

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PREHEARING CONFERENCE MEMORANDUM
OF MARPLE TOWNSHIP, DELAWARE COUNTY**

TO THE ADMINISTRATIVE LAW JUDGE, EMILY I. DeVOE

Pursuant to 52 Pa. Code §5.222(d) and the June 5, 2023 Prehearing Conference Order, Marple Township, Delaware County, Intervenor in this action, hereby files this Prehearing Conference Memorandum. For the purposes of the Prehearing Conference, J. Adam Matlawski, Esq. will be the primary speaker.

I. HISTORY OF THE PROCEEDING

On February 26, 2021, PECO filed a Petition before the PUC. In its Petition, PECO requests that the Commission, pursuant to 52 Pa. Code § 5.41 and Section 619 of the Municipalities Planning Code (“MPC”), 53 P.S. § 10619, make a finding that: (1) the situation of two buildings at 2090 Sproul Road, Marple Township, Delaware County, Pennsylvania, 19008 (the “Property”) for a proposed Gas Reliability Station is reasonably necessary for the convenience and welfare of the public and, therefore, exempt from the Marple Township Zoning Code pursuant to MPC § 619, and (2) a proposed security fence appurtenant to the Gas Reliability Station is a “facility” under 66 Pa. C.S. § 102 and is therefore exempt from local zoning requirements (the “Petition”).

On March 11, 2021, Marple Township filed a Petition to Intervene and on April 12, 2021, the County of Delaware, Pennsylvania filed a petition to Intervene. On or about April 12, 2021, sixty-three *pro se* protestants filed Protests to the Petition. Two residents, Mr. Ted Uhlman and Julie Baker, filed Petitions to Intervene in addition to Protests. Public Input Hearings were held on May 25 and 26, 2021, including approximately sixteen (16) hours of public comment, at which time ninety-three individuals testified, the overwhelming majority of which were residents of Marple Township residents who voiced their opposition to and concerns with the siting of the Gas Reliability Station at the proposed location given the property's proximity to residences, a family restaurant, businesses and an elementary school. Written testimony, rebuttal and surrebuttal were exchanged by the parties and evidentiary hearings were held before Administrative Law Judge Emily DeVoe ("ALJ DeVoe") via telephonic proceedings on July 15, July 16, July 20, and July 22, 2021.

An Initial Decision was entered by ALJs DeVoe and Long on December 7, 2021 approving PECO's Petition. After exceptions and reply exceptions, the Commission entered its Opinion and Order on March 10, 2022 adopting the Initial Decision of the ALJs with minor exceptions.

Marple appealed to the Commonwealth Court. After briefs submitted and oral argument, the Commonwealth Court rendered its decision on March 9, 2023 issuing an Unreported Decision vacating the PUC's Order and remanding with instructions that it issue an Amended Decision regarding PECO's Petition which must incorporate the results of a constitutionally sound environmental impact review as to siting the so-called "Fiber Building" and "Station Building" upon the property located at 2090 Sproul Road.

Marple filed an Application to report the CW Court's unreported decision which was granted on April 25, 2023

PECO filed an Application for reargument which was denied on April 25, 2023.

II. PRESENTLY IDENTIFIED ISSUES. The following list represents Marple Township's preliminary determination of potential issues in these remand proceedings. Marple Township specifically reserves the right to address other appropriate issues that may emerge during any limited discovery period. The preliminary issues are as follows:

- a.** Pursuant to Article 1 section 27 of the Pennsylvania Constitution, Environmental Rights Amendment ("ERA"), the Commission must complete a thorough environmental impact review of PECO's building site proposal at 2090 Sproul Road, including but not limited to impact to area persons and property from the siting and operation of the proposed natural gas regulating station at 2090 Sproul Road (the "Project") including review of the potential and impact of explosion impact radius, noise, heater emissions and issues related to health and safety such as air quality, odor, accidents, leaks, discharge, fire, etc.
- b.** The Commonwealth Court decision above requires that a Section 619 proceeding is "constitutionally inadequate unless the Commission completes an appropriately thorough environmental review of a building siting proposal and, in addition, factors the results into its ultimate determination regarding the reasonable necessity of the proposed siting." It is submitted that environmental impact of the siting of the Project at the Property in question is such that such siting is not reasonable necessary for purposes of Section 619.

- c. Township submits that a constitutionally sound environmental impact review of the proposed siting on the Property of the PECO project must necessarily include an independent environmental impact assessment, which should also include a review of all incidents (accidents, discharge, fire, explosions) in recent years at gate stations (and any compressor stations), the impact of such incidents to the environment (including injury or damage to area persons and property), the frequency of such incidents and likelihood of like incidents at the proposed site and the impact to the surrounding environment (including injury or damage to area persons and property) if such incidents were to occur at the subject site.

III. PROPOSED WITNESSES. Marple Township currently intends to call the following witnesses, without being limited thereto:

- a. Lawrence J. Gentile, Marple Township Manager, 227 S Sproul Road, Broomall, PA 19008. Mr. Gentile will testify concerning the proposed site and area surrounding it.
- b. Jim Capuzzi, President, Broomall Fire Company, 1 North Malin Road, Broomall, PA 19008; Township Fire Marshal. Mr. Capuzzi will testify concerning fire safety, hazards and any issues risk assessment of the proposed siting and operation from emergency management perspective.
- c. Jeff Marx, Quest Consulting, Inc. Mr. Marx will testify regarding risk assessment of the proposed location.
- d. Environmental expert testimony. The Township is currently engaged in identifying and determining the availability of experts who will provide

environmental impact assessment and will identify same upon receipt of the discovery to be requested as discussed below.

- e. Jeff Marx, Quest Consulting, Inc. Mr. Marx will provide a report regarding risk assessment of the proposed location.
- f. Pennoni Associates Inc., will testify regarding the impact of noise generated by the proposed Project and provide environmental impact assessment concerning the suitability of the proposed site given surrounding residential and commercial facilities and the availability of other suitable sites;.
- g. Expert Witnesses to be identified upon receipt of further discovery from PECO and evaluation of same.
- h. Marple Township reserves the right to call witnesses as necessary to address issues that may arise during the course of discovery and during these proceedings and will provide the ALJ and other parties to this matter reasonable notice thereof.

IV. PROPOSED LITIGATION SCHEDULE. Marple Township has agreed to the revised schedule proposed by PECO. Township understand that PECO will submit the proposed schedule with its pre-hearing memo for the Commission's consideration.

- a. Marple Township requests that the Commission immediate discovery for further information relative to the actual to be built reliability station for the necessary environmental impact review. Township submits that there is some confusion as to the actual operational data and wishes to confirm same so that all assessments are made from the same operational specifications and data. Township requests that PECO provide the following as confirmation of same: (i) Plot plan(s) (not the

3-D rendering) of the station, showing all equipment and piping, including outdoor areas, indoor areas, and all underground pipe routings; (ii) Process and instrumentation diagrams (P&IDs) for the station; (iii) Gas conditions at the station: Temperature, Pressure, Flowrate, and Composition at: (a) Inlet; (b) Outlet (c) Within the building (heater system, etc.) and (iv) Is the gas flowing through this station odorized or not.

- b. Marple Township supports Mr. Uhlman's suggestion that the parties agree upon and engage independent industry experts to do a full Environmental Impact Assessment. The assessment should include analysis of all environmental impact including sound and air quality as well as all matters of health and safety resulting from the siting and intended operation of the Project.

Respectfully Submitted,
MCNICHOL, BYRNE & MATLAWSKI, P.C.

/s/

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