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August 31, 2020

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

VIA ELECTRONIC FILING

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

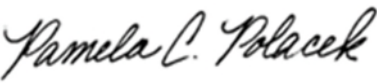
Dear Secretary Chiavetta:

Please find attached for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the National Railroad Passenger Corporation's ("Amtrak") Answer to Motion for Summary Judgment, in the above-referenced proceeding.

As shown by the attached Certificate of Service and per the Commission's March 20, 2020, Emergency Order, all parties to this proceeding are being duly served via email only due to the current COVID-19 pandemic. Upon lifting of the aforementioned Emergency Order, we can provide parties with a hard copy of this document upon request.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek

Counsel to National Railroad Passenger Corporation

Enclosures

cc: Deputy Chief Administrative Law Judge Joel H. Cheskis
Certificate of Service

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CERTIFICATE OF SERVICE

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

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Counsel to the National Railroad Passenger
Corporation

Dated this 31st day of August, 2020, in Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

National Railroad Passenger Corporation	:	
	:	
v.	:	C-2019-3010398
	:	
PPL Electric Utilities Corporation	:	

ANSWER TO MOTION FOR SUMMARY JUDGMENT

AND NOW, the National Railroad Passenger Corporation ("Amtrak"), pursuant to 52 Pa. Code §5.102(b), submits this Answer to the Motion for Summary Judgment filed by PPL Electric Utilities Corporation ("PPL Electric") on July 31, 2020.¹ As explained below, Amtrak requests presiding Administrative Law Judge ("ALJ") Joel H. Cheskis to dismiss the Motion for Summary Judgment as moot because Amtrak filed on August 13, 2020, a Petition to Withdraw its Complaint in the above-captioned matter. In support of hereof, Amtrak states as follows:

1. On May 30, 2019, Amtrak filed a Complaint against PPL Electric Utilities Corp. ("PPL") with the Pennsylvania Public Utility Commission ("PUC" or "Commission") asking the Commission to, among other things, determine that the retail transmission charges assessed to Amtrak by PPL have been and continue to be unjust, unreasonable, and unduly discriminatory.

2. On May 30, 2019, Amtrak filed a Complaint against PPL and PJM Interconnection, L.L.C. ("PJM") with the Federal Energy Regulatory Commission ("FERC"), alleging that the rates that Amtrak is being charged for transmission service through PPL and PJM are unjust, unreasonable, and unduly discriminatory in violation of the Federal Power Act.

¹ Section 5.102(b) of the Commission's regulations establishes a 20-day response period for Answers to Motions for Summary Judgment. At the Prehearing Conference held on July 1, 2020, the parties agreed that Amtrak's response was due by August 31, 2020.

3. Amtrak filed Complaints against PPL at both the Commission and FERC because both commissions have authority and jurisdiction to adjudicate the subject matter of the complaints, and neither commission has exclusive or primary jurisdiction.

4. On June 18, 2020, FERC issued an order ("June 18 Order") denying Amtrak's Complaint.²

5. On July 20, 2020, Amtrak filed a Request for Rehearing of the June 18 Order, arguing, among other things, that the June 18 Order failed to address Amtrak's cost-causation arguments and permitted a rate outcome that is, and has been, unjust, unreasonable, unduly discriminatory, and preferential. Amtrak also asserted that FERC did not evaluate PPL's failure to file its Network Service Peak Load ("NSPL") methodology with FERC and failed to evaluate PPL's non-transparent metering practices and non-transparent application of its NSPL methodology to Amtrak's retail transmission obligations.

6. In the Request for Rehearing of the June 18 Order, Amtrak also requested FERC clarify that its jurisdiction over the calculation and application of NSPL is concurrent. The actions by FERC and the PUC in both complaint proceedings indicate that concurrent jurisdiction exists between FERC and the PUC with respect to retail transmission obligations and the issues raised in Amtrak's complaints.

7. On August 13, 2020, Amtrak submitted to the PUC a Petition to Withdraw its Complaint, seeking to withdraw the pending proceeding without prejudice.

8. As of August 31, 2020, PPL Electric has not responded to Amtrak's Petition to Withdraw Complaint.

² "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").

9. Due to Amtrak's willingness to withdraw its Complaint at the PUC, PPL's Motion for Summary Judgment is moot. There is no "case or controversy" for the Commission to adjudicate at this time. The Supreme Court of Pennsylvania has provided that "a case is moot if there is no actual case or controversy in existence at all stages of the controversy." *Phila. Pub. Sch. Notebook v. Sch. Dist. of Phila.*, 49 A.3d 445, 448 (Pa. Commw. Ct. 2012) (citing *Pap's A.M. v. City of Erie*, 812 A.2d 591, 600 (2002) ("an actual case or controversy must be extant at all stages of review, not merely at the time the complaint is filed"))).

10. In addition, if the Commission were to reach the merits of PPL's Motion for Summary Judgment, it should be denied because the June 18 Order is not final and is not unappealable. As noted by PPL's Motion for Summary Judgment, Amtrak pursued rehearing of the June 18 Order. On August 20, 2020, FERC issued the attached *Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration*, indicating that the rehearing request will be addressed in a future order, where FERC "may modify or set aside [the June 18 Order] in whole or in part, in such manner as it shall deem proper." In addition, FERC's August 20 Notice removes any procedural bar to, and begins the 60-day time period for, Amtrak filing a petition for review with the United States Court of Appeals for the District of Columbia Circuit or another United States Court of Appeals that has jurisdiction over this matter. The issues that PPL categorizes as having been decided by the FERC, including cost-causation and the extent of the PUC's concurrent jurisdiction over this dispute, are not fully decided and are not unappealable.

11. Because PPL's Motion for Summary Judgment is moot due to Amtrak's request to withdraw the PUC Complaint, Amtrak respectfully requests that it be dismissed.


12. If the Commission denies Amtrak's unopposed Petition to Withdraw its Complaint, PPL's Motion for Summary Judgment will no longer be moot. In such event, Amtrak respectfully

requests the opportunity to supplement this Answer to more fully address why summary judgment is inappropriate at this time.

CONCLUSION

WHEREFORE, Complainant National Railroad Passenger Corporation hereby requests that the Presiding Administrative Law Judge dismiss PPL Electric's Motion for Summary Judgment as moot.

Respectfully submitted,

By 
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Dated: August 31, 2020

172 FERC ¶ 62,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

National Railroad Passenger Corporation

Docket No. EL19-78-001

v.

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

NOTICE OF DENIAL OF REHEARING BY OPERATION OF LAW AND
PROVIDING FOR FURTHER CONSIDERATION

(August 20, 2020)

Rehearing has been timely requested of the Commission's order issued on June 18, 2020, in this proceeding. *Nat'l R.R. Passenger Corp. v. PPL Elec. Utils. Corp. and PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,237 (2020). In the absence of Commission action on the request for rehearing within 30 days from the date the request was filed, the request for rehearing (and any timely requests for rehearing filed subsequently)¹ may be deemed denied. 16 U.S.C. § 825l(a) (2018); 18 C.F.R. § 385.713 (2019); *Allegheny Defense Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc).

As provided in 16 U.S.C. § 825l(a) (2018), the rehearing request of the above-cited order filed in this proceeding will be addressed in a future order to be issued consistent with the requirements of such section. As also provided in 16 U.S.C. § 825l(a), the Commission may modify or set aside its above-cited order, in whole or in part, in such manner as it shall deem proper. As provided in 18 C.F.R. § 385.713(d), no answers to the rehearing request will be entertained.

Kimberly D. Bose,
Secretary.

¹ See *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs. Into Mkts. Operated by Cal. Indep. Sys. Operator & Cal. Power Exch.*, 95 FERC ¶ 61,173 (2001).