

**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	:	

**MARPLE TOWNSHIP’S MOTION TO COMPEL THE PRODUCTION OF
DOCUMENTS DIRECTED TO PECO ENERGY COMPANY**

Marple Township hereby files this Motion to Compel documents from PECO, and avers as follows:

1. This matter is on remand from the Commonwealth Court with orders that the PUC conduct a constitutionally sound environmental impact review.
2. In order to conduct a sound environmental assessment, the parties must enlist certain experts.
3. The experts retained by Marple require certain information and documentation to complete their reports, presumably the same documentation that is available to PECO’s own experts.
4. Thus, Marple made a supplemental¹ discovery request to PECO for specific documents required by its experts. A true and correct copy of Marple’s Supplemental Discovery Request is attached hereto as Exhibit “A.”
5. However, PECO issued its response to Marple’s supplemental discovery and for two out of the four requests, stated that it would only show the requested documents either

¹ Marple’s made a Second Supplemental Request, the responses of which are not yet due however Marple believes PECO will respond in the same manner.

- in person or via a secure online platform. PECO will not provide copies of the documents.
6. All parties to this proceeding are subject to a protective order. A true and correct copy of the Protective Order entered in this matter is attached hereto as Exhibit “B.”
 7. All of Marple’s anticipated experts have executed an acknowledgement of the Protective Order.
 8. The Protective Order applies to confidential or proprietary material and states that such information shall be made available to counsel for a party, subject to the terms of the order. See Exh. B, paragraph 4.
 9. Accordingly, many documents and statements have already been produced by PECO that are marked “Confidential.”
 10. Nothing in the order implies that PECO would only allow a particular set of documents to be shown in person or upon a secure online platform without providing copies.
 11. PECO’s position is neither fair nor practicable and would completely hinder Marple’s experts from thoroughly completing their review and authoring their reports.
 12. PECO is essentially prohibiting the disclosure of necessary information to Marple’s experts, while allowing its own experts free access to prepare for the upcoming proceedings which is more restrictive than what is permitted pursuant to 52 Pa. Code §5.365.
 13. PECO cannot show extraordinary circumstances or that greater restriction is necessary to avoid severe and extreme prejudice. 52 Pa. Code §5.365(e).

14. According to the Prehearing Order, service of supplemental direct testimony is due September 15, 2023.
15. Without the documents requested from PECO, Marple's experts will not be able to complete their analysis and provide reports within the necessary timeframe.
16. For the sake of compromise, Marple would agree to less stringent limitations of the dissemination of the requested information but cannot agree that its experts not receive physical copies of the documentation.

WHEREFORE, based upon all of the foregoing, Marple Township respectfully requests that this Honorable Court overrule and strike the objections of PECO and order PECO to provide physical copies of the requested documentation pursuant to the Protective Order.

Respectfully Submitted,
MCNICHOL, BYRNE & MATLAWSKI, P.C.

/s/ J. Adam Matlawski, Esquire

J. Adam Matlawski, Esq.
Attorney I.D. No.: 41678
Kaitlyn T. Searls, Esq.
Attorney I.D.: 311237
1223 N. Providence Road
Media, PA 19063

Dated: August 14, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing, Motion to Compel directed to PECO Energy Company, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant) in the manner listed below upon the parties listed below:

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MCNICHOL, BYRNE & MATLAWSKI, P.C.

Dated: August 14, 2023

 /s/ J. Adam Matlawski
By: J. Adam Matlawski, Esq.
Attorney I.D. No.: 41678
1223 N. Providence Road
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VERIFICATION

I, J. Adam Matlawski, Esquire, hereby verify that the facts set forth in the foregoing Marple Township's Motion to Compel the Production of Documents Directed to Peco Energy Company are true and correct to the best of my knowledge, information and belief, and that these statements are made subject to the penalties of 18 Pa. C.S. §4909, relating to unsworn falsification to authorities.

Date: August 14, 2023

/s/
J. Adam Matlawski

Exhibit “A”

**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	:	

**MARPLE TOWNSHIP’S SUPPLEMENTAL REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO PECO ENERGY COMPANY**

Marple Township hereby serves this Supplemental Request for Production of Documents directed to PECO Energy Company (“PECO”) to produce, in accordance with 52 Pa. Code § 5.349. the originals or clear, readable copies of the below listed documents and/or items. These documents and/or items will be examined and/or photocopied; photograph negatives will be processed and photographs reproduced, videotapes and audiotapes shall be viewed and/or heard and a copy made. The below listed documents and/or items are to be produced at Intervenor’s counsel’s office located at 1223 N. Providence Road, Media, PA 19063. Such request is continuing up to and at the time of the hearing in this matter. All definitions and instructions from Marple Township’s previous requests shall apply.

SUPPLEMENTAL REQUESTS

Documents and/or communications comprising, containing, discussing, analyzing, relating to or referring to and/or regarding the following:

1. Final plot plan for the gas reliability station at the proposed location, showing all equipment and piping, including outdoor areas, indoor areas and all underground pipe routings.
2. All process and instrumentation diagrams for the gas reliability station.
3. Documentation showing the gas conditions showing temperature, pressure and composition at inlet, outlet and within the building.
4. Documentation regarding any odorization of gas at the station.

Respectfully Submitted,
MCNICHOL, BYRNE & MATLAWSKI, P.C.

/s/

J. Adam Matlawski, Esq.
Attorney I.D. No.: 41678
Kaitlyn T. Searls, Esq.
Attorney I.D.: 311237
1223 N. Providence Road
Media, PA 19063

Dated: July 11, 2023

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing, Supplemental Request for Production of Documents directed to PECO Energy Company, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant) in the manner listed below upon the parties listed below:

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Respectfully Submitted,

MCNICHOL, BYRNE & MATLAWSKI, P.C.

Dated: July 11, 2023

 /s/ J. Adam Matlawski
By: J. Adam Matlawski, Esq.
Attorney I.D. No.: 41678
1223 N. Providence Road
Media, PA 19063

Exhibit “B”

Via electronic service only due to Emergency Order at M-2020-3019262

**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	:	

PROTECTIVE ORDER

WHEREAS, the entry of a PROTECTIVE ORDER is necessary and appropriate to govern the discovery of Proprietary Information in this matter, IT IS HEREBY ORDERED that each of the signing parties and their counsel shall be bound by the following terms and conditions concerning Proprietary Information in the above-captioned action:

1. This Protective Order is hereby GRANTED with respect to all materials and information identified at Ordering Paragraphs 2 and 3 herein which are filed with the Pennsylvania Public Utility Commission (the "Commission"), produced in discovery, or otherwise presented during these proceedings. All persons now and hereafter granted access to the materials and information identified in Ordering Paragraphs 2 and 3 shall use and disclose such information only in accordance with this Order.

2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, furnished in these proceedings, which are believed by the producing party to be of a proprietary or Confidential nature and which are so designated by being marked "Confidential" or "Proprietary." Such materials will be referred to herein as "Proprietary Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record. Any Proprietary

Information inadvertently produced without being marked “Confidential” or “Proprietary” may be so designated by a producing party by written notice to the receiving party within a reasonable time following the discovery that the Proprietary Information was produced without such designation.

3. This Protective Order applies to the following categories of materials: the parties may designate as “Confidential” or “Proprietary” (a) those materials that customarily are treated by that party as sensitive or proprietary, which are not available to the public, and which, if disclosed freely, would subject that party or its clients to risk of competitive disadvantage or other business injury; and (b) those materials that are of such a commercially sensitive nature among the parties or of such a private, personal nature that the producing party is able to justify a heightened level of Confidential protection with respect to those materials. For purposes of example and not limitation, Proprietary Information includes trade secrets, unpatented inventions, technical development and engineering data, and sensitive information whose public disclosure could increase the security threat to critical infrastructure. In addition, information subject to protection under the Public Utility Confidential Security Information Disclosure Protection Act (35 P.S. §§ 2141.1 to 2141.6) and PUC Regulations at 52 Pa.Code §§ 102.1-102.4 will be designated as Proprietary Information.

4. Proprietary Information shall be made available to counsel for a party, subject to the terms of this Protective Order. For so long as they are Active Parties in this proceeding, Proprietary Information shall also be made available to Protestants Julia Baker and Theodore Uhlman, provided that prior to any such disclosure such person has signed and delivered to all counsel a letter in the form attached hereto as Appendix A. All persons receiving Proprietary Information shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, cross examination, argument, or settlement in these proceedings. The designation of material as Proprietary Information shall not itself affect the rights of the designator (or the designator’s authorized representative) to give or disclose the Proprietary Information to any person for any reason, and such giving or disclosing of Proprietary Information shall not be deemed a

waiver of this Agreement, unless such information is made publicly available by designator.

5. To the extent required for participation in this proceeding, a party's counsel may afford access to Proprietary Information made available by another party ("the Producing Party") to:

- i. The Commission at any hearing in this proceeding or in connection with motions filed in this proceeding;
- ii. Counsel of record for all named parties to this action and their immediate supervisor;
- iii. Other counsel not of record, not to exceed five (5) individuals, provided only that said individuals are duly employed on a full-time basis with the organizations that are named parties to this action.
- iv. The Commissioners of Marple Township, The Township Manager of Marple Township, the Township Engineer of Marple Township, the Commissioners of Delaware County, the Executive Director of Delaware County, the Fire Marshal, and the Chief of the Fire Department, provided that prior to any such disclosure such person has signed and delivered to all counsel a letter in the form attached hereto as Appendix A. It shall be the further obligation of counsel, upon learning of any breach or threatened breach of this Protective Order by any person to whom such counsel has delivered Confidential Information, promptly to notify opposing counsel of such breach or threatened breach;
- v. Court reporters;
- vi. Any witness during the course of that witness's deposition or examination;
- vii. Experts consulted by the named parties or their counsel in connection with this action, whether or not retained to testify at trial, provided that prior to any such disclosure counsel for the party making the disclosure shall deliver a copy of this Protective Order to the expert, shall explain its terms to the expert, shall secure the signature of the expert on a letter in the form attached hereto as Appendix A and shall deliver such letter to all counsel of record. It shall be the further obligation of counsel, upon learning of any breach or threatened breach of this Protective Order by any expert and/or advisor, promptly to notify opposing counsel of such breach or threatened breach.

6. To the extent required for participation in this proceeding, Ms. Baker and Mr. Uhlman may afford access to Proprietary Information made available by a Producing Party to:

- i. The Commission at any hearing in this proceeding or in connection with motions filed in this proceeding;
- ii. Court reporters;
- iii. Any witness during the course of that witness's deposition or examination;
- iv. Experts in connection with this action, whether or not retained to testify at trial, provided that at least fifteen (15) days prior to any such disclosure, Ms. Baker and Mr. Uhlman has delivered to all counsel of record a letter disclosing the identity of such expert, has delivered a copy of this Protective Order to the expert, has explained its terms to the expert, and has secured the signature of the expert on a letter in the form attached hereto as Appendix A and delivered such letter to all counsel of record. It shall be the further obligation of Ms. Baker and Mr. Uhlman, upon learning of any breach or threatened breach of this Protective Order by any expert, promptly to notify opposing counsel of such breach or threatened breach.

7. In accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission's Rules of Practice and Procedure, 52 Pa.Code §§ 5.362, 5.365(e), any party may, by subsequent objection or motion, seek further protection with respect to Proprietary Information including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular persons or parties.

8. A Producing Party shall designate data or documents as constituting or containing Proprietary Information by affixing an appropriate Confidential stamp or typewritten or handwritten designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the Producing Party, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents that constitute or contain Proprietary Information.

9. Any public reference to Proprietary Information by the Commission or by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

10. Part of any record of any proceedings containing the Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in Ordering Paragraph No. 9, above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties or pursuant to an order of an Administrative Law Judge or the Commission. Unresolved challenges arising under Ordering Paragraph No. 11, below, shall be decided on motion or petition by the presiding officer and/or the Commission as provided in 52 Pa.Code § 5.365(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, and precedent to the extent such guidance is available.

11. The parties affected by the terms of this Protective Order shall retain the right to question or challenge the Confidential or proprietary nature of Proprietary Information; to question or challenge the admissibility of Proprietary Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary Information beyond that allowed in this Protective Order; and to seek additional measures of protection of Proprietary Information beyond those provided in this Protective Order. If a challenge is made to the designation of a document or information as Proprietary, the party claiming that the information is Proprietary retains the burden of demonstrating that the designation is necessary and appropriate.

12. Upon completion of this proceeding, including any administrative or judicial review thereof, all copies of all documents and other materials, that contain any

Proprietary Information, shall be immediately returned to the party furnishing such Proprietary Information. In the alternative, parties represented by counsel may provide an affidavit affirming that the materials containing or reflecting Proprietary Information have been destroyed. This provision shall not apply to the Commission and its Staff.

13. Nothing contained in this Protective Order shall be construed as inferring that any Proprietary Information must be produced. Rather, this Protective Order is intended to set forth how Proprietary Information shall be handled by other parties to this matter if voluntarily or upon Order of the Commission are produced to other parties in this matter.

SO ORDERED AND APPROVED:

Date: June 9, 2021

/s/
Emily I. DeVoe
Administrative Law Judge

APPENDIX A

COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for a : Docket No. P-2021-3024328
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 :
:

The undersigned has read and understands the Protective Order issued in the above-captioned proceeding, which deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order. In the case of an independent expert, the undersigned represents that he/she has complied with the terms of the Protective Order prior to submitting this Affidavit. The undersigned agrees that any Proprietary Information, as addressed and defined in the Protective Order, shall be used and disclosed only for purposes of preparation for, and the conduct of, the above-captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for any other purposes whatsoever. The undersigned agrees that, if he or she is an Active Party and Protestant in this matter, he or she will return all Proprietary Information. All other signatories shall either return or destroy all Proprietary Information.

The undersigned understands and agrees that money damages may not be a sufficient remedy for any breach of the Protective Order and the undersigned hereby agrees that the non-breaching party will be entitled to obtain in any court of competent jurisdiction a decree of specific performance or other injunctive relief as a remedy for any such breach in favor of the non-breaching party, without the necessity of posting a bond or other security. Such remedy shall not be deemed to be the exclusive remedy for any such breach but shall be in addition to all other remedies available at law or equity to the non-breaching party. The prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and expenses incurred in enforcing the Protective Order.

The undersigned further agrees to be bound by the terms of the Protective Order and to subject himself/herself to the jurisdiction of the administrative and judicial bodies of the Commonwealth of Pennsylvania for the enforcement of the Protective Order and understands that, in the event that he/she fails to abide by the provisions of this Order, he/she may be subject to sanctions by the administrative and judicial courts of this Commonwealth.

Signature

Print Name

Job Title and Description

Business Address

Employer

If Independent Expert, List Persons/Entities Retaining You

Role in Proceeding

Date

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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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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