McNees
Wallace & Nurick LLC

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

Alessandra L. Hylander
Direct Dial: 717.237.5435
Direct Fax: 717.260.1689
ahylander@mcneeslaw.com

August 30, 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:

Attached please find for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the National Railroad Passenger Corporation's Notice in Lieu of Exceptions to the Recommended Decision of Administrative Law Judge David A. Salapa, issued August 23, 2017, in the above-referenced proceeding.

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 Alessandra L. Hylander
Alessandra L. Hylander

Counsel to National Railroad Passenger Corporation

Enclosure

c: Administrative Law Judge David A. Salapa (via E-mail and First-Class Mail)
Certificate of Service
PUC Office of Special Assistants (via E-mail)

## 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

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

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

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

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

Alessandra L. Hylander

Alessandra L. Hylander

Counsel to National Railroad Passenger Corporation

Dated this 30th day of August 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,** | : | |
| **RESPONDENT** | : | **Docket No. R-2016-2569975** |
| | : | |
| **PPL ELECTRIC UTILITIES CORPORATION SUPPLEMENT NO. 213 TO TARIFF ELECTRIC PA PUC NO. 201 FOR RATE SCHEDULE LPEP** | : | |

## NOTICE OF NATIONAL RAILROAD PASSENGER CORPORATION IN LIEU OF EXCEPTIONS

On June 13, 2017, National Railroad Passenger Corporation ("AMTRAK") submitted a Petition for Interlocutory Review of Material Questions seeking the Pennsylvania Public Utility Commission's ("PUC" or "Commission") dismissal of the above referenced proceedings as moot and otherwise preempted by the proceeding in *National Railroad Passenger Service Corporation v. 4.0446 Acres More or Less of Land and Fixtures & PPL Electric Utilities Corporation,* Civil Action-Law No. 17-CV-1752, which is pending before United States District Court for the Eastern District of Pennsylvania ("District Court" or "federal court"). AMTRAK expressly reserved its statutory right to adjudicate in federal court any issues related to the condemnation, the transfer of possession, and the disposition of outstanding charges related to the Conestoga Substation (such reservation is hereinafter referred to as the "England Reservation"). The precedent supporting AMTRAK's England Reservation includes: *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, decided by the United States Supreme Court in 1964; *Instructional Systems, Inc. v. Computer Curriculum Corp.*, 35 F.3d 813, decided by the Third Circuit in 1994;

and *Bradley v. Pittsburgh Board of Education*, 913 F. 2d 1064, decided by the Third Circuit in 1990.

Since filing its Petition for Interlocutory Review of Material Questions, and while maintaining its England Reservation, AMTRAK filed letters with the PUC to update it on the status of the District Court's activities and to resolve any doubt that may exist in this proceeding regarding the current ownership of the land and equipment at the Conestoga Substation. *See, e.g.* Notice of Additional Activities in Federal Court, Docket Nos. C-2016-2580526 and R-2016-2569975 (August 8, 2017); Notice of Reservation Pursuant to *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964), et al., Docket Nos. C-2016-2580526 and R-2016-2569975 (July 18, 2017).

On August 23, 2017, Administrative Law Judge ("ALJ") David Salapa issued a Recommended Decision ("R.D.") in the above-captioned proceeding. Pursuant to its England Reservation, in lieu of filing Exceptions, AMTRAK hereby files this Notice that it will not file Exceptions to the particular findings of fact and conclusions of law presented in that R.D. AMTRAK'S election not to file Exceptions should not be construed as acceptance of the findings of fact or conclusions of law in the R.D. The underlying assumption of the England Reservation is that the factual and legal issues are preserved for adjudication before the federal court. AMTRAK continues to await the PUC's disposition of AMTRAK'S Petition for Interlocutory Review of Material Questions, which, among other things, addresses whether the issues in this proceeding are (1) moot or unripe for review and (2) within the exclusive jurisdiction of the federal court. AMTRAK reserves all rights to litigate in the federal court the issues related to condemnation, transfer of possession, and disposition of outstanding charges relating to the Conestoga Substation.

Without waiving and notwithstanding its England Reservation, Amtrak respectfully notes that, overall, the R.D. makes mistakes of fact and is internally inconsistent. First, the final paragraph on page 17 of the R.D. omits the fact that the 2015 "Mutual Settlement Agreement Among PPL Electric Utilities Corporation and National Railroad Passenger Corporation," provided that if Amtrak and PPL were unable to reach an agreement on all open issues regarding the upgrade of the Conestoga Substation by September 1, 2016, PPL would be permitted to make a tariff filing to recover those costs *and Amtrak reserved all rights to contest the tariff filing before the PUC. See* Page 4 of PPL Electric Exhibit SRK-4, PPL Electric Utilities Corporation Statement No. 1 – Direct Testimony of Scott R. Koch, Docket Nos. C-2016-2580526 and R-2016-2569975 (Feb. 22, 2017).

Second, the R.D. is internally inconsistent. The R.D. acknowledges that the District Court issued a stipulation and order which prohibited PPL from making capital improvements. R.D., p. 10. Notwithstanding the federal court's prohibition, the fact that Amtrak now has title to the facility, and the fact that PPL merely has a floating easement, the R.D. proceeds to recommend that the PUC adopt PPL's proposed rate increase so it may begin making upgrades to the facility. R.D., pp. 18-22. The R.D. does not even attempt to explain how PPL could make the capital upgrades (on which the rate increase is premised) to a facility it does not own or control and which would violate a federal court order.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By: Alessandra L. Hylander

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

Counsel to National Railroad Passenger Corporation

Dated: August 30, 2017