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July 17, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

**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 New Matter 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 black ink, appearing to read 'Pamela Polacek', written over a horizontal line.

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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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER TO NEW MATTER OF
PPL ELECTRIC UTILITIES CORPORATION**

Pursuant to 52 Pa. Code Sections 5.63(a), the National Railroad Passenger Corporation ("Amtrak") hereby submits this Answer ("Answer") to the New Matter ("New Matter") filed by PPL Electric Utilities Corporation ("PPL Electric"). As a preliminary matter, in Amtrak's Answer to PPL Electric's Preliminary Objections, Amtrak has already addressed all issues raised by PPL Electric in the New Matter, and Amtrak's Answer to PPL Electric's Preliminary Objections is incorporated herein by reference.¹ For the reasons stated herein, Amtrak respectfully requests that the Pennsylvania Public Utility Commission ("PUC" or "Commission") reject the averments of PPL Electric in the New Matter. In support hereof, Amtrak states as follows:

ANSWER TO NEW MATTER

87. Admitted in part and denied in part. Amtrak admits that Amtrak seeks a refund from PPL Electric. Amtrak admits that Amtrak seeks a refund for excessive payments for transmission service. Amtrak admits that Amtrak did not pay PPL Electric directly for "retail transmission service." However, Amtrak denies any characterization or implication that PPL Electric is not the ultimate recipient of transmission payments made by Amtrak. By way of further

¹ Pursuant to Commission procedure, Amtrak is not responding to the averments in PPL Electric's Answer.

explanation, the fact that Amtrak did not pay PPL Electric directly for transmission service is not dispositive of whether Amtrak may pursue a refund in the aforementioned docket. 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 network service peak load ("NSPL") values that result in the transmission costs for Amtrak's account, a fact that was supported by PJM in its Answer in the proceeding on this same topic at the Federal Energy Regulatory Commission ("FERC"). Answer of PJM Interconnection, L.L.C., FERC Docket No. EL19-78-000, pp. 2-3. PPL Electric has provided no legal or equitable basis to shield a Commission-jurisdictional public utility from the Commission's authority to order refunds merely because the payments did not pass directly from the ultimate consumer to the public utility.

Endorsing PPL Electric's view of refunds will deprive retail customers of direct recourse against the utility that calculates the transmission obligations and provides transmission service. PPL Electric's theory 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 to get reimbursement for the refund owed to the customer, this process 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 the Commission.

88. Admitted in part and denied in part. Amtrak admits that a refund can be sought for amounts paid by the customer and received by the utility. Amtrak denies any implication 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. Consequently, Amtrak denies that the Commission cannot order PPL Electric to issue a refund.

89. Denied. Amtrak denies that Amtrak's refund claim is a claim for damages. PPL Electric 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, made 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 Additionally, 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.³ Additionally, PPL Electric is the ultimate recipient of the transmission charges that Amtrak pays. In paragraph 36 of PPL Electric'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

² As indicated in Amtrak's Answer to PPL Electric's Preliminary Objections, 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 Electric Distribution Companies ("EDC") and Electric Generation Suppliers ("EGS"). 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.

³ PPL Electric concurrently argues before the FERC that the FERC has no jurisdiction over this matter. Answer of PPL Electric Utilities Corporation, FERC Docket No. EL19-78-000, pp. 20-24. PPL Electric stated:

[FERC] has jurisdiction over transmission of power in interstate commerce and sales for resale in interstate commerce. Jurisdiction over the other aspects of the power sector, including sales from retail power providers to end use customers is fully within the jurisdiction of the states. Relevant to Amtrak's Complaint, the [FERC] has already addressed this issue when it found that it does not have jurisdiction over the terms and conditions included in EGS Tariffs.

Id. at 20-21.

customers, it should be accountable to accurately calculate these costs and the transmission responsibility of each account using cost-of-service principles. The Commission retains full authority to adjudicate this dispute and award relief to Amtrak.

90. 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 EDCs' 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). Additionally, 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.

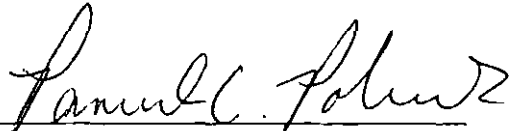
PPL Electric (a) has not denied PPL Electric is the only entity charged with a responsibility under the EGS Tariff to calculate NSPLs for transmission billing purposes; (b) has not denied PPL Electric is the only entity with the ability to correct potentially erroneous NSPL calculations; (c) has not 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 (through PJM or PJM's affiliate); 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. 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.

WHEREFORE, the National Railroad Passenger Corporation respectfully requests that PPL Electric Utilities Corporation's averments in its New Matter be rejected.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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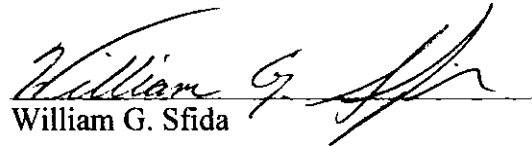
Counsel to the National Railroad Passenger Corporation

Dated: July 17, 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).

7/12/2019
Date


William G. Sfida

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CERTIFICATE OF SERVICE

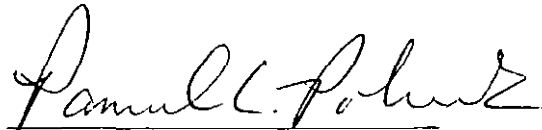
I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Pamela C. Polacek

Counsel to the National Railroad Passenger
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Dated this 17th day of July, 2019, in Harrisburg, Pennsylvania.

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