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File #: 167272

August 10, 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:

PPL Electric Utilities Corporation (PPL Electric) hereby submits this letter in response to the August 8, 2017 letter filed by the National Railroad Passenger Corporation (Amtrak) “in lieu of filing a Reply Brief, and in support of Amtrak’s Petition for Interlocutory Review of a Material Question” currently pending before the Pennsylvania Public Utility Commission (“Commission”). For the reasons explained herein, Amtrak’s letter and supporting attachments are improper and should be disregarded in their entirety.

First, Amtrak’s letter “in lieu of filing a Reply Brief” is procedurally improper. Amtrak did not file a Main Brief in the above-captioned proceeding. Notwithstanding, Amtrak now seeks to advance additional arguments in support of its request that the Commission deny PPL Electric’s proposal to increase the Rate Schedule LPEP monthly charge to fully recover all the costs of the upgrades needed at the Conestoga Substation. It is well established that when parties have been ordered to file briefs and fail to include all the issues and arguments they wish to have reviewed, the issues not briefed have been waived. *Pa. PUC v. Metropolitan Edison Company*, Docket Nos. R-00061366 *et al.*, 2006 Pa. PUC LEXIS 116 (Order entered October 31, 2006); *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania*, Docket Nos. R-00049783, 2005 Pa. PUC LEXIS 14 at \*165-66; 245 P.U.R.4th 1 (November 4, 2005). Because Amtrak did not raise these new arguments and issues in its Main Brief, these un-briefed issues

should properly be viewed as having been waived. To hold otherwise would violate PPL Electric's due process right by denying it reasonable notice and the opportunity to respond.

Second, Amtrak's letter "in lieu of filing a Reply Brief" improperly seeks to have this Commission consider extra-record evidence. The evidentiary record in this matter is closed. Importantly, no parties, including Amtrak, submitted any testimony or evidence to refute or otherwise challenge the Company's proposed increase in Rate Schedule LPEP. Notwithstanding, Amtrak now seeks to have the Commission consider additional evidence and arguments after the record has closed. It is well-settled that the Commission must strike any arguments based on extra-record evidence. *See, e.g., Application of West Penn Power Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00973981, 1998 Pa. PUC LEXIS 168 (Opinion and Order entered May 29, 1998).

Third, Amtrak's letter "in support of Amtrak's Petition for Interlocutory Review of a Material Question" currently pending before the Commission is procedurally improper. Amtrak filed its Petition on June 13, 2017. Pursuant to 52 Pa. Code § 5.306, Amtrak filed a brief in support of its Petition on June 23, 2017. Thus, Amtrak has already briefed its arguments and issues in support of the Petition. Notwithstanding, Amtrak now seeks to advance additional arguments and issues in further support of its Petition. However, absent Commission approval otherwise, there is nothing in the Commission's regulations that would permit Amtrak to submit additional arguments and issues outside of the brief permitted by 52 Pa. Code § 5.306. Amtrak's attempt to have a second bite at the proverbial apple is improper and should be disregarded.

Fourth, the issues and arguments raised in Amtrak's August 8, 2017 letter are entirely outside the scope of this proceeding. In its letter, Amtrak seeks to have this Commission consider the filings and arguments raised in the federal condemnation proceeding currently pending before the United States District Court for the Eastern District of Pennsylvania ("District Court"). However, the issue to be addressed by the Commission in this proceeding involves the prospective rate PPL Electric proposes to charge for electric distribution service under Rate Schedule LPEP. The issue pending before District Court is whether Amtrak can exercise federal eminent domain authority over PPL Electric's Conestoga Substation facilities used to provide utility service to or for the public. As explained in PPL Electric's brief in opposition to Amtrak's Petition for Interlocutory Review of a Material Question, the Commission has no jurisdiction over the federal condemnation proceeding and the District Court has no jurisdiction over this rate proceeding. Therefore, the filings and arguments raised in the federal condemnation proceeding are beyond the scope of this proceeding and should be disregarded.

Fifth, in its federal brief attached to the August 8, 2017 letter, Amtrak asserts that it has "acquired the [Conestoga Substation]." This is not correct. As explained in PPL Electric's brief in opposition to Amtrak's Petition for Interlocutory Review of a Material Question, although legal title to the Conestoga Substation passes to Amtrak upon filing its declaration of taking and required deposit, the law is clear that the federal court, not Amtrak, 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 has not acquired the Conestoga Substation.

Rosemary Chiavetta, Secretary  
August 10, 2017  
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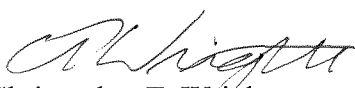
This fact is further demonstrated by Amtrak's federal "Motion for Immediate Possession" attached to its August 8, 2017 letter, which remains pending before the District Court and has not been granted. It is clear that unless and until the District Court (i) approves the condemnation and (ii) determines the time and terms under which possession of the Conestoga Substation will be given to Amtrak, if at all, PPL 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.

Finally, PPL Electric notes that included in the attachments to Amtrak's August 8, 2017 letter is a notice from Amtrak dated June 9, 2017, that states Amtrak will no longer pay for the electric service provided by PPL Electric. It must be remembered that: (i) PPL Electric and Amtrak entered into a stipulation before the District Court that provided, among other things, PPL Electric will continue to perform normal operational and maintenance functions at the Conestoga Substation unless ordered otherwise by the Court, *i.e.*, PPL Electric will continue to provide utility service through the Conestoga Substation unless ordered otherwise; (ii) Amtrak willingly entered into the 2015 Rate Case Settlement that, among other things, established the current rate under Rate Schedule LPEP; (iii) the Commission approved the 2015 Rate Case Settlement; (iv) the settled rate under Rate Schedule LPEP is part of PPL Electric's currently-effective, Commission-approved tariff; and (v) PPL Electric has provided and Amtrak has received electric service, and PPL Electric will continue to provide service to Amtrak under the federal stipulation unless ordered otherwise by the District Court. Notwithstanding, Amtrak apparently believes that it, not the Commission, gets to decide what rate Amtrak should or should not pay for the utility service it has received and will continue to receive. This is another demonstration of Amtrak "thumping its nose" at the Commission's jurisdiction and approval of the 2015 Rate Case Settlement.

For these reasons, Amtrak's August 8, 2017 letter is improper and should be disregarded in its entirety, including for purposes of (i) deciding PPL Electric's proposed increase to the Rate Schedule LPEP monthly distribution charge and (ii) deciding Amtrak's Petition for Interlocutory Review of a Material Question.

Copies of this letter will be provided as indicated on the Certificate of Service.

Respectfully submitted,

  
Christopher T. Wright

CTW/jl  
Enclosure

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: August 10, 2017

  
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