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April 20, 2021

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: 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 Reliability Station in Marple Township, Delaware County Is Reasonably Necessary for the Convenience and Welfare of the Public

Docket No. P-2021-3024328

Dear Secretary Chiavetta:

Enclosed please find PECO Energy Company's Prehearing Conference Memorandum and related Certificate of Service, which is being filed in accordance with Judge DeVoe's Prehearing Conference Order dated April 5, 2021. Copies have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter.

Respectfully,

/s/ *Christopher A. Lewis*

Christopher A. Lewis

*Enclosures*

cc: Certificate of Service List (w/ encl.)

**BEFORE THE  
COMMONWEALTH OF PENNSYLVANIA  
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 : Docket No. P-2021-3024328  
Associated with a Gas Reliability Station in :  
Marple Township, Delaware County Is :  
Reasonably Necessary for the Convenience :  
and Welfare of the Public :  
:

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**PECO ENERGY COMPANY’S PREHEARING CONFERENCE MEMORANDUM**

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Pursuant to 52 Pa. Code § 5.222 and in accordance with the Prehearing Conference Order dated April 5, 2021, PECO Energy Company (“PECO”) respectfully submits the following Prehearing Conference Memorandum.

**I. PRELIMINARY STATEMENT AND PROCEDURAL HISTORY**

In Pennsylvania, local municipalities do not have the power to zone with respect to public utility facilities, nor may they seek to exclude buildings whose siting the Pennsylvania Public Utility Commission (the “Commission” or the “PUC”) finds is necessary for the public convenience or welfare.<sup>1</sup> This enduring principle is rooted in sound public policy: “[T]he rendition of efficient service to the public transcends the legitimate objectives of any one of the political subdivisions of the Commonwealth.”<sup>2</sup> Indeed, “[i]f each county was to pronounce its own regulation and control over [public utility facilities], the conveyors of power and fuel would

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<sup>1</sup> See *PPL Elec. Utils. Corp. v. City of Lancaster and Pa. Pub. Util. Comm’n*, 214 A.3d 639 (Pa. 2019); *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 679 (Pa. Commw. Ct. 2018) (“DRN”); *Com. v. Del. and Hudson RR*, 339 A.2d 155 (Pa. Commw. 1975); *Duquesne Light Co. v. Monroeville Borough*, 298 A.3d 252 (Pa. 1972); *County of Chester v. Phila. Elec. Co.*, 218 A.2d 331 (Pa. 1966).

<sup>2</sup> *DRN*, 179 A.3d at 692 (citing *Duquesne Light*, 105 A.3d at 293).

become so twisted and knotted as to affect adversely the welfare of the entire state.”<sup>3</sup> In view of this precedent, the Commission has held that a zoning exemption is not needed for any public utility facilities, as a “blanket exemption” exists. *See Petition of Sunoco Pipeline, L.P. for A Finding That A Bldg. to Shelter the Walnut Bank Valve Control Station in Wallace Twp., Chester Cty., Pennsylvania Is Reasonably Necessary for the Convenience or Welfare of the Pub. Petition of Sunoco Pipeline, L.P. for A Finding That A Bldg. to Shelter the Blairsville Pump Station in Burrell Twp., Indiana Cty., Pennsylvania Is Reasonably Necessary for the Convenience or Welfare of the Pub.* (hereinafter, “SPLP”), No. P-2014-2411941, 2014 WL 5810345, at \*25 (Opinion and Order, Oct. 2, 2014); *accord Petition of Pennsylvania-American Water Company for a Finding on an Expedited Basis that Two Buildings to Shelter Booster Pumps to be Constructed in Dunbar Township, Fayette County, Pennsylvania, are Reasonably Necessary for the Convenience or Welfare of the Public*, (hereinafter, “PAWC”), No. P-2014-2513587, 2016 WL 1689629, at \*10 (Opinion and Order April 21, 2016).<sup>4</sup>

This matter involves the construction of buildings associated with PECO’s Gas Reliability Station, proposed to be constructed at the property at 2090 Sproul Road, Broomall, Marple Township, Delaware County, Pennsylvania (“the Property”). The Gas Reliability Station is a public utility facility, the construction of which is necessary in order to: (i) meet growing current and future demand for natural gas public utility service in Delaware County, (ii) reduce the gas system’s dependence on the availability of delivered gas supply; and (iii) allow PECO to

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<sup>3</sup> *Id.* (quoting *Cnty. of Chester*, 218 A.2d at 333).

<sup>4</sup> In light of the blanket exemption against local zoning, courts have recognized that public utilities may expand previously certificated service, or may upgrade facilities “as needed” in exercise of its managerial functions. *See DRN*, 179 A.3d at 693 (citing *In re Sunoco Pipeline, L.P.*, 143 A.3d 1000 (Pa. Commw. 2016) (en banc), *appeal denied*, 164 A.3d 485 (Pa. 2016) and *Duquesne Light Co.*, 63 A.2d 466). Such discretion is not unchecked however, as the Commission, upon its own motion or upon the Complaint of an individual with standing, may review and determine whether a utility’s facilities are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of the Public Utility Code. *See id.*; 66 Pa. C.S. §§ 701, 1505(a).

comply with its statutory obligation to provide an adequate, safe and reliable supply of natural gas to its customers. *See* 66 Pa. C.S. § 1501.

The Gas Reliability Station is part of a larger Reliability Project that also involves the installation of 11.5 miles of new gas main as well as upgrading PECO's natural gas plant in West Conshohocken. The Gas Reliability Station will involve the construction of new natural gas piping, valves, meters, electronics, batteries, gas line heaters, backup generators, and driveways ("Public Utility Facilities"). In addition, the Gas Reliability Station will include two new buildings: (1) a 2,073 square foot (74-foot by 28-foot) steel building with an absorptive layer (the "Main Building") and (2) a 160 square foot, (16-foot by 10-foot) fiber building (the "Fiber Building" and together with the Main Building, the "Buildings"). PECO has constructed and currently operates approximately 30 similar stations using nearly identical technology.

The Gas Reliability Station also will include a security fence measuring approximately 8 feet in height ("Security Fence"). The Security Fence will be constructed around the perimeter of the Gas Reliability Station and will serve the important functions of securing the sensitive equipment located at the Property from tampering, vandalism, and other damage. The Security Fence will have the added public benefits of providing an absorptive barrier for sound as well as enhancing the aesthetic appearance of the Public Utility Facilities.

Prior to planning construction of the Gas Reliability Station, PECO undertook an extensive evaluation of approximately ten sites to determine suitability for the Gas Reliability Station. The site selection process was influenced by several constraints insofar as the selected site: (1) must be in close proximity to Sproul and Lawrence Roads where existing natural gas lines are located; (2) must be available for purchase through a mutually agreeable transaction; (3) must be a sufficient size (at least 0.5 acres) to accommodate the public utility facilities; and (4)

must be zoned for public utility use. The Property was selected because, among the properties evaluated, it satisfied each of the above requirements.

PECO filed the instant Petition requesting a finding from the Public Utility Commission (“Commission”) that: (1) the situation of the two Buildings is reasonably necessary for the convenience and welfare of the public and, therefore, exempt from any zoning, subdivision, and land development restriction of the Marple Township Zoning Code pursuant to Section 619 of the Municipal Planning Code (“MPC”), 53 P.S. § 10619, and (2) that the proposed Security Fence appurtenant to the Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from local zoning requirements.

In anticipation of the construction of the Gas Reliability Station, PECO engaged in extensive public outreach. These efforts, which are ongoing, include:

- In June 2020, residents in the immediate vicinity of the Gas Reliability Station received notice about the project.
- On July 29, 2020, PECO held a virtual open house for residents living adjacent to or in close proximity to the Gas Reliability Station to provide additional details about the Station;
- On October 27 and 28, 2020, PECO held four virtual open house style public meetings for Marple Township residents to provide the public with information regarding the proposed substation and to receive input from the public regarding its views on the appropriate construction of the Gas Reliability Station.
- On November 16, 2020, PECO held an additional virtual open house for Marple Township residents that had additional questions following the October open houses.

- On December 10, 2020, a telephonic public input hearing was held in PECO's Gas Rate Case at R-2020-3018929 where multiple individuals testified regarding the Gas Reliability Project on behalf of Marple Township residents.
- On April 10, 2021, PECO held an additional virtual open house for Marple Township residents which included various breakout sessions to solicit feedback and provide the public with information on site selection, design, community impact, and safety.
- PECO conducted numerous one-on-one meetings with residents and extensive written communications to the community.
- In response to feedback and comments from the community, PECO amended and altered design and construction plans to address the public's concerns.<sup>5</sup>

Concomitant to its public outreach efforts, and consistent with the Commission's statement of policy regarding consideration of impacts on local zoning, 52 Pa. Code § 69.1101, PECO filed a Zoning Application with Marple Township in accordance with the provisions governing the N Zoning District, where public utility facilities are permitted upon special exception.<sup>6</sup> On November 18, 2020, the ZHB voted to deny the Zoning Application and issued an Order (the "Order") denying PECO's request for: (1) a special exception to operate the Gas Reliability Station, a public utility facility, at the Property; and (2) a variance to erect the Security Fence measuring 8 feet in height around the Station in lieu of the permitted fence of 6

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<sup>5</sup> For instance, in response to public feedback, in February, 2021, PECO revised its plans in support of its Subdivision and Land Development Application which, among other things provides a revised Landscape Plan and a revised Post-Construction Stormwater Management Plan. PECO also provided several revised renderings of the facility, which were designed to have the facility blend in as a "gateway" to the commercial district where it is to be located.

<sup>6</sup> Notwithstanding the "blanket exemption" from zoning requirements entitled to public utility facilities, PECO filed the Zoning Application consistent with the spirit of the Commission's policy statement, 52 Pa. Code § 69.1101.

feet in height. On December 18, 2020, PECO appealed the Order to the Court of Common Pleas of Delaware County, which appeal is currently pending.

On February 26, 2021, PECO filed the instant Petition regarding the Buildings and Security Fence appurtenant to the Gas Reliability Station. Notice of the Petition was published in the *Daily Times and Sunday Times* and the *Daily and Sunday Times Digital* on March 26, 2021 and in the *Pennsylvania Bulletin* on March 27, 2021, each specifying a deadline of April 12, 2021 for filing formal protests, comments or petitions to intervene.

## II. PROTESTS AND INTERVENORS

On March 12, 2021, Marple Township filed a Petition to Intervene in the instant proceeding.

On April 1, 2021, state Representative Jennifer O'Mara and state Senator Tim Kearney sent a letter to the presiding Administrative Law Judge's legal assistant indicating that they do not oppose the construction of the Gas Reliability Station, but that they oppose the proposed location at the corner of Sproul and Cedar Grove Roads, and requesting a public hearing.<sup>7</sup>

On April 8, Theodore (Ted) Uhlman filed a Petition to Intervene. On April 12, 2021, Marple Township filed an Answer with New Matter and Formal Protest.<sup>8</sup> On April 12, 2021, Julia Baker and Delaware County filed Petitions to Intervene.<sup>9</sup> Between April 8 and April 13, 2021, approximately 65 individuals filed formal protests.

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<sup>7</sup> The letter was made part of the record by way of Interim Order Curing *Ex Parte* Communication and Attaching Comments to Record, dated April 2, 2021.

<sup>8</sup> PECO's response to Marple Township's New Matter is due on May 3, 2021. PECO intends to file a response on or before May 3, 2021.

<sup>9</sup> On or about April 12, 2021, Amy Blake made a filing in the form of a protest, but in email service to PECO titled the email as "Petition to Intervene and Protest." The online docket, and Judge DeVoe's April 14, 2021 Interim Order, only recognizes the filing of Amy Blake as a protest.

As to Marple Township and Delaware County, PECO has filed or will file responses indicating that PECO does not oppose their intervention in the proceeding, but reserves the right to challenge any factual averments or legal conclusions they may assert.

As to individual protestants, PECO does not oppose the right of any Marple Township resident who lives near the Gas Reliability Station to participate in a public input hearing. However, inasmuch as all the protestants are proceeding *pro se*, PECO believes that most are unlikely to be familiar with the Commission's procedural rules, and their prehearing conference memoranda suggest that many already may be confusing a public input hearing (where individual opinions and views can be expressed) with the evidentiary hearing, where only relevant and competent evidence is admissible. In addition, PECO is concerned that, absent appropriate safeguards, PECO could be subjected to duplicative and cumulative burden, as the protestants assert individually the very same positions that the Township and County are asserting as their elected representatives. For this reason, to the extent that the protestants seek to participate in the proceeding beyond testifying at a public input hearing and being included on the service list (so they will continue to receive filings), PECO reserves the right to seek appropriate limitations, including but not limited to those authorized by 52 Pa. Code §§ 5.76 and 5.401, to avoid unwarranted burden and redundant filings.

Finally, on April 12, 2021, Ted Uhlman filed a "Petition for Reconsideration from Staff Action" seeking an additional 45 days to submit Petitions to Intervene and/or Protest. PECO will submit an Answer opposing the Petition on the grounds that the Commission provided sufficient time to file interventions and/or protests. Public notice of PECO's Petition was provided in the *Daily Times and Sunday Times* and the *Daily and Sunday Times Digital* on March 26, 2021, and in the *Pennsylvania Bulletin* on March 27, 2021. In satisfaction of the requirements at 52 Pa.



Code § 5.14(d)(9), putative protestors or intervenors had more than 15-days, until April 12, to file a Protest or Motion to Intervene, during which time 65 protests and multiple petitions to intervene were filed. Almost all of the individual protests contain identical or substantially similar language and allegations.

PECO notes that any individual who has not filed a protest or petition to intervene may participate in the public input hearing. Under these circumstances, no purpose would be served by permitting additional time for protests or allowing intervention by the individuals.

### **III. NAME FOR SERVICE LIST**

PECO respectfully requests that the following counsel of record appear on the service list:

Christopher A. Lewis, Esq. (I.D. # 29375)  
Frank L. Tamulonis, Esq. (I.D. # 208001)  
Stephen C. Zumbrun, Esq. (I.D. # 319241)  
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PECO consents to accept electronic delivery of documents on the deadline for their filing. Pursuant to the Prehearing Conference Order dated April 5, 2021, PECO identifies Christopher Lewis as the primary speaker for the purposes of the prehearing conference.

#### **IV. SETTLEMENT**

As stated above, PECO has engaged in extensive public outreach with local residents with respect to the construction of the Gas Reliability Station. PECO continues to engage in public outreach to discuss matters relating to the construction of the Gas Reliability Station. Most recently, PECO held a virtual open house on April 10, 2021 to provide the community with information and solicit feedback. PECO remains willing to engage in good faith efforts to resolve this matter amicably, short of hearings, briefs and exceptions, and subject to the approval of the Commission.

#### **V. PROPOSED DISCOVERY PLAN AND LITIGATION SCHEDULE**

PECO's original construction schedule for the Gas Reliability Station anticipated a construction start date of April 2021. However, in light of developments in PECO's Zoning Application and PECO's ongoing community outreach efforts, PECO currently anticipates that construction of the Gas Reliability Station will commence no earlier than September 2021. PECO respectfully requests Commission approval of this Petition as soon as reasonably possible.

On April 19, 2021, the undersigned counsel and counsel for Marple Township and Delaware County met-and-conferred to discuss proposed discovery and litigation schedules and other case management issues. Although the participating parties were unable to come to an agreement with respect to specific deadlines, PECO will continue to work with the parties and the presiding Administrative Law Judge to develop a proposed discovery plan and litigation schedule.

## **VI. OTHER PROPOSED ORDERS**

Due to the confidential nature of some of the information that could be requested from PECO in this proceeding, PECO has circulated among counsel for the Parties a proposed protective order. A copy of PECO's proposed protective order is attached hereto as **Exhibit A**.

## **VII. PUBLIC INPUT HEARINGS**

PECO values public input and, as described above, has engaged in (and continues to engage in) extensive public outreach. PECO does not oppose requests for a public input hearing in this matter.

## **VIII. WITNESSES**

PECO reserves the right to present direct, rebuttal, and surrebuttal fact and expert testimony, to the extent that it deems necessary, in this proceeding. At present, PECO intends to present the testimony of the following officers or employees of PECO:

1. Douglas Oliver, Vice President of Government and External Affairs  
PECO Energy Company  
2301 Market Street  
Philadelphia PA 19103
2. Carlos Thillet, Manager Gas Supply & Transportation  
PECO Energy Company  
2301 Market Street  
Philadelphia PA 19103
3. Jim Moylan, Real Estate Specialist  
PECO Energy Company  
2301 Market Street  
Philadelphia PA 19103
4. Ryan Lewis, Manager Gas Engineering and Asset Performance  
PECO Energy Company  
2301 Market Street  
Philadelphia PA 19103

5. Timothy Flanagan, Manager Gas & Plant Operations  
PECO Energy Company  
300 Front Street  
Building #3  
Conshohocken, PA 19428

Mr. Oliver will provide an overview and description of the Gas Reliability Station, and will also provide an overview of PECO's community outreach efforts, site selection, and the need and benefits of the project. Mr. Thillet and Mr. Lewis will provide testimony regarding PECO's determination of the need for additional, safe, reliable, and affordable gas supply for Marple Township and Delaware County. Mr. Moylan will provide testimony regarding site selection and location. Mr. Flannigan will provide testimony regarding the design and safe functioning of the Gas Reliability Station and the design and need for the proposed Buildings.

PECO reserves the right to present additional witnesses on additional topics, if necessary. Further, PECO has not identified expert witness(es) at this time and reserves the right to present expert testimony as may be necessary. PECO will notify the Administrative Law Judge and all parties of the identity of any expert it intends to call.

#### **IX. ISSUES AND SUB-ISSUES**

The Commission's scope of review under Section 619 of the MPC is narrow. As described by the Commission, the appropriate scope of inquiry is *not* "whether it is appropriate to place the [public utility facilities] in certain areas, but rather, ... whether the buildings proposed to shelter those facilities are reasonably necessary for the public convenience or welfare of the public. See *SPLP*, No. P-2014-2411941, 2014 WL 5810345, at \*26; accord *PAWC*, No. P-2014-2513587, 2016 WL 1689629, at \*10 (Opinion and Order April 21, 2016).

In view of this standard, PECO anticipates that it will provide evidence that the two Buildings appurtenant to the Gas Reliability Station are "reasonably necessary for the public convenience and welfare" because *inter alia*:

- The Facilities to be housed in the Buildings are essential to the safe, efficient, and economical operation of the Gas Reliability Station.
- The Facilities and the Buildings must be located in close proximity to the new gas main.
- The Buildings will protect the Facilities from the elements, facilitate maintenance, dampen any ambient sound, and create a more aesthetic appearance.
- The Buildings will protect sensitive Facilities, including electronics and telecommunications, from damage, vandalism, theft, and tampering.

PECO will provide evidence that the Security Fence is a public utility facility that is exempt from zoning, and that it will serve the critical function of protecting and securing sensitive equipment in an otherwise unmanned facility from tampering, vandalism, and other damage. Moreover, PECO will provide evidence that the Security Fence will benefit the community by enhancing the aesthetic appearance of the Station and by providing a noise absorptive barrier.

Finally, although the allegations of the intervenors and protestors raise issues that are not relevant to a Section 619 proceeding, in an effort to allay any penumbral concerns that the Commission might have, PECO anticipates that it will present evidence: (1) regarding the design of the Gas Reliability Station; (2) regarding the public need for the Gas Reliability Station; (3) demonstrating that the site selected is “reasonably necessary” for the convenience and welfare of the public; (4) demonstrating the safety of the operation of Station; (5) demonstrating the public benefit to be provided to the community; and (6) demonstrating the extensive public outreach efforts undertaken by PECO.

PECO continues to investigate facts relevant to this matter, and therefore reserves the right to supplement this list with additional evidence as it becomes available.

Respectfully submitted,  
**BLANK ROME LLP**

*/s/ Christopher A. Lewis*

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*Counsel for PECO Energy Company*

Dated: April 20, 2021

# EXHIBIT A

**BEFORE THE  
COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for a : Docket No. P-2021-3024328  
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and Welfare of the Public :  
:

**\*\*\*DRAFT\*\*\*  
PROTECTIVE ORDER  
FOR THE DISCOVERY OF  
PROPRIETARY INFORMATION**

WHEREAS, the parties whose signatures appear below have stipulated to the signing and entry of this Protective Order for the Discovery of Confidential and/or Proprietary Information (“Protective Order”), IT IS HEREBY ORDERED that each of the signing parties and their counsel shall be governed by the following terms and conditions concerning Confidential and/or Proprietary Information in the above-captioned action:

1. This Protective Order is hereby GRANTED with respect to all materials and information identified at Ordering Paragraphs 2 and 3 herein which are filed with the Pennsylvania Public Utility Commission (the “Commission”), produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 shall use and disclose such information only in accordance with this Order.

2. The materials subject to this Order are all correspondence, documents, data, information, studies, methodologies and other materials in any form that a party or an affiliate of a party furnishes in this proceeding pursuant to the Commission’s rules and regulations, discovery procedures, or cross-examination which are claimed to be of a proprietary or confidential nature and which are designated “PROPRIETARY” or “CONFIDENTIAL—ATTORNEYS EYES ONLY” (hereinafter collectively referred to as “Proprietary Information”).



3. Categories of Protected Information.
  - a. Basis for Designation of Proprietary Information. Information may be designated as “Proprietary” based upon a good faith belief that the information constitutes or contains information of the designating party which is not available to the general public and the release of which will cause negative economic or competitive impacts for the designating party, including, but not limited to, trade secrets, know-how, proprietary data, and/or other medical, technical, commercial, business, financial or personal information.
  - b. Basis for Designation of Confidential—Attorneys’ Eyes Only Information. Information may also be designated as “Confidential—Attorneys’ Eyes Only” based upon a good faith belief that the information constitutes or contains highly sensitive personal information or highly sensitive business confidential information which, if placed in the hands of a third party, may subject the non-party individuals or entities whose highly sensitive information appears in the document to embarrassment, ridicule, or discrimination or may place the designating party or any existing or potential customer at a competitive disadvantage because said information relates to, among other things, the designating party’s: pricing; financial records; sales strategies; distribution strategies; manufacturing procedures; technical knowledge; unpatented inventions; patent applications; technical development and engineering plans and notes; secret processes; potential customers; and engineering data and other sensitive information whose public disclosure could increase the security threat to critical infrastructure. As used in this Agreement, and except as otherwise set forth, “Confidential Information” and “Proprietary Information” includes information designated as “Confidential,” “Proprietary,” or “Confidential—Attorneys’ Eyes Only.”
  - c. Dispute Mechanism for Modification to Categories. The parties reserve the right to add additional areas covered under “Proprietary,” or “Confidential-Attorney’s Eyes Only” if a party later determines that a particular document should be

protected by the designation but for some reason the document does not fall under the above category of protected information. If a party decides that it must modify the particular category to include or exclude a document(s), the party shall notify the opposing party of its intention to modify the category of protected documents and state precisely the proposed modified category. The document(s) in question should be produced to the opposing counsel in the “Confidential—Attorneys’ Eyes Only” Category. Once the designating party requests a modification of a category to include a document, the document may only be viewed by opposing counsel in the “Confidential—Attorneys’ Eyes Only” Category, unless or until the Administrative Law Judge(s), the Commission, or Court rule(s) otherwise. The parties shall attempt in good faith to resolve any dispute that may arise and should only seek appropriate application with the Court in order to protect the rights created by this Agreement. Within ten (10) business days of a notice, the opposing party shall either (i) grant the requested broadening of the category, or (ii) file a motion with the adjudicating body requesting a determination by the Administrative Law Judge(s), the Commission, or Court as to whether the requested modification to the “Proprietary,” or “Confidential—Attorneys’ Eyes Only” categories shall be permitted. If the party opposing the modification fails to file a motion within ten (10) business days as stated, the party shall be deemed to have granted the modification of the category.

4. Proprietary Information shall be made available to the Commission and its Staff for use in this proceeding. For purposes of filing, to the extent that Proprietary Information is placed in the Commission’s report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission’s testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. Public inspection of Proprietary Information shall be permitted only in accordance with this Order.

5. Permissible Use of Proprietary Information. Any person having access to Proprietary Information shall use it only for the purposes of this litigation (including appeals); shall not disclose it to anyone other than those persons designated herein; and shall handle it in

the manner set forth in this Agreement. The designation of material as Proprietary shall not itself affect the rights of the designator (or the designator's authorized representative) to give or disclose the Proprietary Information to any person for any reason, and such giving or disclosing of Proprietary information shall not be deemed a waiver of this Agreement, unless such information is made publicly available by designator.

6. Proprietary Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

- a. Proprietary Information. To the extent required for participation in this proceeding, a party's counsel may afford access to Proprietary Information made available by another party ("the Producing Party") to:
  - i. The Commission at any hearing in this proceeding or in connection with motions filed in this proceeding;
  - ii. Counsel of record for all named parties to this action and their immediate supervisor;
  - iii. Other counsel not of record, not to exceed five (5) individuals, provided only that said individuals are duly employed on a full-time basis with the organizations that are named parties to this action.
  - iv. Court reporters;
  - v. Any witness during the course of that witness's deposition or examination;
  - vi. Experts and/or advisors consulted by the named parties or their counsel in connection with this action, whether or not retained to testify at trial, provided that prior to any such disclosure counsel for the party making the disclosure shall deliver a copy of this Protective Order to the expert and/or advisor, shall explain its terms to the expert and/or advisor, and shall secure the signature of the expert and/or advisor on a letter in the form attached hereto as **Appendix A**. It shall be the further obligation of counsel, upon learning of any breach or threatened breach of this Protective Order by any expert and/or advisor, promptly to notify opposing counsel of such breach or threatened breach;
  - vii. Any non-corporate party, only upon order of the Administrative Law Judge or the Commission; or
  - viii. Any party not represented by counsel, only upon order of the Administrative Law Judge or the Commission.

- b. Access to Proprietary Information designated as “Confidential—Attorneys’ Eyes Only” shall be limited to:
- i. Counsel of record for all parties;
  - ii. The Commission at any hearing in this proceeding or in connection with motions filed in this proceeding;
  - iii. Experts and/or advisors consulted by the named parties or their counsel in connection with this action, who are employed, retained, or otherwise consulted by counsel of record for the purpose of analyzing data, conducting studies, or providing opinions for assistance in this litigation, ***provided that*** prior to any such disclosure counsel for the party making the disclosure shall deliver a copy of this Protective Order to the expert and/or advisor, shall explain its terms to the expert and/or advisor, and shall secure the signature of the expert and/or advisor on a letter in the form attached hereto as **Appendix A**. It shall be the further obligation of counsel, upon learning of any breach or threatened breach of this Protective Order by any expert and/or advisor, promptly to notify opposing counsel of such breach or threatened breach; or
  - iv. Any other person only upon order of the Administrative Law Judge or the Commission or upon stipulation of the party that designated the Confidential Information.
- c. Any party appearing in this proceeding without counsel of record shall not be provided access to documents designated as “Confidential—Attorney’s Eyes Only.”
- d. For purposes of the foregoing paragraphs, disclosure to a party’s expert(s) shall be subject to the following additional restrictions:
- i. Such expert(s) may not hold any of the following positions with any competitor of the Producing Party: (a) an officer, board member, significant stockholder, partner, owner (other than owner of stock) or an employee of any competitor of the Producing Party who is primarily involved in the pricing, development, and/or marketing of products or services that are offered in competition with those of the Producing Party; or (b) an officer, board member, significant stockholder, partner, owner (other than owner of stock) of any affiliate of a competitor of the Producing Party; provided, however, that any expert shall not be disqualified on account of being a stockholder, partner, or owner unless his/her interest in the business constitutes a significant potential for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Order, stocks, partnership, or other

ownership interest valued at more than \$10,000 or constituting more than a 1% interest in a business establishes a significant potential for violation.

ii. If a party's independent expert, another member of the independent expert's firm or the independent expert's firm generally also serves as an expert for, or as a consultant or advisor to a competitor or any affiliate of a competitor of the Producing Party, said independent expert must: (1) advise the Producing Party of the competitor's or affiliate's name(s); (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a competitor or any affiliate of a competitor of the Producing Party; and (3) if segregation of such personnel is impractical, the independent expert shall give to the Producing Party written assurances that the lack of segregation will in no way jeopardize the interests of the Producing Party. The Producing Party retains the right to challenge the adequacy of the written assurances that its interests will not be jeopardized.

e. No other persons may have access to the Proprietary Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive or who is afforded access to any Proprietary Information shall use or disclose such information for the purposes of business or competition, or for any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

7. Prior to making Proprietary Information available to any person as provided in above, counsel for a party of record shall deliver a copy of this Order to such person and shall receive a written acknowledgement from that person in the form attached to this Order and designated as "**Appendix A**". Counsel shall promptly deliver to the Producing Party a copy of this executed acknowledgement form.

8. A Producing Party shall designate data or documents as constituting or containing Proprietary Information by affixing an appropriate proprietary stamp or typewritten or handwritten designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the Producing Party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents that constitute or contain Proprietary Information.

9. Any federal agency that has access to and/or receives copies of the Proprietary Information will consider and treat the Proprietary Information as within the exemption from disclosure provided in the Freedom of Information Act as set forth at 5 U.S.C. § 552(b)(4) until such time as the information is found to be non-proprietary.

10. Any state agency, local agency, or municipality which has access to and/or receives copies of the Proprietary Information will consider and treat the Proprietary Information as “Confidential Proprietary Information” that is exempt from disclosure under Section 708(b)(11) of the Pennsylvania Right-to-Know Law (65 P.S. § 67.708(b)(11)) until such time as the information is found to be non-proprietary.

11. Any public reference to Proprietary Information by the Commission or by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

12. Part of any record of any of proceedings containing the Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in Ordering Paragraph No. 11, above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to an order of an Administrative Law Judge or the Commission. Unresolved challenges arising under Ordering Paragraph No. 13, below, shall be decided on motion or petition by the presiding officer and/or the Commission as provided in 52 Pa. Code § 5.365(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, and precedent to the extent such guidance is available.

13. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information; to question or challenge the admissibility of Proprietary Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information

as Proprietary, the party claiming that the information is Proprietary retains the burden of demonstrating that the designation is necessary and appropriate.

14. Upon completion of this proceeding, including any administrative or judicial review thereof, all copies of all documents and other materials, that contain any Proprietary Information, shall be immediately returned upon request to the party furnishing such Proprietary Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary Information have been destroyed. This provision shall not apply to the Commission and its Staff.

15. Nothing contained in this Protective Order shall be construed as inferring that any Proprietary Information must be produced. Rather, this Protective Order is intended to set forth how Proprietary Information shall be handled by other parties to this matter if voluntarily or upon Order of the Commission are produced to other parties in this matter.

SO AGREED:

Dated: \_\_\_\_\_

/s/Christopher A. Lewis  
Christopher A. Lewis, Esquire  
Frank L. Tamulonis, Esquire  
Stephen C. Zumbrun, Esquire  
BLANK ROME LLP  
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*Counsel for PECO Energy Company*

Dated: \_\_\_\_\_

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*Solicitors for Marple Township*

SO ORDERED AND APPROVED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Administrative Law Judge

**APPENDIX A**

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

The undersigned has read and understands the Protective Order issued in the above-captioned proceeding, which deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order. In the case of an independent expert, the undersigned represents that he/she has complied with the terms of the Protective Order prior to submitting this Affidavit. The undersigned agrees that any Proprietary Information, as addressed and defined in the Protective Order, shall be used and disclosed only for purposes of preparation for, and the conduct of, the above-captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever. The undersigned agrees that, following the conclusion of this litigation, he/she will return or destroy all Proprietary Information.

The undersigned further agrees to be bound by the terms of the Protective Order and to subject himself/herself to the jurisdiction of the administrative and judicial bodies of the Commonwealth of Pennsylvania for the enforcement of this Order and understands that, in the event that he/she fails to abide by the provisions of this Order, he/she may be subject to sanctions



by the administrative and judicial courts of this Commonwealth.

---

Signature

---

Print Name

---

Date

---

Job Title and Job Description

---

Business Address

---

Employer

---

If Independent Expert, List Persons/Entities Retaining You

---

Role in Proceeding

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing Prehearing Conference Memorandum upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party) via electronic mail unless otherwise indicated below.

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Dated: April 20, 2021