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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JUL 28 2016

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

INTERNATIONAL BROTHERHOOD OF :  
ELECTRICAL WORKERS, LOCAL 614 :

v. :

PECO ENERGY COMPANY :

DOCKET NO. C-2016-2525801

**OBJECTIONS OF PECO ENERGY COMPANY TO  
NOTICES OF DEPOSITION ISSUED BY  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 614**

Pursuant to 52 Pa. Code § 5.343(f), PECO Energy Company ("PECO") hereby objects to the Notices of Deposition (the "Deposition Notices") served on PECO by the International Brotherhood of Electrical Workers Local 614 ("Local 614") on July 18, 2016. Copies of the Deposition Notices are attached hereto as Appendix A. As set forth herein, PECO respectfully requests that the Pennsylvania Public Utility Commission (the "Commission") enter an Order directing that the depositions of the individuals identified in the Deposition Notices not proceed because the Deposition Notices entirely fail to conform to threshold requirements for depositions set forth in the Commission's discovery regulations, 52 Pa. Code § 3.321 *et seq.* (the "Regulations").

**I. PROCEDURAL HISTORY**

1. A detailed procedural history of this case is set forth in prior Orders issued by Administrative Law Judge Cynthia W. Fordham (the "ALJ") and, therefore, is not necessary to repeat here. For present purposes, PECO notes that (1) Local 614 filed its Complaint on January 25, 2016; (2) the ALJ's Prehearing Order #3 established a schedule for this proceeding, and (3) several modifications to the Commission's discovery regulations agreed to by PECO and Local

614 were approved, including a requirement for electronic service of all discovery. *See* Prehearing Order #3 (Order entered June 7, 2016).

2. In accordance with Prehearing Order #3, Local 614 filed its Direct Testimony (comprised of ten statements and totaling over 300 pages of written testimony and exhibits) on June 30, 2016.

3. On June 16, 2016 and July 11, 2016, counsel for Local 614 informed PECO that Local 614 intended to take the oral depositions of several PECO employees and contractors. PECO identified dates when deponents could be available (August 4 and August 8, 2016). PECO was not asked to nor did it agree to any waiver of the Commission's Regulations.

4. On July 18, 2016, PECO received an e-mail (attached as Exhibit B) with deposition notices of three PECO employees and a PECO contractor.<sup>1</sup> The e-mail stated only that "[a]ttached are copies of the Notices of Deposition in the above-referenced matter which were mailed to the individuals on [July 15], as well as a copy of [the PECO contractor's] Notice which is being mailed [on July 18]."

5. Subsequently, as detailed in the Motion of PECO Energy Company for Extension of Time filed by PECO concurrently with these Objections, counsel for PECO and Local 614 discussed an extension of time for these proceedings but did not reach agreement on a new schedule, including the timing of any depositions.

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<sup>1</sup> The discovery modifications agreed to by PECO and Local 614 and approved by the ALJ in Prehearing Order #3 require that all discovery requests be served electronically. *See* Prehearing Order #3, Ordering Paragraph ¶ 3(h).

## II. OBJECTIONS TO LOCAL 614 DEPOSITION NOTICES

6. Section 5.343(a) of the Commission's Regulations require that a party seeking to take the deposition of a person upon oral examination give twenty days' notice of the deposition to both the active party in a proceeding *and* to the presiding officer. *See* 52 Pa. Code § 5.343(a). Absent agreement of the parties, approval of the deposition by the presiding officer – in this case, the ALJ – in the form of an order is required. *See* 52 Pa. Code § 5.344(a).

7. The Commission's regulations also require that any notice of deposition "include a brief statement of the matters for which inquiry is being made." 52 Pa. Code § 5.343(c).

8. In these proceedings, Local 614 did not serve any of the Deposition Notices upon the ALJ or obtain approval of the ALJ to conduct the depositions, as required by the Commission's Regulations.

9. In addition, the Deposition Notices served upon counsel for PECO do not include the "brief statement of the matters for which inquiry is being made" required by the Commission's Regulations. *See* 52 Pa. Code § 5.343(c). Indeed, the Deposition Notices include **no information whatsoever** regarding the scope of the deposition. Local 614's failure to comply with the Commission's notice requirement compromises PECO's due process rights, precluding PECO from raising objections to the scope of the deposition in accordance with the Commission's Regulations. *See* 52 Pa. Code § 5.361 (providing that a deposition may not be permitted on various grounds, including burden and expense to the deponent or relationship to privileged matters).

10. Local 614's failure to provide any statement regarding the matters in which it intends to inquire as required by the Regulations is particularly prejudicial to PECO as Local 614

is attempting to take discovery **after** it has already served its Direct Testimony in these proceedings. Because the deposition notices are substantively deficient and preclude PECO from exercising its rights to raise specific objections, PECO will be required to waste essential resources preparing the witnesses noticed for deposition for all possible deposition inquiries. Those resources cannot be efficiently and effectively devoted to working with other witnesses preparing testimony in response to the ten statements submitted by Local 614 in its case-in-chief.

11. Furthermore, it is unclear how Local 614 could lawfully introduce into the record whatever information it hopes to extract through such depositions. The Commission's Regulations explicitly prohibit testimony in later stages of a proceeding that should have been presented in a party's case-in-chief. *See* 52 Pa. Code § 5.243(e); *Pa. P.U.C. v. UGI Utilities, Inc.*, Docket No. R-00932862 (July 27, 1994), 1994 Pa. PUC LEXIS 137, \*129-134 (rejecting new claims made for the first time in rebuttal testimony as a violation of 52 Pa. Code § 5.243(e)(2)). Because Local 614 has already submitted its case-in-chief, it cannot claim that the depositions are needed to assist in preparation of rebuttal testimony by Local 614 since PECO has not yet submitted its own testimony.

WHEREFORE, for the foregoing reasons, the ALJ should issue an Order granting these Objections and directing that the depositions of the individuals identified in the Deposition Notices not proceed.

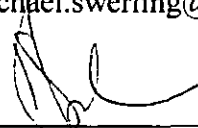
Respectfully submitted,

By: 

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Romulo L. Diaz, Jr. (Pa. No. 88795)  
Jack R. Garfinkle (Pa. No. 81892)  
Michael S. Swerling, Esq. (Pa. No. 94748)  
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Karl A. Pritton (Pa No. 34552)  
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*Counsel for PECO Energy Company*

Dated: July 28, 2016

**APPENDIX A**

**Local 614 Deposition Notices**

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

LAW OFFICES  
**SPEAR WILDERMAN**

*A Professional Corporation*

SUITE 1400, 230 SOUTH BROAD STREET, PHILADELPHIA, PA 19102

TEL: (215) 732-0101 FAX: (215) 732-7790



July 15, 2016

WARREN J. BORISH\*  
SAMUEL L. SPEAR  
JAMES F. RUNCKEL  
CHARLES T. JOYCE\*  
BENJAMIN EISNER◊  
WENDY CHIERICI\*  
JAMES KATZ\*  
MARTIN W. MILZ\*  
LOIS GARBER SCHWARTZ\*  
WILLIAM B. SANDERSON, JR.\*  
LAURIE M. HIGGINS\*  
NICHOLAS J. BOTTA  
SYRETTA J. MARTIN  
MELISSA A. LOVETT  
F. TIGHE BURNS\*

PA BAR EXCEPT:  
\* PA & NJ BAR  
◊ PA, NJ & DC BAR

NJ OFFICE:  
1040 N. KINGS HIGHWAY  
SUITE 202  
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(856) 482-8799 FAX: (856) 482-0343

BRUCE E. ENDY  
Of Counsel

LEONARD SPEAR  
1923 - 2003

LOUIS H. WILDERMAN  
1909 - 1993

Robert Gatto, Senior Contract Coordinator  
PECO Energy Company  
2301 Market Street  
Philadelphia, Pennsylvania 19101

Re: International Brotherhood of Electrical Workers  
Local 614 v. PECO Energy Company  
Docket No. C-2016-2525801

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Mr. Gatto:

Enclosed please find a Notice of Deposition for your appearance on August 8, 2016 at 10:00 a.m. in my office relative to the above-captioned matter.

Very truly yours,

SPEAR WILDERMAN, P.C.

BY:   
CHARLES T. JOYCE

CTJ/tj  
Enc.

cc: Emil J. Meyer, President and Business Manager, IBEW Local 614 (w/enc.)  
Karl A. Fritton, Esquire (w/enc.)



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July 15, 2016

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BRUCE E. ENDY  
Of Counsel

LEONARD SPEAR  
1923 - 2003

LOUIS H. WILDERMAN  
1909 - 1993

Vince Saldano, Project Construction Manager  
PECO Energy Company  
2301 Market Street  
Philadelphia, Pennsylvania 19101

Re: International Brotherhood of Electrical Workers  
Local 614 v. PECO Energy Company  
Docket No. C-2016-2525801

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Mr. Saldano:

Enclosed please find a Notice of Deposition for your appearance on August 4, 2016 at 10:00 a.m. in my office relative to the above-captioned matter.

Very truly yours,

SPEAR WILDERMAN, P.C.

BY:  CHARLES T. JOYCE

CTJ/tj  
Enc.

cc: Emil J. Meyer, President and Business Manager, IBEW Local 614 (w/enc.)  
Karl A. Fritton, Esquire (w/enc.)



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PA BAR EXCEPT.  
\* PA & NJ BAR  
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July 15, 2016

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BRUCE B. ENDY  
Of Counsel

LEONARD SPEAR  
1921 - 2003

LOUIS H. WILDERMAN  
1909 - 1993

Jermaine Jackson, Senior Contract Coordinator  
PECO Energy Company  
2301 Market Street  
Philadelphia, Pennsylvania 19101

Re: International Brotherhood of Electrical Workers  
Local 614 v. PECO Energy Company  
Docket No. C-2016-2525801

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Dear Mr. Jackson:

Enclosed please find a Notice of Deposition for your appearance on August 4, 2016 at 10:00 a.m. in my office relative to the above-captioned matter.

Very truly yours,

SPEAR WILDERMAN, P.C.

BY:  CHARLES T. JOYCE

CTJ/tj  
Enc.

cc: Emil J. Meyer, President and Business Manager, IBEW Local 614 (w/enc.)  
Karl A. Fritton, Esquire (w/enc.)



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LOIS GARBER SCHWARTZ\*  
WILLIAM B. SANDERSON, JR.\*  
LAURIE M. HIGGINS\*  
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July 18, 2016

NJ OFFICE:  
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BRUCE E. ENDY  
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LEONARD SPEAR  
1923 - 2003

LOUIS H. WILDERMAN  
1909 - 1993

Mr. John Meyer  
LaFata Contract Services  
1911 Squire Court  
Wyomissing, Pennsylvania 19610

Re: International Brotherhood of Electrical Workers  
Local 614 v. PECO Energy Company  
Docket No. C-2016-2525801

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Mr. Meyer:

Enclosed please find a Notice of Deposition for your appearance on August 8, 2016 at 10:00 a.m. in my office relative to the above-captioned matter.

Very truly yours,

SPEAR WILDERMAN, P.C.

  
BY: CHARLES T. JOYCE

CTJ/tj  
Enc.

cc: Emil J. Meyer, President and Business Manager, IBEW Local 614 (w/enc.)  
Karl A. Fritton, Esquire (w/enc.)



**APPENDIX B**

**E-Mail Transmitting Local 614 Deposition Notices to PECO Energy Company on July 18,  
2016**

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**From:** Terri Juliano [mailto:TJuliano@spearwilderman.com]

**Sent:** Monday, July 18, 2016 9:25 AM

**To:** Fritton, Karl A.

**Cc:** Emil Meyer

**Subject:** IBEW Local 614 v. PECO (PUC)

Mr. Fritton:

Attached are copies of the Notices of Deposition in the above-referenced matter which were mailed to the individuals on Friday, as well as a copy of Mr. Meyer's Notice which is being mailed today.

**Terri Juliano**

**Legal Assistant to James F. Runckel, Esquire and Charles T. Joyce, Esquire**

Spear Wilderman, P.C.

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tjuliano@spearwilderman.com

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**BEFORE THE  
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International Brotherhood of Electrical Workers	:	
Local 614	:	
	:	
v.	:	Docket No. C-2016-2525801
	:	
PECO Energy Company	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this day served a true copy of the foregoing document upon the parties listed below by electronic mail and U.S. First Class Mail, postage pre-paid, in accordance with the requirements of § 5.14 (relating to service by a party):

Administrative Law Judge  
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Pennsylvania Public Utility Commission  
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Philadelphia, PA 19107  
cfordham@pa.gov

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Spear Wilderman, P.C.  
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*Counsel for IBEW Local 614.*

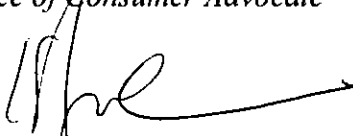
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*Office of Consumer Advocate*

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SECRETARY'S BUREAU



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*Counsel for PECO Energy Company*

Dated: July 28, 2016