

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held March 10, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora.

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

P-2021-3024328

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed on December 28, 2021, by PECO Energy Company (PECO or Company), Marple Township, Delaware County (Marple Township or the Township), and Theodore Uhlman (Mr. Uhlman) to the Initial Decision of Administrative Law Judges (ALJs) Emily I. DeVoe and Mary D. Long served on December 8, 2021, in the above-captioned proceeding. Marple Township filed Replies to Exceptions on January 6, 2022, and PECO filed Replies to Exceptions on January 7, 2022. For the reasons stated below, we shall: (1) grant PECO's Exceptions; (2) deny, in major part, and grant, in limited part, Marple Township's Exceptions;

(3) deny Mr. Uhlman’s Exceptions; and (4) adopt the Initial Decision, as modified and clarified in this Opinion and Order.

### **I. History of the Proceeding**

On February 26, 2021, PECO filed a Petition 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 (Petition). In the Petition, PECO requested that the Commission, pursuant to 52 Pa. Code § 5.41 and Section 619 of the Municipalities Planning Code (MPC), 53 P.S. § 10619 (Section 619 or § 619), make a finding that: (1) the situation of two buildings for a proposed gas reliability station (Gas Reliability Station or Station) is reasonably necessary for the convenience and welfare of the public and, therefore, exempt from any zoning, subdivision, and land development restriction of the Marple Township Subdivision and Land Development Ordinance and 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. Petition at 1.

On March 27, 2021, notice of the Petition was published in the *Pennsylvania Bulletin* at 51 Pa. B. 1760, advising that the protest deadline was April 12, 2021. PECO also published notice of the Petition and the protest deadline in the *Daily Times and Sunday Times* as well as the *Daily and Sunday Times Digital* on March 26, 2021.

On March 11, 2021, Marple Township filed a Petition to Intervene. On March 18, 2021, PECO filed an Answer to Marple Township’s Petition to Intervene, advising it did not oppose it. On April 12, 2021, Marple Township filed an Answer, New Matter, and Formal Protest to the Petition. Also on April 12, 2021, the County of

Delaware, Pennsylvania (Delaware County) filed a Petition to Intervene. On April 20, 2021, PECO filed an Answer to Delaware County's Petition to Intervene, advising it did not oppose it.

On or about April 12, 2021, sixty-three *pro se* protestants filed Protests to the Petition. Two individuals, Mr. Uhlman and Julie Baker, filed Petitions to Intervene in addition to a Protest.<sup>1</sup> Two individuals, Sylva Baker and Joseph Baker (the Bakers), filed untimely Protests.<sup>2</sup>

A prehearing conference was held on April 21, 2021. PECO, Marple Township, and Delaware County were represented by counsel. Twenty-five *pro se* protestants were present, as were the Bakers. ALJ DeVoe granted Marple Township and Delaware County's Petitions to Intervene. Tr. at 28.

Four public input hearings were held over May 25 and May 26, 2021, during which ninety-three individuals testified. For more information on the public input hearings, *see* I.D. at 6-9.

Evidentiary hearings were held on July 15, 16, 20, and 22, 2021.

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<sup>1</sup> Mr. Uhlman and Ms. Julie Baker are active parties in this proceeding. At the prehearing conference, ALJ Devoe provided those who filed timely Protests, including Mr. Uhlman and Ms. Baker, with the opportunity to become active parties by filing a statement indicating their intent to be an active party. Tr. at 23. Both Mr. Uhlman and Ms. Baker timely filed the required statements of intent which PECO did not oppose.

<sup>2</sup> ALJ DeVoe advised she would treat the untimely protests of Sylva Baker and Joseph Baker as Motions for Leave to File Late-filed Protests. After oral argument from the Bakers and counsel for PECO, Delaware County, and Marple Township, ALJ DeVoe denied the Motion for Leave to File Late-Filed Protests. ALJ DeVoe advised the Bakers they would receive notice of the public input hearings and would be able to testify at the public input hearings if they chose to do so. Tr. at 34.

PECO, Delaware County, and Marple Township filed Main Briefs on August 23, 2021. Ms. Baker and Mr. Uhlman also filed Main Briefs on August 23, 2021, without the benefit of reviewing the transcripts of the evidentiary hearings.<sup>3</sup> PECO, Delaware County, Marple Township, and Ms. Baker filed Reply Briefs on August 31, 2021. By Interim Order dated September 10, 2021, the Protestants were afforded an opportunity to review the transcripts and to file amended briefs on or before September 24, 2021. The remaining Parties were granted leave to file amended reply briefs on or before October 1, 2021. Mr. Uhlman filed an Amended Reply Brief on September 24, 2021, and Ms. Baker filed an Amended Reply Brief on September 27, 2021. PECO filed a Supplemental Reply Brief on October 1, 2021. By Interim Order dated October 4, 2021, the record was closed.

By Initial Decision issued December 8, 2021, the ALJs granted PECO's Petition, finding that PECO met its burden of proving that the two buildings associated with the Gas Reliability Station should be exempt from Marple Township zoning because the proposed situation of the buildings is reasonably necessary for the public convenience or welfare of the public. As previously discussed, PECO, Marple Township, and Mr. Uhlman filed Exceptions on December 28, 2021. Marple Township filed Replies to Exceptions on January 6, 2022, and PECO filed Replies to Exceptions on January 7, 2022.

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<sup>3</sup> Due to a delay in the preparation of the transcripts, transcripts for the first and second day of the hearing were provided to the Parties on August 6, 2021, and transcripts for the third and fourth day of the hearing were provided to the Parties on August 9, 2021. I.D. at 4. Hard copies of the transcripts of the evidentiary hearings were received in the Pittsburgh offices of the Commission on August 26, 2021, and were shipped to the Philadelphia offices of the Commission shortly thereafter. *Id.* at 6.

## II. Background

PECO is a public utility within the meaning of Section 102 of the Public Utility Code (Code), 66 Pa. C.S. § 102. The Company has a certificate to provide natural gas service to approximately 534,000 retail customers and transportation service to 1,800 large commercial and industrial customers. PECO St. 1 at 2. PECO's gas service territory comprises an area of 1,900 square-miles adjacent to Philadelphia that includes all, or portions of Bucks, Delaware, Montgomery and Lancaster Counties. PECO St. 1 at 3.

PECO and its natural gas customers rely on the interstate natural gas pipeline system to deliver natural gas into PECO's distribution system because PECO's service territory is not in a natural gas producing region. PECO St. 2 at 4.

The Gas Reliability Station is part of the "Natural Gas Reliability Project," a long-term infrastructure project PECO is implementing in order to increase its capacity supply to diminish its design day constraints.<sup>4</sup> PECO St. 2 at 3-7. According to PECO, in addition to increasing design day requirements, the Gas Reliability Station is also needed to address customer and usage growth in Delaware County, particularly in Marple Township. PECO St. 3 at 3-12. In addition to the growing need for natural gas in Marple Township, PECO chose to site its Gas Reliability Station in Marple Township because of

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<sup>4</sup> According to PECO, the Company is experiencing natural gas supply constraints that, over the next ten years, will result in an increased deficit between its current supply capacity resources and its calculated design day demand requirements. PECO St. 2 at 7-22; PECO Exhs. CPT-1 at 25-31, CPT-2 at 18-25, and CPT-3 at 19-29. A "design day" is a 24-hour period of demand which is used as a basis for planning gas capacity requirements. "Design day requirements" refer to the amount of gas needed to meet customer needs during design day conditions. PECO St. 2 at 3-7. "Design day conditions" are defined as an average temperature of zero-degree Fahrenheit for the 24-hour "gas day" period. A "gas day" runs from 10 a.m. until 10 a.m. the following day. PECO St. 2 at 3.

its location within PECO's existing natural gas distribution system in Delaware County. PECO St. 3 at 5-18.

During its site selection process, PECO considered fifteen sites, including 2090 Sproul Road. PECO also considered 580 Reed Road, 541 Hilldale Road, 2024 Sproul Road, 850 Paxon Hollow Road, 700 Abbott Drive, 946 and 964 West Sproul Road, 4980 State Road, 27-43 South Sproul Road, 825 Reed Road, 1797 Sproul Road, 401 Parkway Drive, 861 Sussex Blvd., 10-20 Lawrence Road, and 2590 Harding Drive. PECO St. 5 at 4-5. PECO indicated that the optimal location for the Gas Reliability Station is within a half a mile from the terminus of the line that is coming in from Conshohocken to Sproul and Lawrence Road in Marple Township. PECO determined that based on the pressure of the lines and engineering issues, the only location this project as designed would work is 2090 Sproul Road. Tr. at 1213, 1222.

The location selected for the Station is zoned as "Neighborhood Center District" (ND). Marple Township Zoning Ordinance, Section 300-39; Exh. C to Petition. 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 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.

*Id.* The Marple Township Zoning Ordinance, ND district, permits "public utility use" by special exception. Marple Township Zoning Ordinance, Section 300-37, 300 Attachment 5.

The Gas Reliability Station's design includes two buildings, a "Station Building" and a "Fiber Building." PECO St. 4 at 6-7. The Station Building will be enclosed and provide weather protection for the pipes, valves, regulators, and electronic equipment necessary for the operation of the Station and provide climate control for the proper functioning of this equipment. PECO St. 4 at 6-12. The Station Building will be locked to protect the equipment from unauthorized access. PECO St. 4 at 6-16. Additionally, the Station Building will include several sound-dampening features. PECO St. 4 at 10-11. The Fiber Building will protect sensitive telecommunication equipment necessary to connect the Station to PECO's control room and provide an enhanced aesthetic appeal. PECO St. 4 at 6-7. The Gas Reliability Station will also include a perimeter security fence (Security Fence) made of sound-absorbing material that will be constructed and maintained by PECO. PECO St. 4 at 7-8.

The gas arriving in the Station will originate from a new PECO liquified natural gas station in West Conshohocken. The gas will travel through a new gas main and will run at a lower pressure than typical of an interstate transmission line. PECO St. 4 at 8-9. PECO indicated that the purpose of the proposed Station is to reduce gas pressure from a new 12-inch main that connects the West Conshohocken Liquefied Natural Gas or LNG facility and inject it into the existing 16-inch main serving Marple Township at the point of lowest pressure at the intersection of Lawrence Road and Sproul Road. PECO St. 3-R at 3-4.

Prior to filing its Petition in this matter, PECO submitted a zoning application with the Marple Township Zoning Hearing Board seeking: (1) a special exception for the Gas Reliability Station at the site, and (2) a variance for the Security Fence measuring eight feet in height around the Gas Reliability Station. After a hearing on the matter, the Zoning Hearing Board denied PECO's application on November 18, 2020. PECO Exh. LG-2. Consequently, PECO filed the present Petition.

### III. Discussion

#### A. Legal Standards

As the proponent of a rule or order, PECO bears the burden of proof to establish that it is entitled to the relief it is seeking in this proceeding pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, PECO's evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a utility of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the utility shifts to the other parties to the proceeding. If the evidence presented by those parties is of co-equal value or "weight," the burden of proof has not been satisfied. The utility now has to provide some additional evidence to rebut that of the opposing parties. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).



The ALJs made fifty-six Findings of Fact and reached seven Conclusions of Law. I.D. at 9-17, 28-29. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

## **1. Exemptions from Local Zoning Ordinances Under the MPC**

The MPC provides, in relevant part, as follows:

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.

In order for the MPC exemption to apply, PECO must qualify as a “public utility corporation.”<sup>5</sup> Section 1103 of the Business Corporation Law defines “public

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<sup>5</sup> Pennsylvania courts have held that Section 619 of the MPC must be interpreted by using the definition of “public utility corporation” in Section 1103 of the Business Corporation Law, 15 Pa. C.S. § 1103. *Pa. PUC v. WVCH Communications, Inc.*, 351 A.2d 328 (Pa. Cmwlth. 1976).

utility corporation” as including “[a]ny domestic or foreign corporation for profit that: ... is subject to regulation as a public utility by the Pennsylvania Public Utility Commission or an officer or agency of the United States.” 15 Pa. C.S. § 1103. In other words, an entity meets the definition of “public utility corporation” for MPC exemption purposes by being a “public utility” under the Code. Thus, a municipality may exercise its zoning powers over a public utility building unless the Commission determines that the “site is reasonably necessary for the public convenience or welfare.” *Del-AWARE Unlimited, Inc. v. Pa. PUC*, 513 A.2d 593, 596 (Pa. Cmwlth. 1986) (*Del-AWARE*). If the Commission finds that the location is reasonably necessary for the convenience or welfare of the public, the building is exempt from local zoning ordinances under the MPC. *Id.*

The Commission has adopted a policy statement at 52 Pa. Code § 69.1101 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. That policy statement provides the following:

[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) Other Commission decisions.

52 Pa. Code § 69.1101.

Whether the proposed buildings are reasonably necessary for the convenience or welfare of the public does not require the utility to prove that the site it has selected is absolutely necessary or that it is the best possible site. Rather, the

Commission's finding that the site chosen is reasonably necessary will not be disturbed if supported by "substantial evidence," which is that quantum of evidence that a reasonable mind might accept as sufficient to support that conclusion. *O'Connor v. Pa. PUC*, 582 A.2d 427, 433 (Pa. Cmwlth. 1990) (*O'Connor*).

## **B. Positions of the Parties**

PECO argued that it is implementing the Natural Gas Reliability Project in the Township to address supply capacity constraints across its entire distribution system. According to the Company, PECO's need for this reliable supply has been the subject of PECO's Purchased Gas Cost proceedings before the Commission since at least 2015 and has been explicitly addressed in Joint Settlements in those proceedings since 2018. PECO asserted that it is seeking to install a pressure reducing station at the proposed location because that is the area within PECO's distribution system where the additional reliable supply is needed most. PECO M.B. at 16.

The Company submitted that it selected 2090 Sproul Road as the site for the Natural Gas Reliability Station because it was the only site that met PECO's site selection criteria, specifically: (1) availability; (2) appropriate zoning; (3) adequate size; and (4) a location that satisfied engineering constraints. PECO argued that the issues in this proceeding are: (1) whether the situation of buildings which serve to protect equipment, dampen sound, and enhance aesthetics is reasonably necessary for the convenience or welfare of the public; and (2) whether the proposed Security Fence falls within the broad definition of "facilities" in 66 Pa. C.S. § 102. PECO proffered that it has exceeded its burden of producing evidence regarding the necessity and benefits of siting the Station's buildings at 2090 Sproul Road and, though not at issue in this proceeding, the Station itself. PECO M.B. at 16-17.

PECO contended that the arguments of the Parties pertaining to Section 619 of the MPC are irrelevant because they are beyond the proper scope of this proceeding. The Company asserted that the other Parties do not challenge the location or public benefits of the proposed buildings at the Station but instead challenge the location of the entire Station. Additionally, PECO proffered that the other Parties raise concerns that are incorrect and not supported by competent evidence of record. PECO R.B. at 2

The Township argued that the exemption provided by Section 619 of the MPC applies only to zoning regulation and not to the application of local subdivision and land development regulation. According to the Township, an exemption from the zoning regulation under Section 619 requires PECO to prove that the siting of the buildings housing the proposed Station is reasonably necessary for the convenience or welfare of the public. Township M.B. at 15-16.

The Township contended that the proposed site is not reasonably necessary for the convenience and welfare of the public. Rather, the Township asserted that the site is simply necessary for PECO's own convenience as evidenced by developing selection and design criteria at the outset to work for the subject property to the exclusion of all others, refusing to truly consider or pursue alternative sites even after being asked to do so by local officials and residents and having been denied zoning, proceeding with installation of the gas main from the plant to the Station site before zoning approval, and dismissing other locations without contacting a single owner. Additionally, the Township argued that the proposed site is inappropriate because of its proximity to a surrounding densely populated residential community and an adjacent restaurant and shopping district. In support of its arguments, the Township cited various fire, safety, emissions, land use planning, and noise concerns. Township M.B. at 16.

The County joined in the arguments of the Township and contended that the Petition is premature because it is seeking to address a need which is seven to ten

years in the future. Additionally, the County argued that PECO did not conduct an evaluation of the impact of the location and thus has failed to meet its burden to prove that the proposed facility is necessary for the public convenience or welfare pursuant to Section 619 of the MPC. County M.B. at 7-9.

Mr. Uhlman and Ms. Baker also challenged the need for the facility, arguing that the forecasted gas supply need is ten years in the future. In addition, they contended, in part, that PECO's gas planning and reliability forecasting was unreasonable and speculative. Mr. Uhlman and Ms. Baker also asserted that there are noise and safety concerns with the proposal and more appropriate locations for the facility. Uhlman M.B. at 3-7; Baker R.B. at 16-18.

### **C. ALJs' Initial Decision**

In the Initial Decision, the ALJs granted PECO's Petition, finding that PECO met its burden of proving that the two buildings associated with the Gas Reliability Station should be exempt from Marple Township zoning because the proposed situation of the buildings is reasonably necessary for the public convenience or welfare of the public. The ALJs initially emphasized the very limited scope of the Commission's inquiry under Section 619 of the MPC. I.D. at 21. The ALJs stated that as a certificated gas utility within the meaning of the Code, PECO has the authority to build a station along the pipeline to manage the distribution and supply of natural gas in its pipes as long as it is running its facilities in compliance with state and federal regulations. *Id.* at 21-22 (citing 66 Pa. C.S. § 2205(b)(2)). Consequently, the ALJs found that concerns the municipalities and the Protestants raised about issues related to noise, gas emissions, aesthetics, traffic, and other health and safety concerns were beyond the Commission's review. I.D. at 22 (citing *Petition of UGI Penn Natural Gas Inc.*, Docket No. P-2013-2347105 (Order entered December 19, 2013) (*UGI Penn Natural Gas*)).

In reaching their conclusion, the ALJs relied on, among other things, certain testimony from PECO's witnesses. For instance, the ALJs observed the testimony of PECO Witness Ryan Lewis, Manager of Gas Engineering and Performance Asset Management, who explained the importance of the location at 2090 Sproul Road for the site of the Station. Mr. Lewis testified that PECO's analysis concluded that Marple Township is located furthest away from supply sources and therefore tends to have the lowest pressure on the distribution system. Mr. Lewis also testified that over the next ten years, PECO anticipates an increase in customer count and has identified this area as one of future reliability problems. Mr. Lewis stated that an engineering review of PECO's distribution system indicated that the intersection of Lawrence and Sproul Roads is the ideal point to inject additional gas supply because it is an area of lowest pressure on the system. Mr. Lewis then explained that maintaining the appropriate pressure for gas traveling through the distribution system requires the siting of the Station within a half mile radius from the 16-inch main at the intersection of Lawrence and Sproul Roads, because gas pressure must enter the Station at a specific pressure in order for the regulators responsible for reducing the pressure for the 16-inch mains to operate properly. According to Mr. Lewis, locating the Station farther away from the Lawrence and Sproul Road intersection would require significant additional infrastructure and redesign of the Station and would increase the cost of the project, and there is not another location that is suitable for the Station from an engineering standpoint that would not require significant and expensive redesign of the project. I.D. at 24 (citing PECO St. 3 at 8; PECO St. 3-SR at 11-12; Tr. 1225).

Moreover, the ALJs examined the arguments of Delaware County, Mr. Uhlman, and Ms. Baker who challenged, among other things, the need for the facility because the forecasted gas supply need is ten years in the future. The ALJs determined that neither Delaware County nor Mr. Uhlman or Ms. Baker offered any expert testimony that supported a conclusion that gas planning and reliability forecasting by PECO's experts was unreasonable or speculative. I.D. at 25. The ALJs stated that while Mr.

Uhlman questioned the accuracy of the growth projections PECO relied on, Mr. Uhlman is not an expert witness, and his lay opinion was insufficient to rebut the expert opinions supporting the growth projections and forecasted gas supply need, as these are technical matters which require specialized knowledge. *Id.* (citing *Application of Transource Pennsylvania, LLC.*, Docket A-2017-2640195 (Order entered May 24, 2021), at 29-30).

## **D. Exceptions, Replies, and Disposition**

### **1. PECO's Exceptions, Replies, and Disposition**

#### **a. PECO Exception No. 1, Township Replies, and Disposition**

In its Exception No. 1, PECO requests clarification that, in addition to being exempt from local zoning, the buildings associated with the Station are exempt from any subdivision and land development restrictions of the Marple Township Municipal Code, including any requirement to submit Subdivision and Land Development Ordinance (SALDO) Plans. According to the Company, the ALJs properly determined that public utility facilities are exempt from local regulation and granted PECO's request that buildings associated with the site be exempt from local zoning, citing Conclusion of Law No. 3. However, PECO submits that the Initial Decision is silent as to whether the granted exemption extends to the subdivision and land development restrictions in the Township's SALDO. PECO Exc. at 7-8.

Specifically, PECO seeks to clarify that the exemption from local regulation recommended in the Initial Decision extends to the Township's SALDO set forth in Chapter 265 of the Township's Municipal Code. The Company notes that zoning requirements are found in Chapter 300 of the Township's Municipal Code. PECO contends that it would be logical to extend the exemption from zoning requirements to the Township's subdivision and land development restrictions, which would include

requirements to obtain a tax parcel identification number and submit plans of subdivision and land development, collectively termed SALDO plans, for approval and execution by the Township's board of commissioners and code officials. PECO argues that an exemption from the Township's SALDO restrictions is supported by appellate court and Commission precedent. PECO Exc. at 8.

PECO first cites to *Newtown Township v. Philadelphia Electric Company*, 594 A.2d 834 (Pa. Cmwlth. 1991), *app. denied*, 529 Pa. 627, 600 A.2d 542 (1991) (*Newtown Township*), in which the Commonwealth Court found that PECO was not subject to Newtown's SALDO. The Company explains that in *Newtown Township* PECO had applied for a Commission finding that a building associated with a substation was reasonably necessary for the public convenience under Section 619 of the MPC. The Commission granted PECO's request but, after the start of construction, Newtown issued a stop work order contending that PECO failed to obtain land development or subdivision approval from Newtown. PECO emphasizes Newtown's argument that the Commission's order providing an exemption from the zoning ordinance did not apply to other local ordinances which require subdivision or land development approval. The Company also highlights Newtown's assertion that zoning ordinances and subdivision ordinances are distinguishable because a zoning ordinance controls the actual use of the land and a subdivision ordinance concerns the health, safety, and welfare of the public after the use of the land has been decided. PECO Exc. at 8-9 (citing *Newtown Township*, 594 A.2d at 835, 837).

PECO explains that despite these assertions by Newtown the Commonwealth Court held: "We conclude that it is clear that no 'implied' power exists in the MPC which would allow the Township to regulate PECO through its subdivision and land development ordinance." PECO Exc. at 9 (quoting *Newtown Township*, 594 A.2d at 837). The Company further contends that the Commonwealth Court relied on a



long line of Pennsylvania appellate caselaw finding public utilities to be exempt from local regulations. *Id.*

In further support, PECO cites to an unpublished decision of the Commonwealth Court affirming the decision of the Court of Common Pleas of Delaware County. PECO Exc. at 9 (citing *Flynn v. Sunoco Pipeline L.P.*, 184 A.3d 645 (Pa. Cmwlth. 2018) (mem.) (*Flynn*)). In *Flynn*, the Common Pleas Court dismissed a complaint which alleged that Sunoco, a regulated utility, violated Middleton Township's SALDO by constructing a pipeline less than seventy-five feet from residential dwelling units. According to PECO, the trial court determined that the Commission has exclusive jurisdiction over the regulation of public utilities and that the Code preempts local attempts to regulate the location of utility facilities. PECO adds that the trial court rejected arguments that a township possesses a fundamental right to assure the safety of its citizens through enforcement of local ordinances such as the SALDO. On appeal, the Commonwealth Court affirmed the trial court's order in *Flynn* dismissing the suit. PECO Exc. at 9.<sup>6</sup>

PECO also references the Recommended Decision in *Application of PPL Electric Utilities*, Docket No. A-2012-2340872 (Recommended Decision issued October 21, 2013) (*PPL Application*), in which PPL sought an exemption from local zoning pursuant to Section 619 of the MPC for buildings to shelter control equipment at

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<sup>6</sup> The unpublished opinion of the Commonwealth Court in *Flynn* can be found at 2018 WL 1463443. There, the Court affirmed the trial court's order dismissing the complaint for the same reasons set forth in *Delaware Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670 (Pa. Cmwlth. 2018) (*Delaware Riverkeeper*), noting that in *Delaware Riverkeeper*, the Commonwealth Court found that the plaintiffs could not state a cause of action to have the West Goshen Township Zoning Ordinance applied to Sunoco's ME2 pipeline which is regulated by the Commission as a public utility. The Commonwealth Court held that it was dismissing the complaint in *Flynn* – regarding the attempt to have the SALDO applied to Sunoco's ME2 pipeline – for the same reasons set forth in *Delaware Riverkeeper*. *Flynn*, 2018 WL 1463443 at \*6.

two substations associated with a transmission line project. In *PPL Application*, Covington Township objected to the proposed siting of the substations, arguing that it violated zoning and subdivision ordinances and the comprehensive plan. Covington Township further contended that PPL must submit a plan for the construction of the buildings pursuant to its SALDO. PECO argues that the ALJ in that case agreed with PPL that the exemption under Section 619 of the MPC applies equally to zoning ordinances and SALDOs. The Company references the ALJ's recommendation that by granting PPL's petition, the control equipment building was exempt from Covington Township's regulation and that to rule otherwise would undermine the Commission's statewide jurisdiction over public utilities. PECO Exc. at 10 (citing *PPL Application Recommended Decision* at 196).<sup>7</sup>

PECO argues, consistent with *Newtown Township, Flynn* and *Application of PPL* and the additional Pennsylvania caselaw concluding that public utilities are exempt from local regulation, that the Commission should clarify the Company's exemption from the regulations under the Township's SALDO, including any requirement to submit SALDO plans. PECO Exc. at 10-11.

In its Replies, the Township references the language of Section 619 of the MPC, which is contained within Article VI of the MPC, and asserts it only applies to the article governing zoning ordinances and procedures. The Township argues that, in contrast, subdivision and land development ordinances and regulations, such as the Township's SALDO, are authorized and governed under a different article of the MPC, Article V, found at 53 P.S. §§ 10501-10515.1. According to the Township, the exemption under Section 619 of the MPC applies only to zoning regulation and not to the

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<sup>7</sup> The Commission adopted the Recommended Decision in *Application of PPL*, Docket No. A-2012-2340872 (Order entered January 9, 2014).

Commission's ability to exempt a utility from any local subdivision and land development regulation. Township R. Exc. at 2.

The Township also attempts to distinguish the cases cited by PECO by arguing that the courts and not the Commission determined whether or not a utility had to abide by local subdivision and land development regulations. In support, the Township contends in *Newtown Township* the court stated that Section 619 of the MPC specifically allowed the Commission to exempt public utilities from compliance with local zoning ordinances. The Township argues, however, that the court did not state that the Commission was authorized to exempt public utilities from any other local regulations. Township R. Exc. at 2.

Upon review, we agree with PECO that the exemption from local regulation recommended in the Initial Decision should also extend to the Township's SALDO. The Commonwealth Court squarely addressed this issue in *Newtown Township*. In *Newtown Township*, PECO obtained a Commission order pursuant to Section 619 of the MPC exempting the siting of a substation building from compliance with local zoning ordinances. Thereafter, the township in that case issued a stop work order until PECO secured a land use or subdivision permit from the township. In response, PECO obtained a preliminary injunction against the township. The Commonwealth Court affirmed the issuance of the preliminary injunction finding that the township did not have the power to regulate PECO in matters that were within the power of the Commission and that Section 619 of the MPC specifically authorized the Commission to exempt public utilities from compliance with local zoning ordinances. *Newtown Township*, 594 A.2d at 834.

In support, the Commonwealth Court cited a series of cases holding that public utilities are not subject to local requirements and articulating the Commission's role as the sole regulator of public utilities. *Newtown Township*, 594 A.2d at 836-837 (citing *York Water Co. v. York*, 250 Pa. 115, 95 A. 396, 397 (1915); *Duquesne Light Co.*

*v. Upper St. Clair Township*, 377 Pa. 323, 105 A.2d 287 (1954) (*Duquesne Light 1954*); *Chester County v. Philadelphia Electric Co.*, 420 Pa. 422, 218 A.2d 331 (1966) (*Chester County*); *Com. v. Delaware and Hudson Railway Co.*, 339 A.2d 155 (Pa. Cmwlth. 1975) (*Delaware and Hudson*); and *South Coventry Township v. Philadelphia Electric Co.*, 504 A.2d 368 (Pa. Cmwlth. 1986) (*South Coventry*)).

The Commonwealth Court summarized the rationale for the Commission's sole regulatory authority as follows:

The necessity for conformity in the regulation and control of public utilities is as apparent as the electric lines which one views traversing the Commonwealth. If each county were to pronounce its own regulation and control over electric wires, pipe lines and oil lines, the conveyors of power and fuel could become so twisted and knotted as to affect adversely the welfare of the entire state. It is for that reason that the Legislature has vested in the Public Utility Commission exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utilities facilities.

*Newtown Township*, 594 A.2d at 837 (internal quotations omitted) (citing *Chester County*, 218 A.2d at 333).

Additionally, the Commonwealth Court explained that Section 619 of the MPC did not authorize local governments to regulate utilities in a manner infringing on the Commission's power to so regulate and that subjecting PECO to a miscellaneous collection of local regulations would unduly burden and disable it from successfully functioning as a utility. *Newtown Township*, 594 A.2d at 837 (citing *Delaware and Hudson* and *South Coventry*). Thus, the Commonwealth Court determined that no implied power existed which would allow the township to regulate PECO through its subdivision and land development ordinance. *Newtown Township*, 594 A.2d at 837.

The Township's argument herein that exemption under Section 619 of the MPC applies only to zoning regulation and not to local subdivision and land development regulation was previously raised in *Newtown Township* and rejected by the Commonwealth Court. Specifically, the Township argues that the exemption under Section 619 of the MPC is found in Article VI of the MPC and that the SALDO requirements are authorized under Article V of the MPC, which does not contain similar exemption language applicable to the Commission. Township R. Exc. at 2. The Commonwealth rejected a similar argument in *Newtown Township*:

[The Township's] position is based upon the "omission" from Article V of the MPC, entitled Subdivision and Land Development, of any exemption for buildings used or to be used by a public utility which corresponds to the zoning exemption found in Article VI, Section 619 of the MPC, quoted supra. The Township derives from this "omission" an implied power by which municipalities may regulate utility facilities through their subdivision and land development ordinances. *However, this construction is contrary to the long line of appellate cases which have addressed the relationship between municipalities and public utilities.*

*Newtown Township*, 594 A.2d at 835-836 (emphasis added).

Although the Commission will consider local land use plans and ordinances in certain circumstances, pursuant to 52 Pa. Code § 69.1101, there is no implied authority for the Township to require compliance with its SALDO under the circumstances of this case. Indeed, subjecting PECO to a miscellaneous collection of regulations pursuant to the SALDO upon the Company's system could potentially burden and disable it from successfully functioning as a utility. *See South Coventry*, 504 A.2d at 371. Consistent with the long line of Pennsylvania appellate cases holding that public utilities are not generally subject to local land use requirements and the Commission's determination in *Application of PPL*, we shall grant PECO's Exception No. 1.

**b. PECO Exception No. 2 and Disposition**

In its Exception No. 2, PECO seeks clarification that the Security Fence appurtenant to the Station is a public utility “facility” exempt from local land use restrictions. PECO explains that in addition to seeking an exemption under Section 619 of the MPC for the Station’s buildings, PECO also requested a finding that the proposed Security Fence is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from the local requirements limiting its height to six feet. PECO Exc. at 11. PECO states that the ALJs properly determined the following: (1) the Security Fence is a “vital component” of the Station (FOF No. 10); (2) public utility facilities are exempt from local regulation (COL No. 3); and (3) no party has argued that the Security Fence is a “building” within the meaning of Section 619 of the MPC. PECO also states, however, that the ALJs did not expressly find that the proposed Security Fence is a “facility” under 66 Pa. C.S. § 102 or is otherwise exempt from local regulation. PECO files this Exception seeking clarification that the Security Fence is not a “building” subject to local regulation, but rather is a public utility “facility” exempt from local zoning and land use requirements. PECO Exc. at 12.

PECO avers that caselaw has established that a local municipality only has the power to regulate buildings that are not reasonably necessary for the public convenience or welfare, and based on this precedent, the Commission has held that a zoning exemption is not needed for public utility facilities because a “blanket exemption” exists. *Id.* at 11 (citing *Del-AWARE*, 513 A.2d at 596105 A.3d; *Petition of Sunoco Pipeline, L.P.*, Docket No. P-2014-2411941 (Order entered October 29, 2014) (*Sunoco Pipeline*); *Petition of Pennsylvania-American Water Company*, Docket No. P-2015-2513587 (Order entered April 21, 2016) (*PAWC*)).

PECO continues that the Commission and the Pennsylvania Commonwealth Court have found that the term “facilities” as defined in the Code is

broadly construed. PECO Exc. at 12 (citing *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72, 76 (Pa. Cmwlth. 1995)). PECO asserts that it has presented evidence that the Security Fence is a “fence” that is a part of PECO’s Gas Reliability Station and, thus, a part of “all the plant and equipment of a public utility under 66 Pa. C.S. § 102. PECO Exc. at 12. PECO avers that the Security Fence serves an important function and provides significant benefits to the Station and to the community.

*Id.* at 12-13. PECO submits that it presented the following evidence: (1) that it will surround the Station to prevent unauthorized access and protect against any potential tampering, vandalism, or other damage at the Station (FOF No. 11); (2) the Security Fence will be made of Sound Fighter SonaGuard, which is a sound dampening material (FOF No. 10); and (3) the Security Fence will add an aesthetic element to the Station that will benefit the community. PECO Exc. at 13 (citing PECO St. 4 at 8; PECO St. 7-SR at 9-10; PECO Exh. MG-3).

PECO further avers that its position is supported by the Commonwealth Court’s decision in *South Coventry*, 504 A.2d at 372, in which the court ruled that siren towers were a vital part of PECO’s operations and, therefore, constituted “facilities” exempt from zoning within the definition of 66 Pa. C.S. § 102. PECO argues that, similarly, in this case, because the Security Fence is a vital component of PECO’s Gas Reliability Station and is an instrumentality used in connection with, and is a critical component of the Station, the Security Fence falls within the broad definition of “facilities” in 66 Pa. C.S. § 102. PECO Exc. at 13.

While the ALJs granted PECO’s Petition in this proceeding, the ALJs did not specifically address PECO’s request in the Petition that the Commission find that a proposed security fence appurtenant to the Gas Reliability Station is a “facility” under Section 102 of the Code, 66 Pa. C.S. § 102, and is therefore exempt from local zoning requirements. Upon review, we will modify the Initial Decision to clarify that based on

the record in this proceeding, PECO satisfied its burden of showing that the Security Fence is a “facility” within the meaning of Section 102 of the Code.

The Pennsylvania Supreme Court has long held that municipalities have no power to zone with respect to utility facilities. *Duquesne Light 1954*; <sup>8</sup> *Duquesne Light Co. v. Monroeville Borough*, 298 A.2d 252, 256 (Pa. 1972) (*Duquesne Light 1972*) (the Commission has exclusive regulatory jurisdiction over the implementation of public utility facilities). Only public utility buildings are subject to local zoning requirements. *Del-AWARE*, 513 A.2d at 596 n.5. As a result, an exemption is not needed under Section 619 for any public utility facilities, as a blanket exemption exists.<sup>9</sup> Moreover, it is clear under Pennsylvania law that public utility buildings, when found by this Commission to be reasonably necessary for the convenience or welfare of the public, are exempt from local zoning regulations. *Sunoco Pipeline* at 40-41.

We agree with PECO that the Security Fence is part of “all the plant and equipment of a public utility” and falls within the broad definition of “facilities” under

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<sup>8</sup> We note that *Duquesne Light 1954* was decided prior to both the current Public Utility Code and the MPC. Subsequent cases, however, have made it clear that the principles enumerated in *Duquesne Light 1954* are still in force. *See generally, Heitzel v. Zoning Hearing Bd. of Millcreek Twp.*, 533 A.2d 832, 833 (Pa. Cmwlth. 1987); *South Coventry*, 504 A.2d at 371.

<sup>9</sup> The term “facilities” is broadly defined in the Code as follows:

All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility.



66 Pa. C.S. § 102.<sup>10</sup> The Security Fence will be an eight-foot structure made of sound containing Sound Fighter SonaGuard material, as shown on PECO Exhibit TF-4. The Security Fence will enclose the entire Gas Reliability Station, and PECO is also developing exterior design aesthetics for the Security Fence and exterior portions of the property. PECO St. 4 at 7. Timothy Flanagan, Manager for Gas System Control and Plant Operations, testified that the Security Fence is a critical component of the Natural Gas Reliability Station and that it will serve the following three purposes: (1) the Security Fence will surround the Station to prevent unauthorized access and to protect against any potential tampering, vandalism, or other damage; (2) the Security Fence will be made of Sound Fighter SonaGuard, a building material specifically designed to dampen sound, so that the Security Fence will buffer the community from sound generated from the Station and act to diminish the sound generated by the Station from extending beyond the footprint of the Station; and (3) the Security Fence will add an aesthetic element to the Station. *Id.* at 7-8.

Under the circumstances, we find that similarly to the holding in *South Coventry*, 504 A.2d at 372, the Security Fence is an instrumentality used in connection with, and is a critical component of the Gas Reliability Station. Accordingly, we will grant PECO's Exception on this issue and modify the Initial Decision to reflect that the

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<sup>10</sup> The meaning of the word "building" does not appear to be defined in Section 619 of the MPC; therefore, we may use the "common and approved usage" of the word. 1 Pa. C.S. § 1903(a). Merriam-Webster's Online Dictionary (2022) defines "building" as "a usually roofed and walled structure built for permanent use (as for a dwelling)." In *UGI Penn Natural Gas*, we determined that structures proposed to shelter certain pipeline equipment were buildings because they were housing chattels in the form of pipes, meters, valves, and storage tanks and were constructed to protect individuals working on the equipment. We found that the description of the structures, which included concrete walls, metal roofs and locked metal doors, indicated that the structures were buildings. None of the Parties in this proceeding presented evidence to establish that the Security Fence is a "building" under Section 619, and the description of the Security Fence in this case does not fit within the definition of a "building."

Security Fence falls within the broad definition of “facilities” in 66 Pa. C.S. § 102, consistent with the above discussion.

**c. PECO Exception No. 3, Marple Township Replies, and Disposition**

In its Exception No. 3, PECO seeks clarification regarding Finding of Fact No. 53, which provides, “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.” Exc. at 14 (citing I.D. at 16; Marple Township St. 1 at 6). PECO specifically excepts to the portion of the Finding of Fact which indicates the Station is not compatible with residential and retail uses. PECO believes that this Finding of Fact is inconsistent with other sections of the Initial Decision that indicate the proposed Station is compatible with the surrounding community and local zoning requirements. Exc. at 14. For example, PECO points out that Finding of Fact No. 54 states as follows:

The selected location, 2090 Sproul Road is located in an “N Neighborhood Center” zoning district and includes commercial uses and specifically allows public utility use by special exception and as such, Marple Township specifically contemplated public utility use on this property along Sproul Road in enacting the zoning classification. This location is adjacent to a main thoroughfare (Sproul Road) which already generates traffic and noise and which roadway feeds commercial establishments situated in the N Neighborhood Center district.

PECO Exc. at 14 (citing I.D. at 16; PECO St. 5 at 9; Tr. at 1154). PECO also points out that the Initial Decision indicates that the “ND District in Marple Township at least contemplates ‘public utility use.’” PECO Exc. at 14 (citing I.D. at 28). PECO avers that by permitting public utility use as a special exception in the N Neighborhood Center District, the Board of Commissioners has determined that the public utility facility is

compatible with the uses in the N Neighborhood Center District and with the uses surrounding the district. PECO Exc. at 14 n.9 (citing *Jojo Oil Co., Inc. v. Dingman Twp. Zoning Hearing Bd.*, 77 A.3d 679 (Pa. Cmwlth. 2013); *Appeal of O'Hara*, 131 A.2d 587 (Pa. 1957)).

Additionally, PECO asserts that the record demonstrates that the Gas Reliability Station is consistent with surrounding uses. For instance, PECO states that: (1) it presented evidence that the Station is comparable, yet less extensive in size and scale, to PECO's twenty-eight other gate stations, a majority of which are located in residential areas, and some of which are located within the same proximity to residences as the Station (FOF No. 12); (2) it presented testimony that residences were built after some of PECO's other gate stations were constructed, thereby indicating that these facilities do not negatively affect surrounding residential communities (Tr. at 1359-60); (3) its witness Mike Israni explained that it is both common and necessary for natural gas distribution companies to locate district regulating stations in residential areas (PECO St. 6-SR at 14-15); and (4) it presented testimony that the Station's sound levels will comply with Marple Township's ordinance, and its Cold Weather Technologies heater will operate primarily during the winter, which will result in minimal effect during operation, if any, on the residences or adjacent commercial property (PECO St. 4-SR at 7-9). Accordingly, PECO seeks clarification that the proposed Station is compatible with the surrounding community and local zoning and that Finding of Fact No. 53 was either in error or, alternatively, should not be interpreted as a conclusive finding on this issue, but rather should be interpreted and clarified as representing Marple Township's allegation with respect to its position on the Station's compatibility with the surrounding community, and one that the ALJs ultimately rejected. PECO Exc. at 15.

In its Replies to Exceptions, Marple Township argues that Finding of Fact No. 53 is not inconsistent with other portions of the Initial Decision. Marple Township believes that other parts of the Initial Decision, including Finding of Fact No. 54, simply

describe the zoning district the property is located in and the surrounding uses. Marple Township states that the Initial Decision also indicates how PECO designed the aesthetics of the Station in order to, in the Township's opinion, reduce the perceived inconsistent nature of the site with the surrounding buildings. Marple Township R. Exc. at 3.

Contrary to PECO's argument, Marple Township contends that the Gas Reliability Station is not compatible with the surrounding residential and retail uses. Marple Township states that no other surrounding use has a potential impact radius of 117 feet, where a failure of the pipeline could ignite gas resulting in flame or plume of that flame or fire that would injure people in that radius. *Id.* (citing Tr. at 1618-1620). Marple Township continues that no other surrounding use will omit the gas usage and emissions equivalent to that of twenty homes at once or use commercial generators that have higher kilowattage than a home run generator and result in additional noise disturbances. Marple Township R. Exc. at 3 (citing Tr. at 1089, 1096-1097, 1101, and 1366-1367).

Upon review, we will grant PECO's Exception to the extent that we will modify Finding of Fact No. 53 to clarify that the portion stating that "a Gas Reliability Station is not compatible with residential and retail uses" is one of the reasons why the Township opposes the location for the Station.<sup>11</sup> To more accurately reflect Mr. Gentile's testimony, we will modify Finding of Fact No. 53 to read as follows: "Because the property at 2090 Sproul Road is the gateway to the business shopping district and is in close proximity to residential homes, Marple Township opposes the location of a Gas Reliability Station at the site on the basis that the site is not compatible with residential and retail uses." With this clarification, we will correct any portions of Finding of Fact

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<sup>11</sup> Finding of Fact No. 53 is based on the testimony of Larry Gentile, Marple Township Manager, who explained the reasons why the Township opposes the 2090 Sproul Road location and is found in Marple Township St. 1. As this testimony is labeled confidential, we will not discuss the details of the testimony herein.

No. 53 that may conflict with Finding of Fact No. 54 or other sections of the Initial Decision that reflect that the selected location is in an “N Neighborhood Center” zoning district that includes commercial uses and allows public utility use by special exception. *See* PECO St. 5 at 9. While we have made this modification for accuracy, Finding of Fact No. 53 does not impact our determination, or the ALJs’ determination, that PECO met its burden of proving that the proposed situation of the buildings associated with the Gas Reliability Station is reasonably necessary for the public convenience or welfare of the public and, therefore, the buildings are exempt from Marple Township’s zoning requirements.

**2. Marple Township’s Exceptions, Replies, and Disposition**

**a. Marple Township Exception No. 1, PECO’s Replies, and Disposition**

In its Exception No. 1, Marple Township argues that the Initial Decision contradicts caselaw and ALJ DeVoe’s June 1, 2021 Interim Order. Specifically, Marple Township cites Conclusions of Law Numbers 6 and 7 in the Initial Decision. Marple Township Exc. at 2. Conclusion of Law Number 6 states the following: “The location selected by PECO at 2090 Sproul Road for the Reliability Station is reasonably necessary. 53 P.S. § 10619.” Conclusion of Law Number 7 states the following: “The buildings are reasonably necessary to protect the equipment of the Natural Gas Reliability Station from weather and vandalism. 53 P.S. § 10619.” I.D. at 29.

Marple Township avers that the Initial Decision does not follow the legal standards set forth in ALJ DeVoe’s June 1, 2021 Interim Order, which indicates 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.” Marple Township Exc. at 2. First, Marple Township states that the ALJs’ analysis in the Initial Decision

improperly focused only on the four walls of the buildings that surround the public utility facility. Marple Township argues that this analysis ignores the holding in *Re Philadelphia Suburban Water Company*, 1980 Pa. PUC Lexis 81, in which the Commission determined that the entire facility, the steel reservoir and booster pumping station, was reasonably necessary for the convenience or welfare of the public. Marple Township Exc. at 3. Marple Township believes that the Commission should have evaluated the impacts of placing the entire facility at the proposed location. *Id.* at 4.

Second, Marple Township states that the ALJs improperly focused on the building itself, rather than the location, contrary to the holding in *Del-AWARE*, which Marple Township submits provides that Section 619 of the MPC only empowers the Commission to decide if there is a reasonable necessity for the site. Marple Township contends that the ALJs in this case incorrectly focused on the building and whether it was necessary to house the public utility equipment. Marple Township believes that if the ALJs had engaged in the proper analysis of whether the siting of the Gas Reliability Station is reasonably necessary for the convenience and welfare of the public, they would have reached a different conclusion. Marple Township Exc. at 4.

In its Replies, PECO disagrees with Marple Township's claim that the ALJs applied the wrong standard for a Section 619 proceeding because they only considered the narrow question of whether the siting of the buildings at the Station was reasonably necessary for the convenience or welfare of the public and failed to consider whether the Station as a whole was reasonably necessary. PECO contends that Marple Township's argument ignores the plain language of Section 619 of the MPC, which focuses on whether the "situation of the building in question is reasonably necessary for the convenience or welfare of the public." PECO R. Exc. at 5. PECO continues that to the extent Marple 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 Marple Township's Exception No. 7), the case law is 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, PECO avers, it need only show that the site chosen is reasonably necessary. *Id.* at 6 (citing *O'Connor*, 582 A.2d at 433).

PECO also disagrees with Marple Township's argument that there is a conflict between the legal standards set forth in ALJ DeVoe's June 1, 2021 Interim Order and the legal standards applied in the Initial Decision. PECO R. Exc. at 6. PECO avers that the standard the ALJs applied in the Initial Decision was fully consistent with the Interim Order, as it provided the following:

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.

*Id.* (citing I.D. at 22). PECO also avers that Conclusions of Law Numbers 6 and 7 are consistent with the standards set forth in the June 1, 2021 Interim Order. For these reasons, PECO submits that the ALJs applied the proper standard for a Section 619 proceeding. PECO R. Exc. at 7.

Upon review, we shall grant Marple Township's Exception, in part, and deny it, in part. We disagree with Marple Township's argument that the ALJs should have considered whether the entire facility was exempt from zoning requirements under Section 619 of the MPC. As we discussed previously, only public utility buildings are subject to local zoning requirements, and an exemption is not necessary under Section 619 for public utility facilities. *Del-AWARE*, 513 A.2d at 596 n.5. The Pennsylvania Supreme Court has long held that municipalities have no power to zone

with respect to utility facilities. *Duquesne Light 1954; Duquesne Light 1972*, 298 A.2d at 256.

The proper inquiry under Section 619 in this case is whether the site of the public utility buildings associated with the Gas Reliability Station is reasonably necessary for the public convenience or welfare. *Del-AWARE*, 513 A.2d at 596. If the Commission finds that the location is reasonably necessary for the convenience or welfare of the public, the building is exempt from local zoning ordinances under the MPC. *Id.* The ALJs' findings are consistent with this legal standard. For instance, the ALJs stated, "This decision finds that PECO has met its burden of proving that the buildings should be exempt from Marple Township zoning because the proposed situation of the buildings is reasonably necessary for the public convenience or welfare of the public." I.D. at 1; *see also* I.D. at 28; 29 (Ordering Paragraph No. 1). The ALJs also explained the legal standards, among other things, as follows: "Stated another way, a municipality may exercise its zoning powers over a public utility building unless the Commission determines that the 'site is reasonably necessary for the public convenience or welfare.'" I.D. at 19 (citing *Del-AWARE*, 513 A.2d at 596). Moreover, Conclusions of Law Nos. 4<sup>12</sup> and 6 specifically track the legal standards in the applicable caselaw and Section 619 of the MPC.

The ALJs also properly analyzed the evidence PECO presented in this case that demonstrated that the proposed situation of the buildings is reasonably necessary for the public convenience or welfare of the public. This evidence, as discussed above in the Initial Decision section of this Opinion and Order, included Mr. Lewis' testimony explaining the importance of the location at 2090 Sproul Road for the site of the Station.

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<sup>12</sup> Conclusion of Law No. 4 provides the following: "Under Section 619 of the Pennsylvania Municipalities Planning Code, a municipality may exercise its zoning powers over a public utility building unless the Commission determines that the site is reasonably necessary for the public convenience or welfare." I.D. at 29.



*See* I.D. at 24 (citing PECO St. 3 at 8; PECO St. 3-SR at 11-12; Tr. at 1225).

Additionally, PECO's witness Jim Moylan, a PECO real estate specialist, testified regarding the site selection process for the Station and why the site is beneficial. Mr. Moylan explained that the site is proximate to the new gas main terminus and the existing downstream network of gas mains serving Delaware County, and at 0.55 acres, the site offers adequate size to support the construction and operation of the Gas Reliability Station. PECO St. 5 at 8-9. Mr. Moylan also stated that the site is located in Marple Township's N Neighborhood Center District in which public utility use is permitted by special exception. Further, Mr. Moylan testified that PECO will address residual contamination at the site that was present before PECO executed an agreement to purchase the site, which Mr. Moylan averred would further benefit the community. *Id.* at 9.

Nevertheless, as Marple Township contends, the ALJs included some analysis and conclusions that focused more on the need for the buildings themselves, rather than the site for the buildings. The ALJs analyzed PECO's testimony concerning various attributes of the buildings associated with the Gas Reliability Station (*see* I.D. at 23-25) and reached Conclusion of Law Number 7, finding that "[t]he buildings are reasonably necessary to protect the equipment of the Gas Reliability Station from weather and vandalism." *See* I.D. at 29. We acknowledge that the Commission must ensure that the proposed structures constitute buildings within the meaning of Section 619, and the functions and necessity of the buildings in this case tie into the location of the buildings on some level, as both are important in meeting the gas supply needs of PECO's customers. However, in *Del-AWARE*, the Court explained that it was rejecting the Commission's argument that the focus should include the building itself, stating that the Commission "is simply not empowered to evaluate the building." 513 A.2d at 595 n.4. Accordingly, we shall grant Marple Township's Exception, in part, by: (1) modifying the Initial Decision to reflect that the legal focus should be on whether the site of the buildings associated with the Gas Reliability Station is reasonably necessary for the

public convenience or welfare, and (2) removing Conclusion of Law No. 7 from the Initial Decision.

**b. Marple Township Exception No. 2, PECO’s Replies, and Disposition**

In its Exception No. 2, the Township objects to Findings of Fact Nos. 46, 47, and 50 addressing the Don Guanella site suggested by the Township for the project. Specifically, the Township opposes the following:

46. If PECO’s Natural Gas Reliability Station were sited beyond the 0.5-mile radius, additional infrastructure would be needed including larger diameter steel gas mains, and a redesign of the Natural Gas Reliability Station, which would increase disruptions to local traffic patterns during the period of construction and would require significant additional investment that would financially burden PECO’s customers.

47. The cost of installing the additional infrastructure would be substantial to PECO’s customers without any additional operational advantages.

50. Despite the Don Guanella property being within the V2 [sic] mile of the Sproul and Lawrence connection and meeting that site selection criteria, the Don Guanella site would not be acceptable to PECO as its location would cause unreasonable engineering constraints.<sup>13</sup>

Marple Township Exc. at 4-5; I.D. at 15-16 (citations omitted).

The Township asserts that the Initial Decision fails to mention that PECO has already been disturbing traffic patterns while placing a trunk line without

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<sup>13</sup> “V2 mile” appears to be an error; the correct reference should be “1/2 mile.” Accordingly, we shall modify Finding of Fact No. 50 to reflect this correction.

authorization to use the proposed site. Further, the Township contends that although the Initial Decision mentions added costs associated with the Don Guanella site, the ALJs failed to discuss the extra costs needed for “Act 2” remediation at PECO’s proposed site resulting from the Company disturbing the soil and resulting litigation costs.<sup>14</sup> Marple Township Exc. at 5.

The Township argues that PECO dismissed the proposed site for zoning reasons rather than cost, traffic, or engineering concerns. According to the Township, it was only during surrebuttal testimony that PECO indicated that the Don Guanella site would be unacceptable because of engineering constraints. The Township submits that PECO rejected the Don Guanella site despite knowing that the Township and all the Protestants preferred this location because it was not as close to homes and residents as PECO’s proposed site. The Township proffers there is a lack of evidence that cost is an issue for PECO considering the costly environmental remediation efforts the Company will need to perform at the selected location and given the ongoing litigation costs of this proceeding. *Id.*

In its Replies, PECO argues that the Initial Decision properly considered the Company’s evaluation of alternative sites, including the Don Guanella property. Citing to divergent opinions by the other Parties as to the best location for the site, PECO asserts that none of the individual Protestants are qualified experts in the field of public utility facility siting. PECO adds that the Company does not have the burden to select the “best” site but need only demonstrate “reasonable necessity” for the particular location. PECO R. Exc. at 8 (citing *O’Connor*, 582 A.2d at 433).

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<sup>14</sup> In his testimony, PECO witness Jim Moylan described the proposed site as being recently occupied by a Texaco gasoline filling station; during the acquisition of the site, PECO conducted a Phase I and Phase II environmental site assessment confirming the site was subject to a tank removal and soil remediation and mitigation pursuant to the Pennsylvania Land Recycling and Remediation Act, 35 P.S. §§ 6026.101-.908, referred to as Act 2. PECO St. 5 at 9.

PECO contends that it exhaustively explained the reasons for the infeasibility of the Don Guanella site. In support, the Company references its prior explanation that locating the Station at the Don Guanella site would cause inlet pressure to drop below 150 pounds per square inch (p.s.i.); that the site is not zoned for public utility development; that the Company is embroiled in eminent domain litigation which is ongoing; and that the property has a long history of litigation as to its appropriate use. PECO R. Exc. at 8; PECO M.B. at 35-36. PECO also objects to the Township's assertion that it would work with the Company on zoning for an appropriate property. According to PECO, the Township fails to address the unavailability of the Don Guanella site<sup>15</sup> because the "quid quo pro" transaction offered by the Township would invite "spot zoning" or "contract zoning" litigation from those opposed to developing the Don Guanella property. PECO R. Exc. at 8-9 (citing *Appeal of Realen Valley Forge Greenes Associates*, 576 Pa. 115, 838 A.2d 718 (2003); *Carlino v. Whitpain Invs.*, 499 Pa. 498, 453 A.2d 1385 (1982)).

In summary, PECO requests that the Commission deny the Township's Exception because it fails to show evidence that the ALJs erred concerning the reasons for PECO's rejection of the Don Guanella site or in finding that PECO's selected site was reasonably necessary. PECO R. Exc. at 9.

Upon review of the evidentiary record, we find no substantive errors in the development of Findings of Fact Nos. 46, 47, and 50. Rather, the expressed findings are directly supported by the testimony and record evidence referenced therein. The Township essentially objects to the findings because they do not reference or adopt the Township's contentions that PECO's decision was unrelated to engineering constraints or costs and that PECO simply did not want to use the Don Guanella site or any other site

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<sup>15</sup> PECO presented testimony that the property was unavailable for purchase during PECO's property selection process because a land developer had the property under contract for residential and commercial development. PECO St. 5-SR at 4.

within the Township. However, as discussed herein, PECO has demonstrated the reasonable necessity for the site of the buildings that would shelter the facility equipment at the Station and, in contrast to the Township's arguments, the Company does not have the burden to establish that it has selected the best site available. *See O'Connor*, 582 A.2d at 433. Accordingly, we shall deny the Township's Exception No. 2.<sup>16</sup>

**c. Marple Township Exceptions Nos. 3, 4, 5, and 6, PECO's Replies, and Disposition**

**i. Marple Township Exception No. 3 and PECO's Replies**

In its Exception No. 3, Marple Township argues that the Initial Decision fails to give any consideration to the impact radius of the site. Marple Township notes that Mr. Israni, an expert witness on behalf of PECO, testified that based on Mr. Flanagan's operation figures of the pressure of the main connected to the natural gas reliability station of 525 p.s.i. and the pressure arriving at the station anticipated to be less than 200 p.s.i. with a 12-inch diameter main, in the scenario of a serious incident at the proposed station, the potential impact radius is 190 feet for the 525 p.s.i. main and 117 feet for the 200 p.s.i. main. Marple Township Exc. at 5 (citing Tr. at 1618-1620).

Marple Township explains that the 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. Marple Township explains further that the failure of a pipeline where the gas was ignited, resulting in flame or plume of that flame or fire, would impact persons in that radius, with impacts such as second degree burns from exposure to flame heat within

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<sup>16</sup> The Township also references a general allegation that PECO has been disturbing traffic patterns while placing trunk lines related to the proposed site. Township Exc. at 4. However, the Township fails to cite to any record evidence in its Exception supporting this allegation and thus we find no error pertaining to the absence of such a finding.

twenty seconds, death within thirty seconds, and building ignition within thirty minutes. Marple Township Exc. at 5-6 (citing Tr. at 1618-1620).

According to Marple Township, neighboring residences and a local restaurant, and the occupants of each, are well within the potential impact radius and in danger of damage or injury in the event of an emergency. Marple Township notes that Mr. Israni's testimony confirmed that events can and do happen at regulating stations. Marple Township reasons that given the potential emergencies, the location of the proposed station in close proximity (within the impact radius) to occupied residences and businesses is not appropriate and is detrimental to public safety and welfare. Marple Township Exc. at 6.

Marple Township argues that the evidence regarding the impact radius supports the testimony of Mr. Jim Capuzzi, the Township's Fire Marshall. The Township contends that the location of the proposed facility in close proximity to homes and businesses is contrary to public health, safety, and welfare as the facility will be unmanned and inaccessible to Township emergency response personnel until PECO can respond. *Id.*

In its Replies to Marple Township Exception No. 3, PECO disagrees with Marple Township's assertion that the Initial Decision did not adequately consider the effects of the proposed station's Potential Impact Radius (PIR) on the community. PECO R. Exc. at 10 (citing Marple Township Exc. at 5-6). PECO contends that although beyond the scope of this proceeding (PECO R. Exc. at 10, citing *UGI Penn Natural Gas*),<sup>17</sup> PECO has established through expert testimony that the operation of natural gas infrastructure in the United States is extremely safe, and further that PECO's safety

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<sup>17</sup> *UGI Penn Natural Gas* 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.”).

record involving similar natural gas regulating stations is exemplary. PECO R. Exc. at 10 (citing PECO M.B., Sec. VII.B.5; PECO R.B. Supp., Sec. II.D.2).

PECO explains that the Township's contention that the PIR should be used to determine the adequacy of a site for natural gas infrastructure is incorrect. According to PECO, 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. PECO R. Exc. at 10 (citing PECO R.B. Supp. at 9-10; 49 C.F.R. § 192.901 *et seq.*; Tr. at 1650, 1651).

PECO explains further that these compliance obligations are not limited to gate stations, but also include natural gas mains, many of which are in place in Marple Township and have been for years. PECO R. Exc. at 10 (citing Finding of Fact No. 49, providing that a natural gas system already exists in Marple Township). PECO submits that it provided testimony that it will comply with all applicable safety regulations, including those promulgated by the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Commission relating to the construction and operation of the systems, and no Party has disputed PECO's intentions or ability to comply with such requirements. PECO R. Exc. at 10-11 (citing PECO St. 4-SR at 11).

PECO provides that the record clearly reflects PECO's emphasis on safety. PECO notes that 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. PECO R. Exc. at 11, n.4 (citing PECO St. 4-SR at 13; PECO St. 4 at 11). PECO avers that its track record on safety is exemplary, as evidenced by Mr. Israni's testimony, who noted that no incidents have been reported at PECO's gate stations. PECO R. Exc. at 11, n.4 (citing PECO St. 4-SR at 12; PECO St. 6-SR at 9).

PECO argues that Marple Township Exception No. 3 should be denied because it raises issues that are not germane to this proceeding. Further, PECO contends that in the event the Commission determines such issues are germane, PECO has met its burden of production and persuasion on this issue. PECO R. Exc. at 11.

**ii. Marple Township Exception No. 4 and PECO's Replies**

In its Exception No. 4, Marple Township disagrees with Conclusion of Law No. 5, which states as follows: “The Commission is not empowered under Section 619 of the MPC to evaluate the various aspects of the environmental impact of a project and, instead, is obliged to defer to the determinations of those agencies with jurisdiction over such impacts.” I.D. at 29 (citing *O'Connor*). Marple Township contends that in deciding this type of case, the environmental impact must be considered. Marple Township Exc. at 6-7 (citing *PAWC*). Marple Township provides that when the gas heaters at the proposed Station are operating, the gas usage and emissions from the Station are equivalent to that of twenty-three homes. Marple Township Exc. at 7 (citing Tr. at 1366-1367).

In its Replies to Marple Township Exception No. 4, PECO avers that the Initial Decision's determination that general environmental concerns are beyond the scope of a Section 619 proceeding is in agreement with the Commission's holding in *UGI Penn Natural Gas*. PECO explains that the ALJs properly determined that the Commission is not empowered under Section 619 of the MPC to evaluate the various environmental impacts of a project and, instead, must defer to determinations of state and federal agencies with jurisdiction over potential environmental impacts. PECO R. Exc. at 11 (citing *Del-AWARE*, 513 A.2d at 596; *O'Connor*, 582 A.2d at 431).

While Marple Township cited to *PAWC* to support its position regarding environmental impacts, PECO provides that *PAWC* 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. PECO explains that in assessing environmental impact, *PAWC* applied the now overturned test set forth in *Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973). PECO R. Exc. at 11-12, n.9 (citing *Pennsylvania Env'tl. Def. Found. v. Commonwealth*, 161 A.3d 911 (Pa. 2017)). PECO explains further that every Section 619 case decided since *PAWC* that addresses this issue has determined that general environmental concerns are beyond the proper scope of a Section 619 proceeding. PECO R. Exc. at 12.

PECO argues that if the Commission finds potential environmental impacts including air emissions germane to this case, PECO has met its burden on this issue. According to PECO, the pre-heaters to be installed at the proposed Station are 4.6 million British thermal units or Btu and are exempt from air permitting requirements. PECO R. Exc. at 12 (citing PECO St. 4 at 5; PECO St. 4-SR at 6; 25 Pa. Code § 127.14(a)(3)). PECO submits that it will remediate legacy environmental contamination remaining at the site from historical gasoline operations during development of the site. PECO R. Exc. at 12 (citing PECO St. 5 at 9-10; PECO St. 7-SR at 10). PECO contends that the other Parties did not present any qualified evidence that the proposed station would have a detrimental environmental impact on the community and PECO has met any burdens of production and persuasion that could apply. PECO R. Exc. at 12 (citing PECO M.B. at 52-54).

### **iii. Marple Township Exception No. 5 and PECO's Replies**

In its Exception No. 5, Marple Township provides that its Fire Marshall, Mr. Jim Capuzzi testified that the proposed site is not an appropriate location for a Gas Reliability Station due to its proximity to a densely populated residential community and immediately adjacent restaurant and shopping district. Marple Township argues that the

Initial Decision fails to consider or acknowledge Mr. Capuzzi's testimony. Marple Township Exc. at 8.

In its Replies to Marple Township Exception No. 5, PECO provides that general concerns about public safety are not germane to a Section 619 proceeding. PECO R. Exc. at 13 (citing *UGI Penn Natural Gas*). PECO reasons that Mr. Capuzzi testified on issues not germane to this proceeding, and he was not qualified as an expert in pipeline safety. PECO R. Exc. at 13 (citing Tr. at 1503). According to PECO, nothing in the Initial Decision indicates that the ALJs did not consider Mr. Capuzzi's testimony and afford it appropriate weight. PECO R. Exc. at 13.

#### **iv. Marple Township Exception No. 6 and PECO's Replies**

In its Exception No. 6, Marple Township disagrees with Finding of Fact No. 8<sup>18</sup> on the basis that it fails to address the study done on behalf of Marple Township. Marple Township avers that PECO's study was not of the actual equipment or all of the equipment at the proposed Station. Marple Township Exc. at 8 (citing Marple Township St. 3 at 3-4). Marple Township provides that the study did not include the generators, which must run periodically resulting in additional noise disturbances. Marple Township Exc. at 9 (citing Tr. at 1089, 1096-1097).

In its Replies to Marple Township Exception No. 6, PECO provides that the general concerns regarding sound are beyond the scope of a Section 619 proceeding. PECO R. Exc. at 14 (citing *UGI Penn Natural Gas*). PECO submits that it presented direct evidence that it commissioned an acoustic and sound control consultant, Hoover &

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<sup>18</sup> Finding of Fact No. 8 provides as follows: "The Station Building will be locked to protect the equipment from unauthorized access. (PECO St. No. 4, at 6:14-16). Additionally, the Station Building will include several sound-dampening features to minimize the effect of the Station on the community."

Keith Inc., to assist with designing the Station and reduce sound impacts on the community. PECO states that the study resulted in several recommendations that PECO is employing to mitigate sound from the Station, such as insulation, HVAC modifications, and sound dampening equipment on valves and regulators. PECO R. Exc. at 14 (citing PECO M.B. at 47-50; PECO St. 4 at 10-11; PECO St. 4-SR at 8-9). PECO provides that Marple Township's witness, Ms. Nancy Wilson, acknowledged that PECO's sound level projections with sound-dampening recommendations in place indicate that sound levels will fall within the Marple Township noise code criteria. PECO R. Exc. at 14 (citing Marple Township St. 3 at 3). According to PECO, Ms. Wilson further acknowledged that both the buildings and the Security Fence will help to dampen sound and did not opine that any residual sound that might escape the building and the Security Fence will exceed the Township's noise ordinance. PECO R. Exc. at 14 (citing Tr. at 1094-1096).

PECO explains that while the Township avers that the emergency generator and pre-heater were not included in PECO's acoustic study, the generator will only operate in emergencies and for routine testing. The generator testing will last for an hour. The pre-heaters will operate only intermittently, generally during cold weather. PECO explains further that the generator and pre-heaters are integral to the Station, but will be situated outside, and not within the buildings that are at issue in this proceeding. PECO R. Exc. at 14, n.10 (citing PECO St. 4-SR at 17).

**v. Disposition of Marple Township Exceptions Nos. 3, 4, 5, and 6**

In reviewing these Exceptions and the applicable law, we do not find any error in the ALJs' conclusion that issues related to noise, gas emissions, aesthetics, traffic, and other health and safety concerns are beyond the Commission's review in a Section 619 proceeding. *See* I.D. at 22. The scope of the Commission's review and

determination in a Section 619 proceeding is very narrow and, in this case, involves only a determination of whether the proposed site of the buildings associated with the Gas Reliability Station is reasonably necessary for the public convenience or welfare of the public. If the Commission finds that the location is reasonably necessary for the convenience or welfare of the public, the buildings are exempt from local zoning ordinances under the MPC. *Del-AWARE*, 513 A.2d at 596. Ancillary issues unrelated to the siting of the buildings, such as the issues related to the siting or route of the public utility's facilities, public safety, or environmental requirements, are outside the scope of a Section 619 proceeding. *Sunoco Pipeline* at 12; *see also, UGI Penn Natural Gas* at 12, 22 (concerns about gas pressure, gas emissions, noise levels and other health and safety issues are beyond the scope of a Section 619 proceeding).

This does not mean that the Commission does not take Marple Township's concerns seriously or that these concerns are not otherwise addressed. While the Commission is not empowered under Section 619 of the MPC to evaluate the various aspects of the environmental impact of a project, it defers to the determinations of those agencies with jurisdiction over such environmental impacts, including the Pennsylvania Department of Environmental Protection (DEP). *O'Connor*, 582 A.2d at 431.<sup>19</sup> Moreover, as the ALJs stated, granting PECO an exemption from zoning requirements related to the buildings does not exempt PECO from compliance with the Commission's Regulations or the Code or regulation by any other agencies responsible for health and safety, such as the Pennsylvania Department of Transportation or DEP. *See I.D.* at 27. As a certificated natural gas utility within the meaning of the Code, PECO has the authority to place the buildings along the pipeline to manage the distribution and supply

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<sup>19</sup> We note that during the acquisition of the property, PECO identified residual soil contamination at the site from its prior use. The site had been subject to a tank removal and soil remediation and mitigation. The site is subject to an environmental covenant dated 2013 and approved by DEP. PECO maintains that it will remove additional soil contamination and will proceed in accordance with the environmental covenant. PECO St. 5 at 9-10; PECO Exh. JM-1.

of natural gas in its pipes as long as the Company operates its facilities in compliance with state and federal regulations. *See* 66 Pa. C.S. § 2205(b)(2). As the ALJs concluded based on the record in this proceeding, PECO satisfied its burden of demonstrating that the buildings should be exempt from Marple Township zoning because the proposed situation of the buildings is reasonably necessary for the public convenience or welfare of the public. Accordingly, we shall deny Marple Township’s Exceptions Nos. 3, 4, 5, and 6.

**d. Marple Township Exception No. 7, PECO’s Replies, and Disposition**

In its Exception No. 7, Marple Township avers that the ALJs erred by stating that neither Marple Township nor the other Protestants challenged PECO’s need for the Gas Reliability Station. Specifically, Marple Township objects to Findings of Fact Nos. 14-20 and 24-28, and a related discussion on page 28 of the Initial Decision, because Marple Township and other Protestants pointed out the inconsistencies with PECO’s own gas usage projections. Marple Township Exc. at 9. These Findings of Fact provide the following:

14. PECO’s gas system is not located in a natural gas-producing region and therefore depends on the interstate natural gas pipeline system to deliver natural gas into PECO’s distribution system. (PECO St. 2 at 4).

15. PECO is experiencing natural gas supply constraints that, over the next 10 years, will result in an increased deficit between its current supply capacity resources and its calculated design day demand requirements. (PECO St. 2 at 7-22, Exhibits CPT-1 at 25-31, CPT-2 at 18-25, & CPT-3 at 19-29).

16. A “design day” is a 24-hour period of demand which is used as a basis for planning gas capacity requirements. “Design day requirements” refers to the amount of gas needed

to meet customer needs during design day conditions. (PECO St. 2 at 3-7).

17. “Design day conditions” are defined as an average temperature of zero-degree Fahrenheit for the 24-hour “gas day” period. A “gas day” runs from 10 AM until 10 AM the following day. This design day analysis provides assurances that firm service customers— especially residential customers—are not likely to experience interruptions when service is most essential. (PECO St. 2 at 3).

18. In the past decade, design day requirements have increased. (PECO St. 2 at 5).

19. The projected design day requirement increased to 877,531 Mcf for the winter of 2030-2031, which is 18,442 Mcf higher than the 2020-2021 requirement of 859,089 Mcf. PECO is projecting a deficit of 111,685 Mcf between the design day firm demand requirements and current resources for the 2021-2022 winter period. The deficit is expected to increase to 130,127 Mcf for the winter of 2030-2031. (PECO St. 2 at 5, 6).

20. To address this deficit, PECO is implementing a long-term infrastructure project, known as the “Natural Gas Reliability Project,” to increase its capacity supply to diminish its design day constraints. (PECO St. 2 at 3-7).

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24. In addition to increasing design day requirements, the Natural Gas Reliability Station is also needed to address customer and usage growth in Delaware County. (PECO St. 3 at 4).

25. PECO performed a linear trend analysis for both customer count and usage growth based on the 10-year (2011-2020) historical customer counts for Delaware County and Marple Township. (PECO St. 3 at 4).

26. According to PECO’s analysis, the customer count for Delaware County is expected to grow by 3-4% over the next

10 years and normalized usage will grow 2% annually. (PECO St. 3 at 4).

27. In addition to customer and usage growth in Delaware County at large, PECO's analysis confirmed that Marple Township in particular is expected to experience customer and usage growth. (PECO St. 3 at 3-7).

28. The Marple Township area is projected to experience a 3% increase in customer count over a 10-year period, which corresponds to a 1% annual increase in normalized usage over the 10-year period. (PECO St. 3 at 5; Tr. at 1195).

I.D. at 11-13.

Marple Township states that although it did not present any expert witnesses, it did not require an expert to read the numbers on the graphs PECO presented. Marple Township Exc. at 9. Marple Township questions how the location and siting of the facility at 2090 Sproul Road is reasonably necessary for the convenience and welfare of the public when PECO's projections for additional gas needs over the next ten years for both Delaware County and Marple Township show annual growth in gas usage several times greater than the population and gas usage growth during the previous decade historic figures that PECO claims support its projections. *Id.* at 9-10. Additionally, Marple Township submits that PECO admits that it currently has adequate supply to meet mandated requirements in a safe, least cost manner, and the reason for its desired additional supply is to reduce PECO's reliability on market purchases and to reduce price volatility, but that the project would not solve long term supply issues. Marple Township argues that the ALJs did not address this evidence in the Initial Decision. *Id.* at 10.

In its Replies, PECO argues that the ALJs did not err in their findings regarding the need for the Gas Reliability Station. PECO R. Exc. at 15. PECO emphasizes 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.” *Id.* (citing Marple Township M.B. at 2). In any case, PECO submits that it is well-established that in a Section 619 proceeding, the Commission does not evaluate the public utility’s need for the entire project. PECO R. Exc. at 15 (citing *O’Connor*). As such, PECO states that the ALJs correctly found 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. PECO R. Exc. at 15 (citing I.D. at 25; *Joint Application of Verizon Communications*, Docket No. A-310580F0009 (Final Order entered January 11, 2006)).

PECO additionally argues that contrary to Marple Township’s contention, the ALJs expressly acknowledged that Delaware County, Mr. Uhlman, and Ms. Baker challenged the need for the Station. PECO R. Exc. at 16 (citing I.D. at 25). However, PECO points out that the ALJs properly noted that these Parties merely offered their lay opinion on this topic and failed to offer any expert testimony. PECO asserts that it, 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. PECO R. Exc. at 16 (citing I.D., FOF Nos. 14-29). For example, PECO explains that it presented the following testimony and evidence: (1) PECO’s overall natural gas system is already constrained, and PECO is experiencing an over-dependence on delivered supply and spot market purchases (PECO St. 2 at 7-12); (2) PECO projects that its natural gas system in Delaware County will become constrained much sooner than ten years and could occur in as little as six years (PECO St. 3 at 8; Tr. at 1224); 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. (PECO R.B., Sec. III.E). PECO R. Exc. at 16.



In addressing this Exception, we will not discuss issues related solely to the need for the Gas Reliability Station. As we discussed previously, the proper inquiry under Section 619 in this case is whether the site of the public utility buildings associated with the Gas Reliability Station is reasonably necessary for the public convenience or welfare. While we find that Findings of Fact Nos. 14-20 are supported by the record, we need not address them in detail as they are based on Mr. Thillet's testimony regarding the need for the Station itself from the standpoint of ensuring the reliability of PECO's natural gas supply to meet design day requirements.

Findings of Fact Nos. 24-28 pertain to Mr. Lewis' testimony regarding why the Company selected the location in Delaware County for the Gas Reliability Station and why the Station is necessary near Lawrence and Sproul Roads in Marple Township. Among other things, PECO's analysis using hydraulic modeling showed that Delaware County has the greatest future projected need for peak day demand<sup>20</sup> due to the County's usage growth and that Lawrence and Sproul Roads was an ideal location to direct the increased supply of natural gas. PECO St. 3 at 4, 5-6. PECO's testimony and accompanying exhibits demonstrated that locating the Gas Reliability Station in Marple Township will enable PECO to meet current and projected demand for natural gas in that area, and this evidence was not sufficiently rebutted by the other Parties. In evaluating whether the proposed buildings are reasonably necessary for the convenience or welfare of the public, the utility is not required to prove that the site it has selected is absolutely necessary or that it is the best possible site. Rather, the Commission's finding that the site chosen is reasonably necessary will not be disturbed if it is supported by "substantial evidence." *O'Connor*, 582 A.2d at 433. PECO has demonstrated that its chosen site is reasonably necessary in this case and, accordingly, Marple Township's Exception is denied.

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<sup>20</sup> Peak day demand is the highest level of natural gas distributed in a year over a specified 24-hour period. PECO St. 3 at 4 n.1.

**e. Marple Township Exception No. 8, PECO's Replies, and Disposition**

In its Exception No. 8, Marple Township objects to Findings of Facts Nos. 5, 12, and 13. These Findings of Fact state the following:

5. The proposed facility is PECO's first "Gas Reliability Station"; however, this is similar to 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 be odorized in the Conshohocken plant, not at the station. (Tr. at 1355:4-18).

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12. The Natural Gas Reliability Station is comparable, yet less extensive in size and scale, to PECO's 28 other gate stations, a majority of which are located in residential areas, and some of which are located within the same proximity to residences as the Natural Gas Reliability Station. (PECO St. 4 at 8:8-21; PECO Exh. TF-6).

13. Neither the operation nor the equipment used to operate the station will be different from other gate stations. (PECO St. 4-SR at 3).

I.D. at 9, 10.

Marple Township explains that the proposed facility is PECO's first "Gas Reliability Station." Marple Township explains further that a gate station involves a transfer of ownership or custody of natural gas from the transmission line to PECO, while the proposed station will receive gas from PECO's high pressure main and the gas will be odorized in the Conshohocken plant, not at the station. Marple Township Exc. at 10 (citing Tr. at 1355). Marple Township avers that the Initial Decision erred in its comparison of the Gas Reliability Station to PECO's other existing gate stations. Marple

Township provides that PECO operates twenty-eight gate stations with only two others as close to the nearest residence as the proposed reliability station at 2090 Sproul Road. Marple Township Exc. at 10 (citing Tr. at 1358; PECO Exh. TF-6). Marple Township notes that all of the other twenty-eight gate stations are further in distance from residences and PECO does not maintain any gate stations which are closer to residences than the proposed reliability station would be. Marple Township Exc. at 10 (citing Tr. at 1358-1359).

In its Replies, PECO notes that the Findings of Facts correctly found that PECO operates twenty-eight 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 station. PECO R. Exc. at 17 (citing Finding of Fact Nos. 5, 12, 13; PECO Exh. TF-6).

We find no errors in Findings of Facts Nos. 5, 12, and 13. The record demonstrates that the proposed Gas Reliability Station is similar to PECO's existing gate stations, while the Gas Reliability Station is less extensive in size and scale.<sup>21</sup> PECO has testified that the majority of its twenty-eight gate stations are located in residential areas and operate in a similar manner to the proposed Gas Reliability Station. Some of the existing gate stations are located within the same proximity to residences as the proposed facility. PECO St. 4 at 8; PECO Exh. TF-6; PECO St. 4-SR at 3. Accordingly, Marple Township Exception No. 8 is denied.

**f. Marple Township Exc. No. 9, PECO's Replies, and Disposition**

In its Exception No. 9, Marple Township contends that the Initial Decision erred in its conclusions regarding PECO's analysis for the need for the project at this site.

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<sup>21</sup> See, e.g., Tr. at 1553-54, 1561, 1589, 1617, and 1646.

Marple Township avers that it was evident throughout the proceeding that PECO focused on the property at 2090 Sproul Road at the beginning of the planning for the project in the Spring of 2019, and PECO's further activities served to justify the selection of the site. Marple Township explains that PECO's engineers prepared drawings and plans for the Gas Reliability Station at 2090 Sproul Road in May 2019, months before PECO contacted the owners regarding site availability. Marple Township notes that PECO does not have drawings of any other location it claims to have considered for the project. Marple Township Exc. at 11.

Marple Township contends that PECO dismissed other sites that met its selection criteria as not available, even though: (1) PECO did not contact the property owners to inquire about a possible voluntary sale, and (2) PECO has the power of eminent domain to acquire any property it wished. *Id.* Marple Township avers that PECO designed the project for the 2090 Sproul Road site in the Spring of 2019, over six months before advising the Township of the proposed project and over a year before securing the right to purchase the site. According to Marple Township, PECO has never wavered from its pursuit of the 2090 Sproul Road site and has chosen to litigate "rather than take any meaningful steps to pursue acceptable alternative locations." *Id.*

In its Replies to Marple Township Exception No. 9, PECO provides that it considered and thoroughly analyzed fifteen different sites. PECO R. Exc. at 17 (citing FOF No. 49). PECO explains that 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 R. Exc. at 17 (citing PECO St. 5 at 2). PECO provides that it subsequently met with Township officials in November 2019 and solicited site recommendations from them in December 2019. PECO R. Exc. at 17 (citing PECO St. 7-SR at 4-5). PECO contends that a series of meetings with elected officials and staff members followed to further discuss the project in January, July, and November of 2020, and in January of 2021. PECO R. Exc. at 17 (citing PECO St. 1 at 7-8; Tr. at 902).

According to PECO, multiple recommendations for alternative locations for the siting of the proposed station were received, thoroughly analyzed, and determined to be infeasible for one or more reasons. PECO R. Exc. at 17-18 (citing PECO St. 5-SR at 2-7; PECO St. 3-SR at 11-12; PECO Exh. RL-6; PECO M.B., Sec. VII.A.d.ii).

Upon review, we shall deny Marple Township Exception No. 9. It is well settled that a public utility must decide in the first instance what facilities are needed and where to locate those facilities. Unless the public utility acted in an arbitrary or capricious manner, its decision should remain undisturbed. *See, e.g., Lower Chichester Township v. Pa. PUC*, 119 A.2d 674 (Pa. Super 1956); *Abington Electric Co. v. Pa. PUC*, 198 A. 901 (Pa. Super 1938). Further, as the ALJs noted, the Company must only show that it has made a reasonable decision, not the best possible decision. I.D. at 20 (citing *O'Connor*, 582 A.2d at 433). Although evidence of an alternative location may be the basis for questioning the reasonableness of the Company's decision, the mere existence of an alternative site does not invalidate the Company's judgment. *Re Philadelphia Suburban Water Company*, 1980 Pa. PUC LEXIS 81 at \*16.

In this case, PECO testified that it considered fifteen potential sites, including 2090 Sproul Road. PECO St. 5 at 4-5. PECO also indicated that it endeavored to work with Marple Township regarding its site selection. PECO St. 1 at 7-8; Tr. at 902; PECO St. 7-SR at 4-5. PECO has selected a site in the Township's Neighborhood Center District which permits "public utility use" by special exception. Marple Township Zoning Ordinance, Section 300-37, 300 Attachment 5. As previously discussed, PECO satisfied its burden of showing that the location of the buildings associated with its Gas Reliability Station is reasonably necessary for the convenience and welfare of the public. We find no error in the ALJs' reasoning and determination regarding PECO's site selection process.

**g. Marple Township Exception No. 10, PECO's Replies, and Disposition**

In its Exception No. 10, Marple Township contends that the Initial Decision erred in its lack of a detailed description of 2090 Sproul Road. Marple Township notes that Finding of Fact No. 54 does not include important details about the site, including the size of the lot and the proximity to residential homes and businesses. Marple Township Exc. at 11.

In its Replies to Marple Township Exception No. 10, PECO notes that the ALJs described and considered the location at 2090 Sproul Road and the surrounding community, concluding that the location is reasonably necessary. PECO R. Exc. at 18 (citing FOF Nos. 53-54; COL No. 6). PECO contends that the omission of the specific acreage of the property is not an error and does not warrant overturning the Initial Decision. PECO R. Exc. at 18.

We find no error in Finding of Fact No. 54. We note that no Party indicated that the proposed parcel was too small or too large for the project. While we do not believe that the exact acreage is necessary to the Commission's review in this case in determining that the location of the buildings associated with the Gas Reliability Station is reasonably necessary for the convenience and welfare of the public, such detailed information is part of the record before us and has been reviewed. We note that PECO provided that the site for the proposed project must be at least ½ acre to provide adequate space for construction and operation of the station. PECO St. 5 at 3. As PECO witness, Mr. Jim Moylan stated, the 2090 Sproul Road tract at 0.55 acres, "offers adequate size to support the construction and operation of the Natural Gas Reliability Station." PECO St. 5 at 9. A detailed description and plot plan of the proposed site of the station can be found in PECO Exh. JM-1.

Moreover, as addressed previously in this Opinion and Order, both the ALJs and this Commission have considered and noted the location of the proposed facility relative to residences and businesses. *See, e.g.*, Finding of Fact No. 12<sup>22</sup> and Finding of Fact No. 53, as amended by this Opinion and Order. Accordingly, we shall deny Marple Township Exception No. 10.

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<sup>22</sup> Finding of Fact No. 12 provides the following:

12. The Natural Gas Reliability Station is comparable, yet less extensive in size and scale, to PECO's 28 other gate stations, a majority of which are located in residential areas, and some of which are located within the same proximity to residences as the Natural Gas Reliability Station. (PECO St. 4 at 8:8-21; PECO Exh. TF-6).

I.D. at 10.

### **3. Mr. Uhlman's Exceptions,<sup>23</sup> Replies, and Disposition**

#### **a. Mr. Uhlman's Exception No. 1,<sup>24</sup> PECO's Replies, and Disposition**

In his Exception No. 1, Mr. Uhlman argues that the ALJs omitted significant information from the summary of the History of the Proceeding in the Initial Decision. Mr. Uhlman Exc. at 4. Mr. Uhlman specifically cites to various Motions, Objections, and Interim Orders pertaining to PECO's Protective Order and discovery matters, including the following: (1) Mr. Uhlman's May 17, 2021 Objection to PECO's Motion for a Protective Order; (2) Marple Township and Delaware County's May 17, 2021 Motion to Compel Discovery Directed at PECO; (3) May 20, 2021 Interim Order Directing PECO to File an Amended Motion for Protective Order; (4) PECO's May 24, 2021 Response to Marple Township and Delaware County's May 17, 2021 Motion to Compel; (5) PECO's May 27, 2021 Amended Motion for Protective Order; (6) June 1, 2021 Interim Order Granting Marple Township and Delaware County's Motion to Compel Discovery Directed to PECO; (7) June 9, 2021 Interim Order Granting

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<sup>23</sup> Mr. Uhlman's Exceptions do not strictly comply with 52 Pa. Code § 5.533(b), which provides that "[e]ach exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision." In some sections of his Exceptions, Mr. Uhlman cites certain specific Findings of Fact and Legal Conclusions to which he takes exception. In other sections, he presents arguments supporting his position without specific reference to record evidence or specific factual findings and legal conclusions. Mr. Uhlman's Exceptions are also organized by the section of the Initial Decision to which he is excepting. We recognize that Mr. Uhlman has represented himself *pro se* in this proceeding, and as such, we afford him liberal construction of our Regulations pursuant to 52 Pa. Code § 1.2 and overlook this nonconformity. *See also Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993). Accordingly, we address Mr. Uhlman's Exceptions sequentially, numbering them by section as presented in his filing for ease of reference.

<sup>24</sup> Mr. Uhlman's first Exception pertains to the History of the Proceeding portion of the Initial Decision.



Motion for Protective Order; (8) Mr. Uhlman's June 22, 2021 Objection to Protective Order; (9) PECO's July 8, 2021 Opposition to Mr. Uhlman's June 22, 2021 Objection to Protective Order; and (10) Mr. Uhlman's July 13, 2021 Reply to PECO's July 8, 2021 Opposition. Mr. Uhlman Exc. at 4-5.

In its Replies to Exceptions, PECO states that Mr. Uhlman's Exceptions should be denied because Mr. Uhlman fails to indicate why or how the inclusion of the above-mentioned information in the Initial Decision would have any bearing on the merits of this matter or on the ALJs' Findings of Facts or Conclusions of Law and, in fact, such information is immaterial to the substance of the ALJs' conclusions. PECO R. Exc. at 19.

Upon review, we will deny Mr. Uhlman's Exception. The History of the Proceeding portion of an Initial Decision and of a Commission Opinion and Order is intended as a summary of procedural events that have occurred throughout a proceeding and is not required to include every single procedural event, particularly in a complex proceeding with a substantial record, such as this proceeding. As PECO indicates, the information included in the History of the Proceeding does not impact the ALJs' or the Commission's determination on the merits of the issues in this proceeding. Moreover, to the extent Mr. Uhlman has concerns regarding the merits of the interlocutory decisions in the various Interim Orders Mr. Uhlman cites in his Exceptions, we cannot consider those concerns at this stage in the proceeding. *See* 52 Pa. Code § 5.533 (stating "Exceptions may not be filed with respect to an interlocutory decision"); *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2021-3024296 (Order entered December 16, 2021), at 47.

**b. Mr. Uhlman’s Exception No. 2,<sup>25</sup> PECO’s Replies, and Disposition**

In his Exception No. 2, Mr. Uhlman challenges the ALJs’ Findings of Fact on two distinct grounds. First, in an exception based on substance, Mr. Uhlman claims some ALJ factual findings are “flawed in some of the ‘facts’ that are put forth[.]” Mr. Uhlman Exc. at 5. Second, in an exception based on alleged omission of substance, Mr. Uhlman asserts some ALJ findings “are even more **flawed for the findings of fact that are NOT** present.” *Id.* (emphasis in original).

Addressing first the Findings of Fact challenged as “missing,” Mr. Uhlman asserts that the PIR<sup>26</sup> “is much smaller than the property at the Corner of Sproul and Cedar Grove Roads[.]” citing, presumably as support for a finding, “(see page 19, and Transcripts 1618:4-1622:7).” *Id.* Mr. Uhlman provides more context to this challenge in his discussion of the size of the PIR in his Exception No. 3, addressed further below. There Mr. Uhlman ascribes to PECO witness Mr. Israni a description of the PIR that generally identifies the impact on a person under the hypothetical scenario of an increasingly impactful event. With regard to the PIR and PECO’s proposed Station location, Mr. Uhlman asserts “one does not need to be an [sic] mathematical or engineering expert to determine that the proposed site is 0.57 acres/24,830 sqft [sic],” compared to his asserted size PIR for a facility the size of the Station. Mr. Uhlman Exc. at 19. Mr. Uhlman concludes with the statement “How this information stayed out of the Findings of Fact is a mystery to me.” *Id.*

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<sup>25</sup> Mr. Uhlman’s second Exception pertains to the Findings of Fact in the Initial Decision.

<sup>26</sup> PECO presented Mike Israni as an expert on pipeline safety and U.S. Department of Transportation, PHMSA regulations. *See* Tr. at 1542; PECO St. 6-SR at 1-6. On cross examination by Mr. Uhlman, Mr. Israni described the PIR as “the radius of a sector where if the pipeline fails, the persons or the buildings within that impact circle may be impacted.” Tr. at 1618-19.

Mr. Uhlman next challenges a “missing” ALJ Finding of Fact regarding potential sound emissions from the Station. Mr. Uhlman asserts that the sound study commissioned by PECO “indicates that noise levels will probably exceed the levels stipulated by the Marple Township Noise Ordinance[.]” Mr. Uhlman Exc. at 5. As with his challenge to the “missing” PIR fact, Mr. Uhlman provides more context to this challenge in his Exception Nos. 3 and 4, addressed below, challenging whether PECO’s proposed Station location is reasonable or reasonably necessary. Mr. Uhlman raises “the very real possibility of constant noise from industrial regulators and heaters[.]” *Id.* at 16. He also asserts that the location is not reasonable because it “introduces the probability of constant noise from regulators and heaters[.]” *Id.* at 25.

In his final challenge based on an alleged “missing” finding, Mr. Uhlman refers to an ALJ Initial Decision addressed by the Commission in *UGI Penn Natural Gas*. Focusing on the ALJ’s factual findings in that case regarding the size and other attributes of UGI’s proposed location, Mr. Uhlman states that in *UGI Penn Natural Gas*, the ALJ “cited several Findings of Fact showing that the location in question was a rural setting, on a lot of 3.2 acres, and 1,500 feet 1/3 of a mile) from the nearest home[.]” Mr. Uhlman Exc. at 5. In contrast, Mr. Uhlman complains that the ALJs on this record “neglected to mention . . . that the proposed location is in a suburban, densely populated residential and neighborhood business setting on a lot of 0.57 acres, and less than 100 feet from the closest inhabited residence.” *Id.* at 5-6.

Mr. Uhlman’s challenges to the ALJs’ factual findings he alleges are “flawed” due to facts “that are not present” may be sorted by subject matter into four categories: (1) gas pressure; (2) aesthetics; (3) location; and (4) need.

In addressing gas pressure, Mr. Uhlman challenges Findings of Fact Nos. 5 and 30,<sup>27</sup> criticizing findings regarding ratings of high-pressure mains, the project design, and system input/output. Mr. Uhlman presents no citation to other record evidence to support alternate findings. Mr. Uhlman Exc. at 6-7. In his challenge to ALJ Finding of Fact No. 9, Mr. Uhlman criticizes the ALJs' finding that the telecommunications building will provide "an enhanced aesthetic appeal" by characterizing the finding as an opinion not a fact. *Id.* at 6.

In excepting to Findings of Fact Nos. 12 and 44-52,<sup>28</sup> Mr. Uhlman challenges several factual findings addressing location. In contesting ALJ Finding of Fact No. 12, Mr. Uhlman criticizes the ALJs' finding that the majority of PECO's gate stations are located in residential settings, including "some" within the same proximity to residences as the Station. On this point, Mr. Uhlman asserts that "some" would be more accurately represented as "two." Mr. Uhlman Exc. at 6. In challenging the remainder of

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<sup>27</sup> These Findings of Fact provide as follows:

5. The proposed facility is PECO's first "Gas Reliability Station"; however, this is similar to 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 be odorized in the Conshohocken plant, not at the station. (Tr. at 1355:4-18).

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30. Before injecting the additional supply of natural gas, the pressure must be reduced to be compatible with PECO's distribution system, which operates at a pressure of 99 pounds per square inch (p.s.i.). (PECO St. 4 at 3-4; PECO St. 3-SR at 3-4).

I.D. at 9, 13.

<sup>28</sup> For a full recitation of these Findings of Fact, see I.D. at 15-16.

these findings addressing location, Mr. Uhlman criticizes PECO's site selection process and its reasons for choosing 2090 Sproul Road while rejecting other sites, particularly the Don Guanella site. Challenging PECO's evidence, Mr. Uhlman asserts in contesting Finding of Fact No. 50 that PECO's claims of "unreasonable engineering constraints" have not been supported other than by the opinion of PECO (SR-3, p. 6; Tr. 122:3-25)[.]” Except for record references in his challenges to Findings of Fact Nos. 48-50, Mr. Uhlman criticizes these findings without citation to other record evidence to support alternate findings. *Id.* at 6-10.

Finally, in contesting ALJ Findings of Fact Nos. 24, 26-28, 32, and 38,<sup>29</sup> Mr. Uhlman challenges the ALJs' findings regarding PECO's projected future gas supply needs. *Id.* at 6-7. Mr. Uhlman challenges Findings of Fact Nos. 24 and 27 as "conjecture," Nos. 26 and 28 addressing population and usage growth as "conjecture that begs for a rational explanation," and No. 32, in which the ALJs found that PECO's taking ownership of the gas delivered to the Station will benefit customers by providing reliability and price control, as "an unnecessary, gratuitous, approbatory obligation to PECO." Mr. Uhlman criticizes Finding of Fact No. 38, which also addressed peak day demand due to usage growth, because it "is unsupported by anything except (PECO St. No. 3, at 4-6)" and "is a restatement of Findings of Fact #26 and #28." *Id.*

Mr. Uhlman again provides further context to his challenge to the ALJs' factual findings regarding PECO's studies and testimony addressing anticipated customer and usage growth over the next ten years in his Exception No. 3, which is addressed in more detail below. Addressing the ALJs' discussion of the relative weight of the testimony of PECO's witnesses versus that of other Parties, including himself, Mr. Uhlman contends that "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

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<sup>29</sup> For a full recitation of these Findings of Fact, *see* I.D. at 12, 13, and 14.

experts[.]” Mr. Uhlman Exc. at 18. Ultimately, Mr. Uhlman refers to PECO’s expert testimony forecasting customer and usage growth as “flimsy explanations[.]” *Id.* at 21. Mr. Uhlman’s challenges to the factual findings are presented without citation to other record evidence to support alternate findings.

In response to the factual findings Mr. Uhlman asserts are missing, PECO initially notes that nothing in our Regulations suggests that a Party may, through Exceptions, propose additional factual findings. Rather, PECO asserts, parties are provided the opportunity through Exceptions to identify particular factual findings to which exception is taken and provide supporting reasons for each exception. Moreover, PECO notes that Mr. Uhlman “largely fails to explain why the findings are in error or if or how his proposed additions or modifications will alter” the ALJs’ legal conclusions or “have any bearing on the merits” of the proceeding overall. PECO R. Exc. at 19-20, n.14. PECO further asserts that in many instances, Mr. Uhlman attempts to modify existing factual findings without providing supporting citations to the record. *Id.* at 19.

Responding substantively to factual findings Mr. Uhlman claims are “missing,” PECO asserts that the ALJs properly determined that Mr. Uhlman’s concerns about the PIR and sound emissions were beyond the scope of this proceeding. PECO R. Exc. at 20. As to Mr. Uhlman’s concerns that sound from the Station may exceed reasonable levels, PECO responds that those concerns derive from an “incorrect assertion” following “an incomplete line of questioning that is unsupported by any evidence in the record.” *Id.* at 20 n.15 (citing PECO R.B. Supp. at 13-14, n.13). Finally, in response to Mr. Uhlman’s allegation that the Initial Decision is missing a Finding of Fact regarding PECO’s chosen location within a residential area, PECO asserts that the ALJs adequately addressed this issue in their Findings of Fact Nos. 53-54, which described the character of the neighborhood and zoning classification for 2090 Sproul Road. PECO R. Exc. at 20.

Responding to Mr. Uhlman's challenges to the Findings of Fact he asserts are in error, PECO argues that the Exceptions should be denied on four grounds: (1) they do not identify an actual error with the factual finding; (2) they seek only to add Mr. Uhlman's "extraneous commentary which is immaterial to the ultimate merits of this proceeding"; (3) they cite to no countervailing evidence to support a finding of factual error; and (4) they largely repeat the Exceptions of Marple Township. *Id.*

PECO responds to the challenged Findings of Fact by subject matter similar to our breakdown above. To Findings of Fact Nos. 5 and 30, addressing gas pressure, PECO asserts that Mr. Uhlman seeks to insert extraneous regulator design pressure information that provides no indication of actual error by the ALJs and that the ALJs adequately considered pressure information, citing Finding of Fact No. 45 and I.D. at 26. PECO R. Exc. at 20, 21.

To Finding of Fact No. 9, addressing aesthetics and challenging as opinion the ALJs' finding that a building intended to house telecommunications equipment will provide enhanced aesthetic appeal, PECO responds that there is neither actual error nor countervailing evidence cited by Mr. Uhlman to support granting the Exception. PECO R. Exc. at 20.

PECO responds to Mr. Uhlman's challenges to Findings of Fact Nos. 12, 44-48, 49, 50-51, each of which in various ways criticized PECO's chosen site location, in a similar fashion. As to criticism of Finding of Fact No. 12 regarding other gate stations, PECO asserted that Mr. Uhlman's proffered information regarding PECO's other gate stations is extraneous and presents no actual error to the ALJs' findings, which, as addressed further in response to Marple Township Exception No. 8, were correctly found by the ALJs to be comparable to the proposed Station, with two of the existing stations being within the same proximity to residential dwellings as the proposed Station. PECO R. Exc. at 20.

In response to Mr. Uhlman’s challenges to Findings of Fact Nos. 44-48, 49, 50-52 criticizing PECO’s rejection of the Don Guanella site, PECO again asserts that Mr. Uhlman presents extraneous commentary that assigns no actual errors to the ALJs’ findings and cites to no countervailing record evidence to support changing the findings, which are supported by substantial evidence. PECO R. Exc. at 21. Moreover, PECO asserts that as it responded to the Exceptions of Marple Township, PECO need not choose the “best” site. PECO’s chosen site was supported by the only expert testimony and evidence of record, including testimony that the Don Guanella site was unacceptable because of engineering constraints, zoning issues, pressure drops, and pending eminent domain litigation that also included a “long history” of challenges as to appropriate use. PECO R. Exc. at 21; *see also id.* at 8. PECO also refutes Mr. Uhlman’s challenge to PECO’s site selection process, asserting that as demonstrated in the Initial Decision, PECO evaluated fifteen different locations, including the Don Guanella site. *Id.* at 21-22; *see also id.* at 17.

Finally, as to Mr. Uhlman’s challenges to Findings of Facts Nos. 24, 26-28, 32, and 38, PECO again asserts that Mr. Uhlman presents extraneous commentary that assigns no actual error to the findings, which are supported by substantial evidence. PECO repeats its criticism that Mr. Uhlman cites to no countervailing record evidence. PECO R. Exc. at 21. PECO also relies on its response to the Exceptions of Marple Township that the Commission’s role is not to sit as a super board of directors or reevaluate the utility’s timing and need for the entire project. Further, PECO asserts that ample expert evidence of record refuted by only lay opinion supported PECO’s design day deficits, gas usage projections, and supply constraints in Marple Township and Delaware County that gave rise to the planning for and preparation of the Station. PECO R. Exc. at 21; *see also id.* at 15-16.

Overall, PECO contends that Mr. Uhlman’s Exceptions to the ALJs’ Findings of Fact fail to assign any error to the findings, fail to cite to any countervailing



record evidence that would support any modification to the findings, and fail to offer or explain how Mr. Uhlman's additional commentary would have any material bearing on the outcome of the Initial Decision.

Upon review, we agree with PECO's overall response and will deny Mr. Uhlman's Exception No. 2. Mr. Uhlman fails to assert how the ALJs' findings were in error in light of the cited record evidence on which they relied; he fails to cite competent, qualified countervailing record evidence that would rebut the ALJs' findings and support alternative findings; and he fails to demonstrate how, under the legal standard applicable to this proceeding, adoption of commentary raised in his Exception No. 2 would have any material bearing on or alter the outcome of the ALJs' Initial Decision.

The absence of factual findings raised by Mr. Uhlman in support of his position speaks to their lack of relevance, their lack of persuasion, their lack of competent record support, and their lack of impact on the ALJs' analysis in a manner that would alter the disposition or compel a different outcome. In almost every instance in his Exception to the ALJs' findings or lack thereof, Mr. Uhlman cited no record evidence to support alternate findings relevant to the issue in this case. Mr. Uhlman's "missing" findings have no bearing on the issue in this case and were properly determined by the ALJs to be beyond the scope. Similarly, Mr. Uhlman's challenges to the factual accuracy of the specified factual findings also fail because he cites no competent countervailing record evidence relevant to the issue at hand that would alter the disposition or compel a different outcome.

The ALJs properly established the Commission's broad jurisdiction over public utility facilities and the narrow focus of a Section 619 proceeding.

The lack of authority for a local municipality to regulate the design, location, or construction of public utility facilities is consistent with the long line of cases holding that

public utilities are exempt from local ordinances. The exception to this principle is the regulation of buildings, which is found in the Municipalities Planning Code.

I.D. at 18-19 (footnotes omitted).<sup>30</sup> Focusing on Section 619 of the MPC, the ALJs elaborated that “a municipality may exercise its zoning powers over a public utility building unless the Commission determines that the ‘site is reasonably necessary for the public convenience or welfare.’” *Id.* at 19 (footnote omitted). Citing well-established case law interpreting that standard, the ALJs correctly concluded that “Commission review under Section 619 is very narrow and focuses on whether the proposed *buildings* should be exempt from municipal zoning regulation.” *Id.* at 20 (footnote omitted) (emphasis in original); *see also* I.D. at 21 (“It is very important to emphasize the very limited scope of the Commission’s inquiry under Section 619 of the MPC.”).

In response to the alleged “missing” factual finding on the impact radius, Mr. Uhlman cites to no evidence to show that a difference in impact area between 2090 Sproul Road and the Don Guanella property would change our legal disposition. Even if relevant to a Section 619 analysis, which it is not, PECO’s expert witness Mr. Israni testified that the size of an impact zone is not a matter relevant to the location of a regulation station. On cross-examination, Mr. Israni stated that “[t]here are no regulations that prevent having a restaurant or building or even a church within [the] impact zone. ... [R]egulations mainly advise what [gas] operators can do. But not on the location of those [regulating] facilities.” Tr. at 1621-22; *see also* Tr. at 1600 (there

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<sup>30</sup> The Pennsylvania Supreme Court recently affirmed the Commission’s “all-embrasive regulatory jurisdiction” over public utilities in *PPL Electric Utilities Corporation vs. City of Lancaster*, 214 A.3d 639 (Pa. 2019). The Court observed there that “[i]f each county were to pronounce its own regulation and control over electric wires, pipe lines and oil lines, the conveyors of power and fuel could become so twisted and knotted as to affect adversely the welfare of the entire state.” On that basis, the Court determined that “the Legislature has vested in the [Commission] exclusive authority over the complex and technical service and engineering questions arising in the location, construction and maintenance of all public utilities facilities.” *Id.*, 214 A.3d at 649-50.

are no regulations on where regulating stations are to be located), Tr. at 1576-77 (location selection depends on many reasons beyond the residential density near it). Mr. Israni affirmed on redirect examination that “[t]here are no federal regulations regulating any part of the system that are located within the impact zone.” Tr. at 1650-51. Regulations address management of the risk within a location, not the location itself.<sup>31</sup>

To the extent the relative size of the PIR between PECO’s chosen location and Mr. Uhlman’s preferred location was not the subject of a finding of fact by the ALJs, we find the relative size differential in this case is not a determinative factor and would not alter the ALJs’ disposition. Mr. Uhlman’s challenge based on the assertion that a factual finding on the PIR is “missing,” an issue also addressed in our disposition of Marple Township Exception No. 3 above and Mr. Uhlman’s Exception No. 3 below, lacks evidentiary support and is not relevant to our disposition.

As to Mr. Uhlman’s challenge that PECO’s sound study “will probably” exceed Marple Township’s noise ordinance, we note that Mr. Uhlman qualifies this complaint with terms such as possible, probably, or likely. *See, e.g.*, Mr. Uhlman Exc. at 5, 16. On this basis, the Exception is speculative and lacking reliable or persuasive evidence on which to base a finding. Moreover, as the ALJs also properly concluded and as addressed previously herein, issues related to matters such as noise and aesthetics are beyond our review in this type of proceeding. I.D. at 22 (citing *UGI Penn Natural Gas*). While not relevant to site location under Section 619, we nonetheless conclude, as we did in *UGI Penn Natural Gas*, that both PECO and the ALJs adequately considered the impact of sound within the locale. As PECO witness Mr. Lewis testified, PECO will

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<sup>31</sup> While PECO witness Mr. Israni agreed on cross-examination with the statement that the likelihood of an injury or death from a gas incident is reduced the more removed a facility is from populated areas, he also testified that “the incident rate is so low that . . . regulating stations have very, very little chance of any incident or catastrophic incident happening.” Tr. at 1566.

implement sound recommendations in order to comply with Marple Township’s noise ordinance, a commitment PECO affirmed throughout this proceeding. *See* PECO St. 4-SR at 17-18; PECO R.B. Supp. at 13-14, n.13; PECO R. Exc. at 14; *see also* I.D. at 10, Finding of Fact No. 8 (Station building will include several sound-dampening features), Finding of Fact No. 10 (perimeter security fence will be composed of sound-absorbing material); I.D. at 20 (Station building and fence will reduce sounds), and I.D. at 24 (main Station building will include a sound insulating layer).<sup>32</sup> Additionally, Marple Township’s witness, Nancy Wilson, a Senior Industrial Hygienist at Pennoni, testified that based on a projected sound level contribution study PECO’s consultants conducted, the sound level projections fell within the Marple Township noise code criteria. Marple Township St. 3 at 3.

For these reasons, we find no support for Mr. Uhlman’s Exception that the absence of a finding that the noise levels may exceed the levels in Marple Township’s noise ordinance impairs the ALJs’ factual findings and ultimate legal conclusion in this case. Mr. Uhlman’s “missing” finding regarding the issue of sound, which we also address in the disposition of Marple Township Exception No. 6 above and Mr. Uhlman Exception No. 3 below, lacks evidentiary support and is not relevant to our disposition.

Finally, we find Mr. Uhlman’s reliance on *UGI Penn Natural Gas* to support his criticism of the ALJs’ failure to address UGI’s chosen location compared to PECO’s in this case to be inapposite to this decision. A comparison of PECO’s deployment of facilities in a location in its service territory to another utility’s deployment of facilities in a location in a totally different service territory cannot support any findings or conclusions absent any evidence of or argument sustaining its relevance

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<sup>32</sup> Upon questioning by Mr. Uhlman on this issue, PECO expert witness Mr. Israni also testified that the amount of attention being paid to noise emissions from this proposed PECO Station is greater than any other he had experienced, and he would not criticize anything PECO is doing regarding sound. Tr. at 1647.

to PECO's service area. We have no such evidence, nor do we suggest that even if it was part of the record, it would be relevant to the legal issue at hand. Regardless of our conclusion in *UGI Penn Natural Gas*, the ALJs correctly concluded that PECO's selected site "need not be absolutely necessary." I.D. at 27, citing *UGI Penn Natural Gas*; see also PECO R. Exc. at 9. Mr. Uhlman's complaint about a "missing" finding describing the lot at 2090 Sproul Road lacks evidentiary support and is not relevant to our disposition.

As to Mr. Uhlman's challenges to specifically enumerated ALJ Findings of Fact, we agree with PECO that there are no indications of factual errors in the referenced findings, as the ALJs' findings are based on substantial record evidence often comprising unrefuted expert testimony. Mr. Uhlman cites to no relevant countervailing evidence that would change the outcome of the proceeding, and the ALJs properly addressed findings relevant to the scope of this proceeding.

Of those factual findings that Mr. Uhlman challenges based on accuracy, all were fully and accurately addressed by the ALJs based on the competent evidence of record before them. Mr. Uhlman challenges nineteen ALJ Findings of Fact. With the exception of Findings of Fact Nos. 48-50, however, as PECO contends, he presents no citation to record evidence that might be interpreted as supporting countervailing alternative findings. Additionally, we find no support for modification of the ALJs' disposition based on the record citations Mr. Uhlman does provide in his contests to Findings of Fact Nos. 48-50. More importantly, however, aside from asserting his own statements in his Exception, without citation to the record, Mr. Uhlman fails to explain how the ALJs' findings are in error, fails to present an alternative supportable finding, and fails to explain how his complaints would impact the ALJs' Initial Decision and compel a different outcome. On those bases alone, we would be within our authority to reject Mr. Uhlman's remaining challenges presented in his Exception No. 2. However, we will address the points asserted by Mr. Uhlman.

On the issue of gas pressure that Mr. Uhlman asserts in his challenges to Findings of Fact Nos. 5 and 30, the ALJs fully addressed this issue. After describing Mr. Uhlman's questioning the various pressure points and his accusation that PECO's explanations were "'inconsistent' and confusing[.]" the ALJs determined that all of Mr. Uhlman's "general observations do not rebut the credible testimony presented by PECO regarding the engineering constraints that form the basis of the half-mile siting requirement [and] do not support his argument challenging the half-mile criteria[.]" I.D. at 26. Mr. Uhlman presents no grounds to disturb the ALJs' Findings of Fact Nos. 5 and 30.

In challenging Finding of Fact No. 9, Mr. Uhlman contests as "a finding of opinion, not fact," the ALJs comment that the building designed to house telecommunications equipment will provide "an enhanced aesthetic appeal." As PECO responds, and the ALJs agreed, this finding is supported by substantial evidence. PECO witness Mr. Flanagan testified that the building is designed to provide security to the facilities, to provide protection from weather and other corrosive effects, and to ensure the provision of safe and reliable service to the public. Its "enhanced aesthetic" is only an "added" benefit to the site design. PECO St. 4 at 7. Further, as previously stated, aesthetics are not germane to our Section 619 determination.

On the issue of location, we note initially that the ALJs correctly concluded that the "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." I.D. at 20 (footnote omitted); *see also Del-AWARE*, 513 A.2d at 595-96 (determination that a site is reasonably necessary for the public convenience or welfare does not require Commission reevaluation of the entire project including as to location and aesthetics). In response to Mr. Uhlman's Exception to Findings of Fact Nos. 12 and 44-52 regarding location, a substantial portion of this argument challenges PECO's process and chosen Station location at 2090 Sproul Road rather than the Don Guanella site. These challenges

are fully addressed in the disposition of Marple Township Exception No. 2 above and Mr. Uhlman's Exception No. 3 below. We reject Mr. Uhlman's Exception to these ALJ Findings of Fact in his Exception No. 2 without further addressing that issue here.

With regard to his challenge to the location of other PECO stations in residential areas, Mr. Uhlman's preference for the adjective "two" rather than "some" as set out in his challenge to Finding of Fact No. 12 is a level of detail that does not change the analysis or outcome in this proceeding. Finally, in response to Mr. Uhlman's challenges to Findings of Fact Nos. 48-50, the only challenges in which Mr. Uhlman has provided a record citation, we have already addressed the relevance of the PIR (Finding of Fact No. 48) and PECO's chosen location (Finding of Fact No. 49). Mr. Uhlman's record citations do nothing to persuade us otherwise. Mr. Uhlman's statement in his challenge to Finding of Fact No. 50, that it is only PECO St. 3-SR that supports the finding that unreasonable engineering constraints related to other sites, undermines his own argument. The expert engineering testimony of PECO witness Mr. Lewis relied on by the ALJs is persuasive, competent evidence as to engineering constraints presented in the site selection process that was not refuted by any other qualified evidence of record. *See* PECO St. 3 at 6; PECO St. 3-SR at 12; *see also* PECO St. 5 at 4, PECO St. 5-SR at 3. Mr. Uhlman's challenges are to no avail.

Finally, for many of the same reasons already stated, we find that Mr. Uhlman presents no valid argument or evidence to support his challenges to Findings of Fact Nos. 24, 26-28, 32, and 38. Similar to our disposition of his challenge to PECO's expert testimony as the only evidence supporting PECO's claimed engineering constraints at other sites, Mr. Uhlman's complaint that Finding of Fact No. 38 is supported only by the testimony of PECO witness Mr. Lewis in his Statement 3 again undermines his own argument. PECO's expert testimony from several witnesses, relied on by the ALJs and unrefuted by any other competent evidence of record, is substantial evidence that supports the ALJs' findings. The expert testimony of PECO witness

Mr. Lewis in PECO Statement 3, evidence relied on by the ALJs that Mr. Uhlman suggests is insufficient, supports the location selected for the Station from the standpoint of customer and usage growth in Delaware County. *See also* PECO St. 2 at 3-7; I.D. at 23-24.

Responding to the criticisms of Mr. Uhlman and others opposed to the Station, the ALJs addressed the evidence on need as follows:

[N]either 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.

I.D. at 25 (footnote omitted). We agree with the ALJs. Mr. Uhlman has failed to present any competent evidence or argument ascribing error to the ALJs' factual findings to warrant rejecting or otherwise altering the findings. As we also address in the disposition of Marple Township Exception No. 7 above and Mr. Uhlman Exception No. 3 below, the ALJs' findings are amply supported by record evidence, rendering Mr. Uhlman's challenges of no avail.

In concluding our disposition of Mr. Uhlman's Exception No. 2, we agree with PECO that while raising assertions that the Findings of Fact are inadequate in what they purport to miss or misstate, Mr. Uhlman fails to explain how his proffered facts would alter the outcome of this proceeding. Mr. Uhlman also fails to refute PECO's evidence, most often in the form of educated, informed expert testimony, that provided the factual basis for the ALJs' findings, with any countervailing evidence. The absence



of Mr. Uhlman's preferred findings and the ALJs' specific challenged findings are both substantiated by a preponderance of record evidence that was unrefuted on any commensurate qualitative basis sufficient to override the ALJs' findings or have any other bearing on the ultimate outcome of the proceeding.

For all of the above reasons, we deny Mr. Uhlman's Exception No. 2 and adopt the ALJs' findings, which we conclude are both well within their discretion and amply supported by the record.<sup>33</sup>

**c. Mr. Uhlman's Exception No. 3,<sup>34</sup> PECO's Replies, and Disposition**

In his Exception No. 3, Mr. Uhlman objects to the following discussion in the Initial Decision:

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. [Citing *UGI Penn Natural Gas*] 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*

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<sup>33</sup> While the Commission is the ultimate arbiter of the evidence, the Commission typically will not disturb an ALJ's evidentiary rulings or findings of fact unless it is determined to be an abuse of discretion or lacking substantial evidence. *See Pa. PUC et al. v. Duquesne Light Company*, Docket No. R-2021-3024750 (Order entered December 16, 2021) at 71 n.17, *citing Baker v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3004294 (Order entered September 23, 2020) at 15.

<sup>34</sup> Mr. Uhlman's Exception No. 3 pertains to the Discussion portion of the Initial Decision.

*request for the buildings associated with the site to be exempt from local zoning will be granted.*

Mr. Uhlman Exc. at 11 (quoting I.D. at 22) (emphasis added by Mr. Uhlman). In response, Mr. Uhlman makes several pages of arguments addressing this discussion section but fails to enumerate and identify specific exceptions to a finding of fact or conclusion of law, pursuant to 52 Pa. Code § 5.533. Nonetheless, Mr. Uhlman raises four general arguments contending that the Initial Decision: (1) did not consider the zoning in accordance with 52 Pa. Code § 69.1101; (2) applied the wrong legal standard for a proceeding under Section 619 of the MPC; (3) incorrectly followed the prior Commission precedent in *UGI Penn Natural Gas*; and (4) did not fulfill the Commission’s role in adjudicating siting disputes between public utilities and municipalities. Mr. Uhlman Exc. at 11-21.

In his first argument, Mr. Uhlman asserts that the Initial Decision did not follow the Commission’s policy statement under 52 Pa. Code § 69.1101 requiring the Commission to consider the impact of its decisions on local comprehensive plans and zoning ordinances. Mr. Uhlman also cites to Section 619.2(a) of the MPC, pertaining to the effect of comprehensive plans and zoning ordinances,<sup>35</sup> and to the Township’s zoning ordinance for the proposed Station location which has been zoned as “Neighborhood Center District.” Mr. Uhlman Exc. at 12-13.

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<sup>35</sup> (a) 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(j), *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.

Mr. Uhlman Exc. at 12 (quoting 53 P.S. § 10619.2(a)) (emphasis added by Mr. Uhlman).

Additionally, Mr. Uhlman argues that the Township and the County have said that PECO's proposed site at the corner of Sproul and Cedar Grove Roads is not an appropriate location and have encouraged PECO to move the facility less than a mile away, to the corner of Sproul and Reed Roads, which is the Don Guanella property being purchased by the County. According to Mr. Uhlman, Pennsylvania has given power to the Commission to determine where this facility should 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. Mr. Uhlman Exc. at 12-13.

In response to Mr. Uhlman's first argument, PECO argues that the ALJs expressly acknowledged the Commission's policy statement and the obligations under 52 Pa. Code § 69.1101. The Company adds that the ALJs affirmatively considered the local zoning of 2090 Sproul Road which permits public utility facilities by special exception. Accordingly, PECO submits that there was no error in considering impacts on local comprehensive plans and zoning ordinances and that Mr. Uhlman's Exception should be denied. PECO R. Exc. at 22 (citing I.D. at 16 (Finding of Fact No. 54), 19 and 28).

In his second argument, Mr. Uhlman contends that the ALJs applied the wrong legal standard for Section 619 proceedings by misinterpreting the Commonwealth Court's decision in *Del-AWARE*. Mr. Uhlman argues that *Del-AWARE* does not require the Commission to reevaluate the entire project in a Section 619 proceeding but rather to determine whether the site of the proposed facility is appropriate to further the public interest. Mr. Uhlman Exc. at 13 (citing *Del-AWARE*, 513 A.2d at 595). Mr. Uhlman posits that the existence of the proposed Station is not being contested but submits that the Commission does have jurisdiction over the location of the buildings at the Station. In support of his contention, Mr. Uhlman cites to ALJ DeVoe's June 1, 2021, Interim

Order stating that the issue in this case is whether it is reasonably necessary for the Station to be sited at 2090 Sproul Road. Mr. Uhlman Exc. at 13.

In its response to Mr. Uhlman's second argument, PECO reiterates its arguments pertaining to the proper scope of review in a Section 619 proceeding as summarized in its response to the Township's Exception No. 1. PECO states that the ALJs properly applied the correct legal standard in accordance with Commonwealth Court and Commission decisions. PECO R. Exc. at 23 (citing *Del-AWARE, O'Connor*, and *UGI Penn Natural Gas*). In addition, the Company asserts that it offered direct evidence that the proposed Station would be safe and comply with noise and environmental requirements as summarized in its responses to the Township's Exception Nos. 3-6. PECO also argues that the other Parties offered no credible countervailing evidence on these issues even though such issues are not germane to this proceeding. PECO R. Exc. at 23.

In his third argument, Mr. Uhlman asserts that the decision in *UGI Penn Natural Gas* is factually and legally distinguishable and should be afforded little weight in this proceeding. Mr. Uhlman argues that in this case, the Township objects to the proposed Station location based on its smaller size and proximity to a densely populated residential and neighborhood retail business zone. According to Mr. Uhlman, the proposed facility in this proceeding is located "downtown" with increased concerns of noise, pollution, fire and explosions as opposed to the rural location at issue in *UGI Penn Natural Gas*. Mr. Uhlman Exc. at 15-16.

In response to the third argument, PECO asserts that, although some factual differences with *UGI Penn Natural Gas* can be identified, such differences have no bearing on the proper legal scope of review to be applied in this proceeding. The Company highlights that both *UGI Penn Natural Gas* and this proceeding involve a natural gas pressure regulating station and the central issue in each is the reasonable

necessity for the buildings sheltering the facility equipment in each station. PECO argues that, by applying the proper legal standards adopted in *UGI Penn Natural Gas* and other applicable precedent to this case, the ALJs properly determined that the Company's Petition should be granted. PECO R. Exc. at 23-24.

In his fourth argument, Mr. Uhlman states that the ALJs failed to fulfill the Commission's role in adjudicating siting disputes between public utilities and municipalities. Mr. Uhlman argues that PECO has not satisfied its burden to establish that the location of the buildings is reasonably necessary for the convenience and welfare of the public. Mr. Uhlman submits that "reasonable" means giving consideration to the Township's local land use, planning, and zoning requirements and "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." Mr. Uhlman Exc. at 16.

Mr. Uhlman also asserts that determining if the siting of the building is necessary requires a determination that no alternative site is technologically feasible. Mr. Uhlman proffers that when the Commission gives consideration to the needs of local zoning and the wants of PECO, it should determine that the location of the proposed Station is not reasonably necessary for the convenience and welfare of the public. *Id.* at 17.<sup>36</sup>

In response to the fourth argument, PECO contends that the ALJs properly adjudicated the pertinent legal issues in this proceeding. The Company notes initially that this proceeding was initiated through PECO's Petition under Section 619 of the MPC

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<sup>36</sup> Mr. Uhlman also reiterates arguments previously raised in his Exceptions pertaining to the Findings of Fact and in the Township's Exceptions alleging the misapplication of the PIR and the projected timeline and the need for the proposed Station. Mr. Uhlman Exc. at 17-21.

and not through a complaint. In accordance with the procedure established by the General Assembly for Section 619 proceedings, PECO continues, the Initial Decision employed the proper standard of review and found the Company's buildings at 2090 Sproul Road are reasonably necessary for the public convenience and welfare. Thus, PECO argues that Mr. Uhlman's Exception should be denied. PECO R. Exc. at 24.

Upon review, we find no error in the ALJs' consideration of the Petition and PECO's request for an exemption from local zoning pursuant to Section 619 of the MPC. Moreover, the ALJs correctly acknowledge that the Company has attempted to address local land use and development concerns. For example, the ALJs explained that "PECO has made an effort to consider the aesthetics of the Station and attempted to propose materials and landscaping designs that will reduce the perceived inconsistent nature of the site with the surrounding buildings." I.D. at 28; *see also*, PECO M.B. at 21-22, 27-28; PECO St. 4-SR at 7-8 (Confidential Version with Stricken Portions Redacted); and PECO St. 7-SR at 9. Moreover, the ALJs noted that the selected location is within a zoning district that includes commercial uses and allows public utility use by special exception and thus the Township itself contemplated utility use at this location when enacting the zoning classification. I.D. at 16, Finding of Fact No. 54. "This location is adjacent to a main thoroughfare (Sproul Road) which *already* generates traffic and noise and which roadway feeds the commercial establishments situated in N Neighborhood Center District." *Id.* (emphasis in original) (citing PECO St. 5 at 9; Tr. at 1154). Accordingly, we find that the ALJs appropriately considered various potential impacts of local land use issues consonant with 52 Pa. Code § 69.1101.

Regarding Mr. Uhlman's additional arguments, and for the reasons set forth in the disposition sections addressing the Township's Exceptions, *supra*, we conclude that the ALJs applied the correct standard of review for a proceeding involving Section 619 of the MPC, subject to the modification in this Opinion and Order as

discussed in the disposition of the Township’s Exception No. 1. Accordingly, we shall deny Mr. Uhlman’s Exception No. 3.

**d. Mr. Uhlman’s Exception No. 4,<sup>37</sup> PECO’s Replies, and Disposition**

In his Exception No. 4, Mr. Uhlman challenges the ALJs’ COL No. 6, that the location selected by PECO at 2090 Sproul Road for its Station is reasonably necessary. Mr. Uhlman recites the language of Section 619 of the MPC while highlighting the words “situation” and “reasonably.” He also quotes the Commission’s policy statement at 52 Pa. Code § 69.1101 while highlighting language that the Commission will “consider the impact of its decisions on local comprehensive plans and zoning ordinances.” Mr. Uhlman then asserts that “there is ample evidence in the record that shows that this conclusion is false, and for two reasons.” Mr. Uhlman Exc. at 22.

The reasons Mr. Uhlman posits in challenging the ALJs’ legal conclusion comprise restatements of his myriad positions throughout his Exceptions on the feasibility of other locations, primarily the Don Guanella site. According to Mr. Uhlman, PECO’s chosen site is “technologically, financially, politically, legally, environmentally, and in every other way **not necessary.**” *Id.* (emphasis in original). To support his legal conclusion, Mr. Uhlman asserts that the Don Guanella site is preferred by other Parties and otherwise fits PECO’s criteria. Mr. Uhlman also argues that PECO’s chosen site is “technologically, financially, politically, legally, environmentally, and in every other way **not reasonable.**” *Id.* at 23 (emphasis in original). To support this legal conclusion, Mr. Uhlman argues that placing the Station at PECO’s site conflicts with Marple Township’s comprehensive plans and zoning ordinances, as proven by Marple Township’s denial of “PECO’s request for a Special Exception [ ], the purpose of this

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<sup>37</sup> Mr. Uhlman’s Exception No. 4 pertains to the Conclusions of Law in the Initial Decision.

procedure,” and aspects of the Station will be ugly, noisy, and risk “the small possibility of a catastrophic explosion.” *Id.* at 23.

PECO responds that Mr. Uhlman’s position is based on his “subjective belief” that the Don Guanella site offers a better location and that it has “addressed [Mr. Uhlman’s] issues exhaustively above [in its Replies] and in prior briefing,” which it incorporates by reference. PECO argues Mr. Uhlman’s Exception to the ALJs’ Conclusion of Law No. 6, accordingly, should be denied. PECO R. Exc. at 24-25.

We agree with PECO that the issue raised in Mr. Uhlman’s Exception No. 4 has been addressed in detail and deny this Exception. We find this to be the case not only by PECO in its advocacy and presentation of evidence but also by the ALJs’ analysis and conclusion in their Initial Decision. While under our policy statement we consider the impact of our decision on municipal planning and zoning in a Section 619 proceeding, the policy statement does not trump the statute or case law. On the facts presented in this case, we conclude that the ALJs have fulfilled our policy of considering the impact of PECO’s proposed location for the Station on Marple Township’s zoning and planning. This includes their consideration of the facts that PECO’s chosen location is at a site previously used for a gas station and permitting public utility use. I.D. at 21; PECO St. 7-SR at 10.

We also conclude that in concert with the legal standard applicable to this proceeding, we have thoroughly addressed this issue in this Opinion and Order in response to Mr. Uhlman’s and other Parties’ Exceptions. Indeed, the entire reason for this proceeding, as Mr. Uhlman acknowledges, is to determine whether under Section 619 of the MPC PECO’s proposed location is reasonably necessary for the convenience or welfare of the public. If, after notice and hearing, we find that it is, as we do in this Opinion and Order, it is exempt from local zoning requirements and restrictions.



On the evidentiary record before us, in consideration of our policy statement, and in conformance with existing statutory and applicable case law, we agree with the ALJs that the preponderance of evidence in this proceeding supports the conclusion that the location of PECO's Station at 2090 Sproul Road is reasonably necessary for PECO to provide public utility service. Accordingly, PECO is exempt from local zoning ordinances to implement comprehensive plans under other statutory provisions applicable to municipal and quasi-municipal corporations, and we deny Mr. Uhlman's Exception No. 4 for these reasons.

#### **IV. Conclusion**

Based on our review of the record and the applicable law, we shall: (1) grant PECO's Exceptions; (2) deny, in major part, and grant, in limited part, Marple Township's Exceptions; (3) deny Mr. Uhlman's Exceptions; and (4) adopt the Initial Decision, as modified and clarified in this Opinion and Order, all consistent with the discussion herein; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions filed by PECO Energy Company on December 28, 2021, are granted, consistent with this Opinion and Order.
2. That the Exceptions filed by Marple Township, Delaware County on December 28, 2021, are denied, in major part, and granted, in limited part, consistent with this Opinion and Order.
3. That the Exceptions filed by Theodore Uhlman on December 28, 2021 are denied, consistent with this Opinion and Order.

4. That the Initial Decision of Administrative Law Judges Emily I. DeVoe and Mary D. Long served on December 8, 2021, is adopted as modified and clarified by this Opinion and Order.

5. That the 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, at Docket No. P-2021-3024328, is hereby granted in that the proposed two “structures” constitute “buildings,” and their proposed situation in question is reasonably necessary for the convenience or welfare of the public within the meaning of Section 619 of the Municipalities Planning Code Act of July 31, 1968. P.L. 805, *as amended*, 53 P.S. § 10619.


6. That Finding of Fact No. 53 in the Initial Decision is modified to read as follows:

53. Because the property at 2090 Sproul Road is the gateway to the business shopping district and is in close proximity to residential homes, Marple Township opposes the location of a Gas Reliability Station at the site on the basis that the site is not compatible with residential and retail uses.

7. That Conclusion of Law No. 7 is removed from the Initial Decision, consistent with the discussion in this Opinion and Order.

8. That this proceeding be marked closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: March 10, 2022

ORDER ENTERED: March 10, 2022