**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 : (On Remand)

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

**PREHEARING ORDER**

This matter, initiated in 2021, is now on remand from the Commonwealth Court’s March 9, 2023 Opinion and Order. The reader is directed to the prehearing conference order served on June 22, 2023, for a detailed rendition of the history of this case.

By hearing notice dated June 21, 2023, the Office of Administrative Law Judge scheduled a prehearing conference by telephone on June 28, 2023.[[1]](#footnote-1)

The prehearing conference convened as scheduled. Counsel for PECO, Christopher Lewis, Frank Tamulonis and Stephen Zumbrun, and Marple Township, Adam Matlawski and Kaitlyn Searls appeared. Self-represented intervenors Julia Baker and Ted Uhlman also appeared. Approximately 60 interested individuals also called in to monitor the proceedings. This order memorializes the matters agreed upon at the prehearing conference.

GENERAL

**All parties are expected to read this order carefully and comply with the procedure set forth below.** All parties are expected to review and be familiar with the Commission’s rules of procedure in Title 52 of the Pa. Code which can be found at the following website: https://www.pacodeandbulletin.gov/. The public docket for this case, including the prior decisions of the Commission, can be found by entering the docket number in the docket search page on the Commission’s website: https://www.puc.pa.gov/search/.

SERVICE LIST

A service list of the parties is attached to this order.

Any party that did not request to participate in the June 28, 2023 Prehearing Conference will be treated as an inactive participant to this proceeding. Inactive participants will receive the presiding officer’s written orders, notices of hearings and copies of any Commission decisions and orders. Inactive participants will not participate in discovery, testify at the evidentiary hearing, or cross-examine witnesses. Inactive participants will not receive copies of the hearing exhibits or briefs filed by the active participants.

PROTESTS

This petition was originally filed in February 26, 2021. Notice of the petition and the prehearing conference was published in the Pennsylvania Bulletin and several local newspapers. Those notices set a deadline for filing a protest for April 12, 2021. Sixty-three timely protests were filed. Since the remand of this case from the Commonwealth Court, additional protests have been filed. PECO represented that it did not object to any protest filed by the original protestants, but moved to strike the any new protests. I instructed PECO to file a motion indicating which protests it had no objection to and which protests it moved to strike. Protestants will be given an opportunity to respond and a ruling will be forthcoming.

PUBLIC INPUT HEARINGS

The Intervenors requested public input hearings to be conducted. Four public input hearings were convened in May 2021 and 93 individuals testified. The issue on remand, an appropriately thorough environmental review of a building siting proposal, is technical and scientific and not conducive to lay testimony. The public opposition to PECO’s project is well-documented in the evidentiary record. Therefore, I denied the request.

LITIGATION SCHEDULE

|  |  |
| --- | --- |
| Date | Event |
| June 28, 2023 | Prehearing Conference |
| June 28, 2023 | Remand Discovery begins |
| September 15, 2023 | Service of Supplemental Direct Testimony of All Parties |
| October 2, 2023 | Deadline for All Written Discovery to be propounded |
| October 27, 2023 | Service of Supplemental Rebuttal Testimony of All Parties |
| November 14-17, 2023 | Technical evidentiary hearings in Philadelphia |
| December 15, 2023 | Filing and service of main briefs |
| December 29, 2023 | Filing and service of reply briefs |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code § 5.412. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **The parties are to agree on a list of common acronyms and use them consistently in all written testimony and briefs.**

The above-stated dates are in-hand dates for service on the parties and the presiding Administrative Law Judge (ALJ). The parties at the prehearing conference and the presiding ALJ agree to accept electronic service of such material,[[2]](#footnote-2) so long as the subject email is received by the date due. The email address of the presiding ALJ is: [malong@pa.gov](mailto:malong@pa.gov).

Hearings will begin promptly each day at 10:00 a.m. The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings. In the event that a partial settlement is achieved the parties should be prepared to proceed on the first scheduled day of hearing to present evidence on the non-resolved issues.

ISSUES

In their respective prehearing memoranda, the parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process develops.

## DISCOVERY

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse to the Commission’s procedures for formal discovery. 52 Pa.Code §§ 5.321, *et* *seq*. The parties must not send the presiding ALJ discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of counsel or intervenors of the informal discovery undertaken and their efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the presiding ALJ will contact the parties and direct them to pursue informal discovery.

PROTECTIVE ORDER

PECO requested that the Protective Order issued on June 9, 2021 remain in place in the proceedings on remand. I granted the request.

PRE-SERVED TESTIMONY AND EXHIBITS

The Intervenors requested the appointment of an independent expert to conduct the environmental assessment of the building siting proposal. The request was denied.

No written testimony will be admitted into evidence unless accompanied by a verification or affidavit of the witness.

Confidential Security Information (CSI) as defined by 35 P.S. § 2141 *et seq.* should not be transmitted by email or other electronic means. The parties are to avoid introducing CSI into the record and should develop alternative means, such as joint stipulations or redaction when proposing testimony or exhibits. If there is no other alternative to establish a material fact other than by CSI, the parties are to contact the presiding ALJ immediately and in advance of the evidentiary hearing.

SETTLEMENT AND STIPULATIONS

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility.

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234. All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

CROSS-EXAMINATION

Friendly cross-examination or cumulative cross-examination during hearings will not be permitted. 52 Pa.Code §§ 5.76; 5.243.

BRIEFS AND REPLY BRIEFS

The parties must comply with 52 Pa.Code §§ 5.501, et seq., regarding the preparation and filing of briefs. Briefs must include proposed conclusions of law and proposed ordering paragraphs. Page limitations on briefs will be discussed on or before the last day of hearing. The parties shall submit to the presiding ALJ one copy by email. The electronic version of a brief must be prepared in Microsoft Office Word format. If in doubt, please email the presiding ALJ for clarification. Additional briefing instructions may be provided on the last day of hearing.

MODIFICATION

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

Date: July 5, 2023 /s/

Mary D. Long

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. Administrative Law Judge Emily I. DeVoe was unavailable and the case was assigned to me by Judge Change Notice dated June 28, 2023. [↑](#footnote-ref-1)
2. For parties accepting electronic service, the documents are to be served electronically on the date indicated, by 4:00 p.m. unless otherwise indicated. [↑](#footnote-ref-2)