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May 7, 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 Motion for Protective Order. 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 : 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 :  
:

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**NOTICE TO PLEAD**

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TO: All Intervenors

The attached Motion for Protective order of PECO Energy Company (“PECO”) has been filed with the Pennsylvania Public Utility Commission in the above-captioned proceeding. If you wish to respond to the Motion, you must, pursuant to the provisions of 52 Pa. Code § 5.103, take action within twenty (20) days after this Motion is served by filing a response with the Secretary of the Pennsylvania Public Utility Commission and serving a copy of that response upon all parties of record. You are warned that if you fail to do so, the case may proceed without you and an order or a judgment may be entered against you by the Commission without further notice.

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

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**MOTION FOR PROTECTIVE ORDER**

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PECO Energy Company (“PECO”) hereby requests that the Honorable Administrative Law Judge Emily DeVoe (the “ALJ”) enter a Protective Order in these proceedings pursuant to the provisions of 52 Pa. Code § 5.365(a), and in support thereof represents as follows:

1. On February 26, 2021, PECO filed a petition seeking a finding from the Commission that: (1) the situation of two buildings for a proposed Gas Reliability Station 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 Subdivision and Land Development Ordinance and the Marple Township Zoning Code; and (2) a 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.

2. Confidential and proprietary information within the definition of 52 Pa. Code § 5.365 may be presented during the course of these proceedings, which justifies the issuance of a protective order. For example, the parties may present information that is customarily treated as sensitive, proprietary, highly confidential, or confidential security information. Treatment of such information as set forth in the attached proposed Protective Order is justified because unrestricted

disclosure of such information would cause harm to the party producing such information. These considerations constitute cause for the restrictions specified in 52 Pa. Code § 5.365.

3. An ALJ or the Commission may issue a protective order to limit or prohibit disclosure of confidential or proprietary information where the potential harm to a participant would be substantial and outweighs the public's interest in having access to the confidential information. 52 Pa. Code § 5.365(a).

4. In applying this standard, the relevant factors to be considered include: (1) the extent to which disclosure would cause unfair economic or competitive damage; (2) the extent to which the information is known by others and used in similar activities; (3) the worth or value of the information to the party and to the party's competitors; and (4) the degree of difficulty and cost of developing the information. 52 Pa. Code § 5.365(a)(1)-(3).

5. Moreover, the Commission has an affirmative duty to protect from disclosure confidential security information, which is not subject to disclosure to third parties pursuant to the Public Utility Confidential Security Information Disclosure Protection Act ("CSIDA") and the Commission's regulations implementing said Act. *See* 35 Pa. Stat. Ann. § 2141.1 to 2141.6 (West); 52 Pa. Code §§ 102.1-102.4.

6. Treatment of confidential security and proprietary information as set forth in the attached proposed protective order is justified. The attached proposed protective order defines confidential or proprietary information as: (a) those materials that customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury; (b) those materials that are of such a commercially sensitive nature

among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of confidential protection with respect to those materials. Exhibit A, ¶3.

7. Paragraph 11 of the proposed protective order protects against overly broad designations of protected information giving all parties the right to challenge the designation of information as confidential or proprietary.

8. PECO has conferred with the Intervening parties in this proceeding regarding entry of the proposed protective order and made substantial modifications to the proposed protective order to address issues that they raised. For example:

- a. Paragraph 4 permits disclosure of proprietary information to Protestants Julia Baker and Theodore Uhlman, provided they sign and deliver the acknowledgement form agreeing to abide by the terms of the Protective Order and providing PECO a remedy in the event they breach the terms of the Protective Order.
- b. Paragraph 5(iv) permits disclosure of proprietary information to the Commissioners of Marple Township, The Township Manager of Marple Township, the Township Engineer of Marple Township, the Commissioners of Delaware County, the Executive Director of Delaware County, the Fire Marshal, and the Chief of the Fire Department, provided they sign and deliver the acknowledgement form agreeing to abide by the terms of the Protective Order and providing PECO a remedy in the event they breach the terms of the Protective Order.
- c. Protective orders issued by ALJs in other matters often provide protections to prevent disclosure of confidential information to experts who may have a

conflict of interest with a party. Those provisions have been eliminated from the protective order that is attached as Exhibit A.

9. In a “meet and confer” held with counsel and Protestants Baker and Uhlman, Mr. Uhlman objected to any provision that would treat him differently from counsel for Marple Township and the County of Delaware. While Mr. Uhlman is an Active Party to this proceeding, he is neither a member of the Bar of the Supreme Court of Pennsylvania nor a governmental entity. As a private citizen, Mr. Uhlman is not bound by any ethical duty, and the Commission’s jurisdiction over him is limited to his participation in this proceeding. Absent the provisions of the proposed protective order, if Mr. Uhlman disclosed PECO’s proprietary information—either intentionally or inadvertently—the only recourse would be to dismiss him as an Active Party in this case, an outcome that would penalize Mr. Uhlman but provide no remedy to PECO for the breach of confidentiality. The attached protective order creates a remedy for PECO by providing that, in the event of breach, PECO can seek legal relief from Mr. Uhlman in a court of competent jurisdiction. *See* Exhibit A, Appendix A.

10. The attached protective order also permits Ms. Baker and Mr. Uhlman to disclose proprietary information to an expert that they would engage. Exhibit A, ¶6. However, it requires Ms. Baker and Mr. Uhlman to disclose the identity of that expert to all counsel of record 15 days before releasing proprietary information. The purpose of this provision is to protect against disclosure of confidential information to individuals who could not reasonably qualify as experts on the issues involved in this proceeding. In that event, the parties would have 15 days to seek an order from the ALJ prohibiting the disclosure of the confidential information to the putative expert.

11. Because the attached protective order permits counsel and all Active Parties access to PECO’s proprietary information, and because it permits counsel and all Active Parties to

challenge designations of confidentiality, there is no prejudice to any party from entering the proposed protective order.

12. The attached protective order will protect the proprietary nature of valuable information while allowing the parties to use such information for purposes of the instant litigation. The attached protective order applies the least restrictive means of limitation that will provide the necessary protections from disclosure.

WHEREFORE, for all the reasons set forth above, PECO respectfully requests that Your Honor issue the attached protective order.

Dated: May 7, 2021

/s/Christopher A. Lewis  
Christopher A. Lewis, Esquire  
Frank L. Tamulonis, Esquire  
Stephen C. Zumbrun, Esquire  
BLANK ROME LLP  
One Logan Square  
Philadelphia, PA 19103  
*Counsel for PECO Energy Company*

# EXHIBIT A

**BEFORE THE  
COMMONWEALTH OF PENNSYLVANIA  
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 :  
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Marple Township, Delaware County Is :  
Reasonably Necessary for the Convenience :  
and Welfare of the Public :  
:

**PROPOSED  
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 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 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 information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in these proceedings, which are believed by the producing party to be of a proprietary or

Confidential nature and which are so designated by being marked “Confidential” or “Proprietary.” Such materials will be referred to herein as "Proprietary Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.

3. This Protective Order applies to the following categories of materials: the parties may designate as “Confidential” or “Proprietary” (a) those materials that customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury; (b) those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of Confidential protection with respect to those materials. For purposes of example and not limitation, Proprietary Information includes trade secrets, unpatented inventions, technical development and engineering data, and sensitive information whose public disclosure could increase the security threat to critical infrastructure. In addition, information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa. Code §§ I 02.1-102.4 will be designated as Proprietary Information.

4. Proprietary Information shall be made available to counsel for a party, subject to the terms of this Protective Order. For so long as they are Active Parties in this proceeding, Proprietary Information shall also be made available to Protestants Julia Baker and Theodore Uhlman, provided that prior to any such disclosure such person has signed and delivered to all counsel a letter in the form attached hereto as Appendix A. All persons

receiving Proprietary Information shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in these proceedings. The designation of material as Proprietary Information 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.

5. 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. The Commissioners of Marple Township, The Township Manager of Marple Township, the Township Engineer of Marple Township, the Commissioners of Delaware County, the Executive Director of Delaware County, the Fire Marshal, and the Chief of the Fire Department, provided that prior to any such disclosure such person has signed and delivered to all counsel 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 person to whom such counsel has delivered Confidential Information, promptly to notify opposing counsel of such breach or threatened breach;
- v. Court reporters;
- vi. Any witness during the course of that witness's deposition or examination;

- vii. Experts 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, shall explain its terms to the expert, shall secure the signature of the expert on a letter in the form attached hereto as Appendix A and shall deliver such letter to all counsel of record. 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.

6. To the extent required for participation in this proceeding, Ms. Baker and Mr. Uhlman may afford access to Proprietary Information made available by a Producing Party to:

- i. The Commission at any hearing in this proceeding or in connection with motions filed in this proceeding;
- ii. Court reporters;
- iii. Any witness during the course of that witness's deposition or examination;
- iv. Experts in connection with this action, whether or not retained to testify at trial, provided that at least fifteen (15) days prior to any such disclosure, Ms. Baker and Mr. Uhlman has delivered to all counsel of record a letter disclosing the identity of such expert, has delivered a copy of this Protective Order to the expert, has explained its terms to the expert, and has secured the signature of the expert on a letter in the form attached hereto as Appendix A and delivered such letter to all counsel of record. It shall be the further obligation of Ms. Baker and Mr. Uhlman, upon learning of any breach or threatened breach of this Protective Order by any expert, promptly to notify opposing counsel of such breach or threatened breach.

7. In accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's Rules of Practice and Procedure, 52 Pa. Code §§ 5.362, 5.365(e), any party may, by subsequent objection or motion, seek further protection with respect to Proprietary Information including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular persons or parties.

8. A Producing Party shall designate data or documents as constituting or containing Proprietary Information by affixing an appropriate Confidential 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 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.

10. 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. 10, 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. 11, 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.

11. 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.

12. 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 to the party furnishing such Proprietary Information. In the alternative, parties represented by counsel may provide an affidavit affirming that the materials containing or reflecting Proprietary Information have been destroyed. This provision shall not apply to the Commission and its Staff.

13. 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  
One Logan Square  
Philadelphia, PA 19103  
Counsel for PECO Energy Company

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

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Solicitors for Marple Township

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

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

\_\_\_\_\_  
Julia Mary (Julie) Baker  
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Dated: \_\_\_\_\_

Ted Uhlman  
2152 Sproul Rd  
Broomall, PA 19008  
uhlmantr@yahoo.com

SO ORDERED AND APPROVED:

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

\_\_\_\_\_  
Emily I. DeVoe  
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  
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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, if he or she is an Active Party and Protestant in this matter, he she will return all Proprietary Information. All other signatories shall either return or destroy all Proprietary Information.

The undersigned understands and agrees that money damages may not be a sufficient remedy for any breach of the Protective Order and the undersigned hereby agrees that the non-breaching party will be entitled to obtain in any court of competent jurisdiction a decree of specific performance or other injunctive relief as a remedy for any such breach in favor of the non-breaching party, without the necessity of posting a bond or other security. Such remedy shall not be deemed to be the exclusive remedy for any such breach but shall be in addition to all other remedies available at law or equity to the non-breaching party. The prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and expenses incurred in enforcing the Protective Order.

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 the Protective 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.

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Signature

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Print Name

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Job Title and Description

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Business Address

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Employer

---

If Independent Expert, List Persons/Entities Retaining You

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Role in Proceeding

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Date

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I served a true copy of the foregoing Motion for Protective Order 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 7, 2021