



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Pamela C. Polacek
Direct Dial: 717.237.5368
Direct Fax: 717.260.1736
ppolacek@mcneeslaw.com

June 13, 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 Pa. P.U.C.
No. 201 for Rate Schedule LPEP; Docket No. R-2016-2569975**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") is the Petition of National Railroad Passenger Corporation ("Amtrak") for Interlocutory Review of Material Questions in the above-referenced proceeding. Pursuant to 52 Pa Code § 5.303, Amtrak respectfully requests that the PUC act on Amtrak's Petition for Interlocutory Review of Material Questions at its Public Meeting on July 13, 2017.

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

Respectfully submitted,

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 National Railroad Passenger Corporation

Enclosure

c: Administration Law Judge David Salapa (via E-mail and First-Class Mail)
Certificate of Service

www.McNeesLaw.com

Harrisburg, PA • Lancaster, PA • Scranton, PA • State College, PA • Columbus, OH • Frederick, MD • 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

Christopher T. Wright, Esq.
Post & Schell PC
17 North Second Street 12th Floor
Harrisburg, PA 17101-1601
cwright@postschell.com


Kimberly A. Klock, Esq.
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
kklock@pplweb.com

David B. MacGregor, Esq.
Post & Schell PC
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103
dmacgregor@postschell.com

Gina L. Miller, Esq.
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street, 2nd Floor West
Harrisburg, PA 17120
ginmiller@pa.gov

Alan M. Seltzer, Esq.
Brian C. Wauhop, Esq.
Buchanan Ingersoll & Rooney, PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
alan.seltzer@bipc.com
brian.wauhop@bipc.com

Shaun Logue, Esq.
Steve Eckert
Brookfield Energy Marketing LP
41 Victoria Street
Gatineau, QC J8X2A1
Canada
Via First Class Mail Only



Pamela C. Polacek

Counsel to National Railroad Passenger
Corporation

Dated this 13th day of June, 2017, at Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PETITION OF NATIONAL RAILROAD PASSENGER CORPORATION FOR INTERLOCUTORY REVIEW OF MATERIAL QUESTIONS

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

1. National Railroad Passenger Corporation ("Amtrak"), by undersigned counsel and pursuant to 52 Pa. Code § 5.302, respectfully submits this Petition for Interlocutory Review of Material Questions ("Petition") requesting that the Pennsylvania Public Utility Commission ("PUC" or "Commission") answer Material Questions that have arisen in the above-captioned proceeding.

Material Question #1: Whether the Administrative Law Judge's ("ALJ") June 7, 2017 Order dismissing Amtrak's May 11, 2017 Motion to Dismiss erred by allowing the continuation of a proceeding addressing issues that are moot or unripe for review due to the uncertainty that PPL Electric Utilities Corporation ("PPL") will upgrade the Conestoga Substation?¹

*Proposed Answer: Yes. Because Amtrak has lawful title to the property and equipment at the Conestoga Substation by operation of federal law, the sole basis for PPL's proposed Supplement No. 213 is gone; the Petition is now moot, and no case or controversy exists. At minimum, PPL's tariff change is not ripe for review, and further proceedings by PPL on its tariff change would violate the federal court order preventing PPL from making any alterations at the Conestoga Substation.*²

Material Question #2: Whether the ALJ's June 7, 2017 Order erred by concluding that the Commission's consideration of compensation due by Amtrak to PPL after April 18,

¹ The "Conestoga Substation" is the substation that connects Amtrak to the Safe Harbor Power Corporation's ("Safe Harbor") hydroelectric generation facility. As noted later herein, Amtrak acquired the Conestoga Substation and certain facilities and equipment that are used to provide power to Amtrak. A complete description of the acquired property can be found in Paragraphs 7-8 of Amtrak's Complaint for Condemnation (dated Apr. 17, 2017), Paragraphs 3-4 of Amtrak's Notice of Condemnation (dated Apr. 18, 2017), and Paragraphs 2-3 of Amtrak's Declaration of Taking (dated Apr. 17, 2017), filed under *National Railroad Passenger Corporation (AMTRAK) v. 4.0446 Acres More or Less of Land and Fixtures and PPL Electric Utilities Corporation* at Docket No. 17-CV-1752 at the United States District Court for the Eastern District of Pennsylvania. For ease of reference, throughout this Petition Amtrak will refer to the acquired property collectively as the "Conestoga Substation."

² See Appendix A hereto for a copy of the federal court order preventing PPL from making any alterations to the Conestoga Substation.

2017, is not preempted by 49 U.S.C. § 24311(b), Fed. R. Civ. P. 71.1 and the federal court order?

Proposed Answer: Yes. The plain language of 49 U.S.C. §24311 and Fed. R. Civ. P. 71.1 indicates that all outstanding charges related to the property are within the exclusive jurisdiction of the federal court. The Commission's continuation of the review of a hypothetical rate that would apply based on PPL's original (and now invalid) schedule and costs for the Conestoga Substation conflicts with the district court's jurisdiction and is preempted.

2. Review of the errors of fact and law contained in the June 7, 2017 Order is essential in order to prevent: the Commission from violating the Supremacy Clause of the U.S. Constitution; a violation of a federal court order; an intrusion on the exclusive jurisdiction of the federal court; substantial prejudice and the prospect of judicial waste; the creation of conflicting fact records; and collateral estoppel, or res judicata disputes regarding the outstanding charges related to the Conestoga Substation.

3. On October 5, 2016, PPL filed Supplement No. 213 to Tariff Electric Pa. P.U.C. No. 201 ("Supplement No. 213") for Rate Schedule LPEP under Docket No. R-2016-2569975. On December 19, 2016, Amtrak filed a Complaint and New Matter under Docket No. C-2016-2580526 opposing Supplement No. 213.³ On April 17, 2017, Amtrak filed a Complaint for Condemnation and Declaration of Taking, along with other supporting documentation, with the United States District Court for the Eastern District of Pennsylvania ("District Court") pursuant to Amtrak's federal eminent domain authority under 49 U.S.C. § 24311 and Fed. R. Civ. P. 71.1.⁴ On April 18, 2017, Amtrak submitted to the District Court a Notice of Condemnation and a deposit in the amount of Amtrak's estimate of the just compensation for the property and equipment that was specified in the Declaration of Taking. By operation of law on April 18, 2017, fee title to the Conestoga Substation transferred to Amtrak. Accordingly, PPL provides no electric distribution service to Amtrak. The Declaration of Taking preserved a floating easement for PPL to ensure PPL's continued ability to perform PPL's obligations to parties other than Amtrak under (1) the Transmission Contract ("TC") between PPL, Safe Harbor, and Baltimore Gas and Electric Company and (2) the Interconnection Service Agreement ("ISA") among PJM Interconnection, L.L.C. and Safe Harbor and PPL. On May 11, 2017, Amtrak filed a Motion to Dismiss the above-captioned proceeding with the PUC. On June 7, 2017, ALJ David Salapa issued an Order denying Amtrak's Motion to Dismiss.⁵

³ Amtrak's Complaint addressed the propriety of Supplement No. 213, while Amtrak's New Matter asserted PPL improperly charged Amtrak for service rendered as of September 1, 2016, and requested a refund and/or credit for Amtrak's overpayments after September 1, 2016. In an Order issued by the PUC on January 19, 2017, ALJ David Salapa denied Amtrak's New Matter. As a result, the proceeding carried forward and solely focused on Supplement No. 213. Amtrak continued to pay PPL at the rate in the current tariff through April 18, 2012.

⁴ Pursuant to 52 Pa. Code §§ 1.31(b) and 1.33, Amtrak incorporates by reference its eminent domain pleadings at the District Court, which include: the Complaint for Condemnation, Declaration of Taking, Notice of Condemnation, deposit, and all supporting documentation. Copies of these eminent domain filings were attached as Appendix A to Amtrak's Motion to Dismiss filed under the above-captioned proceeding.

⁵ PPL's tariff changes addressed only charges to Amtrak, not charges under the TC or ISA. Once Amtrak filed its Motion to Dismiss, Amtrak's participation in the above-captioned proceeding was limited to preservation of its federal court claims in

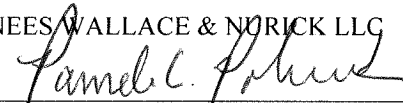
4. Assuming, *arguendo*, that PPL is successful in federal court challenging Amtrak's exercise of federal eminent domain authority and returning title to the Conestoga Substation to PPL, PPL could file a new Tariff Supplement at that time reflecting the new construction schedule and updated costs.

5. **WHEREFORE**, Amtrak requests that the Commission grant this Petition for Interlocutory Review and answer the Material Questions in the affirmative.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By:



Pamela C. Polacek (Pa. I.D. No. 78276)

Adeolu A. Bakare (Pa. I.D. No. 208541)

Alessandra L. Hylander (Pa. I.D. No. 320967)

McNees Wallace & Nurick LLC

100 Pine Street

Harrisburg, PA 17108-1166

Phone: (717) 232-8000

Fax: (717) 237-5300

ppolacek@mcneeslaw.com

abakare@mcneeslaw.com

ahylander@mcneeslaw.com

Dated: June 13, 2017

Counsel to National Railroad Passenger Corporation

National Railroad Passenger Corporation (AMTRAK) v. 4.0446 Acres More or Less of Land and Fixtures and PPL Electric Utilities Corporation, Civil Action-Law No. 17-CV-1752 (United States District Court for the Eastern District of Pennsylvania). Pursuant to *England v. La. State Bd. Of Med. Exam'rs*, 375 U.S. 411 (1964), *Instructional Sys., Inc. v. Computer Curriculum Corp.*, 35 F.3d 813, 820-21 (3d Cir. 1994), and *Bradley v. Pittsburg Bd. of Educ.*, 913 F. 2d 1064, 1071 (3d Cir. 1990), Amtrak reserved its statutory right to adjudicate issues related to the acquisition, transfer of possession, and disposition of outstanding charges related to the Conestoga Substation at the District Court.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) 60 Massachusetts Avenue, NE Washington, DC 20020	:	
	:	NO. 17-CV-1752
Plaintiff	:	
	:	
v.	:	CIVIL ACTION – LAW
	:	
4.0446 ACRES MORE OR LESS OF LAND AND FIXTURES located at Powerhouse Road, Manor Township Lancaster County, PA 17516	:	
	:	
and	:	
	:	
PPL ELECTRIC UTILITIES CORP. Two North Ninth Street Allentown, PA 18101	:	
	:	
Defendants	:	

STIPULATION AND [PROPOSED] ORDER

On May 22, 2017, Plaintiff National Railroad Passenger Corporation (“Amtrak”) and Defendant PPL Electric Utilities Corp. (“PPL”) reached the following stipulation:

1. PPL will not make any capital improvements, upgrades, or alterations of the physical conditions at the Conestoga Substation including to the real property or to any equipment located thereon without the prior approval of Amtrak’s

Assistant Division Engineer, Electric Traction Maintenance, Mid-Atlantic Division North, currently Frank Morris.

2. PPL will continue to perform normal operational and/or maintenance functions at the Conestoga Substation but will provide telephonic notice to Amtrak prior to performing these functions as per past practice.

3. The agreements set forth above shall remain in effect until further order of the Court. The parties will submit a proposed scheduling order regarding PPL's defenses to the Complaint in Condemnation in accordance with the Federal Rules of Civil Procedure and the local rules of court.

4. The Court will consider Amtrak's Motion for Temporary Restraining Order and Preliminary Injunction withdrawn upon the Court's approval of this Stipulation.

IT IS SO STIPULATED AND ORDERED.

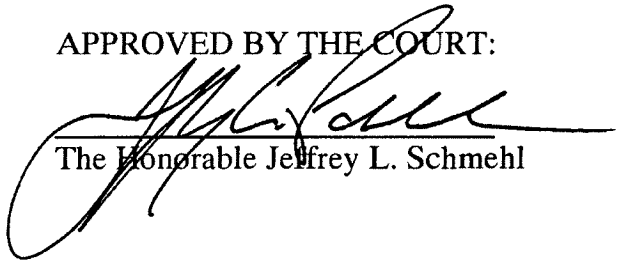
Dated: May 22, 2017

Respectfully Submitted,

<p>McNees Wallace & Nurick LLC</p> <p><u>/s/ Kandice K. Hull</u> Kandice K. Hull, Esquire 100 Pine Street, P.O. Box 1166 Harrisburg, PA 17108</p> <p><i>Counsel for National Railroad Passenger Corporation</i></p>	<p>Duane Morris LLP</p> <p><u>/s/ Patrick Loftus</u> Patrick Loftus, Esquire George J. Kroclicik, Esquire Meredith E. Carpenter, Esquire Sean P. McConnell, Esquire 30 South 17th Street Philadelphia, PA 19103</p> <p><i>Counsel for PPL Electric Utilities Corp.</i></p>
---	---

Date: *MAY 23, 2017*

APPROVED BY THE COURT:



The Honorable Jeffrey L. Schmehl

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2017, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system:

Patrick J. Loftus, Esquire
George J. Kroculick, Esquire
Meredith Carpenter, Esquire
Sean Patrick McConnell, Esquire
DUANE MORRIS, LLP
30 South 17th Street
Philadelphia, PA 19103

Attorneys for Defendant

/s/ Kandice Kerwin Hull
Kandice K. Hull
PA I.D. No. 86345
Dana W. Chilson
PA I.D. No. 208718
Sarah Hyser-Staub
PA I.D. No. 315989
100 Pine Street,
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
khull@mcneeslaw.com