

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	:	Docket No.: P-2021-3024328
Reliability Station in Marple Township, Delaware	:	
County Is Reasonably Necessary for the	:	
Convenience and Welfare of the Public	:	

MAIN BRIEF OF INTERVENOR MARPLE TOWNSHP

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MAIN BRIEF OF INTERVENOR MARPLE TOWNSHIP

Intervenor, Marple Township (“Marple”), by its undersigned counsel respectfully submits this brief in support of its request for the denial of PECO Energy Company’s (“PECO”) Petition before the Public Utility Commission (“PUC” or “Commission”), and in support thereof, sets forth as follows:

II. INTRODUCTION

On February 26, 2021, PECO filed a Petition before the PUC. In its Petition, PECO requests that the Commission, pursuant to 52 Pa. Code § 5.41 and Section 619 of the Municipalities Planning Code (“MPC”), 53 P.S. § 10619, make a finding that: (1) the situation of two buildings at 2090 Sproul Road, Marple Township, Delaware County, Pennsylvania, 19008 (the “Property”) for a proposed Gas Reliability Station is reasonably necessary for the convenience and welfare of the public and, therefore, exempt from 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 (the “Petition”).

Therefore, the issue in this case is whether the siting of the Gas Reliability Station at 2090 Sproul Road, Marple, Pennsylvania, is reasonably necessary for the convenience or welfare of the public. In other words, this issue is whether it is reasonably necessary for the convenience or welfare of the public that the Gas Reliability Station be sited at 2090 Sproul Road. It is the *siting of the buildings* at the proposed location that is at issue in this matter.

It is Marple Township’s position that PECO has not established by credible substantial evidence that it is reasonably necessary that the Gas Reliability Station be sited at the proposed location for the convenience and welfare of the public. Marple Township submits that, in the project’s early stages, PECO zeroed in on the location at issue, and later backtracked to establish

necessity. The Township does not argue PECO's projections for the need for the proposed Gas Reliability Station. Rather, it is Marple Township's position that the proposed site for the utility is not reasonably necessary for the convenience and welfare of the public, it is simply necessary for PECO's own convenience.

III. STATEMENT OF THE CASE

On February 26, 2021, PECO filed a Petition with the Commission 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. On March 11, 2021, Marple Township filed a petition to intervene and on April 14, 2021, filed an Answer with New Matter to PECO's Petition opposing the Petition.

Prior to filing its Petition in this matter, PECO submitted a zoning application with the Marple Township Zoning Hearing Board seeking a special exception to operate a Gas Reliability Station at the Property. After a hearing on the matter, the Zoning Hearing Board denied PECO's application issuing Findings of Fact and Conclusions of Law. (See Exhibit LG-2). PECO appealed the denial of its zoning application to the Delaware County Court of Common Pleas and the matter is currently pending.

Public Input Hearings were held on May 25 and 26, 2021, including approximately sixteen (16) hours of public comment, at which time several dozens of Marple Township residents voiced their opposition to and concerns with the siting of the Gas Reliability Station at the proposed location given the property's proximity to residences, family restaurant and businesses and an elementary school. Written testimony, rebuttal and surrebuttal were exchanged by the parties and evidentiary hearings were held before Administrative Law Judge

Emily DeVoe (“ALJ DeVoe”) via telephonic proceedings on July 15, July 16, July 20, and July 22, 2021. The matter is now ripe for a recommended decision by ALJ DeVoe.

PECO is the current equitable owner of the Property. (PECO Statement No. 1, p. 4; R.908). Douglas I. Oliver, PECO’s Vice President of Governmental and External Affairs, testified that proximity to the terminus was one of the primary considerations in finding a location for the Gas Reliability Station, as well as availability, zoning and lot size “with availability being of particular importance.” (R.911-12). Curiously, whether a site has the proper zoning was claimed by PECO to a factor for its determination even though it is PECO’s position that they are not subject to zoning for this utility use. (R. 934). PECO dismissed properties that were not listed for sale, as unavailable, while zeroing on a location that was also not for sale. (R.969). Mr. Oliver testified that the need for the gas reliability project was not because of any current Gas supply shortage and that PECO did not have a current supply shortage. (R913, 13-20).

Jim Moylan is a PECO Real Estate Specialist who testified that PECO began working on this project in the Spring of 2019. (R.1122). Although denied by nearly every single PECO witness, 2090 Sproul Road was also selected as the site for this project in the Spring of 2019, as evidenced by PECO’s “Site Plan” of the proposed facility at the 2090 Sproul Road site first dated May 31, 2019 (See Exhibit TF-2 Confidential). PECO’s witnesses state over and over that due consideration was given to other properties as well as to the input of the Township and elected officials, but the original drawing of the Gas Reliability Station at the proposed site is dated May 31, 2019, six months before meeting with the Township and seven months before mentioning that the site was a possibility (See Id.) and more than a year before executing an agreement of sale to purchase the property. (R. 970)

Nevertheless, PECO has stressed the criteria used for the site selection for the Gas Reliability Station. (R. 1123). The four criteria specifically being: (1) that the property is available for purchase, (2) that the property is zoned for utility use, (3) that the property is at least a half an acre and (4) that the property is located within a half mile from the proposed main terminus at the intersection of Sproul and Lawrence Roads. (R. 1123 – 30).

Although claiming in its Petition that the proposed Property was available for purchase, PECO's witnesses do not contest in their testimony that the selected Property was not available for purchase. (R. 1124). Although PECO approached the owner of 2090 Sproul Road to see if the owner would be willing to sell, PECO did not approach a single other property owner to ask if they would sell to them nor elect to acquire those properties through eminent domain. (R. 969:23-970:1, 1125:21-1126.1), despite being asked by Township, County and other elected officials to find and consider an alternative location. PECO dismissed every other potential property as being unavailable for acquisition, solely based on the property not being then formally listed for sale, without contacting the owner to see if they would consider selling and despite PECO having the power of eminent domain which would enable PECO to acquire virtually any property regardless of the owner's agreement or refusal to sell. (R. 1126:1-24; R. 969:16-22).

The second criteria offered by PECO is that the property is subject to zoning regulations to permit utility use. (R. 1127). However, here the Property is in a zoning district where utility use is not permitted by right and is only permitted by special exception. (R. 1127). Additionally, PECO was informed by the Township that if an appropriate alternate site could be obtained, the Township could work with PECO on zoning applicable to the alternate site. (R. 980:19-23).

According to PECO, an additional factor that eliminated the other properties was that they had existing structures on them that would need to be demolished. (R. 1134). While the proposed site does not have an existing structure on it, the site was a former gas station and auto repair and, PECO has stated that it will need to undertake costly active environmental remediation on the site to develop same for the proposed Gas Reliability Station. (R. 1134). However, despite PECO's claim that the remediation required to develop the Gas Reliability Station would be a public benefit, the 2090 Sproul Road site has already been subjected to tank removal and soil remediation and mitigation pursuant to Pennsylvania Act 2 and is subject to an environmental covenant from 2013, and, further, that this additional remediation that PECO is willing to do and says is for the benefit of the public is only necessary and required because PECO is going to be disturbing the soil to build a new Gas Reliability Station on the property. (R.1135:1-1136:3).

Mr. Moylan's direct testimony states that the station had to be located proximate to the gas main terminus, however he is the sole PECO witness who admitted that the Gas Reliability Station could be in a different location. (Moylan Statement p. 4). If it were to be located at a site outside of the half mile radius from the gas main terminus at Sproul and Lawrence Roads, PECO would have to install a pair of additional gas mains from the terminus to the site and then back from the site to the terminus. (Id.).

On November 19, 2019, PECO met with Marple Township Manager to advise the Township of the project. Although PECO knew its selected location was 2090 Sproul Road, PECO representatives did not mention any location as a potential site. (R. 915-16; PECO Statement No. 1, p 2). Shortly thereafter, on December 3, 2019, 2090 Sproul Road was the sole property mentioned to the Township as a possible location for the project. (R. 917:1-10). Even

though as Mr. Moylan testified, prior to this meeting, the list of properties had already been considered (and dismissed) by PECO and they had narrowed in on 2090 Sproul Road. (R. 1131:11-1133:12). Township suggested other sites at the meeting.

From December 9, 2019, through June of 2020, PECO did not have a single conversation with the Township regarding its endeavors to find an appropriate location for this Project. (R. 974-75). PECO made no inquiries to the Township for the Township's thoughts or position regarding any potential site during this period. (R. 921-922). PECO ultimately contacted the owner and entered into agreement of sale for the Property in June of 2020 and informed the Township on July 26, 2020 (R. 919). PECO began tearing up the roads and installing the 12' main running 11 ½ miles from the Conshohocken gas plant to connect with the Marple Township site to connect with the future Gas Reliability Station even before it sought zoning approval. (R.924-25; R.975-76). Mr. Oliver further stated that this was because PECO was moving forward with parts of the project that needed to occur "regardless of where the final reliability station would be built." (R. 925).

In a meeting with PECO on November 10, 2020, the Township made it clear that they were opposed to the station being located at 2090 Sproul Road, but that the Township was willing to work with PECO on zoning at a more appropriate location within the Township. (R. 927; R. 935; Marple Township Statement No. 1, p. 5). In her testimony, PECO witness Michele Garrity recalled the Township's offer to assist PECO in this regard. (R. 980). However, Ms. Garrity admits that although PECO has offered a series of statements about PECO's willingness to engage with the community members and elected officials and soliciting of their feedback and concerns, she could not recall a time when PECO took those concerns and agreed to change the location of a site they had already chosen. (R.987). Likewise, Mr. Moylan, who has assisted in

securing nearly fifty sites for PECO projects, cannot recall a single time in his career where PECO sought an alternate site after receiving feedback from local government. (R. 1144-45).

In a meeting on January 7, 2021, the State Representative, State Senator and County Council Members all voiced to PECO their opposition to the project at this location, requesting yet again for PECO to find a suitable location for such a project. (R. 929).

For example, the former Don Guanella and Cemetery properties on Sproul Road were suggested to PECO, but PECO did not go back and reconsider either. PECO never approached the owner to determine if they would voluntarily sell same to PECO. PECO dismissed the Don Guanella property for zoning reasons even though the Township had informed that it would work with PECO on zoning for an appropriate site (R 1140:3-16; R1142:7-12). And now, for the first time at submission of surrebuttal testimony, Ryan Lewis of PECO testified that despite the property being within the ½ mile of the Sproul and Lawrence connection and meeting that site selection criteria, the Don Guanella site would not be acceptable as its location would now cause “engineering constraints”. (SR-3, p.6; R. 122:3-25)

Ryan Lewis, Manager of Gas Engineering and Performance Asset Management and stated that the optimal location for the Gas Reliability Station is within a half a mile from the terminus of the line that is coming in from Conshohocken to Sproul and Lawrence Road in Marple. (R. 1213). It was Mr. Lewis’ testimony that, based upon the pressure of the lines and engineering issues, the only locations this project would work is at 2090 Sproul Road. (R. 1222). Mr. Lewis also testified that the only other location that satisfied all criteria from his standpoint was 2024 Sproul Road. (R. 1268). Timothy Flanagan, manager for gas system control and plant operations testified that gas will be running through the new line into the Gas Reliability Station at all times. (R. 1337). Mr. Flanagan, like PECO’s other witnesses, could not state when it was

determined that the connection point would be at the Lawrence and Sproul Road intersection. (R. 1343). He also could not say whether that point was determined before or after 2090 Sproul was selected as the site. (R. 1343).

PECO projects that over the next 10 years natural gas usage will increase annually at 2% per year for Delaware County and 1% per year for Marple Township (PECO Statement – 3, P4:13-5:10), despite population for Marple Township having grown only a total of 2.3% over the entire preceding 10 year period and Delaware County population having grown only a total of 1.4% over that same preceding entire 10 year period with gas usage having increased only a total 2.6% in Marple Township and 3.1% in Delaware County over the entire preceding 10 year period. (PECO Statement 3 – SR, p.12-15).

The vent stacks from the heaters will emit mainly water vapor and small amounts of carbon dioxide, but Mr. Flanagan could not say for sure that those are the only emissions. (R.1366). The emissions coming from the Gas Reliability Station when the heaters are running will be the equivalent of that of twenty-three (23) homes (R. 1367). PECO would not answer the question regarding additional emissions from the stacks completely, other than saying that there is nothing that would require a permit to be issued. (R.1418-20). The vent stacks will be visible to some neighboring residents. (R. 1368:1-10)

Carlos Thillet, who is responsible for PECO for managing financial and service reliability risk of PECO's interstate natural gas and storage contracts (R. 1275:19-20) testified that the Natural Gas Reliability Station will provide an additional source of supply to meet design day requirements. (R.1276:1-7). PECO has sufficient supply currently in order to meet design day requirements. The reason for the desired additional supply to be added by the project in question is to reduce PECO's reliability on market purchases and reduce the price volatility and to

increase reliability. (R.1276:8-20). PECO currently has adequate supply to meet mandated requirements in a safe, least cost manner and as currently structured will have enough supply to meet demand for the coming year (R. 1279:23-1280:11). However, Mr. Thillet testified that the project will not fully resolve deficit in the long term. (R. 1282:1-2)

Mike Israni testified on behalf of PECO as an expert in safety of operation in like facilities. (R. 1551). Mr. Israni has never been retained in a legal proceeding for any party other than an energy company, nor has he ever rendered an opinion that was in opposition to a facility of an energy company. (R. 1552). He testified that other emissions from natural gas combustion are nitrogen oxides, sulfur oxides and other particulates. (R. 1568). Mr. Israni testified that based on Mr. Flanagan's operational figures of pressure of the main connected to the natural gas reliability station of 525 PSI and the pressure arriving at the station anticipated to be less than 200 PSI with a 12-inch diameter main, in the scenario of a serious incident at that natural Gas Reliability Station, the potential impact radius is 190 feet for 525 PSI and at 200 PSI, the potential impact radius is 117 feet. (R. 1618.3 -1620.4). The potential impact radius is the radius of a sector where if the pipeline fails, the persons or the buildings within that impact circle may be impacted. The failure of a pipeline where the gas was ignited resulting in flame or plume of that flame or fire would have impact on persons in that radius, with impacts such as such as 2nd degree burns from exposure to flame heat (20 secs), death within 30 seconds and building ignition within 30 minutes. (R. 1618.3 -1620.4). Neighboring residences and Freddy's restaurant, and the occupants of each, are well within the potential impact radius and in danger of damage or injury in the event of emergency.

According to Tim Flanagan, PECO Manager for Gas Control and Plant Operations (R.1331:17), when the Gas Reliability Station is in operation, there will gas on the main coming

from Conshohocken to the Gas Reliability Station at all times, not just in times of high demand (R.1336:25-1337:11). Gas will be connected to the distribution system at all times: flow will increase in times of high demand. (R.1337:7). This facility is PECO's first "Gas Reliability Station"; however, this is like a gate station except that a gate station involves a transfer of ownership or custody of the gas from the transmission line to PECO, where here it is PECO's gas in the high pressure main prior to the station and the gas will be odorized in the Conshohocken plant not at the station. (R.1355:4-18). PECO operates 28 gate stations with only 2 others as close to nearest residence as the proposed reliability station at 2090 Sproul Road. (R.1358:12-24, Exhibit TF-6). All of the other 28 gate stations are further in distance from residences and PECO does not maintain any gate stations which are closer to residences than the proposed Marple reliability station would be. (R. 1358:23-1359:13).

Local emergency responders will not have a key or access to the Gas Reliability Station but would need PECO escort to enter station even in time of emergency (R. 1352:3-12). According to PECO, PECO's average response time for gas odor calls in the period of 2017 to 2020 was 25 minutes.

When the heaters are operating, the gas usage and emissions from the Marple Reliability Station is the equivalent of 23 homes coming from a single property. (R. 1366:16-1367:13). While a reliability station performs a similar function to a gas meter as a house, this is on a much larger scale and it is clear that there is more substantially more gas by volume coming into reliability station than what's coming to a typical residence and the gas is coming in at substantially higher pressure. (R. 1370:14-19).

The Township opposes the site for this project because it is the gateway to the business shopping district, in too close proximity to residential homes and businesses and not compatible

with residential and retail uses. (Marple Township Statement No. 1, p. 6). Marple Township Fire Marshall, Jim Capuzzi testified that, given the adjacent and immediate proximity to a densely populated residential community and immediately adjacent restaurant and shopping district, the proposed site is not an appropriate location for a Gas Reliability Station from a fire, life safety and public interest standpoint, given concerns about the impact of US Department of Transportation 2020 Emergency Response Guide (ERG) evacuation parameters, potential impact radius, line integrity, lack of manning of the facility and PECO historic response times in Marple (Marple Township Statement No. 2, pp. 5-6, R. 1508). In addition to serving as a Fire Marshall, Mr. Capuzzi is employed by AON Risk Control, where he handles a number of international clients from a property risk control standpoint, fire, explosion, and natural hazardous standpoint and is a certified fire protection specialist, certified by the National Fire Protection Association. He has almost 40 years of experience and expertise in this field (Marple Township Statement No. 2).

As Township noise expert Nancy Wilson pointed out in her testimony, the sound level study produced by PECO did not measure the actual equipment to be housed at the location but used projections and did not include all noise producing equipment and processes proposed for the facility. (Marple Township Statement No. 3, pp. 3-4). The fact that this facility is to be sited near the property line and in close proximity to residential homes makes it inappropriate for the site. (Marple Township Statement No. 3, p. 4). Notably, the sound study does not include the generators, which must run periodically which will result in additional noise disturbances. (R. 1089; R. 1096-97). Ms. Wilson explained that the difference is that commercial generators generally have higher kilowattage than a home run generator and they have to run for periodically to make sure they could be kept running. (R.1101).

Matt Wanamaker, Senior Planner for Pennoni Associates Inc., testified that the site is zoned for a Neighborhood Center District, which allows commercial uses and is generally in an area where an appropriate use would be small-scale commerce where residents can walk, and where uses have synergy with the adjacent neighborhood. (Marple Township Statement No. 5, p. 3). Mr. Wanamaker notes that the Marple Township Comprehensive Plan update details that Sproul Road is the gateway to Marple, and that “gateway should have a unified and welcoming design that is clear, clean, and informative.” (Marple Township Statement No. 5, p. 4). However, here PECO’s proposal will create a dead space on a prominent corner where it will not afford area residents access to local services. (Marple Township Statement No. 5, pp.3-5).

Township Engineer Joseph Mastronardo opined that due to the unreconciled zoning issues, remaining unaddressed plan review comments that, and the need to resolve site access issues, we would be unable to recommend approval for the proposed Preliminary/Final Land Development Plan for the site at this time. Additionally, it is his professional opinion that the proposed development adversely affects the public health, safety, and general welfare since the applicant has failed to propose development of the site consistent with the Marple Township Zoning and Subdivision and Land Development Ordinance requirements. (Marple Township Statement No. 6, pp.4-5).

IV. STATEMENT OF QUESTION INVOLVED

- a. Whether PECO failed to present substantial evidence to show that the proposed buildings associated with a Gas Reliability Station are reasonably necessary for the convenience or welfare of the public?

Suggested Answer: Yes.

- b. Whether PECO failed to present substantial evidence that the proposed fence is a facility?

Suggested Answer: Yes.

- c. Whether PECO's proposed situation of the Gas Reliability Station should be subject to Marple Township Zoning Code and regulations requiring PECO to comply with zoning and land development?

Suggested Answer: Yes.

V. LEGAL STANDARDS

a. BURDEN OF PROOF

Section 332(a) of the Public Utility Code ("Code"), 66 Pa. C.S. 332(a), provides that a party seeking a rule or order from the Commission has the burden of proof in that proceeding. The preponderance of the evidence standard required proof by a greater weight of the evidence. *Commonwealth of Pennsylvania v. Williams*, 732 A.2d 1167 (Pa. 1999).

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-ed Indus. Users Group v. Pennsylvania Public Utility Commission*, 960 A.2d 189, 193 n.2 (Pa. Commw. Ct. 2008) (citing 2 Pa. C.S. §704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Service Commission*, 942 A.2d 274, 281 (Pa. Commw. Ct. 2008).

If the applicant sets forth a prima facie case, then the burden shifts to the opponent. *McDonald v. Pennsylvania Railroad Co.*, 36 A.2d 492 (Pa. 1940). Establishing a prima facie case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for

the opponent. Once a prima facie case on a point has been established, if contrary evidence is not presented, there is no requirement that the applicant produce additional evidence in order to sustain its burden of proof. *District of Columbia's Appeal*, 21 A.2d 883 (Pa. 1941).

b. STANDARD FOR APPROVAL OF REASONABLE NECESSITY

Municipalities may apply local zoning rules to public utility buildings unless the Commission finds that the location of the building is reasonably necessary for the convenience or welfare of the public. Section 619 of the MPC provides the standard for approval of the siting of a public utility building:

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 a 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. Thus, a municipality may exercise its zoning power over a public utility building unless the Commission determines that the “site is reasonably necessary for the public convenience or welfare.” *Del-AWARE Unlimited, Inc. v. Pennsylvania Public Utility Commission*, 513 A.2d 593, 596 (Pa. Commw. Ct. 1986), *appeal denied*, 527 A.2d 547 (Pa. 1987).

In deciding this type of case, consideration must be given to the following:

- A. Whether the Public Utility Commission has jurisdiction over the parties and subject matter pursuant to the Municipalities Code, 53 P.S. § 10619;
- B. Whether the **proposed site** is reasonably necessary for the convenience or welfare of the public;
- C. Environmental impact.

See Application of Pennsylvania American Water Company for a finding of reasonable necessity, under Section 619 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10619, for the subdivision of lands, and for the proposed situation and construction of the buildings comprising

an expansion of the wastewater treatment plant on a site in South Coatesville Borough, Chester County, Pennsylvania (“PAWC”), 2006 Pa. PUC LEXIS 91, *8 (Pa. P.U.C. October 25, 2006) (emphasis added). Therefore, the standard to be applied in granting an exemption under 53 P.S. § 10619 is reasonable necessity for the site, i.e., whether the site is reasonably necessary for the public convenience or welfare. *PAWC*, at. *11.

In addition to Section 619, the Commission has adopted a final policy statement order intending to further the State’s goal of making State agency actions consistent with sound land use planning by considering the impact of its decisions upon local comprehensive plans and zoning ordinances. *See* 31 Pa. Bull. 951 (February 17, 2001). The policy statement provides that the Commission will consider the impacts of its decisions upon local comprehensive plans and zoning ordinances when reviewing applications for the following:

- (1) Certificates of public convenience.
- (2) Siting electric transmission lines.
- (3) Siting a public utility “building” under section 619 of the Municipalities Planning Code (53 P.S. §10619).

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

VI. SUMMARY OF THE ARGUMENT

The exemption provided by Section 619 of the MPC upon finding of reasonable necessity for the convenience and welfare of the public applies only to zoning regulation and does not in any way apply to nor affect the application of local subdivision and land development regulation.

To be exempted from zoning regulation under Section 619, PECO must prove that the siting of the buildings housing the proposed Gas Reliability Station is reasonably necessary for the convenience or welfare of the public. The impacts of placing the facility at the proposed

location is necessary to determination of whether locating the facility at the particular site is necessary for the convenience or welfare of the public. The proposed site is not reasonably necessary for the convenience, and welfare of the public, it is simply necessary for PECO's own convenience as evidenced by its development of selection and design criteria at the outset to work for the subject property to the exclusion of all others, its refusal to truly consider or pursue alternative sites even after being asked to do so by local officials and residents and having been denied zoning, its proceeding with installation the gas main from the plant to the Marple site before zoning approval, its dismissal of other locations without contacting a single owner..

Not only has PECO failed to meet its burden, but ample evidence was presented to the contrary showing that siting the Gas Reliability Station at 2090 Sproul Road is not reasonably necessary for the convenience or welfare of the public. The impacts, including fire safety, emission, land use planning and noise, of the locating the Gas Reliability Station at this location clearly make this site inappropriate for the siting of such Gas Reliability Station, especially given the proximity of a surrounding densely populated residential community and immediately adjacent restaurant and shopping district.

Because the Gas Reliability Station is not reasonably necessary for the convenience or welfare of the public, the proposed fence is moot.

The Commission should find that PECO's proposed public utility building, sited at 2090 Sproul Road, is not reasonably necessary for the public convenience or welfare, and therefore, Marple Township may exercise apply zoning regulation over the proposed project.

VII. ARGUMENT

a. The proposed buildings associated with PECO's Gas Reliability Station is not reasonably necessary for the convenience or welfare of the public

At the outset, it should be noted that PECO has requested the Commission provide relief from Township regulation beyond what Section 619 of the MPC allows. PECO, in its Petition, asks the Commission to find that the proposed buildings for the Gas Reliability Station are “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” (emphasis added). Section 619 of the MPC 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 a 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. (emphasis added)

53 P.S. §10619. Section 619 is contained within Article VI “Zoning” of the MPC, which by governs zoning ordinances and procedures. Subdivision and land development ordinances and regulations, such as the Marple Township Subdivision and Land Development Ordinance, are authorized and governed by a different “article” of the MPC, Article V, 53 P.S. §§10501-10515.1. The exemption provided by Section 619 upon finding of reasonable necessity for the convenience and welfare of the public applies only to zoning regulation and does not in any way apply to nor affect the application of local subdivision and land development regulation.

To be exempted from zoning regulation under Section 619, PECO must prove that the siting of the buildings housing the proposed Gas Reliability Station is reasonably necessary for the convenience or welfare of the public. The purpose of the MPC is to provide powers and

standards for the accomplishment of coordination and control of local planning and development at the local level. *Re Philadelphia Suburban Water Company*, 54 PA. PUC 127, 129, 1980 Pa. PUC LEXIS 81, *9-10 (Pa. P.U.C. April 3, 1980) (“Philadelphia Suburban”). To accomplish these ends, the statute provides for comprehensive planning agencies and activities, and additionally provides zoning powers and procedures for implementation at the local government level. *Id.*

The matter before the Commission is comparable to *Philadelphia Suburban*. While PECO has consistently argued that the only issue to be decided is that of a building surrounding the regulating station, the Petition in *Philadelphia Suburban* sought for the entire pump station to be exempt from local zoning on the basis of reasonably necessity. The procedure in *Philadelphia Suburban* mirrored that of the current case before the Commission in that the matter began when *Philadelphia Suburban* applied to the zoning hearing board for a variance to construct a pump house. Had the utility company been successful in obtaining a variance, *there* would have been no need for Commission action in the matter. *Id.* at *11. Similarly, had PECO been successful with its zoning application to *operate a Gas Reliability Station*, there would be no need to come before the Commission.

Like PECO must do in this matter to build a Gas Reliability Station, *Philadelphia Suburban* needed to make an application to the commission regarding the storage tank and pump house and an exemption from the local zoning ordinance must be sought. *Philadelphia Suburban*, at. *9-14. Like PECO, *Philadelphia Suburban* focused on the need for the service as well as need for the location. *Id.* at. *12.

Ultimately, the Court in *Philadelphia Suburban*, found that:

[u]pon full consideration of the records in this proceeding, and in accordance with the foregoing discussion, we find pursuant to the requirement of §619 of the Pennsylvania Municipalities Planning Code... that the proposed situation of a 5 million gallon steel reservoir and a booster pumping station on a tract of land owned by the applicant is reasonably necessary for the convenience or welfare of the public.

Id. at. *26-27. Indeed, the Commission's finding was that the entire facility, the *steel reservoir and booster pumping station*, was reasonably necessary for the convenience or welfare of the public.

It is of no surprise that a utility company will form its argument given the situation it is presented with. PECO argues that it is essentially of no consequence that the proposed site is in such close proximity to residential homes and businesses, however, it is clear that when a utility endeavors to site its facility in a secluded area, it argues that the area is remote and far away from residences, and therefore an appropriate location. *See Philadelphia Suburban*, *supra* at. *3-4 (According to the company, the proposed site for the reservoir was selected because it is one of the highest elevations in the area, is in close proximity to existing transmission mains, and is in an undeveloped wooded area subject to noise from the turnpike and will have less adverse environmental impact than a location in a highly developed area...).

PECO has often cited the Commonwealth Court decision in *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm'n*, 99 Pa. Commw. 634*, 513 A.2d 593, 595-96 (Pa. Commw. 1986), for the proposition that the only issue germane to this proceeding is whether the siting of PECO's Natural Gas Reliability Station's buildings is reasonably necessary for the convenience or welfare of the public. In the *Del-AWARE* decision, the Court stated that Section 619 "merely directs the PUC to determine whether the *site* of the Bradshaw pumphouse is appropriate to further the public interest." *Id.* at *638. It is the location of the site itself that is germane, as stated by the *Del-AWARE* Court:

Section 619 only *empowers* the PUC, upon petition, to decide if there is reasonable necessity for the *site*. Moreover, the purpose of the inquiry is only to determine whether an exception to the local zoning provisions applicable to that site is justified. Therefore, the location, not the building itself, is the focus of concern.

Id. at footnote 4. The PUC is empowered to evaluate the impacts of placing the facility at the proposed location *Id.* at *639, and indeed it is submitted that such is necessary to determination of whether locating the facility at the particular site is necessary for the convenience or welfare of the public.

Marple Township does not oppose the proposed “Gas Reliability Station” project in general; however, Marple does oppose the siting of the Gas Reliability Station at PECO’s chosen location. Moreover, it is difficult to understand how the location and siting of this facility at the 2090 Sproul Road site is reasonably necessary for convenience and welfare of the public when PECO’s projections for the additional gas needs over the next ten years for both Delaware County and Marple Township project annual growth in gas usage several times greater than both the population and gas usage growth during the previous decade, historic figures which PECO claims support their projections.. Additionally, PECO admits that it currently has adequate supply to meet mandated requirements in a safe, least cost manner. PECO admits that the reason for the desired additional supply to be added by the project in question is to reduce PECO's reliability on market purchases and reduce the price volatility and that the project would not solve long term supply issues.

But more specifically, it is Marple Township’s position that the proposed site for the gas distribution regulating station is not reasonably necessary for the convenience and welfare of the public, it is simply necessary for PECO’s own convenience. It was evident throughout the proceedings that PECO zeroed in on 2090 Sproul Road at the infancy of the planning for this

project in the Spring of 2019, everything else followed in suit to provide justification for its selection. PECO had its engineers prepare a drawing with the Gas Reliability Station at 2090 Sproul Road in May of 2019. PECO does not have drawings of any other location it claims to have considered for this project.

Thereafter, PECO went through the motions to preserve its arguments by asking Marple Township for suggested locations, agreeing to hear from county officials on siting the project, hosting information sessions, and filing an application with the Marple Township Zoning Board, however, it is obvious that PECO's intentions all along were to force this particular location for its own convenience.

While the Township suspected it, it was not until the testimony of Jim Moylan that confirmed that PECO had ran through its "criteria," striking off any other option aside from 2090 Sproul Road prior to even mentioning the project to the Township. Although it had already decided on a site, PECO did not advise the Township of such and instead asked the Township for suggestions, none of which PECO pursued or even meaningfully considered.

PECO continues to argue that the company worked with the Township and even asked for suggested site locations. However, as mentioned above, PECO had already been through its site elimination at the point when they informed the Township of the project for the first time and already had detailed engineering drawings at the proposed site. At the time, Marple Township Manager, Lawrence Gentile, suggested the location of 2024 Sproul Road. However, he was not yet aware of what a Gas Reliability Station was nor was he aware that the Cedar Grove and Sproul Road Property would even become a possibility since it was not listed for sale. (Marple Township Statement No. 1, p. 3). Additionally, knowing what he learned through the

process, Mr. Gentile would not have suggested 2024 Sproul Road to PECO for this project for the same reasons 2090 Sproul Road is not an appropriate site. (R.1007-10).

The Township also submits that, in the Spring of 2019, the site of 2090 Sproul was chosen, and then the final system was designed to argue that this was the only possible location. Indeed, Mr. Moylan testified what would be needed if the line had to go to a further location, while the remaining PECO witnesses simply said a further location was not possible. It is difficult to conceive that the entire natural gas system could fold in Delaware County if this tiny half acre lot did not exist for this project. Rather, the Township submits that PECO would create a design that worked for a new location. PECO needed to argue that this was the only workable location because the site otherwise fails its necessary standards: it was not initially available for sale, it fits the size location by a mere fraction; it requires costly Act 2 remediation, and it is not zoned outright for public utility use. Thus, PECO's argument for reasonable necessity for this exact location defies common sense. This is not surprising after learning that PECO never wavered from its decided-upon location, despite being asked to by officials from the Township, County, and other elected officials as well as resoundingly by the public to pursue alternatives and despite being denied the zoning by the Zoning Hearing Board.

Furthermore, we know through Mr. Oliver that PECO went ahead with tearing up the roads and installing 12' main running 11 ½ miles from the Conshohocken gas plant to the Marple Township site to ultimately connect with the future the Gas Reliability Station even before it had approval from the Zoning Hearing Board. (R.924-25; R.975-76). When asked why, Mr. Oliver testified that this was because PECO was moving forward with parts of the project that needed to occur "regardless of where the final reliability station would be built." (R. 925).

His own statement suggests that PECO is capable of making its project work *regardless of where the final reliability station would be built.*

It cannot be reasonably argued that the chosen site is reasonably necessary for convenience and welfare of public for a myriad of reasons. This site has been consistently opposed by the local community, including government officials and residents alike. PECO has effectively refused to consider alternate locations, by simply dismissing other locations as being unavailable because such sites were not listed for sale even though PECO failed to contact a single owner of such properties to determine if they would voluntarily sell and despite PECO having the power of eminent domain which would enable it to acquire virtually any property it desires regardless of whether an owner will voluntarily sell or not. PECO refused to consider other properties because such parcels were not zoned for utility use, despite assurances from the Township that it would work with PECO on zoning for an appropriate site and despite PECO's position that is now stated position that it is exempt from zoning. This site cannot be argued to reasonably necessary for convenience and welfare of public based on site selection and project design criteria designed to make the 2090 Sproul Road site the only compliant site and designed to eliminate all other potential sites (although PECO made no effort to determine if such other sites could be made compliant. PECO zeroed in on the subject site and designed the project for this site in the Spring of 2019, over six months before advising the Township of the reliability station project and over a year before securing the right to purchase same and has never wavered from its pursuit of same, choosing to litigate to try and force this site on the public rather than take any meaningful steps to pursue acceptable alternative locations.

Indeed, not only has PECO failed to meet its burden, but ample evidence was presented to the contrary showing that siting the Gas Reliability Station at 2090 Sproul Road is not

reasonably necessary for the convenience or welfare of the public. The impacts of the locating the Gas Reliability Station at this location clearly make this site inappropriate for the siting of Gas Reliability Station (or distribution regulation station as such are apparently known elsewhere in the industry). The station is proposed to be built in an area where a utility should not be. Given the proximity of a densely populated residential community and immediately adjacent restaurant and shopping district, the proposed site is not an appropriate location for a Gas Reliability Station from a fire, life safety and public interest standpoint. The proposed station's location places neighboring residences and business and their occupants and customers within the area of Emergency Response Guide (ERG) evacuation parameters and within the potential impact radius for damage (including fire) to property and injury to persons, should an emergency occur. This was confirmed by PECO safety expert. PECO maintains 28 other gate or regulation stations, and none are located closer to residences than this site would be and only 2 others are even near as close. Despite this close proximity, PECO intends that it be unmanned, and local emergency personnel will not be able to access same, even in emergency, without a PECO escort. These factors, given PECO's historic and future promised response time were of great concern to local Fire Marshall. It is submitted that the facility at this location is potentially detrimental to the public welfare as opposed to reasonably necessary for the convenience or welfare of the public.

The emissions coming from the heaters will be the equivalent of 23 homes and contain carbon dioxide, carbon monoxide, water vapor, nitrogen oxides, sulfur oxides and other particulates. The amount of gas coming into the facility and the pressure at which it arrives are substantially greater than exist at customer gas connections. We know that the noise study submitted on behalf of PECO was not of the actual equipment, but rather projections using the

equipment prototype. However, the generators were not included in the study and the noise dampening measures will not eliminate all noise produced at the facility. Additionally, Ms. Wilson explained that the difference in residential versus commercial generators is that commercial generators have higher kilowattage than a home run generator and they have to run weekly to make sure that are in working order. Therefore, when PECO argues the generators will only be an issue in the coldest winter months, the truth is the generators, and the noise and emissions from same, will impact the closely located surrounding residences and businesses all year long. Again, given the immediate proximity to local residences and businesses, which again is not the case with the vast majority of gate stations maintained and operated by PECO, the subject site is not appropriate for a building containing a Gas Reliability Station, and the siting of same here cannot be found to be necessary for the convenience or welfare of the public. It is submitted that the siting at this location is nothing if not contrary to the convenience and welfare of the public.

The Township's planning expert found that the proposed use as a Gas Reliability Station is inappropriate for the selected site, due to the inconsistencies and conflicts with intent of the underlying zoning district (zoned for neighborhood businesses) and the goals of the Township's Comprehensive Plan. (Marple Township Statement 5, p.5).

In summary, PECO began the plan for this Gas Reliability Station in the Spring of 2019 and immediately selected 2090 Sproul Road as its preferred location. Seven months later, PECO asked the Township for suggested locations for the Gas Reliability Station in an effort for the Township to feel engaged in the process. PECO then tried its best to fit 2090 Sproul Road into its designed criteria for all projects, which did not quite fit. Finally, PECO has made the argument that no either location would work for its Gas Reliability Station and thus, this location

is reasonably necessary for the convenience or welfare of the public. It cannot be found that PECO has, with any credibility, proven by substantial evidence that the siting of this Gas Reliability Station is reasonably necessary for anyone other PECO, and certainly not for the convenience or welfare of the public.

b. The proposed fence is not a facility, and fails in the alternative, because the buildings are not reasonably necessary

It is the Township's position that, because the Gas Reliability Station is not reasonably necessary for the convenience or welfare of the public, the proposed fence is moot.

c. PECO's proposed Gas Reliability Station should be subject to Marple Township Zoning Code and regulations

Because PECO cannot meet its burden by substantial evidence, the Commission should find that PECO's proposed public utility building, sited at 2090 Sproul Road, is not reasonably necessary for the public convenience or welfare, and therefore, Marple Township may exercise zoning power over the proposed project.

VIII. CONCLUSION

Based upon all of the foregoing, it cannot be found that PECO has, with any credibility, proven by substantial evidence that the siting of this Gas Reliability Station is reasonably necessary for convenience or welfare of the public. Accordingly, PECO's Petition for a finding of necessity under Section 619 of the MPC should be DENIED in its entirety.

Respectfully Submitted,

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/s/ J. Adam Matlawski, Esquire

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APPENDIX A

Proposed Findings of Fact

Proposed Conclusions of Law

Proposed Ordering Paragraphs

PROPOSED FINDINGS OF FACT

1. On February 26, 2021, PECO filed a Petition with the Commission for a Finding of Necessity Pursuant to 53 P.S. §10619 that the Situation of Two Buildings Associated with a Gas Reliability Station in Marple Township, Delaware County is Reasonably Necessary for the Convenience and Welfare of the Public.

2. On March 11, 2021, Marple Township filed a petition to intervene and on April 14, 2021, filed an Answer with New Matter to PECO's Petition opposing the Petition.

3. Prior to filing its Petition in this matter, PECO submitted a zoning application with the Marple Township Zoning Hearing Board seeking a special exception to operate a Gas Reliability Station at the Property. After a hearing on the matter, the Zoning Hearing Board denied PECO's application issuing Findings of Fact and Conclusions of Law. (Exhibit LG-2). PECO appealed the denial of its zoning application to the Delaware County Court of Common Pleas and the matter is currently pending.

4. Public Input Hearings were held on May 25 and 26, 2021, including approximately sixteen (16) hours of public comment, at which time several dozens of Marple Township residents voiced their opposition to and concerns with the siting of the Gas Reliability Station at the proposed location given the property's proximity to residences, family restaurants and businesses and an elementary school.

5. Written testimony, rebuttal and surrebuttal was exchanged by the parties and evidentiary hearings were held before Administrative Law Judge Emily DeVoe ("ALJ DeVoe") via telephonic proceedings on July 15, July 16, July 20, and July 22, 2021.

6. PECO is the current equitable owner of the Property. (PECO Statement No. 1, p. 4; R.908).

7. Douglas I. Oliver, PECO's Vice President of Governmental and External Affairs, testified that proximity to the terminus was one of the primary considerations in finding a location for the Gas Reliability Station, as well as availability, zoning and lot size "with availability being of particular importance." (R.911-12).

8 PECO dismissed other properties that were not listed for sale, as unavailable, while pursuing only the subject property that was also not listed for sale. (R.969).

9. Mr. Oliver testified that the need for the gas reliability project was not because of any current Gas supply shortage and that PECO did not have a current supply shortage. (R913, 13-20).

10. Jim Moylan is a PECO Real Estate Specialist who testified that PECO began working on this project in the Spring of 2019. (R.1122).

11. 2090 Sproul Road was also selected as the site for this project in the Spring of 2019, as evidenced by PECO's "Site Plan" of the proposed facility at the 2090 Sproul Road site first dated May 15, 2019 (Exhibit TF-2 Confidential).

12. PECO's witnesses state over and over that due consideration was given to other properties as well as to the input of the Township and elected officials, but the original drawing of the Gas Reliability Station at the proposed site is dated May 31, 2019, six months before meeting with the Township and seven months before mentioning that the site was a possibility (Exhibit TF-2 Confidential) and more than a year before executing an agreement of sale to purchase the property. (R. 970)

13. PECO stressed the criteria used for the site selection for the Gas Reliability Station. (R. 1123). The four criteria specifically being: (1) that the property is available for purchase, (2) that the property is zoned for utility use, (3) that the property is at least a half an acre and (4) that

the property is located within a half mile from the proposed main terminus at the intersection of Sproul and Lawrence Roads. (R. 1123 – 30).

14. The selected Property was not available for purchase until PECO approached the owner requesting that it be sold to PECO. (R. 1124).

15. Although PECO approached the owner of 2090 Sproul Road to see if the owner would be willing to sell, PECO did not approach a single other property owner to ask if they would sell to them or consider acquisition of any of those properties through eminent domain. (R. 969:23-970:1, 1125:21-1126.1), despite being asked by Township, County and elected officials to find and consider alternative locations.

16. PECO dismissed every other potential property as being unavailable for acquisition, solely based on the property not being then formally listed for sale, without contacting the owner to see if they would consider selling and despite PECO having the power of eminent domain which would enable PECO to acquire any virtually property regardless of the owner's agreement or refusal to sell. (R. 1126:1-24; R. 969:16-22).

17. While the second criteria offered by PECO is that the property is subject to zoning regulations to permit utility use. (R. 1127), the subject Property is in a district where utility use is not permitted by right and is only permitted by special exception. (R. 1127).

18. PECO was informed by the Township that if an appropriate alternate site could be obtained, the Township could work with PECO on zoning applicable to the alternate site. (R. 980:19-23).

19. According to PECO, an additional factor that eliminated the other properties was that they had existing structures on them that would need to be demolished. (R. 1134).

20. While the proposed site does not have an existing structure on it, the site was a former gas station and auto repair, and PECO will need to undertake costly active environmental remediation on the site to develop same for the proposed Gas Reliability Station. (R. 1134).

21. The 2090 Sproul Road site has already been subjected to tank removal and soil remediation and mitigation pursuant to Pennsylvania Act 2 and is subject to an environmental covenant from 2013 and that this additional remediation that PECO 2 is willing to do and says is for the benefit of the public is really only necessary because PECO is going to be disturbing the soil to build a new Gas Reliability Station on the property. (R1135:1-1136:3).

22. Mr. Moylan's direct testimony states that the station had to be located proximate to the gas main terminus, however he admitted that the Gas Reliability Station could be in a different location. (Moylan Statement p. 4).

23. If it were to be located at a site outside of the half mile radius from the gas main terminus, PECO would have to install a pair of additional gas mains from the terminus to the site and then back from the site to the terminus. (Id.).

24. On November 19, 2019, PECO met with Marple Township to advise the Township of the project. Although PECO knew its selected location was 2090 Sproul Road, PECO representatives did not mention any location as a potential site. (R. 915-16; PECO Statement No. 1, p 2).

25. On December 3, 2019, 2090 Sproul Road was the sole property mentioned to the Township as a possible location for the project. (R. 917:1-10).

26. Mr. Moylan testified that, prior to this meeting, the list of other properties had already been considered and dismissed by PECO and they had narrowed in on 2090 Sproul Road. (R. 1131:11-1133:12).

27. From December 9, 2019, through June of 2020, PECO did not have a single conversation with the Township regarding its endeavors to find an appropriate location for this Project. (R. 974-75). PECO made no inquiries to the Township for the Township's thoughts or position regarding any potential site during this period. (R. 921-922).

28. PECO entered into agreement of sale for the Property in June of 2020 and informed the Township on July 26, 2020 (R. 919).

29. PECO went forward with tearing up the roads and installing the 12' main running 11 ½ miles from the Conshohocken gas plant to the Marple Township site to connect with the future Gas Reliability Station even before it had approval from the Zoning Hearing Board for the site. (R.924-25; R.975-76).

30. Mr. Oliver further stated that this was because PECO was moving forward with parts of the project that needed to occur "regardless of where the final reliability station would be built." (R. 925).

31. In a meeting with PECO on November 10, 2020, the Township made it clear that they were opposed to the station being located at 2090 Sproul Road, but informed that the Township was willing to work with PECO to acquire zoning at a more appropriate location within the Township. (R. 927; R. 935; Marple Township Statement No. 1, p. 5).

32. PECO witness Michele Garrity recalled the Township's offer to assist PECO in this regard. (R. 980).

33. Ms. Garrity admits that although PECO has offered a series of statements about PECO's willingness to engage with the community members and elected officials and solicited their feedback and concerns, she could not recall a time when PECO took those concerns and agreed to change the location of a site they had already chosen. (R.987).

34. Mr. Moylan, who has assisted in securing nearly fifty sites for PECO projects, cannot recall a single time in his career where PECO sought an alternate site after receiving feedback from local government. (R. 1144-45).

35. In a meeting on January 7, 2021, the State Representative, State Senator and County Council Members all voiced to PECO their opposition to the project at this location, requesting yet again for PECO to find a suitable location for such a project. (R. 929).

36. For example, the former Don Guanella property on Sproul Road was suggested to PECO, but PECO did not go back and reconsider the property. PECO never approached the owner to determine if they would voluntarily sell same to PECO. PECO dismissed the property for zoning reasons even though the Township had informed that it would work with PECO on zoning for an appropriate site (R 1140:3-16; R1142:7-12).

37. For the first time at submission of surrebuttal testimony, Ryan Lewis of PECO testified that despite the Don Guanella property being within the ½ mile of the Sproul and Lawrence connection and meeting that site selection criteria, the Don Guanella site would not be acceptable to PECO as its location would now cause engineering constraints (SR-3, p.6; R. 122:3-25)

38. Ryan Lewis, Manager of Gas Engineering and Performance Asset Management and stated that the optimal location for the Gas Reliability Station is within a half a mile from the terminus of the line that is coming in from Conshohocken to Sproul and Lawrence Road in Marple. (R. 1213).

39. It was Mr. Lewis' testimony that, based upon the pressure of the lines and engineering issues, the only locations this project as designed would work is at 2090 Sproul Road. (R. 1222).

40. Mr. Lewis also testified that the only other location that satisfied all criteria from his standpoint was 2024 Sproul Road. (R. 1268).

41. Timothy Flanagan, manager for gas system control and plant operations testified that gas will be running through the new line into the Gas Reliability Station at all times. (R. 1337).

42. Mr. Flanagan, like PECO's other witnesses, could not state when it was determined that the connection point would be at the Lawrence and Sproul Road intersection. (R. 1343). He also cannot say whether that point was determined before or after 2090 Sproul was selected as the site. (R. 1343).

42. PECO projects that over the next 10 years natural gas usage will increase annually at 2% per year for Delaware County and 1% per year for Marple Township (PECO Statement – 3, P4:13-5:10), despite population for Marple Township having grown only a total of 2.3% over the entire preceding 10 year period and Delaware County having grown only a total of 1.4% over that same preceding entire 10 year period and gas usage having increased only a total 2.6% in Marple Township and 3.1% in Delaware County over the entire preceding 10 year period. (PECO Statement 3 – SR, p.12-15).

43. The vent stacks from the heaters will emit mainly water vapor and small amounts of carbon dioxide, but Mr. Flanagan could not say for sure that those are the only off gases. (R.1366).

44. The emissions coming from the Gas Reliability Station when the heaters are running will be the equivalent of that of twenty-three (23) homes (R. 1367).

45. PECO would not answer the question regarding additional emissions from the stacks completely, other than saying that there is nothing that would require a permit to be issued. (R.1418-20).

46. The vent stacks will be visible to some neighboring residents. (R. 1368:1-10)

47. Carlos Thillet, who is responsible for PECO for managing financial and service reliability risk of PECO's interstate natural gas and storage contracts testified that the Natural Gas Reliability Station will provide an additional source of supply to meet design day requirements. (R. 1275:19-20; 1276:1-7).

48. PECO has sufficient supply currently in order to meet design day requirements.

49. The reason for the desired additional supply to be added by the project in question is to reduce PECO's reliability on market purchases and reduce the price volatility and to increase reliability. (R.1276:8-20).

50. PECO currently has adequate supply to meet mandated requirements in a safe, least cost manner and as currently structured will have enough supply to meet demand for the coming year (R. 1279:23-1280:11). However, Mr. Thillet testified that the project will not fully resolve deficit in the long term. (R. 1282:1-2)

51. Mike Israni testified on behalf of PECO as an expert in safety of operation in facilities. (R. 1551).

52. Mr. Israni has never been retained in a legal proceeding for any party other than an energy company, nor has he ever rendered an opinion that was in opposition to a facility of an energy company. (R. 1552). He testified that other emissions from natural gas combustion are nitrogen oxides, sulfur oxides and other particulates. (R. 1568).

53. Mr. Israni testified using the Department of Transportation equation for a 12-inch pipe diameter main and a pressure of 525 PSI in the scenario of a serious incident at that natural Gas Reliability Station, the potential impact radius is 190 feet and at a pressure of 200 PSI, the potential impact radius is 117 feet. (R. 1618.3 -1620.4).

54. The potential impact radius is the radius of a sector where if the pipeline fails, the persons or the buildings within that impact circle may be impacted.

55. The failure of a pipeline with the gas ignited would result in the flame or the plume of that flame or fire impacting the people in that radius, with impacts such as such as 2nd degree burns from exposure to flame heat (20 secs), death within 30 seconds and building ignition within 30 minutes, etc. (R. 1618.3 -1620.4).

56. Neighboring residences and Freddy's restaurant, and the occupants of each, are well within the potential impact radius and in danger of damage or injury in the event of emergency.

57. There will be gas on the main coming from Conshohocken to the Gas Reliability Station at all times, not just in times of high demand (R.1336:25-1337:11).

58. Gas will be connected to the distribution system at all times; flow will increase in times of high demand. (R.1337:7).

59. This facility is PECO's first "Gas Reliability Station"; however, this is similar to a gate station, except that a gate station involves a transfer of ownership or custody of the gas from the transmission line to PECO where here it is PECO's gas in the high pressure main prior to the station and the gas will odorized in Conshohocken plant not at the station. (R.1355:4-18).

60. PECO operates 28 gate stations with only 2 others sited as close to nearest residence as the proposed reliability station at 2090 Sproul Road will be. (R.1358:12-24, Exhibit TF-6).

61. All of other 28 are further in distance from residences and PECO does not maintain any gate stations which are closer to residences than the proposed Marple reliability station would be. (R. 1358:23-1359:13).

62. Local emergency responders will not have a key or access to the Gas Reliability Station but would need PECO escort to enter station in time of emergency (R. 1352:3-12).

63. PECO's average response time for gas order calls in the period of 2017 to 2020 was 25 minutes.

64. When the heaters are operating, the gas usage and emissions from the Marple Reliability Station is the equivalent of 23 homes coming from a single property. (R. 1366:16-1367:13).

65. While a reliability station performs a similar function to a gas meter as a house, it is clear that there is substantially more gas connecting reliability station than what's coming to a typical residence and the gas is coming in at a higher pressure. (R. 1370:14-19).

66. The property at 2090 Sproul Road is the gateway to the business shopping district, is in close proximity to residential homes and a Gas Reliability Station is not compatible with residential and retail uses. (Marple Township Statement No. 1, p. 6).

67. Marple Township Fire Marshall, Jim Capuzzi testified that, given the and immediate proximity to a densely populated residential community and immediately adjacent restaurant and shopping district the proposed site is not an appropriate location for a Gas Reliability Station from a fire, life safety and public interest standpoint, and given concerns about the impact of US Department of Transportation 2020 Emergency Response Guide (ERG) evacuation parameters, potential impact radius, line integrity, lack of manning of the facility and PECO historic response times in Marple (Marple Township Statement No. 2, pp. 5-6, R. 1508).

68. In addition to serving a Fire Marshall, Mr. Capuzzi is employed by AON Risk Control, where handles a number of international clients from a property risk control standpoint, fire, explosion, and natural hazardous standpoint and is a certified fire protection specialist, certified by the National Fire Protection Association, and has almost forty-year experience in the field (Marple Township Statement No. 2).

69. The sound level study produced by PECO did not measure the actual equipment to be housed at the location but used projections and did not include all noise producing equipment and processes proposed for the facility. (Marple Township Statement No. 3, pp. 3-4).

70. The fact that this facility is to be sited near the property line and in close proximity to residential homes makes it inappropriate for the site from a noise standpoint. (Marple Township Statement No. 3, p. 4). N

71. Notably, the sound study does not include the generators, which must run once a week as a safety precaution which will result in noise disturbances. (R. 1089; R. 1096-97). Commercial generators generally have higher kilowattage than a home run generator and they have to run for emergencies once a week to make sure they could be kept running. (R.1101).

72. The site is zoned Neighborhood Center District, which allows commercial uses and is generally in an area where an appropriate use would be small-scale commerce where residents can walk, and where uses have synergy with the adjacent neighborhood. (Marple Township Statement No. 5, p. 3).

73. Marple Township Comprehensive Plan update details that Sproul Road is the gateway to Marple, and that “gateway should have a unified and welcoming design that is clear, clean, and informative.” (Marple Township Statement No. 5, p. 4).

74. PECO’s proposal will create a dead space on a prominent corner where it will not afford area residents access to local services. (Marple Township Statement No. 5, pp.3-5).

75. PECO submitted a zoning application with the Marple Township Zoning Hearing Board seeking a special exception to operate a Gas Reliability Station at the Property. After a hearing on the matter, the Zoning Hearing Board denied PECO’s application issuing Findings of Fact and Conclusions of Law finding that Applicant had not satisfied all objective requirements of

the Marple Township Zoning Code to allow the Board to grant the special exception relief requested. (See Exhibit LG-2).

76. Due to the unreconciled zoning issues, plan review comments that remain unaddressed, and the need to resolve site access issues, the proposed -preliminary/Final Land Development Plan for the site at this time cannot be approved at this time.

77. PECO's proposed development adversely affects the public health, safety, and general welfare since the applicant has failed to propose development of the site consistent with the Marple Township Zoning and Subdivision and Land Development Ordinance requirements. (Marple Township Statement No. 6, pp.4-5).

PROPOSED CONCLUSIONS OF LAW

1. The Pennsylvania Public Utility Commission (PUC) has jurisdiction over the parties and the subject matter of this proceeding by virtue of the Public Utility Code, 66 Pa. C.S. §101, et. Seq.

2. PECO is a public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania, supplying natural gas to customers in Southeastern Pennsylvania.

3. Intervenor, Marple Township is a duly organized first class township existing under the laws of the Commonwealth of Pennsylvania.

4. Delaware County is an Intervenor in this matter.

5. Ted Ullman is an adult individual residing in Marple Township, Delaware County, who is an unrepresented party in this matter.

6. Julie Baker is an adult individual residing in Marple Township, Delaware County, who is an unrepresented party in this matter.

7. Section 332(a) of the Public Utility Code (“Code”), 66 Pa. C.S. 332(a), provides that a party seeking a rule or order from the Commission has the burden of proof in that proceeding.

8. The preponderance of the evidence standard requires proof by a greater weight of the evidence. *Commonwealth of Pennsylvania v. Williams*, 732 A.2d 1167 (Pa. 1999).

9. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-ed Indus. Uders Group v. Pennsylvania Public Utility Commission*, 960 A.2d 189, 193 n.2 (Pa. Commw. Ct. 2008) (citing 2 Pa. C.S. 704).

10. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Service Commission*, 942 A.2d 274, 281 (Pa. Commw. Ct. 2008).

11. If the applicant sets forth a prima facie case, then the burden shifts to the opponent. *McDonald v. Pennsylvania Railroad Co.*, 36 A.2d 492 (Pa. 1940).

12. Establishing a prima facie case required either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the opponent.

13. Municipalities may apply local zoning rules to public utility buildings unless the Commission finds that the location of the building is reasonably necessary for the convenience or welfare of the public. Section 619 of the MPC provides the standard for approval of the siting of a public utility building:

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 a 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.

14. A finding by the Commission under Section 619 of the MPC that the buildings for a proposed Gas Reliability Station are reasonably necessary for the convenience and welfare of the public would not entitle PECO to exemption from the subdivision and land development requirements of the Marple Township Subdivision and Land Development Ordinance as Section 619 of the MPC provides only for exemption from the application of zoning regulations upon such finding.

53 P.S. §10619.

15. A municipality may exercise its zoning power over a public utility building unless the Commission determines that the “site is reasonably necessary for the public convenience or welfare.” *Del-AWARE Unlimited, Inc. v. Pennsylvania Public Utility Commission*, 513 A.2d 593, 596 (Pa. Commw. Ct. 1986), *appeal denied*, 527 A.2d 547 (Pa. 1987).

16. In deciding this type of case, consideration must be given to the following:

- A. Whether the Public Utility Commission has jurisdiction over the parties and subject matter pursuant to the Municipalities Code, 53 P.S. § 10619;
- B. Whether the **proposed site** is reasonably necessary for the convenience or welfare of the public;
- C. Environmental impact.

*See Application of Pennsylvania American Water Company for a finding of reasonable necessity, under Section 619 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10619, for the subdivision of lands, and for the proposed situation and construction of the buildings comprising an expansion of the wastewater treatment plant on a site in South Coatesville Borough, Chester County, Pennsylvania (hereinafter “PAWC”), 2006 Pa. PUC LEXIS 91, *8 (Pa. P.U.C. October 25, 2006) (emphasis added).*

17. Therefore, the standard to be applied in granting an exemption under 52 P.S. § 10619 is reasonable necessity for the site, i.e., whether the site is reasonably necessary for the public convenience or welfare. *PAWC*, at. *11.

18. In addition to Section 619, the Commission has adopted a final policy statement order intending to further the State's goal of making State agency actions consistent with sound land use planning by considering the impact of its decisions upon local comprehensive plans and zoning ordinances. *See* 31 Pa. Bull. 951 (February 17, 2001).

19. The policy statement provides that the Commission will consider the impacts of its decisions upon local comprehensive plans and zoning ordinances when reviewing applications for the following:

- (4) Certificates of public convenience.
- (5) Siting electric transmission lines.
- (6) Siting a public utility "building" under section 619 of the Municipalities Planning Code (53 P.S. §10619).

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

21. PECO has not proven by substantial evidence that the situation of the buildings for a Gas Reliability Station is reasonably necessary for the convenience or welfare of the public.

22. The Commission does not find PECO credible in its analysis of the properties and attempt to prove reasonable necessity.

23. PECO is not exempt from the Marple Township Zoning Code.

24. Due to the unreconciled zoning issues, plan review comments that remain unaddressed, and the need to resolve site access issues, the proposed Preliminary/Final Land Development Plan for the site at this time cannot be approved at this time.

25. PECO's proposed development adversely affects the public health, safety, and general welfare since the applicant has failed to propose development of the site consistent with the Marple Township Zoning and Subdivision and Land Development Ordinance requirements.

PROPOSED ORDERING PARAGRAPHS

It is ordered that:

1. PECO's Petition for a Finding of Necessity pursuant to 53 P.S. 10619 that the situation of two buildings association with a Gas Reliability Station in Marple Township, Delaware County is reasonably necessary for the convenience and welfare of the public is denied.

2. PECO's request that the proposed security fence be deemed a facility and exempt from local zoning regulations is denied.

3. PECO must comply with the applicable sections of the Marple Township Zoning Code and Subdivision and Land Development for its proposed Gas Reliability Station.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing, Main Brief of Intervenor Marple Township 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:

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Respectfully Submitted,

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Dated: August 23, 2021

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