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August 3, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: James Quigley & Teresa Mendez Quigley v. PECO Energy Company
Docket No. C-2017-2617558

Dear Secretary Chiavetta:

PECO's *Reply to Objection to PECO's Motion to Admit Counsel Pro Hac Vice* is attached for filing.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WS/adz
Enclosures

c: Honorable Darlene D. Heep, ALJ
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**James Quigley and
Teresa Mendez-Quigley**

v

PECO Energy Company

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C-2017-2617558

**Reply of PECO Energy Company
To
Objection to PECO's Motion to Admit Counsel *Pro Hac Vice***

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On July 16, 2018, PECO filed its Motion to Admit Thomas Carl Watson *pro hac vice* in this matter. On July 27, 2018, PECO received Complainants' Reply/Objection (dated July 24, 2018). PECO provides this brief reply.

Pro hac vice motions are typically non-controversial requests that are granted without objection. However, in this case the Complainants' have objected.

Pennsylvania Rules of Civil Procedure 1012.1 states that motions for admission *pro hac vice* are presumptively to be granted, absent "good cause for denial."¹ The Official Note to Rule 1012.1 provides eight examples of potential grounds for good cause for denial, stating:

Good cause may include one or more of the following grounds:

- (1) the admission may be detrimental to the prompt, fair and efficient administration of justice,
- (2) the admission may be detrimental to legitimate interests of the parties to the proceedings other than the client whom the candidate proposes to represent,
- (3) the client who the candidate proposes to represent may be at risk of receiving inadequate representation and cannot adequately appreciate that risk,
- (4) the candidate is not competent or ethically fit to practice law,
- (5) the candidate is, in effect, practicing as a Pennsylvania attorney, in light of the nature and extent of the activities of the candidate in the Commonwealth, without complying with the Pennsylvania requirements for the admission to the bar. The court may weigh the number of other admissions to practice sought and/or obtained by the candidate from Pennsylvania courts, the question of whether or not the candidate maintains an office in Pennsylvania although the candidate is not admitted to practice in Pennsylvania courts, and other relevant factors,

¹ Pa. Rule of Civil Procedure 1012.1, which sets forth the rules for *pro hac vice* motions, states in subpart (e): "The court shall grant the motion unless the court, in its discretion, finds good cause for denial." The Explanatory Note to subdivision (e) states (emphasis added): "Subdivision (e) provides that the court *must grant* the motion for admission *pro hac vice* unless it finds good cause for denial."

(6) the number of cases in all courts of record in this Commonwealth in which the Pennsylvania attorney is acting as the sponsor prohibits the adequate supervision of the candidate,

(7) failure to comply with this rule, or

(8) any other reason the court, in its discretion, deems appropriate.

Complainants' objection does not establish that these or any other form of "good cause for denial" have been shown to exist.

Timing

Complainants first state (¶ 2) that *pro hac vice* motions must be filed "at least 3 days before our hearing," and PECO filed its Motion after the hearing.² Later in their reply (¶¶ 5,7, 9, 12), Complainants repeat and to some extent elaborate on this timing argument.

PECO acknowledged in its Motion that, due to inadvertence and oversight, it did not file its Motion prior to hearing. However, that is not a reason to deny its Motion unless the delay in filing creates "good cause for denial." And, while Complainants have argued that the *pro hac vice* Motion should not be granted, none of their arguments demonstrate that they were prejudiced by PECO's later filing of the Motion. PECO regrets that it overlooked making this filing prior to hearing, but denies that the Complainants were prejudiced by the timing of this filing.

In ¶5, Complainants argue that PECO did not cite any case in which an attorney was admitted *nunc pro tunc* after the hearings were complete.

PECO did, however, demonstrate that *pro hac vice* motions have been granted even after key events occurred in the proceeding. That was the point of the *Yarner v Roberts* case cited in

² The Quigley's do not provide a citation to the 3-day period. PECO cannot find any reference, in either the Commission's rules or the Pennsylvania Rules of Civil Procedure, that states a specific time by which *pro hac vice* motions must be filed.

PECO's Motion. In that case, an out-of-state attorney filed a complaint without being admitted *pro hac vice*, and before he was admitted *pro hac vice* or an in-state attorney appeared, the statute of limitations expired on the claim. The defendants argued that the claim should be dismissed because, at the time of filing, it had not been signed by an admitted attorney. The court allowed the pleading to be amended without prejudice to proceeding with the claim. This demonstrates that failure to file a *pro hac vice* motion early in the litigation process, while a regrettable oversight, has been found not to affect the due process rights of the parties – that is, it demonstrates that the mere act of filing a *pro hac vice* Motion later in the proceeding does not, on its face, prejudice the other party.

Moreover, the Complainants claim is not factually correct. In the Duquesne rate case cited by PECO, public input hearings were held on July 12 and 13, 2006, at which more than 20 individual customers appeared and testified *pro se*; the case later settled and, by Initial Decision issued on October 4, 2006, the presiding officer first granted the motions for admission *nunc pro tunc* – after the hearings. See *DQE 2006 Rate Case Initial Decision* at 5-10, 31, R-00061246 (October 4, 2006).³

Personal and Fiduciary Relationship

Complainants next argue (§ 3) that the Motion should be denied because the verified statements attached to the motion show that Mr. Smith (as Sponsor) and Mr. Watson (as Candidate) have a “personal and fiduciary relationship.”

³ Complainants argue (§5) that Duquesne case has “no bearing on this on this case because that case is different and distinguishable from the Complainants. That case involved a settlement agreement with utilities about rate making. It did not involve a hearing and health issues of a customer.” The Complainants did not, however, provide any explanation or argument as to how they believe that distinction affects the analysis of the *pro hac vice* request made by PECO. Every case differs in some way from the cases that precede it; the question is whether those differences are material to the argument under consideration; Complainants did not demonstrate that the noted differences are material to the *pro hac* arguments.

These are reasons to *grant* PECO's Motion, not deny it.

As to a personal relationship, the rule on *pro hac vice* admission, 231 Pa. Code §1012.1(d)(2)(i), requires Mr. Smith, as the Sponsor, to verify that "after reasonable investigation, he or she reasonably believes the candidate to be a reputable and competent attorney and is in a position to recommend the candidate's admission." A personal relationship of 30 years constitutes a "reasonable investigation" and places Mr. Smith "in a position to recommend."

As to a fiduciary relationship, PECO simply notes that all lawyers are required to have a fiduciary relationship with their clients. *See, e.g., Burdett v Miller*, 957 F.2d 1375 (7th Cir. 1992) (Posner, J.). Again, the fact that Mr. Watson can be expected to fulfill that important ethical duty is a reason to grant PECO's Motion, not deny it.⁴

Pennsylvania License and Dues

Complainants next argue (§ 4) that the Motion should be denied because Mr. Watson is not a member of the Pennsylvania bar and thus has not paid Pennsylvania bar dues.

By definition, every *pro hac vice* admission involves an out-of-state lawyer who has not paid Pennsylvania bar dues. That is not a reason to deny *pro hac vice* admission; it is a description of the situation in which *pro hac vice* admission is to be sought.

Moreover, the Complainants did not demonstrate that their case in this docket was prejudiced by the absence of payment of a few hundred dollars of bar dues to the Commonwealth.

⁴ It is possible that Complainants meant to say "financial relationship" rather than "fiduciary relationship." It is true that Mr. Watson charges, and PECO pays, for his professional time and services. This is not unusual and does not provide "good cause for denial" of the *pro hac vice* Motion.

Mr. Smith's Other Sponsorship Responsibilities

The rule on *pro hac vice* admission requires the Sponsor (Mr. Smith) to set forth the cases in which he is acting as a sponsor of *pro hac vice* candidates. According to the Explanatory Notes, the purpose of this requirement is to ensure that the Sponsor is not acting as a sponsor in “too many cases to adequately supervise the candidate.” To that end, Mr. Smith verified that he is acting as a sponsor only in the specific cases in which he supervises Mr. Watson, all of which are on the same subject matter in Commission dockets.

The Complainants state in reply (¶ 6) that the PECO Motion “does not clarify that other PECO counsel are sponsoring Mr. Watson’s partner, Renner, in other proceedings in PA.”

Even if it were true that other PECO attorneys were sponsoring Mr. Renner in other matters, such sponsorship by other attorneys would not affect Mr. Smith’s ability to supervise Mr. Watson. But such sponsorship simply isn’t occurring. No other PECO attorney is sponsoring Mr. Renner *pro hac vice* in any matter. Mr. Renner is appearing in PPL cases, and in those cases is sponsored by a PPL attorney. *See Sunstein v PPL Electric Utilities Corporation*, C-2018-3000078, *Second Interim Order* (June 9, 2018) (discussing and affirming Mr. Renner’s *pro hac vice* admissions in PPL cases.)

Whether Complainants Were Prepared to Proceed

Complainants next argue (¶ 8) PECO’s Motion should be denied because they were not prepared to proceed at hearing and PECO “fiercely opposed any delay.”

If Complainants argue this point in their Main Brief, PECO will respond to it substantively in its Reply Brief. For purposes of this Motion, PECO simply notes that whether Complainants were prepared for hearing or not has no relationship to PECO’s *pro hac vice*

Motion, and this argument in no way demonstrates that granting PECO’s Motion would prejudice Complainants or otherwise provide “good cause for denial.”

Reopening the Record

Complainants next argue (¶¶ 9-11) that PECO’s Motion is akin to a request to reopen the record. That is not correct, for two reasons. First, the record is not yet closed in this proceeding. (Records are typically marked closed upon issuance of either the Initial Decision or the Commission’s Order.) Second, PECO’s Motion does not involve evidence, and thus does not implicate the record in any way because, put simply, PECO is not seeking to introduce additional record evidence.

Conclusion

Complainants have not demonstrated good cause for denial of PECO’s Motion to Admit Counsel *Pro Hac Vice*, and PECO therefore respectfully requests that Your Honor grant that Motion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that on August 3, 2018, I served a copy of PECO Energy Company's *Reply to Objection to PECO's Motion to Admit Counsel Pro Hac Vice*, in the above matter, upon all interested parties via overnight delivery to:

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Dated: August 3, 2018



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