

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 REPLY BRIEF
IN SUPPORT OF DISMISSING THE PETITION OF THE APPELLANT**

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

TABLE OF AUTHORITIES:

Cases

Dept of General Services v. Ogontz Area Neighbors Association.
PA Supreme Court 505 Pa. 614, 483, A.2d 448 (1984).....5

Energy Conservation Council v. Pub. Utility, 995 A.2d 465, Pa. Commonwealth Ct., 2010.....5

In The Court of Common Pleas of Delaware County, Pennsylvania Civil Action No. CV-2020-8477. *PECO Energy Company v. Marple Township Zoning Hearing Board: Findings of Fact and Conclusions of Law*.....10

Hurley v. Hurley 754 A.2d 1283 (a. Super.2000).....7

Hickson, 573 Pa. 127, 135, 821 A.2d 1238, 1243 (2003).....6

Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission, 134 Pa.Cmwlt. 218, 578 A.2d 600, 602 (1990)4

Loudenslager's Estate, 430 Pa. 33, 240 A.2d 477, 482 (1968) (Roberts, J., dissenting).....7

Murphy v. Department of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984). ALJ’s Op., 7/26/17, at 13.....14

Norfolk and Western Railway Co. v. Pennsylvania PUC, 489 Pa. 109, 128, 413 A.2d 1037 (1980).7

Riedel v. County of Allegheny, 159 Pa.Cmwlth. 583, 633 A.2d 1325, 1329 n. 11 (1993).....7

Robinson Township v. Commonwealth of Pennsylvania 83 A.3d 901 (Pa. 2013), in which the Supreme Court ruled that portions of Act 13 of 2012 and unconstitutional, affirming the significance of the Environmental Rights Amendment of the PA Constitution, Article I, Section 27.....6

“*Transource*” 2021 WL 2143699, at *12 (Pa. P.U.C.) (Opinion and Order, May 24, 2021).....8

Statutes

PA Municipal Planning Code MPC 53 P.S. § 10619.212

52 Pa. Code § 54.122. Code of conduct (Electrical suppliers *only*).....14

52 Pa. Code § 57.191. Purpose.....14

52 Pa. Code § 57.107. Construction management guidelines15

52 Pa. Code § 59.1. Definitions 5

52 Pa. Code § 59.29.....17

52 Pa. Code § 59.33. Safety.....14

52 Pa.Code § 57.76(a)(4) 4

52 Pa. Code § 101.3. Plan requirements.....15

66 Pa. C.S. § 332.....7

PREFACE:

Every effort has been made to adhere to the Commission’s rules at 52 Pa. Code § 5.501.

In the interest of responding directly to PECO’s Main Brief, for the sake of brevity and to avoid cumulative comments (because professional legal counsel has comprehensively addressed them) several sections are omitted and/or condensed.

Even though Twp. and Cnty. Attorneys might not be representing the same exact interests of the *pro se* Intervenors, I support fully the foundations and substantiations for their arguments.

In order to avoid a lengthy discourse I simply pose to reply to points in the Company's Brief in their approximate order to the extent possible.

I. INTRODUCTION and BACKGROUND:

I respectfully submit this Reply Brief in support of Marple Township's and Delaware County's opposition to PECO's Petition. The Utility 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.

Commonwealth regulatory law, in 52 Pa.Code § 57.76(a)(4) provides that:

“(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.”

The Commission and Commonwealth Courts have also ruled that:

“These factors must be proven by a preponderance of the evidence.”¹

Moreover, in claiming that their commitment to 2090 Sproul Rd. as the “optimal” and even doing so far as to be the “only” satisfactory site, they have shown blatant distortion of “standard site

¹ *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 134 Pa.Cmwlth. 218, 578 A.2d 600, 602 (1990).

selection criteria and engineering needs,”² and 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, or both. The “convenience” the Company promises is only their own³, and the “welfare of the public” is entirely moot given health and safety concerns, in addition to the intent and character of this Neighborhood Center Zoning District.

It would seem that the only issue of scope on which all Parties agree is that this matter pertains fundamentally and materially in the *siting* of the facility. I submit most respectfully that any reasonable person would conclude that arguments regarding “*the two buildings*” and “*the security fence*” are frivolous at best and illogical at worst, since however necessary they are to any regulating station of this category, it is the equipment associated with this *pipeline*,⁴ in particular the need for heating and pressure-reduction on site, which present the actual harms and potential hazards if located in such close proximity to residences and small businesses. Therefore it must be asserted that the Section 619 statute is not a “*clear*”- at least not in a case such as this one.⁵

The Company’s attempts to denigrate and dismiss the issues raised by Intervenors is unfounded and unseemly. Counsel representing both Marple Township and Delaware County have pursued comprehensive legal actions on behalf of the health, safety and welfare of the community; and they have been joined in good faith by Township and County professionals who submitted

² C. Lewis et al, PECO Main Brief in PUC P-2021-3024328, p. 2

³ *Energy Conservation Council v. Pub. Utility*, 995 A.2d 465 (Pa. Commonwealth Court, 2010).

⁴ 52 Pa. Code § 59.1. Definitions

Pipeline—All parts of those physical facilities through which gas moves in transportation, including pipe, valves and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies.

⁵ *Dept of General Services v. Ogontz Area Neighbors Association.*, PA Supreme Court 505 Pa. 614, 483, A.2d 448 (1984): “absent a clear statute to the contrary, agencies of the Commonwealth are not exempt from zoning and land use regulations”

testimony and made themselves available for cross examination during Evidentiary Hearings, two *pro se* Intervenors, as well as seventy Official Protestants, over ninety Protestants via Public Input Hearings, not to mention hundreds of residents and business owners (off-the-record as far as PUC proceedings ruled, but entirely real nonetheless). This prodigious participation in the Public Interest reaches far beyond PECO's claims of irrelevance and accusations of NIMBY motivation, but represents a truly coherent and coalescent objection to the siting and to the Utility tactics for obtaining Commission approval of it. The Company's complaint that Public Outreach is not germane to an MPC 619 proceeding is belied by the extent and expenditure of their own efforts to convince the Public that they have correctly chosen a reasonable site, but the preponderance of response from citizens, businesspersons, and government staff and officials is overwhelmingly to the contrary.

And just this past Friday, on August 21, 2021, His Honor John Whelan of the Delaware County Court of Common Pleas, denied PECO's Appeal in Opposition to the Marple Zoning Hearing Board's decision and remanded the case back to the Zoning Hearing Board for reconsideration. Thus the jurisdictional debate is moved forward along local and regional channels, and it should be clear to all involved that The Company's attempt to circumvent these authorities by utilizing the Commission's authority is unreasonable and inconsistent with their responsibilities to the Public.⁶

II. PROCEDURAL HISTORY: (*Background/History otherwise noted by others*)

⁶ In relation to local governments' ability to assure the public health, safety and welfare of their citizens. "a political subdivision has a substantial, direct and immediate interest in protecting the environment and the quality of life within its borders, which interest confers upon the political subdivision standing in a legal action... "they are places populated by people."

Local government, therefore, has a substantial and direct interest in the outcome of litigation premised upon changes, or serious and imminent risk of changes, which would alter the physical nature of the political subdivision. *Robinson Township v. Commonwealth of Pennsylvania* 83 A.3d 901 (Pa. 2013), in which the Supreme Court ruled that portions of Act 13 of 2012 and unconstitutional, affirming the significance of the Environmental Rights Amendment of the PA Constitution, Article I, Section 27.

1. Petitions to Intervene *Pro Se* were filed by Theodore R. Uhlman and Julia M. Baker.

Due to the close proximity of their properties to the proposed site, they are eligible to be considered to possess “*substantial standing*” in this matter.⁷

IV. QUESTIONS TO BE PRESENTED: (*in addition to those covered by others*)

1. Whether or not the Company has met their burden of proof regarding the temporal urgency of this project.
2. Whether or not the Company has met their burden of proof that, even though they claim not to have to choose the “best” site, that they have not chosen a *worse* site over a *better* one with respect to the convenience and welfare of the public.
3. Whether or not The Company, in pursuing this particular siting, produced a preponderance of evidence that their process of determination was reasonable and forthright given that they have a default service contract as a Public Utility and must abide by all PUC regulations for the service and protection of the Public Interest.

V. LEGAL STANDARDS

A. BURDEN OF PROOF

According to statute the burden of proof lies with the Appellant in this matter⁸, and consists of burdens of production plus persuasion.⁹ This requires a preponderance of evidence, or that more

⁷ *Hickson*, 573 Pa. 127, 135, 821 A.2d 1238, 1243 (2003)

⁸ 66 Pa. C.S. § 332

⁹ *Loudenslager's Estate*, 430 Pa. 33, 240 A.2d 477, 482 (1968) (Roberts, J., dissenting);
Hurley v. Hurley 754 A.2d 1283 (a. Super.2000)

persuasive than that of the opposition.¹⁰ Substantial evidence is further defined as that quantum of evidence that a reasonable mind might accept as sufficient to support a conclusion.¹¹

The burden of persuasion never leaves the party on whom it is originally cast.¹² In short, “the burden of production goes to the legal sufficiency of a party’s case...and...In order to bear the burden of proof and be entitled to a decision in his favor, a party must bear both the burden of production and the burden of persuasion”¹³ PECO’s brief describes in greater length the importance of sufficient evidence production to engender a *prima facie* case and thereby shift the burden of production, or perhaps enable a strategy of offering the appearance of enough additional evidence to render their position favorable (Main Brief p, 11). Having failed to shift the burden of proof, many of the allegations set forth in PECO’s Argument lack foundation and merit altogether.

VI. SUMMARY OF ARGUMENT:

The positions of the Township, the County and hundreds of local residents and businesspersons have become correctly informed despite the Utility’s efforts to obfuscate facts and cloak realities in cheery marketing language. Moreover their opinions are consistent and well-founded even in the face of such misleading and deceptive practices. Not surprising, some citizens may have been misinformed at times given how deeply concerned they were, and how little of substance was proffered by the Company.

¹⁰ *Norfolk & Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980)

¹¹ *O'Connor v. Pennsylvania PUC*, 582 A.2d 427 (Pa. Commw. Ct. 1990).

¹² *Riedel v. County of Allegheny*, 159 Pa.Cmwlt. 583, 633 A.2d 1325, 1329 n. 11 (1993)

¹³ 2021 WL 2143699, at *12 (Pa. P.U.C.) (Opinion and Order, May 24, 2021) (“*Transource*”)

On the contrary, attorneys' Briefs have shown the many inconsistencies with PECO's claims of imminent need, planning, and site selection criteria. Intervenors presented substantial evidence and demonstrated through their cross examination and rebuttal questions that easily dismantled PECO's unpersuasive search parameters, showed that they did not reach out to other property owners or to the Zoning Board to negotiate for appropriate sites, and acted in such an unauthentic and disingenuous fashion as to preclude local authorities from working with them to establish reasonable and feasible alternatives.

The Company has struggled mightily to walk back Mr. Flanagan's initial assertion of the unique nature of the station. It has been admitted that it is not identical to the other gate stations and that PECO maintains no proving ground or other experimental facility for testing the performance of its integrated systems (Trans. 1474:8-9, 24), that it is one of very few so close to developed properties, and on *such* an unusually small lot- clearly there is knowledge aforethought that this will be unacceptably loud, given the various refinements added and especially the unprecedented pursuit of a (highly flawed) third-party sound study which attempts to whitewash an important health concern.

PECO gained nothing by striving to discredit Mr. Boyce and Mr. Capuzzi as Expert Witnesses; in their important positions of authority, they are responsible for public safety and have working knowledge of National Fire Protection Association and the DOT Emergency Guidelines (trans. 1074:9-12). Mr. Boyce is properly credited with saying re the term "*reliability*" "To me, that's a marketing term."(trans. 1073:13-14). Mr. Israni made it clear that during his prolonged tenure at the PHMSA, they did not use the term "*reliability*" (1589:19-1590:6) nor do they get involved in any siting issues (trans. 1553:1.; 15572:1-9;1582:23-25- 1583:4); however he did respond that with respect to vapor emissions and noise,

and in the event of a release: pressure and distance from the source are certainly factors (trans. 1629:18-23; 1580:7-12).

However, it is absolutely correct to term a regulator or gate station as a “plant”¹⁴

The fundamental situation that PECO would *not* want the Commission to consider is that siting their station on this particular Neighborhood Center corner would impose significant material and aesthetic harm to the District and to the adjacent Residential tracts which begin immediately to the North. Lacking a picturesque Main St. or central Commons/Square/Plaza of any kind, Marple Township and its Broomall section have only State road arterials- S.R. 3 (West Chester Pike) and 320 (Sproul Rd.) serving as commercial strips for small business serving primarily local residents. They may not be tony, picturesque, or even quaint, but PECO grossly mischaracterizes the setting and the impact in alleging that it would be consistent and enhanced.

Mr. Israni also confirmed that noise is a factor with such stations, and that he has not been involved in any sound studies (Trans. 1640:22-24; 1641:7-10). Mr. Flanagan replied that the production document “Heater Noise” is for a 2.3MMBTU/hr unit (Exh. Uhlman Cross-1: PECO 005075) and that Hoover and Keith Sound Study’s simulation was based on a 3MMBTU/hr heater (as opposed to the 4.6MMBTU/hr specified for the proposed station (TF-7 and Trans. 1467). H & K greatly understated the increased noise potential as 1- 3 dB as minimal, and failed to point out that low frequency readings, widely known to be insidiously damaging, were already higher than the ordinance allows (Trans. 1470:20). When asked about

¹⁴ <https://www.merriam-webster.com/dictionary/plant>

2a: the land, buildings, machinery, apparatus, and fixtures employed in carrying on a trade or an industrial business

b: a factory or workshop for the manufacture of a particular product

c: the total facilities available for production or service

the ability of sound to be carried by air currents and whether any studies addressed this, Mr. Flanagan (Trans. 1471:9- 1472:1)¹⁵ and so PECO misrepresents Ms. Wilson’s testimony when they state she conducted no independent studies, and neglected to mention her concerns about routine weekly or biweekly tests of the backup generator which would be expected to exceed acceptable levels¹⁶

The attorneys for the Twp. and Cnty. have made clear that Twp. staff were not aware of the true nature of the project when allegedly asked for ‘recommendations.’ Furthermore, it is improper as well as incorrect to suggest that the Twp. would engage in a “popularity contest.” Questions arose in more detail about Mr. Facciolo’s other property at 2024 Sproul Rd. only because the Company suddenly ‘yanked the cords on its purse-string trap’ by announcing a minimum inlet pressure of 150 p.s.i. for the station so as to exclude all other sites (Exh.RL-5; Trans. 1217:14-15; 1222:10-11), leaving no choice but to draw out additional evidence of comparative features. Mr. Gentile and I were never at odds about the siting; PECO simply mischaracterizes this by juxtaposing partial information that became available at different times.

Again the Company misrepresents the similarities between the 2090 and 2024 Sproul Rd: while it is true that they belong to the same owner (who is widely known for leasing, and not for selling his properties), and are close enough to share geological and hydrological characteristics; the sheer facts of comparison are undeniable as far as health, safety and welfare are concerned.

¹⁵ Exhibit JB-1 *3501 Williamson Sound Measurements* and JB-2 Affidavit of Christine Howze

¹⁶ In The Court of Common Pleas of Delaware County, Pennsylvania Civil Action No. CV-2020-8477. PECO Energy Company v. Marple Township Zoning Hearing Board: 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)

2040 Sproul Rd. is 1) outside of the Potential Impact Radius of 117ft. (Trans. 1618:11-15 and Exh, TF 4:3) for all adjacent properties, and they are screened by vegetation, fencing, and the existing structure on the site, 2) the three nearest businesses are well-insulated modern masonry and double-pane glass structures far less likely to be impacted than Freddy's restaurant and Fritsch's Liberty service station (both of which have open air sections), 4) the existing building has water and sanitary service, all usable, and 5) it offers a larger possible lot and requires no contaminated soil mitigation. After having said he was not involved in site selection and unfamiliar with the criteria, and when asked if such features would make a site more preferable for PECO's needs (Trans. 1461:24- 1462:6), Mr. Flanagan inquired "I am curious of where that site is." (Trans. 1462:24). That the Utility contends 2090 Sproul Rd. is the only satisfactory site only brings into high relief the dishonest or deficient nature of their planning and the self-serving inflexibility of their so-called "standard" selection criteria; it is neither reasonable nor optimal.

VII. ARGUMENT:

PECO repeats the same circular argument and cites the same set of cases in their attempt to narrow the scope of the proceedings beyond what is reasonable in considering siting, which ALJ DeVoe has made clear is central to this matter. It need only be restated as briefly as possible that however literal the wording may be regarding "*buildings*" and "*fencing*" any rational, sentient human understands the true nature of them to be appurtenances to a gas regulating station comprised of integrated mechanical and electrical systems.

Counsel for Marple Twp. and Delaware Cnty. have provided a preponderance of evidence that the planning of the Reliability Project and selection process for the proposed Station have been fraught with wantonly deceptive practices not worthy of a Public Utility, and

have been promulgated too far in advance of persuasively-demonstrated need to warrant the granting of the currently-sought Finding of Necessity.

A. THE SITUATION OF THE NATURAL GAS RELIABILITY STATION'S PROPOSED BUIDINGS IS NOT REASONABLY NECESSARY FOR THE CONVENIENCE 'OR' (PECO Brief sic- the statue reads "AND") WELFARE OF THE PUBLIC

There are numerous citations worthy of quoting to counter PECO's usual litanies, and PECO does not allege that it considered compatibility with neighboring properties with respect to 2090 Sproul Rd., local zoning (except for taking predatory advantage of an out-moded and likely errant clause in the N District Special Exception chart), or local comprehensive plans:

PA Municipal Planning Code MPC 53 P.S. § 10619.2
Commonwealth Agencies such as the PUC "shall consider and may rely upon comprehensive plans and zoning ordinances when reviewing applications for the funding or permitting of infrastructure or facilities."

52 PA Code § 69.1101 requires the PUC to "consider the impact of its decisions upon local comprehensive plans and zoning ordinances" when reviewing applications for, among other things, siting a public utility building."

Their own expert witness Mr. Israni, averred that he had "*no issues with*" guidelines from the American Gas Association "*That there is a significant amount of collaboration and support needed from various parties to upgrade these legacy systems to deliver higher pressure*" (Trans. 1642:15-22); and when given the opportunity to comment on the following: "*it is a leading practice for a gas utility to engage and secure the support of cities, towns, and counties in replacing utilization pressure systems. Gas utility operators and the communities they serve must work closely to develop plans that are workable for all stakeholders. Placement of pressure-related stations and release (sic relief?) valves above ground or in the public right-of-way may*

need support of local communities to mitigate the risk of over pressurization.” Mr. Israni replied “I don’t see anything wrong” (Trans. 1643:24-1644:11)

One of our greatest concerns is that the project is largely for PECO’s convenience, and with no reliable assurance of whom will benefit, that it is driven primarily by self-serving economic interests.¹⁷

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

In contrast to the Utility’s assertions that Intervenors are attempting to distract from issues germane to this matter, it is they who hope to deflect the facts away from central considerations of siting concerning the *convenience and welfare of the public*, that they have not met their burden of production, and so do not merit consideration as having met the standard for a *prima facie* case.

The burden of proof that this application does *not* pose adverse impacts upon the Community and that its promised benefits remain unproven remains squarely with the Appellant. In endeavoring to dictate to the Commission firstly- that they should not “consider these issues” and secondly that the Intervenors- “failed to meet their burden of proof with respect to them.”¹⁸ PECO tries to have its cake and eat it too, for lack of a better analogy. In terms of their evidence production, the Utility stonewalled and obstructed at every turn, and only when compelled by the ALJ did they release anything of substance, which was further made burdensome to the

¹⁷ *Energy Conservation Council v. Pub. Utility*, 995 A.2d 465 (Pa. Commonwealth Court, 2010), in which it was determined that the proposal served the company's need for profits but no real consumer or public need.

¹⁸ C. Lewis et al, PECO Main Brief in PUC P-2021-3024328, p. 38.

Respondents by being stuffed with many hundreds of pages of data, correspondence and specifications, most of which were chaff in great need of winnowing.

Far from providing a preponderance of evidence, PECO's witnesses frequently deferred, or could not (or would not) answer direct questions during cross examination and rebuttal/surebuttal testimony. Time and space do not permit me to list them here, and I believe it was glaringly apparent to all that by the time Mr. Flanagan testified, the number of questions that had been deferred to him but remained unanswered was appalling. In addition to a dearth of actual engineering expertise from which we could draw substantive information, the omission of Edward McBride was extremely curious. It was he and not Douglas Oliver who participated in the greater part by far concerning public communication. It is permissible to draw and 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*"¹⁹ Knowing that their responses would add important evidence to the Respondents case, PECO's counsel also demurred from cross examining several key witnesses: Joseph Mastronardo, the Twp. Engineer, and Christine Howze, a citizen with knowledge and experience in sound measurement far beyond that of a lay person.

It is also of interest to note, in the Commission's Rules, that there are many more regulations pertaining to electrical service than to gas.²⁰ Nevertheless there are certain passages directly related to safety and emergency response in particular:

¹⁹ Murphy v. Department of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth. 1984). ALJ's Op., 7/26/17, at 13. Th

²⁰ 52 Pa. Code § 54.122. Code of conduct (Electrical suppliers *only*).

52 Pa. Code § 57.191. Purpose.

Reliable electric service is essential to the **health, safety and welfare** of the citizens of this Commonwealth. The purpose of this subchapter is to establish standards and procedures for continuing and ensuring the safety and reliability of the electric system in this Commonwealth.

52 Pa. Code § 59.33. Safety

- (a) *Responsibility. Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.*
- (b) *Safety code. The minimum safety standards for all natural gas and hazardous liquid public utilities in this Commonwealth shall be those issued under the pipeline safety laws as found in 49 U.S.C.A. § § 60101—60503 and as implemented at 49 CFR Parts 191—193, 195 and 199, including all subsequent amendments thereto.*

52 Pa. Code § 101.3. Plan requirements.

- (c) (a) A jurisdictional utility shall develop and maintain written **physical and cyber security, emergency response** and business continuity plans.
- (d) (iii) Notification of the **appropriate emergency services and emergency preparedness support agencies and organizations.**

52 Pa. Code § 57.107. Construction management guidelines

- (13) The construction management program should ensure that construction personnel are aware that **cost and schedule considerations are not more important than safety and the application of sound engineering judgment.**

It is therefore encouraging to see that the Commission has kept these issues in mind, and also that the importance of clear and forthright public engagement has been kept at the forefront by the ALJ devoting prodigious amounts of time and consideration both to Public Input Hearings and to the participation of us *pro se* Intervenors. That PECO used 15 pages of its Main Brief for these “Beyond the Limited Scope” concerns is telling indeed; I put good faith in Your Honor’s ability to judge what weight to ascribe to which points, which both sides have covered in detail.

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

20 (cont.) The standards have been developed to provide a uniform method of assessing the reasonableness of electric service reliability

This ancillary issue is posed simply because the Company would otherwise require a variance from the Township for a wall exceeding permissible height. Other stations, more remotely located with very few exceptions, are not in areas so densely developed with “town center” style ordinances. They realize that the station presents an “attractive nuisance” to potential vandals and that they would not stand a chance of complying with the local noise ordinance without the additional height.

VIII. CONCLUSIONS- ANSWERS TO QUESTIONS POSED

1. Whether or not the Company has met their burden of proof regarding the temporal urgency of this project.

- 1.1 In their graphics attempting to document projected need, PECO used only linear calculations based on past consumption (Exh. RL 7: Trans. 1259:11) and did not factor in to account more sophisticated algorithms, or updated information such as the large tract of property which was recently denied for development, in process of being purchased by the County for open space, and therefore will *not* be adding any residential or commercial customers. In addition, a professional real estate appraiser documents that the neighborhood is essentially “built up” and does not offer opportunities for new development.²¹ Nor did they figure in current trends, at every geographic level, that customers will *not* choose new natural gas connections because it is readily apparent to any reasonable person that 1) prices will be increasing, 2) more alternatives for renewable energy are

²¹ Exhibit MMS Professional Real Estate Appraisal

becoming available, and 3) that the threats imposed by climate change dictate a reduction in the use of fossil fuels.

- 1.2 In Ryan Lewis' exhibit pictorializing the "null point" of system pressure occurring at Lawrence and Sproul Rds., he presented a graphic with arrows but no actual numerical pressure figures, and referred to a commercial software system that PECO uses, but never explained how measurements were taken.^{22 23}
2. Whether or not the Company has met their burden of proof that, even though they claim not to have to choose the "best" site, that they have not chosen a *worse* site over a *better* one with respect to the convenience and welfare of the public.
 - 2.1 Through James Moylan's testimony the Company was demonstrated to have given it's agent a 1 mi radius, and one presumes with the benefit of experience Mr. Moylan would have reasonably extended that to 2 miles.
 - 2.2 Not until Spring 2021 meetings with the Public did PECO begin to assert that it was a 0.5 mi radius from Lawrence and Sproul that was necessary. They reinforced this further by responding to the Community and Elected officials presentation of Site Recommendations²⁴
 - 2.3 And then through Rylan Lewis' testimony an even more restricted engineering requirement was finally disclosed, essentially asserting that without a minimum injection pressure of 15 p.s.i. no other options were

²² PECO Exhibit RL- 6

²³ 52 Pa. Code § 59.29. Gas pressure requirements for low-pressure distribution systems

(d) *Pressure gauges* "A sufficient number of recording pressure gauges shall be installed and operated in each distribution system to furnish a continuous record of the pressure prevailing in all parts of the system."

²⁴ Exhibit JB-9 PECO Site Recommendations

even possible (Trans. 1222:23-1223:1): *except 2024 Sproul Rd., which they also claim to have eliminated, for dubious reasons..*

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

IX. CONCLUSIONS WITH REQUESTED RELIEF:

1. The proposed siting is not “reasonably necessary for the convenience and welfare of the public.”
2. The Company, in claiming that they have an urgent need for this project, did not meet their burden of proof that warrants the Commission grant their request for a finding of necessity at this particular time.
3. The Company, in eliminating other sites, has not met the burden of proof that another site would *not* be better, and is reasonably feasible for them to pursue, in order to serve the convenience and welfare of the public.

3.1 PECO failed to carry the burden of persuasion to establish need for the proposed siting Application by a preponderance of the evidence, pursuant to Commission authority under Section 1501 of the Code and Commission Regulation at 52 Pa. Code § 57.76(1).

4. The Commission should direct the Company to cooperate and collaborate with local authorities as they have shown willingness to do. I hope that will be the case for the good of all concerned, and for future cases like this one.

An incomplete main brief was 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 an Amended Brief was filed on the docket and served upon all Parties on August 23, 2021, but is hereby withdrawn.

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
jbakeroca@msn.com
(610) 745-8491

August 30, 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 REPLY BRIEF 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

JACK R. GARFINKLE ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET
PO BOX 8699
PHILADELPHIA PA 19101-8699
215.841.6863

jack.garfinkle@exeloncorp.com
Accepts eService

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

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

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

Respectfully Submitted,

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

August 30, 2021