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July 12, 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 Motion in Limine. 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/ enclosure)

**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 :
:

NOTICE TO PLEAD

TO: All Intervenors

The attached Motion in Limine 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 take action 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 and the Administrative Law Judge within such time as the Administrative Law Judge might order. You are warned that if you fail to do so, the case may proceed without you and an order may be entered against you by the Commission without further notice.

**BEFORE THE
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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for a :
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:

**PECO ENERGY COMPANY’S MOTION IN LIMINE TO LIMIT THE
SCOPE OF THE EVIDENTIARY HEARING AND TO EXCLUDE CERTAIN
PORTIONS OF THE INTERVENORS’ TESTIMONY AND EXHIBITS**

Pursuant to the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.103 and 5.401, and the Interim Order entered on June 4, 2021 in this docket, PECO Energy Company (“PECO” or the “Company”) submits this Motion in Limine, respectfully requesting that the Honorable Administrative Law Judge Emily DeVoe (“ALJ DeVoe”) limit the scope and evidence received during the evidentiary hearing in the above-captioned matter to solely the issues relevant to determine whether (1) the situation of two buildings for a proposed Natural Gas Reliability Station is reasonably necessary for the convenience and welfare of the public, and (2) a proposed security fence appurtenant to the Natural Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102. Consistent with this limitation, PECO further requests that ALJ DeVoe strike certain portions of the Rebuttal Testimony and exhibits submitted on behalf of the Intervenors. For the convenience of ALJ DeVoe and the active parties, PECO has attached hereto as Exhibit “A” a matrix summarizing the objections contained in this Motion in Limine.

In support of its Motion, PECO states as follows:

I. FACTUAL BACKGROUND

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 Natural 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 Natural Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from local zoning requirements.

2. On May 14, 2021 PECO submitted its Direct Testimony for PECO witnesses Douglas Oliver, Carlos Thillet, Ryan Lewis, Timothy Flanagan, and Jim Moylan.

3. On May 25 and 26, 2021, ALJ DeVoe held Public Input Hearings during which certain Marple Township residents submitted exhibits and testimony for inclusion in the record in this proceeding.

4. The purpose of the Public Input Hearings was to receive the comments of non-party members of the public. Many of the issues addressed at the Public Input Hearing did not relate to the purpose of PECO’s Petition, and included concerns related to noise, property values, health issues, air emissions, and emergency evacuation plans, among other things.

5. On June 4, 2021, ALJ DeVoe issued an Interim Order setting the litigation schedule and scheduling the evidentiary hearing.

6. On June 11, 2021, PECO filed its Objections and Motion to Strike Exhibits Offered at Public Input Hearings.

7. On July 6, 2021, Intervenors Julie Baker, Ted Uhlman, Delaware County, and Marple Township submitted written rebuttal testimony and exhibits. The rebuttal testimony

included issues that are not relevant to a Section 619 hearing, including issues related to noise, community approval, health concerns, air emissions, evacuation plans, and climate change.

8. The Evidentiary Hearings in this proceeding are scheduled for July 15-16, 2021. Unlike the Public Input Hearing, the purpose of the evidentiary hearings is to present expert and non-expert (*i.e.* factual) testimony from witnesses that comply with the rules of evidence for formal proceedings set forth in the Commission’s regulations at 52 Pa. Code § 5.401, et seq.

9. Accordingly, PECO submits this Motion in Limine by which it respectfully requests that ALJ DeVoe limit the scope and evidence received during the evidentiary hearing in the above-captioned matter to solely the issues relevant to a Section 619 hearing, and strike certain portions of the Rebuttal Testimony and exhibits submitted on behalf of the Intervenors.

II. LEGAL STANDARD

a. Motion to Limit Scope of Proceeding

10. PECO filed the above-captioned petition pursuant to Section 619 of the Pennsylvania Municipalities Planning Code (“MPC”), which provides:

This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.

53 P.S. § 10619. 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.”¹

11. In its Petition, PECO raised only two issues for the Commission to review. The first issue is whether the situation of two buildings for a proposed Natural Gas Reliability Station is reasonably necessary for the convenience and welfare of the public and, therefore exempt from any zoning, subdivision, and land development restrictions of the Marple Township Subdivision and Land Development Ordinance and the Marple Township Zoning Code.

12. The second issue is whether a proposed security fence appurtenant to the Natural Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from local zoning requirements. Accordingly, the evidentiary hearing should be limited to these issues.

13. This case is analogous to *Petition of UGI Penn Nat. Gas Inc. for A Finding That Structures to Shelter Pipeline Facilities in the Borough of W. Wyoming, Luzerne Cty., to the Extent Considered to Be Buildings Under Loc. Zoning Rules, Are Reasonably Necessary for the Convenience or Welfare of the Pub.*, No. P-2013-2347105, 2013 WL 6835113, at *13 (Pa. PUC Dec. 19, 2013). The Commission in that case noted “the Company is not seeking the Commission’s approval of the project before construction of the gate station; rather, it is seeking a determination from this Commission as to whether the four ‘structures’ it intends to build around the pipes, valves, gas storage tanks, and meters, would constitute ‘buildings’ within the meaning of the Municipal Planning Code (MPC).” *Id.* at *5. And if the structures constitute buildings within the MPC, “whether such ‘buildings’ are reasonably necessary for the

¹ *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.

convenience or welfare of the public and, therefore, exempt from local zoning ordinances.” *Id.* at *19.

14. The Commission went on to state that “[w]hether the proposed buildings are reasonably necessary for the convenience or welfare of the public does not require the utility to prove that the site it has selected is absolutely necessary or that it is the best possible site.” *Id.* at *21.

15. Additionally, in *Petition of UGI Penn Natural Gas* most of the intervenors and witnesses at the public hearing also opposed the construction of any natural gas facilities and “raised concerns about the proposed West Wyoming Gate Station’s: (a) impact on property values, (b) emissions, (c) noise levels, (d) safety, (e) security, (f) impact on traffic, and (g) utility status.” *Id.* at **10-11.

16. In the *UGI* case, ALJ Barnes stated in her Initial Decision that “[t]he intervenors’ concerns about gas pressure, gas emissions, noise levels and other health and safety issues are valid concerns; however, approval of the construction of a gate station is beyond the scope of this proceeding.” No. P-2013-2347105, 2013 WL 4717042, at *15 (Aug. 16, 2013). In affirming the Initial Decision, the Commission agreed that information about gas pressure, gas emissions, noise levels and other health and safety concerns were not “germane” to the scope of 53 P.S. § 10619 proceedings. No. P-2013-2347105, 2013 WL 6835113, at *13 (Pa. PUC Dec. 19, 2013).

17. PECO’s Petition presents an almost identical situation. Many of the issues raised at the Public Input Hearings on May 25 and 26, 2021, and the written Rebuttal Testimony, and exhibits submitted on behalf of the Intervenors are beyond the proper scope of this proceeding under 53 P.S. § 10619.

18. As in *Petition of UGI Natural Gas*, concerns about health, safety, noise, and emissions, albeit valid, are not germane to the scope of 53 P.S. § 10619 proceedings. Such

evidence does not address the limited issues here—whether the structures that PECO proposes to build are “buildings” within the meaning of the MPC, and if so, whether the location of such “buildings” is reasonably necessary for the convenience or welfare of the public.

19. Petitioners in *Petition of UGI Natural Gas* filed a Motion in Limine, seeking to limit the scope and evidence received at the evidentiary hearing to solely “whether the proposed structures to shelter equipment at the West Wyoming Gate Station [were] ‘buildings’ for purposes of zoning and, if so, whether the location for the proposed structures [were] reasonably necessary for public convenience or welfare” and asking the Commission to “strike certain portions of the Direct Testimony submitted on behalf of the Intervenors.” The motion was granted, and the Commission noted in its final Order that “many of the issues and concerns raised by the Intervenors are beyond this Commission’s jurisdiction in this matter and were properly limited by the ALJ via her granting PNG’s Motion in Limine.” No. P-2013-2347105, 2013 WL 6835113, at *22 (Pa. PUC Dec. 19, 2013).

20. Here, as in *Petition of UGI Natural Gas*, the exhibits and evidence that should be permitted to be introduced at the hearing and offered into the evidentiary record should be limited to evidence that is directly relevant to the issues of whether (1) the situation of two buildings for a proposed Gas Reliability Station is reasonably necessary for the convenience and welfare of the public; and (2) a proposed security fence appurtenant to the Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102.

a. Motion to Strike Testimony

21. As described more fully below, Intervenors Julie Baker, Ted Uhlman, Marple Township, and Delaware County submitted Rebuttal Testimony in the form of articles, noise readings from a different gate station, direct testimony, expert testimony, and petition signatures.

Each of these pieces of evidence discuss or relate to issues that are not relevant to a Section 619 proceeding, and therefore should be stricken.

22. Furthermore, much of the testimony from the purported experts fails the *Frye* standard, and should be excluded on that basis alone. Each purported expert is addressed in turn below.

23. Frye Standard: The standards for admissibility of expert testimony in Pennsylvania are governed by Pennsylvania Rule of Evidence 702, which embodies the test set forth in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), which was adopted by Pennsylvania in *Commonwealth v. Topa*, 369 A.2d 1277 (Pa. 1977). See *Grady v. Frito-Lay, Inc.*, 839 A.2d 1038, 1043-1044 (Pa. 2003). Rule 702 provides:

If scientific, technical or other specialized knowledge beyond that possessed by a lay person will assist the trier of fact to understand the evidence or determine a fact in issue, a witness qualified as an expert by knowledge skill or experience, training or education may testify thereto in the form of an opinion or otherwise.

Pa. R. E. 702.

24. “Pennsylvania law requires that the judge serve as a gatekeeper before proffered expert testimony is provided at trial. The judge must screen to ensure that the witness has demonstrated qualifications in the field offered, the testimony provides information that an average juror would not already possess, the testimony is relevant and the methods used are reliable.” *Greene v. Phila. Media Network, Inc.*, September Term, 2011, No. 01223, 2014 Phila. Ct. Com. Pl. LEXIS 236,*4-5 (Phila. Cty. Aug. 1, 2014). Rule 702 also requires that scientific testimony be given by “a witness who is qualified as an expert by knowledge, skill, experience, training or education.” Pa. R. E. 702. “Whether a witness is qualified to render opinions and whether his testimony passes the *Frye* test are two distinct inquiries that must be raised and

developed separately by the parties, and ruled upon separately by the trial courts.” *Grady*, 839 A.2d at 1045-1046 (citing *Commonwealth v. Arroyo*, 723 A.2d 162, 170 (Pa. 1999)).

25. The proponent of so-called expert evidence must prove that the methodology an expert used is generally accepted by scientists in the relevant field as a method for arriving at the conclusion the expert will testify to at trial. *Grady*, 839 A.2d at 1045 (citing *Commonwealth v. Blasioli*, 713 A.2d 1117, 1119 (Pa. 1998)). It is the court’s role as gatekeeper to scrutinize scientific methodology and conclusions “to ensure that what might appear to the jury to be science is not in fact speculation in disguise.” *Blum v. Merrell Dow Pharmaceuticals, Inc.*, 705 A.2d 1314, 1325 (Pa. Super. 1997), *aff’d*, 764 A.2d 1 (Pa. 2000). It is within the sound discretion of the trial court whether to permit an expert witness to testify. *Flanagan v. Labe*, 547 Pa. 254, 690 A.2d 183, 185 (Pa. 1997), *overruled on other grounds*, *Freed v. Geisinger Med. Ctr.*, 971 A.2d 1202 (Pa. 2009).

26. Furthermore, much of the testimony and exhibits offered by the Intervenors are inadmissible hearsay and should be stricken on that basis alone.

27. Hearsay: Hearsay is an out of court statement offered for the truth of the matter asserted. P.A.R.E. 801; *Bonegre v. Workers’ Compensation Bd. (Bertolini’s)*, 863 A.2d 68, 72 (Pa. Cmwlth. 2004). Hearsay is inadmissible unless an exception applies. P.A.R.E. 802.

28. The hearsay rule is relaxed in proceedings before administrative agencies. *Rox Coal Co. v. Workers’ Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60 (2002). The Commonwealth Court established what is commonly called the “Walker Rule” to apply to the use of hearsay evidence during administrative proceedings: (1) hearsay evidence, properly objected to, is not competent evidence to support a finding; and (2) hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.

Walker v. Unemployment Comp. Bd. of Review, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). The “Walker Rule” has been affirmed by the Pennsylvania Supreme Court. *Rox Coal Co.*, 570 Pa. 60.

i. Julie Baker’s Rebuttal Testimony

29. Intervenor Julie Baker submitted an article, signatures of a petition opposing PECO’s Natural Gas Reliability Station, a Facebook screenshot and yard sign receipts, an noise readings from the Brookhaven Gate Station, and purported expert testimony of Robert Winters, Dr. Edward Ketyer, and Dr. C. Thomas Avedisian.

30. It is unclear if the article submitted by Ms. Baker is intended to be her testimony. Regardless, it should be excluded in its entirety, as it pertains to issues that are unrelated to a Section 619 evidentiary hearing, including lack of outreach to the community, safety concerns, an opinion the station should be located in an industrial location, a question about the actual need for the facility, an argument that the community strongly opposes the Natural Gas Reliability Station, and a question about the “Reliability Station” terminology.

31. Ms. Baker also attempts to offer signatures of a petition opposing PECO’s Natural Gas Reliability Station into evidence. Community approval, while an understandable concern, is simply not relevant to this proceeding. Furthermore, the community had an opportunity to express their concerns at the two-day Public Input Hearing before ALJ DeVoe.

32. Ms. Baker also attempts to introduce a Facebook screenshot and invoices for printing of yard signs. In support of this, Ms. Baker included an affidavit from Holly Cross stating she “participated in coordinating social media and obtaining yard signs.” The Facebook screenshot simply shows a private group entitled “Marple Safety Coalition – Proposed PECO Station,” which is not relevant to the proceedings. Similarly, the invoices for the yard signs show no substantive information and are not relevant. Moreover, Ms. Cross’s affidavit is insufficient to authenticate either piece of evidence.

33. Ms. Baker has also submitted an affidavit from Christine Howze, who apparently took noise readings at PECO's Brookhaven Gate Station. Ms. Howze's readings were submitted late, on Friday, July 9, 2021, by Ms. Baker. Assuming ALJ DeVoe excuses the lateness of the submission, Ms. Baker should be precluded from offering any testimony or evidence of these readings because they are not relevant to the proceeding, constitute improper expert testimony, and are inadmissible hearsay. No information has been submitted on the qualifications of Ms. Howze, and therefore she cannot be qualified as an expert under *Frye*. Additionally, there is very little information on how the study was conducted, including no information on the time the study was conducted, or if that date and time represented a typical noise level. And the study was conducted at a totally different location, with a different environment (*e.g.* buildings, fencing, equipment used, etc.) for a gate station that was not specifically engineered with noise-dampening features to meet the levels required by the Marple Township zoning ordinance. Therefore, the study does not have proper controls that would be necessary for it to be reliable under *Frye* and is not factually comparable to the Natural Gas Reliability Station. Moreover, the noise study contains impermissible hearsay in the form of quotes and cites from "public documents pertaining to noise levels and health."

34. Ms. Baker has also submitted what purports to be expert testimony of Dr. Roberta Winters, Dr. Edward Ketyer, and Dr. C. Thomas Avedisian.

35. Dr. Winters opines that there was a lack of community outreach and involvement; the natural gas main route should run along the state highway; air emissions may cause health issues as well as contribute to climate change; and natural gas pipelines can cause fatalities and present a risk of cyber attacks and explosion. These issues are not relevant to the proceeding.

36. Additionally, Dr. Winters is a school teacher, and is not qualified to opine on the location of the natural gas main route, health issues arising from air emissions, fatalities from

natural gas pipelines, or the risk of cyber attacks or explosion. The only cited experience is her “work with the studies of natural gas extraction from Marcellus Shale and pipelines by the League of Women Voters of Pennsylvania (LWVPA) and related Technical Assistance Grants through the Pipeline Hazardous Materials Safety Administration (PHMSA).” Dr. Winters does not explain her “work” or involvement in the studies of natural gas extraction, and there is nothing in her training or experience that suggests she has the relevant background to be qualified as an expert under *Frye*.

37. Dr. Ketyer opines on issues related to climate change, the potential for explosion and fire, and impacts to health because of air pollution and noise. None of these issues are relevant to a Section 619 proceeding.

38. Additionally, Dr. Ketyer is not qualified under *Frye* to offer these opinions. Dr. Ketyer is a retired pediatrician, and although he has experience related to health risks associated with shale gas and oil operations, there is nothing to suggest he has experience analyzing the potential for explosion and fire, air pollution, and noise and light pollution.

39. Dr. C. Thomas Avedisian opines that the facility should be built and tested at a distant site because it is a “prototype.” This testimony is not relevant to the proceeding. Moreover, the site is not a “prototype,” and therefore Dr. Avedisian’s testimony is based on an incorrect factual predicate and is not helpful.

40. Moreover, while Dr. Avedisian states that he is a professor at the Sibley School of Mechanical and Aerospace Engineering, his testimony does not include his experience, training, or qualifications, and as such, there is nothing to suggest he is qualified to offer opinions regarding where the Natural Gas Reliability Station should be built. Therefore, Dr. Avedisian’s testimony should be stricken for failing to satisfy the *Frye* standard.

41. Based on the foregoing, PECO respectfully requests ALJ DeVoe strike the petition signature pages, Ms. Baker's article, the noise study and affidavit of Ms. Howze, and the expert testimony of Ms. Winters, Dr. Ketyer, and Dr. C. Thomas Avedisian.

ii. Ted Uhlman's Rebuttal Testimony

42. Intervenor Ted Uhlman submitted (i) written rebuttal testimony to PECO's direct testimony of Douglas Oliver, Carlos Thillet, Ryan Lewis, Timothy Flanagan, and Jim Moylan, as well as (ii) purported expert testimony of Dr. Zhongping Huang.

43. Mr. Uhlman raises issues related to an alleged lack of evidence or data for Marple Township and Delaware County's increase in natural gas usage trends; a lack of evidence or data for hydraulic modeling for low pressure at Lawrence and Sproul Roads; population decreasing in Delaware County and Marple Township; a lack of explanation as to why larger mains would not be needed if located outside the half-mile radius from Lawrence and Sproul Roads; decreases trends of maximum daily send out and maximum daily firm send out for 1991 through 2021; Heating Degree Days are decreasing in Philadelphia; and statements alleging 25 million cubic feet of gas will still be in the main system and will be vented to Marple if the gas main is shut at West Conshohocken Plant in an emergency. These topics are not relevant to a Section 619 proceeding.

44. Mr. Uhlman also includes graphics depicting "Pennsylvania Natural Gas Residential Consumption" and "U.S. Natural Gas Consumption by sector, 1950-2019" (Graphics 2 and 3). The Court has already ruled that "the long-term consumption statistics of residential natural gas in Pennsylvania [] [is] not relevant to the issue in this matter." *See* June 30, 2021 Interim Order on Motion to Strike Gregory Fat's Exhibits and Testimony. Therefore, these graphics in Mr. Uhlman's testimony, as well as all statements he makes relating to the exhibits, should be stricken.

45. Mr. Uhlman is not being proffered as an expert, and does not have the training, knowledge, or experience to qualify as an expert under *Frye*, yet the above-referenced testimony he attempts to offer requires an expert witness. Because Mr. Uhlman is not qualified to offer any of these opinions, they should all be stricken.

46. Dr. Huang's testimony raises the issue of an alleged lack of evidence and data to support PECO's assertion that the Natural Gas Reliability Facility must be in a half mile radius of Sproul Road and Lawrence Road, and an argument that 525 psi in a pipeline presents a safety risk. These opinions are not relevant to the proceeding.

47. While Dr. Huang is a mechanical engineer, he himself notes that his professional experience "focuses more on cryogenics and biomedical engineering than on natural gas pipeline engineering." (Huang Testimony ¶ 1). In fact, nothing in his background suggests he has *any* experience with natural gas pipelines. Therefore, he does not meet the *Frye* standard for being qualified as an expert, and his testimony should be stricken.

48. Based on the foregoing, PECO respectfully requests ALJ DeVoe strike the above-identified portions of Mr. Uhlman and Dr. Huang's testimony.

iii. Marple Township Testimony

49. Marple Township has submitted rebuttal testimony from Lawrence Gentile, Jim Capuzzi, Nancy Wilson, Alan Lloyd, Matt Wannamaker, Joseph Mastronardo, and Stephen DiMarco.

50. As a preliminary matter, none of Marple Township's witnesses conducted any type of study themselves. Mr. Lloyd, Mr. Capuzzi, Mr. Wannamaker, and Ms. Wilson each state he or she was "asked by the Township to review the testimony, documents and information submitted by PECO in these proceedings..." None of these witnesses performed any quantitative analysis or examination of empirical data. Consequently, to the extent their testimony purports

to reach professional opinions to a reasonable degree of certainty, it is speculative and is not based on reliable methodology, which is improper under *Frye*.

51. Mr. Gentile is Marple Township's Manager and testifies that the site is a gateway to the community and not for industrial use, and that PECO did not ask about additional sites after initial meetings. These issues are not relevant to the proceeding. Furthermore, Mr. Gentile's testimony contains impermissible hearsay from Joe Romano.

52. Mr. Capuzzi is a Fire Marshall for Marple Township and testifies that "any leak" would cause evacuation of surrounding homes, and that there is no guarantee that a PECO representative would be onsite within an hour or that a PECO representative would be trained or qualified to mitigate a leak. Mr. Capuzzi's testimony contains no evidentiary foundation for him to question PECO's response time or a PECO representative's training or qualifications. Furthermore, Mr. Capuzzi's "findings" state "the information provided by PECO is lacking in detail as to the exact equipment, piping, instrumentation and protection systems for the proposed Reliability Station, so *giving exact recommendations at this time is difficult.*" (emphasis added.) He goes on to provide thoughts "from a general standpoint" and later states he is "most concerned with the piping above ground and inside the proposed building." These kind of indefinite opinions are improper under *Frye*.

53. Ms. Wilson is a Senior Industrial Hygenist and Mr. Lloyd is an Industrial Hygenist at Pennoni Associates; both offer the opinion that areas above sound barrier will not be mitigated in the vertical plane, and the emergency generator is not exempt from the Marple noise code. Noise-related issues, which arise from the facility itself and which would occur even in the absence of a Section 619 proceeding, are not relevant to the proceeding, except insofar as they relate to the need for the buildings to dampen any ambient noise. These issues are thus outside the scope of this proceeding. Additionally, both purported experts' testimony is speculative

which is improper under *Frye*. For example, both individuals state “it is *likely* that when all equipment and processes are considered the sound attenuation proposed for the site will not be sufficient to maintain sound levels at the neighboring parcel lines within Township requirements” and “[t]he constant and *potentially* excessive noise is *likely* to interfere with and be detrimental to the use and enjoyment of area residences and commercial retail establishments and the health and safety of those living, working at and visiting same.” (emphasis added.) However, neither expert provides any empirical study or analysis of data to support this conclusion.

54. Mr. Wannamaker is a Senior Planner at Pennoni Associates and offers the opinion that the Natural Gas Reliability Station is not compatible with zoning requirements. This opinion is not relevant to the proceedings, because if the Commission finds that the situation of the buildings for the proposed Natural Gas Reliability Station is reasonably necessary for the convenience and welfare of the public, then they will be exempt from any zoning.

55. Mr. Mastronardo is a Senior Engineer at Pennoni Associates and a Township Engineer in Marple Township. He offers the opinion that a curb cut consolidation would be needed to reduce public access to the site, and that the township cannot approve a final subdivision plan without zoning and curb cut resolved. As stated above, this opinion is not relevant to the proceedings, because if the Commission finds the situation of the buildings for the proposed Natural Gas Reliability Station is reasonably necessary for the convenience and welfare of the public, then it will be exempt from any zoning. Mr. Mastronardo further offers the opinion the site will adversely affect public health, safety, and general welfare. These issues are unrelated to the proceeding, and Mr. Mastronardo is not an expert in public health or safety, and therefore is not qualified to offer these opinions.

56. Mr. DiMarco is the owner of Freddy's Frozen Custard and Steakburgers. His testimony expresses concerns about the safety to the business, as well as potential noise and odor. These issues are not relevant to the proceeding, and Mr. DiMarco is not qualified to render an expert opinion on them in any event.

57. Based on the foregoing, PECO respectfully requests ALJ DeVoe strike the testimony of Mr. Gentile, Mr. Capuzzi, Ms. Wilson, Mr. Lloyd, Mr. Wannamaker, Mr. Mastronardo, and Mr. DiMarco.

iv. Delaware County Rebuttal Testimony

58. Delaware County has submitted expert testimony of Timothy Boyce. Mr. Boyce is the Director of the Delaware County Department of Emergency Services. Mr. Boyce offers the opinions that there is a concern about a "delayed ignition" event; the evacuation area would be a half-mile radius based on U.S. Department of Transportation documents; and that evacuation would be difficult because the Natural Gas Reliability Station would be located near schools and in a residential community. These concerns, while important, are not relevant to a Section 619 proceeding, which concerns the situation of the buildings, not the public utility facility itself.

59. Mr. Boyce has training and experience in "emergency services," yet he is being offered as an expert on the "dangers" of the Natural Gas Reliability Station. Mr. Boyce has no training or expertise in pipeline safety or the engineering of natural gas distribution facilities. Although he has received training in "hazardous materials," he is not qualified to opine on the likelihood or potential severity of an incident at the Natural Gas Reliability Station, or even more generally on the likelihood or potential severity of a "delayed ignition" event. Indeed, Mr. Boyce's lack of expertise is apparent, *inter alia*, from his mischaracterization about the basic properties of natural gas, stating that it could form a "gas cloud," when in reality, natural gas disperses into the atmosphere.

Additionally, Mr. Boyce has performed no study or analysis to justify his opinion. Absent any scientific or reliable methodology to undergird his conclusions, his opinion fails to meet the *Frye* standard. Finally, his testimony regarding harm that could result from a potential natural gas release is too speculative, as it states “[w]ithin the impact zone, people *may* be burned and people *may* be seriously injured or killed. There *may* be property damages.” (emphasis added). Such speculative opinions do not meet the *Frye* standard for reliable expert testimony, and PECO submits that they would also be barred by the general rules of evidence, as almost any outcome is possible, even if improbable.

60. Based on the foregoing, PECO respectfully requests ALJ DeVoe strike Mr. Boyce’s expert testimony.

III. CONCLUSION

WHEREFORE, PECO respectfully requests that Administrative Law Judge Emily DeVoe (1) grant this Motion in Limine; (2) limit the scope of this proceeding to evidence that is directly relevant to the issues of whether the situation of two buildings for a proposed Natural Gas Reliability Station is reasonably necessary for the convenience and welfare of the public, and whether a proposed security fence appurtenant to the Natural Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102; and (3) strike the above-referenced portions of the testimony and exhibits submitted on behalf of the Intervenors.

Respectfully Submitted,
BLANK ROME LLP

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Dated: July 12, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true copy of the foregoing Motion in Limine 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: July 12, 2021

EXHIBIT A

**PETITION OF PECO ENERGY COMPANY FOR A FINDING OF NECESSITY
PURSUANT TO 53 P.S. § 10619
Docket No. P-2021-3024328**

MOTION IN LIMINE MATRIX		
<u>Witness</u>	<u>Testimony/Exhibit</u>	<u>Objection</u>
<u>Marple Township</u>		
Larry Gentile	Direct testimony	Not relevant to Section 619 evidentiary hearing Impermissible hearsay
Jim Capuzzi	Expert testimony	Challenge to facility itself, not relevant to Section 619 evidentiary hearing Not qualified to offer opinion on risk under <i>Frye</i> No foundation for expert testimony under <i>Frye</i>
Nancy Wilson	Expert testimony	Not relevant to Section 619 evidentiary hearing Improper expert testimony under <i>Frye</i>
Alan Lloyd	Expert testimony	Not relevant to Section 619 evidentiary hearing Improper expert testimony under <i>Frye</i>
Matt Wannamaker	Expert testimony	Not relevant to Section 619 evidentiary hearing

MOTION IN LIMINE MATRIX

Joseph Mastronardo	Expert testimony	Not relevant to Section 619 evidentiary hearing Not qualified to offer expert opinion under <i>Frye</i>
Stephen DiMarco	Direct testimony	Not relevant to Section 619 evidentiary hearing Not qualified to offer expert opinion under <i>Frye</i>
<u>Delaware County</u>		
Timothy A. Boyce	Expert testimony and exhibits	Challenge to facility itself, not relevant to Section 619 evidentiary hearing Not qualified to offer opinion on “danger” under <i>Frye</i> No foundation for expert testimony under <i>Frye</i>
<u>Julia Baker</u>		
Julia Baker	Article, which appears to be direct testimony	Not relevant to Section 619 evidentiary hearing
	Petition signatures	Not relevant to Section 619 evidentiary hearing
Dr. Roberta Winters	Expert testimony	Not relevant to Section 619 evidentiary hearing

MOTION IN LIMINE MATRIX

		Not qualified to offer opinions under <i>Frye</i>
Dr. Ned Ketyer	Expert testimony	Not relevant to Section 619 evidentiary hearing Not qualified to offer opinions under <i>Frye</i>
Dr. C. Thomas Avedisian	Expert testimony	Not relevant to Section 619 evidentiary hearing Opinion based on incorrect factual predicate
Christine Howze	Brookhaven noise study	Not relevant to Section 619 evidentiary hearing Improper expert testimony under <i>Frye</i> Inadmissible hearsay
Holly Cross	Facebook screenshot	Not relevant to Section 619 evidentiary hearing Lack of authentication
	Invoices for yard signs	Not relevant to Section 619 evidentiary hearing Lack of authentication
<u>Ted Uhlman</u>		
Ted Uhlman	Direct testimony	Not relevant to Section 619 evidentiary hearing

MOTION IN LIMINE MATRIX

		Not an expert, and therefore not qualified to offer opinions under <i>Frye</i>
Dr. Zhongping Huang	Expert testimony	Not relevant to Section 619 evidentiary hearing Kidney and cryogenics expert; Not qualified to offer opinions under <i>Frye</i> on pipeline safety or engineering of natural gas distribution facilities