
Anthony D. Kanagy
Principal

akanagy@postschell.com
717-612-6034 Direct
717-720-5387 Direct Fax
File #: 177551

July 31, 2020

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 a Motion for Summary Judgment in the above-referenced proceeding. Pursuant to the schedule adopted in this proceeding, any answer is due on or before August 31, 2020.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,


Anthony D. Kanagy

ADK/kl
Enclosure

cc: Honorable Joel H. Cheskis
Certificate of Service

CERTIFICATE OF SERVICE

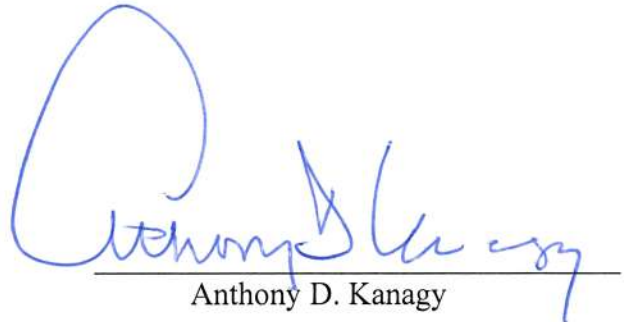
I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL ONLY

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
McNees, Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
E-mail: ppolacek@mcneeslaw.com

Date: July 31, 2020



Anthony D. Kanagy

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PPL ELECTRIC UTILITIES CORPORATION'S
MOTION FOR SUMMARY JUDGMENT**

TO ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) hereby files this Motion for Summary Judgment pursuant to Section 5.102 of the Pennsylvania Public Utility Commission’s (“PA PUC”) regulations, 52 Pa. Code § 5.102, and requests that the above-captioned Complaint be dismissed in its entirety and with prejudice.

As explained herein, National Railroad Passenger Corporation’s (“Amtrak”) Complaint involves a dispute over wholesale interstate Network Integration Transmission Service (“NITS”) rates charged by PJM Interconnection, LLC (“PJM”) for use of PPL Electric’s transmission system to Constellation New Energy, Inc. (“CNE”)¹ who, according to Amtrak, passes those interstate transmission charges through to Amtrak. For clarification purposes, PJM charges CNE for NITS based upon the contribution of CNE’s Network Load to PPL Electric’s Zonal Annual Peak Load. Because CNE provides Amtrak NITS, PPL Electric measures Amtrak’s energy use at system peak, and Amtrak’s load is included in CNE’s Network Load.

¹ CNE is Amtrak’s electric generation supplier (“EGS”).

Amtrak has filed the same Complaint before the Federal Energy Regulatory Commission (“FERC”)² and the Complaint before FERC includes all of the requests for relief that Amtrak seeks before the PA PUC. Attachment A lists Amtrak’s Relief Requested at FERC and Relief Requested Relief at the PA PUC. On June 18, 2020, FERC issued an Order both: (1) asserting jurisdiction over Amtrak’s Complaint; and (2) denying Amtrak’s complaint on the merits. *National Railroad Passenger Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,237 Order Denying Complaint issued June 18, 2020. A copy of this FERC Order is provided as Attachment B.

The PA PUC’s jurisdiction over the application and calculation of interstate transmission service charges has been expressly preempted by the Federal Power Act. Under the Federal Power Act, FERC has exclusive jurisdiction over the interstate transmission of electricity. Based on the Federal Power Act and controlling decisions thereunder, and the FERC Order, the PA PUC does not have jurisdiction over Amtrak’s Complaint, and it should be dismissed as a matter of law.

Moreover, even if there were any PA PUC jurisdiction, the issues in Amtrak’s PA PUC complaint are identical to those raised in its FERC complaint, and Amtrak’s PA PUC complaint is barred by the doctrines of *res judicata*, collateral estoppel, issue preclusion, federal/state comity, and judicial efficiency. If Amtrak is permitted to continue its Complaint before the PA PUC, it would be given a “second bite at the apple.” This type of forum shopping should not be sanctioned by the PA PUC, and Amtrak’s complaint should be dismissed.

² Amtrak notes in Paragraph 19 of its Complaint before the PA PUC that it has filed a “concurrent complaint” at FERC. The Complaint at FERC raises the exact same issues as the Complaint before the PA PUC and all of the relief Amtrak requests before the PA PUC is included in the FERC Complaint.

In addition, Amtrak does not contract with PPL Electric for transmission service. Rather, Amtrak has a contract with CNE, an EGS, for CNE to supply generation and transmission services to Amtrak. The PA PUC does not have jurisdiction over the rates and terms of an EGS' contract with a customer. Therefore, Amtrak's Complaint should be dismissed for this reason as well.

II. BACKGROUND

1. By Secretarial letter dated June 7, 2019, PPL Electric was served with the above-captioned Complaint. As noted above, Amtrak filed the same Complaint before FERC which included all of the requests for relief that Amtrak is making before the PA PUC.

2. The underlying basis of Amtrak's Complaint involves FERC-jurisdictional wholesale interstate transmission charges that PJM charges CNE for use of PPL Electric's transmission system. Amtrak alleges that its contract with CNE requires Amtrak to pay the interstate transmission charges that CNE pays to PPL Electric. Complaint ¶ 8. Amtrak further argues that PPL Electric's transmission charges to CNE are not just and reasonable. Complaint ¶ 45.

3. In the Complaint, Amtrak argues that it should not be required to pay transmission charges to CNE because according to Amtrak, it does not use PPL Electric's transmission system except on rare occasions. Complaint ¶ 41.

4. Amtrak argues that both FERC and the PA PUC are entitled to provide relief to Amtrak, and, therefore, notes that it also filed a concurrent complaint at FERC regarding the same issues. Complaint ¶ 19.

5. On June 27, 2019, PPL Electric filed an Answer and New Matter to the Complaint. In the Answer, PPL Electric denied the material allegations of the Complaint. In the

New Matter, PPL Electric averred that Amtrak was not entitled to refunds because Amtrak had never paid PPL Electric for transmission charges.

6. Also on June 27, 2019, PPL Electric filed Preliminary Objections to the Complaint. In its Preliminary Objections, PPL Electric argued: (1) Amtrak did not have standing to bring its Complaint against PPL Electric because Amtrak does not take transmission services from PPL Electric; (2) the Complaint failed to state a cause of action against PPL Electric because Amtrak did not pay PPL Electric for transmission service; (3) the Commission does not have the authority to issue refunds; (4) the Commission does not have the authority to award damages to Amtrak; and (5) Amtrak failed to join CNE as a necessary party.

7. On July 17, 2019, Amtrak filed an Answer to PPL Electric's New Matter.

8. On July 19, 2019, the ALJ issued a Prehearing Conference Order scheduling a prehearing conference for August 29, 2019.

9. On August 14, 2019, the ALJ issued an Order denying PPL Electric's Preliminary Objections.

10. A Prehearing Conference was held as scheduled on August 29, 2019. At the Prehearing Conference, the parties agreed to delay implementing a procedural schedule pending the outcome of Amtrak's Complaint at FERC.

11. On August 29, 2019, the ALJ issued a Scheduling Order memorializing the issues discussed at the Prehearing Conference.

12. A Further Prehearing Conference was scheduled for November 25, 2019.

13. The Further Prehearing Conference was rescheduled for July 1, 2020.

14. On June 18, 2020, FERC issued an Order assuming full jurisdiction over Amtrak's Complaint and denying Amtrak's Complaint on the merits. *National Railroad*

Passenger Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, L.L.C., Docket No. EL19-78-000, Order Denying Complaint 171 FERC ¶ 61,237. In the Order, FERC ruled that it had jurisdiction to consider the Complaint and that it had jurisdiction over PPL Electric’s methodology for determining Network Service Peak Load (“NSPL”) contributions. FERC also ruled that: (1) Amtrak’s load at the Conestoga Substation is appropriately charged for NITS; (2) PPL did not violate the PJM tariff; and (3) PPL was not required to file its methodology for calculating NSPL contributions.

15. The Further Prehearing Conference was held on July 1, 2020. At the Prehearing Conference the parties noted that FERC has issued an Order regarding Amtrak’s Complaint and agreed that PPL Electric would file a preliminary motion by July 31, 2020 and that Amtrak could respond by August 31, 2020.

16. Also on July 1, 2020, the ALJ issued a Second Scheduling Order memorializing the issues agreed to at the Further Prehearing Conference.

17. On July 20, 2020, Amtrak filed a Request for Rehearing and Clarification of FERC’s Order. Notably, in its Request for Rehearing, Amtrak did not challenge FERC’s assertion of jurisdiction over the matters in Amtrak’s Complaint. Amtrak did ask FERC for clarification on whether FERC jurisdiction over NSPL methodologies is exclusive or whether it has concurrent jurisdiction with state commissions over “retail transmission obligations and NSPL methodologies.” Request for Rehearing, p. 24. A copy of Amtrak’s Request for Rehearing is provided as Attachment C.

18. Pursuant to the Schedule adopted at the Further Prehearing Conference, PPL Electric hereby submits its Motion for Summary Judgment.

III. STANDARD OF REVIEW FOR SUMMARY JUDGMENT

19. Section 5.102 of the Commission's regulations provides the Commission's standard of review for a request for summary judgment:

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

(2) *Standard for grant or denial in part.* The presiding officer may grant a partial summary judgment if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.

52 Pa. Code § 5.102(d)(1), (2).

20. The Commission has discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993).

IV. ARGUMENT

A. INTRODUCTION

21. Amtrak's Complaint has six separate paragraphs requesting relief. These requests are as follows:

- a. Determine that PPL-related transmission charges to Amtrak at Conestoga have been and continue to be unjust, unreasonable, and unduly discriminatory;
- b. State that PPL must calculate its transmission obligations for Amtrak based on a method that is publicly available and tariff-based;
- c. Order PPL to provide Amtrak with the metering data, formulas, calculations, and other data used to calculate Amtrak's billing determinants;
- d. Require PPL to provide Amtrak with a refund for all PPL-related transmission charges paid by Amtrak for a four-year period preceding the date this Complaint was filed, plus interest and applicable taxes;
- e. Order PPL to calculate Amtrak's transmission obligation based solely on any inflows of power to Amtrak from the Manor Substation during the applicable zonal peaks, minus (a) any concurrent outflows from the Conestoga Substation through the four lines that transmit power to Perryville, MD; and minus (b) any concurrent power consumed by Safe Harbor; and
- f. Grant all such relief as the Commission deems appropriate.

22. FERC's Order issued on June 18, 2020, addresses and denies Amtrak's requests for relief (a), (b), (d), (e), and (f). In addition, PPL Electric has addressed Amtrak request for relief (c) in this proceeding. Therefore, Amtrak is not entitled to relief before the PA PUC as a matter of law and Amtrak's Complaint should be dismissed with prejudice.

B. FERC HAS EXCLUSIVE JURISDICTION OVER INTERSTATE TRANSMISSION OF ELECTRICITY UNDER THE FEDERAL POWER ACT.

23. The Federal Power Act authorizes FERC to regulate the transmission of electric energy in interstate commerce. 16 U.S. § 824.

24. The Supreme Court of the United States held the following with respect to FERC's jurisdiction under the Federal Power Act:

In particular, the FPA obligates FERC to oversee all prices for those interstate transactions and all rules and practices affecting

such prices. The statute provides that “[a]ll rates and charges made, demanded, or received by any public utility for or in connection with” interstate transmissions or wholesale sales — as well as “all rules and regulations affecting or pertaining to such rates or charges” — must be “just and reasonable.” §824d(a).

FERC v. Elec. Power Supply Ass’n, 136 S. Ct. 760, 767 (January 25, 2016).

25. In *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1292 (April 19, 2016), the Supreme Court of the United States held that FERC’s jurisdiction under the Federal Power Act is exclusive.

26. In addition, FERC’s jurisdiction over unbundled interstate transmissions of electricity extends to both wholesale and retail transactions. *New York v. FERC*, 535 U.S. 1, 19-21, March 4, 2002 (“*New York v. FERC*”). In *New York v. FERC*, the Supreme Court of the United States held:

This statutory text thus unambiguously authorizes FERC to assert jurisdiction over two separate activities—transmitting and selling. It is true that FERC’s jurisdiction over the *sale* of power has been specifically confined to the wholesale market. However, FERC’s jurisdiction over electricity *transmissions* contains no such limitation. Because the FPA authorizes FERC’s jurisdiction over interstate transmissions, without regard to whether the transmissions are sold to a reseller or directly to a consumer, FERC’s exercise of this power is valid.

Id. at 19 – 20.³ (emphasis in original text)

C. PA PUC JURISDICTION OVER AMTRAK’S COMPLAINT HAS BEEN PREEMPTED

27. The Federal Power Act preempts state jurisdiction over interstate transmission of electricity. *New York v. FERC*, 535 U.S. 1, 18-19, March 4, 2002. (“*New York v. FERC*”).

³ Amtrak’s complaint involves PPL Electric’s calculation of wholesale transmission charges to CNE.

28. The Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, invalidates state law that interferes with or is contrary to federal law. *Farina v. Nokia, Inc.*, 625 F.3d 97, 115 (3d Cir. 2010). In *Hughes v. Talen*, the Supreme Court of the United States held as follows:

The Supremacy Clause makes the laws of the United States “the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U. S. Const., Art. VI, cl. 2. Put simply, federal law preempts contrary state law. “Our inquiry into the scope of a [federal] statute’s pre-emptive effect is guided by the rule that the purpose of Congress is the ultimate touchstone in every pre-emption case.” *Altria Group, Inc. v. Good*, 555 U. S. 70, 76, 129 S. Ct. 538, 172 L. Ed. 2d 398 (2008) (internal quotation marks omitted). A state law is preempted where “Congress has legislated comprehensively to occupy an entire field of regulation, leaving no room for the States to supplement federal law,” *Northwest Central Pipeline Corp. v. State Corporation Comm’n of Kan.*, 489 U. S. 493, 509, 109 S. Ct. 1262, 103 L. Ed. 2d 509 (1989), as well as “where, under the circumstances of a particular case, the challenged state law [***22] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” *Crosby v. National Foreign Trade Council*, 530 U. S. 363, 373, 120 S. Ct. 2288, 147 L. Ed. 2d 352 (2000)

Id at 1297.⁴

29. In *Hughes v. Talen*, the Supreme Court of the United States held that Maryland’s payments of subsidies to certain generators was preempted by FERC’s exclusive jurisdiction over wholesale power sales under the Federal Power Act.

30. Likewise, in *New York v. FERC*, the Supreme Court of the United States held that FERC’s open access transmission requirements in Order No. 888, which required public utilities

⁴ Likewise, under the dormant Commerce Clause, state action that discriminates against interstate commerce in its purpose or effect is “virtually per se invalid.” *Dep’t of Revenue v. Davis*, 553 U.S. 328, 338 (2008). See also *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986) (“When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry.”).

that had unbundled rates to transmit competitor's energy on the same terms that the utility transmitted its own electricity, preempted state regulation over unbundled interstate transmissions of electricity. *Id.* at 18 – 24.

31. As noted above, the issue in dispute in this proceeding involves PPL Electric's application and calculation of NITS⁵ transmission charges to CNE for Amtrak's load at the Conestoga Substation. Amtrak does not take transmission service from PPL Electric, but rather has a contract with CNE under which CNE provides transmission and generation service to Amtrak. Complaint ¶ 7.

32. PPL Electric identifies CNE's load, including Amtrak's load during peak periods to calculate CNE's transmission charges. PPL Electric provides CNE's peak load to PJM, and PJM bills CNE for transmission service for all loads served by CNE. PPL Electric Answer ¶ 8.

⁵ According to FERC:

NITS is a “transmission service that allows Network Customers to efficiently and economically utilize their Network Resources (as well as other non-designated generation resources) to serve their Network Load located in the PJM Region” PJM is required to include the Network Customer's Network Load in transmission system planning, and transmission owners shall “endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer's Network Resources to serve its Network Load” PJM provides “firm transmission service over the Transmission System to the Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads”

The Network Customer designates both the Network Resources and the Network Loads for NITS. A Network Resource is any generating resource owned, purchased, or leased by a Network Customer, or subject to a firm power sales agreement with a Network Customer, and designated to serve Network Load. Network Load includes all load, retail and wholesale, served by the output of any Network Resource designated by the Network Customer. The Network Customer's NITS charge is based on the sum of the Network Customer's individual wholesale and retail customer Network Loads at the time of the annual peak of the zone in which the load is located.

See Attachment B, 171 FERC ¶ 61,237 PP. 37 – 38 (footnotes omitted).

As also explained by FERC, all transmission customers must choose between paying NITS or taking point-to-point transmission service. *Id.* at P. 41.

33. According to Amtrak, CNE bills Amtrak for Amtrak's share of transmission charges based on the transmission obligation that PPL Electric calculates for Amtrak. Complaint

¶ 35. For purposes of this Motion, PPL Electric is not contesting this assertion by Amtrak.

34. As noted above, Amtrak filed the same substantive Complaint at FERC. Complaint ¶ 19.⁶

35. FERC has expressly asserted jurisdiction over all matters in Amtrak's Complaint.

In its Order, FERC held:

34. As an initial matter, we find that the Commission [FERC] has jurisdiction over the matters raised in the complaint. Amtrak challenges the NITS charges assessed by PJM and passed through to Amtrak by its retail supplier without mark-up, as well as the related PPL methodology for determining Network Service Peak Load Contributions, both of which fall within the Commission's jurisdiction.⁷⁰

⁷⁰ See PJM, Intra-PJM Tariffs, OATT, 34.1 Monthly Demand Charge (1.0.0), § 34.1(a); *N.Y. v. FERC*, 535 U.S. 1, 20 (2002); *ComEd*, 133 FERC ¶ 61,118, at PP. 6, 11 (2010) (finding that proposed tariff provisions specifying methodology for utility's calculation of network service peak load contributions are jurisdiction).

171 FERC ¶ 61,237 at p. 34.

36. The FERC Order is clear that FERC has exercised jurisdiction over Amtrak's Complaint under the Federal Power Act. Therefore, the PA PUC is preempted from exercising jurisdiction.

⁶ In its Complaint, Amtrak argued that both FERC and the PA PUC were entitled to provide relief to Amtrak. Complaint ¶ 19. This is incorrect. The PA PUC's jurisdiction has been preempted with regard to Amtrak's Complaint, and Amtrak is not entitled to relief from the PA PUC. Moreover, even if Amtrak were correct, and it is not, FERC has exercised jurisdiction and decided this matter.

D. FERC HAS DECIDED ALL ISSUES IN AMTRAK'S COMPLAINT AND PPL ELECTRIC HAS PROVIDED THE DATA REQUESTED BY AMTRAK

37. Below, PPL Electric identifies each of Amtrak's requests for relief and how all of Amtrak's requests for relief have been resolved. FERC has specifically addressed Amtrak's requests for relief (a), (b), (d), (e) and (f), and PPL Electric has provided Amtrak the data it sought in request for relief (c).

1. FERC HAS DETERMINED THAT PPL ELECTRIC'S TRANSMISSION CHARGES FOR AMTRAK'S LOAD ARE JUST AND REASONABLE.

38. In its First Request for Relief, Amtrak requests that the PA PUC "determine that PPL-related transmission charges to Amtrak at Conestoga have been and continue to be unjust, reasonable, and unduly discriminatory." Complaint ¶ 43(a). Amtrak also requested this relief before FERC. *See* Attachment A.

39. FERC expressly reviewed and denied this request in the FERC Order. Therein, FERC stated:

With respect to the merits of the Complaint, we find that Amtrak has failed to satisfy its burden under FPA sections 206 and 306⁷⁷ to show that the rates that Amtrak is being charged for transmission service are unjust, unreasonable, or unduly discriminatory, or that PPL violated the PJM Tariff or Commission policy. Although Amtrak claims that PPL violated the PJM Tariff by calculating Amtrak's Parkesburg and Royalton load based on an unfiled methodology, Amtrak's fundamental argument is that Amtrak should not be charged for NITS for its load at Parkesburg and Royalton if the power Amtrak is supplied by its retail supplier does not flow across PPL's transmission facilities. As discussed below, we find that Amtrak seeks transmission services that are inconsistent with the PJM Tariff and Commission policy.

171 FERC ¶ 61,237, P. 36 (emphasis supplied; footnote omitted).

40. FERC has determined that Amtrak failed to demonstrate that PPL Electric's rates are unjust, unreasonable or unduly discriminatory and has denied Amtrak's First Request for Relief. The PA PUC does not have jurisdiction to contradict FERC's decision, and Amtrak is not entitled to relief as a matter of law.

2. FERC HAS DETERMINED THAT PPL ELECTRIC IS NOT REQUIRED TO FILE ITS NPSL METHODOLOGY IN ITS TARIFF.

41. In its Second Request for Relief, Amtrak argues that "PPL must calculate its transmission obligations for Amtrak based on a method that is publicly available and tariff based." Complaint at ¶ 43(b). Amtrak also requested this before FERC. *See* Attachment A.

42. FERC directly addressed this request for relief in its Order stating as follows:

We also are not persuaded by Amtrak's argument that PPL violated the PJM Tariff by using a methodology not in the Tariff. Consistent with *Duke Ohio*, PPL is not required to file its methodology to calculate Network Service Peak Load.¹⁰⁴ While many transmission owners have filed their methodologies for determining both capacity and Network Service Peak Load contributions in Attachment M-2 to the PJM Tariff, the Commission has recognized that such a filing is voluntary and not required by PJM.¹⁰⁵

¹⁰⁴*PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,163, at P 15 & n.19 (2016) (*Duke Ohio*).

¹⁰⁵ *Id.* (stating that "PJM's tariff, agreements or manuals" do not require the submission of Attachment M-2 and that "PJM does not require...Transmission Owners to file Attachment M-2s").

171 FERC ¶ 61,237, P 45.

43. FERC has asserted jurisdiction over this issue and determined that PPL Electric is not required to file its NPSL methodology in its tariffs.

44. The PA PUC does not have jurisdiction to contradict FERC's decision with respect to this request for relief, and Amtrak is not entitled to relief as a matter of law.

3. PPL ELECTRIC HAS PROVIDED AMTRAK WITH THE METERING DATA, FORMULAS, CALCULATIONS AND OTHER DATA USED TO CALCULATE AMTRAK'S BILLING DETERMINANTS.

45. In its Third Request for Relief, Amtrak requests that PPL Electric provide Amtrak with the metering data, formulas, calculations and other data used to calculate Amtrak's billing determinants. Complaint ¶ 43(c). Amtrak also requested this before FERC. *See* Attachment A.

46. PPL Electric has provided all of this information to Amtrak in this proceeding. In addition, counsel for Amtrak confirmed that they received this information. *See* Attachment D.

4. THE PUC CANNOT AWARD AMTRAK A REFUND OF TRANSMISSION CHARGES AS A MATTER OF LAW.

47. In its Fourth Request for Relief, Amtrak requests a refund of all PPL Electric-related transmission charges paid by Amtrak from the date that is four years prior to the date on which its Complaint was filed, plus interest and applicable taxes. Complaint ¶ 43(d). Amtrak requested refunds back to December 2, 2002 at FERC, which is a longer period than what Amtrak requested at the PA PUC. *See* Attachment A.

48. As explained above, FERC has exercised its jurisdiction over this matter. In addition, FERC has determined that Amtrak's load is subject to NITS charges and that Amtrak has failed to demonstrate that the rates that it is being charged are unjust, unreasonable, or unduly discriminatory. 171 FERC ¶ 61,237, PP 36-39.

49. FERC has determined that Amtrak is not entitled to refunds. Therefore, the PA PUC cannot award Amtrak refunds as a matter of law.

5. FERC HAS DENIED AMTRAK’S REQUESTED METHODOLOGY FOR CALCULATING TRANSMISSION CHARGES AND THE PA PUC CANNOT CHANGE THE METHODOLOGY AS A MATTER OF LAW.

50. In its Fifth Request for Relief, Amtrak requests that the PUC order PPL Electric to calculate Amtrak’s transmission obligation based solely on any inflows of power to Amtrak from the Manor Substation during the applicable zonal peaks, minus (a) any concurrent outflows from the Conestoga Substation through the four lines that transmit power to Perryville, MD; and minus (b) any concurrent power consumed by Safe Harbor. Complaint ¶ 43(e). Amtrak also requested this relief at FERC. *See* Attachment A.

51. FERC has expressly denied this request by Amtrak, stating as follows:

We also deny Amtrak’s cost causation arguments.⁸⁷ Amtrak argues that, based on cost causation principles, it should be responsible only for transmission costs based on the rare times when Safe Harbor is not generating enough power to serve Amtrak’s demand at the Conestoga Substation and instead PPL’s Manor Substation transmission facilities are used to serve Amtrak’s load. In order to address Amtrak’s argument, it is necessary to understand the difference between network service and point-to-point service.

Noting the difference between network service and point-to-point service, the Commission has consistently rejected cost causation arguments made by network customers that sought to lower their load ratio share based on actual use of the transmission system. These arguments arose in the context of Order No. 888’s, and subsequently, the *pro forma* OATT’s, prohibition against network customers designating only a part of their load at a discrete point of delivery as network load, which is similar to what Amtrak seeks here.⁸⁹ For example, in Order No. 888-A, parties argued that a network customer should be able to designate less than its total load where “only part of the load behind a particular delivery point relies upon the transmission provider’s transmission system for service.”⁹⁰ The Commission rejected these “split system” arguments (i.e., division of a discrete load between point-to-point and network services) explaining that “splitting a discrete load is antithetical to the concept of network service” because “a load at a discrete point of delivery cannot be partially integrated—it is either fully integrated or not integrated.”⁹¹ In addition, the Commission

found that a split system creates the potential for a customer to evade some or all of its load ratio share cost responsibility for network services by using behind the meter generation during monthly peaks to reduce its load ratio share below its actual, typical monthly peak usage, resulting in a rate that is subsidized by other network customers.⁹² “The bottom line,” the Commission stated, “is that all potential transmission customers...must choose between [NITS] or point to point transmission service. Each of these services has its own advantages and risks.”⁹³ The Commissions’ Order No. 888 findings were upheld on appeal by the D.C. Circuit in *Transmission Access Policy Study Group v. FERC*⁹⁴ and consistently applied in several subsequent orders.⁹⁵

171 FERC ¶ 61,237, PP 40-41.

52. Amtrak’s requested methodology for how PPL Electric should calculate transmission charges is completely contrary to FERC’s regulatory paradigm.

53. FERC has denied Amtrak’s proposed methodology for calculating transmission charges. The PUC cannot contradict FERC’s decision with respect to calculation of transmission charges as a matter of law.

6. AMTRAK IS NOT ENTITLED TO ANY ADDITIONAL RELIEF FROM THE PUC AS A MATTER OF LAW.

54. In its Sixth Request for Relief, Amtrak requests that the Commission grant all such relief as it deems appropriate. Complaint ¶ 43(f). Amtrak also requested this relief at FERC. *See* Attachment A.

55. FERC has exercised complete jurisdiction over this Complaint and has denied Amtrak’s Complaint in its entirety.

56. The PUC cannot award Amtrak any relief with respect to this Complaint as a matter of law.

E. AMTRAK'S REQUEST FOR REHEARING AT FERC CONFIRMS AMTRAK IS NOT ENTITLED TO RELIEF BEFORE THE PA PUC

57. As noted above, Amtrak filed a Request for Rehearing at FERC on July 20, 2020. See Attachment C.

58. In the Request for Rehearing, Amtrak does not challenge FERC's jurisdiction as to any issue in its Complaint.

59. Amtrak does request clarification as to whether FERC's jurisdiction over NSPL methodologies is exclusive, or, instead, whether the Commission [FERC] has concurrent jurisdiction with state commission jurisdiction over retail transmission obligations and NSPL methodologies." Request for Rehearing, p. 24.

60. This request for clarification provides no basis for relief for Amtrak before the PA PUC.

61. As explained above, Amtrak's Complaint involves the application and calculation of PPL Electric's wholesale interstate transmission charges to CNE. The PA PUC does not have jurisdiction over whether NITS charges apply on a wholesale basis or how wholesale NITS charges are calculated. *New York v. FERC*, at 18-19. In fact, Amtrak admits in its Complaint that FERC has exclusive jurisdiction over transmission owners' revenue requirements and calculation of wholesale rates in an unbundled context. Complaint ¶ 69.⁷

⁷ In this same paragraph, Amtrak avers that FERC has provided deference to states in overseeing recovery of interstate transmission rates on a retail basis. As an initial matter, Amtrak's Complaint involves PPL Electric's calculation of wholesale transmission rates to CNE, so this argument has no relevance in this proceeding. In addition, as explained below, this argument is incorrect. The United States Supreme Court in *New York v. FERC* has clearly held that FERC jurisdiction applies to both wholesale and retail transactions when transmission rates are unbundled from generation and distribution rates. See Section B above.

62. Moreover, even if Amtrak's dispute is considered to be a dispute over retail interstate transmission charges, the PA PUC's jurisdiction has been pre-empted by the Federal Power Act. *Id.*

63. Amtrak bases its request for clarification on a footnote in *Duke Energy Ohio, Inc.*, 155 FERC ¶ 61,163, Order Issued May 13, 2016 ("*Duke Ohio*"). Request for Rehearing, pp. 23-24.

64. Amtrak's interpretation of the *Duke Ohio* footnote is in error and provides no basis for relief from the PA PUC.

65. The footnote in *Duke Ohio* provides that electric distribution companies or transmission owners may "choose to provide information on their [NSPL] procedures in the appropriate state commission tariffs or on their company websites." *Duke Ohio*, fn. 19.

66. Providing interstate transmission information in a state commission tariff does not grant a state commission authority under the Federal Power Act over interstate transmission charges.

67. Moreover, this footnote is clearly intended to be for informational purposes only, as it states that the procedures may also be provided on "company websites."

68. PPL Electric also notes that its Supplier Tariff has an express provision noting that inclusion of FERC jurisdictional matters is for informational purposes only. Section 2.3 of PPL Electric's Supplier Tariff provides as follows:

2.3 FERC Jurisdictional Matters. The inclusion of FERC-jurisdictional matters within the scope of this Tariff is intended solely for informational purposes and is not intended to accord any jurisdictional authority over such matters to the PA PUC. If anything stated herein is found by the FERC to conflict with or be inconsistent with provision of the Federal Power Act (FPA), or any rule, regulation, order or determination of the FERC under the FPA the applicable FERC rule, regulation, order or determination of the

FPA shall control. To the extent required under any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA, the Company shall secure, from time to time, all appropriate orders, approvals and determinations from the FERC necessary to implement this Tariff.

69. For these reasons, Amtrak's request for clarification at FERC provides no basis for relief before the PA PUC.

F. AMTRAK IS BARRED BY THE DOCTRINES OF *RES JUDICATA* AND COLLATERAL ESTOPPEL FROM LITIGATING ITS CASE BEFORE THE PUC NOW THAT FERC HAS RULED ON ITS COMPLAINT.

70. Amtrak is barred by the doctrines of *res judicata* and collateral estoppel from pursuing its complaint before the PA PUC. In order for the doctrine of *res judicata* to apply, there must be: 1) identical issues; 2) identical causes of action; 3) identical parties to the action; and 4) identical quality and capacity of the parties suing or sued. *Philadelphia Electric Co. v. Lansdale*, 424 A.2d 514 (Pa. Super 1981) ("*Philadelphia Electric*") citing *Safeguard Mutual Ins. Co. v. Williams*, 463 Pa. 567 (1975). The doctrine of collateral estoppel precludes review of an issue when (1) an issue decided in a previous adjudication is identical to the issue presented in the present controversy; (2) there was a final judgment on the merits; (3) the party against whom the estoppel claim is made was a party, or was in privity with a party to the previous adjudication; and (4) the party had a full and fair opportunity to litigate the issue in the previous action. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 128 Pa. Commonwealth Ct. 259, 563 A.2d 548 (1989).⁸

⁸ PPL Electric believes that Amtrak's Complaint before the PA PUC is barred by *res judicata* because it is the same cause of action before FERC and the PA PUC. However, even if it was determined that *res judicata* did not apply, Amtrak's Complaint before the PA PUC is still barred by the doctrine of collateral estoppel because it involves the same issues.

71. *Res judicata* and collateral estoppel apply because Amtrak filed the same complaint with identical issues and identical causes of action before FERC and the PA PUC. Complaint ¶ 19. In addition, the parties to the action are the same parties in the same capacity. Moreover, FERC has issued a Final Order denying Amtrak's Complaint on the merits.⁹

72. In *Philadelphia Electric*, the Superior Court of Pennsylvania held that Philadelphia Electric Company ("PECO") was barred by the doctrines of *res judicata* and collateral estoppel from bringing a contract action regarding a wholesale supply rate in the Court of Common Pleas after the Federal Power Commission issued an Order denying PECO's claims.

73. In *Philadelphia Electric*, the Superior Court stated as follows:

When a court of competent jurisdiction has determined a litigated case on its merits, the judgment entered, until reversed, is, forever, and under all circumstances, final and conclusive as between the parties to the suit . . . in respect to every fact which might properly be considered in reaching a judicial determination of the controversy, and in respect to all points of law there adjudged, as those points relate directly to the cause of action in litigation and affect the fund or other [matter] before the court.

Philadelphia Electric at 519, citing: *Bearoff v. Bearoff Brothers, Inc.*, 458 Pa. 494, 327 A.2d 72 (1974).

74. The Superior Court further held:

...under equitable principles of law we will not permit a party to simultaneously pursue a cause of action in two forums at the same time upon the same theory but with slightly different variations and then, when one forum rules against him, ignore the ruling of that forum, and permit the plaintiff to "play the same tune again" in the second forum with one or two variations. In short, plaintiff chose the Federal Power Commission as the forum in which it would present its mutual mistake argument, the Federal Power Commission was a competent forum for such an argument, and since jurisdiction in rate-making matters in instances such as these lies with the Federal Power Commission we hold that the

⁹ Amtrak has requested rehearing of FERC's order but has not challenged FERC's jurisdiction to rule on the Complaint. Therefore, Amtrak cannot pursue its Complaint in both forums.

principles of res judicata and collateral estoppel bar the plaintiff from raising the mutual mistake issue again in our courts.

Philadelphia Electric at 523.

75. Amtrak cannot continue its Complaint before the PA PUC under the doctrines of *res judicata* and collateral estoppel because FERC has issued an Order denying Amtrak's Complaint on the merits.

G. EVEN IF IT WAS DETERMINED THAT FERC AND THE PUC HAD CONCURRENT JURISDICTION AMTRAK CANNOT PROCEED WITH ITS COMPLAINT BEFORE THE PUC.

76. Now that FERC has ruled on Amtrak's Complaint, even if FERC and the PUC have concurrent jurisdiction, Amtrak should not be permitted to continue its Complaint before the PUC.

77. Under general rules of concurrent jurisdiction, the tribunal that first exercises jurisdiction retains that jurisdiction to the exclusion of other tribunals. *See e.g. Greene v. Superior Court*, 231 P.2d 821 (Cal. 1951; *John Weenink & Sons Co. v. Court of Common Pleas*, 150 Ohio St. 349, 82 N.E.2d 730 (Oh. 1948). Here, Amtrak applied for relief in two jurisdictions. One jurisdiction, FERC, has asserted jurisdiction and decided all relevant issues. Amtrak should not be allowed to relitigate the same issues before the PA PUC and attempt to obtain a different outcome. Amtrak's PUC complaint therefore should be dismissed.

H. THE PUC DOES NOT HAVE JURISDICTION OVER AMTRAK'S SUPPLY CONTRACT FOR TRANSMISSION AND GENERATION SERVICE FROM CNE.

78. It is undisputed in this proceeding that Amtrak takes transmission and generation service from CNE, an EGS. Complaint ¶ 7.

79. It is also undisputed that Amtrak's contract with CNE addresses Amtrak's payment of transmission charges to CNE. Complaint ¶¶ 7 – 8.

80. Moreover, it is undisputed that Amtrak does not take transmission service from PPL Electric. Complaint ¶ 7.

81. The rates and terms of EGS service to customers are not regulated by the PUC. EGSs are not public utilities. 66 Pa. C.S. § 102. In addition, the Supreme Court of Pennsylvania has held that the PA PUC can only regulate EGSs under Sections 2809 – 2810 of the Public Utility Code, 66 Pa. C.S. §§ 2809 – 2810. *Delmarva Power & Light Co. v. Commonwealth*, 582 Pa. 338, 2005 Pa. LEXIS 632 (March 31, 2005).

82. Likewise, the PA PUC has held:

At the outset, we note that the Commission does not have traditional ratemaking authority over competitive electric generation suppliers and does not regulate competitive supply rates.¹³ The Commission also does not have subject matter jurisdiction to interpret the terms and conditions of a contract between an EGS and a customer to determine whether a breach of contract has occurred.

Commonwealth of Pa., et. al. v. IDT Energy, Inc., Docket No. c-2014-2427657, Order entered December 18, 2014.

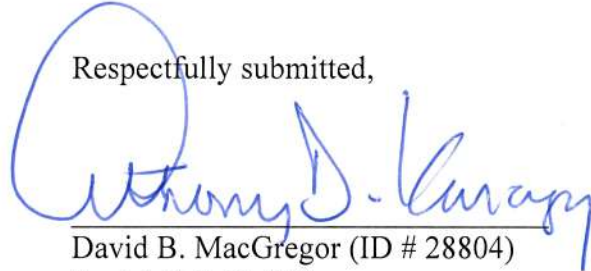
83. The matters in Amtrak's Complaint are private contract matters between Amtrak and CNE.

84. Therefore, the Commission has no authority as a matter of law to grant the relief requested by Amtrak because Amtrak is taking unregulated service from CNE and not regulated service from PPL Electric.

V. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Deputy Chief Administrative Law Judge Joel H. Cheskis enter an Order granting this Motion for Summary Judgment and dismissing the above-captioned Complaint in its entirety and with prejudice.

Respectfully submitted,



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

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

Anthony D. Kanagy (ID # 85522)
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: akanagy@postschell.com
E-mail: lberkstresser@postschell.com

Of Counsel:

Post & Schell, P.C.

Date: July 31, 2020

Attorneys for PPL Electric Utilities Corporation

ATTACHMENT A

Relief Requested at FERC

- a. Determines that PPL-related transmission charges to Amtrak at Conestoga have been and continue to be unjust, unreasonable, and unduly discriminatory;
- b. Finds that PPL is in violation of the terms and conditions of the PJM OATT and Commission Order No. 888;
- c. Orders PPL to calculate its transmission obligations for Amtrak based on a method that is publicly available and tariff-based;
- d. Orders PPL to provide Amtrak with the metering data, formulas, calculations, and other data to calculate Amtrak's billing determinants to help ensure that similar billing errors do not occur in the future;
- e. Orders PPL to calculate Amtrak's transmission obligation based only on any inflows of power to Amtrak from the Manor Substation, net of any outflows through the four lines that transmit power from the Conestoga Substation to Perryville, MD and net of any consumption by Safe Harbor of power flows from the Manor Substation to the Conestoga Substation;
- f. Directs PPL, PJM, and CNE to refund all amounts collected from Amtrak for PPL-related transmission service from December 2, 2002, or such other refund effective date as determined by the Commission, with interest from that refund effective date; and
- g. Directs other such relief as is just, reasonable, and necessary.

FERC COMPLAINT - PAGES 33-34

Relief Requested at PUC

- a. Determine that PPL-related transmission charges to Amtrak at Conestoga have been and continue to be unjust, unreasonable, and unduly discriminatory;
- b. State that PPL must calculate its transmission obligations for Amtrak based on a method that is publicly available and tariff-based;
- c. Order PPL to provide Amtrak with the metering data, formulas, calculations, and other data used to calculate Amtrak's billing determinants;
- d. Require PPL to provide Amtrak with a refund for all PPL-related transmission charges paid by Amtrak from the date that is four years prior to the date on which this Complaint is filed, plus interest and applicable taxes;
- e. Order PPL to calculate Amtrak's transmission obligation based solely on any inflows of power to Amtrak from the Manor Substation during the applicable zonal peaks, minus (a) any concurrent outflows from the Conestoga Substation through the four lines that transmit power to Perryville, MD; and minus (b) any concurrent power consumed by Safe Harbor; and
- f. Grant all such relief as the Commission deems appropriate.

ATTACHMENT B

171 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

National Railroad Passenger Corporation

Docket No. EL19-78-000

v.

PPL Electric Utilities Corporation and PJM
Interconnection, L.L.C.

ORDER DENYING COMPLAINT

(Issued June 18, 2020)

1. On May 30, 2019, National Railroad Passenger Corporation (Amtrak) filed a complaint pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure² against PPL Electric Utilities Corporation (PPL) and PJM Interconnection, L.L.C. (PJM) alleging that the rates Amtrak is being charged for transmission service by PPL and PJM are unjust, unreasonable, and unduly discriminatory, and that PJM, which administers the PJM Open Access Transmission Tariff (PJM Tariff), has not prevented such actions. For the reasons discussed below, we deny the complaint.

I. Amtrak's Complaint

2. Amtrak alleges that it is being assessed unreasonable and unjust PPL-related charges for Network Integration Transmission Service (NITS) and that PJM, which has responsibility for administering the PJM Tariff, has not prevented PPL's unjust, unreasonable, and unduly discriminatory actions.³ Amtrak states that its Pennsylvania electric generation supplier in PPL's service territory, Constellation NewEnergy, Inc. (CNE), provides electric supply to Amtrak at the Conestoga Substation in Lancaster

¹ 16 U.S.C. §§ 824e, 825e, 825h (2018).

² 18 C.F.R. § 385.206 (2019).

³ Complaint at 1-2, 18-19.

County, Pennsylvania.⁴ According to Amtrak, CNE, based on transmission obligation calculations determined by PPL and PJM, is billed by PJM for NITS and passes through those NITS charges on CNE invoices to Amtrak.

3. Amtrak states that the Conestoga Substation is used for the primary purpose of serving Amtrak. Amtrak states that CNE bills Amtrak for electric supply that is obtained exclusively from or through the nearby Safe Harbor hydroelectric generation facility (Safe Harbor), which is directly connected to the Conestoga Substation.⁵ Amtrak states that it currently owns the Conestoga Substation and reserves to PPL a floating easement at the Conestoga Substation to maintain a point of interconnection with Safe Harbor and PJM's transmission system thereby allowing energy generated at Safe Harbor to be delivered to the transmission system and used to serve third parties.⁶

4. Amtrak states that the point of interconnection among Safe Harbor, PPL and PJM is at the 13.2 kV busbar situated between Safe Harbor's generating facilities and the transformers at the Conestoga Substation.⁷ Amtrak states that CNE takes title to the

⁴ *Id.* at 2.

⁵ *Id.* 1, 10-14. Safe Harbor consists of 12 turbines. *Id.* at Ex. C. The Conestoga Substation (a 25 Hz facility) is directly connected to Safe Harbor at turbine units 1 and 2 and at a 60 Hz to 25 Hz frequency converter. According to Amtrak, units 1 and 2 supply power at 25 Hz that is delivered directly to the Conestoga Substation, and units 3-7 produce power at 60 Hz which is delivered to the Conestoga Substation via the frequency converter and enters the Conestoga Substation at 25 Hz. *Id.* at 10-11.

⁶ Amtrak states that, prior to March 6, 2019, PPL and Amtrak each owned portions of the Conestoga Substation, with PPL owning the facilities that serve as the point of interconnection between Safe Harbor and PJM. In April 2017, Amtrak filed to condemn the Conestoga Substation. On March 6, 2019, the district court granted Amtrak's motion for partial summary judgment to immediately possess the property at the Conestoga Substation. Amtrak states that it reserved a floating easement to PPL to allow PPL to fulfill obligations to transmit power through the Conestoga Substation pursuant to a transmission contract and the interconnection service agreement among PJM, Safe Harbor, and PPL. *Id.* at 13 n.13. The district court stated that "the floating easement should allow PPL to continue to perform its obligations to third parties without any restrictions *until the obligations under these contracts can be transferred to Amtrak.*" *Id.* (quoting *Nat'l R.R. Passenger Corp. v. 4.0446 Acres and PPL Elec. Utils. Corp.*, Civil Action No. 17-1752, 2019 WL 1057932, at *10 (E.D. Pa. Mar. 6, 2020) (mem.) (emphasis added)).

⁷ *Id.* at 10, 13-14. Safe Harbor also has a point of interconnection with PPL's Manor Substation. *Id.* at Ex. C.

power from Safe Harbor at the busbar and sells such power directly to Amtrak.⁸ Amtrak asserts that power needed by Amtrak flows through the Conestoga Substation to serve Amtrak's rail system at Parkesburg and Royalton in Pennsylvania, and at Perryville in Maryland.⁹ According to Amtrak, on rare occasions when Safe Harbor is incapable of meeting Amtrak's demand, Amtrak states that power flows in through PPL's Manor Substation on PPL lines, across Safe Harbor's frequency converter and into the Conestoga Substation.¹⁰ Amtrak states that any power delivered by Safe Harbor that is not needed by Amtrak "bounces" along the 13.2 kV busbar at the entrance of the Conestoga Substation and flows back to Safe Harbor, where the power is converted to 60 Hz and transported through the Safe Harbor facilities to PPL's Manor Substation for delivery onto PPL-owned transmission facilities.¹¹ Amtrak states that the busbar is the only delivery point to Amtrak in PPL's service territory.

5. Amtrak states that customers in PPL's service territory are billed, directly or indirectly, for generation and NITS by their electricity supplier based on transmission obligations that are calculated by the customer's electric distribution company – here, PPL. Accordingly, PPL calculates the transmission obligation of Amtrak and provides the data to PJM, which in turn bills CNE for transmission charges based on the transmission obligations for the retail customers that CNE serves.¹² According to Amtrak, CNE then bills Amtrak for its share of the transmission charges based on the transmission obligation that PPL calculates for Amtrak. Amtrak states that the total charge to Amtrak for NITS at the Conestoga Substation is determined by multiplying the

⁸ *Id.* at 13-14.

⁹ *Id.* at 12-13. Amtrak states that it owns the three transmission lines that move the power from the Conestoga Substation to Parkesburg and Royalton. Amtrak also states that there are four transmission lines to serve Amtrak at Perryville in Maryland, and that PPL owns the four transmission lines from the Conestoga Substation to the Maryland border, while Baltimore Gas & Electric Company (BGE) owns the transmission lines in Maryland. Amtrak states it pays the BGE NITS with respect to power delivered to Perryville and those payments are not at issue in its complaint. *Id.* at 12, 18 n.26.

¹⁰ *Id.* at 10-11.

¹¹ *Id.* at 11. Amtrak asserts that if it receives more power from Safe Harbor than it needs, the power flows back through one or more of the meters and is netted against delivered values on each meter, for the same time period, to produce a net number. Amtrak states that the net number then apparently feeds into PPL's calculation of the transmission obligation for Amtrak. *Id.* at 14.

¹² *Id.* at 14.

transmission obligation calculated by PPL by PPL's NITS rate established by a formula rate that PPL has on file with the Commission.¹³ Amtrak contends that PPL sets individual customer transmission obligations or Network Service Peak Load contributions based on readings taken by PPL from meters owned and operated by PPL.¹⁴

6. Amtrak complains that the PPL-related NITS charges for energy delivered from Safe Harbor to the Conestoga Substation to serve Parkesburg and Royalton are unjust and unreasonable because no PPL transmission facilities are being used to deliver such energy. Amtrak contends that because of Safe Harbor's direct connection to the Conestoga Substation, which Amtrak argues is a distribution facility, no transmission facilities are used to deliver power from Safe Harbor to the Conestoga Substation.¹⁵ Amtrak argues that PPL, through PJM and CNE, is assessing transmission charges on Amtrak at the Conestoga Substation that have no basis in the physical configuration of the substation, operation, or Amtrak's consumption patterns.¹⁶

7. Amtrak requests that the Commission issue an order that, among other things, orders PPL to calculate Amtrak's transmission obligation based only on any inflows of power to Amtrak from the Manor Substation net of any outflows through the four lines that transmit power from the Conestoga Substation to Perryville, MD and net of any consumption by Safe Harbor of such power flows.¹⁷

8. Amtrak argues that established principles of cost causation support its contention that the PPL-calculated transmission obligation should be zero with respect to energy delivered from Safe Harbor to the Conestoga Substation.¹⁸

9. Amtrak further argues that PPL unduly discriminates against Amtrak.¹⁹ Amtrak maintains that PPL calculates Amtrak's load based on the outflows of power from Conestoga to Parkesburg and Royalton on Amtrak-owned lines. By contrast, Amtrak

¹³ *Id.* at 14-15.

¹⁴ *Id.* at 15.

¹⁵ *Id.* at 3, 17-18, 24.

¹⁶ *Id.* at 5, 17-18, 24.

¹⁷ *Id.* at 6, 28-29, 34.

¹⁸ *Id.* at 24.

¹⁹ *Id.* at 28-29.

states PPL calculates other retail customers' load using metered values of the inflow of power from the transmission grid.

10. Amtrak also argues that PPL violates the PJM Tariff and Order No. 888²⁰ by subjecting Amtrak to charges at the Conestoga Substation based on billing determinants that are not in the PJM Tariff.²¹ Amtrak argues that PPL must put its methodology for the determination of peak load for purposes of calculating NITS in an approved tariff, and notes that other electric distribution companies in Pennsylvania have their NITS calculations for retail customers in Commission-approved tariffs.²² Amtrak also argues that PJM has failed to enforce the terms of the PJM Tariff.

11. In addition to requesting that PPL calculate Amtrak's load based on a method that is publicly available and tariff-based, Amtrak requests that PPL provide Amtrak with certain pertinent information used to calculate Amtrak's billing determinants to avoid similar billing errors.²³ Amtrak explains that it has requested this information previously, but that it has not been provided.²⁴

12. Amtrak seeks refunds from PPL, PJM, and CNE of all amounts collected from Amtrak for PPL-related transmission service from December 2, 2002 or such other refund effective date as determined by the Commission, with interest from that refund effective date.²⁵ Amtrak argues that PPL, PJM, and CNE must credit or refund charges, including interest, of approximately \$12.5 million. Amtrak also seeks prospective relief

²⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 75 FERC 61,080 (1996), *order on reh'g*, Order No. 888-A, (Order No. 888-A), 78 FERC ¶ 61,220, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

²¹ Complaint at 27-28. Further, Amtrak asserts that the Commission has jurisdiction over unbundled retail transmission service and PPL violates Commission jurisdictional tariff. *Id.* at 25-26.

²² *Id.* at 27 & n.52.

²³ *Id.* at 6, 34.

²⁴ *Id.* at 3-6, 34.

²⁵ *Id.* at 6, 29-34.

from the date it filed the complaint, which Amtrak estimates at approximately \$1.0-1.5 million per year.²⁶

13. Amtrak asserts that it has standing to file this complaint at the Commission because it is a retail unbundled transmission customer whose rates are determined by PPL's calculations.²⁷ Nevertheless, Amtrak states that it filed a complaint at the Pennsylvania Public Utilities Commission (Pennsylvania PUC) at the same time as it filed the instant complaint because the Commission has provided some deference to state commissions on overseeing the recovery of retail unbundled transmission rates.²⁸

II. Notice of Complaint and Responsive Pleadings

14. Notice of the complaint was published in the *Federal Register*, 84 Fed. Reg. 26,664 (June 7, 2019), with answers, interventions and protests due on or before June 19, 2019.²⁹ The Pennsylvania Public Utility Commission filed a notice of intervention. The following entities filed timely motions to intervene: Exelon Corporation (Exelon); Public Citizen, Inc.; Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM; Safe Harbor Water Power Corporation; and American Municipal Power, Inc.

15. On June 28, 2019, PPL and PJM each filed answers to the complaint and Exelon filed comments. On July 29, 2019, Amtrak filed an answer to PPL's and PJM's answers. On August 13, 2019, PPL filed an answer in response to Amtrak's answer. On August 28, 2019, Amtrak filed an answer. On September 12, 2019, PPL filed an answer.

A. PPL Answer

16. PPL argues that the Commission lacks jurisdiction to consider the complaint because Amtrak contests charges that CNE assesses under its retail supply contract with

²⁶ *Id.* at 35.

²⁷ *Id.* at 7 (citing *Am. Elec. Power Serv. Corp.*, 153 FERC ¶ 61,167 (2015) (*AEP*); *N.C. Waste Awareness & Reduction Network, Inc. v. Duke Energy Carolinas, LLC*, 151 FERC ¶ 61,079, at P 15, *order on reh'g*, 153 FERC ¶ 61,189 (2015); *PECO Energy Co.*, 91 FERC ¶ 61,030, 61,106 (2000) (*PECO*)).

²⁸ *Id.* at 27.

²⁹ On June 7, 2019, PPL and PJM filed a motion requesting to extend the time to respond to the Complaint from June 19, 2019. On June 11, 2019, a notice granting extension of time was issued and extended the deadline to submit answers, interventions and protests to the Complaint to June 28, 2019.

Amtrak.³⁰ PPL contends that sales from retail power providers to their retail customers in Pennsylvania are fully within the jurisdiction of the Pennsylvania PUC. PPL also argues that it collects Amtrak's retail load data and calculates Amtrak's peak load pursuant to its Electric Generation Supplier Coordination Tariff on file with the Pennsylvania PUC, which PPL alleges is similar to supplier tariffs that the Commission has previously rejected as not subject to its jurisdiction.³¹

17. PPL also argues that Amtrak lacks standing to raise a complaint against PPL because Amtrak lacks contractual or tariff privity with PPL. PPL states that Amtrak is not a transmission customer of PPL or PJM; rather, under the PJM Tariff, CNE is the transmission customer.³²

18. As to the merits of Amtrak's complaint, PPL responds that Amtrak fails to establish a violation of a tariff or the FPA. PPL asserts that Safe Harbor sells the entire capacity of the generating facility into the PJM wholesale capacity market, and that the entire 416.5 MW output, including the 25 Hz units, is designated as a Network Resource with PJM, as shown on PJM's Open Access Same-Time Information System (OASIS).³³ PPL also asserts that Safe Harbor does not qualify as a Behind the Meter Generation Resource because its full capacity is sold into the PJM capacity market.³⁴ PPL maintains that the PJM Tariff requires PPL to meter Amtrak's load served by Safe Harbor because CNE has designated Safe Harbor as a Network Resource, under the PJM Tariff, and that the PJM Tariff requires that load served by Safe Harbor be included in the calculation of CNE's Network Load when determining CNE's NITS obligation.³⁵ PPL contends that Amtrak is ignoring that CNE uses NITS to serve Amtrak's load as Network Load. PPL

³⁰ PPL Answer at 20-24.

³¹ *Id.* at 21-24 (discussing *PECO Energy Co.*, 85 FERC ¶ 61,271 (1998), *order on reh'g*, 91 FERC ¶ 61,030, at 61,106-07 (2000) (*PECO*)).

³² *Id.* at 24-28 (citing *N. Star Steel Co., LLC v. Az. Pub. Serv. Co.*, 116 FERC ¶ 61,022 (2006), *order on reh'g*, 120 FERC ¶ 61,146 (2007), *aff'd sub nom. N. Star Steel Co., LLC v. FERC*, 343 F. App'x 260 (9th Cir. 2009) (*N. Star Steel*)).

³³ *See id.* at 17 & n.53, 31.

³⁴ *Id.* at 17, 31-32.

³⁵ *Id.* at 4, 29-33 (citing PJM, Intra-PJM Tariffs, OATT, L-M-N, OATT Definitions – L-M-N (21.1.0) (definitions of “Network Load” and “Network Resource”), 31.1 Network Load (0.0.0), § 31.1, 34.1 Monthly Demand Charge (1.0.0), § 34.1). PPL also includes a copy of CNE's Service Agreement for Network Integration Transmission Service (CNE NITSA). *Id.* at 30 & Ex. C.

argues that it is irrelevant for metering and calculating Amtrak's load whether the Conestoga Substation is a distribution facility. PPL emphasizes that there is no separate measurement of transmission use.

19. PPL argues that it is not required to include its peak load contribution methodology in the PJM Tariff or to file it with the Commission.³⁶ PPL maintains that it bases Amtrak's load contribution to CNE's NITS charges on the load Amtrak withdraws from the PPL system, which PPL states is most accurately measured at the interconnection points between Amtrak's system and the Conestoga Substation. PPL asserts that the methodology for determining PJM NITS rates is set forth in the PJM Tariff and that NITS charges are allocated based on a determination of a customer's load at the time of system peak load. PPL asserts that NITS service is not intended to govern flows over a particular transmission path like point-to-point transmission service. PPL contends that its method of calculating Amtrak's load is not discriminatory.³⁷ PPL also asserts that Amtrak benefits from PPL's transmission facilities because Amtrak relies on those facilities to maintain the reliability of its supply.³⁸

20. PPL argues that, because Amtrak failed to include its contract with CNE, Amtrak provides no proof that it actually paid for NITS to support its claim of being overcharged.³⁹

21. PPL argues that the Commission should reject Amtrak's request for relief under FPA section 309 because Amtrak has not shown that PPL violated the FPA or the PJM Tariff.⁴⁰ PPL further argues that, even if it erred, only CNE could seek an adjustment, and PJM Tariff section 10.4 only permits an adjustment covering two years of charges.⁴¹ PPL additionally argues that it would be impermissible under the PJM Tariff to impose increased NITS charges on other Network Customers if there were a reduction in CNE's NITS charges. PPL also argues that the Commission should not decide any issue of how much Amtrak receives if CNE is awarded refunds as that issue is a matter either under the Amtrak-CNE retail contract or for the Pennsylvania PUC to decide as it regulates retail

³⁶ *Id.* at 33-38.

³⁷ *Id.* at 36-39.

³⁸ *Id.* at 39-40.

³⁹ *Id.* at 40-41.

⁴⁰ *Id.* at 42-43.

⁴¹ *Id.* at 43-44.

supply.⁴² PPL also notes that it provided Amtrak's meter data to CNE, and was informed by CNE that CNE provided this information to Amtrak.⁴³

B. PJM Answer

22. PJM requests that the Commission dismiss the complaint with respect to PJM, stating that there is no merit to Amtrak's argument that PJM failed to enforce the PJM Tariff.⁴⁴ PJM argues that there is no PJM Tariff obligation that PJM must enforce regarding the details of electric distribution company calculations of Network Customer/Load Serving Entity aggregate retail customer peak load responsibilities. PJM asserts that PJM simply calculates the NITS charges under section 34 of the PJM Tariff and that PJM has no authority to assess whether PPL's transmission rates are just and reasonable. PJM states that Amtrak is not a Network Customer under the PJM Tariff, and that PJM does not charge Amtrak for NITS. PJM states that Amtrak takes bundled retail service, over which the Commission has no jurisdiction.⁴⁵ PJM contends that any dispute regarding the alleged impact of NITS charges billed by CNE to Amtrak is a retail service dispute to be decided by the Pennsylvania PUC.⁴⁶ PJM argues that any relief granted under the complaint must be subject to the billing adjustment limitation of section 10.4 of the PJM Tariff.⁴⁷

C. Exelon Comments

23. Exelon states that it submits comments on behalf of CNE, its indirect, wholly-owned subsidiary. Exelon states that it does not take a position on the central substantive issues of the complaint. Exelon states that CNE provides unbundled generation supply service, not transmission or delivery. Exelon states that CNE incurs NITS and other transmission service charges based on billing determinants provided by the applicable utility as a cost of providing competitive retail service to its customers. Exelon states that CNE passes through charges that CNE incurs to provide supply to Amtrak. Exelon states that, under the terms of the retail supply contract with Amtrak, these charges are passed through to Amtrak without mark-up. Exelon states that CNE commits to pass through to

⁴² *Id.* at 45 n.135.

⁴³ *Id.* at 20.

⁴⁴ PJM Answer at 3, 9-13.

⁴⁵ *Id.* at 4.

⁴⁶ *Id.* at 12.

⁴⁷ *Id.* at 13-14.

Amtrak any refunds CNE receives from PPL or PJM. Exelon objects to any implication that CNE could be liable for any refunds that are not a direct pass-through of PPL- and/or PJM-refunds.⁴⁸

D. Amtrak First Answer

24. In response to PPL and PJM, Amtrak reiterates many of the arguments it raises in its complaint.⁴⁹ Amtrak argues that PPL's determination of the transmission obligation is a practice affecting transmission rates because PPL determines the quantity of transmission service for which a customer will pay and should be in an approved tariff.⁵⁰ Amtrak also argues that the Commission has affirmed jurisdiction over the calculation of loads subject to Commission-jurisdictional charges.⁵¹ Amtrak further argues that energy that flows exclusively over Amtrak's system, and does not flow over the PJM transmission system, is not subject to NITS because the PJM Tariff states that NITS is a service PJM "provide[s] . . . over the Transmission Provider's Transmission Systems."⁵²

25. Amtrak argues that the commercial arrangements between Amtrak and its electric suppliers, and such suppliers' arrangements with its sources is irrelevant.⁵³ Amtrak further counters PPL's arguments regarding jurisdiction arguing that the Commission has jurisdiction over transmission, including retail transmission, under section 201 of the FPA.⁵⁴ Amtrak reiterates that it has standing and counters PPL's arguments that contractual privity is required.⁵⁵ Amtrak argues that it is entitled to refunds and that the limitation in section 10.4 of the PJM Tariff does not apply because PPL does not

⁴⁸ Exelon Comments at 1-2.

⁴⁹ Amtrak First Answer at 3-6, 11-15.

⁵⁰ *Id.* at 6-11.

⁵¹ *Id.* at 7-9 (citing *Commonwealth Edison Co.*, 133 FERC ¶ 61,118 (2010) (*ComEd*)).

⁵² *Id.* at 15 (quoting PJM, Intra-PJM Tariffs, OATT, 28.2 Transmission Provider Responsibilities (0.0.0), § 28.2).

⁵³ *Id.* at 16-17.

⁵⁴ *Id.* at 17-19.

⁵⁵ *Id.* at 19-21, 26.

calculate the transmission obligation pursuant to the PJM Tariff.⁵⁶ Amtrak asserts that PJM is a necessary party to the proceeding.⁵⁷

E. PPL Second Answer

26. In response to Amtrak, PPL reiterates many arguments from its first answer, including that CNE is a Network Customer, that CNE is required to designate its Network Load and has designated Amtrak's load at the Conestoga Substation as Network Load, CNE has identified Safe Harbor as a Network Resource, and PPL is required to include the output of Safe Harbor when determining CNE's NITS charges.⁵⁸ PPL contends that Amtrak ignores how NITS charges are required to be calculated under the PJM Tariff and that responsibility for NITS charges in PJM is measured by end-use customer load, which is generally measured at the point of interconnection between local distribution facilities and an end-use customer's property. PPL asserts that local end-use meter data is required to determine load serving entities' obligations to PJM, including NITS charges, as well as used by a supplier to bill their customers. PPL contends that Amtrak's recent condemnation of the Conestoga Substation has no impact on the inclusion of Amtrak's load at the substation in CNE's Network Load and NITS charges because Safe Harbor is a Network Resource and Amtrak's ownership of end-use interconnection facilities has no impact.⁵⁹

27. Addressing Amtrak's cost causation arguments, PPL contends that PPL's peak load contribution methodology did not cause Amtrak's load to be considered in CNE's NITS charges, but rather Amtrak's load was included because of CNE's designation of Network Load and Safe Harbor's designation as a Network Resource, and Amtrak's agreement that CNE could pass through its NITS charges to Amtrak.⁶⁰ PPL states that Amtrak recognizes and does not challenge that other Pennsylvania electric distribution companies have not filed their network service peak load methodologies with the Commission, and that other transmission owners subject to the PJM Tariff only list their methodologies on their websites and do not file them with the Commission or the Pennsylvania PUC.⁶¹ PPL asserts that even if the methodology was filed with the

⁵⁶ *Id.* at 21-23, 26.

⁵⁷ *Id.* at 24-26.

⁵⁸ PPL Second Answer at 3-6.

⁵⁹ *Id.* at 8-9.

⁶⁰ *Id.* at 12-13.

⁶¹ *Id.* at 14-17.

Commission, PPL would still be required by the PJM Tariff to measure all of Amtrak's load given that it is designated as Network Load and Safe Harbor as a Network Resource.

28. PPL refutes Amtrak's claims that "PPL acknowledges that it operates outside the PJM Tariff" explaining that PJM's charges to CNE for NITS were assessed pursuant to section 34.1 of the PJM Tariff and are thus subject to the two-year limitation on claims under section 10.4. PPL asserts that if Amtrak, through CNE, overpaid its NITS, then other customers in the PPL zone underpaid during the same period and any refunds would require surcharges as the PPL zonal revenue requirement would remain the same.⁶²

F. Amtrak Second Answer

29. In its second answer, Amtrak, in addition to repeating earlier arguments, asserts that, even if the PJM Tariff has been correctly followed as PPL contends, the Commission can order revisions if the PJM Tariff violates the FPA.⁶³ Amtrak argues that PPL has presented no evidence that Amtrak's Parkesburg and Royalton load is designated as Network Load or that Safe Harbor is designated as a Network Resource.⁶⁴ Amtrak contends that the arrangements that Amtrak's suppliers have with wholesale sources for energy and capacity are irrelevant to the quantity of PPL transmission service that Amtrak should be charged. Amtrak reiterates its contention that PPL's determination of Amtrak's transmission obligation must reflect its actual use of the transmission system to comport with cost-causation principles and argues that generalized system benefits are not enough to satisfy cost causation principles.⁶⁵ Amtrak argues that PPL's calculation of Amtrak's transmission obligation is not based on the load Amtrak withdraws from the PPL system because PPL is metering energy flowing from Safe Harbor to the Conestoga Substation across facilities Amtrak asserts always have been distribution facilities or owned by Amtrak.⁶⁶

G. PPL Third Answer

30. In its third answer in response to Amtrak, with respect to the designation of Amtrak's load as Network Load, PPL notes that CNE has intervened and stated that it

⁶² *Id.* at 19-20.

⁶³ Amtrak Second Answer at 6-8.

⁶⁴ *Id.* at 4-6.

⁶⁵ *Id.* at 10-12.

⁶⁶ *Id.* at 12-13.

incurs NITS charges to serve Amtrak's load, and any load served by a Network Resource is by definition Network Load.⁶⁷ PPL also asserts that the entire 416.5 MW output of Safe Harbor, including the 25 Hz units 1 and 2, is designated as a Network Resource with PJM, as shown on PJM's OASIS.⁶⁸

III. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept Amtrak's and PPL's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

33. We deny Amtrak's complaint. Based on our review of the record,⁶⁹ Amtrak failed to satisfy its burden under FPA sections 206 and 306 to show that the rates Amtrak is being charged for transmission service are unjust, unreasonable, or unduly discriminatory, or that PPL violated the PJM Tariff or Commission policy.

34. As an initial matter, we find that the Commission has jurisdiction over the matters raised in the complaint. Amtrak challenges the NITS charges assessed by PJM and passed through to Amtrak by its retail supplier without mark-up, as well as the related PPL methodology for determining Network Service Peak Load Contributions, both of which fall within the Commission's jurisdiction.⁷⁰

⁶⁷ PPL Third Answer at 3-4.

⁶⁸ *See id.* at 4 & Ex. A. PPL states that PJM's OASIS contains a list of all designated Network Resources located within the PJM region and that list includes the entire 416.5 MW output of the Safe Harbor facility. Exhibit A is an excerpt of PJM's Network Resource list showing Safe Harbor's inclusion.

⁶⁹ Amtrak did not include any of the retail supply contracts it references in its complaint. As a result, our decision is based solely on the parties' representations and evidence presented.

⁷⁰ *See* PJM, Intra-PJM Tariffs, OATT, 34.1 Monthly Demand Charge (1.0.0), § 34.1(a); *N.Y. v. FERC*, 535 U.S. 1, 20 (2002); *ComEd*, 133 FERC ¶ 61,118, at PP 6, 11

35. We also conclude that Amtrak may file a complaint under FPA section 206. FPA section 306 broadly authorizes “[a]ny person, electric utility, State, Municipality, or State commission” to file a complaint complaining of anything done or omitted to be done by any transmitting utility or public utility, among others, in contravention of the FPA.⁷¹ Similarly, Commission Rule 206 permits “[a]ny person [to] file a complaint seeking Commission action.”⁷² In *AEP*, the Commission held that retail customers of Commission-jurisdictional public utilities may file complaints addressing Commission jurisdictional transmission rates.⁷³ The Commission found that a retail customer has standing if it is an “end-use customer that will pay . . . some portion of that [transmission] rate when flowed through [her] retail bill.”⁷⁴ Based on Exelon’s and Amtrak’s assertions, CNE passes through NITS charges to Amtrak without mark-up pursuant to a retail supply contract.⁷⁵ We also do not find PPL’s reliance on *N. Star Steel*⁷⁶ persuasive. In that case, the Commission clarified that the FPA and the Commission’s regulations permitted North Star Steel Company, LLC, a retail customer, to bring a complaint under section 206 of the FPA challenging the justness and reasonableness of the respondents’ rates, but it was the requested retail refunds of retail sales of electric energy that were beyond the scope of the Commission’s jurisdiction. Accordingly, because Amtrak is an end-use customer that pays NITS charges passed through to its retail bill without mark-up, we find that Amtrak may file the instant complaint.

(2010) (finding that proposed tariff provisions specifying methodology for utility’s calculation of network service peak load contributions are jurisdictional).

⁷¹ 16 U.S.C. § 825e (2018); *see* 16 U.S.C. § 824e (2018).

⁷² 18 C.F.R. § 385.206(a) (2019).

⁷³ *AEP*, 153 FERC ¶ 61,167 at P 15.

⁷⁴ *Id.* at P 15 (quoting *Potomac-Appalachian Transmission Highline, LLC*, 140 FERC ¶ 61,229, at P 106 (2012) (*PATH*)); *see PATH*, 140 FERC ¶ 61,229 at P 105 (stating that the private citizens were qualified to file a complaint based on their “status as consumers taking service in the area in question and subject to paying the rates charged by *PATH* through the Formula Rates”) (footnote omitted).

⁷⁵ Complaint at 2; Exelon Comments at 2.

⁷⁶ *N. Star Steel*, 120 FERC ¶ 61,146 at PP 6, 10.

36. With respect to the merits of the Complaint, we find that Amtrak has failed to satisfy its burden under FPA sections 206 and 306⁷⁷ to show that the rates that Amtrak is being charged for transmission service are unjust, unreasonable, or unduly discriminatory, or that PPL violated the PJM Tariff or Commission policy. Although Amtrak claims that PPL violated the PJM Tariff by calculating Amtrak's Parkesburg and Royalton load based on an unfiled methodology, Amtrak's fundamental argument is that Amtrak should not be charged for NITS for its load at Parkesburg and Royalton if the power Amtrak is supplied by its retail supplier does not flow across PPL's transmission facilities. As discussed below, we find that Amtrak seeks transmission services that are inconsistent with the PJM Tariff and Commission policy.

37. NITS is a "transmission service that allows Network Customers to efficiently and economically utilize their Network Resources (as well as other non-designated generation resources) to serve their Network Load located in the PJM Region"⁷⁸ PJM is required to include the Network Customer's Network Load in transmission system planning, and transmission owners shall "endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer's Network Resources to serve its Network Load"⁷⁹ PJM provides "firm transmission service over the Transmission System to the Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads"⁸⁰

38. The Network Customer designates both the Network Resources and the Network Loads for NITS.⁸¹ A Network Resource is any generating resource owned, purchased, or

⁷⁷ 16 U.S.C. §§ 824e, 825e.

⁷⁸ PJM, Intra-PJM Tariffs, OATT, 28.1 Scope of Service (1.0.0), § 28.1.

⁷⁹ *Id.* at 28.2 Transmission Provider Responsibilities (1.0.0), § 28.2.

⁸⁰ *Id.* at 28.3 Network Integration Transmission Service (0.0.0), § 28.3.

⁸¹ *Id.* at 30.1 Designation of Network Resources (0.0.0), § 30.1, 31.1 Network Load (0.0.0), § 31.1, L-M-N, OATT Definitions – L-M-N (21.1.0) (definitions of "Network Load" and "Network Resource"). Section 31.1 of the PJM Tariff requires that a Network Customer "designate the individual Network Loads on whose behalf [PJM] will provide [NITS]." With respect to loads served pursuant to state required retail access programs, the Tariff also provides that "the Transmission Customer shall provide information regarding Network Loads using [PJM's] specified electronic information system for such programs in accordance with the Service Agreement." *Id.* at 31.1 Network Load (0.0.0), § 31.1; *see also id.* at 30.1 Designation of Network Resources (0.0.0), § 30.1, L-M-N, OATT Definitions – L-M-N (21.1.0) (definitions of "Network Load" and "Network Resource").

leased by a Network Customer, or subject to a firm power sales agreement with a Network Customer, and designated to serve Network Load.⁸² Network Load includes all load, retail and wholesale, served by the output of any Network Resource designated by the Network Customer.⁸³ The Network Customer's NITS charge is based on the sum of the Network Customer's individual wholesale and retail customer Network Loads at the time of the annual peak of the zone in which the load is located.⁸⁴

39. Consistent with these Tariff provisions, we find that Amtrak's load at the Conestoga Substation is appropriately charged for NITS. Amtrak states that it receives most of its power from Safe Harbor. Safe Harbor is a Network Resource, as PPL demonstrates.⁸⁵ The PJM Tariff provides that Network Load includes all load, retail and wholesale, served by the output of any Network Resource designated by the Network Customer. Amtrak does not complain that CNE has improperly designated Amtrak's Parkesburg and Royaltown load as Network Load or improperly designated Safe Harbor as a Network Resource, or otherwise violated the specific, relevant terms and conditions of the PJM Tariff. Because Amtrak's load has been designated as Network Load and because it is being served by the output of Safe Harbor, a designated Network Resource, we find that Amtrak's load at the Conestoga Substation is appropriately charged NITS under the PJM Tariff. Further, contrary to Amtrak's contentions, it is immaterial for purposes of NITS charges whether the Conestoga Substation is otherwise a local distribution facility as Amtrak is receiving unbundled retail transmission service pursuant to the PJM Tariff.⁸⁶

40. We also deny Amtrak's cost causation arguments.⁸⁷ Amtrak argues that, based on cost causation principles, it should be responsible only for transmission costs based on

⁸² See *id.* at L-M-N, OATT Definitions – L-M-N (21.1.0) (definition of “Network Resource”), 30.7 Limitation on Designation of Network Resources (1.0.0), §30.7 (a “Network Customer must demonstrate that it owns or has committed to purchase generation pursuant to an executed contract in order to designate a generating resource as Network Resource”).

⁸³ See *id.* at 31.1 Network Load (0.0.0), § 31.1.

⁸⁴ *Id.* at 34.1 Monthly Demand Charge (1.0.0), § 34.1; see *id.* W-X-Y-Z, OATT Definitions – W-X-Y-Z (5.0.0) (definition of “Zone Network Load”).

⁸⁵ PPL Third Answer at 4, Ex. A.

⁸⁶ While Amtrak now owns the Conestoga Substation, PPL previously owned portions of it and retains a floating easement over the facilities.

⁸⁷ PJM's definition of Network Load is generally identical to that in the *pro forma* open access transmission tariff (OATT). Both definitions provide that a Network

the rare times when Safe Harbor is not generating enough power to serve Amtrak's demand at the Conestoga Substation and instead PPL's Manor Substation transmission facilities are used to serve Amtrak's load. In order to address Amtrak's argument, it is necessary to understand the difference between network service and point-to-point service.

41. As the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has explained:

“Network service allows more flexibility” than point-to-point service, another form of service offered under the *pro forma* tariff, “by allowing a transmission customer to use the entire transmission network to provide generation service for specified resources and specified loads without having to pay multiple charges for each resource-load pairing.” Network service permits a utility company using another utility's transmission system “to fully integrate load [i.e., the aggregate demand for service on the system at any given time,] and resources on an instantaneous basis in a manner similar to the transmission owner's integration of its own load and resources.” We recognized in [*Transmission Access Policy Study Group v. FERC*] that “network service, as the Commission defined it, means that network customers can call upon the transmission provider to supply not just some, but all of their load at any given moment, when for instance they experience blackouts or brownouts.”⁸⁸

Noting the difference between network service and point-to-point service, the Commission has consistently rejected cost causation arguments made by network customers that sought to lower their load ratio share based on actual use of the transmission system. These arguments arose in the context of Order No. 888's, and subsequently, the *pro forma* OATT's, prohibition against network customers designating only a part of their load at a discrete point of delivery as network load, which is similar to what Amtrak seeks here.⁸⁹ For example, in Order No. 888-A, parties argued that a

Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery.

⁸⁸ *Fla. Mun. Power Agency v. FERC*, 411 F.3d 287, 289 (D.C. Cir. 2005) (citations omitted); see *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000).

⁸⁹ Amtrak asserts that CNE takes title to power from Safe Harbor at the Conestoga Substation and in turn sells it to Amtrak. Complaint at P 35. PJM's definition of

network customer should be able to designate less than its total load where “only part of the load behind a particular delivery point relies upon the transmission provider’s transmission system for service.”⁹⁰ The Commission rejected these “split system” arguments (i.e., division of a discrete load between point-to-point and network services) explaining that “splitting a discrete load is antithetical to the concept of network service” because “a load at a discrete point of delivery cannot be partially integrated—it is either fully integrated or not integrated.”⁹¹ In addition, the Commission found that a split system creates the potential for a customer to evade some or all of its load ratio share cost responsibility for network services by using behind the meter generation during monthly peaks to reduce its load ratio share below its actual, typical monthly peak usage, resulting in a rate that is subsidized by other network customers.⁹² “The bottom line,” the Commission stated, “is that all potential transmission customers . . . must choose between [NITS] or point to point transmission service. Each of these services has its own advantages and risks.”⁹³ The Commission’s Order No. 888 findings were upheld on appeal by the D.C. Circuit in *Transmission Access Policy Study Group v. FERC*⁹⁴ and consistently applied in several subsequent orders.⁹⁵

Network Load is generally identical to that in the *pro forma* OATT. Both definitions provide that a Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Moreover, where a customer has elected not to designate a particular load at discrete points of delivery as Network Load, the customer is responsible for making separate arrangements under the tariff for any point-to-point transmission service that may be necessary for such non-designated load.

⁹⁰ Order No. 888-A, 78 FERC ¶ 61,220 at 30,257.

⁹¹ *Id.* at 30,262.

⁹² *Id.* at 30,260-61. *See also East Ky. Power Coop. Inc. v. Louisville Gas & Elec. Co./Ky. Utils. Co.*, 154 FERC ¶ 61,144, P 60 (2016) (*Kentucky*) (“[T]he Commission used the ‘behind-meter-generation’ language as an example of transmission customers subject to the provision but it did not explicitly exclude . . . other transmission customers from this provision.”).

⁹³ Order No. 888-A, 78 FERC ¶ 61,220 at 30,260.

⁹⁴ *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000).

⁹⁵ *See Idaho Power Co.*, 106 FERC ¶ 61,329 (2004) (*Idaho Power*); *Ameren Servs. Co. v. Prairieland Energy Inc.*, 131 FERC ¶ 61,125 (2010) (finding that network customer failed to comply with the tariff by not designating its total load as network

42. In *Idaho Power*, the Commission rejected Bonneville Power Administration's (BPA) attempt to remove certain of its load from its load ratio share, which is the very relief that Amtrak seeks in the instant proceeding.⁹⁶ The Commission explained that, contrary to Order No. 888, "BPA's proposal would essentially leave the behind the meter loads . . . as part of BPA's network load served by Idaho Power's transmission service, but eliminate the requirement that such loads be metered, *i.e.*, included in BPA's load ratio share, *because Idaho Power's transmission service may only be needed in rare instances.*"⁹⁷ Similarly, in Order No. 890,⁹⁸ commenters complained that assigning transmission-related costs to customers that do not rely on the transmission provider's system to serve load is inconsistent with the Commission's cost-causation principles. The Commission rejected such arguments, stating that its existing policy already provides customers with the opportunity to reduce network service costs to the extent a customer is not relying on the transmission system to meet its energy needs (*i.e.*, by taking point-to-point transmission service instead of network service).⁹⁹

43. As stated above, Amtrak concedes that, when power from Safe Harbor is insufficient, it uses PPL transmission facilities to obtain power. This is what it means to take and rely on network service. As the Commission and the D.C. Circuit have recognized, and as PPL argues in this proceeding, this is one of the significant benefits of network service, *i.e.*, the transmission provider plans and provides for firm transmission capacity sufficient to meet the customer's current and projected peak loads and, as a result, a customer can call upon the transmission system to supply all of the customer's load at any given moment, even when behind the meter or alternative supply is

load); *Arizona Pub. Serv. Co.*, 151 FERC ¶ 61,191 (2015) (finding that a network customer's request to designate less than its entire load as network load violated both the transmission provider's OATT and longstanding Commission policy, which require network customers to designate their entire load as network load to receive network service).

⁹⁶ *Idaho Power*, 106 FERC ¶ 61,329 at P 14.

⁹⁷ *Id.* at P 14 (emphasis added).

⁹⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 119 FERC ¶ 61,119 (Order No. 890), *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁹⁹ Order No. 890, 119 FERC ¶ 61,119 at P 1,619.

unavailable.¹⁰⁰ Given these benefits, it is appropriate that Amtrak bears the costs associated with its reliance on the transmission system, as its retail supplier, CNE, is a Network Customer relying on a Network Resource.¹⁰¹

44. For these reasons, we find Amtrak has not demonstrated that the PJM Tariff is unjust and unreasonable, or otherwise inconsistent with the FPA. Amtrak has also failed to justify a departure from Commission policy and from the PJM Tariff.¹⁰² To the extent that Amtrak no longer wishes to be charged for NITS and prefers to obtain alternative transmission service such as point-to-point service, it would need to change its retail supply contract with CNE.¹⁰³

45. We also are not persuaded by Amtrak's argument that PPL violated the PJM Tariff by using a methodology not in the Tariff. Consistent with *Duke Ohio*, PPL is not

¹⁰⁰ See *Fla. Mun. Power Agency v. FERC*, 411 F.3d at 289; Order No. 888-A, 78 FERC ¶ 61,220 at 30,260 & n.247; PPL Answer at 30.

¹⁰¹ Further, to the extent that Amtrak may be arguing that, because Safe Harbor and Parkesburg and Royalton are all in the same state, NITS charges should not be assessed, we note that the power from Safe Harbor that supplies Parkesburg and Royalton is comingled with power that serves Perryville, Maryland, and it is all power in interstate commerce. See *N.Y. v. FERC*, 535 U.S. at 7 (citations omitted) (“any electricity that enters the grid immediately becomes a part of a vast pool of energy that is constantly moving in interstate commerce”); see also *FPC v. Fla. Power & Light Co.*, 404 U.S. 453, 643 (1972), *reh’g denied*, 405 U.S. 948 (1972); *Fla. Power & Light Co.*, 29 FERC ¶ 61,140 at 61,291-92 (1984) (explaining that “interstate commerce” has been interpreted to grant the Commission jurisdiction when the transmission system “is interconnected and capable of transmitting [electric] energy across the State boundary, even though the contracting parties and the electrical pathway between them are within one State,” *i.e.*, if the transaction is made over the “interconnected interstate transmission grid”).

¹⁰² *Kentucky*, 154 FERC ¶ 61,144 at P 64 (“[W]e did not intend for each and every customer of a transmission provider to have the opportunity to demand that the transmission provider create alternative services which benefit that particular customer.”) (quoting *Fla. Power & Light Co.*, 113 FERC ¶ 61,290, at P 6 (2005)).

¹⁰³ The PJM Tariff, unlike the *pro forma* OATT, does allow a Network Customer to exclude from its peak load, load served by behind the meter generation. See PJM, Intra-PJM Tariffs, OATT, 34.2 Netting of Behind the Meter Generation (0.0.0), § 34.2. Amtrak does not claim, however, that Safe Harbor is designated, or should be, behind the meter generation. Safe Harbor also does not qualify as Behind the Meter Generation because, among other things, it is a Generation Capacity Resource.

required to file its methodology to calculate Network Service Peak Load.¹⁰⁴ While many transmission owners have filed their methodologies for determining both capacity and Network Service Peak Load contributions in Attachment M-2 to the PJM Tariff, the Commission has recognized that such a filing is voluntary and not required by PJM.¹⁰⁵

The Commission orders:

The complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰⁴ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,163, at P 15 & n.19 (2016) (*Duke Ohio*).

¹⁰⁵ *Id.* (stating that “PJM’s tariff, agreements or manuals” do not require the submission of Attachment M-2 and that “PJM does not require . . . Transmission Owners to file Attachment M-2s”).

ATTACHMENT C

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

National Railroad Passenger Corporation,)	
Complainant,)	
)	
v.)	Docket No. EL19-78-000
)	
PPL Electric Utilities Corporation)	
and)	
PJM Interconnection, LLC)	
Respondents.)	

**REQUEST FOR REHEARING AND CLARIFICATION OF
THE NATIONAL RAILROAD PASSENGER CORPORATION**

On June 18, 2020, the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued an order (“June 18 Order” or “Order”) denying the complaint (“Complaint”) filed by the National Railroad Passenger Corporation (“Amtrak”) against PPL Electric Utilities Corporation (“PPL”) and PJM Interconnection, L.L.C. (“PJM”) in the above-referenced proceeding.¹ Pursuant to Rule 713 of the Commission’s Rules of Practice and Procedure,² Amtrak hereby seeks rehearing and clarification of the June 18 Order. Amtrak respectfully submits that the June 18 Order is arbitrary and capricious, does not reflect reasoned decision-making, and is not supported by substantial evidence. As explained herein, the June 18 Order fails to address Amtrak’s cost-causation arguments and permits a rate outcome that is, and has been, unjust, unreasonable, unduly discriminatory, and preferential. The June 18 Order excuses PPL’s violation of the Federal Power Act (“FPA”) and PPL’s failure to file its Network Service Peak Load (“NSPL”) methodology with the Commission. The June 18 Order fails to

¹ “Order Denying Complaint,” *Nat’l R.R. Passenger Corp. v. PPL Elec. Utils. Corp. and PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,237 (2020) (hereinafter “June 18 Order” or “Order”).

² 18 C.F.R. § 385.713 (2019).

evaluate PPL’s non-transparent metering practices and non-transparent application of its NSPL methodology to Amtrak’s retail transmission obligations. Due to the errors identified herein, the Commission should grant rehearing and the Order should be modified on rehearing. Additionally, Amtrak requests that the Commission clarify whether its jurisdiction over the calculation and application of NSPL is not exclusive.

I. BACKGROUND

On May 30, 2019, Amtrak filed the Complaint against PPL and PJM pursuant to Sections 206, 306, and 309 of the FPA³ and Rule 206 of the Commission’s Rules of Practice and Procedure⁴ contending that the rates charged to Amtrak for transmission service by PPL and PJM are unjust, unreasonable, and unduly discriminatory or preferential.⁵ Amtrak also contended that PJM, as the administrator of its Open Access Transmission Tariff (“Tariff”), had not acted in a manner necessary to prevent the unjust and unreasonable rates assessed to Amtrak by PPL.⁶

Amtrak explained that its electric generation supplier (“EGS”) in PPL’s service territory is Constellation NewEnergy, Inc. (“CNE”), which provides electric supply to Amtrak at the Conestoga Substation in Lancaster County, Pennsylvania.⁷ CNE bills Amtrak for electric supply that is obtained exclusively from or through the nearby Safe Harbor hydroelectric station (“Safe Harbor”), which is directly connected to the Amtrak-owned Conestoga Substation.⁸ CNE, based on transmission obligation calculations determined by PPL and provided to PJM, is billed by PJM

³ 16 U.S.C. §§ 824e, 825e, 825h.

⁴ 18 C.F.R. 385.206 (2020).

⁵ See *Nat’l R.R. Passenger Corp. v. PPL Elec. Utils. Corp. and PJM Interconnection, L.L.C.*, Docket No. EL19-78 (Complaint filed May 30, 2019) (hereinafter “Complaint”).

⁶ See Complaint at P 1

⁷ See *id.* at P 3.

⁸ See *id.* at P 4. While most delivery points on Amtrak’s 25 hertz (“Hz”) frequency system include conversion equipment (to convert from 60 Hz to 25 Hz), the Conestoga Substation takes power at 25 Hz directly from Safe Harbor.

for Network Integration Transmission Service (“NITS”). CNE passes through those NITS charges on CNE invoices to Amtrak.⁹

Amtrak contended that PPL had not explained the relationship between certain metered values at the Conestoga Substation and PPL’s calculation of the amount of transmission service or NSPL obligations for which PJM and CNE charge Amtrak.¹⁰ Importantly, no transmission facilities are used to deliver power from Safe Harbor to the Conestoga Substation, which is a distribution facility that directly connects to Safe Harbor.¹¹ And no PPL transmission facilities are used to transmit power to Amtrak at the Conestoga Substation except in certain extremely rare situations when 60 Hz power flows through the PPL Manor Substation, through Safe Harbor-owned facilities, through a frequency converter, and then on to the Conestoga Substation.¹² Any 25 Hz power delivered by Safe Harbor that is not needed by Amtrak flows back to Safe Harbor and is then converted by the frequency converter to 60 Hz and transported, through Safe Harbor-owned facilities, to PPL’s Manor Substation for delivery onto PPL-owned transmission facilities (over which PJM has operational control) and into the PJM system.¹³

In its Complaint, Amtrak estimated that it has overpaid PPL for transmission service in an amount, with interest, of approximately \$12.5 million to date and that such overpayments would continue at a rate of \$1 million per year, on average, going forward if the Complaint were not granted.¹⁴

⁹ See Complaint at P 4.

¹⁰ See *id.* at P 6.

¹¹ Complaint at P 5. Power needed by Amtrak follows through Amtrak’s Conestoga Substation and is provided to Amtrak’s rail system at Perryville, Maryland; Parkesburg, Pennsylvania; and Royalton, Pennsylvania (near Harrisburg). *Id.* at P 34.

¹² *Id.* at PP 31, 47.

¹³ *Id.* at P 33.

¹⁴ *Id.* at P 76.

On June 4, 2019, Amtrak submitted to FERC copies of a Complaint against PPL that Amtrak had concurrently filed with the Pennsylvania Public Utility Commission (“PAPUC”). Amtrak had filed a complaint at both FERC and the PAPUC because both commissions have exercised jurisdiction over retail transmission obligations such as NSPL. Amtrak’s complaint filing with the PAPUC remains pending.

On June 28, 2019, PPL and PJM filed with FERC separate Answers to Amtrak’s complaint. Also, on June 28, 2019, Exelon Corporation, the owner of CNE, filed limited comments.

On July 29, 2019, Amtrak filed a Motion for Leave to Answer and Answer the answers filed by PPL and PJM (“Amtrak July 2019 Answer”).

On August 13, 2019, PPL filed an Answer to Amtrak’s July 29, 2019 Answer.

On August 28, 2019, Amtrak filed a Motion for Leave to Answer and Limited Answer to PPL’s August 13, 2019 Answer (“Amtrak August 2019 Answer”).

On September 12, 2019, PPL filed an answer to Amtrak’s August 28, 2019 Answer.

On June 18, 2020, the Commission issued the June 18 Order denying Amtrak’s Complaint.

II. STATEMENT OF ISSUES/SPECIFICATIONS OF ERRORS

Pursuant to Rule 713(c),¹⁵ Amtrak respectfully submits that the June 18 Order is arbitrary and capricious, does not reflect reasoned decision-making, is insufficiently supported, does not adhere to cost causation principles, and results in a rate outcome that is, and has been, unjust, unreasonable, unduly discriminatory, and preferential. Due to the errors identified herein, the Order should be modified and clarified on rehearing.

Amtrak specifies the following errors:

1. The June 18 Order’s failure to address Amtrak’s cost-causation arguments is arbitrary and capricious, does not reflect reasoned decision-making, and is not supported by

¹⁵ 18 C.F.R. § 385.713(c).

substantial evidence. *Nat'l Railroad Passenger Corp. v. PPL Electric Utilities Corp. and PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,237 (2020); 16 U.S.C. §§ 824e, 825e, 825h; *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 12 (D.C. Cir. 2015); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (D.C. Cir. 2010); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004); *New Eng. Power Generators Ass'n v. FERC*, 881 F.3d 202 (D.C. Cir. 2018); *West Deptford Energy, LLC*, 766 F.3d 10 (D.C. Cir. 2014); *ExxonMobil Oil v. FERC*, 487 F.3d 945 (D.C. Cir. 2007); *New York v. FERC*, 535 U.S. 1 (2002); *Transmission Access Policy Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014); *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470 (7th Cir. 2009); *El Paso Elec. Co. v. FERC*, 832 F.3d 495 (5th Cir. 2016); *K N Energy, Inc. v. FERC*, 968 F.2d 1295 (D.C. Cir. 1992)); *Gulf South Pipeline Co., LP v. FERC*, 955 F.3d 1001 (D.C. Cir. 2020); *Ala. Elec. Co-op., Inc. v. FERC*, 684 F.2d 20 (D.C. Cir. 1982).

2. The June 18 Order errs by excusing PPL's failure to file its NSPL methodology with the Commission and, thus, PPL's violation of the FPA. *Nat'l Railroad Passenger Corp. v. PPL Electric Utilities Corp. and PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,237 (2020); 16 U.S.C. §§ 824e, 825e, 825h; 16 U.S.C. § 8251(b); *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 12 (D.C. Cir. 2015); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520 (D.C. Cir. 2010); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004); *New Eng. Power Generators Ass'n v. FERC*, 881 F.3d 202 (D.C. Cir. 2018); *West Deptford Energy, LLC*, 766 F.3d 10 (D.C. Cir. 2014); *ExxonMobil Oil v. FERC*, 487 F.3d 945 (D.C. Cir. 2007); *New York v. FERC*, 535 U.S. 1 (2002); *Transmission Access Policy Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000); *N.J. Bd. of Pub. Utils. v. FERC*, 744 F.3d 74 (3d Cir. 2014); *FERC v. Elec. Power Supply Ass'n*, 136 S.Ct. 760 (2016); *City of Cleveland v. FERC*, 773 F.2d 1368 (D.C. Cir. 1985); *Perot v. Federal Election Comm'n*, 97 F.3d 553 (DC. Cir. 1996); *A.L.A. Schecter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Cudahy Packing Co. v. Holland*, 315 U.S. 357 (1942); *Western Systems Power Pool*, 55 FERC ¶61,495 (1991); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,163 (2015); *PJM Interconnection, L.L.C., American Transmission Systems, Inc.*, 153 FERC ¶ 61,216 (2015).

Additionally, Amtrak requests clarification on the following issue:

3. The Commission should clarify whether its jurisdiction over the calculation and application of NSPL is not exclusive.

III. REQUEST FOR REHEARING

A Commission order will be reversed on review if it is arbitrary or capricious, reflects an abuse of discretion, is not otherwise in accordance with law, or is not supported by substantial

evidence.¹⁶ In order to satisfy its obligation to engage in reasoned decision-making, the Commission must examine the relevant data and articulate a rational connection between the facts found and the choices made.¹⁷ The Commission must reach its conclusion through decision-making that is “reasoned, principled, and based upon the record.”¹⁸ Under the FPA, FERC’s factual findings are determinative so long as they are supported by substantial evidence.¹⁹ The “substantial evidence” standard “requires more than a scintilla, but can be satisfied by something less than a preponderance of the evidence.”²⁰ Substantial evidence is “relevant evidence” that “a reasonable mind might accept as adequate to support a conclusion.”²¹ Additionally, to avoid an arbitrary and capricious decision or one that does not reflect reasoned decision-making, the Commission must consider all important aspects of the problem at issue.²² It is “well established that the Commission must ‘respond meaningfully to the arguments raised before it.’”²³

As explained in detail herein, the June 18 Order is arbitrary and capricious, unsupported by substantial evidence, and does not reflect reasoned decision-making. Rehearing is warranted.

¹⁶ *South Carolina Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 55 (D.C. Cir. 2014); *Sacramento Mun. Util. Dist. v. FERC*, 616 F.3d 520, 528 (D.C. Cir. 2010).

¹⁷ *Sacramento*, 616 F.3d at 528; *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, (1983)).

¹⁸ *New Eng. Power Generators Ass’n v. FERC*, 881 F.3d 202, 210-11 (D.C. Cir. 2018); *West Deptford Energy, LLC*, 766 F.3d 10, 20 (D.C. Cir. 2014); *ExxonMobil Oil v. FERC*, 487 F.3d 945, 953 (D.C. Cir. 2007); see *New York v. FERC*, 535 U.S. 1, 36 (2002); see also *Transmission Access Policy Group*, 225 F.3d at 705, 716 (citing *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1021 (D.C. Cir. 1987)); *Colo. Interstate Gas Co. v. FERC*, 146 F.3d 889, 893 (D.C. Cir. 1998).

¹⁹ Section 313(b) of the FPA, 16 U.S.C. § 8251(b).

²⁰ See *N.J. Bd. of Pub. Utils.*, 744 F.3d at 97 (“*NJBPU*”) (quoting *La. PSC v. FERC*, 522 F.3d 378, 395 (D.C. Cir. 2008)).

²¹ *NJBPU*, 744 F.3d at 97 (quoting *Mars Home for Youth v. NLRB*, 666 F.3d 850, 853 (3d Cir. 2011)).

²² See e.g. *Motor Vehicle Mfrs. v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983) (“an agency rule would be arbitrary and capricious if the agency . . . failed to consider an important aspect of the problem”); *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998) (“In previous cases, we have rejected agency orders when the Commission neglected to deal with an important part of the problem . . .”) (citing *Laclede Gas Co. v. FERC*, 997 F.2d 936, 945-48 (D.C. Cir. 1993)); *North Carolina Util. Comm’n v. FERC*, 42 F.3d 659 (D.C. Cir. 1994).

²³ *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 12 (D.C. Cir. 2015).

1. The June 18 Order’s Failure to Address Amtrak’s Cost-Causation Arguments Is Arbitrary and Capricious, Does Not Reflect Reasoned Decision-making, And Is Not Supported By Substantial Evidence.

The June 18 Order found that Amtrak had not met its burden to demonstrate that the rates Amtrak is charged for transmission service are unjust, unreasonable, or unduly discriminatory or preferential, or that PPL violated PJM’s Tariff or FERC policy.²⁴ In finding Amtrak had not met its burden, the June 18 Order concluded that Amtrak sought transmission rates that were inconsistent with the PJM Tariff and FERC policy.²⁵ The June 18 Order concluded that Amtrak is appropriately charged for NITS because Amtrak receives most of its power from Safe Harbor and Safe Harbor is a Network Resource.²⁶ However, the June 18 Order did not examine the specific charges at issue, PPL’s methodology to calculate the charges, or Amtrak’s actual use of PPL’s PJM-operated transmission facilities. The June 18 Order also mischaracterizes the relief that Amtrak seeks.

- a. The Rationale Underpinning the June 18 Order’s Denial of Amtrak’s Cost-Causation Arguments Rests on an Irrelevant Scenario About “Split Load;” Amtrak Has Neither Argued Nor Requested to Split Its Load Between Point-to-Point and Network Service.

In finding Amtrak had not met its Section 206 burden and in denying Amtrak’s cost causation arguments, the June 18 Order focused on the definitions of NITS, Network Load, Network Resource, and Network Customer under PJM’s Tariff.²⁷ However, PJM Tariff provisions alone do not end the inquiry into whether cost-causation principles are satisfied and whether the

²⁴ June 18 Order at P 36.

²⁵ *Id.* at P 36.

²⁶ *Id.* at P 39.

²⁷ *See id.* at PP 37-39.

specific charges assessed to Amtrak are just and reasonable under the FPA.²⁸ The June 18 Order fails to make that further inquiry – ignoring the means by which energy is actually delivered from a Network Resource to a Network Customer – and does not fully account for the *actual use* or, in this case, the “non-use” of the transmission system by Amtrak.

The June 18 Order referenced the description of Network Service in a D.C. Circuit opinion to differentiate between Network Service and Point-to-Point Service.²⁹ The June 18 Order further elaborated on prior Commission determinations rejecting arguments that sought partial load ratio pricing or sought to divide transmission service to a discrete load between Point-to-Point Transmission Service and Network Service Transmission Service.³⁰ The June 18 Order explained that the Commission, in Order No. 888-A, determined that “splitting a discrete load is antithetical to the concept of network service” and that transmission customers must choose between NITS/Network or Point-to-Point service.³¹ However, the determinations made in Order No. 888-A³² do not apply here because Amtrak never requested or argued that its load should be split between Point-to-Point and Network Service.³³ Neither Amtrak nor its retail supplier CNE has made any request to PPL, PJM, Safe Harbor, or the Commission to “split” Amtrak’s Pennsylvania load between Network and Point-to-Point Transmission Service. The June 18 Order’s misapprehension and misunderstanding of Amtrak’s arguments demonstrates a lack of reasoned

²⁸ See *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254, 1255-56 (D.C. Cir. 2018) (“*ODEC*”) (explaining that the cost causation principle adds flesh to the bare statutory bones of the FPA’s just and reasonable rate mandate) (citing *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992)) (citations omitted).

²⁹ June 18 Order at P 41 (citing *Fla. Mun. Power Agency v. FERC*, 411 3d. 287, 289 (D.C. Circ. 2005)). In *Fla. Mun. Power Agency*, the D.C. Circuit held that “FERC has failed to explain why network customers should be charged by the transmission provider for network service that the provider is physically constrained from offering.” *Id.* at 293.

³⁰ See June 18 Order at PP 40-44.

³¹ June 18 Order a P 41 (citing Order No. 888-A, 78 FERC ¶ 61,220 at 30,260, 30,262 (1997)).

³² See Order No. 888-A, 78 FERC ¶ 61,220 at 30,257.

³³ See generally Amtrak Complaint, Amtrak July 2019 Answer, and Amtrak August 2019 Answer.

decision-making. Amtrak's Complaint concerns how Amtrak *actually uses* the transmission system and how PPL calculates load values that result in Network Service transmission charges to Amtrak.³⁴ The sole focus of Amtrak's arguments in this proceeding has been on Network Service. Yet, the basis of the June 18 Order's denial of Amtrak's Complaint rests entirely on cases involving Point-to-Point Service and requests by a customer to split its load between two types of transmission service or receive partial load ratio pricing.³⁵

Because the June 18 Order's reliance on Order No. 888-A is misplaced, the June 18 Order's reliance on Order No. 888-A's progeny regarding split load issues in *Transmission Access Policy Study Group v. FERC*³⁶ and *Idaho Power Co.*³⁷ is also misplaced and irrelevant. The June 18 Order explains that the relief sought by Amtrak is analogous to Bonneville Power Administration's ("BPA") attempt in *Idaho Power Co.* to remove certain portions of its load from its load ratio share.³⁸ However, in *Idaho Power Co.*, the BPA had argued certain loads should not be included in its load ratio share during "rare times when [BPA] will need Idaho Power's assistance to serve these loads," and that during those rare times the BPA would "purchase point-to-point transmission service from Idaho Power and pay for any energy imbalance charges incurred during the short time it will take to arrange for the point-to-point transmission service."³⁹ Unlike the BPA, Amtrak is not splitting its load between two types of transmission service or seeking to take Point-to-Point

³⁴ See July 2019 Answer at p. 2.

³⁵ See *Fla. Mun. Power Agency v. FERC*, 411 3d. at 287-88; see June 18 Order at fn. 95 (citing *Idaho Power Co.*, 106 FERC ¶ 61,329 (2004); *Ameren Servs. Co. v. Prairieland Energy, Inc.*, 131 FERC ¶ 61,125 (2010); and *Arizona Pub. Serv. Co.*, 151 FERC ¶ 61,191 (2015)).

³⁶ See June 18 Order at P 41 (citing *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000)). The June 18 Order does not pin cite *Transmission Access Policy Study Group v. FERC* or specifically explain how it applies to Amtrak's complaint, given that Amtrak does not seek to split its load at different delivery points. See *Transmission Access Policy Study Group*, 225 F.3d at 726.

³⁷ See June 18 Order at P 42 (citing *Idaho Power Co.*, 106 FERC ¶ 61,329 (2004)).

³⁸ *Id.* at P 42 (citing *Idaho Power*, 106 FERC ¶ 61,329 at P 14).

³⁹ *Idaho Power*, 106 FERC ¶ 61,329, at P 11.

Service. Unlike the BPA, Amtrak is not seeking to avoid Network Service charges in the rare circumstances where Amtrak actually does use the PPL transmission system.⁴⁰

Amtrak is not contesting the application of NITS charges; rather, it is contending that any NITS charges must be calibrated to reflect Amtrak's actual use of the transmission system.⁴¹ Amtrak has asserted that the relevant calculation for NITS charges on Amtrak's Pennsylvania Load should be based on the Pennsylvania Load's actual use of transmission facilities. In this case, the Pennsylvania Load's actual use of transmission facilities is limited to rare occasional inflows from PPL transmission facilities to Amtrak's Pennsylvania Load. Amtrak seeks a FERC determination that Amtrak should be required to pay NITS charges only for that amount of inflow. Amtrak has not sought any determination that Amtrak should instead receive or pay for a combination of Network Service and Point-to-Point Service. The June 18 Order fails to engage Amtrak's factual assertions – unchallenged by PJM and PPL – that Amtrak's actual use of PPL's transmission facilities is rare, or Amtrak's related arguments that NITS charges should reflect Amtrak's actual use. Indeed, *Idaho Power* requires this analysis. Unlike in the June 18 Order, the Commission in *Idaho Power* evaluated the contesting customer's actual use of the transmission facilities at issue: In *Idaho Power*, the Commission determined that it was clear that the BPA “require[d] the use of Idaho Power transmission facilities to serve its loads at the C Line Pumping Plant near the Black Canyon delivery point and its loads at the First, Second and Third Lift Stations near the Minidoka delivery point.”⁴²

Instead of evaluating Amtrak's actual use of PPL transmission facilities, the June 18 Order embarks on an irrelevant discussion about “split load.” The June 18 Order, *sua sponte*, raises a

⁴⁰ See Amtrak July 2019 Answer at 12-13; Complaint at PP 16, 31-32, 47, 52-53, 61-62.

⁴¹ See Complaint at PP 31, 47, 62 n.39.

⁴² *Idaho Power*, 106 FERC ¶ 61,329, at P 13 (emphasis added).

strawman discussion about “split system” and “split load” and then proceeds to tear down that strawman. While the June 18 Order’s legal conclusions concerning “split system” arguments may well be correct, they do not apply to the factual circumstances or to the legal arguments that Amtrak or any other party advanced in this proceeding. Because it engages in wholly irrelevant analysis – while failing to engage the factual assertions and legal arguments Amtrak actually made – the June 18 Order does not reflect reasoned decision-making.⁴³

b. The June 18 Order Fails to Engage Amtrak’s Cost-Causation Arguments Concerning Amtrak’s Actual Use of PPL’s Transmission System.

During this proceeding, Amtrak argued that the calculation for Amtrak’s PPL-related transmission/NSPL obligation must adhere to well-established principles of cost-causation.⁴⁴ The cost-causation principle requires that “all approved rates reflect to some degree, the costs actually caused by the customer who must pay them.”⁴⁵ The Commission’s long-standing policy requires rates to be “cost supported.”⁴⁶ Compliance with the cost-causation principle is evaluated by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.⁴⁷ Amtrak explained that PPL did not calculate Amtrak’s transmission obligation for

⁴³ *Sacramento*, 616 F.3d at 528; *Midwest ISO Transmission Owners*, 373 F.3d at 1368 (quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

⁴⁴ Complaint at P 62 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 at P 622 (2011) (“Order No. 1000”), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014)); *see also Illinois Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009); *El Paso Elec. Co. v. FERC*, 832 F.3d 495, 504-505 (5th Cir. 2016); *Old Dominion Elec. Coop. v. FERC*, 898 F.3d 1254 (D.C. Cir. 2018) (“ODEC”).

⁴⁵ *Midwest ISO Transmission Owners*, 373 F.3d at 1368 (citing *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992)); *Transmission Access Policy Study Group*, 225 F.3d at 708; *Pac. Gas & Elec. Co. v. FERC*, 373 F.3d 1315 (D.C. Cir. 2004).

⁴⁶ *Gulf South Pipeline Co., LP v. FERC*, 955 F.3d 1001, 1009 (D.C. Cir. 2020); *Ala. Elec. Co-op., Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982).

⁴⁷ *Gulf South Pipeline Co., LP*, 955 F.3d at 1009; *Midwest ISO Transmission Owners*, 373 F.3d at 1368; *Alabama Elec. Coop.*, 684 F.2d at 27; *see also Transcontinental Gas Pipe Line Corp.*, 161 FERC ¶61,012 at P. 22 (2017); *Northwest Pipeline Corp.*, 69 FERC ¶61,359 at p 62,338 (1994). In applying the cost causation principle, the burden must match the benefit. *BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 268 (D.C. Cir. 2014).

Amtrak's Pennsylvania Load served by the Conestoga Substation based on the actual use by Amtrak's Pennsylvania Load of PPL's transmission facilities. Instead, Amtrak has been charged transmission costs based on net flows into the Conestoga Substation, even though those flows use no PPL transmission facilities except on rare occasions.⁴⁸ Instead of measuring flow on PPL's transmission facilities during these rare occasions, for purposes of assessing transmission fees to Amtrak, PPL measures flow directly from Safe Harbor to the Conestoga Substation even when those flows do not use, and are incapable of using, PPL transmission facilities.⁴⁹

The June 18 Order fails to consider, let alone evaluate, PPL's unjust and unreasonable metering practices. Specifically, Amtrak explained that, instead of basing Amtrak's transmission obligations on any *inflows* of power to Amtrak from the Manor Substation, PPL's nearest transmission facility to the Conestoga Substation, PPL calculates Amtrak's transmission obligation based on the *outflows* of power from Conestoga to the Pennsylvania Load exclusively on Amtrak-owned lines.⁵⁰ Because the power that flows out from the Conestoga Substation to the Pennsylvania Load never crosses any PPL-owned transmission (except on rare occasions, which are addressed elsewhere), the use of metering that measures these outflows dramatically overstates Amtrak's transmission obligation and results in unjust and unreasonable transmission charges that do not reflect Amtrak's actual use of the PPL transmission system.⁵¹ The June 18 Order did not engage, much less address, Amtrak's arguments that this metering decision is manifestly unjust,

⁴⁸ See Complaint at P 16.

⁴⁹ See *id.* at P 16.

⁵⁰ See *id.* at P 80.

⁵¹ *Id.*

unreasonable, and unduly discriminatory, and that Amtrak should only be charged for actual use of PPL's transmission facilities, consistent with cost-causation principles.⁵²

Instead of assessing Amtrak's use of transmission facilities during the relevant peak hours that PPL uses for that purpose, PPL calculates Amtrak's transmission obligation based on readings from four reversible retail meters installed on the 13.2 kV side⁵³ of the transformers at the Conestoga Substation that measure power flows across Amtrak's own transmission lines to Amtrak's Pennsylvania Load at Parkesburg, Pennsylvania and Royalton, Pennsylvania.⁵⁴ Instead of metering load flowing from PPL's transmission system and onto Amtrak's facilities at the Conestoga Substation, PPL meters power flowing across distribution facilities that were owned by PPL but are now owned by Amtrak and across facilities that are otherwise, and always have been, owned by Amtrak.⁵⁵ As a result, PPL charges Amtrak for transmission of power that never flows over any PPL transmission facilities. The PPL-related transmission charges to Amtrak (which have exceeded \$12.5 million in total and amount to approximately \$1 million per year⁵⁶) are unjust and unreasonable because PPL does not provide transmission service to Amtrak in the manner by which Amtrak is billed for transmission service.⁵⁷ PPL's metering and billing approach is not

⁵² The June 18 Order recited Amtrak's arguments when describing Amtrak's Complaint in the outset of the order. *See* June 18 Order at PP 4-9. However, the June 18 Order entirely failed to address those arguments when rendering its determination on Amtrak's Complaint. As a result, the order is arbitrary and capricious and does not reflect reasoned decision-making.

⁵³ The point of interconnection among Safe Harbor, PPL, and PJM is the 13.2 kV busbar situated between Safe Harbor's generating facilities and the transformers at Amtrak's Conestoga Substation. June 18 Order at P 4.

⁵⁴ *See* Complaint at P 36. In its Complaint, Amtrak further explained that, if Amtrak receives more power from Safe Harbor than Amtrak needs, the 13.2 kV power received from Safe Harbor flows back through one or more of those four meters and is registered as "received" on PPL's meter data. The "received" values are netted against the "delivered" values on each meter, for the same time period, to produce a net number. Amtrak explained that the net number appears to inappropriately feed into PPL's calculation of the transmission obligation for Amtrak. *Id.*

⁵⁵ Amtrak July 2019 Answer at p. 4. Amtrak further explained that Amtrak's service at Royalton and Parkesburg, Pennsylvania has no direct connections to PPL's transmission facilities; the only connection is the indirect connection through Safe Harbor. *Id.*

⁵⁶ *See* Complaint at P 76; Amtrak August 2019 Answer at p. 2.

⁵⁷ Amtrak July 2019 Answer at p. 4.

“cost supported.”⁵⁸ Under cost-causation principles, Amtrak must be required to pay NITS charges only for the full amount of inflows of electricity from PPL *transmission* facilities to Amtrak’s Pennsylvania Load. Only that outcome would ensure that the costs assessed against Amtrak are roughly commensurate to the benefits drawn, and the costs caused, by Amtrak.⁵⁹

Amtrak further explained that the metering approach employed by PPL for Amtrak at the Conestoga Substation differs from the metering approach employed by PPL for other retail customers in the PPL zone.⁶⁰ Amtrak asserted that PPL provides no basis for its discriminatory approach in metering and assessing transmission obligations.⁶¹ The lack of transparency regarding PPL’s application of its NSPL methodology to Amtrak allows for the ongoing perpetuation of discrimination against Amtrak (and any other customers).⁶² To avoid such unduly discriminatory treatment, Amtrak explained that “the metered inflows at the Manor Substation during the relevant peak hours, net of any consumption of those inflows by Safe Harbor as the power traverses the Safe Harbor facilities, should be the starting point for the calculation of any PPL transmission service charges to be assessed to Amtrak.”⁶³ The inflows of electricity from PPL’s Manor Substation must then be netted by the amount of power that is metered by Baltimore Gas & Electric (“BGE”) at the Conestoga Substation and subject to BGE transmission charges,⁶⁴ to avoid

⁵⁸ See *Gulf South Pipeline Co., LP v. FERC*, 955 F.3d 1001, 1009 (D.C. Cir. 2020); *Ala. Elec. Co-op., Inc. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982).

⁵⁹ See *Illinois Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009); *Gulf South Pipeline Co., LP*, 955 F.3d at 1009; *BNP Paribas Energy Trading GP*, 743 F.3d at 268; *Midwest ISO Transmission Owners*, 373 F.3d at 1368; *Ala. Elec. Coop.*, 684 F.2d at 27.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See *Tennessee Gas Pipeline*, 147 FERC P 61,196 at P 59 (June 10, 2014) (explaining that a lack of transparency in service agreements can “make it more difficult to detect undue discrimination by inhibiting interested customers from easily tracking and understanding all agreement provisions”).

⁶³ Complaint at P 81.

⁶⁴ If power is consumed at Safe Harbor, the inflows from Manor must also be netted by the amount of power consumed by Safe Harbor.

unlawful “rate pancaking” (*i.e.*, the stacking or accumulation of charges for transmission service from multiple providers).⁶⁵ The June 18 Order entirely failed to address Amtrak’s argument on rate pancaking and rate discrimination by PPL and PJM at the Conestoga Substation.

In its Complaint, Amtrak explained that, on rare occasions, it is electrically possible that Amtrak could draw power from the PPL Manor Substation and through the Safe Harbor infrastructure to serve Amtrak’s Pennsylvania Load, and that Amtrak should pay a NITS charge to reflect such occasional use.⁶⁶ Specifically, when the Safe Harbor hydro-electric generating units are incapable of meeting Amtrak’s demand, power may flow in through the PPL Manor Substation on either PPL Circuit 2302, a 230-kV Line, or on PPL spans 692 and 693, which are 69-kV lines.⁶⁷ That power, net of any consumption by Safe Harbor as it flows through and across Safe Harbor-owned facilities, goes through Safe Harbor’s 60 hertz-to-25 hertz frequency converter, known as FC 27, before reaching Amtrak’s Conestoga Substation.⁶⁸ During such a rare occasion, Amtrak’s transmission obligation – its NSPL – could be impacted if the power was drawn during the single peak hour that the PJM Tariff prescribes, or the five peak hours that PPL actually purports to use, to calculate transmission obligations for retail customers in the PPL Zone.⁶⁹ Retail customers’ actual transmission usage coincident with the peak hour or five peak hours each year is used to determine the burden that customers are placing on the transmission system and, thus, is used to calculate customers’ annual responsibility to pay for the transmission system.

⁶⁵ See Complaint at P 81 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 63,049, modified by, July 23, 2003 Order, 104 FERC ¶ 61,105 at P 35, order on reh’g, 105 FERC ¶ 61,212 (2003)).

⁶⁶ *Id.* at PP 31, 47, 62, n. 39.

⁶⁷ *Id.* at P 32(c), Exhibit C (Diagram of the Safe Harbor configuration).

⁶⁸ *Id.*

⁶⁹ *Id.* at P 62 n.39.

The June 18 Order fails to address those arguments that Amtrak’s actual use of the transmission facilities should be based on Amtrak’s consumption during the relevant peak periods. Because the inflow of electricity from PPL’s Manor Substation is the only means for Amtrak’s Pennsylvania Load to use any PPL transmission facilities, the relevant measurement for calculation for Amtrak’s transmission obligation, for the purpose of assessing any applicable NITS charges, is the inflow at the Manor Substation that is attributable to Amtrak during the applicable peak hours.⁷⁰ The applicable cost allocation methodology would thus be the 1 Coincident Peak (“1 CP”) methodology under Section 34.1 of PJM’s Tariff or potentially the 5 CP zonal methodology under PPL’s *unfiled* NSPL methodology. By ignoring Amtrak’s actual use of PPL’s transmission facilities and instead underpinning its findings based on an argument to “split” Amtrak’s load between NITS and Point-to-Point service (an argument that Amtrak never made and a billing arrangement that Amtrak never requested), the June 18 Order is arbitrary and capricious and should be modified to be in accordance with cost-causation principles.

2. The June 18 Order Errs By Excusing PPL’s Failure To File Its NSPL Methodology with the Commission And, Thus, PPL’s Violation of the FPA.

In the June 18 Order, the Commission held that it “has jurisdiction over the matters raised in [Amtrak’s] complaint.”⁷¹ Specifically, the June 18 Order determined that the Commission has jurisdiction over the NITS charges and the related PPL methodology for determining NSPL contributions, both of which Amtrak challenges in the Complaint.⁷² The June 18 Order also concluded that Amtrak had the right under Sections 206 and 306 of the FPA to file a complaint challenging the assessment of NITS charges by PJM and PPL.⁷³ Despite those jurisdictional

⁷⁰ Amtrak July 2019 Answer at p. 4-5.

⁷¹ June 18 Order at P 34.

⁷² *Id.*

⁷³ June 18 Order at P 35 (citing 16 U.S.C. § 824e and 16 U.S.C. § 825e).

findings, the June 18 Order concluded that PPL did not violate the FPA by failing to file with FERC its methodology to calculate a customer's NSPL. The June 18 Order concludes that the filing of the methodology is "voluntary and not required by PJM."⁷⁴ Yet, an NSPL methodology significantly affects FERC-jurisdictional rates, terms, and conditions. PPL's nontransparent and unfiled application of its NSPL methodology resulted in a transmission obligation for the load-serving entity serving Amtrak's Pennsylvania Load that results in approximately \$1 million per year of transmission charges being assessed to Amtrak, despite Amtrak's lack of use of, and its non-reliance on, PPL's transmission facilities. The June 18 Order reflects a lack of reasoned decision-making by reaching a finding that the Commission may and will exercise jurisdiction over the transmission obligation calculation for Amtrak's Pennsylvania Load, but then contradictorily excusing PPL's failure to file the transmission obligation calculation methodology on the grounds that the filing of the transmission rate methodology at issue is "voluntary."⁷⁵

a. Practices and Terms That Affect FERC-Jurisdictional Rates, Such as PPL's NSPL Methodology, Must Be Filed with the Commission.

Under the Federal Power Act, practices affecting rates, terms, and conditions of jurisdictional service must be filed with the Commission.⁷⁶ In *New York v. FERC*, the United States Supreme Court confirmed FERC's jurisdiction over retail transmission service.⁷⁷ If FERC is assuming full jurisdiction over NSPL methodologies as the June 18 Order suggests, then FERC *must* require the filing of all NSPL methodologies with the Commission, and the most logical and

⁷⁴ June 18 Order at P 45.

⁷⁵ *See id.*

⁷⁶ *See* 16 U.S.C. §§ 824e, 825e; *see FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 766-768 (U.S. 2016).

⁷⁷ 535 U.S. 1, 18-20 (2002). The Court further explained, that unlike some limitations on FERC's jurisdiction with respect to the sale of electricity at wholesale, "FERC's jurisdiction over electricity *transmissions* contains no such limitation." *Id.* at 19-20. Amtrak raised these arguments in its Complaint. *See* Complaint at P 65.

transparent codification of those methodologies would be Attachment M-2 of PJM’s Tariff.⁷⁸ The FPA requires that every public utility file with FERC and “keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges...”⁷⁹

Per the Commission’s Rule of Reason, the material details of “a matter that significantly affects rates and services,” – such as the NSPL methodology that serves as the sole basis for determining the quantity of Network Transmission Service for which customers will be charged – must be expressed in the FERC-jurisdictional tariff.⁸⁰ The D.C. Circuit has explained that utilities need to file “those practices that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous.”⁸¹ The NSPL methodology is reasonably susceptible of specification, as other transmitting utilities provide their methodology in Attachment M-2 in PJM’s Tariff.⁸² Importantly, each utility’s Attachment M-2 methodology is typically only a few pages in length⁸³ and provides clarity and transparency as to the calculations

⁷⁸ See Complaint at PP 66-78 (arguing that PPL violated the PJM Tariff and has been unlawfully assessing transmission charges to Amtrak); see also Amtrak July 2019 Answer at p. 7-11 (arguing that PPL must be accountable for its calculation methodology and its failure to file the methodology at FERC or the PA PUC).

⁷⁹ 16 U.S.C. § 824d(c).

⁸⁰ *Coalition of MISO Transmission Customers v. Midcontinent Indep. Sys. Operator, Inc.*, 157 FERC ¶ 61,182 at P 54 (Dec. 6, 2016) (citing *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985)); *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171, at P 80 (2012); *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61, 271, at P 16-17 (2008) (stating that “provisions significantly affecting rates, terms and conditions of service . . . must be filed for Commission approval.”); see also, *Public Serv. Comm’n of N.Y. v. FERC*, 813 F.2d 448, 454 (D.C. Cir. 1987) (determining that the Commission properly excused utilities from filing policies or practices of no practical significance to customers).

⁸¹ *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985).

⁸² See June 18 Order at P 45 (explaining that many transmission owners have filed their NSPL methodologies in Attachment M-2 to the PJM Tariff).

⁸³ See PJM Tariff, Attachment M-2 (providing methodologies for Allegheny Power Systems, American Transmission Systems, Inc., Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison,

that underpin electric utility bill inputs for customers, including NITS charges, that are not always readily transparent or clear from the terms and conditions of an electric service/supply contract or invoice. Silence in the Tariff as to a system operator’s practice (such as allowing the provision of Attachment M-2 methodologies to be voluntary) does not make such a practice reasonable or permissible.⁸⁴

The June 18 Order never suggests that the NSPL methodology does not significantly affects FERC-jurisdictional rates. Instead, the June 18 Order concludes that, relying primarily on the *Duke Ohio* case,⁸⁵ PPL is not required to file its NSPL methodology with the Commission as “such a filing is voluntary and not required by PJM.”⁸⁶ In *Duke Ohio*, the Commission, in referring to Duke Ohio’s NSPL methodology filing, noted that “Duke Ohio is voluntarily submitting its Attachment M-2 for filing with the Commission, since PJM’s tariffs, agreements, or manuals do not require it to do so.”⁸⁷ The Commission further explained that, while the electric distribution companies and transmission owners “are required to provide the values of these parameters [for capacity and transmission obligations] to PJM, PJM does not provide specific guidelines with respect to the level of detail that EDCs should provide on how the parameters are calculated.”⁸⁸ In a footnote in *Duke Ohio*, the Commission explained that the electric distribution companies and transmission owners may “choose to provide information on their procedures in the appropriate

Delmarva Power and Light Company, Jersey Central Power and Light Company, Metropolitan Edison, Old Dominion Electric Cooperative, PECO Energy, Pennsylvania Electric Company, and Public Service Gas and Electric Company). PPL is one of the few utilities in PJM that does not have an Attachment M-2 on file with the Commission or does not otherwise provide its methodology upon request or with any detail in its state tariff with the Pennsylvania PUC.

⁸⁴ See *Shetek Wind v. MISO*, 138 FERC ¶ 61,250 at P 123 (2012); see also *Neptune Regional Transmission System v. PJM*, 110 FERC ¶ 61,098 at P 25 (Feb. 10, 2005) (explaining that silence on a Tariff issue does not give PJM sole, un-reviewable discretion).

⁸⁵ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,163 (2016) (hereinafter “*Duke Ohio*”).

⁸⁶ June 18 Order at P 45 (citing *Duke Ohio*, 155 FERC ¶ 61,163, at P 15 n.19).

⁸⁷ *Duke Ohio* at P 15.

⁸⁸ *Id.*

state commission tariffs.”⁸⁹ If the filing of NSPL methodologies is voluntary at FERC and should instead be filed in the appropriate state commission tariffs, then the rationale in *Duke Ohio* suggests that state commissions – not FERC – have jurisdiction over NSPL methodologies. However, the June 18 Order concluded that FERC exercises jurisdiction over the NSPL methodology issues raised in Amtrak’s Complaint. Because the June 18 Order exercises such jurisdiction, it logically follows that PPL’s NSPL methodology should have been filed in a FERC-jurisdictional tariff and that FERC has both authority and an obligation to address PPL’s non-transparent application of its methodology to the retail transmission rates challenged by Amtrak in its Complaint.

b. The June 18 Order’s Finding That PJM Retains the Authority to Determine Whether PPL’s NSPL Methodology Should Be Filed with the Commission is an Unlawful Delegation of the Commission’s Authority and Responsibility Under the FPA.

In declining to find that PPL violated the PJM Tariff or the FPA,⁹⁰ or that the PJM Tariff is unjust and unreasonable or otherwise inconsistent with the FPA,⁹¹ the June 18 Order emphasized that the filing of PPL’s NSPL methodology, in the form of an Attachment M-2 to the PJM Tariff, “is not required by PJM.”⁹² Instead of addressing the legal issues raised by Amtrak concerning compliance by PJM and PPL with the FPA and federal appellate court precedent on cost-causation, or the FPA’s filing requirements, the June 18 Order deferred to the lack of such a filing requirement in the PJM Tariff to conclude that the transmission rate methodology does not need to be filed with FERC. The June 18 Order errs in this line of reasoning. The Commission – not PJM – is charged

⁸⁹ *Duke Ohio* at n.19.

⁹⁰ See June 18 Order at P 45.

⁹¹ See *id.* at P 44.

⁹² June 18 Order at P 45 (citing *Duke Ohio* at P 15, n.19).

with administering the Federal Power Act.⁹³ Deferring to PJM to determine whether or not the filing of a transmission rate methodology should be required, or should have been required, by FERC is an unlawful delegation of FERC's statutory authority. As Amtrak argued in this proceeding, application of PJM's Tariff remains subordinate to the requirements of the Federal Power Act.⁹⁴ The D.C. Circuit has explained that, "when Congress has specifically vested an agency with the authority to administer a statute, it may not shift that responsibility to a private actor."⁹⁵ Under the FPA, there is no indication that Congress intended to allow FERC to delegate its authority to set just and reasonable rates to a regional transmission organization such as PJM or any other public utility.⁹⁶ The Commission itself has affirmed that it "cannot delegate its authority to assess the justness and reasonableness of wholesale rates."⁹⁷ The June 18 Order's decision to defer to PJM – a public utility – as to whether PPL – another public utility – must file its NSPL methodology with the Commission is an unlawful delegation of authority. Rehearing is warranted.

c. The June 18 Order Relies Solely on *Duke Ohio* and, As Such, Fails To Examine Prior Commission Precedent Addressing Attachment M-2s in PJM's Tariff.

The Commission has exercised jurisdiction over NSPL methodologies in other cases, but, notwithstanding its finding that the Commission has jurisdiction, the June 18 Order fails to conclude that PPL's NSPL methodology should have been filed. In an order that predated *Duke*

⁹³ See Section 201 of the FPA, 16 U.S.C. § 824(b)(1) (providing FERC with jurisdiction over all facilities for such transmission or sale of electric energy).

⁹⁴ See Amtrak August 2019 Answer at 7-8.

⁹⁵ *Perot v. Federal Election Comm'n*, 97 F.3d 553, 559 (DC. Cir. 1996) (citing *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935)) (explaining that it would be unlawful for Congress to delegate legislative authority to trade or industrial associations or groups).

⁹⁶ See *Cudahy Packing Co. v. Holland*, 315 U.S. 357 (1942) (finding that the legislative history and congressional intent of the statute at issue did not allow for the delegation of power by an administrator in the U.S. Department of Labor).

⁹⁷ *Western Systems Power Pool*, 55 FERC ¶61,495, at p. 62,715 (1991).

Ohio, the Commission held that Attachments M-1 and M-2 of the PJM Tariff govern FERC-jurisdictional services.⁹⁸ In *FirstEnergy*, the Commission determined that it would be unjust, unreasonable, and unduly discriminatory for FirstEnergy to apply Attachments M-1 and M-2 differently to FirstEnergy's affiliates and other entities than FirstEnergy applies them to Old Dominion Electric Cooperative.⁹⁹ The Commission even went as far as concluding that any ambiguities in Attachments M-1 and M-2 should be construed against the utility that drafted the attachment.¹⁰⁰ Unlike *Duke Ohio*, the Commission in *FirstEnergy* issued a comprehensive Order on Initial Decision in a litigated proceeding.¹⁰¹ *FirstEnergy* evidences the Commission's determination that implementation of Attachment M-2 methodologies matter for purposes of determining jurisdictional rates.

In *FirstEnergy*, the Commission applied FPA standards for just, reasonable, and not unduly discriminatory rates to FirstEnergy's application of its PJM Tariff Attachment M-2 methodology. Just as the Commission applied FPA standards to the application of FirstEnergy's NSPL methodology, the Commission should also apply FPA standards to PPL's failure to maintain a transparent NSPL methodology on file with the Commission. PPL's failure to have the material details of its NSPL methodology in Attachment M-2 of the PJM Tariff, or in a PPL-specific FERC-jurisdictional tariff, is a violation of the FPA's filing requirements.¹⁰² And, here, the application of PPL's unfiled and nontransparent methodology was the basis for PJM's assessment of

⁹⁸ See *PJM Interconnection, L.L.C., American Transmission Systems, Inc.*, 153 FERC ¶ 61,216, at P 71 n.144 (2015) (hereinafter ("*FirstEnergy*") (finding that Attachments M-1 and M-2 "address Commission-jurisdictional services taken under the PJM [Tariff]").

⁹⁹ *FirstEnergy* at PP 34-38.

¹⁰⁰ *Id.* at P 37

¹⁰¹ See *id.* at PP 14-16 (explaining that testimony, hearing, and briefing was held on the application of PJM Tariff Attachments M-1 and M-2 to ODEC's load and use of meters to determine capacity and transmission obligations).

¹⁰² See Complaint at PP 64-78; Amtrak July 2019 Answer at p. 7-11.

transmission charges for non-use of transmission facilities. The June 18 Order's determination that FERC has jurisdiction over PPL's NSPL methodology and the issues raised in Amtrak's Complaint, combined with the inescapable conclusion that forcing customers to purchase a certain amount of Network Service materially impacts a customer's total transmission charges, confirms that PPL's NSPL methodology should have been filed with FERC. By not requiring the filing of the PPL NSPL methodology with the Commission, the Commission is enabling the perpetuation of the assessment of transmission charges that has no grounding in the justness and reasonableness obligations imposed by the FPA.¹⁰³

For the foregoing reasons, the June 18 Order's determination that the filing of PPL's NSPL methodology with FERC was and is wholly voluntary is unlawful. Rehearing is warranted.

3. The Commission Should Clarify Whether Its Jurisdiction Over the Calculation And Application of NSPL Is Not Exclusive.

As discussed in the above specification of error, the June 18 Order held that the Commission "has jurisdiction over the matters raised in [Amtrak's] complaint."¹⁰⁴ The June 18 Order determined that the Commission has jurisdiction over the PPL methodology for determining NSPL contributions.¹⁰⁵ The June 18 Order concluded that Amtrak had the right under Sections 206 and 309 of the FPA to file a complaint challenging the assessment of NITS charges by PJM and PPL.¹⁰⁶ However, based on *Duke Ohio*, the June 18 Order determined that the filing of PPL's NSPL methodology with the Commission is voluntary.¹⁰⁷ In citing *Duke Ohio*, the June 18 Order implies that the Commission's jurisdiction over NSPL methodologies may be concurrent with state

¹⁰³ See *Tennessee Gas Pipeline*, 147 FERC P 61,196 at P 59 (June 10, 2014).

¹⁰⁴ June 18 Order at P 34.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at P 35.

¹⁰⁷ *Id.* at P 45 (citing *Duke Ohio*, 155 FERC ¶ 61,163, at P 15 n.19).

utility commission jurisdiction, and not exclusive.¹⁰⁸ In a footnote in *Duke Ohio*, the Commission explained that electric distribution companies and transmission owners may “choose to provide information on their procedures in the appropriate state commission tariffs.”¹⁰⁹ When these two parts of the June 18 Order are read together, they signal that Commission jurisdiction over retail transmission obligations and NSPL methodologies is not exclusive, but, rather, concurrent with state commission authority to review and approve state tariffs that regulate the rates, terms, and services of electric distribution companies or state commission authority pursuant to properly-enacted state laws. In order to square *Duke Ohio* with the June 18 Order’s determination that the Commission has jurisdiction over NSPL methodologies and the issues raised in Amtrak’s complaint, the Commission should clarify whether its jurisdiction over NSPL methodologies is exclusive, or, instead, whether the Commission has concurrent jurisdiction with state commission jurisdiction over retail transmission obligations and NSPL methodologies.

¹⁰⁸ See June 18 Order at P 45 (citing *Duke Ohio* at P 15 n.19).

¹⁰⁹ *Duke Ohio* at n.19.

IV. CONCLUSION

WHEREFORE, the National Railroad Passenger Corporation (Amtrak) respectfully requests that the Commission grant rehearing and clarification of the June 18 Order as set forth herein.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

/s/ Robert A. Weishaar, Jr.

Robert A. Weishaar, Jr.
McNees Wallace & Nurick LLC
1200 G Street, NW, Suite 800
Washington, DC 20005
Phone: (202) 898-0688
bweishaar@mcneeslaw.com

Pamela C. Polacek
Kenneth R. Stark
Jo-Anne S. Thompson
McNees Wallace & Nurick LLC
100 Pine Street
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
ppolacek@mcneeslaw.com
kstark@mcneeslaw.com
jthompshon@mcneeslaw.com

Counsel to National Railroad Passenger
Corporation

Dated: July 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first-class mail, electronic transmission, or hand-delivery the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC this 20th day of July, 2020.

/s/ Robert A. Weishaar, Jr.

Robert A. Weishaar, Jr.
McNees Wallace & Nurick LLC
1200 G Street, NW
Suite 800
Washington, DC 20005
Phone: (202) 898-5700
bweishaar@mcneeslaw.com

ATTACHMENT D

REQUEST FOR ADMISSION AMT-PPL-II-10:

PPL refused to provide Amtrak with Amtrak's interval and demand usage data for Amtrak's PPL accounts.

RESPONSE TO REQUEST FOR ADMISSION AMT-PPL-II-10:

PPL denies that it refused to provide Amtrak with Amtrak's interval and demand usage data for Amtrak's PPL accounts. PPL provided this information on both March 6, 2019 and March 8, 2019. On March 6th, Mike Shafer provided a spreadsheet to Pam Polacek containing hourly interval and demand usage data for April 1, 2017 to December 31, 2017. In addition, on March 8, 2019, Mike Shafer emailed Pam Polacek a spreadsheet which included both the 15 minute and 60 minute data for Amtrak from January 1, 2018 to March 6, 2019. Pam Polacek emailed confirmation that she received the information and indicated she would send it along to her client.