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January 20, 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 Motion of PPL Electric Utilities Corporation to Dismiss Objections and Compel Responses to Discovery Propounded on National Railroad Passenger Corporation – Set I, 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: 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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Date: January 20, 2017



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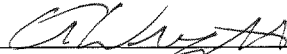
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
v.	:	Docket No. R-2016-2569975
PPL Electric Utilities Corporation	:	
	:	
National Railroad Passenger Corporation	:	
v.	:	Docket No. C-2016-2580526
PPL Electric Utilities Corporation	:	

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.342(g)(1) AND THE ALJ'S JANUARY 6, 2017 SCHEDULING ORDER, YOU MAY FILE A REPLY TO THE ENCLOSED MOTION TO COMPEL WITHIN **THREE (3) 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: January 20, 2017

Counsel for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
v.	:	Docket No. R-2016-2569975
PPL Electric Utilities Corporation	:	
	:	
National Railroad Passenger Corporation	:	
v.	:	Docket No. C-2016-2580526
PPL Electric Utilities Corporation	:	

**MOTION OF PPL ELECTRIC UTILITIES CORPORATION
TO DISMISS OBJECTIONS AND COMPEL RESPONSES TO DISCOVERY
PROPOUNDED ON NATIONAL RAILROAD PASSENGER CORPORATION – SET I**

TO ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Motion to Dismiss Objections and Compel Responses to Discovery Propounded on the National Railroad Passenger Corporation (“Amtrak”) Set I, pursuant to 52 Pa. Code §§ 5.342(g), 5.350(e) and the Scheduling Order issued on January 6, 2017. For the reasons explained below, PPL Electric respectfully requests that the Honorable Administrative Law Judge David A. Salapa (“ALJ”) grant this Motion and order Amtrak to answer fully PPL Electric to Amtrak Set I, Nos. 19-26, and 29 within three (3) days from the date of the order. In support of this Motion, PPL Electric states as follows:

I. INTRODUCTION

1. As part of the Pennsylvania Public Utility Commission (the “Commission”) approved Joint Petition for Settlement of PPL Electric’s 2015 base rate case (“2015 Base Rate Settlement”), PPL Electric agreed to continue to temporarily suspend work on the Conestoga Substation while PPL Electric and Amtrak attempted to resolve all open issues regarding the

upgrade of the Conestoga Substation. PPL Electric and Amtrak further agreed that PPL Electric would submit a future tariff filing for Rate Schedule LPEP reflecting (1) the agreement reached between PPL Electric and Amtrak or (2) the fact that PPL Electric and Amtrak were unable to reach an agreement by September 1, 2016. *See Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Order entered Nov. 19, 2015).

2. PPL Electric and Amtrak were unable to reach an agreement regarding the scope, timing and costs of the upgrades needed to the Conestoga Substation by September 1, 2016. In accordance with the 2015 Base Rate Settlement, PPL Electric filed Supplement No. 213 to PPL Electric's Tariff – Electric Pa. P.U.C. No. 201 (“Supplement No. 213”) on October 5, 2016, requesting that the Commission approve an increase to Rate Schedule LPEP. The requested increase of approximately \$2.320 million in the distribution revenues received from Rate Schedule LPEP is necessary to recover the costs associated with substantial upgrades to the Conestoga Substation required to provide reasonably continuous, reliable, and safe service to Amtrak, the sole customer taking service under Rate Schedule LPEP.

3. On December 19, 2016, Amtrak filed a Complaint opposing the proposed distribution rate increase for Rate Schedule LPEP in Supplement No. 213. In its Complaint, Amtrak also indicated that it intended to exercise its eminent domain authority under 49 U.S.C. § 24311 to acquire the Conestoga Substation. *See Complaint*, p. 8, n. 2.

4. On December 22, 2016, PPL Electric filed an Answer and New Matter and Preliminary Objections to Amtrak's Complaint.¹

5. On December 22, 2016, the Commission issued an order initiating an investigation and suspending Supplement No. 213 by operation of law until June 1, 2017, unless

¹ On January 18, 2017, the ALJ issued an Order sustaining PPL Electric's Preliminary Objections in part and striking the “New Matter” portion of Amtrak's Complaint.

otherwise directed by Order of the Commission. On January 19, 2017, the Commission issued an order further suspending Supplement No. 213 until October 1, 2017, unless otherwise directed by Order of the Commission. See *Pa. PUC v. PPL Electric Utilities Corporation Supplement No. 213 to Tariff Electric P.A. PUC No. 201 for Rate Schedule LPEP*, Docket No. R-201602569975 (Order entered January 19, 2017).

6. A Prehearing Conference was held on January 6, 2017. During the Prehearing Conference, the parties agreed to a litigation schedule and modification of the Commission's discovery rules. The litigation schedule and modified discovery rules were adopted in the Prehearing Order #2 issued on January 6, 2017. A further Prehearing Conference was held on January 20, 2017. During the January 20, 2017 Prehearing Conference, the parties agreed on a revised litigation schedule and modified discovery rules.

7. On January 11, 2017, PPL Electric served Interrogatories and Requests for Production of Documents Propounded on Amtrak Set I ("PPL to Amtrak Set I"). A true and correct copy of PPL to Amtrak Set I is attached hereto and marked as **Appendix A**.

8. On January 13, 2017, counsel for Amtrak contacted counsel for PPL Electric to orally object to certain interrogatories in PPL to Amtrak Set I.

9. On January 17, 2017, Amtrak served its objections to PPL to Amtrak Set I, Nos. 14, 19-26, and 29. A true and correct copy of Amtrak's objections to PPL to Amtrak Set I is attached hereto and marked as **Appendix B**.

10. On January 18, 2017, counsel for PPL Electric and Amtrak attempted to informally resolve the objections. PPL Electric and Amtrak were able to resolve the discovery dispute with respect to Amtrak's objection to PPL to Amtrak Set I, No. 14. However, PPL

Electric and Amtrak were unable to resolve Amtrak's objections to PPL to Amtrak Set I, Nos. 19-26, and 29.

11. Under 52 Pa. Code § 5.321(c), a party is entitled to obtain discovery of any matter not privileged that is relevant to the pending proceeding, or any matter that is reasonably calculated to lead to the discovery of admissible evidence. Discovery is permitted regardless of whether the information sought "relates to the claim or defense of the party seeking discovery or to the claim or defense of another party." *Id.*

12. The Commission generally provides wide latitude in discovery matters. *See Pa. P.U.C. v. The Peoples Natural Gas Co.*, 62 Pa. P.U.C. 56 (Order Entered Aug. 26, 1986); *Pa. P.U.C. v. Equitable Gas Co.*, 61 Pa. P.U.C. 468 (Order Entered May 16, 1986).

13. For the reasons stated below, PPL Electric respectfully requests that the ALJ grant this Motion and order Amtrak to answer fully PPL to Amtrak Set I, Nos. 19-26 and No. 29 as described below.

II. ARGUMENT

A. AMTRAK'S OBJECTION TO PPL TO AMTRAK SET I, NO. 19 IS WITHOUT MERIT

14. PPL to Amtrak Set I, No. 19 provides:

See Complaint, ¶ 38. Please explain in detail whether Amtrak intends to acquire:

- (a) All of the equipment and facilities at the Conestoga Substation;
- (b) All of the land upon which the Conestoga Substation is situated;
- (c) The four PPL Electric-owned transmission lines between the Conestoga Substation and the Pennsylvania-Maryland border; and

(d) All of the PPL Electric-owned transmission line right-of-way between the Conestoga Substation and the Pennsylvania-Maryland border.

15. Amtrak objects to PPL to Amtrak, Set I, No. 19 on the basis that “it requests irrelevant information that is beyond the scope of the instant proceeding and concerns matters over which the Commission has no jurisdiction.” Amtrak also states in its objection that, pursuant to 52 Pa. Code § 5.361(a)(4), “discovery is not permitted if it ‘[w]ould require the making of an unreasonable investigation by the deponent, a party or witness.” Amtrak’s objections to PPL to Amtrak, Set I, No. 19 are without merit and should be dismissed.

16. In its Complaint, Amtrak indicated that it intends to acquire the Conestoga Substation by eminent domain. *See* Complaint, p. 8, n. 2. In addition, Amtrak stated in its Suspension Petition that if Amtrak is unsuccessful in voluntarily acquiring the Conestoga Substation from PPL Electric, Amtrak would exercise its eminent domain authority to condemn the Conestoga Substation. *See* Amtrak Suspension Petition, pp. 1-2. By attempting to leverage its eminent domain authority to achieve a forced sale of the Conestoga Substation in this proceeding, Amtrak has opened the door to discovery on the issue of its plans to acquire the Conestoga Substation, and PPL Electric is entitled to discovery that is directly related to the relief requested by Amtrak.

17. The information requested in PPL to Amtrak Set I, No. 19 is directly relevant to the outcome of this rate proceeding. The extent of Amtrak’s plans to acquire the Conestoga Substation, including the equipment and facilities located at the Substation, the land upon which the Substation is located, the connecting transmission lines, and the accompanying rights-of-way, will have an immediate and direct impact on the rate to be determined in this proceeding.

18. The fact that the Commission does not have jurisdiction over a proceeding involving Amtrak’s federal eminent domain authority is not grounds for objecting to the

discovery request in this proceeding. PPL Electric is entitled to examine the extent of a request Amtrak has made to resolve issues in this proceeding.

19. Moreover, 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. This question is fully and firmly within the Commission’s jurisdiction.

20. Finally, Amtrak’s claim that PPL to Amtrak Set I, No. 19 would require an unreasonable investigation is without merit. The information requested in PPL to Amtrak Set I, No. 19 does not require Amtrak to conduct any investigation. Rather, PPL to Amtrak Set I, No. 19 simply seeks to determine the extent of Amtrak’s plan to acquire the Conestoga Substation. Amtrak has already stated that its plans to acquire the Substation. Therefore, this information is readily available to and exclusively within the possession of Amtrak.

21. It is Amtrak, not PPL Electric, that raised the issue of Amtrak’s proposed acquisition of the Conestoga Substation in this proceeding. Amtrak should not be permitted on the one hand to use its plan to acquire the Conestoga Substation as a defense in the pending proceeding and then, on the other hand, say its very own defense and claim in this proceeding is not relevant.² Amtrak has raised the issue in this proceeding and, therefore, PPL Electric should clearly be permitted to test and evaluate Amtrak’s claim.

22. Based on the foregoing, PPL Electric respectfully submits that it is entitled to obtain discovery of the information and materials requested in PPL to Amtrak Set I, No. 19,

² The courts have long held that the integrity of adjudications must be protected by preventing litigants from “playing fast and loose” with the judicial system by switching positions to suit their own ends. *Sunbeam Corporation v. Liberty Mutual Insurance Company*, 566 Pa. 494, 781 A.2d 1189, 1192 (Pa. 2001), *reargument denied*, 2001 Pa. LEXIS 2597 (Pa. Dec. 5, 2001); *Ligon v. Middletown Area Sch. Dist.*, 584 A.2d 376, 380 (Pa.Cmwth. 1990).

which is reasonably calculated to lead to the discovery of evidence relevant to Amtrak's claims and defenses in this proceeding.

B. AMTRAK'S OBJECTION TO PPL TO AMTRAK SET I, NO. 20 IS WITHOUT MERIT

23. PPL to Amtrak Set I, No. 20 provides:

See Complaint, p. 8, n. 2. Please provide the following with respect to Amtrak's eminent domain authority under 49 U.S.C.S. § 24311:

(a) A copy of any orders approving or denying Amtrak's proposed condemnation of any property;

(b) A copy of any pleadings filed by Amtrak seeking to condemn property, whether granted or not; and

(c) An explanation of how each condemnation proposed by Amtrak, whether granted to not, meets the "necessary for intercity rail passenger transportation" standard in 49 U.S.C.S. § 24311.

24. Amtrak objects to PPL to Amtrak Set I, No. 20 on the grounds that (1) it is not relevant to the instant proceeding; (2) Amtrak's federal eminent domain authority is beyond the scope of the Commission's jurisdiction; and (3) the request would require an unreasonable investigation. Amtrak's objections to PPL to Amtrak, Set I, No. 20 are without merit and should be dismissed.

25. The information sought in PPL to Amtrak Set I, No. 20 is directly relevant to the outcome of this proceeding. The proposed distribution rate that PPL Electric proposes to charge Amtrak for service will be immediately and directly affected by Amtrak's attempt to acquire the Conestoga Substation by eminent domain. Indeed, according to Amtrak, if it acquires the Conestoga Substation, it may no longer be subject to a rate for distribution service from PPL

Electric. Therefore, PPL Electric is entitled to information concerning the basis for and extent of Amtrak's eminent domain authority.

26. Any existing orders and pleadings regarding Amtrak's prior attempts to condemn property, and how prior attempted condemnations met the standard set forth in 49 U.S.C.S. § 24311, are relevant for purposes of examining the validity of Amtrak claim in this proceeding that it has authority and intends to condemn the Conestoga Substation. Because Amtrak has introduced the issue of its federal eminent domain authority as a defense to the proposed distribution rate increase in this proceeding, PPL Electric clearly is entitled to discovery examining the validity, scope, and ability of Amtrak to exercise federal eminent domain authority over PPL Electric's property and facilities.

27. The fact that the Commission does not have jurisdiction over a proceeding involving Amtrak's federal eminent domain authority is not a valid basis for objecting to the discovery request. Section 5.321(c) simply requires that the information sought be relevant to the pending proceeding. PPL Electric is entitled to examine the basis of Amtrak's authority to condemn the Conestoga Substation because Amtrak raised the issues as a defense to the proposed increase to Rate Schedule LPEP. Further, the question of whether the Commission must approve any such transfer under 66 Pa.C.S. § 1102(a)(3) is an issue squarely and firmly within the Commission's jurisdiction.

28. In addition, PPL to Amtrak Set I, No. 20 would not require Amtrak to undertake an unreasonable investigation. PPL to Amtrak Set I, No. 20 is limited to eminent domain proceedings in which Amtrak sought to condemn property pursuant to 49 U.S.C.S. § 24311, information that should be readily available to Amtrak. While Amtrak may have to undertake some effort to provide the information requested in PPL to Amtrak Set I, No. 20, Section

5.361(a)(4) only prohibits discovery that would require an unreasonable investigation. Other than Amtrak's unsubstantiated statement, there is nothing in Amtrak's objections that suggest a simple search and identification of its own eminent domain proceedings would be an unreasonable and burdensome investigation. Moreover, given the highly relevant nature of the information sought and the fact that Amtrak raised condemnation as a defense, requiring Amtrak to provide this information clearly outweighs any claim of unreasonableness.

29. Further, to the extent that the information sought in PPL to Amtrak Set I, No. 20 is publicly available, Amtrak need not produce such information. Rather, Amtrak can easily and simply identify any such publicly available information.

30. Based on the foregoing, PPL Electric respectfully submits that it is entitled to obtain discovery of the information and materials requested in PPL to Amtrak Set I, No. 20, which is reasonably calculated to lead to the discovery of evidence relevant to Amtrak's claims and defenses in this proceeding.

C. AMTRAK'S OBJECTIONS TO PPL TO AMTRAK SET I, NOS. 21 AND 22 ARE WITHOUT MERIT

31. PPL to Amtrak Set I, No. 21 provides:

See Petition of the National Passenger Railroad Corporation for Amendment of the December 22, 2016 Order to Suspend these Proceedings, ¶ 19. Please provide following:

(a) The name, address, and phone number of Amtrak's real property appraiser that visited the Conestoga Substation on December 30, 2016;

(b) A copy of all documents, notes, photographs, and other materials used or relied upon by Amtrak's real property appraiser and its employees or agents during the visit to the Conestoga Substation on December 30, 2016; and

(c) A copy of all analyses, recommendations, memoranda, studies, proposals, and other

documents used or otherwise prepared by Amtrak's real property appraiser and its employees or agents regarding the Conestoga Substation.

PPL to Amtrak Set I, No. 22 provides:

See Petition of the National Passenger Railroad Corporation for Amendment of the December 22, 2016 Order to Suspend these Proceedings, ¶ 19. Please explain the following in detail:

- (a) The method used, or to be used, by Amtrak to determine the value of the facilities at the Conestoga Substation; and
- (b) The method used, or to be used, by Amtrak to determine the value of the land underlying the Conestoga Substation.

32. Amtrak objects to PPL to Amtrak Set I, Nos. 21 and 22 on the grounds that they (1) request information irrelevant to the proposed distribution rate in this proceeding; (2) and seek information on an issue outside of the Commission's jurisdiction. Amtrak's objections to PPL to Amtrak, Set I, Nos. 21 and 22 are without merit and should be dismissed.

33. The information sought in Amtrak PPL to Amtrak Set I, Nos. 21 and 22 is directly relevant to Amtrak's defense to the proposed increase of Rate Schedule LPEP. PPL to Amtrak Set I, Nos. 21 and 22 seek information related to Amtrak's plan to acquire the Conestoga Substation, which will have a direct impact on the distribution rate to be determined in this proceeding.

34. Because Amtrak has indicated that it intends to acquire the Conestoga Substation if PPL Electric is not willing to sell the Substation to Amtrak, PPL Electric is entitled to seek information Amtrak may have in support of its claim. Information concerning Amtrak's method for determining the value of the Conestoga Substation and the underlying land is necessary to evaluate the Amtrak's defense to the proposed rate increase in this proceeding, and PPL Electric is entitled to explore the basis for Amtrak's request.

35. Further, the information sought in PPL to Amtrak Set I, Nos. 21 and 22 is directly relevant to Amtrak's claim in this proceeding that PPL Electric should sell the Conestoga Substation to Amtrak. The information sought in these interrogatories will enable PPL Electric to evaluate Amtrak's proposal.

36. The information requested in PPL to Amtrak Set I, Nos. 21 and 22 is not outside the scope of the Commission's jurisdiction. PPL Electric is entitled to examine the basis of Amtrak's defense to the proposed increase to Rate Schedule LPEP, which will have a direct impact on the rate determined in this proceeding. Further, there is a question of whether the Commission must approve any such sale or transfer under 66 Pa.C.S. § 1102(a)(3), and the information requested in PPL to Amtrak Set I, No. 23 is relevant to that question.

37. Again, it is Amtrak, not PPL Electric, that raised the issue of Amtrak's proposal to acquire the Conestoga Substation. Amtrak should not be permitted on the one hand to use its eminent domain authority and attempt to force a sale of the Conestoga Substation as a defense in the pending proceeding and then, on the other hand, say its very own defense and claim is not relevant. Amtrak has raised the issue in this proceeding and, therefore, PPL Electric should clearly be permitted to test and evaluate Amtrak's claim.

38. Based on the foregoing, PPL Electric respectfully submits that it is entitled to obtain discovery of the information and materials requested in PPL to Amtrak Set I, Nos. 21 and 22, which is reasonably calculated to lead to the discovery of evidence relevant to Amtrak's claims and defenses in this proceeding.

D. AMTRAK'S OBJECTION TO PPL TO AMTRAK SET I, NO. 23 IS WITHOUT MERIT

39. PPL to Amtrak Set I, No. 23 provides:

See Supplement No. 213, Statement of Reasons, p. 6 and Exhibit 2.
In the event that Amtrak acquires the Conestoga Substation, either

by sale or condemnation, please explain whether Amtrak intends to pay, reimburse, compensate, or otherwise include in the purchase price/condemnation value the actual project costs already incurred by PPL Electric. Explain your response and reasoning in detail.

40. Amtrak objects to PPL to Amtrak Set I, No. 23 on the grounds that it (1) requests information irrelevant to the proposed distribution rate in this proceeding; (2) and seeks information on an issue outside of the Commissions' jurisdiction. Amtrak's objections to PPL to Amtrak, Set I, No. 23 are without merit and should be dismissed.

41. The information sought in PPL to Amtrak Set I, No. 23 concerning Amtrak's intent to compensate PPL Electric for the actual project costs incurred in the event that Amtrak acquires the Conestoga Substation through condemnation is directly relevant to the outcome of this proceeding. PPL Electric has proposed to recover all project costs related to the Conestoga Substation in Supplement No. 213. Amtrak's ability to acquire the Conestoga Substation by eminent domain will immediately and directly affect PPL Electric's ability to recover the upgrade costs it has already incurred for the Conestoga Substation project. Because Amtrak has proposed to acquire the Conestoga Substation as a defense to the proposed increase of Rate Schedule LPEP, PPL Electric is entitled to discovery concerning how Amtrak intends to handle the actual project costs that PPL Electric has already incurred in the event that Amtrak is successful in acquiring the Conestoga Substation.

42. The information requested in PPL to Amtrak Set I, No. 23 is not outside the scope of the Commission's jurisdiction. PPL Electric is entitled to examine the basis of Amtrak's defense to the proposed increase to Rate Schedule LPEP, which will have a direct impact on the rate determined in this proceeding. Further, there is a question of whether the Commission must approve any such sale or transfer under 66 Pa.C.S. § 1102(a)(3), and the information requested in PPL to Amtrak Set I, No. 23 is relevant to that question.

43. Additionally, in its complaint Amtrak has challenged not only the proposed rate, but also the current Rate Schedule LPEP approved by the Commission in the 2015 base rate case. Prior to Amtrak and PPL Electric entering the agreement for PPL Electric to temporarily discontinue work on the Conestoga Substation, PPL Electric had incurred actual costs for the Conestoga Substation project. The current Rate Schedule LPEP monthly distribution charge agreed to by the parties and approved by the Commission in the 2015 base rate case was a compromise by the parties designed to generally reflect the actual costs already incurred by PPL Electric at that time for the upgrades needed at the Conestoga Substation. Accordingly, the information sought in PPL to Amtrak Set I, No. 23 is directly relevant to Amtrak's challenge to the existing rate under Rate Schedule LPEP.³

44. Based on the foregoing, PPL Electric respectfully submits that it is entitled to obtain discovery of the information and materials requested in PPL to Amtrak Set I, No. 23, which is reasonably calculated to lead to the discovery of evidence relevant to Amtrak's claims and defenses in this proceeding.

E. AMTRAK'S OBJECTIONS TO PPL TO AMTRAK SET I, NO. 24 ARE WITHOUT MERIT

45. PPL to Amtrak Set I, No. 24 provides:

In the event that Amtrak acquires the Conestoga Substation, please explain in detail whether Amtrak intends to:

- (a) Operate and maintain the Conestoga Substation;
- (b) Operate and maintain the four transmission lines between the Conestoga Substation and the Pennsylvania-Maryland border; and

³ PPL Electric recognizes that, by order issued January 18, 2017, Amtrak's challenge to the existing rate was dismissed and stricken without prejudice to refile. At the time of filing this Motion, it is unknown whether Amtrak will seek interlocutory review of the ALJ's January 18, 2017 order. Therefore, PPL Electric advances this argument herein to preserve the issue. Notwithstanding, and without any waiver, Amtrak's objection to PPL to Amtrak Set I, No. 23 should be denied for the remaining reasons stated in Paragraphs 41 and 42.

(c) Operate and maintain the transmission line right-of-way between the Conestoga Substation and the Pennsylvania-Maryland border.

46. Amtrak objects to PPL to Amtrak Set I, No. 24 on the grounds that it (1) requests information irrelevant to the proposed distribution rate in this proceeding; (2) and seeks information on an issue outside of the Commissions' jurisdiction. Amtrak's objections to PPL to Amtrak Set I, No. 24 are without merit.

47. The information sought in PPL to Amtrak Set I, No. 24 is directly relevant to the proposed distribution rates in this proceeding. Information concerning Amtrak's intent to operate and maintain the Conestoga Substation and related facilities may impact the rates to be determined in this proceeding. Indeed, even assuming, *arguendo*, that Amtrak can acquire the Conestoga Substation, there may still be operating and maintenance expenses incurred to provide service to Amtrak if PPL Electric is to operate and maintain the Conestoga Substation and related facilities. Thus, the information sought in PPL to Amtrak Set I, No. 24 is directly relevant to the rates to be determined in this proceeding even if Amtrak is able to acquire the Conestoga Substation.

48. The information sought in PPL to Amtrak Set I, No. 24 relates to an issue within the Commission's jurisdiction. Assuming, *arguendo*, that Amtrak can acquire the Conestoga Substation, the rates to be charged if PPL Electric is required to continue to operate and maintain the Conestoga Substation and related facilities is a matter clearly and exclusively within the Commission's jurisdiction. Further, there is a serious question of whether Commission approval is required under 66 Pa.C.S. § 1102(a)(3) before any portion of the Conestoga Substation, associated facilities, or land may be transferred, "by any method or device whatsoever," from PPL Electric to Amtrak. This question is fully and firmly within the Commission's jurisdiction.

49. The information sought in PPL to Amtrak Set I, No. 24 is directly related to the claims and defenses raised by Amtrak in this proceeding. Amtrak should not be permitted on the one hand to use its eminent domain authority and attempt to force a sale of the Conestoga Substation as a defense in the pending proceeding and then, on the other hand, say its very own defense and claim is not relevant. Amtrak has raised the issue in this proceeding and, therefore, PPL Electric should clearly be permitted to test and evaluate Amtrak's claim.

50. Based on the foregoing, PPL Electric respectfully submits that it is entitled to obtain discovery of the information and materials requested in PPL to Amtrak Set I, No. 24, which is reasonably calculated to lead to the discovery of admissible evidence.

F. AMTRAK'S OBJECTIONS TO PPL TO AMTRAK SET I, NOS. 25 AND 26 ARE WITHOUT MERIT

51. PPL to Amtrak Set I, No. 25 provides:

Explain in detail whether Amtrak believes Commission approval is required under 66 Pa.C.S. § 1102 before the Conestoga Substation may be acquired by Amtrak.

PPL to Amtrak Set I, No. 26 provides:

Explain in detail whether Amtrak believes Commission approval is required under 66 Pa.C.S. § 1102 before the transmission lines interconnected with the Conestoga Substation may be acquired by Amtrak.

52. Amtrak objects to PPL to Amtrak Set I, Nos. 25 and 26 on the grounds that they (1) request information irrelevant to the proposed distribution rate in this proceeding; (2) and seek information on an issue outside of the Commissions' jurisdiction. Amtrak's objections to PPL to Amtrak Set I, Nos. 25 and 26 are without merit.

53. The information sought in PPL to Amtrak Set I, Nos. 25 and 26 relates to an issue within the Commission's jurisdiction. Indeed, even assuming, *arguendo*, that Amtrak can acquire the Conestoga Substation, either by condemnation or forced sale, 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. This question is fully and firmly within the Commission’s jurisdiction.

54. Additionally, the information sought in PPL to Amtrak Set I, Nos. 25 and 26 is directly relevant to Amtrak’s claim that it intends to acquire the Conestoga Substation. Again, it is Amtrak, not PPL Electric, that raised the issue of Amtrak’s proposal to acquire the Conestoga Substation. Therefore, PPL Electric should clearly be permitted to test and evaluate Amtrak’s claim.

55. Based on the foregoing, PPL Electric respectfully submits that it is entitled to obtain discovery of the information and materials requested in PPL to Amtrak Set I, Nos. 25 and 26, which is reasonably calculated to lead to the discovery of evidence relevant to Amtrak’s claims and defenses in this proceeding.

G. AMTRAK’S OBJECTIONS TO PPL TO AMTRAK SET I, NO. 29 ARE WITHOUT MERIT

56. PPL to Amtrak Set I, No. 29 provides:

In the event Amtrak acquires the Conestoga Substation, by sale or condemnation, please explain in detail:

- (a) How the acquisition costs will be financed;
- (b) How the acquisition costs will be recovered;
and
- (c) Whether any other entities, persons, affiliates, rail systems, or other commuter railroads will directly or indirectly pay for the acquisition costs.

57. Amtrak objects to PPL to Amtrak Set I, No. 29 on the grounds that it (1) requests information irrelevant to the proposed distribution rate in this proceeding; (2) and seeks

information on an issue outside of the Commissions' jurisdiction. Amtrak's objections to PPL to Amtrak Set I, No. 29 are without merit.

58. Amtrak has already acquiesced to the relevance of the information sought in PPL to Amtrak Set I, No. 29. Indeed, in the 2015 base rate case at Docket No. R-2015-2469275, Amtrak raised the issue of its ability to request contributions from other commuter rail operators as a defense to the proposed increase to Rate Schedule LPEP. *See* PPLICA Statement No. 1 at Docket No. R-2015-2469275, p. 5. Amtrak also stated that it "has access to lower cost funding compared to PPL's cost of capital." *See* PPLICA Statement No. 1 at Docket No. R-2015-2469275, p. 7. Clearly, by its own admission, Amtrak believes the information sought in PPL to Amtrak Set I, No. 29 is relevant to the rate to be determined in this proceeding.

59. The information sought in PPL to Amtrak Set I, No. 29 relates to an issue within the Commission's jurisdiction. Indeed, even assuming, *arguendo*, that Amtrak can acquire the Conestoga Substation, either by condemnation or forced sale, 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. This question is fully and firmly within the Commission's jurisdiction.

60. Again, it is Amtrak, not PPL Electric, that raised the issue of Amtrak's proposal to acquire the Conestoga Substation. Therefore, PPL Electric should clearly be permitted to test and evaluate Amtrak's claim.

61. Based on the foregoing, PPL Electric respectfully submits that it is entitled to obtain discovery of the information and materials requested in PPL to Amtrak Set I, No. 29,


which is reasonably calculated to lead to the discovery of evidence relevant to Amtrak's claims and defenses in this proceeding.

III. CONCLUSION

For the reasons set forth above, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge David A. Salapa grant this Motion to Dismiss Objections and Compel Responses to Discovery and direct Amtrak to answer fully PPL to Amtrak Set I, Nos.19-26 and 29, as described above within three (3) days from the date of the order.

Respectfully submitted,

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Date: January 20, 2017

Counsel for PPL Electric Utilities Corporation

APPENDIX “A”



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File #: 167272

January 11, 2017

VIA E-MAIL & REGULAR MAIL

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Adeolu A. Bakare, Esquire
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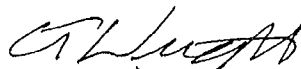
**Re: National Railroad Passenger Corporation v. PPL Electric Utilities Corporation
Docket No. C-2016-2580526**

**PPL Electric Utilities Corporation Supplement No. 213 to Tariff - Electric Pa.
P.U.C. No. 201 - Docket No. R-2016-2569975**

Dear Counsel:

Enclosed please find Interrogatories and Requests for Production of Documents Propounded by PPL Electric Utilities Corporation on The National Railroad Passenger Corporation – Set I, in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Sincerely,


Christopher T. Wright

CTW/jl
Enclosures

cc: Rosemary Chiavetta, Secretary (*Letter & Certificate of Service Only*)
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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Adeolu A. Bakare, Esquire
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Harrisburg, PA 17105-3265

Date: January 11, 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	:	

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED
BY PPL ELECTRIC UTILITIES CORPORATION
ON THE NATIONAL RAILROAD PASSENGER CORPORATION
SET I**

Pursuant to 66 Pa.C.S. § 333 and 52 Pa. Code §§ 5.341 *et seq.*, PPL Electric Utilities Corporation (“PPL Electric”) propounds the following Interrogatories and Requests for Production of Documents (hereinafter, “discovery requests”) on the National Railroad Passenger Corporation (“Atmrak”) – Set I.

INSTRUCTIONS AND DEFINITIONS

1. The “Responding Party,” “you,” or “your” means the party to which these discovery requests are propounded and/or all attorneys, agents, affiliates, subsidiaries, employees, consultants, members, constituents, and representatives acting on behalf of the Responding Party.

2. The “PUC” or “Commission” means the Pennsylvania Public Utility Commission.

3. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.

4. To “identify” a business entity means to state the full name of such business, the form of the business, and its location or address.

5. To “identify” a “document” means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. The title or other means of identification of each such document;
- b. The date of each such document;
- c. The author, preparer or signer of each such document; and
- d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.).

In lieu of “identifying” any document, it shall be deemed a sufficient compliance with these discovery requests to attach a copy of each such document to the answers hereto and reference said document in the particular interrogatory to which the document is responsive.

6. “Document” means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however

stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

7. "Communication" means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

8. "Date" means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

9. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

10. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

11. The answers provided to these discovery requests should first restate the question asked and identify the person(s) supplying the information.

12. In answering these discovery requests, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party's attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party's own knowledge. If any of the discovery requests cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying the Responding

Party's inability to answer the remainder, and stating whatever information the Responding Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

13. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 5 and state the basis of the objection.

14. If the Responding Party objects to part of a discovery request and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that discovery request. If the Responding Party objects to the scope or time period of a discovery request and refuses to answer for that scope or time period, state the Responding Party's objection and answer the discovery request for the scope or time period that the Responding Party believes is appropriate.

15. If, in connection with a discovery request, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

16. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and (c) the basis on which the privilege or other protection from disclosure is claimed.

17. As set forth in 52 Pa. Code § 5.342(g), these discovery requests are continuing and the Responding Party is obliged to change, supplement, and correct all answers given to conform to new or changing information.

18. The “2015 Base Rate Case” means PPL Electric’s 2015 distribution base rate case at Docket No. R-2015-2469275.

19. The “2015 Settlement” means the Joint Petition for Settlement filed on September 3, 2015, in PPL Electric’s 2015 base rate case at Docket No. R-2015-2469275.

20. The “Mutual Settlement Agreement” means the September 16, 2015 agreement between PPL Electric and Amtrak that is attached as Exhibit B to Amtrak’s Complaint at Docket No. C-2016-2580526.

21. “PPLICA” means the PP&L Industrial Customer Alliance.

**INTERROGATORIES, REQUESTS FOR PRODUCTION OF
DOCUMENTS AND REQUESTS FOR ADMISSION
ON AMTRAK – SET I**

PPL to Amtrak-I-1

See Complaint, Exhibit B, ¶ 1. Does Amtrak agree that substantial upgrades to the Conestoga Substation are required to provide reasonably continuous, reliable, and safe service to Amtrak? If not, explain your response in detail.

PPL to Amtrak-I-2

Please explain in detail the impact that the loss of the Conestoga Substation would have on Amtrak's operations.

PPL to Amtrak-I-3

Please explain in detail whether Amtrak has any alternate sources of supply if an outage were to occur at the Conestoga Substation.

PPL to Amtrak-I-4

Please describe any equipment failures of Amtrak equipment at Conestoga. In your description, please also include:

- (a) The reason the for the failure;
- (b) The date the of the failure;
- (c) The status of the failed equipment today; and
- (d) If and when the failed equipment will be returned to service.

PPL to Amtrak-I-5

Please describe the material condition of equipment in the Conestoga substation.

PPL to Amtrak-I-6

Please provide any analyses, studies, or reports describing safety concerns with degraded equipment at Conestoga.

PPL to Amtrak-I-7

See Complaint, Exhibit B, ¶ 2. Confirm whether Amtrak is the only customer served by the Conestoga Substation. If not, explain your response in detail.

PPL to Amtrak-I-8

Identify and describe in detail all locations that Amtrak receives service from the Conestoga Substation.

PPL to Amtrak-I-9

Explain in detail how Amtrak uses the power received from the Conestoga Substation.

PPL to Amtrak-I-10

Explain in detail whether the power received from the Conestoga Substation is, by any method or device whatsoever, used by any other entities, persons, affiliates, rail systems, or commuter railroads other than Amtrak. In responding to this interrogatory, please also provide the following:

- (a) Identify the entities, persons, affiliates, rail systems, or commuter railroads;
- (b) Explain how the power received from the Conestoga Substation is conveyed, transferred, sold, or otherwise provided to the entities, persons, affiliates, rail systems, or commuter railroads;
- (c) Explain in detail the fees, charges, rates, or other means paid by any other entities, persons, affiliates, rail systems, or commuter railroads other than Amtrak for the power received from the Conestoga Substation;
- (d) Explain in detail how Amtrak recovers the fees, charges, rates, or other means paid by any other entities, persons, affiliates, rail systems, or

commuter railroads other than Amtrak for the power received from the Conestoga Substation;

- (e) A copy of any agreements or contracts between Amtrak and any other entities, persons, affiliates, rail systems, or commuter railroads regarding the power received from the Conestoga Substation;
- (f) A copy of any agreements or contracts between Amtrak and any other entities, persons, affiliates, rail systems, or commuter railroads regarding 25 Hz power.

PPL to Amtrak-I-11

Explain in detail how much of the power received from the Conestoga Substation is directly used by Amtrak and how much is provided to or used by third-parties.

PPL to Amtrak-I-12

See Complaint, Exhibit B, ¶ 3. Does Amtrak agree it is responsible for the reasonable and prudent costs to upgrade the Conestoga Substation? If not, explain your response in detail.

PPL to Amtrak-I-13

Explain in detail how Amtrak recovers the costs incurred for power and electric service received from the Conestoga Substation.

PPL to Amtrak-I-14

Please explain in detail the terms, conditions, and rates for the electricity supplied to Amtrak from the Safe Harbor power plant.

PPL to Amtrak-I-15

Does Amtrak agree that PPL Electric proposed in the 2015 base rate case that the upgrades needed to Conestoga Substation be placed in-service on or before the end of the fully projected future test year for the 2015 base rate case, *i.e.*, on or before December 31, 2016? In not, explain your response in detail.

PPL to Amtrak-I-16

See Complaint, Exhibit B, ¶¶ 4, 7. Confirm whether Amtrak agreed that PPL Electric would temporarily discontinue work on the Conestoga Substation while PPL Electric and Amtrak attempted to resolve the open issues regarding the upgrade of the Conestoga Substation? If not, explain your response in detail.

PPL to Amtrak-I-17

See Complaint, Exhibit B, ¶¶ 4, 7. Does Amtrak agree that, but for the agreement that PPL Electric would temporarily discontinue work on the Conestoga Substation, PPL Electric would have continued to undertake the upgrades required at the Conestoga Substation? If not, explain your response in detail.

PPL to Amtrak-I-18

Explain in detail whether Amtrak is aware that PPL Electric incurred costs associated with the upgrades to the Conestoga Substation prior to Amtrak and PPL Electric entering into the Mutual Settlement Agreement on September 16, 2015.

PPL to Amtrak-I-19

See Complaint, ¶ 38. Please explain in detail whether Amtrak intends to acquire:

- (a) All of the equipment and facilities at the Conestoga Substation;
- (b) All of the land upon which the Conestoga Substation is situated;
- (c) The four PPL Electric-owned transmission lines between the Conestoga Substation and the Pennsylvania-Maryland border; and
- (d) All of the PPL Electric-owned transmission line right-of-way between the Conestoga Substation and the Pennsylvania-Maryland border.

PPL to Amtrak-I-20

See Complaint, p. 8, n. 2. Please provide the following with respect to Amtrak's eminent domain authority under 49 U.S.C.S. § 24311:

- (a) A copy of any orders approving or denying Amtrak's proposed condemnation of any property;
- (b) A copy of any pleadings filed by Amtrak seeking to condemn property, whether granted or not; and
- (c) An explanation of how each condemnation proposed by Amtrak, whether granted to not, meets the "necessary for intercity rail passenger transportation" standard in 49 U.S.C.S. § 24311.

PPL to Amtrak-I-21

See Petition of the National Passenger Railroad Corporation for Amendment of the December 22, 2016 Order to Suspend these Proceedings, ¶ 19. Please provide following:

- (a) The name, address, and phone number of Amtrak's real property appraiser that visited the Conestoga Substation on December 30, 2016;
- (b) A copy of all documents, notes, photographs, and other materials used or relied upon by Amtrak's real property appraiser and its employees or agents during the visit to the Conestoga Substation on December 30, 2016; and
- (c) A copy of all analyses, recommendations, memoranda, studies, proposals, and other documents used or otherwise prepared by Amtrak's real property appraiser and its employees or agents regarding the Conestoga Substation.

PPL to Amtrak-I-22

See Petition of the National Passenger Railroad Corporation for Amendment of the December 22, 2016 Order to Suspend these Proceedings, ¶ 19. Please explain the following in detail:

- (a) The method used, or to be used, by Amtrak to determine the value of the facilities at the Conestoga Substation; and

- (b) The method used, or to be used, by Amtrak to determine the value of the land underlying the Conestoga Substation.

PPL to Amtrak-I-23

See Supplement No. 213, Statement of Reasons, p. 6 and Exhibit 2. In the event that Amtrak acquires the Conestoga Substation, either by sale or condemnation, please explain whether Amtrak intends to pay, reimburse, compensate, or otherwise include in the purchase price/condemnation value the actual project costs already incurred by PPL Electric. Explain your response and reasoning in detail.

PPL to Amtrak-I-24

In the event that Amtrak acquires the Conestoga Substation, please explain in detail whether Amtrak intends to:

- (a) Operate and maintain the Conestoga Substation;
- (b) Operate and maintain the four transmission lines between the Conestoga Substation and the Pennsylvania-Maryland border; and
- (c) Operate and maintain the transmission line right-of-way between the Conestoga Substation and the Pennsylvania-Maryland border.

PPL to Amtrak-I-25

Explain in detail whether Amtrak believes Commission approval is required under 66 Pa.C.S. § 1102 before the Conestoga Substation may be acquired by Amtrak.

PPL to Amtrak-I-26

Explain in detail whether Amtrak believes Commission approval is required under 66 Pa.C.S. § 1102 before the transmission lines interconnected with the Conestoga Substation may be acquired by Amtrak.

PPL to Amtrak-I-27

Please explain in detail whether Amtrak is willing to accept an agreement that does not include a sale of the Conestoga Substation and allows PPL to receive a return on the investment to resolve the proposed Rate Schedule LPEP.

PPL to Amtrak-I-28

Please explain in detail whether Amtrak is willing to provide a partial contribution in aid of construction for the upgrades required at the Conestoga Substation to resolve the proposed Rate Schedule LPEP. Explain your response and reasoning in detail.

PPL to Amtrak-I-29

In the event Amtrak acquires the Conestoga Substation, by sale or condemnation, please explain in detail:

- (a) How the acquisition costs will be financed;
- (b) How the acquisition costs will be recovered; and
- (c) Whether any other entities, persons, affiliates, rail systems, or other commuter railroads will directly or indirectly pay for the acquisition costs.

APPENDIX “B”



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January 17, 2017

Honorable David A. Salapa
Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265

VIA EMAIL AND FIRST CLASS MAIL

**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 Judge Salapa:

Enclosed please find the National Railroad Passenger Corporation's ("Amtrak") Objections to Interrogatories and Requests for Production of Documents Propounded by PPL Electric Utilities Corporation ("PPL"), Set I. 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

A handwritten signature in black ink, appearing to read 'Pamela C. Polacek', written over a horizontal line.

Pamela C. Polacek

Counsel to National Railroad Passenger Corporation ("Amtrak")

Enclosures

c: Rosemary Chiavetta, Secretary (Letter and Certificate of Service only – via electronic filing)
Certificate of Service

www.mwn.com

HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

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).

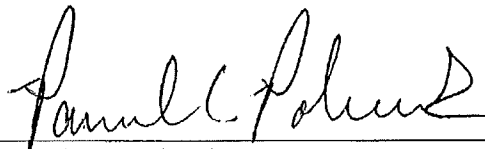
VIA E-MAIL AND FIRST CLASS MAIL

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Pamela C. Polacek

Counsel to National Railroad Passenger
Corporation

Dated this 17 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
	:	

**NATIONAL RAILROAD PASSENGER CORPORATION OBJECTIONS TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY PPL ELECTRIC UTILITIES CORPORATION – SET I**

Pursuant to 52 Pa. Code §§ 5.342(c) and (e), as modified by Prehearing Order #2 dated January 6, 2017, in the above-captioned docket, National Railroad Passenger Corporation ("Amtrak") hereby objects to portions of PPL Electric Utilities Corporation's ("PPL") "Interrogatories and Requests for Production of Documents Propounded by PPL Electric Utilities Corporation on The National Railroad Passenger Corporation – Set I," served on January 11, 2017. Amtrak conveyed its oral objections on Friday, January 13, 2017.

**NATIONAL RAILROAD PASSENGER CORPORATION OBJECTIONS TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY PPL ELECTRIC UTILITIES CORPORATION – SET I**

DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak, Set I, Instructions and Definitions

15. If, in connection with a discovery request, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called “attorneys’ work product doctrine,” or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

16. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and (c) the basis on which the privilege or other protection from disclosure is claimed.

Objection

A party may not ask interrogatories which “[r]elates to matter which is privileged.” 52 Pa. Code § 5.361(a)(3). Consistent with Section 5.361(a)(3), privileged information, or information related to privileged matters is not properly subject to discovery. *Id.* While PPL has acknowledged that privileged documents are not subject to discovery, the above instruction would require Amtrak to furnish information related to privileged matters, contrary to Section 5.361(a)(3) of the Commission's Regulations. *Id.*

**NATIONAL RAILROAD PASSENGER CORPORATION OBJECTIONS TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY PPL ELECTRIC UTILITIES CORPORATION – SET I**

DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak-I-14

Please explain in detail the terms, conditions, and rates for the electricity supplied to Amtrak from the Safe Harbor power plant.

Objection

The scope of discovery is limited to "any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party : . ." 52 Pa. Code § 5.321(c). The information sought must be "reasonably calculated to lead to the discovery of admissible evidence." *Id.* Amtrak objects to this interrogatory on the grounds that it is not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. The details of Amtrak's power supply arrangements are not relevant to the issues in this proceeding, which address the proper distribution rates for PPL's service to Amtrak. Distribution and generation supply are unbundled services under the Public Utility Code and are provided by different entities. Accordingly, PPL to Amtrak-I-14 is beyond the scope of discovery under Section 5.321(c) of the Commission's Regulations. *Id.*

**NATIONAL RAILROAD PASSENGER CORPORATION OBJECTIONS TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
PROPOUNDED BY PPL ELECTRIC UTILITIES CORPORATION – SET I**

DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak-I-19

See Complaint, ¶ 38. Please explain in detail whether Amtrak intends to acquire:

- (a) All of the equipment and facilities at the Conestoga Substation;
- (b) All of the land upon which the Conestoga Substation is situated;
- (c) The four PPL Electric-owned transmission lines between the Conestoga Substation and the Pennsylvania-Maryland border; and
- (d) All of the PPL Electric-owned transmission line right-of-way between the Conestoga Substation and the Pennsylvania-Maryland border.

Objection

Section 5.321(c) of the Commission's Regulations indicates that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." 52 Pa Code § 5.321(c). In addition, Section 5.361(a)(4) of the Commission's Regulations indicates that discovery is not permitted if it "[w]ould require the making of an unreasonable investigation by the deponent, a party or witness." 52 Pa. Code. § 5.361(a)(4). Amtrak objects to this interrogatory on the grounds that it requests irrelevant information that is beyond the scope of the instant proceeding and concerns matters over which the Commission has no jurisdiction. If Amtrak opts to utilize its federal eminent domain authority under Section 24311 of the United States Code, that procedure would be subject to review in federal court. 49 U.S.C. § 24311; Fed. R. Civ. P. 71.1. At that time, PPL will be informed of the land and equipment that is being acquired through the federal court filings. Accordingly, this interrogatory seeks information on an issue that is beyond the scope of this proceeding and beyond the Commission's jurisdiction.

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DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak-I-20

See Complaint, p. 8, n. 2. Please provide the following with respect to Amtrak's eminent domain authority under 49 U.S.C.S. § 24311:

- (a) A copy of any orders approving or denying Amtrak's proposed condemnation of any property;
- (b) A copy of any pleadings filed by Amtrak seeking to condemn property, whether granted or not; and
- (c) An explanation of how each condemnation proposed by Amtrak, whether granted to not, meets the "necessary for intercity rail passenger transportation" standard in 49 U.S.C.S. § 24311.

Objection

Section 5.321(c) of the Commission's Regulations indicates that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." 52 Pa Code § 5.321(c). Section 5.361(a)(4) of the Commission's Regulations indicates that discovery is not permitted if it "[w]ould require the making of an unreasonable investigation by the deponent, a party or witness. 52 Pa. Code. § 5.361(a)(4). Amtrak objects to this interrogatory on the grounds that it requests irrelevant information that is beyond the scope of the instant proceeding and concerns matters over which the Commission has no jurisdiction. If Amtrak opts to utilize its federal eminent domain authority under Section 24311 of the United States Code, that procedure would be subject to review in federal court. 49 U.S.C. § 24311; Fed. R. Civ. P. 71.1. Amtrak's prior use of its eminent domain authority is not relevant to the issue in this proceeding, namely the appropriate distribution rate for PPL's service to Amtrak at Conestoga.

Furthermore, a party may not ask interrogatories that would cause unreasonable burden or expense or "[w]ould require the making of an unreasonable investigation by the deponent, a party or witness." 52 Pa. Code §§ 5.361(a)(2), (4). Accordingly, Amtrak also objects to this interrogatory on the basis that it would require an investigation into the all of the condemnation orders and pleadings regarding Amtrak's prior proposed condemnations of property. Locating and providing such records covering such a broad period of time would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. Furthermore, any reported decisions regarding Amtrak's federal condemnation authority are already in the public record and therefore are accessible to PPL.

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DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak-I-21

See Petition of the National Passenger Railroad Corporation for Amendment of the December 22, 2016 Order to Suspend these Proceedings, ¶ 19. Please provide following:

- (a) The name, address, and phone number of Amtrak's real property appraiser that visited the Conestoga Substation on December 30, 2016;
- (b) A copy of all documents, notes, photographs, and other materials used or relied upon by Amtrak's real property appraiser and its employees or agents during the visit to the Conestoga Substation on December 30, 2016; and
- (c) A copy of all analyses, recommendations, memoranda, studies, proposals, and other documents used or otherwise prepared by Amtrak's real property appraiser and its employees or agents regarding the Conestoga Substation.

Objection

Section 5.321(c) of the Commission's Regulations indicates that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." 52 Pa Code § 5.321(c). In addition, Section 5.361(a)(4) of the Commission's Regulations indicates that discovery is not permitted if it "[w]ould require the making of an unreasonable investigation by the deponent, a party or witness." 52 Pa. Code. § 5.361(a)(4). Amtrak objects to this interrogatory on the grounds that it requests irrelevant information that is beyond the scope of the instant proceeding and concerns matters over which the Commission has no jurisdiction. If Amtrak opts to utilize its federal eminent domain authority under Section 24311 of the United States Code, that procedure would be subject to review in federal court. 49 U.S.C. § 24311; Fed. R. Civ. P. 71.1. At that time, PPL will be informed of the land and equipment that is being acquired through the federal court filings. If Amtrak exercises eminent domain, PPL's rights to the requested information, if any, will be covered by the Federal Rules of Civil Procedure and applicable precedent regarding the permissible scope of discovery. The requested information is not relevant to the proposed distribution rate in Supplement No. 213 to Tariff Electric Pa. P.U.C. No. 201 for Rate Schedule LPEP ("Supplement No. 213"). Accordingly, this interrogatory seeks information on an issue that is beyond the scope of this proceeding and beyond the Commission's jurisdiction.

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DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak-I-22

See Petition of the National Passenger Railroad Corporation for Amendment of the December 22, 2016 Order to Suspend these Proceedings, ¶ 19. Please explain the following in detail:

- (a) The method used, or to be used, by Amtrak to determine the value of the facilities at the Conestoga Substation; and
- (b) The method used, or to be used, by Amtrak to determine the value of the land underlying the Conestoga Substation.

Objection

Section 5.321(c) of the Commission's Regulations indicates that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." 52 Pa Code § 5.321(c). In addition, Section 5.361(a)(4) of the Commission's Regulations indicates that discovery is not permitted if it "[w]ould require the making of an unreasonable investigation by the deponent, a party or witness." 52 Pa. Code. § 5.361(a)(4). Amtrak objects to this interrogatory on the grounds that it requests irrelevant information that is beyond the scope of the instant proceeding and concerns matters over which the Commission has no jurisdiction. If Amtrak opts to utilize its federal eminent domain authority under Section 24311 of the United States Code, that procedure would be subject to review in federal court. 49 U.S.C. § 24311; Fed. R. Civ. P. 71.1. At that time, PPL will be informed of the land and equipment that is being acquired through the federal court filings. If Amtrak exercises eminent domain, PPL's rights to the requested information, if any, will be covered by the Federal Rules of Civil Procedure and applicable precedent regarding the permissible scope of discovery. The requested information is not relevant to the proposed distribution rate in Supplement No. 213. Accordingly, this interrogatory seeks information on an issue that is beyond the scope of this proceeding and beyond the Commission's jurisdiction.

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DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak-I-23

See Supplement No. 213, Statement of Reasons, p. 6 and Exhibit 2. In the event that Amtrak acquires the Conestoga Substation, either by sale or condemnation, please explain whether Amtrak intends to pay, reimburse, compensate, or otherwise include in the purchase price/condemnation value the actual project costs already incurred by PPL Electric. Explain your response and reasoning in detail.

Objection

Section 5.321(c) of the Commission's Regulations indicates that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." 52 Pa Code § 5.321(c). In addition, Section 5.361(a)(4) of the Commission's Regulations indicates that discovery is not permitted if it "[w]ould require the making of an unreasonable investigation by the deponent, a party or witness." 52 Pa. Code. § 5.361(a)(4). Amtrak objects to this interrogatory on the grounds that it requests irrelevant information that is beyond the scope of the instant proceeding and concerns matters over which the Commission has no jurisdiction. If Amtrak opts to utilize its federal eminent domain authority under Section 24311 of the United States Code, that procedure would be subject to review in federal court. 49 U.S.C. § 24311; Fed. R. Civ. P. 71.1. At that time, PPL will be informed of the land and equipment that is being acquired through the federal court filings. The requested information is not relevant to the proposed distribution rate in Supplement No. 213. Accordingly, this interrogatory seeks information on an issue that is beyond the scope of this proceeding and beyond the Commission's jurisdiction.

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DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak-I-24

In the event that Amtrak acquires the Conestoga Substation, please explain in detail whether Amtrak intends to:

- (a) Operate and maintain the Conestoga Substation;
- (b) Operate and maintain the four transmission lines between the Conestoga Substation and the Pennsylvania-Maryland border; and
- (c) Operate and maintain the transmission line right-of-way between the Conestoga Substation and the Pennsylvania-Maryland border.

Objection

Section 5.321(c) of the Commission's Regulations indicates that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." 52 Pa Code § 5.321(c). In addition, Section 5.361(a)(4) of the Commission's Regulations indicates that discovery is not permitted if it "[w]ould require the making of an unreasonable investigation by the deponent, a party or witness." 52 Pa. Code. § 5.361(a)(4). Amtrak objects to this interrogatory on the grounds that it requests irrelevant information that is beyond the scope of the instant proceeding and concerns matters over which the Commission has no jurisdiction. If Amtrak opts to utilize its federal eminent domain authority under Section 24311 of the United States Code, that procedure would be subject to review in federal court. 49 U.S.C. § 24311; Fed. R. Civ. P. 71.1. At that time, PPL will be informed of the land and equipment that is being acquired through the federal court filings. The requested information is not relevant to the proposed distribution rate in Supplement No. 213. Accordingly, this interrogatory seeks information on an issue that is beyond the scope of this proceeding and beyond the Commission's jurisdiction.

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DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak-I-25

Explain in detail whether Amtrak believes Commission approval is required under 66 Pa.C.S. § 1102 before the Conestoga Substation may be acquired by Amtrak.

Objection

Section 5.321(c) of the Commission's Regulations indicates that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." 52 Pa Code § 5.321(c). In addition, Section 5.361(a)(4) of the Commission's Regulations indicates that discovery is not permitted if it "[w]ould require the making of an unreasonable investigation by the deponent, a party or witness." 52 Pa. Code. § 5.361(a)(4). Amtrak objects to this interrogatory on the grounds that it requests irrelevant information that is beyond the scope of the instant proceeding and concerns matters over which the Commission has no jurisdiction. If Amtrak opts to utilize its federal eminent domain authority under Section 24311 of the United States Code, that procedure would be subject to review in federal court. 49 U.S.C. § 24311; Fed. R. Civ. P. 71.1. At that time, PPL will be informed of the land and equipment that is being acquired through the federal court filings. If Amtrak exercises eminent domain, PPL's rights to the requested information, if any, will be covered by the Federal Rules of Civil Procedure and applicable precedent regarding the permissible scope of discovery. The requested information is not relevant to the proposed distribution rate in Supplement No. 213. Accordingly, this interrogatory seeks information on an issue that is beyond the scope of this proceeding and beyond the Commission's jurisdiction.

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DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak-I-26

Explain in detail whether Amtrak believes Commission approval is required under 66 Pa.C.S. § 1102 before the transmission lines interconnected with the Conestoga Substation may be acquired by Amtrak.

Objection

Section 5.321(c) of the Commission's Regulations indicates that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." 52 Pa Code § 5.321(c). In addition, Section 5.361(a)(4) of the Commission's Regulations indicates that discovery is not permitted if it "[w]ould require the making of an unreasonable investigation by the deponent, a party or witness." 52 Pa. Code. § 5.361(a)(4). Amtrak objects to this interrogatory on the grounds that it requests irrelevant information that is beyond the scope of the instant proceeding and concerns matters over which the Commission has no jurisdiction. If Amtrak opts to utilize its federal eminent domain authority under Section 24311 of the United States Code, that procedure would be subject to review in federal court. 49 U.S.C. § 24311; Fed. R. Civ. P. 71.1. At that time, PPL will be informed of the land and equipment that is being acquired through the federal court filings. If Amtrak exercises eminent domain, PPL's rights to the requested information, if any, will be covered by the Federal Rules of Civil Procedure and applicable precedent regarding the permissible scope of discovery. The requested information is not relevant to the proposed distribution rate in Supplement No. 213. Accordingly, this interrogatory seeks information on an issue that is beyond the scope of this proceeding and beyond the Commission's jurisdiction.

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DOCKET NOS. R-2015-2569975 AND C-2016-2580526

PPL to Amtrak-I-29

In the event Amtrak acquires the Conestoga Substation, by sale or condemnation, please explain in detail:

- (a) How the acquisition costs will be financed;
- (b) How the acquisition costs will be recovered; and
- (c) Whether any other entities, persons, affiliates, rail systems, or other commuter railroads will directly or indirectly pay for the acquisition costs.

Objection


Section 5.321(c) of the Commission's Regulations indicates that "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." 52 Pa Code § 5.321(c). In addition, Section 5.361(a)(4) of the Commission's Regulations indicates that discovery is not permitted if it "[w]ould require the making of an unreasonable investigation by the deponent, a party or witness." 52 Pa. Code. § 5.361(a)(4). Amtrak objects to this interrogatory on the grounds that it requests irrelevant information that is beyond the scope of the instant proceeding and concerns matters over which the Commission has no jurisdiction. If Amtrak opts to utilize its federal eminent domain authority under Section 24311 of the United States Code, that procedure would be subject to review in federal court. 49 U.S.C. § 24311; Fed. R. Civ. P. 71.1. At that time, PPL will be informed of the land and equipment that is being acquired through the federal court filings. If Amtrak exercises eminent domain, PPL's rights to the requested information, if any, will be covered by the Federal Rules of Civil Procedure and applicable precedent regarding the permissible scope of discovery. The requested information is not relevant to the proposed distribution rate in Supplement No. 213. Accordingly, this interrogatory seeks information on an issue that is beyond the scope of this proceeding and beyond the Commission's jurisdiction.

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Respectfully submitted,

MCNEES WALLACE & NURICK, LLC

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