Certificate of Service
Docket No. C-2017-2621057

August 6, 2017

We sent our Objections to Peco's Motion to Admit Mr. Renner to our case pro hac vice via email to Judge Heep (dheep@pa.gov), Mr. Ward Smith (ward.smith@exeloncorp.com), and Ms. Shawane Lee (shawane.Lee@exeloncorp.com) at 1:56pm today.

Alexia L. McKnight

Objection to PECO's Motion to Admit Mr. Renner *Pro Hac Vice*
Docket No. C-2017-2621057

August 6, 2018

This objection is in response to PECO's Motion submitted on July 16, 2018 to admit Mr. Renner to our case *pro hac vice*. We object for the following reasons.

Our hearing was already held 3 months ago. We cannot find any legal basis for allowing outside legal counsel into our case after it has been heard. Instead, we find in rule 301:

> *"The motion for the applicant's candidacy for pro hac vice admission shall be filed by the sponsor with the clerk of the court in which or with the magisterial district judge before which the case is pending at least three days prior to the appearance before the court or magisterial district judge by the attorney, barrister, or advocate seeking pro hac vice admission" (https://www.pacode.com/secure/data/204/chapter71/s301.html at (b)(2)(ii))(emphasis added)*

Filing three months *after* the appearance in court is clearly not compliant with at least three days *prior* to appearance in court. We suggest that PECO's motion to file on July 16 clearly demonstrates that this motion was NOT filed earlier or that Mr. Renner was ever admitted through some other method as might be suggested by Mr. Ward's testimony of some 'global' filing (Tr. 4/13, 291:14-15). We have not been able to find any legal basis for a 'global' filing, nor could we find that any such 'global' document was ever submitted.

Filing this motion after the court date would appear to violate any purpose of establishing this procedure before the case is heard, and even requiring a motion in the first place. This is like "asking for forgiveness rather than permission."

Specifically, we find that the ALJ has legitimate grounds for Mr. Renner's denial based on the frequency of his work in Pennsylvania. We find in Rule 1012.1:

> *"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" (https://www.pacode.com/secure/data/231/chapter1000/s1012.1.html at (e)(5))(emphasis added)*

For example, this was cited in a case an attorney Finnigan who had similar behavior in PUC v. Metropolitan Edison Company R-2016-2537349. Quoting Judge Long:

> *"While this participation lends itself to the conclusion that Attorney Finnigan has become familiar with the procedural rules of the Commission, it also calls into question the*

continued propriety of granting Attorney Finnigan pro hac vice admission. Pennsylvania Bar Rule 103, provides that an out-of-state attorney may be "specially admitted to the bar of this Commonwealth for purposes limited to a particular case." The rule is not intended to permit a practitioner who intends to practice in the Commonwealth on a regular basis to avoid admission to the Pennsylvania Bar. Indeed, the Pennsylvania Rules of Civil Procedure note that a court may deny a motion for admission pro hac vice where "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""(emphasis added)

Similarly, the Arkansas supreme court recently limits this practice to 3 times per year:

"The court shall deny the pro hac vice motion of a non-resident attorney when the non-resident attorney has participated, served as counsel, or entered an appearance pro hac vice in three (3) cases in the State of Arkansas during the twelve months prior to the filing of the motion." (see http://www.mitchellwilliamslaw.com/webfiles/Per%20Curiam%202016%20Ark_%20354%20Pro%20Hac%20Practice.pdf at 3: item (f) and https://www.americanbar.org/groups/litigation/publications/litigation-news/top-stories/2017/pro-hac-vice-rule-increases-scrutiny-of-non-resident-lawyers.html) (emphasis added)

Pro hac vice means 'for this occasion', not 'any time you please.'

Mr. Renner has been involved in numerous (at least 20 that we could find) additional cases where he has either acted as counsel or has applied for *pro hac vice* in other Pennsylvania cases such as in the PPL districts in 2017-18:

D. Bervinchak C-2016-2572824,
J. Bervinchak C-2016-2577527,
S. G. Chapman C-2017-2617625,
R.-M. Elam C-2017-2630795,
M. Forney C-2017-2614957,
K. Hicks C-2017-2628778,
J. Kline C-2017-2621072,
D. Millan C-2017-2623236,
R. N. Myers C-2017-2620710,
M. Peters F-2017-2612900,
V. Schmukler C-2017–2621285,
D. & B. Zimmerman C-2017-2615038,
K. R. Anthony C-2018-3000490,
C. & P. Bamberger C-2018-3000358,
B. Heffner C-2018-3000471,
E. Hoffman-Lorah C-2018-2644957,
E. Mallin C-2018-2644068,
L. L. Miller C-2018-3000685,

G. Pink C-2017-2637828,
W. & E. Sunstein C-2018-3000078,
Torres C-2018-2641883.

This repeated participation can easily be seen as an abuse of the *pro hac vice* system.

These many admissions indicate a near full-time operation. One wonders when or if Mr. Renner ever gets back to his home state to practice there.

Nunc pro tunc then sets very bad precedent because it forces the ALJ to confound other decisions and events that occurred during the proceedings against decisions that might be made in regarding the *pro hac vice*, and places additional pressure for the ALJ to rule in particular ways on the *pro hac vice* because of issues unrelated.

PECO argues (item 9) that the docket is still open. But, according to § 5.431 the record is closed:

> *"(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.*
>
> *(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion."*
> *(https://www.pacode.com/secure/data/052/chapter5/s5.431.html)*

So, at best this would be reopening the record. But further, the referenced testimony where Mr. Renner acted as counsel was shared with the Bachman's case (C-2017-2623504) which was apparently settled, which would imply that at minimum that docket is closed (see http://www.puc.state.pa.us//pcdocs/1573117.pdf) and was closed without this *pro hac vice* admission. The testimony and counsel Mr. Renner provided may have been influential in the Bachman's decision to settle.

And, in our case, this would confound with testimony that the ALJ has already heard to potentially change fact finding or weight.

That potential for dramatic change in the way the trial has proceeded, with no way for PECO to address the situation by for example finding a substitute Pennsylvania legal representation would at minimum create a perception of impropriety that the case was decided on technical legal grounds rather than on the substance merits of the case. But also, this situation creates un-natural pressure on the ALJ to ignore the *pro hac vice* abuses, and thus creates perception of impropriety that the ALJ is not appropriately addressing these. If the ALJ is to rule consistently, since the omission is not an isolated issue of a single case but involving several other cases, it confounds those decisions as well and would require reopening multiple records, and continued block of the ALJ to address a separate issue of what appears to be an abuse of the system. This is a bad slippery slope.

PECO cites prior cases of *nunc pro tunc*, however these appear at best to be extremely rare and seem to be in very different situations where the admission or denial would not have materially changed a decision. In Varner v. Roberts 1988 (https://www.leagle.com/decision/198816547padampc3d1181143) the *pro hac vice* occurred on November 2, 1987 before the arguments were heard December 17, 1987, and the late filing was with respect to preliminary objections. Similarly, in Duquesne Light v. PUC 2006

(Docket R-00061346) the case looks to have been dismissed for failure to prosecute, and it is not clear if the admission had any impact to relevant testimony.

Similar cases in other states have been questions up to high courts and have resulted in invalidation and voiding of the judgements. For example, Hadley v. Pike, 2014-Ohio-3310 (http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2014/2014-ohio-3310.pdf) where a Pennsylvania lawyer applied for *pro hac vice* in Ohio 2 weeks late.

Therefore, PECO's motion for *nunc pro tunc pro hac vice* should be denied with consequence of impact on the testimony given by witnesses that may have received counsel that he provided.

Respectfully submitted,

Alexia L. McKnight, DVM

Lawrence K. McKnight, MD