

PENNSYLVANIA PUBLIC UTILITY
COMMISSION

Docket No. R-2024-3046932

v.

PECO ENERGY COMPANY-GAS
DIVISION

EXCEPTIONS OF

LOCAL 614 OF THE INTERNATIONAL BROTHERHOOD

OF ELECTRICAL WORKERS, AFL-CIO

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I. INTRODUCTION AND REVIEW

On October 15, 2024, Administrative Law Judges Darlene Davis Heep and Marta Guhl (“ALJs”) issued their Recommended Decision (“Recommended Decision” or “RD”). Local 614 of the International Brotherhood of Electrical Workers (“IBEW Local 614” or “the Union”) files these Exceptions.

On September 6, 2024, the Joint Petitioners submitted their Statement in Support of Joint Petition for Non-Unanimous Partial Settlement (“Joint Petition”). The Joint Petition was supported by PECO Energy Company-Gas Division (“PECO”), the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Pennsylvania Area Industrial Energy Users Group (“PAIEUG”), the Southeastern PA Transportation Authority (“SEPTA”) and Walmart, Inc. (“Walmart”) (collectively “the Joint Petitioners”). IBEW Local 614 opposed the Joint Petition and submitted a Main Brief and Reply Brief in opposition to the same. In the Recommended Decision, the ALJs recommended approval of the Joint Petition of Non-Unanimous Settlement (“Non-Unanimous Settlement”) with modifications. The ALJs’ recommended modifications to the Joint Petition were as follows: 1) modify the Settlement to require PECO to provide a copy of its review of its customer service report to IBEW Local 614; 2) direct the Commission’s Bureau of Technical Utility Services (“TUS”) to review the efficacy of a PECO Schedule of Affiliate Transactions as proposed by IBEW Local 614 and 3) deny the remaining requests of IBEW Local 614 as more appropriately raised in another proceeding or not within the authority of the Commission.

PECO has additionally requested the Commission approve PECO’s Weather Normalization Adjustment (“WNA”). OCA, OSBA, and CAUSE-PA have opposed it. I&E has likewise opposed it but has additionally proposed limitations to the WNA if ultimately approved. IBEW Local 614

supported implementation of the WNA. In the Recommended Decision, the ALJs denied implementation of the WNA as “unjust, unreasonable, and contrary to the interest of customers and the public.”

As further addressed herein, the ALJs have erred in their RD by placing undue and unnecessary legal prerequisites on IBEW Local 614’s reporting requests; by finding that IBEW Local 614’s proposals in relation to topics discussed in the underlying rate and in the parties’ own proposed non-unanimous settlement was beyond the scope of this case and the Commission’s authority; and in finding that the WNA was not just and reasonable.

II. LEGAL STANDARDS

A party filing exceptions is required to identify the finding of fact or conclusion of law to which exception is taken, and to cite to the relevant pages of the underlying decision. 52 Pa. Code § 5.533(b). Herein, IBEW Local 614 will identify conclusions of law and findings of fact where they form the basis of the exceptions and will cite to the underlying pages of the ALJs’ decision which are further referenced as support for its arguments or “interpretations” of the facts. The latter is especially the case where IBEW Local 614 argues that the ALJ erroneously failed to adopt IBEW Local 614’s proposed finding of fact based on an incorrect legal standard.

Exception No. 1 – The RD adopted conclusory statements by the Joint Petitioners to find that the Settlement was in the “public interest” and “just and reasonable.” Conclusions of Law, ¶¶ 3–7 & RD at pp. 60–61, 67–68, 70, 72.

In their RD, at pages 32–33, the ALJs correctly note that a utility has the burden of showing that every rate made, demanded, or received by any public utility “shall be” just and reasonable. 66 Pa.C.S. § 1301(a). The public utility seeking the increase has the burden of proving this by “substantial evidence.” *Lower Frederick Twp. v. Pa. Pub. Util. Comm’n*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980). See Conclusions of Law, ¶¶ 3–7.

Despite this, the ALJs erroneously cite 52 Pa. Code § 5.232(d) for support of the proposition that settlement must be supported by “substantial evidence to be in the public interest” in order to be approved. No such standard is contained in this regulatory code. Moreover, regardless of any internal Commission policy, the legal standard in 66 Pa.C.S. § 1301(a) is not inapplicable in the context of settlements. *Pa. PUC v Pike County Light & Power Co. – Elec.*, Docket No. R 2020-3022135 (Opinion and Order entered July 21, 2021); *Pa. PUC v. City of Bethlehem Water Dep’t*, Docket No. R-2020- 3020256 (Opinion and Order entered Apr. 15, 2021) *Pa. PUC v. Pennsylvania-American Water Co.*, Docket No. R-2020-3019369 (Opinion and Order entered Feb. 25, 2021). The ALJs did not cite anything other than conclusory statements by the Joint Petitioners for support of how the Non-Unanimous Settlement was “just and reasonable” standard in reviewing the parties’ Joint Settlement. *See* RD at pp. 60–61, 67–68, 70, 72. It only engaged in that analysis for purposes of the WNA. For this reason alone, the Non-Unanimous Settlement should be rejected.

Exception No. 2: The ALJ’s Legal Standards and Conclusions of Law Give Undue Deference to the Non-Unanimous Settlement. RD at pp. 35–36, 51, 59–60, 73–74 & Conclusion of Law ¶¶ 9–10.

On page 35 of the RD, the ALJs express that the Commission “rarely” rejects a settlement in a rate case. Without citing support, the ALJs also state the following in the first sentence of its Recommendation on page 73 of the RD: “Given the policy statements and decisions of the Commission when there is a settlement in a rate case, there is very little occasion or room to modify a settlement or recommend that a settlement not be approved.”

These standards and tone in approaching a settlement are not in of themselves legal standards. Moreover, the ALJs or Commission should not begin their analysis of a proposed settlement with a reluctance to reject the same. This is all more so the case in the context of a *Non-*

Unanimous Black Box Settlement. A non-unanimous settlement bears none of the hallmarks of a full settlement. It is not an agreement by all parties to resolve their differences by compromise. It also does not save the Commission or parties from the uncertainty of litigation because it must be fully litigated and could be appealed.

Indeed, the ALJs' removal of IBEW Local 614's proposals and requests from the context of the Non-Unanimous Settlement terms has effectively deprived IBEW Local 614 from the benefit of the context of the *rate proceedings* that led to the Non-Unanimous Settlement.

Exception No. 3: Section 315(a) of the Code does not impede parties from raising topics relating to a rate increase or the utilities' furnished services simply because the utility did not raise the topic in its rate application. RD at pp. 51–52 & 74.

On pages 51–52 and 74 of the RD, the ALJs find that a party cannot raise topics relating to the rate case unless it is raised by the utility in its rate application. Citing 315(a) of the Code, the ALJs state that IBEW Local 614's discussions regarding employee training, reporting requirements, and workforce planning cannot be addressed here because they were not included in PECO's initial rate case filing. RD at p. 74.

If the Commission adopts this finding, it will effectively implode the ability of any party to push forward any concerns that are supposed to be directly addressed by the Commission. At 66 Pa. C.S. § 1501, the Commission is required to enforce a public utility's obligation to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." If the ALJs' interpretation of 315(a) of the Code is adopted, then public utilities need only *avoid* the topic of safety, efficiency, reasonableness, to block the

interested parties from providing testimony as to how the utility is failing to meet these requirements.

III. CUSTOMER SERVICE REPRESENTATIVE ISSUES

Exception No. 4: Despite PECO's failure to deny there were customer service problems caused by its change in customer service software, including problems relating to its billing, billing accuracy, service stopping, the ALJs failed to provide any response or solution to address these issues. RD at pp. 50–51 & 75.

On pages 50–51 of the RD, in response to IBEW Local 614's request for additional mandated training, the ALJs state that the matter has been addressed in the settlement. Specifically, PECO has agreed to "investigate" material issues with call handling that have not been resolved. PECO will be filing a report on its investigation within six months of the effective date of the new rates. Pursuant to the ALJs' modification, that report will now be produced to TUS *and* IBEW Local 614.

While IBEW Local 614 appreciates and agrees with the modification, it also believes this proposal falls short of fully addressing its concerns. PECO has not proven itself responsive to the concerns brought forward by IBEW Local 614. This reporting requirement only punts the question of adequate response to these customer concerns to the next rate case. For this reason, IBEW Local 614 requests the Commission adopt its exception and approve its recommended solutions on pages 6–8 of its Main Brief.

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IV. PECO'S VACANCY RATE, BUDGETING AND WORKFORCE PLANNING PROCESS

Exception No. 5: The ALJs erred in refusing to consider IBEW Local 614's position relating to PECO's vacancy rate, budgeting and workforce planning process, and erred in finding that these requests seeking relief are all beyond the Commission's authority. RD at pp. 51–52 & 93–94.

On pages 51–52 of the RD, the ALJs recommend the Commission find that IBEW Local 614's positions as they relate to the vacancy rate, workforce planning, wage and salary increases, and Union contract ratification benefit are all beyond the realm of the Commission's authority.

At the outset, the ALJs appear to misunderstand IBEW Local 614's positions and the context of these positions. Most importantly, these are positions that IBEW Local 614 is arguing as a *non-signatory* to the Non-Unanimous Joint Settlement. Unlike all other signatories to the settlement who dropped or resolved these topics through settlement, IBEW Local 614 has continued to litigate them. No other party has alleged that the topics of employee vacancy factor for purposes of calculating wages and benefits, the recovery of costs post-FPPTY, recovery of certain costs, or the issue of how to address leak repair audits, were “outside” of what the Commission routinely assesses. In fact, prior to the Non-Unanimous Joint Settlement, the parties were all, in some fashion, discussing these topics. *See e.g.*, PECO Statement No. 3 at 10:13–18; 35:04–15, 57:03–09, 64:11–17; PECO Exh. MJT-1, Schedules D-3, D-4, D-6; PECO Exh. MJT-2, Schedules D-3, D-4, D-6; PECO Exh. MJT-2, Schedules D-3, D-4, D-6 (salary and wages); PECO Statement No. 1 at 17:06–22 (discussing construction quality audits for contractors); I&E Statement No. 4-SR at 10:13–13:06.

The ALJs' cursory dismissal of these topics as exceeding the Commission's authority is inaccurate. On pages 9–14 of its Main Brief, generally stated, IBEW Local 614 requested the following:

1. IBEW Local 614 (and prior to settlement, OCA) have taken issue with PECO's proposed tracking mechanism for its employee vacancy factor. It is IBEW Local 614's position that PECO's proposed vacancy factor of 4% for purposes of its payroll and employee benefits arbitrarily bloated its employee count.
2. IBEW Local 614 has explicitly carved out support for employee costs associated with the bargaining unit employees. These wages and benefits are extensively bargained for by IBEW Local 614 and PECO and are contractually and statutorily guaranteed. Allowing recoveries of these costs *now* will reduce rate shock when PECO returns to the Commission in 2026.
3. IBEW Local 614 supports PECO's recovery of the one-time Union contract ratification payment as the benefits of this contract have spanned to present day and continues to benefit ratepayers.

These three (3) listed topics are directly in response to PECO's basis for its rate increase and part of the regulatory scheme that the Commission oversees. *See* 66 Pa.C.S. § 1301(a). For this reason, IBEW Local 614 requests the Commission adopt its proposals on pages 9–13 of its Main Brief.

V. GAS SAFETY

Exception No. 6: The ALJs erred in severing IBEW Local 614's recommendations for PECO's post-construction audit from the context of the settlement, erred in finding that there were no safety matters at issue in this context, and erred in finding that safety concerns are not appropriately addressed in a rate case. RD at pp. 52–53 & 72–73.

IBEW Local 614 also submitted two (2) proposals in relation to PECO's post-construction audits. The ALJs discuss this same topic on pages 72–73 of the RD but have divorced IBEW Local 614's position from the same. On these pages, the ALJs adopt and approve the Joint Petitioners' proposed solution to "gas safety". On page 51–53 of the RD, the ALJs state that IBEW Local's

proposals “exceed” authority and there are no “safety” issues that need to be addressed by the same.

From 2019 to 2023, PECO has been inadequately auditing construction sites. This concern was also addressed by I&E in its filed testimony. I&E Statement No. 4-SR at 10:13–13:06. The Joint Petitioners settled this topic by agreeing that “PECO will continue to keep track of post construction quality audits containing a failed observation.” *See* RD, p. 46, ¶ 47. IBEW Local 614 did not join the settlement and took issue with this term as it is wholly insufficient and unresponsive to the underlying issue. This topic clearly does not “exceed” the Commission’s authority pursuant to 66 Pa.C.S. § 1501. If that were the case, then why are the ALJs now recommending the Commission “exceed” its authority by approving this inadequate solution in the Joint Petitioners’ Non-Unanimous Settlement?

As the ALJs have failed to adopt a term which adequately addresses PECO’s inadequate construction auditing process and erred in finding such a topic was beyond the scope of the Commission’s authority for purposes of IBEW Local 614’s proposals (but not the parties’ Non-Unanimous Settlement), IBEW Local 614 requests that its recommendations on pages 13–14 of its Main Brief be adopted.

VI. ANNUAL WORKFORCE PLANNING REPORT

Exception No. 7: The ALJs have erred in finding a party must point to “1501 violations” in order to request workforce planning reports and that reporting requirements relating to PECO’s workforce planning inappropriately enters the area of “personnel and employee management.” RD at pp. 51, 53–54.

The ALJs have denied IBEW Local 614’s request for annual workforce planning reports on the grounds that IBEW Local 614 has to point to “1501 violations” in order to require them. However, the ALJs have cited *no* legal authority to support this proposition. RD at p. 54. To the contrary, 66 Pa.C.S. § 504 plainly provides that the Commission can require periodical filing on

topics “concerning *any matter whatsoever* which the Commission is authorized to inquire or to keep itself informed, or which it is required to enforce.” (Emphasis added). The issue of whether PECO is adequately staffing itself or overly uses expensive contracted labor is squarely at the heart of what the Commission should keep itself informed of.

The ALJs’ recommended finding that this inappropriately enters the area of “personnel and employee management” is also an overstatement. RD at pp. 51 & 54. Workforce planning *reports* are just that, reports. The reporting requirements do not, at the outset and without justification, mandate specific actions with relation to PECO’s current staffing practices. Rather these reports will inform the parties’ assessment of PECO’s use of contracted labor and vacancy rates in future rate cases. For these reasons, IBEW Local 614 requests it adopt its Annual Workforce Planning Report, as described on page 14–17 of its Main Brief.

VII. CAPITAL AND O&M PROJECT LIST REPORTS & ANNUAL RECONCILIATION OF RATE BASE AND OPERATING INCOME

Exception No. 8: The ALJs erred in not approving the information requested in the Capital and O&M Project List Reports & Annual Reconciliation of Rate Base and Operating Income Reports be made available directly to the intervenors, including IBEW Local 614. RD at pp. 55–57.

The ALJs’ recommendations regarding these two (2) reporting requirements largely notes that the parties have either (1) already agreed to so in the settlement, which IBEW Local 614 is not a signatory for, or (2) reports seek information which is already being reported to the TUS for another reason. RD at pp. 55–57. As there appears to be no disagreement that the information is relevant or within the scope of the Commission’s authority, IBEW Local 614 proposes as an alternative that the information be made available directly to the intervening parties on the same timeline it is made available to the TUS. The reporting requirements as originally proposed by IBEW Local 614 can be seen on pages 17–18 of its Main Brief.

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VIII. SCHEDULE OF AFFILIATED TRANSACTIONS

Exception No. 9: The ALJs erred in finding IBEW Local 614's proposed reporting requirement of Schedules of Affiliated Transactions must be addressed and implemented through a statewide docket rather than in this immediate matter. RD at pp. 57–59.

The ALJs' recommendation with regard to IBEW Local 614's proposed Schedule of Affiliated Transactions again adds the unnecessary requirement that this be ballooned into a statewide docket rather than an immediate decision. RD at pp. 57–59. There is no legal support for the proposition that the Commission cannot issue reporting requirements specific to certain utilities. Moreover, there is no reason the Commission cannot walk – *i.e.*, order PECO to issue these reporting requirements in this docket – and chew gum – *i.e.*, open a generic docket regarding whether to make this a statewide requirement. In fact, PECO's own filings may better inform the necessity of the statewide requirement. For these reasons, IBEW Local 614 requests the Commission proceed with adopted the proposed Schedule of Affiliate Transactions as requested by the Union on pages 18–19 of its Main Brief.

IX. THE JOINT PETITIONERS OFFER ONLY CONCLUSORY STATEMENTS REGARDING HOW THE NON-UNANIMOUS AGREEMENT IS IN “THE PUBLIC INTEREST”

Exception No. 10: The ALJs erred in adopting the Joint Petitioners' conclusory statements as “substantial evidence” that the Non-Unanimous Settlement Was in the Public Interest. RD at 59–75, Conclusions of Law, ¶¶ 11–12.

In support of the Non-Unanimous Settlement, the Joint Petitioners have failed to provide any support for their conclusory statements that the settlement is in the public interest. On page 61 of the RD, the ALJs summarize the Joint Petitioners' statements regarding how this settlement “serves” the public interest. There were no specifics regarding exactly *how* the settlement serves the public interest. On page 63 of the RD, the parties' statements regarding why the revenue requirements are appropriately can be condensed down to Walmart's aptly put statement: the Joint

Petitioners “support[] the revenue requirements terms as it is a lessor increase than originally sought.”

The ALJs also favorably note that suggestions by the Joint Petitioners that the fact this is a joint settlement proposal somehow automatically imbues the settlement itself with some kind of legitimacy. If the Commission adopts this standard, then any and all settlements will *always* be in the “public” interest, and “ratemaking” will become a function of the intervenors, and not the Commission. This is all more a concern when the ALJs explicitly state, without citing support, that there is “there is very little occasion or room to modify a settlement or recommend that a settlement not be approved.” RD at p. 73.

X. CONTESTED ISSUE – WNA

Exception No. 11: The ALJs erred in finding that the WNA is not just and reasonable and does not provide any benefits to ratepayers. RD at 90–93, Conclusions of Law, ¶¶ 18–20.

For the reasons already provided in its Main and Reply Briefs, IBEW Local 614 reaffirms its support for the WNA. While the WNA does in effect untether itself to real-time costs incurred by ratepayers, it will provide bill stability to ratepayers by spreading the cost of high bills, the WNA has already been approved by the Commission for other public utilities, and the parties opposing the WNA have failed to produce evidence of how the other WNA mechanisms harmed ratepayers.

XI. CONCLUSION

Based on the foregoing and for the reasons articulated in IBEW Local 614’s Main and Reply Briefs, IBEW Local 614 respectfully requests that the Commission grant IBEW Local 614’s Exceptions and adopt its positions as described in its Main and Reply Briefs.

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Respectfully submitted,

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