

PENNSYLVANIA PUBLIC UTILITY  
COMMISSION

Docket No. R-2024-3046931

v.

PECO ENERGY COMPANY—ELECTRIC  
DIVISION

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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—Electric 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 National Railroad Passenger Corporation (“Amtrak”), Electrify America, LLC (“EA”), EVgo Services LLC (“EVgo”), the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), the Southeastern Pennsylvania Transportation Authority (“SEPTA”), the Tenant Union Representative Network and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“TURN/CAUSE-PA”), the City of Philadelphia and Philadelphia Energy Authority (“City/PEA”), 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”) without modifications. Specifically, the ALJs deny IBEW Local 614’s additional reporting requests as beyond the scope of the Commission’s authority and more appropriately raised before the legislature. RA at p. 83.

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 and 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.

## 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, ¶ 9 & RD at pp. 38–74.

In their RD, at page 21, 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* RD at pp. 22; Conclusions of Law, ¶¶ 2–4.

Despite stating that “[t]he standards for approving non-unanimous settlements are the same as those for deciding a fully contested case,” *to wit*, the Joint Petitioners “must demonstrate that the proposed settlement is supported by substantial evidence that the rates agreed to are just and reasonable, in the public interest, and in conformity with the Commission's orders and regulations,” the ALJs did not cite anything other than conclusory statements by the Joint Petitioners for support of how the Non-Unanimous Settlement is “just and reasonable.” *See* RD at pp. 38–74. 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. 24–25 & Conclusion of Law ¶¶ 5–6.

On page 24 of the RD, the ALJs express it is “unusual” for the Commission to reject a settlement in a rate case. This is due in part, to the Commission’s policy to promote settlements, which in most cases, may “lessen the time and expense . . . [of] litigating a case, and . . . conserve precious administrative resources.” *See* RD at p. 24.

This policy is not in and of itself a legal standard. 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.

### **III. CUSTOMER SERVICE REPRESENTATIVE ISSUES**

Exception No. 3: 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. 76–77.

The ALJs do not address IBEW Local 614’s concerns regarding customer service representative issues beyond conclusory statements that the Settlement needs no modification. Specifically, after summarizing IBEW Local 614’s position regarding these issues on page 76, there is no further discussion in the RD.

While IBEW Local 614 appreciates that the Settlement addresses some customer service issues, it also believes it does not take the customer service representatives themselves into account. PECO has not proven itself responsive to the concerns brought forward by IBEW Local 614. For this reason, IBEW Local 614 requests the Commission adopt its exception and approve its recommended solutions on pages 6–8 & 24 of its Main Brief.

#### **IV. PECO’S VACANCY RATE, BUDGETING AND WORKFORCE PLANNING PROCESS**

Exception No. 4: 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 beyond the Commission’s authority. RD at pp. 83.

On pages 77–78 of the RD, the ALJs explain the IBEW Local 614’s positions as they relate to the vacancy rate, workforce planning, wage increases, and the one-time Union contract ratification payment. The ALJs do not recommend the adoption of any of these proposals and opines that many of these proposals are better addressed in the legislative and policy arena.

At the outset, the ALJs appear to misunderstand IBEW Local 614’s position with regards to many of these proposals. These proposals are formed 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-FPFTY, recovery of certain costs, or additional reporting requirements 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.

The ALJs' cursory dismissal of these topics as exceeding the Commission's authority is inaccurate. On pages 10–14 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 4.4% 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 10–14 of its Main Brief.

## **V. ADDITIONAL REPORTING REQUIREMENTS**

Exception No. 5: The ALJs have erred in finding additional reports are better addressed by the General Assembly in legislation. RD at p. 83.

The ALJs have denied IBEW Local 614's request for additional reporting requirements on the grounds that additional reporting requirements are better addressed by the General Assembly in legislation. 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 staffed for its future capital and O&M projects, and whether is it appropriately applying costs to its affiliates, is not in and of itself a burdensome or expensive process.

Nor do requiring these reports impinge on PECO’s sphere of business decisions. Workforce planning reports, annual reconciliations, project lists, and affiliate transaction reports do not, at the outset and without justification, mandate specific actions with relation to PECO’s businesses practices. It is merely a means for the Commission and interested parties to stay informed of, *inter alia*, PECO’s staffing needs and the means it allocate costs among its affilaites. Further, 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 its additional reporting requirements, as described on page 14–17 of its Main Brief.

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

Exception No. 6: 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 pp. 83–84, Conclusions of Law, ¶ 9.

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 pages 38–74 of the RD, the ALJs summarize the Joint Petitioners’ statements regarding how this settlement is in the public interest. There were no specifics regarding exactly *how* the settlement serves the public interest.

The ALJs also favorably note that suggestions by the Joint Petitioners that 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 that it is “unusual” for a proposed settlement to be rejected. RD at p. 24.

## VII. 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.

Respectfully submitted,

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