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January 18, 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**

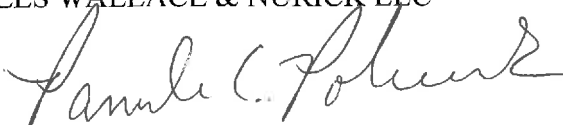
**PPL Electric Utilities Corporation Supplement No. 213 to Tariff Electric P.A. PUC No. 201
for Rate Schedule LPEP; Docket No. R-2016-2569975**

Dear Secretary Chiavetta:

Attached please find for filing with the Pennsylvania Public Utility Commission the Answer of the National Railroad Passenger Corporation ("Amtrak") to the Motion of PPL Electric Utilities Corporation to Strike Certain Portions of the Complaint of the National Railroad Passenger Corporation. 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
Administrative Law Judge David A. Salapa (via Email and First Class Mail)

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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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Pamela C. Polacek

Counsel to National Railroad Passenger
Corporation

Dated this 18th 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 MOTION TO STRIKE OF
PPL ELECTRIC UTILITIES CORPORATION**

Pursuant to 52 Pa. Code Sections 5.61(a)(1) and 5.103(c), National Railroad Passenger Corporation ("Amtrak") hereby submits this Answer to the "Motion of PPL Electric Utilities Corporation to Strike Certain Portions of the Complaint of the National Railroad Passenger Corporation" ("Motion to Strike"), filed by PPL Electric Utilities Corporation ("PPL") on December 29, 2016. Any of PPL's averments not expressly admitted by Amtrak herein are denied. For the reasons set forth herein, Amtrak respectfully requests that the Pennsylvania Public Utility Commission ("PUC" or "Commission") reject PPL's Motion to Strike. By and in support hereof, Amtrak states as follows:

1. Admitted.
2. Admitted on information and belief that PPL's representations are accurate.

3. PPL's distribution base rate filing under Docket No. R-2015-2469275 speaks for itself and no further response is required.

4. Amtrak avers that Exhibit B of the Complaint and New Matter speaks for itself and no further response is required.

5. Amtrak avers that Exhibit B of the Complaint and New Matter speaks for itself and no further response is required.

6. Admitted.

7. Admitted.

8. Amtrak avers that Exhibit B of the Complaint and New Matter speaks for itself and no further response is required.

9. Admitted.

10. Admitted.

11. The Joint Petition for Approval of Settlement of All Issues ("2015 Settlement") at Docket No. R-2015-2469275 speaks for itself. 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 Mutual Settlement Agreement, a non-confidential document, is similar to the quoted provisions from the 2015 Settlement, but contains more detail regarding the agreement between Amtrak and PPL regarding the scope of the negotiations and Amtrak's resolution of rights if 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 [\$89,223.59]. 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. 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.

Complaint and New Matter, Exhibit B, ¶¶ 6-9.

12. Admitted.

13. 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"). Therefore, the terms of the 2015 Settlement, and the November 19 Order which incorporated it, were effective only until September 1, 2016. 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.

14. Amtrak avers that Paragraph 12 of its Complaint and New Matter speaks for itself and no further response is required.

15. Amtrak avers that Paragraph 14 of its Complaint and New Matter speaks for itself and no further response is required.

16. Admitted.

17. 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.

18. Admitted.

19. Admitted.

20. Amtrak avers that Paragraphs 22(iii)-(iv) and 35-49 of the Complaint and New Matter speak for themselves and no further response is required.

21. Denied.

22. Denied. For the reasons set forth in the paragraphs below, Amtrak respectfully requests that the Commission deny PPL's Motion to Strike in its entirety.

I. AMTRAK'S ANSWER TO PPL'S MOTION TO STRIKE

23. Amtrak incorporates its arguments in Paragraphs 1 through 22 of this Answer as though fully set forth herein.

24. Amtrak avers that Paragraph 12 and Exhibit B of its Complaint and New Matter speak for themselves and no further response is required.

25. Admitted. By way of further response, these negotiations provided a venue for Amtrak and PPL to explore "possible alternative resolution regarding the final scope, timing, and costs of the upgrades needed for the Conestoga Substation." Complaint and New Matter, Exhibit B, ¶ 7. Both Amtrak and PPL agreed "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." *Id.* PPL and Amtrak committed to making "good faith efforts to conclude the negotiations and execute a final agreement by no later than September 1, 2016." *Id.*

26. Admitted.

27. Denied. Paragraphs 12, 31(ii)-(iii), and 38 reiterate statements made on the record in Amtrak's Direct and Surrebuttal Testimony under Docket No. R-2015-2469275.¹ In addition, these paragraphs reiterate portions of the 2015 Settlement (which was incorporated into the November 19 Order) and the Mutual Settlement Agreement, which is a non-confidential agreement.

¹ Amtrak provided testimony in the 2015 base rate proceeding as a member of the PP&L Industrial Customer Alliance ("PPLICA").

Paragraph 12 of Amtrak's Complaint and New Matter indicates it "engaged in discussions with PPL regarding the options to fund all or portions of the upgrades to minimize Amtrak's ongoing operational costs, consistent with Amtrak's statutory obligations to minimize government subsidies for rail service and Paragraph 7 of the Mutual Settlement Agreement." Complaint and New Matter, ¶ 12. Section 24101(c) of the United States Code indicates Amtrak has an obligation to "minimize United States Government subsidies" through various means, including "encouraging State, regional, and local governments *and the private sector*, separately or in combination, to share the cost of providing rail passenger transportation, including the cost of operating facilities[.]" 49 U.S.C. § 24101(c)(1)-(2) (emphasis added). This obligation is reiterated in Section 24101(d) of the United States Code, where the statute indicates Amtrak may maximize the use of its resources by "mak[ing] agreements with the private sector and undertak[ing] initiatives that are consistent with good business judgment and designed to maximize its revenues and minimize Government subsidies." *Id.* at § 24101(d). As a result, Paragraph 12 of Amtrak's Complaint and New Matter merely restates portions of the United States Code.

Moreover, Paragraph 12 of the Complaint and New Matter merely restates testimony on the record in several pieces of Amtrak's testimony during the 2015 base rate proceeding at Docket No. R-2015-2469275:

- Q. Are there other reasons why PPL's proposed LPEP rate increase should be denied?
- A. Yes . . . PPL's request should not be ruled upon until the precise scope, costs and schedule for the Conestoga Substation upgrade is completed. This should include a full exploration of Amtrak's offer to provide two of the transformers to PPL, and whether any additional portion of the upgrade costs will be provided as Contributions In Aid of Construction ("CIAC") from Amtrak.

PPLICA Statement No. 1, Direct Testimony and Exhibit of William Auve, Docket No. R-2015-2469275, p. 7.

Q. Does Amtrak agree that the costs to upgrade the Conestoga Substation should be Amtrak's responsibility?

A. Yes . . . Once the Conestoga Substation is upgraded, we should pay any just and reasonable costs for the upgrade that were not otherwise accounted for through equipment transfers or CIAC.

Id. at pp. 7-8.

Q. Please summarize the current status of the Conestoga Substation and Amtrak base rates.

A. As discussed earlier, the Conestoga Substation is undergoing an extensive rebuild Amtrak is proposing to explore other options for paying for the new investment, including an Amtrak donation of two transformers as described in the testimony of Mr. Hornung, and a Contribution In Aid of Construction ("CIAC") as described in the testimony of Mr. William Auve.

PPLICA Statement No. 3, Direct Testimony and Exhibits of Stan Faryniarz, Docket No. R-2015-2469275, pp. 10-11.

Q. What are your conclusions and recommendations regarding the LPEP rate increase?

A. The LPEP rate increase PPL proposes is not reasonable. I understand Amtrak would like to pursue discussions with PPL over the scope and schedule of the Conestoga Substation rebuild project and whether Amtrak can pay for the capital work through a potential donation of two transformers and a CIAC, and not through base rates, as discussed by Mr. Auve. Amtrak is willing to engage in good faith discussions with PPL to establish new distribution rates after the project is concluded and based on the actual, just and reasonable costs and investment that PPL incurs (taking into account CIAC and other potential cost mitigation approaches)

Id. at p. 15.

Q. How do you respond to the Claim that a CIAC is not applicable to the Conestoga substation upgrade?

A. . . . The use of a voluntary CIAC to fund major capital expenditures that serve only one customer is reasonable

PPLICA Statement No. 3-S, Surrebuttal Testimony of Stan Faryniarz, Docket No. R-2015-2469275, p. 2.

- Q. How do you respond to the claim that a CIAC is not reasonable because it would prevent PPL from earning a return on its investment?
- A. . . . PPL has already incurred some cost for capital upgrades for the Conestoga Substation. Note carefully that Amtrak is willing to compensate PPL and provide a return during the period any capital costs remain on PPL's books. This would be a part of the CIAC . . . Alternately, Amtrak may seek to purchase the substation from PPL when the upgrades are complete, if PPL would agree to a sale and an appropriate price is negotiated.
- Q. Do you believe that CIAC payment would result in a fair outcome?
- A. Yes, I do . . .
- Q. Would a CIAC payment from Amtrak be an economic means of funding the Conestoga Substation upgrades?
- A. Yes . . . [A]cceptance of a voluntary CIAC from Amtrak arguably is necessary to ensure that PPL's rates are just and reasonable, and that the Company's actions are prudent.

Id. at pp. 2-4.

Furthermore, Paragraph 7 of the Mutual Settlement Agreement, a non-confidential document, recites that Amtrak would engage in discussions with PPL regarding the options to fund all or part of the upgrades to minimize Amtrak's ongoing operational costs, as follows:

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.

Complaint and New Matter, Exhibit B, ¶ 7.

Paragraph 12 of the Complaint and New Matter do not disclose anything that is not already part of the public record.

Similarly, Paragraphs 31(ii)-(iii) of the Complaint and New Matter contain only information available in the record under R-2015-2469275. The fact that Amtrak proposed contributing two transformers was stated in the testimony during the 2015 base rate case as follows:

- Q. Are there other reasons why PPL's proposed LPEP rate increase should be denied?
- A. Yes . . . PPL's request should not be ruled upon until the precise scope, costs and schedule for the Conestoga Substation upgrade is completed. This should include a full exploration of Amtrak's offer to provide two of the transformers to PPL, and whether any additional portion of the upgrade costs will be provided as Contributions In Aid of Construction ("CIAC") from Amtrak.

PPLICA Statement No. 1, Direct Testimony and Exhibit of William Auve, Docket No. R-2015-2469275, p. 7.

- Q. Can you provide a specific example of where the lack of final authority is impacting the project?
- A. Yes. Amtrak has offered PPL two of its surplus transformers (*i.e.* four transformers to be replaced) for use on this project. To this point, PPL has yet to accept the offer . . . Amtrak has told PPL that these transformers will be available in the April-May 2016 timeframe

PPLICA Statement No. 2, Direct Testimony and Exhibit of Eric F. Hornung, Docket No. R-2015-2469275, pp. 6-7.

- Q. Please summarize the current status of the Conestoga Substation and Amtrak base rates.
- A. As discussed earlier, the Conestoga Substation is undergoing an extensive rebuild Amtrak is proposing to explore other options for paying for the new investment, including an Amtrak donation of two transformers as described in the testimony of Mr. Hornung, and a Contribution In Aid of Construction ("CIAC") as described in the testimony of Mr. William Auve.

PPLICA Statement No. 3, Direct Testimony and Exhibits of Stan Faryniarz, Docket No. R-2015-2469275, pp. 10-11.

- Q. What are your conclusions and recommendations regarding the LPEP rate increase?

- A. The LPEP rate increase PPL proposes is not reasonable. I understand Amtrak would like to pursue discussions with PPL over the scope and schedule of the Conestoga Substation rebuild project and whether Amtrak can pay for the capital work through a potential donation of two transformers and a CIAC, and not through base rates, as discussed by Mr. Auve. Amtrak is willing to engage in good faith discussions with PPL to establish new distribution rates after the project is concluded and based on the actual, just and reasonable costs and investment that PPL incurs (taking into account CIAC and other potential cost mitigation approaches)

Id. at p. 15.

Furthermore, Paragraph 7 of the Mutual Settlement Agreement, which was not confidential, indicated that Amtrak and PPL agreed "to consider all potential solutions, including, but not limited to . . . transfer of 2 existing Amtrak transformers from the Metuchen Station to the Conestoga Substation." Complaint and New Matter, Exhibit B, ¶ 7. Accordingly, Paragraph 31(ii) of the Complaint and New Matter merely restates prior testimony in the 2015 base rate proceeding and a portion of the Mutual Settlement Agreement, which is not marked as confidential.

In addition, Paragraph 31(iii) of the Complaint and New Matter indicates PPL's rate calculation errs when it fails to reflect "PPL has failed to accept and incorporate Amtrak's willingness to pay substantial Contributions in Aid of Construction ("CIAC"), both during construction and at a later date[.]" Complaint and New Matter, ¶ 31(iii). As noted above, Amtrak's willingness to pay CIAC was fully disclosed in its testimony during the 2015 base rate proceeding. PPLICA Statement No. 1, Direct Testimony and Exhibit of William Auve, Docket No. R-2015-2469275, pp. 7-8; PPLICA Statement No. 3, Direct Testimony and Exhibits of Stan Faryniarz, Docket No. R-2015-2469275, pp. 11-13 and 15; PPLICA Statement No. 3-S, Surrebuttal Testimony of Stan Faryniarz, Docket No. R-2015-2469275, pp. 2-5.

Furthermore, under Paragraph 7 of the Mutual Settlement Agreement, the parties agreed that potential means to resolve open issues regarding the upgrade of the Conestoga Substation include "direct funding by Amtrak" Complaint and New Matter, Exhibit B, ¶ 7. As a result, Paragraph 31(iii) of Amtrak's Complaint and New Matter merely restates information contained in the non-confidential Mutual Settlement Agreement and testimony in the 2015 rate case.

Neither Paragraph 31(ii) nor Paragraph 31(iii) reveal information that could be construed as specific discussions and negotiations among PPL and Amtrak in efforts to settle issues regarding Rate Schedule LPEP or the Conestoga Substation. Rather, both paragraphs simply restate on the record testimony or portions of the non-confidential Mutual Settlement Agreement.

Paragraph 38 of the Complaint and New Matter indicates "*Pursuant to Paragraph 7 of the Mutual Settlement Agreement*, Amtrak offered in good faith to purchase the Conestoga Substation from PPL. PPL refused to provide a price at which Amtrak could purchase the equipment." Complaint and New Matter, ¶ 38 (emphasis added). This statement is taken directly from Amtrak's Surrebuttal Testimony during the 2015 base rate proceeding: "Amtrak may seek to purchase the substation from PPL when the upgrades are complete, if PPL would agree to a sale and an appropriate price is negotiated." PPLICA Statement No. 3-S, Surrebuttal Testimony of Stan Faryniarz, Docket No. R-2015-2469275, p. 3.

Also, Paragraph 7 of the non-confidential Mutual Settlement Agreement states "Both parties agree to consider all potential solutions, including, but not limited to . . . purchase of the Conestoga Substation by Amtrak" Complaint and New Matter, Exhibit B, ¶ 7. Therefore, the language of Paragraph 38 of the Complaint and New Matter is taken directly from the public record, is a non-confidential settlement document, and should not be stricken.

28. Amtrak avers that Paragraphs 12, 31(ii)-(iii), and 38 of its Complaint and New Matter speak for themselves and no further response is necessary. By way of further response, Amtrak incorporates by reference Paragraphs 23 through 27 of this Answer. Specifically, as discussed in Paragraph 27 of this Answer, the averments made by Amtrak in Paragraphs 12, 31(ii)-(iii), and 38 of its Complaint and New Matter merely restate testimony provided during the 2015 rate proceeding and restate general terms, goals, and objectives of the 2015 Settlement and the Mutual Settlement Agreement.

29. Denied. Amtrak incorporates by reference Paragraphs 23 through 28 of this Answer.

30. The averment in Paragraph 30 of PPL's Motion to Strike is a legal conclusion to which no response is required. By way of further response, Amtrak incorporates by reference its responses in Paragraphs 23 through 28 of this Answer.

31. The PUC's order discussed in Paragraph 31 of PPL's Motion to Strike speaks for itself. By way of further response, Amtrak incorporates paragraphs 23 through 28 of this Answer.

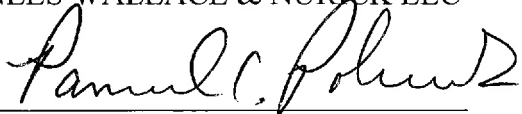
32. Denied.

II. CONCLUSION

WHEREFORE, National Railroad Passenger Corporation, respectfully requests that PPL Electric Utilities Corporation's Motion to Strike be rejected.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: January 18, 2017

