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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 Petition of the National Railroad Passenger Corporation ("Amtrak") for Amendment of December 22, 2016 Order to Suspend these Proceedings in the above-referenced proceeding. **Please note that Amtrak respectfully requests consideration of this Petition at the Commission's January 19, 2017, Public Meeting to avoid expedited litigation activities that will be unnecessary as explained in the Petition.**

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 ("Amtrak")

Enclosures

- c: Certificate of Service
- Chairman Gladys M. Brown (via E-mail and Hand Delivery)
- Vice Chairman Andrew G. Place (via E-mail and Hand Delivery)
- Commissioner John F. Coleman, Jr. (via E-mail and Hand Delivery)
- Commissioner Robert F. Powelson (via E-mail and Hand Delivery)
- Commissioner David W. Sweet (via E-mail and Hand Delivery)

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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).

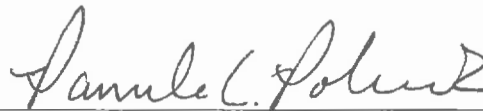
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Corporation

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
	:	

**PETITION OF THE NATIONAL PASSENGER RAILROAD CORPORATION FOR
AMENDMENT OF DECEMBER 22, 2016 ORDER
TO SUSPEND THESE PROCEEDINGS**

Pursuant to Section 5.572(a) of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") regulations, 52 Pa. Code § 5.572(a), the National Passenger Railroad Corporation ("Amtrak") hereby requests the Commission to amend its Order issued on December 22, 2016, in the above-referenced proceeding, which suspend the effective date of PPL Electric Utilities Corporation's ("PPL" or "Company") proposed Supplement No. 213 in the above-referenced matters (hereinafter, "Suspension Order"). **Due to the extremely abbreviated litigation schedule that results from the Suspension Order, Amtrak respectfully requests that the Commission rule on this Petition for Amendment at the January 19, 2017, Public Meeting.**

Specifically, Amtrak requests that the Commission amend the Suspension Order to revise Ordering Paragraph 2 to indicate that proposed Supplement No. 213 is **suspended indefinitely**

due Amtrak's current plans to acquire the Conestoga Substation equipment and property by purchasing the facility from PPL, or if that is not possible, to take the Conestoga Substation pursuant to Amtrak's federal eminent domain authority, 49 U.S.C. §24311. Alternatively, the Commission should suspend the above-captioned proceedings from June 1, 2017, to September 1, 2017, *i.e.*, for the **full nine-month suspension** available under Section 1308(b), without prejudice for any party to seek dismissal or modification of this proceeding or for further extensions. This will enable the Commission, the ALJ and the parties to avoid the prospect of judicial waste by proceeding with haste to resolve issues that may very well be rendered moot by Amtrak's acquisition of the Conestoga facility by purchase or pursuant to a Federal court eminent domain proceeding, to avoid rulings that may conflict with the jurisdiction of a federal court, and to have sufficient time to evaluate the multitude of unique legal issues that would arise as a result of Amtrak's current plans to acquire the Conestoga Substation equipment and property by purchasing the facility from PPL, or if that is not possible, to take the Conestoga Substation pursuant to Amtrak's federal eminent domain authority.

In support hereof, Amtrak states as follows:

I. HISTORY OF THE PROCEEDING

1. On October 5, 2016, PPL filed with the Commission its Supplement No. 213 to Tariff Electric Pa. P.U.C. No. 201 ("Supplement No. 213") for Rate Schedule LPEP requesting to add the following language to Rate Schedule LPEP:

Effective on the date that the Conestoga Substation upgrade is completed and placed in service, the distribution charge will be \$319,671.00 per month (Customer Charge). Customers under Rate Schedule LPEP will be given written notice 30 days before the effective date of the new distribution charge.

Supplement No. 213, Proposed Twenty-Sixth Revised Page No. 29.

2. On December 19, 2016, Amtrak filed a Complaint and New Matter to PPL's filing. A description of Amtrak is set forth in Paragraphs 8 and 9 of its Complaint. Complaint, ¶¶ 8-9.

3. On December 22, 2016, the Commission issued the Suspension Order, which: (a) instituted an investigation into the lawfulness, justness and reasonableness of the rates, rules and regulations in Supplement No. 213; (b) suspended Supplement No. 213 by operation of law until June 1, 2017, unless otherwise directed by Order of the Commission; (c) required PPL to file a tariff supplement suspending Supplement No. 213; (d) required the investigation to include consideration of the lawfulness, justness and reasonableness of PPL's existing rates, rules and regulations; (e) assigned the case to the Office of Administrative Law Judge for the prompt scheduling of hearings and issuance of a Recommended Decision; and (e) specified that the Suspension Order should be served on PPL, Amtrak, the Bureau of Investigation and Enforcement ("BIE"), the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA"). Suspension Order, Ordering ¶¶ 1-6.

4. On December 22, 2016, PPL filed an Answer and New Matter in response to Amtrak's Complaint and New Matter.

5. On December 22, 2016, PPL served Preliminary Objections to Amtrak's Complaint and New Matter.

6. On December 27, 2016, BIE filed a Notice of Appearance to participate in the proceeding.

7. On December 29, 2016, PPL filed a Motion to Strike portions of Amtrak's Complaint and New Matter.

8. On January 3, 2017, Amtrak filed its Answer to PPL's Preliminary Objections.

9. On January 6, 2017, presiding ALJ David Salapa will hold a Prehearing Conference

in the proceeding.

10. On December 29, 2016, ALJ Salapa issued a Prehearing Conference Order requiring the parties to submit proposed procedural schedules for the case, with the directive that Reply Briefs are due no later than 97 days before May 18, 2017 (i.e., by February 10, 2017).

11. In early February, 2017, Amtrak plans to acquire the Conestoga Substation equipment and property by purchasing the facility from PPL, or if that is not possible, to take the Conestoga Substation pursuant to Amtrak's federal eminent domain authority, 49 U.S.C. §24311.

II. LEGAL BASIS FOR REQUEST TO AMEND SUSPENSION ORDER

12. Section 703(g) of the Public Utility Code states:

The Commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when serve upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

66 Pa. C.S. § 703(g).

13. The key effect of 66 Pa. C.S. § 703(g) "is that prior orders of the Commission have no preclusive effect on the Commission from taking action, even though they have issued an order governing the same matter and involving the same parties." *Popowsky v. Pa PUC*, 805 A.2d 637, 641 (Pa. Commw. Ct. 2002) ("*Popowsky*") (citing *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 112 A.2d 826 (Pa. Super. Ct. 1955)). While "the PUC has the power to modify or rescind orders subject only to the requirements of due process, our Supreme Court has stated that power must be 'granted judiciously and only under appropriate circumstances' because such relief may result in the disturbance of final orders." *City of Phila. v. Pa. PUC*, 720 A.2d 845, 852 (Pa. Commw. Ct. 1998) (quoting *City of Pittsburgh v. Pa. Dep't. of Transp.*, 416 A.2d 461 (Pa. 1980)). New evidence is not required in order to consider a party's petition for amending or rescinding a prior

PUC order. *AT&T Commc'ns. of Pa. v. Pa. Pub. Util. Comm'n.*, 568 A.2d. 1362, 1364-1365 (Pa. Commw. Ct. 1990); *see also Pittsburgh & L.E.R. Co. v. Pa. Pub. Util. Com.*, 445 A.2d 851, 853 (Pa. Commw. Ct. 1982). In this instance, Amtrak's request to amend concerns only the timing of the PUC's investigation into Supplement No. 213; Amtrak is not seeking amendment of a factual or legal finding. Because intervening events may substantially change the nature of this proceeding, and may even make the proposed rate change and tariff language moot because PPL will not be upgrading the Conestoga Substation, granting an amendment as requested herein is warranted and appropriate.

14. Section 5.572(a) of the Commission's regulations also authorizes the submission of a Petition for Amendment of a Commission Order. 52 Pa. Code § 5.572(a).

III. THE SUSPENSION ORDER SHOULD BE AMENDED TO REMOVE THE JUNE 1, 2017, EFFECTIVE DATE FOR SUPPLEMENT NO. 213 BECAUSE PPL WILL NOT OWN THE CONESTOGA SUBSTATION ONCE AMTRAK PROCEEDS WITH ITS CURRENT PLANS TO ACQUIRE IT.

15. Amtrak currently plans to acquire the Conestoga Substation in early February, 2017, by purchase, or if that is not possible, to taking the Conestoga Substation pursuant to Amtrak's federal eminent domain authority, 49 U.S.C. §24311.

16. Section 24311(a) of Title 49 of the United States Code permits Amtrak to acquire by eminent domain property that is "necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a government authority." 49 U.S.C. § 24311 (a)(A).

17. Section 24311(b) indicates that the exercise by Amtrak of eminent domain must occur in the "district court of the United States for the judicial district in which the property is located" and that the property is condemned for Amtrak's use "when a declaration of taking is filed under this subsection and an amount of money estimated in the declaration to be just compensation

for the interest is deposited in the court." *Id.* § 24311(b)(1).

18. Section 24311(b)(2) states:

When the declaration is filed and the deposit is made under paragraph (1) of this subsection, title to the property vests in Amtrak in fee simple absolute or in the lesser interest shown in the declaration, and the right to the money vests in the person entitled to the money. When the declaration is filed, the court may decide— (A) the time by which, and the terms under which, possession of the property is given to Amtrak; and (B) the disposition of outstanding charges related to the property.

Id. at § 24311(b)(2).

19. Amtrak's real property appraiser visited the Conestoga Substation on December 30, 2016, to finalize his evaluation of the property value. Amtrak personnel are working diligently to finalize the appraisals and to submit an offer to purchase the Conestoga Substation facilities from PPL, or, if necessary, to take the Conestoga Substation facilities by eminent domain in early February, 2017.

20. Prior to filing the declaration with the U.S. District Court, Amtrak must offer to purchase the Conestoga Substation to Amtrak at the appraised value. *Id.* at § 24311(a)(2). If that offer is not accepted, Amtrak may acquire immediate title to the property upon the filing of a declaration of taking and the deposit into the registry of the federal court Amtrak's estimate of just compensation based upon an appraisal of the property's value.

21. Once Amtrak submits a declaration to the U.S. District Court, PPL will no longer own any distribution service equipment serving Amtrak. *Id.* at § 24311(b)(2).

22. Once a declaration of taking is filed with the U.S. District Court, the federal court has jurisdiction over the time by which, and terms under which, Amtrak will take possession of the Conestoga Substation and the disposition of outstanding charges related to the Conestoga Substation. *Id.* See also Federal Rule of Civil Procedure 71.1. In either event, the PUC would no

longer have jurisdiction over the Conestoga Substation as of the date Amtrak acquires title.

23. Once Amtrak takes possession of the Conestoga Substation as determined by the U.S. District Court, PPL would neither own any distribution service equipment serving Amtrak nor provide any services to Amtrak (unless required by the U.S. District Court).

24. If PPL does not own the Conestoga Substation and does not provide services to Amtrak, then there is no basis to charge Amtrak for "distribution" service under Rate Schedule LPEP, either at the previously-approved rate of \$37,100.00 or at the proposed rate of \$319,671.00. Once Amtrak takes title to the property PPL will not be able to continue with its upgrade of the Conestoga Substation because Amtrak will own the Conestoga Substation under Federal law. 49 U.S.C. § 24311(b)(2).

25. As of the date Amtrak acquires title to the Conestoga Substation, Amtrak no longer would be a customer of PPL, and Supplement No. 213 would be moot.

26. Any legal challenges by PPL to an Amtrak condemnation of Conestoga Substation are within the sole jurisdiction of the Federal court. 49 U.S.C. §24311; Federal Rule of Civil Procedure 71.1.

27. Amtrak respectfully requests that the Commission issue an Amended Order at Public Meeting on January 19, 2017, revising the original Suspension Order to remove the previously-determined date for the presumed effectiveness of Supplement No. 213.

28. The June 1, 2017, effective date for Supplement No. 213 stated in the Suspension Order and the February 10, 2017, due date for Reply Briefs stated in the ALJ's Prehearing Conference Order will require parties to continue litigation activities that would be moot and unnecessary once Amtrak acquires title to the Conestoga Substation.

29. Because the new language that PPL proposes to add to Rate Schedule LPEP through

Supplement No. 213 is premised on the completion of the upgrade, the revisions in Supplement No. 213 will never be needed if PPL does not own the Conestoga Substation.

30. Because the tariff language change in Supplement No. 213 is premised on the completion of the PPL's suggested work to upgrade the Conestoga Substation and any work by PPL will be required to cease once it does not own the property and equipment, PPL will not be prejudiced by removing the effective date for Supplement No. 213.

31. Amtrak has paid and will continue to pay PPL for services Amtrak has received from PPL since the expiration of the settlement on September 1, 2016. Although PPL and Amtrak dispute the amount of such monthly payments, PPL is not suffering and will not suffer any prejudice, and certainly no irreparable harm, from an order suspending further proceedings in accordance with this motion.

IV. IN THE ALTERNATIVE AND AT A MINIMUM, THE SUSPENSION ORDER SHOULD BE AMENDED TO PROVIDE FOR THE FULL NINE MONTH SUSPENSION AUTHORIZED BY SECTION 1308(B).

32. The Suspension Order indicates that the June 1, 2017, suspension of Supplement No. 213 is being imposed by operation of law under Section 1308(b) of the Public Utility Code. *See Suspension Order*, p. 2.

33. Section 1308(b) states, in relevant part,

Whenever there is filed with the commission by any public utility any tariff stating a new rate, the commission may, either upon complaint or upon its own motion, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, and pending hearing and the decision thereon, the commission, upon filing with such tariff and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before it becomes effective, **suspend the operation of such rate for a period not longer than six months from the time such rate would otherwise become effective, and an additional period of not more than three months pending such decision.**

66 Pa. C.S. § 1308(b) (emphasis added).

34. As explained in paragraphs 18-25 above, the scope of this proceeding will fundamentally change once Amtrak acquires the Conestoga Substation, either by voluntary purchase from PPL or by filing the eminent domain declaration.

35. In addition, the jurisdictional basis for this proceeding may be preempted by the actions at the U.S. District Court, which would require dismissal of this proceeding.

36. Furthermore, it is possible that litigation may occur between Amtrak and PPL in U.S. District Court as a result of the condemnation, which may impact the scope of this proceeding.

37. Although Amtrak respectfully submits that the upcoming condemnation of the Conestoga Substation warrants an indefinite suspension of Supplement No. 213, in the alternative and at a minimum, the Commission should amend the Suspension Order to ensure that the ALJ, the parties and the Commission have the additional three months that are available under Section 1308(b) to adjust the continued litigation of this matter, if any will occur, to the developments at the U.S. District Court.

38. Depending on the implementation of Amtrak's plans to acquire the Conestoga Substation, a longer delay in this litigation of this proceeding may be warranted. Consequently, Amtrak respectfully requests that the amendment requested herein be without prejudice to requests to further suspend the schedule or to terminate the proceeding.

39. Using the entire nine month suspension is a judicious first step in the Commission's consideration of this matter.

40. Using the entire nine month suspension will not prejudice PPL because the proposed language in Supplement No. 213 that would become effective is premised on the completion of PPL's proposed upgrades to the Conestoga Substation and PPL has provided no projected in service date for those upgraded.

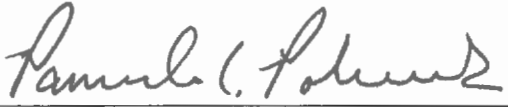
41. Using the entire nine month suspension will not prejudice PPL because the proposed language in Supplement No. 213 that would become effective and proposed rate are premised on the completion of PPL's proposed upgrades to the Conestoga Substation, which will not occur once Amtrak has filed the declaration and taken ownership of the property and equipment.

42. Amtrak commits to filing and serving monthly reports on its progress to acquire the Conestoga Substation, beginning February 28, 2017.

WHEREFORE, the National Railroad Passenger Corporation respectfully requests that the Pennsylvania Public Utility Commission amend its Suspension Order consistent with this Petition and grant such other relief as appropriate.

Respectfully submitted,

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Dated: January 3, 2017