**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 :

**INTERIM ORDER**

**DENYING APPLICATION FOR RECONSIDERATION**

**REGARDING THE FORMAT FOR REIVEW AND SCOPE OF THE PROCEEDINGS**

On February 26, 2021, PECO Energy Company (PECO) filed a Petition 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 (Petition). Following hearings and initial adjudication, the Commission 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. (Initial Proceeding)

Thereafter, Marple Township filed a petition for review in 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.”[[1]](#footnote-1) (Remand Proceeding)

By hearing notice dated June 21, 2023, the Office of Administrative Law Judge scheduled a prehearing conference by telephone on June 28, 2023. 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 called in to monitor the proceedings. Following the prehearing conference, I issued a prehearing conference order on July 5, 2023, which memorialized the matters discussed at the prehearing conference, including a litigation schedule.

On July 10, 2023, Mr. Uhlman filed an Application for Reconsideration of the Format for the Review and the Scop of Inquiry in the Remanded Docket No. P-2021-3024328. Mr. Uhlman asks that I reconsider my determination denying his request for the appointment of independent experts and denying his request to expand the scope of the Remand Proceeding beyond the directive of the Commonwealth Court. On August 4, 2023, PECO filed an answer to the application.

In his prehearing memorandum, Mr. Uhlman requested the Commission to appoint an independent expert to conduct the environmental impact review directed by the Commonwealth Court. Mr. Uhlman explained at the prehearing conference that he believed that “dueling experts” would not assist the Commission. Following input from the parties I denied Mr. Uhlman’s request for an independent expert because assessing the credibility of multiple experts and determining facts from those expert opinions are well within the purview of an administrative law judge.

Mr. Uhlman’s Application for Reconsideration simply restates the arguments that he made in his prehearing memorandum and at the prehearing conference. He does not present any factual issue that I failed to consider or present any legal authority which supports his requests or requires a different ruling. Mr. Uhlman is free to retain the services of his own expert, whose opinion will be reviewed and considered along with the expert opinions of the other parties. His request for reconsideration is denied.

Mr. Uhlman also repeats his argument that the Commission should broaden its review beyond the instructions of the Commonwealth Court to 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.” According to Mr. Uhlman “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.”[[2]](#footnote-2) Mr. Uhlman does not cite any language in the Commonwealth Court’s decision which supports his statement that the court “implied” that the Commission should consider alternative sites in rendering an amended decision on PECO’s application. Nor does he cite any legal authority which would permit me to expand the scope of the Commission’s reconsideration beyond the explicit instructions of the Commonwealth Court. The court has recently held that on remand, an agency is not permitted to expand the scope of the court’s instructions:

Pursuant to Pennsylvania Rule of Appellate Procedure 2591(a), upon remand by an appellate court, a governmental unit “shall proceed in accordance with the judgment or other order of the appellate court ....” Pa.R.A.P. 2591(a). “[I]t has long been the law in Pennsylvania that following remand, [an administrative agency] 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). “Where a case is remanded for a specific and limited purpose, issues not encompassed within the remand order may not be decided on remand.” *Levy v. Senate of Pa.*, 94 A.3d 436, 442 (Pa. Cmwlth. 2014) (internal quotation and citation omitted).[[[3]](#footnote-3)]

Therefore, Mr. Uhlman’s request for reconsideration regarding the scope of the Remand Proceeding is denied.

THEREFORE,

IT IS ORDERED:

1. That Ted Uhlman’s Application for Reconsideration of the Format for the Review and the Scope of the Inquiry in the Remanded Docket No. P-2021-3024328 is denied.

Date: August 10, 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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2. Uhlman Application, p. 4/6. [↑](#footnote-ref-2)
3. *Dep't of Env't Prot. v. B&R Res., LLC*, 270 A.3d 580, 591 (Pa. Cmwlth. 2021). [↑](#footnote-ref-3)