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October 1, 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 Supplemental Reply 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 :

SUPPLEMENTAL REPLY BRIEF OF PECO ENERGY COMPANY

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October 1, 2021

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I. INTRODUCTION

PECO files this Supplemental Reply Brief pursuant to the Interim Order on Requests to File Amended Briefs issued on September 10, 2021 (“Interim Order”). As set forth below in greater detail, Administrative Law Judges (“ALJs”) DeVoe and Long should disregard the arguments in *pro se* Intervenors Baker’s and Uhlman’s amended briefs or afford them no weight because: (1) Ms. Baker filed her amended brief after the mandatory deadline set forth in the Interim Order; (2) both Ms. Baker and Mr. Uhlman merely repeat arguments that have already been made, in contravention of the clear instruction in the Interim Order; (3) Ms. Baker and Mr. Uhlman misinterpret the applicable law; and (4) Ms. Baker and Mr. Uhlman misinterpret and/or misrepresent facts in the evidentiary record.

In accordance with the Interim Order, PECO takes this opportunity to briefly respond to the Intervenors’ numerous misrepresentations of the applicable law and facts which serve only to muddle the record.¹ For the convenience of the ALJs, PECO will refer to portions of previously filed briefs that exhaustively address each issue, and which include appropriate citations to legal precedent and the evidentiary record.

II. ARGUMENT

A. Ms. Baker’s amended brief is untimely.

In the Interim Order, ALJs DeVoe and Long acknowledged that the briefing schedule in this matter has been extended multiple times. Throughout this proceeding, the ALJs have granted every possible leniency to *pro se* intervenors Uhlman and Baker. Despite the importance of

¹ For example, by way of procedural background, Ms. Baker incorrectly states that Judge Whelan of the Delaware County Court of Common Pleas “denied” PECO’s appeal of the Marple Township Zoning Hearing Board’s (“ZHB”) decision. This is not true. Rather, Judge Whelan remanded the matter to the ZHB for further development of the factual record. PECO has sought reconsideration of that decision as Marple Township has stated in a prior hearing before Judge Whelan that the record is complete.

commencing construction of the Natural Gas Reliability Station in time to meet the 2022 winter season, PECO has consented to numerous extensions,² and also made each of its witnesses available for extensive cross-examination by Intervenors during hearings that spanned four days and covered numerous topics that went well beyond the proper scope of a Municipal Planning Code (“MPC”) Section 619 proceeding.

As a further accommodation, the Interim Order permitted the *pro se* Intervenors to file a “short, amended brief, if necessary” in order to preserve their due process rights; however, the ALJs instructed that any amended briefs must be filed on or before September 24, 2021. *See* Interim Order, ¶ 2.

Notwithstanding the ALJs’ clear instruction, Ms. Baker filed and served her Memorandum Constituting Amended Brief in Support of Dismissing the Petition Against Appellant (“Baker Am. Br.”) on September 27, 2021, three days after the filing deadline, without seeking prior permission from the ALJs to file after the deadline. The untimely brief is not the first instance of untimely and/or incomplete filings by Ms. Baker, in violation of the clearly established briefing deadlines.³ Accordingly, the ALJs should disregard Ms. Baker’s untimely amended brief in its entirety.

² For example, with PECO’s concurrence, ALJ DeVoe issued an Interim Order dated June 7, 2021, extending Intervenors’ agreed-upon written Rebuttal Testimony deadline from June 14 to July 6, 2021; rescheduling the Evidentiary Hearings from June 28 and 29 to July 15 and 16, 2021; and extending the deadlines for Main Briefs and Reply Briefs from July 13 and July 27, 2021, respectively, to August 2 and August 16, 2021. PECO also agreed to multiple subsequent extensions. Following Evidentiary Hearings, the parties agreed to further extend the briefing schedule, with Main Briefs due August 11, 2021 and Reply Briefs due August 20, 2021. Further, given the delay in receiving transcripts in this matter, Marple Township, with PECO’s consent, sought to extend the briefing deadlines by one week, requesting that Main Briefs be due August 18 and Reply Briefs be due August 25, 2021. On August 10, 2021, ALJ DeVoe issued an Interim Order further extending the briefing schedule to August 23, 2021 for Main Briefs and August 30, 2021 for Reply Briefs. Finally, on August 19 and August 20, Intervenors Uhlman and Baker sought a further extension of time to file briefs, which PECO opposed in light of the multiple extensions already granted. Nevertheless, the ALJs issued the instant order, providing Intervenors with a further opportunity to submit amended briefs on or before September 24, 2021.

³ On August 23, 2021, Ms. Baker filed an incomplete Main Brief, followed by a motion to submit an amended brief, citing personal reasons and the delay in transcripts as reasons for the incomplete submission, which motion was subsequently withdrawn in Ms. Baker’s Reply Brief filed on August 30, 2021.

B. Intervenor’s amended briefs merely reiterate prior arguments.

In addition to setting a clear deadline, the Interim Order also instructed that any amended briefs must be concise and shall not simply repeat arguments already made in Main and Reply Briefs. *See* Interim Order, ¶ 2.

In contravention of the Interim Order, both Mr. Uhlman’s and Ms. Baker’s amended briefs reiterate arguments that were already thoroughly briefed by the parties in their Main Briefs and Reply Briefs and which, in any event, are beyond the scope of this proceeding. For example, arguments reiterated in the amended briefs include: (1) the proper scope of this proceeding under MPC Section 619; (2) PECO’s site selection criteria; (3) public safety; (4) PECO’s public outreach efforts; (5) the availability of alternative sites; (6) noise; (7) air emissions; and (8) the urgent need for the Natural Gas Reliability Station. The ALJs should disregard the arguments of the Intervenor on these points because the arguments are duplicative and in violation of the Interim Order.

C. Scope of this Municipal Planning Code Section 619 proceeding.

Intervenor continue to advocate that the proper inquiry in this proceeding is whether the “gas-regulating components” of the Natural Gas Reliability Station are reasonably necessary. *See* Baker Am. Br., p.5; *see also* Amended Reply Brief of Ted Uhlman (“Uhlman Am. Br.”), pp. 4-5.

This issue has already been addressed and briefed by the parties.⁴ To be clear, it is black letter law in Pennsylvania that local authorities lack the power to regulate the design, location, or construction of public utility facilities. *See PPL Elec. Utils. Corp v. City of Lancaster*, 214 A.3d 639, 659-60 (Pa. 2019). Rather, the proper inquiry under MPC Section 619 is whether the proposed situation of *the buildings*—not the public utility facilities—is reasonably necessary for

⁴ *See, e.g.*, Baker Reply Br., p. 4; Main Brief of Marple Township (“Marple Main Br.”), pp. 14-16.

the convenience or welfare to the public.⁵ PECO is not required to show that the location of the buildings is the “best” site; rather, PECO must only demonstrate the “reasonable necessity” for a particular location, not absolute need. *See O’Connor v. Pa. Pub. Util. Comm’n*, 582 A.2d 427, 433 (Pa. Cmwlth. 1990).

Here, PECO has produced substantial evidence that the buildings will benefit the public by protecting sensitive equipment from weather and unauthorized access, enhancing the aesthetic appeal, and dampening ambient sound. *See* PECO Main Br., Sec. VII.A.c. Moreover, the proposed location at 2090 Sproul Road is optimal because it “threads the needle” in satisfying PECO’s engineering, availability, sizing, and zoning considerations. *See* PECO Main Br., Sec. VII.A.a.-e. Strikingly, no party has offered evidence disputing the benefits of the Station’s buildings, and Mr. Uhlman’s and Ms. Baker’s amended briefs are notably bereft of *any* substantive discussion of the proposed buildings, and instead focus on other issues not germane to this proceeding such as noise, air emissions, safety, and public outreach.⁶

⁵ *See Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm’n*, 513 A.2d 593, 596, n.4 (Pa. Cmwlth. 1986); *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 23; *adopted by the Commission on exceptions*, 2013 WL 6835113, at *13 (Pa. P.U.C.) (Opinion and Order, Dec. 19, 2013) (“*Petition of UGP*”); *see also* *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 for the Convenience or Welfare of the Pub.*, No. P-2014-2411941, 2014 WL 5810345, at *26 (Pa. P.U.C.) (Opinion and Order, Oct. 2, 2014) (“*Petition of SPLP 2014*”).

⁶ The Public Utility Commission (“Commission”) has already concluded that:

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, (Initial Decision) at p. 22 (emphasis added); *Petition of UGI*, (Commission Opinion and Order) at p. 22 (“[w]e further conclude that many of the issues and concerns raised by the Intervenor are beyond this Commission’s jurisdiction in this matter and were properly limited by the ALJ via her granting PNG’s Motion in Limine.”)

Out of an abundance of caution, PECO has produced evidence establishing the reasonable necessity and benefits of *both* the Station and its buildings at 2090 Sproul Road. PECO refers the ALJs to Sections V.B and V.C of its Main Brief and Section III.A of its Reply Brief, which exhaustively address the issue of the proper scope of this proceeding with additional citations to well-established legal precedent from the Commission and Pennsylvania courts.

D. Out of scope issues.

In accordance with Commission precedent, PECO has consistently noted that issues *not* related to whether the location of the buildings is reasonably necessary for the convenience and welfare of the public are beyond the scope of this proceeding. Here, it was evident from the beginning of this proceeding that Intervenors' opposition would be based on a plethora of concerns that are not germane to this proceeding, but which PECO has nevertheless sought to address. Importantly, the location of the buildings (which is the subject of this proceeding) will serve to mitigate sound, enhance security, and provide aesthetic enhancements. Accordingly, it is not clear why the Intervenors would oppose the inclusion of the buildings at the Natural Gas Reliability Station. In the event the ALJs depart from Commission precedent and find any of these ancillary concerns to be germane, PECO has satisfied whatever burden it might have on these issues.

1. PECO's site selection criteria.

In their Amended Briefs, Intervenors Uhlman and Baker continue to attack PECO's use of its standard site selection criteria. *See* Uhlman Am. Br., pp. 3-4; Baker Am. Br., p. 5.⁷ But Intervenors cannot escape the fact that they have not put forth any expert testimony suggesting

⁷ Intervenors Delaware County and Marple Township both previously argued and briefed this point, to which PECO responded. *See* Delaware Co. Main Br., at pp. 12-13; Marple Main Br., p. 22-23; Marple Reply Br. p. 3; PECO Reply Br., Sec. III.F.

what additional or alternative site selection criteria should have been used, or that such alternative criteria would have led to a different result.

Mr. Uhlman reiterates the argument that PECO's site selection criteria regarding "availability" was not satisfied because the site was not available for purchase. *See* Uhlman Am. Br., p. 7. Mr. Uhlman further implies (without specifically arguing) that the half-acre size requirement is improper due to the Potential Impact Radius (PIR) for the Station of 117 to 190 feet. *See id.*, p. 4. As to the former argument, PECO has clearly demonstrated that the site was advertised as being available, as evidenced by two large red signs posted at the property indicating as much. *See* PECO Reply Br., p. 13 and Appendix A. As to the latter, Mr. Uhlman is conflating PECO's standard siting criterion with safety considerations. PECO addresses the safety considerations below at pages 8-11.

Mr. Uhlman also continues to question PECO's criteria that the site be located within a half-mile of the intersection of Sproul and Lawrence Roads with confounding and inaccurate statements regarding pipeline pressures. *See* Uhlman Am. Br., pp. 10-11.⁸ To clarify, and as described in Ryan Lewis's testimony, due to the design and engineering of the regulators in the Natural Gas Reliability Station, the Station must receive gas at an inlet pressure of at least 150 p.s.i. to operate properly and locating the Station outside of the half-mile radius would cause the pressure to drop below 150 p.s.i. due to the additional distance and piping necessary to reach those locations. *See* PECO Statement No. 3-SR, p. 3:12-3:17. As an example, PECO has provided its calculations demonstrating that the additional distance required to locate the Station at either the

⁸ Mr. Uhlman erroneously states that this requirement was not mentioned until PECO filed its Direct Testimony on May 14, 2021. *See* Uhlman Am. Br., p. 3. This is false. The requirement that the Natural Gas Reliability Station be located proximate to the new gas main terminus and the existing downstream network of gas mains serving Delaware County was set forth in the very first filing in this matter. *See* Petition of PECO Energy Company For a Finding Pursuant to 53 P.S. § 10619, ¶ 10.

Don Guanella property at 825 Reed Road or the industrial park at 700 Abbott Drive will cause the inlet pressures to drop well below the 150 p.s.i. threshold. *See id.*, pp. 10-12, and RL-6. Mr. Uhlman correctly notes that natural gas leaving West Conshohocken will have a pressure of 475 p.s.i., and that the existing pipeline system experiences low pressure of 65 p.s.i. (or less) at the intersection of Sproul and Lawrence Roads (*see* Tr. 1235), but these general observations have no bearing on the engineering constraints that form the basis of the half-mile siting requirement, do not support his argument challenging the half-mile criteria, and serve only to muddle the record.

Ms. Baker seems to argue that PECO's use of its evaluation criteria "did not involve proper planning" because there is currently no water service at the site and due to the potential for vapor emissions. *See* Baker Am. Br., p. 5. During the evidentiary hearing, Ms. Baker offered no witness regarding water service, and PECO is unable to decipher how water service has any possible relevance to this proceeding. Given Ms. Baker's failure to introduce evidence establishing the relevance of this issue, the ALJs should dismiss her contentions as being unsupported by substantial evidence in the record.

With respect to the criteria requiring proper zoning, Ms. Baker acknowledges that 2090 Sproul Road is zoned for "Public Utility Facility" by special exception, but asks (seemingly rhetorically) "how could that have been possible." Baker Am. Br., p. 8. She posits, speculatively, that "the Commissioners may have intended to grandfather in a gasoline service station" when they permitted public utility facility development at the proposed site. *Id.*, p. 9. These observations are speculative, irrelevant, and should be afforded no weight. Moreover, Ms. Baker's point underscores why opposition to the proposed Station is particularly confounding, as it appears that Ms. Baker is suggesting that a gasoline service station would be preferable and more compatible with the community than a public utility facility with aesthetic and noise-dampening

enhancements, notwithstanding the considerable car and truck traffic, lighting, noise, aesthetic issues, emissions, odors, and other environmental and safety concerns commonly associated with gasoline service stations.⁹

PECO has thoroughly addressed Intervenors' concerns with respect to the site selection criteria and has demonstrated that its use and application of those criteria were reasonable, customary, and prudent, and no party has introduced any evidence suggesting otherwise. *See* PECO Statement No. 5 at pp. 2:20-8:9; Tr. 1123-1154. PECO refers the ALJs to Section III.F of its Reply Brief, which exhaustively addresses this issue with appropriate citations to the evidentiary record.

2. Public safety.

Although beyond the scope of this proceeding, Mr. Uhlman and Ms. Baker continue to point to public safety issues as a basis for denying PECO's Petition. Notably, neither Intervenor offered or refer to any expert testimony to contradict PECO's expert, Mr. Mike Israni, who served as a Senior Technical Advisor and Program Manager for the Pipeline and Hazardous Materials Safety Administration ("PHMSA"). Mr. Israni concluded, following a detailed review of PHMSA's databases and PECO's own safety record, that natural gas regulating stations are extremely safe and are commonly located in residential, commercial, and industrial areas. *See* PECO Statement No. 6-SR, p. 7:3-6 & 14:22-15:5. His conclusion is supported by PECO witness Tim Flanagan's testimony that PECO will comply with all applicable federal and state laws and regulations governing the construction, operation, and maintenance of the Natural Gas Reliability Station. *See* PECO Statement No. 4-SR, at 11:13-20.

⁹ Indeed, the gasoline station previously located at 2090 Sproul Road resulted in contaminated soil at the site, which PECO will address in accordance with Pennsylvania regulations as part of the redevelopment of the property. *See* PECO Statement No. 5, at 9:4-10:3; PECO Statement No. 7-SR, at 10:10-13.

Ms. Baker, for her part, merely quotes to portions of the transcript without articulating a cogent argument to discredit Mr. Israni or Mr. Flanagan. *See Baker Am. Br.*, pp. 16-18. Rather, she simply concludes that Mr. Israni’s testimony underscores that safety decisions “rest[] within the jurisdiction of the Commission.” *Id.*, p. 18. Ms. Baker is conflating the issue of the proper scope of the proceeding with the question of whether the Natural Gas Reliability Station is safe. As indicated above, issues of public safety are not germane to a Section 619 proceeding, but even if they were, PECO has met its burdens of production and persuasion on this issue. Ms. Baker’s string of quotations in her amended brief, which are not in context and which do not support any legal argument to discredit Mr. Israni or Mr. Flanagan, do not alter this fact.

Mr. Uhlman, for his part, notes that the Potential Impact Radius (PIR) for this facility is between 117 feet and 190 feet and concludes—without citing to any expert testimony of his own—that “it is not certain that public safety has been given sufficient weight by PECO in this situation.” *See Uhlman Am. Br.*, p. 4, 11-12.

Mr. Uhlman’s characterization of the PIR is misdirected for multiple reasons. First, PIRs, by definition, can be interpreted as applying to distribution mains, service lines, and customer meters. *See* 49 C.F.R. § 192.903 (explaining that a PIR applies to “pipelines” which includes “all parts of those physical facilities through which gas moves in transportation, including pipe, valve, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.” (49 C.F.R. § 192.3)). Thus, insofar as Intervenors are arguing that the Natural Gas Reliability Station should not be located at 2090 Sproul Road because residential properties would fall within the applicable PIR, such argument is misleading because *any* house served by natural gas distribution facilities would theoretically fall within a PIR.

Second, a PIR calculation is used to determine whether an area is within a “High Consequence Area.” *See id*; *see also* PECO Statement No. 6-SR at 23:12-18; Tr. 1627:23-1628:12. As explained by Mr. Israni, the federal regulations do not prohibit the siting of natural gas distribution facilities near people and, in fact, such facilities must be and frequently are sited near residential and commercial areas because that is where demand is located. *See* Tr. 1577:8-10; 1650:8-1651:20. In fact, the regulations ensure safety by requiring natural gas operators to develop and implement integrity management programs for these areas and providing additional compliance precautions since they are high consequence areas. *See generally* 49 C.F.R. § 192.901 *et seq.*; *see also* Tr. 1650:8-16 & 1651:7-20. In short, PECO has provided extensive testimony to address public misapprehensions about the safety of the Station, and no party has disputed PECO’s intentions or ability to comply with all applicable state and federal safety requirements. *See* PECO Statement No. 4-SR, at 11:13-20.

Moreover, the record clearly reflects PECO’s emphasis on safety. PECO witness Tim Flanagan testified that PECO will comply with all applicable safety regulations, including those promulgated by PHMSA and the Commission relating to the construction and operation of the system. *See* PECO Statement No. 4-SR, at 11:13-20. Additionally, PECO has employed a multitude of risk mitigation measures based on industry best practices, including gas leak detectors, remote control valves, and 24-7 monitoring, and has detailed operational and emergency response protocols in place to address the unlikely event of a gas leak. *See id.* at 13:5-16; PECO Statement No. 4, at 11:20-26. PECO’s track record on safety is exemplary, as evidenced by Mr. Israni, who notes that no incidents have been reported at PECO’s gate stations. *See* PECO Statement No. 4-SR, at 12:1-6; PECO Statement No. 6-SR, at 9:1-4.

PECO refers the ALJs to Section VII.B.5 of its Main Brief, which exhaustively addresses this issue with appropriate citations to the evidentiary record.

3. PECO's public outreach efforts.

Both Mr. Uhlman and Ms. Baker reiterate arguments previously advanced by Marple Township and Delaware County that the decision to locate the Natural Gas Reliability Station at 2090 Sproul Road was final as of May 2019, and subsequent public outreach efforts were “disingenuous” and “intentionally deceptive.” *See* Baker Am. Br., pp. 8-9; Uhlman Am. Br., p. 6.¹⁰

Even though the issue of public outreach is not germane to whether the situation of the Station's buildings is reasonably necessary for the convenience or welfare of the public, the evidentiary record clearly reflects that PECO reached out on numerous occasions to local and state officials to solicit suggested sites and obtain feedback. Mr. Uhlman's timeline of events on pages 2 and 3 of his amended brief completely ignores evidence of PECO's site selection analysis and robust public outreach which has been briefed in detail. *See* PECO Main Br., Sec. VII.B.7; PECO Reply Br., Sec. III.E. Notably, Intervenors' argument is completely negated by a fulsome review of the applicable timeline, which demonstrates that PECO did not even meet with the property owner of 2090 Sproul Road until February 2020, and a purchase agreement was not executed until June 2020, demonstrating that no decision was final as of May 2019 as Intervenors continue to insist. *See* PECO Statement No. 5, at 8:6; PECO Statement No. 7-SR, at 6:14-16. Intervenors' repeated efforts to denigrate PECO's extensive public outreach efforts are based solely on their personal opinions and are simply not supported by the record.

¹⁰ Here again, these arguments were previously raised and briefed by Marple Township and Delaware County, and PECO thoroughly responded to and rebutted such arguments. *See* Delaware Co. Main Br., p. 15; Marple Main Br., pp. 1, 21; PECO Reply Br., Sec. III.E.

PECO refers the ALJs to Section VII.B.7 of its Main Brief and Section III.E of its Reply Brief, which exhaustively address this issue with appropriate citations to the evidentiary record.

4. Alternative sites.

Both Ms. Baker and Mr. Uhlman continue to advocate for the relocation of the Natural Gas Reliability Station to other sites that, in their view, are better suited for it. Mr. Uhlman continues to argue that the Don Guanella site should be acceptable to PECO. *See* Uhlman Am. Br., pp. 5, 9. But PECO has already exhaustively explained the multitude of reasons why that site is not feasible. *See* PECO Main Br., Sec. VII, A.d.ii.3 (explaining that locating that Station there will cause inlet pressure to drop below 150 p.s.i., that the property is not zoned for public utility development, and that the property is embroiled in eminent domain litigation which is ongoing and remains unresolved). In contrast, Ms. Baker acknowledges that the Don Guanella property was previously “denied for development.” *See* Baker Am. Br., p. 7.

Ms. Baker also continues to assert that 2024 Sproul Road, which is located 1,000 feet from the proposed site and adjacent to a Wawa convenience store, is a better location for the Station. *See* Baker Am. Br., p. 19. Notably, the Township disagrees with her view (*see* Marple Main Br., pp. 21-22), and so does PECO. In its Main Brief, PECO explained the multitude of reasons as to why this site was not selected. *See* PECO Main Br., Sec. VII.A.d.1 (explaining that this site was eliminated because it is not zoned for public utility use, it was not advertised as being available, and it currently contains an office structure believed to be occupied). It bears reiteration that, while Intervenors have divergent opinions on what they think is the “best” site for the Station, none of the Intervenors are qualified experts in the field of public utility facility siting, and none of the Intervenors have retained individuals who are so qualified. Further, it is not PECO’s burden to select the “best” site; rather, PECO must only demonstrate the “reasonable necessity” for a

particular location, not absolute need. *See O'Connor*, 582 A.2 at 433. Intervenors inability to agree among themselves on the suitability of a site is precisely why the General Assembly and courts do not permit local authorities or individuals to decide where to place public utility facilities. *See Duquesne Light Co. v. Upper St. Clair*, 105 A.2d 287, 293 (Pa. 1954).

5. Noise.

Although clearly beyond the scope of a Section 619 proceeding, Ms. Baker and Mr. Uhlman continue to argue that PECO's Petition should be denied based on unsupported claims that the Natural Gas Reliability Station will produce noise beyond the permissible levels set forth in the Marple Township Noise Ordinance.¹¹ Mr. Uhlman, notably, references several portions of the confidential record pertaining to PECO's Sound Study.¹² Ms. Baker, meanwhile, takes issue with the potential noise increase of 1-3 dBs as being classified as "minimal." *See Baker Am. Br.*, p. 13. She concludes that "it remains entirely possible" that the Station will exceed the noise ordinance when the heater runs. *See id.*, p. 15.

The Intervenors' sheer speculation that it is "possible" that the Station will exceed the noise ordinance is not competent evidence and should be afforded no weight. It also ignores key facts of record, namely: (1) that PECO's consultant, Hoover & Keith Inc., provided sound-dampening recommendations that are designed to comply with the Marple Township noise ordinance (PECO Statement No. 4, at 10:18-11:4; PECO Statement No. 4-SR, at 8:8-9:6); (2) that PECO will implement the consultant's recommendations (PECO Statement No. 4-SR, at 17:20-18:5)¹³; and

¹¹ This argument was previously asserted by Ms. Baker. *See Baker Reply Br.*, p. 9.

¹² Pursuant to paragraph 10 of the Amended Protective Order entered in this matter, Proprietary Information included in writings, including briefs, shall be sealed. Mr. Uhlman filed his Amended Brief before PECO had an opportunity to object to its inclusion in the public record. Given the numerous references to and descriptions of confidential information in Mr. Uhlman's Brief, PECO respectfully requests that Mr. Uhlman's brief be treated as confidential.

¹³ Citing to page 1256 of the transcript, Mr. Uhlman improperly asserts that PECO does not intend to follow the recommendations of the sound study by expounding on his own statements during questioning that are not supported

(3) that Marple Township’s own witness, Nancy Wilson, acknowledged that PECO’s sound level projections, with sound-dampening recommendations in place, indicate that sound levels will fall within the Marple Township noise code criteria (*see* Marple Statement No. 3, at 3:18-23). Ms. Wilson further acknowledged that both the buildings and the fence will help to dampen sound and did *not* opine that any residual sound that might escape the buildings and the fence will exceed the Township’s noise ordinance. Tr. p. 1094:10-1096:8.

Ms. Baker also continues to rely on sound data from a different gate station—the Brookhaven Gate Station—to suggest that the Natural Gas Reliability Station will produce similar sound. *See* Baker Am. Br., pp. 14-15. As explained in PECO’s Main Brief, the Commission should give this no weight because, unlike the Natural Gas Reliability Station, the Brookhaven Gate Station does not contain the same sound dampening equipment and insulated fence as the proposed Station and operates with a different heater system. At footnote 7 of her amended brief, Ms. Baker claims, in emphasized font, that facts distinguishing the Brookhaven Station from the Natural Gas Reliability Station are not in evidence. This claim is false. PECO witness Tim Flanagan squarely addressed this issue in his surrebuttal testimony:

Q. Would these readings outside of the Brookhaven Gate Station provide an accurate representation of the sound levels from PECO’s proposed Natural Gas Reliability Station?

A. No, Ms. Howze’s study for sounds emanating from PECO’s Brookhaven Gate Station, even if accurately measured, would not

by corresponding PECO testimony. *See* Uhlman Am. Br., p. 13. To the contrary, Mr. Uhlman asked PECO witness Mr. Ryan Lewis if PECO plans to use the “Uni-Flo regulators”, to which Mr. Lewis responds “Yes”. *See* Tr. 1256:15-25. Then, Mr. Uhlman asked if the sound study recommended changing the “Uni-Flo regulator” to the “Fisher globe valves”, to which Mr. Lewis deferred to PECO witness Mr. Tim Flanagan as the appropriate witness to address that question. *Id.* However, following the testimony of Mr. Lewis, neither Mr. Uhlman, nor any other Intervenor, asked Mr. Flanagan for testimony regarding PECO’s reasoning or intention to use the “Uni-Flo regulators” or the “Fisher globe valves.” Any conclusion drawn by Mr. Uhlman that PECO is not following the recommendations of the sound study from his own incomplete line of questioning is unsupported by any evidence in the record. Rather, the clear evidence is that PECO will implement the recommendations so as to comply with the Marple Township noise ordinance. *See* PECO Statement No. 4-SR, at 17:20-18:5.

provide an appropriate representation for the sound levels from PECO's proposed Natural Gas Reliability Station.

Q. What is your reasoning for that statement?

- A. I have several reasons. First, the two stations are of different sizes and each station has different sound dampening components. PECO's Brookhaven Gate Station has a chain-link fence, which has no sound dampening properties. In contrast, PECO's proposed Natural Gas Reliability Station will have a specific Sonoguard insulated Security Fence that will dampen sounds. In addition, while PECO's Brookhaven Gate Station does not have any silencers on its equipment, the proposed Natural Gas Reliability Station will have them. The Brookhaven Gate Station's building does not have the acoustical dampening design elements that are proposed for the Natural Gas Reliability Station, which I previously provided commentary on in my Direct Testimony on pages 10 and 11. These include a forced air ventilation system that will minimize open areas where sounds can escape and HVAC equipment that will dampen sounds. Also, the Brookhaven Gate Station operates a different natural gas heater system that generates greater sound levels than the proposed Natural Gas Reliability Station's planned CWT heaters. Finally, and importantly, the Brookhaven Gate Station operates at a higher pressure than PECO's proposed Natural Gas Reliability Station, and higher pressures have the capability to generate additional sound as it travels through the equipment.

PECO Statement No. 4-SR, p. 19:1-23.

Finally, Ms. Baker falsely states that PECO failed to consider that "low frequency readings, widely known to be insidiously damaging, were already higher than the ordinance allows." Baker Am. Br., p. 13 (citing Tr. 1470:20). However, nothing in the transcript at page 1470 or elsewhere supports this statement.

PECO refers the ALJs to Section VII.B.6 of its Main Brief, which exhaustively addresses this issue with appropriate citations to the evidentiary record.

6. Air Emissions.

Although clearly beyond the scope of this proceeding, Intervenors continue to voice general concerns that there may be minor levels of byproducts emitted due to the combustion of

natural gas and, according to Ms. Baker's purported expert, Dr. Edward Ketyer,¹⁴ "there's no safe level of any of these emissions." *See Baker Am. Br.*, p. 11. Such concerns, however, are not specific to the Natural Gas Reliability Station and could, in theory, apply to any natural gas facility. Moreover, it is undisputed that no Intervenor retained any qualified expert to perform an emissions study with respect to this Station, and there is no analysis or testimony to support Dr. Ketyer's conclusion that the burning of any fossil fuels is medically harmful if the concentration level of pollutants is non-zero. *Tr.* 1669:17-24.¹⁵

The Intervenor further ignore or dismiss the Pennsylvania Department of Environmental Protection's determination that combustion units with a capacity of less than 10 million Btu per hour of heat input that are fueled by natural gas (the pre-heaters in this case are rated 4.6 million Btu (*see PECO Statement Nos. 4*, at 5:16-19 & 4-SR, at 6:8-10)) are subject to a blanket exemption from air permitting requirements. *See 25 Pa. Code § 127.14(a)(3)*. The Commission, however, cannot ignore such determinations because it is "obliged to defer" to determinations regarding environmental impacts to agencies with jurisdiction over such impacts. *See, e.g., Petition of UGI* (Initial Decision) at 20.

¹⁴ At the hearing, Dr. Ketyer's written statement was admitted into evidence, but ALJ DeVoe acknowledged that portions of his testimony are outside of his expertise and will be disregarded, and those portions within his purported expertise will be given the appropriate weight. *See Tr.* p. 1671. Dr. Ketyer admitted during the hearing that he did not perform any study to determine the levels of emissions that might be generated by the Natural Gas Reliability Station. *See Tr.* p. 1669. He also admitted that he is not an engineer, he has no experience in calculating air emissions or modeling pollution dispersion, and that his conclusions are based solely on his experience as a father, pediatrician, and his advocacy against climate change. *See Tr.* p. 1665-1666. Accordingly, Dr. Ketyer cannot opine as to the projected emissions from the Station with any degree, let alone a reasonable degree, of certainty, and such speculative observations are not admissible as expert opinion.

¹⁵ At this point in her amended brief, Ms. Baker cites to testimony in the ZHB proceeding, quoting questions and answers between Commissioner Veshercovski and Attorney Sklaroff. *See Baker Am. Br.* at 12; *see also id.* at 14 (referring to ZHB testimony from PECO Engineer Aaron Szczesny and further referencing ZHB findings of fact and conclusions of law). Any evidence or testimony that was admitted during the ZHB testimony but not in this proceeding is improper and cannot be afforded any weight.

PECO refers the ALJs to Section VII.B.8 of its Main Brief, which exhaustively addresses this issue with appropriate citations to the evidentiary record.

7. Urgency and the need for the Natural Gas Reliability Station.

Ms. Baker also recycles Delaware County’s argument that there is no urgent need to construct the Natural Gas Reliability Station and seems to suggest that this matter can be deliberated *ad infinitum*. As previously explained by PECO, this argument ignores several key points, including: (1) the reality that PECO’s overall natural gas system is already constrained and that PECO is experiencing an over-dependence on delivered supply and spot market purchases (*see* PECO Statement No. 2, at 7:3-12); (2) that PECO projects that its natural gas system in Delaware County will become constrained much sooner than 10 years, and could occur in as little as six years (PECO Statement No. 3, at 8:19-20; Tr. 1224:18);¹⁶ and (3) in order to fulfill its statutory obligations, PECO must act prudently and allow sufficient time to adequately plan and prepare for impending service shortfalls (*see* 66 Pa. C.S. § 1501). Accordingly, Intervenors’ “kick-the-can” approach is imprudent because, if followed, (1) PECO would not be able to ensure that it can meet its gas customers’ needs during periods of peak demand, and (2) PECO, and its customers, will be exposed to the risk of increasingly volatile pricing for firm supply.

PECO refers the ALJs to Section III.C of its Reply Brief, which exhaustively addresses this issue with appropriate citations to the evidentiary record.

III. CONCLUSION

Intervenors’ amended briefs do little to help the ALJs decide this matter and, if anything, serve only to further muddle the record. Ms. Baker’s amended brief further confuses the relief being sought, improperly requesting (for the first and only time) that the Commission defer to the

¹⁶ Ms. Baker presumably made a typographical error when stating that PECO’s system will not experience constraints until “2107”. Baker Am. Br., p. 7. The proper year should reflect 2027. (Tr. 1224:18).

Delaware County Court of Common Pleas and the Marple Township ZHB, and further requesting a finding that PECO's Petition should be denied because PECO has not met the standard for a special exception under the Marple Township zoning code. *See Baker Am. Br.*, pp. 20-21. This, however, is not the standard applicable to this proceeding. Both Ms. Baker and Mr. Uhlman continue to misapply the applicable standard, rely on factors not germane to this proceeding, and have failed to put forth any qualified evidence to dispute PECO's showing that the location of the buildings (and indeed the facilities themselves) are reasonably necessary for the public convenience and welfare.

The Intervenors have now had multiple opportunities to submit briefs, reply briefs, and amended briefs, and briefing has now been completed more than two months after it was scheduled to close pursuant to the originally agreed-upon litigation schedule. PECO respectfully requests that the ALJs permit no further briefing and declare that the record is now closed pursuant to 52 Pa. Code §5.431 in order to prevent any further supplemental or late filings, and to avoid further delay. PECO further respectfully requests that Your Honor grant PECO's Petition and find that: (1) the siting of the proposed Natural Gas Reliability Station's buildings, specifically 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. PECO respectfully requests expedited consideration so that PECO's construction plans, which are designed to meet the 2022 winter season, are not further delayed.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true copy of the foregoing Supplemental Reply 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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