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May 24, 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 Answer to Marple Township and Delaware County's Motion to Compel. 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 ANSWER TO THE MOTION OF MARPLE TOWNSHIP
AND DELAWARE COUNTY TO COMPEL DISCOVERY DIRECTED TO PECO
ENERGY COMPANY**

Pursuant to the provisions of 52 Pa. Code § 5.342(g), Petitioner PECO Energy Company (“PECO”), by its attorneys, hereby Answers the Motion of Marple Township and Delaware County to Compel Discovery Directed to PECO Energy Company (“Motion”).

I. BACKGROUND

1. On February 26, 2021, PECO filed with the Pennsylvania Public Utility Commission (the “Commission”) a Petition 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.

2. Subsequently, Marple Township and Delaware County filed Petitions to Intervene to which PECO did not object.

3. On April 26, 2021, Intervenors Marple Township and Delaware County (collectively, “Intervenors”) served Interrogatories and Document Requests (collectively, “Discovery Requests”) on PECO.

4. On May 5, 2021, PECO timely served its objections and responses to Intervenors’ Discovery Requests.

5. On May 14, 2021, PECO served upon Intervenors the Direct Testimony of Douglas I. Oliver, Timothy Flanagan, Ryan Lewis, Jim Moylan, and Carlos Thillet, containing information and documents responsive to portions of Intervenors’ Discovery Requests as described more fully below.

6. On May 17, 2021, Intervenors Marple Township and Delaware County served upon PECO the instant Motion.

7. On May 24, 2021, PECO served upon Intervenors its Supplemental Responses to Intervenors’ Discovery Requests.

8. PECO respectfully requests that the Motion be denied because the information sought is not relevant to the proper scope of the inquiry in this proceeding; namely, whether the situation of the buildings is reasonably necessary for the convenience and welfare of the public. To the extent the information sought is possibly relevant, the Motion is moot because PECO has provided the requested information and documents in its Direct Testimony and supplemental discovery responses.

II. ARGUMENT

9. Pursuant to section 5.321 of the Commission’s Regulations, “a party may obtain discovery regarding any matter, not privileged, which is *relevant to the subject matter involved in the pending action*” 52 Pa. Code § 5.321(c) (emphasis added). Section 5.361 further limits the

scope of discovery to exclude discovery that “[w]ould cause unreasonable annoyance, embarrassment, oppression, burden or expense” or “[w]ould require the making of an unreasonable investigation” by a party. *Id.* at § 5.361(2) and (4).

10. The seminal question in this proceeding is whether the proposed situation of the buildings in question is reasonably necessary for the convenience or welfare of the public. In other words, the Commission must “determine whether the site of the [proposed facility] is appropriate to further the public interest.” *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm’n*, 513 A.2d 593 (Pa. Cmwlth. 1986) (emphasis in original). The scope of inquiry in this proceeding **does not include** “whether the selected site is absolutely necessary or the best possible site, or whether the service to be provided by the public utility facilities is reasonably necessary for the convenience or welfare of the public.” May 18, 2021 Interim Order, at 2 (emphasis added).¹

11. Intervenors’ Motion should be denied because it seeks the production of information and documents that are not relevant to the subject matter involved in the pending litigation. Furthermore, PECO has provided additional documents and information responsive to Intervenors’ Discovery Requests in PECO’s Direct Testimony and supplemental discovery responses. To the extent the requests are relevant, the information has already been provided by PECO and Intervenors’ Motion is moot.

12. Interrogatory Nos. 7 and 8 ask PECO to “[p]rovide the noise” and “content and quantity of emissions levels generated at all other Gas Reliability Stations operated by PECO or is [sic] affiliates.” Intervenors claim that these Interrogatories are relevant because the proposed

¹ Citing *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.

Station is “experimental.” As a threshold matter, and as explained in the Direct Testimony of Tim Flanagan, this community rumor is simply untrue. *See generally*, PECO Energy Company Statement No. 4, at 8-9.

13. Nonetheless, the noise levels at *other* PECO gate stations is not relevant to the subject matter involved in the pending action. What is relevant is whether the situation of the buildings associated with *this* facility (the Natural Gas Reliability Station) is reasonably necessary for the convenience and welfare of the public. Indeed, the crux of Intervenors’ request goes to “whether the selected site is absolutely necessary or the best possible site” a question Your Honor has already ruled is not within the scope of this proceeding.

14. It should be noted that PECO has provided Intervenors with the noise levels for this specific facility.

15. Interrogatory No. 11 asks whether PECO is “in possession of plans, schematics, specification and/or data sheets for all equipment and machinery to be utilized at the site.” PECO has produced documents and information responsive to this Interrogatory in the Direct Testimony of Timothy Flanagan. Exhibit TF-1 is a zoning site plan of the Natural Gas Reliability Station, which shows the proposed Station at 2090 Sproul Road. Exhibit TF-2-CONFIDENTIAL is another site plan of the Natural Gas Reliability Station that shows generally the equipment that will be contained within the Station’s Main Building. Exhibit TF-3 provides a preliminary conceptual design of the Natural Gas Reliability Station showing the Main Building, the Fiber Building, and Security Fence. Mr. Lewis’ Testimony also provides general information concerning the equipment and machinery that will be housed in these buildings. Any more particularized information regarding the equipment (i.e. specifications and data sheets for particular pieces of

equipment) is not relevant to the subject matter of this proceeding as it does not pertain to the siting of the proposed buildings.

16. Request No. 2 seeks “[s]tudies, projections and/or documentation showing the timeline for the demand which PECO alleges pushing this construction.” PECO has provided the requested information and documents in the Direct Testimony of PECO witness Ryan Lewis. Mr. Lewis sponsors Exhibit RL-1, which is a chart that depicts Delaware County historical and projected normalized gas usage from 2011 to 2030. Mr. Lewis also sponsors Exhibit RL-2, which is a chart that depicts the Marple Township area’s historical and projected normalized gas usage from 2011 to 2030. Thus, PECO has produced relevant information and documents responsive to Request No. 2 and Intervenor’s Motion is moot with respect to Request No. 2.

17. Request No. 13 seeks “[r]eports, etc. identifying how the Marple Gas Reliability Station will benefit the public surrounding the plant who do not have natural gas service.” As a preliminary matter, PECO has no obligation to demonstrate that everyone, including individuals who do not have natural gas service, will benefit from the proposed buildings and that issue is not relevant to this proceeding. However, it is worth noting, as explained in the Direct Testimony of Jim Moylan, the construct of the proposed Gas Reliability Station will have the added public benefit of addressing contamination at the property which existed prior to PECO executing an agreement to purchase the site. *See* PECO Energy Company Statement No. 5, at 9-10.

18. Request No. 18 seeks “[p]lans, schematics, specifications and data sheets for all equipment and machinery to be used in or part of the Marple Gas Reliability Station.” This request mirrors Interrogatory No. 11. As explained in Paragraph 15 *supra*, PECO has produced documents and information responsive to this Interrogatory in the Direct Testimony of Timothy Flanagan. Thus, Intervenor’s Motion is moot with respect to Request No. 18.

19. Request No. 19 seeks “[o]peration and Maintenance manual and/or guidelines for the facility/equipment.” This request seeks information and documents that are entirely irrelevant to the subject matter of this proceeding. Indeed, the operation and maintenance manual or guidelines for the equipment that is to be housed in the proposed buildings is not relevant to whether the situation of the proposed buildings is reasonably necessary for the convenience or welfare of the public. Nevertheless, PECO has produced several technical and administrative procedure documents related to facility procedures that are responsive to this Request (*See* CONFIDENTIAL PECO 000437-000520, including procedures titled “Gas Emergency Response,” “Response to Gas Odor Calls at PECO Gate Stations,” “Gate Station Inspection and Maintenance Schedule,” “Response to Relief Valve Alarms at the West Conshohocken Gate Stations”). Thus, to the extent either this Request can be fairly deemed to be seeking information relevant to the siting of the buildings or the facility, PECO has already provided responsive information. Intervenors’ Motion is moot with respect to Request No. 19.

20. Requests Nos. 20 and 22 seek “[r]isk Assessment for the Marple Gas Reliability Station site and process” and “[s]afety Data Sheets for all chemicals stored on site,” respectively. These requests are irrelevant as they do not pertain to the siting of the buildings or the facility. Moreover, with respect to Request No. 20, the Direct Testimony of Timothy Flanagan explains the safety and emergency response protocols that PECO will utilize for the Natural Gas Reliability Station, including but not limited to 24/7 monitoring and the ability to respond to an incident within an hour. *See* PECO Energy Company Statement No. 4, at 11:8-9. Thus, to the extent Request No. 20 can be fairly deemed to be seeking information relevant to the siting of the buildings or the facility, PECO has already provided the relevant information, and the request is moot.

21. Requests Nos. 25 and 30 seek the “[r]esults of any studies done on the impacts of the proposed facility” and “[e]nvironmental impact statement or study for the site of the proposed Marple Gas Reliability Station,” respectively. As explained on page 9 of the Direct Testimony of Jim Moylan, the site is currently vacant but was most recently occupied by a Texaco gasoline filling station. PECO Energy Company Statement No. 5, at 9:10. During the acquisition of the property, PECO conducted a Phase I and Phase II environmental assessment which have been produced in PECO’s supplemental production (*see* CONFIDENTIAL PECO000572-PECO000684), the results of which identified residual contamination at the property from its prior use and further confirmed that the site was subject to a tank removal and soil and remediation and mitigation under Pennsylvania law. PECO Energy Company Statement No. 5, at 9:11-16. As a result of the contamination, the property is subject to an environmental covenant, dated May 13, 2013 and approved by the Pennsylvania Department of Environmental Protection, which restricts the future use of the property to non-residential uses only. The environmental covenant is attached to Mr. Moylan’s Direct Testimony as PECO Exhibit JM-1. Mr. Moylan’s Direct Testimony explains that PECO will remove the additional soil contamination and will proceed in a manner consistent with the restrictions in the environmental covenant and other applicable environmental laws, thereby benefitting the community by removing and/or capping pollutants that currently exist at the property. PECO Energy Company Statement No. 5, at 9:23-10:3.

22. Intervenors must bear the initial burden of establishing the relevance of the requested information. Yet, Intervenors merely state in conclusory fashion that “the Request above seeks information regarding the convenience and welfare of the public in accordance with MPC § 619, 53 P.S. § 10619.” Intervenors Motion to Compel, at 6-7. Intervenors have not met their burden

of establishing that the information and documents sought in Requests Nos. 20, 22, 25, or 30 are relevant. Therefore, the Motion should be denied.

23. Requests Nos. 32 and 33 seek the “Pollution Prevention and Contingency (PPC) plan for the site or similar facilities” and “Phase 1/Phase 2 Environmental Site Assessment for the site,” respectively. First, information and documents regarding other PECO facilities are not relevant to the subject matter of this proceeding. *See* May 18, 2021 Interim Order, at 5. Similarly, PECO’s plan to prevent pollution at the proposed location is not relevant to “whether it is reasonably necessary for the convenience or welfare of the public that the Gas Reliability Station be sited at 2090 Sproul Road.” May 18, 2021 Interim Order, at 6. Nonetheless, as explained in ¶ 21 *supra*, Mr. Moylan’s Direct Testimony contains PECO’s plan to remediate pollution that currently exist at the property and utilize the land in a manner consistent with the restrictions in the environmental covenant and other applicable environmental laws. Moreover, PECO has produced the Phase I and Phase II Environmental Site Assessment for the proposed site. Therefore, Intervenors’ Motion is moot with respect to Requests Nos. 32 and 33.

III. CONCLUSION

For all of the foregoing reasons, PECO respectfully requests that Your Honor deny Marple Township and Delaware County’s Motion.

/s/ Christopher A. Lewis _____

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Dated: May 24, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true copy of the foregoing Answer to the Motion of Marple Township and Delaware County to Compel Discovery Directed to PECO Energy Company was served 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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Dated: May 24, 2021