

BLANKROME

One Logan Square
130 North 18th Street | Philadelphia, PA 19103-6998

Phone: (215) 569-5793

Email: lewis@blankrome.com

May 3, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: 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
Docket No. P-2021-3024328

Dear Secretary Chiavetta:

Enclosed for electronic filing in the above-referenced proceeding please find PECO Energy Company's Reply to the Exceptions of Marple Township and Intervenors Julia Baker and Theodore Uhlman on Remand.

Thank you for your continued attention to this matter.

Respectfully,

/s/ *Christopher A. Lewis*

Christopher A. Lewis

Enclosure

cc: Certificate of Service List (via email w/encl.)

**BEFORE THE
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 in : Docket No. P-2021-3024328 (On Remand)
Marple Township, Delaware County Is :
Reasonably Necessary for the Convenience :
and Welfare of the Public :

**PECO ENERGY COMPANY’S REPLY TO THE EXCEPTIONS OF
MARPLE TOWNSHIP, JULIA M. BAKER AND THEODORE R. UHLMAN ON REMAND**

Christopher A. Lewis, Esq.
Frank L. Tamulonis, Esq.
Stephen C. Zumbrun, Esq.
BLANK ROME LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Phone: 215.569.5793
Fax: 215.832.5793
Email: lewis@blankrome.com

Anthony E. Gay, Esq.
Jack R. Garfinkle, Esq.
PECO ENERGY COMPANY
2301 Market Street
Philadelphia, PA 19103
Phone: 215.841.4000
Email: anthony.gay@exeloncorp.com
jack.garfinkle@exeloncorp.com

Counsel for PECO Energy Company

May 3, 2024

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ARGUMENT	2
A. REPLY TO EXCEPTIONS OF MARPLE TOWNSHIP	4
1. The Amended Initial Decision Accurately Characterized PECO’s Other Gate Stations and their Proximity to Residences (Response to Marple Township Exception No. 1).....	5
2. The Amended Initial Decision Made Appropriate Findings That the Reliability Station Will Comply With Marple Township’s Noise Ordinance (Response to Marple Township Exception Nos. 2-7).	5
3. PECO Provided the Final Engineering Plans to the Parties (Response to Marple Township Exception No. 8).....	8
4. The ALJ Appropriately Concluded That the Risk of Serious Damage to Property or Injury to People is Remote and Unlikely to Occur (Response to Marple Township Exception Nos. 9-13).	8
5. The Amended Initial Decision Correctly Evaluated the Air Emissions Evidence (Response to Marple Township Exception Nos. 14-17).	12
6. Marple Township Provides No Basis to Conduct a “NEPA-Style Environmental Review” (Response to Marple Township Exception No. 18).	14
7. The Amended Initial Decision’s Review Appropriately Evaluated “Agency Determinations” as Directed by the Commonwealth Court (Response to Marple Township Exception Nos. 19 and 20).	14
B. REPLY TO EXCEPTIONS OF INTERVENORS	15
1. The Commonwealth Court Directed the Commission to Defer to Other Agencies and the Commission Has No Statutory Authority to Supplant the Evaluations of These Agencies (Response to Intervenors Exception No. 1).....	16
2. The Amended Initial Decision Followed the Commonwealth Court’s Directive and Intervenors’ Position Would Yield Absurd Results (Response to Intervenors Exception No. 2).	20

3. The Amended Initial Decision Made GHG Emissions Findings and Appropriately Evaluated Dr. Najjar’s Testimony (Response to Intervenors’ Exception No. 3).....	23
4. The Amended Initial Decision Correctly Determined that Dr. Najjar’s Testimony was Speculative (Response to Intervenors’ Exception No. 4).	23
5. Pennsylvania’s Climate Action Plan is Not Binding on this Proceeding and its Language Conflicts with Intervenors’ Own Arguments (Response to Intervenors Exception No. 5).	24
III. CONCLUSION.....	25

I. INTRODUCTION

This lengthy proceeding began more than three years ago when PECO filed a routine Petition with the Commission seeking a finding that the siting of two buildings associated with PECO’s proposed Natural Gas Reliability Station (the “Reliability Station” or “Station”) at 2090 Sproul Road in Marple Township—a site zoned for public utility facilities by special exception—was reasonably necessary for the convenience or welfare of the public.¹ Now, on remand from the Commonwealth Court, Marple Township (the “Township”) and the Intervenors, Julia Baker and Theodore Uhlman (“Intervenors”), have attempted to transform this proceeding into a campaign to ban all new natural gas infrastructure in the Commonwealth, cavalierly ignoring the Commission’s statutory mandate to ensure reliable service in certificated territories.²

After four days of hearing on remand and an evaluation of over 2,500 pages of transcript, Administrative Law Judge (“ALJ”) Mary D. Long issued an Amended Initial Decision finding that the Township’s and Intervenors’ factual contentions against the Reliability Station are baseless and their legal position meritless.³ PECO respectfully requests that the Commission adopt the reasoning and factual findings of the Amended Initial Decision, deny the Exceptions on Remand of Marple Township and Intervenors, and further clarify that, to the extent the Commission may be required to consider climate change in this Section 619 proceeding by virtue of the duties the Commission has under Article I, Section 27 of the Pennsylvania Constitution (the “Environmental Rights Amendment” or “ERA”), the evidentiary record in this proceeding supports approval of PECO’s Petition.

¹ PECO filed its Petition pursuant Section 619 of the Municipalities Planning Code (“MPC”), 53 P.S. § 10619.

² See Reply Brief on Behalf of Intervenors Julia M. Baker and Theodore R. Uhlman, at 23 (Jan. 3, 2024); see also Tr. 2265:23-2266:1 & 2267:2-6.

³ Amended Initial Decision, No. P-2021-3024328 (Apr. 3, 2024) (“AID”).

II. ARGUMENT

The Amended Initial Decision correctly stated that this proceeding is necessary only because the Reliability Station includes two buildings that are subject to a narrow exception to the blanket exemption from local zoning for public utility facilities under MPC Section 619.⁴ Nothing in the Commonwealth Court’s remand expanded the scope of a Section 619 proceeding beyond the impacts of the proposed buildings. On the contrary, the Commonwealth Court remanded for the limited purpose of issuing an amended decision that (1) incorporates “a constitutionally sound environmental impact review as to the proposed siting on the Property of the Fiber Building and the Station Building,” and (2) identifies agency determinations that pertain to the “explosion impact radius, noise, or heater emissions.”⁵

To satisfy a “constitutionally sound environmental impact review” pursuant to the ERA, the Commission must demonstrate that (1) it has reasonably accounted for the environmental features of the affected locale, (2) its actions will not unreasonably degrade the rights set forth in the ERA (i.e., the right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment), and (3) it has deferred, where appropriate, to other agencies with primary jurisdiction over environmental matters.⁶

⁴ See *id.* at 30 (“But for the buildings proposed for the site, PECO would not require authorization from the Commission to construct the Gas Reliability Station.”)

⁵ *Twp. of Marple v. Pennsylvania Pub. Util. Comm'n*, 294 A.3d 965, 975 (Pa. Cmwlth. 2023), *reconsideration and reargument denied* (Apr. 25, 2023) (citations and quotations omitted) (“*Marple*”).

⁶ See *Frederick v. Allegheny Twp. Zoning Hearing Bd.*, 196 A.3d 677, 695 (Pa. Commw. Ct. 2018), *appeal denied*, 208 A.3d 462 (Pa. 2019) (“Judicial review of the government’s action requires an evidentiary hearing to determine, first, whether the values in the first clause of the Environmental Rights Amendment are implicated and, second, whether the governmental action unreasonably impairs those values”); *Marple* at 973-74 (“the Commission is *obligated* to consider ‘the environmental impacts of placing [a building] at [a] proposed location,’ while also deferring to environmental determinations made by other agencies with primary regulatory jurisdiction over such matters”) (citations omitted)(emphasis in original); see also *Murrysville Watch Comm. v. Municipality of Murrysville Zoning Hearing Bd.*, 272 A.3d 998, at *11 (Pa. Cmwlth. Ct.), *appeal denied*, 283 A.3d 790 (Pa. 2022) (quoting *Robinson Twp. v. Commonwealth*, 83 A. 3d 901, 953 (Pa. 2013) (plurality)) (“when government acts, the action must, on balance, reasonably account for the environmental features of the affected locale.”)

This directive has been satisfied. ALJ Long considered extensive evidence pertaining to air emissions, water resources, endangered species, historical resources and greenhouse gas emissions and concluded that there are no unreasonable environmental, health or safety impacts from siting the Reliability Station’s buildings at 2090 Sproul Road or from siting the Reliability Station’s *equipment* located outside of those buildings at 2090 Sproul Road⁷ (noting that PECO is not even required by the Public Utility Code to obtain Commission approval to site public utility equipment).⁸ Thus, regardless of whether the Commission takes a narrow view of the scope of its ERA obligations in Section 619 proceedings as relating only to the location of the buildings, or a broader view relating to the Reliability Station as a whole, the Commission’s ERA obligations have been satisfied. Moreover, the Amended Initial Decision identified “agency determinations” related to the “potential impact radius” of the Reliability Station (described by the Court as “explosion impact radius”), “noise”, and “heater emissions.” Accordingly, the Amended Initial Decision included an “appropriately thorough environmental review of a building siting proposal” and the decision “factor[ed] the results into its ultimate determination regarding the reasonable necessity of the proposed siting.”⁹

At first, the Township’s and Intervenors’ opposition to the Reliability Station has been “Not in My Backyard” (“NIMBY”) hostility, arguing that other locations—such as the “Don Guanella” site—are preferable. This completely disregards the decades of Pennsylvania case law

⁷ See AID at 31-35 (safety), 36-37 (noise), and 37-41 (air emissions); see also AID Findings of Fact (“FOF”) Nos. 19, 70, 71, and 103.

⁸ See *id.*; see also *Marple* at 972-73 (“Reading Section 102 of the Code in conjunction with Section 619 of the MPC leads us to the conclusion that, in the context of public utilities, anything that does not qualify as a building under the latter should be considered a facility under the former. Thus, because the security fence does not fall within the common understanding of what constitutes a building, it is a facility that stands outside the Township’s regulatory authority.”)

⁹ *Marple* at 974.

warning against local control over public utilities.¹⁰ Now, in this remand proceeding and their Exceptions, the Township and Intervenors request that the Commission dramatically expand the scope of this narrow Section 619 proceeding by turning it into a “NEPA-style” review reserved for major federal projects, and analyzing the alleged downstream environmental and climate impacts from PECO’s customers who use natural gas to cook and heat their homes.

To accept this position would require the Commission to: (1) go far beyond the Commonwealth Court’s directive to perform an environmental review *of the siting of the buildings*, (2) ignore case law holding that the ERA cannot expand the powers of an agency beyond its enabling legislation, (3) become a super-regulator on issues of environmental impact and climate change, issues squarely within the jurisdiction of other agencies, and (4) ignore the Commission’s statutory mandate to ensure reliable service in its certificated territories.

For these reasons and those detailed below, the Commission should deny the Township’s and Intervenors’ Exceptions and adopt the Amended Initial Decision.

A. REPLY TO EXCEPTIONS OF MARPLE TOWNSHIP

Through the course of this proceeding, the Township’s strategy has shifted considerably. The Township originally argued before remand a NIMBY position, not opposing the Station but instead trying to require PECO to construct the Station at a nearby location within the Township.¹¹ Now, the Township, while still advocating for moving the Station to an alternative location, asserts “there was no sound environmental review conducted.”¹² This claim is disingenuous on its face: the site selected by PECO is a vacant lot that formerly had a gasoline station. PECO remediated

¹⁰ Longstanding case law makes clear that this NIMBYism is the reason why municipal regulation of utilities is preempted. *See Marple* at 971-72, quoting *Chester Cnty. v. Phila. Elec. Co.*, 218 A.2d 331, 333 (Pa. 1966).

¹¹ *See* Remand Main Brief of PECO at 5-6 discussing the changing positions of Marple Township, and Intervenors, on their preferred locations for the Reliability Station.

¹² Marple Township’s Exceptions to the AID, at 2 (Apr. 23, 2024) (“Marple Twp. Remand Except.”).

soil contamination from the underground tanks formerly at the property. The site preferred by the Township, Don Guanella, is a pristine woodland with nearby streams—the epitome of a “public natural resource.” Regardless, the Township’s argument fails because an extensive environmental review *was* conducted. The Township is simply unhappy with the results of that extensive review and the ALJ’s witness credibility determinations. As addressed below, the Township’s Exceptions fail and should be denied.

1. The Amended Initial Decision Accurately Characterized PECO’s Other Gate Stations and their Proximity to Residences (Response to Marple Township Exception No. 1).

The Township’s Exception No. 1 takes issue with FOF No. 11, and in particular, with the ALJ using the term “some” to describe the fact that two of PECO’s gate stations are located within the same proximity to residences as the proposed Reliability Station.¹³ This is not an error.¹⁴ The more important point in FOF No. 11 is that the majority of PECO’s other gate stations are in residential areas and those gate stations are more extensive in size and scale than the Reliability Station. The Commission should reject Marple Township’s Exception No. 1.

2. The Amended Initial Decision Made Appropriate Findings That the Reliability Station Will Comply With Marple Township’s Noise Ordinance (Response to Marple Township Exception Nos. 2-7).

There are no errors with the Amended Initial Decision’s findings related to noise.¹⁵ The evidence in this proceeding demonstrated that: (1) PECO engaged noise consultants Hoover & Keith Inc. (“H&K”) to conduct an Ambient Sound Survey and Noise Impact Study of the

¹³ Marple Twp. Remand Except. at 3.

¹⁴ Indeed, the word “some” can encompass “two.” Merriam-Webster Online Dictionary, *available at* <https://www.merriam-webster.com/dictionary/some> (“some” defined as “being an unknown, undetermined, or unspecified unit or thing.”)

¹⁵ For a further discussion on noise for this proceeding, see Main Brief of PECO, at 47-50 (Aug. 23, 2021), Reply Brief of PECO (Aug. 31, 2023), Supplemental Reply Brief of PECO, at 13-15 (Oct. 1, 2021), Remand Main Brief of PECO, at 27-28 (Dec. 15, 2023); Remand Reply Brief of PECO, at 25-26 (Jan. 3, 2024).

Reliability Station (“H&K Study”);¹⁶ (2) H&K made recommendations for noise control measures;¹⁷ and (3) PECO’s noise expert, Reginald Keith, opined that PECO would be able to comply with Marple Township’s Noise Ordinance.¹⁸ PECO addresses each of Marple Township’s specific Exceptions related to noise below.

a. There are no errors with FOF Nos. 15, 65, 66-67 or 70 (Marple Township Exception Nos. 2-5).

The Township takes issue with FOF Nos. 15, 65, 66-67 and 70 because the H&K Study was commissioned by PECO in 2020 and did not review the Reliability Station’s final “Enhanced Clocktower Design” plans. In addition, the Township takes issue that PECO’s noise expert, Mr. Reginald Keith of H&K, did not review the Enhanced Clocktower Design plans. The Commission should deny the Township’s exceptions because they mischaracterize the evidence.

PECO witness Oleg Shum testified that the only changes for the Enhanced Clocktower Design are the size of the generator, a gate at the Reliability Station, additional esthetic lighting, and the perimeter esthetic wall and clocktower,¹⁹ which changes were made after discussions with the Township to enhance the esthetics of the Station.²⁰ None of these changes affect the sound-mitigating measures H&K recommended to be used at the Reliability Station. To the contrary, Mr. Keith testified that he has been advised that PECO *is* planning to meet Marple Township’s Noise Ordinance through the H&K recommendations, including the use of the sound-mitigating

¹⁶ See AID FOF Nos. 65-67; *see also* PECO St. No. 4 at 10:3-15; Exhibit TF-7, at I; PECO St. No. 4-SR at 8:8-9:6.

¹⁷ See AID FOF Nos. 66-67; *see also* PECO St. No. 4 at 10:7-15; PECO St. No. 4-SR at 8:8-9:6.

¹⁸ See AID FOF No. 70; *see also* PECO St. No. 5-RD at 4:3-12 and Tr. 1987:20-25.

¹⁹ Tr. 1996-2000 & 2008.

²⁰ *See id.*; *see also* Tr. 1866-67.

SonaGuard perimeter wall.²¹ Importantly, Mr. Keith opined that PECO will be able to meet the Noise Ordinance.²² The Township and the Intervenors offered no evidence to rebut this testimony.

b. There are no errors with the credibility determinations of the witnesses related to noise (Marple Township Exception Nos. 6 and 7).

The Township claims the ALJ erred by crediting the testimony of PECO's noise expert, Mr. Keith, who did not review PECO's final engineering plans in rendering his opinion, while discrediting the testimony of the Township's air emissions expert, who also did not review the final engineering designs. This argument is illogical and belied by the record. When asked on several different occasions if PECO would be able to meet the Noise Ordinance notwithstanding not seeing the final engineering designs, Mr. Keith, an acoustics expert, testified that PECO will be able to meet the Noise Ordinance with proven technology that is readily available.²³

Yet, the Township claims that ALJ Long improperly discredited the testimony of the Township's witness, Dr. Ketyer, related to noise pollution. The ALJ discredited Dr. Ketyer's testimony for several reasons, including that: (1) Dr. Ketyer is not an acoustical expert, (2) he did not calculate sound decibel levels for the Station, and (3) he was only speaking generically about the impact of excessive sound and noise pollution on children's health.²⁴ ALJ Long made credibility determinations between the witnesses and appropriately determined that the testimony did not prove that sound generated by the Reliability Station will cause an unreasonable impact.²⁵

²¹ PECO St. No. 5-RD, at 3-5.

²² Tr. 1987:20-25 & 1988:9-11.

²³ Tr. 1987:20-25 ("They don't have to reinvent the wheel to do any of this stuff.")

²⁴ AID at 36-37.

²⁵ *Id.*

The Commission should not disturb the ALJ's credibility determinations²⁶ and should deny the Township's Exceptions.

3. PECO Provided the Final Engineering Plans to the Parties (Response to Marple Township Exception No. 8).

The Township's Exception No. 8 argues that FOF Nos. 18 and 19 should state that the Enhanced Clocktower Design rendering of the Reliability Station that was entered into evidence as part of exhibit DO-Cross-1 is only a drawing. The Township raises this exception because it claims that PECO did not provide final engineering plans. This exception is meritless and false.

First, the Enhanced Clocktower Design is a rendering drawn to scale to depict the design of the Reliability Station.²⁷ In addition, PECO provided the parties and their experts with an internet weblink to view the final engineering design plans for the Reliability Station and also offered for the parties to view the final designs in person at one of PECO's facilities.²⁸ There is no error, the Township's claims are baseless, and the Commission should deny this exception.

4. The ALJ Appropriately Concluded That the Risk of Serious Damage to Property or Injury to People is Remote and Unlikely to Occur (Response to Marple Township Exception Nos. 9-13).

This proceeding included extensive testimony on the safety of the Reliability Station, Pipeline and Hazardous Materials Safety Administration ("PHMSA") regulations, and PHMSA's databases regarding safety incidents at equivalent regulating station facilities.²⁹ ALJ Long found

²⁶ *Grant Schauer v. Yellow Cab Company of Pittsburgh, Opinion and Order*, No. C-2012-2304882, 2013 WL 3070750 (June 13, 2013) ("It is well settled that the issue of credibility of witnesses in an evidentiary proceeding before the Commission falls within the purview of the ALJ.") (citing *Application of JET Sedan Services, LLC*, No. A-2009-2120781 (Aug. 23, 2010)).

²⁷ Tr. 1996:20-22 ("These are the final renderings of the station...") & Tr. 2009:2-3 ("It does depict all the equipment that will be on site, and it is to be rendered to scale.")

²⁸ See Tr. 1990-91.

²⁹ For further discussion see Main Brief of PECO, at 18-20, 42-47 (Aug. 23, 2021); Reply Brief of PECO (Aug. 31, 2023); Supplemental Reply Brief of PECO, at 8-11 (Oct. 1, 2023); Remand Main Brief of PECO, at 35-37 (Dec. 15, 2023); Remand Reply Brief of PECO, at 26-27 (Jan. 3, 2024).

that “PECO’s evidence regarding the facilities at the Station more credible and convincing tha[n] the evidence provided by the Township and the Intervenors.”³⁰ Now on Exceptions, the Township takes issue with the ALJ’s findings regarding PHMSA regulations and the very limited safety risk posed by the Reliability Station. For the reasons below, the Commission should deny Marple Township’s Exceptions Nos. 9 through 13.

a. There is no error with FOF No. 25 (Marple Township Exception No. 9).

The Township takes issue with FOF No. 25, which found that gas distribution facilities, such as the Reliability Station, frequently need to be located near residences and businesses. The basis of this exception is that PECO’s expert, Mr. Israni, did not give the testimony that the Township wished he would, i.e., that the Reliability Station should be located at their preferred alternate site, Don Guanella. The Commission should deny this exception because the Township is asking the Commission to disregard the extensive evidence that engineering constraints dictate where these facilities are placed,³¹ operators must follow extensive safety regulations wherever these facilities are placed,³² and that these are safe facilities.³³

b. Evaluating the PHMSA regulations is not an “academic exercise.” (Marple Township Exception No. 10)

The Township takes issue with the Amended Initial Decision’s safety analysis because it evaluates the potential impact radius (“PIR”), claiming that the Amended Initial Decision’s safety analysis was limited to an “academic exercise” on the PIR.³⁴ It is disingenuous for the Township to now argue that the PIR should not be considered in this proceeding. The Township’s own

³⁰ AID at 31.

³¹ Tr. 1579:21-1580:3, 1582:4-12 & 1582:23-25.

³² AID FOF No. 33 (citing PECO St. No. 3-RD at 7-8).

³³ See AID FOF Nos. 39, 43, and 46.

³⁴ Marple Twp. Remand Except. at 7-8.

witness, Jim Capuzzi, repeatedly stated he was concerned about the PIR for the Station and that PECO's Petition should be denied because of the PIR.³⁵

The Township's claim that the Amended Initial Decision was limited to an "academic exercise" on the PIR is also disingenuous. The PIR is a component of PHMSA's regulations, and the Commission specifically requires companies to comply with these safety regulations.³⁶ The Amended Initial Decision evaluated the PIR and found that this calculation is applicable only to transmission pipelines to determine if a segment of transmission pipeline must be included in an operator's "Transmission Integrity Management Program."³⁷ Distinct from transmission pipelines, "distribution pipelines," such as the Reliability Station, have separate regulatory requirements, and all segments of distribution pipelines are required to be included in an operator's "Distribution Integrity Management Program," which prioritizes and mitigates risks.³⁸ The PIR is inapplicable to distribution pipelines because of these differences. Further, the PIR calculation itself is based on a full rupture of a transmission pipeline, which scenario is factually distinct from a distribution pipeline because distribution facilities are only permitted to operate at 20% of the maximum pressure of the lines' capacity to ensure higher safety margins.³⁹

The Township's Exception No. 10 also takes issue with what it claims is a lack of evidence regarding safety concerns of the Station. The Amended Initial Decision made extensive findings

³⁵ Marple Township Remand St. No. 2-R, at 2-3 and 5-6 and Tr. 2300:23-2301:1.

³⁶ 52 Pa. Code § 59.33(b).

³⁷ See AID FOF Nos. 29-31.

³⁸ See AID FOF Nos. 32-34.

³⁹ See AID FOF Nos. 29, 32-33, 35, 62; AID at 34.

as to the very limited safety risk posed by the Station.⁴⁰ Accordingly, based on the foregoing, the Commission should deny Marple Township Exception No. 10.

c. There is no error with FOF No. 42 (Marple Township Exception No. 11).

The Township asserts that FOF No. 42 does not accurately reflect the evidence on “vulnerability zones.” As described in FOF Nos. 41 and 42, the Township’s expert, Jeffrey Marx, conducted a quantitative risk analysis for the Reliability Station that identified “vulnerability zones” of potential impact of hypothetical events at the Reliability Station. The analysis included a hypothetical “significant holes event” to have a 100 ft zone and a hypothetical “full rupture event” to have a 220 ft zone. FOF No. 42 stated that these areas extend only a short distance beyond the site boundaries, if any potential impact would occur at all. The Township believes that this finding is in error because there are properties within the “vulnerability zone.”

There is no error with this finding. The Township’s own expert testified that an event occurring that would create a 100 ft zone at the Reliability Station is “rare” and PECO’s expert testified that PHMSA’s incident database has not identified a similar such incident at an equivalent regulating station across the United States.⁴¹ Moreover, an event that would create a 220 ft zone was described as “extremely rare” by the Township’s witness and there were likewise no such events identified in PHMSA’s database, which dates back several decades.⁴²

d. There is no error with FOF No. 61 and the ALJ correctly discredited the unfounded concerns of Marple Township’s witness James Capuzzi (Marple Township Exception Nos. 12 and 13).

The Township believes that FOF No. 61 is in error, in which the ALJ determined that even if an unlikely explosion occurred in the Reliability Station’s building, the explosion would not

⁴⁰ See AID FOF Nos. 38-43 and 46.

⁴¹ AID FOF No. 38 and 39.

⁴² AID FOF Nos. 40 and 43.

extend beyond the site's boundary. There is no error with this finding because the Township's own witness, Jeffrey Marx, provided this exact testimony, which is cited in the Amended Initial Decision.⁴³ In addition, the Township's Exception's No. 13 takes issue with the fact that there is not a finding that the natural gas will be heated at the Reliability Station, which was a concern of its witness, James Capuzzi. The Amended Initial Decision correctly dispatched this concern because Mr. Capuzzi "did not provide any evidence other than his opinion that these factors may elevate the danger of an accident at the facility" and Mr. Capuzzi is not an engineer and does not have any specialized experience with gas safety other than his experience as a firefighter and fire marshal.⁴⁴ Accordingly, the Commission should dismiss these exceptions.

5. The Amended Initial Decision Correctly Evaluated the Air Emissions Evidence (Response to Marple Township Exception Nos. 14-17).

In Exception Nos. 14 through 17, the Township takes issue with the ALJ's findings that the Township's air emissions expert, Dr. McAuley, incorrectly modeled the projected air emissions from the Reliability Station. ALJ Long found that Dr. McAuley's calculations failed to acknowledge: (1) PECO's actual plans to run the emergency generator only sporadically; (2) federal law restricting operation of emergency generators to no more than 100 hours per year; and (3) EPA guidance specifying 500 hours as a conservative benchmark for generator air emissions modeling.⁴⁵ In addition, Dr. McAuley's air emissions modeling did not use the statistical form of the National Ambient Air Quality Standards ("NAAQS") standard promulgated by EPA⁴⁶ and

⁴³ Tr. 2183:1-12 ("Yes, that's correct. Natural gas is not a very energetic material and explosions do not have much strength...[b]ut the damaging overpressure here characterized by one pound per square inch . . . of overpressure in the blast wave, does not extend past the facility boundaries.")

⁴⁴ AID at 34-35.

⁴⁵ AID FOF No. 96.

⁴⁶ AID FOF No. 94.

used the incorrect facility layout and stack dimensions, different exhaust temperatures and velocities when comparing different locations, and used an overly conservative screening parameter in contravention of EPA’s guidance.⁴⁷ In sum, ALJ Long concluded: “I find Mr. Harrington’s [PECO’s expert’s] air modeling and analysis more persuasive than Dr. McAuley’s...Dr. McAuley overstated his estimates of emissions from the line heater and the generator.”⁴⁸

Exception Nos. 14 and 17 ask the Commission to reject the credibility assessments of the ALJ, who presided over the hearing and directly heard the testimony and cross-examination of witnesses. The Township seeks for the Commission to credit Dr. McAuley’s testimony and discredit Mr. Harrington’s testimony, contrary to ALJ Long’s determination based on evidence in the record.

More importantly, despite ALJ Long acknowledging that it was not clear from the *Marple* decision whether the Commonwealth Court was aware that neither emission source would be located in the buildings,⁴⁹ ALJ Long permitted the parties to introduce evidence on air emissions and found that PECO “produced substantial evidence to conclude that for purposes of a Section 619 review, the Gas Reliability Station will not pose an unreasonable impact on air quality.”⁵⁰ The evidence demonstrated that neither emission source required permits from DEP; that even in the absence of any permit requirement, PECO’s testimony showed the emissions sources would be subject to EPA regulations and DEP enforcement; and the emissions sources will not cause an

⁴⁷ AID FOF No. 98-99.

⁴⁸ AID at 40-41.

⁴⁹ *Id.* at 37.

⁵⁰ *Id.*

unreasonable impact on air quality.⁵¹ Accordingly, the Commission should dismiss Marple Township’s Exception Nos. 14 through 17.

6. Marple Township Provides No Basis to Conduct a “NEPA-Style Environmental Review” (Response to Marple Township Exception No. 18).

In Exception No. 18, the Township claims the ALJ erred in not adopting a “NEPA-style environmental review.” Insofar as the Township is contending that the ALJ should have required PECO to prepare an environmental impact statement conforming to the federal National Environmental Policy Act (“NEPA”) criteria as a condition precedent for approval of PECO’s Section 619 Petition, that contention lacks merit. NEPA applies only to federal projects, and more specifically to *Major* Federal Actions Significantly Affecting the Quality of the Human Environment.⁵² A NEPA-style review is inappropriate for a minor non-federal project involving only the siting of buildings. Moreover, neither the plain text of the ERA nor any court precedent interpreting the ERA supports the use of a NEPA-like environmental review as a condition for Commission approval. In any event, ALJ Long provided the Township and the Intervenors every opportunity to present evidence on environmental, health, and safety concerns, both related to the buildings and for the utility facilities located outside of the buildings in question. Accordingly, there is no legal, factual, or procedural basis for this exception and it should be dismissed.

7. The Amended Initial Decision’s Review Appropriately Evaluated “Agency Determinations” as Directed by the Commonwealth Court (Response to Marple Township Exception Nos. 19 and 20).

In Exception Nos. 19 and 20, the Township claims that the Amended Initial Decision failed to engage in a constitutionally-sound environmental review because it inappropriately “punted” to

⁵¹ *Id.* at 37-41.

⁵² For a further discussion of why a NEPA-style review does not apply in this proceeding, see Remand Main Brief of PECO, at 40-41 (Dec. 15, 2023); Remand Reply Brief of PECO, at 11, 14-16 (Jan. 3, 2024).

the “illusory” agency determinations of the DEP and EPA. As a threshold matter, this argument attempts to circumvent the Commonwealth Court’s instruction that “the Commission is obligated to consider ‘the environmental impacts...**while also deferring to environmental determinations made by other agencies with primary regulatory jurisdiction over such matters.**”⁵³

The Township appears to argue that because the DEP made no specific determinations for the Reliability Station, there is consequently no “agency determination” for the Commission to defer to. This argument is wrong as a matter of law. The Township does not dispute that DEP’s regulations exempt the line heater and emergency generator from the requirement to obtain an air permit. These blanket exemptions are themselves “agency determinations” of the DEP that are applicable to emission sources at this facility and deserve the Commission’s deference.

Moreover, the Amended Initial Decision did not rely only on the blanket exemptions. ALJ Long allowed the Township to offer evidence on the Reliability Station’s air emissions. Contrary to Marple Township’s contention that the Commission is “punting” to other agencies, ALJ Long analyzed the modeling performed by both Dr. McAuley and Mr. Harrington, and correctly concluded that there was no demonstration of an unreasonable impact on air quality.⁵⁴ Marple Township’s Exception Nos. 19 and 20 should be dismissed because the Amended Initial Decision evaluated the evidence and made the findings as directed by the Commonwealth Court.

B. REPLY TO EXCEPTIONS OF INTERVENORS

The Intervenors’ arguments do not challenge the location of the buildings themselves, or even the Reliability Station’s facilities, which is the sole focus of this proceeding. Their Exceptions are an attack on the broader Natural Gas Reliability Project, of which the Reliability

⁵³ *Marple* at 973–74 (emphasis added).

⁵⁴ AID at 37-41.

Station is one-part. Their arguments have no basis in law, and no evidence was presented by Intervenors that would demonstrate that the Commission should deny PECO's Petition. For the reasons provided below, the Intervenors' Exceptions should be denied.

1. The Commonwealth Court Directed the Commission to Defer to Other Agencies and the Commission Has No Statutory Authority to Supplant the Evaluations of These Agencies (Response to Intervenors Exception No. 1).

Intervenors' Exception No. 1 argues: (1) that the Commonwealth Court remanded this proceeding "to complete a 'constitutionally sound environmental impact review' of *the PECO Gas Expansion Project*....," and (2) that the Amended Initial Decision failed to "clearly and unequivocally" recognize that the Commission is bound to apply the ERA in this proceeding.⁵⁵

The Intervenors' argument is misleading and incorrect. The Commonwealth Court did *not* remand for an environmental review of the *entire* Natural Gas Reliability Project nor did the Commonwealth Court ever imply that the Commission should review the actions of non-utility end-users. Rather, the Commonwealth Court ordered the Commission to: "issue an Amended Decision...which 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.**"⁵⁶ The Commission was not directed to go beyond this limited judicial mandate. Intervenors' repeated attempts to transform this Section 619 building siting proceeding into an attack on PECO's reliable supply of natural gas to customers is far outside the Commonwealth Court's mandate and outside the bounds of a Section 619 proceeding.⁵⁷

⁵⁵ See Exceptions of Intervenors Julia M. Baker and Theodore R. Uhlman at 2-8 (Apr. 23, 2024) (emphasis added) ("Intervenors' Remand Except.").

⁵⁶ *Marple* at 975 (emphasis added).

⁵⁷ See *Del-AWARE Unlimited, Inc. v. Pennsylvania Pub. Util. Comm'n*, 513 A.2d 593, 595 (Pa. Cmwlth. 1986) ("[w]e do not interpret [Section 619] as requiring the [Commission] to reevaluate the entire project. [Section 619] of

To the extent Intervenors' Exception No. 1 claims that the ALJ did not evaluate issues of air emissions and climate change, such argument is belied by the record. In fact, notwithstanding the limited scope of this proceeding, the ALJ accepted and considered evidence proffered by the parties, including expert opinions, and made well-reasoned determinations regarding such evidence. The Amended Initial Decision made extensive environmental findings regarding the Reliability Station, including findings about air emissions, water resources, endangered species, and historical structures to conclude that there would be no unreasonable impact posed by the Reliability Station.⁵⁸ Additionally, as directed by the Commonwealth Court, the Amended Initial Decision identified and deferred to DEP determinations for air permitting for the Reliability Station's equipment and broader climate change policy because DEP is charged by the General Assembly with that authority.⁵⁹ ALJ Long correctly cited to established case law that the Commission, as a statutory agency, may exercise only the jurisdiction that the General Assembly has delegated.⁶⁰ This limiting principle is well founded, because if a statutory agency were to stray beyond its enabling statute, there would be no way for the General Assembly, the people's representatives, to rein in an agency that went down its own path on whatever course it wished.⁶¹

the MPC] merely directs [the Commission] to determine whether the site of the [proposed building] is appropriate to further the public interest.”)

⁵⁸ AID FOF Nos. 71-103.

⁵⁹ AID at 37-44.

⁶⁰ AID, at 41 (citing *Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (Pa. 1977); *Pittsburgh Railways Co. v. Pennsylvania Pub. Util. Comm'n*, 237 A.2d 602, 605 (Pa 1967); *Com., Dep't of Env't Res. v. Butler Cnty. Mushroom Farm*, 454 A.2d 1, 4 (Pa 1982); *Pequea Twp. v. Herr*, 716 A.2d 678, 686 (Pa. Commw. Ct. 1998)).

⁶¹ See *Process Gas Consumers Grp. v. Pennsylvania Pub. Util. Comm'n*, 511 A.2d 1315, 1319 (Pa. 1986) (quoting *Borough of Swarthmore v. Pub. Serv. Comm'n*, 121 A. 488, 490 (Pa. 1923) (“The only safe and proper roads for administrative bodies like the present commission to travel are those plainly marked by the acts of assembly defining their duties, and to these the courts must confine them, if the system represented by such commissions—to which our body politic seems committed—is to work out as intended by its creators, the legislature.”)

The Commission’s enabling statute, the Public Utility Code, requires that the Commission provide for just, reasonable, and reliable public utility service. That is the Commission’s authorization and guiding principle.⁶² Here, the Commission has already found that the Reliability Station is needed to: (1) address design day requirements deficits;⁶³ (2) reduce price volatility and increase reliability;⁶⁴ and (3) address expected customer growth in the existing certificated areas of Marple Township and Delaware County.⁶⁵ The Amended Initial Decision fulfilled the duty the Commission has under the ERA as a trustee for future generations by finding that the siting of the Reliability Station at 2090 Sproul Road would create no unreasonable environmental impacts and would serve the important public purpose of ensuring reliable natural gas distribution service in an *existing* certificated territory.

Specific to climate change considerations, the Amended Initial Decision cited to *Funk v. Wolf* in support of the proposition that the General Assembly is the correct body to enact climate change policy, not the Commission outside of legislative authority.⁶⁶ The Amended Initial Decision made GHG emissions determinations for the Reliability Station itself and deferred to agencies on both the environmental limits for such emissions and broader climate change policy in the Commonwealth as directed by the General Assembly in the Pennsylvania Climate Change Act of 2008 (Act 70). The Commission, a statutory agency, has no ability to alter this legislative scheme established by the General Assembly.

⁶² See *Rulemaking Regarding Hazardous Liquid Pub. Util. Safety Standards at 52 Pa. Code Chapter 59*, No. L-2019-3010267, 2024 WL 838537, at *13 (Feb. 22, 2024).

⁶³ December 7, 2021 Initial Decision, adopted on exceptions by the Commission on March 10, 2022 (“ID”), FOF Nos. 18-20.

⁶⁴ ID FOF No. 35.

⁶⁵ ID FOF No. 24-29.

⁶⁶ AID at 41-42; *Funk v. Wolf*, 144 A.3d 228, 250 (Pa. Commw. Ct. 2016), *aff’d*, 638 Pa. 726, 158 A.3d 642 (2017)).

Intervenors urge the Commission to disregard *Funk v. Wolf*, arguing that *Funk* is “defunct” because it predated the Supreme Court’s *PEDF II* decision.⁶⁷ While it is true that *Funk* predated *PEDF II*, any notion that the decision is not applicable to this proceeding, or is no longer binding on the Commission, is incorrect. *Funk* was affirmed by the Supreme Court.⁶⁸ *Funk* did not rely on the *Payne v. Kassab* test abrogated by *PDEF II* to support its conclusion that an agency cannot act beyond its enabling statutes on climate change policy.⁶⁹ Additionally, subsequent Commonwealth Court cases after *PDEF II* have reaffirmed that the ERA cannot expand the statutory powers of an administrative agency. In *Commonwealth v. Monsanto Co.*, the Commonwealth Court, citing to *Funk*, ruled that the ERA did not expand the powers of the DEP and the DCNR and those agencies gained their ERA trustee standing from their enabling statutes.⁷⁰ Similarly, in *Delaware Riverkeeper Network v. Pennsylvania Dep’t of Env’t Prot.*, the Court applied *Funk* to find that because the Safe Drinking Water Act, “which embodies the General Assembly’s judgment about the Agencies’ duties under the [ERA],” did not require DEP to issue drinking water standards, “so the amendment [i.e. the ERA] itself does not require that action.”⁷¹

In short, there is no dispute that the ERA applies to this Section 619 proceeding and the record clearly shows that the ALJ considered an abundance of evidence and satisfied the Commission’s ERA obligations in Section 619, the Commonwealth Court’s directive, and the Public Utility Code. Accordingly, Intervenors’ Exception No. 1 should be denied.

⁶⁷ *Pennsylvania Env’t Def. Found. (PEDF) v. Commonwealth*, 161 A.3d 911 (Pa. 2017) (“*PEDF I*”).

⁶⁸ *Funk v. Wolf*, 158 A.3d 642, 643 (Pa. 2017).

⁶⁹ *Funk*, 144 A.3d at 234–35 (“This [*Payne v. Kassab*] test is somewhat less satisfying when, as here, a person alleges that the government failed to affirmatively engage in an action required by its trusteeship duties under the ERA[.]...”)

⁷⁰ 269 A.3d 623, 644–45 (Pa. Cmwlth. 2021).

⁷¹ 247 A.3d 1188, 2021 WL 96887, at *8 (Pa. Cmwlth. 2021) (unpublished).

2. The Amended Initial Decision Followed the Commonwealth Court’s Directive and Intervenors’ Position Would Yield Absurd Results (Response to Intervenors Exception No. 2).

Intervenors’ Exception No. 2 finds error with the Amended Initial Decision’s review of only the Reliability Station, and not all “reasonably foreseeable environmental effects” resulting from the Reliability Station, including alleged increases in GHG emissions from PECO’s broader Natural Gas Reliability Project, such as those purportedly to be generated by PECO’s downstream customers.⁷² This argument is contrary to the command given to the Commission by the Commonwealth Court in *Marple* where the Court said the Commission is to specifically consider the environmental impact of placing a building at a proposed location.⁷³ In the Discussion, Conclusion, and Order sections of the Commonwealth Court’s *Marple* opinion and order, the Court specifically held that this Section 619 remand proceeding is limited to evaluating only PECO’s building siting proposal.⁷⁴ As stated earlier in this proceeding by ALJ Long, it is hornbook Pennsylvania law that, on remand, a lower court or other government unit must follow the instructions of an appellate court,⁷⁵ and the Commonwealth Court’s directive was specifically limited to evaluating the environmental impacts of siting PECO’s proposed Fiber Building and Station Building at 2090 Sproul Road.

Simply put, emissions of customers are *not* emissions of the Reliability Station’s buildings or the Reliability Station itself. The Intervenors engage in extreme bootstrapping in assuming that any emissions “facilitated” or “downstream” of the Reliability Station are emissions “of” the

⁷² Intervenors’ Remand Except. at 8-19.

⁷³ *Marple* at 973–74.

⁷⁴ *Id.* at 973-975.

⁷⁵ See *Interim Order Denying Application for Reconsideration Regarding the Format for Review and Scope of Proceedings*, No. P-2021-3024328 (Aug. 10, 2023); see also *Department of Env’tl. Prot. v. B&R Resources*, 270 A.3d 580, 591 (Pa. Cmwlth. 2021), *reargument denied* (Jan. 27, 2022).

project. Indeed, the Commonwealth Court precedent has rejected this but-for causation reasoning that relies on downstream impacts to establish an ERA concern. In *Cnty. Coll. of Delaware Cnty. v. Fox*, the Court found that, although permitting a sewer line in question could lead to further development, this could not in itself be a violation of the ERA.⁷⁶

Setting aside the Commonwealth Court’s directive in this remand proceeding to focus on the building siting proposal, Intervenor’s do not point to any language in Section 619, in the Code, or in any other Pennsylvania statute or regulation, that even authorizes the Commission to evaluate climate change impacts from sources *other than* PECO’s Reliability Station, or to deny PECO’s Petition for a reasonable necessity determination of the proposed buildings on that basis.⁷⁷

Intervenor’s further claim that if the Commission does not consider downstream emissions with this Section 619 proceeding, then there would be no other forum for Intervenor’s to challenge any environmental impacts from these emissions. This is false. Intervenor’s have the ability to petition PHMSA, EPA, DEP, or the Commission for regulatory changes regarding end-use customers, and the General Assembly or Congress for legislative changes. What the Intervenor’s cannot do is use this limited Section 619 proceeding to force the Commission to deny customers reliable public utility service without any legislative authority to do so.

Intervenor’s argument suffers from at least two other fatal flaws. First, even assuming that the Commission were obligated to consider any “reasonably foreseeable” downstream impacts of

⁷⁶ *Cnty. Coll. of Delaware Cnty. v. Fox*, 342 A.2d 468, 482 (Pa. Cmwlth.1975). While this case was analyzed using the *Payne v. Kassab* decision, the Pa. Supreme Court plurality favorably viewed this decision’s result. *See Robinson Twp., Washington Cnty. v. Com.*, 83 A.3d 901, 967, n. 53 (Pa. 2013) (plurality) (“The Commonwealth Court’s conclusions [in *Fox*] that the Amendment limits rather than expands executive agency authority, and that executive agency authority to act is limited by its enabling legislation, are certainly reasonable.”)

⁷⁷ *See Pennsylvania Pub. Util. Comm’n Bureau of Investigation & Enft Off. of Consumer Advoc. Off. of Small Bus. Advoc. Philadelphia Indus. & Com. Gas User Grp. Grays Ferry Cogeneration P’ship & Vicinity Energy Philadelphia, Inc. James M. Williford v. Philadelphia Gas Works*, No. C-2021-3029259, 2023 WL 8714853, at *143–45 (Nov. 9, 2023) (where the Commission recently denied arguments attempting to require a natural gas utility to evaluate non-pipeline alternatives when there was no statutory or regulatory provision).

the Reliability Station, Intervenors provided no evidence as to precisely what those impacts are other than a speculative increase in customer usage of natural gas. Intervenors made no attempt to quantify the amount of increased natural gas usage, or calculate any resulting increase emissions in GHGs. Intervenors had every opportunity over the last three years to produce evidence of “reasonably foreseeable” downstream impacts, but failed to do so. Intervenors cannot now argue that alleged downstream GHG emissions will increase without *any* supporting evidence.

Second, as described further in the Brief of Amicus Curiae Energy Association of Pennsylvania, Intervenors’ position will produce an absurd result that will adversely impact all public utilities and their customers.⁷⁸ Intervenors’ position, taken to its logical conclusion, would mean that every time any upgrades were made to *any* utility infrastructure (not just a natural gas facility), an industry-wide environmental impact review would be necessary. For example, if a water utility were to upgrade a sewer system to accommodate community growth, an area wide environmental impact review of such growth would be required. Moreover, insofar as multiple agency approvals are required for such projects, multiple environmental impact reviews would be triggered, which could produce conflicting findings. Such results are absurd and would stifle necessary upgrades to critical utility infrastructure and lead to dramatically increased costs which impede the provision of reliable utility service to customers. Our courts have long instructed that such is not the intent of the ERA.⁷⁹ Accordingly, this exception should be dismissed.

⁷⁸ See Brief of Amicus Curiae of Energy Association of Pennsylvania (Jan. 3, 2024) at 6 and 16-18.

⁷⁹ See *Frederick v. Allegheny Twp. Zoning Hearing Bd.*, 196 A.3d 677, 695 (Pa. Commw. Ct. 2018) (“the [ERA] does not call for a stagnant landscape or for the derailment of economic or social development or for a sacrifice of other fundamental values.”) (citations and quotations omitted).

3. The Amended Initial Decision Made GHG Emissions Findings and Appropriately Evaluated Dr. Najjar's Testimony (Response to Intervenors' Exception No. 3).

Intervenors' Exception No. 3 argues that the Amended Initial Decision is in error because it failed to make sufficient findings on the climate impacts of PECO's broader Natural Gas Reliability Project, which includes the Reliability Station, or to credit the testimony of Intervenors' witness, Dr. Najjar. The Commission should deny this exception because the Amended Initial Decision did make specific GHG findings and Dr. Najjar's testimony was not related to the Reliability Station or the Reliability Project.

As the Intervenors recognize on page 22 of their Exceptions, the Amended Initial Decision does contain findings regarding GHG emissions from the Reliability Station.⁸⁰ Moreover, the Intervenors have mischaracterized Dr. Najjar's testimony and the evidence they presented. Dr. Najjar testified that all fossil fuel combustion contributes to climate change and then described the impacts of climate change itself.⁸¹ Dr. Najjar did not purport to isolate and identify climate change impacts from the Project standing alone. Accordingly, the Amended Initial Decision fulfilled its mandate from *Marple* and the Commission should reject Intervenors' exception.

4. The Amended Initial Decision Correctly Determined that Dr. Najjar's Testimony was Speculative (Response to Intervenors' Exception No. 4).

Intervenors' Exception No. 4 takes issue with the fact that ALJ Long discredited the testimony of Intervenors' witness Dr. Najjar, who testified that climate change will increase temperatures and decrease the need for the Reliability Station. The Intervenors continue to ignore the testimony of Carlos Thillet that the Reliability Station would be needed to protect the reliability

⁸⁰ See AID FOF Nos. 101 and 102.

⁸¹ Marple Township, Ted Uhlman & Julie Baker Remand Statement No. 2-RD, at 17-19; Tr. 2265:20-2273:24.

of gas supply *even in the absence of any increased demand in Delaware County*.⁸² ALJ Long appropriately rejected Intervenors’ argument based on the evidence adduced during the hearing. ALJ Long made credibility determinations that Dr. Najjar only speculated that climate change will impact the need for natural gas service. Dr. Najjar’s opinion was based on his “common sense”⁸³ and not based on any type of analysis on demand calculations across thousands of customers in Delaware County. The Commonwealth Court has upheld credibility determinations by fact-finding bodies where speculative theories advanced by challengers under the auspices of the ERA were rejected.⁸⁴ Accordingly, the Commission should reject this exception.

5. Pennsylvania’s Climate Action Plan is Not Binding on this Proceeding and its Language Conflicts with Intervenors’ Own Arguments (Response to Intervenors Exception No. 5).

Intervenors Exception No. 5 argues that the Commission is disregarding Pennsylvania’s Climate Action Plan. This argument is also meritless. First, there is nothing in the Pennsylvania Climate Action Plan that mandates or even suggests the Commission should abandon its statutory duty to ensure the reliability of existing natural gas distribution service. Additionally, Intervenors ignore key aspects of the 2021 Climate Action Plan that argue against abandoning natural gas usage. The Climate Action Plan lists fuel switching to lower emitting fuels for heating as the first reason for reduced emissions in the residential and commercial sectors since 2005.⁸⁵ In addition, the Climate Action Plan has determined that “building electrification”, which the Intervenors’

⁸² PECO Statement No. 2, at 3-7; Tr. 1277:1-1283:24.

⁸³ Tr. 2269:1-3 (“No, I’m using my common sense knowledge. . . .”); 2269:22-2270: 3 (“No. I’m using my common sense understanding”); 2273:20-24 (“No, I’m using common sense.”).

⁸⁴ See *Carnahan v. Slippery Rock Twp. Zoning Hearing Bd.*, 305 A.3d 211, 226–27 (Pa. Cmwlth. 2023).

⁸⁵ See Pa. Dep’t of Env’t Prot., Climate Change Action Plan (2021) at 13, available at <https://greenport.pa.gov/elibrary//GetDocument?docId=3925177&DocName=2021%20PENNSYLVANIA%20CLIMATE%20ACTION%20PLAN.PDF%20%20%3cspan%20style%3D%22color:green%3b%22%3e%3c/span%3e%20%3cspan%20style%3D%22color:blue%3b%22%3e%28NEW%29%3c/span%3e%209/21/2023>.

advocate for, would have a net negative economic impact, and further the Climate Action Plan specifically calls for *new gas service* to enable fuel-switching in the industrial sector.⁸⁶ Because the Climate Action Plan has no controlling aspect on this proceeding, and there are conflicting aspects of the Plan to Intervenors' own positions, the Commission should deny Intervenors' Exception No. 5.

III. CONCLUSION

PECO respectfully requests that the Commission adopt the Amended Initial Decision and deny the Exceptions of Marple Township and Intervenors Mr. Uhlman and Ms. Baker on Remand.

Respectfully submitted,
BLANK ROME LLP

/s/ Christopher A. Lewis
Christopher A. Lewis, Esq.
Frank L. Tamulonis, Esq.
Stephen C. Zumbrun, Esq.
BLANK ROME LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Phone: 215.569.5793
Fax: 215.832.5793
Email: lewis@blankrome.com

Anthony E. Gay, Esq.
Jack R. Garfinkle, Esq.
PECO ENERGY COMPANY
2301 Market Street
Philadelphia, PA 19103
Phone: 215.841.4000
Email: anthony.gay@exeloncorp.com
jack.garfinkle@exeloncorp.com

Counsel for PECO Energy Company

Date: May 3, 2024

⁸⁶ *Id.* at 50 and 71.

CERTIFICATE OF SERVICE

I hereby certify that on this day I served a true copy of the foregoing PECO Energy Company's Reply to the Exceptions of Marple Township and Theodore Uhlman upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party) via electronic mail.

Honorable Mary D. Long
PO Box 3265
Harrisburg, PA 17105-3265

J Adam Matlawski, Esquire
Kaitlyn T Searls, Esquire
McNichol, Byrne & Matlawski, P.C.
1223 N Providence Road
Media, PA 19063
amatlawski@mbmlawoffice.com
ksearls@mbmlawoffice.com
Accepts EService
Representing Marple Township

Robert W. Scott, Esquire
Carl Ewald, Esquire
ROBERT W SCOTT PC
205 North Monroe Street
Media, PA 19063
rscott@robertwscottpc.com
carlewald@gmail.com
Accepts EService
Representing Delaware County

John C. Dernbach, Esquire
Professor Emeritus
Widener University
Commonwealth Law School
3800 Vartan Way
Harrisburg, PA 17110
jcdernbach@widener.edu
*Counsel for Theodore R. Uhlman and
Julia M Baker*

Robert B. McKinstry, Jr., Esquire
548 School House Rd.
Kennett Square Pa. 19348
robert.mckinstry@gmail.com
*Counsel for Theodore R. Uhlman and Julia
M Baker*

Devin McDougall, Esquire
Senior Attorney
Clean Energy Program
Earthjustice
Philadelphia Office
1617 John F. Kennedy Blvd., Suite 2020
Philadelphia, PA 19103
dmcdougall@earthjustice.org
*Counsel for Theodore R. Uhlman and Julia
M Baker*

Jessica R. O'Neill, Esquire
Emma H. Bast, Esquire
Citizens for Pennsylvania's Future
1429 Walnut Street, Suite 701
Philadelphia, PA 19102
oneill@pennfuture.org
bast@pennfuture.org
*Counsel for Amicus Curiae Citizens for
Pennsylvania's Future*

Kacy C. Manahan, Esquire
Delaware Riverkeeper Network
Canal Street, Suite 3701
Bristol, PA 19007
kacy@delawareriverkeeper.org
*Counsel for Amici Curiae Delaware
Riverkeeper Network and Green
Amendments For the Generations*

Alex Bomstein, Esquire
Sage Lincoln, Esquire
Clean Air Council
135 South 19th Street, Suite 300
Philadelphia, PA 19103
215-567-4004
abomstein@cleanair.org
slincoln@cleanair.org
*Counsel for Amicus Curiae Clean Air
Council*

/s/ Stephen C. Zumbrun
Counsel to PECO Energy Company

Dated: May 3, 2024