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January 3, 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 P.A. PUC No.
201 for Rate Schedule LPEP; Docket No. R-2016-2569975**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Prehearing Memorandum on behalf of the National Railroad Passenger Corporation ("Amtrak") in the above-referenced proceeding.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek

Counsel to the National Railroad Passenger Corporation

Enclosures

c: Administrative Law Judge David A. Salapa (via e-mail and First-Class Mail)
Certificate of Service

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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).

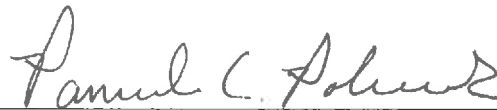
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Pamela C. Polacek

Counsel to National Railroad Passenger
Corporation

Dated this 3rd day of January, 2017, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PREHEARING MEMORANDUM OF
THE NATIONAL RAILROAD PASSENGER CORPORATION ("AMTRAK")**

Pursuant to Administrative Law Judge ("ALJ") David A. Salapa's December 29, 2016, Prehearing Conference Order, the National Railroad Passenger Corporation ("Amtrak") hereby submits this Prehearing Memorandum in the above-captioned proceeding.

I. HISTORY OF THE PROCEEDING

On October 5, 2016, PPL Electric Utilities Corporation ("PPL" or "Company") filed with the Pennsylvania Public Utility Commission ("Commission" or "PUC") its Supplement No. 213 to Tariff Electric Pa. P.U.C. No. 201 ("Supplement No. 213") for Rate LPEP requesting to add the following language to Rate Schedule LPEP:

Effective on the date that the Conestoga Substation upgrade is completed and placed in service, the distribution charge will be \$319,671.00 per month (Customer Charge). Customers under Rate Schedule LPEP will be given written notice 30 days before the effective date of the new distribution charge.

Supplement No. 213, Twenty-Sixth Revised Page No. 29. If enacted, Supplement No. 213 would increase the Rate LPEP monthly customer charge by over 1000% percent from the previously-approved charge of \$31,700 to \$319,671.00. In its filing, PPL provided no projected in-service date for the upgraded equipment.

On December 19, 2016, Amtrak filed a Complaint and New Matter opposing Supplement No. 213. A description of Amtrak is set forth in Paragraphs 8 and 9 of its Complaint. Complaint, ¶¶ 8-9. As explained in Amtrak's Complaint, this proceeding represents a continuation of a dispute between Amtrak and PPL that began in PPL's 2015 distribution rate case regarding the cost, scope, timing and payment for upgrades to the substation that connects Amtrak to the Safe Harbor Power Corporation's ("Safe Harbor") hydroelectric generation facility (known as the "Conestoga Substation"). Two separate settlement agreements were executed that collectively defined a process for continued negotiation between Amtrak and PPL regarding the disputes over the proposed substation upgrades, with negotiations concluding by September 1, 2016. When negotiations concluded, the parties had not reached a mutually-acceptable resolution.

As a result, many of the same objections that Amtrak raised to PPL's proposed rate for Rate Schedule LPEP of \$252,647.17 per month in the 2015 distribution rate case remain unresolved, including items such as the reasonable and verifiable cost of the upgrades, Amtrak's preference to contribute monetary Contributions In Aid of Construction ("CIAC") to reduce the ongoing cost to rail commuters, Amtrak's offer to supply the two 25 Hertz transformers for the upgrade project, the depreciation assumed for the equipment, the proper level of directly-assigned Operations and Maintenance costs that can be reflected in the rate, and the potential purchase of PPL's portion of the substation by Amtrak. In fact, those concerns are magnified in Supplement No. 213 because, in addition to rejecting the CIAC and transformers, PPL has not adequately supported its projected

\$24 million upgrade cost or explained why this estimate increased from the original \$15 million project cost estimate.

Amtrak is the only customer served by the Conestoga Substation and is the only PPL customer that receives service at 25 Hertz (rather than 60 Hertz). Safe Harbor produces power for Amtrak at 25 Hertz, which is necessary to operate Amtrak's electric traction system. Safe Harbor delivers the 25 Hertz power to the Conestoga Substation, which is owned partly by PPL and partly by Amtrak. PPL has no other 25 Hertz substations on its system. Amtrak, on the other hand, operates multiple 25 Hertz substations along the Northeast Corridor.

Within the next four to six weeks, Amtrak will be sending PPL a formal offer to purchase the property and existing equipment owned by PPL at the Conestoga Substation. If Amtrak cannot acquire the portion of the Conestoga Substation owned by PPL through a voluntary transaction, then Amtrak intends to take the Conestoga Substation pursuant to Amtrak's federal eminent domain authority, 49 U.S.C. §24311. The declaration to take the facility by eminent domain would be submitted to the United States District Court for the Eastern District of Pennsylvania in early February, 2017. Section 24311(a) of Title 49 of the United States Code permits Amtrak to acquire by eminent domain property that is "necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a government authority." 49 U.S.C. § 24311 (a)(A). Section 24311(b) indicates that the exercise by Amtrak of eminent domain must occur in the "district court of the United States for the judicial district in which the property is located" and that the property is condemned for Amtrak's use "when a declaration of taking is filed under this subsection and an amount of money estimated in the declaration to be just compensation for the interest is deposited in the court." *Id.* § 24311(b)(1). Section 24311(b)(2) states:

When the declaration is filed and the deposit is made under paragraph (1) of this subsection, title to the property vests in Amtrak in fee simple absolute or in the lesser interest shown in the declaration, and the right to the money vests in the person entitled to the money. When the declaration is filed, the court may decide— (A) the time by which, and the terms under which, possession of the property is given to Amtrak; and (B) the disposition of outstanding charges related to the property.

Id. at § 24311(b)(2).

Because of Amtrak's pending plans to acquire the remainder of the Conestoga Substation by purchase or, if a purchase is not agreed to, by federal eminent domain, on January 3, 2017, Amtrak submitted a Petition to Amend the Commission's December 22, 2016, Order in this matter. Amtrak requests to remove the June 1, 2017, effective date for Supplement No. 213 and to suspend this proceeding indefinitely pending the outcome of the taking proceeding in Federal court. Amtrak requests for the Commission to consider the Petition to Amend at its January 19, 2017 Public Meeting.

Significantly, Federal law indicates that Amtrak owns the Conestoga Substation when the declaration is filed and the deposit is paid. *Id.* This immediate transfer of ownership will deprive the PUC of authority over the Conestoga Substation as of the acquisition date (as the existing facilities upon which PPL has based its filing will no longer be owned by PPL). Amtrak plans to submit appropriate pleadings and motions at that time to request dismissal of all or a portion of PPL's filing, or to hold the proceeding in abeyance pending resolution of the eminent domain activities. As explained in Amtrak's Petition to Amend, Amtrak respectfully submits that continuing this litigation concurrent with a federal court eminent domain action raises the possibility of judicial waste (by devoting the Commission's resources to resolve issues regarding the proposed rate and tariff language that may very well be rendered moot by acquisition of the Conestoga facility by Amtrak by purchase or pursuant to a federal court eminent domain

proceeding), may result in rulings that conflict with the jurisdiction of a federal court, and will unnecessarily require the expedited development by the Parties, the ALJ and the Commission of unique legal issues that would arise as a result of Amtrak's current plans to acquire the Conestoga Substation equipment and property by purchasing the facility from PPL, or if that is not possible, to take the Conestoga Substation pursuant to Amtrak's federal eminent domain authority.

Amtrak recognizes that the presiding ALJ is constrained by the June 1, 2017, date for Supplement No. 213's effectiveness, unless that date is changed by a Commission Order. Amtrak will, in good faith, participate in the development of a procedural schedule and discovery process to meet the June 1, 2017, date; however, Amtrak reserves its rights to amend its prior pleadings, and to submit all necessary motions, petitions and other pleadings, in response to the anticipated events over the upcoming months related to the ownership of the Conestoga Substation. In addition, if the Petition to Amend is granted, Amtrak requests to immediately suspend any procedural schedule adopted at the Prehearing Conference.

II. SERVICE LIST

For purposes of service in the above-captioned proceeding, please direct all communications to:

Pamela C. Polacek (Pa. I.D. No. 78276)
Adeolu A. Bakare (Pa. I.D. No. 208541)
Alessandra L. Hylander (Pa. I.D. No. 320967)
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III. ANTICIPATED ISSUES

Amtrak's preliminary review of PPL's filing indicates the need for Commission investigation into at least the following issues:

- (a) Whether PPL's Supplement No. 213 is prematurely filed. Amtrak avers that the PUC should find Supplement No. 213 is premature because the upgraded equipment at the Conestoga Substation is not yet used and useful by PPL in providing service to the public.
- (b) If Supplement No. 213 is valid, whether Supplement No. 213's proposed monthly customer charge of \$319,671.00 is just, reasonable and non-discriminatory. Amtrak avers that the PUC should find Supplement No. 213's proposed monthly customer charge for Rate LPEP is unjust, unreasonable, and unduly discriminatory.
- (c) Whether the monthly customer charge for Rate LPEP reverted to \$37,100 for service rendered after September 1, 2016, pursuant to the terms of the Mutual Settlement Agreement Among PPL Electric Utilities Corporation And National Railroad Passenger Corporation ("Mutual Settlement Agreement") regarding Docket Nos. R-2015-2469275, *et al.*; the Joint Petition for Approval of Settlement of All Issues ("2015 Settlement") under *Pa. Pub. Util. Comm'n., v. PPL Elec. Utils. Corp.*, Docket No. R-2015-2469275, *et al.*; and the Commission's Opinion and Order in *Pa. Pub. Util. Comm'n., v. PPL Elec. Utils. Corp.*, Docket No. R-2015-2469275, *et al.* (November 19, 2015) ("November 19 Order"). Amtrak avers that the PUC should confirm the current monthly customer charge for Rate LPEP is \$37,100.
- (d) Whether PPL should provide Amtrak with a refund for services rendered under Rate LPEP since September 1, 2016, for any invoices paid by Amtrak that exceed \$37,100 for distribution service. Amtrak avers that the PUC should order PPL to provide this refund.
- (e) Whether PPL must credit Amtrak or refund to Amtrak the difference between the \$37,100 per month pre-project rate and the \$126,323.59 for service provided during the period from January 1, 2016 through August 31, 2016. Amtrak avers that the PUC should order PPL to provide this refund or credit.

Amtrak anticipates pursuing these issues during this proceeding and also reserves the right to raise further issues and to respond to all matters raised by other parties.

IV. PROPOSED WITNESSES

Amtrak expects to sponsor expert testimony regarding the aforementioned issues by the following witnesses:

Mr. Stan Faryniarz
Principal Consultant
La Capra Associates, Inc.
63 Main Street
Essex Junction, VT 05452
sfaryniarz@lacapra.com

Mr. Eric F. Hornung
Senior Manager-Substation Design, Amtrak Engineering Department.
National Railroad Passenger Corporation/Amtrak
30th Street Station, Fourth Floor, South Tower
Philadelphia, Pennsylvania 19104.
HornunE@amtrak.com

Mr. William Auve
Assistant Controller – Costing & Capital
National Railroad Passenger Corporation/Amtrak
30th Street Station, Fourth Floor, South Tower
Philadelphia, Pennsylvania 19104.
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Amtrak reserves the right to modify or supplement this witness list during the course of this proceeding. In the event Amtrak decides to modify or supplement the witness list, it will inform the parties and the ALJ as soon as possible of the intended witnesses. Amtrak also intends to participate in this proceeding through the submission of discovery, cross-examination of other parties' witnesses, and the submission of briefs, exceptions, and reply exceptions, if necessary.

V. PROPOSED SCHEDULE AND DISCOVERY RULES

Attached to this Prehearing Memorandum as Exhibit A are a proposed schedule and proposed discovery rules, assuming that the June 1, 2017, effective date for Supplement No. 213 remains in place. As previously noted, Amtrak has submitted a Petition to Amend the schedule for consideration of this proceeding and requested that the Commission rule on the request at its

January 19, 2017, Public Meeting. Amtrak will cooperate with the parties and the ALJ prior to and at the Prehearing Conference to finalize the schedule and discovery rules.

VI. STATEMENT OF EVIDENCE

Amtrak already provided copies of the Mutual Settlement Agreement, invoices received from PPL for services rendered after September 1, 2016, and its Dispute Letter to PPL regarding the disputed invoices. Complaint, Exhibits B-F. Amtrak's witness(es) plan to submit Direct Testimony, as well as Rebuttal and Surrebuttal Testimony, as necessary, in addition to providing further evidence, in the form of cross-examination and exhibits, at the Hearing related to the issues mentioned above.

VII. PROTECTIVE ORDER

Amtrak will cooperate with the ALJ and the parties at the Prehearing Conference to develop a protective order in accordance with the Commission's regulations and any directives issued by the ALJ.

VIII. POSSIBILITY OF SETTLEMENT

Amtrak is willing to participate in discussions with the other parties to amicably resolve the issues in this proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek (Pa. I.D. No. 78276)
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Counsel to the National Railroad Passenger
Corporation

Dated: January 3, 2017

Exhibit A
Proposed Schedule and Discovery Rules

January 6, 2017: Prehearing Conference
January 13, 2017: PPL Prepared Direct Testimony regarding proposed rate and tariff change;
Amtrak Prepared Direct Testimony supporting Refunds*
January 23, 2017: Amtrak Prepared Rebuttal Testimony regarding proposed rate and tariff
change; PPL Prepared Rebuttal Testimony regarding Refunds
I&E Prepared Testimony
January 25 at Noon: Outline of any oral surrebuttal (all parties)
January 26-27: Evidentiary Hearings in Harrisburg**
February 6: Main Briefs (all parties)
February 10: Reply Briefs (all parties) (this date was set by the ALJ)

*Note: Due to the expedited nature of this schedule, Amtrak is willing to provide the first testimony regarding the refund requests, while reserving legal arguments regarding the burden of proof on this issue for briefing.

**If the PUC acts on Amtrak's Petition to Amend the schedule, then the procedural schedule will be suspended and the January 26th hearing will be converted into a Further Prehearing Conference for the parties to address procedural issues.

Proposed Discovery Rule Modifications:

5 business day turn-around (best efforts)

Oral Objections by close of first business day following service of interrogatories

Written Objections by close of second business day following service of interrogatories

Motion to Compel by close of fourth business day following service of interrogatories

Answer to Motion to Compel by close of fifth business day following service of interrogatories

Service of interrogatories after Noon on Friday will be considered as served on the next Business Day

Discovery objections/motions due on Friday will be due by 10 AM on the following Business Day

Service by email is considered in hand