

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2 nd Floor  
Harrisburg, PA 17120

Re: Docket No. P-2021-3024328

Dear Secretary Chiavetta:

Enclosed please find attached:

TED UHLMAN'S REPLY  
TO PECO ENERGY COMPANY'S OPPOSITION  
TO TED UHLMAN'S OBJECTION  
TO PROTECTED INFORMATION

Copies of this document have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter.

Respectfully Submitted,



Ted Uhlman  
2152 Sproul Rd  
Broomall, PA 19008  
July 12, 2021

---

**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 : : P-2021-3024328  
 : : DATED: July 12, 2021  
 :

---

**TED UHLMAN’S REPLY  
TO PECO ENERGY COMPANY’S OPPOSITION  
TO TED UHLMAN’S OBJECTION  
TO PROTECTED INFORMATION**

---

1. Ted Uhlman hereby files this Reply to PECO Energy Company’s Opposition to Ted Uhlman’s Objection to Protected Information, and respectfully requests that the Honorable Administrative Law Judge Emily DeVoe accept Mr. Uhlman’s objections to PECO’s confidentiality designations and proposed revised protective order.

**FACTUAL BACKGROUND**

2. On February 26, 2021, PECO filed a petition seeking a finding from the Commission that: (1) the situation of two buildings for a proposed Gas Reliability Station is reasonably necessary for the convenience and welfare of the public and, therefore exempt from any zoning, subdivision, and land development restriction of the Marple Township Subdivision and Land Development Ordinance and the Marple Township Zoning Code; and (2) a proposed security fence appurtenant to the Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from local zoning requirements.

3. On June 9, 2021 ALJ DeVoe issued the Protective Order, and Paragraph 3 of the Protective Order permits the parties to designate the following categories of materials 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; and (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. On June 15, 2021, Ted Uhlman delivered a copy of the signed Appendix A to counsel for PECO.

5. On June 22, 2021 Ted Uhlman filed an Objection to PECO’s Protected Information, challenging the confidentiality designations of documents relating to alternate locations, emergency response plans, sound surveys, groundwater studies, ~~purchase and sale agreements~~, production data, stormwater management plans, soil reports, brochures for tanks, meters and pumps, safety data sheet for diesel fuel, and a catalog of parts, and other parts of PECO’s testimony that were not 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.

6. On July 8, 2021, PECO filed PECO ENERGY COMPANY’S OPPOSITION TO TED UHLMAN’S OBJECTION TO PROTECTED INFORMATION. PECO began its argument stating

that “*After further review...*” PECO was willing to remove the claim of Confidentiality from 61 pages<sup>1</sup> of previously classified testimony, including, a Safety Data Sheet for Diesel Fuel.

7. PECO argues that PECO00442-00472 (a PowerPoint that contains information about alternate locations for the Gas Reliability Station “*include[s] PECO’s internal processes and considerations for selecting the siting of its gas reliability stations*”<sup>2</sup>, but close examination of the document does not reveal anything that even remotely resembles internal processes or considerations; certainly not processes or considerations of such a commercially sensitive nature among the parties or of such a private, personal nature that PECO is able to justify a heightened level of Confidential protection with respect to those materials. And although those “processes and considerations” customarily are treated by PECO as sensitive or proprietary, which are not available to the public, they would not, if disclosed freely, subject t PECO or its clients to risk of competitive disadvantage or other business injury

8. PECO00473-520 are “*PECO’s internal administrative and technical procedures for responding to incidents at its facilities...*”<sup>3</sup>, and close inspection of these documents reveal little more than, [NOTHING IMPORTANT, but I redacted the analogy, anyway]. There is nothing here that, if disclosed freely, would subject PECO or its clients to risk of competitive disadvantage or other business injury; there is nothing here of such a commercially sensitive nature among the parties or of such a private, personal nature that PECO is able to justify a heightened level of Confidential protection with respect to those materials.

9. PECO00521-548 “*...is an internal version of an Ambient Sound Survey and Noise Impact Assessment conducted by PECO.*”<sup>4</sup> It contains PECO’s internal engineering data, analysis, and

---

1 PECO ENERGY COMPANY’S OPPOSITION TO TED UHLMAN’S OBJECTION TO PROTECTED INFORMATION: paragraph 14

2 Ibid.: paragraph 15e.

3 Ibid.: paragraph 15f.

4 Ibid.: paragraph 15g.

calculations developed by PECO's contractors. Although PECO claims that this study has economic value and therefore should be confidential, it does not 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. In fact, it is primarily composed of a lengthy description of the methodology and results of the ambient sound (birds, wind, distant traffic), but virtually nothing concerning the methodology or results of the Noise Impact Assessment (noise from regulators, heaters, HVAC units, and emergency generators).

10. PECO00572-684 are "*...a Phase I Environmental Site Assessment and a Phase II Environmental Investigation Report.*", and again, PECO claims that "*the information contained therein has economic value and is not readily available to the public*"<sup>5</sup> While that may be true, unfortunately, the information, if disclosed freely, would not subject PECO or its clients to risk of competitive disadvantage or other business injury. And certainly, those materials are not 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.

11. PECO00695-761 "*...are PECO's purchase and sale agreements ("PSA") and amendments related to the property at issue in this proceeding*"<sup>6</sup>. All of the important information has been redacted, leaving nothing that, if disclosed freely, would subject PECO or its clients to risk of competitive disadvantage or other business injury; with the redactions, there is nothing 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.

12. PECO claims that PECO02441-2499 are "*...spreadsheets containing detailed calculations and data related PECO's annual sales forecast (2020-2029), PECO's forecasted sales*

---

5 Ibid.: paragraph 15h.

6 Ibid.: paragraph 15i.

*volumes, and other data supporting PECO's design day requirements...*"<sup>7</sup> but that is not true. (Details are supplied in the following paragraphs 12.1 through 12.5.)

12.1. PECO002441 through PECO002448 are pdf files containing the results of calculations, but the calculations remain on on the original spreadsheets, and we only see the results of the calculations. If the calculations were there, THAT would be worthy of the "confidential" notation; it would also be very valuable, as I have no idea of how you come up with these forecasts for increasing gas usage, when the rest of Pennsylvania is using less gas (except for the generation of electricity). The figures listed on pages PECO002441 through PECO002448 are largely meaningless without appropriate legends and labels, and if disclosed freely, would not subject PECO or its clients to risk of competitive disadvantage or other business injury; they are not of such a commercially sensitive nature among the parties or of such a private, personal nature that PECO is able to justify a heightened level of Confidential protection with respect to those materials.

12.2. PECO002448 through PECO002473 contains daily [xxx] totals from an unknown plant, and I have no idea how this data can be considered confidential. This data, if disclosed freely, would not subject PECO or its clients to risk of competitive disadvantage or other business injury; it is not of such a commercially sensitive nature among the parties or of such a private, personal nature that PECO is able to justify a heightened level of Confidential protection with respect to those materials.

12.3. PECO002474 through PECO002488 contains another listing of incomprehensible data. This data, if disclosed freely, would not subject PECO or its clients to risk of competitive disadvantage or other business injury; it is not of such a commercially sensitive nature among the parties or of such a private, personal nature that PECO is able to justify a heightened level of Confidential protection with respect to those materials.

---

<sup>7</sup> Ibid.: paragraph 15j.

12.4. PECO002489 to PECO002496 contain data between Nov. 1, 2016 to Jan. 8, 2018. No comment.

12.5. PECO002497 through PECO002499 contain numbers, but no calculations, and is generally incomprehensible; what is the function of Factor-1 and the 10% kicker?

13. PECO02500-2506: “*This is PECO’s Response to Emergency Generator Alarm at Gate Stations.*”<sup>8</sup> Again, close inspection of these documents reveal little more than, [NOTHING IMPORTANT, but I redacted the analogy, anyway.] There is nothing here that, if disclosed freely, would subject PECO or its clients to risk of competitive disadvantage or other business injury; there is nothing here of such a commercially sensitive nature among the parties or of such a private, personal nature that PECO is able to justify a heightened level of Confidential protection with respect to those materials.

14. PECO02507-2731 “*...is PECO’s Stormwater Management Plan and related Soil Reports.*”<sup>9</sup> Although PECO claims that the information contained therein has economic value and is not readily obtainable, according to paragraph 3 of the amended protection order, in order to be classified as confidential, it also must, if disclosed freely, subject PECO or its clients to risk of competitive disadvantage or other business injury.

15. One of the main reasons that Mr. Uhlman signed the confidentiality agreement was that he wanted to see the information in Ryan Lewis’s Exhibit RL-3, based on Ryan Lewis’s testimony, “*Exhibit RL-3-CONFIDENTIAL provides a visual representation of natural gas pressures within the distribution system around Lawrence Road and Sproul Road from PECO’s hydraulic modeling system.*”<sup>10</sup> It was hoped that pressure values generated by the “hydraulic modeling system” would shed

---

8 PECO ENERGY COMPANY’S OPPOSITION TO TED UHLMAN’S OBJECTION TO PROTECTED INFORMATION: paragraph 15k

9 Ibid. paragraph 15L

10 PECO Statement No. 3 (Ryan D. Lewis) – Non-Confidential.pdf: page 6, lines 3 to 5.

some light on PECO's claims, but, alas, it was not to be. This exhibit also fails the test for confidential and/or proprietary information.

16. Finally, Mr. Christopher A. Lewis, Esquire, counsel for PECO has stated, "*PECO notes that Mr. Uhlman has not advanced any argument as to why disclosure of PECO's internal proprietary information would be beneficial to the public. To the contrary, public disclosure of that information harms PECO and potentially threatens the security of this region's natural gas distribution system.*"<sup>11</sup>

To which Mr. Uhlman replies:

16.1. Returning to the language of 52 Pa. Code § 5.365:

"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."

16.2. Paragraph 3 of ALJ DeVoe's Protective Order of June 9, 2021, paragraph 3 states:

"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; and  
(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."

---

<sup>11</sup> PECO ENERGY COMPANY'S OPPOSITION TO TED UHLMAN'S OBJECTION TO PROTECTED INFORMATION page 7, paragraph 17.



16.3. And finally, Mr. Uhlman advances several arguments as to why PECO's protective order should be limited. First, the language of 52 Pa. Code § 5.365 clearly states that if the disclosure causes substantial harm, and if the harm is outweighed by the public's interest, then the disclosure is permitted,. Secondly, the language of the June 9<sup>th</sup> Protective Order creates two classes of protected information: The first class has two tests, and the second test for this first class requires competitive disadvantage or other business injury. The second class allows protection of information that is commercially sensitive or of a private, personal nature. Third, as paragraphs 7 through 15 (above) detail, PECO has not met the requirements in any of the above instances. Finally, and most importantly, Mr. Uhlman is concerned about the chilling effect that PECO's approach to protective orders has on any of PECO's legal opponents. In paragraph 8 of this filing, Mr. Uhlman has removed a useful analogy out of fear of the consequences, should PECO claim that the analogy has violated the protective order and caused substantial monetary harm. In Mr. Uhlman's most recent filing<sup>12</sup>, the effect of the existing protective order, with special terms and conditions for pro se interveners, is chilling, to the point that Mr. Uhlman feels intimidated and threatened by the protective order, and has removed references to protected material. He is limited in the number of advisors with whom he can consult. On the other hand, PECO has no such limitations. As evidenced by PECO's original claim that the Safety Data Sheet for Deisel Oil<sup>13</sup> is protected information, PECO's strategy in replying to discovery is to throw volumes of irrelevant information at its opponents, and then claim blanket protection for all of the information. PECO uses protective orders as a legal weapon, which is not its intended purpose.

---

12 TED UHLMAN'S RESPONSE TO PECO'S ENERGY COMPANY'S MOTION IN LIMINE (July 12, 2021)

13 PECO002811To PECO002822

17. In almost every instance listed in PECO ENERGY COMPANY'S OPPOSITION TO TED UHLMAN'S OBJECTION TO PROTECTED INFORMATION, PECO fails to support, or even attempt to support, that the information is either:

17.1. BOTH 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;**

17.2. OR 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.

18. WHEREFORE, for all the reasons set forth above, Mr. Uhlman respectfully requests that Your Honor deny PECO ENERGY COMPANY'S OPPOSITION TO TED UHLMAN'S OBJECTION TO PROTECTED INFORMATION.



Respectfully Submitted,  
Ted Uhlman  
2152 Sproul Rd  
Broomall, PA 19008  
July 12, 2021

---

**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 : : P-2021-3024328

---

**PROPOSED ORDER**

---

Upon careful consideration of Ted Uhlman’s Objections to PECO’s Protected Information and PECO’s opposition thereto, and Ted Uhlman’s reply thereto, including PECO’s agreement to remove any confidentiality designations to PECO02800-04, PECO02805-10, PECO02811-22, and PECO03127-65, IT IS HEREBY ORDERED that the remainder of Mr. Uhlman’s Objections are GRANTED.

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

\_\_\_\_\_  
Emily I. DeVoe  
Administrative Law Judge

---

**CERTIFICATE OF SERVICE**

---

I hereby certify that I have this day served a true and correct copy of the foregoing

---

**TED UHLMAN'S REPLY  
TO PECO ENERGY COMPANY'S OPPOSITION  
TO TED UHLMAN'S OBJECTION  
TO PROTECTED INFORMATION**

---

upon the parties listed below, in accordance with the requirements of 52 PA Code § 1.54 (relating to service by a participant) in the manner listed below upon the parties listed below:

CHRISTOPHER A. LEWIS ESQUIRE  
FRANK L. TAMULONIS ESQUIRE  
STEPHEN C. ZUMBRUN ESQUIRE  
BLANK ROME, LLP  
ONE LOGAN SQUARE  
130 NORTH 18TH STREET  
PHILADELPHIA PA 19103  
215-569-5793  
lewis@blankrome.com  
ftamulonis@blankrome.com  
szumbrun@blankrome.com  
Accepts eService  
Representing PECO Energy Company

JACK R. GARFINKLE ESQUIRE  
PECO ENERGY COMPANY  
2301 MARKET STREET  
PO BOX 8699  
PHILADELPHIA PA 19101-8699  
215.841.6863  
jack.garfinkle@exeloncorp.com  
Accepts eService

KAITLYN T. SEARLS ESQUIRE  
J. ADAM MATLAWSKI ESQUIRE

MCNICHOL, BYRNE & MATLAWSKI, P.C.  
1223 N PROVIDENCE ROAD  
MEDIA PA 19063  
ksearls@mbmlawoffice.com  
amatlawski@mbmlawoffice.com  
Accepts eService  
Representing Marple Township

ROBERT W. SCOTT ESQUIRE  
CARL EWALD  
ROBERT W. SCOTT P.C.  
205 NORTH MONROE STREET  
MEDIA PA 19063  
610.891.0108  
rscott@robertwscottpc.com  
carlewald@gmail.com  
Accepts eService  
Representing County of Delaware

JULIA M. BAKER  
2150 SPROUL RD  
BROOMALL PA 19008  
610.745.8491  
jbakeroca@msn.com  
Accepts eService



Respectfully Submitted,  
Ted Uhlman  
2152 Sproul Rd  
Broomall, PA 19008  
July 12, 2021