BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT COMPANY, EXELON CORPORATION, PEPCO HOLDINGS, INC., PURPLE ACQUISITION CORPORATION, EXELON ENERGY DELIVERY COMPANY, LLC AND NEW SPECIAL PURPOSE ENTITY FOR APPROVALS UNDER THE PROVISIONS OF DEL. C. §§ 215 AND 1016 (Filed June 18, 2014)	)	**PSC Docket No. 14-193**

Order No. 8613

ORDER DENYING IBEW LOCAL 614'S PETITION FOR LEAVE TO INTERVENE

AND NOW, this 11th day of August, 2014;

1. This matter is currently before the Hearing Examiner on a Petition For Leave to Intervene ("Petition") filed on August 7, 2014 by IBEW Local 614, a labor union whose members work in Pennsylvania primarily for PECO Energy, an Exelon subsidiary. For the reasons that follow, I deny the Petition because it fails to adequately allege why IBEW Local 614's participation in this Docket would be in the public interest, as required by Commission Rule 21(a)(iii) and 26 *Del.C.* §215(d).

I. BACKGROUND

2. This docket was commenced on June 18, 2014. (Application, p. 1.) However, this docket has garnered considerable nationwide media attention since the proposed merger was announced on April 30, 2014. (Applic., Exh. 2, p.3.)

3. On July 8, 2014, the Commission entered PSC Order No. 8581. This Order, among other things, established an intervention deadline of July 28, 2014, after publication in local newspapers. (Order, p.5.) According to PSC Order No. 8581, if a petition to intervene was filed

after July 28, 2014, as the Hearing Examiner, I could grant the petition only if "good cause" was shown. (Id.)

4. On August 7, 2014, IBEW Local 614 filed its Petition in the Commission's DelaFile E-Filing System.[1] (PSC Docket Sheet.) However, IBEW's President had hand-delivered a portion of the Petition to the Joint Applicants' Counsel's office and the Public Advocate's office on July 28, 2014. (Petition, Exh. A.)

5. Pursuant to PSC Order No. 8581, I held a Scheduling Conference in this case on July 30, 2014 at 10 a.m. IBEW Local 614 did not attend the Scheduling Conference. According to PSC Order No. 8581, this conference was mandatory for "[a]ny person who wishes to participate as a party to this matter…." IBEW Local 614 was not the only potential party not to attend the Scheduling Conference.

6. On August 7, 2014, the Joint Applicants timely filed their Response to IBEW's Petition. (PSC Docket Sheet.) The Joint Applicants object to allowing IBEW Local 614 to intervene because: a) the Petition is untimely; b) IBEW's members work in Pennsylvania, not Delaware, primarily for PECO; and c) Locals 1238 and 1307 of the International Brotherhood of Electrical Workers (IBEW), which represent Delmarva's Delaware union employees "recently agreed to three-year extensions and agree that the merger is in the best interest of Delmarva Power and its employees." (Response, p.1.)

7. In fact, attached as Exhibit 1 of the Applicant's Response is a letter from IBEW Local 1238 to PSC Chairman Dallas Winslow dated July

[1] IBEW's Counsel's office emailed the complete Petition to the parties on August 5, 2014, and emailed it again on August 6, 2014.

2, 2014 expressing its support for the proposed merger. (*Id.* at Exh.1.) This letter states, in pertinent part, as follows:

> "IBEW Local 1238 supports the pending merger between Pepco Holdings and Exelon Corporation and our members approved a three-year extension of our collective bargaining agreement. We are encouraged by Exelon's commitment to no net involuntary merger-related job losses at the utilities for two years following closing, and the addition of 150 new full time employees. We think that Exelon's commitment to maintaining a local presence in our service territory is important and valuable to Customers and employees of Delmarva Power/PHI.
>
> Delmarva Power/PHI will benefit from Exelon's commitment to reliability, customer service, a highly trained workforce and access to even more resources to help in our day to day operations, and restore customers in the event of a major storm. We look forward to joining with Exelon to become part of the leading Mid-Atlantic electric and gas utility. Please contact us if you have any questions.
>
> Sincerely,
>
> Steve Newberry
> Business Manager
> IBEW Local 1238"

8. As to the second Delaware union representing Delaware workers, IBEW Local 1307, Joseph M. Rigby, the Chairman of the Board of Directors, President and Chief Executive Officer of Pepco Holdings, Inc. ("PHI"), Delmarva's parent Company, testified as follows:

> "….I believe that the strength of any business lies in its people. Consequently, we cannot think about delivering safe, reliable and efficient utility service without considering our employees. Exelon shares my view. In that regard, Exelon has clearly stated it will honor all existing collective bargaining agreements, and I am pleased to report that all of the collective bargaining units that represent our employees, namely, Locals 210, 1238,

> 1307 and 1900 of the International Brotherhood of Electrical Workers, agree the Merger is in the best interest of Delmarva Power and its employees and have recently agreed to contract extensions for an additional three years.
>
> Additionally, Exelon is making specific commitments that for two years following the Merger there will be no net reduction due to involuntary attrition as a result of the Merger integration process in the employment level at Delmarva Power and that there will be provided to current and former employees of Delmarva Power compensation and benefits that are at least favorable, in the aggregate, as the compensation and benefits provided to those employees immediately before the Merger." (Applic., Exh. 2, p.13 l 16-p.14 l 8.)

II. THE TIMELINESS OF THE PETITION

9. IBEW Local 614's Petition is not timely because it was filed on August 7, 2014, ten (10) days after the Commission's July 28, 2014 deadline. However, since IBEW Local 614's Business Manager hand-delivered a copy of the substantive aspects of the Petition to the Joint Applicants' Counsel's office and the Public Advocate's office on July 28, 2014, the last day of the intervention period, mistakenly believing that it would be properly filed with the Commission, I find "good cause" to treat the Petition as timely. Additionally, I permitted Clean Air Council to intervene, despite filing three (3) days late. (PSC Order No. 8603, Docket Sheet.)

III. WHY THE PETITION FAILS TO ADEQUATELY ALLEGE THAT IBEW LOCAL 614'S PARTICIPATION WOULD BE IN THE PUBLIC INTEREST

10. IBWE Local 614's Petition alleges as follows:

> "2. Local 614 represents approximately 1450 members working in the utility industry, most of whom are employed by PECO Energy, a subsidiary of Exelon Corp., a party to the above captioned proceedings.

> My membership's wellbeing is directly related to the future plans that Exelon Corp. may have for PECO, and therefore it has an interest in any mergers or acquisitions Exelon might seek to obtain, most especially in the same geographical region of PECO Energy and those portions of its franchised service territory that currently extend into the state of Delaware.
>
> 3. Local 614's interest is in the continued working conditions, level of service to the public and economic well-being of its members, which may be adversely impacted by the approval of this merger, which may create redundancies in operations that might allow or require Exelon to downsize its complement of employees including members of IBEW Local 614, AFL-CIO. No current party to the proceedings has an adequate interest in, or concern about, the employment of PECO workers and how such employment might be affected if this application is approved.
>
> 4. The Relief requested by the proposed intervener, IBEW Local 614, is either inclusion in the Order of the Public Service Commission of adequate safeguards to protect the employment, and working conditions of PECO workers, and the ability to maintain current service levels in those portions of PECO Energy's franchised service territory that currently extend into the state of Delaware or dismissal of the Application in its entirety." (Petition, Exh. A, p.1.)

11. Commission Rule 21(a)(iii) requires that a Petition to Intervene must satisfy the following "public interest" requirement:

> **RULE 21. <u>Petitions for Leave to Intervene</u>**
>
> (a) <u>Any person</u>, other than an original party to a proceeding or a party entitled to participate as a matter of right, <u>must file a petition to intervene. Such petition shall set forth in numbered paragraphs the following:</u>
>
> (i) the name, identity, mail and e-mail addresses, telephone and fax numbers of the person seeking to intervene;
> (ii) a description of the petitioner's interest in the outcome of the proceeding;

(iii) a concise statement of why the petitioner's interest will not be adequately represented by the parties to the proceeding or why participation in the proceeding would be in the public interest; and
(iv) a description of the relief requested.
(emphasis supplied)

12. In finding that it is not in the public interest for IBEW to be granted intervener status, I determine as follows:

a. PECO is not a party to this docket;

b. It is *not* alleged that: a) PECO is a "Delaware public utility," as defined by 26 *Del.C.* §102(2); b) PECO is a Delaware electric distribution company as defined by 26 *Del.C* §1001(9); or c) a Certified Electric Supplier as defined by 26 *Del. Adm. Code* §3001 (Sec. 2.0.);

c. IBEW 614's workers work in Pennsylvania, not Delaware;[2] and

d. Although IBEW Local 614 claims this proposed merger may eventually result in downsizing to IBEW Local 614's members who work in Pennsylvania, primarily for PECO, this claim is not within the scope of the Commission's duty to approve or not approve the proposed merger. According to 26 *Del.C.* §215(d):

(d) The Commission shall approve any such proposed merger, mortgage, transfer, issue, assumption or acquisition when it finds that the same is to be made in accordance with law, for a proper purpose, and is consistent with the public interest.

[2] IBEW Local 614 alleges without any specificity that it has "portions of its franchised territory that currently extend into the State of Delaware," but the Joint Applicants' Response states that "they believe that this is not accurate." (Petition, Exh. A; Response p.3 fn. 1.) IBEW Local 614's claim is not supported by the facts alleged in its Petition.

13. While there are many issues the Commission must examine regarding the proposed merger, i.e. its potential effect on energy supplies, its potential effect on customer service, etc., the Commission is not required to examine the effect of potential downsizing to union workers performing unknown services in Pennsylvania primarily for PECO, particularly when the two (2) unions representing Delaware workers are in favor of the proposed merger. These claims fall outside the Commission's duty of analyzing whether the proposed merger is consistent with the public interest as required by 26 *Del.C.* §215(d).

14. I understand the genuine concern IBEW Local 614 has for the economic livelihood of its Pennsylvania members, but I cannot allow IBEW Local 614 to exploit the statutory stated purposes of this merger proceeding to satisfy its concern for its members. If IBEW Local 614 has a bona-fide dispute with PECO and/or Exelon, it should find the proper forum. The Delaware Public Service Commission is not the proper forum for its claims.

NOW, THEREFORE,

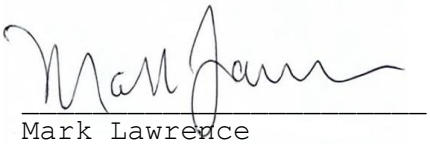
1. I find that "good cause" exists to permit IBEW Local 614's late-filed petition for intervention. This is based upon the reasons described earlier herein.

2. However, I find that IBEW Local 614's Petition to Intervene fails to adequately allege why its participation in this docket would be in the public interest, as required by Commission Rule 21(a)(iii).

3. Also, IBEW Local 614's claims fall outside the Commission's duty of analyzing whether the proposed merger is consistent with the public interest as required by 26 *Del.C.* §215(d).

4. Therefore, IBEW Local 614's Petition to Intervene Filed Out-of-Time is DENIED.

Respectfully Submitted



Mark Lawrence
Senior Hearing Examiner

Cc: Service List for PSC Docket No. 14-193