

**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 :

**REPLY OF INTERVENOR MARPLE TOWNSHIP TO THE EXCEPTIONS OF PECO
ENERGY COMPANY TO THE INITIAL DECISION**

J. Adam Matlawski, Esq.
Attorney I.D. No.: 41678
Kaitlyn T. Searls, Esq.
Attorney I.D.: 311237
1223 N. Providence Road
Media, PA 19063
Counsel for Marple Township

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Certificate of Service

**REPLY OF INTERVENOR MARPLE TOWNSHIP
TO THE EXCEPTIONS OF PECO ENERGY COMPANY**

Intervenor, Marple Township (“Marple”), by its undersigned counsel respectfully submits this Reply to the Exceptions of PECO Energy Company (“PECO”) 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”).

While the Initial Decision provided PECO with everything it asked for in its Petition, over the objection of Marple Township, PECO filed Exceptions. In its Exceptions, PECO seeks clarification of the following: that it is also exempt from subdivision and land development restrictions, that the security fence is a public utility facility and with respect to the finding that its Gas Reliability Station is not compatible with residential and retail uses. Marple Township files this Reply to oppose PECO’s Exceptions as unsupported by the proceedings and the record and which are contrary to law.

II. REPLY TO EXCEPTIONS

Marple Township’s Reply to PECO Exception No. 1: The PUC does not have the jurisdiction to exempt PECO from a municipality’s subdivision and land development regulations

PECO filed a Petition before the PUC pursuant to 52 Pa. Code § 5.41 and Section 619 of the Municipalities Planning Code (“MPC”), 53 P.S. § 10619. Section 619 of Article VI of the MPC provides:

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. (emphasis added)

53 P.S. §10619. Section 619 is contained within Article VI “Zoning” of the MPC, which governs zoning ordinances and procedures only. Subdivision and land development ordinances and regulations, such as the Marple Township Subdivision and Land Development Ordinance, are authorized and governed by a different “article” of the MPC, Article V, 53 P.S. §§10501-10515.1. The exemption provided by Section 619 upon finding of reasonable necessity for the convenience and welfare of the public applies only to zoning regulation and does not in any way apply to nor affect the Commissions ability to exempt a utility from any local subdivision and land development regulation.

In the cases cited by PECO, it was the courts and not the PUC, determining whether or not a utility had to abide by local subdivision and land development regulations or not. It was the court in Newtown Township v. Philadelphia Electric Co., that stated that 53 P.S. § 10619 specifically allowed the PUC to exempt public utilities from compliance with local zoning ordinances. 594 A.2d 834 (Pa. Commw. Ct. 1991). The court did not say that the PUC was authorized to exempt public utilities from any other local regulations.

Marple Township's Reply to PECO Exception No. 3: Finding of Fact 53 of the Initial Decision is an appropriate finding based upon the evidence

PECO objects to the portion of finding of fact number 53 of the Initial Decisions finding that the Gas Reliability Station is not compatible with residential, and retail uses, claiming it is inconsistent with other portions of the Decision. However, the other parts of the Decision simply restate the zoning district the property is located in and the surrounding uses. (FOF No. 54). The Initial Decision also points out how PECO designed the aesthetics of the station attempting to propose designs that will reduce the perceived inconsistent nature of the site with the surrounding buildings. Id.

Contrary to PECO's argument, the Gas Reliability Station is not compatible with the surrounding residential and retail uses. No other surrounding use has a potential impact radius of 117 feet. (R. 1618.3 -1620.4), where a failure of the pipeline could ignite gas resulting in flame or plume of that flame or fire that 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). No other surrounding use will single-handedly omit the gas usage and emissions equivalent to that of 23 homes at once. (R. 1366:16-1367:13). There is no evidence to suggest that any other surrounding use utilizes commercial generators which have higher kilowattage than a home run generator and will have to run periodically to make sure they could be kept running, resulting in additional noise disturbances. (R. 1101; R.1089; R. 1096-97).

Indeed, the evidence shows that the Gas Reliability Station is not compatible with surrounding residential and retail uses and the finding of fact should not be disturbed.

III. CONCLUSION

WHEREFORE, for the reasons set for above, Marple Township respectfully requests that the Commission deny PECO's Exceptions numbers 1 and 3.

Respectfully Submitted,

MCNICHOL, BYRNE & MATLAWSKI, P.C.

/s/ J. Adam Matlawski, Esquire

J. Adam Matlawski, Esq.

Attorney I.D. No.: 41678

Kaitlyn T. Searls, Esq.

Attorney I.D.: 311237

1223 N. Providence Road

Media, PA 19063

Dated: January 6, 2022