

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for a Finding	:	
Of Necessity Pursuant to 53 P.S. §10619 that the	:	
Situation of Two Buildings Associated with a Gas	:	Docket No.: P-2021-3024328
Reliability Station in Marple Township, Delaware	:	
County Is Reasonably Necessary for the	:	
Convenience and Welfare of the Public	:	

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**ANSWER WITH NEW MATTER AND FORMAL PROTEST OF MARPLE  
TOWNSHIP, DELAWARE COUNTY TO THE PETITION OF PECO ENERGY  
COMPANY FOR A FINDING PURSUANT TO 53 P.S. §10619**

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Marple Township, Delaware County, Intervenor in this action, hereby files this Answer with New Matter and Formal Protest to the Petition of PECO Energy Company (“PECO”) for a Finding Pursuant to 53 P.S. §10619 and, in support thereof, avers as follows:

**ANSWER WITH NEW MATTER AND FORMAL PROTEST**

**I. INTRODUCTION**

1. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. Strict proof thereof is demanded.

2. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. Strict proof thereof is demanded. By way of further answer, it is admitted that a subdivision application regarding the Property is currently pending before Marple Township.

3. Admitted in part; denied in part. It is strictly denied that there exists a growing demand for natural gas in Delaware County as PECO has not produced any evidence of the same. Strict proof thereof is demanded. Marple believes and therefore avers that demand for

natural gas is not growing generally or specifically in the area and that demand for same does not exceed supply and availability of same. Moreover, it is believed and averred that future demand for greenhouse gas energy will continue to decrease in light of public and private environmental initiatives toward green energy. It is admitted that PECO's proposed plan consists of public utility facilities and two associated buildings.

4. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. Strict proof thereof is demanded.

5. Denied. It is strictly denied that the situation of the buildings associated with the Gas Reliability Station is reasonably necessary for the convenience and welfare of the public, nor has PECO produced any evidence of same. Strict proof thereof is demanded.

**II. DESCRIPTION OF PETITIONER**

6. Admitted upon information and belief.

7. Admitted upon information and belief.

8. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. Strict proof thereof is demanded.

9. Admitted upon information and belief.

**III. DESCRIPTION OF PROJECT**

10. Denied. It is specifically denied that Delaware County "is experiencing, or soon will be experiencing" design day constraints as PECO has not produced any evidence of same.

In reference to the many other averments made in the corresponding paragraph, after reasonable

investigation, Marple does not have sufficient information to admit or deny same. Strict proof thereof is demanded.

11. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. By way of further response, the referenced exhibits are written documents that speak for themselves. Strict proof thereof is demanded.

12. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. Marple believes and avers that is has been presented with no evidence that the proposed operations or facilities will provide or consist of “added public benefits” in any way. Strict proof thereof is demanded. By way of further response, it is strictly denied that PECO is “continuing to engage” or has engaged with local officials regarding their input with the proposed project. PECO has rejected any and all suggestions or requests offered by Marple Township.

13. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph, nor has PECO produced any evidence of same. Strict proof thereof is demanded. By way of further response, Marple believes and therefore avers that demand for natural gas is not growing generally or specifically in the area and that demand for same does not exceed supply and availability of same. Moreover, it is believed and averred that future demand for greenhouse gas energy will continue to decrease in light of public and private environmental initiatives toward green energy.

14. Admitted in a part. Denied in part. It is admitted that the Property formerly housed a gas station and an automotive repair business. However, calling the Property vacant implies that it is currently unused, and that is inaccurate, as the Property has been used for

seasonal sales as recently as this winter. It is admitted that the property is surrounding by residential uses (immediately adjacent and across the street) and commercial (also immediately adjacent and which consists of a restaurant with drive through service and outdoor dining on the side directly adjacent to the Property).

15. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. By way of further response, it is strictly denied that the site was available for sale; it was available for rent. It is believed and therefore averred that the current owner of the Property had recently refused to sell the Property to a potential retail developer offering same for rent only but agreed to sell the Property to PECO only after PECO threatened to exercise eminent domain for same. Further, PECO has failed and refused to provide the Township with proof of consideration and/or unavailability of more appropriate sites as alleged. Strict proof thereof is demanded.

16. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. Neither zoning nor land development approval for the proposed project has been obtained to date. Strict proof thereof is demanded.

17. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. It is believed and therefore averred that PECO's "outreach" to the public has consisted of advising PECO's intentions with regard to the project and that PECO has not addressed the concerns raised by members of the public. Strict proof thereof is demanded.

18. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. By way of further response, it

is strictly denied that PECO engaged in and/or is still engaging in extensive public outreach. Strict proof thereof is demanded.

19. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. Strict proof thereof is demanded.

20. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. By way of further response, the case cited by PECO clearly states that municipalities have the power to zone with respect to buildings, which is the exact subject matter herein. Moreover, given all considerations, PECO's proposed use as a Gas Reliability Station is not appropriate for the Property and would be injurious to public health, safety and general welfare. Additionally, the necessity for same has not been shown, established or proven by PECO at any level.

21. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. Strict proof thereof is demanded.

22. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. Strict proof thereof is demanded.

23. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. Strict proof thereof is demanded.

24. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. It is strictly denied that the proposed buildings nor the fence qualify as "facilities." By way of further response, here, PECO attempts to muddy the waters by referring to the buildings AND the fence as "facilities" in another attempt to circumvent the PUC, the MPC and the case law that follows. Moreover, given all

considerations, PECO's proposed use as a Gas Reliability Station is not appropriate for the Property and would be injurious to public health, safety and general welfare.

25. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. By way of further response, PECO has failed to meet its burden to prove that that buildings are reasonably necessary for the convenience or welfare of the public. Strict proof thereof is demanded. It is admitted, however, that public hearing is required on the within Petition and Marple hereby requests and demands same.

26. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. Strict proof thereof is demanded.

27. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. By way of further answer, PECO has failed to provide proof of necessity and as set forth above, Marple believes and therefore asserts that such necessity does not exist. Strict proof thereof is demanded. Moreover, given all considerations, PECO's proposed use as a Gas Reliability Station is not appropriate for the Property and would be injurious to public health, safety and general welfare. Additionally, the necessity for same has not been shown, established or proven by PECO at any level.

28. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. Strict proof thereof is demanded. Moreover, given all considerations, PECO's proposed use as a Gas Reliability Station is not appropriate for the Property and would be injurious to public health, safety and general welfare. Additionally, the necessity for same has not been shown, established or proven by PECO at any level.

29. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. Exhibit C is a written document that speaks for itself.

30. It is strictly denied that PECO engaged in extensive public outreach. By way of further response, Exhibits “D,” “E,” and “F” are written documents which speak for themselves. The remainder of the corresponding paragraph contains a conclusion of law to which no responsive pleading is required and the same is therefore denied.

31. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. Strict proof thereof is demanded. Moreover, given all considerations, PECO’s proposed use as a Gas Reliability Station is not appropriate for the Property and would be injurious to public health, safety and general welfare. Additionally, the necessity for same has not been shown, established or proven by PECO at any level..

32. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. Strict proof thereof is demanded.

33. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. By way of further response, PECO has failed to offer any evidence of a “clear public need.” Moreover, given all considerations, PECO’s proposed use as a Gas Reliability Station is not appropriate for the Property and would be injurious to public health, safety and general welfare. Additionally, the necessity for same has not been shown, established or proven by PECO at any level.

34. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. Additionally, the necessity for same has not been

shown, established or proven by PECO at any level. Strict proof thereof is demanded. Asuch, PECO should be able to obtain necessary governmental approvals for the Project.

35. The corresponding paragraph contained conclusions of law to which no response is required and the same is therefore denied. Strict proof thereof is demanded. The comments in questions were those of the Township Engineer during the land development process, which is currently open but on hold and on extension. It is specifically denied that PECO has addressed the concerns of the public or of the Township regarding the proposed project at the Property.

36. It is strictly denied that PECO has and/or is continuing to work in good faith with local government and residents. By way of further response, Exhibit "G" is a written document which speaks for itself. Strict proof thereof is demanded.

37. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. Strict proof thereof is demanded.

38. After reasonable investigation, Marple does not have sufficient information to admit or deny the averments within the corresponding paragraph. Strict proof thereof is demanded.

WHEREFORE, Marple respectfully requests that the Commission find that the proposed situation of the Buildings for the Gas Reliability Station is not reasonably necessary for the convenience and welfare of the public, and that the proposed security fence is not exempt from the local zoning requirements of Marple Township.

**NEW MATTER OF MARPLE TOWNSHIP**

1. In deciding this type of case, consideration must be given to the following:
  - A. Whether the Public Utility Commission has jurisdiction over the parties and subject matter pursuant to the Municipalities Code, 53 P.S. § 10619;



B. Whether the **proposed site** is reasonably necessary for the convenience or welfare of the public;

C. Environmental impact.

*See Application of Pennsylvania American Water Company for a finding of reasonable necessity, under Section 619 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10619, for the subdivision of lands, and for the proposed situation and construction of the buildings comprising an expansion of the wastewater treatment plant on a site in South Coatesville Borough, Chester County, Pennsylvania (hereinafter "PAWC"), 2006 Pa. PUC LEXIS 91, \*8 (Pa. P.U.C. October 25, 2006) (emphasis added).*

2. Thus, in order to establish the propriety of a proposed location, the burden is upon the utility in a siting case to prove reasonable necessity for a particular location. *PAWC*, \*10-11.

3. Therefore, the standard to be applied in granting an exemption under 52 P.S. § 10619 is reasonable necessity for the site, i.e., whether the site is reasonably necessary for the public convenience or welfare. *PAWC*, at. \*11.

4. In *PAWC*, the court notes how the **record discloses** that PAWC's

expanding the Plant to meet the growth needs of its service territory; **that reports submitted to DEP** for 2001-2004 showed that the Coatesville [\*12] System had a projected hydraulic overload based on anticipated connections; that the Plant does not have sufficient capacity to service the projected growth; that new connections to the system are limited; and that expanding the Plant will allow more new connections to the system, thereby enhancing PAWC's ability to meet the needs of the public in its service territory.

*PAWC*, at \*11-12. (emphasis added).

5. Furthermore, it was emphasized by the court in *PAWC* that, unlike the case before the

Commission, no party challenged the need for the wastewater treatment plant expansion and, indeed, the parties had entered into a Settlement Stipulation resolving all issues between them.

*PAWC*, at \*13.

6. The Commission Policy Statement states that the Commission will consider the impact of its decisions upon local comprehensive plans and zoning ordinances. This will include reviewing applications for:

...  
(3) Siting a public utility “building” under section 619 of the Municipalities Planning Code (53 P. S. § 10619).

7. Thus, there are two main limiting principles governing municipal zoning related to public utilities:

- (1) municipal zoning authority regarding utilities is limited to buildings, and
- (2) a public utility can obtain an exemption from municipal zoning regulation for buildings upon a finding by this Commission that the exemption meets the “reasonably necessary” test enumerated in Section 619 of the MPC.

8. Municipalities have the power to enforce zoning regulations on building facilities, which is why PECO made an application to the Marple Township Zoning Board. After the Zoning Board concluded that PECO failed to meet its burden, PECO has decided not to exhaust its remedies with the Courts and instead is attempting to circumvent them altogether via this narrow channel.

9. Here, PECO has not provided any adequate proof that there exists a growing current or future demand for natural gas in Delaware County to show that a gas reliability station is in fact necessary to the public of Marple and/or Delaware County Pennsylvania at all.

10. Indeed, PECO was unable to offer any assurances that the natural gas availability would increase in Marple at all.

11. Unlike *PAWC*, where the court relied on the studies produced by the utility company

and the fact that there were no objections to the project, PECO has failed to produce any studies, testing or data supporting its claims.

12. PECO has not proven that the proposed Gas Reliability Station nor the security fence is reasonably necessary for the convenience and welfare of the public.

13. PECO admits the Gas Reliability Station will be an unmanned facility, serviced only periodically and monitored continuously from a remote location in West Conshohocken, Pennsylvania.

14. The Property is located between high volume retail districts as well as residential neighborhoods and is approximately 1/10 of a mile from Russel Elementary School.

15. PECO did not seriously or meaningfully consider any other locations within the Township, even though the Township continuously urged them to do so.

16. In the event of an emergency, local first responders would not have access to the site, potentially causing further damage or injury.

17. Sproul Road, in the area of the Property is a high traffic area with a history of motor vehicle accidents, including serious accidents.<sup>1</sup>

18. The area surrounding the Property already creates sight issues for motorists, therefore adding an 8' wall around the proposed buildings will only add to the dangerous driving conditions in this area.

19. Given all considerations, PECO's proposed use as a Gas Reliability Station is not appropriate for the Property and would be injurious to public health, safety and general welfare.

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<sup>1</sup> As recent as March 22, 2021, a serious car accident, including the striking of a utility pole, was reported and witnessed by neighbors near Freddy's restaurant which is adjacent to the Property.

20. PECO has not worked with the municipality or the community in designing this project, rather PECO has ignored Marple's encouragement to explore other, more suitable locations, and ignored the community's concerns.

21. PECO's filing of this Petition is an attempt to circumvent the Courts and further proof of their refusal to meaningfully consider the concerns and wishes of the Marple Township community.

22. Indeed, the community as a whole is opposed to this Project and has circulated petitions regarding the same.

23. PECO has failed to address, among other things, the following:

- a. The level of noise the Station and/or buildings will produce;
- b. The handling of an emergency situation;
- c. How a gas leak would be handled;
- d. How local first responders would have access to the property with the security fence in place;
- e. The frequency of inspections by PECO;
- f. Lighting in and around the Property;
- g. The already accident-prone stretch of roadway the Property sits on;
- h. The requests and concerns of the Township; and
- i. The requests and concerns of the community.

24. It is believed and therefore averred that this is the first Gas Reliability Station that PECO has ever built. PECO has no data, tests, statistics or proof regarding the safety and effectiveness of the Station.

25. It is believed and therefore averred that PECO has no basis for its assumptions

regarding the noise level and disturbance of the neighborhood as PECO has never utilized this type of station before.

26. PECO has not presented the results of any testing or studies done at or around the site.

27. Other than mere assertions, PECO has not produced any proof of the growing demand for natural gas in Marple and/or Delaware County or of the need for any Gas Reliability Station at all, let alone one at the proposed site.

28. PECO must show that it made a reasonable decision supported by substantial evidence.

29. Substantial evidence is that quantum of evidence that a reasonable mind might accept as sufficient to support a conclusion. Norfolk and Western Railway Co. v. Pennsylvania Public Utility Commission, 413 A.3d 1037, 1047 (Pa. 1980).

30. PECO has failed to offer substantial evidence to support its conclusion regarding the necessity of the proposed buildings, fence and facilities.

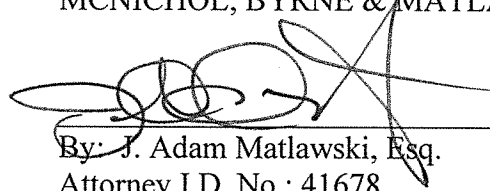
31. PECO's request for zoning relief was denied on multiple grounds, including failure to present substantial, credible evidence that the proposed use will not generate high levels of noise, noxious odors or air pollution.

32. Constructing a Station at the proposed Property would not be in welfare of the community, and in fact, would be serve the opposite purpose.

33. Marple reserves the right to raise additional issues as the matter proceeds and further information is obtained from PECO.

**WHEREFORE**, Marple respectfully requests that the Commission investigate and hold full hearings regarding the above-captioned Petition. Marple further requests that the Commission deny the Petition submitted by PECO for a finding that the situation of the buildings associated with the Gas Reliability Station reasonably necessary for the convenience and welfare of the public.

Respectfully Submitted,  
MCNICHOL, BYRNE & MATLAWSKI, P.C.

A handwritten signature in black ink, appearing to read 'J. Adam Matlawski', is written over a horizontal line. The signature is stylized and somewhat cursive.

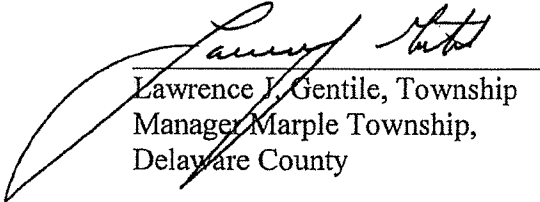
By: J. Adam Matlawski, Esq.  
Attorney I.D. No.: 41678  
1223 N. Providence Road  
Media, PA 19063

Dated: April 12, 2021

VERIFICATION

I, Lawrence J. Gentile, hereby state that the facts set forth in the attached filing are true and correct to the best of my knowledge, information and belief and that I expect Marple Township, Delaware County to be able to prove the same in a hearing held in this matter. I understand that statements herein are made subject to the penalties of 18 Pa. C.S. §4904.

April 12, 2021  
Date

  
Lawrence J. Gentile, Township  
Manager Marple Township,  
Delaware County

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for a Finding	:	
Of Necessity Pursuant to 53 P.S. §10619 that the	:	
Situation of Two Buildings Associated with a Gas	:	Docket No.: P-2021-3024328
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County Is Reasonably Necessary for the	:	
Convenience and Welfare of the Public	:	

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing Answer with New Matter and Formal Protest of Marple Township upon the parties listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant) in the manner listed below upon the parties listed below:

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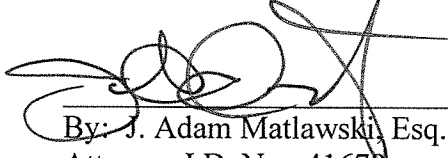
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Emily I. DeVoe  
Administrative Law Judge  
Public Utility Commission  
400 North Street  
Keystone Building  
Harrisburg, PA 17120

Respectfully Submitted,  
MCNICHOL, BYRNE & MATLAWSKI, P.C.

Dated: April 12, 2021



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