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June 27, 2019

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-2019-3010398

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objections of PPL Electric Utilities Corporation to the Complaint of the National Railroad Passenger Corporation for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Lindsay A. Berkstresser

LAB/jl
Enclosures

cc: Certificate of Service

CERTIFICATE OF SERVICE

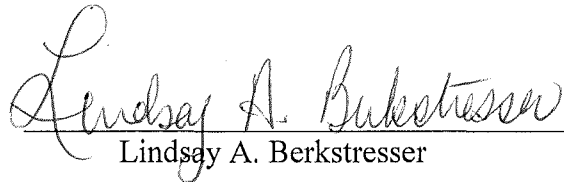
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: June 27, 2019


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2. By Secretarial Letter dated June 7, 2019, PPL Electric was served with the above-captioned Complaint. The issues raised in the Complaint pertain to the retail transmission rates charged to Amtrak by its electric generation supplier (“EGS”), Constellation New Energy, Inc. (“CNE”). (Complaint ¶¶ 8 and 17-18)

3. PPL Electric herein files these Preliminary Objections to the Complaint. For the reasons explained below, PPL Electric respectfully requests that the Complaint be dismissed in its entirety for lack of standing pursuant to 52 Pa. Code Section 5.101(a)(7), legal insufficiency pursuant to 52 Pa. Code Section 5.101(a)(4); and in the alternative, failure to join a necessary party pursuant to 52 Pa. Code § 5.101(a)(5).

4. By way of summary, the Complaint deals solely and entirely with rates for retail transmission service. As explained in detail below, Amtrak is not currently a customer of PPL Electric, and at no time during the relevant four-year period did Amtrak purchase retail transmission service from PPL Electric. PPL Electric did not bill Amtrak any amount for retail transmission service, and Amtrak paid PPL Electric nothing for retail transmission service. Rather, throughout the relevant period, Amtrak obtained and paid for retail transmission service from its EGS, CNE. As a result, Amtrak lacks standing in its Complaint against PPL Electric, Amtrak’s complaint against PPL Electric fails to state a legally sufficient claim, and therefore should be dismissed. Further, as explained in PPL Electric’s New Matter to Amtrak’s Complaint, the Commission has no legal authority or jurisdiction to require PPL Electric to provide a refund for amounts never billed by PPL Electric and never paid by Amtrak. Rather, Amtrak’s requested relief constitutes a claim for damages, which the Commission has no authority to award. Finally, the Complaint relates to retail transmission services provided by Amtrak’s EGS, CNE. Any complaint by Amtrak is against CNE, not PPL Electric. To date,

Amtrak has not filed a complaint against CNE. To the extent the Commission has jurisdiction over Amtrak's contract with CNE, Amtrak's Complaint against PPL Electric should be dismissed for failure to join an indispensable party.

II. STANDARD OF REVIEW

5. Pursuant to the Commission's regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

6. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwlth.*, 910 A.2d 775, 781 (Pa. Cmwlth. 2006) (citing *Dep't of Gen. Serv. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwlth. 2005); accord *Complaint of Nat'l Fuel Gas Distrib. Corp. and Petition for an Order to Show Cause*, Docket No. P-00072343 (December 26, 2007). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwlth. 2007). For preliminary

objections to be sustained, it must appear with certainty that the law will permit no recovery, and any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781. However, when the law is clear that the complainant is not entitled to relief, preliminary objections will be granted and the complaint dismissed. *Commonwealth of Pennsylvania, et al., v. Blue Pilot Energy, LLC*, 2014 Pa. PUC LEXIS 394 (August 20, 2014) citing *Interstate Traveler Services, Inc. v. Commonwealth, Department of Environmental Resources*, 406 A.2d 1020 (Pa. 1979).

III. PRELIMINARY OBJECTIONS:

A. PRELIMINARY OBJECTION NO. 1: AMTRAK LACKS STANDING TO BRING ITS COMPLAINT AGAINST PPL ELECTRIC

7. PPL Electric incorporates by reference Paragraphs 1 through 6 as if fully set forth herein.

8. As explained below, it is undisputed that Amtrak did not pay PPL Electric for retail transmission service during the time period relevant to the Complaint. In its Complaint, Amtrak admits that it does not pay retail transmission charges to PPL Electric, but rather pays these charges to CNE. (Complaint ¶ 7) Because Amtrak's Complaint pertains solely to retail transmission service and PPL Electric has not charged Amtrak for retail transmission service during the period relevant to the Complaint, Amtrak has no standing as to its Complaint against PPL Electric.

9. There is no contractual or tariff relationship between Amtrak and PPL Electric. Amtrak is not a retail transmission customer of PPL Electric. Rather, it is Amtrak's supplier, CNE that is responsible for the cost of delivering power to Amtrak. PPL Electric has no knowledge of the charges that CNE charges to Amtrak to deliver power to Amtrak's load. In fact, PPL Electric does not even know whether CNE charges Amtrak for transmission service at all.

10. In its Complaint, Amtrak requests a refund of retail transmission charges from PPL Electric for a four-year period from the date of Amtrak's Complaint, i.e., May 30, 2015 to May 30, 2019. (Complaint ¶ 43) However, at no time during that four-year period did Amtrak pay any retail transmission service charges to PPL Electric.

11. Amtrak's request for a refund of retail transmission service charges from PPL Electric is improper. During the requested four-year refund period (May 30, 2015 to May 30, 2019) identified in the Complaint, Amtrak was a shopping customer who received only distribution service from PPL Electric. Amtrak was not a default service customer of PPL Electric at any time during this period. During this time, Amtrak's EGS, CNE or its predecessor, provided and billed for generation supply service and retail transmission service. Therefore, PPL Electric has not billed Amtrak for any retail transmission service, and Amtrak has not paid PPL Electric for any retail transmission service. PPL Electric cannot be ordered to provide a refund for retail transmission service charges that were never paid to PPL Electric.

12. PPL Electric offers three different services to its customers: generation, transmission, and distribution. PPL Electric acquires generation supply in default service auctions from the wholesale market. 66 Pa. C.S. § 2807(e). Transmission service on PPL Electric's facilities is provided under the PJM Interconnection, L.L.C. ("PJM") Open Access Transmission Tariff¹ and is administered by PJM. PPL Electric acquires distribution service from its own distribution system.

13. Basic Utility Supply Service ("BUSS") customers, i.e., non-shopping customers, take all three services – generation, transmission, and distribution – from PPL Electric and pay PPL Electric directly for these services. Shopping customers, such as Amtrak, take only

¹ Available at <https://www.pjm.com/directory/merged-tariffs/oatt.pdf>.

distribution service from PPL Electric. Shopping customers receive generation and transmission service from their EGS and pay the EGS for those services.

14. The unbundling of generation, transmission, and distribution rates is rooted in the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, et seq. (the “Competition Act”). The Competition Act deregulated electric generation and required electric utilities to unbundle their rates and services and provide open access to their transmission and distribution systems so that competitive suppliers could sell electricity directly to customers. 66 Pa. C.S. §§ 2802(14), 2804(3). In accordance with these requirements, PPL Electric unbundled its generation, distribution, and transmission rates in its electric restructuring proceeding. *See Application of Pennsylvania Power & Light Company for Approval of Restructuring Plan Under Section 2806 of the Public Utility Code*, 1998 Pa. PUC LEXIS (June 15, 1998). Prior to the Competition Act, PPL Electric provided bundled retail service to its retail customers, including charges for both electric supply and transmission.

15. The Competition Act also allows customers to choose a competitive supplier and requires EDCs to be the “provider of last resort.” See 66 Pa. C.S. § 2802(16); *Guidelines for Addressing Return of Customers to Provider of Last Resort Service*, Docket No. M-00960890F0017 (Order entered June 22, 2000); *Investigation of Pennsylvania’s Retail Electricity Market; End State of Default Service*, 2013 Pa. PUC LEXIS 306 (Final Order February 15, 2013).

16. Once a retail customer contracts with an EGS and becomes a “shopping” customer, the EGS becomes responsible for providing electric supply to that customer, including obtaining the necessary transmission service from PJM required to delivery that electric supply.

17. Pursuant to the Competition Act and subsequent Commission orders, PPL Electric’s currently-effective tariff establishes separate rates for generation, transmission, and distribution services. Distribution rates are applicable to all customers, shopping and non-shopping. A Transmission Service Charge (“TSC”) and a Generation Supply Charge (“GSC”) apply only to those customers who receive generation supply service from PPL Electric. Shopping customers do not pay the TSC or GSC. See Attachment “A” hereto for a copy of the relevant portions of PPL Electric’s currently-effective tariff. The following table summarizes the rates paid to PPL Electric by BUSS customers and shopping customers:

Rate	TSC	GSC	Distribution rates
BUSS customers	X	X	X
Shopping customers			X

18. The TSC is computed by rate class and is applicable to all BUSS customers. Shopping customers, such as Amtrak, do not pay the TSC. See Supplement No. 194, page 19Z to PPL Electric’s tariff (“The [TSC] shall be applied to charges for electricity supplied to customers who receive [BUSS]” and Supplement No. 194, page 29 to PPL Electric’s tariff (“The [TSC] included in this Tariff applied to all KW and/orKWH billed under this Rate Schedule.”), provided as Attachment “A.” Rather, shopping customers pay retail transmission charges to their EGS, the entity who provides the retail transmission service.

19. As a shopping customer, Amtrak did not pay PPL Electric the TSC or GSC. Amtrak paid only the applicable distribution service rate. Because retail transmission service is provided to shopping customers and billed to shopping customers by their EGS, PPL Electric did not bill for or collect from Amtrak charges for retail transmission service during the time period in which Amtrak is requesting a refund of retail transmission charges from PPL Electric.

20. Based on the foregoing, Amtrak lacks standing to bring its Complaint, which pertains solely to retail transmission charges, against PPL Electric, and the Complaint should be dismissed in its entirety and with prejudice pursuant to 52 Pa. Code § 5.101(a)(7).

B. PRELIMINARY OBJECTION NO. 2: THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION AGAINST PPL ELECTRIC AND IS LEGALLY INSUFFICIENT

21. PPL Electric incorporates by reference paragraphs 1 through 23 as if fully set forth herein.

22. As explained in Preliminary Objection No. 1, during the period relevant to the Complaint, Amtrak received retail transmission service from CNE, and Amtrak did not pay PPL Electric for retail transmission service. These facts are undisputed.

23. In its Complaint, Amtrak asks the Commission to order PPL Electric to refund to Amtrak retail transmission charges that Amtrak, by its own candid admission, never paid to PPL Electric. (Complaint ¶¶ 7, 45) Amtrak failed to demonstrate, because it cannot demonstrate, that Amtrak paid PPL Electric for retail transmission service during the four-year period relevant to the Complaint. Even assuming that all of the factual allegations in Amtrak's Complaint are true, which PPL Electric disputes, Amtrak has failed to demonstrate that it is entitled to relief.

24. It is undisputed and undisputable that CNE provided Amtrak with retail transmission service, and PPL Electric did not receive any payment from Amtrak for retail transmission service. Therefore, Amtrak's request for a refund for retail transmission service charges it never paid to PPL Electric should be summarily dismissed for failure to state a claim on which relief can be granted. Moreover, Amtrak has failed to provide any contract it has with CNE for transmission charges, nor has Amtrak provided a bill from CNE containing the transmission charges that Amtrak paid to CNE.

25. Based on the foregoing, Amtrak has failed to state a cause of action against PPL Electric; its Complaint is legally insufficient, and Amtrak's Complaint therefore should be dismissed pursuant 52 Pa. Code § 5.101(a)(4).

C. PRELIMINARY OBJECTION NO. 3: THE COMMISSION HAS NO AUTHORITY TO GRANT A REFUND IN THIS CASE

26. PPL Electric incorporates by reference paragraphs 1-28 as if set forth herein.

27. In its Complaint, Amtrak seeks a "refund" for the amount paid for retail transmission service. However, as fully explained in Preliminary Objections Nos. 1 and 2, PPL Electric did not charge Amtrak for retail transmission service at any time during the four-year period relevant to the Complaint. As a result, Amtrak did not pay PPL Electric anything for retail transmission service, and there is nothing to refund.

28. Section 1312 of the Public Utility Code, 66 Pa. C.S. § 1312, governs refunds. Section 1312 provides as follows:

(a) General rule.--If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. Any order of the commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact.

29. A refund can be sought for amounts *paid* by the customer and *received* by the utility. Amtrak paid nothing to PPL Electric for retail transmission service. Pursuant to Section

1312, the Commission cannot order PPL Electric to issue a refund for charges that were never paid to it in the first place.

30. Based on the forgoing, the Commission lacks authority to grant the relief requested, and the Complaint should be denied in its entirety.

D. PRELIMINARY OBJECTION NO. 4: AMTRAK'S CLAIM, IF ONE EXISTS, IS FOR DAMAGES OVER WHICH THE COMMISSION HAS NO JURISDICTION

31. PPL Electric incorporates paragraphs 1-33 by reference as if fully set forth herein.

32. As explained in Preliminary Objection No. 3, the Commission cannot order Amtrak a refund of retail transmission charges from PPL Electric because Amtrak never paid PPL Electric for retail transmission charges. Although Amtrak characterizes its request for relief as seeking a "refund," to the extent Amtrak has any claim against PPL Electric, which PPL Electric denies, Amtrak's claim is for damages.

33. It is well-settled law that the Commission has no jurisdiction to award damages. "There is no question that the Commission lacks authority to award damages." *Taylor v. Pennsylvania American Water Company*, 2009 Pa. PUC LEXIS 952 (February 11, 2009) (dismissing complaint with prejudice based on Commission's lack of authority to award damages) citing *Terminato v. Pa. National Insurance Co.*, 645 A.2d 1287 (Pa. 1994); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977); *Ostrov v. I.F.T., Inc.*, 586 A.2d 409 (Pa. Super. 1991); *Poorbaugh v. Pennsylvania Public Utility Commission*, 666 A.2d 744 (Pa. Cmwlth. 1995). Because the Commission lacks authority to award damages, the complaint should be dismissed with prejudice. Any claim for damages must be brought in a court of proper jurisdiction.

34. Based on the foregoing, the Commission lacks jurisdiction to award Amtrak the remedy it seeks, and the Complaint should be dismissed pursuant to 52 Pa. Code § 5.101(a)(1).

E. PRELIMINARY OBJECTION NO. 5: THE COMPLAINT SHOULD BE DISMISSED FOR NONJOINDER OF A NECESSARY PARTY

35. PPL Electric incorporates by reference paragraphs 1 through 37 as if fully set forth herein.

36. The Complaint avers that Amtrak was a shopping customer who received competitive electric generation supply and retail transmission service from CNE during the time period in question. (Complaint ¶ 7)

37. The Complaint avers that CNE bills Amtrak for generation supply and retail transmission service. (Complaint ¶ 7)

38. CNE is a licensed EGS that is authorized to offer, render, furnish or supply electricity or electric generation services in the Commonwealth of Pennsylvania, including within PPL Electric's service territory. (Complaint ¶ 7)

39. In the prayer for relief, the Complaint seeks a refund for retail transmission service charges. (Complaint p. 30) These charges were paid to Amtrak's EGS, CNE. Therefore, the Complaint seeks a refund for the retail transmission charges that Amtrak paid to CNE for retail transmission service during the time period in question. (Complaint ¶ 43)

40. To the extent Amtrak has any cause of action concerning the rates charged for the retail transmission service provided by CNE, its complaint is against CNE, not PPL Electric.

41. If and how an EGS is reimbursed by its customers for PJM transmission service is a matter of contract between the EGS and the customer.

42. PPL Electric is not a party to and is not involved in contracts between an EGS and its retail customers.

43. PPL Electric has no knowledge of or authority over the terms and conditions of the contract between Amtrak and CNE, including the rates charged by CNE.

44. At no time during the four year period prior to Amtrak filing its Complaint did PPL Electric bill or collect rates from Amtrak for retail transmission service. The only tariffed service provided by PPL Electric to Amtrak during a portion of the four year period in question was distribution service. The Complaint does not allege that the rates PPL Electric charged for distribution service were improper.

45. Retail transmission service was provided by Amtrak's EGS, CNE, and Amtrak allegedly has paid CNE for the retail transmission service it provided.

46. To date, Amtrak did not file a complaint with the Commission against CNE or named CNE as a respondent in this matter.

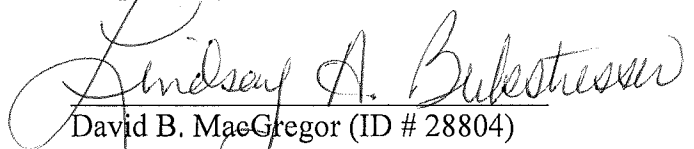
47. Based on the foregoing, Amtrak has failed to join a necessary party and the Complaint should be dismissed as against PPL Electric pursuant to 52 Pa. Code § 5.101(a)(5).²

² The Commission's jurisdiction over complaints against EGSs is limited, particularly as to when it can order an EGS to issue a refund or credit to a customer. *See, e.g., Commonwealth v. IDT Energy, Inc.*, 2014 Pa. PUC LEXIS 715, at *24-30 (Order Entered Dec. 18, 2014); *Nadav v. Respond Power, LLC*, Docket No. C-2014-2429159, at 7 (Order Entered Dec. 19, 2014). PPL Electric takes no position at this time as to whether any complaint filed by Amtrak against CNE should be heard by the Commission or a court of general jurisdiction.

IV. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that the Complaint be dismissed in its entirety and with prejudice.

Respectfully submitted,



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Post & Schell, P.C.

Date: June 27, 2019

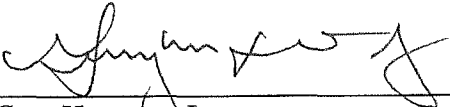
Attorneys for PPL Electric Utilities Corporation

VERIFICATION

I, GARY HARTMAN, JR., being the Supervisor of Load, Scheduling and Settlement at PPL Electric Utilities Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: _____

6/27/19



Gary Hartman, Jr.