

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2 nd Floor
Harrisburg, PA 17120

Re: Docket No. P-2021-3024328
Date: December 28, 2021

Dear Secretary Chiavetta:

Enclosed please find attached Certificate of Service for

TED UHLMAN'S EXCEPTIONS TO
THE INITIAL DECISION

Copies of this document have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter.

Respectfully Submitted,



Ted Uhlman
2152 Sproul Rd
Broomall, PA 19008

**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 : P-2021-3024328
 Associated with a Gas Reliability Station in :
 Marple Township, Delaware County Is : December 28, 2021
 Reasonably Necessary for the Convenience :
 and Welfare of the Public :

**TED UHLMAN’S EXCEPTIONS TO
THE INITIAL DECISION**

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Introduction

This case turns on the question of whether or not the **location** of the buildings is reasonably necessary for the welfare and convenience of the public, and these Exceptions take issue with and find fault with the History of the Proceedings, the Findings of Fact, the Conclusions of Law, and the Final Order as promulgated in the Initial Decision. Against the protests of Marple Township, Delaware County and the many citizens of the area who testified at the Public Input Hearings and filed protests, PECO plans to build a facility that has been referred to as a Reliability Station, a Gas Expansion Plant, and a Gate Station, in Marple Township, and it plans on building this station at the Corner of Sproul and Cedar Grove Roads, in a densely populated suburban neighborhood, and adjacent to residences that are currently occupied, and a popular restaurant. Nearby, there are several residences that are home to elderly and disabled persons, including a group home for intellectually disabled persons.

In this case PECO sometimes claims that the Corner of Sproul and Cedar Grove Roads (aka 2090 Sproul Road) is the only location where this facility can function, claiming that the facility must be located within 0.5 miles of the corner of Sproul and Lawrence Road. However, Delaware County and Marple Township have spent considerable time and money to make available to PECO another site, part of the Don Guanella property, which is also within the 0.5 mile radius from the corner of Sproul and Lawrence Roads specified by PECO.¹ PECO refuses to discuss the possibility. Many times in the proceedings, PECO has stated that locations within the 0.5 mile radius are technologically feasible (Findings of Fact #44, #45, #46, #51).

By locating the facility at the Corner of Sproul and Cedar Grove Roads rather than at the Don Guanella site, PECO is focused on saving the money required to lay additional pipe to the Don Guanella location. The Corner of Sproul and Cedar Grove Roads is about 0.5 miles closer than the

¹ Transcripts 1162:9 – 1164:1; 1139:7 – 1143:10
AND <https://www.delcotimes.com/2021/11/17/delco-continues-to-move-forward-with-don-guanella-property/>

corner of Sproul and Lawrence Roads to the LNG tank in Conshohocken. On the other hand, the Don Guanella site is a little less than 0.5 miles farther than the corner of Sproul and Lawrence Roads from the LNG tank in Conshohocken. One way to look at this issue is to consider if the extra money spent is worth the safety, welfare, and convenience of the public.

Exceptions o the History of the Proceedings

The History of the Proceedings is not only flawed in some of the statements that are put forth, but are even more flawed for the statements that are NOT present. For example, there is mention of a great many minutia such as:

- On April 5, 2021, a Prehearing Conference Order was issued. (Page 3)
- On July 21, 2021, an Interim Order was issued directing the parties to file briefs as agreed on July 20, 2021. The Order also provided instructions and requirements for briefs. (Page 4)
- Stephen Reilly, a current PECO employee, and Malcolm Riley, a retired PECO employee, both testified in their individual capacities as residents of the community and stressed PECO's commitment to safety and the importance of the project. (Page 8)

However, there are a number of significant points of legal import that have similar, if not greater, bearing on he case, that are not mentioned in this History, such as:

- The series of Motions, Objections, and Orders related to PECO's Confidentiality Agreement
 - May 17 - <https://www.puc.pa.gov/pcdocs/1703772.pdf> Ted Objects to original confidentiality agreement
 - May 20 - <https://www.puc.pa.gov/pcdocs/1704491.docx> Interim Order
 - May 28 - <https://www.puc.pa.gov/pcdocs/1705428.pdf> PECO's amended confidentiality
 - June 9 = <https://www.puc.pa.gov/pcdocs/1706796.docx> Interim Order
 - June 25 - <https://www.puc.pa.gov/pcdocs/1708975.pdf> Ted objects to confidentiality
 - July 29 - <https://www.puc.pa.gov/pcdocs/1710944.pdf> PECO's Objections
 - July 12 = <https://www.puc.pa.gov/pcdocs/1711281.pdf> Ted responds to PECO's objections
- The series of Motions, Objections, and Orders related to PECO's resistance to Discovery Requests by Marple Township and Delaware County

June 1 <https://www.puc.pa.gov/pcdocs/1705652.docx> Interim Order
May 25 <https://www.puc.pa.gov/pcdocs/1704860.pdf> PECO objects to Discovery
May 17 <https://www.puc.pa.gov/pcdocs/1703758.pdf> Motion to Compel

Exceptions to the Findings of Fact

The Findings of Fact are not only flawed in some of the “facts” that are put forth, but are even more **flawed for the findings of fact that are NOT present**. While the vast majority of the Findings are virtually quotes from PECO employees and/or attorneys, and are not supported by credible evidence, there is no mention of other relevant issues

Findings of Fact that are Missing

- According to the testimony of PECO’s Expert Witness, Mike Israni, the **Potential Impact Radius** is much smaller than the property at the Corner of Sproul and Cedar Grove Roads is (see page 19, and Transcripts 1618:4 – 1622:7)
- **The Hoover & Keith Sound Study**, commissioned by PECO, indicates that noise levels will probably exceed the levels stipulated by the Marple Township Noise Ordinance (see CONFIDENTIAL PECO 000534 - 000535 and Transcripts 1256:15 – 23)
- In The Recommended Decision of *UGI Penn Nat. Gas Inc., P-2013-2347105*², ALJ Elizabeth Barnes cited several Findings of Fact showing that the location in question was in a rural setting, on a lot of 3.2 acres, and 1,500 feet (1/3 of a mile) from the nearest home (Findings of Fact #12, #13, #23, #28)³. **HOWEVER**, in the current case, the author of the Initial Decision has neglected to mention (in the Findings of Fact, or anywhere else) that the proposed location is in a suburban, densely populated

2 See Petition of UGI Penn Nat. Gas Inc., P-2013-2347105 (Initial Decision August 16, 2013), adopted by, (Opinion and Order entered December 19, 2013) (UGI).

3 <https://www.puc.pa.gov/pcdocs/1244938.docx> UGI Initial Decision, pp 5, 6, 7

residential and neighborhood business setting, on a lot of 0.57 acres, and less than 100 feet from the closest inhabited residence.

Findings of Fact that are In Error

- Finding of Fact #5 This Finding would be more complete if it included the fact that the “*high pressure main*” is a pipeline rated at 575psi, and PECO has designed the facility to accept input as high as 475psi.
- Finding of Fact #9 Quoting PECO’s assertion that the building will “*provide an enhanced aesthetic appeal*” is a finding of opinion, not a fact.
- Finding of Fact #12 Quoting PECO’s assertion that the majority of PECO’s 28 other Gate Stations “*are located in residential areas...*” gives an incomplete impression. PECO’s list of gate stations has only two types of location: Industrial and Residential, ignoring the possibility that many of these “Residential” locations are, in fact, located in Agricultural, Rural, Forested, or other locations, not in densely populated Residential neighborhoods such as the Corner of Sproul and Cedar Grove Roads in Marple Township/Broomall. Also, “*and some of which are located within the same proximity to residences as the Natural Gas Reliability Station*” would be more accurate if it stated “TWO of which are located...” In addition, PECO has never established when these two residences were last occupied.
- Finding of Fact #24 This is conjecture, based on Finding of Fact #26, below.
- Finding of Fact #26 This is conjecture that begs for a rational explanation. How can an increase in customer count of “*3% over the next 10 years*” (~0.3% per year) translate into gas usage of “*2% annually*” (more than 20% in the next 10 years)?

- Finding of Fact #27 This is conjecture, based on Finding of Fact #28, below.
- Finding of Fact #28 This is conjecture that begs for a rational explanation. How can “a 3% increase in customer count over a 10-year period” (~0.3% per year) correspond “to a 1% annual increase in normalized usage over the 10-year period” (more than 10% in the next 10 years)?
- Finding of Fact #30 This Finding would be more complete if it included the fact that the system is designed to accept a maximum input pressure as high as 475psi, prior to lowering the gas to an maximum output pressure of 99psi.
- Finding of Fact #32 This Finding of Fact is a an unnecessary, gratuitous, approbatory oblation to PECO.
- Finding of Fact #38 This Finding of Fact is unsupported by anything except (PECO St. No. 3, at 4 – 6); it is a restatement of Findings of Fact #26 and #28.
- Finding of Fact #44 This Finding conflicts with #50 and #52. Both the Corner of Sproul and Cedar Grove Roads (2090 Sproul Rd.) and The Don Guanella site are within the 0.5 mile radius of the corner of Sproul and Lawrence Roads. Don Guanella is readily available, and PECO has been approached repeatedly by Marple Township and Delaware County as they encourage PECO to relocate away from the Corner of Sproul and Cedar Grove Roads. PECO refuses to discuss this viable option.
- Finding of Fact #45 Again, this Finding conflicts with #50 and #52. While the Don Guanella site is within the 0.5 mile radius, PECO refuses to consider the Don Guanella site. Secondly, there is no support for PECO’s claim that this facility needs a minimum of 150psi input in order to achieve a maximum 99psi output.
- Finding of Fact #46 Since the Don Guanella site is within the 0.5 mile radius of the corner of Sproul and Lawrence Roads, this point is moot. However, the local residents and the

governments of Marple Township and Delaware County would WELCOME increased “disruptions to local traffic patterns during the period of construction” if such were the result of moving the facility away from the Corner of Sproul and Cedar Grove Roads. Also, the additional investment would not be significant to a public utility company such as PECO or Exelon. Finally, a redesign of the “Reliability Station” would probably be a good thing, since it will probably be around for a very long time, and the current design and location are not reasonable.

Finding of Fact #47 Since the Don Guanella site is within the 0.5 mile radius of the corner of Sproul and Lawrence Roads, this point is moot. However, as noted in Finding of Fact #2, *“PECO provides natural gas service to approximately 534,000 retail customers and transportation service to 1,800 large commercial and industrial customers.”* If the relocation and redesign of the facility cost \$5 million, that will cost the average customer less than \$10. Spread out over 20 years, that’s only 50¢ per year, less than ½¢ per month. Finally, a redesign of the “Reliability Station” would probably be a good thing, since it will probably be around for a very long time, and the current design and location are not reasonable.

Finding of Fact #48 First, both the Don Guanella site and the Corner of Sproul and Cedar Grove Roads are within 0.5 miles of the corner of Sproul and Lawrence Roads. Secondly, So far as availability is concerned, the site at the Corner of Sproul and Cedar Grove Roads was never advertised as available for sale (only for lease), and that status did not change until PECO made an offer that the owner couldn’t refuse. Third, zoning has been a problem from the beginning, and this

proceeding is about PECO's desire to override the local zoning. Fourth, the lot size, at 0.57 acres, is much less than the Potential Impact Radius (see page 19). The proposed site is 0.57 acres/24,830 sqft, but the Potential Impact Radius (PIR) for a facility such as this is between 0.98 acres/43,000 sqft/ 117ft radius and 2.60 acres/113,441 sqft./190ft radius (1618:4 – 1622:7)

Finding of Fact #49 PECO's consideration of the sites listed in this Finding was window-dressing, applied after-the-fact. PECO claims that they gave full consideration to the many alternative sites that had been suggested by Marple Township and its residents, but the following timeline clearly shows that PECO had made substantial investments in the corner of Sproul and Cedar Grove Roads prior to any investigation of other sites.

- May 31, 2019 – PECO develops site plan for the corner of Sproul and Cedar Grove Roads/2090 Sproul Rd. (Exhibit TF-2 Confidential).
- June 18, 2019 – PECO receives heater design and specifications for the “Broomall Gate Station” (CONFIDENTIAL PECO003025)
- November 19, 2019 – PECO contacts Marple Township and inquires about possible sites; Marple staff recommend against the corner of Sproul and Cedar Grover Roads (915:2 – 9).
- June, 2020 – PECO enters into an agreement of sale with the owner of 2090 Sproul Rd (918:20 – 919:13)
- July 26, 2020 – PECO informs Marple Township that PECO had entered into an agreement of sale with the owner of 2090 Sproul Rd (919:14 – 920:8)
- October, 2020 – PECO applies to the Marple Zoning Hearing Board for a Special Exception, which is required in order to put two buildings associated with the Gas Expansion Plant in an “N – Neighborhood Business” District. The application was subsequently denied.

Finding of Fact #50 Findings of Fact #44, #45, #46, and #51 all clearly state that sites within 0.5 miles of the “planned terminus” at the corner of Sproul and Lawrence Roads are

within the capabilities of the project as designed, yet this item (Finding of Fact #50) conflicts with those statements. Additionally, “unreasonable engineering constraints” have not been supported other than by the opinion of PECO (SR-3, p.6; Tr. 122:3-25)

Finding of Fact #51 First, this Finding of Fact states that a location within 0.5 miles of the corner of Sproul and Lawrence Roads is optimal; it does not say that it is necessary. This fact implies that even more locations could be possible. Second, this Finding of Fact conflicts with #50 and #52. This Finding states that a location within 0.5 miles of the corner of Sproul and Lawrence Roads (such as the Don Guanella sites that are still being proposed by Marple Township and Delaware County) is feasible, and #50 and #52 state that such a location is NOT feasible.

Finding of Fact #52 Since this Finding of Fact is the only point that supports PECO’s request 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*”, it is important to note that, within these findings of fact, there are several other Findings of Fact that conflict with this one.

- #44 The Natural Gas Reliability Station must be located at a site **within 0.5 miles** of the proposed main terminus at Sproul and Lawrence Roads
- #45 Locating the Natural Gas Reliability Station **outside of a half-mile radius** from Sproul Road and Lawrence Road would lead to an inlet natural gas pressure below 150 p.s.i.,
- #46 If PECO’s Natural Gas Reliability Station were sited **beyond the 0.5-mile radius**, additional infrastructure would be needed
- #51 The optimal location for the Gas Reliability Station is **within a half a mile** from the terminus

Exceptions to the Discussion

Page 22

On Page 22 of the initial decision, the following paragraph, which succinctly summarizes the case for the final decision, states:

While we find that the concerns raised by the municipalities and the individual intervenors are valid, and we are not unsympathetic to those concerns, issues related to noise, gas emissions, aesthetics, traffic and other health and safety concerns are beyond the Commission's review (*See Petition of UGI Penn Nat. Gas Inc., P-2013-2347105 (Initial Decision August 16, 2013)*), adopted by, (Opinion and Order entered December 19, 2013) (UGI). As explained in more detail below, PECO has sustained its burden of demonstrating that **the Station is reasonably necessary** to meet the gas supply needs of its customers and that the buildings are required to protect the equipment from the weather, and to keep the equipment secure to ensure that reliable service is maintained and the facilities are maintained in a safe manner. **Therefore, its request for the buildings associated with the site to be exempt from local zoning will be granted.**

There are five problems with this:

- Section 69.1101 of the Commission's Regulations and the weight of the Commission's consideration of the impact of its decision upon local comprehensive plans and zoning ordinances.
- An improper interpretation of *Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm'n*.
- The false comparison of the 2013 UGI Penn Nat. Gas petition to the current PECO petition.
- Although the author of the Initial Decision has stated that "PECO has sustained its burden of demonstrating that **the Station is reasonably necessary...**", there is no support for the proposition that the **LOCATION** of the buildings is reasonably necessary.
- These issues are not beyond the commission's review. Although the Initial Decision states that the concerns raised by the municipalities and the individual intervenors are valid, and worthy of sympathy, what is required here is more than sympathy.

Section 69.1101 of the Commission's Regulations requires the Commission to consider local land use plans and zoning. The differences between UGI Penn Nat. Gas Inc (P-2013-2347105) and PECO (P-2021-3024328) are so vast that the decisions in that proceeding are not applicable in the

current proceeding. Delaware United re-iterates that the PUC does, in fact, have the authority to make a decision concerning the location of the buildings.

Section 69.1101

The Commission adopted a policy statement to further the Commonwealth's goal of making agency actions consistent with sound land use planning by considering the impact of its decision upon local comprehensive plans and zoning ordinances. Section 69.1101 of the Commission's Regulations provides:

[T]he Commission will consider the impact of its decisions upon local comprehensive plans and zoning ordinances. This will include reviewing applications for:

- (1) Certificates of public convenience.
- (2) Siting electric transmission lines.
- (3) **Siting a public utility "building"** under section 619 of the Municipalities Planning Code (53 P.S. §10619).⁴

In fact, Section 619.2a (Effect of Comprehensive Plans and Zoning Ordinances) of the PA MPC states:

When a county adopts a comprehensive plan in accordance with sections 301 and 302 and any municipalities therein have adopted comprehensive plans and zoning ordinances in accordance with sections 301, 303(d) and 603(i), **Commonwealth agencies shall consider and may rely upon comprehensive plans and zoning ordinances** when reviewing applications for the funding or permitting of infrastructure or facilities.

The location selected for the Station is zoned as “Neighborhood Center District” (ND).

According to the Marple Township ordinance, the intent of the district is as follows:

THE INTENT OF THE N NEIGHBORHOOD CENTER DISTRICT IS TO PROVIDE APPROPRIATE LOCATIONS AND DEVELOPMENT STANDARDS FOR LOW-INTENSITY COMMERCIAL USES WHERE MORE INTENSIVE COMMERCIAL USE WOULD HAVE ADVERSE EFFECTS ON ADJACENT AND NEIGHBORING RESIDENTIAL AREAS. THE REGULATIONS THAT APPLY WITHIN THE DISTRICT PROVIDE FOR RETAIL AND OFFICE

⁴ See 31 Pa.B. 951 (Feb. 17, 2001)

USES OF LIMITED SCALE THAT PRIMARILY SERVE NEARBY RESIDENTS, AFFORDING OPPORTUNITIES FOR PEDESTRIAN ACCESS TO LOCAL SERVICES. BUILDINGS IN THIS DISTRICT SHOULD BE COMPATIBLE IN SIZE AND SCALE WITH THOSE IN ADJACENT RESIDENTIAL AREAS.⁵

Marple Township and Delaware County have said that the Corner of Sproul and Cedar Grove Roads is not an appropriate location, and have even gone to great lengths to encourage PECO to move the facility less than a mile away, to the corner of Sproul and Reed Roads, the Don Guanella property, recently purchased by Delaware County. The State of Pennsylvania has given power to the Public Utility Commission to determine where this facility will be located, and the Commission has the responsibility to weigh the pros and cons of the location at the corner of Sproul and Cedar Grove Roads against the pros and cons of the Don Guanella location at the corner of Sproul and Reed Roads (both of which are within the 0.5 mile radius of the corner of Sproul and Lawrence Roads).

Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm'n

The Commonwealth Court has explained,

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

Nobody is arguing against the existence of the station; the PUC, however, does have jurisdiction over the location of the buildings. In fact, it has been clearly stated by the author of the Initial Decision that:

“...the issue in this case is whether the siting of the Gas Reliability Station at 2090 Sproul Road is reasonably necessary for the convenience or welfare of the public. In other words, whether it is reasonably necessary for the convenience or welfare of the public that the Gas Reliability Station be sited at 2090 Sproul Road.” (June 1, 2021 Interim Order)

5 Marple Township Zoning Ordinance, Section 300-39

UGI Penn Nat. Gas Inc (P-2013-2347105)

The author of the Initial Decision states: “While we find that the concerns raised by the municipalities and the individual intervenors are valid, and we are not unsympathetic to those concerns, issues related to noise, gas emissions, aesthetics, traffic and other health and safety concerns are beyond the Commission’s review

In stating that the valid concerns of the County, Township, and Intervenors are beyond the Commission’s Review, the author of the Initial Decision cites the UGI vs. West Wyoming Township case. However, the current petition of PECO for a facility in Marple Township (P-2021-3024328) and the petition of UGI Penn Nat. Gas Inc (P-2013-2347105) cited in the Initial Decision are **factually and legally distinguishable** in the following ways. (see table on Page 15)

In the 2021 PECO case, Marple Township et al object to a facility that is located on a 0.57 acre property in a densely populated residential and neighborhood retail business zone, less than 100 feet from currently occupied residences and a popular restaurant, in order to increase the supply to Marple Township and Delaware County, both of whom have questioned the need for the facility, and both of whom have gone to great lengths in order to provide an alternative location that is both less objectionable to the politics and residents and also technologically feasible⁶

6 The Don Guanella site.

	UGI 2013	PECO 2021
PUC Docket Number	P-2013-2347105	P-2021-3024328
Government Intervenors	West Wyoming Township	Marple Township AND Delaware County
Basis for Refusal of Development	General Concern about the Development ⁷	Denial of Special Exemption by the Marple Zoning Hearing Board ⁸
Number of Protestants and Intervenors	11	63
Number of citizens who testified at the Public Input Hearings	16	93
Size of the Property	3.2 acres	0.57 acres
Purpose of the Project	Interconnect outgoing local “Frack Gas” with interstate gas pipeline distribution system. (F of F #8)	Supply local distribution system with gas from existing gate stations. (F of F #14, 29, 35)
Location	“an approximately 3.2 acre property in a rural, forested area of West Wyoming Borough” (F of F #12)	“The property at 2090 Sproul Road is the gateway to the business shopping district, is in close proximity to residential homes and a Gas Reliability Station is not compatible with residential and retail uses.” (F of F #53)
	“The location of the gate station was chosen because it... is approximately 1,500 feet from the nearest dwelling...” (F of F #13)	
	“..the site... is rural... and it is a third of a mile away from the closest dwellings...” (F of F #28)	
Security	“PNG will post warning signs indicating that the property in question is owned by PNG.” (F of F #33)	PECO expects this facility to remain unmarked to discourage vandalism and/or terrorism

7 [ANSWER&NEW MATTER TO PETITION-WEST WYOMING](#), P-2013-2347105, 3/1/2013

8 Current Petition (P-2021-3024328), Initial Decision; Finding of Fact #56

When residents and polities are complaining about noise, pollution, the danger of fire and explosion, decreases in property values and the deterioration of the ambiance of the neighborhood, it is axiomatic that these issues weigh much more heavily in the case where the proposed facility is located “downtown” as opposed to in a rural area. The Marple Township Zoning Hearing Board denied the Special Exception requested by PECO for this project in order to protect its citizens and preserve the character of the main shopping area in the township. Considering that the 2013 project was out “in the middle of nowhere”, it would be difficult for the intervenors in West Wyoming Township to make similar claims.

Necessity for the Buildings or the Location?

Although not all would agree, at this point there is little to be gained by arguing if the station is needed to ensure future gas supply, or if the buildings are required to protect the equipment. But the remaining issue that PECO has not sustained its burden of demonstrating, and that the Initial Decision has not demonstrated, is whether or not the **LOCATION** of the buildings is reasonably necessary for the convenience and welfare of the public.

“Reasonably” means that consideration be given to the local land use, land use planning, and zoning. It means consideration be given to the certainty of an ugly box sitting in the middle of a residential/retail area, the very real possibility of constant noise from industrial regulators and heaters, and the miniscule possibility, some time over the life of the facility, of a catastrophic accident. And finally, it means full consideration of the fact that, if a catastrophic failure were to occur, due to an accident or an act of terrorism, the Potential Impact Radius, as defined by PECO’s expert witness, Mike Israni, would easily encompass Freddy’s Steakburgers restaurant, and several residences that are currently occupied.

“Necessary” means that there is no alternative site that is technologically feasible. Although Findings of Fact #52 and #50 support that the location is necessary, there is no support anywhere for #50. Finding of Fact #51 states that the Corner of Sproul and Cedar Grove Roads is “optimal”, not “necessary. Findings of Fact #44, #45, #46, and #47 all support the argument that the Don Guanella site, which is within the 0.5 mile radius, is technologically feasible. The Don Guanella site is preferred by both Marple Township and Delaware County as a site for this project, and both have already gone through much effort to make this alternative site available. Therefore, when The Commission gives consideration to the needs of Local Zoning and the wants of PECO, it is easy to see that the Location of the Buildings at the Corner of Sproul and Cedar Grove Roads is not Reasonably Necessary for the Convenience and Welfare of the Public.

More than Sympathy for the Valid Concerns

The Initial Decision admits that the concerns of the Municipalities and Residents are valid and worthy of sympathy, but fails to give sufficient weight to those concerns, relying solely on the testimony of PECO employees. Even mention of the Potential Impact Radius has been eliminated from the Initial Decision. The fact remains that, in addition to other flaws, the Initial Decision reflects a scope of review that is much too limited. The local and county governments have said that this location is not reasonable, and the Commission is now saying that “issues related to noise, gas emissions, aesthetics, traffic and other health and safety concerns are beyond the Commission’s review”. If consideration of these issues is beyond the Commission’s review, then what is the purpose of the Commission? If consideration of these issues is beyond the Commission’s review, then who will consider these issues? The Mission Statement of the Pennsylvania Utility Commission states “*The mission of the Pennsylvania Public Utility Commission is to balance the needs of consumers and utilities...*” The Commission needs to offer more than sympathy for the valid concerns of the residents, protestors,

intervenor, and governments that are opposed to the location of this project at the Corner of Sproul and Cedar Grove Roads.

Page 25

On Page 25 of the initial decision, the following paragraphs compare the weight of testimony by PECO employees and expert witnesses to the weight of testimony by Ted Uhlman:

“Delaware County and Intervenor Uhlman and Baker all challenge the need for the facility because the forecasted gas supply need is ten years into the future. In Delaware County’s view, there is no need to begin this project now and PECO should take more time to identify other locations that may become available in the future.”

And, further,

“However, neither Delaware County, nor Mr. Uhlman or Ms. Baker, offered any expert testimony which would support a conclusion that gas planning and reliability forecasting by PECO’s experts was unreasonable or speculative. Mr. Uhlman, in his brief, questions the accuracy of the growth projections relied on by PECO, but he is not an expert witness. His lay opinion is not sufficient to rebut the expert opinions supporting the growth projections and forecasted gas supply need, as these are technical matters which require specialized knowledge.”

Ten Years Until Needed

On this issue, as in so many others, it doesn’t require a PhD in Natural Gas Distribution Pipeline Engineering to simply remind the court of facts that have come from PECO’s own experts, such as Findings of Fact #15, #34, #35, and #36. These statements indicate that the need for this project is ten years in the future, and there is no need to rush this decision, especially since the Don Guanella property is in the process of being purchased by Delaware County, and is being offered to PECO as an alternative site for this project by Delaware County, in conjunction with Marple Township.

Potential Impact Radius

Similarly, it doesn't take an expert witness to interpret PECO's own professional paid witness, Mr. Michal Israni, who, with many years of experience in this field, in the evidentiary hearings, made statements concerning the Potential Impact Radius. The PIR is defined as:

“the radius of a sector were if the pipeline fails, the persons or the buildings within that impact circle may be impacted. ...And the impact would be, like, 30 seconds and you're done, person is standing safely back of that flame, or if it is breathing there in a certain time period will have impact. ... if a plume of fire is there at that point, that impact radius distance in 30 minutes, the house, to fire ignition, meaning it will start on fire in 30 minutes if it's exposed in that heat. And so the person, it takes 20 seconds to get second-degree burns. If the person is facing the fire without any walls inside the building of behind the plumes, if he's directly exposed to that plume, in 20 seconds it can get second degree burns. So there's impact radius on that.” (Transcripts: 1618:19 – 1620:9)

According to PECO's Expert Witness, Mr. Israni, the Potential Impact Radius (PIR) for a facility such as this is between 0.98 acres/43,000 sqft/117ft radius and 2.60 acres/113,441 sqft./190ft radius (Transcripts: 1618:4 – 1622:7). One does not need to be an mathematical or engineering expert to determine that the proposed site is 0.57 acres/24,830 sqft, and to compare that to the Potential Impact Radius, as testified by Mr. Israni. The Potential Impact Radius is considerably larger than the entire property, and several homes and businesses are well within the Potential Impact Radius.

	Min. PIR	Max. PIR	Corner Property
Acres	0.98	2.60	0.57
Square Feet	43,000	113,441	24,830
Radius	117	190	89

How this information stayed out of the Findings of Fact is a mystery to me.

Role of the PUC

Further, still on page 25,

The Commission does not sit as a substitute board of directors for public utilities, and generally views the timing of the construction of approved projects as a management decision by the utility. 54 This project is not the only PECO gas infrastructure project, or the only area of future forecasting in which PECO must engage to provide reasonable service to its customers within its entire service territory. Further, as PECO witnesses explained, this project not only addresses a forecasted reliability problem, but is also part of a plan to keep gas prices down by increasing PECO's ability to acquire gas at low prices and to reduce reliance on spot markets and mitigate price volatility.

However, when there is a serious dispute between the PECO board of directors and local government, it is time for The Commission to intervene. The Commission is not a substitute board of directors; it REGULATES AND CONTROLS the board of directors. Several infrastructure projects, such as the Transource Electricity Line, and the Sunoco Logistics Mariner East pipeline project show how projects can get a green light early on, then meet red lights later. *"The mission of the Pennsylvania Public Utility Commission is to balance the needs of consumers and utilities..."*⁹

Page 26

REMOVE THIS

If Mr. Uhlman's arguments "...serve only to muddle the record", while "the explanation by Mr. Flanagan and Mr. Ryan in particular is "inconsistent" and confusing", then perhaps this case is not as simple as some would like.

Page 27

On page 27, the author of the Initial Decision makes a grave error. It is not true that *"The focus of the Commission's review is limited to the necessity for the buildings themselves."* This is an argument for which Ted Uhlman has been chided many times. It is not the **necessity** for the buildings, but rather, it is the **siting** of the buildings; the LOCATION of the buildings that is at issue in this case. In the June 1, 2021 Interim Order *"...the issue in this case is whether the **siting** of the Gas Reliability*

⁹ <https://www.puc.pa.gov/about-the-puc/>

Station at 2090 Sproul Road is **reasonably** necessary for the convenience or welfare of the public. In other words, whether it is **reasonably** necessary for the convenience or welfare of the public that the Gas Reliability Station be **sited** at 2090 Sproul Road.”¹⁰

Page 28

On page 28, the author of the Initial Decision provides the reader with a step by step analysis supporting the necessity for the **buildings**, and then ends with the unfounded conclusion in support of the **siting** of the buildings. Although much has been said in this case (on both sides) about PECO’s abhorrent community engagement, PECO’s phony site selection process, PECO’s flimsy explanations of future growth of residential natural gas usage, and PECO’s unfounded claims concerning the 0.5 mile radius from the corner of Sproul and Lawrence Roads, the fact remains that, time and again, we are told that this case turns on the **reasonable** necessary for the convenience or welfare of the public that the Gas Reliability Station be **sited** at the Corner of Sproul and Cedar Grove Roads. By reasonable, it is meant that the Commission seriously consider the zoning and welfare of the local community, as well as the necessity that PECO claims. By necessary, it is meant that the Commission consider other sites, such as the Don Guanella site, that are within the 0.5 mile radius of Sproul and Lawrence Roads that PECO claims is a technological limit.

¹⁰ [P-2021-3024328 INTERIM ORDER GRANTING MARPLE TOWNSHIP AND DELAWARE COUNTY'S MOTION TO COMPEL DISCOVERY DIRECTED TO PECO ENERGY COMPANY.DOCX](#)

Exceptions to the Conclusions of Law

Conclusion of Law #6

53 Pa. Stat. § 10619

This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed **situation** of the building in question is **reasonably** necessary for the convenience or welfare of the public...

§ 69.1101. Local land-use plans and ordinances in issuing certificates of public convenience.

To further the State's goal of making State agency actions consistent with sound land-use planning, and under the act of June 22, 2000 (P. L. 483, No. 67) and the act of June 23, 2000 (P. L. 495, No. 68), the Commission will **consider the impact of its decisions upon local comprehensive plans and zoning ordinances**. This will include reviewing applications for:

- (1) Certificates of public convenience.
- (2) Siting electric transmission lines.
- (3) Siting a public utility "building" under section 619 of the Municipalities Planning Code (53 P. S. § 10619).
- (4) Other Commission decisions.

This Conclusion of Law states that the location of te buildings in **reasonably necessary** for the convenience and welfare of the public, but there is ample evidence in the record that shows that this conclusion is false, and for two reasons.

1. This location is technologically, financially, politically, legally, environmentally, and in every other way **not necessary**. The Don Guanella site is within the 0.5 mile radius repeatedly cited by PECO; also, the Don Guanella site is preferred by both Marple Township and Delaware County. All four of the criteria that PECO cite (Transcripts page 911, lines 12 – 16) are easily met. It is available, it is within 0.5miles of Lawrence Road, zoning will not be an issue, and size will not be an issue.

2. This location is technologically, financially, politically, legally, environmentally, and in every other way **not reasonable**.
 1. It conflicts with the local comprehensive plans and zoning ordinances, because the Marple Township Zoning Hearing Board denied PECO's request for a Special Exception. (Hence, the purpose of this procedure)
 2. It will degrade the neighborhood because:
 1. The 8 foot barrier around the facility will be ugly,
 2. The regulators and heaters will create noise, and
 3. The above ground pipes with as much as 475psi of natural gas introduce the small possibility of a catastrophic explosion.

Summary

The central issue in this proceeding is whether the proposed **situation** of the building in question is **reasonably** necessary for the convenience or welfare of the public. Although the ALJ in this case has issued a Preliminary Decision ordering that the location IS reasonably necessary, the fact remains that the **location** IS NOT reasonably necessary.

It is not **necessary** because, comparing the Corner of Sproul and Cedar Grove Roads with a location on the Don Guanella property, and using PECO's own Site Selection Process, the Don Guanella property meets the criteria better than the Corner of Sproul and Cedar Grove Roads.

1. Zoning – Obviously, this proceeding is asking for a finding that the location is reasonably necessary so that PECO can evade the refusal of the Marple Township Zoning Hearing Board to issue a Special Exception that would allow this project to move forward at the Corner of Sproul and Cedar Grove Roads. On the other hand, both Marple Township and Delaware County have repeatedly told PECO that they would gladly alter zoning in order to make the location on the Don Guanella property work for the PECO facility.
2. Availability – The site at the Corner of Sproul and Cedar Grove Roads was never advertised as being for sale, and is currently under contract to PECO only because the current owner received “an offer he couldn't refuse” from PECO. On the other hand, Delaware County is currently purchasing the entire 213 acres of the Don Guanella property from the Archdiocese of Philadelphia, and, in coordination with Marple Township, has actively encouraged PECO to move the facility to this location.
3. Size – At 0.57 acres, the location at the corner of Sproul and Cedar Grove Roads is laughably small. It is very much smaller than the Potential Impact Radius (see page 19), less than 50 feet from a popular restaurant, and similarly close to multiple residences. On the other hand, the location within the Don Guanella property can easily be much larger, facilitating the construction and maintenance of the facility.

4. Location – Both locations are within 0.5miles of the corner of Sproul and Lawrence Roads, and Findings of Fact #44, #45, #46, state that locations within 0.5miles are technically feasible, and #51 states that locations within 0.5miles are only *optimal*, not *necessary*.

It is not **reasonable**, because it conflicts with local comprehensive land use plans and zoning ordinances, introduces the probability of constant noise from regulators and heaters, as well as the possibility of a catastrophic explosion, and subjects local citizens and residents to an ugly box at the entrance to the central shopping district.

CERTIFICATE OF SERVICE

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

**TED UHLMAN'S EXCEPTIONS TO
THE INITIAL DECISION**

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 below upon the parties listed below:

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