**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael and Sharon Hartman :

:

v. : C-2019-3008272

:

PPL Electric Utilities Corporation :

**ORDER**

**GRANTING IN PART AND DENYING IN PART**

**RESPONDENT’S MOTION TO STRIKE**

This Order grants in part and denies in part Respondent PPL’s Motion to Strike portions of the Complainant’s written testimony and exhibits submitted in advance of the evidentiary hearings in this proceeding.

BACKGROUND

Complainants Michael and Sharon Hartman filed their Formal Complaint against PPL in March of 2019. The gravamen of the complaint is that PPL abused its right of way through the Hartman’s property, causing extensive damage to the land and vegetation, when performing the company’s Halifax-Dauphin 69 KV Transmission Line Rebuild Project. PPL filed its Answer to the Complaint on March 25, 2019. This proceeding was originally assigned to Administrative Law Judge Andrew Calvelli. It was subsequently re-assigned to me.

On June 27, 2019, PPL filed a Motion for Summary Judgment in which it requested that the complaint be dismissed as outside of the Commission’s jurisdiction. PPL argued essentially that the complaint involved the interpretation and enforcement of a private, contractual right of way agreement between the parties. The Hartmans filed an Answer to PPL’s Motion on July 15, 2019.

By Initial Decision dated October 4, 2019, Judge Calvelli granted PPL’s Motion and dismissed the Hartmans’ Complaint. The Hartmans filed exceptions to the Initial Decision on October 30, 2019.

In its April 16, 2020, Opinion and Order (April 2020 Order), the Commission granted in part and denied in part the Hartmans’ exceptions and remanded the proceeding to the Office of Administrative Law Judge for further proceedings consistent with its Order. In its Order, the Commission identified the allegations in the Complaint that were beyond the Commission’s jurisdiction, as well as the allegations that were the proper subjects of further proceedings.

On February 17, 2021, attorney Robert Young filed a Notice of Entry of Appearance on behalf of the Hartmans. On November 30, 2021, PPL filed a Praecipe for Withdrawal of attorney Kimberly Krupka, and on December 1, 2021, PPL filed a Notice of Entry of Appearance for Michael J. Shafer, Devin T. Ryan and Nicholas A. Stobbe. On March 1, 2022, attorney Robert Young filed a Notice of Withdrawal of Appearance on behalf of the Hartmans. The Hartmans have proceeded throughout the remainder on this proceeding on a *pro se* basis.

Throughout and after the time period during which the above-described events occurred, the parties engaged in discovery and settlement discussions. Several site visits occurred at the Hartmans’ property during which the parties viewed the property and discussed the Complaint. Both parties propounded Interrogatories and the Hartmans submitted requests for the issuance of subpoenas for various individuals. Various procedural issues arose at times throughout the course of this proceeding related to discovery requests propounded by the parties. During an informal, off the record call between the parties and I in early 2022, I proposed and the parties agreed to “re-set” discovery in the case and re-issue their various requests in order to overcome and rectify any prior procedural issues or defects. The Hartmans and PPL discussed the interrogatories that had been previously propounded by the Hartmans and resolved any issues related to PPL’s answers, culminating in my receiving an e-mail from PPL’s counsel on April 25, 2022, in which he informed me that Mr. Hartman indicated he would not be filing a Motion to Compel.

Following the discovery “re-set,” the Hartmans again submitted requests for subpoenas for a number of individuals. These requests were sent to PPL and I but were not served on the individual subjects of the requests as required by the Commission’s regulations. By e-mail to the parties dated May 17, 2022, I informed Mr. Hartman that his subpoena requests had not been served properly and instructed him that both PPL and the individuals who were the subject of the subpoenas had to be served. Proper subpoenas applications were not subsequently submitted for the subject individuals.

Pursuant to a procedural schedule established by the parties, evidentiary hearings were scheduled for August 16-17, 2022. The Hartmans served their written direct testimony and exhibits on May 17, 2022.[[1]](#footnote-1) On July 8, 2022, PPL served its written rebuttal testimony and exhibits. By e-mail dated July 13, 2022, the Hartmans indicated that they did not intend to serve surrebuttal testimony. Additional proposed exhibits were served by the parties and evidentiary hearings were held, as scheduled, on August 16-17, 2022. A third and final hearing was held on September 21, 2022.

At the beginning of the August 16, 2022, hearing, counsel to PPL indicated that PPL had a substantial number of objections to portions of the direct testimony and exhibits submitted by the Hartmans. I directed that we would proceed with the hearing and cross examination and allow PPL to submit its objections in writing after the hearings had concluded, with an opportunity for the Hartmans to respond to the objections. To that end, a schedule was established whereby PPL’s written objections would be due by October 20, 2022, and a written response to PPL’s objections, if any, would be due by November 9, 2022.

PPL filed a Motion to Strike on October 20, 2022. After some initial filing difficulty with submitting a response, PPL and I ultimately received the Hartmans’ response to PPL’s Motion on December 12, 2022. By e-mail dated December 12, 2022, I informed the parties that, although the Hartmans’ response had not initially been properly filed by the established deadline with the Commission, I would accept and consider it in ruling on PPL’s Motion.

MOTION TO STRIKE

The testimony and exhibits that are the subjects of PPL’s Motion to Strike are arranged in the Motion into eight general categories. The eight categories are as follows:

1. Testimony and exhibits that are outside the scope of this proceeding.
2. Statements in the testimony and exhibits that are outside the scope of the Commission’s limited jurisdiction.
3. Hearsay statements and hearsay within hearsay statements.
4. Repetitious or cumulative statements.
5. Irrelevant statements.
6. Statements that are inherently unreliable and not provided in original form.
7. Hartman Exhibits 7A through 53, which were not properly included in Complainants’ case in chief.
8. Exhibits that lack proper authentication.

Preliminarily, I note that **t**he Commission, in its April 16, 2020 Order, identified various issues that it dismissed from consideration in this proceeding. It also identified the specific issues that were to be addressed in the remanded proceeding and for which a record was to be developed.

The following issues were dismissed by the Commission from this proceeding:

1. Whether proper notice of activities contemplated by the easement agreement was provided (April 2022 Order, p. 14);
2. 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 (April 2020 Order, p. 20);
3. 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 (April 2020 Order, p. 21);
4. Complainants’ request for monetary damages (April 2020 Order, p. 21); and
5. 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 increases storm water discharges (April 2020 Order, p. 22).

The following issues were specifically identified as those for which an evidentiary record was to be developed in this proceeding:

1. Allegations about PPL Electric’s vegetation management practices (April 2020 Order, p. 19);
2. Allegations about the quality and reasonableness of PPL Electric’s construction efforts (April 2020 Order, p. 19); and
3. 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 Complainant’s property and any safety hazards resulting therefrom that may be reasonably identified and the steps that PPL Electric proposes to implement in order to adhere to its statutory duty to furnish adequate, safe and reasonable service (April 2020 Order, pp. 22-23).

It is against these directives from the Commission that I address PPL’s Motion and the Hartmans’ responses thereto.

1. **Testimony and exhibits that are outside the scope of this proceeding.**

PPL first cites to the passage in the Commission’s April 2020 Order that states: “[w]hile the Code has a provision for the discrimination in service in Section 1502 of the Code, 66 Pa. C.S. §1502, we have not interpreted that provision to include the restoration of property impacted by activities of a utility in order to supply service to the public.” (April 2020 Order, p. 20). Based on this directive, PPL seeks to strike statements and exhibits that support allegations of discrimination in service between the Hartmans’ property and adjoining property owned by the National Park Service (NPS). In particular, PPL seeks to strike Hartman Exhibit A, ¶¶2, 40, 49, 54, 57, 62-66, 74-75, 92-93, 112, 116-121, 132-133, 136, and Hartman Exhibit Nos. 31, 45, 46, 48, 49, 50 and 51.

In their response, the Hartmans deny that the relevant testimony and exhibits are being introduced to show discrimination in PPL’s restoration efforts between the two properties but, rather, are intended to prove that PPL’s construction and vegetation management practices on their property were unreasonable and did not reflect safe, adequate, and reliable service.

The Hartmans are correct that, while the Commission excluded from consideration in this proceeding allegations of discrimination in restoration activities between the two properties, it did not exclude from consideration more general allegations of discrimination in service contemplated in 66 Pa. C.S. §1502. Accordingly, I will deny PPL’s Motion to Strike Hartman Exhibit A, ¶¶2, 40, 54, 57, 62-66, 74-75, 92, 112, 116-121, 132-133, 136, and Hartman Exhibit Nos. 31, 49, 50 and 51, to the extent, if any, that they support more general allegations of discrimination in construction and vegetation management activities. As noted, however, I will not consider any allegations of discrimination in restoration activities between the two properties as being outside the scope of this proceeding.

PPL next argues that the Hartmans are improperly raising allegations about environmental issues that are related to the project’s environmental impact, environmental protection controls and unpermitted or increased stormwater discharge. PPL argues that those environmental issues are outside the scope of this proceeding as being “. . . squarely within the purview of the Pennsylvania Department of Environmental Protection [DEP] and/or an appropriate civil court of jurisdiction to address.” (April 2020 Order, p. 22). In particular, PPL seeks to strike Hartman Exhibit A, ¶¶27, 33, 56-57, 59-60, 98, 122-125.

The Hartmans point to the passage in the Commission’s April 2020 Order wherein it directed the ALJ:

. . . to determine 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 proposes to implement in order to adhere to its statutory duty to furnish adequate, safe and reasonable service.”

April 2020 Order, p. 20.

The Hartmans argue that the relevant testimony goes to the issues of vegetation management allegations and whether PPL’s construction activities constituted adequate, safe and reasonable service, and whether those activities resulted in erosion and sedimentation or safety hazards on their property.

The testimony in Hartman Exhibit A, ¶¶27, 33, 56-57, 59-60, 98, 122-125 arguably addresses the issues of soil erosion and sedimentation on the Hartman’s property resulting from PPL’s construction activities, which are issues in this proceeding. Accordingly, I will deny PPL’s Motion to Strike Hartman Exhibit A, ¶¶27, 33, 56-57, 59-60, 122-125. I note, however, as more fully addressed below, that allegations about violations of municipal and county laws or environmental regulations, such as the interpretation of, and whether PPL violated, its Erosion and Sediment Control Plan and Permit or DEP permits, are beyond this Commission’s jurisdiction. Accordingly, this testimony will not be considered to the extent it purports to address allegations of violations of municipal, county laws or DEP regulations that are beyond the Commission’s jurisdiction.

1. **Statements in testimony and exhibits that are outside the scope of the Commission’s limited jurisdiction.**

PPL next argues that any testimony and exhibits related to issues involving the interpretation of, or compliance with, PPL’s Erosion and Sediment Control Plan (E&S) and permit, and whether PPL violated its obligations under the Plan should be stricken as beyond the Commission’s jurisdiction. It specifically seeks to strike Hartman Exhibit A, ¶¶ 9, 17, 22, 26-35, 39-40, 49, 67-69, 77, 95, 136 and Hartman Exhibit Nos. 4, 13, 14, 19, 21, 22, 23, 45, 46, 48, 49 and 50. PPL further argues that testimony and exhibits related to the project’s environmental impact, environmental protection controls and alleged unpermitted or increased stormwater discharges are likewise beyond the Commission’s jurisdiction and should be stricken. PPL specifically seeks to strike Hartman Exhibit A, ¶¶ 27, 33, 56-57, 59-60, 98, 122-125.

In response, the Hartmans again note language in the Commission’s April 2020 Order, which directed that the Commission address the issues of the safety and reasonableness of PPL’s construction activities on Complainants’ property, and its impact on erosion and sedimentation on the property and any safety hazards on their property that resulted therefrom. The Hartmans argue that PPL failed to follow its own E&S plan and the terms and conditions of its PA DEP permit. The Hartmans request that the specific testimony passages and exhibits challenged by PPL above be admitted.

PPL correctly argues in its Motion that the Commission’s authority “extends only to those matters that the state legislature has specifically delegated to it in the Code.”[[2]](#footnote-2) The Commission stated in its April 2020 Order:

We decline to examine the general or specific issues raised in the Complaint because the Complainants’ assertions regarding any environmental impact of PPL’s construction practices, the reasonableness of PPLs environmental protection control, or lack thereof, or any unpermitted or increased storm water discharges are outside of the Commission’s jurisdiction. These matters are squarely within the purview of the Pennsylvania Department of Environmental Protection and/or an appropriate civil court of jurisdiction to address.

April 2020 Order, p. 22.

The law is clear in Pennsylvania that the Commission does not have jurisdiction over claims involving violations of Municipal law or environmental regulations that are beyond the scope of the Code or a Commission order or regulation.[[3]](#footnote-3)

Any testimony and exhibits involving the interpretation of PPL’s E&S plan and whether PPL’s construction activities in completing the project violated the E&S plan will be stricken as beyond the Commission’s jurisdiction. In addition, any testimony and exhibits involving the general environmental impacts of PPL’s construction activities, the reasonableness of its environmental protection controls, or unpermitted or increased stormwater runoff will also be stricken. On the other hand, as discussed above, testimony and exhibits related to allegations about safety impacts and alleged destruction of vegetation, including soil erosion and sedimentation, specifically on the Hartmans’ property will be admitted.

Therefore, I will grant PPL’s Motion and strike from the record Hartman Exhibit A, ¶¶26, 35, 39, 49 and 77, and Hartman Exhibit Nos. 4, 13, 14, 21, 22, 23, 45, 46 and 48. I will deny PPL’s Motion with respect to Hartman Exhibit A, ¶¶ 9, 17, 22, 27-30, 32-34, 40, 67, 68, 69, 95 and 136, and Hartman Exhibit Nos. 19, 49 and 50.[[4]](#footnote-4)

1. **Hearsay statements and hearsay within hearsay statements.**

In this section of its Motion, PPL cites to numerous statements and exhibits attributed to or prepared by people who did not appear at or testify during the hearings in this proceeding. PPL argues that all of this proposed evidence constitutes out of court statements and exhibits that are being offered to prove the truth of the matters asserted therein. PPL notes that none of the declarants of the various challenged statements were presented as witnesses and, consequently, were not available to be cross examined during the hearings. PPL argues that the challenged statements and exhibits are inadmissible hearsay and should be stricken from the record.

In opposing PPL’s hearsay arguments, the Hartmans argue that the individuals whose statements are being challenged have all been identified as being authorized to speak on behalf of PPL. They further argue that some of the challenged statements are admissible as exceptions to the hearsay rule under either Rule 804(b)(3) (Statement Against Interest) or Rule 804(b)(6) (Statement Offered Against a Party That Wrongfully Caused the Declarant’s Unavailability). The Hartmans argue that PPL had ample opportunity to debrief the challenged declarants prior to the hearings or refute their statements but did not do so. Additionally, the Hartmans argue that many of the challenged statements have been corroborated by Hartman photographs and testimony. The Hartmans further argue that some of the challenged exhibits constitute PPL business records and are admissible on that basis. The Hartmans argue that, for these reasons, the challenged statements and exhibits are admissible and PPL’s hearsay arguments should be denied.

The Harmans argue that the declarants associated with the challenged statements or exhibits were fully authorized to speak on behalf of PPL and, consequently, may properly bind the company to the challenged statements. Other than the Hartmans so stating, however, there is no admissible evidence in the record confirming that PPL authorized the declarants to speak on the company’s behalf and bind the company to the challenged statements. This is particularly the case when some of the challenged statements were made after the Hartmans filed their complaint against PPL. Absent direct authorization by PPL, which we do not have in the record, there declarants certainly aren’t authorized to bind the company, and especially with respect to litigation efforts and decisions.

With respect to the Harmans’ argument that certain of the challenged statements constitute PPL business records, I note that Pennsylvania Rule of Evidence 803 requires that certain foundational requirements be established by the custodian of the records or another qualified witness for a record to be admitted as a business record. For example, Rule 803 requires testimony proving that the record was made at or near the time of the occurrence, that it was kept in the course of a regularly conducted activity of the business, and that making the record was a regular practice of that activity. There is no such foundational testimony in the record that would properly qualify the challenged statements as PPL business records.

Finally, in the case of *Walker v. Unemployment Comp. Bd. of Review,* 367 A.2d 366 (Pa. Cmwlth. 1976), the Pennsylvania Commonwealth Court stated the evidentiary rule in Pennsylvania that hearsay evidence that has been properly objected to may not be used to support a finding, while hearsay evidence that has been admitted without objection may only support a finding if it is corroborated with other competent evidence in the record.

I note that many of the challenged statements contain, in addition to information that arguably constitutes hearsay, admissible information that addresses some of the issues in this proceeding, such as descriptions of construction activities that the Hartmans themselves witnessed. In admitting certain such statements into the record, they will only be relied upon to the extent they contain competent evidence that is relevant to the issues in this proceeding.

Based upon the above considerations, I will grant PPL’s Motion and strike the following testimony and exhibits from the record:

Hartman Exhibit A

¶¶ 11, 13, 14 (last sentence only), 16, 21, 24, 25, 31, 39, 41, 42, 48, 76, 77, 85, 86, 89, 90, 91, 93, 94, 96, 98, 128, 136 (sub-sections 12, 19, 20, 21, 27, 28 and 32 only).

Hartman Exhibits

2, 6, 15, 41, 48, 57.

Finally, the Hartmans argue that, if any of their testimony or exhibits are excluded on hearsay grounds, then all of PPL’s rebuttal testimony should likewise be stricken on hearsay grounds. They argue, for example, that no PPL witnesses observed their property pre-construction, and they were not present to personally observe some of the construction and vegetation management activities that are at issue in this proceeding. Even if some of PPL’s evidence is arguably inadmissible, specific objections to such evidence were not raised during the hearings and, consequently, PPL did not have an opportunity to respond and argue against any objections. Accordingly, I will not strike any PPL evidence here. I emphasize here, however, that the weight, if any, that I give to such evidence will be determined by its reliability as support for PPL’s positions on the subjects at issue. For example, if a PPL witness provided testimony about the proper way to spray or treat areas similar to the Hartmans’ property but did not personally observe or witness the spraying or treatment of the Hartman’s property, I will give very little weight, if any, to that testimony in support of PPL’s position that the spraying or treatment performed on the Hartmans’ property was, in fact, done properly.

1. **Statements in Complainants’ testimony and exhibits that are repetitious or cumulative.**

PPL correctly argues that Section 5.401 of the Commission’s regulations provides that evidence will be excluded if it is repetitious or cumulative. 52 Pa. Code §5.401(b)(1). The Commission’s regulations also provide, however, that “[t]he presiding officer shall have all necessary authority to control the receipt of evidence . . . .” 52 Pa. Code §5.403(a). PPL argues that the Hartman exhibits listed on pages 15-18 of its Motion should be stricken as being repetitive of or cumulative with other evidence already in the record. All of the challenged exhibits are included either in whole or in part in other record evidence that has been admitted in this proceeding.

I have reviewed the challenged exhibits and conclude that it is not necessary to strike them from the record. Certain evidence will simply be included twice in the record. To the extent that certain of the challenged exhibits constitute only a portion of a document that has been included in full elsewhere in the record, and it is relevant to a finding or determination in this proceeding, the parties may simply refer to the complete version of the evidence and disregard the same evidence elsewhere. I see no harm or prejudice in allowing in the record the challenged exhibits. Accordingly, unless stricken on other grounds elsewhere in this Order, PPL’s Motion to strike certain Hartman exhibits on the basis of being repetitive or cumulative is denied.

1. **Irrelevant statements in Complainants’ testimony and exhibits.**

PPL challenges the admission of Hartman Exhibit Nos. 11, 38, 39 and 40-44 on the ground that they are not relevant to or probative of any issues to be decided in this proceeding.

With respect to Hartman Exhibit 11, PPL argues that the development plan of a nearby subdivision is not relevant to the issue of the reasonableness of PPL’s actions on the Hartman property. The Hartmans argue it is relevant to the issue of whether PPL’s vegetation management activities on the Hartman property were applied equally to similarly situated properties near the Hartman property.

With respect to Hartman Exhibit 38, an e-mail from PPL counsel to Complainants’ then attorney, PPL argues that it is not relevant to an issue to be decided in this proceeding. The Hartmans argue that it corroborates their assertion that certain people were instructed by PPL to not speak to or cooperate with the Complainants.

With respect to Hartman Exhibits 39-44, PPL argues that they are collections of e-mails between Mr. Hartman and various other individuals who are not parties to this proceeding and who were not presented as witnesses at the hearings. PPL argues that Complainants, through these exhibits, are attempting to secure testimony and documents from non-parties who did not testify at the hearings. PPL argues that Complainants did not properly apply for subpoenas for any non-parties and their attempts to introduce information and documents from such persons are improper. The Hartmans again argue that the challenged exhibits corroborate their assertion that certain people were instructed by PPL to not speak to or cooperated with the Complainants.

PPL correctly notes in its Motion that, under Section of 5.401 of the Commission’s regulations, evidence must be relevant to issues in the proceeding to be admissible. Evidence is relevant if it has a tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the action. 52 Pa. Code §§401(a)(b).

With respect to Hartman Exhibit 11, I agree with the Hartmans that the exhibit is arguably relevant on the issue of the reasonableness of PPL’s vegetation management activities on the Hartman property and whether the Hartmans were treated differently in such activities than other nearby, similarly situated property owners. Accordingly, I will deny PPL’s Motion requesting to strike Hartman Exhibit 11.

With respect to Hartman Exhibits 38-44, I agree with PPL that the challenged e-mail exchanges involve disputes between the parties that are not probative of the limited set of issues identified by the Commission in the April 2020 Order to be decided in this proceeding. The Hartmans argue the exhibits are intended to show that certain non-party individuals were prevented by PPL from speaking to or cooperating with Complainants. PPL argues that the Hartmans did not properly apply for subpoenas for any of these individuals. None of these individuals appeared as witnesses at the hearing. Information tending to demonstrate PPL’s procedural or tactical decisions in its interactions with Complainants are not relevant to the specific topics at issue in this proceeding. With respect to Hartman Exhibits 38-44, I agree with PPL and will strike these exhibits from the record.

1. **Statements in Complainants’ testimony and exhibits that are inherently unreliable and not provided in original form.**

PPL requests that Hartman Exhibits 14, 33 and 37 be stricken as being unreliable. It argues that Exhibit 14 is an excerpt from PPL’s E&S plan that it cut and pasted. It states it has provided the plan in its entirety as PPL Electric Exhibit TE-1. PPL argues that Exhibit 33 is a blog post describing Mile-a-Minute vegetation for which there is no authenticating testimony. PPL further argues that Exhibit 37 is evidence describing “rip-rap” taken from several sources that appears to have been altered from its original state. The Hartmans argue that Exhibit 14 was taken from the company’s E&S plan, the original of which is in fine print that is difficult to read. They argue that Exhibits 33 and 37 were reviewed with three PPL witnesses and corroborated by other testimony and exhibits.

I note that Ex. 14 was stricken above on other grounds. I will deny PPL’s Motion to strike Hartman Exhibits 33 and 37. To the extent that information from PPL’s E&S plan is useful in determining any of the issues to be decided in this case, the parties and I can refer to the full plan included as part of PPL’s evidence. As noted above, general information about Mile-a-Minute and “rip-rap” may be helpful to me in having a basic and general understanding about these items as I address the parties’ arguments. They will be admitted and used by me for no other purpose. The degree to which I determine the level of reliability of the challenged exhibits will dictate the weight given to them preparing a decision.

Accordingly, I will deny PPL’s Motion requesting to strike Hartman Exhibits 33 and 37.

1. **Hartman Exhibits 7A through 53 were not properly included in Complainant’s case-in-chief or in surrebuttal testimony.**

PPL notes that the Hartmans submitted their direct testimony and exhibits on May 27, 2022, in accordance with the schedule established and agreed upon by the parties. The Hartmans did not submit surrebuttal testimony. Subsequently, on August 11, 2022, the Hartmans submitted Exhibit Nos. 7A through 52. On August 12, 2022, they submitted exhibit 53. PPL argues that these exhibits should have been submitted as part of their case in chief, either with their direct testimony or as part of surrebuttal testimony. Since the challenged exhibits were included with neither, PPL argues the Hartmans are attempting to shoehorn additional evidence into the record five days before the start of hearings. PPL argues that Hartman Exhibits 7A-53 should be stricken on this basis.

The Hartmans argue that they were under the mistaken belief that they would be able to present their case in chief in person during the hearings, rather than having to rely solely on their written testimony and exhibits submitted prior to the hearings. They argue that the admission of the challenged exhibits will not adversely affect the rights of the parties and that PPL has had sufficient opportunity to address and challenge the exhibits during the hearings.

I note that certain of the challenged Hartman exhibits have already been stricken in response to other challenges raised by PPL in its Motion. With respect to the remaining Hartman Exhibits 7A-53, I will deny PPL’s Motion and admit the exhibits into the record. I do not believe that PPL will be unduly prejudiced by the admission of the remaining challenged exhibits. PPL addresses a number of the topics in the challenged exhibits in its rebuttal testimony. Additionally, Mr. Hartman questioned some of PPL’s witnesses extensively during the hearings on a number of the challenged exhibits, so PPL had an opportunity to address them and provide whatever explanation or rebuttal it felt necessary. Accordingly, to the extent not already otherwise stricken in this Order, PPL’s Motion to Strike Hartman Exhibits 7A-53 is denied.

1. **Exhibits lack authentication and foundation.**

PPL argues that a number of the Hartmans’ proposed exhibits were offered without proper authentication and foundation. The challenged exhibits include drawings, photographs, articles and e-mails. PPL requests that Hartman Exhibits 16, 18, 20, 25-33, 35-37, 39-44, and 47-57 be stricken from the record.

The Hartmans generally argue that some of the exhibits are readily publicly available and self-explanatory (photographs, aerial photographs internet articles, etc.), while many of the others were described and addressed during Mr. Hartman’s cross examination of PPL witnesses. The Hartmans request that the challenged exhibits be admitted into the record.

Unless otherwise stricken on other grounds in other sections of this Order, I will deny PPL’s Motion and admit the challenged exhibits into the record. While a proper foundation and authentication may not have been formally presented for some of the exhibits, I will factor that consideration into my review and I will assign appropriate weight, if any, to the challenged exhibits when preparing an Initial Decision and ruling on the issues to be decided in this case.

THERFORE,

IT IS ORDERED:

1. That the Motion of PPL Electric Utilities Corporation to Strike certain portions of the Complainants' direct testimony and exhibits is granted in part and denied in part, consistent with this Order.

2. That the following paragraphs from Hartman Exhibit A (Direct Testimony) are hereby stricken from the evidentiary record:

11, 13, 14 (last sentence only), 16, 21, 24, 25, 26, 31, 35, 39, 41, 42, 48, 49, 76, 77, 85, 86, 89, 90, 91, 93, 94, 96, 98, 128, 136 (subsection nos. 12, 19, 20, 21, 27, 28 and 32 only).

3. That the following Hartman Exhibits are stricken from the evidentiary record:

2, 4, 6, 13, 14, 15, 21, 22, 23, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48 and 57.

Date: February 2, 2023 /s/

Steven K. Haas

Administrative Law Judge

**C-2019-3008272 - MICHAEL AND SHARON HARTMAN v. PPL ELECTRIC UTILITIES CORPORATION***Updated 06/27/22*

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1. The Hartmans submitted their direct testimony as “Exhibit A.” Accordingly, I will refer to their direct testimony in this Order as Hartman Exhibit A. [↑](#footnote-ref-1)
2. *Flynn, et al. v Sunoco, L.P.,* 2021 PA. PUC LEXIS 529, \*20, Docket Nos. C-2018-3006116, et al (Opinion and Order entered November 18, 2021). [↑](#footnote-ref-2)
3. *Rovin, D.D.S. v. Pa. PUC,* 502 A.2d 785 (Pa. Cmwlth. 1986); *Country Place Water Treatment Co., Inc. v. Pa. PUC,* 654 A.2d 72 (Pa. Cmwlth. 1995). [↑](#footnote-ref-3)
4. Hartman Exhibit 4 contains excerpts from PPL’s E&S plan. PPL Exhibit TE-1 contains the entirety of PPL’s E&S plan. To the extent a party wishes to refer to PPL’s E&S plan on a topic that is properly at issue in this proceeding, it may refer to PPL Exhibit TE-1. [↑](#footnote-ref-4)