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File #: 140074

October 20, 2022

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: Michael and Sharon Hartman v. PPL Electric Utilities Corporation
Docket No. C-2019-3008272

Dear Secretary Chiavetta:

Attached for filing please find the Motion of PPL Electric Utilities Corporation to Strike Certain Portions of the Complainants' Testimony and Exhibits in the above-referenced proceeding.

Copies are being provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DR/kl
Attachments

cc: Honorable Steven K. Haas (*via email; w/att.*)
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 FIRST-CLASS MAIL AND E-MAIL

Michael and Sharon Hartman
1650 Primrose Lane
Dauphin, PA 17018
Email: angelgah@comcast.net

Date: October 20, 2022



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------------------|---|---------------------------|
| Michael and Sharon Hartman, | : | |
| | : | |
| Complainants, | : | |
| | : | |
| v. | : | Docket No. C-2019-3008272 |
| | : | |
| PPL Electric Utilities Corporation, | : | |
| | : | |
| Respondent. | : | |

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.103(c), ANSWERS TO MOTIONS ARE DUE WITHIN TWENTY (20) DAYS AFTER THE DATE OF SERVICE. YOUR ANSWERS SHOULD BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL.

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Date: October 20, 2022

Attorneys for PPL Electric Utilities Corporation

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
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| Michael and Sharon Hartman, | : | |
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| Complainants, | : | |
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| v. | : | Docket No. C-2019-3008272 |
| | : | |
| PPL Electric Utilities Corporation, | : | |
| | : | |
| Respondent. | : | |

**MOTION OF PPL ELECTRIC UTILITIES CORPORATION TO
STRIKE CERTAIN PORTIONS OF
THE COMPLAINANTS’ TESTIMONY AND EXHIBITS**

TO ADMINISTRATIVE LAW JUDGE STEVEN K. HAAS:

AND NOW, comes PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) by and through its attorneys, Post & Schell, P.C., and files pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.103, this Motion to Strike certain portions of Michael and Sharon Hartman’s (“Complainants”) direct testimony and exhibits.

As explained herein, PPL Electric respectfully submits that Administrative Law Judge Steven K. Haas (“ALJ”) should enter the proposed Order attached hereto as **Appendix D** and:

(1) Strike the many statements in the Complainants’ testimony and exhibits that are outside the scope of this proceeding.

(2) Strike the many statements in the Complainants’ testimony and exhibits that are outside the scope of the Commission’s limited jurisdiction.

(3) Strike the many hearsay and hearsay within hearsay statements in the Complainants’ testimony and exhibits.

(4) Strike the many repetitious or cumulative statements in the Complainants' testimony and exhibits.

(5) Strike the many statements in the Complainants' testimony and exhibits that are irrelevant to this proceeding.

(6) Strike the many statements in the Complainants' testimony and exhibits that are inherently unreliable and not provided in original form.

(7) Strike the many statements in the Complainants' exhibits that should have been raised in the Complainants' Case-In-Chief.

(8) Strike the many statements in the Complainants' testimony and exhibits that were not and have not been properly authenticated.

In support thereof, PPL Electric states as follows:

I. BACKGROUND

1. This matter was initiated on March 1, 2019 (*i.e.*, over 43 months ago), and has a long and convoluted procedural history. The following background and procedural history is relevant to this Motion to Strike.

2. PPL Electric is a "public utility" and an "electric distribution company" as those terms are defined under the Public Utility Code, 66 Pa. C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

3. PPL Electric furnishes electric distribution, transmission, and provider of last resort electric supply services to approximately 1.4 million customers throughout its certificated service territory, which includes all or portions of twenty-nine counties and encompasses approximately 10,000 square miles in eastern and central Pennsylvania.

4. On March 1, 2019, PPL Electric was served with the Formal Complaint filed by the Complainants at Docket No. C-2019-3008272 alleging, among other things, that the

Company's Halifax-Dauphin 69 KV Transmission Line Rebuild Project ("Project"), a portion of which took place on the Complainants' property, was unreasonable.

5. On March 25, 2019, PPL Electric filed an Answer to the Complaint, admitting or denying the allegations in the Complaint.

6. On June 27, 2019, PPL Electric filed a Motion for Summary Judgement.

7. On or around July 15, 2019, the Complainants filed an Answer to PPL Electric's Motion for Summary Judgement.

8. On October 4, 2019, an Initial Decision was issued dismissing the Complainants' complaint, treating PPL Electric's Motion for Summary Judgement as a Motion for Judgement on the Pleadings.

9. On or around October 30, 2019, the Complainants filed Exceptions to the Initial Decision.

10. On November 14, 2019, PPL Electric filed Replies to the Complainants' Exceptions.

11. On April 16, 2020, the Commission issued an Opinion and Order granting in part and denying in part the Complainants' Exceptions. The Opinion and Order further remanded the proceeding to the Commission's Office of Administrative Law Judge for further proceedings as may deemed necessary and the issuance of an Initial Decision on Remand.

12. On February 17, 2021, Robert Young filed a Notice of Appearance on behalf of the Complainants.

13. On November 30, 2021, PPL Electric filed an additional Praecipe for Withdrawal of Appearance for Kimberly Krukpa.

14. On December 1, 2021, PPL Electric filed a Notice of Appearance for Michael J. Shafer, Devin T. Ryan, and Nicholas A. Stobbe.

15. On March 1, 2022, Robert Young filed a Withdrawal of Appearance on behalf of the Complainants.

16. On May 17, 2022, the Complainants served their written direct testimony and exhibits, consistent with the established procedural schedule.

17. On June 28, 2022, the Commission issued a Further Call-In Telephone Hearing Notice, scheduling August 16 and 17, 2022, for Evidentiary Hearings in this proceeding.

18. On July 8, 2022, PPL Electric served its written rebuttal testimony and exhibits, consistent with the established procedural schedule.

19. The Complainants never served any surrebuttal testimony and exhibits by the required deadline of July 26, 2022. In fact, the Complainants sent an email on July 13, 2022, stating that they would not be submitting surrebuttal testimony.

20. On August 11, 2022, the Complainants served additional exhibits and their potential cross-examination exhibits in advance of the evidentiary hearings.

21. On August 12, 2022, PPL Electric served its potential cross-examination exhibits in advance of the evidentiary hearings.

22. Also on August 12, 2022, the Complainants served an additional exhibit.

23. On August 13, 2022, the Complainants served an additional cross-examination exhibit.

24. On August 15, 2022, the Complainants served three (3) additional cross-examination exhibits.

25. On August 15, 2022, the Complainants served additional cross-examination exhibits.

26. On August 16 and 17, 2022, the Evidentiary Hearings were held as scheduled. During the August 16 hearing, counsel for PPL Electric indicated that the Company had substantial and voluminous objections to various pieces of testimony and exhibits offered by the Complainants. The ALJ declared that any evidentiary objections on behalf of PPL Electric could be submitted, in writing, after the evidentiary hearings concluded. During the August 17 hearing, the Complainants indicated that they would need an additional day to finish conducting cross-examination of the Company's witnesses.

27. On August 26, 2022, the Commission issued a further Telephonic Hearing Notice, scheduling a third day of Evidentiary Hearings for September 21, 2022.

28. On September 21, 2022, the third day of Evidentiary Hearings was held as scheduled. Thereafter, it was agreed-upon by the parties that written objections and/or Motions to Strike portions of the Complainants' testimony and exhibits would be due to be filed no later than October 20, 2022. Answers thereto would be due 20 days thereafter.

II. MOTION TO STRIKE

A. ANY TESTIMONY AND EXHIBITS THAT ARE OUTSIDE THE SCOPE OF THIS PROCEEDING SHOULD BE STRICKEN

29. The Complainants attempt to introduce testimony and exhibits containing various factual allegations that are clearly outside the scope of this proceeding and, therefore, those testimony and exhibits should be stricken.

30. In its Opinion and Order entered April 16, 2020,¹ the Commission held that certain issues raised by the Complainants are outside the scope of this proceeding and, thus, evidence concerning those claims are inadmissible.

31. Specifically, in the *2020 Order*, the Commission the PUC dismissed the following issues from the proceeding:

- a. The proper notice of activities contemplated by the easement agreement (see *2020 Order*, p. 14);
- b. The Complainants' allegation that PPL Electric's restoration efforts showed a preference for the National Park Service and constituted discrimination in service that violated Section 1502 of the Public Utility Code (see *2020 Order*, p. 20);
- c. The Complainants' request for a ruling from the PUC as to the scope and validity of the existing easement agreement and whether PPL Electric is acting in accordance with or in breach thereof (see *2020 Order*, p. 21);
- d. The Complainants' request for monetary damages (see *2020 Order*, p. 21); and
- e. The Complainants' allegations regarding any environmental impact of PPL Electric's construction practices, the reasonableness of PPL Electric's environmental protection controls, or lack thereof, or any unpermitted or increased storm water discharges (see *2020 Order*, p. 22).

32. Moreover, the Commission directed the ALJ and the parties to develop a complete record on the following narrow issues:

- a. Allegations about PPL Electric's vegetation management practices (see *2020 Order*, p. 19);
- b. Allegations about the quality and reasonableness of PPL Electric's construction efforts (see *2020 Order*, p. 19); and
- c. Allegations about the safety impact of the construction and alleged destruction of vegetation on the Complainants' property, including, but not limited to, any erosion to the soil and sedimentation on the Complainants' property and any safety hazards resulting therefrom that may be reasonably identified and the steps that PPL Electric proposes to

¹ *Michael and Sharon Hartman v. PPL Electric Utilities Corporation*, Docket No. C-2019-3008272 (Opinion and Order Entered April 16, 2020) ("*2020 Order*").

implement in order to adhere to its statutory duty to furnish adequate, safe, and reasonable service (see *2020 Order*, pp. 20, 22-23).

33. Here, the Complainants have tried to introduce testimony and exhibits on issues outside the scope of the aforementioned allegations.

34. First, the Complainants seek to raise issues regarding allegedly discriminatory service on behalf of PPL Electric due to alleged differences between the Company's construction, restoration, and vegetation management practices on neighboring National Park Service ("NPS") lands.

35. As clearly addressed by the *2020 Order*, those issues are outside the scope of this proceeding.² The Commission observed that "the Complainants alleged that PPL's restoration efforts showed a clear preference for the National Park Service."³ "While the Code has a provision for the discrimination in service in Section 1502 of the Code, 66 Pa. C.S. § 1502," the Commission has "not interpreted that provision to include the restoration of property impacted by activities of a utility in order to supply service to the public."⁴ Therefore, the Commission dismissed those allegations.⁵

36. Despite this clear directive, the Complainants seek to introduce numerous statements related to the alleged discrimination of service between their property and that of the NPS. (See Hartman Exhibit A, ¶¶ 2, 40, 49, 54, 57, 62-66, 74-75, 92-93, 112, 116-121, 132-133, 136; see also Hartman Exhibit Nos. 31, 45, 46, 48, 49, 50, 51.)

37. Second, the Complainants also seek to raise issues regarding alleged environmental issues related primarily to the Project's environmental impact, the Company's

² See *2020 Order*, p. 20.

³ *Id.*

⁴ *Id.*

⁵ See *id.*

environmental protection controls, and the Project’s alleged unpermitted or increased stormwater discharges.

38. The Commission’s *2020 Order* clearly explained that those environmental issues were outside the scope of this proceeding and would not be considered by the Commission, as those issues “are squarely within the purview of the Pennsylvania Department of Environmental Protection and/or an appropriate civil court of jurisdiction to address.”⁶

39. In making that holding, the Commission dismissed the “claims in the Complaint raising general or specific environmental challenges.”⁷

40. Despite the Commission dismissal of the Complainants’ environmental claims, the Complainants have tried to introduce inappropriate environmental evidence clearly outside the scope of this proceeding. (*See* Hartman Exhibit A, ¶¶ 27, 33, 56-57, 59-60, 98, 122-125.)

41. Based on the foregoing, and consistent with the Commission’s *2020 Order*, the Complainants’ testimony and exhibits on these issues are outside the scope of this proceeding and, therefore, should be stricken.

B. THE STATEMENTS IN THE COMPLAINANTS’ TESTIMONY AND EXHIBITS THAT ARE OUTSIDE THE SCOPE OF THE COMMISSION’S LIMITED JURISDICTION SHOULD BE STRICKEN

42. The Complainants’ testimony and exhibits also seek to introduce various claims and issues well-outside the scope of the Commission’s limited jurisdiction in this matter.

43. It is well established that the Commission’s authority “extends only to those matters that the state legislature has specifically delegated to it in the code.”⁸

⁶ *2020 Order*, p. 22.

⁷ *Id.*

⁸ *Flynn, et al. v. Sunoco Pipeline, L.P.*, 2021 PA. PUC LEXIS 529, *20, Docket Nos. C-2018-3006116, et al. (Opinion and Order entered November 18, 2021).

44. As such, the Commission “lacks jurisdiction to adjudicate claims regarding violations of Municipal law or environmental regulations that are beyond the scope of the Code or a Commission order or Regulation.”⁹

45. Despite the Commission’s lack of jurisdiction over environmental issues, which was confirmed through the *2020 Order*, the Complainants continue to raise and attempt to introduce environmental issues outside the scope of the Commission’s jurisdiction and the scope of this proceeding.

46. Indeed, as noted above, the *2020 Order* specifically held that “[t]hese [environmental impacts, environmental protection controls, or unpermitted or increased storm water discharges] matters are squarely within the purview of the Pennsylvania Department of environmental Protection and/or an appropriate civil court of jurisdiction to address.”¹⁰

47. Specifically, the Complainants seek to introduce evidence relating to the interpretation and compliance of the Company’s Erosion and Sediment Control (“E&S”) Plan and Permit governing the Project on the Complainants’ property. (*See* Hartman Exhibit A ¶¶ 9, 17, 22, 26-35, 39-40, 49, 67-69, 77, 95, and 136; Hartman Exhibit Nos. 4, 13, 14, 19, 21, 22, 23, 45, 46, 48, 49, and 50.)

48. The Complainants’ attempted introduction of voluminous and incomplete E&S Plan related documents are all inadmissible insofar as the Complainants’ request the Commission to interpret or determine compliance with the E&S Plan and Permit.

49. Further, as noted previously, the Complainants seek to introduce evidence related to the Project’s environmental impact, environmental protection controls employed by the

⁹ *Id. See also Rovin, D.D.S. v. Pa. PUC*, 502 A.2d 785 (Pa. Cmwlth. 1986); (*Rovin*) and *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlth. 1995).

¹⁰ *2020 Order*, p. 22.

Company, and alleged unpermitted or increased stormwater discharges. (*See* Hartman Exhibit A ¶¶ 27, 33, 56-57, 59-60, 98, 122-125.)

50. Clearly, these environmental issues are outside the scope of the Commission's limited jurisdiction in this proceeding. In fact, the Commission confirmed its lacked jurisdiction over such issues in the *2020 Order*.

51. Therefore, and consistent with the above, the Complainants should not be given the opportunity to present testimony or exhibits related to alleged environmental issues stemming from the Project. The Commission has already evaluated this issue in this proceeding and held those matters non-jurisdictional.

52. For these reasons, the Complainants' testimony and exhibits related to alleged environmental issues, including their contentions that the Company failed to comply with the E&S Plan and Permit, should be stricken.

C. THE HEARSAY STATEMENTS AND HEARSAY WITHIN HEARSAY STATEMENTS IN THE COMPLAINANTS' TESTIMONY AND EXHIBITS SHOULD BE STRICKEN

53. The Complainants' testimony and exhibits include numerous hearsay statements and hearsay within hearsay statements that should be stricken.

54. For example, the following testimony and exhibits introduced by the Complainants are entirely hearsay or contain hearsay statements or hearsay within hearsay statements:

- i. Hartman Exhibit A:
 1. Alleged statements made by Kimberly Krupka, former counsel to PPL Electric in this proceeding. *See* Hartman Exhibit A, ¶¶ 14, 22, 136;
 2. Alleged statements made by Kimberly Nettles (employed by Burns and McDonnell). *See* Hartman Exhibit A, ¶¶ 10-11, 13, 16, 24-45, 38, 52, 136;

3. Alleged statements by Mike Bush (employed by Burns and McDonnell). *See* Hartman Exhibit A, ¶¶ 20, 37, 41-42, 136;
4. Alleged statements by Jonathon Scott (employed by Contract Land Staff). *See* Hartman Exhibit A, ¶¶ 21, 41-42;
5. Alleged statements by Robin Crossley (employed by Burns and McDonnell). *See* Hartman Exhibit A, ¶¶ 39, 41-412, 136;
6. Alleged statements by Kristina Wessner (employed by Burns and McDonnell). *See* Hartman Exhibit A, ¶¶ 76-78, 136;
7. Alleged statements by Joseph Scott (employed by Louis Berger Group, which was later acquired by WSP Global). *See* Hartman Exhibit A, ¶ 31;
8. Alleged statements by Drew Gradwell (employed by ECI Consultants LLC). *See* Hartman Exhibit A, ¶¶ 85-86, 89-91;
9. Alleged statements made by unnamed personnel at the Pennsylvania Department of Environmental Protection and the United States' Environmental Protection Agency as purportedly recounted by Drew Gradwell (employed by ECI Consultants). *See* Hartman Exhibit A, ¶ 85;
10. Alleged statements by William Rook (employed by Penn Line). *See* Hartman Exhibit A, ¶¶ 92-94;
11. Alleged statements Eric Naguski (the “Dauphin County Conservation District Manager,” according to the Complainants). *See* Hartman Exhibit A, ¶ 96;
12. Alleged statements by Todd Lutte (an “EPA Field Scientist,” according to the Complainants) . *See* Hartman Exhibit A, ¶¶ 98, 123-124, 128;
13. Alleged statements by Ed Fisher (a “Middle Paxton Township Engineer,” according to the Complainants). *See* Hartman Exhibit A, ¶¶ 98, 123-124;
14. Alleged statements by Don Gilbert (a “PA Department of Agriculture Pesticide Specialist,” according to the Complainants). *See* Hartman Exhibit A, ¶ 128;
15. Alleged statements by an unnamed “Contract Land Staff contractor that preceded Jonathon Scott.” *See* Hartman Exhibit A, ¶ 88;

16. Alleged statements by an unnamed “Backhoe Operator.” *See* Hartman Exhibit A, ¶ 48;
 17. Alleged statements by unnamed “neighbors.” *See* Hartman Exhibit A, ¶ 21;
 18. Alleged statements by “PPL ROW Specialist[s].” *See* Hartman Exhibit A, ¶ 136;
 19. Alleged statements by unnamed “Representative” of MJ Electric. *See* Hartman Exhibit A, ¶ 136; and
 20. Alleged statements of unnamed “Representative” of Newville Construction. *See* Hartman Exhibit A, ¶ 136.
- ii. Hartman Exhibit No. 2 – Letter purportedly written by Kimberly Nettles on December 17, 2018, containing alleged statements of Kimberly Nettles (employed by Burns and McDonnell) and Jonathan Scott (employed by Contract Land Staff).
 - iii. Hartman Exhibit No. 6 – Email purportedly sent by Kristina Wessner (employed by Burns and McDonnell) on August 24, 2020, containing alleged statements of Kristina Wessner.
 - iv. Hartman Exhibit No. 15 – Emails purportedly sent by James Fricke (employed by Burns and McDonnell), Dennis Yerger (employed by MJ Electric), and Christopher Capoccia (employed by Burns and McDonnell), containing alleged statements of James Fricke, Dennis Yerger, and Christopher Capoccia.
 - v. Hartman Exhibit No. 33 – Bugwood.org Blog Post describing Mile-a-Minute.
 - vi. Hartman Exhibit No. 37 – Excerpts from a Wikipedia.org webpage on “riprap,” “Union Quarries website,” “Ayres Associates Post,” and “Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas.”
 - vii. Hartman Exhibit No. 41 – Emails purportedly between the Complainants and MJ Electric, containing alleged statements of Leonard Pataki (Division General Counsel of Quanta Services).
 - viii. Hartman Exhibit No. 48 – Email between the Complainants and the ALJ, containing alleged statements of “representative[s]” from “MJ Electric,” “Quanta Services, Inc.,” and “Newville Construction” as well as an unidentified “PPL ROW Specialist, an unnamed “PPL surveyor,” and PPL Electric’s former counsel, Kimberly Krupka.
 - ix. Hartman Exhibit No. 54 – Emails purportedly between the Complainants, PPL Electric, and PPL Electric’s contractors, containing alleged statements of

Mike Bush (employed by Burns and McDonnell), Kimberly Nettles (employed by Burns and McDonnell), unidentified “PPL agents,” and an unidentified “Dauphin County Conservation Officer.”

- x. Hartman Exhibit No. 57 – Email purportedly from Kimberly Nettles (employed by Burns and McDonnell), containing alleged statements of Kimberly Nettles and “Amy.”

55. All of these averments are out-of-court statements that are being offered to prove the truth of the matters asserted.¹¹

56. None of the actual declarants of these statements were presented as witnesses in this proceeding.

57. Consequently, these allegations cannot simply be sponsored by the Complainants, as the Complainants have denied PPL Electric the ability to cross-examine the actual declarants of the statements. PPL Electric has an unquestionable right to cross-examine these individuals should their testimony – hearsay or otherwise – be admitted into the record in this proceeding. *See* 66 Pa. C.S. § 332(c).

58. Based on the foregoing, these inadmissible hearsay statements should be stricken from the Complainants’ testimony and exhibits.

¹¹ Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Pa.R.E. 801; *Bonegre v. Workers’ Compensation Appeal Board (Bertolini’s)*, 863 A.2d 68, 72 (Pa. Cmwlth. 2004). Ordinarily, hearsay evidence is inadmissible unless some exception applies. Pa.R.E. 802. The hearsay rule is somewhat relaxed in proceedings before administrative agencies. *Rox Coal Co. v. Workers’ Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002). The Commonwealth Court established what is commonly called the “Walker Rule” to apply to the use of hearsay evidence during administrative proceedings:

- (1) Hearsay evidence, properly objected to, is not competent evidence to support a finding;
- (2) Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.

Walker v. Unemployment Comp. Bd. of Review, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). The “Walker Rule” has been affirmed by the Pennsylvania Supreme Court. *Rox Coal Co. v. Workers’ Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002).

D. THE MANY REPETITIOUS OR CUMULATIVE STATEMENTS IN THE COMPLAINANTS' TESTIMONY AND EXHIBITS SHOULD BE STRICKEN

59. The Complainants' testimony and exhibits include several repetitious or cumulative statements which should be stricken.

60. Section 5.401 of the Commission's regulations govern the admissibility of evidence.¹²

61. Under Section 5.401(b)(1), evidence will be excluded if it "repetitious or cumulative."¹³

62. Through testimony and exhibits, the Complainants attempt to introduce and/or reintroduce the same or similar evidence several times. While much of that evidence is objectionable on other grounds, it is also repetitious or cumulative.

63. Moreover, much of the Complainants' testimony and exhibits are wholly duplicative of documents sponsored by PPL Electric's witnesses and are already in the evidentiary record in this proceeding.

64. For example, the Complainants' testimony and exhibits contain the following repetitious or cumulative materials:

- i. Hartman Exhibit B – Photographs and captions to those photographs that were already provided by the Complainants as part of Hartman Exhibit A. Because these photographs and captions were provided by the Complainants as part of Hartman Exhibit A, a second inclusion is repetitious or cumulative and should be stricken.
- ii. Hartman Exhibit No. 7A – Excerpts from PPL Electric's Herbicide Application Policy, the Company's Specification for Distribution Vegetation Management, and the Company's Specification for Transmission Vegetation Management. PPL Electric provided these materials as complete copies as part of the Rebuttal Testimony of Matthew Stutzman, which has since been admitted into the evidentiary record. Therefore, Hartman Exhibit 7A is repetitious or cumulative

¹² See 52 Pa. Code § 5.401.

¹³ See 52 Pa. Code § 5.401(b)(1).

and should be stricken. *See* PPL Electric Exhibit Nos. MS-3, MS-1, and MS-2. *See generally* PPL Electric Statement No. 4R.

- iii. Hartman Exhibit No. 9 – A copy of the ROW Agreement between PPL Electric and the Fetterhoffs dated October 31, 1950. PPL Electric provided a complete copy of this agreement as part of the Rebuttal Testimony of Austin Weseloh. As part of Austin Weseloh’s Rebuttal Testimony, Mr. Weseloh provided this ROW agreement as Exhibit No. AW-1, which has since been admitted into the evidentiary record. Therefore, Hartman Exhibit 9 is repetitious or cumulative and should be stricken. *See* PPL Electric Exhibit AW-1. *See generally* PPL Electric Statement No. 3R.
- iv. Hartman Exhibit No. 10 – A copy of the ROW Agreement between PPL Electric and the Fetterhoffs dated October 31, 1950 and updated on June 19, 1990. PPL Electric provided a complete copy of this agreement as part of the Rebuttal Testimony of Austin Weseloh. The ROW agreement was included as PPL Electric Exhibit No. AW-1 and has since been admitted into the evidentiary record. Therefore, Hartman Exhibit 10 is repetitious or cumulative and should be stricken. *See* PPL Electric Exhibit AW-1. *See generally* PPL Electric Statement No. 3R.
- v. Hartman Exhibit No. 12 – Copies of three (3) ROW Agreements between PPL Electric and several landowners. All three of these ROW Agreements were provided as complete copies to the Rebuttal Testimony of Austin Weseloh as PPL Electric Exhibit Nos. AW-1, AW-2, and AQ-3, and have since been admitted into the evidentiary record. Therefore, Hartman Exhibit 12 is repetitious or cumulative and should be stricken. *See* PPL Electric Exhibit AW-1, AW-2, and AW-3. *See generally* PPL Electric Statement No. 3R.
- vi. Hartman Exhibit 13 – E&S Plan Page E&S-002 – A copy of page E&S-002 from the Company’s E&S Plan. The Company’s entire E&S plan was included, in full, as Exhibit TE-1, sponsored by Company witness Thomas Eby, which has since been admitted into the evidentiary record. Therefore, Hartman Exhibit 13 is repetitious or cumulative and should be stricken. *See* PPL Electric Exhibit TE-1. *See generally* PPL Electric Statement No. 1R.
- vii. Hartman Exhibit 14 – E&S Plan excerpts – As noted previously, the Company’s entire E&S plan was included, in full, as Exhibit TE-1, sponsored by Company witness Thomas Eby, which has since been admitted into the evidentiary record. Therefore, Hartman Exhibit 14 is repetitious or cumulative and should be stricken. *See* PPL Electric Exhibit TE-1. *See generally* PPL Electric Statement No. 1R.
- viii. Hartman Exhibit 19 – Photo of logging road purporting to signify “obliteration.” This photograph was included within Complainants’ Exhibit A, photograph 1. As such, its separate inclusion is repetitious or cumulative and should be stricken.

- ix. Hartman Exhibit 21 – Excerpts of E&S Plan pages E&S-114 and 115 – A complete copy of the Company’s E&S Plan was included as PPL Electric Exhibit TE-1 to the Rebuttal Testimony of Thomas Eby, and has since been admitted into the evidentiary record. Therefore, separate inclusion in Hartman Exhibit 21 is repetitious or cumulative and should be stricken. *See* PPL Electric Exhibit TE-1. *See generally* PPL Electric Statement No. 1R.
- x. Hartman Exhibit 22 – Excerpts of E&S Plan page E&S-114 (5th revision) – A complete copy of the Company’s E&S Plan was included as PPL Electric Exhibit TE-1 to the Rebuttal Testimony of Thomas Eby, and has since been admitted into the evidentiary record. Therefore, separate inclusion in Hartman Exhibit 22 is repetitious or cumulative and should be stricken. *See* PPL Electric Exhibit TE-1. *See generally* PPL Electric Statement No. 1R.
- xi. Hartman Exhibit 23 – Excerpts of E&S Plan page E&S-115 (6th revision) – A complete copy of the Company’s E&S Plan was included as PPL Electric Exhibit TE-1 to the Rebuttal Testimony of Thomas Eby, and has since been admitted into the evidentiary record. Therefore, separate inclusion in Hartman Exhibit 23 is repetitious or cumulative and should be stricken. *See* PPL Electric Exhibit TE-1. *See generally* PPL Electric Statement No. 1R.
- xii. Hartman Exhibit 28 – Photographs of Pole 75 Crane Pad. Photographs of the Pole 75 Crane Pad were included as part of Hartman Exhibit B. Therefore, separate inclusion in Hartman Exhibit 28 is repetitious or cumulative and should be stricken. *See* Hartman Exhibit B, Photograph 33-36.
- xiii. Hartman Exhibit 29 – Photographs of Pole 75 Crane Pad and other portions of the ROW. Photographs of the Pole 75 Crane Pad and portions of the ROW were included as part of Hartman Exhibit B. Therefore, separate inclusion in Hartman Exhibit 29 is repetitious or cumulative and should be stricken. *See* Hartman Exhibit B, Photograph 33-36.
- xiv. Hartman Exhibit 30 – Photographs of Mile-a-Minute – Photographs of the Complainants’ property depicting Mile-a-Minute vegetation were included in other exhibits. Therefore, separate inclusion of such depiction in Hartman Exhibit 30 is repetitious or cumulative and should be stricken. *See* Hartman Exhibit 29, Photograph 4-5.
- xv. Hartman Exhibit 31 – Photographs of Mile-a-Minute and NPS lands – Photographs of the Complainants’ and NPS property depicting Mile-a-Minute vegetation were included in other exhibits. Therefore, separate inclusion of such depiction in Hartman Exhibit 31 is repetitious or cumulative and should be stricken. *See* Hartman Exhibit 29, Photograph 4-5.
- xvi. Hartman Exhibit 32 – Photographs of vegetation on the Complainants’ property – Various photographs of the vegetation traversing the Complainants’ property were included in other of the Complainants’ exhibits. Therefore, separate

inclusion of such depiction in Hartman Exhibit 32 is repetitious or cumulative and should be stricken. *See* Hartman Exhibit 7A.

- xvii. Hartman Exhibit 52 – Photograph of alleged erosion occurring on the Complainants’ property – Various photographs of the alleged erosion on the Complainants’ property were included as part of other of the Complainants’ exhibits. Therefore, separate inclusion of such depiction in Hartman Exhibit 52 is repetitious or cumulative and should be stricken. *See* Hartman Exhibit B, Photograph 14.

65. Consistent with the above-referenced testimony and exhibits, the Complainants have attempted to present repetitious or cumulative evidence that is often wholly duplicative of other evidence, presents a piece-meal version of documents fully presented and subsequently admitted by PPL Electric, or some combination thereof.

66. Consequently, consistent with Section 5.401(b)(1) of the Commission’s regulations, the above-referenced testimony and exhibits that are repetitious or cumulative should be stricken from the Complainants’ testimony and exhibits. *See* 52 Pa. Code § 5.401(b)(1).

E. THE IRRELEVANT STATEMENTS IN THE COMPLAINANTS’ TESTIMONY AND EXHIBITS SHOULD BE STRICKEN.

67. The Complainants attempt to introduce several items throughout their testimony and exhibits that are wholly irrelevant to the adjudication of this proceeding.

68. Under Section 5.401 of the Commission’s regulations, in order to be admissible before the Commission, evidence must be relevant.¹⁴

69. Under the Pennsylvania Rules of Evidence, evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.¹⁵

¹⁴ 52 Pa. Code § 5.401(a).

¹⁵ 225 Pa. Code § 401(a)-(b).

70. If evidence is not relevant, it is not admissible.¹⁶

71. Here, the Complainants seek to introduce a number of irrelevant documents.

These irrelevant documents do not have any tendency to make a fact more or less probable than it would be without the evidence, nor is this evidence of consequence in determining the action.

72. Specifically, the Complainants attempt to introduce the following evidence, all of which is wholly irrelevant to this proceeding:

- i. Hartman Exhibit 11 – Development Plans – The document purports to be a development plan for the Cottonwood Subdivision near where a portion of the Project took place. This document does not have any tendency to make the reasonableness of PPL Electric’s actions more or less probable than without the evidence. Moreover, any purported facts in Hartman Exhibit 11 are of no consequence in determining this action. As such, Hartman Exhibit 11 is irrelevant and should be stricken.
- ii. Hartman Exhibit 38 – November 15, 2021, email from PPL Electric Counsel – The Complainants claim that this email is allegedly a form of witness intimidation. While PPL Electric vehemently disagrees with this characterization, it is nonetheless irrelevant to this proceeding because it is merely an email between a PPL Electric attorney and the then-attorney for the Complainants. It is unclear what fact the Complainants believe Hartman Exhibit 38 has a tendency to make more or less probable for the issues to be decided in this proceeding, as directed in the Commission’s *2020 Order*. As such, Hartman Exhibit 38 is irrelevant and should be stricken.
- iii. Hartman Exhibit 39 – Collection of emails between Mr. Hartman and Mr. Dophide from Burns and McDonnell – Through Hartman Exhibit 39, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not properly apply for a subpoena for any non-party at any point in this proceeding; thus, emails detailing the Complainants’ informal efforts to procure a non-party’s testimony and documents are wholly irrelevant to this proceeding. As such, Hartman Exhibit 39 is irrelevant and should be stricken.
- iv. Hartman Exhibit 40 – Collection of emails between Mr. Hartman and Mr. Roberts and Mr. Scott from Contract Land Staff – Through Hartman Exhibit 40, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not properly apply for a subpoena for any non-party at any point in this proceeding; thus, emails detailing the Complainants’

¹⁶ 225 Pa. Code § 402.

informal efforts to procure a non-party's testimony and documents are wholly irrelevant to this proceeding. As such, Hartman Exhibit 40 is irrelevant and should be stricken.

- v. Hartman Exhibit 41 – Collection of emails between Mr. Hartman and a PPL Electric Contractor – Through Hartman Exhibit 41, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not properly apply for a subpoena for any non-party at any point in this proceeding; thus, emails detailing the Complainants' informal efforts to procure a non-party's testimony and documents are wholly irrelevant to this proceeding. As such, Hartman Exhibit 41 is irrelevant and should be stricken.
- vi. Hartman Exhibit 42 – Collection of emails between Mr. Hartman and Mr. Pataki from Quanta Services – Through Hartman Exhibit 42, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not properly apply for a subpoena for any non-party at any point in this proceeding; thus, emails detailing the Complainants' informal efforts to procure a non-party's testimony and documents are wholly irrelevant to this proceeding. As such, Hartman Exhibit 42 is irrelevant and should be stricken.
- vii. Hartman Exhibit 43 – Collection of emails between Mr. Hartman and Mr. Spampinato and Mr. Scott from ECI Consultants LLC – Through Hartman Exhibit 43, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not properly apply for a subpoena for any non-party at any point in this proceeding; thus, emails detailing the Complainants' informal efforts to procure a non-party's testimony and documents are wholly irrelevant to this proceeding. As such, Hartman Exhibit 43 is irrelevant and should be stricken.
- viii. Hartman Exhibit 44 – Collection of emails between Mr. Hartman and Mr. Seiferth and Ms. Rodriguez from Penn Line – Through Hartman Exhibit 44, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not properly apply for a subpoena for any non-party at any point in this proceeding; thus, emails detailing the Complainants' informal efforts to procure a non-party's testimony and documents are wholly irrelevant to this proceeding. As such, Hartman Exhibit 44 is irrelevant and should be stricken.

73. All of the above-referenced evidence does not have any tendency to make a fact more or less probable than it would be without the evidence.

74. Moreover, none of the information presented in the aforementioned exhibits would be of any consequence to the issues being decided in this proceeding on remand.

75. As such, Hartman Exhibit Nos. 11 and 38-44 should be stricken as irrelevant.

F. THE STATEMENTS IN THE COMPLAINANTS' TESTIMONY AND EXHIBITS THAT ARE INHERENTLY UNRELIABLE AND NOT PROVIDED IN ORIGINAL FORM SHOULD BE STRICKEN.

76. The Complainants attempt to introduce several pieces of evidence that are inherently unreliable and not provided in their original form. As such, that evidence should be stricken as there is no indicia of accuracy or reliability.

77. Evidence that is inherently unreliable is often excluded or not considered by the Commission.¹⁷

78. Moreover, the inherently unreliable evidence submitted by the Complainants not in original form could have easily been submitted in original form, thus addressing some reliability concerns.

79. Despite this, the Complainants attempt to introduce several pieces of evidence that have been “copied and pasted” from the original document, leading to a conspicuous lack of reliability.

80. Moreover, several of the exhibits the Complainants attempt to introduce appear to have been altered or marked from their original state.

81. Specifically, Hartman Exhibit No. 14 presents excerpts from the Company's E&S Plan. Not only did PPL Electric provide this plan as PPL Electric Exhibit TE-1, but the Complainants also appear to have copied and pasted passages from the plan without including the plan – or page – in its entirety.

¹⁷ See *Richard N. Myers v. PPL Electric Utilities Corp.*, 2019 PA. PUC LEXIS 261, Docket No. C-2017-2620710 (Opinion and Order entered Aug. 19, 2019); See also *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority - Stage 1; Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan*, 2020 PA. PUC LEXIS 382, Docket Nos. M-2018-2640802, *et al.* (Opinion and Order Entered Mar. 26, 2020).

82. Similarly, Hartman Exhibit 33 is an apparent blog post from “Bugwood.org” describing Mile-a-Minute vegetation.

83. The Complainants offered no testimony to substantiate or authenticate this apparent blog post. Indeed, it even appears that the blog-post has been altered from its original state by the Complainants in order to highlight certain passages.

84. Additionally, through Hartman Exhibit 37, the Complainants attempt to introduce evidence regarding “rip-rap” from a variety of different sources, including Wikipedia.org.

85. Moreover, much like Hartman Exhibit 33, the contents of Hartman Exhibit 37 appear to have been altered from their original state to include the highlighting of certain passages.

86. As such, Hartman Exhibits 14, 33, and 37 are all inherently unreliable and should be stricken from the record in this proceeding.

G. HARTMAN EXHIBITS 7A THROUGH 53 WERE NOT PROPERLY INCLUDED IN THE COMPLAINANTS CASE-IN-CHIEF OR IN SURREBUTTAL TESTIMONY AND EXHIBITS AND, THEREFORE, SHOULD BE STRICKEN

87. As noted previously, the Complainants served their written direct testimony and exhibits on May 27, 2022, in accordance with the established procedural schedule. The Complainants had the opportunity to submit written surrebuttal testimony and exhibits on July 27, 2022. However, they elected not to do so. In fact, on July 13, 2022, the Complainants sent an email indicating that they did not plan on submitting surrebuttal testimony, a copy of which is attached hereto as **Appendix A**.

88. Nevertheless, on August 11, 2022, after the close of the parties’ submission of written testimony and exhibits and shortly before the evidentiary hearings were to begin on August 16, 2022, the Complainants served “New exhibits” to be included in their case-in-chief.

Specifically, these “New exhibits” were Hartman Exhibits 7a through 52. A copy of the Complainants’ August 11, 2022 email recounting such service and acknowledging these exhibits were “New exhibits” is attached hereto as **Appendix B**.

89. Moreover, on August 12, 2022, the Complainants served yet another exhibit to be included in his case-in-chief. Specifically, this new exhibit was Hartman Exhibit 53. A copy of the Complainants’ August 12, 2022 email recounting such service and requesting the exhibit be included in their case-in-chief is attached hereto as **Appendix C**.

90. Section 5.243(e)(1)-(3) of the Commission’s regulations provide that:

A party will not be permitted to introduce evidence during a rebuttal phase which:

(1) Is repetitive.

(2) Should have been included in the party’s case-in-chief.

(3) Substantially varies from the party’s case-in-chief.¹⁸

91. The Commission and Pennsylvania Courts have routinely recognized that evidence that should have been included in the party’s case-in-chief is prohibited.¹⁹

92. Here, the Complainants attempt to shoehorn additional evidence that should have been properly included in their case-in-chief.

93. Furthermore, the Complainants had the opportunity to present written surrebuttal testimony and exhibits by July 27, 2022.

¹⁸ 52 Pa. Code § 5.243(e)

¹⁹ *Red Lion Mun. Auth. v. Pa. PUC*, 219 A.3d 730, Docket No. 186 C.D. 2019, 2019 Pa. Commw. Unpub. LEXIS 590, (Pa. Cmwlth. Oct. 29, 2019); *See also: Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority - Stage 1; Petition of Pittsburgh Water and Sewer Authority for Approval of Its Long-Term Infrastructure Improvement Plan*, 2020 PA. PUC LEXIS 382, Docket Nos. M-2018-2640802, *et al.* (Opinion and Order Entered Mar. 26, 2020); *See also Application of Pennsylvania-American Water Co.*, Docket Nos. A-212285F0071, *et al.*, 2001 PA. PUC LEXIS 6, * 180 (Order Adopting in Part and Modifying in Part Initial Decision Entered Feb. 18, 2001) (“If it wished to make it part of the record, it should have done so as part of its case-in-chief.”)

94. Yet, the Complainants never presented any written surrebuttal testimony and exhibits and, instead, waiting until five days before the hearings and after the close of written testimony to present Hartman Exhibits 7a through 53.

95. Therefore, Hartman Exhibits 7A through 53 should be stricken because they were not properly included in the Complainants' case-in-chief or in written surrebuttal testimony and exhibits.

H. SEVERAL OF THE COMPLAINANTS' EXHIBITS LACK AUTHENTICATION AND FOUNDATION AND, THEREFORE, SHOULD BE STRICKEN

96. The Complainants attempt to introduce numerous exhibits that lack authentication and foundation. This evidence should be stricken.

97. Rule 901 of the Pennsylvania Rules of Evidence governs the required procedures to properly authenticate and identify evidence.²⁰

98. Rule 901 dictates that:

(a) In General. Unless stipulated, to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.²¹

99. Additionally, "it is axiomatic that a foundation must be laid for the admission of any evidence."²²

100. The Commission has struck otherwise relevant evidence in the past for lack of proper foundation and lack of authentication.²³

²⁰ 225 Pa. Code § 901.

²¹ 225 Pa. Code § 901(a).

²² *Turek v. Hardy*, 458 A.2d 562, 565 (Pa. Super. 1983).

²³ See *Pa. PUC v. Fawn Lake Forest Water Co.*, Docket Nos. R-912117, *et al.*, 1992 Pa. PUC LEXIS 100 (Opinion and Order entered August 31, 1992); See also *App. of LP Water & Sewer Co. for approval to begin to offer, render, furnish or supply water service to the public in portions of Middle Smithfield Twp., Monroe Cty. and*

101. Here, the Complainants attempt to introduce the following evidence, all of which was not properly authenticated, nor provided with a proper foundation:

- i. Hartman Exhibit 16 – Line Drawing of Access Road and Crane Pads – The Complainants did not present testimony on this exhibit, nor did the Complainants indicate where it was gathered or what it depicts. As such, it is not properly authenticated and should be struck.
- ii. Hartman Exhibit 18 – Google Earth Photo of Transmission Line ROW – The Complainants did not present testimony on this exhibit, nor did the Complainants indicate where it was gathered or what it depicts. Indeed, there is no indication as to whether Hartman Exhibit 18 is the transmission line ROW in question. As such, it is not properly authenticated and should be stricken.
- iii. Hartman Exhibit 20 – Google Earth Photograph – The Complainants did not present testimony on this exhibit, nor did the Complainants indicate where it was gathered or what it depicts. As such, it is not properly authenticated and should be stricken.
- iv. Hartman Exhibit 25 – Photographs of Norway Spruce – The Complainants did not present testimony to properly substantiate this exhibit. Indeed, there is no indication of where or when these photographs were taken. As such, it is not properly authenticated and should be stricken.
- v. Hartman Exhibit 26 – Photographs of Alleged Garbage Below Pole 74 – The Complainants did not present testimony to properly lay a foundation for this exhibit. Indeed, there is no indication of where or when these photographs were taken, beyond an amorphous reference to “Pole 74.” As such, it is not properly authenticated and should be stricken.
- vi. Hartman Exhibit 27 – Aerial Photograph of “PPL PA DEP PERMIT PAD22002 Application” – The Complainants did not present testimony to properly substantiate this exhibit. Indeed, there is no indication of where or when this document was gathered from. As such, it is not properly authenticated and should be stricken.
- vii. Hartman Exhibit 28 – Photographs of the Pole 75 Crane Pad – The Complainants did not present testimony to properly substantiate this exhibit. Indeed, there is no indication of where or when these photographs were taken. As such, it is not properly authenticated and should be stricken.

Lehman Twp., Pike Cty. App. of LP Water & Sewer Co. for the approval to begin to offer, render, furnish or supply sewer service to the public in portions of Middle Smithfield Twp., Monroe Cty. and Lehman Twp., Pike Cty. Affiliated Interest Agreement between LP Water & Sewer Company and Lehman Pike Development Corporation. Falls Community Assoc., Inc. LP Water & Sewer Co. Petition of LP Water and Sewer Co. For The Establishment Of Temporary Rates, Docket Nos. A-211770, et al., 1993 Pa. PUC LEXIS 117 (Opinion and Order entered July 7, 1993).

- viii. Hartman Exhibit 29 – Photographs of the Pole 75 Crane Pad and Other Portions of the ROW – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- ix. Hartman Exhibit 30 – Photographs of Mile-a-Minute – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- x. Hartman Exhibit 31 – Photographs of Mile-a-Minute and NPS Lands – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xi. Hartman Exhibit 32 – Photographs of “Spared Vegetation” – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xii. Hartman Exhibit 33 – Blog Post from “Bugwood.org” Describing Mile-a-Minute – The Complainants did not present testimony to substantiate this blog post. As such, it is not properly authenticated and should be stricken.
- xiii. Hartman Exhibit 35 – Photographs of Pole 75 Crane Pad and Pole 76 Crane Pad – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xiv. Hartman Exhibit 36 – Photographs of “rip-rap” – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xv. Hartman Exhibit 37 – Excerpts from Various Sources Regarding “rip-rap” – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xvi. Hartman Exhibit 39 – Collection of emails between Mr. Hartman and Mr. Dophide from Burns and McDonnell – Through Hartman Exhibit 39, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xvii. Hartman Exhibit 40 – Collection of emails between Mr. Hartman and Mr. Roberts and Mr. Scott from Contract Land Staff – Through Hartman Exhibit 40, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xviii. Hartman Exhibit 41 – Collection of emails between Mr. Hartman and a PPL Electric Contractor – Through Hartman Exhibit 41, the Complainants present their attempts at securing testimony and documents from a non-party. The

Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.

- xix. Hartman Exhibit 42 – Collection of emails between Mr. Hartman and Mr. Pataki from Quanta Services – Through Hartman Exhibit 42, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xx. Hartman Exhibit 43 – Collection of emails between Mr. Hartman and Mr. Spampinato and Mr. Scott from ECI Consultants LLC – Through Hartman Exhibit 43, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxi. Hartman Exhibit 44 – Collection of emails between Mr. Hartman and Mr. Seiferth and Ms. Rodriguez from Penn Line – Through Hartman Exhibit 44, the Complainants present their attempts at securing testimony and documents from a non-party. The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxii. Hartman Exhibit 47 – Photographs of “Needless and Careless PPL Excavation” – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxiii. Hartman Exhibit 48 – August 31, 2020 Email from Complainants to ALJ – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxiv. Hartman Exhibit 49 – Photographs Comparing Access Road on Hartman Property Compared to NPS Property – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxv. Hartman Exhibit 50 – Photographs Comparing Access Road on Hartman Property Compared to Wech Property – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxvi. Hartman Exhibit 51 – Photograph of “Topsoil reclaimed from Pole 77 on border of Hartman–Rosewarne property was given to Rosewarne” – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.

- xxvii. Hartman Exhibit 52 – Photograph of Alleged Erosion – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxviii. Hartman Exhibit 53 – Photographs of Peters Mountain – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxix. Hartman Exhibit 54 – April 3, 2019 Email from Complainants to PPL Electric and its Contractors – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxx. Hartman Exhibit 55 – Photographs of Herbicide Application – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxxi. Hartman Exhibit 56 – August 12, 2022 Vegetation and Access Road on the North Side of Peters Mountain – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.
- xxxii. Hartman Exhibit 57 – February 6, 2019 Email from Kimberly Nettles – The Complainants did not present testimony to properly substantiate this exhibit. As such, it is not properly authenticated and should be stricken.

102. All of the aforementioned exhibits presented by the Complainants wholly lack any credible authentication and foundation.

103. Indeed, in many instances, the Complainants did not reference or address several of the above-referenced exhibits at any point during cross-examination,²⁴ including Hartman Exhibit Nos. 36-38, 41, 43, 47, 49, or 50.

104. At the very least, those exhibits should be stricken, as there is no testimony, from the Complainants or through cross-examination of PPL Electric’s witnesses, to authenticate and lay the foundation for those exhibits.

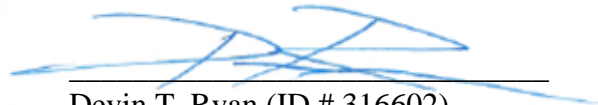
²⁴ The Complainants did call attention to Hartman Exhibit 37 in their closing argument, however, did not address that exhibit during cross-examination.

105. As such, and consistent with the above, all of the Complainants' exhibits that lack authentication and foundation should be stricken.

III. CONCLUSION

WHEREFORE, PPL Electric Utilities Corporation respectfully requests that Administrative Law Judge Steven K. Haas enter the proposed Order attached hereto as **Appendix D** and strike the portions of the direct testimony and exhibits submitted by Michael and Sharon Hartman as described above and in the proposed Order.

Respectfully submitted,



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Date: October 20, 2022

Attorneys for PPL Electric Utilities Corporation

**PPL ELECTRIC
APPENDIX A**

Stobbe, Nicholas

From: Hartman, Michael C <MCHartman@uspis.gov>
Sent: Wednesday, July 13, 2022 1:34 PM
To: Haas, Steve; Ryan, Devin
Cc: Stobbe, Nicholas; Michael J. Shafer (mjshafer@pplweb.com); Sharon Hartman
Subject: RE: [EXTERNAL] RE: Hartman's Third Document Production Request 7-13-2022

Follow Up Flag: Follow up
Flag Status: Flagged

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Thank you your honor.

I withdraw my request for a status hearing.

From: Haas, Steve <sthaas@pa.gov>
Sent: Wednesday, July 13, 2022 11:55 AM
To: Hartman, Michael C <MCHartman@uspis.gov>; Ryan, Devin <DRyan@PostSchell.com>
Cc: Stobbe, Nicholas <NStobbe@PostSchell.com>; Michael J. Shafer (mjshafer@pplweb.com) <mjshafer@pplweb.com>; Sharon Hartman <angelgah@comcast.net>
Subject: RE: [EXTERNAL] RE: Hartman's Third Document Production Request 7-13-2022

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Mr. Hartman –

In response to your various questions . . .

1. You do not need to submit rebuttal testimony
2. PPL has the time deadlines specified in the Commission's regulations to respond to your recent discovery requests
3. All witnesses who submitted testimony will be present at the hearing. They will need to authenticate their testimony and be subject to cross-examination.

Judge Haas

From: Hartman, Michael C <MCHartman@uspis.gov>
Sent: Wednesday, July 13, 2022 11:50 AM
To: Ryan, Devin <DRyan@PostSchell.com>; Haas, Steve <sthaas@pa.gov>
Cc: Stobbe, Nicholas <NStobbe@PostSchell.com>; Michael J. Shafer (mjshafer@pplweb.com) <mjshafer@pplweb.com>; Sharon Hartman <angelgah@comcast.net>
Subject: RE: [EXTERNAL] RE: Hartman's Third Document Production Request 7-13-2022

Your Honor and Mr. Ryan,

Issues,

Do I need to submit Surrebuttal Testimony?

I am ready to proceed to a Hearing without submitting Surrebuttal Testimony.

I would like to hear, however, PPL's position on the production of materials requested today.

Also, can I get assurance from PPL that PPL's Rebuttal witnesses (Eby, Salisbury, Stutzman and Weseloh) will be available as witnesses in our case. I wish to call each as witnesses in our case in chief.

If they will not be made available, I will submit Interrogatories for each.

Thank you,

Mike Hartman

From: Ryan, Devin <DRyan@PostSchell.com>
Sent: Wednesday, July 13, 2022 11:32 AM
To: Hartman, Michael C <MCHartman@uspis.gov>; Haas, Steve <sthaas@pa.gov>
Cc: Stobbe, Nicholas <NStobbe@PostSchell.com>; Michael J. Shafer (mjshafer@pplweb.com) <mjshafer@pplweb.com>; Sharon Hartman <angelgah@comcast.net>
Subject: [EXTERNAL] RE: Hartman's Third Document Production Request 7-13-2022

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Your Honor and Mr. Hartman,

Before PPL Electric can take a position on whether another status conference is necessary, it would be helpful to know for what purpose the status conference would be held. That is unclear from Mr. Hartman's email below.

Thank you.

Devin Ryan
Principal
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101

717-612-6052 (Phone)
717-731-1981 (Fax)
DRyan@PostSchell.com
www.postschell.com

From: Hartman, Michael C <MCHartman@uspis.gov>

Sent: Wednesday, July 13, 2022 7:45 AM

To: Ryan, Devin <DRyan@PostSchell.com>; Haas, Steve <sthaas@pa.gov>

Cc: Stobbe, Nicholas <NStobbe@PostSchell.com>; Michael J. Shafer (mjshafer@pplweb.com) <mjshafer@pplweb.com>; Sharon Hartman <angelgah@comcast.net>

Subject: Hartman's Third Document Production Request 7-13-2022

ALERT: This message originated outside of Post & Schell's network. BE CAUTIOUS before clicking any link or attachment.

Judge Haas and Mr. Ryan,

Attached please find our third request for document production based on PPL's Rebuttal Testimony.

We request a status conference at your earliest convenience, preferably next week sometime other than Tuesday July 19th.

Thank you,

Mike Hartman

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**PPL ELECTRIC
APPENDIX B**

Stobbe, Nicholas

From: Hartman, Michael C <MCHartman@uspis.gov>
Sent: Thursday, August 11, 2022 6:13 PM
To: Haas, Steve; Ryan, Devin
Cc: Stobbe, Nicholas; Michael J. Shafer (mjshafer@pplweb.com); Sharon Hartman
Subject: Hartman Exhibits

ALERT: This message originated outside of Post & Schell's network. BE CAUTIOUS before clicking any link or attachment.

Judge Haas and Mr. Ryan,

Please be advised that I uploaded 55 exhibits and an exhibit list this evening.

I delivered each exhibit to Post Shell today at 1. Post Shell copied the exhibits from my thumb drive.

- Hartman Testimony Exhibit A (May 17, 2022 testimony with limited corrected Hartman photograph dates)
- Hartman Testimony Exhibit B (Hartman photographs contained in Exhibit A with date taken, when known)
- Hartman Testimony Exhibits 1 – 7 (Exhibits to my original May 17, 2022 testimony. I did not delete the original 7 Hartman Testimony Exhibits uploaded on May 17, 2022.)
- Hartman Exhibits 7a, 8 – 52 (New exhibits)
- Hartman vs PPL C-2019-300872 Exhibit List

I respectfully request that all future communications be completed by telephone, text (717-315-9473) or US Mail (1650 Primrose Lane, Dauphin, PA 17018). I am missing too many messages on our personal email, angelgah@comcast.net.

If you must email me at angelgah@comcast.net, please send a text so we can search for the email.

Good evening,

Mike Hartman

**PPL ELECTRIC
APPENDIX C**

Stobbe, Nicholas

From: Haas, Steve <sthaas@pa.gov>
Sent: Monday, August 15, 2022 9:41 AM
To: Hartman, Michael C
Cc: Ryan, Devin; Sharon Hartman
Subject: RE: [External] Hartman Exhibits

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I will accept Hartman Exhibits 53-57 for discussion during the hearings.

I will not accept any further submissions for the hearings. There has to be an end point.

Steve Haas

From: Hartman, Michael C <MCHartman@uspis.gov>
Sent: Monday, August 15, 2022 8:49 AM
To: Haas, Steve <sthaas@pa.gov>
Cc: Ryan, Devin <DRyan@PostSchell.com>; Stobbe, Nicholas <NStobbe@PostSchell.com>; Michael J. Shafer (mjshafer@pplweb.com) <mjshafer@pplweb.com>; Sharon Hartman <angelgah@comcast.net>
Subject: [External] Hartman Exhibits

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

Your Honor,

I respectfully request permission to add Hartman Exhibits 55, 56 and 57, attached, as cross examination exhibits.

I also updated the Exhibit List, attached.

I apologize for the late notice, but trust that PPL has ample time to prepare their witnesses with the evidence.

Exhibits 55 and 56 are photographs of the ROW readily available to PPL.

Exhibit 57 is an email addressed to PPL.

Respectfully,

Mike Hartman

From: Hartman, Michael C
Sent: Saturday, August 13, 2022 11:56 AM
To: Haas, Steve <sthaas@pa.gov>
Cc: Ryan, Devin <DRyan@PostSchell.com>; Stobbe, Nicholas <NStobbe@PostSchell.com>; Michael J. Shafer

(mjshafer@pplweb.com) <mjshafer@pplweb.com>; Sharon Hartman <angelgah@comcast.net>

Subject: FW: Hartman Exhibit 54

Your Honor.

I respectfully request permission to add Hartman Exhibit 54, attached, as a cross examination exhibit.

Proposed Exhibit 54 was emailed by me to Jeffrey Eberwein, a PPL employee, and two PPL ROW Specialists, now identified as contractors, on April 3, 2019.

Accordingly, the document should have been retained by PPL in the ordinary course of business.

I also have attached an updated exhibit list.

Thank you for your consideration,

Mike Hartman

From: Hartman, Michael C

Sent: Friday, August 12, 2022 4:12 PM

To: Haas, Steve <sthaas@pa.gov>

Cc: Ryan, Devin <DRyan@PostSchell.com>; Stobbe, Nicholas <NStobbe@PostSchell.com>; Michael J. Shafer (mjshafer@pplweb.com) <mjshafer@pplweb.com>; Sharon Hartman <angelgah@comcast.net>

Subject: Hartman Exhibit 53

Your Honor,

I respectfully request permission to add Hartman Exhibit 53, attached.

Recently, PPL objected to my Discovery requests for photographs and other documents associated with PPL access roads and crane pads on the opposite side of Peters Mountain (North Side) and the opposite side of Clarks Valley known as Third Mountain aka Stoney Mountain.

The ROW vegetation, crane pads and access roads depicted in these photographs are well known and readily available to PPL during the normal course of business via drone and satellite imagery, or simple photographs taken on foot, like mine.

If I can't use the Exhibit in my case in chief, I respectfully request authorization to use same during the cross examination of PPL employees Eby, Salisbury and Stutzman.

I took the photos today.

Thank you for your consideration.

Mike Hartman

PPL Electric Utilities Corporation
Responses to Request for the Production of Documents
Michael and Sharon Hartman, Set III
Dated June 13, 2022
Docket No. C-2019-3008272

Hartman-III-35: Any notes, diary entries, emails, letters, agreements, photographs, and reports which reflect that PPL constructed any other switchbacks on Peter's and Stoney Mountain pursuant to this project.

PPL Electric's Response: PPL Electric has already served answers to interrogatories and requests for production of documents totaling nearly 700 pages and has responded to several informal discovery requests. PPL Electric's rebuttal testimony and exhibits totaled over 350 pages. The content of the previously-produced documents is readily discernible. Therefore, the Complainants can ascertain whether any of the previously-produced documents fall within the scope of this request. To further respond to this request, PPL Electric would have to conduct a special study or analysis and/or compile information or data in a format that it does not maintain in the normal course of business. Because this is not a rate proceeding, PPL Electric need not conduct such a special study or analysis, nor need it assemble information or data in a format that it does not maintain in the normal course of business. See 52 Pa. Code § 5.361(b).

Witness: Thomas Eby; William Salisbury
Dated: August 2, 2022

**PPL ELECTRIC
APPENDIX D**

PROPOSED ORDER GRANTING MOTION TO STRIKE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael and Sharon Hartman, :
 :
 :
 Complainants, :
 :
 :
 v. : Docket No. C-2019-3008272
 :
 :
 PPL Electric Utilities Corporation, :
 :
 :
 Respondent. :

ORDER GRANTING MOTION TO STRIKE

Upon consideration of the Motion of PPL Electric Utilities Corporation’s (“PPL Electric” or “Company”) to Strike Certain Portions of Michael and Sharon Hartman’s (“Complainants”) testimony and exhibits:

IT IS ORDERED THAT:

1. The Motion is hereby GRANTED.
2. That the following portions of Hartman Exhibit A are hereby stricken, consistent with the reasons enumerated in PPL Electric’s Motion to Strike:
 - a) **Hartman Exhibit A** – Testimony Outside the Scope of the Proceeding: Hartman Exhibit A ¶¶ 2, 40, 49, 54, 57, 62-66, 74-75, 92-93, 112, 116-121, 132-133, and 136.
 - b) **Hartman Exhibit A** – Testimony Outside the Scope of the Pennsylvania Public Utility Commission’s Limited Jurisdiction: ¶¶ 27, 33, 56-57, 59-60, 98, and 122-125.
 - c) **Hartman Exhibit A** – Hearsay Statements and Hearsay within Hearsay Statements:

- i. Alleged statements made by Kimberly Krupka, former counsel to PPL Electric in this proceeding. *See* Hartman Exhibit A, ¶¶ 14, 22, 136;
- ii. Alleged statements made by Kimberly Nettles (employed by Burns and McDonnell). *See* Hartman Exhibit A, ¶¶ 10-11, 13, 16, 24-45, 38, 52, 136;
- iii. Alleged statements by Mike Bush (employed by Burns and McDonnell). *See* Hartman Exhibit A, ¶¶ 20, 37, 41-42, 136;
- iv. Alleged statements by Jonathon Scott (employed by Contract Land Staff). *See* Hartman Exhibit A, ¶¶ 21, 41-42;
- v. Alleged statements by Robin Crossley (employed by Burns and McDonnell). *See* Hartman Exhibit A, ¶¶ 39, 41-412, 136;
- vi. Alleged statements by Kristina Wessner (employed by Burns and McDonnell). *See* Hartman Exhibit A, ¶¶ 76-78, 136;
- vii. Alleged statements by Joseph Scott (employed by Louis Berger Group, which was later acquired by WSP Global). *See* Hartman Exhibit A, ¶ 31;
- viii. Alleged statements by Drew Gradwell (employed by ECI Consultants LLC). *See* Hartman Exhibit A, ¶¶ 85-86, 89-91;
- ix. Alleged statements made by unnamed personnel at the Pennsylvania Department of Environmental Protection and the United States' Environmental Protection Agency as purportedly recounted by Drew Gradwell (employed by ECI Consultants). *See* Hartman Exhibit A, ¶ 85;
- x. Alleged statements by William Rook (employed by Penn Line). *See* Hartman Exhibit A, ¶¶ 92-94;
- xi. Alleged statements Eric Naguski (the "Dauphin County Conservation District Manager," according to the Complainants). *See* Hartman Exhibit A, ¶ 96;
- xii. Alleged statements by Todd Lutte (an "EPA Field Scientist," according to the Complainants) . *See* Hartman Exhibit A, ¶¶ 98, 123-124, 128;
- xiii. Alleged statements by Ed Fisher (a "Middle Paxton Township Engineer," according to the Complainants). *See* Hartman Exhibit A, ¶¶ 98, 123-124;

- xiv. Alleged statements by Don Gilbert (a “PA Department of Agriculture Pesticide Specialist,” according to the Complainants). *See* Hartman Exhibit A, ¶ 128;
- xv. Alleged statements by an unnamed “Contract Land Staff contractor that preceded Jonathon Scott.” *See* Hartman Exhibit A, ¶ 88;
- xvi. Alleged statements by an unnamed “Backhoe Operator.” *See* Hartman Exhibit A, ¶ 48;
- xvii. Alleged statements by unnamed “neighbors.” *See* Hartman Exhibit A, ¶ 21;
- xviii. Alleged statements by “PPL ROW Specialist[s].” *See* Hartman Exhibit A, ¶ 136;
- xix. Alleged statements by unnamed “Representative” of MJ Electric. *See* Hartman Exhibit A, ¶ 136; and
- xx. Alleged statements of unnamed “Representative” of Newville Construction. *See* Hartman Exhibit A, ¶ 136.

3. That the following portions of the Complainants’ testimony and exhibits are stricken, consistent with the reasons enumerated in PPL Electric’s Motion to Strike:

- a) Hartman Exhibit B – Photographs and captions to those photographs that were already provided by the Complainants as part of Hartman Exhibit A.
- b) Hartman Exhibit No. 2 – Letter purportedly written by Kimberly Nettles on December 17, 2018, containing alleged statements of Kimberly Nettles (employed by Burns and McDonnell) and Jonathan Scott (employed by Contract Land Staff).
- c) Hartman Exhibit No. 6 – Email purportedly sent by Kristina Wessner (employed by Burns and McDonnell) on August 24, 2020, containing alleged statements of Kristina Wessner.
- d) Hartman Exhibit Nos. 7A through Hartman Exhibit No. 53.
- e) Hartman Exhibit 54 – April 3, 2019 Email from Complainants to PPL Electric and its Contractors.
- f) Hartman Exhibit 55 – Photographs of Herbicide Application.
- g) Hartman Exhibit 56 – August 12, 2022 Vegetation and Access Road on the North Side of Peters Mountain.
- h) Hartman Exhibit 57 – February 6, 2019 Email from Kimberly Nettles.

Dated: _____

Honorable Steven K. Haas
Administrative Law Judge