 48 Pa. Cmwlth 68, 409 A2d 122; The Federal Rules of Evidence, Rule 408; "McCormick on Evidence," 2nd ed, § 274; "Wigmore on Evidence," Chadbourn edition, § 1061. In the instant case, we need not delve into case law in order to determine the existence or nonexistence of a privilege in administrative proceedings, for we find one clearly recognized in 1 Pa Code § 35.115. That provision, placed as it is within prehearing conference procedures, indicates that the privilege reasonably extends to any unaccepted proposals of settlement or to any discussions regarding settlement, as well as a wide variety of other matters which would expedite the proceeding. Consequently, the scope of the privileged subject matter is to be interpreted broadly. Accordingly we find that settlement negotiations are privileged, confidential and inadmissible into evidence....

32. Based on the foregoing, Amtrak's reference to and disclosure of the settlement negotiations by and between Amtrak and PPL Electric in Paragraphs 12, 31(ii)-(iii), and 38 of

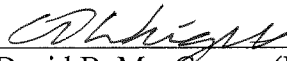
the Complaint is improper and should be stricken from the Complaint and removed from the public docket.

III. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission (a) grant this Motion, (b) strike Paragraphs 12, 31(ii)-(iii), and 38 of the Complaint, and (c) remove any reference to Paragraphs 12, 31(ii)-(iii), and 38 of the Complaint from the public docket.

Respectfully submitted,

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Date: December 29, 2016

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