*Via electronic service only due to Emergency Order at M-2020-3019262*

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for a Finding : P-2021-3024328

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 :

**INTERIM ORDER**

**DIRECTING PECO TO FILE AN AMENDED MOTION FOR PROTECTIVE ORDER**

 On May 7, 2021, PECO Electric Company (PECO or Company) filed a Motion for a Protective Order (Motion) with the Public Utility Commission (Commission) requesting that the undersigned enter a protective order in the above-captioned matter. A proposed protective order was attached to PECO’s Motion as Exhibit A. The proposed protective order contains a proposed signature page as Appendix A.

 On May 12, 2021, the undersigned issued an Interim Order setting a deadline of May 17, 2021 for any objections to the proposed protective order.

 On May 17, 2021, Theodore Uhlman (Mr. Uhlman) and Julie Baker (Ms. Baker), both Protestants and active parties in this matter, filed objections to the proposed protective order on May 17, 2021.

 Also on May 17, 2021, the County filed an Answer to the Motion, requesting some edits to the proposed protective order.

 On May 18, 2021, PECO’s counsel submitted email correspondence to the undersigned advising it had conferred with the County’s counsel and agreed to all but one of the County’s proposed changes.[[1]](#footnote-1) As for the one remaining issue, PECO’s counsel advised he and the County’s counsel agreed to substitute language that addresses the County’s concerns. PECO then provided the undersigned a copy of the proposed protective order with the County’s edits and substituted language inserted (Amended Proposed Protective Order)[[2]](#footnote-2).

 PECO’s email also addressed the concerns raised by Mr. Uhlman and Ms. Baker in their objections.

Mr. Uhlman’s and Ms. Baker’s Objections to the Amended Proposed Protective Order[[3]](#footnote-3)

 Mr. Uhlman objects to the Amended Proposed Protective Order, arguing that it allows PECO to classify materials as “Confidential” or “Proprietary” without having to first demonstrate that disclosure of the materials without restriction would cause harm or potential harm and that the harm outweighs the public’s interest in free and open access to the administrative hearing process. Mr. Uhlman argues that the other parties would then have to challenge PECO’s designation of the information as “Confidential” or “Proprietary.” Mr. Uhlman argues that the Amended Protective Order allows PECO to mark materials as “Confidential” or “Proprietary” at its discretion and places the burden on the other parties to challenge that designation if the other parties believe that designation is inappropriate.

 Mr. Uhlman argues that the Amended Proposed Protective Order does not comply with 52 Pa.Code § 5.365(a). He argues that this code section prohibits PECO from designating materials as “Confidential” or “Proprietary” unless PECO first makes a showing of harm or potential harm prior to designating material as Confidential” or “Proprietary.” Mr. Uhlman argues that PECO should be required to add language in the Amended Proposed Protective Order including a “clear description of the information to be protected, and a clear demonstration of substantial harm.”

 Additionally, Mr. Uhlman argues that as a public utility, PECO is a controlled monopoly, has no competition, and should not be able to claim competitive disadvantage as a reason to mark a document as “Confidential” or “Proprietary.”

 Ms. Baker to objects to language contained in the proposed signature page, arguing that the sanctions are “extreme, excessive, and frankly quite frightening.” Further, she argues the language in the signature page inadequately protects Mr. Uhlman or Ms. Baker in the event the other would violate the terms of the proposed protective order. She maintains that the sanctions provided for in 52 Pa.Code §§ 5.371-5.372 are adequate to ensure she and Mr. Uhlman comply with the terms of the protective order.

Discussion

 The Commission’s rules authorize the issuance of protective orders. “Upon motion by a party or by the person from whom discovery or deposition is sought, and for good cause shown, the presiding officer may make an order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense, including…[an order that] a trade secret or other confidential research, development or commercial information may not be disclosed or be disclosed only in a designated way.”[[4]](#footnote-4) Protective orders to protect or limit trade secrets or confidential commercial information (confidential information) shall be issued under 52 Pa.Code § 5.365 (section 5.365).[[5]](#footnote-5)

 Subpart 5.365(a) provides the “general rule” for adversarial proceedings and is the rule under Mr. Uhlman raises his objections to the Amended Proposed Protective Order. This subpart provides, “A petition for protective order to limit the disclosure of a trade secret or other confidential information on the public record will be granted only when a party demonstrates that the potential harm to the party of providing the information would be substantial and that the harm to the party if the information is disclosed without restriction outweighs the public’s interest in free and open access to the administrative hearing process.”[[6]](#footnote-6) Subpart 5.365(a) further provides, “A protective order to protect trade secrets or other confidential information will apply the least restrictive means of limitation which will provide the necessary protections from disclosure.”[[7]](#footnote-7) Finally, subpart 5.365(a) provides,

In considering whether a protective order to limit the availability of proprietary information should be issued, the Commission or the presiding officer should consider, along with other relevant factors, the following:

   (1)   The extent to which the 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.

   (4)   The degree of difficulty and cost of developing the information.

   (5)   Other statutes or regulations dealing specifically with disclosure of the information.[[8]](#footnote-8)

 In its Motion, PECO restates the Amended Protective Order’s definition of “Confidential” or “Proprietary” information: “(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.”[[9]](#footnote-9)

 PECO further argues that paragraph 11 of the Amended 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.”[[10]](#footnote-10)

 PECO then identifies substantial changes it made to its initial proposed order in response to concerns raised by the other parties and claims, “because [the proposed order] permits counsel and all Active Parties to challenge designations of confidentiality, there is no prejudice to any party from entering the proposed protective order.”[[11]](#footnote-11) PECO further submits, “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.”[[12]](#footnote-12)

 As Mr. Uhlman correctly points out, PECO’s motion and proposed order fail to identify with sufficient specificity the trade secrets or confidential or proprietary information for which it is requesting protection. PECO also fails to provide sufficient information such that the undersigned can perform the balancing test (and consider the five “relevant factors”) required under section 5.365(a). PECO cannot meet its burden under section 5.365(a) by making general statements that constitute legal conclusions (which only the presiding officer has the authority to determine).[[13]](#footnote-13)

 Regarding Ms. Baker’s objections, she objects to language contained in the signature page of the proposed order. The proposed signature page provides, in part,

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 nonbreaching 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.[[14]](#footnote-14)

 In its May 18, 2021, email to the undersigned, PECO argues that this language is necessary to protect itself from any breach of confidentiality perpetrated by Mr. Uhlman or Ms. Baker. PECO argues,

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.[[15]](#footnote-15)

 Presumably, PECO would make this same argument with regards to Ms. Baker.

 Since the Commission is a creature of statute, it has only those powers which are expressly conferred upon it by the legislature and those powers which arise by necessary implication.[[16]](#footnote-16) Further, the undersigned has only the authority expressly granted to her by statute or Commission rule or order.[[17]](#footnote-17) The Commission’s rules provide that a presiding officer may “make an appropriate order” if “(1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests,” or “(2) A party deponent or an officer or managing agent of a party refuses to obey or induces another to refuse to obey an order of a presiding officer respecting discovery, or induces another not to appear.”[[18]](#footnote-18) This section does not appear to grant the undersigned the authority to issue an order imposing sanctions upon a party failing to comply with the terms of a protective order or otherwise granting legal recourse for a party in the event of a breach of confidentiality.

 Furthermore, assuming the undersigned has the authority to issue such an order, the Commission’s rules provide that a presiding officer, when issuing an order regarding sanctions may make:

(1)   An order that the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

  (2)   An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.

 (3)   An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.

 (4)   An order with regard to the failure to make discovery as is just.[[19]](#footnote-19)

 None of rules appear to provide the undersigned the authority to issue an order imposing sanctions upon a party failing to comply with the terms of a protective order or otherwise granting legal recourse for a party in the event of a breach of confidentiality.

 THEREFORE,

 IT IS ORDERED:

 1. That, by **May 27, 2021**, PECO Energy Company shall file an Amended Motion for Protective Order and an amended protective order.

 2. That the Amended Motion for Protective Order and amended proposed protective order shall identify with sufficient specificity the trade secrets or confidential or proprietary information for which PECO Energy Company is requesting protection.

 3. That, to the extent the amended proposed protective order seeks to limit disclosure of a trade secret or other confidential information on the public record, PECO shall demonstrate in its Amended Motion for Protective Order how the potential harm of providing the information would be substantial and how the harm outweighs the public’s interest in free and open access to the administrative hearing process.

 4. That the Amended Motion for Protective Order shall address how the amended proposed protective order applies the least restrictive means of limitation which will provide the necessary protections from disclosure.

 5. That, for each kind of trade secret or confidential or proprietary information for which PECO Energy Company is requesting protection, the Amended Motion for Protective Order shall address: (1) The extent to which the 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.

 6. That, for each remedy for breach of confidentiality provided in the amended proposed protective order or signature page, PECO shall, in its Amended Motion for Protective Order, address, with appropriate legal citations and argument, the undersigned’s authority to issue a such an order.

 7. That objections to the Amended Motion and amended protective order shall be filed within **five (5) business days of service** of the Amended Motion and amended protective order.

 8. The Motion for a Protective Order filed by PECO Energy Company on May 7, 2021 is hereby held in abeyance pending PECO Energy Company’s filing of an Amended Motion for Protective Order and the filing of other parties’ responses.

Date: May 20, 2021  /s/

 Emily I. DeVoe

 Administrative Law Judge



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 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 |

**\*\*\*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 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 shal1 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:
	* 1. The Commission at any hearing in this proceeding or in connection with motions filed in this proceeding;
		2. Counsel of record for all named parties to this action and their immediate supervisor;
		3. 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.
		4. The Commissioners of Marple Township, The Township Manager of Marple Township, the Township Engineer of Marple Township, the County Council members of Delaware County, the Executive Director of Delaware County, the Director and Deputy Director of Emergency Services, 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;
		5. Court reporters;
		6. Any witness during the course of that witness’s deposition or examination;
		7. 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:
	* 1. The Commission at any hearing in this proceeding or in connection with motions filed in this proceeding;
		2. Court reporters;
		3. Any witness during the course of that witness’s deposition or examination;
		4. 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.

1. 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.
2. 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.
3. 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. This section 9 shall not be interpreted as in such a manner as to impede counsel’s ability to have its witnesses impeach or discredit Proprietary Information, or to introduce evidence which counters, contradicts, impeaches or discredits another party’s Proprietary Information.
4. 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. 9, above, shall be sealed for all purposes (including during any 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. Nothing in this paragraph shall be construed as preventing an administrative or judicial body from having access to the sealed Proprietary Information for the purpose of administrative or judicial review. 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.
5. 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.
6. 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.
7. 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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Philadelphia, PA 19103

Counsel for PECO Energy Company

Dated:

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Solicitors for Marple Township

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Robert W. Scott, Esquire

 Carl W. Ewald, Esquire

 Robert W. Scott, P.C.

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 Media, PA 19063

 rscott@robertwsottpc.com

 carlewald@gmail.com

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

 ­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Julia Mary (Julie) Baker

2150 Sproul Rd

Broomall, PA 19008

jbakeroca@msn.com

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 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 |

 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.

|  |  |  |
| --- | --- | --- |
| Date |  | SignaturePrint Name Job Title and DescriptionBusiness AddressEmployerIf Independent Expert, List Persons/Entities Retaining YouRole in Proceeding  |

**P-2021-3024328 – 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.**

*FULL-SERVICE LIST:*

*Revised 4/29/21*

CHRISTOPHER A. LEWIS ESQUIRE

FRANK L. TAMULONIS ESQUIRE

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*Representing PECO Energy Company*

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Accepts eService

**P-2021-3024328 – 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**

*LIMITED SERVICE LIST:*

*Revised 4/29/21*

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“*Via electronic service only due to Emergency Order at M-2020-3019262”*

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1. The email is attached to this Order as Attachment A. [↑](#footnote-ref-1)
2. The Amended Proposed Protective Order is attached to this Order as Attachment B. [↑](#footnote-ref-2)
3. Although Mr. Uhlman and Ms. Baker submitted their objection in response to PECO’s originally filed Motion and proposed Order, and not to the Amended Motion submitted by PECO on May 18, 2021, the language objected to by Mr. Uhlman and Ms. Baker in the originally proposed protective Order filed on May 7, 2021 is identical to the language contained in the Amended Proposed Protective Order submitted by PECO on May 18, 2021. Therefore, to avoid confusion, this Order addresses Mr. Uhlman’s and Ms. Baker’s objections as if they were objections to the Amended Protective Order. [↑](#footnote-ref-3)
4. 52 Pa.Code § 5.362(a)(7). [↑](#footnote-ref-4)
5. *See Id.* Note, section 5.362(a)(7) provides that these kinds of protective orders shall issue under section 5.423, but section 5.423 was subsequently repealed and replaced by section 5.365. [↑](#footnote-ref-5)
6. 52 Pa.Code § 5.365(a) (emphasis added). [↑](#footnote-ref-6)
7. 52 Pa.Code § 5.365(a). [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. Motion at ¶ 6. [↑](#footnote-ref-9)
10. Motion at ¶ 7. [↑](#footnote-ref-10)
11. Motion at ¶ 11. [↑](#footnote-ref-11)
12. Motion at ¶ 12. [↑](#footnote-ref-12)
13. The undersigned recognizes that PECO’s Amended Proposed Protective Order is substantially similar to protective orders that are customarily adopted by the Commission and acknowledges that administrative law judges may not require exacting adherence to section 5.365(a) if all parties are in agreement with a proposed protective order. The Commission’s rules, however, are clear as to what must be shown prior to the issuance of a protective order. [↑](#footnote-ref-13)
14. Proposed Protective Order, Appendix A. [↑](#footnote-ref-14)
15. Motion for Protective Order, ¶ 9. [↑](#footnote-ref-15)
16. [*Allegheny County Port Authority v. Pa. P. U. C.*, 427 Pa. 562, 237 A.2d 602 (1967)](https://www.lexis.com/research/buttonTFLink?_m=68dbe8bf25b80bb78fe0dc463b9fd790&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b477%20Pa.%201%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=59&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b427%20Pa.%20562%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzk-zSkAW&_md5=e3f077fe6f0133dddc6509f2007bbfe2); [*Delaware River Port Authority v. Pa. P. U. C.*, 393 Pa. 639, 145 A.2d 172 (1958)](https://www.lexis.com/research/buttonTFLink?_m=68dbe8bf25b80bb78fe0dc463b9fd790&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b477%20Pa.%201%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=60&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b393%20Pa.%20639%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzk-zSkAW&_md5=309cf0b27f994df5cf9c972c3704f142). [↑](#footnote-ref-16)
17. 52 Pa.Code § 5.483(a). [↑](#footnote-ref-17)
18. 52 Pa.Code § 5.371(a). [↑](#footnote-ref-18)
19. 52 Pa.Code § 5.372(a). [↑](#footnote-ref-19)