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August 23, 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 for filing in the above-referenced proceeding is the Main Brief of PECO Energy Company. Copies will be provided as indicated on the Certificate of Service.

Thank you for your continued attention to this matter.

Respectfully,
/s/ Christopher A. Lewis
Christopher A. Lewis

Enclosures

cc: Certificate of Service List (w/ encl.)

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

MAIN BRIEF OF PECO ENERGY COMPANY

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August 23, 2021

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I. INTRODUCTION

PECO Energy Company (“PECO”) respectfully submits this Main Brief in support of its Petition for a Pennsylvania Public Utility Commission (the “Commission”) finding that: (1) its proposed Natural Gas Reliability Station’s buildings in Marple Township, Delaware County are reasonably necessary for the convenience or welfare of the public pursuant to Section 619 of the Municipalities Planning Code (“MPC”), 53 P.S. § 10619; and (2) the Natural Gas Reliability Station’s perimeter security fence is a public utility facility, and therefore exempt from local municipal land use regulation.

Pennsylvania courts have established an enduring principle that municipalities do not have the power to zone with respect to utility structures other than buildings. *See, e.g., Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 679 (Pa. Cmwlth. 2018) (citations omitted), *appeal denied*, 192 A.3d 1106 (Pa. 2018) (“*SPLP 2018*”). This principle is rooted in sound reasoning because, as the Supreme Court recognizes:

[L]ocal authorities not only are ill-equipped to comprehend the needs of the public beyond their jurisdiction, but, and equally important, those authorities, if they had the power to regulate, necessarily would exercise that power with an eye toward the local situation and not with the best interests of the public at large as the point of reference.

PPL Elec. Utilities Corp. v. City of Lancaster, 214 A.3d 639, 643–44 (Pa. 2019) (*quoting Duquesne Light Co. v. Upper St. Clair Twp.*, 105 A.2d 287, 293 (Pa. 1954)).

Consistent with these well-established principles, the construction of the public utility facilities comprising the Natural Gas Reliability Station, including the Security Fence, are exempt from local zoning. PECO proposes to include as part of the design of the Natural Gas Reliability Station two buildings that will serve, among other things, to protect the equipment, to dampen ambient sound, and enhance aesthetic appearance. Under MPC § 619, such buildings are exempt

from local zoning if the Commission determines that the situation of the buildings is reasonably necessary for the convenience or welfare of the public.

Here, PECO has satisfied this burden by demonstrating that the location of the Natural Gas Reliability Station is reasonably necessary because it will: (1) enhance reliable natural gas supply in Marple Township and Delaware County, (2) address local demand and low pressures in Marple Township and Delaware County, and (3) ensure the proper functionality of the Natural Gas Reliability Station. As demonstrated below, of all the sites reviewed by PECO for the siting of the Station (including sites recommended by state and local officials and members of the community), 2090 Sproul Road was not only the optimal site, but indeed it was the only site that satisfied PECO's standard site selection criteria and engineering needs. Further, the buildings themselves are reasonably necessary for the public convenience and welfare because they will protect PECO's equipment from weather exposure, secure the equipment from unauthorized access, and dampen sounds generated by the Natural Gas Reliability Station.

Intervenors generally do not oppose the building of the Natural Gas Reliability Station. Rather, they oppose the proposed location at 2090 Sproul Road because of either misconceptions about the purpose and operation of the Station and/or their desire for other types of development at this location. In support of their opposition, Intervenors raise a host of unsubstantiated issues that the Commission and courts have clearly held to be outside the limited scope of a Section 619 proceeding, such as: (1) questioning the need for the project generally; (2) general safety allegations about the Station; (3) alleged lack of transparency by PECO in developing the project or cooperating with the community; (4) alleged quality of life issues caused by the Station, such as noise, glare, or traffic; (5) alleged negative economic consequences of the Station on local businesses and residential property values; and (6) alleged health effects on the community and

general allegations about climate change. Denying PECO's Petition on the basis of these unfounded, "not in my back yard" concerns, which are not germane to the scope of this proceeding, is precisely the type of local control of public utilities that Pennsylvania courts have long sought to avoid. *See, e.g., PPL Elec. Utilities Corp.*, 214 A.3d at 659-60. To the extent the Commission determines that any of these issues are relevant in this proceeding (notwithstanding precedent holds none are), PECO has presented direct evidence on each issue demonstrating that they have no basis and Intervenors have failed to produce any qualified, countervailing evidence to suggest otherwise.

In short, the evidence of record clearly establishes that the Natural Gas Reliability Station will provide many benefits and that the location selected for its siting is reasonable. Further, absent the location issue, there is no dispute that the buildings associated with the Station are reasonably necessary for the public convenience and welfare. Accordingly, the Honorable Administrative Law Judge ("ALJ") Emily DeVoe and the Commission should find that the situation of the Station's proposed buildings at 2090 Sproul Road is reasonably necessary for the convenience or welfare of the public and, therefore, exempt from local zoning. Furthermore, for the reasons set forth below, the Station's security fence is a public utility "facility" that is likewise exempt from local zoning.

II. BACKGROUND

PECO is experiencing natural gas supply constraints that, over the next 10 years, will result in an increased deficit between its current supply capacity resources and its calculated design day demand requirements, which is the amount of natural gas needed to meet customer demand during a 24-hour period of zero-degree Fahrenheit average temperatures. (PECO Statement No. 2, Direct Testimony of Carlos Thillet, at 3-7; Tr. 1277:1-1281:23). To address this deficit, PECO is implementing a long-term infrastructure project, known as the "Natural Gas Reliability Project", to increase its capacity supply and diminish its design day constraints. (PECO Statement No. 2,

at 7:1-12; Tr. 1281:24-1283:24). The Natural Gas Reliability Project will direct additional supply from PECO's upgraded Liquefied Natural Gas Plant in West Conshohocken ("LNG Plant") to Marple Township, Delaware County, an area within PECO's distribution network that is currently experiencing demand constraints and where PECO projects usage growth over the next 10 years. (PECO Statement No. 3, Direct Testimony of Ryan Lewis, at 3:15-7:7).

To address this local demand and anticipated increase in usage in Marple Township and Delaware County, PECO will transport additional natural gas supply from the West Conshohocken LNG Plant along a new 11.5-mile steel 12-inch over-high-pressure gas main to Marple Township and inject the natural gas into PECO's existing 16-inch trunkline and downstream distribution network. (PECO Statement No. 4, Direct Testimony of Timothy Flanagan, at 3:24-4:5; Tr. 1267:8-18). Before injecting the additional supply of natural gas, the pressure must be reduced to be compatible with PECO's local distribution system, which operates at a pressure of 99 pounds per square inch ("p.s.i."). (PECO Statement No. 4, at 3:24-4:5; PECO Statement No. 3-SR, at 3:18-4:10). This further pressure reduction will be accomplished by PECO's proposed "Natural Gas Reliability Station" (the "Natural Gas Reliability Station" or "Station"), the facility central to this proceeding. (*Id.*).

The Natural Gas Reliability Station's design includes two buildings, a 2,073-square feet "Station Building" and a 160-square feet "Fiber Building." (PECO Statement No. 4, at 5:1-16 & 6:3-7:7). Both buildings will house and protect the Natural Gas Reliability Station's equipment, and the Station Building will provide the added benefit of reducing sounds generated from the Station's equipment. (*Id.*). The Natural Gas Reliability Station also will include a perimeter security fence (the "Security Fence") composed of sound-absorbing material. (*Id.* at 7:10-8:3; *see*

also Exhibits TF-1 and TF-3 for a visual depiction of the modest size and scale of the Station's buildings and Security Fence in relation to the selected site, 2090 Sproul Road.).

Following an extensive site selection evaluation to locate the Natural Gas Reliability Station, PECO determined that 2090 Sproul Road was the only property that satisfied PECO's standard site selection criteria, including engineering considerations. (PECO Statement No. 5, Direct Testimony of Jim Moylan, at 4:1-9:7; Tr. 1123:6-20, 1145:4-1150:11 & 1153:19-25). In February 2020, PECO representatives initially met with the owner of 2090 Sproul Road to discuss acquiring the property. In June 2020, PECO and the owner reached an agreement for PECO to purchase the site. (PECO Statement No. 5, at 8:6-9; PECO St. No. 7-SR, Surrebuttal Testimony of Michele Garrity, at 6:14-16). PECO had originally anticipated beginning construction for the Natural Gas Reliability Station by September 2021 to ensure the project was completed for the 2022-2023 heating season. (PECO Statement No. 1, Direct Testimony of Douglas Oliver, at 5:19-20). As a preliminary step in developing the Natural Gas Reliability Station, PECO filed a zoning application with Marple Township seeking: (1) a special exception for the Natural Gas Reliability Station at the site; and (2) a variance for the Security Fence measuring 8 feet in height around the Natural Gas Reliability Station. (PECO Statement No. 1, at 11:1-4).

On November 18, 2020, the Marple Township Zoning Hearing Board denied PECO's zoning application, which PECO appealed to the Court of Common Pleas of Delaware County to preserve its rights in that proceeding, which appeal is currently pending. (*Id.* at 11:8-11). PECO subsequently filed this Petition with the Commission on February 26, 2021 to seek a finding of necessity pursuant to Section 619 of the MPC that the situation of PECO's proposed Station Building and Fiber Building at the Natural Gas Reliability Station is reasonably necessary for the

convenience or welfare of the public and a finding that the Security Fence is a public utility facility exempt from local land use restrictions.

III. STATEMENT OF THE CASE

PECO is a “public utility” and a “natural gas company” as defined, respectively, in Sections 102 and 2202 of the Pennsylvania Public Utility Code (the “Code”), 66 Pa.C.S. §§ 102, 2202. (PECO Statement No. 1, Direct Testimony of Douglas Oliver, at 2:16-20). PECO provides natural gas distribution service to approximately 534,000 retail customers and transportation service to 1,800 large commercial and industrial customers in southeastern Pennsylvania. (*Id.* at 2:22-3:5).

On February 26, 2021, PECO filed its Petition for a finding of necessity by the Commission pursuant to 53 P.S. § 10619. The Commission assigned the proceeding to ALJ DeVoe and issued a Telephonic Prehearing Conference Notice scheduling a prehearing conference and advising any protests and answers to the Petition to be filed by April 12, 2021. Notice of the Petition, the Prehearing Conference, and the Protest deadline was published in the *Pennsylvania Bulletin* and in both print and digital versions of the *Daily Times and Sunday Times*, which are local Delaware County publications.

Marple Township and the County of Delaware, Pennsylvania (“Delaware County”) filed separate Petitions to Intervene, which PECO did not oppose, and which ALJ DeVoe granted. Two individuals, Theodore Uhlman and Julia Mary Baker, filed Petitions to Intervene in addition to Protests, and were later admitted as full parties to this proceeding following PECO’s indication of no objection to their participation. (Marple Township, Delaware County, Mr. Uhlman, and Ms. Baker are collectively referred to herein as the “Intervenors”). Additionally, Protests were filed by several *pro se* protestants.

ALJ DeVoe conducted telephonic public input hearings on May 25, 2021 and May 26, 2021. Ninety-three individuals testified under oath and two offered comments over the course of

the four public input hearing sessions. Two witnesses, Gregory Fat and Marilia Mancini-Strong, offered exhibits during their testimony at the public input hearings.¹ The concerns raised by the hearing participants generally involved issues not germane to this proceeding, including: (1) the need for the broader Natural Gas Reliability Project generally; (2) safety concerns of the Station, including the risk of fire, explosion, evacuation, vandalism, or terrorism related to the Station; (3) perceived lack of transparency by PECO in development of the project or cooperating with the community; (4) alleged potential quality of life issues caused by the Station, such as noise, glare, or traffic; (5) alleged potential negative economic consequences of the Station on local businesses and residential property values; and (6) alleged potential health impact on the community and general allegations about climate change.

On May 14, 2021, PECO submitted its Direct Testimony and on July 6, 2021, Intervenors Marple Township, Delaware County, Ms. Baker, and Mr. Uhlman submitted written Rebuttal Testimony and Exhibits. On July 12, 2021, PECO filed a Motion in Limine, arguing, *inter alia*, that much of the Intervenors' Rebuttal Testimony was outside of the scope of a Section 619 proceeding, contained hearsay, or was purported expert testimony that did not meet Pennsylvania's *Frye* standard for admissibility of expert testimony codified by Pennsylvania Rule of Evidence 702. On July 13, 2021, PECO filed Surrebuttal Testimony to respond to testimony at the public input hearings and Intervenors' Rebuttal Testimony.

An evidentiary hearing was held on July 15, July 16, July 20 and July 22, 2021. At the hearing, ALJ DeVoe granted, in part, PECO's Motion in Limine filed on July 12, 2021, and struck certain Rebuttal Testimony and Exhibits offered by Marple Township, Mr. Uhlman, and Ms.

¹ On June 30, 2021 and July 29, 2021, in response to PECO's objections and motions to strike exhibits and testimony offered at the public input hearings, ALJ DeVoe issued Interim Orders that granted in part, and denied in part, PECO's objections and motions to strike and struck certain portions of testimony of Mr. Fat, and exhibits of Mr. Fat and Ms. Mancini-Strong.

Baker. The parties conducted cross-examination and submitted the following testimonies and exhibits subject to any corrections identified on the record, which were admitted into evidence by ALJ DeVoe:²

- PECO Statement No. 1, Direct Testimony of Douglas Oliver, Confidential and Nonconfidential Versions, including PECO's Exhibits DIO-1 (confidential and nonconfidential portions) and DIO-2.
- PECO Statement No. 2, Direct Testimony of Carlos Thillet, including PECO's Exhibits CPT-1 through CPT-4.
- PECO Statement No. 3, Direct Testimony of Ryan Lewis, Confidential and Nonconfidential Versions, including PECO's Exhibits RL-1, RL-2, RL-3 (Confidential),
- PECO Statement No. 3-SR, Surrebuttal Testimony of Ryan Lewis, including PECO's Exhibits RL-4, RL-5, RL-6, and RL-7.
- PECO Statement No. 4, Direct Testimony of Timothy Flanagan, Confidential and Nonconfidential Versions, including PECO's Exhibits TF-1, TF-2 (Confidential), TF-3, TF-4, TF-5, TF-6, and TF-7
- PECO Statement No. 4-SR, Surrebuttal Testimony of Timothy Flanagan, including PECO's Exhibits TF-8 and TF-9.
- PECO Statement No. 5, Direct Testimony of Jim Moylan, including PECO's Exhibit JM-1.
- PECO Statement No. 5-SR, Surrebuttal Testimony of Jim Moylan, including PECO's Exhibits JM-2, JM-3, JM-4, and JM-5.
- PECO Statement No. 6-SR, Surrebuttal Testimony of Mike Israni, including PECO's Exhibit MI-2.
- PECO Statement No. 7-SR, Surrebuttal Testimony of Michele Garrity, including PECO's Exhibits MG-1, MG-2, and MG-3.

² Following ALJ DeVoe's ruling on PECO's Motion in Limine, pursuant to an agreement with Marple Township PECO withdrew PECO Statement No. 2-SR, Surrebuttal Testimony of Carlos Thillet and agreed to strike certain portions of: (1) PECO Statement No. 3-SR, Surrebuttal Testimony of Ryan Lewis; (2) PECO Statement No. 4-SR, Surrebuttal Testimony of Timothy Flanagan; and (3) PECO Statement No. 6-SR, Surrebuttal Testimony of Mike Israni because these testimonies responded to portions of Intervenor's Rebuttal Testimony stricken by ALJ DeVoe. (Tr. 1522-1529).

- Marple Township Statement No. 1, Rebuttal Testimony of Lawrence Gentile, including Marple Township’s Exhibits LG-1 and LG-2.
- Marple Township Statement No. 2, Rebuttal Testimony of Jim Capuzzi, including Marple Township’s Exhibits JC-1 and JC-2.
- Marple Township Statement No. 3, Rebuttal Testimony of Nancy Wilson, including Marple Township’s Exhibits NW-1 and NW-2.
- Marple Township Statement No. 5³, Rebuttal Testimony of Matt Wannamaker, including Marple Township’s Exhibits MW-1 and MW-2.
- Marple Township Statement No. 6, Rebuttal Testimony of Joseph Mastronardo, including Marple Township’s Exhibits JM-1 and JM-2.
- Marple Township Cross-Examination Exhibits MT-Cross-1 and MT-Cross-2.
- Delaware County Statement No. 1, Rebuttal Testimony of Tim Boyce, including Delaware County’s Exhibits TB-1 and TB-2.
- Baker Statement No. 4, Dr. Edward Ketyer Testimony, including Exhibit EK-1.⁴
- Baker Exhibit JB-1, 3501 Williamson SPL Measurements, Sound Level Measurements 2501 Williamson Ave., Brookhaven, PA 19015 and accompanying Exhibit JB-2, Sound Measurement Affidavit of Christine Howze.
- Baker Exhibit JB-9, Marple Safety Coalition’s “Recommendations for Appropriate Sites in Marple for Proposed PECO Natural Gas Reliability Station.”
- Uhlman Exhibit 4, Uhlman Graphic 4, which is purported to be reordered data from PECO’s Exhibit TF-6.
- Uhlman Exhibit 8, a document confidentially produced by PECO and named by Uhlman as “Heater Specs.”
- Uhlman Exhibit 9, an Ambient Sound Survey and Noise Impact Assessment dated June 22, 2020 and produced confidentially by PECO.

ALJ DeVoe adopted a briefing schedule on July 21, 2021, which was subsequently modified by Interim Order on August 10, 2021, with main briefs in this matter due by August 23,

³ Marple Township withdrew Marple Township Statement No. 4.

⁴ ALJ DeVoe admitted Dr. Ketyer’s testimony into evidence and qualified that it would be afforded an appropriate level of evidentiary weight. (Tr. 1671:14-25).

2021, and reply briefs due by August 30, 2021. PECO hereby submits this Main Brief in support of its Petition.

IV. STATEMENT OF THE QUESTIONS INVOLVED

Whether the situation of PECO’s proposed Natural Gas Reliability Station’s buildings is reasonably necessary for the convenience or welfare of the public?

Suggested Answer: Yes.

Whether PECO’s proposed Natural Gas Reliability Station’s Security Fence is a public utility facility exempt from local municipal land use restrictions?

Suggested Answer: Yes.

V. LEGAL STANDARDS

A. BURDEN OF PROOF

Section 332(a) of the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *See Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000); *Applications of Transource Pennsylvania, LLC for Approval of the Siting & Constr. of the 230 Kv Transmission Line Associated with the Indep. Energy Connection - E. & W. Projects in Portions of York & Franklin Ctys., Pennsylvania Petitions of Transource Pennsylvania, LLC for A Finding That A Bldg. to Shelter Control Equip. at the Rice Substation in Franklin Cty., Pennsylvania & the Furnace Run Substation in York Cty., Pennsylvania*, No. A-2017-2640195, 2021 WL 2143699, at *12 (Pa. P.U.C.) (Opinion and Order, May 24, 2021) (“*Transource*”). The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. *Hurley*, 754 A.2d. at 1286. This burden may shift between the parties during the course of a trial.

Transource, supra, at *12. If the party with the burden of production fails to introduce sufficient evidence the opposing party is entitled to receive a favorable ruling. *Id.* Once the party with the initial burden of production introduces sufficient evidence to make a *prima facie* case, that burden shifts to the opposing party. *Id.* A *prima facie* case is established if there is enough shown to make a finding of the existence of a fact permissible, or it may mean that such finding is obligatory in the absence of other evidence. *In re Fink's Est.*, 21 A.2d 883, 888 (Pa. 1941). If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to his position. *Transource supra*, at *12.

Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion to be entitled to a verdict in his favor. *Id.* at *13. The burden of persuasion determines which party must produce sufficient evidence to meet the applicable standard of proof. *Id.*, (citing *Hurley*, 754 A.2d 1283). The degree of proof required before an administrative tribunal is a preponderance of the evidence. *See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of the evidence is the lowest degree of proof recognized in civil judicial proceedings. *Id.* (citing *Se-Ling Hosiery v. Margulies*, 70 A.2d 854, 856 (Pa. 1950)). Preponderance of the evidence is proof which “fairly outweighs the probative value of any proof offered against the claim” or “fairly preponderate[s] in favor of his claim.” *Se-Ling Hosiery*, 70 A.2d at 856. (emphasis in original). In sum, “[t]he litigant’s burden of proof before administrative tribunals...is satisfied by establishing a preponderance of evidence which is substantial and legally credible”, i.e. not mere “suspicion” or by only a “scintilla” of evidence. *Samuel J. Lansberry, Inc.*, 578 A.2d at 602.

B. PUBLIC UTILITY FACILITIES ARE EXEMPT FROM LOCAL ZONING.

It is axiomatic that local municipalities lack the authority to regulate the design, location, or construction of public utility facilities. *See PPL Elec. Utilities Corp.*, 214 A.3d at 659–60 (Pa. 2019) (“[t]he General Assembly ‘vested in the [PUC] exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utility facilities.’”) (*quoting Chester Cty. v. Philadelphia Elec. Co.*, 218 A.2d 331, 333 (Pa. 1966)). This enduring principle reflects the General Assembly’s clear intent that one regulatory body – the Public Utility Commission – be vested with the power to regulate public utility facilities in furtherance of uniformity, and to avoid inviting municipalities to create their own patchwork of supplementary regulations to enforce at a whim. *See SPLP 2018*, 179 A.3d at 692-93.

The Public Utility Code broadly defines the term “facilities” as:

All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility.

66 Pa. C.S. § 102. Moreover, the Commission and the Commonwealth Court have both held that the term “facilities” is to be broadly construed. *See Application of Duquesne Light Co. for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code*, No. R-00974104, 1998 Pa. PUC LEXIS 167, *78-79 (Recommended Decision, March 18, 1998) (*citing Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72, 76 (Pa. Cmwlth. 1995)); *see also S. Coventry Twp. v. Philadelphia Elec. Co.*, 504 A.2d 368, 372-73 (Pa. Cmwlth. 1986) (siren towers were “facilities”, “thus properly fall within the zoning-exempt operations of a public utility.”)

C. APPROVAL OF THE SITUATION OF PUBLIC UTILITY BUILDINGS UNDER THE MUNICIPALITIES PLANNING CODE.

A limited exception to the rule against municipal regulation of the siting of public utility “facilities” is with respect to the siting of public utility “buildings.” *See SPLP 2018*, 179 A.3d at 679 (“Pennsylvania courts consistently construe Section 619 narrowly and hold a township has no power to regulate a public utility by zoning ordinances with regard to uses and structures that are not buildings.”) (citations omitted); *see also Petition of Pennsylvania-Am. Water Co. for A Finding on an Expedited Basis That Two Buildings to Shelter Booster Pumps to Be Constructed in Dunbar Twp., Fayette Cty., Pennsylvania, Are Reasonably Necessary for the Convenience or Welfare of the Pub.*, No., P-2015-2513587, 2016 WL 1689629, at *5 (Pa.P.U.C.) (Opinion and Order, Apr. 21, 2016) (“PAWC”).

The General Assembly in Article VI of the MPC, 53 P.S. § 10619, empowered the Commission, upon petition by a public utility, to exempt public utility buildings from local municipal regulation if the Commission determines that the “situation of the building in question is reasonably necessary for the convenience or welfare of the public.” Section 619 specifically provides that:

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. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.

53 P.S. § 10619. Thus, a municipality may not exercise its zoning powers over a public utility building if the Commission determines, pursuant to Section 619 of the MPC, that the “site is

reasonably necessary for the public convenience or welfare.” *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm'n*, 513 A.2d 593, 595 (Pa. Cmwlth. 1986); *see also Newtown Twp. v. Philadelphia Elec. Co.*, 594 A.2d 834, 836-37 (Pa. Cmwlth. 1991) (*discussing Duquesne Light Co., supra* and its progeny finding that the MPC § 619 exemption applied to zoning ordinances and subdivision regulations).

Furthermore, the Commonwealth Court has explained, “[w]e do not interpret [Section 619 of the MPC] as requiring the [Commission] to reevaluate the entire project. [Section 619 of the MPC] merely directs [the Commission] to determine whether the *site* of the [proposed facility] is appropriate to further the public interest.” *Del-AWARE Unlimited, Inc.*, 513 A.2d at 595 (emphasis in original).

In evaluating land use decisions, the Commission has adopted a final policy statement that the Commission will consider the impacts of its decisions upon local comprehensive plans and zoning ordinances when reviewing certain applications, including the siting of public utility buildings in a Section 619 proceeding. *See* 52 Pa.Code § 69.1101(3). Importantly, though, Section 619 of the MPC does not require a utility to prove that the site it has selected is absolutely necessary or that it is the best possible site; rather it need only show that the building is reasonably necessary. *O'Connor v. Pa. Pub. Util. Comm'n*, 582 A.2d 427, 433 (Pa. Cmwlth. 1990).

As to the scope of a Section 619 proceeding, the Commission has further clarified that the “analysis concerns only *proposed buildings* ... and whether the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public.” *Petition of Sunoco Pipeline, L.P. for A Finding That A Bldg. to Shelter the Walnut Bank Valve Control Station in Wallace Twp., Chester Cty., Pennsylvania Is Reasonably Necessary for the Convenience or Welfare of the Pub. Petition of Sunoco Pipeline, L.P. for A Finding That A Bldg.*

to Shelter the Blairsville Pump Station in Burrell Twp., Indiana Cty., Pennsylvania Is Reasonably Necessary for the Convenience or Welfare of the Pub., No. P-2014-2411941, 2014 WL 5810345, at *25 (Pa. P.U.C.) (Opinion and Order, Oct. 2, 2014) (“*Petition of SPLP 2014*”) (emphasis in the original). The Commission further clarified that “the inquiry . . . should not address whether it is appropriate to place the valve and pump stations in certain areas, but, rather, should address whether the buildings proposed to shelter those facilities are reasonably necessary for the convenience or welfare of the public.” *Id.* at *26.

Ancillary issues not related to the siting of the buildings, such as issues related to the siting or route of the public utility’s facilities, public safety, or environmental requirements, are outside the scope of a Section 619 proceeding. *Id.* at *8 (“[A]pproval of the siting or route of the pipeline; or . . . a finding that the proposed pipeline complies with relevant public safety or environmental requirements. . . [t]hose issues are outside the scope of this proceeding.”). Indeed, ALJ Barnes succinctly framed the proper scope of a Section 619 proceeding in a case that involved a similar scenario to this proceeding, stating: “**concerns about gas pressure, gas emissions, noise levels and other health and safety issues are valid concerns; however, approval of the construction of a gate station is beyond the scope of this proceeding.**” *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 (Initial Decision, August 16, 2013) at 22 (emphasis added); *adopted by the Commission on exceptions*, 2013 WL 6835113, at *13 (Pa.P.U.C.) (Opinion and Order, Dec. 19, 2013) (“*Petition of UGI*”) (“[w]e further conclude that many of the issues and concerns raised by the Intervenors are beyond this

Commission's jurisdiction in this matter and were properly limited by the ALJ via her granting PNG's Motion in Limine.”)

Once the Commission finds that the site chosen is reasonably necessary, this decision will not be disturbed by the Commonwealth Court if the finding is supported by “substantial evidence,” which is that quantum of evidence that a reasonable mind might accept as sufficient to support that conclusion. *See O’Connor* 582 A.2d at 433; *see also PAWC, supra*, 2016 WL 1689629, at *6.

VI. SUMMARY OF ARGUMENT

This proceeding involves an attempt by a municipality to dictate the location of a public utility facility based on the opinion of some local residents who simply want the facility to be located someplace else. The evidence of record clearly establishes that the local opinion, which has promoted a series of baseless fears, is misinformed, motivated by “not in my backyard” reasoning, and marked by inconsistent and conflicting positions.

PECO is implementing its Natural Gas Reliability Project to address supply capacity constraints across its entire distribution system. PECO’s need for this reliable supply—and the construction of this project as one solution to address the supply constraints—has been the subject of PECO’s Purchased Gas Cost proceedings before the Commission since at least 2015 and has been explicitly addressed in Joint Settlements in those proceedings since 2018.

PECO is proposing to install a pressure reducing station, the Natural Gas Reliability Station, in Marple Township, Delaware County, because that is the area within PECO’s distribution system where the additional reliable supply is needed most.

PECO selected 2090 Sproul Road as the site for the Natural Gas Reliability Station because it was the only site that met PECO’s site selection criteria, specifically: (1) availability; (2) appropriate zoning; (3) adequate size; and (4) a location that satisfied engineering constraints.

Importantly, while the Intervenor raised hypothetical questions regarding PECO's site selection process—such as questioning why PECO did not contact property owners whose properties had not been placed on the market for sale or lease, or why PECO did not consider using eminent domain—Intervenor offered no expert testimony to show that these alternative methods were reasonable, feasible, or that they would have led to a different result. While some witnesses at the public input hearings claimed that PECO had failed to evaluate other suitable sites, the evidence adduced during the evidentiary hearing showed, to the contrary, that PECO had in fact considered *all* of the sites recommended by Marple Township, elected officials, and others, including those identified in Ms. Baker's Exhibit JB-9, "Marple Safety Coalition's Recommendations for Appropriate Sites in Marple for Proposed PECO Natural Gas Reliability Station". Given the complete absence of any countervailing evidence, ALJ DeVoe and the Commission should find as a fact that PECO reasonably concluded that 2090 Sproul Road was the optimal site – and indeed the only reasonable site—for the location of the Natural Gas Reliability Station.

Similarly, Intervenor introduced no evidence to challenge the benefits of constructing buildings and a security fence to shelter the public utility equipment at the Station. The un rebutted evidence shows that these benefits would include dampening sounds, protecting the equipment from the elements, enhancing security, and aesthetic appeal. Accordingly, ALJ DeVoe and the Commission should find as a fact that: (1) the construction of the proposed Station Building and Fiber Building is reasonably necessary for the convenience or welfare of the public; and (2) the Security Fence is a public utility facility exempt from local land use restrictions.

Further, as a matter of law, the construction and siting of the Natural Gas Reliability Station's facilities are not at issue in this proceeding.⁵ Rather, the subject of this proceeding is limited to: (1) the *situation of the proposed buildings*—the Station Building and the Fiber Building—that can be regulated by local zoning absent a finding under Section 619 of the MPC, and (2) separately, whether the Security Fence is a public utility facility that is exempt from local zoning because Marple Township has attempted to regulate this public utility facility. Nevertheless, the public input hearing witnesses and Intervenors sought to challenge the siting of the buildings by claiming, *inter alia*, that the siting of the Station (as well as the overall Natural Gas Reliability Project) is inappropriate, arguing that PECO is attempting to locate an “experimental” and “industrial” facility in a residential area. Even if this contention were germane to this proceeding, which it is not, the evidence of record established that it—and the public perceptions that underlie it—are flatly wrong.

The evidence presented during the evidentiary hearing shows beyond question that the Natural Gas Reliability Station is not an experimental facility. Rather, it is a regulating station similar to PECO's 28 other gate stations and thousands of regulating stations nationwide operated safely by natural gas distribution companies. The only differences between this Station and PECO's other gate stations are that: (1) PECO will already own the natural gas arriving at this Station (whereas at the other gate stations PECO acquires ownership at those stations); (2) no natural gas odorization will occur at this Station; and (3) this Station has a smaller footprint and operates at lower pressures than PECO's other gate stations. Contrary to concerns about safety expressed by witnesses during the public input hearings, it is undisputed that PECO has not had

⁵ As noted above, the Commonwealth Court in *Del-AWARE Unlimited, Inc.* established that Section 619 proceedings are not proceedings to approve a public utility's project—here the Natural Gas Reliability Project and the Natural Gas Reliability Station at 2090 Sproul Road. 513 A.2d at 595; *see also* *Petition of UGI* (Initial Decision), *supra*. at 22 (“approval of the construction of a gate station is beyond the scope of this proceeding.”).

any incidents at any of its gate stations at least since 1986 (which is as far back as the relevant records go), and PECO's overall safety record—based on an examination of data maintained by the federal Pipeline Hazardous Materials and Safety Administration (“PHMSA”)—is exemplary. Issues concerning pipeline safety raised by Mr. Timothy Boyce and Mr. Jim Capuzzi, the expert witnesses offered by Delaware County and Marple Township, respectively, should be given no weight because: (1) neither Mr. Boyce nor Mr. Capuzzi is qualified as an expert in pipeline safety; (2) Mr. Boyce's concerns about “delayed ignition events” for natural gas, as contrasted with natural gas liquids, were contradicted by basic scientific fact, his own testimony in an earlier proceeding before the Commission, and a report he received from consultants retained by Delaware County to evaluate the safety of the Adelphia natural gas pipeline; (3) neither Mr. Boyce nor Mr. Capuzzi studied any data or performed any analysis relating to the Natural Gas Reliability Station; and (4) most importantly, as a matter of law, they have misconstrued federal and state law relating to pipeline safety.

As explained by PECO witness Mike Israni, a former PHMSA official and pipeline safety expert, the federal regulations and guidelines establishing evacuation zones and potential impact radii do *not* prohibit the siting of regulating stations within those zones and radii. To the contrary, the federal regulations permit the siting of facilities within high consequence areas and it is undisputed in this proceeding that PECO will comply with all federal and state safety requirements that apply for the facility.

The evidence of record also established that the Natural Gas Reliability Station is not an “industrial plant” as contended by Intervenors and participants at the public input hearings. For instance, there will be no manufacturing, refining, processing, or other chemical operations at the Station. Even though odorization is commonly performed at PECO's gate stations, there will be

no odorization at the Natural Gas Reliability Station because the natural gas will already have been odorized at PECO's West Conshohocken LNG facility. Similarly, while Ms. Baker introduced testimony from a pediatrician (Dr. Ketyer) regarding potential harm arising from *all* fossil fuel air emissions, it is undisputed that, under the pertinent regulations promulgated by the Department of Environmental Protection ("DEP"), the pre-heaters to be installed at the Station are considered to be sources of such minor significance that no air permit is required. The Commission has no jurisdictional authority to impose more stringent environmental protections on public utilities or to conclude that an emissions source is harmful when DEP has determined by blanket exemption that it is not.⁶

The evidence of record also persuasively refuted claims that PECO is attempting to "fit a square peg into a round hole" by locating the Station in a residential area. First, contrary to the opinions held by lay witnesses, it is both common and necessary for natural gas distribution companies to locate district regulating stations in residential areas. As PECO witness Mike Israni explained, regulating stations are found where natural gas is needed to be delivered into the distribution systems, which is often in residential or commercial areas, and reliability stations generally are used to lower pressure into distribution mains, which are mostly located in residential or commercial areas. A majority of PECO's existing gate stations are located in residential areas.

Second, 2090 Sproul Road is *not* in a residential zoning district under Section 300-19 of the Marple Township Zoning Ordinance, where public utility use is prohibited. Instead, 2090 Sproul Road is located in an "N Neighborhood Center" zoning district that includes commercial uses and specifically allows public utility use by special exception. It is undisputed that this

⁶ Moreover, even if the Commission had such authority, it should not exercise it in this case, where the only evidence of record relating to harm from combustion of methane is from a pediatrician who was not qualified to perform, and who did not perform, any analysis of the Station, the concentration levels of various pollutants that might be emitted, or the atmospheric conditions that would apply to the dispersal of any such emissions.

location is adjacent to a main thoroughfare (Sproul Road) which *already* generates traffic and noise and which roadway feeds the commercial establishments situated in the N Neighborhood Center district. PECO Exhibit JM-5 contains photographs of the commercial buildings located adjacent and in proximity to the site, while PECO Exhibits TF-4 and JM-4 show various renderings for the design of the Station and its Security Fence. ALJ DeVoe and the Commission can examine the photographs and see that the proposed Natural Gas Reliability Station—which will be constructed on what is now a vacant lot that was contaminated by leakage from a former Texaco gasoline filling station—is consistent with and an enhancement to the existing commercial area.

Finally, the evidence of record shows that PECO has taken appropriate steps to address potential sounds from the Station. It is undisputed that PECO and its engineering firm, EN Engineering, contracted with Hoover & Keith Inc., consultants in acoustics and sound control engineering, to assist PECO with the development of a plan to mitigate sounds that might be generated by the Station. As a result, PECO modified the design of the Station to add several sound-dampening features, including acoustic-dampening insulation and doors, forced air ventilation, sound restrictions and absorptive barriers on HVAC equipment, in-line silencers on regulator valves, and Sound Fighter SonaGuard material in the Station’s Security Fence. Because of these additions, Hoover & Keith Inc. concluded that the sound produced by the Station would be below the levels set forth in the Marple Township noise ordinance and, given the existing ambient noise, would only potentially increase sound levels by an additional 1 to 3 dB, representing a minimal impact in terms of human perception. Significantly, while Marple Township witness Nancy Wilson expressed concerns about sound from the backup generator (which would operate only in emergencies) and sounds rising above the vertical plane of the Security Fence, she conducted no independent analysis or study with respect to this Station, and

further admitted that the Station would otherwise comply with the noise ordinance if the Hoover & Keith Inc. recommendations were implemented.

The danger of allowing local municipalities to control the siting of public utility facilities based on local opinion was highlighted during the evidentiary hearing by the testimony regarding an alternative site—2024 Sproul Road. It is undisputed that *before* PECO decided to purchase 2090 Sproul Road, PECO solicited recommendations for sites from Larry Gentile, the Township Manager of Marple Township. Mr. Gentile recommended two locations, one of which was 2024 Sproul Road. As the address indicates and Mr. Gentile testified, this site is merely 1,000 feet further down Sproul Road—and just like the site that PECO selected—is next to both commercial establishments and residences.

During the evidentiary hearing, Ms. Baker, who lives across the street from the 2090 Sproul Road site, repeatedly attempted to elicit testimony that the 2024 Sproul Road site would have been a better selection. And Mr. Gentile, because of what he claims to have learned about the Station since his initial recommendation, now takes the position that the 2024 Sproul Road site is *not* an appropriate location contrary to Ms. Baker’s apparent position. Had PECO followed the whim of local opinion, instead of its site selection criteria, and attempted to accommodate these shifting and conflicting positions, it would have been faced with continual arguments that the facility should be moved “someplace else”. Indeed, the Township’s pledge to assist PECO with “any necessary zoning” if PECO would now forego its selection of 2090 Sproul Road is an invitation to participate in a local popularity contest in which there can be no winner.

The site chosen by PECO for the Natural Gas Reliability Station is not only a reasonable site, but also the optimal site. Indeed, it is the *only* site PECO identified that satisfies PECO’s standard site selection criteria. Accordingly, the Commission should grant PECO’s instant Petition

and allow the construction of the Station Building, the Fiber Building and the Security Fence related to this important reliability project to go forward.

VII. ARGUMENT

As repeatedly recognized in ALJ DeVoe's various Interim Orders, the only issue germane to this proceeding is whether the siting of the Natural Gas Reliability Station's *buildings* is reasonably necessary for the convenience or welfare of the public and this is *not* a proceeding to approve of PECO's Natural Gas Reliability Project or the siting of the Natural Gas Reliability Station's *facilities*. See, e.g., July 29, 2021 Interim Order; June 30, 2021 Interim Order; and May 18, 2021 Interim Order; see also *Del-AWARE Unlimited, Inc.*, 513 A.2d at 596, n.4. If PECO's designs for the Natural Gas Reliability Station did not include buildings, then PECO would be able to locate the Natural Gas Reliability Station at 2090 Sproul Road without the need for this Section 619 proceeding. *Petition of UGI*, at *12. Here, however, PECO's designs include two buildings because they are necessary to protect the Natural Gas Reliability Station's facilities and equipment and have the added public benefit of dampening sounds generated by the Station and enhancing aesthetic appeal. Separately, PECO seeks a finding that the Station's Security Fence is a public utility "facility" exempt from zoning because the Intervenor's have improperly attempted to conflate this narrow proceeding with an indictment against PECO's Natural Gas Reliability Station, and the broader Natural Gas Reliability Project.

While this proceeding is focused on a narrow issue, the record demonstrates that PECO's selection of 2090 Sproul Road for the siting of the Natural Gas Reliability Station as a component of the Natural Gas Reliability Project: (1) is reasonable; (2) was driven by careful consideration of multiple criteria (including engineering considerations, availability, and zoning); (3) that PECO expended considerable effort to determine the location for the Natural Gas Reliability Station; and

(4) that the Station's buildings and Security Fence provide significant benefits to PECO and the public.

A. THE SITUATION OF THE NATURAL GAS RELIABILITY STATION'S PROPOSED BUILDINGS IS REASONABLY NECESSARY FOR THE CONVENIENCE OR WELFARE OF THE PUBLIC.

a. The Need for PECO's Natural Gas Reliability Project.

The entire purpose of the Natural Gas Reliability Project is to increase the reliability of PECO's natural gas service by increasing capacity supply to reduce its deficit between capacity resources and design day requirements. (PECO Statement No. 2, at 3-7; Tr. 1277-1284). The Commission is already well aware of this deficit as a result of PECO's Purchased Gas Cost ("PGC") proceedings and is further aware that PECO is projecting this deficit to grow over the next 10 years. (PECO Statement No. 2, at 7:14-22; Exhibits CPT-1, at 25-31, CPT-2, at 18-25, & CPT-3, at 19-29). As the Commission is also aware as a result of the PGC proceedings, PECO's calculations show that: (1) the level of exposure to volatile market area prices during cold weather periods is increasing; and (2) the deficit between currently contracted-for pipeline storage and firm transportation deliveries, as well as LNG and propane capacity, and anticipated future peak-day firm-demand will continue to grow. (PECO Statement No. 2, at 6:7-13; *see also* CPT-3, at 19:9-15).

PECO's Natural Gas Reliability Project will address the design day deficit by upgrading the peaking capacity of its West Conshohocken LNG Plant, which will serve to reduce price volatility and overdependence on delivered supply and spot market purchases. (PECO Statement No. 2, at 7:3-12). Again, this long-term solution has been before the Commission for several years, at least since 2015. (PECO Statement No. 2, at 3:22-4:4). To be effective, the increased capacity from the LNG Plant must then be directed to an area where it is most needed to address customer

usage demands. (*Id.* at 7:3-12; Tr. 1282:6-1283:24). As discussed further below, that area is Marple Township. (PECO Statement No. 3, at 5:3-6:18).

To be clear, PECO is *not* seeking approval of the Natural Gas Reliability Project. Indeed, it is well-settled that approval of the project is outside the scope of a Section 619 proceeding and that a public utility must decide in the first instance what facilities are needed and where to locate those facilities. *See SPLP 2018*, 179 A.3d at 693 (“public utility company, in exercise of its managerial functions, may determine in first instance, type and extent of its service to public”); *see also Petition of UGI*, at *12 (approval of the larger project was not an issue in the 619 proceeding). Furthermore, no substantial evidence was presented by the Intervenors or at the public input hearings that refuted the overall need for the Natural Gas Reliability Project. Instead, Intervenors only attempted to question the need for the Natural Gas Reliability Project. Moreover, the record demonstrates that PECO provided direct evidence regarding the need for the project. (PECO Statement No. 2; Tr. 1275-1306). In sum, to the extent there is any question about the need for the project, there is substantial evidence to support PECO’s decision to implement the Natural Gas Reliability Project in order to increase its supply reliability and reduce its design day requirements deficit by upgrading the LNG Plant.

b. The Need to Direct Additional Natural Gas Supply to Marple Township.

Following extensive analyses, PECO made the decision to direct the increased supply from PECO’s West Conshohocken LNG Plant to Marple Township. For example, the record provides that PECO conducted a normalized natural gas usage projection based on historical customer counts and calculated that PECO’s normalized usage will increase in Delaware County annually at 2% and in Marple Township annually at 1% over the next 10 years. (PECO Statement No. 3, at 4:3-5:10). Further, the record provides that PECO conducted computer hydraulic modeling and

determined that the intersection of Lawrence and Sproul Roads in Marple Township is a “null point” along PECO’s existing 16-inch distribution trunkline, meaning that this area is experiencing the lowest gas pressures along the trunkline, which signifies that demand for additional natural gas in this area is highest. (*Id.* at 5:11-7:6). This area is also the furthest away hydraulically from any other supply source. (*Id.*) The combination of increased projected normalized natural gas usage and current supply constraints on the 16-inch distribution trunkline requires that PECO add gas supply to the Marple Township distribution system to ensure a reliable supply when it is needed most. (*Id.* at 5:3-7:7). To meet this need, PECO’s additional supply from the LNG Plant will be transported along a the 11.5-mile 12-inch over-high-pressure gas main and arrive in Marple Township along Sproul Road. (PECO Statement No. 4, at 3:25-4:23). PECO’s proposed Natural Gas Reliability Station at 2090 Sproul Road will then connect the new 12-inch gas main with the existing 16-inch distribution trunkline and reduce and regulate the pressures between the two pipe systems. (*Id.*).

Here again, no substantial evidence was offered by the public or the Intervenors that PECO’s decision to direct the increased supply from the Natural Gas Reliability Project to Marple Township, and specifically to the Lawrence and Sproul Roads intersection “null point”, was unnecessary or unreasonable. Specifically, no evidence was admitted that contradicts or otherwise challenges PECO’s projections for increased customer count or usage in Delaware County and Marple Township, or that PECO is experiencing high demand, and low pressure, at the Lawrence Road and Sproul Road intersection requiring additional gas supply. At the evidentiary hearings, Intervenors questioned PECO witness Ryan Lewis at length on PECO’s calculations and overall determination of the need for additional supply to Marple Township and Delaware County; however, Mr. Lewis provided direct evidence to support PECO’s decision to provide Marple

Township with the additional supply from the LNG Plant upgrade that is a component of the Natural Gas Reliability Project. (Tr. 1205-13 & 1223-25; *see also* Confidential Tr. 1228-36, 1243-47 & 1259-65).

Despite the extensive testimony on this subject, the issues of “need” for the Natural Gas Reliability Project, its relationship to Marple Township, and specifically the location of the Natural Gas Reliability Station in Marple Township are not germane to a Section 619 proceeding; rather, the proper inquiry is whether the situation of the proposed buildings is reasonably necessary for the public convenience or welfare. *See SPLP 2018*, 179 A.3d at 693; *see also Petition of UGI*, at *12. However, should the Commission decide that the issue is germane to this Section 619 proceeding, there is substantial evidence to support PECO’s decision to direct the LNG Plant additional supply to Marple Township, and specifically to the Lawrence and Sproul Roads intersection.

c. The Benefits of the Natural Gas Reliability Station’s Buildings.

Whether the buildings are reasonably necessary for the convenience or welfare of the public *is* an issue germane to this proceeding. PECO’s designs for the Natural Gas Reliability Station includes buildings, which the record provides will have benefits to the Station and to the community. PECO’s witness Mr. Tim Flanagan testified that the main Station Building will enclose and provide weather protection for the pipes, valves, regulators, and electronic equipment necessary for the operation of the Natural Gas Reliability Station and provide climate control for the proper functioning of this equipment. (PECO Statement No. 4, at 6:3-12). The Station Building will be locked to protect the equipment from unauthorized access. (*Id.* at 6:14-16). Additionally, as discussed further below in more detail, the Station Building will include several sound-dampening features. (*Id.* at 10:3-11:4). Likewise, the Station’s Fiber Building will protect sensitive telecommunication equipment necessary to connect the Station to PECO’s control room.

(*Id.* at 6:18-7:2). Further, the record provides that the Station building more broadly will provide an added benefit to the public by enhancing community aesthetic appeal, and that as part of the construction of the Station and buildings PECO will address residual contamination at the property in accordance with Pennsylvania regulations. (PECO Statement No. 5, at 9:4-10:3; PECO Statement No. 7-SR, at 9:23-10:5; Exhibit MG-3). No party offered evidence disputing that the Station’s buildings will provide these benefits. Accordingly, there is substantial evidence to find that the Natural Gas Reliability Station’s buildings serve a clear purpose and will benefit PECO and the public.

d. The Proposed Site at 2090 Sproul Road is the Optimal Location for the Natural Gas Reliability Station.

PECO’s decision to locate the Natural Gas Reliability Station at 2090 Sproul Road followed a detailed analysis of 14 sites that involved multiple considerations. As explained above, PECO determined that the intersection of Lawrence and Sproul Roads was the “null point” in PECO’s distribution system where additional natural gas supply must be injected, or as close to this location as possible, with the Natural Gas Reliability Station being the facility that actually connects the additional supply from the new 11.5-mile gas main to the existing distribution system. (PECO Statement No. 3, at 7:4-7; Tr. 1267:8-18; PECO Statement No. 4, at 4:16-23). Next, as PECO witness Mr. Ryan Lewis explained, natural gas pressure considerations require that the Station be located within a half-mile of the “null point”. The additional supply of natural gas from the LNG Plant will lose pressure at an exponential rate as it travels along the 11.5-mile gas main towards the “null point”, and at a distance of 11.5 miles the pressure is calculated to be approximately 175 p.s.i. (PECO Statement No. 3-SR, at 4:13-5:3; Exhibit RL-5). Any additional distances that the natural gas would need to travel would cause continued pressure reduction at an exponential rate. (*Id.*). This anticipated pressure loss is a critical engineering consideration in

locating the Natural Gas Reliability Station because the Station as designed would not function properly if the inlet pressure from the 11.5-mile gas main fell below 150 p.s.i. (*Id.* at 3:12-4:10). Thus, to ensure necessary natural gas inlet pressures for the Station, PECO determined that the Station should be located within a certain radius of the Lawrence and Sproul Roads intersection “null point”, which PECO calculated to be a half-mile. (*Id.* at 4:11-5:3; PECO Statement No. 3, at 7:20-8:14).

Once PECO established this half-mile radius from Lawrence and Sproul Roads, PECO worked with real estate broker Newmark Knight Frank and with Marple Township representatives to find potential locations for the Natural Gas Reliability Station. (PECO Statement No. 5, at 2:18-8:9; PECO Statement No. 7-SR, at 4:19-7:17; Marple Township Statement No. 1, Rebuttal Testimony of Lawrence Gentile, at 3:11-15). The subject site, 2090 Sproul Road, was the only site considered that satisfied each of PECO’s established criteria.⁷ (PECO Statement No. 5, at 8:3-5; Tr. 1142:13-18 & 1153:19-25). For instance, the property was located within a half-mile of the Lawrence and Sproul Road intersection. (PECO Statement No. 5, at 8:19-9:1). Also, the property was over a half-acre in size, which was the determined size needed to construct the Station. (*Id.* at 3:16-19 & 9:1-2). Furthermore, the property was available because it had been advertised for lease and as an available pad site for several years. (*Id.* at 8:5-6). Finally, and importantly for the Commission’s consideration here, the property’s zoning permits public utility uses as a special exception. (*Id.* at 9:2-4; Tr. 1154:9-14; *see also* Marple Township Zoning Ordinance, 300

⁷ As explained in the testimony of Jim Moylan, PECO also considered 580 Reed Road, 541 Hilldale Road, 2024 Sproul Road, 850 Paxon Hollow Road, 700 Abbott Drive, 946 & 964 West Sproul Road, 4980 State Road, 27-43 South Sproul Road, 825 Reed Road, 1797 Sproul Road, 401 Parkway Drive, 861 Sussex Blvd. 10-20 Lawrence Road, and 2590 Harding Drive. (PECO Statement No. 5, at 4:19-5:26). Each of these sites, however, failed one or more of the site selection criteria. (*Id.* at 5:28-8:1).

Attachment 5, Section 300-37: Permitted Uses – Commercial Township of Marple); *and see* 52 Pa. Code § 69.1101(3).

Having established that PECO conducted a reasonable and thorough site selection analysis, Intervenor offered no countervailing evidence that PECO’s site selection process was unreasonable. Instead, Intervenor extensively questioned PECO witness Ryan Lewis on the engineering considerations for the Project and the Station, which were fully addressed by Mr. Lewis. (Tr. 1205-1225; *see also* Confidential Tr. 1228-1265). Intervenor also challenged PECO’s property selection process and argued, *inter alia*, that: (1) the Natural Gas Reliability Station was incompatible with the community surrounding 2090 Sproul Road; (2) alternative “better sites” existed and claimed that PECO failed to consider these locations; and (3) questioned PECO’s site selection efforts for the Natural Gas Reliability Station.

PECO addressed each one of these issues and demonstrated that: (1) the Natural Gas Reliability Station is an appropriate use for 2090 Sproul Road; (2) the other proposed “better sites” were not feasible for the Station; and (3) Intervenor’s other arguments as to PECO’s site selection process were unsupported by the record.

i. Intervenor’s Arguments that the Situation of the Natural Gas Reliability Station is Incompatible with Zoning or Surrounding Uses Lack Merit.

Marple Township’s witness Mr. Matt Wanamaker testified that the Natural Gas Reliability Station should not be placed at 2090 Sproul Road because public utility use is “inconsistent” with the neighborhood surrounding this property. (*See* Marple Township Statement No. 5, at 4:3-4 & 5:6-8). These contentions are primarily premised on misapprehensions that the Natural Gas Reliability Station is an “industrial plant.” It is not. There will be no manufacturing, refining, processing, or other chemical operations at the Station. (PECO Statement No. 4-SR, at 5:20-21). But this position is further undercut by the property’s own zoning classification and is further

diminished by Marple Township’s own statements that other properties *not* zoned for public utility use *would* be “an appropriate site” for the Station.

First, while the Commission will consider the impact of its decisions upon local comprehensive plans and zoning ordinances pursuant to 52 Pa. Code § 69.1101(3), this does not mean that the Commission will allow local zoning to trump the Commission’s determination of the public welfare. By enacting Section 619 of the MPC, the General Assembly has expressly vested public utilities with the authority to waive local zoning requirements upon a finding by the Commission that the siting of buildings is necessary for the public welfare. Moreover, as explained by PECO’s witness Mr. Jim Moylan, 2090 Sproul Road is zoned for public utility use by special exception, and as such, Marple Township specifically contemplated public utility use on this property along Sproul Road in enacting the zoning classification. (PECO Statement No. 5, at 9:2-4; Tr. 1154); *see also Freedom Healthcare Servs., Inc. v. Zoning Hearing Bd. of City of New Castle*, 983 A.2d 1286, 1291 (Pa. Cmwlth. 2009) (“A special exception is not an exception to a zoning ordinance but rather a use which is expressly permitted absent a showing of a detrimental effect on the community.”) (emphasis added).

Second, Marple Township’s suggestions to PECO that other nearby properties should be considered for the Natural Gas Reliability Station, namely 2024 Sproul Road and the “Don Guanella School Property” at 825 Reed Road, further contradicts Mr. Matt Wanamaker’s testimony because neither of these properties are zoned to permit public utility uses. (*Compare* Marple Township Statement No. 5, at 3:11-15, *with* PECO Statement No. 5-SR, at 5:4-8 & 6:22-23). Mr. Wanamaker’s testimony also conflicts with other testimony by Marple Township, such as Mr. Lawrence Gentile, who stated that Marple Township “pledged that the Township would support PECO’s development, *including necessary zoning*, of a Gas Reliability Station *at an*

appropriate site” (Marple Township Statement No. 1, at 5:8-10 (emphasis added)), even though 2090 Sproul Road is an appropriate site because the Township has already zoned this property to include public utility uses by special exception. This situation, a municipality favoring certain properties for public utility uses at certain times—sometimes known as spot zoning—is precisely what Pennsylvania courts have held is impermissible in siting of public utility facilities. *See, e.g., Philadelphia Elec. Co.*, 218 A.2d 331, 333; *In re Realen Valley Forge Greenes Assocs.*, 838 A.2d 718, 729 (Pa. 2003) (“Spot zoning is the antithesis of lawful zoning in this sense. In spot zoning, the legislative focus narrows to a single property and the costs and benefits to be balanced are those of particular property owners.”)

Furthermore, the record demonstrates that the Natural Gas Reliability Station is otherwise “consistent with” surrounding uses. PECO presented evidence that the Natural Gas Reliability Station is comparable, yet less extensive in size and scale, to PECO’s 28 other gate stations, a majority of which are located in residential areas, and some of which are located within the same proximity to residences as the Natural Gas Reliability Station. (PECO Statement No. 4, at 8:8-21; Exhibit TF-6). Testimony at the evidentiary hearing indicated that residences were built *after* some of PECO’s other gate stations were constructed, thereby indicating that these facilities do not negatively affect surrounding residential communities. (Tr. 1359-60). Further, PECO witness Mike Israni explained that it is both common and necessary for natural gas distribution companies to locate district regulating stations in residential areas. (PECO Statement No. 6-SR, at 14:22-15:5). Also, as discussed below (and contrary to Mr. Wanamaker’s concerns about potential noise), the Natural Gas Reliability Station’s sound levels will comply with Marple Township’s ordinance, and its CWT heater will operate primarily during the winter, which will result in minimal effect during operation, if any, on the residences or adjacent commercial property (PECO

Statement No. 4-SR, at 7:12-22 & 8:8-9:6). Accordingly, the record demonstrates that the Natural Gas Reliability Station is compatible with surrounding uses at 2090 Sproul Road.

ii. Alternative Sites Proposed for the Station Are Infeasible.

The evidentiary record clearly shows that PECO thoroughly considered 14 alternate sites for the Natural Gas Reliability Station, including every site proposed by Intervenors, elected officials, and those by the local community group “Marple Safety Coalition.” (PECO Statement Nos. 5, at 4:19-8:1 & 5-SR, Surrebuttal, at 2:11-7:22; Tr. 1131:11-22 & 1156:17-1157:4; Exhibit JB-9). These alternative sites were eliminated from PECO’s consideration for the Natural Gas Reliability Station for one or more reasons, including engineering impracticality.⁸ As noted earlier, Section 619 of the MPC does not require a utility to prove that the site it has selected is absolutely necessary or that it is the best possible site; rather the utility must only demonstrate “reasonable necessity” for a particular location, not absolute need. *See O’Connor*, 582 A. 2d at 433.

PECO must decide in the first instance what facilities are needed and where to locate those facilities. As a matter of law, unless PECO acted in an arbitrary or capricious manner, its decision should remain undisturbed. *See, e.g., Lower Chichester Twp. v. Pa. Pub. Util. Comm’n*, 119 A.2d 674 (Pa. Super. 1956); *Abington Electric Co. v. Pa. Pub. Util. Comm’n*, 198 A. 901 (Pa. Super. 1938).

During the evidentiary hearing, Intervenors presented no evidence that PECO’s decisions were arbitrary or capricious. To the contrary, when questioned about specific sites—notably, the

⁸ PECO Exhibit RL-6 is a chart depicting the calculated inlet natural gas pressure for several considered properties, including 825 Reed Rd., 1797 Sproul Rd., 850 Paxon Hollow Rd., 401 Parkway Dr., 861 Sussex Blvd., 10-20 Lawrence Rd., 700 Abbott Dr., and 4980 State Rd., all of which inlet pressures were calculated to be below the regulator design inlet pressure of 150 p.s.i.. (PECO Statement No. 3-SR, at 11:1-12:21). Additionally, the Direct Testimony of Jim Moylan summarizes the various reasons why alternate sites were not selected. (PECO Statement No. 5, at 5:28-8:1).

2024 Sproul Road site (the lot next to the Wawa), an industrial park property known as 700 Abbott Road, and the “Don Guanella School Property” at 825 Reed Road, PECO provided testimony showing that it had good reason to eliminate each of these locations from consideration.

1. PECO eliminated 2024 Sproul Road from consideration for several reasons.

From an engineering perspective, a potentially viable property presented by the Intervenors is 2024 Sproul Road, which is located only 1,000 feet from, and on the same street as, 2090 Sproul Road. (PECO Statement No. 5-SR, at 6:18; Tr. 1222:8-13 & 1268:20-25). However, this property was eliminated from PECO’s consideration because it: (1) is zoned for office use, which does not permit public utility use; (2) was not advertised as available at the time of PECO’s site selection process; and (3) contains an office structure, believed to be occupied, that would need to be demolished in order to construct the Natural Gas Reliability Station. (PECO Statement No. 5-SR, at 6:18-7:7). Furthermore, no evidence was presented that PECO would receive support from the public or Marple Township to install the Natural Gas Reliability Station at this location and such support would be unlikely given that this property is surrounded by residences and commercial properties, including a Wawa, a TD Bank, and a WSFS Bank, and also is located in the same business area as 2090 Sproul Road. (*Id.*; Tr. 1008:3-1010:16). Even more telling, while Marple Township initially presented this property as an option for the Station, Marple Township witness Mr. Lawrence Gentile subsequently withdrew such support during the evidentiary hearing, now contending that the property is *not* appropriate for the Natural Gas Reliability Station. (Tr. 1008-10 & 1311:12-1313:2). Accordingly, 2024 Sproul Road was not a viable option for the Natural Gas Reliability Station, PECO reasonably eliminated it as a potential site, and Marple Township now appears to agree with that conclusion.

2. PECO eliminated 700 Abbott Road from consideration because of engineering constraints and availability reasons.

The property at 700 Abbott Drive did not meet PECO's site selection criteria for several reasons. First, the property is located approximately one mile from the selected site of 2090 Sproul Road and is outside of PECO's determined half-mile radius from the Lawrence and Sproul Roads intersection "null point" along the 16-inch distribution trunkline in Marple Township. (PECO Statement No. 3-SR, at 11:1-7). The increased distance to this property would require the installation of additional gas main from Sproul Road, to 700 Abbott Drive, and then additional gas main back to Sproul Road – resulting in an additional two miles of gas main. (*Id.* at 11:7-12). The additional length of gas main to 700 Abbott Road would cause the natural gas pressure to reduce to 28 p.s.i. when it arrives at that location, which is far below the necessary 150 p.s.i. required for PECO's regulators intended to be used at the Natural Gas Reliability Station. (*Id.* at 11:15-20; Exhibit RL-6). In addition to the engineering considerations, the property contains a warehouse, which is currently leased, that would need to be demolished to install the Natural Gas Reliability Station, thereby rendering the property occupied and unavailable. (PECO Statement No. 5-SR, at 3:6-12). Accordingly, 700 Abbott Road was reasonably eliminated as a viable option for the Natural Gas Reliability Station.

3. PECO eliminated the Don Guanella School Property because of engineering constraints and other availability complications.

Distance and other complications eliminated the Don Guanella School Property from PECO's consideration for the Natural Gas Reliability Station. The Don Guanella School Property is a large parcel (216 acres) and portions of the property are located both within, and outside of, PECO's determined half-mile radius. (Tr. 1139:22-1140:6). Compared with the 2090 Sproul Road property, the Don Guanella School Property would require 0.9 miles of additional 12-inch

gas main along Sproul Road, which would result in a further natural gas pressure drop as it travels the additional distance. (PECO Statement No. 3-SR, at 12:10-15).

Notwithstanding the engineering considerations, other impediments prevented this site from being selected. First, the property was unavailable for purchase during PECO's property selection process because a land developer already had the property under contract for residential and commercial development. (PECO Statement No. 5-SR, at 4:2-4). Also, PECO understood that the land developer and Marple Township were involved in a dispute over this property, which culminated in Marple Township denying development plans for the property. More recently, Delaware County has pursued the property through eminent domain.⁹ (*Id.* at 4:13-5:23; Tr. 1141:5-21). As explained by PECO witness Jim Moylan, these various legal hurdles would preclude the timely acquisition of this property. (*Id.* at 4:21-5:8). Furthermore, the property is zoned for Institutional use, which does not permit public utility use without a variance. (*Id.* at 5:4-8). Accordingly, this property was not a viable option for the Natural Gas Reliability Station and was reasonably eliminated from consideration.

iii. Intervenors' Other Arguments Related to PECO's Site Selection Process were Unsupported.

Finally, the record did not support Intervenors' other claims that PECO's site selection process was inadequate. Intervenors argued that PECO should have supplemented its site selection process by proactively contacting potential property owners for sites that were not publicly advertised as being available for sale or lease to inquire as to whether those owners would be interested in selling their property to PECO. (*See* Tr. 1138:9-22, 1141:2-21, & 1157:5-6). Intervenors also argued that PECO could have used eminent domain to acquire an appropriate site

⁹ *In Re: Condemnation of 124.10 Acres of Land in Marple Twp.* 25-00-04498-03 v. *Delaware County et al.*, CV-2021-006298 (Del. Ct. Com. Pl, filed July 22, 2021).

for the Station. (*See, e.g.*, Marple Township Statement No. 1, at 8:10-17). But Intervenors offered no evidence to support these contentions. Specifically, there is no evidence that these strategies are (or should be) standard practices for a public utility in site selection or acquisition, that they should have been used here, or that they would have led to a different result.

By contrast, PECO provided testimony that, with the assistance of state and local officials, it identified and evaluated several properties for the Natural Gas Reliability Station, it has standard site selection criteria for identifying public utility facility locations, that these criteria were employed in this case, and that this practice was reasonable. (PECO Statement No. 5, at 3:12-21; Tr. 1123:6-20, 1142:13-18 & 1145:4-18). Further, Mr. Moylan offered testimony that PECO only uses eminent domain as an option of last resort in its property acquisition policy and that PECO never threatened eminent domain against the owner as baselessly claimed by Intervenors. (PECO Statement No. 5, at 8:11-13). Accordingly, Intervenors' claims that PECO should have contacted properties not marketed as available or employed eminent domain to find a "better site" are unsupported.¹⁰

e. Conclusion.

In summary, the record demonstrates that 2090 Sproul Road is the optimal location for the Natural Gas Reliability Station and indeed the only viable location among those identified because it satisfies the necessary engineering, availability, and zoning considerations for the Station. Locating the Station at the 2090 Sproul Road location is necessary to insert additional supply of natural gas from PECO's LNG Plant into the Marple Township distribution system at a location where it is needed most. Further, there is no apparent dispute that the buildings accompanying the

¹⁰ It is worth noting that the Intervenors use eminent domain as a two-edged sword against PECO, by claiming that the Company threatened the owner of 2090 Sproul Road with its use (which PECO did not), yet that PECO should have used it with other property owners. (*Compare* Marple Township Statement No. 1 at 8:10-17, *with* Tr. 1126:13-25).

Natural Gas Reliability Station will offer multiple public benefits related to noise, security, and protection. Accordingly, there is substantial evidence in the record to support a finding by the Commission that the siting of the Natural Gas Reliability Station's buildings at 2090 Sproul Road is reasonably necessary for the convenience or welfare of the public.

B. OTHER CONCERNS RAISED DURING THE PROCEEDING ARE BEYOND THE LIMITED SCOPE OF A SECTION 619 CASE AND, IN ANY EVENT, ARE UNSUPPORTED AND LACK MERIT.

Some members of the public raised several unsubstantiated concerns about the Natural Gas Reliability Station at the public input hearings, which Intervenors used in an attempt to broaden this matter and distract from the limited scope of a Section 619 proceeding as defined by the Commission. *See, e.g., Petition of UGI, supra.* These concerns include: (1) questioning the need for the broader Natural Gas Reliability Project; (2) general safety allegations about the Station, including the risk of fire, explosion, evacuation, vandalism, or terrorism; (3) alleged lack of transparency by PECO in development of the project or cooperating with the community; (4) alleged quality of life issues caused by the Station, such as noise, glare, or traffic; (5) alleged negative economic consequences of the Station on local businesses and residential property values; and (6) alleged health effects on the community and general allegations about climate change.

These issues are outside of the limited scope of this Section 619 proceeding and therefore not germane to the Commission's analysis. *Petition of UGI, supra.* Even if the Commission did consider these issues, however, the Commission should find that the opponents of the Station (both lay witnesses at the public input hearing and the Intervenors) failed to meet their burden of proof with respect to them.

As provided above, PECO has met its burden of producing evidence regarding the necessity and benefits of siting both the Station and its buildings at 2090 Sproul Road. *Transource, supra,* at *12. Consequently, the burden of production shifts to the opponents of the siting to

produce sufficient evidence to counter PECO's *prima facie* case. *Id.* In doing so, they can no longer rely on the personal or anecdotal concerns articulated by lay witnesses at the public input hearings. *Transource, supra*, at *19. Instead, under Pennsylvania Rules of Evidence 701 and 702, technical issues require expert testimony to be persuasive enough to support the proposing party's burden of proof or persuasion. As the Commission explained in *Transource, supra* at *18-19:

The Pennsylvania Rules of Evidence provide the parameters within which lay witnesses' testimony may be relied upon for factual findings.

Rule 701. Opinion testimony by lay witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness, helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

The testimony taken at the public input hearings by lay witnesses falls into this category. On various issues, however, expertise is required. For example, while the lay public input witnesses can legitimately express their personal or anecdotal concerns and experience with transmission lines, technical issues such as the health effects of the line, the probability of structural failure, and the effect on real estate values require expert evidence to be persuasive enough to support the proposing party's burden of proof or persuasion.

Here, the Intervenors failed to come forward with expert testimony on many of the concerns raised at the public input hearings, and when the Intervenors did offer expert testimony, it was so devoid of factual analysis, study, or qualification that the Commission should afford it absolutely no weight. *See Harley-Davidson Motor Co. v. Springettsbury Twp.*, 124 A.3d 270, 286 (Pa. 2015) ("an expert cannot base his [or her] opinion upon facts which are not warranted by the record. No matter how skilled or experienced the witness may be, he will not be permitted to guess or to state a judgment based on mere conjecture") (*quoting Collins v. Hand*, 246 A.2d 398, 404

(Pa. 1968); *Snizavich v. Rohm & Haas Co.*, 83 A.3d 191, 197 (Pa. Super. 2013) (“the proffered expert testimony must point to, rely on or cite some scientific authority—whether facts, empirical studies, or the expert's own research—that the expert has applied to the facts at hand and which supports the expert's ultimate conclusion”); *Swift v. Dep’t of Transp. of Com.*, 937 A.2d 1162, 1170 (Pa. Cmwlth. 2007) (The putative expert must show that he has a “reasonable pretension to specialized knowledge on the subject under investigation”); Pa.R.E. 702.

1. Glare and Traffic

Various individuals at the public input hearings raised concerns about glare and traffic in connection with the Natural Gas Reliability Station. However, there was no testimony at the evidentiary hearing (lay or expert) regarding glare or traffic, except for Mr. Flanagan’s testimony that the Station will be unmanned and therefore will have no impact on traffic conditions within Marple Township. (PECO Statement No. 4, at 9:16-17). Accordingly, there is no evidence in the record to substantiate these concerns.

2. Real Estate Values

While many lay witnesses at the public input hearings alleged risks to real estate values as a concern, none of the Intervenors offered expert testimony or any other affirmative evidence regarding this issue. Accordingly, there is no competent evidence of record to sustain the opponents’ burdens of production and persuasion on this issue. Further, PECO presented evidence that many of its other regulating stations are located in residential areas, including instances where residential development occurred after the stations were in operation, thereby indicating that these facilities do not negatively affect surrounding residential communities. (Tr. 1359-60).

3. Vandalism, Cyberattacks, and Terrorism

Various lay witnesses at the public input hearing alleged the risk of vandalism, cyberattacks, and terrorism as reasons for not siting the Station at 2090 Sproul Road.

During the evidentiary hearing, Intervenors adduced no expert testimony regarding these issues. On the other hand, PECO presented testimony that directly addressed the issues of vandalism and terrorism. Mr. Flanagan testified that the Natural Gas Reliability Station, in addition to being remotely monitored, will be surrounded by the Security Fence, which can only be opened by PECO personnel. The Fence and the Station's buildings will be locked to prevent unauthorized access to the equipment. (PECO Statement No. 4, at 6:14-16 & 7:20-23). This testimony further demonstrates that the buildings and Security Fence are necessary for the convenience and welfare of the public.

Further, PECO's expert witness Mr. Israni stated that his review of the PHMSA records did not identify any incidents involving vandalism or terrorism at other comparable regulating stations and that it was common for these facilities to have fencing or locked buildings to prevent unauthorized access. (PECO Statement No. 6-SR, at 14:12-18).

Accordingly, the opponents did not meet their burdens of production and persuasion on these issues. However, PECO clearly met its burden of persuasion as to why the buildings and Security Fence are necessary.

4. Odor

Public input hearing witnesses also expressed concern about possible odor from the Station. Again, the Intervenors introduced no lay or expert testimony or any other affirmative evidence on this issue during the evidentiary hearing.

However, in direct contradiction of these concerns, PECO witness Tim Flanagan explained that the natural gas will be odorized at PECO's West Conshohocken LNG Plant, so no odorization will be performed at the Natural Gas Reliability Station. (PECO Statement No. 4, at 9:4-8).

Accordingly, the opponents failed to meet their burdens of production and persuasion on this issue.

5. Safety

Like the issues addressed above, safety concerns alleged by the Intervenors and participants at the public input hearings are beyond the scope of this proceeding. *See Petition of UGI, supra* at *12. Despite the non-germane nature of these concerns, PECO provided extensive testimony to address public misapprehension about the safety of the Station.

The Natural Gas Reliability Station is not an “experimental” facility and, contrary to the claims of multiple witnesses at the public input hearing, PECO never characterized it as such. Instead, at the Marple Township Zoning Hearing Board meeting, Mr. Flanagan testified that the Natural Gas Reliability Station would be similar to PECO’s 28 other gate stations, with similar equipment and similar operations, except that it would be smaller. (PECO Statement No. 4-SR, at 3:1-4:19). Mr. Flanagan described the Station as the “first such animal” for PECO’s system only because PECO will already own and have odorized the natural gas that is arriving from the LNG Plant, which is in contrast to PECO’s other gate stations where the natural gas is odorized and those facilities are custody transfer points where PECO acquires ownership of the natural gas from third-party suppliers. (*Id.*). Claims by opponents of the Station that it was reasonable to interpret Mr. Flanagan’s remarks as meaning the Station is experimental are belied by the transcript of the Zoning Hearing Board meeting. (*Id.*; Exhibit TF-8). During the evidentiary hearing, Mr. Flanagan rightly rejected and took umbrage at the Intervenors’ efforts to distort his prior remarks. (Tr. 1354:15-1356:10).

In fact, the safety record of PECO’s gate stations—and those of other natural gas distribution companies—is stellar. PECO’s expert witness, Mr. Mike Israni, who served as Senior Technical Advisor and Program Manager – Regulations and Standards for PHMSA for twenty-two years, opined that natural gas pressure regulating stations are extremely safe and are commonly located in residential, commercial, and industrial areas. (PECO Statement No. 6-SR,

at 7:3-6 & 14:22-15:5). Mr. Israni supported this claim based on his review of PHMSA's databases, which identified that no incidents, as defined by 49 C.F.R. § 191.3, have occurred at PECO's gate stations dating back to 1986, the earliest records available. (*Id.* at 7:8-9:4). This was corroborated by PECO's witness Mr. Tim Flanagan who also stated that he was unaware of any incident at PECO's gate stations since he began working at PECO in 1987. (PECO Statement No. 4-SR, at 11:22-12:6).

On a national level, examining thousands of regulating stations operated by other natural gas distribution companies, Mr. Israni's review of PHMSA's records identified only 29 incidents that have occurred since 1986, with only 4 injuries and no casualties. (PECO Statement No. 6-SR, at 7:8-10:9). Mr. Israni testified that a majority of these incidents involved minor problems, such as a valve malfunctioning or simple operational failure, and are not indicative of any type of safety situation. (*Id.* at 10:12-18). Based on his extensive review of PHMSA's available records for regulating stations, PECO's enforcement records, and his extensive knowledge of the natural gas industry, Mr. Israni opined to a reasonable degree of professional certainty that PECO would be able to safely operate the Natural Gas Reliability Station. (*Id.* at 17:9-12).

PECO witness Tim Flanagan also testified that PECO will comply with all applicable federal and state laws and regulations governing the construction, operation, and maintenance of the proposed Natural Gas Reliability Station. (PECO Statement No. 4-SR, at 11:13-20). Mr. Flanagan also explained that the Natural Gas Reliability Station will be monitored by PECO's control room 24 hours a day and seven days a week like PECO's other 28 gate stations. (PECO Statement No. 4 at 11:8-17). The Natural Gas Reliability Station will be equipped with natural gas leak detectors and remote-control valves to shut-off gas flow at the Station, and PECO will have shut-off valves at multiple points along the 11.5-mile gas main and at the LNG Plant (*Id.*;

PECO Statement No. 4-SR, at 13:5-16). PECO also has detailed operational and emergency response protocols in the event of natural gas leaks. (PECO Statement No. 4, at 11:20-26). These protocols require that PECO have a staff member onsite within one-hour for gas odor calls, per industry and regulatory standards, with PECO achieving this result 99.9% of the time. (*Id.*; PECO Statement No. 4-SR, at 14:8-13). PECO also offered testimony that its representatives met with local safety officials to inform them of PECO's safety protocols for the Station. (*Id.* at 15:1-11; PECO Statement No. 4, at 12:13-17). Mr. Flanagan testified at the evidentiary hearing that PECO's protocols and interactions with local emergency officials for this Station would be the same as PECO's protocols for all of its facilities across its four-county service area. (Tr. 1352:3-19).

During the evidentiary hearing, Intervenors Marple Township and Delaware County offered expert testimony from Mr. Jim Capuzzi and Mr. Tim Boyce who opined that the Natural Gas Reliability Station should be situated at a different location due to potential safety concerns. (Marple Township Statement No. 2, at 5-6; Delaware County Statement No. 1, at 16-17). The Commission should give no weight to this testimony.

First, unlike PECO witness Mr. Israni, neither Mr. Boyce nor Mr. Capuzzi is an expert in pipeline safety. Mr. Boyce was admitted only as an expert in emergency response generally (Tr. 830:14-21), and he conceded on cross-examination that the emergency response for an incident at the Natural Gas Reliability Station would be the same in character as that for other transmission pipelines and natural gas distribution mains (Tr. 1071:7-1072:14) and, additionally, that he has adequate resources to handle such a response (Tr. 1072:16-21).

Furthermore, while Mr. Boyce's opinions were based on his fears concerning the possible consequences of a "delayed ignition event," Mr. Boyce admitted during cross-examination that he

is not an expert in the operation of reliability or gate stations, calculating impact zones, hazard assessments, risk assessments, consequence analysis, the siting of reliability or gate stations, or PHMSA regulations. (Tr. 1045:14-1055:3). Mr. Boyce’s credibility was also undermined by his willingness to allow others to consider him an expert in these disciplines even though he does not hold himself out as an expert in them and even though he previously testified to the Commission that he is not an expert in those areas. (Tr. 1053:11-1054:22). Any commentary from Mr. Boyce as to the siting, operations, or safety risks of the Natural Gas Reliability Station at 2090 Sproul Road was unqualified, speculative at best, and should be afforded little to no evidentiary weight. *Swift v. Dep’t of Transp. of Com.*, 937 A.2d 1162, 1170 (Pa. Cmwlth. 2007) (The putative expert must show that he has a “reasonable pretension to specialized knowledge on the subject under investigation”); Pa.R.E. 702.¹¹

Mr. Capuzzi identified his area of expertise as “fire safety and fire protection for industrial and commercial occupancies” (Tr. 1503:4-6); however, Mr. Capuzzi’s overall opinion that “the 2090 Sproul Road site is not an appropriate location for the proposed Gas Reliability Station from a fire and life safety standpoint, and therefore not in the public interest” (Marple Township Statement No. 2 at 6:1-3) is similarly flawed. First, as confirmed during cross-examination, Mr.

¹¹ Moreover, Mr. Boyce’s purported analysis of the risk from a natural gas leak was itself wrong--and demonstrably so. In his testimony in this proceeding, Mr. Boyce claimed that unignited gas clouds are “a volatile, dynamic force” that can “move and flow along the ground for long distances while remaining in the combustible range. Any ignition source, of which there are many in densely populated location that is proposed, can ignite the entire cloud and flash back to the point of release.” (Delaware County Statement No. 1, at 11:3-6). However, when Mr. Boyce testified before the Commission in opposition to the Mariner East pipeline—a highly volatile liquids pipeline carrying ethane and propane—he observed that methane is lighter than air, so natural gas tends to dissipate upon release to the atmosphere. Mr. Boyce noted then that it is highly volatile liquids, not natural gas, that are heavier than air and which tend to concentrate near the ground. (Tr. 1057:22-1060:3) In fact, Mr. Boyce had received a report from G2 Integrated Solutions which explained that, because natural gas rapidly dilutes into the air: (1) a flash fire impact would be negligible; and (2) a vapor cloud explosion is unlikely. (PECO Statement No. 6-SR, at 20:6-22:23; Exhibit MI-2, at 32). Mr. Boyce admitted during cross-examination in this proceeding that he had no reason to believe that an incident involving a leak from the Natural Gas Reliability Station would be different in physical properties than one from a high-pressure natural gas transmission line. (Tr. 1066-1067.) Finally, Mike Israni confirmed that, because natural gas is lighter than air, natural gas from a leak will continue to rise and mix with the air, reducing the concentration of methane below flammable levels. (PECO Statement. No. 6-SR, at 22).

Capuzzi's opinion was not based on any studies of the Natural Gas Reliability Station or review of any data. (Tr. 1506:24-1509:15). Notwithstanding professed concerns about potential leaks and the integrity of underground piping, Mr. Capuzzi admitted that he did not look at any data maintained by the Commission, PHMSA or any other source regarding these items. (*Id.*). Similarly, while he voiced concern about PECO's response times in the event of an odor call, he looked at no data—including readily available reports from Delaware County's 911 center—to assess whether his concerns were justified. (*Id.*). In short, Mr. Capuzzi's views are mere conjecture which cannot sustain an expert opinion. *See Harley-Davidson Motor Co.*, 124 A.3d at 286 (“[a]n expert cannot base his [or her] opinion upon facts which are not warranted by the record. No matter how skilled or experienced the witness may be, he will not be permitted to guess or to state a judgment based on mere conjecture.”) (quotations omitted).

Further, Mr. Capuzzi attempted to incorrectly equate the 2020 Department of Transportation Emergency Response Guidebook (“ERG”) recommended precautionary isolation distance of 100 meters from a natural gas leak with the incompatibility of 2090 Sproul Road for siting of the Natural Gas Reliability Station. (Marple Statement No. 2, at 3:16-5:16). However, these precautionary distances are the same for all natural gas leaks, including those on existing service lines to residential buildings. (PECO Statement No. 4-SR, at 12:20-13:2). According to PECO's expert witness, Mr. Israni, these distances are for emergency preparedness and have no bearing on siting requirements for natural gas distribution facilities, which are based on several considerations, such as engineering. (Tr. 1581:21-1582:1).

Finally, Mr. Boyce and Mr. Capuzzi have misconstrued the federal pipeline safety regulations and guidelines by claiming that the siting of the Natural Gas Reliability Station within an applicable evacuation radius or impact zone is inconsistent with the public welfare. This is

simply incorrect. As Mr. Israni explained, the federal regulations do not prohibit the siting of natural gas distribution facilities near homes or people. (Tr. 1650:8-1651:20.) To the contrary, these facilities frequently need to be located near residences and businesses, because that is “...where the demand is, where the supply is and where the connection points are.” (Tr. 1577:8-10). Rather than constrain the siting of the facility, the federal regulations ensure the protection of the public by imposing additional, more stringent requirements when facilities are located in high consequence areas. (Tr. 1651:7-20). It is undisputed that PECO will comply with all federal and state safety requirements in the construction and operation of the Natural Gas Reliability Station. (PECO Statement No. 4-SR, at 11:13-20).

For all the above reasons, even if safety issues were germane to a proceeding under Section 619 of the MPC, which they are not, ALJ DeVoe and the Commission should find that PECO carried its burdens of production and persuasion on this issue.

6. Noise

As to ambient sound levels associated with the Natural Gas Reliability Station, the record shows that PECO’s engineering firm, EN Engineering, contracted with acoustic and sound control consultant Hoover & Keith Inc. to assist on designing the Station to comply with local noise requirements. (PECO Statement No. 4, at 10:3-7; Exhibit TF-7, at i). Hoover & Keith Inc. conducted an ambient sound survey and noise impact assessment specific to 2090 Sproul Road to determine the potential impact of sounds generated by the Station’s equipment and developed sound mitigation measures for the Natural Gas Reliability Station. (PECO Statement No. 4, at 10:7-15; PECO Statement No. 4-SR, at 8:8-9:6). PECO’s Natural Gas Reliability Station’s designs implement several sound-dampening recommendations by Hoover & Keith Inc. and is designed to comply with the Marple Township noise ordinance and will not appreciably add sounds to the community. (PECO Statement No. 4, at 10:18-11:4; PECO Statement No. 4-SR, at 8:8-9:6.).

Hoover & Keith Inc. estimated that the Station's contribution to background sound levels with PECO's sound mitigating designs will only add 1 to 3 dB to background sound levels, which is representative of only a minimum impact on human perception. (*Id.* at 9:4-6; Exhibit TF-9). PECO's sound mitigating designs for the Station include the use of acoustic-dampening insulation and doors for the main Station Building, a forced air ventilation system to minimize open areas where sounds can escape, sound absorbing or dampening HVAC equipment, and other sound-dampening materials on the Station's regulators and valves. (PECO Statement No. 4, at 10:18-11:2). Lastly, the Station's Security Fence will be composed of Sound Fighter SonaGuard material that is specifically designed to absorb sounds and prevent them from extending beyond the Station's footprint. (*Id.* at 11:2-4).

Intervenors introduced witnesses to counter PECO's testimony regarding the Station's minimal sound impact on the community, but this testimony either supported PECO's own statements, was unsupported by any reliable evidence, or was irrelevant to this proposed Station. Marple Township witness Ms. Nancy Wilson specifically acknowledged that the Hoover & Keith Inc. report indicated that the Station would comply with Marple Township's noise ordinance. (Marple Township Statement No. 3, at 3:18-23). Yet, Ms. Wilson concluded, without conducting any study or assessment of her own (Tr. 1089:1-1096:8), that the Natural Gas Reliability Station would not be appropriate for 2090 Sproul Road because, *inter alia*, the Station will have an emergency generator, will operate 24-hours per day and 7 days a week, and there may be a noise impact in the vertical plane above the 8-foot Security Fence. (Marple Township Statement No. 3, at 3:23-5:17). *Snizavich*, 83 A.3d at 197. ("the proffered expert testimony must point to, rely on or cite some scientific authority—whether facts, empirical studies, or the expert's own research—

that the expert has applied to the facts at hand and which supports the expert's ultimate conclusion”).

While the Hoover & Keith Inc. study did not consider sounds from the back-up generator or the operation of the pre-heaters, it is *not* true that this equipment will operate 24/7. Except for routine testing to ensure that it works, the back-up generator will operate only in the event of a loss of electric power. (PECO Statement No. 4-SR, at 17:10-12). The testing is typically concluded in an hour. (*Id.*). The pre-heaters will be used only intermittently, generally during cold weather. (*Id.* at 17:12-14). Most importantly, while the back-up generator and pre-heaters are integral to the Station, they are situated outside, and not within the buildings that are at issue in this proceeding. (*Id.* at 17:14-17). Consequently, a challenge to the back-up generator and pre-heaters is a challenge to the facility itself, not the building.

PECO will implement its engineering consultants’ recommendations during the construction of the buildings, which further confirms that the buildings are necessary for the convenience and welfare of the public because they will reduce the ambient sound from the piping and equipment. (*Id.* at 17:20-18:5).

Upon implementation of the recommendations, the expected sound contribution will comply with the levels set forth in the Marple Township Zoning Ordinance (50 dBA nighttime maximum noise level, 60 dBA maximum noise level for the property that is adjacent to commercial land). (*Id.* at 18:6-9).

Exhibit TF-9, a table of acoustical terminology, frames the decibel levels in layman’s terms. A sound level of 60 dBA is equivalent to normal conversation. (PECO Statement No. 4-SR, at 18:11-12). It is less loud than the sound of the traffic Marple Township residents already

hear every day from Sproul Road, which is a major thoroughfare with 4 lanes of traffic. (*Id.* at 18:13-15).

Furthermore, the testimony of Marple Township witness Mr. Matt Wanamaker that this Station would have detrimental noise impacts was speculative because Mr. Wanamaker's testimony was not based on any empirical evidence and was only based on his familiarity with noise generated from facilities that are "industrial use." Mr. Wanamaker specifically did not have any familiarity with gate stations.¹² (Tr. 1498:2-1500:3). Accordingly, concerns of the potential sound impacts of the Station on the community are unsupported by the record and have been rebutted by PECO's direct evidence. That evidence demonstrates that PECO took proactive design steps to reduce potential sounds from the Station, including incorporating the use of sound-absorbing material in the design of the Station Building and the Security Fence, which will result in a minimal and reasonable addition of sound by the Station that is compliant with local noise requirements.

Accordingly, while PECO maintains that the issue of noise is not germane to a proceeding under Section 619 of the MPC, the Commission should find in any event that PECO met its burden of production and persuasion as to this issue.

7. Public Outreach

Intervenors and members of the public claimed that PECO was not transparent about the Natural Gas Reliability Project or the Natural Gas Reliability Station and did not collaborate with

¹² ALJ DeVoe and the Commission should give no weight to the sound measurements conducted by Ms. Baker's witness, Ms. Christine Howze, at PECO's Brookhaven gate station. There was no evidence in the record regarding Ms. Howze's qualifications regarding acoustic engineering, so all of her testimony should be disregarded. But more importantly, this testimony is an attempt to "compare apples to oranges" because the Marple Township facility will have sound dampening equipment and absorptive insulation that the Brookhaven gate station lacks, including, among other items, a different heater system and a Sonaguard insulated fence at the perimeter of the gate station. (PECO Statement No. 4-SR, at 19:4-23). Additionally, the Brookhaven gate station operates at higher pressures than the Natural Gas Reliability Station. (*Id.*). Accordingly, any sound measurements from the Brookhaven gate station are not probative of the sound that will be emitted by the Marple Township facility.

the community. Such claims are far afield from the normal scope of a Section 619 proceeding. *See, e.g., Del-AWARE Unlimited, Inc.*, 513 A.2d at 596; *see also Petition of UGI, supra*. Furthermore, these criticisms are not supported by the record, which demonstrates that PECO's outreach efforts were robust.

PECO representatives met with Marple Township officials as early as November 2019 to discuss the Natural Gas Reliability Station and in December 2019 solicited site recommendations from Marple Township officials. (PECO Statement No. 7-SR, at 4:19-5:11). PECO representatives also met with several elected officials, or their staff members, to discuss the Natural Gas Reliability Station in January, July, and November 2020, and in January 2021. (PECO Statement No. 1, at 7:4-8:20; Tr. 902:12-16). PECO also received site recommendations from Marple Township and elected officials and assessed whether these locations were viable for the Station; however, the assessment determined that these locations were not feasible. (PECO Statement No. 5-SR, at 2:16-7:22; PECO Statement No. 3-SR, at 11:1-12:21; Exhibit RL-6).

In addition to PECO's ongoing dialogue with elected and government officials, PECO engaged in extensive direct outreach to the community to provide information about the Natural Gas Reliability Station. PECO created a dedicated landing page on its website for information about the Natural Gas Reliability Station, sent letters, informational materials, and bi-monthly newsletters to 1,336 Marple Township residents, and held four virtual open houses, which were collectively only attended by 42 community members. (PECO Statement No.7-SR, at 7:21-8:14); Tr. 959-60). Further, PECO's involvement in the Marple Township zoning hearing proceeding provided an additional public forum for members of the public to learn about the Station. (PECO Statement No. 1, at 11:4-8; *see also* Exhibit MT-Cross-1). Finally, in response to PECO's meetings with the community and public officials, PECO has proposed several aesthetic and

pedestrian accommodating design elements to the Natural Gas Reliability Station to benefit the community. (PECO Statement No.7-SR, at 9:23-10:5; Exhibit MG-3).

In sum, while not germane to the issue of whether the situation of the Natural Gas Reliability Station's buildings is necessary for the public convenience or welfare, the evidence of PECO's public outreach is substantial and not rebutted by substantial evidence.

8. Air Emissions

Lastly, Intervenors and members of the public raised concerns that the Natural Gas Reliability Station will emit pollutants or will contribute to climate change, which claims were based on misunderstandings of the function and operation of the Station. Specifically, Intervenor Ms. Baker offered testimony of Dr. Ketyer, a pediatrician, that mischaracterized the Natural Gas Reliability Station as a "large fracked gas facility" and claimed that a facility like this would emit harmful pollutants such as particulate matter, volatile organic compounds, nitrogen oxides, carbon monoxide, sulfur dioxide, radon gas, methane, and potentially exacerbate global climate change. (Baker Statement No. 4).

As a threshold matter, these concerns are outside of the limited scope of this Section 619 proceeding. Second, environmental impacts are, in any event, regulated by the Pennsylvania Department of Environmental Protection ("DEP"). *See, e.g., Del-AWARE Unlimited, Inc.*, 513 A.2d at 596 (1986); *see also Petition of UGI, supra*. ALJ Barnes has acknowledged that: "[t]he Commonwealth Court has explained that the Commission is not empowered under Section 619 of the MPC to evaluate the various aspects of the environmental impact of a project and, instead is obliged to defer to the determinations of those agencies with jurisdiction over such impacts." *Petition of UGI* (Initial Decision) at 20. In this case, the DEP has promulgated a regulation that exempts combustion units with a rated capacity of less than 10 million Btu per hour of heat input if they are fueled by natural gas supplied by a public utility. 25 Pa. Code § 127.14(a)(3).

The pre-heaters that will be installed at the Station are rated at 4.6 million Btu. (PECO Statement. Nos. 4, at 5:16-19 & 4-SR, at 6:8-10). Consequently, as a matter of law, the DEP has determined by regulation that this source of emissions is of such minor significance that it enjoys a *blanket exemption* from air permitting requirements.

Furthermore, Dr. Ketyer has no expertise to opine on the volume of emissions from natural gas distribution facilities, the concentration of pollutants in any such emissions, or any discipline that would allow him to compute the atmospheric transport and dispersion of any such pollutants, and he acknowledged that he did not conduct any type of study to support his testimony. (Tr. 1664:24-1669:11). There is thus no basis on which he can render an expert opinion concerning potential harm from the Natural Gas Reliability Station. *See Swift* 937 A.2d at 1170; *Snizavich* 83 A.3d at 197; *Hutz* 147 A.3d at 50; Pa.R.E. 702. Nor is there any analysis in his testimony to support his conclusory view that any burning of fossil fuels is medically harmful so long as the concentration level of pollutants is non-zero. (Tr. 1669:17-24). Even if credited, that opinion applies regardless of where the Station is sited and regardless of whether the Station is constructed with buildings. Indeed, Dr. Ketyer's criticism applies to the entirety of all combustion of natural gas and is far outside the relevant scope of any proceeding under Section 619 of the MPC.

Finally, the Commission should note that the only emission generating equipment at the Station will be the emergency generator and the CWT heater, both of which run on natural gas. (PECO Statement No. 4, at 5:16-18). These pieces of equipment will only operate sporadically, with the natural gas fueled electric generator only being used in emergencies, or during its weekly maintenance testing, and the CWT heater only running during very cold weather. (PECO Statement No. 4-SR, at 17:10-14). Moreover, the CWT heater uses a water bath to heat piping

passing through the equipment and only emits water vapor, carbon dioxide, and negligible amounts of other emissions. (*Id.* at 6:20-7:10; Tr. 1567:23-1569:16).

Accordingly, while air emissions are not germane to a proceeding under Section 619 of the MPC, PECO met any burdens of production and persuasion that could apply to this issue.

C. THE NATURAL GAS RELIABILITY STATION'S PROPOSED SECURITY FENCE IS A PUBLIC FACILITY EXEMPT FROM LOCAL LAND USE RESTRICTIONS.

The Security Fence is not a “building” and Marple Township has no authority to regulate the size or scope of the Security Fence. *SPLP* 2018, at 695 (“Our Supreme Court holds that [Section 619] does not grant municipalities an implied right to zone with regard to public utility facilities other than described buildings.”) (*citing Duquesne Light Co., supra*)). The Commonwealth Court’s decision in *South Coventry Township, supra* is instructive here. There, the Commonwealth Court upheld a trial court’s preliminary injunction against South Coventry Township’s citations against PECO related to the construction of siren towers that were required by federal and state agencies. *Id.* at 373. The court reasoned that the siren towers were a vital part of PECO’s operations and thus constituted “facilities” within the definition of 66 Pa. C.S. § 102 that are exempt from local zoning. *Id.* at 372. Likewise, the Security Fence is a vital component of PECO’s Natural Gas Reliability Station. (PECO Statement No. 4, at 7:10-8:3).

PECO presented evidence that the Security Fence is a “fence” that is a part of PECO’s Natural Gas Reliability Station and thus a part of “all the plant and equipment of a public utility.” *See* 66 Pa. C.S. § 102. The Security Fence serves an important function and provides significant benefits to the Station and to the community. First, it will surround the Station to prevent unauthorized access and protect against any potential tampering, vandalism, or other damage at the Natural Gas Reliability Station. (PECO Statement No. 4, at 7:10-8:3). Second, the Security Fence will be made of Sound Fighter SonaGuard, which is a building material that will dampen

sound generated by the Station. (*Id.*) Third, the Security Fence will add an aesthetic element to the Station, thereby benefitting the community. (*Id.* at 8:1-3; PECO Statement No. 7-SR, at 9:23-10:5; Exhibit MG-3).

Intervenors offered no evidence into the record to support a finding that the Security Fence is a “building” (the only type of utility structure subject to local zoning) or is otherwise not within the broad definition of “facilities” pursuant to 66 Pa. C.S. § 102. Accordingly, PECO met its burden for a finding that the Security Fence is a “facility” and not a “building”, and therefore is exempt from local zoning requirements. *See S. Coventry Twp.* 504 A.2d at 372-73.

VIII. CONCLUSION

For all the foregoing reasons, PECO respectfully requests that the Pennsylvania Public Utility Commission find that: (1) the siting of the proposed Natural Gas Reliability Station’s buildings, including the Station Building and the Fiber Building, at 2090 Sproul Road, Marple Township, Delaware County, Pennsylvania is reasonably necessary for the convenience or welfare of the public; and (2) the Natural Gas Reliability Station’s Security Fence is a public utility facility, and therefore exempt from local municipal land use regulation.

Respectfully submitted,

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APPENDIX A
PROPOSED FINDINGS OF FACT

PECO Energy Company (“PECO” or “the Company”) proposes that the following findings of fact be made in this proceeding:

1. PECO provides natural gas service to approximately 534,000 retail customers and transportation service to 1,800 large commercial and industrial customers. (PECO Statement No. 1, at 2:22-23).

2. PECO’s gas service territory comprises an area of 1,900 square-miles adjacent to Philadelphia that includes all, or portions of Bucks, Delaware, Montgomery and Lancaster Counties. (PECO Statement No. 1, at 3:1-5).

3. PECO and its natural gas customers rely on the interstate natural gas pipeline system to deliver natural gas into PECO’s distribution system because PECO’s service territory is not a natural gas producing region. (PECO Statement No. 2, at 4:9-11).

Need for the Natural Gas Reliability Station

4. PECO is experiencing natural gas supply constraints that, over the next 10 years, will result in an increased deficit between its current supply capacity resources and its calculated design day demand requirements. (PECO Statement No. 2, at 7:14-22; Exhibits CPT-1, at 25-31, CPT-2, at 18-25, & CPT-3, at 19-29).

5. A “design day” is a 24-hour period of demand which is used as a basis for planning gas capacity requirements. “Design day requirements” refers to the amount of gas needed to meet customer needs during design day conditions. (PECO Statement No. 2, at 3-7).

6. “Design day conditions” are defined as an average temperature of zero-degree Fahrenheit for the 24-hour “gas day” period. A “gas day” runs from 10 AM until 10 AM the following day. This design day analysis provides assurances that firm service customers—especially residential customers—are not likely to experience interruptions when service is most essential. (PECO Statement No. 2, at 3:7-14).

7. In the past decade, design day requirements have increased. (PECO Statement No.

2, at 5:2).

8. The projected design day requirement increased to 877,531 Mcf for the winter of 2030-2031, which is 18,442 Mcf higher than the 2020-2021 requirement of 859,089 Mcf. PECO is projecting a deficit of 111,685 Mcf between the design day firm demand requirements and current resources for the 2021-2022 winter period. The deficit is expected to increase to 130,127 Mcf for the winter of 2030-2031. (PECO Statement No. 2, at 5:10 & 6:17-21).

9. To address this deficit, PECO is implementing a long-term infrastructure project, known as the “Natural Gas Reliability Project,” to increase its capacity supply to diminish its design day constraints. (PECO Statement No. 2, at 3-7).

10. The Natural Gas Reliability Project has been under consideration and deliberated publicly before the Commission in PECO’s Purchased Gas Cost proceedings since at least 2015 (PECO Statement No. 2, at 4:2-4).

11. PECO’s plan to address this deficit consist of two components. First, PECO intends to ensure that sufficient capacity exists to satisfy design day deliverability requirements. The Company’s capacity is diversified into three categories: (1) pipeline firm transportation capacity; (2) pipeline storage capacity; and (3) peaking capacity (which consists of PECO’s Liquefied Natural Gas facility (“LNG”), propane-air facility, and contracted peaking services with reliable third-party suppliers). (PECO Statement No. 2, at 5:12-16).

12. Second, PECO intends to ensure that a firm source of supply exists through contractual arrangements with its suppliers to utilize the capacity resources described above and managing its storage inventory to prepare for winter seasons. (PECO Statement No. 2, at 6:1-5).

13. In addition to increasing design day requirements, the Natural Gas Reliability Station is also needed to address customer and usage growth in Delaware County. (PECO Statement No. 3, at 4:3-12).

14. PECO performed a linear trend analysis for both customer count and usage growth based on the 10-year (2011-2020) historical customer counts for Delaware County and Marple Township. According to PECO’s analysis, the customer count for Delaware County is expected to grow by 3-4% over the next 10 years and normalized usage will grow 2% annually. (PECO

Statement No. 3, at 4:14-17).

15. In addition to customer and usage growth in Delaware County at large, PECO's analysis confirmed that Marple Township in particular is expected to experience customer and usage growth. (PECO Statement No. 3, Direct Testimony of Ryan Lewis, at 3:15-7:7).

16. The Marple Township area is projected to experience a 3% increase in customer count over a 10-year period, which corresponds to a 1% annual increase in normalized usage over the 10-year period. (PECO Statement No. 3, at 5:4-8; Tr. 1195:5-8).

17. To address this supply constraint, PECO will transport additional natural gas supply from the West Conshohocken LNG Plant along a new 11.5-mile steel 12-inch over-high-pressure gas main to Marple Township and inject the gas into PECO's existing 16-inch trunkline and downstream distribution network. (PECO Statement No. 4, at 3-4; PECO Statement No. 3-SR, at 3-4; Tr. 1267).

18. Before injecting the additional supply of natural gas, the pressure must be reduced to be compatible with PECO's distribution system, which operates at a pressure of 99 pounds per square inch ("p.s.i."). (PECO Statement No. 4 at 3-4; PECO Statement No. 3-SR at 3-4). This pressure reduction will be accomplished by PECO's proposed Natural Gas Reliability Station. (PECO Statement No. 4, at 3-4).

19. Because PECO will own the natural gas in the LNG tank, the Company's customers will have a reliable source of supply for the coldest conditions in the winter when the natural gas is needed most. (PECO Statement No. 2, at 7:10-12).

20. No affirmative evidence was presented by the Intervenors or the public at the public input hearing that challenged or contradicted the need for the Natural Gas Reliability Project.

Selection of the Site of the Natural Gas Reliability Station

21. PECO was transparent regarding its site selection process. PECO representatives met with Marple Township officials as early as November 2019 to discuss the Natural Gas Reliability Station and in December 2019 solicited site recommendations from Marple Township officials. (PECO Statement No. 7-SR, at 4:19-5:11).

22. PECO representatives also met with several elected officials, or their staff members, to discuss the Natural Gas Reliability Station in January, July, and November 2020, and in January 2021. (PECO Statement No. 1, at 7:4-8:20; Tr. 902:12-16).

23. PECO also received site recommendations from Marple Township and elected officials and assessed whether these locations were viable for the Station; however, the assessment determined that these locations were not feasible. (PECO Statement No. 5-SR, at 2:16-7:22; PECO Statement No. 3-SR, at 11:1-12:21; Exhibit RL-6).

24. In addition to PECO's ongoing dialogue with elected and government officials, PECO engaged in extensive direct outreach to the community to provide information about the Natural Gas Reliability Station. PECO created a dedicated landing page on its website for information about the Natural Gas Reliability Station, sent letters, informational materials, and bi-monthly newsletters to 1,336 Marple Township residents, and held four virtual open houses, which were collectively only attended by 42 community members. (PECO Statement No.7-SR, at 7:21-8:14; Tr. 959-60).

25. Finally, PECO's involvement in the Marple Township zoning hearing proceeding provided an additional public forum for members of the public to learn about the Station and its siting. (PECO Statement No. 1, at 11:4-8; *see also* Exhibit MT-Cross-1).

26. In selecting the site of the Natural Gas Reliability Station, PECO utilized its established procedure for identifying potential properties for public utility infrastructure projects and identified several criteria for selecting a suitable site for the Station. (PECO Statement No. 5, at 2-3).

27. PECO sought a site that was: 1) available for purchase; 2) subject to zoning regulations that permit public utility uses; 3) at least 0.5 acre to provide adequate space for the construction and operation of the Natural Gas Reliability Station; and 4) located within 0.5 mile of the proposed main terminus at Sproul and Lawrence Roads. (PECO Statement No. 5, at 3:12-21).

28. PECO conducted an analysis using hydraulic modeling to determine current and projected natural gas need and the optimal location to direct the additional capacity from the Natural Gas Reliability Project to where the increased supply would be able to be accepted into

the system. (PECO Statement No. 3, at 4:3-7).

29. PECO's analysis showed that Delaware County has the greatest future projected need for peak day demand due to the County's usage growth. This analysis also showed that the intersection of Lawrence and Sproul Roads in Marple Township is a "null point" along PECO's existing 16-inch distribution trunkline because this area is experiencing the lowest gas pressures in the system. (PECO Statement No. 3, at 5:11-7:6).

30. In addition to the growing need for natural gas in Marple Township, PECO chose to site its Natural Gas Reliability Station in Marple Township because of its location within PECO's existing natural gas distribution system in Delaware County. The Marple Township/Broomall area distribution system is located the farthest away hydraulically from supply sources, such as a gate station. In addition, it is served only by an existing 16- inch trunkline. This 16-inch trunkline is supplied by two gate stations, one in Brookhaven, Delaware County, and another in West Conshohocken. This 16-inch trunkline feeds several subsystems before reaching the Marple Township/Broomall area. (PECO Statement No. 3, at 5:11-18).

31. The Natural Gas Reliability Station must be located at a site within 0.5 miles of the proposed main terminus at Sproul and Lawrence Roads because the Station must be able to connect to both the new 12-inch main connecting the West Conshohocken LNG Plant to Marple Township that will run along Sproul Road and the existing 16-inch trunk line that also runs along Sproul Road, while maintaining necessary pressures needed to run the natural gas through the system. (PECO Statement No. 3, at 7:20-8:1).

32. The Natural Gas Reliability Station as designed must receive natural gas at an inlet pressure of at least 150 p.s.i. in order to function properly. Locating the Natural Gas Reliability Station outside of a half-mile radius from Sproul Road and Lawrence Road would lead to an inlet natural gas pressure below 150 p.s.i., which is below the designed minimum inlet pressure required for the Station to function properly and provide the necessary amount of natural gas flow into the PECO gas distribution system. (PECO Statement No. 3, at 7:1-6).

33. If PECO's Natural Gas Reliability Station were sited beyond the 0.5-mile radius, additional infrastructure would be needed including larger diameter steel gas mains, and a redesign of the Natural Gas Reliability Station, which would increase disruptions to local traffic patterns

during the period of construction and would require significant additional investment that would financially burden PECO's customers. (PECO Statement No. 3, at 7; PECO Statement No. 5, at 4:9-10).

34. Furthermore, the cost of installing the additional infrastructure would be substantial to PECO's customers without any additional operational advantages. (PECO Statement No. 5, at 4:12-13).

35. Thus, the half-mile radius was calculated to ensure proper functionality of the Natural Gas Reliability Station and to avoid disruptions to the community and unnecessary financial burdens on PECO's customers.

36. No evidence was offered by the public or the Intervenors to support a finding that PECO's decision to direct the increased supply from the Natural Gas Reliability Project to Marple Township was unnecessary or unreasonable.

37. Specifically, no evidence was admitted to counter PECO's projections for increased customer count or usage in Delaware County and Marple Township, or that PECO is experiencing high demand, and low pressure, at the Lawrence Road and Sproul Road intersection requiring additional gas supply.

38. While the Intervenors raised hypothetical questions regarding PECO's site selection process—such as questioning why PECO did not contact property owners whose properties had not been placed on the market for sale or lease or why PECO did not consider using eminent domain—Intervenors offered no testimony to show that these alternative methods were reasonable, feasible, or that they would have led to a different result.

39. Witnesses at the public input hearings claimed that PECO had failed to evaluate other suitable sites; however, the evidence adduced during the evidentiary hearing showed to the contrary that PECO had in fact considered all of the sites recommended by Marple Township, elected officials, and those identified in Ms. Baker's Exhibit JB-9.

40. During its site selection process, PECO considered a total of fifteen (15) sites including 2090 Sproul Road. PECO also considered 580 Reed Road, 541 Hilldale Road, 2024 Sproul Road, 850 Paxon Hollow Road, 700 Abbott Drive, 946 & 964 West Sproul Road, 4980

State Road, 27-43 South Sproul Road, 825 Reed Road, 1797 Sproul Road, 401 Parkway Drive, 861 Sussex Blvd. 10-20 Lawrence Road, and 2590 Harding Drive. (PECO Statement No. 5, at 4:19-5:26). Each of these sites, however, failed one or more of the site selection criteria. (*Id.* at 5:28-8:1). Several sites also contained existing structural improvements that would need to be demolished and removed, which provided an additional impediment to further development at the site. (PECO Statement No. 5, at 4:19-6:1; Tr.1123, 1145-50, 1153).

41. Witnesses at the public input hearings suggested 700 Abbot Drive, Broomall Pennsylvania was a suitable site for PECO's Natural Gas Reliability Station. However, PECO evaluated this site and concluded that this site was not suitable because it was located outside of the 0.5-mile radius of the gas main terminus at Sproul and Lawrence Roads. Additionally, this site was recently sold in June 2021 and the onsite warehouse is fully leased. Thus, the site is not available for purchase. Even if the site were available for sale, the onsite structure would need to be demolished and removed prior to preparing the site for construction of the Natural Gas Reliability Station leading to increased costs and construction delays that could deprive PECO of the ability to timely complete the project. (PECO Statement No. 5-SR, at 3-4).

42. The Don Guanella School property located at 825 Reed Road, Broomall, Pennsylvania was also suggested as an alternative site for the Natural Gas Reliability Station. However, this site was also not suitable because it was not available for purchase. Moreover, when PECO was in search of a location for the Station, the Don Guanella property was the subject of a legal dispute between the owners and Marple Township. Said legal dispute would have precluded the timely acquisition of the property and completion of the project. (PECO Statement No. 5-SR, at 2-3).

43. Marple Township introduced testimony suggesting that 2024 Sproul Road was a suitable site for the Natural Gas Reliability Station (Although, Larry Gentile, Marple Township Manager, later testified that the Township no longer supports this location for the Natural Gas Reliability Station). PECO considered this location and concluded it was not suitable because the site was not available for purchase or lease, it is zoned for office use and does not permit public utility facility development, and it contains an existing structure that would need to be demolished and removed prior to preparing the site for construction of the Natural Gas Reliability Station. (PECO Statement No. 5-SR, at 6-7).

44. PECO also considered the property at 1797 Sproul Road but rejected that site because it was not advertised as being available for purchase or lease, the site is zoned for institutional use and does not permit public utility facility development without a variance, and this location is an active cemetery. Therefore, PECO does not believe such a location is appropriate for siting the Natural Gas Reliability Station. (PECO Statement No. 5-SR, at 7).

45. 2090 Sproul Road was the only site that met PECO's site selection criteria: (1) availability; (2) appropriate zoning; (3) adequate size; and (4) a location that satisfied engineering constraints. (PECO Statement No. 5, at 4-5 & 8-9; Tr. 1123, 1145-50 & 1153). Thus, PECO reasonably concluded that 2090 Sproul Road was both a reasonable, and the optimal site for the location of the Natural Gas Reliability Station.

46. PECO had originally anticipated beginning construction for the Natural Gas Reliability Station by September 2021 to ensure the project was completed for the 2022-2023 heating season. (PECO Statement No. 1, at 5).

Benefits of the Natural Gas Reliability Station Buildings

47. The Natural Gas Reliability Station's design includes two buildings, a "Station Building" and a "Fiber Building." (PECO Statement No. 4, at 6:3-7:7).

48. The main Station Building will enclose and provide weather protection for the pipes, valves, regulators, and electronic equipment necessary for the operation of the Natural Gas Reliability Station and provide climate control for the proper functioning of this equipment. (PECO Statement No. 4, at 6:3-12).

49. The Station Building will be locked to protect the equipment from unauthorized access. (PECO Statement No. 4, at 6:14-16). Additionally, the Station Building will include several sound-dampening features to minimize the effect of the Station on the community. (PECO Statement No. 4, at 10:3-11:4).

50. The Station's Fiber Building will protect sensitive telecommunication equipment necessary to connect the Station to PECO's control room and provide an enhanced aesthetic appeal. (PECO Statement No. 4, at 6:18-7:7).

51. The Natural Gas Reliability Station will also include a perimeter security fence (the

“Security Fence”) composed of sound-absorbing material. The Security Fence is a vital component of the Natural Gas Reliability Station that will be constructed and maintained by PECO. (PECO Statement No. 4, at 7:10-8:3).

52. Intervenors offered no evidence into the record to support a finding that the Security Fence is a “building” or is otherwise not within the broad definition of “facilities” pursuant to 66 Pa. C.S. § 102.

53. The proposed buildings and Security Fence at the Natural Gas Reliability Station will assist in restricting access to unauthorized personnel, which will help reduce the potential for vandalism and tampering with the equipment or other damage. (PECO Statement No. 4, at 6:14-16, 24-25).

54. The Station is designed with the intent of enhancing the aesthetic appeal of the property as well as the surrounding community through landscaping, facility design, and enhanced pedestrian access. (PECO Statement No. 5-SR, at 10; *see* PECO Exhibits TF-4 and JM-4).

55. 2090 Sproul Road is *not* in a residential zoning district under Section 300-19 of the Marple Township Zoning Ordinance, where public utility use is prohibited. (*See* PECO Exhibit JM-5).

56. Instead, 2090 Sproul Road is located in an “N Neighborhood Center” zoning district that includes commercial uses and specifically allows public utility use by special exception and as such, Marple Township specifically contemplated public utility use on this property along Sproul Road in enacting the zoning classification. This location is adjacent to a main thoroughfare (Sproul Road) which *already* generates traffic and noise and which roadway feeds the commercial establishments situated in the N Neighborhood Center district. (PECO Statement No. 5, at 9:2-4; Tr. 1154).

57. The Natural Gas Reliability Station is comparable, yet less extensive in size and scale, to PECO’s 28 other gate stations, a majority of which are located in residential areas, and some of which are located within the same proximity to residences as the Natural Gas Reliability Station. (PECO Statement No. 4, at 8:8-21; Exhibit TF-6).

58. Residences were built *after* some of PECO’s other gate stations were constructed,

thereby indicating that these facilities do not negatively affect surrounding residential communities. (Tr. 1359-60).

59. It is both common and necessary for natural gas distribution companies to locate district regulating stations in residential areas. (PECO Statement No. 6-SR, at 14:22-15:5).

60. Presently, the property is a barren, unoccupied site of a former gasoline filling station, which has caused residual ground contamination. PECO has agreed to address said contamination under the supervision of the Pennsylvania Department of Environmental Protection. (PECO Statement No. 5-SR, at 10).

61. PECO's Natural Gas Reliability Station will not produce any appreciable levels of traffic, noise, or air emissions beyond the footprint of the property. Further, the proposed design of the Station will continue to provide pedestrian access to local services and, although the final design of the Station is still in progress, once constructed, the Station will provide better pedestrian access than the currently existing vacant gasoline filling station. (PECO Statement No. 5-SR, at 9).

62. Intervenors introduced no evidence to challenge the benefits of constructing the buildings and the security fence to shelter the public utility facilities at the Station. The un rebutted evidence showed that these benefits would include dampening sounds, protecting the equipment from the elements, and enhancing security and aesthetic appeal.

Safety of the Natural Gas Reliability Station

63. Federal regulations do not prohibit the siting of natural gas distribution facilities near homes or people. (Tr. 1650:8-1651:20). These facilities frequently need to be located near residences and businesses, because that's "...where the demand is, where the supply is and where the connection points are." (Tr. 1577:8-10).

64. Rather than constrain the siting of the facility, the federal regulations ensure the protection of the public by imposing additional requirements when facilities are located in high consequence areas. (Tr. 1651:7-20).

65. PECO has committed to comply with all federal and state safety requirements in the construction and operation of the Natural Gas Reliability Station. (PECO Statement No. 4-SR,

at 11:13-20).

66. The Natural Gas Reliability Station is not an experimental facility. The Station will function in essentially the same manner as 28 other similar facilities within PECO's natural gas system, which are known as "gate stations." (PECO Statement No. 4, at 8:7-10).

67. A majority of PECO's gate stations are located in residential areas. Some of PECO's existing gate stations have residences within 100 feet of the gate station, a distance similar to that of the Natural Gas Reliability Station. (PECO Statement No. 3, at 6:11-16; PECO Statement No. 4 at 8:17-21).

68. Pipeline Hazardous Materials and Safety Administration's ("PHMSA") databases indicate that no incidents, as defined by 49 C.F.R. § 191.3, have occurred at PECO's gate stations dating back to 1986, the earliest records available. (PECO Statement No. 6-SR, at 7:8-9:4).

69. Neither Mr. Timothy Boyce nor Mr. Jim Capuzzi, the expert witnesses offered by Delaware County and Marple Township, respectively, were admitted or qualified as an expert in pipeline safety. (Tr. 830:14-21).

70. Mr. Boyce's concerns about "delayed ignition events" for natural gas, as contrasted with natural gas liquids, were contradicted by basic scientific fact, his own testimony in an earlier proceeding before the Commission and a report he received from consultants retained by Delaware County to evaluate the safety of the Adelphia natural gas pipeline. (PECO Statement No. 6-SR, at 19:17-20:2).

71. Neither Mr. Boyce nor Mr. Capuzzi studied any data or performed any analysis relating to the Natural Gas Reliability Station. (Tr. 1506:24-1509:15).

72. Mr. Boyce admitted during cross-examination that he is not an expert in the operation of reliability or gate stations, calculating impact zones, hazard assessments, risk assessments, consequence analysis, or the siting of reliability or gate stations, or PHMSA regulations. (Tr. 1045:14-1055:3).

73. Mr. Capuzzi's opinion that "the 2090 Sproul Road site is not an appropriate location for the proposed Gas Reliability Station from a fire and life safety standpoint, and therefore not in the public interest" (Marple Township Statement No. 2 at 6:1-3) was not based on any studies of

the Natural Gas Reliability Station or review of any data. (Tr. 1506:24-1509:15).

74. Many lay witnesses at the public input hearings cited risk to real estate values as a concern, none of the Intervenors offered expert testimony regarding this issue.

75. The Natural Gas Reliability Station will have minimal effect on the community, if any. The Station will be unstaffed; therefore, it will not create additional traffic in the area. (PECO Statement No. 4, at 9:16-18).

76. Various lay witnesses at the public input hearing cited the risk of vandalism, cyberattacks, and terrorism as reasons for not siting the Station at 2090 Sproul Road. PHMSA records did not include any incidents involving vandalism or terrorism at other comparable regulating stations. (PECO Statement No. 6-SR, at 14:12-18). Furthermore, Intervenors adduced no expert testimony regarding these issues.

77. PECO's engineering firm, EN Engineering, contracted with acoustic and sound control consultant Hoover & Keith Inc. to assist on designing the Station to comply with local noise requirements. (PECO Statement No. 4, at 10:3-7; Exhibit TF-7, at i).

78. Hoover & Keith Inc. estimated that the Station's contribution to background sound levels with PECO's sound mitigating designs will only add 1 to 3 dB to background sound levels, which is representative of only a minimum impact on human perception. (PECO Statement No. 4, at 9:4-6; Exhibit TF-9).

79. The report produced by Hoover & Keith Inc. indicated that the Station would comply with Marple Township's noise ordinance. (Marple Township Statement No. 3 at 3:18-23).

80. While the back-up generator and pre-heaters are integral to the Station, they are situated outside, and not within, the buildings that are at issue in this proceeding. (PECO Statement No. 4-SR, at 17:14-17). Therefore, a challenge to the back-up generator and pre-heaters is a challenge to the facility itself, not the buildings.

81. The testimony of Marple Township witness Mr. Matt Wanamaker that the Station would have detrimental noise impacts was speculative because Mr. Wanamaker's testimony was not based on any empirical evidence and was only based on his familiarity with noise generated

from facilities that are in “industrial use.” Mr. Wanamaker did not have any familiarity with gate stations. (Tr. 1498:2-1500:3).

82. Dr. Edward Ketyer, a pediatrician, has no expertise in determining the volume of emissions from natural gas distribution facilities, the concentration of pollutants in any such emissions, or any discipline that would allow him to compute the atmospheric transport and dispersion of any such pollutants. (Tr. 1664:24-1669:11). There is thus no basis on which he can render an expert opinion concerning potential harm from the Natural Gas Reliability Station by siting it at 2090 Sproul Road.

83. The only emission generating equipment at the Station will be the emergency generator and the CWT heater, both of which run on natural gas. (PECO Statement No. 4, at 5:16-18).

84. These pieces of equipment will only operate sporadically, with the emergency generator only being used in emergencies, or during its weekly maintenance testing, and the CWT heater only running during very cold weather. (PECO Statement No. 4-SR, at 17:10-14).

85. The CWT heater uses a water bath to heat piping passing through the equipment and only emits water vapor, carbon dioxide, and negligible amounts of other emissions. (PECO Statement No. 4-SR at 6:20-7:10; Tr. 1567:23-1569:16).

86. Under the pertinent regulations promulgated by the Department of Environmental Protection (“DEP”), the pre-heaters to be installed at the Station are considered sources of minor significance such that no air permit is required.

87. The Company remotely monitors its gate stations using fiber optic cables and also through the cellular network to ensure communication with the equipment within its facilities. PECO will be able to remotely shut down the Station if a problem is ever identified. If necessary, PECO also has the ability to shut off gas from the West Conshohocken LNG Plant that would travel to the Natural Gas Reliability Station. (PECO Statement No. 4, at 11:8-17).

88. PECO will also have shut-off valves at multiple points along the 11.5-mile gas main and at the LNG Plant (*Id.*; PECO Statement No. 4-SR, at 13:5-16).

89. PECO’s internal procedures for responding to irregularities in operations at the

Station include instructions for responding to gas odors calls and gas emergency response protocols. The procedures require PECO to respond to any incident within an hour. PECO operates its control room 24 hours per day, 7 days a week. (PECO Statement No. 4, at 11:20-25).

90. The Company routinely communicates with local fire and emergency management officials and works with them on a regular basis. PECO also conducts an annual training program, free of charge, for local emergency management officials located across PECO's service territory. The program trains emergency officials on the appropriate steps that should be taken to respond to any incidents involving PECO's facilities or equipment, such as the procedures for how to ensure an area is safe around PECO's facilities and how to notify PECO of the incident. (PECO Statement No. 4, at 12:3-10).

91. PECO's protocols mandate that the Company have a staff member onsite within one-hour for gas odor calls, per industry and regulatory standards. PECO achieves this result 99.9% of the time. (PECO Statement No. 4-SR, at 14:8-13).

92. PECO has met with Marple Township and Delaware County emergency officials to discuss the Natural Gas Reliability Station and PECO's safety protocols. (PECO Statement No. 4, at 12:13-17).

93. Once the Natural Gas Reliability Station is completed, PECO will invite local emergency management officials to tour the Station to allow them to familiarize themselves with the assets and to further discuss PECO's safety protocols for the facility. (PECO Statement No. 4, at 12:20-23).

94. As a preliminary step in developing the Natural Gas Reliability Station, PECO filed a zoning application with Marple Township seeking: (1) a special exception for the Natural Gas Reliability Station at the site; and (2) a variance for the Security Fence measuring 8 feet in height around the Natural Gas Reliability Station. (PECO Statement No. 1, at 11).

95. On November 18, 2020, the Marple Township Zoning Hearing Board denied PECO's zoning application, which PECO appealed to the Court of Common Pleas of Delaware County to preserve its rights in that proceeding, which appeal is currently pending. (PECO Statement No. 1, at 11).

96. PECO subsequently filed this Petition with the Commission on February 26, 2021 to seek a finding of necessity pursuant to Section 619 of the MPC that the situation of PECO's proposed Station Building and Fiber Building at the Natural Gas Reliability Station are reasonably necessary for the convenience or welfare of the public and a finding that the Security Fence is a public utility facility exempt from local land use restrictions.

APPENDIX B
PROPOSED CONCLUSIONS OF LAW

PECO Energy Company (“PECO”) proposes that the following conclusions of law be made in this proceeding:

1. PECO is a “public utility” and a “natural gas company” as defined in Sections 102 and 2202 of the Pennsylvania Public Utility Code (the “Code”), 66 Pa.C.S. §§ 102, 2202.

2. As the party seeking approval from the Commission, PECO has the burden of proof. 66 Pa.C.S. § 332(a).

3. The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *See Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000); *Applications of Transource Pennsylvania, LLC for Approval of the Siting & Constr. of the 230 Kv Transmission Line Associated with the Indep. Energy Connection - E. & W. Projects in Portions of York & Franklin Ctys., Pennsylvania Petitions of Transource Pennsylvania, LLC for A Finding That A Bldg. to Shelter Control Equip. at the Rice Substation in Franklin Cty., Pennsylvania & the Furnace Run Substation in York Cty., Pennsylvania*, No. A-2017-2640195, 2021 WL 2143699, at *12 (May 24, 2021) (“*Transource*”).

4. The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. *Hurley*, 754 A.2d. at 1286.

5. This burden may shift between the parties during the course of a trial. *Transource*, *supra*, at *12. If the party with the burden of production fails to introduce sufficient evidence the opposing party is entitled to receive a favorable ruling. *Id.*

6. Once the party with the initial burden of production introduces sufficient evidence to make a *prima facie* case, that burden shifts to the opposing party. *Id.*

7. A *prima facie* case is established if there is enough shown to make a finding of the existence of a fact permissible, or it may mean that such finding is obligatory in the absence of other evidence. *In re Fink's Est.*, 21 A.2d 883, 888 (Pa. 1941).

8. If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to his position. *Transource supra*, at *12.

9. Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion to be entitled to a verdict in his favor. *Id.* at *13.

10. The burden of persuasion determines which party must produce sufficient evidence to meet the applicable standard of proof. *Id.* (citing *Hurley*, 754 A.2d 1283).

11. The degree of proof required before an administrative tribunal is a preponderance of the evidence. See *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

12. The preponderance of the evidence is the lowest degree of proof recognized in civil judicial proceedings. *Id.* (citing *Se-Ling Hosiery v. Margulies*, 70 A.2d 854, 856 (Pa. 1950)).

13. Preponderance of the evidence is proof which “*fairly outweighs* the probative value of any proof offered against the claim” or “fairly preponderate[s] in favor of his claim.” *Se-Ling Hosiery*, 70 A.2d at 856. (emphasis in original). In sum, “[t]he litigant’s burden of proof before administrative tribunals...is satisfied by establishing a preponderance of evidence which is substantial and legally credible”, i.e. not mere “suspicion” or by only a “scintilla” of evidence. *Samuel J. Lansberry, Inc.*, 578 A.2d at 602.

14. Local municipalities lack the authority to regulate the design, location, or construction of public utility facilities. See *PPL Elec. Utilities Corp. v. City of Lancaster*, 214 A.3d 639, 659–60 (Pa. 2019) (“[t]he General Assembly ‘vested in the [PUC] exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utility facilities.’”) (quoting *Chester Cty. v. Philadelphia Elec. Co.*, 218 A.2d 331, 333 (Pa. 1966)); see also *Duquesne Light Company v. Monroeville Borough*, 449 Pa. 573, 580, 298 A.2d 252, 256 (1972) (“This Court has consistently held, however, that the Public Utility Commission has exclusive regulatory jurisdiction over the implementation of public utility facilities”) (citations omitted). See, e.g., *Newtown Township v. Philadelphia Elec. Co.*, 594 A.2d 834, 837 (Pa. Cmwlth. 1991) (noting that “it is clear that no

‘implied’ power exists in the MPC which would allow the Township to regulate [the Philadelphia Electric Company] through its subdivision and land development ordinance”); *Heintzel v. Zoning Hearing Board of Millcreek Township*, 533 A.2d 832 (Pa. Cmwlth. 1987) (holding that township had no power to regulate, under its zoning ordinance, city’s erection of water tower because that power was under the exclusive jurisdiction of the PUC); *South Coventry Township v. Philadelphia Elec. Co.*, 504 A.2d 368 (Pa. Cmwlth. 1986) (noting that to possibly subject [the Philadelphia Electric Company] to a miscellaneous collection of regulations upon its system would clearly burden and indeed disable it from successfully functioning as a utility); *Commonwealth v. Delaware and Hudson Railway Co.*, 339 A.2d 155 (Pa. Cmwlth. 1975) (holding that the MPC did not authorize local governments to regulate public utilities in any manner which infringes upon the power of the Commission to so regulate).

15. This enduring principle reflects the General Assembly’s clear intent that one regulatory body – the Public Utility Commission – be vested with the power to regulate public utility facilities in furtherance of uniformity, and avoid inviting municipalities to create their own patchwork of supplementary regulations to enforce at a whim. *See Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 692-93 (Pa. Cmwlth. 2018) (“SPLP 2018”).

16. The Public Utility Code broadly defines the term “facilities” as:

All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility.

66 Pa. C.S. § 102.

17. The Commission and the Commonwealth Court have both held that the term “facilities” is to be broadly construed. *See Application of Duquesne Light Co. for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code*, No. R-00974104, 1998 Pa. PUC LEXIS, *173 (Recommended Decision March 18, 1998) (citing *Country Place Waste Treatment Co., Inc. v. Pa. P.U.C.*, 654 A.2d 72, 76 (Pa. Cmwlth. 1995)); *see also S. Coventry Twp. v. Philadelphia Elec. Co.*, 504 A.2d 368, 373 (Pa. Cmwlth. 1986) (siren towers were “facilities,” “thus properly fall within the zoning-exempt operations of a public utility.”)

18. A limited exception to the rule against municipal regulation of the siting of public

utility “facilities” is with respect to the siting of public utility “buildings.” See *SPLP 2018 179 A.3d* at 679 (“In sum, the trial court observed, Pennsylvania courts consistently ... hold a township has no power to regulate a public utility by zoning ordinances with regard to uses and structures that are not buildings.”); see also *Petition of Pennsylvania-Am. Water Co. for A Finding on an Expedited Basis That Two Buildings to Shelter Booster Pumps to Be Constructed in Dunbar Twp., Fayette Cty., Pennsylvania, Are Reasonably Necessary for the Convenience or Welfare of the Pub.*, No. (“PAWC”) P-2015-2513587, 2016 WL 1689629, at *5 (Pa. P.U.C.)(Opinion and Order, Apr. 21, 2016).

19. The General Assembly in Article VI of the MPC, 53 P.S. § 10619, empowered the Commission, upon petition by a public utility, to exempt public utility buildings from local municipal regulation if the Commission determines that the “situation of the building in question is reasonably necessary for the convenience or welfare of the public.” Section 619 specifically provides that:

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. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.

53 P.S. § 10619.

20. Thus, a municipality may not exercise its zoning powers over a public utility building if the Commission determines, pursuant to Section 619 of the MPC, that the “site is reasonably necessary for the public convenience or welfare.” *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm'n*, 513 A.2d 593, 595 (Pa. Cmwlth. 1986); see also *Newtown Twp. v. Philadelphia Elec. Co.*, 594 A.2d 834, 837 (Pa. Cmwlth. 1991) (*discussing Duquesne Light Co., supra* and its progeny finding that the MPC § 619 exemption applied to zoning ordinances and subdivision regulations).

21. Furthermore, the Commonwealth Court has explained, “[w]e do not interpret [Section 619 of the MPC] as requiring the [Commission] to reevaluate the entire project. [Section 619 of the MPC] merely directs [the Commission] to determine whether the *site* of the [proposed facility] is appropriate to further the public interest.” *Del-AWARE Unlimited, Inc.*, 513 A.2d at 595 (emphasis in original).

22. In evaluating land use decisions, the Commission has adopted a final policy statement that the Commission will consider the impacts of its decisions upon local comprehensive plans and zoning ordinances when reviewing certain applications, including the siting of public utility buildings in a Section 619 proceeding. *See* 52 Pa.Code § 69.1101(3). Importantly, though, Section 619 of the MPC does not require a utility to prove that the site it has selected is absolutely necessary or that it is the best possible site; rather it need only show that the building is reasonably necessary. *O’Connor v. Pa. Pub. Util. Comm’n.*, 582 A.2d 427, 433 (Pa. Cmwlth. 1990).

23. A public utility must decide in the first instance what facilities are needed and where to locate those facilities. Unless PECO acted in an arbitrary or capricious manner, its decision should remain undisturbed. *See e.g., Lower Chichester Township v. Pennsylvania Public Utility Commission*, 119 A.2d 674 (Pa. Super 1956); *Abington Electric Co. v. Pennsylvania Public Utility Commission*, 198 A. 901 (Pa. Super 1938).

24. As to the scope of a Section 619 proceeding, the Commission has further clarified that the scope is limited to only the situation of the buildings and not the utilities’ broader project necessitating the buildings. *Petition of Sunoco Pipeline, L.P. for A Finding That A Bldg. to Shelter the Walnut Bank Valve Control Station in Wallace Twp., Chester Cty., Pennsylvania Is Reasonably Necessary for the Convenience or Welfare of the Pub.* *Petition of Sunoco Pipeline, L.P. for A Finding That A Bldg. to Shelter the Blairsville Pump Station in Burrell Twp., Indiana Cty., Pennsylvania Is Reasonably Necessary for the Convenience or Welfare of the Pub.*, No. P-2014-2411941, 2014 WL 5810345, at *26 (Opinion and Order, Oct. 2, 2014) (“*Petition of SPLP 2014*”) (“the inquiry on remand should not address whether it is appropriate to place the valve and pump stations in certain areas, but, rather, should address whether the buildings proposed to shelter those facilities are reasonably necessary for the convenience or welfare of the public.”).

25. Issues related to the siting or route of the public utility’s facilities or public safety or environmental requirements are outside the scope of a Section 619 proceeding. *Petition of SPLP*

2014, *supra* at *8 (“approval of the siting or route of the pipeline; or ...a finding that the proposed pipeline complies with relevant public safety or environmental requirements. Those issues are outside the scope of this proceeding.”).

26. ALJ Barnes succinctly framed the proper scope of a Section 619 proceeding, stating: “concerns about gas pressure, gas emissions, noise levels and other health and safety issues are valid concerns; however, approval of the construction of a gate station is beyond the scope of this proceeding.” *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 (“*Petition of UGI*”) (Initial Decision August 16, 2013) at 22 (emphasis added); *adopted by the Commission on exceptions*, 2013 WL 6835113, at *13 (Dec. 19, 2013) (“[w]e further conclude that many of the issues and concerns raised by the Intervenors are beyond this Commission’s jurisdiction in this matter and were properly limited by the ALJ via her granting PNG's Motion in Limine.”).

27. The Commission has no jurisdictional authority to impose more stringent environmental protections on public utilities or to conclude that an emissions source is harmful when the Department of Environmental Protection has determined by blanket exemption that it is not.

28. Federal regulations do not prohibit the siting of natural gas distribution facilities near homes or people.

29. Once the Commission finds that the site chosen is reasonably necessary, this decision will not be disturbed by the Commonwealth Court if the finding is supported by “substantial evidence,” which is that quantum of evidence that a reasonable mind might accept as sufficient to support that conclusion. *O’Connor v. Pennsylvania Public Utility Commission*, 582 A.2d 427, 433 (Pa. Cmwlth. 1990); *see also PAWC, supra*, 2016 WL 1689629, at *6.

30. The Commission is not empowered under Section 619 of the MPC to evaluate the various aspects of the environmental impact of a project and, instead, is obliged to defer to the determinations of those agencies with jurisdiction over such impacts. *See O’Connor*, 582 A.2d at 430-31.

31. The fact that the proposed Natural Gas Reliability Station will not benefit everyone does not mean that the project does not benefit the public. *See, e.g., Popowsky v. Pennsylvania Public Utility Commission*, 594 Pa. 583, 617-18, 937 A.2d, 1040, 1061 (2007) (holding that substantial public benefits do not require that every customer receive a benefit from the proposed action).

32. PECO has met its burden of producing evidence establishing the reasonable necessity and benefits of siting both the Station and its buildings at 2090 Sproul Road.

33. PECO acted reasonably in selecting the proposed site for its Marple Township Natural Gas Reliability Station and, by extension, PECO also acted reasonably in selecting the location of its proposed buildings to shelter certain equipment at the Station.

34. There will be substantial public benefits resulting from the construction of the Natural Gas Reliability Station and, by extension, through the location of the buildings at the site to shelter the equipment.

35. Many of the issues and concerns raised by the Intervenors and witnesses at the public input hearing are beyond the Commission's jurisdiction in this matter. *Del-AWARE Unlimited, Inc. v. Pennsylvania Public Utility Commission*, 513 A.2d 593, 596 fn.4 (Pa. Cmwlth. 1986). These issues include: (1) questioning the need for the Natural Gas Reliability Project generally; (2) general safety concerns of the Station, including the risk of fire, explosion, evacuation, vandalism, terrorism of the Station; (3) alleged lack of transparency by PECO in development of the project or cooperating with the community; (4) alleged quality of life issues caused by the Station, such as noise, glare, or traffic; (5) alleged negative economic consequences of the Station on local businesses and residential property values; and (6) alleged health impact on the community and general concerns about climate change. *See Transource, supra* at *19 (May 24, 2021) (“*Transource*) (“technical issues such as the health effects of the line, the probability of structural failure, and the effect on real estate values require expert evidence to be persuasive enough to support the proposing party's burden of proof or persuasion.”)

36. If a witness does not testify as an expert, “the witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness, helpful to a clear understanding of the witness’ testimony or the

determination of a fact in issue, and not based on scientific, technical, or other specialized knowledge within the scope of [Pennsylvania] Rule [of Evidence] 702.” See *Transource, supra* at *18; Pa. R. Evid. 701.

37. A lay person’s testimony may not be relied upon for specialized technical knowledge. See *Transource, supra* at *12 (citing Pa. R. Evid. 701).

38. Many lay witnesses at the public input hearings cited risk to real estate values as a concern, and none of the Intervenors offered expert testimony regarding this issue, accordingly, there is no competent evidence of record to sustain the opponents’ burdens of production and persuasion on this issue.

39. There is no basis for Dr. Edward Ketyer, a pediatrician, to render an expert opinion concerning potential harm from the Natural Gas Reliability Station by siting it at 2090 Sproul Road.

40. The Commission has no jurisdictional authority to impose more stringent environmental protections on public utilities or to conclude that an emissions source is harmful when DEP has determined by blanket exemption that it is not.

41. The favoring by municipalities of certain properties for public utility uses at certain times is impermissible in siting of public utility facilities. See, e.g., *Philadelphia Elec. Co.*, 218 A.2d at 333.

42. The proposed security fence appurtenant to the Natural Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from local zoning requirements.

APPENDIX C
PROPOSED ORDERING PARAGRAPHS

PECO Energy Company proposes that the following ordering paragraph be adopted in this proceeding:

1. That the Petition of PECO Energy Company (“PECO”) 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, at Docket No. P-2013-2347105, is hereby granted in that the situation of the two buildings associated with the proposed natural gas reliability station (the “Natural Gas Reliability Station”) is reasonably necessary for the convenience and welfare of the public within the meaning of Section 619 of the Municipalities Planning Code (MPC) Act of July 31, 1968, P.L. 805, *as amended*, 53 P.S. § 10619 and, therefore, exempt from any zoning, subdivision, and land development restriction of the Marple Township Zoning Code pursuant to MPC § 619; and
2. The proposed security fence appurtenant to the Natural Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from local zoning requirements.

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true copy of the foregoing Main Brief of PECO Energy Company upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party) via electronic mail.

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Dated: August 23, 2021