

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

Re: Docket No. P-2021-3024328
Date: June 20, 2023

Dear Secretary Chiavetta:

Enclosed please find attached Certificate of Service for

TED UHLMAN'S PREHEARING CONFERENCE MEMORANDUM

Copies of this document have been served in accordance with the attached Certificate of Service.
Thank you for your attention to this matter.

Respectfully Submitted,
Ted Uhlman
2152 Sproul Rd
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June 20, 2023

**BEFORE THE COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for a Finding of :
Necessity Pursuant to 53 P.S. § 10619 that the Situation of :
Two Buildings Associated with a Gas Reliability Station : Docket No. P-2021-3024328
in Marple Township, Delaware County Is Reasonably :
Necessary for the Convenience and Welfare of the Public :

TED UHLMAN'S PREHEARING CONFERENCE MEMORANDUM

Pursuant to 52 Pa. Code § 5.222 and in accordance with the Prehearing Conference Order dated June 5, 2023, TED UHLMAN respectfully submits the following Prehearing Conference Memorandum.

PRELIMINARY STATEMENT AND PROCEDURAL HISTORY

Before 2020 - PECO started working on their 11.5 mile pipeline from the Conshohocken Gate Station to Marple. Rt3 320 was closed periodically, but nobody paid that much attention, and PECO wasn't announcing their plans.

2020 - In the midst of The Covid-19 Pandemic, PECO announced their plans for a Gas Expansion Plant (aka"Reliability Station") at the Corner of Sproul and Cedar Grove Roads. PECO applied to the Marple Township Zoning Hearing Board for variances and exceptions, which were denied.

2021 - On February 26, PECO applied to the PA Public Utility Commission for permission to steam-roller over the decision of the Marple Township Zoning Hearing Board. During March and April; sixty-five residents filed to be pro se protestants and/or intervenors. On April 12, the Telephonic PreHearing Conference was held, with twenty-five residents in attendance. On May 25 and May 26, a total of four Telephonic Public Hearings were held, and about 100 residents called in, almost unanimously to voice their concerns about the location of the proposed facility. On December 7, the Initial Decision was published, and, although the PUC decided in PECO's favor, the Initial Decision included the following statement:

*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**.*

2022 - Marple Township appealed the decision to the PA Commonwealth Court, and oral arguments were heard in Pittsburgh on October 12.

2023 - On March 19, a seven member panel of PA Commonwealth Court judges unanimously decided that the PUC had erred in its decision, and remanded the case back to the PUC, with the following instructions:

*...that it issue an Amended Decision regarding Intervenor PECO Energy Company's "Petition... . . . For a Finding Pursuant to 53 P.S. § 10619," **which must incorporate the results of a constitutionally sound environmental impact review...** "*

ISSUES AND SUB-ISSUES

ENVIRONMENTAL REVIEW – There has never been an Environmental Review performed in association with a “619 Procedure”, as such a review had been prohibited prior to the ruling by the recent Commonwealth Court on this issue. In this precedent making case, all aspects of the review have implications, not only for this case, but for future cases of a similar nature. What does a constitutionally sound environmental impact review look like, when applied to a “619 Procedure”?

In the previous round of this case, the vast majority of the expert witnesses for Exelon/PECO were, in fact, employees of Exelon/PECO. Similarly, the vast majority of the expert witnesses for the other side were employees of Marple Township or Delaware County. Each witness had obvious reasons to expand or contract their testimony as much as possible

Thus far, there has been little agreement between the parties on the facts of this case. Marple Township and the *pro se* intervenors insist that the homes, businesses, and nearby traffic within the Potential Impact Radius constitute a very serious problem. They insist that the noise studies promulgated by PECO are inadequate. They insist that pollution from the exhaust gasses and

methane releases are unacceptable. They insist that other locations¹ are both technologically feasible and much safer. They insist that PECO's claims of an alternative site search was a sham. They insist that PECO's claims of "community interaction" are ludicrous. They even question PECO's claim that Residential Natural Gas Usage in Marple Township and Delaware County will increase by 20% within ten years, which is the basis of PECO's argument that the facility is "reasonably necessary". PECO challenges all of Marple's assertions.

Additionally, for a long time, in the previous iteration of this case, PECO repeatedly told us about the "Half Mile Radius from the Corner of Sproul and Lawrence Roads"; this assertion even appears in Findings of Fact #44, #45, #46, and #51 in the Initial Decision. However, when the Don Guanella site was seriously pushed forward as a viable alternative location, suddenly those facts needed to be amended. In the Initial Decision, without any further explanation of the "engineering restraints", Finding of Fact #50 refutes the half-mile radius in that it states: "

Despite the Don Guanella property being within the [one half] 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. (SR-3, p.6; Tr. 122:3-25)

Clearly, the two sides have repeatedly been dealing with two different sets of facts; occasionally, there are conflicting facts even within the Initial Decision's Findings of Fact.

And now, as the case returns from the Commonwealth Court to the Public Utility Commission, with orders to issue an Amended Decision which must incorporate the results of a constitutionally sound environmental impact review, it is important, not just for this case, but, for future, similar cases, that the same level of disagreement does not obfuscate the scientific facts of the environmental review. To continue on a road where the two sides employ their own environmental witnesses to promote their own interests is not in the best interests of the case, nor of the precedent that it sets. A constitutionally sound environmental impact review has never before been associated with a "619 Procedure", so this court may well determine the course of such reviews in the future. Therefore, it is imperative that all parties mutually agree upon a single group of environmental experts to execute the environmental review. Such a group could come from industry, academia, government, whatever.

¹Such as the "Don Guanella" site at the Corner of Sproul and Reed Roads

The review should be based upon impartial facts of science, not the lawyerly arguments of the two sides, each having clear agendas in the case. After The Review has been completed, both sides will then have the opportunity to cross-examine the review and the reviewers, and continue on with their legal opinions and interpretations of ONE SET OF FACTS.

SCOPE – While it could be argued that the current proceeding should constitute nothing more than a constitutionally sound environmental impact review slapped on top of the existing record, the fact is that the Order of the Commonwealth Court, in ordering that the Amended Decision must incorporate the results of a constitutionally sound environmental impact review, has implied that the engineering and environmental pros and cons of the proposed location be balanced by the pros and cons of other locations. PECO’s initial acceptance of a half-mile radius from the corner of Sproul and Lawrence Roads, followed by their later complaint of “technological restraints” associated with the Don Guanella site needs to be looked at more closely. Even PECO’s claim to the half mile radius requirement has not been explained adequately, which could possibly make other sites² farther afield attractive alternatives.

WITNESSES – Witnesses have not yet been identified, but I reserve the right to call witnesses in the future.

PROCEDURAL SCHEDULE – See Below

Respectfully Submitted on June 20, 2023



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² Such as, deep in the the forested area across Sproul Rd from Cardinal O’Hara High School, between the cemetery and I-476.

Proposed Litigation Schedule for Remanded Proceeding

Date	Event
June 21, 2023 – 9:00 AM	Pre-hearing Conference Scheduled
September 21, 2023	All Parties must agree to a single Environmental Consultant who will perform the Constitutionally Sound Environmental Impact Review
September 21, 2024	Expected Completion of Constitutionally Sound Environmental Impact Review
November 21, 2024	Service of Supplemental Direct Testimony of all parties
October 8, 2024	Final Day for All Written Discovery to be Propounded
December 31, 2024	Service of Supplemental Rebuttal Testimony of all parties
Week of February 13, 2025	Evidentiary Hearings
March 14, 2025	Main Briefs Due
May 1, 2025	Reply Briefs

P-2021-3024328 - 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.

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Revised 4/29/21

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