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May 3, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd 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 Reply to New Matter of Marple Township. 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.)

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

**PECO ENERGY COMPANY’S REPLY TO
THE NEW MATTER OF MARPLE TOWNSHIP**

Pursuant to Section 5.63 of the Commission’s Regulations, 52 Pa. Code § 5.63, PECO Energy Company (“PECO”) hereby files the following replies to new matters raised in the Answer with New Matter and Formal Protest of Marple Township, Delaware County filed with the Pennsylvania Public Utility Commission (“PUC” or “Commission”) in the above-captioned docket on April 12, 2021. In support thereof, PECO avers as follows.

I. INTRODUCTION

On February 26, 2021, PECO filed a Petition requesting: (1) a finding that two buildings associated with a gas reliability station in Marple Township, Delaware County (the “Gas Reliability Station”), are reasonably necessary for the convenience and welfare of the public and, therefore, are exempt from any local zoning, subdivision, and land development ordinances or regulations pursuant to 53 P.S. § 10619 of the Municipal Planning Code (“MPC”); and (2) a finding that a proposed security fence appurtenant to the Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and, therefore, exempt from the local zoning requirement limiting its height to 6 feet. On April 12, 2021, Marple Township (“Respondent”) filed the above-referenced Answer with New Matter and Formal Protest to the Petition. In addition to responding to the issues raised

in the Petition, Respondent also raised new matter in paragraphs 1 through 33 of Respondent's "New Matter of Marple Township." As specified below, many of Respondent's averments in the New Matter are comprised of allegations which are outside the scope of, and irrelevant to, this proceeding.

II. SPECIFIC AVERMENTS TO NEW MATTER

1. Admitted in part; denied in part. The allegations contained in Paragraph 1 are conclusions of law to which no response is required and the same are therefore denied, except that PECO admits that the proper scope of a proceeding under Section 619 of the MPC is whether the situation of the buildings is reasonably necessary for the convenience and welfare of the public. *See Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm'n*, 513 A.2d 593, 596 (Pa. Commw. Ct. 1986). By way of further response, the utility need only show that the site chosen is "reasonably necessary" for the convenience of the public, but need not show that selected site is absolutely necessary or the best possible site. *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 *10.

2. Admitted in part; denied in part. The allegations contained in Paragraph 2 are conclusions of law to which no response is required and the same are therefore denied, except that PECO admits that PECO, as Petitioner, has the burden of proof in this proceeding.

3. Admitted in part; denied in part. The allegations contained in Paragraph 3 are conclusions of law to which no response is required and the same are therefore denied, except that

PECO admits that the proper scope of a proceeding under Section 619 of the MPC is whether the situation of the buildings is reasonably necessary for the convenience and welfare of the public. *See Del-AWARE*, 513 A.2d at 596. By way of further response, the utility need only show that the site chosen is “reasonably necessary” for the convenience of the public, but need not show that selected site is absolutely necessary or the best possible site. *See SPLP*, No. P-2014-2411941, 2014 WL 5810345, at *10.

4. Admitted in part; denied in part. The allegations in Paragraph 4 are conclusions of law to which no response is required and the same are therefore denied, except insofar as the allegations in Paragraph 4 purport to contain a quote from *Application of Pennsylvania American Water Company for a finding of reasonable necessity, under Section 619 of the Municipalities Planning Code, 53 P.S. § 10619, for the subdivision of lands, and for the proposed situation and construction of buildings compromising an expansion of the wastewater treatment plant on a site in South Coatesville Borough, Chester County, Pennsylvania*, (“PAWC”) 2006 Pa. PUC LEXIS 91, *8 (Pa. P.U.C. October 25, 2006), which quotation appears to be true and correct.

5. The allegations contained in Paragraph 5 purport to characterize the Commission’s decision in *PAWC* and are conclusions of law to which no response is required and the same are therefore denied.

6. Admitted in part; denied in part. The allegations contained in Paragraph 6 are conclusions of law to which no response is required and the same are therefore denied, except that PECO admits that, pursuant to 52 Pa. Code § 69.1101, entitled “Local land-use plans and ordinances in issuing certificates of public convenience,” “the Commission will consider the impact of its decisions upon local comprehensive plans and zoning ordinances,” including “(3) “Siting a public utility ‘building’ under Section 619 of the Municipalities Planning Code....”. By

way of further response, the utility need only show that the site chosen is “reasonably necessary” for the convenience of the public, but need not show that selected site is absolutely necessary or the best possible site. *See SPLP*, No. P-2014-2411941, 2014 WL 5810345, at *10.

7. Admitted. PECO specifically admits that municipal zoning authority regarding utilities is limited to buildings. PECO further admits that a public utility can obtain an exemption from municipal zoning regulations for buildings upon a finding by the Commission that the buildings are “reasonably necessary” for the convenience and welfare of the public. *See Delaware*, 513 A.2d at 596. By way of further response, the utility need only show that the site chosen is “reasonably necessary” for the convenience of the public, but need not show that selected site is absolutely necessary or the best possible site. *See SPLP*, No. P-2014-2411941, 2014 WL 5810345, at *10.

8. Admitted in part; denied in part. PECO admits that it made an application to the Marple Township Zoning Board and that the Board denied PECO’s application. PECO denies that municipalities have the power to enforce zoning regulations on building facilities where the Commission finds that the buildings are “reasonably necessary” for the convenience and welfare of the public. PECO further denies that it decided not to exhaust its remedies with the Courts or is attempting to circumvent the courts. By way of further response, PECO has appealed the Zoning Hearing Board’s decision, which appeal is currently pending before the Court of Common Pleas of Delaware County. By way of further response, under Section 619 of the MPC, the Commission, and not Pennsylvania courts, has authority to issue the relief requested by PECO in this proceeding. *See also PAWC*, 2006 Pa. PUC LEXIS 91, * 9-10.

9. The allegations contained in Paragraph 9 are conclusions of law to which no response is required and the same are therefore denied. By way of further response, through

PECO's public outreach efforts, PECO has advised the public as to the importance of dependable gas service in Delaware County, and has explained that failure to construct the Gas Reliability Station will lead to system constraints, increase dependence on more costly delivered supply, over which PECO lacks control, and will (and in some instances already has) resulted in restricting new customers and communities from connecting to the system. PECO will provide further corroborating support on these issues through discovery responses and testimony in this matter, which have not yet been served or filed.

10. Denied, for the reasons set forth in Paragraph 9 above.

11. Denied, for the reasons set forth in Paragraph 9 above. By way of further response, PECO authorized a noise study, the results of which were presented during the Zoning Hearing Board hearing on October 21, 2020. In addition, PECO held numerous virtual open houses to advise the community of the need for the Gas Reliability Project and the Gas Reliability Station and responded to the inquiries of local public officials with regard to the Gas Reliability Station. The crux of their responses to this information was that they do not oppose natural gas service, but PECO should place the Gas Reliability Station elsewhere.

12. Denied, for the reasons set forth in Paragraph 9 above. By way of further response, the Security Fence will be constructed around the perimeter of the Gas Reliability Station and will serve the important functions of securing the sensitive facilities 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 aesthetic appearance.

13. Admitted.

14. Admitted in part; denied in part. PECO admits that the proposed Gas Reliability Station will be constructed in an area that includes residential and commercial uses, as well as a

school. PECO specifically denies any inference that the location of the proposed Gas Reliability Station poses any safety threat to the surrounding community.

15. Denied. In order to find a suitable location for the Gas Reliability Station, PECO analyzed multiple other sites. PECO's analysis required compliance with four (4) site selection criteria. Specifically, the property would have to: (1) be located within ½ mile of the proposed gas main terminus at Sproul and Lawrence Roads; (2) contain a land area of approximately ½ acre or more; (3) be available for purchase; and (4) be subject to zoning regulations that permitted a public utility facility. After considering numerous potential sites, PECO determined that the Property met all the criteria.

16. Denied as stated. PECO regularly hosts first responders at free seminars at PECO's fire school that involve training with regard to PECO's operations and physical assets. PECO is in the process of meeting with local first responders to discuss the Gas Reliability Station. Because of the highly technical nature of the Gas Reliability Station equipment, however, PECO does not generally permit first responders to enter the Gas Reliability Station in order to prevent disruptions to the Station's safety measures or harm to the first responders. The proposed Gas Reliability Station will have robust and redundant safety protocols, including 24/7 remote monitoring at PECO's West Conshohocken plant, where PECO technicians can immediately oversee and control operations and, if necessary, cease part or all of the Gas Reliability Station's functions.

17. Denied. Strict proof thereof is demanded.

18. Denied. Strict proof thereof is demanded.

19. Denied. PECO denies the baseless and conclusory assertion that the proposed Gas Reliability Station will be injurious to public health, safety and general welfare. By way of further response, the *only* issues in this proceeding are: (1) whether the *siting* of the two buildings is

reasonably necessary for the convenience and welfare of the public; and (2) whether the security fence is a public utility facility under the Public Utility Code. *Del-AWARE Unlimited, Inc., supra.* Furthermore, and to respond to Respondent's unsupported conclusion, PECO states that the Gas Reliability Station will support the public interest in multiple ways. For example, the Gas Reliability Station will allow PECO to meet growing demand in Delaware County by providing an adequate, safe, and reliable supply of natural gas within Delaware County, where gas supply would otherwise become constrained, resulting in interference of service to existing customers and prohibiting new customers from connecting to the system. The Gas Reliability Station will have the added public benefit of reducing price volatility by reducing the need for PECO to procure natural gas on the spot market on a design day. Finally, PECO conducted environmental studies at the property which confirmed the existence of underground pollutants resulting from the prior use of the property as a gasoline filling station and automotive repair shop. As part of the redevelopment of the property, PECO will remediate the property in accordance with Pennsylvania environmental laws. Thus, the Gas Reliability Station will have the added public benefit of redeveloping and remediating the former gas station site.

20. Denied. First, the *only* issues in this proceeding are: (1) whether the *siting* of the two buildings is reasonably necessary for the convenience and welfare of the public; and (2) whether the security fence is a public utility facility under the Public Utility Code. *Del-AWARE Unlimited, Inc., supra.* By way of further answer, and to respond to Respondent's erroneous assertion, PECO engaged in extensive public outreach. In addition to notifying the appropriate Township officials about PECO's plans to site the Gas Reliability Station in Marple Township and allowing them to suggest suitable locations, PECO's public outreach efforts, which are ongoing, include: (1) in June 2020, residents in the immediate vicinity of the Gas Reliability Station received

notice about the project; (2) 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; (3) 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 Gas Reliability Station and to receive input from the public regarding its views on the appropriate construction of the Gas Reliability Station; (4) on November 16, 2020, PECO held an additional virtual open house for Marple Township residents that had additional questions following the October open houses; (5) 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; (6) 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; and (7) 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. 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 employed "roadside architecture" to have the facility blend in as a "gateway" to the commercial district where it is to be located.

21. Denied, for the reasons set forth in Paragraphs 8 and 20 above.

22. Admitted in part; denied in part. Although not germane to the scope of a Section 619 proceeding, PECO admits that individuals in Marple Township have, or currently are, circulating a petition regarding the Gas Reliability Project. PECO understands the crux of the petition to be that those circulating it do not oppose natural gas service, but that PECO should place the Gas Reliability Station elsewhere. It is specifically denied that the community “as a whole” is opposed to the Project.

23. The allegations contained in Paragraph 23, and each subpart thereof, are conclusions of law to which no response is required and the same are therefore denied. By way of further response, the issues raised in Paragraph 23 were addressed during the Zoning Hearing Board hearing on October 21, 2020 and in numerous meetings PECO has had with the community and officials referenced in Paragraph 20 above. PECO will provide further corroborating support on these issues through discovery responses and testimony in this matter, which have not yet been submitted.

24. Denied. PECO’s gas distribution pipeline system is comprised of many individual distribution subsystems that operate at different pressures. A regular and routine part of operating the gas distribution system is to move the gas at one pressure and then reduce that pressure so the gas can be distributed to homes and businesses. The technology to be used within the proposed Gas Reliability Station is neither new nor experimental. In fact, PECO operates 30 gate stations within its service territory utilizing identical or similar technology and processes. Those stations receive gas from interstate transmission pipelines and PECO reduces the pressure before moving the gas into the distribution subsystems. Three key differences between the Gas Reliability Station and the other gate stations are: (1) the gate stations are custody transfer points where legal title to the gas is transferred from the owner of the gas to PECO; by contrast, PECO will already own the

gas that is distributed to the Gas Reliability Station; (2) the gas coming into the gate stations arrives on transmission pipelines which can operate at pressures up to 1000 p.s.i.g; for the Gas Reliability Station, by contrast, the gas will leave PECO's West Conshohocken facility at 475 p.s.i.g. and will arrive at the Gas Reliability Station at a pressure in a general range of less than 200 p.s.i.g.; and (3) at the gate stations, PECO odorizes the gas for safety reasons and compliance with the Commission's regulations; the gas being delivered to the Gas Reliability Station will already have been odorized, so no odorization will occur in Marple Township.

25. Denied for the reasons set forth in Paragraph 24 above. By way of further response, PECO authorized a noise study, the results of which were presented during the Zoning Hearing Board hearing on October 21, 2020. In response to the noise study, PECO undertook several design modifications to further dampen ambient noise including, but not limited to, placing more pipe underground, using acoustical insulation on above-ground piping, adjusting equipment to be used at the facility to reduce noise levels, designing the main building to be made from steel with sound absorptive material (as opposed to pre-cast concrete), designing building ventilation to limit noise emanating from regulating valves located in the buildings, and designing the Security Fence to include sound absorptive material.

26. Denied for the reasons set forth in Paragraph 25 above.

27. Denied for the reasons set forth in Paragraph 9 above. By way of further response, PECO will provide further corroborating support on these issues through discovery responses and testimony in this matter, which have not yet been served or filed.

28. The allegations contained in Paragraph 28 are conclusions of law to which no response is required and the same are therefore denied. By way of further response, as stated above, in order to obtain an exemption under Section 619 of the MPC, PECO must show that the

buildings are “reasonably necessary” for the convenience and welfare of the public. *See Delaware, 513 A.2d at 596*. Furthermore, PECO need only show that the site chosen is “reasonably necessary” for the convenience of the public, but need not show that selected site is absolutely necessary or the best possible site. *See SPLP, No. P-2014-2411941, 2014 WL 5810345, at *10*.

29. Denied for the reasons set forth in Paragraph 28 above.

30. Denied for the reasons set forth in Paragraph 9 above. By way of further response, PECO will provide further corroborating support on these issues through discovery responses and testimony in this matter, which have not yet been submitted.

31. Admitted in part; denied in part. PECO admits that its zoning application was denied by the Marple Township Zoning Hearing Board. PECO denies any inference that the Zoning Hearing Board’s denial was appropriate. In the zoning proceeding, PECO satisfied the criteria set forth by the Marple Township Zoning Code by establishing its status as a public utility. Moreover, the Zoning Hearing Board applied the incorrect standard with respect to the variance application. As a result, PECO has appealed the Zoning Hearing Board’s decision, which appeal is currently pending before the Court of Common Pleas of Delaware County.

32. Denied for the reasons set forth in Paragraph 19 above.

33. The allegations contained in Paragraph 33 are conclusions of law to which no response is required and the same are therefore denied.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the Commission should deny Respondent’s requests for affirmative relief set forth in the Answer with New Matter and Formal Protest, and grant PECO’s Petition filed in the above-captioned proceeding.

/s/ Christopher A. Lewis _____

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Counsel for PECO Energy Company

Dated: May 3, 2021

VERIFICATION

Steven A. Singh deposes and says he is Vice President of Technical Services of PECO Energy Company (“PECO”) that he is duly authorized to and does make this Verification on behalf of PECO; that the facts set forth in the foregoing Reply to New Matter are true and correct to the best of his knowledge information and belief; and that this verification is made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



DATED: May 2, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true copy of the foregoing Answer 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.

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/s/ Frank L. Tamulonis

Counsel to PECO Energy Company

Dated: May 3, 2021