

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 Royalton 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”).