



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: June 15, 2005

A-110550F0161

WARD L SMITH ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET S23-1
PO BOX 8699
PHILADELPHIA PA 19101-8699

DOCUMENT FOLDER

Application of PECO Energy Company
For a finding of necessity for the situation of one building
On a site in Montgomery Township, Montgomery County
Pennsylvania, containing four acres, located on 110
Domorah Drive near Corporate Drive, adjacent to
Applicant's transmission line right-of-way. The electric
Transforming substation will be designated "Hartman Substation

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Charles E. Rainey, Jr.

An original and nine (9) copies of signed exceptions to the decision, if any, **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION, 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265;** a copy in the hands of the Office of Special Assistants Third Floor; and a **copy in the hands** of each party of record no later than **June 20, 2005 by 4:30 P.M.** 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions. A certificate of service shall be attached to the filed exceptions.

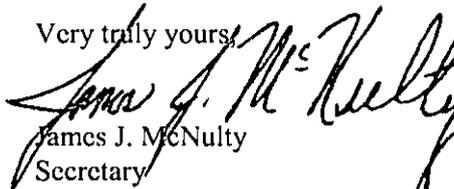
Exceptions shall obey 52 Pa. Code 5.533 and 5.535, particularly the 40-page limit for exceptions. Exceptions should be clearly labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

Reply exceptions will not be accepted for filing and will not be entertained by the Commission.

Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of exceptions/reply exceptions on a computer disk, 3 1/2" in size, in Microsoft Word 6.0 format. If Word 6.0 is not available, either Wordperfect 5.1 or ASCII format is acceptable.

Very truly yours,


James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
jeh

KJR

A-110550F0161 Application of PECO Energy Company

FOR A FINDING OF NECESSITY FOR THE SITUATION OF ONE BUILDING ON A SITE IN MONTGOMERY TOWNSHIP, MONTBOMERY COUNTY, PENNSYLVANIA, CONTAINING FOUR ACRES, LOCATED ON 110 DOMORAH DRIVE, NEAR CORPORATE DRIVE, ADJACENT TO APPLICANT'S TRANSMISSION LINE RIGHT-OF-WAY. THE ELECTRIC TRANSFORMING SUBSTATION WILL BE DESIGNATED "HARTMAN SUBSTATION".

WARD L SMITH ESQUIRE ✓
PECO ENERGY COMPANY
2301 MARKET STREET/S23-1
PO BOX 8699
PHILADELPHIA PA 19101-8699

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ENR

JUN 08 2005

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DOCUMENT
FOLDER**

Application of PECO Energy Company :
for a finding of necessity for the situation of one building :
on a site in Montgomery Township, Montgomery County :
Pennsylvania, containing four acres, located on 110 :
Domorah Drive near Corporate Drive, adjacent to :
Applicant's transmission line right-of-way. The electric :
transforming substation will be designated "Hartman :
Substation." :

A-110550F0161

INITIAL DECISION

DOCKETED

JUN 15 2005

Before
Charles E. Rainey, Jr.
Administrative Law Judge

HISTORY OF THE PROCEEDING

On February 17, 2005, PECO Energy Company (PECO or Applicant) filed an application with the Pennsylvania Public Utility Commission (Commission) to obtain an exemption from a local zoning ordinance pursuant to Section 619 of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. §10619 and Section 230-141 of the Montgomery Township Zoning Code, in order to construct one building in connection with the erection of an electric transforming substation, to be designated "Hartman Substation". PECO also seeks the Commission's approval of a related land transaction pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. §1102(a)(3). Notice of PECO's application was published in the Pennsylvania Bulletin on March 5, 2005. The Pennsylvania Bulletin notice provided that any protests to the application were to be filed by March 21, 2005. No protests were filed.

PECO's application was assigned to me by Notice dated March 24, 2005, of an initial prehearing conference scheduled for April 13, 2005. On March 28, 2005, I issued a

Prehearing Conference Order. In compliance with my Prehearing Conference Order, PECO submitted a prehearing memorandum dated April 5, 2005.

The prehearing conference was held as scheduled. PECO was the sole party at the prehearing conference, and it was represented by Ward Smith, Esquire. During the course of the prehearing conference, it was determined that a public hearing would be held pursuant to 53 P.S. §10619 and the Montgomery Township Zoning Code §230-141. The agreed upon date, time and place for the public hearing was May 19, 2005, at 7:00 p.m. at the Montgomery Township Building.

Notice of the public hearing on PECO's application was timely published in one newspaper of general circulation and two newspapers of local circulation. See, PECO Hearing Ex. 1. In addition, PECO sent to residents who were on its mailing lists for this project, letters informing them of the public hearing. Id.

The public hearing was held as scheduled. Mr. Smith again appeared on behalf of PECO. PECO introduced one exhibit (PECO Hearing Ex. 1), which was admitted into evidence. There were three public witnesses, all of whom provided sworn testimony. The three witnesses were: Montgomery Township Supervisor Stephen A. Prousi, Michael J. Fox and Thomas P. Keebler.

FINDINGS OF FACT

1. PECO plans to construct and place in service by the summer of 2006, an electric transforming substation to be designated "Hartman Substation" on a four-acre site it purchased located at 110 Domorah Drive near Corporate Drive, adjacent to its transmission line right-of-way in Montgomery Township, Montgomery County. Application (App.) at ¶s 4,6,8,14.

2. The planned construction of the Hartman Substation will include a takeoff from PECO's existing 230 kv transmission line, and construction of a 230 kv – 34 kv duplex substation. PECO plans to construct one half of the duplex substation at this time, and to

construct the remaining portion of the substation as load continues to develop in the area. App. at ¶ 7.

3. The Hartman Substation is part of a project required to provide the capacity necessary to serve new and existing load in the Montgomery Township area. App. at ¶ 9(iv); Tr. 7.

4. In connection with the Hartman Substation, PECO proposes to construct one building on the Domorah Drive site. App. at ¶ 4.

5. The proposed building is necessary to house 34 kv switchgear and control equipment for the operation of the 230 kv and 34 kv Hartman Substation. App. at ¶ 6.

6. The equipment to be housed in the proposed building is essential to the safe, efficient and economical operation of the outdoor substation. App. at ¶ 9(i).

7. The equipment must be located in close proximity to the outdoor transmission substation facilities in order that the connections to other equipment will be as short as practicable, thereby minimizing the likelihood of failures which would result in outages or the poor operation of substation equipment. App. at ¶ 9(ii).

8. The building should be in close proximity to the outdoor switching substation facilities for the efficient and convenient operation and maintenance of the entire substation installation. App. at ¶ 9(iii).

9. The proposed building and associated substation is to be located in a commercial/industrial park (zoned Limited Industrial) and is surrounded by industrial buildings/sites. The nearest residence is approximately 1400 feet (1/4 mile) from the planned Hartman Substation. App. at ¶ 5.

10. A total of three sites were considered by PECO, and it decided on the Domorah Drive site after taking into consideration the concerns expressed by members of the affected community during the course of an extensive public outreach effort that PECO engaged in prior to filing its application. App. at ¶s 11 – 13; Tr. 7 – 12.

11. The three witnesses who testified at the public hearing in this proceeding on May 19, 2005, were all in favor of the Domorah Drive site.

12. PECO purchased the Domorah Drive site contingent upon the Commission's approval of a land transaction. The transaction involves a tax-free exchange of property. PECO will obtain a fee simple interest in the four acre site on Domorah Drive. In return, it will provide an easement on a five acre parcel that it owns, located on Route 309 where that road intersects PECO's transmission line corridor. The easement is for limited purposes associated with parking and storing cars and access to parking areas for a car dealership on Route 309. App. at ¶ 14.

13. The building that PECO proposes to build in connection with the Hartman Substation is reasonably necessary for the convenience or welfare of the public.

14. The easement that PECO proposes to provide to the car dealership in exchange for PECO's acquisition of the land upon which the Hartman Substation and associated building will be constructed, is necessary or proper for the service, accommodation, convenience, or safety of the public.

DISCUSSION

In order to serve new and existing load in the Montgomery Township area, PECO plans to construct and place in service by the summer of 2006, an electric transforming substation to be designated "Hartman Substation." PECO also proposes to construct a building to house the equipment necessary to operate the Hartman Substation. Both the Hartman Substation and the building would be constructed on a four-acre site PECO purchased located at

110 Domorah Drive near Corporate Drive, adjacent to PECO's transmission line right-of-way in Montgomery Township. The Domorah Drive site, however, is located in a "Limited Industrial District" (LI District) pursuant to Montgomery Township's zoning ordinance; and public utility facilities are not listed as an approved use in the zone. PECO consequently filed the present application with the Commission for an exemption from the local land use requirement, pursuant to Section 619 of the MPC, 53 Pa. §10619, and Section 230-141 of the Montgomery Township Zoning Code. PECO also seeks from the Commission approval of a land transaction related to its proposed construction of the Hartman Substation and associated building, pursuant to 66 Pa. C.S. §1102(a)(3).

Section 619 of the MPC provides:

§10619. Exemptions

This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.

53 P.S. §10619 (emphasis supplied).

Section 230-141 of the Montgomery Township Zoning Code similarly provides:

§240-141. Public utility corporations.

This chapter shall not apply to any existing or proposed building or extension thereof or to any land used or to be used by a public utility corporation if, upon petition of the corporation, the Public

Utility Commission shall, after a public hearing, decide that the present or proposed situation or use of the buildings or land in question is reasonably necessary for the convenience or welfare of the public.

Montgomery Township Zoning Code §230-141.

The Public Utility Code provides that “the proponent of a rule or order has the burden of proof.” 66 Pa. C.S. §332(a). PECO thus has the burden of proving that the proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.

PECO anticipates that additional system capacity will be needed by the summer of 2006 to serve new and existing load in the Montgomery Township area. (Tr. 7). In order to help meet that load, PECO proposes to construct an electric transforming substation that will be known as the Hartman Substation, along with a building that will house the equipment¹ necessary to operate the Hartman Substation. There is no evidence of record that the need for the electric transforming substation or the associated building was ever in question. The question was, early on, where would the substation and building be sited?

One and a half to two years prior to filing the present application, PECO engaged in an extensive public outreach campaign in the affected community in order to gain support for the project. (Tr. 7). PECO held meetings (including a number of open house meetings) with local residents and obtained their input. (Tr. 8-20). During the course of its public outreach campaign, PECO considered three different sites. The third site considered by PECO, the Domorah Drive site, was ultimately preferred by the affected community and PECO, and that is the site where PECO proposes to build the substation and associated building. (Tr. 20).

¹ PECO’s counsel stated at the prehearing conference that the “building will house control equipment, have desks, a telephone, a bathroom for people that are in there to work on the equipment or to stage down the area.” (Tr. 8).

PECO subsequently filed the present application in February 2005, and there were no protests filed in regard to the application. A prehearing conference was held in regard to the application on April 13, 2005. At the prehearing conference it was determined that a public hearing in the affected community would be held pursuant to 53 P.S. §10619 and the Montgomery Township Zoning Code §230-141. The public hearing was scheduled for May 19, 2005 at 7:00 p.m. at the Montgomery Township Building. Adequate notice of the public hearing was provided. See, PECO Public Hearing Ex. 1. The public hearing was held as scheduled and three public witnesses provided sworn testimony. All three witnesses expressed appreciation for PECO's public outreach campaign, and spoke approvingly of PECO's proposal to construct the substation and associated building on the Domorah Drive site.

For all of the foregoing reasons, I find that PECO has met its burden of proving that the proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.

PECO also seeks, pursuant to 66 Pa. C.S. §1102(a)(3), Commission approval of a related land transaction. The related land transaction involves PECO's proposed grant of an easement to a local car dealership on Route 309 for use of land within PECO's transmission line right-of-way for the limited purpose of parking and storing cars and access to parking areas. The easement would be on a five acre parcel that PECO owns located on Route 309 where that road intersects PECO's transmission line corridor. PECO's purchase of the Domorah Drive site is contingent upon the Commission's approval of the easement.

Section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. §1102(a)(3) provides in pertinent part:

§1102. Enumeration of acts requiring certificate

(a) General rule.- Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

* * *

(3) For any public utility . . . to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa. C.S. §1102(a)(3).

Relatedly, 66 Pa. C.S. §1103(a) provides that “A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” PECO thus has the burden of proving² that the grant of a certificate of public convenience to allow the easement, is necessary or proper for the service, accommodation, convenience, or safety of the public.

It is undisputed that the Hartman Substation is needed to meet new and existing load. The Domorah Drive site is the one preferred by both the affected community as well as PECO. As a condition for purchase of the Domorah Drive site, PECO had to agree to provide the easement to the local car dealership, for the limited use of land within PECO’s transmission line corridor. There is no record of any opposition to the easement. I find for all of the foregoing reasons, that the grant of a certificate of public convenience to PECO authorizing it to provide the easement, is necessary or proper for the service, accommodation, convenience, or safety of the public.

²

See, 66 Pa. C.S. §332(a)

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the party in this proceeding. 66 Pa. C.S. §1102; 53 P.S. §10619; Montgomery Township Zoning Code §230-141.

2. Applicant had the burden of proof. 66 Pa.C.S. §332(a).

3. Applicant met its burden of proving that the proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. 53 P.S. §10619; Montgomery Township Zoning Code §230-141.

4. Applicant met its burden of proving that the grant of a certificate of public convenience authorizing it to provide an easement, is necessary or proper for the service, accommodation, convenience or safety of the public. 66 Pa. C.S. §§1102(a)(3), 1103(a).

ORDER

THEREFORE,

IT IS ORDERED:

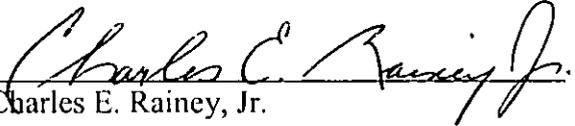
1. That the Application of PECO Energy Company at Docket No. A-110550F0161 is granted.

2. That PECO Energy Company may construct the building in question on the four-acre site at 110 Domorah Drive near Corporate Drive, adjacent to its transmission line right-of-way in Montgomery Township, Montgomery County, Pennsylvania.

3. That a Certificate of Public Convenience shall be issued which gives PECO Energy Company the following rights:

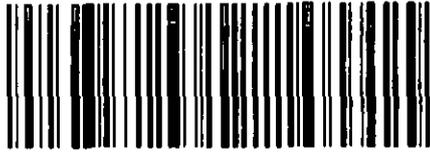
To provide an easement on a five-acre parcel owned by PECO Energy Company and located on Route 309 where that road intersects PECO Energy Company's transmission line corridor, to a car dealership on Route 309, for the limited purpose of parking and storing cars and access to parking areas.

4. That PECO Energy Company shall comply with all the provisions of the Public Utility Code as now existing or as may be hereafter amended, and with all applicable regulations of the Commission now in effect, or as may hereafter be prescribed by the Commission. Failure to comply shall be sufficient cause to suspend, revoke or rescind the rights and privileges conferred by the Certificate.


Charles E. Rainey, Jr.
Administrative Law Judge

Date: May 27, 2005

2. Article Number



7160 3901 9843 0002 9637

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

W Branch

Agent

Addressee

D. Is delivery address different from Item 1?
If YES, enter delivery address below:

Yes

No

A-110550F0161 ID
WARD L SMITH ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET S23-1
PO BOX 8699
PHILADELPHIA PA 19101-8699

Domestic Return Receipt

PS Form 3817, February 2000

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