

**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 : Docket No. P-2021-3024328
Associated with a Gas Reliability Station in :
Marple Township, Delaware County Is :
Reasonably Necessary for the Convenience :
and Welfare of the Public :
:

**PECO ENERGY COMPANY’S REMAND PROCEEDING PREHEARING
CONFERENCE MEMORANDUM**

Pursuant to 52 Pa. Code § 5.222 and in accordance with Administrative Law Judge DeVoe’s June 5, 2023 Prehearing Conference Order, PECO Energy Company (“PECO”) respectfully submits the following Remand Proceeding Prehearing Conference Memorandum.

I. PRELIMINARY STATEMENT AND PROCEDURAL HISTORY

Initiated in 2021, this matter is now on remand from the Commonwealth Court’s March 9, 2023 Opinion and Order.¹ On February 26, 2021, PECO filed a petition (“Petition”) with the Commission for a finding pursuant to Section 619 of the Municipalities Planning Code (“MPC”), 53 P.S. § 10619, that the situation of two buildings – a telecommunications “Fiber Building” and a “Station Building” housing natural gas utility infrastructure (collectively the “Buildings”) – associated with PECO’s proposed Natural Gas Reliability Station (the “Station”) at 2090 Sproul Road in Marple Township, Delaware County is reasonably necessary for the convenience or welfare of the public, and therefore exempt from local zoning. Additionally, PECO sought a

¹ *Twp. of Marple v. Pennsylvania Pub. Util. Comm’n*, No. 319 C.D. 2022, 2023 WL 3069788 (Pa. Commw. Ct. Mar. 9, 2023), reconsideration and reargument denied (Apr. 25, 2023) (Publication Ordered Apr. 25, 2023).

finding that the Station's proposed security fence is a public utility facility, and therefore exempt from local land use controls. The matter included four public input hearing sessions, two on May 25, 2021 and two on May 26, 2021, the submission of direct, rebuttal, and surrebuttal testimony, four days of evidentiary hearings that occurred on July 15, 16, 20 and 22, 2021, and briefing from the parties (the "Initial Proceeding").

The Initial Proceeding included extensive testimony on: (1) the need for the Station as part of a broader Natural Gas Reliability Project to provide additional reliable supply of natural gas to an area with recognized demand; (2) the purpose of the Station's two Buildings; (3) PECO's considerable efforts to locate a suitable site for the Station and the site selection criteria used to support such effort; (4) that the selected site of 2090 Sproul Road was the optimal location due to engineering considerations and availability; (5) PECO's safety record and procedures, and the general safety of natural gas infrastructure in the United States; and (6) health and welfare aspects of the Station, such as PECO's planned environmental remediation of the selected site, that the Station would comply with Marple Township's noise ordinance, and that the Station's preheaters were exempt from Pennsylvania Department of Environmental Protection ("DEP") permitting. Marple Township, Delaware County, and pro se individuals Theodore (Ted) Uhlman and Julia Baker intervened in the Initial Proceeding and participated as full participants.

Administrative Law Judges DeVoe and Long issued an Initial Decision on December 7, 2021, finding that the situation of PECO's proposed Fiber Building and Station Building was reasonably necessary for the convenience or welfare of the public pursuant to MPC Section 619. Relying on prior Commonwealth Court and Commission precedent, the Initial Decision determined that the scope of a Section 619 proceeding was limited and that environmental impacts of the Station were outside the scope of a Section 619 proceeding. (*See* Initial Decision Conclusion

of Law No. 5). On March 10, 2022, the Commission on exceptions issued an Opinion and Order (the “Commission’s Opinion”) that likewise found that the situation of PECO’s proposed Buildings was reasonably necessary for the convenience or welfare of the public and found that PECO’s proposed Station security fence is a public utility facility, and therefore exempt from local land use controls. The Commission also relied on prior Commonwealth Court and Commission precedent to determine that the scope of a Section 619 proceeding was narrow and ancillary issues such as the route of public utility facilities to a site, public safety, or environmental concerns were outside the scope of a Section 619 proceeding. (*See* Commission’s Opinion at 44.)

Following the Initial Proceeding, Marple Township filed a petition for review of the Commission’s Opinion with the Commonwealth Court. PECO subsequently purchased the site on April 13, 2022 and the deed for the property was recorded on May 16, 2022. Marple Township and PECO negotiated to resolve certain aspects of the matter during the pendency of the appeal to the Commonwealth Court and entered into a joint stipulation on August 18, 2022, which stipulation was filed with the Delaware County Court of Common Pleas. PECO and Marple Township agreed under certain circumstances in the joint stipulation, *inter alia*, that: (1) PECO’s proposed Station would include an enhanced clock tower design for the Station’s security fence; (2) PECO would comply with the Township’s stormwater management code to develop the clock tower design; (3) PECO would be permitted to construct the gas main to the property along Sproul Road, but PECO would not construct the Station’s Buildings during the pendency of the appeal; and (4) in lieu of permit fees to Marple Township for the Station, PECO would make a donation to the Marple Township Park and Recreational Fund in the amount of \$49,409.84.

After briefing and oral argument before the Commonwealth Court, on March 9, 2023, the Commonwealth Court issued an Opinion and Order vacating the Commission’s Opinion and

remanding the matter to the Commission to “issue an Amended Decision” that “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 in the Township of Marple, Pennsylvania.” The Commonwealth Court’s Opinion determined that article I, section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment, obligates the Commission “to consider ‘the environmental impacts of placing [a building] at [a] proposed location’, while also deferring to environmental determinations made by other agencies with primary regulatory jurisdiction over such matters.” *Twp. of Marple*, 2023 WL 3069788, at *5 (citations omitted).

Specific to a Section 619 proceeding, the Court stated 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.” *Id.* The Court took issue with the Commission’s Opinion, claiming that the Commission’s Opinion “failed to identify any such outside agency determinations that pertained to explosion impact radius,² noise, or heater emissions” (*see id.*), notwithstanding the evidence presented on, and the Commission’s evaluation of, these issues.

Now on remand, this proceeding should fulfill the directive of the Commonwealth Court’s March 9, 2023 Opinion and Order that the Commission amend its March 10, 2022 Opinion and Order following a “constitutionally sound environmental impact review as to the siting the so-

² The Commonwealth Court’s Opinion incorrectly used the term “explosion impact radius” or “impact radius of a potential explosion” when describing the “potential impact radius” (“PIR”), which is a term defined by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) of the United States Department of Transportation in 49 C.F.R. § 192.903 – a term that was testified to and briefed extensively on, before the Commission and the Commonwealth Court.

called ‘Fiber Building’ and ‘Station Building’ upon the property located at 2090 Sproul Road in the Township of Marple, Pennsylvania” (the “Remand Proceeding”). As presented in further detail in Section IV below, to satisfy the Commonwealth Court’s requirements, PECO requests that the Commission hold supplemental evidentiary hearings, where PECO will present evidence of: (1) the results of an environmental impact review conducted by an environmental professional of the siting of PECO’s proposed Station Buildings, including a review of the Station’s alleged impacts to air emissions, surface or ground water, noise or historic or esthetic considerations of the surrounding community, (2) the environmental remediation of the site conducted by PECO to address pre-existing contamination, and (3) testimony from PECO’s pipeline safety expert to explain the federal pipeline safety regulations, including the background, scope, and purpose of the PIR and to provide additional information on the safety of natural gas distribution infrastructure and gate stations.

II. PARTIES

In addition to PECO, the following intervenors were full parties in the Initial Proceeding before the Commission and remain full parties to the Remand Proceeding: (1) Marple Township; (2) County of Delaware; (3) Theodore (Ted) Uhlman, resident of Marple Township; and (4) Julia Baker, resident of Marple Township.

III. NAME FOR SERVICE LIST

PECO respectfully requests that the following counsel of record appear on the service list:

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PECO consents to accept electronic delivery of documents on the deadline for their filing.

PECO identifies Christopher Lewis as the primary speaker for the prehearing conference.

IV. ISSUES AND SUB-ISSUES

The Remand Proceeding is not an opportunity to relitigate the entire Initial Proceeding. Pennsylvania case law is clear that a remand proceeding is limited to the issues contained in the remand order:

“[I]t has long been the law in Pennsylvania that following remand, a lower court is permitted to proceed only in accordance with the remand order.” *Commonwealth v. Sepulveda*, 636 Pa. 466, 144 A.3d 1270, 1280 n.19 (2016). In *Levy v. Senate of Pennsylvania*, 94 A.3d 436 (Pa. Cmwlth.), *appeal denied*, 630 Pa. 738, 106 A.3d 727 (Pa. 2014), which the Supreme Court cited with approval in *Sepulveda*, this Court explained: “Where a case is remanded for a specific and limited purpose, ‘issues not encompassed within the remand order’ may not be decided on remand. A remand does not permit a litigant a ‘proverbial second bite at the apple.’” *Levy*, 94 A.3d at 442 (quoting *In re Indep. Sch. Dist. Consisting of the Borough of Wheatland*, 912 A.2d 903, 908 (Pa. Cmwlth. 2006)).”

Marshall v. Commonwealth, 197 A.3d 294, 306 (Pa. Commw. Ct. 2018), *aff'd*, 214 A.3d 1239 (Pa. 2019).

The Commonwealth Court’s Opinion and Order contained three instructions to the Commission for this Remand Proceeding: (1) pursuant to the Environmental Rights Amendment, amend its decision and “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 in the Township of Marple, Pennsylvania” (*Twp. Of Marple*, 2023 WL 3069788, at *5); (2) “identify any such outside agency determinations that pertain[] to explosion impact radius [PIR], noise, or heater emissions” (*see id.*); and (3) factor the results of the appropriately thorough environmental review of the Buildings siting proposal into the Commission’s ultimate determination regarding the reasonable necessity of the proposed siting. (*See id.*).

The Commission has historically evaluated Environmental Rights Amendment claims for Section 619 proceedings pursuant to the now abolished *Payne v. Kassab* test established by the Commonwealth Court.³ In 2017, however, the Pennsylvania Supreme Court abolished the *Payne v. Kassab* test. *See Pennsylvania Env’t Def. Found. (PEDF) v. Commonwealth*, 161 A.3d 911, 930 (Pa. 2017). The Commission has yet to develop a standard to evaluate MPC Section 619 in the context of the Environmental Rights Amendment following the 2017 *PEDF* decision. PECO proposes that the standards developed in other Environmental Rights Amendment contexts by the Pennsylvania Supreme Court, the Commonwealth Court, and the Environmental Hearing Board be used to formulate a standard for this Remand Proceeding.

³ *See, e.g., Application of Pennsylvania American Water Company for a finding of reasonable necessity, under Section 619 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10619, for the subdivision of lands, and for the proposed situation and construction of the buildings comprising an expansion of the wastewater treatment plant on a site in South Coatesville Borough, Chester County, Pennsylvania.* 2006 Pa. PUC LEXIS 91 (Pa. P.U.C. October 25, 2006).

The Environmental Rights Amendment states:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

PA. CONST. Art. I, § 27.

The Pennsylvania Supreme Court has determined that the Environmental Rights Amendment created two rights. *PEDF*, 161 A.3d at 931-35. The first sentence of the Environmental Rights Amendment establishes the right of the people to “clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment” and the clause limits the Commonwealth’s power (including local governments and government agencies) from unreasonably impairing this right. *See id.* The second and third clauses of the Environmental Rights Amendment establishes the common ownership of Pennsylvania’s public natural resources, and that the Commonwealth is the trustee of the state’s public natural resources. *Id.*

PECO’s Petition seeks a Commission finding that the situation of PECO’s proposed Station Buildings is reasonably necessary for the convenience or welfare of the public pursuant to Section 619 of the MPC. According to *PEDF*, 161 A.3d at 931, this situation principally implicates the first clause of the Environmental Rights Amendment, where it must be determined that the Commission’s action (i.e. a finding that the situation of the Station’s Buildings is reasonably necessary for the convenience or welfare of the public) does not unreasonably impair the people’s right to “clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.”

In an instructive Commonwealth Court decision, the court on appeal from a zoning hearing board proceeding evaluated whether a municipality’s enactment of a zoning ordinance for oil and

gas development, and the issuance of a permit pursuant to that ordinance, violated the Environmental Rights Amendment. *Frederick v. Allegheny Twp. Zoning Hearing Bd.*, 196 A.3d 677, 695 (Pa. Commw. Ct. 2018). The Commonwealth Court analyzed the Pennsylvania Supreme Court's *PEDF*, 161 A.3d 911, decision and *Robinson Twp., Washington Cnty. v. Com.*, 83 A.3d 901 (Pa. 2013) plurality opinion in the context of the Environmental Rights Amendment. The Commonwealth Court, in accordance with the *Robinson Twp.* plurality, determined that "the Environmental Rights Amendment does not call for a stagnant landscape or for the derailment of economic or social development or for a sacrifice of other fundamental values." *Frederick*, 196 A.3d at 694 (quotations omitted). Furthermore, the Commonwealth Court determined that the Environmental Rights Amendment does not impose express duties on the government to enact affirmative measures to promote the rights articulated in the Environmental Rights Amendment. *Id.* quoting *Robinson Twp.*, 83 A.3d at 951. But the court did hold that "when the government [does] act[] [implicating the first clause of the Environmental Rights Amendment], it must reasonably account for the environmental features of the affected locale." *Id.* at 694-95 (citations and internal quotations omitted).

To evaluate a governmental action, the Commonwealth Court determined that "[j]udicial review of the government's action requires an evidentiary hearing to determine, first, whether the values in the first clause of the Environmental Rights Amendment are implicated and, second, whether the governmental action unreasonably impairs those values." *Id.* Notwithstanding the requirement of the Environmental Rights Amendment to evaluate the environmental implications of the government's action, the amendment does not empower a municipality (or other state agency) from acting beyond the bounds of its enabling legislation or "to replicate the environmental oversight that the General Assembly has conferred upon the DEP and other state

agencies.” *See id.* at 696. In sum, the Commonwealth Court in *Frederick* instructed that an Environmental Rights Amendment review include: (1) an evidentiary hearing evaluating the governmental action’s implication of the first clause of the Environmental Rights Amendment, and (2) a determination of whether the governmental action “unreasonably impairs” the values of the Environmental Rights Amendment (i.e. clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment).⁴

Likewise, a sister Commonwealth agency to the Commission, the Environmental Hearing Board, which reviews appeals of permit issuances or denials from the DEP, also provides an instructive standard for evaluating this instant Petition in the context of the Environmental Rights Amendment. In *Ctr. For Coalfield Justice and Sierra Club v. DEP and Consol Pa. Coal Co., LLC, Permittee*, 2017 WL 3842580, at *32 (Pa. Env. Hrg. Bd., Aug. 15, 2017), the Environmental Hearing Board analyzed the Pennsylvania Supreme Court’s *PEDF*, 161 A.3d 911, decision and *Robinson Twp.*, 83 A.3d 901, plurality opinion, and determined that the proper review for a DEP permit decision in the context of the Environmental Rights Amendment is to determine: (1) whether the DEP considered the environmental effects of its action, and (2) whether, by a preponderance of the evidence, the action is likely to cause the unreasonable degradation or deterioration of the rights enumerated by the Environmental Rights Amendment.

Based on the above, to address the Commonwealth Court’s directive in this Remand Proceeding, PECO proposes that the Commission hold evidentiary hearings, limited in scope for the parties to produce evidence on:

⁴ *See also Delaware Riverkeeper Network v. Middlesex Twp. Zoning Hearing Bd.*, No. 2609 C.D. 2015, 2019 WL 2605850, at *8 (Pa. Commw. Ct. June 26, 2019) (summarizing *Frederick*, 196 A.3d 677) and *Murrysville Watch Comm. v. Municipality of Murrysville Zoning Hearing Bd.*, 272 A.3d 998 (Pa. Commw. Ct.), appeal denied, 283 A.3d 790 (Pa. 2022) (discussing same and finding the Environmental Rights Amendment did not require that municipalities conduct a “pre-action environmental impact analysis” before enacting ordinances.)

- 1) Whether the Commission’s action of finding that siting PECO’s proposed Station Buildings is reasonably necessary for the convenience or welfare of the public pursuant to Section 619 of the MPC (the “Commission’s Action”) implicates the Environmental Rights Amendment (*see, e.g., Frederick*, 196 A.3d at 695);
- 2) Whether the Commission’s Action unreasonably impairs or otherwise causes the unreasonable degradation or deterioration of the public’s right to: (i) clean air; (2) pure water; or (3) the preservation of the natural, scenic, historic and esthetic values of the environment (*see, e.g., id.; see also Ctr. For Coalfield Justice*, 2017 WL 3842580, at *32-35); and
- 3) Whether the siting of the Station’s Buildings requires any “outside agency determinations” pertaining to: (i) explosion impact radius [PIR], (ii) noise, or (iii) heater emissions.” (*See Twp. of Marple*, 2023 WL 3069788, at *5.)

Finally, following the evidentiary hearings, PECO proposes that the parties brief the Commission on the limited issues instructed by the Commonwealth Court.

V. SETTLEMENT

As stated in PECO’s initial prehearing conference memorandum and throughout the Initial Proceeding, PECO has engaged in extensive public outreach with local residents with respect to the construction of the Station. As discussed in Section I, during the course of the petition for review before the Commonwealth Court in 2022, PECO and Marple Township engaged in dialogue and entered into a joint stipulation to resolve matters under certain circumstances that were raised by the parties during the pendency of the appeal before the Commonwealth Court. PECO remains open to the possibility of settlement of issues related to this matter to the extent they are technologically and economically feasible.

VI. OTHER PROPOSED ORDERS

Due to the confidential nature of some of the information that could be requested from PECO in this proceeding, the Initial Proceeding included a June 9, 2021 Protective Order, which PECO requests remain in effect for the Remand Proceeding.

VII. PUBLIC INPUT HEARINGS

While PECO values public input and, as described above, has engaged in extensive public outreach, the Commonwealth Court's directive for this Remand Proceeding is limited to amending the Commission's Opinion to incorporate the results of a constitutionally sound environmental impact review. Further public input hearings are not warranted for this Remand Proceeding because lay testimony is not admissible to establish environmental impacts, and because the public already had multiple opportunities to participate in the Initial Proceeding, including providing lay opinion as to environmental issues. As noted above, it is well-settled in Pennsylvania that remand proceedings do not provide litigants "a second bite at the apple" on issues outside the limited purpose and scope of the remand proceeding. *See Del. Riverkeeper Network v. Middlesex Twp. Zoning Hearing Bd.*, 215 A.3d 96, 2019 WL 2605850, at *1 n.4 (Pa. Commw. Ct. June 26, 2019) (quoting *Marshall*, 197 A.3d at 306)).

VIII. WITNESSES

PECO offered extensive testimony in the Initial Proceeding, which the Commission initially determined met PECO's burden to show that the situation of the Station's proposed Buildings at 2090 Sproul Road was reasonably necessary for the convenience or welfare of the public in accordance with Section 619 of the MPC. The Commonwealth Court's Opinion and Order directs the Commission to amend its decision after a constitutionally sound environmental impact review. As explained further above, the Commonwealth Court specifically took issue that the Commission's Opinion "failed to identify any such outside agency determinations that pertained to the explosion impact radius [potential impact radius], noise, or heater emissions." *Twp. of Marple*, 2023 WL 3069788, at *5. Notwithstanding the extensive testimony presented by

PECO and the intervenors on these issues, PECO intends during this Remand Proceeding to present supplemental direct and rebuttal fact and expert testimony, to the extent that it deems necessary, to address the Commonwealth Court's concerns raised in its Opinion. At present, PECO intends to present the testimony of the following witnesses:

1. Environmental Consultant(s) (TBD)
The environmental consultant(s) will review alleged environmental impacts of the siting of the Station (including, but not limited to alleged noise, air emissions and the PIR), explain the DEP's air permitting scheme and exemptions, and assess whether unreasonable environmental degradation will result from siting the proposed Station at 2090 Sproul Road.
2. Mike Israni
Pipeline Safety Consultant
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Dublin, CA 94568
3. Jim Moylan, Real Estate Specialist
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2301 Market Street
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4. Timothy Flanagan, Manager Gas & Plant Operations
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To address the Commonwealth Court's instruction for the Commission to conduct a "constitutionally sound environmental impact review", PECO intends through these witnesses to offer additional testimony concerning, among other things: (1) emissions from the Station's preheaters; (2) PECO's environmental remediation of the site; and (3) the lack of any further unreasonable environmental, historical, or esthetic impact, including noise, from the Station's Buildings on the Marple Township community. Mr. Moylan and Mr. Flanagan provided testimony during the Initial Proceeding regarding, respectively, PECO's site selection process and PECO's natural gas safety protocols and the Station's designs. These witnesses will provide further

testimony as to the Station’s engineering and equipment specifications and PECO’s closing on the property and environmental remediation of the site. Additionally, PECO will provide expert testimony as to the results of PECO’s experts’ assessment of the alleged environmental impacts that analyzes the negligible impact of siting the Station’s Buildings at 2090 Sproul Road on “clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.”

PECO will offer the expert testimony of Mr. Israni, a former Pipeline Hazardous Materials and Safety Administration (PHMSA) official and expert in natural gas infrastructure, who provided extensive expert testimony during the Initial Proceeding regarding: (1) the safety of PECO’s natural gas system, including PECO’s other gate stations; (2) the safety of natural gas systems nationally; and (3) testimony with regards to the potential impact radius (PIR) calculation for the Station. PECO will offer supplemental testimony from Mr. Israni in the Remand Proceeding to provide further expert testimony on the safety of natural gas infrastructure and the PIR, including its purpose, scope, and lack of a relationship to any agency approvals required for the siting of natural gas infrastructure.

PECO continues to investigate facts and the legal standard relevant to this Remand Proceeding, and therefore reserves the right to supplement its witness list and introduce additional evidence as PECO deems appropriate.

IX. PROPOSED DISCOVERY PLAN AND LITIGATION SCHEDULE

PECO’s original construction schedule for the Station anticipated a construction start date of April 2021. Because of the considerable delay in light of PECO’s original zoning application before the Marple Township zoning hearing board in 2020 and the instant proceedings, PECO respectfully requests Commission approval of this Petition as soon as reasonably possible.

On June 15, 2023, the undersigned counsel submitted a proposed discovery and litigation schedule to the parties. Counsel for Delaware County responded that the County had no issue with the proposed schedule subject to any scheduling revisions proposed by Marple Township. Mr. Uhlman objected to PECO’s proposed schedule and proposed his own schedule and process for the Remand Proceeding as discussed further below. Ms. Baker did not respond to PECO’s proposed schedule. On June 20, 2023, counsel for PECO and counsel for Marple Township conferred and agreed to the following proposed litigation schedule:

Date	Event
June 21, 2023 – 9:00 AM	Pre-hearing Conference Scheduled
June 21, 2023	Remand Proceeding Discovery Begins (Proposed)
September 15, 2023	Service of Supplemental Direct Testimony of all parties (Proposed)
October 2, 2023	Final Day for All Written Discovery to be Propounded (Proposed)
October 27, 2023	Service of Supplemental Rebuttal Testimony of all parties (Proposed)
Week of November 13, 2023	Evidentiary Hearings (Proposed)
December 15, 2023	Main Briefs Due (Proposed)
December 29, 2023	Reply Briefs (Proposed)

Mr. Uhlman objected to PECO’s proposed schedule and proposed that the parties agree to a single, third party, independent environmental organization to conduct a constitutionally sound environmental impact review over the course of a year, to be followed by replies and cross-examination of the one set of facts found by the third party, which Mr. Uhlman proposes to be extended into the year 2025.

PECO opposes Mr. Uhlman’s proposal for the following reasons: (1) the mandate to perform a “constitutionally sound environmental impact review” rests on the Commission, not a third party; (2) limiting the facts of the environmental impact review to those put forward by a single entity deprives PECO of its right to due process to present all evidence that PECO believes

is relevant to the issues before the Commission; and (3) the alleged adverse environmental impacts from the siting of the Station have already been identified (e.g., alleged noise, air emissions, and the PIR), and it should take no more than the timeline proposed above by PECO and Marple Township for the parties to evaluate whether these impacts rise to the level of unreasonable environmental degradation. Mr. Uhlman's proposal creates unnecessary delay for a project that already has been unduly delayed. For these reasons, PECO cannot agree to Mr. Uhlman's proposal, and PECO urges ALJ DeVoe to reject it.

Respectfully submitted,
BLANK ROME LLP

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Dated: June 20, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Prehearing Conference Memorandum in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party) via electronic mail and/or eService on the following:

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Prehearing Order*

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