**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**

**STRIKING THE LATE-FILED PROTEST OF DIANA GIAMPINO**

On June 27, 2023, Intervenor Ted Uhlman filed a protest on behalf of Diana Giampino. On July 17, 2023, PECO filed a motion to strike the late-filed protest of Diana Giampino. The motion included a notice to plead which notified Ms. Giampino that she should respond to PECO’s motion within 20 days of service of the motion.

Ms. Giampino has not filed a response to PECO’s motion to strike her protest. For the reasons explained in more detail below, I will grant PECO’s motion to strike.

**Procedural Background**

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).

On March 27, 2021, notice of the Petition and a prehearing conference was published in the *Pennsylvania Bulletin*. The published notice advised that the protest deadline was April 12, 2021. PECO also published notice of the Petition and the protest deadline in the *Daily Times* *and* *Sunday Times* as well as the *Daily and Sunday Times Digital* on March 26, 2021. Sixty-three individuals filed timely protests.

Thereafter, the litigation of PECO’s Petition included four public input hearings, 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).

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. On March 10, 2022, the Commission, adopted the Initial Decision and approved PECO’s Petition.

Following the Initial Proceeding, Marple Township filed a petition for review of the Commission’s Opinion with 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.”

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.

The issue of new protests which were filed after the Commonwealth Court remand to the Commission was discussed at the prehearing conference. PECO represented that while it did not object to any amended protests filed by the original protestants after the Commonwealth Court remand, it did object to new protests filed after the remand. I instructed PECO to file a motion indicating which protests it moved to strike in order to permit the affected protestants to respond to PECO’s motion. PECO filed this motion to strike the protest of Diana Giampino, which was filed after the Commonwealth Court remand.

Ms. Giampino’s protest was e-filed by Mr. Uhlman, an intervenor. The cover letter to the protest, states that Ms. Giampino does not have a computer or email and that Mr. Uhlman typed the letter for her. The document does not include an original signature or a verification by Ms. Giampino.

**Discussion**

Filings, such as protests, must be signed by the person filing the document.[[1]](#footnote-1) An electronic signature, is only acceptable for an *e-filing user*.[[2]](#footnote-2) Ms. Giampino’s protest was e-field by Mr. Uhlman. Mr. Uhlman’s e-file username and password evidences *his* signature on filings, therefore it is not appropriate for him to use his account on behalf of others.[[3]](#footnote-3) If Ms. Giampino does not have a computer or e-mail, she could have filed her protest by mail.[[4]](#footnote-4) Paper filings must be signed in ink.[[5]](#footnote-5) Therefore, her protest is not properly signed and could have been rejected by the Commission or stricken on that basis.[[6]](#footnote-6)

It is also concerning that Mr. Uhlman e-filed the protest, purporting to be dictated to him by Ms. Giampino. Commission rules provide that individuals may represent themselves.[[7]](#footnote-7) However, an individual may not represent another individual, unless they are a licensed attorney in the Commonwealth of Pennsylvania.[[8]](#footnote-8)

Even if I were to overlook these serious defects in the filing, Ms. Giampino’s protest is filed more than two years after the deadline for the filing of protests in this matter. The Commonwealth Court did not instruct the Commission to disregard the existing evidentiary record or to republicize PECO’s application, setting a new protest period. Therefore, April 12, 2021, remains the deadline for the filing of protests in this matter.

The Commission has the discretion to accept a protest that is filed after the protest deadline. The Commission, in *Application of Artesian Water Pennsylvania, Inc. for Approval to Begin to Offer, Render, Furnish or Supply Water Service to the Public in a portion of Franklin Township, Chester County*,[[9]](#footnote-9) set forth the four factors that it will consider to determine whether to accept late-filed protests:

1. Does the petitioner have a reasonable excuse for missing the protest due date?

2. Was the proceeding contested at the time of the filing of the protest?

3. Will the receipt of the late-filed protest delay the orderly progress of the case?

4. Will the late-filed protest significantly broaden the issues or shift the burden of proof?

The Commission requires that a party requesting that the Commission accept its late-filed protest address all four of the factors recited above in order to allege good cause for the late filed protests.[[10]](#footnote-10)

Ms. Giampino did not file a response to PECO’s motion to strike her protest to provide any explanation for the late filing. In its motion to strike, PECO asserts that allowing late-filed protests in the Remand Proceeding, in addition to the 63 that have already been filed, risks complicating proceedings that are already complex. New protestants may attempt to expand the limited scope of the remand proceeding and will require all of the parties and the Commission to expend additional resources and risk delaying the orderly process of the case.

I agree with PECO. As explained above, and as I observed in the prehearing conference, the public opposition to PECO’s application is well-documented. There are a substantial number of protests that were filed on time. Judge DeVoe convened four public input hearings, which provided an opportunity for members of the community to voice their concerns regarding the Petition. Ninety-three individuals testified. This testimony was part of the record in the Initial Proceeding and the Commission considered the testimony in rendering its decision.[[11]](#footnote-11)

The issue on remand, an appropriately thorough environmental review of a building siting proposal, is technical and scientific. The potential prejudice to the parties to the proceedings by further delay or the necessity of responding to attempts to expand the issue on remand outweighs any prejudice to individuals who could have filed a timely protest, but did not.

THEREFORE,

IT IS ORDERED:

That the Motion to Strike the Protest of Diana Giampino by PECO Energy Company is granted.

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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1. 52 Pa.Code § 1.35(b). [↑](#footnote-ref-1)
2. 52 Pa.Code § 1.35(a)(2). [↑](#footnote-ref-2)
3. 52 Pa.Code § 1.35(a)(2). [↑](#footnote-ref-3)
4. 52 Pa.Code § 1.4(a). [↑](#footnote-ref-4)
5. 52 Pa.Code § 1.35(a). [↑](#footnote-ref-5)
6. 52 Pa.Code § 1.38. [↑](#footnote-ref-6)
7. 52 Pa.Code § 1.21(a). [↑](#footnote-ref-7)
8. 52 Pa.Code § 1.22. [↑](#footnote-ref-8)
9. Docket No. A-210111F0003, (Order entered June 24, 2004) (*Artesian Water*). [↑](#footnote-ref-9)
10. *Application of Leatherstocking Gas Company, LLC,* Docket A-2011-2275595 (Opinion and Order adopting March 2, 2012 Initial Decision, entered March 2, 2012). [↑](#footnote-ref-10)
11. See Initial Decision at pp. 6-9. [↑](#footnote-ref-11)