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July 15, 2021

VIA ELECTRONIC FILING

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

Re: Petition of PECO Energy Company for a Finding of Necessity Pursuant to 53 P.S. § 10619 that the Situation of Two Buildings Associated with a Gas Reliability Station in Marple Township, Delaware County Is Reasonably Necessary for the Convenience and Welfare of the Public
Docket No. P-2021-3024328

Dear Secretary, Chiavetta:

Enclosed please find PECO Energy Company's Answer to the Joint Motion of Marple Township, Ted Uhlman, Julie Baker and Delaware County for Extension of Time for Evidentiary Hearings. 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 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

PECO ENERGY COMPANY'S ANSWER TO THE JOINT MOTION OF MARPLE TOWNSHIP, TED UHLMAN, JULIE BAKER AND DELAWARE COUNTY FOR EXTENSION OF TIME FOR EVIDENTIARY HEARINGS

Pursuant to Section 5.61 of the Pennsylvania Public Utility Commission's (the "Commission's" or the "PUC's") Regulations, 52 Pa. Code § 5.61, PECO Energy Company ("PECO") hereby files the following Answer to the Joint Motion of Marple Township, Ted Uhlman, Julie Baker and Delaware County ("Intervenors") for Extension of Time for Evidentiary Hearings ("Motion for a Second Extension"). For the reasons that follow, PECO opposes any extension of time of the Evidentiary Hearing and requests that Intervenors' Motion for a Second Extension be denied.

PECO'S ANSWER

1. On April 21, 2021, Your Honor held a prehearing conference during which representatives for PECO, Marple Township, and Delaware County discussed and agreed upon a litigation schedule according to which the Evidentiary Hearing was to be held on June 28 and 29, 2021. *See* Prehearing Order dated April 23, 2021, attached hereto as **Exhibit A**.

2. On June 3, 2021, Marple Township and Delaware County filed their Joint Motion of Marple Township and Delaware County for Extension of Time for Written Rebuttal Testimony in which they requested a thirty (30) day extension to submit their Written Rebuttal Testimony. Intervenors also requested that the Evidentiary Hearing be postponed.

3. By email dated June 4, 2021, PECO informed Your Honor that it had conferred with counsel for Marple Township and Delaware County and agreed to modify the litigation schedule to permit Marple Township and Delaware County more time to submit their Written Surrebuttal Testimony and to postpone the Evidentiary Hearing.

4. According to the revised schedule to which the parties agreed:

- Intervenors were given until July 6, 2021 (originally June 14) to submit their Written Rebuttal Testimony;
- PECO was allotted only seven (7) days (until July 13, 2021) to submit its Written Surrebuttal Testimony; and
- the Evidentiary Hearing was to be held on July 15 and 16, 2021.

5. By Interim Order dated June 7, 2021, Your Honor adopted the revised litigation schedule that was agreed to by the parties and, to date, that schedule has been followed. *See* Interim Order dated June 7, 2021, attached hereto as **Exhibit B**.

6. On July 14, 2021—the day before the Evidentiary Hearing was scheduled to commence—Intervenors filed their Motion for a Second Extension in which they request that the Evidentiary Hearing be postponed yet again for either one or two weeks.

7. PECO opposes any extension of time of the Evidentiary Hearing and requests that Intervenors' Motion for a Second Extension be denied.

8. First, it is customary in these proceedings for parties to have short periods of time during which they must respond to written submissions and prepare for evidentiary hearings. Indeed, Intervenors agreed to, and have been aware of, the current litigation schedule since the issuance of Your Honor's Interim Order dated June 7, 2021 Order, more than five weeks ago. Moreover, Intervenors have already received the benefit of a postponement of the Evidentiary Hearing in this proceeding.

9. Second, any additional postponement of the Evidentiary Hearing would delay the Commission's ability to render a decision in this proceeding and jeopardize PECO's construction schedule, which is intended to allow for PECO's Natural Gas Reliability Station to provide safe and reliable natural gas to its customers.

10. Third, Intervenors have not provided adequate justification for the extraordinary relief that they have requested. Intervenors suggest that the Evidentiary Hearing should be postponed for up to two weeks because PECO circulated its Motion in Limine on July 12, 2021 at 4:28 p.m. According to Intervenors' reading of Your Honor's April 23, 2021 Order, PECO was required to serve its Motion in Limine by email "by 4:00 p.m. **on the due date**." *See* Intervenors' Motion for Second Extension, ¶ 2-3 (emphasis added). However, neither the Commission's Regulations nor Your Honor's Pre-hearing Orders sets a date by which motions in limine were to be filed. Accordingly, there was no established "due date" for PECO's Motion in Limine. Moreover, Intervenors cannot argue they have suffered prejudice by the alleged twenty-eight-minute delay in their receipt of PECO's Motion in Limine, in particular because PECO alerted Intervenors on Wednesday, July 7, 2021 that the Motion would be filed on Monday July 12, 2021. *See* PECO's email to Intervenors dated July 7, 2021, attached hereto as **Exhibit C**.

11. Intervenors also argue that the Evidentiary Hearing should be postponed because PECO served its Written Surrebuttal Testimony on July 13, 2021, which leaves Intervenors with one day to complete preparation for the Evidentiary Hearing. However, this is *precisely* the schedule to which Intervenors agreed; that is, the Evidentiary Hearing would commence two days following the submission of PECO's Written Surrebuttal Testimony. PECO agreed to this schedule to accommodate Intervenors' first extension request. Intervenors likewise agreed to this schedule and should not now be permitted to argue that they do not have sufficient time under the agreed-upon schedule.

12. Intervenors also suggest that they are entitled to an extension because PECO served its Written Surrebuttal Testimony at 6:04 p.m. Again, Intervenors have not demonstrated that they have been prejudiced in any way by the fact that PECO served its Written Surrebuttal Testimony at 6:04 p.m. instead of 4:00 p.m. Furthermore, Intervenors offer no explanation for why this fact entitles Intervenors to a one to two-week postponement of the Evidentiary Hearing.

13. In an attempt to accommodate Intervenors, PECO offered to postpone the commencement of the Evidentiary Hearing by one day, which would be more than adequate to make up for the time allegedly lost due to PECO's 6:04 p.m. submission of its Written Surrebuttal Testimony. This proposal would also provide Intervenors additional time over the weekend to prepare for the second day of the Evidentiary Hearing. PECO even offered to alter the order in which witnesses would be presented in order to accommodate Intervenors. Yet, Intervenors denied each of PECO's offers. Thus, it would appear that Intervenors never intended to abide by the litigation schedule to which they agreed.

14. Intervenors' Motion for a Second Extension is part of Marple Township's pattern of delay whereby is it has repeatedly sought postponements of the litigation schedule to which it agreed. Indeed, Marple Township has engaged in the same dilatory conduct in the parallel litigation pending before the Court of Common Pleas of Delaware County, Pennsylvania, No. CV-2020-008477. In that proceeding, Marple Township agreed to abide by a litigation schedule but later filed a Petition to stay the proceeding. What is more, Marple Township attached Your Honor's June 7, 2021 Interim Order as an exhibit to its Petition for Stay and argued that a stay should be granted in light of the litigation schedule set forth therein. *See* Marple Township's June 18, 2021 Petition for Stay, attached hereto as **Exhibit D**. Marple Township later filed a Motion to Remand requesting that the matter be remanded back to the Zoning Hearing Board to permit that body to hear testimony and receive evidence that have been presented in the instant proceeding before

Your Honor. *See* Marple Township June 30, 2021 Motion for Remand, attached hereto as **Exhibit E**. Marple Township's dilatory conduct should not be permitted.

WHEREFORE, PECO requests that Your Honor deny Intervenors' Motion for a Second Extension.

Respectfully Submitted,
BLANK ROME LLP

/s/ *Christopher A. Lewis*

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Counsel for PECO Energy Company

Dated: July 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true copy of the foregoing Answer to the Joint Motion of Marple Township, Ted Uhlman, Julie Baker and Delaware County for Extension of Time for Evidentiary Hearings 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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/s/ Christopher A. Lewis
Counsel to PECO Energy Company

Dated: July 15, 2021

EXHIBIT A

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 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

PREHEARING ORDER

NOTE: Please read this document in its entirety as it provides important information about this case.

On February 26, 2021, PECO Energy Company (PECO) filed a Petition for a Finding of Necessity Pursuant to 53 P.S. § 10619 that the Situation of Two Buildings Associated with a Gas Reliability Station in Marple Township, Delaware County Is Reasonably Necessary for the Convenience and Welfare of the Public (Petition). In the Petition, PECO requests that the Pennsylvania Public Utility Commission (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 (Buildings) for a proposed gas reliability station (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.

Pursuant to 52 Pa.Code § 5.14(d)(9), applications to secure exemption under section 619 of the Pennsylvania Municipalities Planning Code (53 P.S. § 10619) must be published in the *Pennsylvania Bulletin* and are subject to a 15-day protest period.

On March 10, 2021, the Commission issued a Telephonic Prehearing Conference Notice scheduling a prehearing conference for 10:00 a.m. on April 21, 2021.

On March 27, 2021, notice of the Petition and the prehearing conference was published in the *Pennsylvania Bulletin*. The published notice further advised that the protest deadline was April 12, 2021.[1] PECO also published notice of the Petition and the protest deadline in the *Daily Times and Sunday Times* as well as the *Daily and Sunday Times Digital* on March 26, 2021.[2]

On March 11, 2021, Marple Township, Delaware County (Marple Township) filed a Petition to Intervene in the proceeding. A ruling on this Petition to Intervene is still outstanding.

On March 18, 2021, PECO filed an Answer to Marple Township's Petition to Intervene, advising it does not oppose it.

On April 1, 2021, the undersigned's legal assistant received an email containing comments regarding the above-captioned matter. By Interim Order dated April 2, 2021, the comments were attached to the record.

On April 5, 2021, a Prehearing Conference Order was issued.

On April 12, 2021, Marple Township filed an Answer, New Matter, and Formal Protest to the Petition.

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[1] Fifteen days from March 27, 2021, is April 11, 2021, a Sunday. Therefore, the protest deadline was set for the next business day, Monday, April 12, 2021.

[2] PECO filed proof of publication on April 8, 2021.

On April 12, 2021, the County of Delaware, Pennsylvania (Delaware County) filed a Petition to Intervene.

Sixty-three timely protests were filed by *pro se* protestants on or about April 12, 2021. Two individuals filed a Petition to Intervene in addition to their Protest, Theodore Uhlman (Mr. Uhlman) and Julie Baker. Two individuals filed untimely protests, Sylva Baker and Joseph Baker.

On April 13, 2021, Mr. Uhlman filed a Motion requesting the protest period be extended.

On April 14, 2021, an Interim Order was entered providing information to *pro se* protestants.

On April 15, 2021, an Interim Order was entered regarding Mr. Uhlman's Motion to extend the protest period.

A prehearing conference was held on April 21, 2021 as scheduled. PECO, the Township, and the County were represented by counsel. Twenty-five *pro se* protestants were present, as were Mr. and Mrs. Baker. The parties discussed a variety of matters detailed below.

Litigation Schedule

Counsel for PECO, the Township, and the County agreed upon the following litigation schedule, which was adopted by the undersigned at the prehearing conference:

Date	Event
Monday, April 26, 2021	Service of Initial Written Discovery
Wednesday, May 5, 2021	Responses to Written Discovery
Friday, May 14, 2021	Direct Testimony of PECO
Wednesday, May 19, 2021	Service of Remaining Written Testimony
Friday, May 28, 2021	Responses to Remaining Written Discovery
Monday, June 14, 2021	Written Rebuttal Testimony
Monday, June 21, 2021	Written Surrebuttal
Monday, June 28, 2021 and Tuesday June 29, 2021	Evidentiary Hearings
Tuesday, July 13, 2021	Main Briefs
Tuesday, July 27, 2021	Reply Briefs
14 calendar days from service of RD	Exceptions Due

The parties are reminded of the Commission's requirements for the preparation and filing of written testimony. 52 Pa.Code §§ 5.412 and 5.412a. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **No written testimony will be admitted into evidence unless accompanied by a verification or affidavit of the witness**.

Active parties serving prepared testimony in proceedings pending before the Commission pursuant to 52 Pa.Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding, to e-file with the Secretary's Bureau a copy of all testimony furnished to the court reporter during the proceeding consistent with 52 Pa.Code § 5.412a.

The above-stated dates are in-hand dates for service on the active parties and the undersigned. The undersigned agrees to accept email transmission of such material, so long as the subject email is received by 4:00 p.m. on the due date. The email address of the undersigned is edevoe@pa.gov.

Evidentiary hearings will begin promptly at **10:00 a.m. on June 28, 2021, and June 29, 2021**. The active parties must confer before commencement of the hearings to schedule their witnesses so as to avoid "holes" or "dead time" during the hearings.

Parties

The Petitions to Intervene filed by the Township and the County were granted by the ALJ at the prehearing conference.

As mentioned above, sixty-three *pro se* individuals filed timely protests, and twenty-three of them appeared at the prehearing conference on April 21, 2021. An additional two, Jill Adaman and Maria Henderson, contacted the undersigned prior to the conference advising they would be unable to participate in the prehearing conference due to other commitments.

Individuals who filed timely protests and did not appear at the prehearing conference: Consistent with the April 14, 2021 Interim Order, those parties who did not appear at the prehearing conference, with the exception of Ms. Adaman and Ms. Henderson, are now considered inactive parties and will be placed on the limited service list. These individuals will still receive notice of the public input hearings and will be able to testify at those public input hearings if they choose to do so.

Individuals who filed timely protests and did appear at the prehearing conference: As for the *pro se* protestants who did appear at the prehearing conference, as well as Ms. Adaman and Ms. Henderson, these individuals are to e-file a signed statement with the

Commission's Secretary's Bureau by **4:00 pm on April 28, 2021** if they want to be considered active parties in this proceeding. Otherwise, they will be considered inactive parties and placed on the limited service list. If they choose not to become active parties, they will still receive notice of the public input hearings and will be able to testify at those public input hearings if they choose to do so.

A current Service List is appended to this Order.

Motion to Extend the Protest Deadline

After consideration of the written motion, PECO's filing in response, and oral argument at the prehearing conference, the ALJ denied the motion to extend the protest deadline. **Individuals who did not timely file a protest will still be able to testify at a public input hearing if they choose to do so.**

Motion for Leave to File Late-Filed Protests

On April 19, 2021, Sylva Baker filed a protest with the Secretary's Bureau. On April 20, 2021, the undersigned was served by Joseph Baker with a purported protest, but as of the time of the issuance of this Order, it does not appear in the Commission's online docket system as filed with the Commission's Secretary's Bureau.[3]

Both Mr. and Mrs. Baker were present at the prehearing conference. The undersigned advised she would treat their filings as Motions for Leave to File Late-filed Protests. After oral argument from Mr. and Mrs. Baker and counsel for PECO, the County, and the Township, the undersigned denied the Motion for Leave to File Late-Filed Protests. The undersigned advised Mr. and Mrs. Baker they would receive notice of the Public Input Hearings and would be able to testify if they chose to do so.

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[3] Mr. Baker advised at the prehearing conference that he had in fact filed a protest with the Commission's Secretary's Bureau and had received a confirmation number for the filing.

Public Input Hearings

At least two days of public input hearings will be held in this matter. They will be held remotely. The exact dates and times of the public input hearings will be set at a later time.

Filing and Service

The only way to file anything in this case is to e-file with the Secretary's Bureau. Filings may not be made by emailing or faxing the Secretary's Bureau. Filings may not be made through the undersigned or her office.

Once a filing has been made, the document must then be served upon the undersigned and every other person appearing on the most recent party's list provided by the Commission.

The undersigned may be served by email. Furthermore, everyone at the prehearing conference agreed to be served by email. **Therefore, all service by the Commission, the active parties, and protestants shall be by email.**

Service by *pro se* protestants upon the undersigned: When a *pro se* protestant is serving something he or she has already filed, the *pro se* protestant must send one email serving the undersigned and all other parties simultaneously. If the undersigned receives an email from a *pro se* protestant, regardless of its contents or purpose, and all other parties are not also copied, the email will not be read by the undersigned and will be deleted.

Site Visit

Several *pro se* protestants requested a site visit. The request was discussed at the prehearing conference. Ultimately, the undersigned denied the request for a site visit at this time.

Issues

Prehearing memoranda was filed by PECO, the Township, the County, and several *pro se* protestants. In their prehearing memoranda, they identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process unfolds.

Discovery

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse under the Commission's procedures for formal discovery. 52 Pa.Code §§ 5.321, *et seq*. The parties must not send the Presiding ALJ discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of the informal discovery undertaken and the parties' efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the Presiding ALJ will contact the parties and direct them to pursue informal discovery.

Protective Order

PECO attached a proposed protective order to its prehearing memoranda. There was some discussion of the proposed order at the prehearing conference, but the undersigned took no action on the proposed order.

Therefore, the parties must comply with 52 Pa.Code § 5.362 (Protective orders), § 5.365 (Orders to limit availability of proprietary information), and § 102.4(h) (Challenge procedures to confidentiality designation) regarding the preparation and filing of a motion for a protective order.

If a party files a motion for a protective order, the motion must contain a notice to plead, and the party must submit a copy of the proposed protective order to the Presiding ALJ by email in a *Microsoft Office Word* format.

Settlement

The parties are reminded it is the Commission's policy to encourage settlements. 52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility.

In the event that the active parties reach a partial or non-unanimous full settlement is achieved, the active parties should be prepared to proceed on the first scheduled day of hearing.

In the event that that the active parties reach a full unanimous settlement, the active parties should notify the presiding ALJ as soon as possible prior to the scheduled evidentiary hearings, but no later than **4:00 p.m. on Thursday, June 24, 2021**.

If the active parties reach a full unanimous settlement, they may choose to convene on June 28, 2021 and/or June 29, 2021 as scheduled and offer their written testimonies and exhibits on the record. Testimonies and exhibits may be admitted into the record upon oral motion as long as the other active parties waive cross-examination of the witness and an appropriate verification has been filed with the Commission's Secretary's Bureau.

If the active parties reach a full unanimous settlement, they may request that the ALJ cancel the evidentiary hearings. Such a request should be made as soon as possible prior to the scheduled hearings, but no later than **4:00 p.m. on Thursday, June 24, 2021**. The ALJ will not cancel the evidentiary hearings unless and until the active parties file a fully-executed joint stipulation for the admission of evidence with the Secretary's Bureau. The stipulation must include: (1) a stipulation that all active parties waive cross-examination of all witnesses, (2) a list of all testimonies and exhibits to be admitted into the record, either embedded within the stipulation or attached to the stipulation, and (3) a stipulation that the testimonies and exhibits to be admitted into the record are admissible and should be admitted. If such a stipulation is filed,

the ALJ may issue an Order adopting the stipulation, admitting the evidence into the record, cancelling the evidentiary hearings, and ordering the active parties to file their testimonies and exhibits, with appropriate verifications, with the Commission's Secretary's Bureau along with a copy of the Order.

Stipulations

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can in order to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties, and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.

All stipulations entered into by the active parties must be reduced to writing, signed by the active parties to be bound thereby, and moved into the record either orally at an evidentiary hearing or through a motion filed with the Secretary's Bureau.

Cross-Examination

Friendly cross-examination or cumulative cross-examination during the evidentiary hearings will not be permitted. 52 Pa.Code §§ 5.76 & 5.243.

Briefs

The parties must comply with 52 Pa.Code §§ 5.501, *et seq*., regarding the preparation and filing of briefs. Page limitations on briefs will be discussed on or before the last day of hearing. The parties shall submit an electronic copy of all briefs to the Presiding ALJ **in a *Microsoft Office Word* format.**

Modification

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

Date: April 23, 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.

Revised 4/23/21

FULL SERVICE LIST

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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.
Updated 4/23/21

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EXHIBIT B

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 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

INTERIM ORDER
MODIFYING LITIGATION SCHEDULE
AND SCHEDULING EVIDENTIARY HEARINGS

On April 23, 2021, a Prehearing Order was entered in the above-captioned matter. The Prehearing Order adopted a litigation schedule. On June 3, 2021, Marple Township (Township) and Delaware County (County) filed a Joint Motion for Extension of Time for Written Rebuttal Testimony. The undersigned emailed the parties and instructed them to consult with each other to see if they could agree to schedule modifications.

On Friday, June 4, 2021, Counsel for PECO Energy Company emailed the undersigned, advising the parties agreed to the following modifications:

Date	**Event**
Tuesday, July 6, 2021 (originally June 14)	Written Rebuttal Testimony
Tuesday, July 13, 2021 (originally June 21)	Written Surrebuttal Testimony
Thursday, July 15, 2021 and Friday, July 16, 2021 (originally June 28 and June 29)	Evidentiary Hearings
Monday, August 2, 2021 (originally July 13)	Main Brief
Monday, August 16, 2021 (originally July 27)	Reply Brief
14 calendar days from service of RD	Exceptions Due

THEREFORE,

IT IS ORDERED:

1. That the litigation schedule modifications listed above are hereby adopted.

2. That evidentiary hearings in this matter shall be held on Thursday, July 15, 2021 and Friday, July 16, 2021, beginning at 10:00 a.m. both days.

3. That the parties shall prepare one witness matrix listing the witnesses for each party, indicating which parties intend to cross-examine which witnesses, and the approximate amount of time for each cross-examination. The witness matrix must be provided to the undersigned via e-mail by **noon on Wednesday, July 14, 2021.**

4. That as for hearing exhibits, the parties shall work together to prepare one email or series of emails which contain all the parties' proposed exhibits/testimonies. One individual shall email that email or series of emails to the undersigned by **noon on Wednesday, July 14, 2021.** This email shall also include a master list of all the parties' proposed testimonies and exhibits. This will enable the undersigned to easily send the admitted evidence to the court reporting agency immediately following the hearing so that it can be filed by the court reporting agency along with the transcript.

Date: June 7, 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.

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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

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EXHIBIT C

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Subject: RE: P-2021-3024328 PECO Zoning Exemption - Info for Evidentiary Hearing

Dear ALJ DeVoe,

In accordance with your email, we will work with counsel and the Active Parties to prepare the witness matrix and a master list of all parties' written testimonies and exhibits for submission by noon on Wednesday, July 14, 2021.

Also, please be advised that, prior to the evidentiary hearing, in addition to serving its surrebuttal testimony, PECO will be filing: (1) a response to Mr. Uhlman's outstanding motion regarding the confidentiality classifications; and (2) a motion *in limine* to strike all rebuttal testimony and exhibits which, *inter alia*, raise issues that are not germane to the scope of a Section 619 proceeding as defined by the Commission in *In re: 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), affirming the initial decision at 2013 WL 4717042, at *15 (Aug. 16, 2013). We anticipate that this latter motion will be filed on Monday, July 12, 2021.

Respectfully submitted,
Christopher A. Lewis

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Subject: P-2021-3024328 PECO Zoning Exemption - Info for Evidentiary Hearing

All -

I wanted to reach out to you in anticipation of next week's evidentiary hearing. Please work together so that by **noon on Wednesday, July 14, 2021**, counsel for PECO can provide me a witness matrix, as well as a master list of all parties' written testimonies and exhibits with the testimonies and exhibits pre-marked.

With regard to objections to exhibits and/or testimony, please come prepared to raise objections and respond to objections during the hearing.

Please share the conference bridge call-in information with your witnesses. I expect all witnesses will be present for the hearing unless there is a stipulation from the parties to waive cross and a signed verification has been served.

As this is an evidentiary hearing and not a public input hearing, the evidentiary hearing will be conducted in compliance with the Commission's rules for formal proceedings. Furthermore, do not assume I will be applying the same relaxed standards regarding relevance and opinion testimony that I applied during the public input hearing.

Also, I believe I still have an outstanding motion from Mr. Uhlman regarding the confidential classification of at least one of PECO's exhibits, and I need to do an order on Ms. Marilla-Strong's PIH exhibits. Please let me know if there are any other matters outstanding or if any party expects to file any additional motions prior to the start of the hearing.

Please let me know if you have any questions.

Thank you for your cooperation,

Judge DeVoe

EXHIBIT D

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By: J. Adam Matlawski, Esquire
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Attorney for Marple Township

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

PECO ENERGY COMPANY,	:	
	:	NO: cv-2020-008477
Appellant.	:	
	:	
v.	:	LAND USE APPEAL
	:	
MARPLE TOWNSHIP ZONING HEARING BOARD,	:	
	:	
Appellee.	:	

PETITION FOR STAY OF ALL PROCEEDINGS RELATED TO THE APPEAL OF THE ORDER OF THE MARPLE TOWNSHIP ZONING BOARD

Petitioner, Marple Township, by and through counsel, McNichol, Byrne & Matlawski, P.C., hereby files this Petition for Stay of Proceedings related to the Appeal of the Order of the Marple Township Zoning Board, and avers as follows:

1. On November 18, 2020, the Marple Township Zoning Board issued a decision denying the zoning application of Appellant, PECO Energy Company, for a special exception to operate the gas reliability station as a public utility facility at the property located at 2090 Sproul Road, Broomall, Marple Township, Delaware County, Pennsylvania, 19008 (the "Property") and for variance to allow a fence that measures 8 feet in eight (the "Zoning Appeal").

2. On December 18, 2020, Appellant filed a Notice of Appeal of the Order of the Marple Township Zoning Board.
3. On December 23, 2020, Petitioner, Marple Township, filed a Notice of Intervention as of right.
4. On April 1, 2021, without the appropriate and necessary consent of the other parties, Appellant unilaterally filed a Certificate of Readiness with the Court. (A true and correct copy of the certificate is attached hereto as **Exhibit "A"**).
5. In addition to this Zoning Appeal, on February 26, 2021, PECO Energy Company filed a Petition with the Public Utility Commission ("PUC") 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 (the "PUC Petition"). (A true and correct copy of PECO's PUC Petition is attached hereto as **Exhibit "B"**)
6. By the PUC Petition, PECO has asked that the facilities proposed to be located at the Property be declared by the PUC to be reasonably necessary for the convenience and welfare of the public and therefore exempt from zoning regulation pursuant to Section 619 of the Pennsylvania Municipalities Planning Code ("MPC"), 53 P.S. §10619.
7. PECO's within Zoning Appeal and the PUC Petition seek the same ultimate ruling, that PECO be permitted to locate its Gas Reliability Station facilities at the Property.
8. Moreover, a final decision on the PUC Petition in favor of PECO would render PECO's Zoning Appeal moot, as the zoning denied by the Zoning Hearing Board would not be necessary to locate the Gas Reliability Station facilities at the Property.

9. The appropriateness of the site for such facilities is the essential examination for the PUC Petition proceeding and has been and will further be the subject of substantial testimony by PECO, Marple Township, the County of Delaware and in excess of 50 individual neighbors and area residents as well as experts presented or to be presented by the various parties to the PUC Petition hearing.
10. On June 7, 2021, the PUC entered an Interim Order with a revised Litigation Schedule, setting evidentiary hearings for July 15 and 16, main briefs are August 2, and reply briefs for August 16 (A true and correct copy of the Interim Order is attached hereto as **Exhibit "C"**).
11. Appellant will suffer no harm if a stay is imposed because if the PUC Petition is granted and upheld, Appellant PECO will be allowed to proceed with its land development irrespective of the Zoning Hearing Board decision. PECO's appeal rights with respect to the within zoning appeal will be protected and held in abeyance without prejudice to PECO during the pendency of the PUC Petition proceeding and available for PECO to pursue should it not be successful in the PUC proceeding and PECO has not been prohibited from undertaking all offsite improvements necessary to bring highly pressurized natural gas some 11 miles into Marple Township and to the ultimate site of the proposed facilities, construction of which has continued and may continue during the pendency of the Court and PUC proceedings regarding the Property.
12. However, the residents of Marple Township continue to suffer as they are forced to defend this identical matter on two fronts.
13. The Supreme Court of Pennsylvania adopted and followed the standards set forth in the Virginia Jobbers case which has been used by The Commonwealth Court. Pa. Public

Util. Com v. Process Gas Consumers Group, 467 A.2d 805, 808-809, (Pa. 1983). The criteria requires the court to balance the interests of all parties and the public welfare where applicable.

14. Here, PECO will not be substantially harmed by the issuance of a stay, however the Township and its residents would suffer irreparable injury by being forced to defend identical matters on two fronts.
15. Finally, the public interest would not be adversely affected, but instead a stay would further the public interest.
16. The Marple Township Zoning Board is in agreement with this request.

WHEREFORE, Marple Township respectfully ask this Honorable Court to GRANT its Petition for Stay of All Proceedings Related to the Order of the Marple Township Zoning Hearing Board.

Respectfully Submitted:

/s/ J. Adam Matlawski
J. Adam Matlawski, Esq.
Attorneys for Intervenor, Marple Township

EXHIBIT E

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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

PECO ENERGY COMPANY,	:	
	:	NO: cv-2020-008477
Appellant.	:	
	:	
v.	:	LAND USE APPEAL
	:	
MARPLE TOWNSHIP ZONING HEARING BOARD,	:	
	:	
Appellee.	:	

MOTION FOR REMAND TO THE MARPLE TOWNSHIP ZONING BOARD

Petitioner, Marple Township, by and through counsel, McNichol, Byrne & Matlawski, P.C., hereby files this Petition for Remand to the Marple Township Zoning Board, and avers as follows:

1. The Appellant / applicant is PECO Energy Company ("PECO"), which initially filed an application for zoning relief in Marple Township on or about August 26, 2020.
2. PECO's Zoning Application sought (1) a special exception to operate a gas reliability station at the Property; and (2) a variance to erect a fence measuring 8 feet in height around the station.
3. On October 21, 2020, the Zoning Hearing Board held a virtual public hearing on PECO's Zoning Application. Testimony was closed at the conclusion of the October 21, 2020 hearing and the Board announced it would announce its decision within 45 days,

4. On November 18, 2020, the Zoning Hearing Board voted to deny the Zoning Application and issued an Order confirming the decision.
5. Marple Township did not participate in the Zoning Hearing but, following the hearing, received notice and complaints from a number of concerned residents.
6. PECO filed the instant appeal and Marple Township has intervened as of right as a party in this matter.
7. Following the denial of the Zoning Application and PECO's appeal to the Court of Common Pleas, PECO filed a Petition with the Pennsylvania Public Utility Commission ("PUC") on February 26, 2021, seeking the same ultimate ruling as the Zoning Application, that PECO be permitted to locate its Gas Reliability Station facilities at the Property.
8. Marple Township Petitioned to Intervene in the PUC matter and is participating as party in same.
9. During the PUC proceedings through testimony offered by PECO and others, Marple Township has learned of a number of issues with the characterization of PECO's Zoning Application as well as with respect to the nature and working of the facilities proposed for the Gas Reliability Station which was not offered to the Zoning Hearing Board during its hearings and which the Township believes would have material and beneficial to the Board in considering this matter and rendering its decision therein.
10. Marple Township believes it is necessary to remand the matter to the Zoning Hearing Board for acceptance and consideration of additional testimony and evidence that was not presented during the October 21, 2020 hearing.
11. Delaware County Local Rule *27(b) states that:

> When the court deems it necessary it may remand the case to the zoning hearing board for the taking of additional testimony and the filing of a supplemental or additional opinion. Unless specifically relinquished, jurisdiction shall be retained by the court. In cases where jurisdiction is relinquished, the procedure on appeal shall be as prescribed for the original appeal.

12. Section 1005-A of the Municipalities Planning Code states that if, upon motion, it is shown that proper consideration of the land use appeal requires the presentation of additional evidence, the judge may (1) hold a hearing to receive additional evidence, (2) remand the case to the body, agency or officer whose decision or order has been brought up for review, or may (3) refer the case to a referee to receive additional evidence.
13. The Marple Township Zoning Hearing Board is in agreement with this request.

WHEREFORE, Marple Township respectfully ask this Honorable Court to GRANT its Motion for Remand to the Marple Township Zoning Hearing Board for the taking of additional evidence.

Respectfully Submitted:

/s/ J. Adam Matlawski

J. Adam Matlawski, Esq.
Attorneys for Intervenor, Marple Township