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October 22, 2019

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

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

Please find attached for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the National Railroad Passenger Corporation's ("Amtrak") Motion for Leave to File a Limited Reply to the Answer of PPL Electric Utilities Corporation to Amtrak's Motion to Compel, in the above-referenced proceeding. Amtrak's Limited Reply is attached hereto as Exhibit A.

If you have any questions regarding the attached document, please feel free to contact the undersigned. As shown by the attached Certificate of Service, the statutory parties are being duly served with a copy of this filing. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in blue ink, appearing to read 'Matthew L. Garber', with a long horizontal flourish extending to the right.

Matthew L. Garber

Counsel to National Railroad Passenger Corporation

Enclosures

cc: Deputy Chief Administrative Law Judge Joel H. Cheskis (via E-Mail and First Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

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

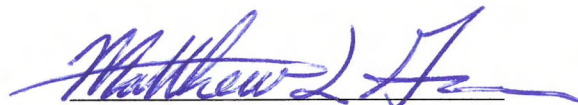
VIA E-MAIL AND FIRST-CLASS MAIL

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Matthew L. Garber

Counsel to the National Railroad Passenger
Corporation

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION FOR LEAVE TO FILE A LIMITED REPLY
TO THE ANSWER OF
PPL ELECTRIC UTILITIES CORPORATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

National Railroad Passenger Corporation (“Amtrak”), by and through its attorneys, hereby submit the following Motion for Leave to file a Limited Reply (“Limited Reply”) to the Answer of PPL Electric Utilities Corporation (“PPL”) to Amtrak's October 10, 2019 Motion to Compel.

1. On September 18, 2019, Amtrak served its Set I Interrogatories and Set II Requests for Admission (“Amtrak Discovery Requests”) on PPL in the above-docketed proceeding.

2. On September 30, 2019, PPL served its formal objections (“Objections”) to Requests 9 and 10 (“Requests 9 & 10”). PPL’s Objections argue that Requests 9 & 10 are overly broad and “would require PPL to undertake an unreasonably extensive and costly investigation.” Objections, at 2.

3. On October 10, 2019, Amtrak filed a Motion to Compel (“Motion”) requesting that Your Honor compel PPL to provide a complete response to Request 9. Amtrak agreed to limit Request 10 to the four-year period (“Refund Period”) immediately preceding the filing date of Amtrak’s Complaint.

4. On October 15, 2019, PPL filed an Answer to Amtrak's Motion to Compel ("Answer").

5. Amtrak seeks leave to file a Limited Reply to PPL's Answer ("Limited Reply") to provide clarification regarding one specific issue raised by PPL in its Answer. While replies to answers are not customarily filed, they can be accepted by the presiding officer if they do not prejudice the opposing party. *See, e.g.,* Interim Order Denying Complainant's Motion for Partial Summary Judgment, *City of Reading v. UGI Utilities, Inc.*, Docket Nos. C-2015-2516051 and C-2016-2530475.

6. Amtrak's Limited Reply addresses an issue that was raised for the first time in PPL's Answer and was not raised in PPL's Objections. Specifically, PPL provides an interpretation of Request 9 in its Answer that implies that Amtrak has requested that PPL provide customer-specific transmission obligation calculation methodology for individual customers other than Amtrak. This interpretation is inaccurate, contrary to the plain language of Request 9, and is addressed more fully in Amtrak's Limited Reply.

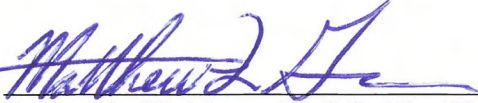
7. Because PPL's "customer-specific" interpretation of Request 9 (a) was newly raised in PPL's Answer; (b) not addressed in PPL's Objections; and (c) may arise from a mistaken understanding by PPL of the scope of Request 9, PPL will not be prejudiced by granting leave for Amtrak to file a Limited Answer providing clarifying comments.

8. The proposed Limited Reply is attached hereto as Exhibit A.

9. WHEREFORE, Amtrak respectfully requests that Your Honor (i) permit filing of a Limited Reply; and (ii) grant Amtrak such other relief as may be just and reasonable under the circumstances.

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)

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Dated: October 22, 2019

EXHIBIT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**LIMITED REPLY TO THE ANSWER OF
PPL ELECTRIC UTILITIES CORPORATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

The National Railroad Passenger Corporation (“Amtrak”) files this Limited Reply (“Limited Reply”) to PPL Electric Utilities Corporation’s (“PPL”) Answer to Amtrak’s Motion to Compel filed on October 10, 2019, in the above-referenced proceeding. This Limited Reply serves to clarify a singular issue before the Administrative Law Judge that was raised by PPL for the first time in its Answer. To provide additional information to assist Your Honor in rendering a decision on Amtrak’s Motion to Compel, Amtrak states as follows:

1. On September 18, 2019, Amtrak served its Set I Interrogatories and Set II Requests for Admission (“Amtrak Discovery Requests”) on PPL in the above-docketed proceeding.
2. On September 30, 2019, PPL served formal objections (“Objections”) to Requests 9 and 10 (“Requests 9 & 10”) of Set I of Amtrak Discovery Requests. PPL’s Objections argue that Requests 9 & 10 are overly broad and “would require PPL to undertake an unreasonably extensive and costly investigation.” Objections, at 2.
3. On October 10, 2019, Amtrak filed a Motion to Compel (“Motion”) requesting that Your Honor compel PPL to provide a complete response to Request 9. Amtrak agreed to limit

Request 10 to the four-year period (“Refund Period”) immediately preceding the filing date of Amtrak’s Complaint.

4. On October 15, 2019, PPL filed an Answer to Amtrak’s Motion to Compel (“Answer”).

5. On page 5 of PPL’s Answer, PPL states:

Amtrak’s broad request is even more unreasonable when considering that it seeks information for all transmission users, not just Amtrak. Question No. 9 seeks information related to the transmission calculation methodology “generally” as well as specifically to Amtrak. (Amtrak Motion to Compel, p. 4) There are approximately 1.4 million users of the PPL Electric transmission system. Internal PPL discussions pertaining to these customers has nothing to do with Amtrak or Amtrak’s use of the transmission system and is confidential customer-specific information.

6. This statement suggests that Amtrak has requested that PPL provide customer-specific transmission obligation calculations for each and every customer in the PPL Zone. This is not the case and is a faulty interpretation of the plain language of Request 9. Further, PPL did not raise this interpretation in its Objections to Amtrak. In its Objections, PPL stated only:

As explained below, PPL Electric objects to Amtrak Set I, Questions 9 and 10 because they are overly broad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence.

I. OBJECTIONS TO AMTRAK SET I, QUESTIONS 9 AND 10

Amtrak Set I, Questions 9 and 10 provide as follows:

9. Provide all internal PPL correspondence and documents regarding the methodology that PPL uses to calculate transmission obligation calculations generally and Amtrak transmission obligations specifically.

10. Provide all correspondence between PPL and CNE, and between PPL and PJM, regarding the calculation of transmission obligations for the Conestoga Account.

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). However,

the Commission's regulations place limitations on the scope of discovery. Discovery that would cause unreasonable burden or expense or require an unreasonable investigation by a party is not permitted. 52 Pa. Code § 5.361(a)(2), (4). Amtrak Set I, Questions 9 and 10 are overly broad, unduly burdensome, and beyond the scope of permissible discovery.

Questions 9 and 10 would require an unreasonable search by PPL Electric unless limited by Amtrak. As drafted, Questions 9 and 10 seek all internal PPL Electric correspondence regarding PPL Electric's transmission obligation calculation methodology for Amtrak and all correspondence between PPL Electric and CNE and PPL Electric and PJM regarding the calculation of transmission obligations for the Conestoga account. Without any limitation as to the period for which Amtrak seeks the requested correspondence, Questions 9 and 10 are overly broad and not within the scope of permissible discovery pursuant to the Commission's regulations. Because responding to the requests as drafted would require PPL Electric to undertake an unreasonably extensive and costly investigation, PPL Electric will not provide a response to Questions 9 and 10 unless and until the requests are narrowed by Amtrak.

7. While Amtrak reserves the right to seek information and documents pertaining to the application of transmission obligation methodologies for specific customers as within the scope of discovery, Amtrak has not done so in Request 9. Request 9 seeks "correspondence and documents regarding the methodology that PPL uses to calculate *transmission obligations generally* and *Amtrak transmission obligations specifically*." Request 9 (emphasis added). Request 9 does not request from PPL the application of specific transmission obligation methodologies to each and every customer in the PPL Zone. Rather, with the sole exception of Amtrak itself, Request 9 seeks only correspondence and documents regarding PPL's calculation methodology applicable to customers *generally*. Such information would include PPL documents for determining or developing the transmission obligation methodology, not the ultimate application of that methodology to non-Amtrak PPL Zone customers.


8. Amtrak has declined to voluntarily limit the time frame of Request 9 because it is likely that PPL's transmission obligation calculation methodology was initially established during Restructuring in the late 1990s or soon thereafter. *See, e.g., PECO Energy Co.*, 85 FERC ¶ 61,271,

62087 (Nov. 25, 1998); *reh'g denied PECO Energy Co.*, 91 FERC ¶ 61,030, 61106-07 (Apr. 12, 2000) (PPL's attempt to file certain provisions of its Supplier Tariff rejected by the Federal Energy Regulatory Commission). Further, PPL has not stated whether any methodology that PPL may have established during Restructuring has been changed for Amtrak specifically, or all customers generally. While this time frame is substantially broader than the Refund Period, the broader time frame is necessary to elicit information about the development of the methodology that PPL applied to its customers during the Refund Period, because that development likely occurred before and perhaps long before the start of the Refund Period. Similarly, the broader time frame is necessary to elicit information about PPL's application of its methodology to Amtrak, because PPL likely determined the application of its methodology to Amtrak before the start of the Refund Period as well. However, Request 9 does not seek individual non-Amtrak customer methodology information, as suggested by PPL on page 5 of its Answer. Because Request 9 is reasonably calculated to lead to the discovery of admissible evidence, Request 9 is within the scope of discovery as established by the Commission in 52 Pa. Code § 5.321(c).

9. WHEREFORE, Amtrak respectfully requests that Your Honor (i) permit filing of this Limited Reply; (ii) consider the comments herein in rendering a decision on Amtrak's Motion to Compel; (iii) order PPL Electric Utilities Corporation to provide complete responses to Request 9; and (iv) grant Amtrak such other relief as may be just and reasonable under the circumstances.

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)

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Corporation

Dated: October 22, 2019