**BEFORE THE**

 **PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for a Finding : P-2021-3024328

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 :

**INTERIM ORDER**

**Please read this Order in its entirety, as it contains important information.**

A Prehearing Conference is scheduled in this case for **Wednesday, June 28, 2023, at 9:00 a.m.** To participate in the hearing, you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name and then the telephone system will connect you to the conference.

**CALL-IN INFORMATION**

 Toll-free Bridge Number: 1- 888-547-8922

 PIN Number: 74903461

 Due to the level of interest in this matter, the Administrative Law Judge is requesting attendees preregister by emailing ALJ’s legal assistant, Nick Miskanic, at nmiskanic@pa.gov, with the following information: (1) their names; (2) the phone number they will be calling from to call into the conference; (3) whether they (a) are an active party or (b) filed a protest in the original proceeding. Active parties **must** preregister. **Individuals who do not preregister will remain muted throughout the conference**.

 Only active parties and individuals who have filed protests and/or petitions to intervene which have not previously been granted will be permitted to speak during the conference. There will be no opportunity for anyone else to speak during the conference. **Preregistration emails must be received by 2:00 pm on Tuesday, June 27, 2023.**

 If you are not an active party, but have questions for the ALJ regarding this matter, **that are not addressed in this Order**, you must include your questions in your email to Mr. Miskanic. The ALJ may answer submitted questions during the conference, as long as she is able to and time permits. Please note, there may be questions the ALJ is unable to answer. Emails containing questions will be forwarded to the active parties to cure any *ex parte* issues.

 The conference scheduled to be held on June 28, 2023, is the initial conference in the Remand Proceeding. The purpose of the conference is to allow the active parties an opportunity to discuss matters including service, the litigation schedule, discovery, discovery rule modifications, etc., with the judge.

**CASE HISTORY**

 Initiated in 2021, this matter is now on remand from the Commonwealth Court’s March 9, 2023, Opinion and Order.[[1]](#footnote-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 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 efforts to locate a suitable site for the Station and the site selection criteria used to support such effort; (4) the optimal location of 2090 Sproul Road 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 must 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- called ‘Fiber Building’ and ‘Station Building’ upon the property located at 2090 Sproul Road in the Township of Marple, Pennsylvania” (the “Remand Proceeding”).

 This 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.

 THEREFORE,

 IT IS ORDERED;

1. That the Prehearing Order issued on June 5, 2023, remains in effect.

Date: June 22, 2023 /s/

 Emily I. DeVoe

 Administrative Law Judge

**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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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) [↑](#footnote-ref-1)