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January 5, 2017

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 Answer of PPL Electric Utilities Corporation to the Petition of National Railroad Passenger Corporation for Amendment of December 22, 2016 Order to Suspend These 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 in black ink.

Christopher T. Wright

CTW/jl
Enclosures

cc: Honorable David A. Salapa
Certificate of Service

CERTIFICATE OF SERVICE

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

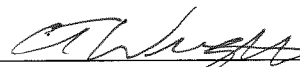
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

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Harrisburg, PA 17105-3265

Date: January 5, 2017



Christopher T. Wright

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”), pursuant to 52 Pa. Code § 5.61(e), hereby submits this Answer to the Petition of the National Railroad Passenger Corporation (“Amtrak”) to Amend the Pennsylvania Public Utilities Commission (“Commission”) December 22, 2016 order suspending Supplement No. 213 to Tariff – Electric Pa. P.U.C. No. 201 (“Supplement No. 213”). Therein, Amtrak requests that Supplement No. 213 be suspended indefinitely or, alternatively, suspend for a total of nine months. For the reasons explained below, Amtrak’s request for an indefinite suspension of Supplement No. 213 should be denied, and PPL Electric generally agrees that Supplement No. 213 should be suspended for a total of nine months, *i.e.*, until October 1, 2017. In support, PPL Electric states as follows:

I. PROCEDURAL HISTORY

On March 31, 2015, PPL Electric filed its 2015 distribution base rate case at Docket No. R-2015-2469275. As part of its general rate increase, 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. 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. 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.

Amtrak is the only customer taking service under Rate Schedule LPEP. The PP&L Industrial Customer Alliance ("PPLICA") intervened in the 2015 base rate case on behalf of Amtrak, among others. During the 2015 base rate case, Amtrak opposed the proposed increase to Rate Schedule LPEP.

On September 16, 2015, PPL Electric and Amtrak entered into a Mutual Settlement Agreement. *See* Amtrak Complaint, Ex. B. 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. PPLICA joined the 2015 Settlement on behalf of Amtrak.

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.

On November 19, 2015, the 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). The Rate Schedule LPEP monthly distribution charge of \$126,323.59 per month became effective on January 1, 2016. PPL Electric's currently effective tariff provides that the monthly distribution charge for Rate Schedule LPEP is \$126,323.59 per month.

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. However, PPL Electric and Amtrak were unable to reach an agreement regarding the upgrade of the Conestoga Substation by September 1, 2016.

As a result of and in accordance with the 2015 Settlement, on October 5, 2016, PPL Electric filed Supplement No. 213. Supplement No. 213, if approved, will result in an increase to 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. 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.

On October 5, 2016, Amtrak filed the above-captioned Complaint at Docket No. C-2016-2580526. In its Complaint, Amtrak opposes the increase to the Rate Schedule LPEP monthly

distribution charge proposed in Supplement No. 213. Despite agreeing to the Rate Schedule LPEP monthly distribution charge of \$126,323.59 per month approved in the 2015 Settlement, Amtrak's Complaint also requests a retroactive refund for services rendered under Rate Schedule LPEP during (i) the period of September 1, 2016 through December 31, 2016, for any invoices paid by Amtrak that exceed \$37,100 per month, and (ii) the period of January 1, 2016 through August 31, 2016, for any invoices paid by Amtrak that exceed \$37,100 per month.

On December 22, 2016, the Commission entered an order opening an investigation of Supplement No. 213 and suspending the effective date from January 1, 2017 to June 1, 2017, unless otherwise directed by Order of the Commission. Subsequently, on January 3, 2017, the Commission issued an Errata Notice correcting and updating the suspension period from January 1, 2017 to July 1, 2017, unless otherwise directed by Order of the Commission.

On December 22, 2016, PPL Electric filed an Answer and New Matter to Amtrak's Complaint. Also on December 22, 2016, PPL Electric filed Preliminary Objections to Amtrak's request for retroactive refunds of Rate Schedule LPEP. Specifically, PPL Electric requested that portions of Amtrak's Complaint be summarily dismissed for the following reasons: (i) Amtrak's requests for retroactive refunds are barred as a matter of law by the Commission-made rates doctrine; (ii) Amtrak's requests for retroactive refunds are a violation of and material breach of the 2015 Settlement; (iii) Amtrak's requests for retroactive refunds are a violation of and material breach of the Mutual Settlement Agreement between PPL Electric and Amtrak; (iv) Amtrak's "new matter" to its own complaint is procedurally improper. Amtrak filed an Answer to the Preliminary Objections on January 3, 2017. PPL Electric's Preliminary Objections remain pending for disposition.

On December 27, 2016, the Commission's Bureau of Investigation and Enforcement entered a Notice of Appearance. On December 28, 2016, a Notice was issued scheduling an Initial Prehearing Conference before Administrative Law Judge David A. Salapa on Friday, January 6, 2017.

On December 29, 2016, PPL Electric filed a Motion to Strike certain portions of Amtrak's Complaint that reference and disclose the settlement negotiations by and between Amtrak and PPL Electric. PPL Electric's Motion to Strike remains pending for disposition.

On January 3, 2017, Amtrak filed the pending Petition seeking to amend the Commission's suspension order issued December 22, 2016. On January 4, 2017, Amtrak filed an updated Petition to reflect the Commission's correction to the suspension period as set forth in the January 3, 2017 Errata Notice. In its Petition, Amtrak requests that Supplement No. 213 be suspended indefinitely or, in the alternative, suspended for a total of nine months.

For the reasons explained below, PPL Electric opposes Amtrak's request for an indefinite suspension, but supports the request to suspend Supplement No. 213 for a total of nine months.

II. RESPONSE TO AMTRAK'S REQUEST

A. AMTRAK'S REQUEST FOR AN INDEFINITE SUSPENSION SHOULD BE DENIED

Amtrak states that it plans to condemn the Conestoga Substation if PPL Electric does not agree to Amtrak's offer to purchase the Conestoga Substation. Amtrak asserts that if and when it takes possession of the Conestoga Substation, PPL Electric will no longer own the Substation and, therefore, will have no basis to charge Amtrak for electric service under the Commission-approved Rate Schedule LPEP. According to Amtrak, its future plan to force a sale of the Conestoga Substation by condemnation renders Supplement No. 213 moot. Amtrak therefore requests that Supplement No. 213 be suspended indefinitely pending the outcome of an unfiled

federal condemnation proceeding. For the reasons explained below, Amtrak's request for an indefinite suspension should be denied.

Section 1308(b) of the Public Utility Code, 66 P.a.C.S. § 1308(b), authorizes the Commission to, among other things, suspend a tariff in non-general rate proceedings. Section 1308(b) provides, in pertinent part, as follows:

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 such 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.

Id. (emphasis added). There is nothing in Section 1308(b) that authorizes the Commission to indefinitely suspend a proposed new tariff rate. Rather, the Commission's authority to suspend a tariff in non-general rate proceedings is limited to a **maximum of nine months** from the time such rate would otherwise become effective. For this reason alone, Amtrak's request for an indefinite suspension of Supplement No. 213 must be denied.

Additionally, Amtrak's request for an indefinite suspension is based entirely on unknown and speculative events that may or may not occur in the future. Amtrak's entire basis for requesting an indefinite suspension of Supplement No. 213 is its plan to file a federal condemnation proceeding. However, Amtrak has not initiated any proceedings for approval to condemn the Conestoga Substation. Although Amtrak purportedly intends to file a federal condemnation proceeding at some point in the future, there is no certainty if and when the federal condemnation proceeding may be filed. Therefore, Amtrak's request for an indefinite suspension of Supplement No. 213 should be denied.

Further, PPL Electric questions whether Amtrak's authority to condemn property "necessary for intercity rail transportation" includes the authority to condemn public utility facilities that are used in providing service to or for the public. *See* 49 U.S.C. § 24311(a). To the extent Amtrak initiates a federal condemnation proceeding to condemn the Conestoga Substation, PPL Electric intends to intervene and oppose any such taking of its public utility facilities. This could result in protracting litigation that could lead to a significant delay in the final resolution of the authority, scope, and limits of Amtrak ability to condemn public utility facilities. Consequently, it is entirely unknown if and when Amtrak's request to condemn the Conestoga Substation will be approved. Therefore, Amtrak's request for an indefinite suspension of Supplement No. 213 should be denied.

Moreover, the Conestoga Substation, associated facilities, and underlying land are currently used and useful in providing service to or for the public. Even assuming, *arguendo*, that Amtrak can force a sale of the Conestoga Substation by condemnation, there is a serious question of whether Commission approval is required under 66 Pa.C.S. § 1102(a)(3) before any portion of the substation, associated facilities, or land may be transferred, "by any method or device whatsoever," from PPL Electric to Amtrak. If Commission approval is required before the transfer may occur, this could further delay the final resolution of Amtrak's proposal to condemn the Conestoga Substation. Therefore, Amtrak's request for an indefinite suspension of Supplement No. 213 should be denied.

Finally, Amtrak has threatened to discontinue paying the full amount of the currently-effective Rate Schedule LPEP monthly distribution charges approved in the 2015 Settlement and set forth in PPL Electric's currently-effective, Commission-approved tariff without seeking approval from the Commission. *See* Amtrak Complaint, p. 13, n.4; *see also* Amtrak Petition, ¶

31.¹ Apparently, Amtrak believes it, not the Commission, decides the rate Amtrak should pay for electric service. Whether Amtrak should be required to pay the currently-effective Rate Schedule LPEP monthly distribution charges is an issue that must be decided promptly, not suspended indefinitely.

Based on the foregoing, Amtrak's request for an indefinite suspension of Supplement No. 213 is beyond the authority granted in 66 Pa.C.S. § 1308(b) and is based entirely on unknown and speculative events that may or may not occur in the future. For these reasons, as further explained below, Amtrak's request for an indefinite suspension of Supplement No. 213 must be denied.

B. PPL ELECTRIC GENERALLY AGREES THAT SUPPLEMENT NO. 213 SHOULD BE SUSPENDED FOR A TOTAL OF NINE MONTHS

Amtrak requests, in the alternative, that Supplement No. 213 be suspended for a total of nine months if the Commission denies its request for an indefinite suspension. In support, Amtrak again relies on its plan to condemn the Conestoga Substation if PPL Electric does not agree to Amtrak's offer to purchase the Conestoga Substation. As explained above, PPL Electric disagrees with the basis on which Amtrak's alternative request is premised. However, PPL Electric does recognize that it may be difficult for parties to the above-captioned proceeding to fully litigate and develop a complete record on an accelerated schedule.

Based on the foregoing, PPL Electric generally agrees that Supplement No. 213 should be suspended for a total of nine months, *i.e.*, until October 1, 2017, thereby permitting a longer and more reasonable litigation schedule to be adopted for this proceeding. If approved by the

¹ In Paragraph 31 of the Petition, Amtrak states that it will continue to pay PPL Electric for services Amtrak has received "since the expiration of the settlement on September 1, 2015." Apparently, it is Amtrak's position that the Rate Schedule LPEP adopted by the Commission in the 2015 Settlement and set forth in PPL Electric's currently-effective tariff somehow reverted back to the rate in effect prior to the filing of the 2015 base rate case because Amtrak and PPL Electric did not reach an agreement on the Conestoga Substation and Rate Schedule LPEP by September 1, 2016. *See* Amtrak Complaint, ¶¶ 40, 42.

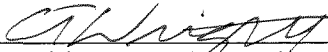
Commission, PPL Electric will promptly submit a tariff supplement suspending Supplement No. 213 from January 1, 2017 through October 1, 2017, unless otherwise directed by Order of the Commission.

III. CONCLUSION

PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission (i) deny Amtrak's request for an indefinite suspension of Supplement No. 213, and (ii) suspend the effective date of Supplement No. 213 from January 1, 2016 to October 1, 2017, unless otherwise directed by Order of the Commission.

Respectfully submitted,

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Date: January 5, 2017

Counsel for PPL Electric Utilities Corporation

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF LEHIGH

I, Stephen J. Gelatko, Director- Distribution Asset Planning, hereby state that the facts above set forth are 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 made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


STEPHEN J. GELATKO