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File #: 167272

February 7, 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 Second Motion of PPL Electric Utilities Corporation to 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/skr
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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Alessandra L. Hylander, Esquire
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Counsel to National Railroad Passenger Corporation

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Date: February 7, 2017



Christopher T. Wright

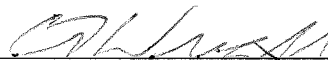
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 JANUARY 6, 2017 SCHEDULING ORDER, YOU MAY FILE A REPLY TO THE ENCLOSED FURTHER 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: February 7, 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	:	

**SECOND MOTION OF PPL ELECTRIC UTILITIES CORPORATION
TO 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 Second Motion to Compel Responses to Discovery Propounded on the National Railroad Passenger Corporation (“Amtrak”) Set I, pursuant to 52 Pa. Code § 5.342(a)(4), (g) 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 and 21-23 within three (3) days from the date of the order. In support of this Motion, PPL Electric states as follows:

I. INTRODUCTION

1. On January 11, 2017, PPL Electric served Interrogatories and Requests for Production of Documents Propounded on Amtrak Set I (“PPL to Amtrak Set I”).

2. On January 17, 2017, Amtrak served its objections to PPL to Amtrak Set I, Nos. 14, 19-26, and 29.

3. On January 20, 2017, PPL Electric filed a Motion to Dismiss Objections and Compel Responses to PPL to Amtrak Set I, Nos. 19-26 and 29. Amtrak filed an Answer to PPL Electric's Motion to Compel on January 24, 2017.

4. On January 27, 2017, the ALJ issued an order granting in part PPL Electric's Motion to Compel ("Discovery Order"). Specifically, the Discovery Order directed Amtrak to provide answers to PPL to Amtrak Set I, Nos. 19 and 21-24 within three days.

5. On February 2, 2017, Amtrak served its responses to PPL to Amtrak Set I, Nos. 19 and 21-24. However, Amtrak's responses to Nos. 19 and 21-23 were nonresponsive and did not fully and completely answer the interrogatories. Rather, Amtrak's "responses" were nothing more than further objections PPL to Amtrak Set I, Nos. 19 and 21-24. A true and correct copy of Amtrak's "responses" PPL to Amtrak Set I, Nos. 19 and 21-24 are provided as **Appendix A**.

6. Counsel for PPL Electric contacted Counsel for Amtrak on February 3, 2017, in an effort to resolve the dispute regarding PPL to Amtrak Set I, Nos. 19 and 21-23. However, on February 6, 2017, counsel for Amtrak advised that Amtrak has declined to provide responsive answers to these interrogatories.

7. For the reasons stated below, PPL Electric respectfully requests that the ALJ grant this Second Motion to Compel and order Amtrak to fully and completely answer PPL to Amtrak Set I, Nos. 19 and 21-23 as described below.

II. ARGUMENT

A. AMTRAK SHOULD BE FURTHER DIRECTED TO FULLY AND COMPLETELY RESPOND TO PPL TO AMTRAK SET 1, NO. 19

8. 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.

9. Amtrak initially objected to PPL to Amtrak Set I, No. 19 on the basis that it is irrelevant and unduly burdensome. The ALJ denied Amtrak’s objection in the January 27, 2017 Discovery Order.

10. In the ALJ’s Discovery Order, the ALJ determined that the information sought in Amtrak Set I, No. 19 is relevant or reasonably calculated to lead to the discovery of admissible evidence because “PPL is entitled to know how much of the Conestoga Substation Amtrak plans to acquire . . .” (Discovery Order, p. 8.) The ALJ also determined that the request was not unduly burdensome and directed Amtrak to fully and completely respond to PPL to Amtrak Set I, No. 19.

11. On February 2, 2017, Amtrak served its response to PPL to Amtrak Set I, No. 19, which states as follows:

Amtrak is unable to respond to this Interrogatory at this time because no final decision has been made as yet and no offer to purchase has been extended as of yet to PPL. When Amtrak determines the scope of the facilities that it needs to acquire for its intercity rail passenger transportation services, it promptly will inform PPL Electric and offer to purchase such facilities.

(See Appendix A.)

12. Amtrak’s answer to PPL to Amtrak Set I, No. 19 is nonresponsive. Amtrak raised this issue when it stated in its Complaint that Amtrak offered to purchase the Conestoga Substation from PPL Electric. (Complaint ¶ 38.) Amtrak should not be permitted to assert its intent to purchase the facilities in support of its position in this proceeding while at the same time

contending that it does not have enough information to determine the extent of the property and/or facilitates it intends to acquire. The scope of the property that Amtrak seeks to acquire will have a direct and immediate outcome in this proceeding to determine the appropriate rate to be charged under Rate Schedule LPEP.

13. Furthermore, Amtrak's failure to provide a response to PPL to Amtrak Set I, No 19 is directly contrary to the ALJ's Discovery Order. The ALJ expressly directed Amtrak to provide a response to PPL to Amtrak Set I, No 19. Rather than complying with the ALJ's Discovery Order, Amtrak has raised a new objection in its "response" to PPL to Amtrak Set I, No 19. Notably, this was not a basis for Amtrak's initial objections to PPL to Amtrak Set I, No 19, which was denied by the Discovery Order. Furthermore, the time for objections to PPL to Amtrak Set I, No 19 has passed. Therefore, Amtrak should be required to provide a full and complete response to PPL to Amtrak Set I, No 19 as previously ordered by the ALJ's Discovery Order.

14. Based on the foregoing, PPL Electric respectfully submits that it is entitled to obtain a full and complete response to PPL to Amtrak Set I, No. 19 pursuant to the ALJ's Discovery Order.

B. AMTRAK SHOULD BE FURTHER DIRECTED TO FULLY AND COMPLETELY RESPOND TO PPL TO AMTRAK SET I, NOS. 21-23

15. 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.

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.

16. Amtrak initially objected to PPL to Amtrak Set I, Nos. 21-23 on the grounds that they request information that is irrelevant and beyond the scope of the Commission's jurisdiction. The ALJ denied Amtrak's objections in the January 27, 2017 Discovery Order.

17. In the ALJ's Discovery Order, the ALJ determined that PPL to Amtrak Set I, Nos. 21 and 22 are relevant or reasonably calculated to lead to the discovery of admissible evidence because "PPL is entitled to know the identity of Amtrak's appraiser and the methods used by the appraiser to arrive at a value of the assets of the Conestoga Substation Amtrak plans to acquire."

(Discovery Order, p. 11.) Likewise, the ALJ's Discovery Order held that PPL to Amtrak Set I, No. 23 is relevant or reasonably calculated to lead to the discovery of admissible evidence because "PPL is entitled to know whether Amtrak will include in its purchase price amounts that PPL has already expended on upgrading the Conestoga substation." (Discovery Order, p. 12.)

18. On February 2, 2017, Amtrak served its responses to PPL to Amtrak Set I, Nos. 21-23, which provide as follows:

Nos. 21 and 22. Although Amtrak has engaged appraisers to assess the value of various aspects of the Conestoga substation in anticipation of acquiring the facilitates at that location, no final appraisal reports have been prepared to date and Amtrak has not yet taken any action in reliance upon any appraisal report. Further, Amtrak has not yet exercised its federal eminent domain authority. If and when Amtrak elects to exercise its federal eminent domain authority, the provisions of 49 U.S.C. § 24311 and Fed. R. Civ. P. 71.1 will govern any such disclosures regarding expert testimony (see Attachment Amtrak-I-21). Information regarding the advice or communications with other consultants that are not relied upon to provide expert testimony is subject to work product privilege. Accordingly, Amtrak cannot respond to this request.

No. 23. Although Amtrak has engaged appraisers to assess the value of various aspects of the Conestoga substation in anticipation of acquiring the facilitates at that location, no final appraisal reports have been prepared to date and Amtrak has not yet taken any action in reliance upon any appraisal report. Further, Amtrak has not yet exercised its federal eminent domain authority. If and when Amtrak elects to exercise its federal eminent domain authority, the provisions of 49 U.S.C. § 24311 and Fed. R. Civ. P. 71.1 will govern any such disclosures regarding expert testimony (see Attachment Amtrak-I-21). Information regarding the advice or communications with other consultants that are not relied upon to provide expert testimony is subject to work product privilege. Accordingly, Amtrak cannot respond to this request.

(See Appendix A.)

19. Amtrak's answers to PPL to Amtrak Set I, Nos. 21-23 are nonresponsive. Amtrak cannot withhold information regarding its condemnation plans from PPL Electric in this proceeding on the basis that it will make the information available in a later proceeding when it

attempts to exercise its federal eminent domain authority. The ALJ has already concluded that the requested information is relevant to this proceeding. It is entirely unknown if and when Amtrak may initiate such a proceeding, which would effectively allow Amtrak to withhold from PPL Electric information that the ALJ has already determined is relevant to this proceeding.

20. Furthermore, Amtrak's failure to provide responses to PPL to Amtrak Set I, Nos. 21-23 is directly contrary to the ALJ's Discovery Order. The ALJ expressly directed Amtrak to provide responses to PPL to Amtrak Set I, Nos. 21-23. Rather than complying with the ALJ's Discovery Order, Amtrak has again objected to PPL to Amtrak Set I, Nos. 21-23. The time for objections to PPL to Amtrak Set I, Nos. 21-23 has passed.

21. Further, Amtrak's responses to PPL to Amtrak Set I, Nos. 21-23 reiterate the same federal eminent domain argument that Amtrak made in its initial objections. This argument has already been rejected by the ALJ's Discovery Order.

22. Amtrak also introduces a new argument in its responses to PPL to Amtrak Set I, Nos. 21-23. Specifically, Amtrak contends for the first time in its "responses" that the information requested is protected by privilege. Notably, Amtrak did not state any objection on the basis of privilege when it initially objected to these interrogatories. *See* 52 Pa. Code § 5.342. To the extent that Amtrak believed the information requested in PPL to Amtrak Set I, Nos. 21-23 is privileged, it was incumbent on Amtrak to submit a timely objection on that basis. Here, however, Amtrak waited until after the ALJ denied Amtrak's objections to claim in its "answer" to PPL to Amtrak Set I, Nos. 21-23 that the information requested is its privileged. Under these circumstances, Amtrak should not now be permitted to introduce a new objection after the ALJ has already dismissed Amtrak's initial objections and ordered Amtrak to respond.

23. Even if Amtrak's objection on the basis of privilege were timely, which it is not, attorney-client privilege and the work product doctrine do not apply to the information sought in PPL to Amtrak Set I, Nos. 21-23. The attorney-client privilege protects only communications between an attorney and client. 42 Pa. C.S. § 5928. Similarly, the work-product doctrine protects the "disclosure of the mental impressions of a party's attorney or his or her conclusions, opinions, memoranda, notes or summaries, legal research or legal theories." *Levy v. Senate of Pa.*, 94 A.3d 436, 443 (Pa. Cmwlth. 2014) (emphasis added). PPL to Amtrak Set I, Nos. 21-23 do not seek any communications between (i) Amtrak and its counsel or (ii) Amtrak's experts and Amtrak's counsel. Likewise, PPL to Amtrak Set I, Nos. 21-23 do not seek any information prepared by Amtrak's counsel.

24. PPL to Amtrak Set I, Nos. 21-23 seek information related to the identity of Amtrak's appraiser, the methods used by the appraiser to arrive at a value of the assets of the Conestoga Substation, and the amount to be paid if Amtrak were to acquire the Conestoga Substation. Parties are permitted to seek discovery of the facts known and opinions held by a party's expert. *See* 52 Pa. Code § 5.324.

25. It should be noted that Amtrak stated in its Petition to Amend the Suspension Period that Amtrak retained a real property appraiser who "visited the Conestoga Substation on December 30, 2016, to finalize his evaluation of the property," which evaluation will clearly be used by Amtrak "to submit an offer to purchase the Conestoga Substation from PPL." (*See* Amtrak Petition to Amend Suspension Period, p. 6.) It was Amtrak, not PPL Electric, that raised this issue in this proceeding. Further, by its own admission, the information requested in PPL to Amtrak Set I, Nos. 21-23 will clearly be used by Amtrak in this proceeding and, moreover, will

directly affect the purpose of this proceeding -- to determine the proper rate under Rate Schedule LPEP.

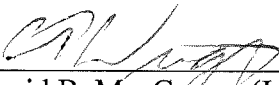
26. Based on the foregoing, PPL Electric respectfully submits that it is entitled to obtain full and complete responses to PPL to Amtrak Set I, Nos. 21-23 pursuant to the ALJ's Discovery Order.

III. CONCLUSION

For the reasons set forth above, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge David A. Salapa grant this Second Motion to Compel Responses to Discovery and direct Amtrak to answer fully PPL to Amtrak Set I, Nos. 19 and 21-23 within three (3) days from the date of the order.

Respectfully submitted,

Kimberly A. Klock (ID #89716)
Amy E. Hirakis (ID #310094)
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Date: February 7, 2017

Counsel for PPL Electric Utilities Corporation

Appendix A



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February 2, 2017

David B. MacGregor, Esq.
Christopher T. Wright, Esq.
Post & Schell PC
17 North Second Street, 12th Floor
Harrisburg, PA 17101

VIA E-MAIL 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 Mr. MacGregor and Mr. Wright:

Enclosed please find the National Railroad Passenger Corporation's ("AMTRAK") responses to the Interrogatories and Requests for Production of Documents Propounded by PPL Electric Utilities Corporation – Set I, in the above-referenced proceeding. Pursuant to Administrative Law Judge David A. Salapa's Order Granting, In Part, On Motion to Compel, issued January 30, 2017, Amtrak hereby responds to the following Interrogatories:

**PPL to Amtrak-I-19
PPL to Amtrak-I-21 through PPL to Amtrak-I-24**

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

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Pamela C. Polacek', is written over the typed name. The signature is fluid and cursive in style.

Pamela C. Polacek

Counsel to the National Railroad Passenger Corporation

Enclosures

c: Rosemary Chiavetta, Secretary (via Electronic Filing - Letter and Certificate of Service only)
Certificate of Service

A5551514:1

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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).

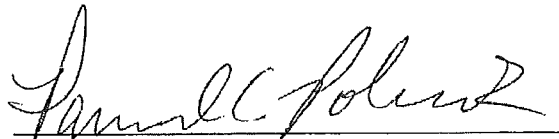
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Pamela C. Polacek

Counsel to National Railroad Passenger
Corporation

Dated this 2nd day of February, 2017, at Harrisburg, Pennsylvania.

**INTERROGATORIES, REQUESTS FOR PRODUCTION OF
DOCUMENTS AND REQUESTS FOR ADMISSION
ON AMTRAK – SET I, NOS. 19, 21-24
DOCKET NO. C-2016-2580526 and R-2016-2569976**

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.

Response:

Amtrak is unable to respond to this Interrogatory at this time because no final decision has been made as yet and no offer to purchase has been extended as of yet to PPL. When Amtrak determines the scope of the facilities that it needs to acquire for its intercity rail passenger transportation services, it promptly will inform PPL Electric and offer to purchase such facilities.

Response Provided by: Bart Bush (Vice President of Real Estate Stations and Facilities,
Amtrak)

Date: February 2, 2017

**INTERROGATORIES, REQUESTS FOR PRODUCTION OF
DOCUMENTS AND REQUESTS FOR ADMISSION
ON AMTRAK – SET I, NOS. 19, 21-24
DOCKET NO. C-2016-2580526 and R-2016-2569976**

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 and 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.

Response:

Although Amtrak has engaged appraisers to assess the value of various aspects of the Conestoga substation in anticipation of acquiring the facilities at that location, no final appraisal reports have been prepared to date and Amtrak has not yet taken any action in reliance upon any appraisal report. Further, Amtrak has not yet exercised its federal eminent domain authority. If and when Amtrak elects to exercise its federal eminent domain authority, the provisions of 49 U.S.C. § 24311 and Fed. R. Civ. P. 71.1 will govern any such disclosures regarding expert testimony (see **Attachment Amtrak-I-21**). Information regarding the advice or communications with other consultants that are not relied upon to provide expert testimony is subject to work product privilege. Accordingly, Amtrak cannot respond to this request.

Response Provided by: Bart Bush (Vice President of Real Estate Stations and Facilities, Amtrak) and McNees Wallace & Nurick, LLC (Counsel to Amtrak)

Date: February 2, 2017

49 USCS § 24311

Current through PL 114-327, approved 12/16/16.

United States Code Service - Titles 1 through 54 > TITLE 49. TRANSPORTATION > SUBTITLE V. RAIL PROGRAMS > PART C. PASSENGER TRANSPORTATION > CHAPTER 243. AMTRAK

§ 24311. Acquiring interests in property by eminent domain

(a) General authority.

- (1) To the extent financial resources are available, Amtrak may acquire by eminent domain under subsection (b) of this section interests in property--
 - (A) necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a governmental authority; or
 - (B) requested by the Secretary of Transportation in carrying out the Secretary's duty to design and build an intermodal transportation terminal at Union Station in the District of Columbia if the Secretary assures Amtrak that the Secretary will reimburse Amtrak.
- (2) Amtrak may exercise the power of eminent domain only if it cannot--
 - (A) acquire the interest in the property by contract; or
 - (B) agree with the owner on the purchase price for the interest.

(b) Civil actions.

- (1) A civil action to acquire an interest in property by eminent domain under subsection (a) of this section must be brought in the district court of the United States for the judicial district in which the property is located or, if a single piece of property is located in more than one judicial district, in any judicial district in which any piece of the property is located. An interest is condemned and taken by Amtrak for its use when a declaration of taking is filed under this subsection and an amount of money estimated in the declaration to be just compensation for the interest is deposited in the court. The declaration may be filed with the complaint in the action or at any time before judgment. The declaration must contain or be accompanied by--
 - (A) a statement of the public use for which the interest is taken;
 - (B) a description of the property sufficient to identify it;
 - (C) a statement of the interest in the property taken;
 - (D) a plan showing the interest taken; and
 - (E) a statement of the amount of money Amtrak estimates is just compensation for the interest.
- (2) When the declaration is filed and the deposit is made under paragraph (1) of this subsection, title to the property vests in Amtrak in fee simple absolute or in the lesser interest shown in the declaration, and the right to the money vests in the person entitled to the money. When the declaration is filed, the court may decide--
 - (A) the time by which, and the terms under which, possession of the property is given to Amtrak; and
 - (B) the disposition of outstanding charges related to the property.
- (3) After a hearing, the court shall make a finding on the amount that is just compensation for the interest in the property and enter judgment awarding that amount and interest on it. The rate of interest is 6

percent a year and is computed on the amount of the award less the amount deposited in the court from the date of taking to the date of payment.

- (4) On application of a party, the court may order immediate payment of any part of the amount deposited in the court for the compensation to be awarded. If the award is more than the amount received, the court shall enter judgment against Amtrak for the deficiency.

(c) Authority to condemn rail carrier property interests.

- (1) If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation, Amtrak may apply to the Surface Transportation Board for an order establishing the need of Amtrak for the interest and requiring the carrier to convey the interest on reasonable terms, including just compensation. The need of Amtrak is deemed to be established, and the Board, after holding an expedited proceeding and not later than 120 days after receiving the application, shall order the interest conveyed unless the Board decides that--
- (A) conveyance would impair significantly the ability of the carrier to carry out its obligations as a common carrier; and
- (B) the obligations of Amtrak to provide modern, efficient, and economical rail passenger transportation can be met adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain under subsection (a) of this section.
- (2) If the amount of compensation is not determined by the date of the Board's order, the order shall require, as part of the compensation, interest at 6 percent a year from the date prescribed for the conveyance until the compensation is paid.
- (3) Amtrak subsequently may reconvey to a third party an interest conveyed to Amtrak under this subsection or prior comparable provision of law if the Board decides that the reconveyance will carry out the purposes of this part [49 USCS §§ 24101 et seq.], regardless of when the proceeding was brought (including a proceeding pending before a United States court on November 28, 1990).

History

(July 5, 1994, P.L. 103-272, § 1(e), 108 Stat. 915.)

(As amended July 6, 2012, P.L. 112-141, Div C, Title II, Subtitle I, Part III, § 32932(c)(2), 126 Stat. 829.)

Prior law and revision:

 Revised Section Source (U.S. Code) Source (Statutes at Large)

24311(a) ... 45:545(d)(1) (less Oct. 30, 1970, Pub. L. words between 91-518, 84 Stat. 1327, Sec. 11th comma and 305(d)(1); added Nov. 3, proviso). 1973, Pub. L. 93-146, Sec. 6, 87 Stat. 550; restated Oct. 28, 1974, Pub. L. 93-496, Sec. 6, 88 Stat. 1528; Feb. 5, 1976, Pub. L. 94-210, Sec. 706(g), 90 Stat. 125; May 30, 1980, Pub. L. 96-254, Sec. 206(a), 94 Stat. 412.

24311(b)(1) ... 45:545(d)(1) (words

USCS Fed Rules Civ Proc R 71.1

Current through changes received January 17, 2017.

USCS Court Rules > Federal Rules of Civil Procedure > Title IX. Special Proceedings

Rule 71.1. Condemning Real or Personal Property

- (a) **Applicability of Other Rules.** These rules govern proceedings to condemn real and personal property by eminent domain, except as this rule provides otherwise.
- (b) **Joinder of Properties.** The plaintiff may join separate pieces of property in a single action, no matter whether they are owned by the same persons or sought for the same use.
- (c) **Complaint.**
- (1) *Caption.* The complaint must contain a caption as provided in Rule 10(a). The plaintiff must, however, name as defendants both the property—designated generally by kind, quantity, and location—and at least one owner of some part of or interest in the property.
 - (2) *Contents.* The complaint must contain a short and plain statement of the following:
 - (A) the authority for the taking;
 - (B) the uses for which the property is to be taken;
 - (C) a description sufficient to identify the property;
 - (D) the interests to be acquired; and
 - (E) for each piece of property, a designation of each defendant who has been joined as an owner or owner of an interest in it.
 - (3) *Parties.* When the action commences, the plaintiff need join as defendants only those persons who have or claim an interest in the property and whose names are then known. But before any hearing on compensation, the plaintiff must add as defendants all those persons who have or claim an interest and whose names have become known or can be found by a reasonably diligent search of the records, considering both the property's character and value and the interests to be acquired. All others may be made defendants under the designation "Unknown Owners."
 - (4) *Procedure.* Notice must be served on all defendants as provided in Rule 71.1(d), whether they were named as defendants when the action commenced or were added later. A defendant may answer as provided in Rule 71.1(e). The court, meanwhile, may order any distribution of a deposit that the facts warrant.
 - (5) *Filing; Additional Copies.* In addition to filing the complaint, the plaintiff must give the clerk at least one copy for the defendants' use and additional copies at the request of the clerk or a defendant.
- (d) **Process.**
- (1) *Delivering Notice to the Clerk.* On filing a complaint, the plaintiff must promptly deliver to the clerk joint or several notices directed to the named defendants. When adding defendants, the plaintiff must deliver to the clerk additional notices directed to the new defendants.
 - (2) *Contents of the Notice.*
 - (A) **Main Contents.** Each notice must name the court, the title of the action, and the defendant to whom it is directed. It must describe the property sufficiently to identify it, but need not describe any property other than that to be taken from the named defendant. The notice must also state:

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- (i) that the action is to condemn property;
 - (ii) the interest to be taken;
 - (iii) the authority for the taking;
 - (iv) the uses for which the property is to be taken;
 - (v) that the defendant may serve an answer on the plaintiff's attorney within 21 days after being served with the notice;
 - (vi) that the failure to so serve an answer constitutes consent to the taking and to the court's authority to proceed with the action and fix the compensation; and
 - (vii) that a defendant who does not serve an answer may file a notice of appearance.
- (B) Conclusion. The notice must conclude with the name, telephone number, and e-mail address of the plaintiff's attorney and an address within the district in which the action is brought where the attorney may be served.
- (3) *Serving the Notice.*
- (A) Personal Service. When a defendant whose address is known resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States, personal service of the notice (without a copy of the complaint) must be made in accordance with Rule 4.
- (B) Service by Publication.
- (i) A defendant may be served by publication only when the plaintiff's attorney files a certificate stating that the attorney believes the defendant cannot be personally served, because after diligent inquiry within the state where the complaint is filed, the defendant's place of residence is still unknown or, if known, that it is beyond the territorial limits of personal service. Service is then made by publishing the notice—once a week for at least three successive weeks—in a newspaper published in the county where the property is located or, if there is no such newspaper, in a newspaper with general circulation where the property is located. Before the last publication, a copy of the notice must also be mailed to every defendant who cannot be personally served but whose place of residence is then known. Unknown owners may be served by publication in the same manner by a notice addressed to "Unknown Owners."
 - (ii) Service by publication is complete on the date of the last publication. The plaintiff's attorney must prove publication and mailing by a certificate, attach a printed copy of the published notice, and mark on the copy the newspaper's name and the dates of publication.
- (4) *Effect of Delivery and Service.* Delivering the notice to the clerk and serving it have the same effect as serving a summons under Rule 4.
- (5) *Amending the Notice; Proof of Service and Amending the Proof.* Rule 4(a)(2) governs amending the notice. Rule 4(l) governs proof of service and amending it.
- (e) **Appearance or Answer.**
- (1) *Notice of Appearance.* A defendant that has no objection or defense to the taking of its property may serve a notice of appearance designating the property in which it claims an interest. The defendant must then be given notice of all later proceedings affecting the defendant.
 - (2) *Answer.* A defendant that has an objection or defense to the taking must serve an answer within 21 days after being served with the notice. The answer must:
 - (A) identify the property in which the defendant claims an interest;
 - (B) state the nature and extent of the interest; and
 - (C) state all the defendant's objections and defenses to the taking.

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- (3) *Waiver of Other Objections and Defenses; Evidence on Compensation.* A defendant waives all objections and defenses not stated in its answer. No other pleading or motion asserting an additional objection or defense is allowed. But at the trial on compensation, a defendant—whether or not it has previously appeared or answered—may present evidence on the amount of compensation to be paid and may share in the award.
- (f) **Amending Pleadings.** Without leave of court, the plaintiff may—as often as it wants—amend the complaint at any time before the trial on compensation. But no amendment may be made if it would result in a dismissal inconsistent with Rule 71.1(i)(1) or (2). The plaintiff need not serve a copy of an amendment, but must serve notice of the filing, as provided in Rule 5(b), on every affected party who has appeared and, as provided in Rule 71.1(d), on every affected party who has not appeared. In addition, the plaintiff must give the clerk at least one copy of each amendment for the defendants' use, and additional copies at the request of the clerk or a defendant. A defendant may appear or answer in the time and manner and with the same effect as provided in Rule 71.1(e).
- (g) **Substituting Parties.** If a defendant dies, becomes incompetent, or transfers an interest after being joined, the court may, on motion and notice of hearing, order that the proper party be substituted. Service of the motion and notice on a nonparty must be made as provided in Rule 71.1(d)(3).
- (h) **Trial of the Issues.**
- (1) *Issues Other Than Compensation; Compensation.* In an action involving eminent domain under federal law, the court tries all issues, including compensation, except when compensation must be determined:
- (A) by any tribunal specially constituted by a federal statute to determine compensation; or
 - (B) if there is no such tribunal, by a jury when a party demands one within the time to answer or within any additional time the court sets, unless the court appoints a commission.
- (2) *Appointing a Commission; Commission's Powers and Report.*
- (A) **Reasons for Appointing.** If a party has demanded a jury, the court may instead appoint a three-person commission to determine compensation because of the character, location, or quantity of the property to be condemned or for other just reasons.
 - (B) **Alternate Commissioners.** The court may appoint up to two additional persons to serve as alternate commissioners to hear the case and replace commissioners who, before a decision is filed, the court finds unable or disqualified to perform their duties. Once the commission renders its final decision, the court must discharge any alternate who has not replaced a commissioner.
 - (C) **Examining the Prospective Commissioners.** Before making its appointments, the court must advise the parties of the identity and qualifications of each prospective commissioner and alternate, and may permit the parties to examine them. The parties may not suggest appointees, but for good cause may object to a prospective commissioner or alternate.
 - (D) **Commission's Powers and Report.** A commission has the powers of a master under Rule 53(c). Its action and report are determined by a majority. Rule 53(d), (e), and (f) apply to its action and report.
- (i) **Dismissal of the Action or a Defendant.**
- (1) *Dismissing the Action.*
- (A) **By the Plaintiff.** If no compensation hearing on a piece of property has begun, and if the plaintiff has not acquired title or a lesser interest or taken possession, the plaintiff may, without a court order, dismiss the action as to that property by filing a notice of dismissal briefly describing the property.
 - (B) **By Stipulation.** Before a judgment is entered vesting the plaintiff with title or a lesser interest in or possession of property, the plaintiff and affected defendants may, without a court order, dismiss

the action in whole or in part by filing a stipulation of dismissal. And if the parties so stipulate, the court may vacate a judgment already entered.

(C) By Court Order. At any time before compensation has been determined and paid, the court may, after a motion and hearing, dismiss the action as to a piece of property. But if the plaintiff has already taken title, a lesser interest, or possession as to any part of it, the court must award compensation for the title, lesser interest, or possession taken.

(2) *Dismissing a Defendant.* The court may at any time dismiss a defendant who was unnecessarily or improperly joined.

(3) *Effect.* A dismissal is without prejudice unless otherwise stated in the notice, stipulation, or court order.

(j) Deposit and Its Distribution.

(1) *Deposit.* The plaintiff must deposit with the court any money required by law as a condition to the exercise of eminent domain and may make a deposit when allowed by statute.

(2) *Distribution; Adjusting Distribution.* After a deposit, the court and attorneys must expedite the proceedings so as to distribute the deposit and to determine and pay compensation. If the compensation finally awarded to a defendant exceeds the amount distributed to that defendant, the court must enter judgment against the plaintiff for the deficiency. If the compensation awarded to a defendant is less than the amount distributed to that defendant, the court must enter judgment against that defendant for the overpayment.

(k) **Condemnation Under a State's Power of Eminent Domain.** This rule governs an action involving eminent domain under state law. But if state law provides for trying an issue by jury—or for trying the issue of compensation by jury or commission or both—that law governs.

(l) **Costs.** Costs are not subject to Rule 54(d).

History

(Added Aug. 1, 1951; July 1, 1963; Aug. 1, 1985; Aug. 1, 1987; Aug. 1, 1988; Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle B, § 7050, *102 Stat. 4401*; Dec. 1, 1993; Dec. 1, 2003; Dec. 1, 2007; As amended Dec. 1, 2009.)

Annotations

Notes

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Other provisions:

Amendments:

1988.

Other provisions:

Notes of Advisory Committee (Original report). General Statement. 1. Background. When the Advisory Committee was formulating its recommendations to the Court concerning rules of procedure, which subsequently became the Federal Rules of 1938, the Committee concluded at an early stage not to fix the procedure in condemnation cases. This is a matter principally involving the exercise of the federal power of eminent domain, as very few condemnation cases involving the state's power reach the United States District Courts. The Committee's reasons at that time were that inasmuch as condemnation proceedings by the United States are governed by

**INTERROGATORIES, REQUESTS FOR PRODUCTION OF
DOCUMENTS AND REQUESTS FOR ADMISSION
ON AMTRAK – SET I, NOS. 19, 21-24
DOCKET NO. C-2016-2580526 and R-2016-2569976**

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 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.

Response:

Although Amtrak has engaged appraisers to assess the value of various aspects of the Conestoga substation in anticipation of acquiring the facilities at that location, no final appraisal reports have been prepared to date and Amtrak has not yet taken any action in reliance upon any appraisal report. Further, Amtrak has not yet exercised its federal eminent domain authority. If and when Amtrak elects to exercise its federal eminent domain authority, the provisions of 49 U.S.C. § 24311 and Fed. R. Civ. P. 71.1 will govern any such disclosures regarding expert testimony (see **Attachment Amtrak-I-21**). Information regarding the advice or communications with other consultants that are not relied upon to provide expert testimony is subject to work product privilege. Accordingly, Amtrak cannot respond to this request.

Response Provided by: Bart Bush (Vice President of Real Estate Stations and Facilities, Amtrak) and McNees Wallace & Nurick, LLC (Counsel to Amtrak)

Date: February 2, 2017

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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 reasons and reasoning in detail.

Response:

Although Amtrak has engaged appraisers to assess the value of various aspects of the Conestoga substation in anticipation of acquiring the facilities at that location, no final appraisal reports have been prepared to date and Amtrak has not yet taken any action in reliance upon any appraisal report. Further, Amtrak has not yet exercised its federal eminent domain authority. If and when Amtrak elects to exercise its federal eminent domain authority, the provisions of 49 U.S.C. § 24311 and Fed. R. Civ. P. 71.1 will govern any such disclosures regarding expert testimony (see **Attachment Amtrak-I-21**). Information regarding the advice or communications with other consultants that are not relied upon to provide expert testimony is subject to work product privilege. Accordingly, Amtrak cannot respond to this request.

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Date: February 2, 2017