

Via electronic service only due to Emergency Order at M-2020-3019262

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for a Finding : P-2021-3024328
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 :

**MEMORANDUM CONSTITUTING MAIN BRIEF
IN SUPPORT OF DISMISSING THE PETITION OF THE APPELLANT**

AUTHOR: Julia M. Baker, *pro se* Intervenor

TABLE OF CONTENTS:

According to the Commission’s rules at 52 Pa. Code § 5.501
(*the current document does not exceed twenty pages*)

AUTHORITIES INDEX: table of citations with reference to the pages of the record or exhibits
where the evidence relied upon by the filing party appears.
(*incomplete due to insufficient access to transcripts*)

Re Need and Do No Harm- General

52 Pa.Code § 57.76(a)(4) provides:

(a) The Commission will issue its order, with its opinion, if any, either granting or denying the application, in whole or in part, as filed or upon the terms, conditions or modifications, of the location, construction, operation or maintenance of the line as the Commission may deem appropriate. ***The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line:***

(1) That there is a need for it.

(2) That it will not create an unreasonable risk of danger to the health and safety of the public.

Re “Convenience” of the public

Energy Conservation Council v. Pub. Utility, 995 A.2d 465 (Pa. Commw. Ct. 2010)

The ALJs found that business opportunity, not reliability, was the impetus for TrAIL Co.'s proposal to build a high voltage service transmission line. By way of Pennsylvania, TrAIL Co. seeks to move its relatively inexpensive electrical power in West Virginia to Loudoun County,

Virginia, where that power can command a higher price. The ALJs found that TrAIL Co.'s *proposal served the company's need for profits but no real consumer or public need*. The ALJs rejected TrAIL Co.'s proffered justification for the construction of a new transmission line in Pennsylvania, *i.e.*, to secure reliability in the grid and to ease congestion in the eastern part of PJM's region, as unfounded.^[2]

The *ALJs criticized the computer models* used to develop PJM's regional transmission expansion plan (Regional Plan) which TrAIL Co. used as its central evidence in support of its claim that the project was needed to resolve future reliability problems.^[3] The ALJs *found the models to be based upon "an overly conservative, belt-and-suspenders approach to transmission system planning."*

Potential Harm to the Public Re Sound:

Intervenor's Standing as Having a Substantial Interest:

See In re Hickson, 573 Pa. 127, 135, [821 A.2d 1238](#), 1243 (2003) (stating that a "*substantial interest is an interest in the outcome of the litigation that is greater than any other citizen*")

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW PECO Energy Company : Appellant : : No.: CV-2020-8477 v. : :
LAND USE APPEAL : Marple Township Zoning Hearing : Board : Appellee : FINDINGS OF
FACT AND CONCLUSIONS OF LAW

26. Applicant stated it was confident that the Proposed Use would not produce sounds in excess of the local noise ordinance levels, but *could not guarantee it*. (N.O.T. Marple Township Zoning Hearing Board Hearing, 10/21/2020, p. 54-55, ll. 23-5).

27. Aaron Szczesny testified that *if a generator turns on, the Proposed Use might exceed the limits of the Township's noise ordinance*. (N.O.T. Marple Township Zoning Hearing Board Hearing, 10/21/2020, p. 55-56, ll. 12-10)

Re substantial evidence:

Our scope of review of an order of the PUC is limited to a determination of whether the PUC violated constitutional rights or committed an error of law or *whether its necessary findings were not supported by substantial evidence in the record*. 2 Pa. C.S. § 704; *Bell Telephone Company of Pennsylvania v. Pennsylvania Public Utility Commission*, 83 Pa. Commonwealth Ct. 331, 478 A.2d 921 (1984)

Substantial evidence is that quantum of evidence that a reasonable mind might accept as sufficient to support a conclusion. *O'Connor v. Pennsylvania Pub. Util. Com'n*, 582 A.2d 427 (Pa. Commw. Ct. 1990); *Norfolk and Western Railway Co. v. Pennsylvania Public Utility Commission*, 489 Pa. 109, 128, [413 A.2d 1037](#), [1047](#) (1980).

52 Pa.Code § 57.76(a)(4) provides:

(a) The Commission will issue its order, with its opinion, if any, either granting or denying the application, in whole or in part, as filed or upon the terms, conditions or modifications, of the location, construction, operation or maintenance of the line as the Commission may deem

appropriate. The Commission will not grant the application, either as proposed or as modified, unless it finds and determines as to the proposed HV line:

(1) That there is a need for it.

(2) That it will not create an unreasonable risk of danger to the health and safety of the public.

These factors must be proven by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 134 Pa.Cmwth. 218, [578 A.2d 600](#), 602 (1990).

That a significant witness was not called

permissible adverse inference arising in certain cases *where a party fails to call an available witness with special knowledge who would naturally be in his interest to produce, without satisfactory explanation*. The ALJ cited *Murphy v. Department of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwth. 1984). ALJ's Op., 7/26/17, at 13.

I. INTRODUCTION:

PECO has not met the quantum standard for substantial evidence in order to merit an exemption from local zoning authorities and codes. They have not demonstrated a need so urgent as to warrant a finding of necessity at this specific time from the Commission, nor have they shown in any but the vaguest terms how they intend to benefit the public in terms of a concrete plan to extend service- least of all to members of the immediate community. Moreover, they have shown either shortcomings in proper planning, or unconscionably deliberate opacity in communication and ultimate unwillingness to collaborate with local officials in a meaningful and timely fashion. The “convenience” the Company promises is only their own, and the “welfare of the public” is entirely moot given health and safety concerns.

II. FACTS AND PROCEDURAL HISTORY:

1. On February 26, 2021, PECO filed a petition seeking a finding from the Commission that: (1) the situation of two buildings for a proposed Gas Reliability Station is reasonably necessary for the convenience and welfare of the public and, therefore exempt from any zoning, subdivision, and land development restriction of the Marple Township Subdivision and Land Development Ordinance and the Marple Township

Zoning Code; and (2) a proposed security fence appurtenant to the Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from local zoning requirements.

2. A Prehearing Conference was held by Administrative Law Judge Emily I. DeVoe telephonically on Wednesday, April 21, 2021.
3. On April 23, 2021, a Prehearing Order was entered proposing the litigation schedule.
4. Public Input Hearings were held on May 25 and 26, 2021, also telephonically.
5. Evidentiary Hearings were held telephonically on July 15, 16, 20, and 22, 2021.
6. On July 21, 2021, Judge DeVoe issued an Order determining submissions schedules and providing instructions for briefs.
7. On August 10, 2021, she issued an additional order modifying the schedule due to issues with readiness of the Evidentiary Hearing Transcripts, such that Main Briefs would be due at 10:00 am on August 23, 2021.

II. QUESTIONS TO BE PRESENTED:

1. Whether or not the siting of the proposed structures is “reasonably necessary for the convenience and welfare of the public.”
2. Whether or not The Company, in pursuing this particular siting, produced a preponderance of evidence that their process of determination was reasonable given that they have a default service contract as a Public Utility and must abide by all PUC rules and regulations.

III. LEGAL ARGUMENT:

(incomplete due to insufficient access to transcripts)

1. The proposed siting is not “reasonably necessary for the convenience and welfare of the public.”

1.1

2. The Company, in pursuing this particular siting, produced a preponderance of evidence that their process of determination was reasonable given that they have a default service contract as a Public Utility and must abide by all PUC rules and regulations.

2.1

IV. CONCLUSIONS WITH REQUESTED RELIEF:

(incomplete due to insufficient access to transcripts)

1. The proposed siting is not “reasonably necessary for the convenience and welfare of the public.”

1.1

2. The Company, in pursuing this particular siting, did not produce a preponderance of evidence that their process of determination was reasonable given that they have a default service contract as a Public Utility and must abide by all PUC rules and regulations.

2.1

APPENDICES:

Exhibits A-E and G are attached to eService copy.

A. JB-1 3501 Williamson Ave. Sound Study

B. JB-1 Affidavit of Ms. Christine Howze

C. JB-4 Testimony of Dr. Edward Ketyer

- D. EK-1 CV of Dr. Edward Ketyer
- E. JB-9 PECO Site Recommendations
- F. Uhlman-4 PECO Table of Gate Station Distances
- G. Uhlman-8 PECO Confidential Production 003025 and 003926
- H. Uhlman-9 PECO Confidential Sound Study 002441-002449

Proposed findings of fact with references to transcript pages or exhibits where evidence appears, together with proposed conclusions of law. (*incomplete due to insufficient access to transcripts*)

This (incomplete) main brief has been e-filed with the Commission's Secretary's Bureau, served upon the ALJ and all Active Parties, in compliance with any applicable provision of 52 Pa.Code § 5.502 that is consistent with the ALJ's July 21, 2021 Order.

A Motion to Submit and Amended Brief will be filed on the docket and served upon all Parties this day August 23, 2021.

VERIFICATION

I, Julia M. Baker (Julie) hereby verify that the facts contained in the foregoing document are true and accurate to the best of my knowledge and that I am duly authorized to make this verification, and that I expect to be able to prove the same in any proceeding held in this matter.

/s/

Julia M. Baker
2150 Sproul Rd.
Broomall, PA 19008
jbakeroa@msn.com
(610) 745-8491

August 23, 2021

CERTIFICATE OF SERVICE

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

JULIA BAKER'S MEMORANDUM OF LAW RE:

P-2021-3024328 – PETITION OF PECO ENERGY COMPANY FOR A FINDING OF NECESSITY PURSUANT TO 53 P.S. § 10619 THAT THE SITUATION OF TWO BUILDINGS ASSOCIATED WITH A GAS RELIABILITY STATION IN MARPLE TOWNSHIP, DELAWARE COUNTY IS REASONABLY NECESSARY FOR THE CONVENIENCE AND WELFARE OF THE PUBLIC.

upon the parties listed below, in accordance with the requirements of 52 PA Code § 1.54 (relating to service by a participant) in the manner listed beneath each entry, which is eService for all:

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

amatlawski@mbmlawoffice.com
Accepts eService
Representing Marple Township

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

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

TED R. UHLMAN
2152 SPROUL RD
BROOMALL PA 19008
484.904.5377
Uhlmantr@yahoo.com
Accepts eService

KAITLYN T. SEARLS ESQUIRE
J. ADAM MATLAWSKI ESQUIRE
MCNICHOL, BYRNE & MATLAWSKI,
P.C.
1223 N PROVIDENCE ROAD
MEDIA PA 19063
ksearls@mbmlawoffice.com

Respectfully Submitted,

/s/
Julia M. Baker
2150 Sproul Rd
Broomall, PA 19008

August 20, 2021

