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December 2, 2019

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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") Answer to PPL Electric Utilities Corporation's ("PPL") Motion to Compel Responses to Interrogatories and Requests for Production of Documents – Set II, Nos. 2 through 8, in the above-referenced proceeding.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek
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

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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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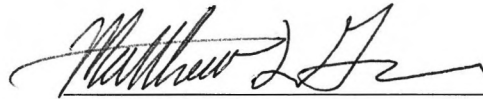
Dated this 2nd day of December, 2019, in Harrisburg, Pennsylvania.

VERIFICATION

I, Mathew L. Garber, 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 II 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).

12-2-2019

Date



Matthew L. Garber

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF THE NATIONAL RAILROAD PASSENGER CORPORATION TO
PPL ELECTRIC UTILITIES CORPORATION'S
MOTION TO COMPEL RESPONSES, DISCOVERY – SET II, NOS. 2-8**

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 II, Nos. 2-8 (“PPL Set II”) filed on November 25, 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 November 1, 2019, PPL served PPL Set II in the above-captioned proceeding.
2. PPL Set II consists of eight requests, addressing four topics:
 - a. The existence of a new supply agreement between Amtrak and Constellation NewEnergy, Inc. (“CNE”);
 - b. Correspondence and document related to Safe Harbor’s alleged or potential status as a “PJM Network Resource;”

- c. Correspondence and documents related to Safe Harbor’s alleged or potential status as “behind the meter generation;” and
- d. Amtrak’s position on the implications to Safe Harbor’s entitlement to capacity rights if Safe Harbor was designated as “behind the meter generation.”

3. On November 14, 2019, counsel for Amtrak served Objections to PPL Set II (“Amtrak Objections”). Amtrak objected to PPL’s request to provide a “position” on Safe Harbor’s capacity rights as calling for a legal conclusion. Amtrak also objected to Requests II-2 through II-7 to the extent they requested documents or correspondence from prior to May 30, 2015, the first day of the four-year period immediately preceding the filing of Amtrak’s Complaint (“Refund Period”). A true and correct copy of the Amtrak Objections is attached hereto as **Appendix A.**

4. On November 25, 2019, counsel for Amtrak served responses to PPL-AMTRAK-II-1 through II-7. Consistent with the Amtrak Objections, Amtrak provided responses dating from or after May 30, 2015.

5. Also on November 25, 2019, counsel for PPL filed a Motion to Compel Answers to Interrogatories and Requests For Production of Documents Propounded by PPL Electric – Set II (“Motion to Compel” or “Motion”). A true and correct copy of PPL’s Motion is attached hereto as **Appendix B.**

6. Specifically, PPL’s Motion seeks to compel Amtrak to:

- a. Provide documents and correspondence pertaining to Safe Harbor’s alleged or potential designation as a PJM Network Resource “since 2013” rather than from the start of the Refund Period on May 30, 2015;

- b. Provide documents and correspondence pertaining to Safe Harbor's alleged or potential designation as behind the meter generation "since 2013" rather than from the start of the Refund Period on May 30, 2015; and
- c. Provide Amtrak's position on theoretical implications for Safe Harbor's capacity benefits if Safe Harbor was designated as "behind the meter generation."

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

II. LEGAL STANDARD

8. 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).

9. However, the information sought in discovery must be "reasonably calculated to lead to the discovery of admissible evidence." *Id.*

10. 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).

11. 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.*

12. 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).

13. 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. Amtrak's Responses to Request Nos. 2, 3, and 6 Were Appropriately Limited to the Refund Period.

14. PPL-AMTRAK-II-2, II-3, and II-6 seek correspondence or documents “since 2013” pertaining to “designation of Safe Harbor as a PJM network resource.” Amtrak provided a response on November 25, 2019 limited to correspondence or documents dated on or since May 30, 2015.

15. As demonstrated in the Amtrak Objections, documents deemed relevant in this proceeding have generally been within the four-year Refund Period. In PPL and Amtrak's first discovery dispute, the Presiding Judge issued an Order explaining that, “with regard to the scope of PPL's interrogatories, the *relevant response period* will begin with the four-year period ending May 30, 2019. . . . PPL's request for five years' worth of information is too long; Amtrak's limit of three years due to its record retention policy is too short. A four-year scope is appropriate in light of the request in Amtrak's complaint and Section 1312 of the Public Utility Code.” *See Order Granting in Part and Denying in Part Motion to Compel*, Docket No. C-2019-3010398 (August 22, 2019) (“August 22 Order”) (emphasis added).

16. As seen by the above-quoted portion of the August 22 Order, the Presiding Judge stated that the “relevant” time period was four years for the discovery requests at issue in the dispute. This relevant time period is based both on Amtrak's Complaint – which seeks relief dating back to May 30, 2015 – and Section 1312 of the Public Utility Code. 66 Pa.C.S. § 1312.

17. In its Motion, PPL relies on the fact that Amtrak sought a longer response timeframe in a subsequent Motion to Compel. *Motion to Compel of the National Railroad Passenger Corporation*, Docket No. C-2019-3010398 (October 10, 2019) (“Amtrak Motion to Compel”). While Amtrak did seek a longer timeframe for one particular request, Amtrak explained

in substantial detail the reason a longer timeframe was relevant in that one instance – namely, that (1) the requested information had direct implications for the core issue of Amtrak’s Complaint, and (2) the requested information involved a methodology likely originally established during Restructuring in the 1990s. *Id.* The Presiding Judge, in the November 1, 2019 Order on the Amtrak Motion to Compel, contrasted the longer period approved in the November 1 Order with his prior Order. The Presiding Judge stated, “In the prior order granting in part and denying in part interrogatories I-5, I-6 and I-7, the scope of the search was limited to four years because the information sought pertained to activities that occurred more recently and because four years corresponded to the relief requested.” *Order Granting National Railroad Passenger Corporation’s Motion for Leave to File Limited Reply and Granting In Part and Denying In Part Motion to Compel Regarding Interrogatory I-9*, Docket No. C-2019-3010398 (Nov. 1, 2019) (“November 1 Order”).

18. Here, in contrast, PPL is reverting to an extended (> 5 year) timeframe for multiple requests without providing a reason for doing so. In fact, PPL’s discovery requests seek a timeframe of approximately six years for six different requests. However, as regarding PPL-AMTRAK-II-2, II-3, and II-6, PPL has not explained why the four-year Refund Period is an insufficient timeframe. PPL has only stated that “PPL Electric’s request for correspondence and documents since 2013 is reasonable in light of the information requested.” Motion to Compel at 3.

19. PPL’s explanation is inadequate because it provides no reason to move beyond the four-year period, which the Presiding Judge stated was the “relevant response period” for PPL’s earlier five-year requests. While the Presiding Judge has rightfully allowed for a sole exception to the four-year Refund Period, the *relevancy* of that extended time frame was clearly established. Here, regardless of the relevancy of Safe Harbor’s current status as a PJM Network Resource, PPL

has articulated no reason why an extended time period is relevant, other than that it is “reasonable.”

Amtrak respectfully requests that PPL’s Motion be denied.

B. Amtrak’s Responses to Request Nos. 4, 5, and 7 Were Appropriately Limited to the Refund Period.

20. PPL-AMTRAK-II-4, II-5, and II-7 seek correspondence or documents “since 2013” pertaining to “designation of or potential designation of Safe Harbor as behind the meter generation.” Amtrak agreed to provide documents beginning May 30, 2015. Amtrak provided a response on November 25, 2019.

21. Amtrak incorporates the arguments set forth in paragraphs 14 through 17, *supra*, in response to PPL-AMTRAK-II-4, II-5, and II-7.

22. In its Motion, PPL states that Amtrak’s responses to II-4, II-5, and II-7 “should not be limited to the timeframe beginning May 30, 2015 because it is very likely that any discussions regarding the designation of Safe Harbor as behind the meter generation would have taken place well before this time.” Motion to Compel at 6.

23. PPL has not provided any support or rationale as to why “any discussions” on this topic would have very likely happened long before May 30, 2015. In seeking to resolve the discovery dispute informally, Amtrak counsel sought to understand the reason “since 2013” was selected as the date. Amtrak’s team discussed internally what may have occurred in or after 2013 that would cause PPL to extend the requests to “since 2013,” and Amtrak counsel asked PPL counsel this same question. However, PPL counsel could not provide a specific reason the timeframe was selected.¹ Because PPL cannot articulate a basis for an exception to the four-year

¹ It is also unclear if “since 2013” is inclusive or exclusive of 2013. In other words, Amtrak is unsure if “since 2013” means “after 2013” (i.e. starting January 1, 2014) or “during and after 2013” (i.e. starting January 1, 2013). Unless otherwise clarified by the Presiding Judge, Amtrak will interpret “since 2013” as “after 2013” (i.e. starting January 1, 2014).

guidance set forth in the August 22 Order, PPL's broader requests take on the appearance of a fishing expedition rather than a reasonably tailored request.

24. In summary, PPL has not supported its assertion that an exception to the August 22 Order is warranted regarding relevant timeframes for Amtrak's responses to II-4, II-5, and II-7. Without providing this support, PPL appears to be fishing for information and documents through an overly broad search. Consequently, PPL's Motion should be denied.

C. Amtrak Should Not Be Compelled to Respond to Request No. 8 Because It Calls for a Legal Conclusion.

25. PPL-AMTRAK-II-8 states: "Does Amtrak agree that if Safe Harbor were designated as behind the meter generation, Safe Harbor would not be entitled to the capacity benefits of the PJM network? If so, fully explain."

26. Amtrak objected to PPL-AMTRAK-II-8 as follows:

Amtrak objects to PPL-AMTRAK-II-8 on the basis that this request seeks a legal opinion or legal conclusion from Amtrak. The question of whether Safe Harbor would or would not be entitled to capacity benefits of the PJM network if it were designated as behind the meter generation is a question of interpretation of PJM's rules and regulations and may involve interpretation of FERC rules and decisions. Consequently, Amtrak also objects to PPL-AMTRAK-II-8 on the basis that this request is an unreasonable burden on Amtrak, requires Amtrak to incur unreasonable expenses in conducting legal research, and constitutes an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Additionally, because the hypothetical implications of Safe Harbor's status as behind the meter generation are neither addressed in Amtrak's Complaint, nor necessary to resolve Amtrak's Complaint, Amtrak objects to PPL-AMTRAK-II-8 on the basis that it is overly broad, not relevant to this proceeding, nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

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).

27. In PPL's Motion to Compel, PPL argues that II-8 "does not call for a legal opinion or analysis. Rather, it seeks *Amtrak's position* as to whether Safe Harbor would be entitled to the capacity benefits of the PJM network if it were designated as behind the meter generation." Motion to Compel at 7 (emphasis in original).

28. PPL's argument that it seeks Amtrak's "position" not Amtrak's "legal opinion" amounts to a distinction without a difference. The question of whether Safe Harbor would be entitled to capacity benefits under a particular designation by PJM is invariably tied to interpretations of the PJM Open Access Transmission Tariff ("PJM Tariff") and/or interpretations of rulings and guidance from the Federal Energy Regulatory Commission ("FERC") under the authority of the Federal Power Act ("FPA"). Amtrak cannot hold a "position" on this issue without conducting legal analysis.

29. Additionally, PPL argues that Amtrak should be forced to provide a "position" because Amtrak's Complaint is, "in effect . . . asking that Safe Harbor be treated as 'behind the meter.'" Motion to Compel at 7.

30. This argument is incorrect. In fact, Amtrak has not asked for Safe Harbor to be considered "behind the meter." Rather, Amtrak has simply requested that Amtrak's transmission charges to be calculated based on Amtrak's *use of the transmission system* in compliance with a transparent, tariff-based methodology. If Amtrak's arguments appear to support a result with some similarities to a behind the meter configuration, this similarity only underscores Amtrak's undisputed factual claim that Amtrak does not use the PPL transmission facilities to receive power at the Conestoga Substation. It does not support PPL's assertion that Amtrak is "in effect" asking that Safe Harbor be placed "behind the meter."

31. To the knowledge of Amtrak's representatives, Amtrak has historically taken no interest in Safe Harbor's status or non-status as behind the meter generation. Amtrak has not had to develop a "position" on this issue and rejects PPL's contention that Amtrak must be forced to do so.

32. Additionally, Amtrak has not taken steps for the designation of or potential designation of Safe Harbor as behind the meter generation; therefore, any "position" of Amtrak's would be simply Amtrak's legal interpretation of a hypothetical fact. Neither PPL nor Amtrak has made a claim that Safe Harbor is classified as behind the meter generation. Moreover, the issue of Safe Harbor's potential status as behind the meter generation – as well as any implications of that status on capacity "benefits" – is not addressed in Amtrak's Complaint and is not necessary to resolve Amtrak's Complaint. As a result, PPL-AMTRAK-II-8 is overly broad, not relevant to this proceeding, nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

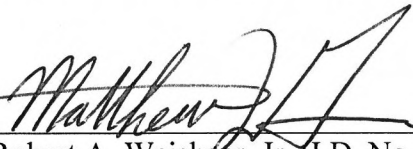
33. Finally, PPL conflates the distinct concepts of capacity and transmission in its arguments. Capacity and transmission are distinct unbundled products. *See* 66 Pa.C.S. § 2801 et al. Amtrak's Complaint addresses transmission costs, not capacity costs. However, PPL seeks Amtrak's opinion on Safe Harbor's entitlement to *capacity* benefits, when this case is about Amtrak's charges for *transmission* service – charges that are based on a metric wholly unrelated to Amtrak's actual use of the transmission system. PPL's arguments that Amtrak benefits from available PJM *capacity* does not change the fact that Amtrak is spending a million dollars annually for *transmission* service it does not need and is not using. Consequently, Amtrak's position on a hypothetical factual scenario that has not been asserted by either party is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. PPL's Motion should be rejected.

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 II, Nos. 2-8, of PPL Electric Utilities Corporation.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: December 2, 2019

Appendix A



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November 14, 2019

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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 ("PPL") Interrogatories and Requests for Production of Documents – Set II, Nos. 2 through 8, in the above-referenced proceeding.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By 

Pamela C. Polacek
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

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CERTIFICATE OF SERVICE

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

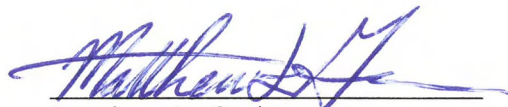
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Matthew L. Garber

Counsel to the National Railroad Passenger
Corporation

Dated this 14th day of November, 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.	:	

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

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 II ("Set II Interrogatories") served on November 4, 2019.¹

GENERAL OBJECTIONS

As a general matter, Amtrak objects to PPL Electric's Set II Interrogatories on several grounds pursuant to 52 Pa. Code § 5.321, 5.361, and the Administrative Law Judge's ("ALJ") August 22, 2019 Order on PPL's Motion to Compel ("August 22 Order").

Amtrak objects to the Set II Interrogatories to the extent they seek documents or information not limited to PPL's service territory. As stated in the August 22 Order, "PPL has agreed to limit [certain interrogatories] to services provided in the PPL zone and this order further limits the responses to those pertaining to transmission service and not generation service over the

¹ Set II Interrogatories were served by email on November 1, 2019 at 2:18 p.m. Pursuant to the Scheduling Order issued August 29, 2019, discovery requests served after noon on a Friday are deemed to have been served on the next business day. Consequently, the service date for the Set II Interrogatories is November 4, 2019.

past four years." Amtrak's only point of delivery within the PPL Electric service territory is the Conestoga Substation. Consistent with the August 22 Order, Amtrak will provide responses limited to service provided in PPL's service territory.²

Second, Amtrak objects to the Set II Interrogatories to the extent they seek documents and information from before the four-year period prior to the filing of Amtrak's Complaint ("Refund Period"). Pursuant to 52 Pa. Code §§ 5.361(a)(2) and 5.321(c), Amtrak objects to the Set II Interrogatories to the extent they result in unreasonable burden and expense on Amtrak, are overly broad, are not relevant to this proceeding or to lead to the discovery of admissible evidence.

² 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).

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

DOCKET NO. C-2019-3010398

-
- PPL-AMTRAK-II-2** Provide all correspondence between Amtrak and CNE since 2013 regarding the designation of Safe Harbor as a PJM network resource.
- PPL-AMTRAK-II-3** Provide all correspondence between Amtrak and Safe Harbor, including its agents, since 2013 regarding the designation of Safe Harbor as a PJM network resource.
- PPL-AMTRAK-II-4** Provide all correspondence between Amtrak and Safe Harbor, including its agents, since 2013 regarding designation of or potential designation of Safe Harbor as behind the meter generation.
- PPL-AMTRAK-II-5** Provide all correspondence between Amtrak and CNE since 2013 regarding designation of or potential designation of Safe Harbor as behind the meter generation.
- PPL-AMTRAK-II-6** Provide all documents in Amtrak's possession since 2013 regarding designation of Safe Harbor as a PJM network resource.
- PPL-AMTRAK-II-7** Provide all Documents in Amtrak's possession since 2013 regarding designation of or potential designation of Safe Harbor as behind the meter generation.
- Objection:** Amtrak objects to PPL-AMTRAK-II-2 through PPL-AMTRAK-II-7 to the extent these requests seek documents or information predating the Refund Period beginning May 30, 2015.

The ALJ's August 22, 2019 Order on PPL's Motion to Compel Answers to Interrogatories and Requests for Production of Documents ("August 22 Order") rejected PPL's request for documents dating back five years. The Order stated, in part:

PPL's interrogatories 5-7 seek correspondence for the past five years. Amtrak's objection states that "due to Amtrak's document retention policy, correspondence older than three years may not, in many cases, be available to Amtrak." As a result, with regard to the scope of PPL's interrogatories, the relevant response period will begin with the four-year period ending May 30, 2019 – the date when Amtrak filed the complaint. PPL's request for five years' worth of information is too long; Amtrak's limit of three years due to its record retention policy is too short. A four-year scope is appropriate in light of the request in Amtrak's complaint and

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

DOCKET NO. C-2019-3010398

Section 1312 of the Public Utility Code. PPL's motion to compel will be denied with regard to its request for information prior to May 30, 2015.

Consistent with the August 22 Order, Amtrak will provide responses to these requests narrowed to the four-year Refund Period beginning May 30, 2015.

**NATIONAL RAILROAD PASSENGER CORPORATION
OBJECTIONS TO PPL ELECTRIC UTILITIES CORPORATION'S
INTERROGATORIES AND REQUESTS FOR
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DOCKET NO. C-2019-3010398

PPL-AMTRAK-II-8 Does Amtrak agree that if Safe Harbor were designated as behind the meter generation, Safe Harbor would not be entitled to the capacity benefits of the PJM network? If so, fully explain.

Objection: Amtrak objects to PPL-AMTRAK-II-8 on the basis that this request seeks a legal opinion or legal conclusion from Amtrak. The question of whether Safe Harbor would or would not be entitled to capacity benefits of the PJM network if it were designated as behind the meter generation is a question of interpretation of PJM's rules and regulations and may involve interpretation of FERC rules and decisions. Consequently, Amtrak also objects to PPL-AMTRAK-II-8 on the basis that this request is an unreasonable burden on Amtrak, requires Amtrak to incur unreasonable expenses in conducting legal research, and constitutes an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Additionally, because the hypothetical implications of Safe Harbor's status as behind the meter generation are neither addressed in Amtrak's Complaint, nor necessary to resolve Amtrak's Complaint, Amtrak objects to PPL-AMTRAK-II-8 on the basis that it is overly broad, not relevant to this proceeding, nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

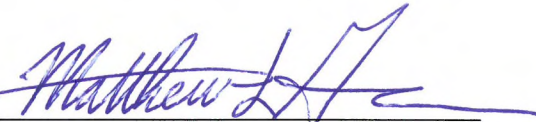
Further, Amtrak objects to this request to the extent any communications between Amtrak and Safe Harbor are part of ongoing negotiations or subject to settlement privilege. 52 Pa. Code §§ 5.361(a)(3); 5.231(d).

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

DOCKET NO. C-2019-3010398

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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

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Dated: November 14, 2019

Appendix B



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November 25, 2019

VIA ELECTRONIC FILING

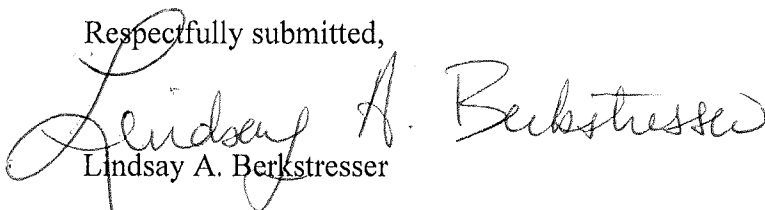
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PPL Electric Utilities Corporation (“PPL Electric”) is the Motion to Compel Answers to Interrogatories and Requests for Production of Documents Propounded by PPL Electric – Set II, Question Nos. 2 – 8, in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser

LAB/jl
Enclosures

cc: Honorable Joel H. Cheskis
Certificate of Service

CERTIFICATE OF SERVICE

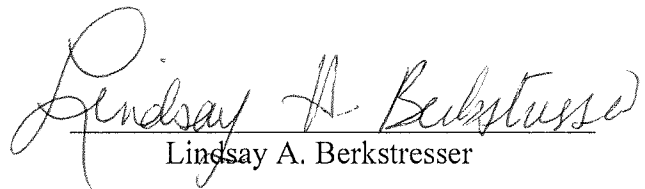
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST CLASS MAIL

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Date: November 25, 2019


Lindsay A. Berkstresser

**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 II, QUESTION NOS. 2-8**

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 II Interrogatories, Questions 2 through 8 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 2 through 8 as required by 52 Pa. Code § 5.342(a)(4). In support of its Motion, PPL Electric states as follows:

I. BACKGROUND

On November 1, 2019, PPL Electric served its Set II Interrogatories and Requests for Production of Documents on Amtrak and Set I Requests for Admission. On November 14, 2019, Amtrak served its formal objections to Set II, Questions 2 through 8. A true and correct copy of Amtrak’s objections is attached hereto as Appendix A. Counsel for PPL Electric and counsel for Amtrak have discussed the objections but have been unable to resolve the objections to date.

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 2, 3 AND 6.

The information requested in Questions 2, 3 and 6 pertains to Safe Harbor’s designation as a PJM Network Resource. Specifically, Questions 2, 3 and 6 provide:

PPL to Amtrak-I-2:

Provide all correspondence between Amtrak and CNE since 2013 regarding the designation of Safe Harbor as a PJM network resource.

PPL to Amtrak-I-3:

Provide all correspondence between Amtrak and Safe Harbor, including its agents, since 2013 regarding the designation of Safe Harbor as a PJM network resource.

PPL to Amtrak-I-6:

Provide all documents in Amtrak’s possession since 2013 regarding designation of Safe Harbor as a PJM network resource.

Amtrak objected to Questions 2, 3 and 6 to the extent that they request information predating the refund period beginning May 30, 2015. However, beyond raising a general burdensomeness objection to the interrogatories, Amtrak did not indicate that it would be unduly burdensome to provide the material requested in Questions 2, 3 and 6 from 2013 to the present.

In fact, Amtrak's only justification for limiting the time period in Questions 2, 3 and 6 is the ALJ's ruling in the August 22, 2019 Order. That Order determined a four-year response period was appropriate for interrogatories seeking correspondence related to Amtrak's transmission service in the PPL Zone. Amtrak fails to mention that the ALJ issued a subsequent Order stating that the August 22, 2019 discovery ruling was not applicable to all future interrogatories in this proceeding, and the permissible timeframe for each interrogatory will be considered in light of the information requested. *See Order Granting National Railroad Passenger Corporation's Motion for Leave to File Limited Reply and Granting in part and Denying in part Motion to Compel regarding Interrogatory I-9*, Docket No. C-2019-3010398 (November 1, 2019).

In the November 1, 2019 Order, PPL Electric was required to provide information concerning its transmission calculation methodology for a period of ten years because, according to Amtrak, the information requested was established prior to the four-year refund period in the Complaint. Here, the correspondence and documents requested in Questions 2, 3 and 6 pertain to the designation of Safe Harbor as a PJM Network Resource. PPL Electric's request for correspondence and documents since 2013 is reasonable in light of the information requested.

The information requested in Questions 2, 3 and 6 is highly relevant to this case. Amtrak's Complaint alleges that it was charged transmission rates that are improper. In support of its argument, Amtrak contends that it receives generation almost exclusively from the Safe Harbor facility and that the Conestoga Substation receives power directly from the Safe Harbor generation facility. Therefore, according to Amtrak, it does not use transmission facilities and should not be charged for Network Integration Transmission Service ("NITS"). (Compl. ¶¶ 24, 27, 43) Information pertaining to Safe Harbor's designation as a Network Resource is highly

relevant to demonstrating that Amtrak has been properly charged for transmission service, and Amtrak should be required to provide full and complete responses to Questions 2, 3 and 6.

To understand why Safe Harbor's designation as a Network Resource is relevant and why Amtrak has been properly charged for transmission service, it is necessary to understand how NITS works in PJM. PJM provides NITS under Part III of the PJM Tariff. NITS allows transmission customers to designate certain generating resources as "Network Resources" and use those resources to serve their "Network Load" anywhere in the PJM Region. "Network Load" is "the load that a Network Customer designates for [NITS] under [the PJM Tariff]." The definition of Network Load also expressly includes all load served by the output of any generation resources designated as Network Resources by a Network Customer. PJM charges Network Customers for NITS pursuant to Section 34.1 of the PJM Tariff, which requires each Network Customer to pay a monthly charge for use of network transmission service.

In PJM, most retail customer load is served by "Load Serving Entities" or "LSEs." LSEs are responsible for procuring the necessary generation, capacity, and transmission service to serve their retail customer load. In PJM states with retail competition, independent retail electric providers often serve as a retail customer's LSE. Retail providers typically purchase NITS to serve their retail loads and generally designate their retail loads as Network Load and the generation resources that serve that load as Network Resources. NITS entitles a Network Customer to deliver energy and capacity from anywhere in PJM to the PJM Zone in which their designated Network Load is located.

Amtrak's supplier, Constellation New Energy ("CNE") is the LSE for Amtrak. CNE has designated Amtrak's load as Network Load and thus by definition, CNE uses NITS to serve Amtrak. In addition, CNE has also designated Safe Harbor (including the 25 hertz facilities that

Amtrak uses) as a Network Resource under the PJM Tariff and, as a result, the PJM Tariff *requires* that load served by Safe Harbor be included in determining CNE's NITS obligation. Thus, even if Amtrak is served almost exclusively by Safe Harbor, as Amtrak contends, the inclusion of Amtrak's full load in the PPL Zone in determining CNE's peak load contribution is proper and must include any load supplied by Safe Harbor. In fact, Amtrak's request that PPL Electric calculate CNE's peak load contribution to the PPL Zonal peak load *net* of Amtrak load supplied by Safe Harbor would violate the PJM Tariff.

For these reasons, information pertaining to Safe Harbor's designation as a Network Resource is relevant to demonstrating that PPL Electric's inclusion of the metered output of Safe Harbor in the calculation of Amtrak's load at the time of the PPL Zone peak is required by and consistent with Part III of the PJM Tariff. It is not burdensome for Amtrak to provide the information requested back to 2013.

B. AMTRAK SHOULD BE COMPELLED TO PROVIDE FULL AND COMPLETE RESPONSES TO QUESTIONS 4, 5 AND 7.

Questions 4, 5 and 7 relate to the designation of Safe Harbor as behind the meter generation. Specifically, Questions 4, 5 and 7 state:

PPL to Amtrak-I-4:

Provide all correspondence between Amtrak and Safe Harbor, including its agents, since 2013 regarding designation of or potential designation of Safe Harbor as behind the meter generation.

PPL to Amtrak-I-5:

Provide all correspondence between Amtrak and CNE since 2013 regarding designation of or potential designation of Safe Harbor as behind the meter generation.

PPL to Amtrak-I-7:

Provide all documents in Amtrak's possession since 2013 regarding designation of or potential designation of Safe Harbor as behind the meter generation.

Amtrak objects to these questions on the basis that they should be limited to the four-year refund period in the Complaint beginning May 30, 2015. In accordance with the ALJ's November 1, 2019 Order, the appropriate time period for these questions should be judged in light of the information requested. Questions 4, 5 and 7 should not be limited to the timeframe beginning May 30, 2015 because it is very likely that any discussions regarding the designation of Safe Harbor as behind the meter generation would have taken place well before this time. PPL Electric's request for information from 2013 to the present is reasonable in light of the information PPL Electric is seeking in these interrogatories. Amtrak did not state that it would be unduly burdensome to provide the information for the time period requested.

Moreover, information pertaining to the designation or potential designation of Safe Harbor as behind the meter generation is highly relevant to the issues in this case. When determining a Network Customer's contribution to a zone's peak load, Section 34.2 of the PJM Tariff allow PJM to net out certain "Behind the Meter Generation" from the Network Customer's Network Load when calculating that customer's NITS Charge. "Behind the Meter Generation" is defined as:

"...a generation unit that delivers energy to load without using the Transmission System or any distribution facilities (unless the entity that owns or leases the distribution facilities has consented to such use of the distribution facilities and such consent has been demonstrated to the satisfaction of the [PJM]); provided, however, that Behind The Meter Generation does not include (i) at any time, any portion of such generating unit's capacity that is designated as a Generation Capacity Resource; or (ii) in an hour, any portion of the output of such generating unit that is sold to another entity for consumption at another electrical location or into the PJM Interchange Energy Market."

The designation or potential designation of Safe Harbor as behind the meter generation is directly relevant to whether the load at Safe Harbor should be included in calculating Amtrak's transmission obligation. Given the highly relevant nature of the information requested, Amtrak

should be required to provide a complete response. Aside from raising burdensomeness as a general objection to the interrogatories, Amtrak has not specifically alleged that providing the information requested in Questions 4, 5 and 7 back to 2013 would be burdensome.

C. AMTRAK SHOULD BE COMPELLED TO PROVIDE FULL AND COMPLETE RESPONSES TO QUESTION 8.

Question 8 provides as follows:

PPL to Amtrak-II-8:

Does Amtrak agree that if Safe Harbor were designated as behind the meter generation, Safe Harbor would not be entitled to the capacity benefits of the PJM network? If so, fully explain.

Amtrak objects to Question 8 on the basis that it requires a legal opinion from Amtrak. According to Amtrak, it would have to interpret PJM's rules and regulations and FERC rules and decisions in order to provide an answer. Question 8 does not call for a legal opinion or analysis. Rather, it seeks Amtrak's position as to whether Safe Harbor would be entitled to the capacity benefits of the PJM network if it were designated as behind the meter generation. Amtrak can answer this question as to its position without providing a legal interpretation of PJM rules or FERC rules and decisions.

Amtrak also contends that Question 8 is not relevant because Safe Harbor's status as behind the meter generation is not addressed in Amtrak's Complaint. In effect, however, Amtrak's Complaint is asking that Safe Harbor be treated as "behind the meter," and to net out of its energy use any load supplied by Safe Harbor in the PPL Zone. Safe Harbor's status is relevant because Safe Harbor's designation as a Network Resource allows Safe Harbor's owner to receive capacity benefits from the PJM transmission system that it would not otherwise receive if Safe Harbor were designated as behind the meter generation. Amtrak's position is

essentially that the Safe Harbor generation should be entitled to transmission system capacity benefits but that the same generation should not be subject to NITS charges.

The Conestoga Substation is the PJM-designated point of interconnection for the Safe Harbor generating facility. Three transformers at the Conestoga substation are used to connect the Conestoga substation directly to Amtrak's load in Pennsylvania. Safe Harbor sells the entire capacity of the Safe Harbor generating facility into the PJM wholesale capacity market, and the entire output of Safe Harbor is designated as a PJM Network Resource. Since Amtrak is served by CNE as part of its Network Load, CNE can deliver energy and capacity from anywhere in the PJM to serve Amtrak. In other words, the entire PJM transmission system is available to serve Amtrak.

While Amtrak argues that it should not pay for transmission service based on its actual electricity usage in the PPL Zone, Amtrak uses and receives significant benefit from the PJM transmission system. When the generation at Safe Harbor is insufficient to meet Amtrak's load, CNE can deliver power at the Conestoga Substation from any designated Network Resources in PJM to serve Amtrak.¹

Amtrak also relies exclusively on the PJM transmission system for capacity. CNE is required to pay a capacity charge to ensure that PJM maintains capacity sufficient to support all of CNE's retail load obligations in the PPL Zone, including Amtrak's load measured at the Conestoga Substation.² That capacity could be delivered to Amtrak from anywhere in PJM. Capacity purchased in the PJM capacity market is not associated with specific loads or customers. Thus, even though the entire capacity output of the Safe Harbor Facility, including

¹ PJM Tariff § 34. Network Resources are any designated generating resources owned, purchased, or leased by a Network Customer and that can be called upon to meet the Network Customer's Network Load on a non-interruptible basis. PJM Tariff, Definitions.

² PJM Tariff, Attachment DD.

from the 25 hertz units, is sold by Safe Harbor into the PJM capacity market, Amtrak does not receive capacity directly from the Safe Harbor Facility. Rather, if capacity is called upon, PPL Electric's transmission facilities would be required to support Amtrak's load. Whether or not PPL Electric's transmission facilities physically deliver energy to Amtrak on a normal day-to-day basis, Amtrak relies on those facilities every day to maintain the reliability of its supply.

For these reasons and the reasons explained in Part B., above, the information sought in Question 8 pertaining to Safe Harbor's designation is highly relevant to the issues in this case. Accordingly, Amtrak should be required to provide a response to Question 8.

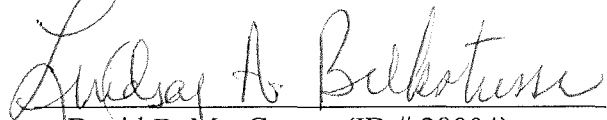
IV. CONCLUSION

In summary, PPL Electric's Set II interrogatories explore Amtrak's decision to contract with CNE for retail service to serve Amtrak's load that included network transmission service. Amtrak, CNE and Safe Harbor chose to rely on the PJM markets rather than designate Safe Harbor as behind the meter generation and enter into private power purchase agreements. This information is relevant to rebutting Amtrak's arguments that this case is about only the physical flows of power over the transmission grid. The issues in this case are not limited to Amtrak's use of physical transmission infrastructure. Rather, this case is about Amtrak's decision to participate in and have access to the PJM markets, the benefits that flow from that decision (e.g., capacity payments to Safe Harbor, access to the generation market, and capacity service, among other benefits), and the costs associated with those benefits.

V. REQUEST FOR RELIEF

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 2 through 8.

Respectfully submitted,



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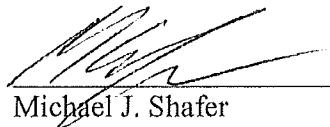
Date: November 25, 2019

Attorneys for PPL Electric Utilities Corporation

VERIFICATION

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

Date: 11/25/19



Michael J. Shafer

Appendix A

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November 14, 2019

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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 ("PPL") Interrogatories and Requests for Production of Documents – Set II, Nos. 2 through 8, in the above-referenced proceeding.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By



Pamela C. Polacek
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).


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Matthew L. Garber

Counsel to the National Railroad Passenger
Corporation

Dated this 14th day of November, 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.	:	

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

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 II ("Set II Interrogatories") served on November 4, 2019.¹

GENERAL OBJECTIONS

As a general matter, Amtrak objects to PPL Electric's Set II Interrogatories on several grounds pursuant to 52 Pa. Code § 5.321, 5.361, and the Administrative Law Judge's ("ALJ") August 22, 2019 Order on PPL's Motion to Compel ("August 22 Order").

Amtrak objects to the Set II Interrogatories to the extent they seek documents or information not limited to PPL's service territory. As stated in the August 22 Order, "PPL has agreed to limit [certain interrogatories] to services provided in the PPL zone and this order further limits the responses to those pertaining to transmission service and not generation service over the

¹ Set II Interrogatories were served by email on November 1, 2019 at 2:18 p.m. Pursuant to the Scheduling Order issued August 29, 2019, discovery requests served after noon on a Friday are deemed to have been served on the next business day. Consequently, the service date for the Set II Interrogatories is November 4, 2019.

past four years." Amtrak's only point of delivery within the PPL Electric service territory is the Conestoga Substation. Consistent with the August 22 Order, Amtrak will provide responses limited to service provided in PPL's service territory.²

Second, Amtrak objects to the Set II Interrogatories to the extent they seek documents and information from before the four-year period prior to the filing of Amtrak's Complaint ("Refund Period"). Pursuant to 52 Pa. Code §§ 5.361(a)(2) and 5.321(c), Amtrak objects to the Set II Interrogatories to the extent they result in unreasonable burden and expense on Amtrak, are overly broad, are not relevant to this proceeding or to lead to the discovery of admissible evidence.

² 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).

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

DOCKET NO. C-2019-3010398

-
- | | |
|------------------------|--|
| PPL-AMTRAK-II-2 | Provide all correspondence between Amtrak and CNE since 2013 regarding the designation of Safe Harbor as a PJM network resource. |
| PPL-AMTRAK-II-3 | Provide all correspondence between Amtrak and Safe Harbor, including its agents, since 2013 regarding the designation of Safe Harbor as a PJM network resource. |
| PPL-AMTRAK-II-4 | Provide all correspondence between Amtrak and Safe Harbor, including its agents, since 2013 regarding designation of or potential designation of Safe Harbor as behind the meter generation. |
| PPL-AMTRAK-II-5 | Provide all correspondence between Amtrak and CNE since 2013 regarding designation of or potential designation of Safe Harbor as behind the meter generation. |
| PPL-AMTRAK-II-6 | Provide all documents in Amtrak's possession since 2013 regarding designation of Safe Harbor as a PJM network resource. |
| PPL-AMTRAK-II-7 | Provide all Documents in Amtrak's possession since 2013 regarding designation of or potential designation of Safe Harbor as behind the meter generation. |
| Objection: | Amtrak objects to PPL-AMTRAK-II-2 through PPL-AMTRAK-II-7 to the extent these requests seek documents or information predating the Refund Period beginning May 30, 2015. |

The ALJ's August 22, 2019 Order on PPL's Motion to Compel Answers to Interrogatories and Requests for Production of Documents ("August 22 Order") rejected PPL's request for documents dating back five years. The Order stated, in part:

PPL's interrogatories 5-7 seek correspondence for the past five years. Amtrak's objection states that "due to Amtrak's document retention policy, correspondence older than three years may not, in many cases, be available to Amtrak." As a result, with regard to the scope of PPL's interrogatories, the relevant response period will begin with the four-year period ending May 30, 2019 – the date when Amtrak filed the complaint. PPL's request for five years' worth of information is too long; Amtrak's limit of three years due to its record retention policy is too short. A four-year scope is appropriate in light of the request in Amtrak's complaint and

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

DOCKET NO. C-2019-3010398

Section 1312 of the Public Utility Code. PPL's motion to compel will be denied with regard to its request for information prior to May 30, 2015.

Consistent with the August 22 Order, Amtrak will provide responses to these requests narrowed to the four-year Refund Period beginning May 30, 2015.

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

DOCKET NO. C-2019-3010398

PPL-AMTRAK-II-8 Does Amtrak agree that if Safe Harbor were designated as behind the meter generation, Safe Harbor would not be entitled to the capacity benefits of the PJM network? If so, fully explain.

Objection: Amtrak objects to PPL-AMTRAK-II-8 on the basis that this request seeks a legal opinion or legal conclusion from Amtrak. The question of whether Safe Harbor would or would not be entitled to capacity benefits of the PJM network if it were designated as behind the meter generation is a question of interpretation of PJM's rules and regulations and may involve interpretation of FERC rules and decisions. Consequently, Amtrak also objects to PPL-AMTRAK-II-8 on the basis that this request is an unreasonable burden on Amtrak, requires Amtrak to incur unreasonable expenses in conducting legal research, and constitutes an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4).

Additionally, because the hypothetical implications of Safe Harbor's status as behind the meter generation are neither addressed in Amtrak's Complaint, nor necessary to resolve Amtrak's Complaint, Amtrak objects to PPL-AMTRAK-II-8 on the basis that it is overly broad, not relevant to this proceeding, nor likely to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

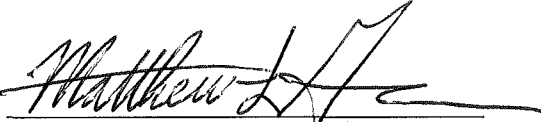
Further, Amtrak objects to this request to the extent any communications between Amtrak and Safe Harbor are part of ongoing negotiations or subject to settlement privilege. 52 Pa. Code §§ 5.361(a)(3); 5.231(d).

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

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Respectfully submitted,

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