

SRosemary 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: July 17, 2023

Dear Secretary Chiavetta:

Enclosed please find attached

**TED UHLMAN'S APPLICATION FOR
RECONSIDERATION OF THE FORMAT FOR THE REVIEW
AND THE SCOPE OF INQUIRY
IN THE REMANDED DOCKET NO. P-2021-3024328**

and Certificate of Service for same. 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
Broomall, PA 19008
JuLY 17, 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 APPLICATION FOR
RECONSIDERATION OF THE FORMAT FOR THE REVIEW
AND THE SCOPE OF INQUIRY
IN THE REMANDED DOCKET NO. P-2021-3024328**

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

OPINION IN QUESTION

During the Pre-Hearing Conference held on June 28, 2023, The Court indicated that, moving forward, the format of the environmental impact review ordered by the Commonwealth Court would be conducted in the same manner as in the previous iteration of this case before the Public Utility Commission. Also, The Court indicated that the scope of the proceedings would be limited to said environmental impact review, and would not include wider aspects of the case. It is hoped that The Court will re-consider both of these indications.

NATURE OF THE REVIEW

During the Evidentiary Hearings, 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, on the other hand, 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

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

single group of environmental experts to execute the environmental review. Such a group could be drawn from industry, academia, government, whatever.

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.

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”?

SCOPE OF THE PROCEEDINGS

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. During the previous iteration of this case at the Public Utility Commission, when Marple Township and/or the *pro se* intervenors questioned such details, PECO objected that such inquiries were not relevant to “a 619 Proceeding”. Now, they are relevant.

The Initial Decision, included language about sympathy for the valid health and safety concerns of the Township and the Intervenors, but, unfortunately, the legislation controlling a “619

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

Procedure” did not allow the Public Utility Commission to review the environmental consequences of their decisions. With the recent ruling on this matter, the Commonwealth Court has changed that calculus. PECO could have appealed that decision to the Supreme Court, but chose not to. Instead, PECO intends to hobble the intent of the Commonwealth Court’s Decision by arguing for another round of “dueling experts”, and again arguing for a very limited scope of investigation. And of course, this has to be done very quickly, because PECO claims that there will be a problem in ten years.

Respectfully Submitted on July 10, 2023



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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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