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| **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | |
| Public Meeting held January 19, 2017 | |
| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  John F. Coleman, Jr.  Robert F. Powelson  David W. Sweet | |
| PPL Electric Utilities Corporation Supplement No. 213 to Tariff Electric Pa. PUC No. 201 for Rate Schedule LPEP | R-2016-2569975 |
| National Railroad Passenger Corporation  v.  PPL Electric Utilities Corporation | C-2016-2580526 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Amendment of December 22, 2016 Order to Suspend These Proceedings (Petition), filed by the National Passenger Railroad Corporation (Amtrak) on January 3, 2017, and updated on January 4, 2017, in the above-captioned proceedings. The Petition requests that the Commission amend its Order entered December 22, 2016, at Docket No. R-2016-2569975 (*December 2016 Order*), with respect to the suspension of Supplement No. 213 to Tariff Electric Pa. P.U.C. No. 201 (Supplement 213) filed on October 5, 2016, by PPL Electric Utilities Corporation (PPL or the Company). An Answer to Amtrak’s Petition (Answer to Petition) was filed by PPL on January 5, 2016. For the reasons stated herein, we will grant, in part, and deny, in part, Amtrak’s Petition.

# Procedural History

On October 5, 2016, PPL filed Supplement 213 to become effective January 1, 2017. Supplement 213 proposed an annual increase of approximately $2.320  million in the distribution revenues received from Rate Schedule LPEP - Power Service to Electric Propulsion. PPL asserted that the proposed increase was necessary to recover the costs associated with substantial upgrades to the Conestoga Substation required to provide reasonably continuous, reliable, and safe service to Amtrak, which is the sole customer taking service under Rate Schedule LPEP.

On December 19, 2016, Amtrak filed the above-captioned Complaint at Docket No. C-2016-2580526, in which it requested that the Commission reject Supplement 213 and determine that the rate increase proposed therein was unjust and unreasonable. Amtrak also raised a New Matter in its Complaint relating to invoices it received from PPL for service provided to Amtrak since September 1, 2016.

On December 22, 2016, PPL filed an Answer and New Matter as well as Preliminary Objections to Amtrak’s Complaint. Amtrak filed an Answer to PPL’s Preliminary Objections on January 3, 2017.

On December 22, 2016, the Commission entered the *December 2016 Order*, which, pursuant to 66 Pa. C.S. §1308(b), suspended Supplement 213 by operation of law on January 1, 2017, until June 1, 2017, unless permitted by Commission Order to become effective at an earlier date. *December 2016 Order* at 2. The *December 2016 Order* also directed that an investigation be instituted to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in Supplement 213, and further directed that the case be assigned to the Office of Administrative Law Judge for the prompt scheduling of such hearings as may be necessary, culminating in the issuance of a Recommended Decision. *Id*. at 2-3. The Commission subsequently issued an *Errata Notice* on January 3, 2017, which corrected the *December 2016 Order* to indicate that Supplement 213 would be suspended by operation of law until July 1, 2017 (rather than June 1, 2017), unless permitted by Commission Order to become effective at an earlier date.

As noted, Amtrak filed its Petition on January 3, 2017, and filed an update to the Petition on January 4, 2017, in order to reflect the correction to the *December 2016 Order* as set forth in the *Errata Notice*. On January 5, 2017, PPL filed its Answer to Petition.

**Discussion**

**Legal Standards**

We note that any issue not specifically addressed herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corporation v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](http://pcinfomap:8080/AppData/Local/Microsoft/Windows/AppData/research/buttonTFLink) *also see, generally,* [*University of Pennsyl­vania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](http://pcinfomap:8080/AppData/Local/Microsoft/Windows/AppData/research/buttonTFLink)

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

A petition to modify or rescind a final Commission decision may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior decision, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380)). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

**Amtrak’s Petition**

In its Petition, Amtrak requests that the Commission amend the *December 2016 Order* to remove the July 1, 2017 suspension date for Supplement 2013, and to state, instead, that Supplement 213 is suspended indefinitely due to Amtrak’s current plans to acquire the Conestoga Substation equipment and property in early February of 2017. Amtrak avers that it intends to acquire the Conestoga Substation either by purchasing it from PPL, or by taking it pursuant to Amtrak’s federal eminent domain authority, as provided at 49 U.S.C. § 24311. Petition at 2, 5-6.

Amtrak explains that prior to exercising its federal eminent domain authority, it must offer to purchase the Conestoga Substation at its appraised value. Petition at 6 (citing 49 U.S.C § 24311(a)(2)). Amtrak avers that if that offer is not accepted, it may acquire immediate title to the property upon filing a declaration of taking in the U.S. District Court, and depositing into the registry of the Court, Amtrak’s estimate of just compensation based upon the appraised value. Petition at 6. Amtrak argues that once it takes possession of the Conestoga Substation, PPL would neither own any distribution service equipment serving Amtrak, nor provide any services to Amtrak (unless required by the U.S. District Court), and the Commission would no longer have jurisdiction over the Conestoga Substation. *Id*. at 6-7. Amtrak submits that if PPL does not own the Conestoga Substation and does not provide services to Amtrak, then there will be no basis for PPL to charge Amtrak for service under Rate Schedule LPEP. Thus, Amtrak concludes that, as of the date it acquires title to the Conestoga substation, it will no longer be a customer of PPL, and Supplement 213 will be moot. *Id*. at 7. Amtrak, argues that because the tariff change in Supplement 213 is premised on the completion of PPL’s suggested work to upgrade the Conestoga Substation, and because any such work will be required to cease once PPL does not own the property and equipment, PPL will not be prejudiced by removing the effective date for Supplement 213. *Id*. at 8.

Although Amtrak contends that the upcoming condemnation of the Conestoga Substation warrants an indefinite suspension of Supplement 213, it submits that, in the alternative and at a minimum, the Commission should amend the *December 2016 Order* to direct a suspension of Supplement 213 for the full nine months permitted by Section 1308(b) of the Code,[[1]](#footnote-1) or until October 1, 2017. Petition at 2, 8. According to Amtrak, extending the suspension date to October 1, 2017, will ensure that the Administrative Law Judge (ALJ), the Parties, and the Commission have the additional three months available under Section 1308(b) to adjust the continued litigation of this matter, if any will occur, to the developments at the U.S. District Court. Petition at 9. Amtrak further requests that this amendment to the *December 2016 Order* be without prejudice to any requests to further suspend Supplement 213 or terminate this proceeding, if necessary to accommodate the implementation of Amtrak’s plans to acquire the Conestoga substation. Petition at 9.

Amtrak submits that because PPL has not projected an in-service date for its proposed upgrade to the Conestoga substation, and because the proposed upgrade will not occur once Amtrak has taken ownership of the property and equipment, PPL will not be prejudiced if the Commission orders the full nine-month suspension permitted by Section 1308(b). Petition at 9-10. Amtrak states that it commits to filing and serving monthly reports on its progress to acquire the Conestoga Substation, beginning February 28, 2017. *Id*. at 10.

Finally, Amtrak requests that the Commission rule on its Petition at the January 19, 2017 Public Meeting, due to the extremely abbreviated litigation schedule necessitated by the currently-effective suspension of Supplement No. 213, as directed in the *December 2016 Order*. Petition at 1.

**PPL’s Answer to Petition**

In its Answer to Petition, PPL asserts that Amtrak’s request for an indefinite suspension of Supplement 213 should be denied, but states that it generally agrees that Supplement 213 should be suspended for a total of nine months, or until October 1, 2017. Answer to Petition at 1. PPL contends that there is nothing in Section 1308(b) of the Code that authorizes the Commission to indefinitely suspend a proposed tariff rate, and that the Commission’s authority to suspend a tariff rate in non-general rate proceedings is limited to a maximum of nine months from the time the rate would otherwise become effective. Moreover, PPL argues that although Amtrak purportedly intends to file a federal condemnation proceeding at some point in the future, it has not yet initiated such a proceeding, and there is no certainty regarding if and when Amtrak may do so. Answer to Petition at 6.

In addition, PPL questions whether Amtrak’s authority to condemn property necessary for intercity rail transportation includes the authority to condemn public utility facilities that are used in providing service to or for the public. Answer to Petition at 7 (citing49 U.S.C. § 24311(a)). PPL asserts that if Amtrak initiates a federal condemnation proceeding to condemn the Conestoga Substation, the Company intends to intervene and oppose any such taking of its public utility facilities and this could result in protracted litigation and lead to a significant delay in the final resolution of the matter. In addition, PPL argues that because the Conestoga Substation, associated facilities, and underlying land are currently used and useful in providing service to or for the public, there is a question of whether Commission approval is required in accordance with 66 Pa.C.S. § 1102(a)(3) before any portion of the substation, associated facilities, or land may be transferred from PPL to Amtrak. PPL contends that if Commission approval is required, the final resolution of Amtrak’s proposal to condemn the Conestoga Substation could be further delayed. Answer to Petition at 7.

Finally, PPL asserts that Amtrak’s dispute regarding the proper rate it is currently required to pay under Rate Schedule LPEP, as raised in Amtrak’s Complaint, is a matter that must be decided promptly. Thus, PPL contends that for this reason and those discussed above, this matter must not be suspended indefinitely and Amtrak’s request for an indefinite suspension of Supplement 213 must be denied accordingly. Answer to Petition at 7-8.

PPL also addresses Amtrak’s alternative request that the Commission suspend Supplement 213 for a total of nine months, if it does not agree to grant an indefinite suspension. PPL asserts that while it does not agree with Amtrak’s reliance on its plan to condemn the Conestoga Substation to support this alternative request, the Company nevertheless recognizes that it may be difficult for the Parties in this proceeding to fully litigate and develop a complete record on an accelerated schedule. Thus, PPL asserts that it generally agrees that Supplement 213 should be suspended for a total of nine months, oruntil October 1, 2017, thereby permitting a longer and more reasonable litigation schedule for this proceeding. PPL states that if the Commission approves a nine-month suspension period, it will promptly submit a tariff supplement that suspends Supplement 213 from January 1, 2017, through October 1, 2017, unless otherwise directed by Order of the Commission. Answer to Petition at 8-9.

**Disposition**

After careful consideration of the Petition and Answer to Petition, we find that the *Duick* standards have been satisfied. We shall therefore exercise our discretion and grant the Petition, in part, to amend the *December 2016 Order* to suspend Supplement 213 for the full nine-month period permitted under 66 Pa. C.S. § 1308(b), or until October 1, 2017.

We agree with PPL that a nine-month suspension of Supplement 213 will allow the ALJ and the Parties in this proceeding to adopt a longer and more reasonable litigation schedule that will better accommodate the development of a complete record and allow more time for the ALJ and the Commission to determine a just and reasonable resolution of the matter. Accordingly, we decline to suspend Supplement 213 indefinitely, as Amtrak requests. We agree with PPL that Amtrak has presented no clear timeline regarding its purported plans to attempt to acquire the Conestoga Substation, either by purchasing it from PPL or by exercising its federal eminent domain authority. Moreover, as PPL points out, the protracted litigation that may result from PPL’s intervention in a federal condemnation proceeding regarding the Conestoga Substation would lead to further uncertainty with respect to the amount of time that may be involved for the matter to be resolved. Under such circumstances we believe the arguments put forth by Amtrak in favor of an indefinite suspension are premature and, thus, it would be imprudent for us to rule in favor of an indefinite suspension of Supplement 213 at this time. Nevertheless, we see no obstacles that would prevent PPL from voluntarily extending the effective date of Supplement 213 beyond October 1, 2017, should the Parties determine during the course of litigation of the instant proceeding that a further postponement of the effective date of Supplement 213 is warranted.

**Conclusion**

Consistent with the foregoing discussion, we shall (1) grant, in part, and deny, in part, Amtrak’s Petition, and (2) amend the *December 2016 Order*; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition of the National Passenger Railroad Corporation for Amendment of December 22, 2016 Order to Suspend These Proceedings, filed on January 3, 2017, and updated on January 4, 2017, is granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the second full paragraph appearing on page 2 of the Order entered December 22, 2016 at Docket No. R-2016-2569975 is amended to read as follows:

Pursuant to 66 Pa. C.S. §1308(b), the filings will be suspended by operation of law on January 1, 2017, until October 1, 2017, unless permitted by Commission Order to become effective at an earlier date.

3. That Ordering Paragraph No. 2 appearing on page 2 of the Order entered December 22, 2016 at Docket No. R-2016-2569975 is amended to read as follows:

2. That the proposed Supplement No. 213 to Electric Pa. P.U.C. No 201 will be suspended by operation of law until October 1, 2017, unless otherwise directed by Order of the Commission.

4. That in all other respects, the Order entered December 22, 2016 at Docket No. R-2016-2569975 remains in full force and effect.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 19, 2017

ORDER ENTERED: January 19, 2017

1. Section 1308(b) of the Code of the Code provides, in part:

   Whenever there is filed with the commission by any public utility any tariff stating a new rate, the commission may, either upon complaint or upon its own motion, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate, and pending such hearing and the decision thereon, the commission, upon filing with such tariff and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before it becomes effective, suspend the operation of such rate for a period not longer than six months from the time such rate would otherwise become effective, and an additional period of not more than three months pending such decision.

   66 Pa. C.S. § 1308(b). [↑](#footnote-ref-1)