

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	:	Docket No.: P-2021-3024328
Reliability Station in Marple Township, Delaware	:	
County Is Reasonably Necessary for the	:	
Convenience and Welfare of the Public	:	

**EXCEPTIONS OF INTERVENOR MARPLE TOWNSHIP
TO THE INITIAL DECISION**

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Certificate of Service

EXCEPTIONS OF INTERVENOR MARPLE TOWNSHIP

Intervenor, Marple Township (“Marple”), by its undersigned counsel respectfully submits these Exceptions to the Initial Decision pursuant to the correspondence of Secretary Chiavetta and in accordance with 52 Pa. Code §5.533.

I. INTRODUCTION

On December 7, 2021, the Honorable Emily I. DeVoe and Mary D. Long (the “ALJs”) issued an Initial Decision of the Pennsylvania Public Utility Commission (“Commission”) in the above-captioned matter. Marple Township opposed PECO Energy Company’s (“PECO”) Petition, pursuant to 52 Pa. Code § 5.41 and Section 619 of the Municipalities Planning Code (“MPC”), 53 P.S. § 10619, for a finding that: (1) the situation of two buildings at 2090 Sproul Road, Marple Township, Delaware County, Pennsylvania, 19008 (the “Property”) for a proposed Gas Reliability Station is reasonably necessary for the convenience and welfare of the public and, therefore, exempt from the Marple Township Zoning Code pursuant to MPC § 619, and (2) a proposed security fence appurtenant to the Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from local zoning requirements (the “Petition”).

In their Initial Decision, the ALJs fail to consider, let alone analyze, and in some cases even acknowledge, the testimony and case law presented on behalf of Marple Township. Furthermore, the Initial Decision fails to follow what the ALJs specifically stated would be the scope of review in the matter. The Initial Decision neglects to address any of the negative facts or shortcomings in PECO’s case, such as the lack of adequate sound study, their lack of knowledge of the types of emissions from the gate station, and admission that the generators would run on a weekly basis for testing. Additionally, the Initial Decision fails to address whether the location of this facility at this specific site is appropriate given the various health and safety concerns raised in testimony at

the evidentiary hearing and supported in large part by PECO's own witnesses during cross examination.

This inadequate response from the Commission merely highlights PECO's talking points and does nothing to provide for the public safety and welfare of the residents of Marple Township.

II. EXCEPTIONS

Marple Township Exception 1: ALJs decision contradicts the case law and the ALJ DeVoe's own Order

Marple Township objects to Conclusions of Law numbers 6 and 7, found on page 29 of the Initial Decision, wherein the Commission found that the location of the site at 2090 Sproul Road for the Reliability Station is reasonably necessary and that the buildings are reasonably necessary to protect the equipment of the Gas Reliability Station from weather and vandalism. The scope of review utilized by the Commission runs afoul to case law cited by the Township and contradicts ALJ DeVoe's own Interim Order in this matter. Interim Order, dated June 1, 2021 states as follows: the Commission must "determine whether the site of the [proposed facility] is appropriate to further the public interest." (June 1, 2021 Interim Order) citing (Del-AWARE Unlimited, Inc., 513 A.2d 593. (emphasis in original)). The Order further states that "[t]he Petition at issue in the instant matter pertains only to the Gas Reliability Station." Finally, and most importantly, a detail that PECO failed to highlight, and the Commission failed to consider, is that ALJ DeVoe's order states the following:

Therefore, 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) (emphasis added).

The Initial Decision fails to logically explain the following conundrum: The Commission is satisfied that PECO analyzed several different sites for the gas reliability station (meaning different addresses); and the Commission believes that, based upon the law, PECO need not choose the best possible site for its project so long as it is reasonable (meaning the address), yet the word “site” for siting the facility as expressed in the Initial Decision somehow only means the four walls of the building itself that surrounds the public utility facility.

The Commission failed to consider the impact of the *Philadelphia Suburban* case. *Re Philadelphia Suburban Water Company*, 54 PA. PUC 127, 129, 1980 Pa. PUC LEXIS 81 (Pa. P.U.C. April 3, 1980). While PECO has consistently argued that the only issue to be decided is that of a building surrounding the regulating station, the Petition in *Philadelphia Suburban* sought for the entire pump station to be exempt from local zoning on the basis of reasonable necessity. Ultimately, the Court in *Philadelphia Suburban*, found that:

[u]pon full consideration of the records in this proceeding, and in accordance with the foregoing discussion, we find pursuant to the requirement of §619 of the Pennsylvania Municipalities Planning Code... that the proposed situation of a 5 million gallon steel reservoir and a booster pumping station on a tract of land owned by the applicant is reasonably necessary for the convenience or welfare of the public.

Id. at. *26-27. Indeed, the Commission’s finding was that the entire facility, the *steel reservoir and booster pumping station*, was reasonably necessary for the convenience or welfare of the public. While this case was presented to the ALJs in argument, it was not considered or distinguished in the Initial Decision.

Further, in *Del-AWARE*, relied upon by PECO and the Commission in its decision states that Section 619 “merely directs the PUC to determine whether the *site* of the Bradshaw pumphouse is appropriate to further the public interest.” *Del-AWARE Unlimited, Inc. v. Pa. Pub.*

Util. Comm'n, 99 Pa. Commw. 634*, *638 (Pa. Commw. 1986). It is the location of the site itself that is germane, as stated by the *Del-AWARE* Court:

Section 619 only *empowers* the PUC, upon petition, to decide if there is reasonable necessity for the *site*. Moreover, the purpose of the inquiry is only to determine whether an exception to the local zoning provisions applicable to that site is justified. Therefore, the location, **not the building itself**, is the focus of concern.

Id. at footnote 4. However, contrary to *Del-AWARE* the Initial Decision focuses on the building itself and whether it is necessary to house the public utility equipment. The analysis is simply not logical. Furthermore, as opposed to only analyzing whether a building around a utility facility is reasonably necessary, the PUC is in fact empowered to evaluate the impacts of placing the entire facility at the proposed location. *Id.* at *639. In *Del-AWARE* the Court stated that Section 619 directs the PUC to determine whether the *site* of the Bradshaw pumphouse is appropriate to further the public interest. *Id.* at *638. The Bradshaw Pumphouse is described in the opinion as the construction of facilities to supply water for cooling a nuclear generating station in Limerick, Montgomery County. *Id.* at *636.

Had the proper analysis of whether the Gas Reliability Station is reasonably necessary for the convenience and welfare of the public, the ALJs would have found otherwise, consistent with the Exceptions set forth in more detail below.

Marple Township Exception 2: Marple Township objects to the Commissions finding regarding why PECO did not choose the Don Guanella site

Findings of Fact numbers 46, 47 and 50, found on pages 15-16 of the Initial Decision, address the Don Guanella site, the site suggested by Marple Township for this project. The decision fails to mention that PECO has already been disturbing traffic patterns whiling putting the trunk line in without have the authorization to use the proposed site. The Initial Decision mentions that there would be extra costs involved with the Don Guanella site but fails to mention

the extra cost of needing expensive Act 2 remediation at the subject site since PECO will be disturbing the soil at the proposed site or the cost involved in this litigation (R.1135:1-1136:3). Rather than cost, traffic or engineering, PECO dismissed the Don Guanella property for zoning reasons even though the Township had informed that it would work with PECO on zoning for an appropriate site (R 1140:3-16; R1142:7-12). It was only for the first time at submission of surrebuttal testimony, having already known that the Township and all other Protestants preferred this location given its location within less proximity to homes and residents, Ryan Lewis of PECO testified that despite the property being within the ½ mile of the Sproul and Lawrence connection and meeting that site selection criteria, the Don Guanella site would not be acceptable as its location would now cause “engineering constraints”. (SR-3, p.6; R. 122:3-25). Additionally, the testimony supports the fact that PECO simply did not want to use the Don Guanella site, or any other site within the Township.

There is no evidence in the record that cost is any issue for PECO, especially considering (1) the costly environmental remediation efforts PECO will need to perform at the selected location and (2) the time and litigation fees already spent and continuing to being spent on these proceedings, which does in fact directly effect “PECO’s customers.”

Marple Township Exception 3: The Initial Decision fails to give any consideration to the impact radius of the site

Mr. Israni, an expert witness on behalf of PECO, testified that based on Mr. Flanagan’s operational figures of pressure of the main connected to the natural gas reliability station of 525 PSI and the pressure arriving at the station anticipated to be less than 200 PSI with a 12-inch diameter main, in the scenario of a serious incident at that natural Gas Reliability Station, the potential impact radius is 190 feet for 525 PSI and at 200 PSI, the potential impact radius is 117 feet. (R. 1618.3 -1620.4). The potential impact radius is the radius of a sector where if the

pipeline fails, the persons or the buildings within that impact circle may be impacted. The failure of a pipeline where the gas was ignited resulting in flame or plume of that flame or fire would have impact on persons in that radius, with impacts such as such as 2nd degree burns from exposure to flame heat (20 secs), death within 30 seconds and building ignition within 30 minutes. (R. 1618.3 -1620.4). Neighboring residences and Freddy's restaurant, and the occupants of each, are well within the potential impact radius and in danger of damage or injury in the event of emergency. Mr. Israni's testimony confirmed that events can and do happen at regulating stations. Given the potential emergencies, the location of such facilities in close proximity (within the impact radius) to occupied residences and businesses, is not appropriate and is detrimental to public safety and welfare.

This evidence regarding the impact radius supports the testimony of the Township's Fire Marshall, Jim Capuzzi, who by trade is a risk management consultant, and that given potential impact, and the fact that facility will be unmanned and the building inaccessible to Township emergency response personnel until such times as PECO can arrive to the site, that the location of the facility at the site in close proximity to homes and businesses is contrary to public health, safety and welfare.

Marple Township Exception 4: The Initial Decision fails to consider the environmental impact of the Gas Reliability Station at the site

Marple Township objects to Conclusion of Law number 5, page 29 of the Initial Decision, wherein the decision states that the commission is not empowered to evaluate various aspects of the environmental impact of a project. While the Initial Decision states that the Commission need not consider environmental factors, this is patently false. In deciding this type of case, consideration must be given to the following:

- A. Whether the Public Utility Commission has jurisdiction over the parties and subject matter pursuant to the Municipalities Code, 53 P.S. § 10619;
- B. Whether the proposed site is reasonably necessary for the convenience or welfare of the public;
- C. Environmental impact.**

*See Application of Pennsylvania American Water Company for a finding of reasonable necessity, under Section 619 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10619, for the subdivision of lands, and for the proposed situation and construction of the buildings comprising an expansion of the wastewater treatment plant on a site in South Coatesville Borough, Chester County, Pennsylvania (“PAWC”), 2006 Pa. PUC LEXIS 91, *8 (Pa. P.U.C. October 25, 2006) (emphasis added).*

Pursuant to the testimony in this matter, the vent stacks from the heaters will emit mainly water vapor and small amounts of carbon dioxide, but Mr. Flanagan could not say for sure that those are the only emissions. (R.1366). When the heaters are operating, the gas usage and emissions from the Marple Reliability Station is the equivalent of 23 homes coming from a single property. (R. 1366:16-1367:13). PECO could not answer the question regarding additional emissions from the stacks completely, other than saying that there is nothing that would require a permit to be issued. (R.1418-20).

The emissions coming from the heaters will be the equivalent of 23 homes and contain carbon dioxide, carbon monoxide, water vapor, nitrogen oxides, sulfur oxides and other particulates. (R.1366-67). While a reliability station performs a similar function to a gas meter as a house, it is clear that there is substantially more gas connecting reliability station than what’s coming to a typical residence and the gas is coming in at a higher pressure. (R. 1370:14-19).

Marple Township Exception 5: The testimony of Marple Township Fire Marshall was not considered by the ALJs

Marple Township Fire Marshall, Jim Capuzzi testified that, given the adjacent and immediate proximity to a densely populated residential community and immediately adjacent restaurant and shopping district, the proposed site is not an appropriate location for a Gas Reliability Station from a fire, life safety and public interest standpoint, given concerns about the impact of US Department of Transportation 2020 Emergency Response Guide (ERG) evacuation parameters, potential impact radius, line integrity, lack of manning of the facility and PECO historic response times in Marple (Marple Township Statement No. 2, pp. 5-6, R. 1508). In addition to serving as a Fire Marshall, Mr. Capuzzi is employed by AON Risk Control, where he handles a number of international clients from a property risk control standpoint, fire, explosion, and natural hazardous standpoint and is a certified fire protection specialist, certified by the National Fire Protection Association. He has almost 40 years of experience and expertise in this field (Marple Township Statement No. 2). The Initial Decision fails to consider or even acknowledge this testimony.

Marple Township Exception 6: The ALJ's finding regarding noise fails to address the study done on behalf of Marple Township and the fact that PECO's own test was insufficient

Marple Township objects to Finding of Fact number 8, page 10 of the Initial Decision, regarding sound-dampening features to minimize the effect of the Station on the community. While this is what PECO claims, PECO admits that its sound study was not of the actual equipment and that it did not include an analysis of all of the equipment. As Township noise expert, Nancy Wilson, pointed out in her testimony, the sound level study produced by PECO did not measure the actual equipment to be housed at the location but used projections and did not include all noise producing equipment and processes proposed for the facility. (Marple

Township Statement No. 3, pp. 3-4). Notably, the sound study does not include the generators, which must run periodically which will result in additional noise disturbances. (R. 1089; R. 1096-97). Ms. Wilson explained that the difference is that commercial generators generally have higher kilowattage than a home run generator and they have to run for periodically to make sure they could be kept running. (R.1101).

Marple Township Exception 7: The Initial Decision erred by stating that neither Marple Township nor the other Protestants challenged PECO's alleged need for the Gas Reliability Station

Marple Township objects to Findings of Fact 14-20, 24-28, as well as the discussion on page 28 of the Initial Decision in that Marple Township, as well as other Protestants, pointed out the inconsistencies with PECO's own gas usage projections. While no expert witness was presented, it did not require an expert to read the numbers on PECO's own graphs. PECO projects that over the next 10 years natural gas usage will increase annually at 2% per year for Delaware County and 1% per year for Marple Township (PECO Statement – 3, P4:13-5:10), despite population for Marple Township having grown only a total of 2.3% over the entire preceding 10 year period and Delaware County population having grown only a total of 1.4% over that same preceding entire 10 year period with gas usage having increased only a total 2.6% in Marple Township and 3.1% in Delaware County over the entire preceding 10 year period. (PECO Statement 3 – SR, p.12-15).

Moreover, Marple Township pointed out in its final brief that it is difficult to understand how the location and siting of this facility at the 2090 Sproul Road site is reasonably necessary for convenience and welfare of the public when PECO's projections for the additional gas needs over the next ten years for both Delaware County and Marple Township project annual growth in gas usage several times greater than both the population and gas usage growth during the

previous decade, historic figures which PECO claims support their projections. Additionally, PECO admits that it currently has adequate supply to meet mandated requirements in a safe, least cost manner. PECO admits that the reason for the desired additional supply to be added by the project in question is to reduce PECO's reliability on market purchases and reduce the price volatility and that the project would not solve long term supply issues. This evidence, straight from PECO itself, was ignored in drafting the Initial Decision.

Marple Township Exception 8: The Initial Decision erred in its comparison of this Gas Reliability Station to PECO's other existing gate stations

Marple Township objects to Findings of Fact paragraphs 5, 12, 13. This facility is PECO's first "Gas Reliability Station"; however, this is like a gate station except that a gate station involves a transfer of ownership or custody of the gas from the transmission line to PECO, where here it is PECO's gas in the high pressure main prior to the station and the gas will odorized in the Conshohocken plant not at the station. (R.1355:4-18). PECO operates 28 gate stations with only 2 others as close to nearest residence as the proposed reliability station at 2090 Sproul Road. (R.1358:12-24, Exhibit TF-6). All of the other 28 gate stations are further in distance from residences and PECO does not maintain any gate stations which are closer to residences than the proposed Marple reliability station would be. (R. 1358:23-1359:13).

Marple Township Exception 9: The Initial Decision erred in its conclusions regarding PECO's analysis for the need for the project at this site

Marple Township objects to paragraphs 37-41 of the Findings of Fact and the discussion regarding the same, wherein the Initial Decisions described PECO's hydraulic analysis to choose the location of the Gas Reliability Station when the evidence proves otherwise. It was evident throughout the proceedings that PECO zeroed in on 2090 Sproul Road at the infancy of the planning for this project in the Spring of 2019, everything else followed in suit to provide

justification for its selection. PECO had its engineers prepare drawings and plans with the Gas Reliability Station at 2090 Sproul Road in May of 2019, months before PECO contacted the owners regarding site availability. PECO does not have drawings of any other location it claims to have considered for this project.

PECO's other sites fitting their stated criteria were dismissed from consideration as such sites were not available, despite the fact PECO did not contact a single property owner to determine if a voluntary sale was possible and despite PECO having the power of eminent domain to acquire any property it wished.

PECO zeroed in on the subject site and designed the project for this site in the Spring of 2019, over six months before advising the Township of the reliability station project and over a year before securing the right to purchase same and has never wavered from its pursuit of same, choosing to litigate to try and force this site on the public rather than take any meaningful steps to pursue acceptable alternative locations.

Marple Township Exception 10: The Initial Decision erred in its lack of detailed description of 2090 Sproul Road

Marple Township objects to paragraph 54 of the Findings of Fact which purports to describe the lot at 2090 Sproul Road, but neglects the important details, such as the size of the lot and the proximity to residential homes and businesses.

III. CONCLUSION

WHEREFORE, for the reasons set for above, Marple Township respectfully requests that the Commission modify the Initial Decision with these exceptions, because:

1. The Initial Decision erred in Paragraphs 6 and 7 of the Conclusions of Law by finding that the location of the site at 2090 Sproul Road for the Reliability Station is

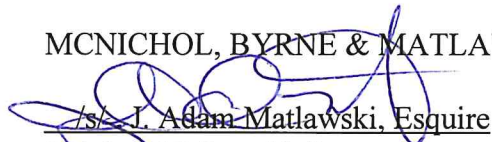
reasonably necessary and that the buildings are reasonably necessary to protect the equipment of the Gas Reliability Station from weather and vandalism.

2. The Initial Decision erred in paragraphs 46, 47 and 50 of the Findings of Fact in the characterization of the review and rejection by PECO of the Don Guanella site, the site suggested by Marple Township for this project.
3. The Initial Decision erred by failing to consider or address the potential impact radius and the potential danger of damage or injury in the event of emergency.
4. The Initial Decision erred in paragraph 5 of the Conclusions of Law wherein the decision states that the commission is not empowered to evaluate various aspects of the environmental impact of a project, when its own edicts state otherwise.
5. The Initial Decision erred by failing to consider or even acknowledge the testimony of Marple Township Fire Marshall, Jim Capuzzi, with respect to evacuation parameters, potential impact radius, line integrity, lack of manning of the facility and PECO historic response times in Marple.
6. The Initial Decision erred in paragraph 8 of the Findings of Fact regarding its analysis of the sound-dampening features to minimize the effect of the Station on the community by failing to acknowledge or consider the opposing testimony presented by the Township.
7. The Initial Decision erred in paragraphs 14-20 and 24-28 of the Findings of Fact 14-20, 24-28 by ignoring the inconsistencies noted by Marple Township, as well as other Protestants, with PECO's own natural gas use projections.
8. The Initial Decision erred in paragraphs 5, 12 and 13 of the Findings of Fact and in its comparison of the Gas Reliability Station to PECO's 28 other gate stations.

9. The Initial Decision erred in paragraphs 37-41 of the Findings of Fact regarding its conclusions surrounding PECO's analysis for the need for the project at the site.
10. The Initial Decision erred in paragraph 54 of the Findings of Fact in failing to fully disclose the details of the lot at 2090 Sproul Road, but neglects the important details, such as the size of the lot and the proximity to residential homes and businesses.

Respectfully Submitted,

MCNICHOL, BYRNE & MATLAWSKI, P.C.


/s/ J. Adam Matlawski, Esquire

Dated: December 28, 2021

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