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January 7, 2022

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 are the PECO Energy Company's Reply to the Exceptions of Marple Township and Theodore Uhlman. 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 :

**PECO ENERGY COMPANY'S REPLY TO THE EXCEPTIONS OF
MARPLE TOWNSHIP AND THEODORE UHLMAN**

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I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.535, PECO Energy Company (“PECO”) respectfully submits this Reply to the Exceptions of Marple Township and Theodore Uhlman.

This is not a case of first impression. Commission precedent and Pennsylvania case law have addressed substantially the same factual and legal situation on numerous occasions. PECO, a Pennsylvania public utility, is seeking to site infrastructure so that it can comply with its duty to provide safe, reliable, and affordable service to its customers. Marple Township and *pro se* litigant Theodore Uhlman, and other officials and residents in the area where the infrastructure must be sited, do not oppose the project *per se*. Instead, they say that it should be sited somewhere else.¹

The Township and Mr. Uhlman, in their Exceptions, claim a scattershot host of errors by Administrative Law Judges (“ALJs”) Emily I. DeVoe and Mary D. Long where none exist.² The record shows that the ALJs heard and admitted a voluminous amount of testimony and information in this case. In addition, the ALJs extended the procedural schedule on numerous occasions to permit extensive public input, additional hearing days, and extended briefing by Intervenors. While the ALJs did not explicitly mention every piece of testimony or data they considered in reaching their Initial Decision (including PECO’s) -- nor could they -- the record indicates that they heard, read, reviewed, and considered an exhaustive amount of evidence. After doing so, they reached a decision consistent with the record evidence, Commission precedent and Pennsylvania law holding that:

¹ See *Main Brief of Intervenor Marple Township* (“Marple Br.”) at p. 2 (“The Township does not argue PECO’s projections for the need for the proposed Gas Reliability Station. Rather, it is Marple Township’s position that the proposed site for the utility is not reasonably necessary for the convenience and welfare of the public....”); see also Ted Uhlman’s Exceptions to the Initial Decision (“Uhlman Except.”), p. 8 (“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 [2090 Sproul Road].”) (capitalization in the original).

² Intervenor Delaware County and *pro se* intervenor Julia Baker did not file Exceptions to the Initial Decision.

... 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.

Initial Decision, p. 22.

Applying Commission precedent and Pennsylvania case law, the ALJs correctly recognized that “Commission review under [Municipalities Planning Code] Section 619 is very narrow and focuses on whether the proposed buildings should be exempt from municipal zoning regulation.” Initial Decision, p. 20. They further held, citing applicable law, that “[t]he Commission need not re-evaluate the entire project nor must the utility prove that the site it has selected is absolutely necessary or that it is the best possible site.” Initial Decision, p. 20 (citing *O’Connor v. Pa. Pub. Util. Comm’n*, 582 A.2d 427 (Pa. Cmwlth. 1990)).

In their Exceptions, the Township and Mr. Uhlman make arguments that are not relevant to the Commission’s narrow scope of review and are not supported by the record. Contrary to their arguments, PECO did look at other sites recommended by Marple Township, including a site just 1,000 feet from 2090 Sproul Road next to a local Wawa.³ The fact is these other sites did not meet the selection criteria or engineering needs for this project.

If the Commission were to adopt the Township’s and Mr. Uhlman’s view of the Public Utility regulation, then utilities would be forced to play a game of “hopscotch” when attempting to site critical infrastructure projects by conceding to local “not in my back yard” concerns. In their view, if one group does not like the location in their back yard, the infrastructure must be

³ Indeed, this site is still the preferred site of *pro se* intervenor Julia Baker. See Memorandum Constituting Amended Brief in Support of Dismissing the Petition Against Appellant (“Baker Am. Br.”), p. 19. Notably, the Township does not support locating the Station at that site. See Marple Br., pp. 21-22.

moved down the road. If those who live down the road do not like the facility near them, then it must be moved again, and so on. This is precisely the type of local control that the Pennsylvania Supreme Court warned against nearly 70 years ago in *Duquesne Light Co. v. Upper St. Clair Township*, 105 A.2d 287, 293 (1954):

Local authorities not only are ill equipped to comprehend the needs of the public beyond their jurisdiction, but, and equally important, those authorities, if they had the power to regulate, necessarily would exercise that power with an eye toward the local situation and not with the best interests of the public at large as the point of reference. We believe that the General Assembly never intended to bestow a power upon first class townships which is in headlong conflict with the power already given the [PUC].

For all of these reasons, the Initial Decision of ALJs DeVoe and Long was correct in concluding that: (1) PECO sustained its burden of demonstrating that the Station is reasonably necessary to meet the gas supply needs of its customers, and (2) the buildings are reasonably necessary and therefore exempt from local zoning. Accordingly, PECO respectfully submits the Initial Decision should be adopted by the Commission, subject to the confirming clarifications requested by PECO's Exceptions. PECO responds to each of the Township's and Mr. Uhlman's Exceptions in detail below.

II. ARGUMENT

As explained in PECO's Main Brief, Reply Brief, and Supplemental Reply Brief, which are incorporated herein by reference, PECO has shown that locating the Station at 2090 Sproul Road is reasonably necessary (*see* PECO Main Br., Sec. VII.A.; PECO Reply Br., Sec. III.; PECO Supp. Reply Br., Sec. II.D.1, 4 & 7), safe (*see* PECO Statement No. 6-SR at 7:3-9:4 & 14:22-15:5; *see also* PECO Main Br., Sec. VII.B.5, pp 42-47), will comply with all applicable laws (*see* PECO Statement No. 4-SR, at 11:13-20), and that PECO has been and remains committed to working with the community to ensure that the Station would have aesthetic elements incorporated into the

design (*see* Initial Decision, Finding of Fact (“FOF”) No. 9; PECO Statement No. 7-SR, at 9:23-10:5; Exhibit MG-3). In the well-reasoned Initial Decision, the ALJs found that locating the Station’s buildings, and the Station itself, at 2090 Sproul Road was reasonably necessary in accordance with MPC Section 619. *See* Initial Decision, Conclusion of Law (“COL”) Nos. 6-7.

The ALJs properly cited to long-established Pennsylvania case law finding that local municipalities lack the authority to regulate the design, location, or construction of public utility facilities. *See* Initial Decision, p. 18; *see also PPL Elec. Utilities Corp. v. City of Lancaster*, 214 A.3d 639, 643–44 (Pa. 2019); *Duquesne Light Co.*, 105 A.2d at 293. This enduring principle reflects the General Assembly’s clear intent that one regulatory body – the Public Utility Commission – be vested with the power to regulate public utility facilities in furtherance of uniformity, and to avoid inviting municipalities to create their own patchwork of supplementary regulations to enforce at a whim. *See Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 692-93 (Pa. Cmwlth. 2018), *appeal denied*, 192 A.3d 1106 (Pa. 2018).

Yet, throughout the course of this proceeding, Marple Township and Mr. Uhlman have advanced a “not in my back yard” argument relying on unsubstantiated misinformation about PECO’s proposed Station at 2090 Sproul Road, and continue to hold an unsupported belief that a better location exists elsewhere. Intervenors themselves, however, cannot seem to agree on a better site. In the underlying proceeding, Mr. Uhlman and Julia Baker advocated in favor of the site adjacent to a Wawa at 2024 Sproul Road. (*See* Ted Uhlman’s Brief in Opposition (“Uhlman Br.”), at p. 4; Tr. 1462:11-25 and 1629:24-1630:20.) Marple Township originally supported that site for the Station, but no longer does. (*See* Marple Br., at pp. 21-22.) Now on Exceptions, Marple Township and Mr. Uhlman continue to contend that the Don Guanella site, located at 825 Reed Road, is more suitable, but press reports (which are publicly available) show that other local

residents and coalitions vigorously opposed the most recent and proposed attempts to develop that site and many want to keep it “pristine”.⁴

Marple Township and Mr. Uhlman also attempt to discredit the ALJs’ thorough analysis by claiming that the ALJs carelessly neglected germane evidence in this proceeding and “merely highlight[ed] PECO’s talking points.” (See Marple Township’s Exceptions (“Marple Except.”), p. 2.) Contrary to those contentions, the ALJs’ scope of review was squarely in-line with the plain language of 53 P.S. § 10619 and Commission caselaw. For these reasons and those discussed below, Marple Township’s and Mr. Uhlman’s Exceptions to the Initial Decision should be denied.

A. REPLY TO EXCEPTIONS OF MARPLE TOWNSHIP

1. The Initial Decision applied the proper standard for a MPC Section 619 Proceeding (Response to Marple Township Exception No. 1).

In a convoluted argument, Marple Township’s Exception No. 1 claims that the Initial Decision applied the wrong standard for a MPC Section 619 proceeding because it only considered the narrow question of whether the siting of *the buildings* at the Station are reasonably necessary for the convenience or welfare of the public, and it failed to consider whether the Station as a whole is reasonably necessary. (See, e.g., Marple Except., p.3.) As a threshold matter, the Township’s argument ignores the plain language of MPC Section 619:

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.

53 P.S. § 10619 (emphasis added).

⁴ See <https://www.delcotimes.com/2020/12/15/marple-commissioners-unanimously-reject-plan-for-don-guanella-site/>; see also <https://www.delcotimes.com/2018/10/16/environmental-group-forms-to-protest-don-guanella-plans/>

The Township also incorrectly attempts to remake the holding of the applicable legal authority, specifically *Del-AWARE Unlimited, Inc.*, 513 A.2d 593 (Pa. Cmwlth. 1986), to support the Township’s position that the Station is not necessary. (See Marple Except. at p.4 (“Had the proper analysis of whether the Gas Reliability Station is reasonably necessary for the convenience and welfare of the public [sic], the ALJs would have found otherwise”). However, in *Del-AWARE Unlimited, Inc.*, the Commonwealth Court clearly held: “[w]e do not interpret this provision [Section 619 of the MPC] **as requiring the PUC to reevaluate the entire project.**” *Id.* at 595 (emphasis added).

Moreover, to the extent the Township’s argument could be read as only referring to the location of the Station, and not whether the Station is necessary (which would be contradicted by the Township’s Exception No. 7), the case law is again clear that Section 619 does not require a utility to prove that the site it has selected is absolutely necessary or that it is the best possible site. Rather, it need only show that the site chosen is reasonably necessary. *O’Connor*, 582 A.2d at 433.

The Township also attempts to manufacture a conflict where none exists by claiming the Initial Decision’s “scope of review . . . contradicts ALJ DeVoe’s own [June 1, 2021] Interim Order”. (See Marple Except, p. 2.) In short, the Township argues that the Interim Order referenced the siting of the Station, but the Initial Decision refers only to the buildings. To the contrary, however, the Initial Decision’s standard was fully consistent with ALJ DeVoe’s Interim Order. The ALJs clearly held in the Initial Decision that:

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.

See Initial Decision, p. 22. Further, in the Initial Decision’s Conclusion of Law, the ALJs concluded:

6. The location selected by PECO at 2090 Sproul Road for the Reliability Station is reasonably necessary. 53 P.S. § 10619.

7. The buildings are reasonably necessary to protect the equipment of the Natural Gas Reliability Station from weather and vandalism. 53 P.S. § 10619.

Id., p. 29. These conclusions are squarely consistent with the standard set forth in the June 1 Interim Order.⁵ For the foregoing reasons, the Initial Decision applied the proper standard for a MPC Section 619 proceeding and the Township’s Exception No. 1 should be denied.

2. The Initial Decision properly considered PECO’s evaluation of alternative sites, including the Don Guanella property (Response to Marple Township Exception No. 2).

In its Exception No. 2, Marple Township “objects to the Commission’s finding regarding why PECO did not choose the Don Guanella site.” (Marple Except., pp. 4-5.) Exception No. 2 purports to take issue with Findings of Fact Nos. 46, 47, and 50, which found that the Don Guanella site was not acceptable to PECO because of unreasonable engineering constraints. In so doing, Marple Township fails to acknowledge the engineering information the ALJs considered from the record. *See, e.g.*, Initial Decision, pp. 24, 26. Instead, the Township claims: (1) “PECO simply

⁵ *See* June 1, 2021 Interim Order, p. 5:

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. It is the *siting of the buildings* that is at issue in this matter. In deciding this issue, the Commission will consider the impact of its decision upon local comprehensive plans and zoning ordinances. (italics in original)

did not want to use the Don Guanella site, or any other site within the Township”, and (2) that the Initial Decision inappropriately considered the costs associated with the need for building additional gas main to a location beyond 2090 Sproul Road while failing to consider the planned costs of environmental remediation for 2090 Sproul Road, a former gasoline station. (Marple Except., pp 4-5.)

While Intervenors have divergent opinions on what they think is the “best” site for the Station,⁶ 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. *See O’Connor*, 582 A.2 at 433.

In the underlying matter, PECO explained exhaustively why the Don Guanella site is not feasible. (*See* PECO Main Br., Sec. VII.A.d.ii.3) (explaining that locating the 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, remains unresolved, and the property has a long history of litigation as to its appropriate use). Indeed, Ms. Baker herself acknowledged that the Don Guanella property was previously “denied for development.” (*See* Baker Am. Br., p. 7.) Moreover, the Township’s continued assertion that it would work with PECO on zoning for an appropriate property, especially the Don Guanella site (*see* Marple Except., p. 5), does not address the unavailability of this location because this type of “quid quo pro” transaction would invite “spot zoning” or “contract zoning” litigation from those

⁶ In the underlying proceeding, Intervenors advocated for the relocation of the Natural Gas Reliability Station to several other sites that, in their view, are better suited for it. Ms. Baker, for example, asserted 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.) The Township does not support this position. (*See* Marple Br., pp. 21-22.)

opposed to developing the Don Guanella property. *See, e.g., Appeal of Realen Valley Forge Greenes Associates*, 838 A.2d 718 (Pa. 2003); *Carlino v. Whitpain Invs.*, 453 A.2d 1385 (1982).

In short, Marple Township points to no evidence suggesting that the ALJs erred in the Initial Decision concerning “why PECO did not choose the Don Guanella site” or that Conclusion of Law No. 6, finding that the selected location at 2090 Sproul Road is reasonably necessary, is erroneous. Accordingly, the Township’s Exception No. 2 should be denied.

3. The Initial Decision properly considered and excluded evidence of issues not germane to a MPC Section 619 Proceeding (Response to Marple Township Exception Nos. 3, 4, 5, and 6).

Marple Township’s Exception Nos. 3, 4, 5, and 6 claim that the Initial Decision applied too narrow a scope of review and improperly excluded from the analysis issues such as safety, environmental considerations, and sound. The Initial Decision, however, is consistent with prior Pennsylvania Commonwealth Court precedent and Commission rulings, which held that these issues are not within the scope of a Section 619 proceeding.⁷ Nevertheless, the Township continues to press unsubstantiated claims about the Station and its alleged impact on the community in an attempt to impermissibly expand the scope of the proceeding.

In the underlying proceeding, PECO provided extensive direct evidence to rebut Intervenor’s general and unsupported arguments regarding noise, air emissions, safety, and traffic. (*See* PECO Main Br., Sec. VII.B.) PECO further established, and supported through expert testimony, that PECO will safely operate the Natural Gas Reliability Station. (*See* PECO Main

⁷ *See Del-AWARE Unlimited, Inc.*, 513 A.2d at 596; *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 22 (“**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.**”) (emphasis added); *adopted by the Commission on exceptions*, 2013 WL 6835113, at *13 (Pa.P.U.C.) (Opinion and Order, Dec. 19, 2013) (“Petition of UGI”) (“[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.”)

Br., Sec. VII.B.5.) For the reasons set forth below, Marple Township’s Exceptions Nos. 3, 4, 5, and 6 should be denied.

a. Public Safety (Response to Marple Township Exception No. 3)

Marple Township’s Exception No. 3 asserts that the Initial Decision did not adequately consider the effects of the Station’s Potential Impact Radius (“PIR”) on the community. (Marple Except., pp. 5-6.) Although beyond the scope of this proceeding (*see Petition of UGI* at *13), PECO established through expert testimony that the operation of natural gas infrastructure in the United States is extremely safe, and further that PECO’s safety record involving similar natural gas regulating stations is exemplary. (*See* PECO Main Br., Sec. VII.B.5; PECO Reply Supp. Br. Sec. II.D.2.)

Furthermore, while Marple Township contends that the PIR should be used to determine the adequacy of a site for natural gas infrastructure, that contention is incorrect. (*See, e.g.*, PECO Reply Supp. Br. Sec. II.D.2, pp. 9-10; *see also* 49 C.F.R. § 192.901 *et seq.*; Tr. 1650:8-16 & 1651:7-20.) Rather, the PIR is a calculation used to determine whether an area surrounding natural gas infrastructure is within a “High Consequence Area”, which then triggers specific compliance obligations of natural gas operators in these areas. (*Id.*) This is not limited to gate stations, but includes natural gas mains, many of which are in place in Marple Township and have been for years. (*See id.*); *see also* Initial Decision, FOF No. 49 (providing that a natural gas system already exists in Marple Township). PECO provided testimony that it will comply with all applicable safety regulations, including those promulgated by PHMSA and the Commission relating to the construction and operation of the system, and no party has disputed PECO’s intentions or ability

to comply with such requirements. *See* PECO Statement No. 4-SR, at 11:13-20.⁸ Accordingly, Marple Township’s Exception No. 3 should be denied because it raises issues that are not germane to this proceeding. In the event the Commission determines such issues are germane, PECO has met its burden of production and persuasion on this issue.

b. Environmental Impacts (Response to Marple Township Exception No. 4)

Marple Township’s Exception No. 4 objects to the Initial Decision’s Conclusion of Law No. 5 that the Commission is not empowered under MPC Section 619 to evaluate the alleged environmental impacts of the project and must defer to the determinations of those agencies with jurisdiction over such impacts. Marple Township claims that the Commission is required to consider environmental impacts in a MPC Section 619 proceeding. Specifically, the Township contends that the ALJs erred by failing to take into consideration potential air emissions from the proposed Station.

The Initial Decision’s determination that general environmental concerns are beyond the scope of a MPC Section 619 proceeding is squarely in-line with the Commission’s holding in *Petition of UGI, supra* (n. 7). Further, the ALJs properly determined that the Commission is not empowered under MPC Section 619 to evaluate the various environmental impacts of a project and instead must defer to determinations of state and federal agencies with jurisdiction over such impacts. *See Del-AWARE Unlimited, Inc.*, 513 A.2d at 596 (“the PUC was obliged to defer to [the

⁸ Moreover, the record clearly reflects PECO’s emphasis on safety. In addition to complying with all applicable safety regulations, PECO has also employed a multitude of risk mitigation measures based on industry best practices, including gas leak detectors, remote control valves, 24-7 monitoring, and has detailed operational and emergency response protocols in place to address the unlikely event of a gas leak. (*See* PECO Statement No. 4-SR 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.)

Department of Environmental Resource's] evaluation of impacts within its jurisdiction"); *see also* *O'Connor*, 582 A.2d at 431 (discussing the holding of *Del-AWARE*).⁹

Should the Commission determine that concerns regarding air emissions are germane to the issue of whether the location of the buildings is reasonably necessary for the convenience or welfare of the public, PECO has nevertheless met its burden on this issue. For example, PECO has shown that the pre-heaters that will be installed at the Station are rated at 4.6 million Btu, (PECO Statement. Nos. 4, at 5:16-19 & 4-SR, at 6:8-10), and therefore, as a matter of law, the Department of Environmental Protection has determined by regulation that this source of emissions is of such minor significance that there is a *blanket exemption* from air permitting requirements. (*See* 25 Pa. Code § 127.14(a)(3); *see also* PECO Statement. Nos. 4, at 5:16-19 & 4-SR, at 6:8-10.) Furthermore, PECO will remediate legacy environmental contamination remaining at the site from historical gasoline operations during development of the Station. (*See* PECO Statement No. 5, at 9:4-10:3; PECO Statement No. 7-SR, at 10:10-13.) In contrast, the Intervenor did not present any qualified evidence that this Station would have a detrimental environmental impact on the community and PECO has met any burdens of production and persuasion that could apply to this issue. (*See* PECO Main Br., Sec. VII.B.8, pp. 52-54.) Accordingly, Marple Township's Exception No. 4 should be denied.

⁹ Marple Township cites to *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*. 2006 Pa. PUC LEXIS 91 (Pa. P.U.C. October 25, 2006) ("*PAWC 2006*") to support its argument that environmental impacts must be considered. *PAWC 2006* is factually and procedurally distinguishable because that case involved the approval of a subdivision to construct a wastewater treatment plant and was before the Commission for approval of a joint stipulation of settlement. Furthermore, in assessing environmental impact, *PAWC 2006* applied the now overturned test set forth in *Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973). *See Pennsylvania Env't Def. Found. v. Commonwealth*, 161 A.3d 911 (Pa. 2017). Notably, every MPC Section 619 case decided since *PAWC 2006* that addresses this issue has determined that general environmental concerns are beyond the proper scope of an MPC Section 619 proceeding. *See, e.g., Petition of UGI, supra*.

c. Testimony of Marple Township Fire Marshal (Response to Marple Township Exception No. 5)

Marple Township next takes issue that its witness, Mr. Jim Capuzzi, who testified that 2090 Sproul Road was not an appropriate location for the proposed Station because of alleged fire and safety concerns, was not specifically acknowledged in the Initial Decision. (*See Marple Except.*, p. 8.) As noted above, however, general concerns about public safety are not germane to a MPC Section 619 proceeding. *See Petition of UGI, supra*. Even if general concerns about safety were germane, PECO has met its burden on this issue as described in Section II.A.3.a above. Furthermore, it is well-established that the Commission and ALJs need not address in initial or final decisions every contention raised by a party in a proceeding. *See Shawnece Moore v. Pittsburgh Water and Sewer Authority*, 2021 Pa. PUC 617, at 4 (Opinion and Order, Dec. 16, 2021) (“we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings.”) (*citing University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984)); *Inves. Re. Intrastate Access Charges and IntraLATA Toll Rates of Rural Carriers and The Pa. Universal Serv. Fund; AT&T Commc’ns of Pa., LLC, et al., v.; Armstrong Tel. Co. – Pa., et al.*, 2010 Pa. PUC LEXIS 216, *263 (Recommended Decision) (Pa. P.U.C. July 27, 2010). In short, Mr. Capuzzi testified on issues not germane to this proceeding and he was not qualified as an expert in pipeline safety. (Tr. 1503:4-6.) Nothing in the Initial Decision indicates that the ALJs did not consider Mr. Capuzzi’s testimony and afford it appropriate weight. Accordingly, this Exception should be denied.

d. Noise (Response to Marple Township Exception No. 6)

Marple Township’s Exception No. 6 takes issue with Finding of Fact No. 8 that the Station Building will include several sound-dampening features to minimize the effect of the Station on the community. (*Marple Except.*, pp. 8-9.) Marple Township claims that PECO’s sound study

was inadequate because it was merely a projection, and it did not include all noise producing equipment. (*Id.*)

Here again, general concerns regarding sound are clearly beyond the scope of a Section 619 proceeding. *See Petition of UGI, supra.* In the event the Commission should find concerns regarding noise to be germane, PECO presented direct evidence that it commissioned an acoustic and sound control consultant, Hoover & Keith Inc., to assist with designing the Station and reduce any sound impacts on the community, and that effort resulted in several recommendations that PECO is employing to mitigate sounds from the Station, such as insulation, HVAC modifications and sound dampening equipment on valves and regulators. (*See PECO Main Br., Sec. VII.B.6, pp 47-50; see also PECO Statement No. 4, at 10:18-11:4; PECO Statement No. 4-SR, at 8:8-9:6.*) Marple Township's own witness Ms. Nancy Wilson, who did not conduct any study or assessment of her own, 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 3:22-23.*) 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. 1094:10-1096:8.) Accordingly, Marple Township's Exception No. 6 should be denied.¹⁰

¹⁰ Marple Township also takes issue that the generator and the pre-heater were not included in PECO's acoustic study. (Marple Except., pp. 8-9.) However, except for routine testing to ensure that it works, the back-up generator will operate only in the event of a loss of electric power. (PECO Statement No. 4-SR, at 17:10-12.) The testing is typically concluded in an hour. (*Id.*) The pre-heaters will be used only intermittently, generally during cold weather. (*Id.* at 17:12-14.) Most importantly, while the back-up generator and pre-heaters are integral to the Station, they are situated outside, and not within the buildings that are at issue in this proceeding. (*Id.* at 17:14-17.) Consequently, a challenge to the back-up generator and pre-heaters is a challenge to the facilities themselves, not the buildings.

4. The Initial Decision did not err in its findings regarding the need for the Natural Gas Reliability Station (Response to Marple Township Exception No. 7)

Marple Township's Exception No. 7 claims the ALJs "erred by stating that neither Marple Township nor the other Protestants challenged PECO's alleged need for the Gas Reliability Station" and takes issue with Findings of Fact Nos. 14-20 and 24-28 and the Initial Decision's discussion on page 28. (Marple Except., pp. 9-10.)

As an initial matter, it is noteworthy that Marple Township did *not* challenge PECO's projections of need in the underlying proceeding, stating that "**The Township does not argue PECO's projections for the need for the proposed Gas Reliability Station.** Rather, it is Marple Township's position that the proposed **site** for the utility is not reasonably necessary for the convenience and welfare of the public...." (*See* Marple Br., at p. 2) (emphasis added). In any event, it is well-established that, in a MPC Section 619 proceeding, the Commission does not evaluate the public utility's need for the entire project. *See* Initial Decision, p. 20 ("The Commission need not re-evaluate the entire project...."), (*citing O'Connor*, 582 A.2d 427).¹¹ The Initial Decision properly concluded that the Commission does not sit as a substitute for the board of directors for public utilities and views the timing of construction projects as a management decision by the utility. *See* Initial Decision, p. 25 (*citing Joint Application of Verizon Commc'ns for Approval of Agreement & Plan of Merger*, A-310580F0009 (Final Order entered Jan. 11, 2006)).

¹¹ *See also Del-AWARE Unlimited, Inc.*, 513 A.2d at 595; *Delaware Riverkeeper Network*, 179 A.3d at 693 ("public utility company, in exercise of its managerial functions, may determine in first instance, type and extent of its service to public"); *see also Petition of UGI*, at *12 (approval of the larger project was not an issue in the MPC Section 619 proceeding).

Contrary to Marple Township’s contention, the ALJs expressly acknowledged that Delaware County, Mr. Uhlman, and Ms. Baker challenged the need for the Station. *See* Initial Decision, p. 25. However, the Initial Decision properly noted that the Intervenors merely offered their lay opinion on this topic and failed to offer any expert testimony. *Id.* PECO, on the other hand, offered extensive direct evidence to support the Initial Decision’s findings regarding PECO’s design day deficits, its natural gas usage projections, and supply constraints in Marple Township and Delaware County. *See* Initial Decision, FOF Nos. 14-29. For example, PECO has explained that: (1) 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); and (3) in order to fulfill its statutory obligations under 66 Pa. C.S. § 1501, PECO must act prudently and allow sufficient time to adequately plan and prepare for impending service shortfalls. *See* PECO Reply Br., Sec. III.E. Accordingly, this Exception should be denied.¹²

5. The Initial Decision did not err in comparing the Natural Gas Reliability Station to other existing gate stations (Response to Marple Township Exception No. 8).

Marple Township’s Exception No. 8 objects to Findings of Fact Nos. 5, 12, and 13 and contends that the Initial Decision erred in comparing the Natural Gas Reliability Station to PECO’s 28 other “Gate Stations.” (Marple Except., p. 10.)

¹² Furthermore, Marple Township claims that the Initial Decision “ignored” PECO’s statements that PECO “currently has adequate supply to meet mandated requirements...” or that a desired intent for the Project was to “reduce PECO’s reliability on market purchases and reduce the price volatility and that the project would not solve long term supply issues.” (Marple Except., p. 10). In fact, these points are within the Initial Decision’s Findings of Fact and Discussion. *See* Initial Decision, FOF Nos. 34-36, and p. 23).

There is no error in the Initial Decision's Findings of Fact, nor is there an error regarding the comparison between the Natural Gas Reliability Station and PECO's other Gate Stations. The Findings of Fact correctly found that PECO operates 28 other Gate Stations, which are comparable to PECO's proposed Natural Gas Reliability Station, two of which are within the same proximity to residences as the proposed Natural Gas Reliability Station. (*See* Initial Decision, FOF Nos. 5, 12, & 13, and Exhibit TF-6.) Accordingly, there is no error here and, in any event, this Exception has no material bearing on the outcome of the Initial Decision.

6. The Initial Decision did not err in addressing PECO's analysis regarding site selection (Response to Marple Township Exception No. 9).

Marple Township's Exception No. 9 objects to Findings of Fact Nos. 37-41 to, again argue, as the Township did in prior briefing (*see* Marple Br., pp. 1, 21), that PECO only considered 2090 Sproul Road as a possible site for the Station and that PECO's site selection analysis was a façade.¹³ (Marple Except., pp. 10-11.) Contrary to this assertion, the record clearly reflects that PECO considered and thoroughly analyzed fifteen different sites. *See* Initial Decision, FOF No. 49. In fact, the site selection process began in the spring of 2019 when PECO's Gas Department requested that Jim Moylan identify potential locations for the proposed Station. (PECO Statement No. 5, at 2:18-19.) PECO subsequently met with Township officials in November 2019 and solicited site recommendations from them in December 2019. (PECO Statement No. 7-SR, at 4:10-5:11.) What ensued thereafter was a series of meetings with elected officials and staff members to further discuss the project in January, July, and November of 2020, and in January 2021. (PECO Statement No. 1, at 7:4-8:20; Tr. 902:12-16.) Multiple recommendations for alternative locations for the siting of the Natural Gas Reliability Station were received, thoroughly

¹³ PECO addressed this false assertion extensively in its Reply Brief. *See* PECO Reply Br. Sec. III.E.

analyzed, and determined to be infeasible for one or more reasons. (PECO Statement No. 5-SR, at 2:16-7:22; PECO Statement No. 3-SR, at 11:1-12:21; Exhibit RL-6; *see also* PECO Main Br., Sec. VII.A.d.ii.) The Township’s assertions that PECO did not “take any meaningful steps to pursue acceptable alternative locations” is simply not supported by the record. (Marple Except., p. 11). Accordingly, this Exception must be denied.

7. The Initial Decision did not err in its description of 2090 Sproul Road (Response to Marple Township Exception No. 10).

Finally, Marple Township’s Exception No. 10 takes issue with the Initial Decision’s description of 2090 Sproul Road. (Marple Except., p. 11.) The Township asserts that information regarding the size of the lot and its proximity to residential homes and businesses should be included. Contrary to the Township’s contention, the ALJs described and considered the location at 2090 Sproul Road and the surrounding community, concluding that the location is reasonably necessary. *See* Initial Decision, FOF Nos. 53-54, COL No. 6. In any event, the omission of the specific acreage of the property is not an error and does not warrant overturning the Initial Decision. Accordingly, Marple Township’s Exception No. 10 is unnecessary and should be denied.

B. REPLY TO EXCEPTIONS OF THEODORE UHLMAN

As an initial matter, Mr. Uhlman’s Exceptions to the Initial Decision are not compliant with 52 Pa. Code § 5.533(b), which requires that each exception be numbered and specifically identify the finding of fact or conclusion of law to which exception is taken. Rather than providing enumerated exceptions, Mr. Uhlman provides a convoluted collection of concerns regarding the recitation of the history of the proceedings, the findings of fact, the discussion, and the conclusions of law. To assist the Commission, PECO will attempt to distill and address the primary points of contention in Mr. Uhlman’s exceptions below.

1. Mr. Uhlman's Exceptions to the History of the Proceedings.

Mr. Uhlman's "Exceptions to the History of the Proceedings" claim that the Initial Decision is flawed because certain procedural and discovery related events were omitted in the Initial Decision's procedural recitation. (*See Uhlman Except.*, p. 4.) Mr. Uhlman does not state why or how inclusion of these details would have any bearing on the merits of this matter or the Initial Decision's findings of fact or conclusions of law, and indeed, such details are immaterial to the substance of the Initial Decision's conclusions. Accordingly, these "Exceptions" should be denied.

2. Mr. Uhlman's Exceptions to the Findings of Fact.

Mr. Uhlman also takes exception to the "Findings of Fact" and, without providing enumerated exceptions, proffers additional findings of fact that he believes were improperly omitted or attempts to modify existing findings of fact without providing actual citations to the record in many instances.

a. Mr. Uhlman's claimed "Findings of Fact that are Missing."

Mr. Uhlman believes additional Findings of Fact should have been included in the Initial Decision relating to the following topics: (1) the PIR; (2) PECO's ambient sound study; (3) information about the nature of the neighborhood; and (4) information regarding its size of the Station and its distance to residences. (*See Uhlman Except.*, pp. 5-6.) Setting aside the impropriety of asking for additional findings of fact,¹⁴ or whether inclusion of his "facts" will have any bearing

¹⁴ Nothing in 52 Pa. Code § 5.533 suggests that additional findings of fact can be proposed by a party. Rather, the Rule requires that an exception must identify a particular finding of fact within the initial decision to which exception is taken and provide supporting reasons for each exception. While Mr. Uhlman has taken exception to many of the Initial Decision's Findings of Fact, he largely fails to explain why the findings are in error or if or how his proposed additions or modifications will alter the conclusions of the Initial Decision.

on the merits, PECO notes that issues regarding the PIR and sound¹⁵ were properly determined to be beyond the scope of this MPC Section 619 proceeding. With respect to the description of the location and surrounding neighborhood, PECO notes that this issue was adequately addressed in the Initial Decision. *See* Initial Decision, FOF Nos. 53-54 (describing the character of the neighborhood and zoning classification). Accordingly, Mr. Uhlman’s Exception and request that additional findings of fact be added should be denied.

b. Mr. Uhlman’s claimed “Findings of Fact that are in Error.”

Next, as addressed in detail below, each of Mr. Uhlman’s exceptions posed as “Findings of Fact that are in Error” (Uhlman Except., pp. 6-10) should be denied because his claims: (1) do not identify an actual error with a finding of fact; (2) seek only to add his extraneous commentary which is immaterial to the ultimate merits of this proceeding; (3) cite to no countervailing evidence that would render a finding of fact in error; and/or (4) offer exceptions that are largely the same as Marple Township, which PECO addressed above.

- Finding of Fact No. 5: Mr. Uhlman seeks to insert extraneous regulator design pressure information. Mr. Uhlman’s exception should be denied because there is no indication of an actual error with the finding, it seeks to only add extraneous commentary, and the ALJs adequately considered this information. *See* Initial Decision, FOF No. 45, and p. 26.
- Finding of Fact No. 9: Mr. Uhlman contends this finding is an opinion, not a fact. This exception should be denied because: (1) there is no actual error with the finding because it is supported by substantial evidence, and (2) Mr. Uhlman cites to no countervailing evidence.
- Finding of Fact No. 12: Mr. Uhlman takes issue with the information presented regarding PECO’s other gate stations as being incomplete. Mr. Uhlman’s exception should be denied because: (1) there is no actual error to this finding, (2) it seeks to add his extraneous commentary, and (3) presents the same position as Marple Township’s Exception No. 8, which PECO addressed in Section II.A.5 above.

¹⁵ Regarding noise, Mr. Uhlman raises the same incorrect assertion regarding PECO’s regulators that he raised in the underlying proceeding. *See* Uhlman Am. Br., p. 13. As addressed below, Mr. Uhlman’s declaration that PECO may not be following the recommendations of its sound study is derived from his own incomplete line of questioning that is unsupported by any evidence in the record. *See* PECO Supp. Reply Br., pp. 13-14, n. 13.

- Finding of Fact Nos. 24 & 26-28: Mr. Uhlman takes issue with the Initial Decision's findings regarding PECO's natural gas usage projections for Marple Township and Delaware County. Mr. Uhlman's exceptions should be denied as there is no actual error with these findings because: (1) they were supported by substantial evidence, (2) Mr. Uhlman seeks only to add his extraneous commentary, (3) he cites to no countervailing testimony, and (4) PECO previously addressed Marple Township's similar argument in Section II.A.4 above.
- Finding of Fact No. 30: Mr. Uhlman seeks to insert unnecessary regulator design pressure information for the Station. Mr. Uhlman's exception should be denied because: (1) there is no indication of an actual error with the finding, (2) it seeks to only add his extraneous commentary, and (3) the ALJs adequately considered this information. *See* Initial Decision, FOF NO. 45, and p. 26.
- Finding of Fact No. 32: Mr. Uhlman takes issue that PECO's LNG Plant will provide a reliable supply of natural gas during the winter. Mr. Uhlman's exception should be denied because: (1) there is no actual error with this finding, (2) it was supported by substantial evidence, and (3) Mr. Uhlman does not cite to any countervailing evidence.
- Finding of Fact No. 38: Mr. Uhlman believes the finding is only supported by the cited portions of the record and is a restatement of other findings. Mr. Uhlman's exception should be denied because: (1) there is no actual error with this finding as it was supported by substantial evidence, and (2) Mr. Uhlman cites to no countervailing evidence.
- Findings of Fact Nos. 44-48 and 50-52: Mr. Uhlman takes issue with these findings because they do not support his position that the Station should be located at the Don Guanella site. Mr. Uhlman's exceptions to these findings should be denied because: (1) there are no actual errors to these findings of fact in that they are supported by substantial evidence, (2) Mr. Uhlman cites to no countervailing evidence in the record, (3) he seeks to only add his extraneous commentary to the findings, and (4) his positions are similar to those of Marple Township's Exceptions, which PECO addresses above. Specifically, PECO addressed the Intervenor's misapplication of the PIR above in Section II.A.3.a. Also, PECO addressed the unavailability and unviability of the Don Guanella site above in Section II.A.2.¹⁶
- Finding of Fact No. 49: Mr. Uhlman takes issue with PECO's site selection process and analysis of other potential sites for the Station. Mr. Uhlman's exception mirrors Marple Township's Exception No. 9, which PECO addressed above in Section

¹⁶ PECO further notes here that, contrary to Mr. Uhlman's assertion, PECO *did* evaluate the Don Guanella site at 825 Reed Road. *See* Initial Decision, FOF No. 49.

II.A.6. Briefly, PECO’s site selection process involved careful consideration of fifteen different locations. *See* Initial Decision, FOF No. 49; *see also* PECO Main Br. Sec. VII.A.d.ii. Accordingly, Mr. Uhlman’s exception should be denied.

3. Mr. Uhlman’s “Exceptions to the Discussion.”

Mr. Uhlman identifies several “Exceptions to the Discussion” that also fail to enumerate specific exceptions to a finding of fact or conclusion of law in accordance with 52 Pa. Code § 5.533. (Uhlman Except., pp. 11-21). For the convenience of the Commission, PECO has distilled Mr. Uhlman’s arguments to the following issues: (1) the Initial Decision did not consider the zoning of 2090 Sproul Road; (2) the Initial Decision applied the wrong legal standard for a MPC Section 619 proceeding; (3) the Initial Decision incorrectly followed the prior Commission precedent of *Petition of UGI, supra*; and (4) the Initial Decision did not fulfill the Commission’s role in adjudicating siting disputes between a public utilities and municipalities.¹⁷ PECO addresses each argument below.

a. The Initial Decision Considered Zoning in Accordance with 52 Pa. Code § 69.1101.

Mr. Uhlman claims that the Initial Decision did not follow the Commission’s policy found in 52 Pa. Code § 69.1101 requiring it to consider its decisions’ impacts on local comprehensive plans and zoning ordinances. (*See* Uhlman Except., pp. 12-13.) This claim is simply wrong. The Initial Decision expressly acknowledged the policy statement and the Commission’s obligations under Section 69.1101, *see* Initial Decision, p. 19, and affirmatively considered the local zoning of 2090 Sproul Road, which, as the ALJs properly noted, contemplates and permits public utility

¹⁷ Mr. Uhlman also reiterates issues he raised previously in his “Findings of Fact” Section and that PECO previously addressed in this Reply. *See* Sec. II.A.3.a., *supra*. (responding to Marple Township’s misapplication of the PIR); Sec. II.A.4, *supra* (responding to Marple Township’s unsupported claims regarding PECO’s projected timeline and need for the Station).

facilities by special exception. *See* Initial Decision, FOF 54, and p. 28. Accordingly, there is no error here and Mr. Uhlman’s “Exception” should be denied.

b. The Initial Decision Applied the Correct Legal Standard for a MPC Section 619 Proceeding.

Several sections of Mr. Uhlman’s “Exceptions” take issue with the legal standard applied in the Initial Decision and encourage the Commission to show “more than sympathy for his valid concerns.”¹⁸ PECO addressed the proper scope of review in a MPC Section 619 proceeding in Section II.A.1 above. As noted above, the Initial Decision applied the proper legal standard in accordance with Commonwealth Court and Commission decisions. *See Del-AWARE, supra; O’Connor, supra; Petition of UGI, supra.* Furthermore, PECO offered direct evidence that the Station would be safe and comply with noise and environmental requirements and Intervenors offered no credible countervailing evidence on these issues (even though such issues are not germane to this proceeding). *See, e.g.,* Sec. II.A.3., *supra*. Accordingly, this “Exception” should be denied.

c. Petition of UGI is Factually and Legally on Point with this Proceeding.

Mr. Uhlman contends that the decision in *Petition of UGI* is factually and legally distinguishable and therefore should be afforded little weight in this proceeding. (*See* Uhlman Except., p. 14.) This contention is incorrect. Like this case, *Petition of UGI* is a MPC Section 619 case that involved a natural gas pressure regulating station. Although certain factual differences can be identified, such differences have no bearing on the proper legal scope of review noted in *Petition of UGI*. Indeed, the central issue in that case, as in this case, was whether the location of

¹⁸ *See* Mr. Uhlman’s headings “Del-AWARE Unlimited, Inc. v. Pa. Pub. Util. Comm’n”, “Necessity for the Buildings or the Location?”, “More than Sympathy for the Valid Concerns”, “Page 27”, and “Page 28.” (Uhlman Except., pp. 13, 16-18, 20-21).

buildings that would shelter the facilities' equipment¹⁹ were reasonably necessary.²⁰ By applying the proper legal standards adopted in *Petition of UGI* and other applicable precedent to this case, the ALJs properly found that PECO's Petition should be granted. Accordingly, Mr. Uhlman's "Exception" should be denied.

d. The Initial Decision Properly Adjudicated the Pertinent Legal Issues in this MPC Section 619 Proceeding.

Mr. Uhlman's remaining exception falsely asserts that the Commission is somehow failing to fulfill its role in adjudicating this siting dispute between PECO and Marple Township. (Uhlman Except., pp. 19-20). Importantly, however, this proceeding was initiated through PECO's Petition under MPC Section 619, and not through a complaint. As noted above, in accordance with the process established by the Generally Assembly for MPC Section 619 proceedings, the Initial Decision employed the proper standard of review and found that PECO's Station's buildings at 2090 Sproul Road are reasonably necessary for the public convenience and welfare.²¹ Initial Decision, COL Nos. 4, 6-7. Accordingly, Mr. Uhlman's exceptions should be denied.

4. Mr. Uhlman's "Exceptions to the Conclusions of Law."

Finally, Mr. Uhlman objects to the Conclusions of Law, contending that he believes that placement of the Station at 2090 Sproul Road is "not necessary" based on his subjective belief that the facility will be "ugly", noisy, and presents a safety issue and that the Don Guanella site would offer a better location. (Uhlman Except., pp. 22-23.) PECO addressed these issues exhaustively

¹⁹ See *Petition of UGI, supra* (Opinion and Order at 21); Initial Decision, FOF Nos. 6-11.

²⁰ See *Petition of UGI, supra* (Opinion and Order at 12) (finding that the gate station location was reasonably necessary because it was at the intersection of existing natural gas infrastructure in a rural area); Initial Decision, FOF Nos. 44-54 (finding that 2090 Sproul Road is located in proximity to PECO's existing natural gas infrastructure, there are engineering constraints for where PECO can place the Station, and the property is zoned to include public utility uses.)

²¹ To the extent Mr. Uhlman is attempting to claim that he did not receive due process, the extensive record in this proceeding belies that claim.

above and in prior briefing, which is incorporated by reference. Therefore, Mr. Uhlman's Exception to Conclusion of Law No. 6 should be denied.

III. CONCLUSION

For the foregoing reasons, PECO respectfully requests that the Commission adopt the Initial Decision subject to the limited clarifications identified in PECO's Exceptions to the Initial Decision, and deny the Exceptions of Marple Township and Mr. Uhlman.

Respectfully submitted,
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Date: January 7, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true copy of the foregoing PECO Energy Company's Reply to the Exceptions of Marple Township and Theodore Uhlman 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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