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May 31, 2017

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265


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

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

Dear Secretary Chiavetta:

Enclosed for filing is PPL Electric Utilities Corporation's Answer to Motion to Dismiss of National Railroad Passenger Corporation in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,


Christopher T. Wright

CTW/jl
Enclosures

cc: Honorable David A. Salapa
Certificate of Service

CERTIFICATE OF SERVICE

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

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

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Date: May 31, 2017



Christopher T. Wright

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PPL ELECTRIC UTILITIES CORPORATION
ANSWER TO MOTION TO DISMISS OF
NATIONAL RAILROAD PASSENGER CORPORATION**

TO ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA:

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Answer to the Motion to Dismiss filed by the National Railroad Passenger Corporation (“Amtrak”). Amtrak requests that the Pennsylvania Public Utility Commission (“Commission”) dismiss the above-captioned rate proceeding for lack of subject matter jurisdiction. Amtrak also requests that the procedural schedule be immediately suspended until such time as the Commission reaches a decision on the merits of Amtrak’s Motion to Dismiss and any appeals therefrom. Amtrak’s Motion to Dismiss is premised entirely on the fact that Amtrak filed a Complaint for Condemnation and Declaration of Taking (collectively, the “Condemnation Complaint”) with the federal court on April 17, 2017, seeking to condemn PPL Electric’s Conestoga Substation pursuant to 49 U.S.C. § 24311. Amtrak’s Motion to Dismiss is fundamentally flawed and without merit for several reasons.

First, this proceeding before the Commission is a base rate proceeding, not a condemnation proceeding. The Commission unequivocally has jurisdiction over public utility

rates and services. Second, as a matter of law, unless and until the federal court (i) approves the condemnation and (ii) determines the time and terms under which possession of the Conestoga Substation will be given to Amtrak, if at all, PPL Electric will continue to be in possession of and operate the Conestoga Substation in accordance with its statutory obligation to provide safe and reliable utility service to the public. Third, Amtrak's jurisdictional argument inappropriately assumes that its request to condemn the Conestoga Substation will be approved by the federal court. PPL Electric is actively opposing Amtrak's attempt to condemn the Conestoga Substation. Fourth, Amtrak's condemnation filing specifically carves out a continuing "floating easement" for PPL Electric. As a result, even if Amtrak's condemnation filing is fully approved, PPL Electric will continue to have a property interest in and will operate facilities and will be provide public utility service subject to the jurisdiction of the Commission and the Federal Energy Regulatory Commission ("FERC"). Fifth, there is a serious question whether Amtrak may be a public utility subject to the regulatory jurisdiction of the Commission and FERC if it ultimately condemns the Conestoga Substation. Finally, Amtrak's request for an indefinite suspension of this base rate proceeding is beyond the authority granted in 66 Pa.C.S. § 1308(b) and is based entirely on unknown and speculative events that may or may not occur in the future.

For these reasons, as further explained below, Amtrak's requests that the above-captioned rate proceeding be dismissed and the procedural schedule be suspended are without merit and should be denied. In support of this Answer, PPL Electric states as follows:

I. INTRODUCTION AND BACKGROUND

On March 31, 2015, PPL Electric filed its 2015 distribution base rate case at Docket No. R-2015-2469275. As part of its general rate increase, PPL Electric proposed, among other things, to increase the monthly distribution charge for Rate Schedule LPEP from \$37,100.00 per

month to \$252,647.17 per month. The proposed increase in the Rate Schedule LPEP distribution charge was due to substantial capital upgrades required to PPL Electric's facilities at the Conestoga Substation. The upgrades needed at the Conestoga Substation were initially to be completed and placed in-service on or before December 31, 2016, *i.e.*, before the end of the fully projected future test year.

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

On September 3, 2015, a Joint Petition for Settlement was filed in PPL Electric's 2015 base rate case ("2015 Rate Case Settlement") at Docket No. R-2015-2469275. PPLICA joined the 2015 Rate Case Settlement on behalf of Amtrak. With respect to Rate Schedule LPEP, the 2015 Rate Case Settlement provided as follows:

29. PPL Electric and National Railroad Passenger Corporation ("Amtrak") agree that for purposes of settlement of this proceeding the customer charge for Rate Schedule LPEP will be reduced from the proposed \$252,647.17 per month to \$126,323.59 per month, effective January 1, 2016, subject to further resolution of the issues as described in Paragraphs 30 and 31 below.

30. PPL Electric and Amtrak agree to continue to work together to resolve all open issues regarding the upgrade of the Conestoga Substation, including possible alternative resolution regarding the final scope, timing, and costs of the upgrades needed for the Conestoga Substation. PPL Electric and Amtrak agree to make good faith efforts to conclude the negotiations and execute a final agreement by no later than September 1, 2016.

31. PPL Electric and Amtrak agree that PPL Electric will submit a further tariff filing for Rate Schedule LPEP to reflect (i) the negotiated agreement ultimately reached by PPL Electric and Amtrak or (ii) the fact PPL Electric and Amtrak were unable to reach an agreement by September 1, 2016.

See 2015 Rate Case Settlement, ¶¶ 29-31. On November 19, 2015, the Commission approved the 2015 Rate Case Settlement and pro forma tariff pages attached thereto. See *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Order entered Nov. 19, 2015).

PPL Electric and Amtrak also agreed to address the upgrades needed at the Conestoga Substation separately outside of Amtrak's interest as a member of PPLICA. On September 16, 2015, PPL Electric and Amtrak entered into a Mutual Settlement Agreement ("Mutual Agreement"). A true and correct copy of the Mutual Agreement is provided as **Appendix A**. Pursuant thereto, PPL Electric and Amtrak agreed as follows:

7. PPL Electric and Amtrak agree to continue to work together to resolve all open issues regarding the upgrade of the Conestoga Substation, including possible alternative resolution regarding the final scope, timing, and costs of the upgrades needed for the Conestoga Substation. Both parties agree to consider all potential solutions, including, but not limited to, direct funding by Amtrak, purchase of the Conestoga Substation by Amtrak, recovery of costs through base rates, and/or transfer of 2 existing Amtrak transformers from the Metuchen Station to the Conestoga Substation. PPL Electric and Amtrak agree to make good faith efforts to conclude the negotiations and execute a final agreement by no later than September 1, 2016.

8. PPL Electric and Amtrak agree that upon reaching an agreement regarding the Conestoga Substation, PPL Electric will submit a further tariff filing for Rate Schedule LPEP to reflect the negotiated agreement ultimately reached by PPL Electric and Amtrak.

9. If PPL Electric and Amtrak are unable to reach an agreement by September 1, 2016, **PPL Electric will undertake all improvements needed for the Conestoga Substation** that are in its opinion necessary or proper to provide safe and reliable service to Amtrak, **and will make an appropriate tariff filing to fully recover those costs**. PPL Electric agrees to serve Amtrak with an electronic copy of the tariff filing upon submission to the Pa. PUC. Amtrak reserves all rights **to contest the tariff filing before the Pa. PUC**.

See Appendix A, ¶¶ 7-9 (emphasis added).

Pursuant to the 2015 Rate Case Settlement and Mutual Agreement, PPL Electric and Amtrak continued to work together to resolve all open issues regarding the upgrade of the Conestoga Substation. However, PPL Electric and Amtrak were unable to reach an agreement regarding the upgrade of the Conestoga Substation by September 1, 2016.

As a result of and in accordance with the express terms of the 2015 Rate Case Settlement and Mutual Agreement, on October 5, 2016, PPL Electric filed Supplement No. 213. Supplement No. 213, if approved, will result in an increase to the Rate Schedule LPEP monthly distribution charge from the \$126,323.59 per month approved in the 2015 Rate Case Settlement to \$319,671.00 per month. As proposed in Supplement No. 213, the proposed increase in the Rate Schedule LPEP monthly distribution charge will become effective on the date the Conestoga Substation upgrade is completed and placed in service.

As provided in the 2015 Rate Case Settlement and Mutual Agreement, Amtrak challenged the rate increase proposed in Supplement No. 213 by filing a Complaint and New Matter with the Commission on October 5, 2016, at Docket No. C-2016-2580526. In its Complaint and New Matter, Amtrak threatened that it would seek to condemn the Conestoga Substation if PPL Electric did not agree to Amtrak's proposals regarding cost recovery for the upgrades to the Conestoga Substation. On December 22, 2016, PPL Electric filed an Answer and New Matter to Amtrak's Complaint.

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

On January 4, 2017, Amtrak filed a Petition requesting that Supplement No. 213 be suspended indefinitely or, in the alternative, suspended for a total of nine months. In its Petition, Amtrak again threatened PPL Electric with condemnation if PPL Electric did not agree to Amtrak's cost recovery proposals for the upgrades to the Conestoga Substation. On January 5, 2017, PPL Electric filed an Answer opposing Amtrak's request for an indefinite suspension, and agreeing that Supplement No. 213 should be suspended for a total of nine months, *i.e.*, until October 1, 2017. By order entered January 19, 2017, the Commission denied Amtrak's request for an indefinitely suspension and further suspended Supplement No. 213 until October 1, 2017.

A procedural schedule was adopted in Prehearing Order #2 dated January 6, 2017, and subsequently modified in Prehearing Order #3 dated January 23, 2017. Thereafter, PPL Electric and Amtrak mutually agreed to stay the schedule for a total of 60 days to allow the parties additional time to settle the proposed rate increase pending before the Commission. In order to accommodate the 60-day stay of the proceeding, PPL Electric voluntarily further suspended Supplement No. 213 until January 1, 2018. Although PPL Electric and Amtrak agreed to suspend the procedural schedule for a total of 60 days, the parties did not agree that PPL Electric would discontinue the work and improvements necessary to the Conestoga Substation during this 60-day period.

Rather than engaging in good faith negotiations to resolve the rate proceeding pending before the Commission, Amtrak used the 60-day stay of the proceeding to prepare and proceed with filing its Complaint for Condemnation and Declaration of Taking (collectively, the "Condemnation Complaint"), which was filed with the United States District Court for the Eastern District of Pennsylvania on April 17, 2017, at Docket No. 17-CV-1752. Immediately after filing the Condemnation Complaint, Amtrak illegally took possession of the Conestoga

Substation¹ and sought a restraining order to prevent PPL Electric from making any necessary improvements to the Conestoga Substation. However, on page 7 of its Motion to Dismiss, Amtrak states that in its condemnation filing a “floating easement” in the Conestoga Substation was preserved for PPL Electric to ensure it can continue to perform the service and obligations under a Transmission Contract and an Interconnection Service Agreement. Although there is no such thing as a “floating easement” in the law, it is clear from Amtrak’s own admission that it expects PPL Electric will have a property interest in the facilities at the Conestoga Substation and will continue to operate, maintain, and provide service through the Conestoga Substation even if it is ultimately condemned.

On May 11, 2017, PPL Electric filed an answer and objections to Amtrak’s Condemnation Complaint, challenging Amtrak’s authority to condemn PPL Electric’s utility facilities used to provide service to or for the public. A true and correct copy of PPL Electric’s answer and objections to the Condemnation Complaint is attached hereto as **Appendix B** (excluding exhibits).

On May 11, 2017, Amtrak filed the pending Motion to Dismiss. Amtrak requests that the above-captioned rate proceeding be dismissed because, according to Amtrak, the Commission lacks subject matter jurisdiction over the Conestoga Substation and the associated rates as a result of Amtrak’s Condemnation Complaint filed with the federal court. In its Motion to Dismiss, Amtrak also requests that the procedural schedule in this rate proceeding be immediately suspended until such time as the Commission has ruled on Amtrak’s Motion to Dismiss, as well as any appeals therefrom.

¹ As explained below, as a matter of law, Amtrak is not entitled to possession of the Conestoga Substation unless and until the federal court determines the time and terms under which possession of the Conestoga Substation will be given to Amtrak, if at all. *See* 49 U.S.C. §§ 24311(b)(2).

For the reasons explained below, Amtrak's Motion to Dismiss is premised entirely on a disputed material fact, is without legal merit, and should be denied.

II. STANDARD OF REVIEW

In this case, Amtrak has filed a "motion to dismiss" alleging that the Commission lacks jurisdiction over the pending rate proceeding. A "motion to dismiss" is not specifically provided for in the Commission's regulations. In Commission proceedings, motions to dismiss are typically treated as preliminary objections. *See, e.g., Application of Reading City Cab LLC for approval to transport persons in call or demand service from points in Berks and Lancaster Counties, to points in Pennsylvania and return*, Docket No. A-2016-2524649, 2016 Pa. PUC LEXIS 184 (ALJ Salapa Order entered May 5, 2016).

The Commission's Rule of Practice and Procedure at 52 Pa.Code § 5.101 permits parties to file preliminary objections, which are limited to the following grounds:

- (1) *Lack of Commission jurisdiction* or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa.Code § 5.101(a) (emphasis added). In this case, Amtrak's requesting that Supplement No. 213 be dismissed for lack of Commission jurisdiction. Thus, Amtrak's "motion to dismiss" should be treated as preliminary objections pursuant to 52 Pa.Code § 5.101(a)(1).

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa.Super. 1991). The Commission follows this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

In ruling on preliminary objections, or a motion to dismiss, the Commission may not rely upon the factual assertions of the moving party, but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A.2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa.Cmwlth. 1988). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003). Thus, the ALJ and Commission must view this case in the light most favorable to PPL Electric and should dismiss Supplement No. 213 only if it appears that PPL Electric would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation*

Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

As explained below, Amtrak has failed to demonstrate that it is entitled to a judgment as a matter of law and, therefore, its Motion to Dismiss must be denied.

III. ARGUMENT

A. THE COMMISSION CLEARLY HAS JURISDICTION OVER THIS UTILITY BASE RATE PROCEEDING

In its Motion to Dismiss, Amtrak argues that the Commission lacks jurisdiction over the pending base rate proceeding because Amtrak filed a Condemnation Complaint with the federal court seeking to condemn the Conestoga Substation pursuant Section 24311 of Title 49 of the United States Code, 49 U.S.C. § 24311. In support, Amtrak argues that under 49 U.S.C. § 24311 it took title to the Conestoga Substation and, therefore, PPL Electric no longer owns any of the equipment or facilities that form the basis for the pending base rate proceeding. Amtrak further argues that the federal court has exclusive jurisdiction over all matters related to the Conestoga Substation, and the Commission's jurisdiction over any charges related to the Conestoga Substation is preempted.

Amtrak's Motion to Dismiss is fundamentally flawed for numerous reasons. First, Amtrak's Motion to Dismiss fails to recognize that the proceeding currently pending before the Commission is not a condemnation proceeding. Rather, this proceeding involves a request to increase a base rate for utility service under Section 1308 of the Public Utility Code, 66 Pa.C.S. § 1308, which is unequivocally within the Commission's jurisdiction. Second, Amtrak incorrectly assumes that it is entitled to immediate possession and operation of the Conestoga Substation when Amtrak filed its declaration of taking and required deposit with the federal

court. However, as a matter of law, Amtrak is not entitled to immediate possession of and does not operate the equipment and facilities unless and until the federal court approves the condemnation and determines the time and terms under which possession of the Conestoga Substation will be given to Amtrak, if at all. Third, Amtrak's argument that the Commission lacks jurisdiction is based on the assumption that its request to condemn the Conestoga Substation will be approved by the federal court. PPL Electric is actively opposing Amtrak's authority to condemn the Conestoga Substation and it is entirely unknown if Amtrak's request to condemn the Conestoga Substation will be approved. Finally, Amtrak overlooks that if and when it acquires the Conestoga Substation, it will be a public utility and electric distribution company providing utility service subject to the Commission's and the FERC jurisdiction.

For these reasons, as further explained below, Amtrak's Motion to Dismiss for lack of Commission jurisdiction over this base rate proceeding must be denied.

1. The Proceeding Before The Commission Is A Base Rate Proceeding, Not A Condemnation Proceeding

Amtrak argues that the Commission lacks jurisdiction over the pending base rate increase because Amtrak has filed a Condemnation Complaint with the federal court under 49 U.S.C. § 24311. Amtrak argues repeatedly that the federal court has exclusive jurisdiction over its request to condemn the Conestoga Substation and, therefore, the Commission lacks jurisdiction over any matters related to the Conestoga Substation. The fundamental flaw with Amtrak's argument is that this proceeding before the Commission is a base rate proceeding, not a condemnation proceeding.

Section 24311 of Title 49 of the United States Code provides that Amtrak may seek to condemn an interest in property "necessary for intercity rail passenger transportation" by filing a declaration of taking in the district court of the United States for the judicial district where the

property is located. 49 U.S.C. §§ 24311(a)(1)(A), (b)(1). Clearly, the United States district courts have jurisdiction over Amtrak's requests to condemn interests in property "necessary for intercity rail passenger transportation." However, the proceeding before the Commission is not a condemnation proceeding.

The pending proceeding was initiated on October 5, 2016, when PPL Electric filed Supplement No. 213 with the Commission in accordance with the express terms of the 2015 Rate Case Settlement and Mutual Agreement. Supplement No. 213, if approved, will result in a base rate increase to the Rate Schedule LPEP monthly distribution charge from the \$126,323.59 per month approved in the 2015 Rate Case Settlement to \$319,671.00 per month. As proposed in Supplement No. 213, the proposed base rate increase in the Rate Schedule LPEP monthly distribution charge will become effective on the date the Conestoga Substation upgrade is completed and placed in service. Notably, there is nothing in Supplement No. 213 that would require the Commission to make any determination, finding, or conclusion regarding Amtrak's attempt to exercise the power of eminent domain to condemn the Conestoga Substation or any issues related to title to, possession of, or compensation for the Conestoga Substation.

Supplement No. 213 was filed as a non-general base rate increase for electric utility service pursuant to Section 1308(a) of the Public Utility Code. 66 Pa.C.S. § 1308(a). It is well-settled law that jurisdiction over matters involving the reasonableness of public utility rates is vested in the Commission and not in the courts. *Morrow v. Bell Telephone Co. of Pennsylvania*, 479 A.2d 548, 550 (Pa.Super. 1984) (quoting *DeFrancesco v. Western Pennsylvania Water Co.*, 435 A.2d 614, 616 (Pa.Super. 1981)). The Commission has sole and exclusive jurisdiction for regulating utility base rates and evaluating proposed tariffs, and "it has particular expertise over such matters." *Springfield Twp. v. Pa. PUC*, 676 A.2d 304, 308 (Pa.Cmwlth. 1996) (citing

Optimum Image, Inc. v. Philadelphia Electric Co., 600 A.2d 553 (Pa.Super. 1991)). Although the federal courts may have jurisdiction over Amtrak's request to condemn property under 49 U.S.C. §§ 24311, the Commission unequivocally has jurisdiction over the pending base rate proceeding.

Further, the base rate increase proposed in Supplement No. 213 is based on PPL Electric's statutory obligation in 66 Pa.C.S. § 1501 to provide safe and reliable service. It is undisputed that the facilities at the Conestoga Substation are in very poor condition and must be replaced. Indeed, Amtrak agreed that the Conestoga Substation needs to be upgraded due to the age and general condition of equipment in the substation. *See* Appendix A, ¶ 1.). It is well-settled law that jurisdiction over matters involving the reasonableness, adequacy or sufficiency of a public utility's service and facilities is vested in the Commission and not in the courts. *Morrow*, 479 A.2d at 550. Thus, the Commission unequivocally has jurisdiction over PPL Electric and the reliability and safety of its service and facilities.

In an effort to avoid the Commission's clear jurisdiction over this base rate proceeding, Amtrak argues that federal court's jurisdiction over Amtrak's request to condemn the Conestoga Substation preempts the Commission from further consideration of this pending base rate proceeding. The courts have explained, however, that the party seeking to invoke preemption has the obligation to prove that the federal law covers the same subject matter as the state law, regulation or order it seeks to preempt. *United Transp. Union v. Pa. PUC*, 68 A.3d 1026, 1033 (Pa. Cmwlth. May 20, 2013) (citing *BNSF Ry. Co. v. Swanson*, 533 F.3d 618 (8th Cir. 2008)). Contrary to Amtrak's assertion, the federal condemnation authority granted in 49 U.S.C. §§ 24311 does not preempt the Commission's jurisdiction over public utility rates, services, or facilities.

There are three ways federal law can preempt state law:

First, state law may be preempted where the United States Congress enacts a provision which expressly preempts the state enactment. [Second], preemption may be found where Congress has legislated in a field so comprehensively that it has implicitly expressed an intention to occupy the given field to the exclusion of state law. Finally, a state enactment will be preempted where a state law conflicts with a federal law. Such a conflict may be found in two instances, when it is impossible to comply with both federal and state law or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Office of Disciplinary Counsel v. Marcone, 579 Pa. 1, 17, 855 A.2d 654, 664 (2004) (internal citations and quotes omitted).

There is nothing in 49 U.S.C. §§ 24311 that grants federal courts any jurisdiction over utility rates and service, or otherwise expressly preempts the Commission from exercising its jurisdiction over public utility base rates. Indeed, 49 U.S.C. §§ 24311(b)(2)(B) expressly limits the federal courts' jurisdiction only to "the disposition of outstanding charges related to the property." Supplement No. 213 does not pertain to "outstanding charges" related to the Conestoga Substation. Rather, Supplement No. 213 is a prospective rate that, if approved, will become effective on the date the Conestoga Substation upgrade is completed and placed in service.

Further, the federal court's jurisdiction over Amtrak's request for condemnation granted in 49 U.S.C. §§ 24311 does not pertain or relate to public utility rates or service. As stated on page 12 of Amtrak's Motion to Dismiss, federal eminent domain actions are *in rem* proceedings that adjudicate a right in specific property.² See *U.S. v. Sid-Mars Restaurant & Lounge, Inc.*,

² Actions in rem are instituted to enforce a right to things, and adjudicate a right in specific property, while actions in personam are those in which an individual is charged personally. *Koken v. Denis*, 2004 U.S. Dist. LEXIS 6506 (M.D. Pa. 2004); see also

644 F.3d 270, 275 (5th Cir. 2011). However, as Amtrak correctly concedes on page 13 of its Motion to Dismiss, “[t]he pending proceeding here is based on the Commission’s jurisdiction to review a proposed tariff change for PPL; the proceeding is not an *in rem* proceeding regarding the Conestoga Substation.” Accordingly, by Amtrak’s own admission, the pending PUC proceeding and the pending federal eminent domain proceeding do not pertain or relate to the same thing. Therefore, no conflict exists between the Commission’s jurisdiction in this proceeding and the federal court’s jurisdiction under 49 U.S.C. §§ 24311.

In a further effort to demonstrate a conflict, Amtrak cites several federal cases for the proposition that the Commission’s jurisdiction in this proceeding conflicts with the federal court’s jurisdiction in the condemnation proceeding. Amtrak’s reliance on these cases is misplaced.

Amtrak first cites to *National R. Passenger Corp. v. Pa. PUC*, 848 F.2d 436 (3d Cir. Pa. June 6, 1988) for the proposition that the Commission lacks jurisdiction over the pending rate proceeding because it would conflict with the federal condemnation proceeding. However, the issue before the Third Circuit was not whether the Commission lacked jurisdiction as suggested by Amtrak. Rather, the issue decided was whether a federal statute that expressly exempted Amtrak from any taxes or other fees imposed by any state also covered a special assessment levied by a state agency for the construction of railroad grade crossing improvements. There is nothing in Third Circuit’s holding that suggests that the Commission’s jurisdiction over public utility rates and services is preempted if federal condemnation proceeding is initiated.

Likewise, Amtrak’s reliance on the holding in *Amtrak v. Caln Twp.*, 2010 U.S. Dist. LEXIS 1876 (E.D. Pa. 2010) is misplaced. In *Amtrak*, the District Court enjoined a municipality from imposing local ordinances against Amtrak. The District Court’s holding is entirely

unrelated to public utility rates or services, the Commission's jurisdiction, or federal condemnation of public utility property.

Amtrak also cites *UGI Utils., Inc. v. Nat'l R.R. Passenger Corp.*, 2004 U.S. Dist. LEXIS 29305 (M.D. Pa. 2004) and *Nat'l R.R. Passenger Corp. v. Colonial Pipeline*, No. 05-2267, 2006 WL 236788 (D. Md. 2006) for the proposition that the Commission lacks jurisdiction over the pending rate proceeding because it would conflict with the federal condemnation proceeding. Both of these cases cited by Amtrak held that public utility actions under state law to condemn Amtrak's property were preempted by federal law. Although public utilities may be preempted by federal law from condemning Amtrak's property, the matter before the Commission is not a condemnation proceeding -- it is a base rate proceeding.

Amtrak's attempt to claim that the Commission is preempted from adjudicating the pending base rate proceeding falls short of demonstrating that Amtrak is entitled to judgment as a matter of law. The matter pending before the Commission is not a condemnation proceeding, and the Commission is not being asked to make any findings, determinations, or conclusions regarding title, possession, or just compensation related to Amtrak's attempt to condemn the Conestoga Substation. Rather, the matter pending before the Commission is a utility base rate proceeding, which is properly and exclusively within the jurisdiction of the Commission. There is nothing in 49 U.S.C. §§ 24311 or the case law cited by Amtrak that stands for the proposition that the Commission's exclusive jurisdiction over public utility base rates, service, and safety somehow vests in the federal courts if Amtrak attempts to condemn public utility property.

Based on the foregoing, Amtrak's claim that the Commission lacks jurisdiction over the base rate increase requested in Supplement No. 213 is without merit and must be denied.

2. Amtrak Is Not Entitled To Immediate Possession Of And Does Not Operate The Conestoga Substation

In an effort to avoid the Commission's clear jurisdiction over the requested base rate increase, Amtrak argues that the Commission lacks jurisdiction because, under 49 U.S.C. §§ 24311(b)(2), title to the Conestoga Substation was transferred to Amtrak when it filed its declaration of taking and required deposit. According to Amtrak, because it has title to the property that is the basis for PPL Electric's proposed rate increase to Rate Schedule LPEP, the Commission no longer has a jurisdictional basis upon which to continue the pending rate proceeding.

Although title to the Conestoga Substation passes to Amtrak upon filing its declaration of taking and required deposit, Amtrak incorrectly asserts that it is entitled to immediate possession of and operation of the equipment and facilities used to provide electric utility service to or for the public. Indeed, the law is clear that, if Amtrak's request to condemn property is approved, the federal court will determine "the time by which, and the terms under which, possession of the property is given to Amtrak." 49 U.S.C. §§ 24311(b)(2). Thus, contrary to Amtrak's assertion, it is not entitled to immediate possession of and does not operate the equipment and facilities used to provide electric utility service to or for the public.

Additionally, as explained in the section below, PPL Electric is actively opposing Amtrak's authority to condemn public utility facilities and it is entirely unknown if Amtrak's request to condemn the Conestoga Substation will be approved. Thus, unless and until the federal court (i) approves the condemnation and (ii) determines the time and terms under which possession of the Conestoga Substation will be given to Amtrak, if at all, PPL Electric will continue to be in possession of and operate the Conestoga Substation in accordance with its statutory obligation to provide safe and reliable utility service to the public.

Based on the foregoing, contrary to Amtrak's assertion, its claim to title of the Conestoga Substation alone is not sufficient to deprive this Commission of jurisdiction over this base rate proceeding.

3. Amtrak's Motion To Dismiss Is Premised On The Disputed Assumption That Amtrak Will Ultimately Be Able To Condemn And Take Possession Of PPL Electric's Conestoga Substation

Amtrak's argument that the Commission lacks jurisdiction is based entirely on its federal condemnation of the Conestoga Substation. Although Amtrak has filed its Condemnation Complaint with the federal court, the fundamental flaw with Amtrak's jurisdictional argument is that it inappropriately assumes that its request to condemn the Conestoga Substation will be approved by the federal court.

PPL Electric has filed an answer to Amtrak's Condemnation Complaint and is actively opposing Amtrak's authority to condemn public utility facilities. *See* Attachment B. Amtrak's assumption that its request to condemn the Conestoga Substation will be approved by the federal court is clearly a disputed material fact. Indeed, it is entirely unknown if Amtrak's request to condemn the Conestoga Substation will be approved as further explained below.

First, there is a serious question whether the federal court currently has jurisdiction over Amtrak's request to condemn PPL Electric's Conestoga Substation. The Conestoga Substation is currently used to provide public utility service subject to the regulatory jurisdiction of the Commission and FERC. Although 49 U.S.C. § 24311 provides Amtrak with authority to condemn property "necessary for intercity rail passenger transportation," the federal court does not have jurisdiction over Amtrak's request to condemn the Conestoga Substation until Amtrak obtains a certificate of public convenience from the Commission for the transfer of the property,

as required by 66 Pa.C.S. § 1102(a)(3),³ and until Amtrak receives FERC approval under Section 203 of the Federal Power Act, 16 U.S.C. § 824b, to condemn the property.⁴ Accordingly, the federal court does not have jurisdiction over Amtrak's request to condemn the Conestoga Substation unless and until Amtrak obtains the appropriate approvals from the Commission and FERC.

Second, and importantly, there is a significant material dispute whether Amtrak has authority to condemn PPL Electric's facilities used to provide utility service to the public. Amtrak is authorized to condemn property "necessary for intercity rail passenger transportation" as required by 49 U.S.C. § 24311(a)(1)(A). There is serious doubt that Amtrak needs to condemn the Conestoga Substation for intercity rail passenger transportation. Prior to Amtrak's request to condemn the Conestoga Substation, PPL Electric was already providing Amtrak with the electric service that it requires for its intercity rail passenger transportation service. Indeed, PPL Electric had adequately provided that electric service to Amtrak (and its predecessors) for

³ Section 1102(a)(3) of the Public Utility Code provides that Commission approval is required before any property used and useful in providing service to the public may be transferred "by any method or device whatsoever." 66 Pa.C.S. § 1102(a)(3). *Public Serv. Water Co. v. Pennsylvania Pub. Util. Comm'n*, 645 A.2d 423, 427 (Pa. Cmwlth. 1994) (holding that 66 Pa.C.S. § 1102(a)(3) is "prohibitive" rather than "regulatory," such that property may not be transferred until *after* the PUC approves an application for a certificate of public convenience).

⁴ Section 203 of the Federal Power Act provides: "No public utility shall, without first having secured an order of the Commission authorizing it to do so—(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of \$10,000,000." See *Public Service Company of Colorado*, 149 FERC ¶ 61,228 (Dec. 18, 2014) ("A transfer by condemnation of facilities subject to the Commission's jurisdiction under the FPA cannot be effectuated unless the Commission has authorized the transfer under section 203 of the FPA."). Indeed, FERC has stated that Congress's intent in enacting Section 203 "was to ensure that the Commission maintain oversight of any transfer of jurisdictional utility property," *Cent. Illinois Pub. Serv. Co.*, 42 FERC ¶ 61,073, at 61,328 (1988), because such transfers may "impair the ability of public utilities to render adequate service or impede, or tend to impede, the coordination in the public interest of facilities subject to the jurisdiction of the Commission." *Enova Corp. & Pac. Enterprises*, 79 FERC ¶ 61,107, at 61,490 (1997).

83 years. The purpose for which Amtrak seeks to condemn the Conestoga Substation is the exact same purpose for which the Conestoga Substation is already in use -- to provide electric service to Amtrak. As such, Amtrak's condemnation is not "necessary for intercity rail passenger transportation." 49 U.S.C. § 24311(a)(1)(A).

Third, the public purpose that Amtrak has asserted for taking the Conestoga Substation is pretextual. Despite expressly agreeing to a tariff filing before the Commission in both the 2015 Rate Case Settlement and Mutual Agreement, Amtrak's true purpose for the condemnation is to avoid the proper and ongoing Commission proceeding applicable to PPL Electric's rates for the electric public utility service provided to Amtrak. For years, Amtrak and PPL Electric have been negotiating the how the required upgrades to the Conestoga Substation would be paid for. Although the parties discussed alternative methods of funding the upgrades, those alternatives never included Amtrak's forceful taking of the Conestoga Substation through the exercise of eminent domain. Yet, in this proceeding, Amtrak threatened PPL Electric with condemnation if it did not agree to Amtrak's proposals regarding the method of funding the upgrades to the Conestoga Substation. Amtrak thus used the threat of eminent domain to attempt to coerce PPL Electric to agree to its proposals, and when that threat did not work, it sought to condemn the Conestoga Substation to avoid litigating the base rate proceeding before the Commission. Condemning property to avoid litigating the base rate proceeding before the Commission is not a proper public purpose.

Fourth, Amtrak acted in bad faith and breached the Commission-approved 2015 Rate Case Settlement and Mutual Agreement by filing of the Condemnation Complaint. The Commission-approved 2015 Rate Case Settlement provides, in pertinent part, as follows:

31. PPL Electric and Amtrak agree that PPL Electric **will submit a further tariff filing for Rate Schedule LPEP to reflect**

(i) the negotiated agreement ultimately reached by PPL Electric and Amtrak or (ii) **the fact PPL Electric and Amtrak were unable to reach an agreement by September 1, 2016.**

See 2015 Rate Case Settlement, ¶ 31 (emphasis added). Likewise, the Mutual Agreement between Amtrak and PPL Electric provides, in pertinent part, as follows:

9. If PPL Electric and Amtrak are unable to reach an agreement by September 1, 2016, **PPL Electric will undertake all improvements needed for the Conestoga Substation that are in its opinion necessary or proper to provide safe and reliable service to Amtrak, and will make an appropriate tariff filing to fully recover those costs.** PPL Electric agrees to serve Amtrak with an electronic copy of the tariff filing upon submission to the Pa. PUC. **Amtrak reserves all rights to contest the tariff filing before the Pa. PUC.**

See Appendix A, ¶ 9 (emphasis added).

Under both the Commission-approved 2015 Rate Case Settlement and Mutual Agreement, Amtrak expressly agreed that if it could not reach an agreement with PPL Electric by September 1, 2016, PPL Electric would begin working on the improvements to the Conestoga Substation and would submit a tariff filing with the Commission to fully recover the costs for the Conestoga Substation upgrades. Thus, Amtrak expressly agreed to a specific procedure regarding the recovery of the costs for the Conestoga Substation project – a tariff filing with this Commission.

Moreover, Amtrak expressly agreed that its sole remedy for any disagreement with PPL Electric's upgrades to the Conestoga Substation and proposed rate change was to "contest the tariff filing before the Pa. PUC." The parties did not agree that Amtrak could condemn the Conestoga Substation if it disagreed with PPL Electric's rate change. Rather, its sole remedy was to participate in the Commission proceedings.

Amtrak's filing to condemn the Conestoga Substation is a material breach of both the Commission-approved 2015 Rate Case Settlement and the Mutual Agreement. Apparently,

Amtrak believes that it is not required to honor these agreements because it has federal eminent domain authority. Under Amtrak's theory, it would never have to honor any agreements or contracts related to property because it can simply condemn the property if it later decides it does not like the deal reached at the time of the agreement. This is an absolutely absurd approach that turns the entire theory of binding contract obligations on its head.

Finally, even assuming, *arguendo*, that Amtrak's request to condemn the Conestoga Substation will be approved, which it will not for the many reasons explained above, Amtrak concedes that PPL Electric will continue to have a property interest in and will operate facilities at the Conestoga Substation. Indeed, on page 7 of its Motion to Dismiss, Amtrak states that in its condemnation filing a "floating easement" in the Conestoga Substation was preserved to PPL Electric to ensure it can continue to perform the service and obligations under (1) the Transmission Contract between PPL Electric, Safe Harbor, and Baltimore Gas and Electric Company and (2) the Interconnection Service Agreement among PJM Interconnection, LLC, Safe Harbor, and PPL Electric. As a preliminary matter, it should be noted that there is no such thing as a "floating easement" in the law. Notwithstanding, it is clear from Amtrak's own admission that, even if Amtrak's condemnation filing is fully approved, it expects PPL Electric will continue to have a property interest in the facilities at the Conestoga Substation and will continue to operate, maintain, and provide service through the Conestoga Substation. Under these facts, the Commission and FERC clearly will have jurisdiction over the public utility services to be provided by PPL Electric through its interests in the Conestoga Substation.

Based on the foregoing, it is entirely uncertain whether the federal court will ultimately approve Amtrak's request to condemn the Conestoga Substation. Amtrak's entire Motion to Dismiss is based on the premise that it will condemn the Conestoga Substation. However, PPL

Electric is actively opposing Amtrak's attempt to condemn the Conestoga Substation as explained above, and the federal condemnation proceeding is ongoing. Despite its assumption to the contrary, Amtrak's request to condemn the Conestoga Substation is not final and has not been approved. Clearly, whether Amtrak will successfully condemn the Conestoga Substation is a disputed material fact and, on this basis alone, the requested relief cannot be granted. Moreover, even if Amtrak's does prevail in the ongoing disputed federal condemnation of the Conestoga Substation, Amtrak concedes that it expects PPL Electric will continue to have a property interest in and will operate facilities at the Conestoga Substation subject to the Commission's and FERC's jurisdiction. For these reasons, Amtrak's Motion to Dismiss for lack of jurisdiction must be dismissed.

4. If Amtrak Condemns the Conestoga Substation There Is A Serious Question Whether Amtrak Is A Public Utility Subject To The Regulatory Jurisdiction Of The Commission And FERC

While not directly relevant to its Motion to Dismiss, Amtrak argues that it is not a public utility subject to the Commission's jurisdiction. In support, Amtrak contends that it is not distributing electricity to or for the public and, instead, provides service only to itself. Although Amtrak asserts that it is not a public utility, there is a serious question whether Amtrak may be a public utility subject to the regulatory jurisdiction of the Commission and FERC if it ultimately condemns the Conestoga Substation.

Contrary to Amtrak's assertion that it does not provide electricity to or for the public, Amtrak stated in discovery in this proceeding that a portion of the power it obtains from the Conestoga Substation is delivered to and used by other rail operators, and the total costs are then allocated among Amtrak and the other rail operators. A true and correct copy of Amtrak's January 19, 2017 response to PPL to Amtrak-I-10 is attached hereto as **Attachment C**. Further, in written direct testimony submitted to the Public Service Commission of Maryland on or about

December 22, 1998, which is provided hereto as **Attachment D**, Amtrak describes its electric system as follows:

- Q. How does Amtrak transmit and distribute electricity?
- A. Amtrak transmits electricity on its own electrical infrastructure, which includes over 970 miles of transmission lines, plus an even more extensive catenary or distribution system.
- Q. Which utilities supply Amtrak with traction power required for use on the Northeast Corridor?
- A. Amtrak currently obtains electricity for traction power on the Northeast Corridor between New York and Washington from four suppliers: Pennsylvania Power & Light Company ("PP&L"), PECO Energy Company (formerly Philadelphia Electric Company) ("PECO"), BGE, and Consolidated Edison of New York ("ConEd").

* * *

- Q. Please describe Amtrak's power transmission system.
- A. ... Amtrak's transmission system forms a fully interconnected grid. Power is supplied to the grid at a number of points but is commingled over a single set of lines and is billed by PECO, PP&L, BGE and ConEd to Amtrak. Amtrak obtains this pooled power along its grid and uses approximately 50 percent of this power for its own use and resells approximately 50 percent of this pooled power to commuter railroad agencies.

See Attachment D, pp. 18-19, 21-22.

According to Amtrak's own description, it is clear that Amtrak uses its existing transmission system to provide electric utility service to other members of the public -- the other rail operators. Moreover, it is undisputed that PPL Electric has for numerous years used the Conestoga Substation to provide service to or for the public as a public utility regulated by the Commission and FERC. Thus, if Amtrak successfully condemns the Conestoga Substation,

Amtrak will also be using the very same facilities to provide regulated electric distribution and transmission service to other rail operators.

Based on the foregoing, there is a serious question whether Amtrak may be a public utility subject to the regulatory jurisdiction of the Commission and FERC if it ultimately condemns the Conestoga Substation. Amtrak's attempt to avoid the Commission's jurisdiction by claiming that it is not a public utility subject to the Commission's jurisdiction is, based on Amtrak's own description of its operations, a genuine issue of material fact that cannot support Amtrak's Motion to Dismiss.

B. A FURTHER SUSPENSION OF THE PROCEDURAL SCHEDULE IS NOT WARRANTED

In its Motion to Dismiss, Amtrak requests that the procedural schedule in this base rate proceeding be immediately suspended until such time as the ALJ and Commission rule on Amtrak's Motion to Dismiss and the parties pursue any appeals therefore. This is Amtrak's second request that Supplement No. 213 be suspended indefinitely. Amtrak's renewed request for a further suspension of the procedural schedule is without merit.

Amtrak's request for an immediate suspension is based on the premise that the Commission lacks jurisdiction over this base rate proceeding because Amtrak has filed a Condemnation Complaint with the federal court. As explained above, the fundamental flaw with this argument is that Amtrak's request to condemn the Conestoga Substation is currently being opposed and it is entirely unknown if and when Amtrak's condemnation request will be approved. PPL Electric has filed an answer and is actively opposing Amtrak's proposed condemnation of the Conestoga Substation. The resolution of Amtrak's request to condemn the Conestoga Substation could result in protracted litigation that could lead to a significant delay in the final resolution of the authority, scope, and limits of Amtrak ability to condemn public utility

facilities. Despite Amtrak's assumption to the contrary, it is entirely unknown if and when Amtrak's request to condemn the Conestoga Substation will be approved. Thus, Amtrak's request for an indefinite suspension is based on speculative events that may or may not occur at some unknown point in the future. Such speculation certainly does not justify indefinitely suspending Supplement No. 213 as requested by Amtrak.

Further, the Commission does not have authority to further suspend Supplement No. 213 as requested by Amtrak. PPL Electric filed Supplement No. 213 on October 5, 2016, to become effective January 1, 2017. By order issued January 19, 2017, the Commission suspended Supplement No. 213 until October 1, 2017, *i.e.*, a total of nine months from the effective date. Pursuant to 66 Pa.C.S. 1308(b), the Commission's authority to suspend a tariff in non-general rate proceedings is limited to a maximum of nine months from the time such rate would otherwise become effective. Thus, the Commission has already suspended the tariff for the maximum nine-months from the original effective date as allowed under Section 1308, and the Commission does not have authority under Section 1308 to further suspend the tariff beyond this 9-month suspension.

Although the Commission does not have authority to further suspend Supplement No. 213, PPL Electric and Amtrak mutually agreed to stay the schedule for a total of 60 days to allow the parties additional time to settle the proposed rate increase pending before the Commission.⁵ In order to accommodate the 60-day stay of the proceeding, PPL Electric voluntarily further suspended Supplement No. 213 until January 1, 2018. As such, unless PPL Electric further voluntarily suspends the tariff, Supplement No. 213 will become effective on January 1, 2018.

⁵ Rather than engaging in good faith negotiations to resolve the rate proceeding pending before the Commission, Amtrak used the 60-day stay of the proceeding to prepare and proceed with Condemnation Complaint.

If the procedural schedule is suspended as requested by Amtrak, or even slightly delayed, there will not be enough time for the parties to fully litigate Supplement No. 213, or for the Commission to reach a final decision by the January 1, 2018 effective date of Supplement No. 213. Again, PPL Electric is actively opposing Amtrak's attempt to condemn its public utility facilities, and it is entirely uncertain and speculative if and when the federal courts may approve Amtrak's condemnation request. Absent agreement by the parties, such speculative and uncertain events do not support Amtrak's request that the procedural schedule be immediately suspended, particularly where such a request would jeopardize the Commission's ability to reach a final decision on the merits by the January 1, 2018 effective date.⁶

Further, Amtrak will not be harmed if its request to indefinitely suspend this proceeding is denied. Amtrak overlooks that, as proposed in Supplement No. 213, the proposed increase in the Rate Schedule LPEP monthly distribution charge will become effective on the date the Conestoga Substation upgrade is completed and placed in service.⁷ If, as Amtrak speculates, the federal court ultimately approves Amtrak's attempt to condemn the Conestoga Substation, the upgrades to the Conestoga will not be completed and, therefore, the Rate Schedule LPEP monthly distribution charge to be set in this proceeding will not become effective. Meaning, that a suspension of Supplement No. 213 is not required because, by design, it will not become effective if the federal court approves the condemnation of the Conestoga Substation as speculated by Amtrak.

⁶ Notably, Supplement No. 213 would become effective if the Commission did not reach a final decision on the merits by the January 1, 2018 effective date.

⁷ PPL Electric explained in its written direct testimony submitted in this case that Conestoga Substation project is scheduled to be completed by November 2018. *See* PPL Electric Statement No. 2, p. 7.

If, however, the federal court rejects Amtrak's attempt to condemn the Conestoga Substation, the proper Rate Schedule LPEP monthly distribution charge will need to be determined by the Commission. Importantly, if Amtrak's indefinite suspension is granted, there will not be enough time for the parties to fully litigate Supplement No. 213 and for the Commission to reach a final decision by the January 1, 2018 effective date of Supplement No. 213.

Finally, it must be remembered that there is no dispute that the facilities at the Conestoga Substation are in poor condition and must be upgraded. Indeed, Amtrak agreed that the Conestoga Substation needs to be upgraded due to the age and general condition of equipment in the substation. *See* Appendix A, ¶ 1. As originally proposed and filed in the 2015 base rate case, the Conestoga Substation project was scheduled to be in-service by November 2016. Although PPL Electric and Amtrak agreed that PPL Electric would temporarily discontinue work on the Conestoga Substation until September 1, 2016, PPL Electric resumed work on the Conestoga Substation project⁸ and the Conestoga Substation project was scheduled to be completed and in-service by November 2018.⁹ Amtrak's effort to delay this proceeding will simply further delay these undisputed necessary upgrades to the Conestoga Substation.

Based on the foregoing, Amtrak's request for an indefinite suspension of Supplement No. 213 is beyond the authority granted in 66 Pa.C.S. § 1308(b) and is based entirely on unknown

⁸ PPL Electric and 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 scope and cost recovery of the upgrades needed at the Conestoga Substation. Both parties agreed to conclude negotiations by September 1, 2016. PPL Electric and Amtrak agreed that if they were unable to reach an agreement by the September 1, 2016 deadline, PPL Electric would "undertake all improvements needed for the Conestoga Substation that are in its opinion necessary or proper to provide safe and reliable service to Amtrak." *See* Appendix A, ¶¶ 4, 7, 9.

⁹ *See* PPL Electric Statement No. 3, p. 5-6.

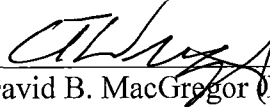
and speculative events that may or may not occur in the future. Therefore, Amtrak's request for an indefinite suspension of Supplement No. 213 must be denied.

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge David A. Salapa (i) deny Amtrak's Motion to Dismiss for lack of Commission jurisdiction, and (ii) deny Amtrak's renewed request for an indefinite suspension of Supplement No. 213.

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Counsel for PPL Electric Utilities Corporation

VERIFICATION

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF LEHIGH

I, Stephen J. Gelatko, Director- Distribution Asset Planning, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


STEPHEN J. GELATKO