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February 10, 2017

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**RE: National Railroad Passenger Corporation v. PPL Electric Utilities Corporation;  
Docket No. C-2016-2580526**


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

Dear Secretary Chiavetta:

Attached please find for filing with the Pennsylvania Public Utility Commission the Answer of the National Railroad Passenger Corporation ("Amtrak") to the "Second Motion of PPL Electric Utilities Corporation to Compel Responses to Discovery Propounded on National Railroad Passenger Corporation – Set I," dated February 7, 2017. As shown on the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Pamela C. Polacek

Counsel to National Railroad Passenger Corporation ("Amtrak")

Enclosures

c: Certificate of Service  
Administrative Law Judge David A. Salapa (via Email and First Class Mail)

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Pamela C. Polacek

Counsel to National Railroad Passenger  
Corporation

Dated this 10th day of February, 2017, at Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>NATIONAL RAILROAD PASSENGER CORPORATION</b>	:	
	:	
<b>COMPLAINANT</b>	:	<b>Docket No. C-2016-2580526</b>
	:	
<b>v.</b>	:	
	:	
<b>PPL ELECTRIC UTILITIES CORPORATION,</b>	:	
	:	
<b>RESPONDENT</b>	:	
	:	
<b>PPL ELECTRIC UTILITIES CORPORATION SUPPLEMENT NO. 213 TO TARIFF ELECTRIC PA PUC NO. 201 FOR RATE SCHEDULE LPEP</b>	:	<b>Docket No. R-2016-2569975</b>
	:	

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**ANSWER OF NATIONAL RAILROAD PASSENGER CORPORATION TO SECOND MOTION TO COMPEL RESPONSES TO DISCOVERY PROPOUNDED BY PPL ELECTRIC UTILITIES CORPORATION**

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Pursuant to 52 Pa. Code § 5.342(g)(1) of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, and Prehearing Order #2 and Prehearing Order #3 in the above-docketed proceedings, National Railroad Passenger Corporation ("Amtrak") hereby submits this Answer to the Second Motion of PPL Electric Utilities Corporation ("PPL") to Compel Responses to Discovery Propounded on National Railroad Passenger Corporation – Set I ("Second Motion to Compel") dated February 7, 2017. For the reasons set forth below, Amtrak respectfully requests that the Commission reject PPL's Second Motion to Compel. In support of this Answer, Amtrak avers as follows:<sup>1</sup>

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<sup>1</sup> Any of PPL's averments in support of its Second Motion to Compel that are not expressly addressed by Amtrak herein are denied.

## I. INTRODUCTION

1. The Second Motion to Compel and this Answer arose from a discovery dispute between PPL and Amtrak regarding interrogatories propounded by PPL upon Amtrak on January 11, 2017 (“PPL to Amtrak Set I”). A copy of PPL to Amtrak Set I is attached to this Answer as Appendix A.

2. On January 13, 2017, counsel for Amtrak contacted counsel for PPL to orally object to the following interrogatories in PPL to Amtrak Set I: Instructions and Definitions Nos. 15 and 16, and Interrogatory Nos. 14, 19-26, and 29.

3. On January 17, 2017, Amtrak served written objections to the above-referenced portions of PPL to Amtrak Set I. A copy of Amtrak's written objections is attached to this Answer as Appendix B. Furthermore, Amtrak's written objections to PPL to Amtrak Set I, Nos. 19 and 21-23 are restated and discussed in Section II of this Answer.

4. On January 18, 2017, counsel for PPL and Amtrak attempted to informally resolve the objections. PPL agreed to withdraw PPL to Amtrak Set I, No. 14. The parties were unable to resolve Amtrak's objections with respect to PPL to Amtrak Set I, Instructions and Definitions Nos. 15 and 16, and Interrogatory Nos. 19-26 and 29.<sup>2</sup>

5. On January 20, 2017, PPL filed a Motion to Dismiss Objections and Compel Responses to PPL to Amtrak Set I, Nos. 19-26 and 29 (“First Motion to Compel”). Amtrak filed an Answer to PPL’s First Motion to Compel on January 24, 2017 (“January 24 Answer”).

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<sup>2</sup>Amtrak objected to items 15 and 16 in PPL to Amtrak Set I's Instructions and Definitions, yet PPL's First Motion to Compel, dated January 20, 2017, did not address that objection. Accordingly, Amtrak did not foresee the need to further discuss that objection in its January 24, 2017, Answer to PPL's First Motion to Compel.

6. On January 30, 2017, the Commission e-served Amtrak with an Order granting in part PPL's First Motion to Compel ("Discovery Order") directing Amtrak to provide answers to PPL to Amtrak Set I, Nos. 19 and 21-24 within three days.<sup>3</sup>

7. On February 2, 2017, Amtrak served its responses to PPL to Amtrak Set I, Nos. 19 and 21-24. A copy of these responses is attached as Appendix C. Furthermore, these responses are restated and discussed in Section II of this Answer. PPL interpreted Amtrak's responses for PPL to Amtrak Set I, Nos. 19 and 21-23 to be "nonresponsive" and therefore perceived them as noncompliant with the Discovery Order.

8. Counsel for PPL and Amtrak corresponded on February 3, 2017 in an effort to resolve the dispute regarding PPL to Amtrak Set I, Nos. 19 and 21-23. On February 6, 2017, counsel for Amtrak informed counsel for PPL that Amtrak views the responses as complete based on the status of the decisions that have been made regarding the forthcoming offer to purchase the Conestoga Substation, and that the assertions of privilege regarding certain requests are valid under the Federal Rules of Civil Procedure.

9. PPL continues to disingenuously insist that there is urgent need for responses to these interrogatories even though PPL agreed to a six-month suspension for Supplement No. 213. Amtrak consistently informed the parties that it would supplement these discovery responses as soon as the information they seek becomes known and available to Amtrak. Accordingly, as set forth below, Amtrak respectfully requests that the PUC deny PPL's Second Motion to Compel and provide that Amtrak need not further respond to PPL to Amtrak Set I, Nos. 19 and 21-23.

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<sup>3</sup> Administrative Law Judge ("ALJ") David Salapa signed the Discovery Order on January 27, 2017 but indicated by email that the three-day period for responding to PPL's interrogatories in compliance with the Discovery Order would begin on January 30, 2017.

## II. ARGUMENT

### A. Amtrak's February 2, 2017 Response to PPL to Amtrak Set I, No. 19 Is Satisfactory And No Further Response Should Be Required.

10. 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.

11. Amtrak initially objected to PPL to Amtrak Set I, No. 19 as follows:

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.

12. After receiving the Discovery Order requiring Amtrak to respond to PPL to Amtrak Set I, Question No. 19, Amtrak responded 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.

13. PPL alleges that Amtrak's response to PPL to Amtrak Set I, No. 19 was nonresponsive. PPL alleges that Amtrak raised this issue in Paragraph 38 of its Complaint when it stated that Amtrak offered to purchase the Conestoga Substation, and therefore Amtrak cannot mention its intent to purchase the facilities in support of its position in this proceeding while at the same time contend that it does not have enough information to identify the extent of the property and/or facilities it intends to acquire. PPL further alleges this information will impact the outcome of this proceeding in determining the appropriate rate to charge under Rate Schedule LPEP, and, in lieu of submitting a response in connection with the terms of the Discovery Order, Amtrak merely provided a new objection after the time period for objections had passed.

14. One may intend to do something without having immediately formed a plan on how it will accomplish its objective. As indicated by its response to PPL to Amtrak Set I, No. 19, Amtrak cannot further respond to this Interrogatory at this time because no final decision has been made about the exact property and substation equipment that will be included in forthcoming offer to purchase the Conestoga Substation. Amtrak is in the process of finalizing the details of the offer, but decisions regarding the requests in subsections (a) and (b) will not be finalized until the offer is conveyed. Amtrak cannot, and is not required to, provide an answer to discovery based upon speculation. Amtrak cannot speak on matters of which it has no knowledge and, therefore, it should reasonably be permitted to supplement any initial responses later once the facts are determined. *See Royster v. McGowan Ford, Inc.*, 439 A.2d 799, 802-804 (Pa. Super. Ct. 1981)

(recognizing that during the early stages of a case, a party may not have all of the facts to formulate a comprehensive response to the interrogatory, and thus a party could seasonably supplement the responses to interrogatories in cases where it lacked sufficient information to answer an interrogatory at the time it was served); *see also Koch v. Exide Corp.*, 1989 U.S. Dist. LEXIS 5083, \*8 (E.D. Pa. 1989) (holding that the defendant reasonably objected to interrogatories on the ground that the questions are vague and call for speculation). Once Amtrak conveys the offer, Amtrak will supplement the response to this interrogatory with relevant, non-privileged information that responds to the request.

Notably, Amtrak has provided PPL with responses to subsections (c) and (d) of PPL to Amtrak Set I, No. 19 when it responded to PPL to Amtrak Set I, No. 24, which asked:

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.

Amtrak responded:

- (a) Amtrak seeks to acquire, operate and maintain the facilities at the Conestoga substation.
- (b) Amtrak does not seek to acquire, operate or maintain the four transmission lines between the Conestoga Substation and the Pennsylvania-Maryland border.
- (c) Amtrak does not seek to acquire, operate or maintain the transmission line right-of-way between the Conestoga Substation and the Pennsylvania-Maryland border.



Amtrak can provide this information because a final decision has been made to exclude the transmission lines and transmission right-of-way. Amtrak will supplement its response to PPL to Amtrak, No. 19 to incorporate responses to subsections (c) and (d). Amtrak has not made final decision regarding subsections (a) and (b). The Commission cannot require Amtrak to provide further response to this question where there is no further information available to respond with. Accordingly, Amtrak respectfully submits the PUC must reject PPL's Second Motion to Compel.

**B. Amtrak's February 2, 2017 Responses to PPL to Amtrak Set I, Nos. 21-23 Are Satisfactory And No Further Responses Should Be Required.**

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.

16. Amtrak's objection to PPL to Amtrak Set I, No. 21 is as follows:

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.

17. After receiving the Discovery Order requiring Amtrak to respond to PPL to Amtrak Set I, Question No. 21, Amtrak responded as follows:

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.

18. 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.

19. Amtrak's objection to PPL to Amtrak Set I, No. 22, is as follows:

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.

20. After receiving the Discovery Order requiring Amtrak to respond to PPL to Amtrak Set I, Question No. 22, Amtrak responded as follows:

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.

21. 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.

22. Amtrak's objection to PPL to Amtrak Set I, No. 23 was as follows:

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.

23. After receiving the Discovery Order requiring Amtrak to respond to

PPL to Amtrak Set I, Question No. 23, Amtrak responded as follows:

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.

24. PPL alleges that Amtrak's answers to PPL to Amtrak Set I, Nos. 21-23 are nonresponsive and states Amtrak cannot withhold information on its condemnation plans on the basis that it will make the information available in a later proceeding when it attempts to exercise its federal eminent domain authority. PPL further avers that Amtrak must produce further information on these questions because the PUC determined such information is relevant to this proceeding. PPL also claims that Amtrak cannot assert in its responses that the information requested is protected by privilege because this objection was not included in Amtrak's initial objections, and even if privilege was asserted it wouldn't apply here because PPL does not seek communications between Amtrak and its counsel or Amtrak's experts and Amtrak's counsel. Instead, PPL avers it seeks discovery of the "facts known and opinions held" by Amtrak's expert.

25. As indicated in Paragraph 14 of this Answer, at this time Amtrak has not finalized the scope of the forthcoming offer. Amtrak also has not finalized the compensation that it will include in that offer. Amtrak expects to finalize and convey the offer within the next two weeks. As a result, Amtrak does not have information to respond to PPL to Amtrak Set I, Nos. 22 and 23. Accordingly, Amtrak cannot provide information which it does not have. Once Amtrak conveys the offer, Amtrak will supplement the response to this interrogatory with relevant, non-privileged information that responds to the request.

26. Although the PUC previously determined that the information in these interrogatories may be relevant to this proceeding, if PPL does not voluntarily sell the Conestoga Substation to Amtrak after the offer is conveyed, then the parties will be involved in federal court litigation. Amtrak's responses to PPL to Amtrak Set I, Nos. 21-23, noted the applicability of the

Federal Rules of Civil Procedure to any contemplated condemnation proceeding carried out by Amtrak. Amtrak respectfully submits that, as noted in its original objections to PPL to Amtrak Set I, Nos. 21 and 22, the Federal Rules of Civil Procedure will apply to the disclosures in this matter. PPL should not be allowed at this time to use this proceeding to institute a jurisdictional dispute between the PUC and the federal court to expand the information that it can obtain from Amtrak beyond the discovery that is permitted by the Federal Rules of Civil Procedure.

Rule 26 of the Federal Rules of Civil Procedure governs discovery of experts in proceedings. FED. R. CIV. P. 26. Rule 26(a)(2)(A) indicates that parties may seek discovery of experts who are identified as likely to be called at trial to present evidence. *Id.* at 26(a)(2)(A). Until a party calls an expert to testify, the consultant or expert is a non-testifying expert and not subject to discovery. Pennsylvania has parallel provisions in the Pennsylvania Rules of Civil Procedure, Rule 4003.5. Pa. R. CIV. P. 4003.5. The Explanatory Note to Rule 4003.5 clearly explains that non-testifying witnesses are immune from discovery, except in “exceptional circumstances.”

Amtrak has not identified an appraiser as a witness in this proceeding. Also, Amtrak has not determined whether it will call the appraisers as experts to testify in the condemnation proceeding. The appraisers were retained by McNeese Wallace & Nurick, LLC (“McNeese”) to assist with the preparation of the offer to PPL. At this time, the appraisers are non-testifying experts and are immune from discovery under both the Federal Rules of Civil Procedure and the Pennsylvania Rules of Civil Procedure. Moreover, contrary to PPL’s apparent belief, Pennsylvania Rule of Civil Procedure Rule 4003.5(a)(4) classifies communications between Amtrak’s attorneys and the non-testifying experts as subject to privilege. PA. R. CIV. P. 4003.5(a)(4).

Even if Amtrak's witnesses ultimately are identified as testifying experts, some or all of the information requested in PPL to Amtrak Set I, Nos. 21, 22 and 23 may remain subject to further privileges, such as drafts of the expert reports or most communications with Amtrak's attorneys. FED. R. CIV. P. at 26(b). When Amtrak completes the offer and supplements its responses to the interrogatories, Amtrak will identify any applicable privilege claims if the status of the appraisers has changed at that time (i.e., if the appraisers will be testifying experts).

Finally, Amtrak's assertion of privilege is not an objection – it is an answer that some or all the information requested is or may be privileged. Regarding PPL to Amtrak Set I, No. 21, that information remains non-discoverable unless and until Amtrak decides to call an appraiser as a witness. For PPL to Amtrak Set I, Nos. 22 and 23, the privilege claim is being asserted along with the primary response that until the offer is finalized, Amtrak cannot provide an answer to the discovery response. Once that occurs, Amtrak will revised the responses and any privilege claims that may apply.

**III. CONCLUSION**

27. Amtrak should not be compelled to respond to PPL to Amtrak Set I, Nos. 19 and 21-23 for the reasons specified herein.

**WHEREFORE**, Amtrak requests that PPL's Second Motion to Compel be denied with prejudice and the Commission grant Amtrak such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to National Railroad Passenger  
Corporation

Dated: February 10, 2017





# APPENDIX A



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January 11, 2017

***VIA E-MAIL & REGULAR MAIL***

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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)**

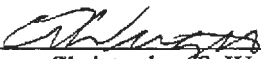
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA E-MAIL & FIRST CLASS MAIL**

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PA Public Utility Commission  
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P.O. Box 3265  
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	:	

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

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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



Pamela C. Polacek  
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ppolacek@mcneeslaw.com

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.mwvl.com](http://www.mwvl.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).

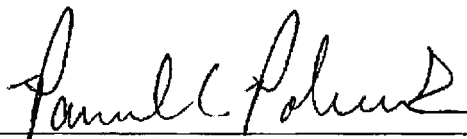
**VIA E-MAIL AND FIRST CLASS MAIL**

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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**

<b>NATIONAL RAILROAD PASSENGER CORPORATION</b>	:	
	:	
<b>COMPLAINANT</b>	:	<b>Docket No. C-2016-2580526</b>
	:	
<b>v.</b>	:	
	:	
<b>PPL ELECTRIC UTILITIES CORPORATION,</b>	:	
	:	
<b>RESPONDENT</b>	:	
	:	
<b>PPL ELECTRIC UTILITIES CORPORATION SUPPLEMENT NO. 213 TO TARIFF ELECTRIC PA PUC NO. 201 FOR RATE SCHEDULE LPEP</b>	:	<b>Docket No. R-2016-2569975</b>
	:	

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

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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**

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**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**

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**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**

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**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.

**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**

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**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.



**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**

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**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.

**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**

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**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.

**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-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.

**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**

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**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.

**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**

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**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.

**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**

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**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.

**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**

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**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.

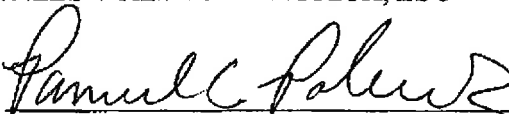
**NATIONAL RAILROAD PASSENGER CORPORATION OBJECTIONS TO  
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
PROPOUNDED BY PPL ELECTRIC UTILITIES CORPORATION – SET I**

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

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Respectfully submitted,

MCNEES WALLACE & NURICK, LLC

By 

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Counsel to National Railroad Passenger  
Corporation

Dated: January 17, 2017



## APPENDIX C



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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 printed name.

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

[www.mwn.com](http://www.mwn.com)

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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).

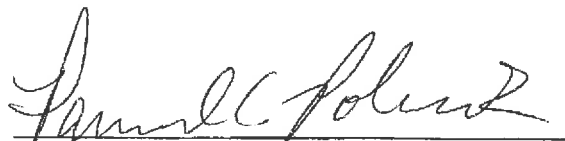
**VIA E-MAIL AND FIRST CLASS MAIL**

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Pamela C. Polacek

Counsel to National Railroad Passenger  
Corporation

Dated this 2<sup>nd</sup> 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**

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**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

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(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 words between 11th comma and proviso).	Oct. 30, 1970, Pub. L. 91-518, <u>84 Stat. 1327</u> , Sec. 305(d)(1); added Nov. 3, 1973, <u>Pub. L. 93-146</u> , Sec. 6, <u>87 Stat. 550</u> ; 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, <u>Pub. L. 96-254</u> , Sec. 206(a), <u>94 Stat. 412</u> .
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**

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**(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:



## USCS Fed Rules Civ Proc R 71.1

- (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.

- (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

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(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

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### 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

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**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.

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

**Date:** February 2, 2017

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**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.

**Response:**

- (a) Amtrak seeks to acquire, operate and maintain the facilities at the Conestoga substation.
- (b) Amtrak does not seek to acquire, operate or maintain the four transmission lines between the Conestoga Substation and the Pennsylvania-Maryland border.
- (c) Amtrak does not seek to acquire, operate or maintain the transmission line right-of-way between the Conestoga Substation and the Pennsylvania-Maryland border.

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

**Date:** February 2, 2017