*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**

**GRANTING IN PART AND DENYING IN PART PECO’S OBJECTIONS TO**

**PUBLIC INPUT HEARING EXHIBITS AND MOTIONS TO STRIKE**

**TESTIMONY OFFERED BY GREGORY FAT**

Public input hearings in the above-captioned matter were held on May 25, 2021 and May 26, 2021, at 1:00 p.m. and 6:00 p.m. both days.

Two witnesses, Gregory Fat (Mr. Fat) and Marilia Mancini-Strong (Ms. Mancini-Strong), offered exhibits during their testimony.[[1]](#footnote-1) Mr. Fat’s proposed exhibits were marked as GF-A through GF-T and Ms. Mancini-Strong’s exhibits were marked as MM-S-1 through

MM-S-7.

On June 4, 2021, an Interim Order was entered setting deadlines for the filing of objections to the admission of the proposed exhibits, motions to strike testimony related to the proposed exhibits, and responses to any objections and motions to strike.

On June 11, 2021, PECO Energy Company (PECO) filed objections and motions to strike, arguing, *inter alia*, the proposed exhibits and testimony go beyond the relevant scope of this proceeding, because they contain inadmissible hearsay, and because any probative value is outweighed by the danger of unfair prejudice and confusion of the issues.

On June 18, 2021, Julie Baker, (Ms. Baker), Theodore Uhlman (Mr. Uhlman), and Mr. Fat filed responses to PECO’s objections and motions to strike.[[2]](#footnote-2)

This Order pertains only to the testimony and exhibits offered by Mr. Fat. The testimony and exhibits offered by Ms. Mancini-Strong will be addressed in a separate order.

Discussion

This matter concerns PECO’s 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 (Petition). In the Petition, PECO requests that the Commission, pursuant to 52 Pa.Code § 5.41 and Section 619 of the Municipalities Planning Code (MPC), 53 P.S. § 10619, make a finding that: (1) the situation of two buildings at 2090 Sproul Road, Marple Township, Delaware County, Pennsylvania, 19008 (2090 Sproul Road) 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 pursuant to MPC § 619, 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.

PECO avers in its application that its current natural gas distribution system in Delaware County is experiencing, or soon will be experiencing, design day constraints.  Consequently, PECO plans to utilize an existing Liquified Natural Gas tank located elsewhere on its system (in West Conshohocken) as a source of supply for Delaware County generally and Marple Township in particular. This larger Natural Gas Reliability Project consists of: (i) upgrading PECO’s natural gas plant in West Conshohocken; (ii) installing 11.5 miles of new gas main; and (iii) constructing the Gas Reliability Station in Marple Township, Delaware County to receive and distribute the natural gas transported by the full Reliability Project. The Petition at issue in the instant matter pertains only to the Gas Reliability Station.

Article VI of the Pennsylvania Municipalities Planning Code (MPC)[[3]](#footnote-3) provides that “[T]he governing body of each municipality . . . , may enact, amend and repeal zoning ordinances to implement comprehensive plans . . .”[[4]](#footnote-4) Article VI of the MPC does not apply to a proposed building to be used by a public utility corporation if, after notice to the municipality and corporation and public hearing, the Commission decides that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.[[5]](#footnote-5)

Therefore, a municipality may zone a public utility building unless the Commission determines that the building is reasonably necessary for the convenience or welfare of the public. If the Commission finds that the building is reasonably necessary, the building is exempt from a local zoning ordinance under the MPC.[[6]](#footnote-6) Section 619 of the MPC does not require a utility to prove that the site it has selected is absolutely necessary or that it is the best possible site, it need only show that the building is reasonably necessary.[[7]](#footnote-7) The Commonwealth Court has explained, “We do not interpret [Section 619 of the MPC] as requiring the [Commission] to reevaluate the entire project. [Section 619 of the MPC] merely directs [the Commission] to determine whether the *site* of the [proposed facility] is appropriate to further the public interest.”[[8]](#footnote-8)

Additionally, the Commission has adopted a final policy statement order intending to further the State’s goal of making State agency actions consistent with sound land use planning by considering the impact of its decisions upon local comprehensive plans and zoning ordinances.[[9]](#footnote-9) The policy statement provides that the Commission will consider the impacts of its decisions upon local comprehensive plans and zoning ordinances when reviewing applications for the following:

1. Certificates of public convenience.
2. Siting electric transmission lines.
3. Siting a public utility “building” under section 619 of the Municipalities Planning Code (53 P.S. §10619).
4. Other Commission decisions.[[10]](#footnote-10)

Therefore, the issue in this case is whether the siting of the Gas Reliability Station at 2090 Sproul Road is reasonably necessary for the convenience or welfare of the public. In other words, whether it is reasonably necessary for the convenience or welfare of the public that the Gas Reliability Station be sited at 2090 Sproul Road. The Commission must “determine whether the site of the [proposed facility] is appropriate to further the public interest.”[[11]](#footnote-11) 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.

It is the *siting of the buildings* that is at issue in this matter. In deciding this issue, the Commission will consider the impact of its decision upon local comprehensive plans and zoning ordinances.

Consequently, testimony and exhibits which challenge the existence of the proposed Natural Gas Reliability Station do not address the limited issue in this proceeding – whether the proposed siting of the buildings in question is reasonably necessary for the convenience or welfare of the public.

PECO’s Objections to Mr. Fat’s Testimony and Exhibits

Exhibit GF-A

PECO did not object to the Admission of Exhibit GF-A. Therefore, Exhibit GF-A shall be admitted into the record.

Exhibits GF-B and C

Exhibits GF-B and C are charts which purport to depict Pennsylvania state-wide natural gas consumption from 1967 to 2019.[[12]](#footnote-12) PECO objects to the admission of Exhibits GF-B and C and any related testimony on the grounds that they are not relevant to this proceeding. PECO argues the state-wide natural gas consumption in Pennsylvania is not at issue in this proceeding. PECO argues it has submitted direct testimony that establishes that the proposed Station is needed to address increasing demands for natural gas in *Marple Township and Delaware County*. Because Exhibits GF-B and C do not depict natural gas consumption in Marple Township, Delaware County, or even PECO’s service territory, and because statewide totals mask differences in natural gas consumption in particular regions, PECO submits they are irrelevant to this proceeding. PECO argues that Exhibits GF-B and C should not be admitted into the record and the related testimony that appears at 134:16-22 and 151:21-152:9, should be stricken from the record.

In his written response to PECO’s objections, Mr. Fat argues Exhibits GF-B and GF-C illustrate long-term decreasing consumption statistics of residential natural gas in Pennsylvania. He argues these statistics are relevant to this case because the necessity of the proposed gas plant and two buildings is dependent upon PECO’s predicted growth of natural gas consumption in PECO’s service network.

Mr. Fat further argues that it cannot be confirmed whether the gas processed by this plant would stay solely in Marple Township or Delaware County or whether this gas would be piped out of the geographic area to be sold to other gas providers and customers elsewhere in the state.

As explained above, the issue in this case is whether the siting of the Gas Reliability Station at 2090 Sproul Road is reasonably necessary for the convenience or welfare of the public. It is the *siting of the buildings*, not the necessity of the gas reliability station, that is at issue in this matter.

Therefore, the long-term consumption statistics of residential natural gas in Pennsylvania purportedly depicted in Exhibits GF-B and GF-C are not relevant to the issue in this matter. Therefore, PECO’s objection to these Exhibits is sustained and Exhibits GF-B and GF-C are not admitted. Mr. Fat’s testimony at 134:16-22 and 151:21-152:9 is not substantive and is basically Mr. Fat identifying what the exhibits are and requesting that they be admitted. As such, PECO’s motion to strike Mr. Fat’s testimony at 134:16-22 and 151:21-152:9 is denied.

Exhibits GF-D, F, G, and H

Exhibits GF-D and F through H are photographs depicting signs and protests that are offered to show alleged public opposition to the proposed Natural Gas Reliability Station. PECO objects to the admission of Exhibits GF-D and GF-F through GF-H and any related testimony on the grounds that they are not relevant to the limited issues in this proceeding, constitute inadmissible hearsay, and are being offered for an improper purpose. PECO argues that, despite acknowledging that he cannot speak on the public’s behalf, Mr. Fat offered these exhibits and testified that they represent community opposition to the project.[[13]](#footnote-13)

PECO submits that these exhibits and related testimony offered by Mr. Fat are inadmissible hearsay because they are offered to prove that unidentified members of the public are opposed to the project without having those persons testify and be subject to cross-examination. PECO argues that, as a result, the finder of fact cannot assess (1) whether such persons are in fact opposed to the project and (2) the grounds for any such opposition. PECO maintains this is classic hearsay that eviscerates the purpose of the public input hearing – to receive into evidence sworn statements regarding the public’s view of the project.

PECO further argues that although Mr. Fat suggests that the number of signs that have been displayed in the community is representative of the level of opposition to the project, this is pure speculation as a small group of individuals could be responsible for displaying all or most of the signs. PECO also maintains that the probative value of this evidence is greatly outweighed by the danger of unfair prejudice to PECO, which had no ability to cross-examine members of the public who chose not to appear at the public input hearings. For these reasons, PECO objects to the admission of Exhibits GF-D and GF-F through GF-H, and requests that the related testimony that appears at 137:23-138:23; 148:19-151:19 be stricken from the record.

In his written response to PECO’s objections, Mr. Fat explains that the photos in Exhibits GF-D and GF-F show a small sampling of the yard signs he has seen displayed in his community. He argues they are part of the reason why he believes that his community does not feel the proposed facility is in line with the welfare of the public. Furthermore, he testified that the photographs in Exhibits GF-D and GF-F were a fair an accurate representation of the streets depicted as he observed them to be.

Regarding exhibits GF-G and GF-H, Mr. Fat testified at the public input hearing that these photographs were taken by himself or others at public protests he personally attended and were fair and accurate representations of the scene he observed.

At the public input hearings, the undersigned repeatedly explained that the purpose of the hearings was to hear from the public and listen to their opinions on the proposed project. It is important to the undersigned that the members of the community surrounding the proposed site have an opportunity to be heard. Mr. Fat properly authenticated Exhibits GF-D and GF-F through GF-H.

Exhibits GF-D and GF-F shall be admitted for the limited purposes of: (1) visually depicting an example of the lawn signs Mr. Fat testified he has observed in his community, and (2) showing that the homes depicted in the photographs in fact have the lawn signs displayed. Exhibits GF-G and GF-H shall be admitted for the limited purposes of: (1) showing that a public protest against the proposed facility was held, and (2) visually depicting the scene of the protest that was held.

Mr. Fat’s testimony at 137:23-138:6 consists of his request that the Exhibits be admitted, testimony regarding what he personally observed at the protest, and testimony about personally observing lawn signs in his community. PECO’s motion to strike Mr. Fat’s testimony at 137:23-138:6 is denied.

In his testimony at 138:7-138:23 Mr. Fat discusses his belief that there is strong community opposition to the proposed facility and cites some examples of how the community opposition has manifested itself:

This is the opposition PECO has to this project. I'm told approximately 300 signs have been put on display around our community. With such strong opposition by the public evidenced by the yard signs, all 70 protestants which filed, the number of public input comments like mine that we'll expect over the next two days, and the local and county government opposition, the approval of this project would be the exact opposite of what me as a resident of the public is voicing for our convenience and my welfare.

With the exception of Mr. Fat’s testimony about the number of lawn signs he has been told exist in his community, his testimony reasonably summarizes the record that already exists in this matter. Mr. Fat’s testimony at 138:8-9 is unquestionably hearsay and does not meet any recognized exception.

Mr. Fat’s testimony at 138:18-23 details Mr. Fat’s belief that allowing the proposed project to proceed with evidence from PECO or considering the community’s opposition to the project would set a precedent that utility companies do not need to work with local communities. This kind of testimony is typical for public input hearings, and it is not appropriate to strike it from the record.

Regarding Mr. Fat’s testimony at 148:19-151:19, it mostly consists of the undersigned asking Mr. Fat questions about what the pictures depict, and where, when, and by whom they were taken. The only substantive testimony in this section is Mr. Fat’s testimony at 149:20-21 (“And those signs have been up for multiple weeks. So I will also add that for the record.”), and 150:6-10 (“Exhibit G depicts a protest where approximately 100 individuals from the community that are opposing this project appeared for news coverage by local news stations such as CBS.”) This substantive testimony is based on Mr. Fat’s personal observation and is not appropriate to strike from the record.

Therefore, PECO’s motion to strike Mr. Fat’s Testimony at 137:23-138:23 and 148:19-151:19 is granted with respect to 138:8-9 but is denied in all other respects.

Exhibit GF-E

Exhibit GF-E is a photograph of the proposed site taken by Mr. Fat that purports to show one or more telephone poles that are leaning. PECO objects to the admission of Exhibit GF-E into the record arguing it is irrelevant to the limited issues in this proceeding.

PECO submits that Mr. Fat’s concern about the safety of leaning telephone poles is pure speculation that is not relevant to the issues in this proceeding. PECO further argues that Mr. Fat is not qualified to offer an expert opinion on the safety risk that a leaning telephone pole could pose. PECO requests that Exhibit GF-E not be admitted into the record, and Mr. Fat’s testimony at 128:13-129:22 and 145:10-146:7 be stricken from the record.

In response, Mr. Fat argues that this photograph is simply a visual depiction of a telephone pole near the proposed site and is a basis for some of his safety concerns should the facility be sited at the proposed location. He testified he is concerned that the leaning pole could fall onto or damage the facility if it were to be sited at the location. He argues he is not offering any kind of expert opinion; rather he is simply stating his lay opinion and “rationally drawn opinions.”

This Exhibit is a photograph of the proposed site, was properly authenticated by Mr. Fat at the hearing, and is relevant. PECO’s objection to the admission of Exhibit GF-E is overruled. Exhibit GF-E shall be admitted into the record.

Mr. Fat’s testimony at 128:13-128:22 is simply Mr. Fat’s identification of the exhibit, as well as his characterization of the pole as “neglected” and “looming.” This testimony is appropriate to remain in the record as Mr. Fat’s lay opinion and the undersigned will give it its appropriate weight in any Recommend Decision. Mr. Fat’s testimony at 128:23-129:22 do not pertain to Exhibit GF-E, and the undersigned suspects PECO’s counsel made a typo, writing “129:22” instead of “128:22.”

Mr. Fat’s testimony at 145:10-146:7 essentially consists of the undersigned asking Mr. Fat questions about what the picture depicts, and where, when, and by whom it was taken.

Therefore, PECO’s motion to strike Mr. Fat’s testimony at 128:13-128:22 and 145:10-146:7 is denied.

Exhibit GF-L

Exhibit GF-L is a photograph which appears to depict metal piping at an unidentified location. PECO objects to the admission of Exhibit GF-L into the record arguing it is irrelevant to the limited issues in this proceeding. Furthermore, PECO notes that Mr. Fat did not provide any testimony at the Public Input Hearing describing or authenticating Exhibit GF-L. PECO argues Exhibit GF-L should not be admitted into evidence.

In his written response to PECO’s objection, Mr. Fat clarifies that he did not offer Exhibit GF-L into evidence. Therefore, since Exhibit GF-L was not offered into evidence, it shall not be admitted.

Exhibits GF-M

According to Mr. Fat, Exhibit GF-M is an article that describes an accident which occurred in Denver, CO, wherein a truck collided with an above-ground gas line.[[14]](#footnote-14) PECO objects to the admission of Exhibit GF-M arguing the Exhibit is irrelevant to the limited issues in this proceeding and constitutes inadmissible hearsay as it contains statements that were made outside of this proceeding and has been offered to prove the truth of the matters asserted therein. PECO argues that the exhibit does not fall within one of the recognized exceptions to the rule against hearsay and argues it should not be admitted into the record. PECO further requests that Mr. Fat’s testimony at 129:9-23 and 144:22-145:7 be stricken from the record.

Mr. Fat, in his written response to PECO’s objections, responded to PECO’s relevance objection, but did not respond to the hearsay objection. Exhibit GF-M is indeed hearsay and does not meet any recognized exception. PECO’s hearsay objection to Exhibit GF-M is sustained and Exhibit GF-M is not admitted into the record.

Mr. Fat’s testimony related to Exhibit GF-M at 129:9-23 contains some inadmissible hearsay, but not all of this testimony is hearsay. Only the testimony that is hearsay shall be stricken. Therefore, PECO’s motion to strike Mr. Fat’s testimony at 129:9-23 is granted with respect to 129:11-15 and 129:18-19 but is denied in all other respects.

Mr. Fat’s testimony at 144:22-145:7 likewise contains some inadmissible hearsay, but not all of it is hearsay. Only the testimony that is hearsay shall be stricken. Therefore, PECO’s motion to strike Mr. Fat’s testimony at 144:22-145:7 is granted with respect to the sentence beginning at 144:24 and ending at 145:1 but is denied in all other respects.

Exhibit GF-O

According to Mr. Fat’s testimony, Exhibit GF-O is a photograph he took of a

random accident that occurred on Sproul Road in Marple Township.[[15]](#footnote-15) Mr. Fat testified that the accident occurred “just a few feet from” the proposed project “causing further concerns” regarding vehicles crashing into the proposed station or nearby telephone poles.[[16]](#footnote-16)

PECO argues that Exhibit GF-O and any related testimony are not relevant to the limited issues in this proceeding. PECO maintains that an accident that occurred somewhere else is not relevant to prove that an accident could occur, or is likely to occur, at the site. Moreover, the testimony concerning the mere possibility of an accident is pure speculation that goes beyond the limited issues in this proceeding, and Mr. Fat is not qualified in any event to offer an expert opinion about traffic safety. Therefore, PECO argues GF-O should not be admitted into the record and the related testimony that appears at 128:1-19; 146:9-147:7; 161:25-162:3 should be stricken from the record.

In his written response to PECO’s objections, Mr. Fat argues Exhibit GF-O is relevant because it supports his “rational opinion that building a natural gas plant and surrounding 8 foot wall would further obstruct this intersection and roadway next to the proposed gas plant.”

At the public input hearings, the undersigned repeatedly explained that the purpose of the hearings was to hear from the public and listen to their opinions on the proposed project. It is important to the undersigned that the members of the community surrounding the proposed site have an opportunity to be heard. Mr. Fat properly authenticated Exhibit GF-O. Exhibit GF-O shall be admitted for the narrow purpose of showing one of the reasons why Mr. Fat is concerned about the safety of the proposed project. The undersigned will give it the appropriate weight in any Recommended Decision. Therefore, Exhibit GF-O shall be admitted, and PECO’s request to strike Mr. Fat’s testimony at 128:1-19; 146:9-147:7; 161:25-162:3 is denied.

Exhibit GF-N

Exhibit GF-N purports to be an aerial map depicting the area that is within a 1- mile radius of the proposed project along with a bullet point list identifying what Mr. Fat believes to be the sites that would be impacted by an explosion or gas leak at the proposed Natural Gas Reliability Station. PECO objects to the admission of Exhibit GF-N and any related testimony on the grounds that Mr. Fat is not qualified to give an opinion as to the likelihood of an explosion or gas leak at the facility, the impacts of any such incident, or the necessity for a safety zone surrounding the proposed project. PECO argues this testimony is pure speculation and is not relevant to the limited issues in this proceeding. PECO also argues its probative value is outweighed by the danger of unfair prejudice to PECO. For all of these reasons, PECO requests that Exhibit GF-N not be admitted into the record and related testimony at 129:24-130:8 and 153:7-154:3 be stricken from the record.

In his written response to PECO’s objections, Mr. Fat argues Exhibit GF-N is intended to provide his lay witness opinion that some of the schools, residences, businesses and places of worship might be impacted given their vicinity to the proposed site in the case of an accident at the proposed facility. Mr. Fat argues it is appropriate for the PUC to weigh the potentially dangerous costs against any public benefits of the siting of the facility at the proposed location. Additionally, Mr. Fat argues that, given the PUC’s declination of a site visit at this time, it is important for the PUC to understand the “densely populated area” surrounding the proposed location.

Considering that the undersigned must consider the impact the proposed siting would have upon local comprehensive plans and zoning ordinances, it is appropriate for the undersigned to receive evidence that depicts the land uses of the surrounding area. Furthermore, at the public input hearings, the undersigned repeatedly explained that the purpose of the hearings was to hear from the public and listen to their opinions on the proposed project. It is important to the undersigned that the members of the community surrounding the proposed site have an opportunity to be heard.

Exhibit GF-N shall be admitted for the narrow purposes of (1) showing that the sites listed in the bullet point list in fact exist within 1 mile of the propose site, and (2) demonstrating one of the reasons why Mr. Fat, as a lay witness, is concerned about the safety of the proposed project. The undersigned will give it the appropriate weight in any Recommended Decision. Therefore, Exhibit GF-N shall be admitted and PECO’s request to strike Mr. Fat’s testimony at 129:24-130:8 and 153:7-154:3 is denied.

Exhibit GF-P

Exhibit GF-P is a proposal that Mr. Fat provided to the Environmental Advisory

Committee of Marple Township detailing a plan to reduce natural gas consumption in Marple

Township.[[17]](#footnote-17) PECO objects to the admission of Exhibit GF-P and any related

testimony on the grounds it is not relevant to this proceeding and constitutes inadmissible

hearsay. PECO argues Exhibit GF-P is inadmissible hearsay because it contains

out of court statements offered to prove the truth of the matter asserted does not

fall within any of the recognized exceptions to the rule against hearsay. Therefore, PECO objects to the admission of Exhibit GF-P and requests that testimony at 141:18-24 be stricken from the record.

Mr. Fat, in his written response to PECO’s objections, responded to PECO’s relevance objection, but did not respond to the hearsay objection. The substantive content of Exhibit GF-P is indeed hearsay and does not meet any recognized exception. PECO’s hearsay objection to the substantive content of Exhibit GF-P is sustained. However, Exhibit GF-P will be admitted for the sole, narrow purpose of showing that Mr. Fat gave a statement to the Board of Commissioners on May 15, 2021.

Furthermore, at the public input hearings, the undersigned repeatedly explained that the purpose of the hearings was to hear from the public and listen to their opinions on the proposed project. It is important to the undersigned that the members of the community surrounding the proposed site have an opportunity to be heard. PECO’s motion to strike Mr. Fat’s testimony at 141:18-24 is denied.

Exhibits GF-Q through GF-S

Exhibits GF-Q and GF-R are articles regarding the City of Philadelphia’s

efforts to transition to clean energy. Exhibit GF-S is a printout of what appears to be Delaware

County Pennsylvania’s Sustainability Commission’s home page. PECO objects to the admission of Exhibits GF-Q through S and any related testimony on the grounds that they are not relevant to this proceeding and constitute inadmissible hearsay. PECO submits that these exhibits, which address the topic of sustainability, and any associated testimony, have absolutely no bearing on whether the situation of the proposed buildings is reasonably necessary for the convenience and welfare of the public.

Moreover, PECO argues Exhibits GF-Q through S are inadmissible hearsay because they contain out of court statements offered to prove the truth of the matter asserted, and the exhibits do not fall within any of the recognized exceptions to the rule against hearsay. Therefore, PECO requests that that Exhibits GF-Q through S not be admitted into the record and related testimony at 141:18-24 and 154:5-9 be stricken from the record.

Mr. Fat, in his written response to PECO’s objections, responded to PECO’s relevance objection, but did not respond to the hearsay objection. Exhibit GF-Q through GF-S are indeed hearsay and do not meet any recognized exception. PECO’s hearsay objections to Exhibits GF-Q through GF-S are sustained and these exhibits are not admitted into the record.

Furthermore, at the public input hearings, the undersigned repeatedly explained that the purpose of the hearings was to hear from the public and listen to their opinions on the proposed project. It is important to the undersigned that the members of the community surrounding the proposed site have an opportunity to be heard. Mr. Fat’s testimony at 141:18-24 and 154:5-9 does not contain any inadmissible hearsay and contains Mr. Fat’s opinion on the project and colloquy between himself and the undersigned regarding his exhibits. PECO’s motion to strike Mr. Fat’s testimony at 141:18-24 and 154:5-9 shall be denied.

Exhibit GF-T

PECO did not object to the admission of Exhibit GF-T, which shall be admitted.

THEREFORE,

IT IS ORDERED:

1. Exhibit GF-A is hereby admitted into the record.

2. PECO’s objection to the admission of Exhibits GF-B and GF-C is sustained. Exhibits GF-B and GF-C are not admitted into the record.

3. PECO’s Motion to Strike Mr. Fat’s testimony at 134:16-22 and 151:21-152:9 is not substantive and is denied.

4. PECO’s objection to the admission of Exhibits GF-D and GF-F is granted such that Exhibits GF-D and GF-F are be admitted for the limited purposes of: (1) visually depicting an example of the lawn signs Mr. Fat testified he has observed in his community, and (2) showing that the homes depicted in the photographs in fact have the lawn signs displayed.

5. PECO’s objection to the admission of Exhibits GF-G and GF-H is granted such that Exhibits GF-G and GF-H are admitted for the limited purposes of: (1) showing that a public protest against the proposed facility was held, and (2) visually depicting the scene of the protest that was held.

6. PECO’s motion to strike Mr. Fat’s Testimony at 137:23-138:23 and 148:19-151:19 is granted with respect to 138:8-9 but is denied in all other respects.

7. PECO’s objection to the admission of Exhibit GF-E is overruled. Exhibit GF-E is admitted into the record.

8. PECO’s motion to strike Mr. Fat’s testimony at 128:13-128:22 and 145:10-146:7 is denied.

9. Exhibit GF-L is not admitted into the record.

10. PECO’s objection to the admission of Exhibit GF-M is sustained. Exhibit GF-M is not admitted into the record.

11. PECO’s motion to strike Mr. Fat’s testimony at 129:9-23 is granted with respect to 129:11-15 and 129:18-19 but is denied in all other respects.

12. PECO’s motion to strike Mr. Fat’s testimony at 144:22-145:7 is granted with respect to the sentence beginning at 144:24 and ending at 145:1 but is denied in all other respects.

13. PECO’s objection to the admission of Exhibit GF-O is granted such that Exhibit GF-O is admitted for the narrow purpose of showing one of the reasons why Mr. Fat is concerned about the safety of the proposed project.

14. PECO’s motion to strike Mr. Fat’s testimony at 128:1-19; 146:9-147:7; 161:25-162:3 is denied.

15. PECO’s objection to the admission of Exhibit GF-O is granted such that Exhibit GF-O is admitted for the narrow purposes of (1) showing that the sites listed in the bullet point list in fact exist within 1-mile of the proposed site, and (2) demonstrating one of the reasons why Mr. Fat, as a lay witness, is concerned about the safety of the proposed project.

16. PECO’s motion to strike Mr. Fat’s testimony at 129:24-130:8 and 153:7-154:3 is denied.

17. PECO’s objection to the admission of Exhibit GF-P is granted such that Exhibit GF-P is admitted for the sole, narrow purpose of showing that Mr. Fat gave a statement to the Board of Commissioners on May 15, 2021.

18. PECO’s motion to strike Mr. Fat’s testimony at 141:18-24 is denied.

19. PECO’s objections to the admission of Exhibits GF-Q through GF-S are sustained and Exhibits GF-Q through GF-S are not admitted into the record.

20. PECO’s motion to strike Mr. Fat’s testimony at 141:18-24 and 154:5-9 is denied.

21. Exhibit GF-T is admitted into the record.

Date: June 30, 2021  /s/

Emily I. DeVoe

Administrative Law Judge

**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*

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**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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1. Mr. Fat and Ms. Mancini-Strong filed protests in this matter and chose not to participate as active parties. [↑](#footnote-ref-1)
2. Ms. Baker and Mr. Uhlman filed protests in this matter and chose to participate as active parties. [↑](#footnote-ref-2)
3. 53 P.S. § 10101 *et seq.* [↑](#footnote-ref-3)
4. 53 P.S. § 10601. [↑](#footnote-ref-4)
5. *See* 53 P.S. § 10619. [↑](#footnote-ref-5)
6. *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm’n,* 513 A.2d 593 (Pa. Cmwlth. 1986). [↑](#footnote-ref-6)
7. *O’Connor v. Pa. Pub. Util. Comm’n*, 582 A.2d 427 (Pa. Cmwlth. 1990). [↑](#footnote-ref-7)
8. *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm’n*, 513 A.2d 593 (Pa. Cmwlth. 1986) (emphasis in original). [↑](#footnote-ref-8)
9. *See* 31 Pa. Bull. 951 (February 17, 2001). [↑](#footnote-ref-9)
10. 52 Pa.Code § 69.1101. [↑](#footnote-ref-10)
11. *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm’n*, 513 A.2d 593 (Pa. Cmwlth. 1986) (emphasis in original). [↑](#footnote-ref-11)
12. *See* March 25, 2021 Public Input Hearing Transcript, at 134:16-25. [↑](#footnote-ref-12)
13. *See* *id*. at 137:23-138:9 (stating that “I’m told approximately 300 signs have been put on display around our community”); see also *id*. at 149:23-150:2; 151:3-6 (Mr. Fat acknowledging that he does not know who took some of these pictures). [↑](#footnote-ref-13)
14. *See* *id*. at 144:24-145:2. [↑](#footnote-ref-14)
15. *See id*. at 128:1-10. [↑](#footnote-ref-15)
16. *See id*. [↑](#footnote-ref-16)
17. *Id*. at 154:5-14. [↑](#footnote-ref-17)