



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Pamela C. Polacek
Direct Dial: 717.237.5368
Direct Fax: 717.260.1736
ppolacek@mcneeslaw.com

August 12, 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:

Enclosed please find the National Railroad Passenger Corporation's ("Amtrak") Answer to PPL Electric Utilities Corporation's Motion to Compel Responses, Discovery – Set I 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 C. Polacek', is written over the printed name.

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

RECEIVED
2019 AUG 12 PM 3:54
PA PUC
SECRETARY'S BUREAU
FRONT DESK

www.McNeesLaw.com

Harrisburg, PA • Lancaster, PA • Scranton, PA • State College, PA • Columbus, OH • Frederick, MD • Washington, DC

CERTIFICATE OF SERVICE

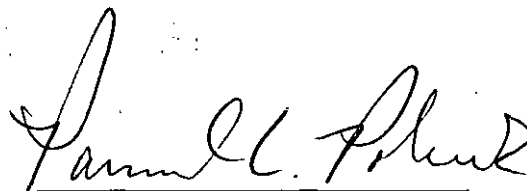
I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Lindsay A. Berkstresser, Esq.
Post & Schell, P.C.
17 N 2nd Street, 12th Floor
Harrisburg, PA 17101
lberkstresser@postschell.com

David B. MacGregor, Esq.
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
dmacgregor@postschell.com

Michael Shafer, Esq.
Kimberly A. Klock, Esq.
PPL Services Corporation
2 N. Ninth St.
Allentown, PA 18101
mjshafer@pplweb.com
kklock@pplweb



Pamela C. Polacek

Counsel to the National Railroad Passenger Corporation

Dated this 12th day of August, 2019, in Harrisburg, Pennsylvania.

RECEIVED
2019 AUG 12 PM 3:54
PA PUC
SECRETARY'S BUREAU
FRONT DESK

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

National Railroad Passenger Corporation,
Petitioner,

v.

PPL Electric Utilities Corporation,
Respondent.

Docket No. C-2019-3010398

**ANSWER OF THE NATIONAL RAILROAD PASSENGER CORPORATION TO
PPL ELECTRIC UTILITIES CORPORATION'S
MOTION TO COMPEL RESPONSES, DISCOVERY – SET I**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

Pursuant to 52 Pa. Code § 5.342(g)(1), the National Railroad Passenger Corporation (“Amtrak”) files this Answer to PPL Electric Utilities Corporation’s (“PPL”) Motion to Compel Answers to Interrogatories and Requests For Production of Documents Propounded by PPL Electric – Set I (“PPL Set I”) filed on August 7, 2019, in the above-referenced proceeding. For the reasons set forth below, Amtrak respectfully requests that Administrative Law Judge (“ALJ”) Joel H. Cheskis deny PPL’s Motion.

I. INTRODUCTION AND OVERVIEW

1. On May 30, 2019, Amtrak filed a Complaint against PPL challenging the manner in which PPL determines the Network Service Peak Load (“NSPL”) transmission obligation that applies to Amtrak’s account at the Conestoga Substation.

2. On June 27, 2019, PPL submitted an Answer and New Matter, and Preliminary Objections asserting that Amtrak’s Complaint should be dismissed.

3. On July 8, 2019, Amtrak filed its Answer to the Preliminary Objections and Answer to PPL’s New Matter.

RECEIVED

AUG 12 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

4. On July 11, 2019, PPL served Amtrak with PPL Set I in the above-captioned proceeding. A true and correct copy of Set I is attached hereto as **Appendix A**.

5. PPL Set I consists of twelve questions, related to:

- a. Contracts and agreements between or among Amtrak and other entities, including its suppliers and Safe Harbor, a hydroelectric generation facility (Set I Discovery Request Nos. 1 to 3);
- b. Bills and billing data related to Amtrak's suppliers (Set I Discovery Request Nos. 4 and 9);
- c. Correspondence between Amtrak and certain other entities related to Amtrak's generation and/or transmission service in the PJM territory, which covers all or part of 13 states and the District of Columbia (Set I Discovery Request Nos. 5-7);
- d. General information on Amtrak's suppliers and Safe Harbor (Set I Discovery Request Nos. 10-12).

6. On July 22, 2019, Amtrak submitted the Objections of the National Railroad Passenger Corporation to PPL Electric Utilities Corporation's Interrogatories and Requests for Production of Documents – Set I (the "Objections") to a portion of the Set I Discovery Requests. A true and correct copy of Amtrak's Objections is attached hereto as **Appendix B**.

7. Although Amtrak objected to Set I Discovery Request Nos. 1, 3, and 5-12, Amtrak indicated that, without waiving the objections, Amtrak would provide a response to Request Nos. 1, 3, and 7-10.

8. Between July 22, 2019 and August 7, 2019, Amtrak counsel conferred with PPL counsel on multiple occasions to resolve the Objections without a need for formal motions. The

parties were able to reach agreement on most objections. In light of these discussions, PPL agreed to limit Request Nos. 1, 5-7, and 8-10 to the PPL Zone (i.e., the PPL territory within PJM); limit Request No. 3 to documents within Amtrak's possession; and not pursue Request Nos. 11-12.

9. In addition, Amtrak committed to explore the potential burdens of responding to Discovery Request Nos. 5-7 by providing non-privileged correspondence addressing both transmission (which Amtrak agrees is relevant and within the scope of discovery within the PPL Zone) and generation (which is not relevant and not within the proper scope of discovery). As part of this proposal, Amtrak also stated that it was willing to create a privilege log regarding any documents for which Amtrak claimed privilege and was withholding from production.

10. On July 31, 2019, Amtrak provided responses to Questions 1-4, 8, and 10.

11. On August 7, 2019, counsel for PPL filed a Motion to Compel Answers to Interrogatories and Requests For Production of Documents Propounded by PPL Electric – Set I (“Motion to Compel” or “Motion”). A true and correct copy of PPL's Motion is attached hereto as **Appendix C**.

12. Specifically, PPL's Motion seeks to compel Amtrak to respond to Set I Discovery Requests Nos. 5, 6, and 7.

13. For the reasons addressed herein, Amtrak requests that Your Honor deny PPL's Motion.

II. LEGAL STANDARD

14. Pursuant to the Commission's rules and regulations, “a party may obtain discovery regarding any matter, not privileged, which is *relevant* to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition

and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter.” 52 Pa. Code § 5.321(c) (emphasis added).

15. However, the information sought in discovery must be “reasonably calculated to lead to the discovery of admissible evidence.” *Id.*

16. Notably, a party is not permitted to ask interrogatories that would cause unreasonable burden or expense or “[w]ould require the making of an unreasonable investigation by the . . . party.” 52 Pa. Code §§ 5.361(a)(2), (4).

17. It is well established that discovery cannot be used as simply a “fishing expedition.” *See City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Commw. Ct. 1971) (“Anything in the nature of a mere fishing expedition is not to be encouraged. Where the plaintiff will swear that some specific book contains material or important evidence, and sufficiently describes and identifies what he wants, it is proper that he should have it produced. But this does not entitle him to have brought in a mass of books and papers in order that he may search them through to gather evidence.”) As stated by the ALJs in a 2011 proceeding, “[T]he standard for discovery is relevance, not curiosity.” *Pennsylvania Public Utility Commission, et al. v. Pennsylvania American Water Co.*, Docket No. 2011-2232243 (Order entered Jul. 21, 2011). In that proceeding, the Office of Consumer Advocate (“OCA”) sought Board of Directors’ meeting minutes from Pennsylvania-American Water Company (“PAWC”). OCA admitted that, until it reviewed the minutes, it did not know whether the minutes contained information relevant to the case. The ALJs stated that “that admission alone exposes the quintessential premise of a ‘fishing expedition.’” *Id.*

18. Further, a party cannot take a “shotgun” approach to discovery. In a 1974 proceeding, the ALJ criticized an applicant’s discovery requests as “shotgun” because they

attempted to “discovery nearly all correspondence, plans, applications, complaints, and other documents between the Commission and the four protestants over at least the last five years. Many of these documents are matters of public record.... The remaining documents sought by this overly broad subpoena are more the object of a fishing expedition: further grounds of specificity and bases for relevance should be established before a subpoena duces tecum should issue.” *Application of William C. Hiner, t/d/b/a Fidelity Messenger Service*, Application Docket No. 98220 (Order entered Jan. 22, 1974).

19. Additionally, a party is not permitted to seek discovery that “relates to matter which is privileged.” 52 Pa. Code § 5.361(a)(3).

III. ANSWER AND ARGUMENT

A. PPL’s Request for Generation-Related Correspondence Is Not Relevant to This Proceeding, Not Calculated to Lead to the Discovery of Admissible Evidence, and Is Burdensome for Amtrak to Produce.

20. While its attempt to dismiss Amtrak’s Complaint remains pending, PPL has propounded discovery requests that are overly broad and reach far beyond relevant requests meeting the requirements of 52 Pa. Code § 5.321(c). PPL agreed to narrow several aspects of its requests but has failed to adequately do so for Request Nos. 5-7:

21. Request No. 5 seeks “copies of all correspondence for the past five years between Amtrak and [Constellation NewEnergy, Inc. (“CNE”)], or CNE’s predecessors, related to Amtrak’s *generation and/or transmission* service in the PJM Zone” (emphasis added).

22. Request No. 6 seeks “all correspondence for the past five years between Amtrak and Safe Harbor related to Amtrak’s *generation and/or transmission* service in the PJM Zone” (emphasis added).

23. Request No. 7 seeks “all correspondence for the past five years between Amtrak and PJM related to Amtrak’s *generation and/or transmission* service in the PJM Zone” (emphasis added).

24. As stated in Amtrak’s Objections, these questions are not limited to the transmission issues that are the subject of this proceeding. Nor were the original questions limited to PPL’s *service territory*, but instead encompassed the entire PJM Zone, which covers all or part of 13 states plus the District of Columbia.

25. PPL’s Request Nos. 5-7 seek voluminous correspondence. PPL has failed to articulate any reason whatsoever that documents and information related to electric generation is *relevant to this Complaint*.

26. The Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 et seq. (“Competition Act”), enacted in 1996, unbundled generation, transmission, and distribution into separate and distinct functions of electric service.

27. For nearly 25 years, pursuant to the Competition Act, the Commission has maintained the distinctions between these functions. “Transmission” is, under the Act, a term of art, describing a particular function.

28. This case is about calculations and charges for transmission service – not for generation. As set forth in Amtrak’s Complaint, PPL is both determiner of Amtrak’s transmission obligation *and* the ultimate recipient of payments made by Amtrak for transmission service. Amtrak has not objected to providing non-privileged transmission correspondence to PPL as this is a *transmission* dispute. However, PPL does not generate electricity for Amtrak’s use; PPL does not charge Amtrak for generation or electric supply; and Amtrak has not disputed any generation issues or charges in this Complaint. Accordingly, PPL has failed to articulate any independent

reason generation information is relevant to Amtrak's Complaint. PPL has failed to assert that generation information is "reasonably calculated to lead to the discovery of admissible evidence," let alone explain a plausible basis for such an assertion. PPL cannot simply add an "and/or" to its request for transmission-related correspondence and magically make generation-related correspondence discoverable.

29. Furthermore, it would be unreasonably burdensome to require Amtrak to produce all generation-related correspondence within PPL's territory. Electric generation supply is a constant need for Amtrak to manage throughout its network. Amtrak communicates regularly with its suppliers about demand, usage, and other issues. A search of Amtrak's electronic communications identified over 7,000 records that have been sent to or received from the entities identified in Request Nos. 5-7. To respond to these requests for both transmission and generation will involve reviewing thousands of documents for responsiveness, redacting or classifying such documents, and producing them.

30. Because generation service is irrelevant to Amtrak's Complaint, and PPL has not even attempted to explain why generation is relevant, Amtrak respectfully requests that Your Honor deny PPL's request for generation-related correspondence.

B. PPL's Attempt to Circumvent Settlement Privilege for Third Parties Related to the Multiple Legal and Regulatory Proceedings Implementing Amtrak's Taking by Eminent Domain of the Conestoga Substation is Improper.

31. Amtrak's Objections to Request Nos. 6 and 7 object to producing correspondence or communication between Amtrak and Safe Harbor or PJM to the extent such communications are "part of ongoing negotiations or subject to settlement privilege." In its Motion to Compel, PPL argues that Amtrak's objection is without merit. PPL's arguments on settlement privilege fail for two reasons.

32. First, PPL misapplies Pennsylvania Rule of Evidence 408 (“Rule 408”). As a threshold matter, Rule 408 is not binding on the Commission. Rule 408 is a rule of admissibility, not discovery, and is inapplicable. Even if Rule 408 applied to discovery (which it does not), it would contradict PPL’s argument. The comment to Rule 408, cited by PPL in its Motion, states that “otherwise discoverable” evidence is not prevented from admission “merely because it is presented in the course of compromise negotiations.” By PPL’s logic, this means that no settlement privilege could apply to any discovery request as long as PPL had a general reason to make the request. Carried to its natural conclusion, PPL’s logic would utterly nullify the ability of parties to preserve the strict confidentiality of compromise negotiations, contradicting the plain language of Commission Rule 5.361(a)(3), which prevents parties from seeking discovery that “relates to matter which is privileged.” 52 Pa. Code § 5.361(a)(3). PPL’s argument must be rejected.

33. Second, PPL fails to mention Safe Harbor and PJM’s involvement in underlying factual issues and the proceedings involving other pending disputes between Amtrak and PPL, the reason for which Amtrak is contending settlement privilege may apply to certain otherwise relevant communications. As described in detail below, significant discussions and communications have occurred toward the goal of resolving issues involving Safe Harbor and PJM that relate to the underlying disputes between Amtrak and PPL regarding Amtrak’s taking by eminent domain of the Conestoga Substation. Pursuant to 52 Pa. Code § 5.361(a)(3), settlement privilege covers those discussions and communications.

34. The underlying facts behind Amtrak’s dispute with PPL are well-documented in proceedings before a Federal District Court and at the Federal Energy Regulatory Commission

(“FERC”). Safe Harbor and PJM are either impacted by, and/or have participated in, these proceedings, including the following:

- a. On April 17, 2017, Amtrak filed a Complaint for Condemnation and a Declaration of Taking with the United States District Court in the Eastern District of Pennsylvania (“Condemnation Proceeding”). Complaint for Condemnation and Declaration of Taking, *National Railroad Passenger Corporation v. 4.0446 Acres More or Less of Land and Fixtures and PPL Electric Utilities Corp.*, Civil Action No. 17-1752 (filed Apr. 17, 2017). In its Declaration of Taking, Amtrak stated that upon deposit of the money estimated for just compensation, Amtrak would become the fee simple owner of “4.0446 Acres of property, more or less of land and all improvements and fixtures thereon heretofore held by PPL Electric Utilities Corp. on Powerhouse Road, Manor Township, Lancaster County Pennsylvania,” which includes the Conestoga Substation.
- b. On March 6, 2019, the District Court issued an Order and Memorandum, finding that Amtrak had the authority to condemn the Subject Facilities via eminent domain. The District Court also granted Amtrak’s motion for immediate possession, directing PPL to deliver possession of the Subject Facilities by March 26, 2019. See Memorandum by Judge Schmehl, *National Railroad Passenger Corporation v. 4.0446 Acres More or Less of Land and Fixtures and PPL Electric Utilities Corp.*, Civil Action No. 17-1752 (E.D. Mar. 6, 2019) (“Condemnation Order Memorandum”).

- c. Additionally, after the Condemnation Order was issued, PPL filed a Section 203 Application at the FERC requesting Commission approval of the transfer of the Conestoga to Amtrak that was authorized by the Condemnation Order (“Section 203 Proceeding”). Application for Authorization Under Section 203 of the Federal Power Act, et al. of PPL Electric Utilities Corporation, *PPL Electric Utilities Corporation*, Docket No. EC19-71 (Mar. 25, 2019). PJM intervened on April 12, 2019, and Safe Harbor intervened on April 15, 2019. Both parties provided comments in the Section 203 Proceeding.
- d. In the Condemnation Proceeding, Safe Harbor filed an amicus brief requesting the District Court to “ensure that Safe Harbor retains the same rights it currently possesses to deliver, sell and settle with the PJM Markets via the Conestoga Substation.” *Id.* at 26-27. In the Section 203 Proceeding, Amtrak stated its commitment “to ensuring that any necessary alternative arrangements are in place to secure [Safe Harbor’s] rights.” Motion for Leave to Answer and Answer of the National Railroad Passenger Corporation, *PPL Electric Utilities Corporation*, Docket No. EC19-71 (Apr. 30, 2019).

35. Each of the above proceedings and disputes involve related claims and issues affecting PPL, Safe Harbor, PJM, CNE, and Amtrak. Amtrak is actively involved in various communications and negotiations with Safe Harbor, PJM, and CNE to address changes to various agreements that may be needed as a result of Amtrak taking ownership and possession of the Conestoga Substation. Safe Harbor is participating in those proceedings, and PJM is also involved

in the resolution of those matters to ensure, as articulated in Safe Harbor's amicus brief to the District Court, that "Safe Harbor retains the same rights it currently possesses to deliver, sell and settle with the PJM Markets via the Conestoga Substation." Brief of Amicus Curiae Safe Harbor Water Power Corporation and BIF II Safe Harbor Holdings, LLC, *National Railroad Passenger Corporation v. 4.0446 Acres More or Less of Land and Fixtures and PPL Electric Utilities Corp.*, Civil Action No. 17-1752 (Nov. 2, 2018) at 5.

36. PPL's history in these proceedings has included several attempts to obstruct Amtrak's efforts, including an attempt to nullify Amtrak's Declaration of Taking in the Condemnation Proceeding and an attempt to delay transfer of the Conestoga Substation to Amtrak by seeking FERC authorization through the now-dismissed Section 203 Proceeding.

37. PPL's attempt through the Requests in Set I to review all Amtrak's correspondence (both historic and ongoing) with Safe Harbor, PJM, and CNE is an illegitimate effort to pierce those third-party negotiations and to identify further ways to obstruct Amtrak's implementation of the District Court decision.

38. Similarly, CNE has been involved in negotiations because of its role as Amtrak's current EGS.

39. In its Motion to Compel, PPL (a) did not address the participation of Safe Harbor, CNE, and PJM in the separate and distinct proceedings regarding Amtrak's taking of the Conestoga Substation; (b) provided no basis for its claim that settlement privilege pertains only to the same proceeding; and (c) has failed to demonstrate a compelling basis to review such privileged settlement communication impacting the rights of Amtrak, Safe Harbor, CNE, and PJM. Amtrak therefore respectfully requests that Your Honor deny PPL's Motion to Compel.

C. PPL's Rush to Require Responses to Overly Broad and Far Reaching Discovery While Its Preliminary Objections Are Pending Demonstrates That PPL Is Engaged In an Abusive "Fishing Expedition."

40. Both the Commission and the parties benefit through an efficient use of resources when parties confer and work out discovery disputes.

41. In this case, Amtrak and PPL conferred and developed compromises on several requests. In a short time frame, Amtrak and PPL negotiated resolutions to a number of Amtrak Objections. In the spirit of Rule 5.322, Amtrak produced responses and offered to provide more time for the parties to negotiate. 52 Pa. Code § 5.322 ("[P]arties are encouraged to exchange information on an informal basis"). Amtrak counsel stated Amtrak's willingness to waive PPL's deadline to compel discovery and further negotiate over Request Nos. 5-7. Amtrak also expressed willingness to develop a privilege log regarding any documents for which Amtrak claimed privilege and was withholding from production.

42. Despite these overtures, PPL apparently deemed Amtrak's offers insufficient and moved quickly to seek to compel discovery, with only same-day's notice to Amtrak counsel.

43. The reason for PPL's impatience to obtain irrelevant information is unclear, as Amtrak counsel provided PPL additional time to continue to negotiate discovery arrangements. Additionally, Amtrak has not yet served Direct Testimony and has propounded no interrogatories on PPL during this prehearing phase of the above-captioned docket.

44. Moreover, PPL's discovery goes well beyond the scope of the Complaint by delving into generation issues and correspondence that relates to other disputes between the parties regarding Amtrak's condemnation of the Conestoga Substation.

45. The expansive subject matter and scope of Request Nos. 5-7 demonstrates that PPL's discovery is not "reasonably calculated to lead to the discovery of admissible evidence." 52 Pa. Code § 5.321(c). Instead, PPL's approach more closely reflects a "shotgun" approach that has

been rejected by the Commission. See, e.g., *Application of William C. Hiner, t/d/b/a Fidelity Messenger Service*, Application Docket No. 98220 (Order entered Jan. 22, 1974).

46. Despite the parties' initial progress and Amtrak's good faith desire to continue working through the objections, PPL counsel has provided no explanation for its sudden urgency to attempt to compel Amtrak to providing documents. PPL has not demonstrated any immediate need for the documents and has not explained why it cannot continue to negotiate with Amtrak in good faith. Nor has PPL explained why it seeks such a broad production of documents.

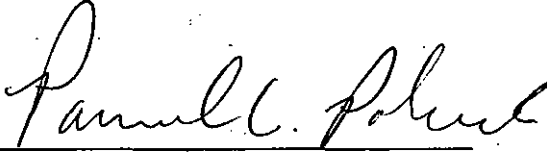
47. In light of these facts, it is clear that PPL is conducting a fishing expedition, abusing the discovery process, and wasting administrative and judicial resources. PPL has not tailored its requests to lead to the discovery of admissible evidence. Rather, PPL has framed its requests (and its Motion to Compel) in such a way as to unduly burden Amtrak and force Amtrak to produce irrelevant material. The Commission has many times rejected burdensome and overly broad, "shotgun" requests by litigants. As stated by the ALJs in *Pennsylvania Public Utility Commission, et al. v. Pennsylvania American Water Co.*, "[T]he standard for discovery is relevance, not curiosity." Docket No. 2011-2232243 (Order entered Jul. 21, 2011). Because PPL's Request Nos. 5-7 are overly broad and unduly burdensome, and because PPL's Motion to Compel opposes the privileged status of Amtrak's settlement communications with Safe Harbor and PJM, Amtrak respectfully requests that PPL's Motion to Compel be denied.

IV. CONCLUSION

WHEREFORE, the National Railroad Passenger Corporation respectfully requests that Your Honor deny the Motion to Compel Answers to Interrogatories and Requests For Production of Documents Propounded by PPL Electric – Set I of PPL Electric Utilities Corporation.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Robert A. Weishaar, Jr. (I.D. No. 74678)

Pamela C. Polacek (I.D. No. 78276)

Matthew L. Garber (I.D. No. 322855)

McNEES WALLACE & NURICK LLC

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone: (717) 232-8000

bweishaar@mcneeslaw.com

ppolacek@mcneeslaw.com

mgarber@mcneeslaw.com

Counsel to the National Railroad Passenger Corporation

Dated: August 12, 2019

Appendix A

RECEIVED

AUG 12 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Lindsay A. Berkstresser

lberkstresser@postschell.com
717-612-6021 Direct
717-731-1977 Direct Fax
File #: 177551

July 11, 2019

VIA E-MAIL & REGULAR MAIL

Pamela C. Polacek, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

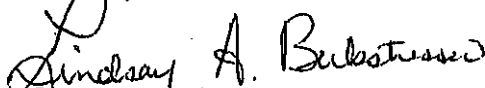
Robert A. Weishaar, Jr., Esquire
McNees Wallace & Nurick LLC
1200 G Street, NW
Suite 800
Washington, DC 20005

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

Dear Counsel:

Enclosed please find the Interrogatories and Requests for Production of Documents Propounded by PPL Electric Utilities Corporation on National Railroad Passenger Corporation – Set I in connection with the above proceeding. Thank you.

Sincerely,


Lindsay A. Berkstresser

LAB/kl
Enclosure

cc: Certificate of Service

CERTIFICATE OF SERVICE

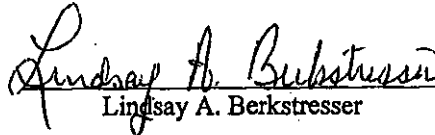
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

Robert A. Weishaar, Jr., Esquire
McNees Wallace & Nurick LLC
1200 G Street, NW, Suite 800
Washington, DC 20005
E-mail: bweishaar@mcneeslaw.com

Pamela C. Polacek, Esquire
Matthew L. Garber, Esquire
McNees, Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
E-mail: ppolacek@mcneeslaw.com
mgarber@mcneeslaw.com

Date: July 11, 2019


Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED BY
PPL ELECTRIC UTILITIES CORPORATION ON
NATIONAL RAILROAD PASSENGER CORPORATION – SET I**

Pursuant to 66 Pa.C.S. § 333 and 52 Pa. Code §§ 5.341 *et seq.*, PPL Electric Utilities Corporation (“PPL Electric”) propounds the following Interrogatories and Requests for Production of Documents (hereinafter, “discovery requests”) on National Railroad Passenger Corporation (“Amtrak” or “Complainant”) – Set I.

INSTRUCTIONS AND DEFINITIONS

1. The “Responding Party,” “you,” or “your” means the party to which these discovery requests are propounded and/or all attorneys, agents, affiliates, subsidiaries, employees, consultants, members, constituents, and representatives acting on behalf of the Responding Party.
2. “Commission” means the Pennsylvania Public Utility Commission.
3. To “identify” a natural person means to state that person’s full name, title or position, employer, last known address, and last known telephone number.

4. To "identify" a business entity means to state the full name of such business, the form of the business, and its location or address.

5. To "identify" a "document" means to provide all of the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- a. The title or other means of identification of each such document;
- b. The date of each such document;
- c. The author, preparer or signer of each such document; and
- d. A description of the subject matter of such document sufficient to permit an understanding of its contents and importance to the testimony or position being examined and the present or last known location of the document. The specific nature of the document should also be stated (*e.g.*, letter, business record, memorandum, computer print-out, etc.).

In lieu of "identifying" any document, it shall be deemed a sufficient compliance with these discovery requests to attach a copy of each such document to the answers hereto and reference said document in the particular interrogatory to which the document is responsive.

6. "Document" means the original and all drafts of all written and graphic matter, however produced or reproduced, of any kind or description, whether or not sent or received, and all copies thereof which are different in any way from the original (whether by interlineation, date-stamp, notarization, indication of copies sent or received, or otherwise), including without limitation, any paper, book, account, photograph, blueprint, drawing, sketch, schematic, agreement, contract, memorandum, press release, circular, advertising material, correspondence, letter, telegram, telex, object, report, opinion, investigation, record, transcript, hearing, meeting, study, notation, working paper, summary, intra-office communication, diary, chart, minutes, index sheet, computer software, computer-generated records or files, however stored, check, check stub, delivery ticket, bill of lading, invoice, record or recording or summary of any telephone or other conversation, or of any interview or of any conference, or

any other written, recorded, transcribed, punched, taped, filmed, or graphic matter of which the Responding Party has or has had possession, custody or control, or of which the Responding Party has knowledge.

7. "Communication" means any manner or form of information or message transmission, however produced or reproduced, whether as a document as herein defined, or orally or otherwise, which is made, distributed, or circulated between or among persons, or data storage or processing units.

8. "Date" means the exact day, month, and year, if ascertainable, or if not, the best approximation thereof.

9. Items referred to in the singular include those in the plural, and items referred to in the plural include those in the singular.

10. Items referred to in the masculine include those in the feminine, and items referred to in the feminine include those in the masculine.

11. The answers provided to these discovery requests should first restate the question asked and identify the person(s) supplying the information.

12. In answering these discovery requests, the Responding Party is requested to furnish all information that is available to the Responding Party, including information in the possession of the Responding Party's attorneys, agents, consultants, or investigators, and not merely such information of the Responding Party's own knowledge. If any of the discovery requests cannot be answered in full after exercising due diligence to secure the requested information, please so state and answer to the extent possible, specifying the Responding Party's inability to answer the remainder, and stating whatever information the Responding

Party has concerning the unanswered portions. If the Responding Party's answer is qualified in any particular, please set forth the details of such qualification.

13. If the Responding Party objects to providing any document requested on any ground, identify such document by describing it as set forth in Instruction 5 and state the basis of the objection.

14. If the Responding Party objects to part of a discovery request and refuses to answer that part, state the Responding Party's objection and answer the remaining portion of that discovery request. If the Responding Party objects to the scope or time period of a discovery request and refuses to answer for that scope or time period, state the Responding Party's objection and answer the discovery request for the scope or time period that the Responding Party believes is appropriate.

15. If, in connection with a discovery request, the Responding Party contends that any information, otherwise subject to discovery, is covered by either the attorney-client privilege, the so-called "attorneys' work product doctrine," or any other privilege or doctrine, then specify the general subject matter of the information and the basis to support each such objection.

16. If any information is withheld on grounds of privilege or other protection from disclosure, provide the following information: (a) every person to whom such information has been communicated and from whom such information was learned; (b) the nature and subject matter of the information; and (c) the basis on which the privilege or other protection from disclosure is claimed.

17. As set forth in 52 Pa. Code § 5.342(g), these discovery requests are continuing, and the Responding Party is obliged to change, supplement, and correct all answers given to conform to new or changing information.

18. "Formal Complaint" means the Formal Complaint filed by the Complainant at Docket No. C-2019-3010398.

**INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS PROPOUNDED ON
NATIONAL RAILROAD PASSENGER CORPORATION – SET I**

PPL to Amtrak-I-1:

Please provide copies of all contracts between Amtrak and CNE, or CNE's predecessors, for the past five years.

PPL to Amtrak-I-2:

Please provide copies of all contracts between Amtrak and Safe Harbor for the past five years.

PPL to Amtrak-I-3:

Please provide copies of all supply agreements between CNE and Safe Harbor for the past five years.

PPL to Amtrak-I-4:

- a) Please provide copies of all bills that CNE, or CNE's predecessors, sent to Amtrak during the past five years.
- b) Did Amtrak pay each bill in full?
- c) If no, please provide the amount paid by Amtrak.

PPL to Amtrak-I-5:

Please provide copies of all correspondence for the past five years between Amtrak and CNE, or CNE's predecessors, related to Amtrak's generation and/or transmission service in the PJM Zone.

PPL to Amtrak-I-6:

Please provide all correspondence for the past five years between Amtrak and Safe Harbor related to Amtrak's generation and/or transmission service in the PJM Zone.

PPL to Amtrak-I-7:

Please provide all correspondence for the past five years between Amtrak and PJM related to Amtrak's generation and/or transmission service in the PJM Zone.

PPL to Amtrak-I-8:

- a) Does Amtrak know where CNE acquires generation to serve Amtrak?

- b) If yes, list each and every entity from which CNE has acquired generation to serve Amtrak within the past five years.
- c) Please provide any contracts or agreements in Amtrak's possession governing generation used to serve Amtrak within the last five years.

PPL to Amtrak-I-9:

- a) Has Amtrak ever disputed, or questioned in any manner, charges from CNE for generation or transmission service?
- b) If yes, fully explain.

PPL to Amtrak-I-10:

- (a) Please provide the name and contact information of all suppliers from which Amtrak took service during the past five years.
- (b) Provide the dates during which Amtrak took service from each supplier listed in response to part (a).

PPL to Amtrak-I-11:

Regarding complaint, paragraph 7, specifically define CNE.

- a) Identify CNE's corporate entity.
- b) Identify all entities with ownership interest in CNE.
- c) Has CNE conducted business under any other name within the past five years? If yes, please provide the name(s).

PPL to Amtrak-I-12:

Regarding complaint, paragraph 24, specifically define Safe Harbor.

- a) Identify Safe Harbor's corporate entity.
- b) Identify all entities with ownership interest in Safe Harbor.
- c) Has Safe Harbor conducted business under any other name within the past five years? If yes, please provide the name(s).

Appendix B

RECEIVED

AUG 12 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8600 • Fax: 717.237.5300

Matthew L. Garber
Direct Dial: 717.237.5270
mgarber@mcneeslaw.com

July 22, 2019

Lindsay A. Berkstresser, Esq.
Post & Schell, P.C.
17 N 2nd Street, 12th Floor
Harrisburg, PA 17101

VIA E-MAIL AND FIRST CLASS MAIL

**RE: National Railroad Passenger Corporation v. PPL Electric Utilities Corporation;
Docket No. C-2019-3010398**

Dear Ms. Berkstresser:

Enclosed please find the National Railroad Passenger Corporation's ("Amtrak") Objections to PPL Electric Utilities Corporation's Interrogatories and Requests for Production of Documents – Set I in the above-referenced proceeding.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
Matthew L. Garber

Counsel to National Railroad Passenger Corporation

Enclosures

c: Rosemary Chiavetta, Secretary (via Electronic Filing – Letter and Certificate of Service only)
Certificate of Service

www.McNeesLaw.com

Harrisburg, PA • Lancaster, PA • Scranton, PA • State College, PA • Columbus, OH • Frederick, MD • Washington, DC

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).

VIA E-MAIL AND FIRST-CLASS MAIL

Kimberly A. Klock, Esq.
2 North Ninth Street, GENTW3
Allentown, PA 18101-1179
kklock@pplweb

Lindsay A. Berkstresser, Esq.
Post & Schell, P.C.
17 N 2nd Street, 12th Floor
Harrisburg, PA 17101
lberkstresser@postschell.com

David B. MacGregor, Esq.
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
dmacgregor@postschell.com



Matthew L. Garber

Counsel to the National Railroad Passenger
Corporation

Dated this 22nd day of July, 2019, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

National Railroad Passenger Corporation,
Petitioner,

v.

PPL Electric Utilities Corporation,
Respondent.

Docket No. C-2019-3010398

**OBJECTIONS OF THE NATIONAL RAILROAD PASSENGER CORPORATION TO
PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

Pursuant to 52 Pa. Code §§ 5.342(c) and (e), the National Railroad Passenger Corporation ("Amtrak") hereby object to PPL Electric Utilities Corporation's ("PPL") Interrogatories and Requests for Production of Documents Propounded by PPL on Amtrak – Set I ("Set I Interrogatories"), Questions 1, 3, and 5-12 served on July 11, 2019.

SUMMARY OF INTERROGATORIES

PPL Electric's Set I Interrogatories request extensive and detailed information from Amtrak concerning everything from supply contracts to business correspondence to billing disputes. Because these requests include numerous documents of a confidential nature, that contain financial, legal, and procedural information that is critical to Amtrak, Amtrak has provided PPL Electric with a draft stipulated protective agreement ("Protective Agreement"). Upon execution of the Protective Agreement, Amtrak will provide confidential responses to the Set I Interrogatories, subject to the objections set forth herein.

GENERAL OBJECTIONS

As a general matter, Amtrak objects to PPL Electric's Set I Interrogatories on several grounds pursuant to 52 Pa. Code § 5.321 and 5.361.

First, some of PPL Electric's Set I Interrogatories are irrelevant to the permissible scope of discovery in this proceeding. The issues in this proceeding concern transmission charges in the PPL Electric zone affecting Amtrak. Amtrak's only point of delivery within the PPL Electric service territory is the Conestoga Substation. However, PPL Electric propounds interrogatories seeking documents pertaining to Amtrak locations far beyond the PPL Electric zone and addressing other aspects of Amtrak's generation supply arrangements. For example, Amtrak has accounts throughout the Northeast where Constellation NewEnergy, Inc. ("CNE") may, at times, serve as a supplier. Agreements between CNE and Amtrak for locations other than Conestoga are not relevant to the scope of the proceeding and are not "reasonably calculated to lead to the discovery of admissible evidence." 52 Pa. Code § 5.321(c).

Second, many of the Set I Interrogatories are overly broad as drafted and would require an unreasonable search by Amtrak unless limited by PPL Electric. Some of the Set I Interrogatories request correspondence in the normal course of business that is not limited to the transmission charges that are within the scope of the issues in this proceeding and would require extensive searches. This correspondence could include Amtrak employees, contractors, consultants, or even former employees. Pursuant to 52 Pa. Code § 5.361(a)(2), Amtrak objects to the Set I Interrogatories to the extent they result in unreasonable burden and expense on Amtrak.

Amtrak's specific objections to PPL Electric's Set I Interrogatories follow below.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS - SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-1 Please provide copies of all contracts between Amtrak and CNE, or CNE's predecessors, for the past five years.

Objection: Amtrak objects to PPL-AMTRAK-I-1 on the basis that this request is overly broad, beyond the scope of the Complaint, and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). As stated in the General Objections, contracts between Amtrak and CNE, or CNE's predecessors, at locations outside of the PPL Electric zone are overly broad and not likely to lead to the discovery of admissible evidence. Additionally, Amtrak objects to this interrogatory on the basis that it would require an investigation into each supply arrangement of Amtrak. Amtrak purchases electric supply at many locations across the United States. Locating and providing such records would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Notwithstanding the objection, Amtrak will endeavor to provide a response to this request for requested contracts, within the PPL Electric zone, executed within the past five years.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-3 Please provide copies of all supply agreements between CNE and Safe Harbor for the past five years.

Objection: Amtrak objects to PPL-AMTRAK-I-3 to the extent it seeks information or documents from Amtrak that are not in the possession of Amtrak or to which Amtrak was not a party.

Notwithstanding the aforementioned objection, Amtrak will provide a response.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-5 Please provide copies of all correspondence for the past five years between Amtrak and CNE, or CNE's predecessors, related to Amtrak's generation and/or transmission service in the PJM Zone.

Objection: Amtrak objects to PPL-AMTRAK-I-5 on the basis that this request is overly broad, beyond the scope of the Complaint, and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The question is not limited in geographic scope to Conestoga, nor is it limited to the transmission issues that are the subject of this proceeding. Amtrak also objects to PPL-AMTRAK-I-5 on the basis that this request is an unreasonable burden on Amtrak, requires Amtrak to incur unreasonable expenses, and constitutes an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

As stated in the General Objections, Amtrak may, at different times, have contracts with CNE all over the Northeastern United States. Communications between Amtrak and CNE can involve engineering, metering, billing, power scheduling protocol, and many other issues, pertaining to any of those locations. To provide every instance of correspondence between Amtrak and CNE, or CNE's predecessors, at locations outside of the PPL Electric zone is overly broad and not likely to lead to the discovery of admissible evidence. Amtrak also objects to this interrogatory on the basis that it would require a vast number of employees and contractors who communicate with CNE to conduct research. Locating and providing such records would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4). Additionally, due to Amtrak's document retention policy, correspondence older than three years may not, in many cases, be available to Amtrak.

Amtrak will not provide a response to this request unless and until the request is narrowed by PPL Electric.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-6 Please provide all correspondence for the past five years between Amtrak and Safe Harbor related to Amtrak's generation and/or transmission service in the PJM Zone.

Objection: Amtrak objects to PPL-AMTRAK-I-6 on the basis that this request is overly broad, beyond the scope of the Complaint, and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). This question seeks information beyond the scope of this proceeding, which is the PPL transmission charges for Amtrak's account. Amtrak also objects to this request on the basis that this request is an unreasonable burden on Amtrak, requires Amtrak to incur unreasonable expenses, and constitutes an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4). Further, Amtrak objects to this request to the extent any communications between Amtrak and Safe Harbor are part of ongoing negotiations or subject to settlement privilege. 52 Pa. Code § 5.361(a)(3); 5.231(d).

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-7 Please provide all correspondence for the past five years between Amtrak and PJM related to Amtrak's generation and/or transmission service in the PJM Zone.

Objection: Amtrak objects to PPL-AMTRAK-I-7 to the extent any correspondence between Amtrak and PJM is part of ongoing negotiations or subject to settlement privilege. 52 Pa. Code § 5.361(a)(3); 5.231(d). Amtrak also objects to this request on the basis that correspondence regarding Amtrak's generation or transmission service outside the PPL Electric zone is overly broad and beyond the scope of the Complaint and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

Notwithstanding the aforementioned objection, Amtrak will provide a response to this request.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-8

- a) Does Amtrak know where CNE acquires generation to serve Amtrak?
- b) If yes, list each and every entity from which CNE has acquired generation to serve Amtrak within the past five years.
- c) Please provide any contracts or agreements in Amtrak's possession governing generation used to serve Amtrak within the last five years

Objection:

Amtrak objects to PPL-AMTRAK-I-8 on the basis that this request is overly broad and beyond the scope of the Complaint and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

As stated in the General Objections and in the Objection to PPL-AMTRAK-I-1, Amtrak purchases generation from CNE at many locations outside of the PPL Electric zone. Consequently, this request is overly broad and not likely to lead to the discovery of admissible evidence. Additionally, Amtrak also objects to this interrogatory on the basis that it would require an investigation into each supply arrangement of Amtrak, which purchases electric supply at many locations across the United States. Locating and providing such records would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Notwithstanding the objection, Amtrak will provide a response to this request to the extent Amtrak is involved in any supply arrangements.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-9

- a) Has Amtrak ever disputed, or questioned in any manner, charges from CNE for generation or transmission service?
- b) If yes, fully explain.

Objection:

Amtrak objects to PPL-AMTRAK-I-9 on the basis that this request is overly broad. 52 Pa. Code § 5.321(c).

As stated in the General Objections and in the Objection to PPL-AMTRAK-I-1, Amtrak purchases generation from CNE at many locations outside of the PPL Electric zone. The phrase "questioned in any manner" is immensely broad, as that could involve simple questions and inquiries by Amtrak employees, communication between CNE and Amtrak's contractors, and many other situations. Also, as stated previously, Amtrak's relationship with CNE outside the PPL Electric zone is not relevant to this proceeding, nor are any non-transmission communications relevant in this proceeding. 52 Pa. Code § 5.321(c). Consequently, this request is overly broad. Locating and providing such records would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Notwithstanding the objection, Amtrak will provide a response to this request to encompass any dispute by Amtrak of a CNE bill pertaining to transmission service in the PPL Electric zone within the last five years, for which Amtrak has record.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-10

- a) Please provide the name and contact information of all suppliers from which Amtrak took service during the past five years.
- b) Provide the dates during which Amtrak took service from each supplier listed in response to part (a).

Objection:

Amtrak objects to PPL-AMTRAK-I-10 on the basis that this request is overly broad and beyond the scope of the Complaint and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

As stated in the General Objections and in the Objection to PPL-AMTRAK-I-1, Amtrak purchases generation from CNE at many locations outside of the PPL Electric zone. Consequently, this request is overly broad and not likely to lead to the discovery of admissible evidence. Additionally, Amtrak also objects to this interrogatory on the basis that it would require an investigation into each supply arrangement of Amtrak, which purchases electric supply at many locations across the United States. Locating and providing such records would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Notwithstanding the objection, Amtrak will provide a response to this request to the extent Amtrak is involved in any supply arrangements for Conestoga.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS - SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-11 Regarding complaint, paragraph 7, specifically define CNE.

- a) Identify CNE's corporate entity.
- b) Identify all entities with ownership interest in CNE.
- c) Has CNE conducted business under any other name within the past five years? If yes, please provide the name(s).

Objection:

Amtrak objects to PPL-AMTRAK-I-11 on the basis that this request asks Amtrak to conduct research of information on PPL Electric's behalf. Such information is presumably publicly available and is not unique to Amtrak. This request would therefore unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Additionally, PPL Electric's request to "specifically define CNE" is unclear. Amtrak identified CNE's corporate name in Amtrak's Complaint.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-12 Regarding complaint, paragraph 24, specifically define Safe Harbor.

- a) Identify Safe Harbor's corporate entity.
- b) Identify all entities with ownership interest in Safe Harbor.
- c) Has Safe Harbor conducted business under any other name within the past five years? If yes, please provide the name(s).

Objection:

Amtrak objects to PPL-AMTRAK-I-12 on the basis that this request asks Amtrak to conduct research of information on PPL Electric's behalf. Such information is presumably publicly available and is not unique to Amtrak. This request would therefore unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

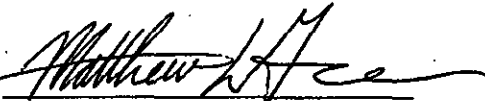
Additionally, PPL Electric's request to "specifically define Safe Harbor" is unclear. Amtrak identified Safe Harbor's corporate name in Amtrak's Complaint.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS - SET I**

DOCKET NO. C-2019-3010398

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Robert A. Weishaar, Jr. (I.D. No. 74678)

Pamela C. Polacek (I.D. No. 78276)

Matthew L. Garber (I.D. No. 322855)

McNEES WALLACE & NURICK LLC

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone: (717) 232-8000

bweishaar@mcneeslaw.com

ppolacek@mcneeslaw.com

mgarber@mcneeslaw.com

Counsel to the National Railroad Passenger
Corporation

Dated: July 22, 2019

Appendix C

RECEIVED

AUG 12 2019

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**



17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
717-731-1970 Main
717-731-1985 Main Fax
www.postschell.com

Lindsay A. Berkstresser

lberkstresser@postschell.com
717-612-6021 Direct
717-731-1977 Direct Fax
File #: 177551

August 7, 2019

VIA ELECTRONIC FILING

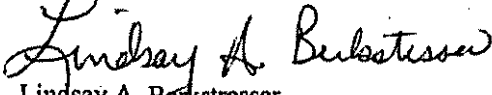
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: National Railroad Passenger Corporation v. PPL Electric Utilities Corporation
Docket No. C-2019-3010398**

Dear Secretary Chiavetta:

Enclosed please find PPL Electric Utilities Corporation's Motion to Compel for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,


Lindsay A. Berkstresser

LAB/kls
Enclosures

cc: Honorable Joel H. Cheskis
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.342(g)(1), YOU MAY FILE A REPLY TO THE ENCLOSED MOTION TO COMPEL WITHIN FIVE (5) DAYS AFTER THE DATE OF SERVICE. YOUR REPLY SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY OF YOUR REPLY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

Ronald J. Reybitz (ID # 78863)
Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID #205681)
PPL Services Corporation
Office of General Counsel
Two North Ninth Street
Allentown, PA 18106
Phone: 610-774-4254
Fax: 610-774-6726
E-mail: rreybitz@pplweb.com
kklock@pplweb.com
mjshafer@pplweb.com

Of Counsel:

Post & Schell, P.C.

Date: August 7, 2019



David B. MacGregor (ID # 28804)
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
Phone: 215-587-1197
Fax: 215-587-1444
E-mail: dmacgregor@postschell.com

Lindsay A. Berkstresser (ID # 318370)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: lberkstresser@postschell.com

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY
PPL ELECTRIC – SET I**

TO ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

As explained herein, PPL Electric Utilities Corporation (“PPL Electric”) hereby files, pursuant to 52 Pa. Code § 5.342, this Motion to Compel Answers to its Set I Interrogatories, Questions 5, 6, and 7 directed to National Railroad Passenger Corporation (“Amtrak”). The Motion to Compel requests that Administrative Law Judge Joel H. Cheskis direct Amtrak to provide full and complete responses to Set I Interrogatories, Questions 5, 6, and 7 as required by 52 Pa. Code § 5.342(a)(4). In support of its Motion, PPL Electric states as follows:

I. BACKGROUND

On July 11, 2019, PPL Electric served its Set I Interrogatories and Requests for Production of Documents on Amtrak. On July 22, 2019, Amtrak served its formal objections to Set I, Questions 1, 3 and 5-12. A true and correct copy of Amtrak’s objections is attached hereto as Appendix A. On July 31, 2019, Amtrak provided responses to Questions 1-4, 8 and 10. Counsel for PPL Electric and counsel for Amtrak were able to reach an agreement to resolve all of the remaining objections expect for Questions 5, 6, and 7, which are the subject of this Motion to Compel.¹

¹ It is PPL Electric’s understanding that Amtrak intends to provide a response to Question 9 as described in its objections.

II. LEGAL STANDARD

Pursuant to Section 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). Parties may also request documents “which are in the possession, custody or control of the party upon whom the request is served.” 52 Pa. Code § 5.349(a)(1). The Commission’s regulations prohibit discovery that would cause unreasonable burden, expense, or delay, or that would cause the answering party to undertake an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4). However, the Commission generally provides wide latitude in discovery matters. See *Pa. P.U.C. v. The Peoples Natural Gas Co.*, 62 Pa. P.U.C. 56 (Order Entered Aug. 26, 1986); *Pa. P.U.C. v. Equitable Gas Co.*, 61 Pa. P.U.C. 468 (Order Entered May 16, 1986).

III. ARGUMENT

A. AMTRAK SHOULD BE COMPELLED TO PROVIDE FULL AND COMPLETE RESPONSES TO QUESTIONS 5, 6 AND 7

Questions 5, 6 and 7 provide as follows:

PPL to Amtrak-I-5:

Please provide copies of all correspondence for the past five years between Amtrak and CNE, or CNE’s predecessors, related to Amtrak’s generation and/or transmission service in the PJM Zone.

PPL to Amtrak-I-6:

Please provide all correspondence for the past five years between Amtrak and Safe Harbor related to Amtrak’s generation and/or transmission service in the PJM Zone.

PPL to Amtrak-I-7:

Please provide all correspondence for the past five years between Amtrak and PJM related to Amtrak’s generation and/or transmission service in the PJM Zone.

Amtrak objected to Questions 5, 6 and 7 on the basis that they are overly broad, irrelevant and unduly burdensome. Amtrak further objected to Questions 6 and 7 to the extent that they request information subject to "settlement privilege." For the reasons explained herein, Amtrak's objections are without merit, and Amtrak should be ordered to provide full and complete responses to Questions 5, 6 and 7.

Amtrak's argument that Questions 5, 6 and 7 are overly broad, unduly burdensome, and beyond the scope of the complaint should be rejected. As an initial matter, PPL Electric notes that it has agreed to limit Questions 5, 6 and 7 to correspondence related to generation and/or transmission service in the PPL Electric Zone. Questions 5, 6 and 7 are directly relevant to the allegations in Amtrak's Complaint. In its Complaint Amtrak alleges that it has been improperly charged for transmission service provided by its electric generation supplier, Constellation New Energy ("CNE"). (Complaint ¶¶ 7, 17) CNE is the load serving entity or "LSE" who is responsible for procuring the necessary generation, capacity, and transmission service to serve its retail customer load. To meet this obligation, LSEs, such as CNE, purchase Network Integration Transmission Service ("NITS") from PJM, which allows LSEs to deliver their network load in the PJM region. Question 5 seeks correspondence for the past five years between Amtrak and CNE related to Amtrak's generation and/or transmission service. Question 7 seeks correspondence for the past five years between Amtrak and PJM related to Amtrak's generation and/or transmission service. This information is highly relevant to Amtrak's allegations regarding transmission charges for service provided by CNE within the PPL Zone. In its Complaint, Amtrak also alleges that it takes power from Safe Harbor to meet its load demands in the PPL Zone. (Complaint ¶ 24) Question 6 seeks correspondence for the past five years

between Amtrak and Safe Harbor related to Amtrak's generation and/or transmission service.

Therefore, Question 6 is also directly relevant to the allegations in the Complaint.

Questions 5, 6 and 7 are not overly broad or unduly burdensome. The Questions are limited in scope to correspondence during past 5 years (the period relevant to the Complaint), and PPL Electric has further agreed to limit the information requested to service in the PPL Electric Zone. Further, the information requested is already in Amtrak's possession. Thus, Amtrak is in the best position to provide it. Requiring Amtrak to produce the requested information does not rise to the level of *undue* burden, especially given that it is highly relevant to the claims made in Amtrak's Complaint.

Amtrak's attempt to invoke "settlement privilege" as a means to avoid answering Questions 6 and 7 is equally without merit. Although the Commission is not bound by the Rules of Evidence,² Pennsylvania Rule of Evidence 408 provides guidance regarding the admissibility of compromise offers and negotiations. Rule 408 provides as follows:

Rule 408. Compromise Offers and Negotiations.

(a) Prohibited Uses. Evidence of the following is **not admissible**—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim.

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

²See, e.g., *Pennsylvania American Water*, 2001 Pa. PUC LEXIS 6, *117 (January 19, 2001); *C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated*, 1993 Pa. PUC LEXIS 214, *15 (June 4, 1993).

The Comment to Pa.R.E. 408 states: **This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. (emphasis added)** Thus, the Pennsylvania Rules of Evidence do not prohibit the discoverability of relevant information simply because it was provided in the course of settlement negotiations. The Commission's discovery regulations provide that evidence does not have to be admissible in order to be discoverable so long as the information sought in discovery is likely to lead to the discovery of admissible evidence. *See* 52 Pa. Code § 5.32 ("It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.") As explained above, the information requested in Questions 6 and 7 is highly relevant to the allegations in Amtrak's Complaint, and PPL Electric is entitled to seek this information in discovery regardless of whether the information has been presented in the course of compromise negotiations. The requested information is clearly *discoverable*. Whether such information is *admissible* evidence is not at issue here.

Furthermore, Amtrak has not properly invoked "settlement privilege" as it pertains to the information requested in Questions 6 and 7. Settlement privilege is designed to protect parties from having statements made in the course of settlement negotiations used against them in the same proceeding. It does not apply to third-party requests for information. In this case, there have been no settlement negotiations between PPL Electric and Amtrak. Amtrak has not demonstrated that there is an actual claim between Amtrak and PJM or Amtrak and Safe Harbor that would entitle it to claim settlement privilege. In order for settlement privilege to apply, there must be a true legal dispute. Settlement privilege does not protect negotiations made in the

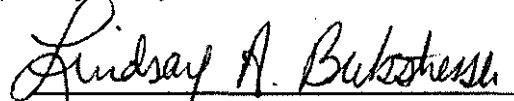
regular course of business, such as ordinary contract negotiations. Even if there were true legal claims between PJM and Amtrak or PJM and Safe Harbor, PPL Electric is not a party to these claims. Therefore, it is entitled to the information sought in Questions 6 and 7 regardless of whether it has been provided in the course of compromise negotiations with other parties.

For the reasons explained above, Amtrak should be required to provide full and complete responses to Questions 5, 6 and 7.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Joel H. Cheskis grant this Motion to Compel and order Amtrak to fully answer Set I, Questions 5, 6, and 7.

Respectfully submitted,



David B. MacGregor (ID # 28804)
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
Phone: 215-587-1197
Fax: 215-587-1444
E-mail: dmacgregor@postschell.com

Lindsay A. Berkstresser (ID # 318370)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Phone: 717-731-1970
Fax: 717-731-1985
E-mail: lberkstresser@postschell.com

Ronald J. Reybitz (ID # 78863)
Kimberly A. Klock (ID # 89716)
Michael J. Shafer (ID #205681)
PPL Services Corporation
Office of General Counsel
Two North Ninth Street
Allentown, PA 18106
Phone: 610-774-4254
Fax: 610-774-6726
E-mail: rreybitz@pplweb.com
kklock@pplweb.com
mjshafer@pplweb.com

Of Counsel:

Post & Schell, P.C.

Date: August 7, 2019

Attorneys for PPL Electric Utilities Corporation

APPENDIX A

RECEIVED

AUG 12 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



JUL 23 2019

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.0000 • Fax: 717.237.5300

Matthew L. Garber
Direct Dial: 717.237.5270
mgarber@mcneeslaw.com

July 22, 2019

Lindsay A. Berkstresser, Esq.
Post & Schell, P.C.
17 N 2nd Street, 12th Floor
Harrisburg, PA 17101

VIA E-MAIL AND FIRST CLASS MAIL

RE: National Railroad Passenger Corporation v. PPL Electric Utilities Corporation;
Docket No. C-2019-3010398

Dear Ms. Berkstresser:

Enclosed please find the National Railroad Passenger Corporation's ("Amtrak") Objections to PPL Electric Utilities Corporation's Interrogatories and Requests for Production of Documents – Set I in the above-referenced proceeding.

As shown by 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 'Matthew L. Garber', written over a horizontal line.

Matthew L. Garber

Counsel to National Railroad Passenger Corporation

Enclosures

c: Rosemary Chiavetta, Secretary (via Electronic Filing – Letter and Certificate of Service only)
Certificate of Service

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).

VIA E-MAIL AND FIRST-CLASS MAIL

Kimberly A. Klock, Esq.
2 North Ninth Street, GENTW3
Allentown, PA 18101-1179
kklock@pplweb

Lindsay A. Berkstresser, Esq.
Post & Schell, P.C.
17 N 2nd Street, 12th Floor
Harrisburg, PA 17101
lberkstresser@postschell.com

David B. MacGregor, Esq.
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
dmacgregor@postschell.com



Matthew L. Garber

Counsel to the National Railroad Passenger
Corporation

Dated this 22nd day of July, 2019, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

National Railroad Passenger Corporation,
Petitioner,

v.

PPL Electric Utilities Corporation,
Respondent.

Docket No. C-2019-3010398

OBJECTIONS OF THE NATIONAL RAILROAD PASSENGER CORPORATION TO
PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I

Pursuant to 52 Pa. Code §§ 5.342(c) and (e), the National Railroad Passenger Corporation ("Amtrak") hereby object to PPL Electric Utilities Corporation's ("PPL") Interrogatories and Requests for Production of Documents Propounded by PPL on Amtrak – Set I ("Set I Interrogatories"), Questions 1, 3, and 5-12 served on July 11, 2019.

SUMMARY OF INTERROGATORIES

PPL Electric's Set I Interrogatories request extensive and detailed information from Amtrak concerning everything from supply contracts to business correspondence to billing disputes. Because these requests include numerous documents of a confidential nature, that contain financial, legal, and procedural information that is critical to Amtrak, Amtrak has provided PPL Electric with a draft stipulated protective agreement ("Protective Agreement"). Upon execution of the Protective Agreement, Amtrak will provide confidential responses to the Set I Interrogatories, subject to the objections set forth herein.

GENERAL OBJECTIONS

As a general matter, Amtrak objects to PPL Electric's Set I Interrogatories on several grounds pursuant to 52 Pa. Code § 5.321 and 5.361.

First, some of PPL Electric's Set I Interrogatories are irrelevant to the permissible scope of discovery in this proceeding. The issues in this proceeding concern transmission charges in the PPL Electric zone affecting Amtrak. Amtrak's only point of delivery within the PPL Electric service territory is the Conestoga Substation. However, PPL Electric propounds interrogatories seeking documents pertaining to Amtrak locations far beyond the PPL Electric zone and addressing other aspects of Amtrak's generation supply arrangements. For example, Amtrak has accounts throughout the Northeast where Constellation NewEnergy, Inc. ("CNE") may, at times, serve as a supplier. Agreements between CNE and Amtrak for locations other than Conestoga are not relevant to the scope of the proceeding and are not "reasonably calculated to lead to the discovery of admissible evidence." 52 Pa. Code § 5.321(c).

Second, many of the Set I Interrogatories are overly broad as drafted and would require an unreasonable search by Amtrak unless limited by PPL Electric. Some of the Set I Interrogatories request correspondence in the normal course of business that is not limited to the transmission charges that are within the scope of the issues in this proceeding and would require extensive searches. This correspondence could include Amtrak employees, contractors, consultants, or even former employees. Pursuant to 52 Pa. Code § 5.361(a)(2), Amtrak objects to the Set I Interrogatories to the extent they result in unreasonable burden and expense on Amtrak.

Amtrak's specific objections to PPL Electric's Set I Interrogatories follow below.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-1 Please provide copies of all contracts between Amtrak and CNE, or CNE's predecessors, for the past five years.

Objection:

Amtrak objects to PPL-AMTRAK-I-1 on the basis that this request is overly broad, beyond the scope of the Complaint, and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). As stated in the General Objections, contracts between Amtrak and CNE, or CNE's predecessors, at locations outside of the PPL Electric zone are overly broad and not likely to lead to the discovery of admissible evidence. Additionally, Amtrak objects to this interrogatory on the basis that it would require an investigation into each supply arrangement of Amtrak. Amtrak purchases electric supply at many locations across the United States. Locating and providing such records would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Notwithstanding the objection, Amtrak will endeavor to provide a response to this request for requested contracts, within the PPL Electric zone, executed within the past five years.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-3 Please provide copies of all supply agreements between CNE and Safe Harbor for the past five years..

Objection: Amtrak objects to PPL-AMTRAK-I-3 to the extent it seeks information or documents from Amtrak that are not in the possession of Amtrak or to which Amtrak was not a party.

Notwithstanding the aforementioned objection, Amtrak will provide a response.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-5 Please provide copies of all correspondence for the past five years between Amtrak and CNE, or CNE's predecessors, related to Amtrak's generation and/or transmission service in the PJM Zone.

Objection: Amtrak objects to PPL-AMTRAK-I-5 on the basis that this request is overly broad, beyond the scope of the Complaint, and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). The question is not limited in geographic scope to Conestoga, nor is it limited to the transmission issues that are the subject of this proceeding. Amtrak also objects to PPL-AMTRAK-I-5 on the basis that this request is an unreasonable burden on Amtrak, requires Amtrak to incur unreasonable expenses, and constitutes an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

As stated in the General Objections, Amtrak may, at different times, have contracts with CNE all over the Northeastern United States. Communications between Amtrak and CNE can involve engineering, metering, billing, power scheduling protocol, and many other issues, pertaining to any of those locations. To provide every instance of correspondence between Amtrak and CNE, or CNE's predecessors, at locations outside of the PPL Electric zone is overly broad and not likely to lead to the discovery of admissible evidence. Amtrak also objects to this interrogatory on the basis that it would require a vast number of employees and contractors who communicate with CNE to conduct research. Locating and providing such records would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4). Additionally, due to Amtrak's document retention policy, correspondence older than three years may not, in many cases, be available to Amtrak.

Amtrak will not provide a response to this request unless and until the request is narrowed by PPL Electric.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-6 Please provide all correspondence for the past five years between Amtrak and Safe Harbor related to Amtrak's generation and/or transmission service in the PJM Zone.

Objection: Amtrak objects to PPL-AMTRAK-I-6 on the basis that this request is overly broad, beyond the scope of the Complaint, and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). This question seeks information beyond the scope of this proceeding, which is the PPL transmission charges for Amtrak's account. Amtrak also objects to this request on the basis that this request is an unreasonable burden on Amtrak, requires Amtrak to incur unreasonable expenses, and constitutes an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4). Further, Amtrak objects to this request to the extent any communications between Amtrak and Safe Harbor are part of ongoing negotiations or subject to settlement privilege. 52 Pa. Code § 5.361(a)(3); 5.231(d).

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-7 Please provide all correspondence for the past five years between Amtrak and PJM related to Amtrak's generation and/or transmission service in the PJM Zone.

Objection: Amtrak objects to PPL-AMTRAK-I-7 to the extent any correspondence between Amtrak and PJM is part of ongoing negotiations or subject to settlement privilege. 52 Pa. Code § 5.361(a)(3); 5.231(d). Amtrak also objects to this request on the basis that correspondence regarding Amtrak's generation or transmission service outside the PPL Electric zone is overly broad and beyond the scope of the Complaint and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

Notwithstanding the aforementioned objection, Amtrak will provide a response to this request.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-8

- a) Does Amtrak know where CNE acquires generation to serve Amtrak?
- b) If yes, list each and every entity from which CNE has acquired generation to serve Amtrak within the past five years.
- c) Please provide any contracts or agreements in Amtrak's possession governing generation used to serve Amtrak within the last five years

Objection:

Amtrak objects to PPL-AMTRAK-I-8 on the basis that this request is overly broad and beyond the scope of the Complaint and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

As stated in the General Objections and in the Objection to PPL-AMTRAK-I-1, Amtrak purchases generation from CNE at many locations outside of the PPL Electric zone. Consequently, this request is overly broad and not likely to lead to the discovery of admissible evidence. Additionally, Amtrak also objects to this interrogatory on the basis that it would require an investigation into each supply arrangement of Amtrak, which purchases electric supply at many locations across the United States. Locating and providing such records would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Notwithstanding the objection, Amtrak will provide a response to this request to the extent Amtrak is involved in any supply arrangements.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-9

- a) Has Amtrak ever disputed, or questioned in any manner, charges from CNE for generation or transmission service?
- b) If yes, fully explain.

Objection:

Amtrak objects to PPL-AMTRAK-I-9 on the basis that this request is overly broad. 52 Pa. Code § 5.321(c).

As stated in the General Objections and in the Objection to PPL-AMTRAK-I-1, Amtrak purchases generation from CNE at many locations outside of the PPL Electric zone. The phrase "questioned in any manner" is immensely broad, as that could involve simple questions and inquiries by Amtrak employees, communication between CNE and Amtrak's contractors, and many other situations. Also, as stated previously, Amtrak's relationship with CNE outside the PPL Electric zone is not relevant to this proceeding, nor are any non-transmission communications relevant in this proceeding. 52 Pa. Code § 5.321(c). Consequently, this request is overly broad. Locating and providing such records would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Notwithstanding the objection, Amtrak will provide a response to this request to encompass any dispute by Amtrak of a CNE bill pertaining to transmission service in the PPL Electric zone within the last five years, for which Amtrak has record.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS – SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-10

- a) Please provide the name and contact information of all suppliers from which Amtrak took service during the past five years.
- b) Provide the dates during which Amtrak took service from each supplier listed in response to part (a).

Objection:

Amtrak objects to PPL-AMTRAK-I-10 on the basis that this request is overly broad and beyond the scope of the Complaint and not relevant to this proceeding nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

As stated in the General Objections and in the Objection to PPL-AMTRAK-I-1, Amtrak purchases generation from CNE at many locations outside of the PPL Electric zone. Consequently, this request is overly broad and not likely to lead to the discovery of admissible evidence. Additionally, Amtrak also objects to this interrogatory on the basis that it would require an investigation into each supply arrangement of Amtrak, which purchases electric supply at many locations across the United States. Locating and providing such records would unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Notwithstanding the objection, Amtrak will provide a response to this request to the extent Amtrak is involved in any supply arrangements for Conestoga.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS - SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-11 Regarding complaint, paragraph 7, specifically define CNE.

- a) Identify CNE's corporate entity.
- b) Identify all entities with ownership interest in CNE.
- c) Has CNE conducted business under any other name within the past five years? If yes, please provide the name(s).

Objection:

Amtrak objects to PPL-AMTRAK-I-11 on the basis that this request asks Amtrak to conduct research of information on PPL Electric's behalf. Such information is presumably publicly available and is not unique to Amtrak. This request would therefore unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Additionally, PPL Electric's request to "specifically define CNE" is unclear. Amtrak identified CNE's corporate name in Amtrak's Complaint.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS - SET I**

DOCKET NO. C-2019-3010398

PPL-AMTRAK-I-12 Regarding complaint, paragraph 24, specifically define Safe Harbor.

- a) Identify Safe Harbor's corporate entity.
- b) Identify all entities with ownership interest in Safe Harbor.
- c) Has Safe Harbor conducted business under any other name within the past five years? If yes, please provide the name(s).

Objection:

Amtrak objects to PPL-AMTRAK-I-12 on the basis that this request asks Amtrak to conduct research of information on PPL Electric's behalf. Such information is presumably publicly available and is not unique to Amtrak. This request would therefore unreasonably burden Amtrak, require Amtrak to incur unreasonable expenses, and constitute an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

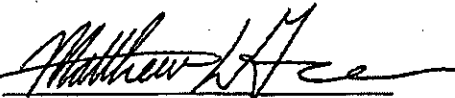
Additionally, PPL Electric's request to "specifically define Safe Harbor" is unclear. Amtrak identified Safe Harbor's corporate name in Amtrak's Complaint.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS - SET I**

DOCKET NO. C-2019-3010398

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Robert A. Weishaar, Jr. (I.D. No. 74678)

Pamela C. Polacek (I.D. No. 78276)

Matthew L. Garber (I.D. No. 322855)

McNEES WALLACE & NURICK LLC

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

Phone: (717) 232-8000

bweishaar@mcneeslaw.com

ppolacek@mcneeslaw.com

mgarber@mcneeslaw.com

Counsel to the National Railroad Passenger
Corporation

Dated: July 22, 2019

CERTIFICATE OF SERVICE

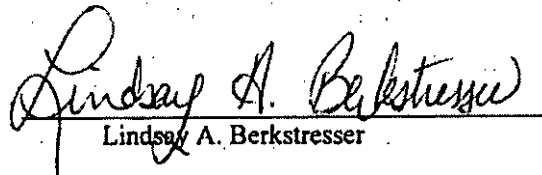
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

Robert A. Weishaar, Jr., Esquire
McNees Wallace & Nurick LLC
1200 G Street, NW, Suite 800
Washington, DC 20005
E-mail: bweishaar@mcneeslaw.com

Pamela C. Polacek, Esquire
Matthew L. Garber, Esquire
McNees, Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
E-mail: ppolacek@mcneeslaw.com
mgarber@mcneeslaw.com

Date: August 7, 2019


Lindsay A. Berkstresser

VERIFICATION

I, Pamela C. Polacek, Counsel to the National Railroad Passenger Corporation ("Amtrak"), hereby state that the facts set forth in the Answer of the National Railroad Passenger Corporation to PPL Electric Utilities Corporation's Motion to Compel Responses, Discovery – Set I 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).

8-12-19
Date

Pamela C. Polacek
Pamela C. Polacek