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

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

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I. INTRODUCTION

I respectfully submit this Amended Brief in support of Marple Township’s and Delaware County’s opposition to PECO’s Petition. Even though Attorneys for Township and County might not be representing the identical interests of this *pro se* Intervenor, I adopt fully the foundations for and substantiations of their arguments. Moreover, their very interventions and thorough, professional efforts emphasize the extent of interest and depth of concern at the local and regional level. We put our faith and trust in the Commission’s wisdom and fairness in presiding over this matter, which we believe is unique among pre-existing cases and worthy of consideration.

In response to The Utility’s allegations, the Intervenor *have* in fact: (1) presented meaningful and properly corroborated evidence that the selected location at 2090 Sproul Road can be considered arbitrary or capricious and does not meet the standard for serving the public interest; (2) identified several viable alternative sites despite The Company’s efforts to restrict the parameters unreasonably, and (3) identified site selection criteria and processes that would allow identification of a viable site. PECO is demanding that the Commission pave the way for them to acquire and use a site convenient only for their needs upon having tried to ‘fly below the radar’ and so as to avoid the necessary consideration of the public welfare.¹

¹ On page 1 note 1 of their Reply Brief, PECO takes issue that this *pro se* Intervenor having cited 52 Pa. Code § 57.76(a)(4), “which relates to the Commission’s review of the siting and construction of electric transmission lines, and which is not applicable to this proceeding.” But PECO *frequently* cites case law dealing with utilities other than gas, not to mention rulings of other Commissions having nothing to do with utilities altogether.

It should be noted that 1) not only did their External Affairs Witness Michele Garrity highlight PECO’s quality of community engagement (PECO Statement 7SR:2:20-3:10) based *only* on examples of electrical infrastructure, and when asked if this was applicable to gas issues she insisted that they were equivalent (Tr. 990:20-23)

Please note also that the following codes are present in Title 52 *only for the electrical side* and there are no such Subsections pertaining to gas.

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

52 Pa. Code § 57.191. Purpose.

Pennsylvania Commissions and Courts can justly consider the greater degree of knowledge local authorities have about the communities they serve. At the Commonwealth level, major trends in demographics (and for the PUC, in evolving energy policy), deliver strong signals that regulations require reconsideration. It is common knowledge that earlier this week our Governor emphasized PA's being fifth in the nation with regard to gas combustion emissions and the need for us to sign onto the RGGI (Regional Greenhouse Gas Initiative).² PECO's insistence on quoting repeatedly the same judicial decisions cannot continue to carry the same weight as we move forward through the 21st century.

II. SELECTED PROCEDURAL HISTORY (*detailed in toto by others*)

1. On April 18, 2021 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 for consideration in having "*substantial standing*" in this matter.³ They have participated in these proceedings and abided by the Commission's Rules and Regulations to the best of their abilities, and in good faith and conscience.
2. On August 27, 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 a multi-jurisdictional concurrency of proceedings ensues.*

(Note 1, cont'd) 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.

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

² <https://www.governor.pa.gov/newsroom/gov-wolf-issues-statement-on-commission-approval-of-rggi/>

³ *Hickson*, 573 Pa. 127, 135, 821 A.2d 1238, 1243 (2003)

3. On August 10, 2021, ALJ Long was added to the case, and she and ALJ DeVoe issued an Interim Order granting Intervenors Ted Uhlman and Julia Baker Leave to Submit Amended Briefs until August 24th if they availed themselves access to the Evidentiary Hearing Transcripts in the Philadelphia Office at 801 Market St., which they have duly followed to the fullest extent possible.

III. SUMMARY OF ARGUMENT

PECO has neither met its burden of producing evidence nor borne their burden of proof regarding the necessity and benefits of siting the Station's buildings at 2090 Sproul Road. They can claim nothing remotely approaching a *prima facie* case, and their attempts to limit the scope of the matter only serves to defy what any reasonable person would conclude.

Intervenors are rightly challenging the location on grounds of adverse effects to health, safety and welfare, and lack of evidence of potential public benefits of the proposed buildings at the Natural Gas Reliability Station. The numerous valid issues raised in these proceedings are not addressed by PECO in a competent evidence of record due to contradictions, failure to produce pertinent evidence, or outright inability and/or refusal to answer legitimate questions.

IV. ARGUMENT

A. Despite the Company's insistence of the more restrictive possible legal interpretation if the MPC Section 619, there is no way to avoid the absolute logic that the buildings and fence would serve no purpose whatsoever without the equipment they are need to house and secure. PECO and the ALJ validate this very concept by affording such intensive and extensive attention to all of the performance and safety matters relating to the mechanical

operations of the facility; the very relief sought based on *reasonable necessity* directly translates to the gas-regulating components.

Given the oft-quoted issue of the *siting*, PECO therefore mischaracterizes the proceedings on Page 4 of their August 30, 2021 Reply Brief when they complain that the request to relocate the station is “not appropriate under applicable law.”⁴ How can it be possible, within the realm of human understanding, that these so closely related codes can be ignored by the Company?

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.”

B. Intervenor *Intervenors have produced a preponderance of evidence that the selection of 2090 Sproul Road can be considered "arbitrary and capricious."*

Other Intervenors have clearly made the case that the site selection process distorted the use of real estate evaluation criteria and did not involve proper planning and communication so as to ensure that the situation of the station buildings would be reasonable necessary for the convenience and welfare of the public. One questionable claim of benefit to the public is having no need to install water lines and a sanitary system (Exh. TF-1 Overall site plan- no water supply or sanitary output is indicated). Mr. Flanagan affirmed details is on the heater specification

⁴ What is *inapplicable* here is their footnote 8 on Page 4 referring to the current rate case and the “Reliability Project” in general, as an illogical means for showing that they have met their burden of proof with regard to the Station, quoted here: “8 Notably, such findings would be consistent with Commissioner Ralph Yanora’s recent statement, dated June 17, 2021, in connection with PECO’s natural gas rate case, concluding that “PECO has met its burden of proof and has provided substantial evidence regarding the necessity of the Natural Gas Reliability Project...”. *Motion of Commissioner Ralph V. Yanora*, Docket No. R-2020-3018929 (June 17, 2021).” This Motion was not entered into evidence, nor was any other document from the Rate Case.

sheets (Exh. Uhlman 9-PECO 3025 and 3026) showing that it does not require a water feed supply: “and a 50/50 ‘what I call’ actually “GLYCOL/”water temperature regulation system, close- actually “closed system.””

This is a **COURT REPORTER ERROR: It SHOULD READ-
“AND A 50/50 WATER/GLYCOL TEMPERATURE REGULATION SYSTEM, A
CLOSED SYSTEM.”** (Tr. 1438:22-23)

This means that the temperature regulating liquid remains within the system and is not added to or released except during maintenance. But without water supply (Baker) “...when you’re cleaning the burners and the heaters and washing down equipment and keeping plantings alive, and keeping your buildings clean, how are you going to deal with not having water service?” (Flanagan) “ I don’t know that we’re not having water service. Where did you see that?” (Tr.1459:25-1460: 7-13). And so admittedly there is another problem with this site.

But there is also confusion about water vapor emissions from the heater, After Attorney asks if stacks handle emissions from gas used to run heaters, he is told “That’s one aspect of it. The other aspect is these heaters are a water bath, so the way we heat the gas that’s coming in is we run the pipe through the hot water, and it’s all contained within that and what you’re seeing mainly coming out is the steam generated from that heating of the water” (Tr. 1365:21-25 to 1366:1). When Attorney Ewald asked about vapor emissions from the heater stacks from natural gas combustion and how Mr. Flanagan knows that they are H₂O and CO₂, he replied “I watched the steam coming off, that’s water vapor coming off of the...water bed that we have in there.” (Tr. 1372:25- 1373:1-2). But as we have just noted, he is being asked about water vapor from the gas burned to *power* the heaters; no water vapor is emitted from the ‘bed’ of a closed system, otherwise one would need to add water to replace what is lost to steam, and *there is to be no water service.*

Other issues critical to the convenience and welfare of the public in choosing this site went unresolved, even by Mr. Flanagan, to whom Mr. Moylan, Mr. Ryan Lewis and Mr. Thillet frequently referred Intervenors questions “And why was it decided that the 4.6MMBtu capacity was necessary for this site?” “I don’t have that answer.” (Tr. 1448:17-19). He confirmed for Attorney Matlawski that he was involved neither in the site selection. (Tr. 1431:15-17) nor in the overall 11.5 route planning “I am not familiar necessarily with the route of the 11 and (a) half miles of main. (Tr. 1431:22-24).

C. Delaware County’s argument that the Natural Gas Reliability Station is not reasonably necessary to force upon this location at this time because there is no “urgent” need- is an important point worthy of due consideration.

In their graphics attempting to document projected need, PECO used only linear calculations based on historical consumption (Exh. RL 7: Trans. 1259:2-11, 21-22, and 1260:4-6) and did not factor in to account more sophisticated algorithms, or updated information such as changes in climate, energy policy 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. Mr. Ryan Lewis told Attorney Ewald that the high pressure distribution system would not experience constraints until 2107(Tr. 1224:13-19). Considering this and the assertion the only one other property “would work,” “the one on 2024 Sproul Rd. which was closer” (Tr. 1222:7-13), it seems only reasonable that further deliberation be conducted in the interest of convenience and welfare of the public.

D. Intervenors’ contention that PECO failed to evaluate public welfare is repeatedly confirmed by the record and indicated a fundamental misinterpretation of the statutory scheme governing public utility law by the Company- that “public welfare” refers only to provision of gas and does not include health and safety.

Intervening Counsel have made it abundantly clear that PECO reiterates in each submission the same arguments citing cases *factually distinguishable* from the current proceedings, and that each and every one of The Company's Witnesses admitted that Public Health, Safety and Welfare *per se* were not considerations for site selection criteria.

E. *Intervenors' correctly contended that PECO's public outreach and site selection process was disingenuous at best and at worst, intentionally deceptive, and so argue that PECO's standard site selection criteria can also be considered "arbitrary and capricious."*

When Mr. Moylan was asked (after he repeated that 2090 was the only site meeting the criteria and was optimal) "why was the ZHB not approached for that request for special exception *prior* to this meeting for approach to the property?" (Tr. 1154:16-19)

"That's not the way we do things. The purpose of us was- purpose was to find- my purpose or my job was to find the property that fit the project the best, and this was the property. And then we dealt with the zoning thereafter." (Tr.1154:20-24)

We appreciate the sense of fairness and emphasis with which ALJ DeVoe offered to take Judicial Notice of the Marple Township Zoning Code, as any reference to the description of the Neighborhood Center District would show how glaring an incongruity it is that among the many permissible uses requiring a Special Exception, one of these does happen to be "Public Utility Facility." In any reasonable context this begs the question of how that could have been possible.

The questionable timing of communication both with local officials and with the public have been detailed at length by others. Suffice it to summarize that PECO had clearly identified its 11.5 miles route and sites along Sproul Rd. by May of 2019, had focused on the 2090 Sproul Rd. location by November or December 2019 at the latest, and continued planning and preparations with full expectation of moving forward while concealing this from local officials for a full six months (Tr. 974:19025 and 975:1)- even from our State Representative Jennifer

O'Mara; unfortunately she was only able to go on the record in the form of a letter⁵. The sound study was conducted in December of 2019 (Tr. 1468:8-16). A stream crossing along the heavily-traveled section of Sproul Rd. between West Chester Pike and West Springfield Rd. was not brought up for permitting until Spring 2021 in a thinly- veiled attempt to slide the final slice of the egg into place at the latest possible juncture (to have done so any earlier would surely have alerted those numerous citizens who were still unaware of these developments). To add to the long list of professional and lay people who had never hear the term "reliability station" and could find no information on it before PECO began generating documents, their own expert witness agreed that is it unfamiliar "the term is not one that's generally used in the industry." (Tr. 1553: 7-10). Mr. Israni made it clear that during his prolonged tenure at the PHMSA, they did not use the term "*reliability*" (1589:19-1590:6). Mr. Boyce said it best when he described the term "*reliability*" "To me, that's a marketing term."(trans. 1073:13-14).

It seems possible that the Commissioners were grandfathering in a gasoline service station when they included a utility facility permissible, not by right, but by Special Exception; but there is no question that the hazards of methane under pressure in a remotely-staffed facility, with usage by a 4.6MMBtu heater and a commercial generator, far exceed those of liquid gasoline tended to by professional staff during hours of dispensing and shut during off hours. Mr. Flanagan, who manages Operations for the West Conshohocken plant and the distribution network, was asked if he participated in any way in the site selection. "I did not" (Tr. 1376:8-10). "Is there an awareness that alternative route could have shortened the distance and, therefore, allowed PECO more flexibility in their site selection?" (Tr. 1433:5-8). "I have no knowledge of

⁵ PA Sen. Tim Kearney and Rep. O'Mara wrote a letter stating their opposition to this siting, and filed it on the docket in the current proceedings.

that, the installation of that main or how they chose to go, or I—I really, can’t answer that question.” (Tr. 1433:9-11).

I asked permission to ask about station design (Exh. TF-1 site plan) “and in particular the fact that you’re not going to need any water service...” (Tr. 1445:16-22). “...on grounds of the contaminated nature of the brownfield characterization of this site and the decision to not have water or sanitary service, (*on MT Cross ZHB presentation*) which I think any reasonable person would agree and conclude that they are doing this so they don’t have to disturb and remove more soil. So it’s fairly self-evident.” (Tr. 1461:9-10). Also, Mr. Flanagan, in his responsibilities as he helped plan the stations.... He’s managing the station...” (Tr. 1461:24-25 “...if there were a site available, this (sic- which) is not a brownfield site, which would be within the inlet pressure requirements for the Company in this regard, where there was already water and sanitary service, and where the distances from the nearest residences and properties was over 150 feet, would that not be an even better selection?” (Tr. 1462:1-5). “I don’t know how to answer that question.” (Tr. 1462:7-9)

“There is one site left, which is within the pressure differential that Mr. Ryan Lewis told us was required and it is not a brownfield site,..does have water and sanitary service and is more than 150 feet from the closest residences. Does that suggest a level of acceptability to you?” (Tr. 1462:11-17). “I’ll just go back and say I was not involved in site selection. I don’t know what criteria they- I know what criteria they used, but I was not engaged in that at all.” (Tr. 1462:18-21). Mr. Flanagan inquired “*I am curious of where that site is.*” (Tr. 1462:24). Intervenor Baker answered “*That site is at 2024 Sproul Rd.*” (Tr. 1462:25).

And he responded “*OK Thank you.*” (Tr. 1463:1).

And then through Ryan 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 even possible (Trans. 1222:23-1223:1) (Exh.RL-5; Trans. 1217:14-15; 1222:10-11): *except 2024 Sproul Rd.*

G. *Intervenors rightly argue issues relevant to public health, safety and welfare.*

Emissions

Mr. Lewis prefaced the Testimony of the Intervenor's expert Medical Witness by asking ALJ DeVoe to take Judicial Notice of PECO's exemption from an EPA Clean Air permit on the grounds that the heater they specify generates less than 10MMBtu/hr. Although PECO attempted to elicit from their witnesses that only carbon dioxide and water were emitted from the heaters (and generator, whose output level was never provided), it was brought out during Cross Examination that the heaters are only 80% efficient, and that some carbon monoxide, nitrous oxides, sulfur dioxide, and particulates would be extant. (Tr. Expert Witness Dr. Edward Ketyer, an active pediatrician who has researched gate stations (Tr. 1663:15-17) and has conferred with "people who are involved in oil and gas activities as far as public health impacts" (Tr. 1663:24-25 to 1664:1-2), and testified that "...when you burn natural gas, you have byproducts, like you do with any fossil fuel. You don't have no byproducts. You don't have no emissions. You have emissions. And having dozens of furnaces or generators on a small area, you're going to have more considerable than just having one generator, more considerable emissions. And there's no safe level of any of these emissions. Even a small amount can cause maybe mild symptoms, maybe no symptoms. But even a small amount can cause some symptoms." (Tr. 1666:8-19)

Mr. Flanagan confirmed that the gas combustion is *not* 100% without emission (Tr.1366:11-15), and that the heater occupies a substantial carbon footprint and source of

emissions for such a closely developed area “It’s about 23 of those houses. That’s what I do know.” (Tr.1367:1-13). Attorney Matlawski wanted to know if the burning also creates carbon monoxide, and is told “Only if it’s for incomplete combustion.” (Tr.1367:14-17). But when asked “Do you know if this is entirely complete combustion?” (Tr. 1367:18-19), Mr. Flanagan told Attorney Matlawski “Yes.” (Tr. 1367:20, 22), and when asked (Tr. 1367::24-25 “Do you know what other emissions are included?” he then state “I do *not*.” (Tr. 1368:1)

Mr. Israni does confirm that greater distance from the station would mean greater dilution of emissions (Tr. 6129:18-23). When Commissioner Veshercofski (MT- Cross 1 74:20-75:7 [Marple 0139]) asked about aging of the heaters causing them to become noisier, to which Attorney Sklaroff replied “We certainly don’t want to have any *inefficiency*.” (Ibid, lines 8-9) Project Manager Mehul Gandhi had affirmed during the April 10, 2021 Zoom meeting that the heater is rated to the industry standard, 80% efficiency, which signifies incomplete combustion. Mr. Flanagan did not know anything about the efficiency rating, but he did confirm that with incomplete combustion which this would certainly represent, some amounts of products in addition to water and carbon dioxide, e.g. carbon monoxide, nitrous oxides, and sulfur dioxide as well as particulates (soot) would be emitted. Despite the 50-year-old EPA threshold for Clean Air Permit requirements only for heaters rated higher than 10MMBtu, Mr. Israni was aware that nitrous oxides and sulfur dioxide are classified by the EPA as criteria pollutants (Tr. 1629:2-7).

Noise

Mr. Israni also confirmed that noise is a factor with such stations, and that he has not been involved in any sound studies (Tr. 1640:22-24; 1641:7-10). Although he admitted that he did not know that the third party sound study by Hoover and Keith was based on a heater with 50% the capacity (Tr.1411:10), Mr. Flanagan confirmed that that the PECO production

document “Heater Noise” is for a 2.3MMBTU/hr unit (Tr. 1466:17-22; Exh. Uhlman Cross-1: PECO 005075) and that Hoover and Keith Sound Study’s simulation was based on a 3MMBTU/hr heater (Tr. 1467:20-24, Exh.TF-7, page 2 aka Exh Uhlman-9) as opposed to the 4.6MMBTU/hr specified for the proposed station (Tr. 1438:25; PECO Production Documents 3025 and 3026 aka Exh. Uhlman-9). When asked why a 4.6MMBtu heater was specified for the proposed Marple site, Mr. Flanagan replied “I don’t have that answer.” (Tr.1444:19). And when asked if these specifications were shared with Hoover and Keith: “I do not know that” (Tr. 1467:7). Nor was he aware if the sound study looked at noise levels for equipment upon start-up and shut-down (Tr. 1464:17-21), or even at what temperatures the heaters would be turned on and off, only that it was done manually and remotely (Tr.) *If an alert failed and an operator did not turn the heater on, the regulator could freeze, inlet flow cease, and back pressure increase.* When Attorney Matlawski noted on p. 9 of his testimony he wrote that the siting would have “minimal effect on the community” and asked Mr. Flanagan if outdoor dining area and drive-through lane of Freddy’s restaurant was closer than 100 feet from the equipment which would produce sound (Tr. 1361:6-8 and 10-12), he was told “I Honestly don’t know that answer.” (Tr. 1361:13-14)

Hoover & Keith greatly understated the increased noise potential as 1- 3 dB as minimal, whereas 3 dB represents a *doubling* of sound, and they failed to point out that low frequency readings, widely known to be insidiously damaging, were already higher than the ordinance allows (Tr. 1470:20). They also failed to mention that sound can be carried in different directions and to different heights by air currents (Exh. JB-1 3501 *Williamson Ave Sound study*) Mr. Lewis began his Cross Examination of Ms. Wilson, the licensed Industrial Hygiene Engineer, about the “regulator valve, silent ventilation system, and acoustical doors” (Tr. 1093:3-

20), to which she notes that "most of the sound dampening features discussed in the report are inside the building" (Tr. 1093:23-25). When asked if the mitigation appurtenances recommended by Hoover and Keith "that the building will serve the purpose of dampening any noise from the regulator and the equipment" Ms. Wilson, replied "It dampens it, but it doesn't make it go away." (Tr. 1095:19-23). Mr. Lewis also testified "that the sound guard panels on the security fence will also help dampen noise from the site" (Tr. 1095:24-25 and 1096:1), Ms. Wilson's reply addressed the relative heights of the sources (as the heater and generator are outside the building, and the 14' 7" heater emission stacks are a full 6' 7" higher than the proposed 8' fence (Exh. TF-1 Site Plan)) "They'll help dampen the noise that's at the same plane, but it's still going to go above that."(Tr. 1096:2-4). PECO neglected to mention her concerns about routine weekly or biweekly tests of the backup generator "'...you always run commercial generators once a week (Tr. 1096:22-25); and PECO Engineer Aaron Szczesny stated at the October 21, 2020 Zoning Hearing Board meeting that the generator noise would be expected to exceed acceptable levels.⁶ When asked whether any studies addressed this, Mr. Flanagan answered (Tr. 1471:9 "I am not aware of any studies"- 1472:1).

In Exhibit JB-1 *3501 Williamson Sound Measurements*, it is clearly evident that the Brookhaven Gate Station uses a 2-burner heater. From the West side the sound measured 61dBA at 260' and from the East side 71 dB A at 70.' As the proposed heater for Marple has 6

⁶ 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***. (Exh. MT Cross-1. 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***. (Exh.MT Cross-1. Marple Township Zoning Hearing Board Hearing, 10/21/2020, p. 55-56, ll. 12-10)

burners, this would mean a 200% increase in the noise level. In audio terms that would mean an additional 6dB minimal. In the absence of any competent evidence of record exactly what amount of noise reduction the proposed sound dampening equipment will afford, it remains entirely possible that acceptable levels listed in Marple Code sound ordinance (which is now 50 years old and is attached to the study Exh. TF-7) will be exceeded when the heater runs.⁷ Mr. Israni does confirm that greater distance from the station would mean less noise (Tr. 6129:18-23)

Safety

PA Code includes key elements with respect to safety in planning, warning and security:

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

7

PECO argues in their Brief that the Brookhaven Station operates at a higher pressure and that it does not have sound dampening equipment. *These are facts not in evidence in these proceedings*; and Mr. Matlawski was denied specifications about that and other stations even after the ALJ ordered The Company to produce additional documents following Motions to Compel by both Mr. Matlawski and Mr. Uhlman. Mr. Israni affirmed that gas transmission lines arrive at such custody transfer points at 250-1,400 psi (1604:9-11 and 1605:17-20), so we can understand that the inlet pressure must be greater by at least 10 psi, but we were denied any specific information about the Brookhaven or any other station beyond what we could see and measure. The Hershey's Mill site is on private property and not subject to public access, and the Buckingham Twp. location was denied altogether. The Hoover and Keith study neither offers any comparison with regard to sound mitigating apparatus, nor did Mr. Flanagan know whether or not their simulation was based on a particular equipment configuration (Tr. 1369:16-17 "I don't know how they conducted that study.")

(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.**

During Attorney Matlawski's Cross Examination of Mr. Flanagan, Exhibit TF-6 was discussed, which lists the 28 other such regulator stations, notes that they are located in industrial and residential areas, and gives ranges of distances from dwellings (Tr. 1357). The proposed Marple site would be the third within 100 feet of the nearest residence (tr. 1358:15-18), with the other two being Lukins and North Coventry (Tr. 1358:20-21), and Mr. Flanagan did confirm that none of them are "as close" (Tr. 1359:2-13). Attorney Ewald asked him if in dealing with a material like natural gas in case of accident, would it better to have less people nearby (Tr. 1376:20-24), and Mr. Flanagan agreed (Tr. 1376:6-7). Ewald then established that along the 11.5 mi pipeline route the valves have to be closed manually, if necessary, and only by PECO mechanics (Tr. 1377:1-13). Does Mr. Flanagan know how far the mechanics are from the valve locations? "No." (Tr. 1377:15-17). "I don't know where they are located on any given moment." (Tr. 1377:20-21). Does he know how many there are in the Delaware County area? "I don't know that number." (Tr. 1377:24) "So in that proposed 11.5 miles of pipe, ...what volume of gas will be in that?" (1378:20-21). "I don't have an answer to that question." (1378::22). Productive cross examination of Mr. Israni by all Intervenors with respect to safety factors was limited to the bounds of his purview, which included only PHMSA regulations, and these appear not to venture into the realm of site selection vis à vis Public Safety and Welfare (Tr. 1621:24, 1622:1-6). Mr. Israni did clear up an inconsistency in his testimony (p.23) in reply to Attorney Ewald, that the consequences of a leak, and therefore the impact and evacuation areas, are greater at higher pressures; and he stated that with respect to vapor emissions and noise, and in

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

He stated incidents are self-reported by the Operators and are not provided by the PHMSA Inspectors (Tr. 1629:14-19). During routine maintenance, Mr. Israni explained that whatever volume of gas resides in the line between the station's inlet and outlet valves will be released, depending on the regulator settings (Tr.1624:12-17). He recalls an incident in which "...the crew mistakenly getting the valve not really closed and started opening or started cleaning top of the floor and a person got injured." (Tr.1565:1-6)

He provided confirmation that Operators are required "to have company personnel present when there's an excavation activity near the pipeline." (Tr. 1624:16-22). He denied personal knowledge of the similarities and differences between the systems of other regulator stations and the one proposed for Marple (Tr. 1624:25- 1625:1-3), does not recall details about the Critical Energy Infrastructure Information Protection Act (Tr. 1625:5-8), has neither read anything nor can comment on why the PHMSA website allows public access to locations of gas compressor stations but not pressure-reduction stations (Tr. 1625:9-24). He has not had a chance to review PECO's Human Factors and Management of Change programs for Operational Culture and Training for the Prevention and Recognition of Adverse Operating Conditions (AOC's), or their Distribution Integrity Management Program (DIMP) (Tr. 1642:24- 1643:9), all of which are germane to the Safety Culture of an industry and entirely relevant to the Welfare of the Public.

He did verify that the PIR (Potential Impact Radius) from Gas Research Bulletin 189 is based on the construction materials of "regular American homes" and was asked if the distance of 117 feet refers to ignition for fire, not for explosion? Mr. Israni: "Absolutely correct." (Tr. 1624:1-4) He did aver, when asked if the two nearby sources of ignition (the grills of Freddy's

Hamburgers adjacent⁸, and Fritsch's Liberty automotive mechanical garage opposite), that the vicinity is already classified as a High Consequence Area, but they do not evaluate sources of ignition- only the number of buildings within a given area (Tr. 1628:5-6). He replied to Attorney Ewald's question "should a utility evaluate that risk (impact and danger zones- Tr. 1581:21-25) when they choose a location?" (Tr. 1582:2-3) by acknowledging that it is a factor "If they see that it's not going to add any impact on the community, and this is not going to be too dangerous" (Tr. 1582:4-12). And the witness averred that when contained or blocked at lower temperatures, gas released or combustion products thereof would dissipate more slowly (Tr. 1586:8-11). And yet for all his expertise and knowledge about PHMSA Regulations, Mr. Israni brought into high relief the simple fact that the Federal DOT does not regulate or get involved in any siting issues (trans. 1553:1,; 15572:1-9;1582:23-25- 1583:4), only what operators must do- not where they do it (Tr. 1622:1-6). His testimony did not settle safety questions specific to the *reasonable necessity* of this siting *for the convenience and welfare of the public*, it only underscored the validity of safety issues involving the gas regulation and delivery equipment and brought home to roost the reality that this decision rests within the jurisdiction of the Commission.

H. *Intervenors seek a fair-minded site selection process based on open communication and cooperation.*

Practically everyone in the community who has become aware of the realities of PECO's proposal agrees that this siting is a bad idea. And once they let their local and regional officials know, unanimous support of our elected officers was established. Nobody wants to inflict this

⁸ Many of us recall, as noted by William Beck during the Public Input hearings, that a grease fire burned down the Arby's fast-food restaurant previously located on the site.

on anyone else's close proximity, and it is abundantly clear that not only we are inexorably burdened with the 11.5 miles over high pressure line having already been laid, but also that PECO has boxed us in with engineering requirements that severely limit, according to them, viable site selection. Attorney Matlawski (Tr. 1559:6-11 and :23-25 to 1560:1) obtained the admission by PECO Witness Mike Israni that the addition on a compressor along the line would allow them to increase the distance to a regulating station (Tr. 1560:2). Having been told repeatedly that The Utility is not required to use the *best* site, their processes to date has left only 2024 Sproul Rd., which was never on the community's list but has clearly been shown to be a *better*, as opposed to a *worse*, option- even if only by virtue of offering PIR greater than the established 117 ft. (Trans. 1618:11-15 and Exh, TF 4:3).

V. CONCLUSION

PECO has *not* met their required burden of proof that the proposed siting of the buildings is "reasonably necessary for the convenience and welfare of the public," and the Intervenors have indeed introduced a preponderance of evidence that The Utility did not consider the undeniably essential parameters of Public Health, Safety and Welfare. It has been amply and repeatedly borne out in these proceedings that they did not genuinely and in good faith communicate and cooperate with the community either in route planning or in a site selection process so fraught with inconsistencies as to lead them to this filing for Reasonable Necessity.

The Community has shown Township- and County-wide solidarity in their concern over the location for this Station, as evinced overwhelmingly by participation in these Proceedings as well as in other public fora. State Representative Jennifer O'Mara held a one-hour Open Meeting at the Marple Township Building last night (September 23, 2021) and questions about the PECO project held the floor for the first ten minutes. PECO's attempts to discredit and

mischaracterize the community resistance should be disregarded due to the gross distortions they present: *pro se* or not, we are mindful of the citizenry as a whole, not just our own backyards; energy activists or not, we cannot oppose the “Reliability Project” because the first two phases of the project (modifications to the West Conshohocken Plant and installation of the 11.5 mile over-high pressure line) have already been carried out in ways precluding public participation. Township-wide we cannot be accused of disagreeing on an appropriate site; the truth that can no longer be hidden is that bits and pieces of information were only made available within a timeframe and in an order which afforded us too little chance to respond, except to do our best to contribute to the two spheres of legal proceedings to which They immediately leapt. The County’s intention to acquire the Don Guanella site is far too recent to have been sorted fully, however given a reasonable amount of time for study, discussion and planning this could result in the availability of a reasonably necessary site selected through fair and forthright channels.

Given PECO’s own admission that gas supply is sufficient for the next five, possibly seven years, this appeal should not be allowed to rush to the altar. We ask most respectfully that you give the Delaware County Court of Common Pleas the opportunity to evaluate the upcoming remand presentations to the Marple Zoning Hearing Board (from which PECO has already tried to seek immediate relief, including an Interlocutory Appeal to a Commonwealth Court)⁹. We submit that the Presiding Officers agree with the Marple Zoning Hearing Board that The Company has not met the Standard for a Special Exception in Zoning and consequently has not

⁹ APPELLANT PECO ENERGY COMPANY'S MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE TO AMEND AND STAY THE COURT'S AUGUST 27, 2021 REMAND ORDER TO CERTIFY FOR IMMEDIATE INTERLOCUTORY APPEAL PURSUANT TO PA. R. A. P. 1311 AND 42 PA. C.S.A. 702(B) <https://delcopublicaccess.co.delaware.pa.us/case/7b6962884d2685850703785c6e2da6dcb1df166443ddb36e2e198d6eb6ef25e9>

demonstrated Reasonable Necessity for the Convenience and Welfare of the Public, and request that The Company's proposed location not be exempted from municipal land use regulation.

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/

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September 26, 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 AMENDED 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:

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September 26, 2021