

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

PECO Energy Company	:
	:
v.	: No. 419 C.D. 2025
	: Submitted: October 13, 2026
Marple Township Zoning	:
Hearing Board, Township	:
of Marple, and Julia Baker	:
	:
Appeal of: Township of Marple	:

BEFORE: HONORABLE ANNE E. COVEY, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE

FILED: October 28, 2026

The Township of Marple (Township) appeals from the March 20, 2025 Order of the Delaware County Court of Common Pleas (Common Pleas), which denied its petition for a preliminary injunction barring PECO Energy Company (PECO) from constructing a natural gas “reliability station” (Station). PECO appealed to Common Pleas from the November 18, 2020 Order of the Township’s Zoning Hearing Board (Board), which denied its application for zoning relief relating to the Station. PECO then obtained relief from Township zoning requirements through the Public Utility Commission (Commission). After careful review, we dismiss the appeal as moot.

BACKGROUND

On approximately August 26, 2020, PECO filed an application with the Board requesting a special exception to construct the Station, a public utility facility, in the Neighborhood Center zoning district. Reproduced Record (R.R.) at 20a-21a. PECO also applied for a dimensional variance permitting the fence that would surround the Station to be eight feet high. *Id.* at 22a. The Board held a hearing on the application on October 21, 2020, and denied both the special exception and variance requests by Order dated November 18, 2020. PECO appealed to Common Pleas.¹

On February 26, 2021, while the appeal was pending, PECO filed a petition in the Commission requesting a finding that the situation of the Station's buildings was reasonably necessary for the convenience or welfare of the public, and a finding that the fence that would surround the Station was a public utility facility.² Critically, our case law directs that a municipality may not regulate the operations of a public utility without statutory authorization. *Twp. of Marple v. Pa. Pub. Util. Comm'n*, 294 A.3d 965, 972 (Pa. Cmwlth. 2023) (en banc) (*Marple I*). Rather, it is the Commission that maintains "preeminent authority to regulate utilities on a statewide basis." *Id.* Such a statutory authorization exists regarding public utility buildings. *Id.* Section 619 of the Pennsylvania Municipalities Planning Code³ provides:

¹ The Township filed a notice of intervention. Julia Baker, representing herself, also filed what she described as a petition to intervene, which Common Pleas granted.

² This Court takes much of the background regarding the proceedings before the Commission from our prior decisions on appeal in that case. *See Lycoming Cnty. v. Pa. Lab. Rels. Bd.*, 943 A.2d 333, 335 (Pa. Cmwlth. 2007) (noting "this Court may take judicial notice of pleadings and judgments in other proceedings where appropriate," particularly "where, as here, the other proceedings involve the same parties") (citations omitted).

³ Act of July 31, 1968, P.L. 805, *as amended*.

This article shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the . . . Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. It shall be the responsibility of the . . . Commission to ensure that both the corporation and the municipality in which the building or proposed building is located have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties and otherwise exercise the rights of a party to the proceedings.

53 P.S. § 10619. *See also Del. Riverkeeper Network v. Sunoco Pipeline L.P.*, 179 A.3d 670, 695 (Pa. Cmwlth. 2018) (en banc) (explaining “[o]ur Supreme Court holds that this provision does not grant municipalities an implied right to zone with regard to public utility facilities other than described buildings”).

Administrative Law Judges (ALJ) held hearings and issued an Initial Decision on December 8, 2021, finding in PECO’s favor. The Commission issued an Opinion and Order ruling on the parties’ exceptions and adopting the ALJs’ Initial Decision as modified and clarified on March 10, 2022. The Commission concluded the fence that would surround the Station was a public utility facility and exempt from zoning requirements, and the Station’s proposed buildings were reasonably necessary. The Township petitioned this Court for review.

Meanwhile, PECO’s appeal from the Board’s decision remained ongoing. On June 30, 2021, the Township filed a motion requesting a remand to the Board for the presentation of further evidence relating to “the characterization of PECO’s Zoning Application as well as . . . the nature of working of the facilities proposed for the . . . Station.” Mot. for Remand, 6/30/21, ¶ 9. Common Pleas granted the motion and

remanded the matter to the Board while retaining jurisdiction on August 27, 2021.⁴ However, Common Pleas stayed the matter “together with the . . . remanded hearing and related proceedings” before the Board, on January 4, 2022. R.R. at 284a.

On August 18, 2022, PECO and the Township submitted a Joint Stipulation to Common Pleas. The Joint Stipulation provided PECO would forgo construction of the Station pending this Court’s ruling on the Township’s petition for review:

1. . . . Provided that the Opinion and Order of the . . . Commission dated March 10, 2022 with respect to the Property and the Project . . . 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 allocat[u]r is filed, PECO will not be required to comply with any of [the] Township’s subdivision and land development ordinances . . . or obtain any permits or approvals of any nature

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. . . .

. . . .

4. Both PECO and [the] 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 [the] 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,

⁴ PECO filed a motion for reconsideration or, in the alternative, a stay of the remand proceedings and certification of Common Pleas’ order for interlocutory appeal. Common Pleas did not rule on the motion. PECO then filed a petition for permission to appeal in this Court on October 20, 2021, at docket number 1155 C.D. 2021. We granted PECO’s application for a stay pending disposition of the petition. On December 16, 2021, we denied PECO’s petition.

halt, or oppose PECO from commencing the “building” portion . . . 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 . . . during the pendency of the Township’s request for allocat[u]r. . . .

5. In the event the Commonwealth Court renders a decision in PECO’s favor and [the] Township declines to file for allocatur, or the Supreme Court ultimately renders a decision in PECO’s favor or denies allocat[u]r if filed by the Township, [the] 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 . . . free of any Township interference. . . .

Id. at 28a-31a (emphasis omitted).

On March 9, 2023, this Court issued a decision on the Township’s petition for review in *Marple I*, agreeing with the Commission that the Station’s proposed fence was exempt from zoning requirements as a public utility facility. The Court vacated the Opinion and Order, however, and remanded for an amended decision regarding the Station’s buildings that “must incorporate the results of a constitutionally sound environmental impact review.”⁵ *Marple I*, 294 A.3d at 975. An ALJ held additional hearings and issued an Amended Initial Decision on April 3, 2024, again finding in PECO’s favor. The Commission issued an Opinion and Order ruling on the parties’

⁵ We relied on article I, section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Pa. Const. art. I, § 27.

exceptions and adopting the ALJ's Amended Initial Decision with a modification on September 26, 2024. The Commission concluded:

Based upon the ALJ's identification of the alleged environmental impacts and careful consideration of the environmental, safety, and additional evidence, as discussed, *supra*, we agree that the ALJ's Amended Initial Decision adequately addressed the environmental impacts of the . . . Station, consistent with the Commonwealth Court's directive . . . , and properly concluded that the proposed . . . Station and related buildings will enhance reliability and availability of supply service to PECO's customers, and that the buildings should be exempt from the Township's zoning ordinance because the situation of the buildings is reasonably necessary for the public convenience or welfare. . . .

Twp. of Marple v. Pa. Pub. Util. Comm'n, 352 A.3d 1144, 1148 (Pa. Cmwlth. 2026) (en banc) (*Marple II*) (quoting the reproduced record).

The Township and intervenors⁶ petitioned this Court for review. On October 23, 2024, the Township filed an application to stay the Commission's Opinion and Order. Specifically, the Township requested that we "continue the stay" in the Joint Stipulation "and enjoin PECO from construction of the [S]tation." R.R. at 44a. The Township asserted, "[c]onsidering the health, safety and environmental issues raised by this appeal," that it was "in the best interest of the residents of [the] Township for construction to be stayed pending a decision." *Id.* This Court denied the application on January 30, 2025, explaining the Township failed to address each of the requisite factors for granting a stay.⁷ *Id.* at 271a.

Returning to PECO's appeal to Common Pleas, the Township filed a petition for a preliminary injunction on March 12, 2025. The Township asserted PECO was

⁶ The petitioning intervenors included Julia Baker and Theodore Uhlman.

⁷ See *Pa. Pub. Util. Comm'n v. Process Gas Consumers Grp.*, 467 A.2d 805 (Pa. 1983).

beginning construction of the Station in violation of the Joint Stipulation and asked that Common Pleas preliminarily enjoin PECO’s activities and award the Township attorney’s fees. R.R. at 277a-79a. Common Pleas entered a Temporary Emergency Order on that same day, enjoining construction of the Station “until a hearing can be scheduled in this matter and upon further notice from” Common Pleas. *Id.* at 301a. PECO filed a response in opposition to the petition on March 17, 2025, asserting the stay provision in the Joint Stipulation applied to the appeal in *Marple I* but not to the appeal in *Marple II*. *Id.* at 305a-06a, 309a-15a. PECO also argued the Township did not satisfy the requisite factors for granting a preliminary injunction,⁸ and this Court in its January 30, 2025 Order had already denied the relief the Township requested.⁹ *Id.* at 304a, 310a-15a.

On March 20, 2025, Common Pleas vacated its Temporary Emergency Order and denied the petition for a preliminary injunction. Common Pleas explained in its Order “that jurisdiction is vested with the Commonwealth Court[, which] denied this request” on January 30, 2025. R.R. at 384a. Common Pleas presented an alternative rationale in its subsequent Opinion, reasoning the Township did not show immediate and irreparable harm. *Id.* at 389a. The Township timely appealed to this Court.

Subsequently, on February 2, 2026, this Court issued a decision in *Marple II*, affirming the Commission’s September 26, 2024 Opinion and Order. We reasoned, in relevant part:

In [*Marple I*], this Court concluded the Commission erred by failing to consider concerns, including potential explosions, noise, and emissions from the Station’s buildings. The ALJ heard extensive evidence regarding these concerns on remand and issued her findings

⁸ See *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995 (Pa. 2003).

⁹ The Township then filed a reply, and PECO filed a response to the Township’s reply.

of fact. The Commission reviewed the ALJ's findings on exceptions and adopted them with only minimal clarification, concluding the Station would not pose an unreasonable impact to the environment, and the situation of the Station's buildings was reasonably necessary for the public convenience or welfare. Our review of the record supports the Commission's necessary findings of fact and its conclusion.

Marple II, 352 A.3d at 1157-58 (citations and quotation marks omitted). Thereafter, the Township and the intervenors filed petitions for allowance of appeal, which our Supreme Court denied. *See Twp. of Marple v. Pa Pub. Util. Comm'n* (Pa., Nos. 125 MAL 2026 & 126 MAL 2026, filed Aug. 17, 2026).

DISCUSSION

As a preliminary matter, we consider whether this Court's decision in *Marple II* renders the Township's appeal moot. Although no party raises this issue, the Court may do so sua sponte because we "cannot decide moot or abstract questions, nor can we enter a judgment or decree to which effect cannot be given." *Battiste v. Borough of E. McKeesport*, 94 A.3d 418, 424 (Pa. Cmwlth. 2014) (quoting *Orfield v. Weindel*, 52 A.3d 275, 277 (Pa. Super. 2012)). An actual case or controversy must exist at all stages of a judicial process. *Kupershmidt v. Wild Acres Lakes Prop. Owners' Ass'n*, 143 A.3d 1057, 1061 (Pa. Cmwlth. 2016). A question before the Court is moot if, by ruling on that question, we "cannot enter an order that has any legal force or effect." *Burns v. Dep't of Hum. Servs.*, 190 A.3d 758, 761 (Pa. Cmwlth. 2018).

On appeal, the Township asserts Common Pleas erred by denying its request for a preliminary injunction. According to the Township, the Joint Stipulation bars PECO from constructing the Station unless this Court resolves the appeal in *Marple II* in PECO's favor:

It is [the Township's] position that, given the numerous references to a decision by the Commonwealth Court "in PECO's favor," as well as the clear intent of the Parties at the time of entering

the agreement, that the Joint Stipulation remains in effect. Therefore, PECO is prohibited from beginning and/or continuing 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 a decision in its favor. Despite the long history of this overall project and litigation, PECO has yet to receive a decision from any higher court in its favor.

. . . .

. . . . The appeal of the [Commission] decision is scheduled for argument October 8, 2025. A decision in that matter is forthcoming. Furthermore, as [the Township] intends to abide by its promises, should the decision be in PECO’s favor in the Commonwealth Court, the Township stands by its agreement that it would not seek to halt construction even if it were to seek allocat[u]r.

Township’s Br. at 11-12, 15 (citation to the reproduced record omitted).

This Court issued a decision resolving *Marple II* in PECO’s favor on February 2, 2026. Our Supreme Court then denied petitions for allowance of appeal on August 17, 2026. Because of this, the Station is exempt from Township zoning requirements under our case law and the Pennsylvania Municipalities Planning Code. Even if the Court were to agree with the Township’s interpretation of the Joint Stipulation, the Township would not be entitled to a preliminary injunction. Accordingly, there is no longer any case or controversy for the Court to consider, and any opinion we would issue would be purely advisory.¹⁰

¹⁰ Exceptions to the mootness doctrine are available “where the conduct complained of is capable of repetition yet likely to evade review, where the case involves issues important to the public interest or where a party will suffer some detriment without the court’s decision.” *Burns*, 190 A.3d at 761-62 (quoting *Sierra Club v. Pa. Pub. Util. Comm’n*, 702 A.2d 1131, 1134 (Pa. Cmwlth. 1997) (en banc)). We discern no basis to conclude that any of these exceptions should apply here.

CONCLUSION

Based on the foregoing, we dismiss the Township's appeal of Common Pleas' March 20, 2025 order as moot.

STACY WALLACE, Judge

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ORDER

AND NOW, this 28th day of October 2026, the Township of Marple’s appeal from the March 20, 2025 order of the Delaware County Court of Common Pleas is **DISMISSED** as moot. Further, the Township of Marple’s “Application for Leave of Court to Discontinue Appeal Pursuant to Pa.R.A.P. [] 1973” is **DISMISSED** as moot.

STACY WALLACE, Judge