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June 23, 2017

VIA ELECTRONIC FILING

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

Enclosed for filing is PPL Electric Utilities Corporation's Brief in Opposition to National Railroad Passenger Corporation's Petition for Interlocutory Review and Answer to Material Questions, in the above-referenced proceedings. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Christopher T. Wright

CTW/jl

Enclosures

cc: Honorable David A. Salapa
Certificate of Service

CERTIFICATE OF SERVICE

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

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

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Date: June 23, 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
BRIEF IN OPPOSITION TO
NATIONAL RAILROAD PASSENGER CORPORATION'S
PETITION FOR INTERLOCUTORY REVIEW
AND ANSWER TO MATERIAL QUESTIONS**

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I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL” or the “Company”) hereby files this Brief in Opposition to the Petition for Interlocutory Review and Answer to Material Questions (“Petition”) filed by the National Railroad Passenger Corporation (“Amtrak”). In its Petition, Amtrak seeks interlocutory review of the June 7, 2017 Order issued by Administrative Law Judge David A. Salapa (“ALJ”) that denied Amtrak’s Motion to Dismiss the above-captioned rate proceeding for lack of subject matter jurisdiction. Amtrak’s Motion to Dismiss and pending Petition are both premised entirely on the fact that Amtrak filed a Complaint for Condemnation and Declaration of Taking (“Condemnation Complaint”) with the United States District Court for the Eastern District of Pennsylvania (“District Court”) on April 17, 2017, seeking to condemn PPL’s Conestoga Substation pursuant to 49 U.S.C. § 24311.

In its Petition, Amtrak raises two issues for the Pennsylvania Public Utility Commission’s (“PUC”) interlocutory review. First, Amtrak argues that the ALJ erred in denying Amtrak’s Motion to Dismiss “by allowing the continuation of a proceeding addressing issues that are moot or unripe for review due to the uncertainty that [PPL] will upgrade the Conestoga Substation.” Second, Amtrak argues that the ALJ erred in denying Amtrak’s Motion to Dismiss “by concluding that the [PUC’s] consideration of compensation due by Amtrak to PPL after April 18, 2017, is not preempted by 49 U.S.C. § 24311(b), Fed. R.Civ. P. 71.7 and the federal court order.” Amtrak’s arguments are fundamentally flawed and without merit for several reasons.

First, this proceeding before the PUC is a base rate proceeding, not a condemnation proceeding. The PUC unequivocally has jurisdiction over public utility rates and services. Second, although Amtrak took title to the Conestoga Substation when it filed the Condemnation Complaint, PPL will, as a matter of law, continue to be in possession of and operate the

Conestoga Substation 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. PPL currently possess and will continue to operate the facilities and equipment to provide public utility service as a public utility pursuant to 66 Pa.C.S. § 102, which defines a public utility is an entity “owning **or operating**” equipment or facilities to provide utility service. Third, Amtrak’s arguments inappropriately assume that its request to condemn the Conestoga Substation will be approved by the District Court. Finally, Amtrak’s reliance on the District Court’s jurisdiction over “outstanding charges related to the property” is misplaced. The purpose of this rate proceeding is to establish a prospective rate to be charged for utility service provided by PPL under rate schedule LPEP -- an issue over which the PUC clearly has jurisdiction.

For these reasons, as further explained below, Amtrak’s Petition and request that the above-captioned rate proceeding be dismissed are without merit and should be denied.

II. BACKGROUND

The above-captioned rate proceeding was initiated as a result of a PUC-approved settlement in PPL’s 2015 base rate case at Docket No. R-2015-2469275. As part of its 2015 base rate case, PPL proposed, among other things, to increase the monthly distribution charge for Rate Schedule LPEP due to substantial capital upgrades required to PPL’s facilities at the Conestoga Substation. Amtrak is the only customer taking service under Rate Schedule LPEP, and the PP&L Industrial Customer Alliance (“PPLICA”) intervened in the 2015 base rate case on behalf of Amtrak.

On September 3, 2015, a Settlement was filed in the PPL 2015 base rate case (“2015 Rate Case Settlement”). 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] and [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] 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] 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] and Amtrak agree that [PPL] **will submit a further tariff filing for Rate Schedule LPEP to reflect** (i) the negotiated agreement ultimately reached by [PPL] and Amtrak or (ii) **the fact [PPL] and Amtrak were unable to reach an agreement by September 1, 2016.**

See 2015 Rate Case Settlement, ¶¶ 29-31 (emphasis added). The PUC approved the Settlement on November 19, 2015.¹

PPL and Amtrak also agreed to address the Conestoga Substation separately outside of Amtrak's interest as a member of PPLICA, and entered into a Mutual Settlement Agreement ("Mutual Agreement") on September 16, 2015.² Pursuant thereto, PPL and Amtrak agreed as follows:

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

¹ See *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Order entered Nov. 19, 2015).

² A true and correct copy of the Mutual Agreement is provided as **Appendix A**.

9. If [PPL] and Amtrak are unable to reach an agreement by September 1, 2016, **[PPL] 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] 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).

PPL and Amtrak were unable to reach an agreement by September 1, 2016. In accordance with the express terms of the 2015 Rate Case Settlement and Mutual Agreement, PPL filed Supplement No. 213 at Docket No. R-2016-2569975 on October 5, 2016. Supplement No. 213 proposes an increase to the Rate Schedule LPEP monthly distribution charge to reflect the upgrades needed at the Conestoga Substation. The proposed increase rate will become effective on the date the Conestoga Substation upgrade is completed and placed in service.

Amtrak filed a Complaint with the PUC on October 5, 2016, at Docket No. C-2016-2580526. In its Complaint, Amtrak threatened that it would seek to condemn the Conestoga Substation if PPL did not agree to Amtrak's proposals regarding cost recovery for the upgrades to the Conestoga Substation.

By order entered January 19, 2017, the PUC suspended Supplement No. 213 until October 1, 2017. However, in order to provide the parties additional time to try and settle the proposed rate increase pending before the PUC, PPL voluntarily suspended Supplement No. 213 until January 1, 2018.

On April 17, 2017, Amtrak filed its Condemnation Complaint with the District Court at Docket No. 17-CV-1752. On May 11, 2017, PPL filed an answer and objections, challenging Amtrak's authority to condemn PPL utility facilities used to provide public utility service.

On May 11, 2017, Amtrak filed its Motion to Dismiss, arguing that the PUC lacks subject matter jurisdiction over the Conestoga Substation and the associated rates as a result of Amtrak's

Condemnation Complaint. PPL filed an Answer on May 31, 2017. On June 7, 2017, the ALJ issued an Order Denying Amtrak's Motion to Dismiss. The ALJ properly found that the District Court's exclusive jurisdiction over the Condemnation Complaint does not preempt the PUC from acting on PPL's proposed rate in this proceeding. (Order, pp. 10-15) On June 13, 2017, Amtrak filed the pending Petition pursuant to 52 Pa. Code § 5.302.

An evidentiary hearing in this rate proceeding was held before the ALJ on June 19, 2017, at which the parties' written testimony and exhibits were admitted to the evidentiary record. The parties' main briefs are due July 18, 2017, and reply briefs are due on August 8, 2017. As such, this matter is clearly ripe for the PUC's review.

For the reasons explained herein, PPL respectfully requests that the PUC deny Amtrak's Petition.³ Alternatively, if the PUC grants Amtrak's Petition and addresses the merits of Amtrak's proposed material questions, PPL respectfully requests that the PUC answer Amtrak's proposed material questions in the negative.

III. ARGUMENT

A. RESPONSE TO AMTRAK'S MATERIAL QUESTION #1

The issue in this proceeding involves the prospective rate PPL proposes to charge for electric distribution service under rate schedule LPEP. In its Petition, Amtrak contends that the issues to be addressed in the rate proceeding are moot or unripe for review because Amtrak filed a Condemnation Complaint with the District Court seeking to condemn the Conestoga Substation. In support, Amtrak argues that under 49 U.S.C. § 24311 it took title to the

³ The PUC has determined that interlocutory review is appropriate only in "exceptional situation[s]." *Pa. PUC v. Dauphin Consolidated Water Supply Co.*, Docket No. R-860350, 1987 Pa. PUC LEXIS 215, *9 (Order entered August 21, 1987). "[A]s a general rule, petitions for interlocutory review are not favored. The preferred approach is to permit proceedings to move forward in the normal course in order to provide all parties, the presiding officer, and the Commission, a full opportunity to develop the record, brief issues, and present arguments at each stage." *Petition of Communications Workers of America*, Docket No. P-2015-2509336, p. 14 (Order entered April 21, 2016).

Conestoga Substation and, therefore, PPL no longer owns any of the equipment or facilities that form the basis for the pending base rate proceeding. Amtrak further argues that PPL's proposed rate increase is moot because the District Court has entered an order preventing PPL from making capital improvements and upgrades to the Conestoga Substation. Amtrak's mootness and ripeness arguments are misplaced for several reasons.

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

The District Court proceeding does not render the issue in this rate proceeding moot. The issue to be decided in this rate proceeding is entirely distinct from the issue to be decided in the District Court proceeding. While the instant rate proceeding will examine the appropriateness of the prospective rate PPL proposes to charge for electric distribution service, the District Court proceeding will determine whether Amtrak can exercise eminent domain authority over the Conestoga Substation. Amtrak's argument inappropriately blends the issues to be decided in this rate proceeding and the District Court 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 issue to be decided in this rate proceeding does not involve Amtrak's authority to condemn the Conestoga Substation.

Supplement No. 213 was filed as a non-general base rate increase for electric utility service pursuant to 66 Pa.C.S. § 1308(a). Notably, there is nothing in Supplement No. 213 that would require the PUC 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. Section 1308(b) only addresses PUC approval of a new rate filed by a utility. It does not involve PUC review of property rights.

It is well-settled law that jurisdiction over matters involving the reasonableness of public utility rates is vested in the PUC and not in the courts.⁴ The PUC has sole and exclusive jurisdiction for regulating utility base rates and evaluating proposed tariffs, and it has particular expertise over such matters.⁵ Although the federal courts may have jurisdiction over Amtrak's request to condemn property under 49 U.S.C. §§ 24311, the PUC unequivocally has jurisdiction over the pending base rate proceeding.

Further, the base rate increase proposed in Supplement No. 213 is based on PPL'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. (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 PUC and not in the courts.⁶ Thus, the PUC unequivocally has jurisdiction over PPL and the reliability and safety of its service and facilities.

Based on the foregoing, the fact that Amtrak filed a Condemnation Complaint seeking approval to condemn the Conestoga Substation does not render the PUC's review of the proposed base rate moot. The matter pending before the PUC is not a condemnation proceeding, and the PUC is not being asked to make any findings, determinations, or conclusions regarding

⁴ *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)).

⁵ *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)).

⁶ *Morrow*, 479 A.2d at, 550.

title, possession, or just compensation related to Amtrak's attempt to condemn the Conestoga Substation. Rather, the matter pending before the PUC is a utility base rate proceeding, which is properly and exclusively within the jurisdiction of the PUC.

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

Amtrak asserts that under 49 U.S.C. § 24311 it took title to the Conestoga Substation and, therefore, PPL no longer owns any of the equipment or facilities that form the basis for the pending base rate proceeding. Amtrak further argues that PPL's proposed rate increase is moot because the District Court has entered an order preventing PPL from making capital improvements and upgrades to the Conestoga Substation.⁷ The fundamental flaw with Amtrak's arguments is that, although Amtrak may have legal title to the Conestoga Substation, PPL continues to possess and operate the facilities to provide public utility service.

Amtrak inaccurately states that "PPL provides no electric distribution service to Amtrak" because Amtrak took title to the Conestoga Substation when it filed the Condemnation Complaint. (Amtrak Petition, p. 2) Although title to the Conestoga Substation passes to Amtrak upon filing its declaration of taking and required deposit, 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.

⁷ Amtrak reference to the District Court's order is a Stipulation between PPL and Amtrak that is attached to Amtrak's Petition as Appendix A and was approved by a May 23, 2017 order of the District Court. However, Amtrak's reliance on the Stipulation is misplaced. Amtrak cites the Stipulation for the proposition that PPL is barred from making further capital improvements and upgrades to the Conestoga Substation. However, the Stipulation only provides that PPL will temporarily discontinue the upgrades needed at the Conestoga Substation "until further order of the Court."

Additionally, as explained in the section below, PPL 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 District 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 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.

Contrary to Amtrak's assertion, PPL does, in fact, provide electric distribution service to Amtrak. Section 102 of the Public Utility Code defines a public utility to include an entity "owning **or operating** ... equipment or facilities" that provide utility service to or for the public for compensation. 66 Pa.C.S. § 102 (emphasis added). As explained above, although title to the Conestoga Substation may have passed to Amtrak, PPL will clearly continue to possess and operate the facilities to provide public utility service. Indeed, the Stipulation between PPL and Amtrak approved by the District Court expressly provides that PPL is obligated "continue to perform normal operational and/or maintenance functions at the Conestoga Substation. . ." As the ALJ explained in the June 7, 2017 Order, "PPL will continue to be responsible for operating and maintaining the Conestoga Substation, pursuant to the District Court's order, pending the outcome of [the] District Court proceeding." (Order, p. 15).

Further, it appears that PPL will continue to operate and provide public utility service through the Conestoga Substation even if Amtrak's condemnation is ultimately approved. Indeed, as Amtrak admits on page 2 of its Petition, a "floating easement" in the Conestoga Substation was preserved to PPL to ensure it can continue to perform the service and obligations under (1) the Transmission Contract between PPL, Safe Harbor, and Baltimore Gas and Electric

Company and (2) the Interconnection Service Agreement among PJM Interconnection, LLC, Safe Harbor, and PPL. Thus, it is clear from Amtrak's own admissions that, even if Amtrak's condemnation filing is fully approved, it expects PPL will continue to have a property interest in the facilities at the Conestoga Substation and will continue to operate, maintain, and provide public utility service through the Conestoga Substation subject to the PUC's and FERC's jurisdiction.

Based on the foregoing, contrary to Amtrak's assertion, its claim to title of the Conestoga Substation alone is not sufficient to render the PUC's review of the proposed base rate moot. Indeed, the pending rate proceeding cannot and will not become moot or unripe unless and until the District Court (i) approves the condemnation and (ii) determines the time and terms under which possession of the Conestoga Substation will be given to Amtrak. These are events that have not occurred and, as explained in the next section below, may never occur. Moreover, PPL 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. Accordingly, Amtrak's contention that this rate proceeding is moot or is without merit and contrary to the plain language of 49 U.S.C. §§ 24311(b)(2).

3. Amtrak Inappropriately Assumes It Will Ultimately Be Able To Condemn And Take Possession Of PPL's Conestoga Substation

Although Amtrak has filed its Condemnation Complaint with the federal court, the fundamental flaw with Amtrak's mootness and ripeness argument is that it inappropriately assumes that its request to condemn the Conestoga Substation will be approved by the District Court. PPL is actively opposing Amtrak's authority to condemn the Conestoga Substation, and Amtrak's assumption that its request to condemn the Conestoga Substation will be approved is

clearly in dispute. 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 District Court currently has jurisdiction over Amtrak's request to condemn PPL's Conestoga Substation, which is currently used to provide public utility service subject to the regulatory jurisdiction of the PUC and FERC. Although 49 U.S.C. § 24311 provides Amtrak with authority to condemn property, 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 PUC for the transfer of the property, as required by 66 Pa.C.S. § 1102(a)(3),⁸ and until Amtrak receives FERC approval under Section 203 of the Federal Power Act to condemn the property.⁹

Second, and importantly, there is a significant material dispute whether Amtrak has authority to condemn PPL'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." PPL has adequately provided that electric service to Amtrak (and its predecessors) for 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.

⁸ Section 1102(a)(3) provides that PUC 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).

⁹ 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." 16 U.S.C. § 824b. *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.").

Third, the public purpose that Amtrak has asserted for taking the Conestoga Substation is pretextual. Despite expressly agreeing to a tariff filing before the PUC in both the 2015 Rate Case Settlement and Mutual Agreement, Amtrak's true purpose for the condemnation is to avoid the proper and ongoing PUC proceeding applicable to PPL's rates for the electric public utility service provided to Amtrak. Condemning property to avoid litigating the base rate proceeding before the PUC is not a proper public purpose.

Fourth, Amtrak acted in bad faith and breached both the PUC-approved 2015 Rate Case Settlement and Mutual Agreement by filing of the Condemnation Complaint.¹⁰ Amtrak expressly agreed to a specific procedure regarding the recovery of the costs for the Conestoga Substation project -- a tariff filing with this PUC -- and agreed that its sole remedy for any disagreement was to "contest the tariff filing before the Pa. PUC." Amtrak's filing to condemn the Conestoga Substation is a material breach of both the PUC -approved 2015 Rate Case Settlement and the Mutual Agreement.¹¹

Based on the foregoing, Amtrak's argument that the pending rate proceeding is moot or unripe is fundamentally flawed because it inappropriately assumes that its request to condemn the Conestoga Substation will be approved by the District Court. PPL Electric is actively opposing Amtrak's attempt to condemn the Conestoga Substation as explained above, and it is entirely uncertain whether the District Court will ultimately approve Amtrak's request to condemn the Conestoga Substation.

¹⁰ Additionally, Amtrak has notified PPL that it will not pay the full bill due for the distribution services rendered to and received by Amtrak, despite Amtrak expressly agreeing to the rate approved in the 2015 Settlement as set forth in PPL's currently-effective tariff.

¹¹ 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 unrealistic approach that turns the entire theory of binding contract and settlement obligations on its head and, moreover, "thumbs its nose" at the PUC's jurisdiction and approval of the 2015 Rate Case Settlement.

B. RESPONSE TO AMTRAK'S MATERIAL QUESTION #2

Amtrak argues that the ALJ's June 7, 2017 Order erred by concluding that the PUC's consideration of the compensation to be paid by Amtrak to PPL after April 17, 2017, is not preempted by 49 U.S.C. § 24311(b), Fed. R. Civ. P. 71.1, and the District Court order. The basis of Amtrak's preemption argument is that the District Court has exclusive jurisdiction over outstanding charges related to the Conestoga Substation now that Amtrak has initiated the Condemnation Complaint. Specifically, Amtrak cites to language in the federal statute which reads, "[w]hen the declaration is filed, the court may decide -- . . . (B) the disposition of outstanding charges related to the property." 49 U.S.C. § 24311(b)(2)(B). According to Amtrak, PUC review of the rate proposed in the instant proceeding would conflict with the District Court's jurisdiction to determine "outstanding charges related to the property" and, therefore, is preempted. Amtrak's reliance on the District Court's jurisdiction over "outstanding charges related to the property" is misplaced and lacks support.

The PUC's jurisdiction over the current rate proceeding in no way interferes with the District Court's exclusive jurisdiction over the Condemnation Complaint. As found by the ALJ, "it is unclear how the PUC's jurisdiction over PPL's rate request pursuant to 66 Pa. C.S. § 1308(b) stands as an obstacle to the objectives of 49 U.S.C. §24311." (Order, p. 13). Section 1308(b) only addresses PUC approval of a new rate filed by a utility. It does not involve PUC review of property rights. Moreover, it does not and will not involve the PUC's "consideration of compensation due by Amtrak to PPL" for the Conestoga Substation as asserted by Amtrak.

Amtrak does not deny that the PUC has jurisdiction over utility rates and service. Instead, Amtrak argues that the District Court's jurisdiction over Amtrak's request to condemn the Conestoga Substation preempts the PUC from further consideration of this pending rate

proceeding.¹² Contrary to Amtrak’s assertion, the federal condemnation authority granted in 49 U.S.C. §§ 24311 does not conflict the PUC’s jurisdiction over public utility rates, services, or facilities. Nothing in 49 U.S.C. § 24311 grants federal courts any jurisdiction over utility rates and service, or otherwise expressly preempts the PUC from exercising its jurisdiction over public utility base rates. Rather, Section 24311 expressly limits the federal courts’ jurisdiction only to “the disposition of **outstanding charges related to the property.**” 49 U.S.C. § 24311(b)(2)(B) (emphasis added).

The ALJ correctly determined that PPL’s proposed Supplement No. 213 does not pertain to “outstanding charges” related to the Conestoga Substation, such as a lien or mortgage.¹³ Rather, Supplement No. 213 is a **prospective rate** for utility service that, if approved, will become effective on the date the Conestoga Substation upgrade is completed and placed in service. “PPL’s charge is based on the costs it incurs providing electric distribution service to Amtrak, including the costs of owning and maintaining the Conestoga Substation. This is not a charge that is attached to the Conestoga Substation but rather is a charge for service to Amtrak.” (Order, pp. 14-15)

Based on the foregoing, Amtrak’s contention that the PUC is preempted from taking further action in the pending base rate proceeding is without merit and contrary to the plain

¹² As the party seeking to invoke preemption, Amtrak must 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)). There are three ways federal law can preempt state law: (1) where the United States Congress enacts a provision which expressly preempts the state enactment; (2) 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; and (3) where a state law conflicts with a federal law. Conflict preemption can be found in two instances: (1) when it is impossible to comply with both federal and state law; or (2) 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). Amtrak has failed to show how 49 U.S.C. §§ 24311 preempts the PUC’s jurisdiction to review proposed utility rates under 66 Pa. C.S. § 1308(b).

¹³ The ALJ noted that “Amtrak cites no cases which support its position interpreting the phrase ‘outstanding charges related to the property’ used in 49 U.S.C. § 24311(b)(2)(B) to include proposed electric distribution rates.” (Order, p. 14)


language of 49 U.S.C. § 24311. Section 1308(b) does not provide the PUC with jurisdiction over property right controversies or the “compensation due by Amtrak to PPL” if Amtrak’s condemnation filing is approved. Thus, there is nothing in Section 1308(b) that interferes or conflicts with the District Court’s exclusive jurisdiction to decide the Condemnation Complaint or “outstanding charges” attached to the Conestoga Substation.

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny the National Railroad Passenger Corporation’s Petition for Interlocutory Review or, in the alternative, answer Amtrak’s proposed Material Questions # 1 and 2 in the negative.

Respectfully submitted,

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Date: June 23, 2017

Counsel for PPL Electric Utilities Corporation

Appendix “A”

MUTUAL SETTLEMENT AGREEMENT
AMONG
PPL ELECTRIC UTILITIES CORPORATION AND
NATIONAL RAILROAD PASSENGER CORPORATION

DOCKET Nos. R-2015-2469275, et al.

This MUTUAL SETTLEMENT AGREEMENT (the "Settlement Agreement") is made effective this 16th day of September, 2015, by and among PPL Electric Utilities Corporation ("PPL Electric") and National Railroad Passenger Corporation ("Amtrak") (collectively, PPL Electric and Amtrak are hereinafter referred to as the "Parties") to resolve all issues raised by the Parties in the proceeding at Docket Nos. R-2015-2469275, *et al.*, on the terms and conditions set forth below.

RECITALS

WHEREAS, PPL Electric is a public utility and electric distribution company certificated by the Pennsylvania Public Utility Commission ("Pa.PUC") that provides electric distribution, transmission, and provider of last resort electric supply services throughout its certificated service territory, with an address of Two North Ninth Street, Allentown, Pennsylvania 18101;

WHEREAS, Amtrak is a partially government-funded for-profit corporation established in 1971 to provide railroad service, with a business address of 60 Massachusetts Avenue, NE Washington, D.C. 20002;

WHEREAS, on March 31, 2015, PPL Electric filed Supplement No. 179 to PPL Electric's Tariff -- Electric Pa, P.U.C. No. 201, which was docketed with the Pa. PUC at Docket Nos. R-2015-2469275, *et al.*, proposing changes to PPL Electric's base retail distribution rates,

including a proposed increase in the customer charge for Rate Schedule LPEP due to substantial capital upgrades required to PPL Electric's facilities at the Conestoga Substation;

WHEREAS, Amtrak currently is the only customer taking service under Rate Schedule LPEP;

WHEREAS, on May 1, 2015, the PP&L Industrial Customer Alliance ("PPLICA")¹ filed a complaint at Docket Nos. R-2015-2469275, *et al.* on behalf of its members, including Amtrak, opposing the proposed increase in the customer charge for Rate Schedule LPEP, among other things;

WHEREAS, the active parties to the proceeding at Docket Nos. R-2015-2469275, *et al.* were able to reach a full settlement in principle on August 4, 2015;

WHEREAS, the Parties acknowledge that the settlement at Docket Nos. R-2015-2469275, *et al.* provides a summary of the terms and conditions to resolve their disputes and disagreements;

WHEREAS, in conjunction with the settlement at Docket Nos. R-2015-2469275, *et al.*, the Parties collectively wish to memorialize through this Settlement Agreement certain additional terms and conditions to resolve their disputes and disagreements in the proceeding at Docket Nos. R-2015-2469275, *et al.*

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and subject to the terms and conditions set forth herein, the Parties hereto, intending to be legally bound, hereby mutually agree as follows:

¹ PPLICA is an *ad hoc* association of energy-intensive industrial customers receiving electric service in PPL Electric's service territory.

AGREEMENT

1. PPL Electric and Amtrak agree that substantial upgrades to PPL Electric's facilities at the Conestoga Substation are required to provide reasonably continuous, reliable, and safe service to Amtrak. (PPLICA Statement No. 2, p. 5)

2. PPL Electric and Amtrak agree that Amtrak is the only customer served by the Conestoga Substation. (PPLICA Statement No. 1, p. 4)

3. Amtrak agrees that it is responsible for the reasonable and prudent costs to upgrade the Conestoga Substation. (PPLICA Statement No. 1, pp. 7-8)

4. To avoid incurring additional costs until an agreement has been reached regarding the Conestoga Substation, PPL Electric and Amtrak agree that PPL Electric will discontinue all work associated with capital improvements for the Conestoga Substation until an agreement has been reached. PPL Electric shall continue work related to any necessary maintenance of existing Conestoga facilities.

5. Amtrak agrees to waive any claim against PPL Electric for any damages, harm, costs, interruptions in service, or for any other liability the proximate cause of which is attributable to the delay associated with Paragraph 4.

6. PPL Electric and 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 a settlement rate of \$126,323.59 per month. PPL Electric and Amtrak further agree that the \$126,323.59 monthly customer charge consists of the current \$37,100 monthly customer charge and an increase related to upgrades at the Conestoga Substation of \$89,23.59. The \$126,323.59 customer charge shall be effective on January 1, 2016, subject to further resolution of the issues as described in Paragraphs 7 through 9.

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.

10. PPL Electric will modify the Distribution System Improvement Charge tariff to exclude Rate Schedule LPEP prospectively beginning January 1, 2016.

11. Amtrak agrees to not oppose the settlement document submitted to the Pa. PUC at Docket Nos. R-2015-2469275, *et al.*, and will not otherwise oppose PPL Electric's March 31, 2015 distribution base rate increase filing as modified by any settlement document submitted to the Pa. PUC.

12. For purposes of the overall settlement at Docket Nos. R-2015-2469275, *et al.*, PPL Electric and Amtrak agree that, subject to signoff or non-opposition from other parties, the following terms will be included in the overall settlement at Docket Nos. R-2015-2469275, *et al.*:

- (a) PPL Electric and 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 12(b) and 12(c).
- (b) 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.
- (c) 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 are unable to reach an agreement by September 1, 2016.
- (d) PPL Electric will modify the DSIC tariff to exclude Rate Schedule LPEP prospectively beginning January 1, 2016.

13. The Parties hereby acknowledge that their obligations under this Settlement Agreement are directly related to and contingent upon the Pa.PUC's approval of the overall settlement at Docket Nos. R-2015-2469275, *et al.*

IN WITNESS WHEREOF, AND INTENDING TO BE LEGALLY BOUND HEREBY,
the Parties have caused this Settlement Agreement to be executed by their duly authorized
representatives as of the date set forth below.

PPL Electric Utilities Corporation

Witness: Jefy D. Bynum By: Dennis R. Urban, Jr.
Title: Finance & Regulatory Affairs - VP
Date: 9/10/2015

National Railroad Passenger Corporation

Witness: Donna L. Smith By: [Signature]
Title: VP + Managing Deputy General Counsel
Date: 9/16/15