

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

National Railroad Passenger Corporation

Docket No. EL19-78-001

v.

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

ORDER DENYING CLARIFICATION AND ADDRESSING ARGUMENTS RAISED  
ON REHEARING

(Issued October 15, 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)<sup>1</sup> and Rule 206 of the Commission's Rules of Practice and Procedure<sup>2</sup> against PPL Electric Utilities Corporation (PPL) and PJM Interconnection, L.L.C. (PJM) alleging that PPL-related charges for Network Integration Transmission Service (NITS) are unjust, unreasonable, and unduly discriminatory, and that PJM, which administers the PJM Open Access Transmission Tariff (PJM Tariff), has not prevented such actions. On June 18, 2020, the Commission issued an order denying the complaint.<sup>3</sup> On July 20, 2020, Amtrak filed a request for rehearing and clarification of the Complaint Order.
2. Pursuant to *Allegheny Defense Project v. FERC*,<sup>4</sup> the rehearing request filed in this proceeding may be deemed denied by operation of law. As permitted by section 313(a)

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e, 825h.

<sup>2</sup> 18 C.F.R. § 385.206 (2020).

<sup>3</sup> *Nat'l R.R. Passenger Corp. v. PPL Elec. Utils. Corp.*, 171 FERC ¶ 61,237 (2020) (Complaint Order).

<sup>4</sup> 964 F.3d 1 (D.C. Cir. 2020) (en banc).

of the FPA,<sup>5</sup> however, we are modifying the discussion in the Complaint Order and continue to reach the same the result in this proceeding, as discussed below.<sup>6</sup>

## **I. Background**

3. Constellation NewEnergy, Inc. (CNE) provides electric supply to Amtrak at the Conestoga Substation, which is used for the primary purpose of serving Amtrak.<sup>7</sup> The Conestoga Substation maintains a point of interconnection with Safe Harbor, a hydro-electric generation facility, 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.<sup>8</sup> According to Amtrak, on rare occasions when the energy generated by Safe Harbor is incapable of meeting Amtrak's demand, energy flows onto Amtrak-owned transmission lines through PPL's Manor Substation on PPL transmission lines, across Safe Harbor's frequency converter and into the Conestoga Substation.<sup>9</sup> Based on transmission obligation calculations determined by PPL and PJM, CNE is billed by PJM for NITS and passes through a share of those NITS charges to Amtrak based on Amtrak's share of CNE's total load.

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<sup>5</sup> 16 U.S.C. § 825l(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

<sup>6</sup> *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Complaint Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

<sup>7</sup> Power needed by Amtrak flows through the Conestoga Substation to serve Amtrak's rail system at Parkesburg and Royalton in Pennsylvania (Pennsylvania Loads), and at Perryville in Maryland. Amtrak owns the three transmission lines that move the power from the Conestoga Substation to Parkesburg and Royalton. Four transmission lines serve Amtrak at Perryville in Maryland, with PPL owning the lines from the Conestoga Substation to the Maryland border, and Baltimore Gas & Electric Company (BGE) owning the transmission lines in Maryland. See Complaint Order, 171 FERC ¶ 61,237 at PP 3-4 n.9

<sup>8</sup> *Id.* P 3. The Complaint Order contains further detail on the physical configuration of the relevant facilities, which we will not repeat here.

<sup>9</sup> *Id.* P 4.

4. In its complaint, Amtrak argued that, based on principles of cost causation, the PPL-calculated transmission obligation should be zero with respect to energy delivered from Safe Harbor to the Conestoga Substation because no PPL transmission facilities were being used to deliver that energy. Amtrak claimed that its transmission obligation should instead be based only on inflows of power to Amtrak from the Manor Substation, net of any outflows through the four lines that transmit power from the Conestoga Substation.<sup>10</sup> Amtrak argued that, as a result of PPL's allegedly improper billing and metering practices, Amtrak is owed refunds, including interest, of approximately \$12.5 million for NITS charges dating back to December 2, 2002.<sup>11</sup>

5. In denying the complaint, the Commission concluded that Amtrak is appropriately being charged NITS under the PJM Tariff for its entire load because Amtrak's load has been designated as Network Load and is being served by the output of Safe Harbor, a designated Network Resource.<sup>12</sup> As relevant to this rehearing request, the Commission also rejected Amtrak's argument that PPL's methodology for calculating individual customer transmission obligations, or Network Service Peak Load, was required to have been included in the PJM Tariff.<sup>13</sup>

6. On July 20, 2020, Amtrak filed its request for rehearing and clarification of the Complaint Order. On August 4, 2020, PPL filed a motion for leave to answer and answer.

## II. Discussion

### A. Procedural Matters

7. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2020), prohibits an answer to a request for rehearing. Accordingly, we deny PPL's motion to answer and reject PPL's answer to Amtrak's rehearing request.

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<sup>10</sup> *Id.* PP 6-8.

<sup>11</sup> Complaint at 33.

<sup>12</sup> Complaint Order, 171 FERC ¶ 61,237 at P 39. *See* PJM, Intra-PJM Tariffs, OATT 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”).

<sup>13</sup> Complaint Order, 171 FERC ¶ 61,237 at P 45.

**B. Cost Causation****1. Rehearing Request**

8. Amtrak alleges that the Commission failed to address Amtrak's cost causation arguments and instead mischaracterized those arguments as pertaining to an "irrelevant scenario about split load."<sup>14</sup> Amtrak maintains that it has neither argued nor requested to split its load between point-to-point service and network service.<sup>15</sup> Without disputing the Commission's underlying legal conclusions,<sup>16</sup> Amtrak views the Commission's split load discussion as a "strawman" that fails to engage in Amtrak's argument for why NITS should be based on Amtrak's actual use, or in this case non-use, of the PPL transmission system.<sup>17</sup> Amtrak continues to argue in its rehearing request that NITS should be calibrated such that Amtrak would be charged NITS only for the "rare occasional inflows" on PPL transmission facilities from the Manor Substation.<sup>18</sup>

9. Amtrak argues that the Complaint Order failed to consider and evaluate PPL's allegedly unjust and unreasonable metering practices. In Amtrak's view, its transmission obligations should be based on inflows of power from the Manor Substation rather than on outflows of power from the Conestoga Substation, which serve Amtrak's Pennsylvania Load.<sup>19</sup> Under this practice, Amtrak argues that it is unreasonably being charged PPL-related NITS for service that never flows over any PPL transmission facilities. Amtrak argues that this metering and billing approach is not "cost supported" and is inconsistent with cost causation principles.<sup>20</sup>

10. Amtrak also alleges that the Complaint Order failed to address its allegations of "rate pancaking" (i.e., the stacking or accumulation of charges for transmission service from multiple providers) and rate discrimination. Amtrak maintains that PPL's metering

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<sup>14</sup> Rehearing Request at 7-8.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 9 ("While the June 18 Order's legal conclusions regarding 'split system' arguments may well be correct, they do not apply to the factual circumstances or to the legal arguments . . . in this proceeding.").

<sup>17</sup> *Id.* at 10-11.

<sup>18</sup> *Id.* at 10.

<sup>19</sup> *Id.* at 12.

<sup>20</sup> *Id.* at 14.

approach differs from the metering approach employed by PPL for other retail customers.<sup>21</sup> In Amtrak's view, the metered inflows at the Manor Substation during the relevant peak hours should be "the starting point for the calculation of any PPL transmission service charges" and that these charges must then be netted by the amount of power that is metered by BGE at the Conestoga Substation to avoid unlawful pancaking.<sup>22</sup>

## 2. Commission Determination

11. We are unpersuaded by Amtrak's arguments on rehearing, and we sustain the Commission's determination in the Complaint Order that Amtrak is seeking transmission services that are inconsistent with the PJM Tariff and Commission policy.<sup>23</sup>

12. At the outset, we note that Amtrak does not challenge as unjust and unreasonable the PJM Tariff requirements for calculating Network Load, pursuant to which loads that are served by a Network Resource will pay Network Service charges.<sup>24</sup> Amtrak also does not dispute that its load has been designated as Network Load, which is served by the output of Safe Harbor, a designated Network Resource. What Amtrak seeks to do is carve out from network service charges the power supplied by Safe Harbor. Such an outcome is impermissible under the PJM Tariff and inconsistent with the nature of NITS.<sup>25</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 14-15.

<sup>23</sup> Complaint Order, 171 FERC ¶ 61,237 at P 36.

<sup>24</sup> *See id.* PP 37-38 (citing Intra-PJM Tariffs, OATT, 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." PJM, Intra-PJM Tariffs, OATT, Network Load (0.0.0), § 31.1.

<sup>25</sup> One of the significant benefits of NITS is that 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

13. Amtrak characterizes the load splitting discussion from the Complaint Order as evidencing a “misapprehension and misunderstanding” of Amtrak’s arguments.<sup>26</sup> We disagree with Amtrak’s characterization. The Commission accurately recognized Amtrak’s fundamental argument, as reiterated in its rehearing request,<sup>27</sup> that Amtrak should not be charged for NITS for its Pennsylvania Loads if the power Amtrak is supplied does not flow across PPL’s transmission facilities.<sup>28</sup> Similar to the case where utilities have sought to “split load” by designating only part of their load as network load, Amtrak seeks the ability to select when it will use and pay for NITS (i.e., only when inflows occur through PPL’s Manor Substation).<sup>29</sup> As explained in the Complaint Order in the context of split load, such selectivity as it pertains to NITS is prohibited under Commission precedent and the PJM Tariff.<sup>30</sup>

14. As compared to other forms of service, “network service allows more flexibility... 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.”<sup>31</sup> This flexibility is the reason that the

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supply all of the customer’s load at any given moment. *Fla. Mun. Power Agency v. FERC*, 411 F.3d 287, 289 (D.C. Cir. 2005); *see also infra* at P 14.

<sup>26</sup> Rehearing Request at 8.

<sup>27</sup> *See* Complaint at 24 (“Under established principles of cost causation, Amtrak’s PPL-related transmission obligation should be zero, because no PPL transmission facility delivers power to Conestoga and PPL transmission facilities are rarely used to serve Amtrak”); Rehearing Request at 10 (seeking a determination that Amtrak should be required to pay NITS charges only for inflows from PPL transmission facilities).

<sup>28</sup> Complaint Order, 171 FERC ¶ 61,237 at P 36.

<sup>29</sup> *See* Complaint at 34, sub para. (e) (requesting that the Commission order PPL to calculate Amtrak’s transmission obligation based only on any inflows of power from the Manor Substation).

<sup>30</sup> Complaint Order, 171 FERC ¶ 61,237 at PP 40-42 (citing *Fla. Mun. Power Agency v. FERC*, 411 F.3d at 289; *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000); *Idaho Power Co.*, 106 FERC ¶ 61,329 (2004)).

<sup>31</sup> *Fla. Mun. Power Agency v. FERC*, 411 F.3d at 289 (quoting *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, at 21,547 n.65 (1996), *order on reh’g*, 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),

Commission has rejected cost causation arguments made by entities, like Amtrak, that have sought selectivity in their use of NITS.<sup>32</sup> Amtrak's cost causation arguments similarly fail because the assessment of NITS is not based on actual use over a particular transmission path, but rather based on the network customer's right to use the entire system.<sup>33</sup> In exchange for the ability to obtain power from Safe Harbor and through the Manor Substation when power from Safe Harbor is insufficient, Amtrak must pay all the PPL-determined NITS charges that are billed to CNE and then passed through to Amtrak for its use of PJM network service. As the Commission noted in the Complaint Order, "[t]hat is what it means to take and rely on network service."<sup>34</sup> Accordingly, we conclude that Amtrak is appropriately being charged PPL-related NITS regardless of the frequency with which Amtrak obtains power through the Manor Substation.

15. We also continue to find that Amtrak failed to satisfy its burden under FPA sections 206 and 306 to show that its rates are unduly discriminatory.<sup>35</sup> In connection with its cost causation arguments, Amtrak maintains 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.<sup>36</sup> This allegation

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*aff'd in relevant part sub nom. Transmission Access Policy Study Group*, 225 F.3d 667, *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

<sup>32</sup> Complaint Order, 171 FERC ¶ 61,237 at P 41.

<sup>33</sup> As noted in the Complaint Order, in Order No. 890, the Commission rejected cost causation arguments from commenters that had complained about paying network service costs for instances in which they do not rely on the transmission provider's system. *Id.* P 42 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 119 FERC ¶ 61,119, *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)). The Commission explained 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). *Id.* (citing Order No. 890, 119 FERC ¶ 61,119 at PP 1,619).

<sup>34</sup> *Id.* P 43. To the extent Amtrak believes it is not relying on PPL to meet its transmission needs, it should modify the type of transmission service it uses.

<sup>35</sup> *Id.* P 33.

<sup>36</sup> Rehearing Request at 14; *see also* Complaint at 28-29.

is unsupported and fails to recognize the fact that PPL calculates the peak load contributions of all suppliers serving retail customers in the same manner.<sup>37</sup>

16. Amtrak's related argument that PPL's metering practices result in unlawful rate pancaking is similarly unavailing.<sup>38</sup> Amtrak argues that, to avoid such rate pancaking, the inflows of electricity from PPL's Manor Substation must be netted by the amount of power that is metered at BGE. Similar to its undue discrimination argument addressed above, this argument assumes that the assessment of NITS should be limited to certain inflows from the Manor Substation. As we have discussed above and in the Complaint Order, the assessment of NITS is not based on actual use over a particular transmission path, but rather based on the network customer's right to use the entire system. Amtrak's allegation of rate pancaking is also unsupported. First, Amtrak provides no evidence to support its assertion that PPL's metering practices result in unlawful rate pancaking. Second, Amtrak's contention is contradicted by its own admissions in its complaint. In the complaint, Amtrak stated that "consistent with the [PJM Consolidated Transmission Owners Agreement] and the Commission's prohibition against rate pancaking, Amtrak is charged by BGE, not PPL, for the transmission of electric energy arriving at Amtrak's Perryville sink point."<sup>39</sup>

### **C. Network Service Peak Load Methodologies**

#### **1. Rehearing Request**

17. Amtrak alleges that the Commission erred by excusing PPL's failure to file its methodology for calculating Network Service Peak Load. Amtrak argues that if the Commission is assuming full jurisdiction over the Network Service Peak Load methodologies, as the Complaint Order suggests, then such methodologies constitute "practices affecting rates, terms and conditions of jurisdictional service" and must be filed with the Commission.<sup>40</sup>

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<sup>37</sup> See PPL June 28, 2019 Answer at 36-38.

<sup>38</sup> Rehearing Request at 14-15.

<sup>39</sup> Complaint at 24.

<sup>40</sup> Rehearing Request at 17-18 (citing 16 U.S.C. § § 824e, 825e). *See also id.* at 20 ("if the filing of [Network Service Peak Load] methodologies is voluntary at FERC and should instead be filed in the appropriate state commission tariffs, then . . . state commissions – not FERC – [would] have jurisdiction over [Network Service Peak Load] methodologies").

18. Amtrak contends that the Network Service Peak Load methodologies serve as “the sole basis for determining the quantity of Network Transmission Service for which customers will be charged” and therefore must be filed with the Commission under the Commission’s “rule of reason.”<sup>41</sup> Amtrak claims that, under the rule of reason, utilities are required to file “those practices that affect rates and services significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous.”<sup>42</sup> Amtrak states that the Network Service Peak Load methodology is “reasonably susceptible of specification” because other transmitting utilities have provided their methodology in Attachment M-2 of the PJM Tariff.

19. Amtrak argues that the Commission should not have deferred to PJM on the question of whether to require the filing of the Network Service Peak Load methodologies because such deference constitutes an unlawful delegation of the Commission’s statutory authority.<sup>43</sup>

20. Amtrak also challenges the Commission’s exclusive reliance on *Duke Ohio*<sup>44</sup> for the proposition that Network Service Peak Load methodologies need not be filed with the Commission. Amtrak points out that, in another case, the Commission addressed the application of PJM Attachment M-2 of the PJM Tariff, which “evidences the Commission’s determination that implementation of Attachment M-2 methodologies matter for purposes of determining jurisdictional rates.”<sup>45</sup>

## 2. Commission Determination

21. We continue to find that the Network Service Peak Load methodologies – while jurisdictional – need not be filed with the Commission.<sup>46</sup> As discussed in the Complaint Order, the Commission’s decision in *Duke Ohio* confirms that the filing of Network

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<sup>41</sup> Rehearing Request at 18.

<sup>42</sup> *Id.* (quoting *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985)).

<sup>43</sup> *Id.* at 21.

<sup>44</sup> *Duke Energy Ohio, Inc.*, 155 FERC ¶ 61,163, at P 15 & n.19 (2016) (*Duke Ohio*).

<sup>45</sup> Rehearing Request at 22 (citing *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,216, at P 71 n.144 (2015) (*FirstEnergy*)).

<sup>46</sup> Complaint Order, 171 FERC ¶ 61,237 at PP 34, 45.

Service Peak Load contributions in Attachment M-2 to the PJM Tariff is voluntary.<sup>47</sup> Contrary to Amtrak's argument on rehearing, that conclusion reflects the Commission's own determination on this point and does not constitute any deference or delegation of authority to PJM regarding the administration of the FPA.

22. Amtrak relies on *FirstEnergy* for the proposition that some transmission owners do file their Network Service Peak Load contributions in Attachment M-2 to the PJM Tariff. While true, this does not alter our conclusion from *Duke Ohio* that such filings are voluntary, and Amtrak cites no other precedent where the Commission has required that these methodologies be filed.

23. Furthermore, Amtrak's invocation of the Commission's "rule of reason" policy further supports our determination that the filing of Network Service Peak Load methodologies is voluntary. As the Commission recently explained with regard to the rule of reason, there are an "infinite of practices affecting rates and services," and the Commission may "exercise its discretion to allow utilities to forego filing particular contracts or practices."<sup>48</sup> We conclude that the Commission appropriately exercised its discretion not to require the filing of Network Service Peak Load methodologies given that the PJM Tariff already specifies the methodology for determining PJM NITS rates.<sup>49</sup> Moreover, as PPL explains in its answer, the methodology for determining a customer's contribution to the PPL zone peak load is available on PPL's website and is therefore transparent to all customers.<sup>50</sup>

#### **D. Clarification Request**

24. Amtrak seeks clarification on whether or not the calculation and application of Network Service Peak Load falls within the Commission's exclusive jurisdiction.<sup>51</sup> In Amtrak's view, the Commission's discussion of *Duke Ohio* "implies that the Commission's jurisdiction over [Network Service Peak Load] methodologies may be

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<sup>47</sup> *Id.* P 45 (citing *Duke Ohio*, 155 FERC ¶ 61,163 at P 15 n.19).

<sup>48</sup> *N.Y. Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,051, at P 15 (2020) (quoting *City of Cleveland*, 773 F.2d at 1376; *PacifiCorp*, 127 FERC ¶ 61,144, at P 9 n.14 (2009)).

<sup>49</sup> PPL June 28, 2019 Answer at 33. See PJM, Intra-PJM Tariffs, OATT, Network Load (0.0.0), § 34.1.

<sup>50</sup> *Id.* at 35.

<sup>51</sup> Rehearing Request at 23-24.

concurrent with state utility commission jurisdiction, and not exclusive.”<sup>52</sup> To square this perceived implication with the Commission’s determination that it has jurisdiction over the Network Service Peak Load methodologies, Amtrak seeks clarification that the Commission’s jurisdiction over the calculation and application of Network Service Peak Load is not exclusive.

25. The clarification sought by Amtrak is unnecessary to the result reached in this case and is therefore denied. We disagree that *Duke Ohio* draws any jurisdictional lines, implicit or otherwise, over the Network Service Peak Load methodologies. The fact that a Commission-jurisdictional methodology may also be included in a state commission tariff does not convey any jurisdictional finding.

The Commission orders:

(A) In response to Amtrak’s request for rehearing, the Complaint Order is hereby modified and the result sustained, as discussed in the body of this order.

(B) Amtrak’s request for clarification is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>52</sup> *Id.* at 22-23. Specifically, Amtrak states that 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.” *Id.* at 19-20 (citing *Duke Ohio*, 155 FERC ¶ 61,163 at n.19).