

Township of Marple
Board of Commissioners

AGENDA

Special Meeting – August 15, 2022 – 6:30 PM

1. Call to Order

2. Pledge of Allegiance

3. Roll Call – Commissioners & Staff

4. Public Forum

5. PECO Energy Company v. Marple Township Zoning Hearing Board

To review and consider for approval of Stipulation setting forth agreement of PECO Energy Company and Marple Township on certain matters with respect to the proposed project at 2090 Sproul Road during the pendency of the PUC appeal and beyond and authorization of the execution and filing of same in the matter of PECO Energy Company v. Marple Township Zoning Hearing Board, Delaware County Court of Common Pleas, No. CV-2020-8477

6. Other Business

7. Adjourn

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PECO ENERGY COMPANY,	:	DELAWARE COUNTY COURT
Appellant,	:	OF COMMON PLEAS
	:	CIVIL DIVISION
v.	:	No. CV-2020-8477
	:	Land Use Appeal
MARPLE TOWNSHIP ZONING HEARING BOARD,	:	Premises:
	:	2090 Sproul Road, Marple Township
Appellee.	:	Pennsylvania
	:	ZHB Case No. 2020-13

**APPELLANT PECO ENERGY COMPANY AND
INTERVENOR MARPLE TOWNSHIP'S JOINT
STIPULATION**

AND NOW, this ____ day of _____, 2022, Appellant PECO Energy Company, a Pennsylvania Corporation (“**PECO**”), by and through its undersigned counsel, and Intervenor, Marple Township (the “**Township**,” collectively, PECO

and the Township are referred to as the “**Parties**”), by and through its undersigned counsel, intending to be legally bound, do hereby submit the following joint stipulation (“**Stipulation**”) regarding the property located at 2090 Sproul Road, Broomall, Marple Township, Pennsylvania, 19008 (the “**Property**”). In support thereof, the Parties stipulate as follows:

1. Subject to the following paragraphs of this Stipulation, at such time as PECO constructs the proposed Natural Gas Reliability Station facility (the “**Project**”), PECO hereby agrees to construct the clock tower design (the “**Enhanced Design**”) and, if so required, will file the necessary documentation with the Pennsylvania Public Utility Commission (“**PUC**”) to acquire the requisite consent for the Enhanced Design. Provided that the Opinion and Order of the Pennsylvania Public Utility Commission dated March 10, 2022 with respect to the Property and the Project (the “**PUC Decision**”) is upheld by the Commonwealth Court in the appeal captioned as *Township of Marple v. Pennsylvania Public Utility Commission*, No. 319 C.D. 2022 (the “**Commonwealth Appeal**”), or upheld in any Pennsylvania Supreme Court decision, if allocator is filed, PECO will not be required to comply with any of Township’s subdivision and land development ordinances (“**SALDO**”) or obtain any permits or approvals of any nature related to the Enhanced Design. The Enhanced Design shall materially comply with the

Township Code Chapter 257- Stormwater Management. Attached to this Stipulation as **Exhibit “A”** is a true and correct copy of the Enhanced Design Renderings.

2. Subject to the following paragraphs of this Stipulation, PECO hereby agrees not to begin construction of the “building” portion of the Project (which PECO agrees includes the construction and/or installation of any and all fixtures, equipment, structures and improvements of any kind) at, upon, under or on the Property until after the Commonwealth Court renders its decision in the Commonwealth Appeal. PECO and Township hereby agree that PECO may continue and complete its construction of the gas main located within Sproul Road up to the Property, and complete the construction work necessary to bring the lateral gas line and terminus point onto the Property for the purposes of water (or other non-gas) testing the entire gas main which is connected to its Liquefied Natural Gas Plant in Conshohocken, PA. In conjunction with this work, Township hereby agrees that it will not take any action(s) to delay, halt, or oppose the completion of the installation of the gas main or the installation of the lateral gas line and terminus point on the Property, including, but not limited to, initiating litigation and/or requiring PECO comply with any Township SALDO or permit or approval requirements. Township also agrees to immediately execute those highway occupancy permits (“HOP”) necessary for PECO to complete the work set forth in this paragraph. Attached to this Stipulation as **Exhibit “B”** is a true and correct copy of those HOP documents to be executed by the Township. Following the test, the

gas main will be capped and remain capped and will not contain natural gas or any pressurized product until construction of the rest of Project as set forth herein.

3. In the event the Commonwealth Court rules in favor of Township and against PECO in the Commonwealth Appeal, or in the event the Pennsylvania Supreme Court either denies PECO's request for allocatur or finds in favor of Township and against PECO with respect to any further appeal of the Commonwealth Appeal, PECO hereby agrees to remove the lateral gas line and terminus point from the Property and agrees to install the terminus point in the bed of Sproul Road until the gas main is extended.

4. Both PECO and Township will be permitted to file for allocatur to the Pennsylvania Supreme Court as a result of any Commonwealth Court decision in the Commonwealth Appeal. In the event the Commonwealth Court renders a decision in PECO's favor with respect to the Commonwealth Appeal and Township elects to file allocatur to the Pennsylvania Supreme Court, the Township hereby agrees not to take any other action(s) or require any approvals to delay, halt, or oppose PECO from commencing the "building" portion of the Enhanced Design on the Property (except for the filing of any allocatur petition), including, but not limited to, initiating litigation and/or requiring PECO comply with any Township SALDO or permit or approval requirements as to the construction of the Enhanced Design, during the pendency of the Township's request for allocator. PECO acknowledges that if PECO elects to commence construction of the Project at the Property following a

Commonwealth Court decision upholding the PUC decision and the Township files allocatur to the Pennsylvania Supreme Court, PECO would be proceeding with construction at its own risk. PECO agrees that in the event that PECO so elects to commence construction of the Project and the Supreme Court ultimately rules in favor of the Township and against PECO, in addition to removing the lateral gas line and terminus point from the Property and installing the terminus point in the bed of Sproul Road as agreed to above, PECO shall remove any and all fixtures, equipment, facilities, appurtenances, structures and improvements of any kind constructed or placed upon, under, on or at the Property and shall restore the Property to its pre-construction state. PECO agrees that it shall reasonably cooperate with the Township and complete such remediation expeditiously. PECO will not take or commence any action(s) to delay, postpone, halt, or otherwise stay any removal of the Project fixtures, equipment, facilities, appurtenances, structures and improvements as set forth herein.

5. In the event the Commonwealth Court renders a decision in PECO's favor and Township declines to file for allocatur, or the Supreme Court ultimately renders a decision in PECO's favor or denies allocatur if filed by the Township, Township hereby agrees that PECO will not be required to adhere to any Township SALDO, permit, or approval requirements and PECO will continue and complete the construction on the Property of the Enhanced Design free of any Township interference. Furthermore, PECO and Township hereby agree that, while no permit

fees will be charged to PECO, in lieu of any permit fees, PECO will make a donation of _____ to the Marple Township Park and Recreational Fund.

6. This Stipulation constitutes the entire agreement and understanding between the Parties.

7. If any portion of this Stipulation is held invalid or unenforceable, then so far as is reasonable and possible, the remainder of this Stipulation shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or unenforceable.

8. The failure by either party to enforce against the other any term of provision of this Stipulation shall not act as a waiver of such party's rights to enforce against the other party the same or any other such term or provision in the future.

9. This Stipulation may be amended and/or supplemented only upon agreement by the Parties in an instrument in writing fully executed by same.

10. This Stipulation shall not be construed more strictly against one party than against the other merely by virtue of the fact it may have been prepared primarily by counsel for one of the parties, it being recognized that both parties have contributed substantially and materially to the preparation of this Stipulation.

11. The Parties hereby agree that a violation of any provision of this Stipulation shall constitute irreparable harm against the non-violating party and further agree that injunctive relief will constitute a proper remedy to address any such violation. Furthermore, the Parties hereby agree that in the event either party

seeks injunctive relief in connection with any violation of this Stipulation, said moving party will not be required to post a bond in connection with the injunctive relief.

12. The Parties hereby agree that this Stipulation shall be governed in all respects in accordance with the laws of the Commonwealth of Pennsylvania.

13. Both PECO and the Township have authorized the filing of this Stipulation.

DATED: _____, 2022

DILWORTH PAXSON LLP

BY: _____

Thomas Biemer, Esq.
Neil Sklaroff, Esq.
Joseph Kessler, Esq.
Christopher C. Nana-Sinkam, Esq.
Attorneys for PECO Energy Company

DATED: _____, 2022

LAMB MCERLANE PC

BY: _____

Rocco P. Imperatrice, III, Esq.
Joel L. Frank, Esq.
Attorneys for PECO Energy Company

DATED: _____, 2022

**MCNICHOL, BRYNE,
MATLAWSKI, P.C.**

BY: _____

Adam Matlawski, Esq.
Attorneys for Marple Township