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July 8, 2019

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-2019-3010398**

Dear Secretary Chiavetta:

Attached please find for filing with the Pennsylvania Public Utility Commission the Answer of the National Railroad Passenger Corporation to the Preliminary Objections of PPL Electric Utilities Corporation in the above-referenced proceeding.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in blue ink that reads 'Pamela C. Polacek'.

Pamela C. Polacek

Counsel to National Railroad Passenger Corporation

Enclosures

c: Chief Administrative Law Judge Charles Rainey (via email and first-class mail)
Certificate of Service

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CERTIFICATE OF SERVICE

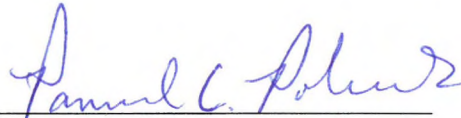
I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Pamela C. Polacek

Counsel to the National Railroad Passenger
Corporation

Dated this 8th day of July, 2019, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

National Railroad Passenger Corporation,	:	
Petitioner,	:	
	:	
v.	:	Docket No. C-2019-3010398
	:	
PPL Electric Utilities Corporation,	:	
Respondent.	:	

**ANSWER OF THE NATIONAL RAILROAD PASSENGER CORPORATION TO THE
PRELIMINARY OBJECTIONS OF
PPL ELECTRIC UTILITIES CORPORATION**

Pursuant to 52 Pa. Code Sections 5.61(a)(2) and 5.101, the National Railroad Passenger Corporation ("Amtrak") hereby submits this Answer ("Answer") to the Preliminary Objections filed by PPL Electric Utilities Corporation ("PPL Electric") in response to Amtrak's Complaint ("Complaint"). For the reasons stated herein, Amtrak respectfully requests that the Pennsylvania Public Utility Commission ("PUC" or "Commission") deny the Preliminary Objections ("Preliminary Objections") of PPL Electric.¹ In support hereof, Amtrak states as follows:

SUMMARY AND STANDARD OF REVIEW

PPL Electric attempts to persuade the Commission to dismiss Amtrak's Complaint by mischaracterizing actions described in the Complaint and by obscuring PPL Electric's role in calculating transmission charges. Although shopping customers may have an Electric Generation Supplier ("EGS") arrange transmission service, PPL Electric is the transmission owner and

¹ On June 27, 2019, PPL Electric also filed an Answer and New Matter to the Complaint of the National Railroad Passenger Corporation in this proceeding. The Commission's regulations provide that "replies to answers seeking affirmative relief or to new matter shall be filed with the Commission and served within twenty days after the service of the answer." 52 Pa. Code § 5.63. In accordance with Section 5.63, Amtrak intends to file a Reply to PPL Electric's New Matter on or before July 17, 2019.

provider of transmission service for all electric customers in its territory. PPL Electric is the entity that calculates the billing determinants for each retail account. This is the gravamen of Amtrak's Complaint. Regardless of which EGS invoices the customer, PPL Electric calculates the quantity of transmission service that must be procured on behalf of each retail customer, and PPL Electric, as the provider of transmission service, is the entity that ultimately receives payment for provision of transmission service based on those calculations. The Commission must reject PPL Electric's attempt to shirk responsibility for calculating an important billing determinant for transmission service that impacts the customer regardless of whether the account purchases default service or competitive supply from an EGS.

In addition, endorsing PPL Electric's theory of standing will deprive retail customers of direct recourse against the utility that calculates the transmission obligations and provides transmission service. PPL Electric's theory of standing requires the customer to sue its EGS, which has no control over the calculation of the transmission obligation for the account. If the customer switches EGSs during the litigation of the proceeding, as it can pursuant to Pennsylvania's retail competition law, then the customer needs to file another Complaint against the second EGS. Although, theoretically the EGSs could try to join or implead PPL Electric, PPL Electric's theory of standing results in unnecessary costs for the retail customer and the EGSs, and creates an unnecessary legal dispute between the EGS and its customer. This is neither an efficient use of legal resources nor an environment that promotes retail choice and competition. In effect, PPL Electric can calculate the transmission obligations for the customers' accounts however it wants, and an aggrieved party such as Amtrak would have no standing to complain, no basis for a refund and, indeed, would have no forum with jurisdiction to pursue a Complaint. PPL Electric's failure

to acknowledge its direct accountability to customers for its actions in calculating transmission obligations should be swiftly and strongly condemned by denying its Preliminary Objections.

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. *Application of East Coast Resources, LLC*, 2016 Pa. PUC LEXIS 21, *8-9, Docket No. A-2014-2453533 (Order entered Jan. 28, 2016). For purposes of disposing of Preliminary Objections, the Commission must accept as true all well-pleaded, material facts of the non-moving party (here, Amtrak), as well as every reasonable inference from those facts. *Id.*; *see also County of Allegheny v. Cmwlt. of Pa.*, 490 A.2d 402 (Pa. 1985); *Cmwlt. of Pa. v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlt. 1988). The Commission must resolve any doubt in favor of the non-moving party (here, Amtrak) by refusing to sustain the preliminary objections. *Id.* As set forth below in Amtrak's Answer, PPL Electric has failed to provide any legal basis to deny Amtrak's Complaint.

ANSWER TO PRELIMINARY OBJECTIONS OF PPL ELECTRIC

1. Amtrak submits that Paragraph 1 of the Preliminary Objections speaks for itself and no response is required.
2. Amtrak submits that Paragraph 2 speaks for itself and no response is required. By way of clarification, the transmission rates charged to Amtrak by its EGS are based on calculations made by PPL Electric. PPL Electric is both the calculator of the transmission obligation, which is used to determine Amtrak's transmission charges, and the ultimate recipient of the charges that Amtrak pays for transmission service.
3. The averment of Paragraph 3 is a conclusion of law to which no response is required.
4. Admitted in part and denied in part. Amtrak admits that Amtrak did not directly pay PPL Electric for transmission service during the relevant four-year refund period ("Refund

Period"). Amtrak further admits that PPL Electric did not directly bill Amtrak any amount for transmission service during the Refund Period. Amtrak denies that the Commission lacks legal authority or jurisdiction to require PPL Electric to provide a refund for amounts Amtrak has paid for transmission, merely because those payments were not remitted directly to PPL Electric. Amtrak further denies that Amtrak's claim constitutes a claim for damages. Amtrak admits that Amtrak has not filed a Complaint on this matter against Constellation NewEnergy, Inc. ("CNE"). Amtrak denies PPL Electric's assertion that Amtrak's Complaint against PPL Electric should be dismissed for failure to join an indispensable party. PPL Electric, as the entity determining each end-use customer account's network service peak load ("NSPL") obligation (also known as the account's "transmission obligation" or "transmission tag"), and as ultimate recipient of the charges that Amtrak pays for transmission, is the appropriate object of Amtrak's Complaint. The remaining averments of Paragraph 4 are conclusions of law to which no response is required.

5. Paragraph 5 is a statement of law, to which no response is required.

6. Paragraph 6 is a statement of law, to which no response is required.

I. ANSWER TO PRELIMINARY OBJECTION 1: AMTRAK HAS STANDING TO BRING ITS COMPLAINT AGAINST PPL ELECTRIC

7. Amtrak submits that Paragraph 7 speaks for itself and no response is required.

8. Admitted in part and denied in part. Amtrak admits that Amtrak does not pay PPL Electric directly for transmission charges, but Amtrak denies that Amtrak's Complaint is limited to "retail transmission service." By way of further explanation, Amtrak's Complaint against PPL Electric pertains to both PPL Electric's role as provider of transmission service and PPL Electric's responsibility to calculate NSPL for accounts located in its territory. Amtrak denies that Amtrak lacks standing to bring the Complaint. By way of further explanation, PPL Electric is the sole entity charged with the responsibility of calculating NSPL for accounts located in its service

territory. This calculation is done for all accounts, regardless of whether the customer purchases generation supply from an EGS or from PPL Electric. These calculations result in individual customer transmission obligations and ultimately result in charges (in some form) to the retail customer and, eventually, payments to PPL Electric. PPL Electric admitted in its recent Answer in the Federal Energy Regulatory Commission ("FERC") proceeding on this same issue that it makes calculations pursuant to its PUC-jurisdictional Electric Generation Supplier Coordination Tariff ("EGS Tariff") that determine the quantity of transmission service for which a retail customer will be charged. Answer of PPL Electric Utilities Corporation, FERC Docket No. EL19-78-000, ¶ 8. As described by PJM Interconnection, L.L.C. ("PJM") in its Answer in the same FERC proceeding, PPL Electric calculates the peak loads of the retail end user accounts served by each Network Customer using PJM's Network Integrated Transmission Service ("NITS"). Answer of PJM Interconnection, L.L.C., FERC Docket No. EL19-78-000, pp. 2-3. PPL Electric also receives payments from CNE, routed through PJM or an affiliate of PJM, based on these very calculations. PPL Electric has provided no basis for its assertion that Amtrak lacks standing merely because Amtrak pays its EGS for transmission service, which subsequently remits those amounts to PJM/PPL Electric. PPL Electric is responsible for the NSPL calculation for Amtrak's account, which is the subject of this Complaint.

9. Admitted in part and denied in part. Amtrak denies that there is no contractual or tariff relationship between Amtrak and PPL Electric. By way of further explanation, Amtrak and PPL Electric have, during the Refund Period, functioned in a relationship of customer and distribution provider. As pertaining to transmission service, Amtrak admits that Amtrak and PPL Electric do not currently have a contract; however, PPL Electric plays a central and critical role for all accounts in the service territory by calculating the NSPL. The NSPL applies to the account

regardless of which EGS is billing the account. Both Parties are subject to Commission jurisdiction as expressed in the Public Utility Code and the Electric Generation Customer Choice and Competition Act ("Competition Act"). 66 Pa. C.S. § 2801. PPL Electric's calculations directly result in charges to Amtrak, and PPL Electric is the ultimate recipient of the transmission charges Amtrak pays. Amtrak is unaware of the extent of PPL Electric's knowledge of CNE's charges to Amtrak, and therefore denies PPL Electric's assertions related to its knowledge of CNE's charges; however, for purposes of ruling on Preliminary Objections, the Commission must accept as true all well-pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *Application of East Coast Resources* at *8-9. As a result, the Commission must accept Amtrak's explanation of the contract structure and the amounts paid. *Id.* Amtrak will, of course, submit appropriate evidentiary support for this contract structure during the hearing.

10. Admitted in part and denied in part. Amtrak admits that Amtrak requests a refund of amounts received by PPL Electric for transmission service to Amtrak's account for the Refund Period. Amtrak admits that Amtrak has not paid any transmission service charges directly to PPL Electric during the Refund Period. However, Amtrak denies any characterization or implication that PPL Electric is not the ultimate recipient of transmission payments made by Amtrak.

11. Admitted in part and denied in part. Amtrak admits that Amtrak was not a default service customer of PPL Electric during the Refund Period. Amtrak admits that PPL Electric provided distribution service directly to Amtrak during the Refund Period and did not bill Amtrak directly for transmission service. By way of further explanation, PPL Electric, in its Preliminary Objections, repeats its assertion *ad infinitum* that Amtrak did not pay PPL Electric for "retail transmission service." However, the fact that Amtrak did not pay PPL Electric directly for transmission service is not dispositive of whether Amtrak has standing to pursue this Complaint.

PPL Electric has not denied that it is the ultimate recipient of payments Amtrak makes for transmission service. Nor has PPL Electric denied that it is the only entity that calculates the NSPL values that result in the transmission costs for Amtrak's account, a fact that was supported by PJM in its Answer referenced above at FERC. Answer of PJM Interconnection, L.L.C., FERC Docket No. EL19-78-000, pp. 2-3. Amtrak denies any characterization or implication that PPL Electric is not the ultimate recipient of transmission payments made by Amtrak, and Amtrak therefore denies that PPL Electric cannot be ordered to provide a refund for these transmission service charges.

12. To the extent Amtrak is aware of PPL Electric's business and operations, PPL Electric's descriptions of its business model in Paragraph 12 are admitted. Amtrak denies, however, that all aspects of transmission service are governed solely by PJM and PJM's Open Access Transmission Tariff ("OATT"). Unless and until FERC asserts jurisdiction over the determination of the quantity of transmission service that a customer must procure, the PUC may exercise jurisdiction by virtue of its jurisdiction over PPL Electric's activities to implement retail customer choice. 66 Pa.C.S. § 2802(14), 2804-2807. Determining the NSPL for each account (shopping and default service) in a just, reasonable, and non-discriminatory manner is subject to the PUC's jurisdiction. 66 Pa. C.S. § 1301; *see also* 66 Pa. C.S. § 102 (definition of "Rate").

13. Admitted in part. Amtrak admits to PPL Electric's averments in Paragraph 13 to the extent "only distribution service" is understood to mean transmission service is not billed to Amtrak by PPL Electric. Amtrak denies any characterization or implication that PPL Electric is not providing transmission service to its distribution-only customers or receiving payment for transmission service from its distribution-only customers, even though that payment is provided directly to an EGS that subsequently pays PPL Electric (via PJM or a PJM affiliate).

14. Admitted.

15. Admitted.

16. Admitted.

17. To the extent Amtrak is aware of PPL Electric's business and operations, PPL Electric's descriptions of its business model in Paragraph 17 are admitted.

18. To the extent Amtrak is aware of PPL Electric's business and operations, PPL Electric's descriptions of its business model in Paragraph 18 are admitted. Amtrak denies, however, that EGSs "provide" transmission service. Rather, PPL Electric provides transmission service.

19. Admitted in part and denied in part. Amtrak admits that Amtrak did not pay PPL Electric the Transmission Service Charge ("TSC") or Generation Supply Charge ("GSC"). Amtrak denies that EGSs "provide" transmission service. Transmission service is billed to shopping customers by their EGSs but is provided by the transmission owner – in this case, PPL Electric.

20. Denied. PPL Electric has not provided any legal basis, rule, statute, or Commission precedent for claiming that Amtrak lacks standing to bring its Complaint. By way of further explanation, PPL Electric's entire argument on standing appears to be based on the fact that Amtrak does not directly pay PPL Electric for transmission services. However, there is no requirement for a contractual relationship or direct-payment relationship to bring a Complaint. Section 5.21(a) of the Commission's Regulations states:

A person complaining of an act done or omitted to be done by a person subject to the jurisdiction of the Commission, in violation, or claimed violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission, may file a formal complaint with the Commission.

52 Pa. Code § 5.21(a). PPL Electric is subject to the Commission's jurisdiction. In its Answer in this proceeding, PPL Electric admits that it calculates EGS' network loads subject to its EGS Tariff, which is a Commission-jurisdictional tariff. Answer and New Matter of PPL Electric Utilities

Corporation, ¶ 8. PPL Electric completes that calculation by adding the NSPLs for the individual accounts that are served by the EGS. Amtrak is challenging the NSPL calculation for its account.

Further, it is well-settled that in order to have standing to pursue a formal complaint before the PUC under Section 701 of the Public Utility Code, the complainant "must have a direct, immediate, and substantial interest in the subject matter of the controversy." *Mun. Auth. of West View v. PUC*, 41 A.3d 929, 933 (Pa. Cmwlth 2012) (quoting *Waddington v. Pa. PUC*, 670 A.2d 199, 202 (Pa. Cmwlth. 1995), *appeal denied*, 678 A.2d 368 (Pa. 1996)). Amtrak meets these requirements, as follows:

- a. Direct. Under the standard articulated in *Mun. Auth. of West View*, Amtrak must merely show "causation of the harm to [Amtrak's] interest by the matter of which [Amtrak] complains." *Mun. Auth. of West View* at 933 (quoting *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975)). Amtrak's harm is directly caused by PPL Electric's miscalculation of Amtrak's usage of the transmission system. No other entity conducts these calculations that result in Amtrak's charges. Those calculations are run by PPL Electric regardless of what EGS serves the Amtrak load.
- b. Substantial. "The requirement of a 'substantial' interest means that the interest must have substance—i.e., there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." *Id.* (citing *Wm. Penn Parking Garage*, 346 A.2d at 282). Amtrak's interest is substantial because (a) PPL Electric's calculation of load at the Conestoga Substation account substantially affects Amtrak as the only retail customer taking service there; (b) Amtrak has paid millions of dollars in

transmission charges based on faulty calculations of its use of the transmission system; (c) CNE's transmission charges are a pass-through and Amtrak is directly affected by PPL Electric's calculations; and (d) even if CNE's transmission charges were not a pass-through, PPL Electric's calculations result in increased charges to CNE and subsequent EGSs serving Amtrak's account, which affect the pricing that CNE or subsequent EGSs for this account will charge.

- c. Immediate. The requirement that an interest be "'immediate' and not a remote consequence of the matter concerns 'the nature of the causal connection between the action complained of and the injury to the person challenging it.'" *Id.* (quoting *Wm. Penn Parking Garage*, 346 A.2d at 283). "A protestant's interest in the subject matter of a proceeding is . . . immediate if there is a close causal nexus between the protestant's asserted injury and the actions challenged in the protest...." Opinion, *Leatherstocking Gas Company*, Docket No. A-2011-2275595 (Mar. 2, 2012). Amtrak's interest is immediate because there is a very close causal nexus between PPL Electric's transmission obligation calculations and the transmission charges for Amtrak's account. CNE does not have the ability to calculate the individual NSPLs for its customers; customers' usage is metered by PPL Electric per the provisions of the EGS Tariff for transmission obligation. As explained by PJM, PPL Electric calculates this for each account, regardless of whether the customer is shopping or on default service. Answer of PJM Interconnection, L.L.C., FERC Docket No. EL19-78-000, pp. 2-3. Whether PPL Electric includes power flowing directly from Safe

Harbor to Amtrak in its calculations, or only includes power flowing from the PJM grid to Amtrak in those calculations, makes millions of dollars of difference to Amtrak. Amtrak's injury is directly connected to PPL Electric's calculation methodology, and its interest is therefore immediate.

II. ANSWER TO PRELIMINARY OBJECTION 2: THE COMPLAINT STATES A CAUSE OF ACTION AGAINST PPL ELECTRIC AND IS LEGALLY SUFFICIENT

21. Amtrak submits that Paragraph 21 speaks for itself and no response is needed.

22. Admitted. Amtrak denies any characterization or implication that PPL Electric is not the ultimate recipient of transmission payments made by Amtrak. Amtrak also denies that CNE provides transmission service.

23. Admitted in part and denied in part. Amtrak admits that Amtrak requests that the Commission order PPL Electric to refund transmission charges paid by Amtrak. Amtrak denies that Amtrak has not demonstrated that it is entitled to relief. By way of further explanation, PPL Electric's repeated claim that Amtrak did not pay PPL Electric is not dispositive. PPL Electric (a) has not denied PPL Electric is the only entity charged with a responsibility under the EGS Tariff to calculate NSPLs for transmission billing purposes; (b) has not denied PPL Electric is the only entity with the ability to correct potentially erroneous NSPL calculations; (c) has not denied PPL Electric is subject to Commission jurisdiction for the actions it takes under its EGS Tariff; (d) has not denied that PPL Electric receives payments for transmission service offered by the EGSs that serve competitive load in its territory; and (e) has not denied that the charges paid by Amtrak to CNE for transmission service for Amtrak's account were ultimately paid to PPL Electric. In short, PPL Electric cannot, by rote repetition of the fact that PPL Electric does not *directly* bill Amtrak, cause the Commission to ignore the material issue that PPL Electric is both the calculator of the

load for which Amtrak is billed for transmission service *and* the ultimate recipient of the money that Amtrak pays for transmission service.

24. Admitted in part and denied in part. Amtrak admits that Amtrak did not pay PPL Electric directly for transmission service. Amtrak denies any characterization or implication that PPL Electric is not the ultimate recipient of transmission payments made by Amtrak. Further, Amtrak denies that CNE "provides" transmission service – PPL Electric remains the provider of transmission service for all load in its service territory. If transmission obligations are being miscalculated, as Amtrak alleges, the only way this can be corrected is by PPL Electric. The end result of PPL Electric's argument, if it were accepted, is that Amtrak would have *no recourse* to address the erroneous basis of its transmission charges. Additionally, PPL Electric is the ultimate recipient of the transmission charges that Amtrak pays. In paragraph 36 of PPL's Answer in this proceeding, PPL Electric acknowledges that its PJM Tariff-based rate is a cost-of-service based transmission rate. If PPL Electric is receiving payments based on its cost of serving transmission customers, it should be accountable to accurately calculate these costs and the transmission responsibility of each account using cost-of-service principles. For these reasons, Amtrak has stated a cause of action under 52 Pa. Code § 5.21(a). PPL Electric is the appropriate object of Amtrak's Complaint.

25. Denied.

III. ANSWER TO PRELIMINARY OBJECTION 3: THE COMMISSION HAS FULL AUTHORITY TO GRANT A REFUND IN THIS CASE

26. Amtrak submits that Paragraph 26 speaks for itself and no response is needed.

27. Admitted in part and denied in part. As stated above, Amtrak admits that Amtrak did not directly pay PPL Electric for transmission service. Amtrak denies that there is nothing to refund. By way of further explanation, PPL Electric does not deny that Amtrak has paid for

transmission service or that PPL Electric received payments from CNE (through PJM or PJM's affiliate) for providing transmission service. PPL Electric does not deny that the payments made by Amtrak for transmission service ultimately accrued to PPL Electric.

28. Amtrak submits that Paragraph 28 speaks for itself and no response is needed.

29. Admitted in part and denied in part. Amtrak admits that it did not pay PPL Electric directly for transmission service. Amtrak admits that a refund can be sought for amounts paid by the customer and received by the utility. Amtrak denies that the Commission cannot order PPL Electric to issue a refund. Amtrak also denies that charges were never paid to PPL Electric. By way of further explanation, PPL Electric did not directly charge Amtrak for transmission service, but PPL Electric received revenue that originated from Amtrak for provision of transmission service. PPL Electric cites to Section 1312 of the Public Utility Code to argue that there must be a direct payment between Amtrak and PPL Electric for Amtrak to seek a refund; however, Section 1312 does not require funds to be transferred directly from the end-user to the utility. Section 1312 simply requires that where there is a "rate received by" a public utility that is unjust or unreasonable, in violation of a regulation or order, or in excess of the applicable tariff rate, 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." 66 Pa.C.S. § 1312. To quote PPL Electric's Preliminary Objections, ¶ 29, a refund can be sought for "amounts *paid* by the customer and *received* by the utility." Here, Amtrak has *paid* for transmission service, and PPL Electric has *received* such payments after they were passed through both CNE and PJM (or its affiliate), ultimately reaching PPL Electric.

30. Denied. By way of further explanation, the Commission has authority to grant the relief requested. The Competition Act directed the establishment of EGS licensing requirements

and any other requirements concerning service the Commission deems necessary "for the protection of the public." 66 Pa. C.S. § 2802(14). The Commission also authorized and approved utility supplier tariffs such as PPL Electric's EGS Tariff. The Commission exercises jurisdiction over the Electric Distribution Companies' ("EDC") implementation of retail customer choice. 66 Pa.C.S. § 2802(14), 2804-2807. The Commission has the "full power and authority" as well as the "duty to enforce, execute and carry out, by its regulations, orders, or otherwise...the provisions of [the Public Utility Code], and the full intent thereof." 66 Pa. C.S. § 501(a). The Commission retains authority over PPL Electric's calculations of load and the resultant transmission charges to Amtrak and has full authority to award appropriate relief.

IV. ANSWER TO PRELIMINARY OBJECTION 4: AMTRAK'S CLAIM IS FOR A REFUND OF OVERPAYMENTS PAID BY AMTRAK AND ULTIMATELY RECEIVED BY PPL ELECTRIC

31. Amtrak submits that Paragraph 31 speaks for itself and no response is needed.

32. Denied. By way of further explanation, PPL Electric provides no basis for its arbitrary definition of "refund." In contrast to PPL Electric's claims, the Commission has broad authority to enforce its own rules and regulations. Where the Commission believes that any person or corporation, among other things, "failed, omitted, neglected, or refused, or is about to fail, omit, neglect, or refuse, to obey any lawful requirement, regulation or order made by the commission...the commission may institute an injunction, mandamus or other appropriate legal proceedings, to restrain such violations of the provisions of this part, or of the regulations, or orders of the commission, and to enforce obedience thereto." 66 Pa.C.S. § 502.

33. Denied in part. Amtrak denies PPL Electric's assertion that the Complaint should be dismissed without prejudice. The remaining averments in Paragraph 33 are conclusions of law, to which no response is required. By way of further explanation, PPL has failed to explain what "damages" Amtrak is seeking and has failed to explain why returning to Amtrak the payments

made by Amtrak would not fit the definition of a refund. Amtrak paid millions of dollars based on faulty calculations, by PPL Electric, that did not reflect Amtrak's actual use of the transmission system. PPL Electric was the ultimate recipient of these payments and was the entity that calculated the inflated and incorrect NSPLs for Amtrak's account. Amtrak is arguing for a return of overpayments it made during the four-year Refund Period. Consequently, Amtrak's request is in the nature of a refund and is within the Commission's authority to grant.²

34. Denied.

V. ANSWER TO PRELIMINARY OBJECTION 5: PPL ELECTRIC IS THE ONLY NECESSARY PARTY TO THIS COMPLAINT

35. Amtrak submits that Paragraph 35 speaks for itself and no response is needed.

36. Denied. Amtrak denies that Amtrak "received" transmission service from CNE.

Although Amtrak paid CNE for transmission charges, PPL Electric at all times remained the provider of transmission service.

² Even if the Commission determined that Amtrak's claim was for damages, the Commission retains jurisdiction (until FERC rules otherwise) to address the NSPL calculations conducted by PPL Electric. As admitted by PPL Electric in its Answer, its calculations are done pursuant to its EGS Tariff, which is subject to Commission jurisdiction. The doctrine of primary jurisdiction provides that a civil court would be required to defer to the Commission under the circumstances of this case. As recognized by the Pennsylvania Supreme Court:

In general, the doctrine of primary jurisdiction holds that where an agency has been established to handle a particular class of claims, the court should refrain from exercising its jurisdiction until the agency has made its determination. Hence, although the court may have subject matter jurisdiction, the court defers its jurisdiction until an agency ruling has been made.

Jackson v. Centennial School District, 501 A.2d 218, 221 (Pa. 1985). Additionally, the Pennsylvania Supreme Court has stated that "where the subject matter is within an agency's jurisdiction and where it is a complex matter requiring special competence, the proper procedure is for the court to refer the matter to the appropriate agency." *Elkin v. Bell Telephone Co. of Pennsylvania*, 420 A.2d 371, 375-77 (Pa. 1980). See also *Ostrov v. I.F.T., Inc.*, 586 A.2d 409, 413-414 (Pa. Super. 1991). The allegations in the Complaint fall squarely within the Commission's subject matter jurisdiction and unique expertise regarding the interaction of EDCs and EGSs. Further, the Commission has the power to handle the types of claims set forth in the Complaint. Consequently, even if this were a claim for damages, the underlying claim that PPL Electric has been miscalculating Amtrak's load would be a dispute properly before this Commission. Thus, PPL Electric's arguments are moot.

37. Denied. Amtrak denies that Amtrak is billed for "retail" transmission service. Amtrak is billed by CNE for transmission service that is provided by PPL Electric, the transmission owner serving all electric customers in PPL Electric territory.

38. Amtrak submits that Paragraph 38 speaks for itself and no response is needed.

39. Denied. Amtrak denies that there are "retail" transmission costs. PPL Electric is the transmission owner that receives the payments for the transmission service that is provided.

40. Denied. By way of further explanation, as described above, PPL Electric is the only entity that calculates individual load data – including NSPLs – for use by the EGSs serving load in its territory. PPL Electric gathers this data on a daily basis for each customer regardless of what EGS is serving load for any particular customer. Answer of PJM Interconnection, L.L.C., FERC Docket No. EL19-78-000, p. 3. PPL Electric provides transmission service and receives the payments.

41. Admitted.

42. Admitted in part and denied in part. PPL Electric is not a party to contracts between EGSs and their retail customers; however, PPL Electric is "involved" through its various roles implementing retail supply competition, including, but not limited to, calculating the NSPL for every account.

43. Amtrak has no knowledge of the extent of PPL Electric's knowledge of the contract terms between CNE and Amtrak, and therefore denies PPL Electric's assertions related to its knowledge on this issue.

44. Admitted in part and denied in part. As stated above, Amtrak admits that PPL Electric did not bill Amtrak directly for transmission service during the Refund Period; however, PPL Electric collected transmission payments for Amtrak's account. Amtrak denies that the only

tariffed service provided by PPL Electric during any of the Refund Period was distribution service. By way of further explanation, PPL Electric is subject to its EGS Tariff and other obligations under Chapter 28 of the Public Utility Code, which sets forth rights of retail customers. *See* 66 Pa.C.S. § 2801 et seq.

45. Denied.

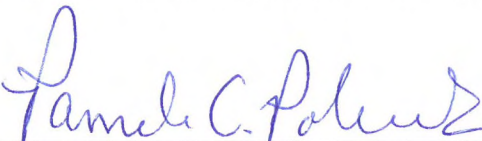
46. Admitted.

47. Denied. A party is indispensable when his/her rights are so connected with the claim of the litigants that no decree can be made without impairing those rights. *Tigue v. Basalyga*, 304 A.2d 119, 120 (Pa. 1973); *Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988). The Pennsylvania Supreme Court has stated that "[t]he basic inquiry in determining whether a party is indispensable concerns whether justice can be done in the absence of him or her." *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 581 (Pa. 2003). Because CNE is a pass-through entity for transmission charges, its rights are not likely to be affected or impaired by a ruling. This controversy involves PPL Electric's calculation of transmission obligations on an account-by-account basis. This occurs regardless of which EGS is serving load, and therefore functions independently of any relationship Amtrak may have with CNE. CNE is not a necessary party.

WHEREFORE, the National Railroad Passenger Corporation respectfully requests that PPL Electric Utilities Corporation's Preliminary Objections be denied.

Respectfully submitted,

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By 

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Counsel to the National Railroad Passenger Corporation

Dated: July 8, 2019

VERIFICATION

I, William G. Sfida, Director of Utilities Management – Procurement & Logistics at the National Railroad Passenger Corporation (“Amtrak”), hereby state that the facts set forth in the foregoing Answer are true and correct to the best of my knowledge, information and belief and that I expect 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).

7/5/2019
Date

William G. Sfida
William G. Sfida