



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Pamela C. Polacek
Direct Dial: 717.237.5368
Direct Fax: 717.260.1736
ppolacek@mcneeslaw.com

January 3, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**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 P.A. PUC No. 201
for Rate Schedule LPEP; Docket No. R-2016-2569975**

Dear Secretary Chiavetta:

Attached please find for filing with the Pennsylvania Public Utility Commission the Answer of National Railroad Passenger Corporation to the Preliminary Objections of PPL Electric Utilities Corporation in the above-referenced proceeding.

As shown on the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek

Counsel to National Railroad Passenger Corporation

Enclosures

c: Administrative Law Judge David A. Salapa (via e-mail and First-Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

Michael W. Gang, Esq.
Christopher T. Wright, Esq.
Post & Schell PC
17 North Second Street 12th Floor
Harrisburg, PA 17101-1601
mgang@postschell.com
cwright@postschell.com

David B. MacGregor, Esq.
Post & Schell PC
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103
dmacgregor@postschell.com

Kimberly A. Klock, Esq.
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
kklock@pplweb.com

Gina L. Miller, Esq.
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street, 2nd Floor West
Harrisburg, PA 17120
ginmiller@pa.gov



Pamela C. Polacek

Counsel to National Railroad Passenger
Corporation

Dated this 3rd day of January, 2017, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NATIONAL RAILROAD PASSENGER CORPORATION	:	
	:	
COMPLAINANT	:	Docket No. C-2016-2580526
	:	
v.	:	
	:	
PPL ELECTRIC UTILITIES CORPORATION,	:	
	:	
RESPONDENT	:	
	:	
PPL ELECTRIC UTILITIES CORPORATION SUPPLEMENT NO. 213 TO TARIFF ELECTRIC PA PUC NO. 201 FOR RATE SCHEDULE LPEP	:	Docket No. R-2016-2569975
	:	

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

Pursuant to 52 Pa. Code Sections 5.61(a)(2) and 5.101, National Railroad Passenger Corporation ("Amtrak") hereby submits this Answer to the Preliminary Objections ("Answer") filed by PPL Electric Utilities Corporation ("PPL") in response to Amtrak's Complaint and New Matter. For the reasons set forth herein, Amtrak respectfully requests that the Pennsylvania Public Utility Commission ("PUC" or "Commission") deny the Preliminary Objections of PPL. By and in support hereof, Amtrak states as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied, except to admit only that paragraph 4 re-states PPL's allegations in support of its proposed rate increase.

5. Denied, except to admit only that paragraph 5 re-states PPL's allegations in support of its proposed rate increase.

6. Admitted

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Amtrak submits that the 2015 Settlement speaks for itself and no response is required. By way of further response, Amtrak and PPL also executed the "Mutual Settlement Agreement Among PPL Electric Utilities Corporation and National Railroad Passenger Corporation" ("Mutual Settlement Agreement"). That separate Mutual Settlement Agreement is similar to the quoted provisions from the Joint Petition for Approval of Settlement of All Issues ("2015 Settlement") at Docket No. R-2015-2469275, but contains more detail regarding the agreement between Amtrak and PPL regarding the scope of the negotiations and Amtrak's resolution of rights if a mutual agreement could not be reached by September 1, 2016. In relevant part, the Mutual Settlement Agreement states:

6. PPL Electric and 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 a settlement rate of \$126,323.59 per month. PPL Electric and Amtrak further agree that the \$126,323.59 monthly customer charge consists of the current \$37,100 monthly customer charge and an increase related to upgrades at the Conestoga Substation of \$89,23.59. 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.

7. 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. Both parties agree to consider all potential solutions, including, but not limited to, direct funding by Amtrak, purchase of the Conestoga Substation by Amtrak, recovery of costs through base rates, and/or transfer of 2 existing Amtrak transformers from the Metuchen Station to 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.
8. PPL Electric and Amtrak agree that upon reaching an agreement regarding the Conestoga Substation, PPL Electric will submit a further tariff filing for Rate Schedule LPEP to reflect the negotiated agreement ultimately reached by PPL Electric and Amtrak.
9. If PPL Electric and Amtrak are unable to reach an agreement by September 1, 2016, PPL Electric will 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 will make an appropriate tariff filing to fully recover those costs. PPL Electric agrees to serve Amtrak with an electronic copy of the tariff filing upon submission to the Pa. PUC, Amtrak reserves all rights to contest the tariff filing before the Pa. PUC.

Mutual Settlement Agreement, ¶¶ 6-9. The Mutual Settlement Agreement was attached to Amtrak's Complaint as Exhibit B.

13. Admitted.

14. Admitted. By way of further response, the application of the new distribution rate for Rate Schedule LPEP was subject to the provisions in the Mutual Settlement Agreement reserving Amtrak's rights if a mutual agreement was not reached by September 1, 2016. Furthermore, the PUC's November 19, 2015 Order approving the 2015 Settlement without modification and noted that the approval was "subject to the terms and conditions" set forth in the 2015 Settlement. *See* Opinion and Order, Pa. PUC v. PPL Elec. Utils. Corp., Docket No. R-2015-

2469275, Ordering ¶¶ 3 & 5 (Nov. 19, 2015) ("November 19 Order"). With respect to Amtrak, this included the application of the \$126,323.59 during the negotiation period and the assurance that the incremental \$89,223.59 would be used for the Conestoga upgrade.

15. Denied as stated. By way of further response, Amtrak notes that the Commission approved that rate only "for purposes of settlement of this proceeding . . . subject to further resolution of the issues as described in Paragraphs 30 and 31 [of the 2015 Settlement]." *Id.* at p. 9. Paragraph 30 of the 2015 Settlement indicated that PPL and Amtrak would negotiate to resolve all open issues regarding upgrades to the Conestoga Substation, and indicated that the negotiations period would conclude on September 1, 2016. Paragraph 31 of the 2015 Settlement indicated that after September 1, 2016, PPL would either submit a tariff filing reflecting a negotiated agreement or PPL would submit a tariff filing reflecting the parties' inability to reach an agreement. The negotiation period concluded on September 1, 2016, and by that date Amtrak and PPL had not negotiated and executed a viable settlement contract. As a result, the \$126,323.59 monthly customer charge is no longer applicable. The PUC has not given PPL approval to institute a \$126,323.59 monthly customer charge for Rate Schedule LPEP beyond September 1, 2016. Moreover, the disposition of the additional \$89,223.59 paid for service each month from January 1, 2016 through August 31, 2016 remains an unresolved issue as stated in the 2015 Settlement and the Mutual Settlement Agreement.

16. Denied. By way of response, Amtrak submits that Paragraph 12 of the Complaint speaks for itself, and PPL's categorization is denied.

17. Admitted.

18. Admitted.

19. Admitted in part and denied in part. Amtrak admits that "[a]t 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." Amtrak denies that the rate was "approved in the 2015 Settlement" for service after September 1, 2016.

20. Admitted in part and denied in part. Amtrak admits that increasing the monthly distribution charge from \$126,323.59 to \$319,671.00 will result in additional annual revenues for PPL of approximately \$2.32 million, and admits that the proposed rate in Supplement No. 213 is \$319,671.00 per month. Amtrak denies that the \$126,323.59 per month rate was "approved in the 2015 Settlement" for service after September 1, 2016.

21. Admitted.

22. Admitted.

23. Amtrak submits that the Complaint speaks for itself and no response is required.

24. Amtrak submits that Paragraphs 22(iii) and 35-44 of the Complaint speak for themselves and no response is required.

25. Amtrak submits that Paragraphs 22(iv) and 45-49 of the Complaint speak for themselves and no response is required.

26. Denied. For the reasons set forth in the paragraphs below, Amtrak respectfully requests that the Commission deny PPL's Preliminary Objections in their entirety.

27. The averment in Paragraph 27 of PPL's Preliminary Objections is a conclusion of law to which no response is required.

28. The averments in Paragraph 28 of PPL's Preliminary Objections are conclusions of law to which no response is required.

I. ANSWER TO PRELIMINARY OBJECTION 1: AMTRAK'S REQUESTS FOR RETROACTIVE REFUNDS ARE NOT BARRED BY THE COMMISSION-MADE RATE DOCTRINE.

29. Amtrak incorporates by reference its arguments in Paragraphs 1 through 28 of this Answer as if fully set forth herein.

30. Amtrak submits that Paragraphs 22(iii), 35-44, and Conclusion subparagraph (iii) of the Complaint speak for themselves and no response is required.

31. Amtrak submits that Paragraphs 22(iv), 45-49, and Conclusion subparagraph (iv) of the Complaint speak for themselves and no response is required.

32. Denied. By way of further response, Paragraphs 33 through 43 of this Answer demonstrate that Amtrak's requests for refunds are permissible under the 2015 Settlement, the Mutual Settlement Agreement and the November 19 Order.

33. The averment in Paragraph 33 of PPL's Preliminary Objections is a conclusion of law to which no response is required. Even if the settlement rate were to be considered a Commission made rate, that rate expired on September 1, 2016, by the terms of the Settlement and the terms of the Commission's Order. Amtrak incorporates by reference its responses to Paragraphs 14 and 15. *See* 2015 Settlement ¶ 12(d) and November 19 Order ¶ 5.

34. The averment in Paragraph 34 of PPL's Preliminary Objections is a conclusion of law to which no response is required. By way of further response, Amtrak's requests for refunds and to reduce its monthly distribution payment as of September 1, 2016, are not barred because the settlement contemplated that Amtrak would pay the higher charge only through September 1, 2016 and because the disposition of the incremental \$89,223.59 each month for service from January 1, 2016, through August 31, 2016, was an issue to be resolved by the failed negotiations.

35. The averment in Paragraph 35 of PPL's Preliminary Objections is a conclusion of law to which no response is required.

36. Denied as stated. By way of further response, Amtrak incorporates by reference its response to Paragraph 12, *supra*.

37. Denied as stated. By way of further response, Amtrak incorporates by reference its response to Paragraph 12, *supra*.

38. Admitted.

39. Denied as stated. By way of further response, Amtrak notes that , the Commission approved the rate of \$126,323.59 per month "for purposes of settlement of this proceeding . . . subject to further resolution of the issues as described in Paragraphs 30 and 31. . . ." November 19 Order, p. 9. Paragraph 30 of the 2015 Settlement indicated that PPL and Amtrak would negotiate to resolve all open issues regarding upgrades to the Conestoga Substation, and indicated that the negotiations period would conclude on September 1, 2016. As a result, the \$126,323.59 monthly customer charge is no longer applicable.

40. Denied as stated. By way of further response, for the reasons set forth in Paragraph 39 of this Answer, the \$126,323.59 monthly customer charge for Rate Schedule LPEP no longer applies after September 1, 2016. Accordingly, that rate is not currently legally binding. A tariff can be challenged through a Complaint and a request for refunds under Section 1312(a) of the Public Utility Code, 66 Pa. C. S. § 1312(a).

41. Denied. By way of additional response, Amtrak incorporates by reference Paragraphs 29 through 40 of this Answer.

42. Denied.

43. Denied. By way of additional response, Amtrak incorporates by reference Paragraphs 29 through 42 of this Answer.

II. ANSWER TO PRELIMINARY OBJECTION 2: THE RELIEF REQUESTED IN AMTRAK'S "NEW MATTER" IS NOT A VIOLATION OR BREACH OF THE 2015 SETTLEMENT.

44. Amtrak incorporates by reference its arguments in Paragraphs 1 through 43 of this Answer as if fully set forth herein.

45. Admitted.

46. Admitted.

47. Admitted.

48. Denied. By way of additional response, Amtrak incorporates by reference Paragraphs 14, 15, and 29 through 43 of this Answer. Amtrak also notes that the PUC's November 19 Order expressly indicated that settlement rate only applied "for purposes of settlement of this proceeding . . . subject to further resolution." November 19 Order, p. 9. PPL and Amtrak had until September 1, 2016 to resolve their concerns and failed to negotiate a settlement. As a result of the fact that the \$126,323.59 rate that the PUC approved as part of the 2015 settlement expired after September 1, 2016, it no longer applies. *See* Mutual Settlement Agreement, ¶¶ 7, 8, and 9, and November 19 Order, Ordering ¶¶ 3 and 5. Accordingly, the only un-expired PUC-approved rate is \$37,100. Furthermore, as demonstrated in Paragraphs 33 and 43 of this Answer, the Commission may order retroactive refunds in this circumstance under the settlement documents. Finally, Paragraphs 62 and 63 of the 2015 Settlement and Paragraph 9 of the Mutual Settlement Agreement both reserve all rights and arguments in future proceedings, such as this.

49. Denied. By way of further response, Amtrak incorporates by reference paragraph 48 of its Answer.

50. Denied. By way of further response, Amtrak incorporates by reference paragraph 48 of its Answer.

51. Denied. By way of further response, Amtrak incorporates by reference paragraph 48 of its Answer.

52. Denied. By way of further response, Amtrak incorporates by reference Paragraphs 29 through 51 of this Answer.

53. Denied. By way of further response, Amtrak incorporates by reference Paragraphs 29 through 52 of this Answer.

54. Denied. By way of further response, Amtrak incorporates by reference Paragraphs 29 through 53 of this Answer.

III. ANSWER TO PRELIMINARY OBJECTION 3: THE RELIEF REQUESTED IN AMTRAK'S "NEW MATTER" IS NOT A VIOLATION OR BREACH OF THE AGREEMENT BETWEEN PPL AND AMTRAK.

55. Amtrak incorporates by reference its arguments in Paragraphs 1 through 54 of this Answer as if fully set forth herein.

56. Denied except to admit that Amtrak and PPL entered into two related settlement agreements, the 2015 Settlement and the Mutual Settlement Agreement.

57. Amtrak submits that the 2015 Settlement speaks for itself and no response is required.

58. Amtrak submits that the 2015 Settlement speaks for itself and no response is required.

59. Amtrak submits that the 2015 Settlement speaks for itself and no response is required.

60. Amtrak submits that the 2015 Settlement speaks for itself and no response is required. By way of further response, Amtrak also specifically reserved all rights and arguments regarding any filing submitted by PPL in the Mutual Settlement Agreement. Mutual Settlement Agreement, ¶ 9.

61. Denied as stated. The Settlements between Amtrak and PPL speak for themselves.

By way of further response, Amtrak notes that, like the 2015 Settlement and the November 19 Order, the Mutual Settlement Agreement specifically indicates:

6. PPL Electric and 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 a settlement rate of \$126,323.59 per month. PPL Electric and Amtrak further agree that the \$126,323.59 monthly customer charge consists of the current \$37,100 monthly customer charge and an increase related to upgrades at the Conestoga Substation of [\$89,223.59]. 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.
7. 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.*

Mutual Settlement Agreement, ¶¶ 6-7 (emphasis added). Paragraph 9 of the Mutual Settlement Agreement provides that if PPL and Amtrak cannot negotiate a settlement by September 1, 2016, PPL "will 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 will make an appropriate tariff filing to fully recover those costs." *Id.* at ¶ 9.

62. Denied. In further response, Amtrak incorporates by reference paragraphs 48 and 56 of its Answer.

63. Denied. In further response, Amtrak incorporates by reference paragraphs 48 and 56 of its Answer.

64. Denied. In further response, Amtrak incorporates by reference paragraphs 48 and 56 of its Answer.

65. Denied. By way of further response, Amtrak incorporates by reference Paragraphs 60 through 64 of this Answer.

66. Denied. By way of further response, Amtrak incorporates by reference Paragraphs 60 through 64 of its Answer.

67. Denied. In further response Amtrak incorporates by reference Paragraphs 33, 42 and 43 of this Answer.

IV. ANSWER TO PRELIMINARY OBJECTION 4: AMTRAK'S "NEW MATTER" CONFORMS WITH CHAPTER 5 OF THE COMMISSION'S REGULATIONS.

68. Amtrak incorporates by reference its arguments in Paragraphs 1 through 67 of this Answer as if fully set forth herein.

69. Admitted.

70. Denied as stated. Amtrak admits only that Section 5.1(a) of the Commission's regulations identifies permissible pleadings in actions before the Commission. Amtrak denies that Section 5.1(a)(2) requires that new matters must be submitted only with answers.. Further, Amtrak notes that Section 5.1(a)(2) of the Commission's Regulations indicates that permissible pleadings in an action before the PUC include "Formal complaint, answer, new matter and reply to new matter." 52 Pa. Code 5.1(a)(2). The plain language of this provision does not specify that a new matter must be submitted in conjunction with an answer.

71. Denied as stated. Section 5.62 speaks for itself and requires no response. However, in further response, Amtrak notes that Section 5.62 of the Commission's Regulations only pertains to "Answers seeking affirmative relief or raising new matter." *Id.* Section 5.62 does not indicate that it applies to other types of pleadings containing new matters. In addition, any perceived

procedural defect could be remedied by the Commission pursuant to Section 1.2 (liberal construction of procedural rules) of the Commission's regulations or by requiring Amtrak to file an Amended Complaint that retains the refund requests, but omits the classification of the requests as "New Matter." *Id.*

72. Denied. In further response, Amtrak incorporates by reference paragraph 71 of tis Answer.


73. Denied. In further response, Amtrak incorporates by reference Paragraphs 70 through 72 of this Answer.

74. Denied. In further response, Amtrak incorporates by reference as discussed in Paragraphs 70 through 72 of this Answer.

WHEREFORE, National Railroad Passenger Corporation, respectfully requests that PPL Electric Utilities Corporation's Preliminary Objections be denied.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek (Pa. I.D. No. 78276)
Adeolu A. Bakare (Pa I.D. No. 208541)
Alessandra L. Hylander (Pa. I.D. No. 320967)
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
ppolacek@mcneeslaw.com
abakare@mcneeslaw.com
ahylander@mcneeslaw.com

Counsel to National Railroad Passenger Corporation

Dated: January 3, 2017

VERIFICATION

I, Eric F. Hornung, Deputy Chief Engineer, Electric Traction of National Railroad Passenger Corporation, hereby state that the facts above set forth in the foregoing document is true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

1/3/17
Date

Eric F. Hornung
Signature

VERIFICATION

I, William Auve, Assistant Controller of the National Railroad Passenger Corporation, hereby state that the facts above set forth in the foregoing document is true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

1/3/17

Date



Signature