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September 4, 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 *Brief in Opposition to Complainants' Petition for Interlocutory Review* 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 & Teresa Mendez Quigley :  
 : Docket No. C-2017-2617558  
 v. :  
 :  
 PECO Energy Company :

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that on September 4, 2018, I served a copy of PECO Energy Company's *Brief in Opposition to Complainants' Petition for Interlocutory Review*, in the above matter, upon all interested parties via overnight delivery to:

James Quigley &  
Teresa Mendez Quigley  
401 Longfield Road  
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Dated: September 4, 2018



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**James Quigley and  
Teresa Mendez-Quigley**

**v**

**PECO Energy Company**

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**C-2017-2617558**

**Brief of PECO Energy Company  
In Opposition to  
Complainants' Petition for Interlocutory Review**

**Contents**

Introduction.....1

Background .....1

Summary of Argument.....2

Argument .....3

I. Legal Standard .....3

II. The Quigley’s claim of error can be addressed during the normal Commission review process ....4

III. The ALJ was correct to admit Mr. Watson *pro hac vice* .....5

Conclusion .....8

## Introduction

On August 29, 2018, the Commission served<sup>1</sup> PECO with a document titled “Motion and Application for Leave to Bring an Interlocutory Appeal of This Court’s Order Dated August 17, 2018.”

Presumably, the Quigleys intended this filing to qualify as a Petition for Interlocutory Review and Answer to a Material Question pursuant to 52 Pa. Code §5.301 *et seq.*<sup>2</sup> Pursuant to that subchapter, the parties have 10 days after service of such a petition to “submit a brief directed to the Commission supporting or opposing the petition and addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a party.” 52 Pa. Code § 5.302(b). PECO hereby submits its Brief in Opposition.

## Background

The Quigleys claim that radio frequency transmissions from PECO’s Advanced Metering Infrastructure (“AMI”) meters will cause, contribute to, or exacerbate adverse health effects. As part of its preparation to rebut these claims, PECO retained the services of Thomas Carl Watson, an outside counsel from Washington, D.C. who has special expertise in such health claims.

The evidentiary hearings took place on April 17 and 18, 2018. Due to inadvertence and oversight, PECO did not file a motion requesting *pro hac vice* admission for Mr. Watson prior to

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<sup>1</sup> PECO also received U.S. Mail service from the Quigleys; the U.S. Mail service was also received on August 29, 2018.

<sup>2</sup> *See* 52 Pa. Code §5.301(a): “The Commission will not permit interlocutory review of rulings made by a presiding officer during the course of proceedings, except as permitted by the act and as specified in this subchapter.”

the hearing. PECO rectified that omission on July 16, 2018, when it filed a Motion to Admit Mr. Watson *pro hac vice*.

On July 27, 2018, PECO received the Quigley's Objection to Mr. Watson's *pro hac vice* admission. On August 3, 2018, PECO filed its Reply to Objection. On August 17, 2018, Administrative Law Judge Heep issued an Order granting PECO's Motion for *pro hac vice* admission of Mr. Watson.

The parties filed their Main Briefs on August 3, 2018.

On August 29, 2018, the Quigley's filed the instant Petition.

Reply Briefs are due no later than September 7, 2018.<sup>3</sup>

Briefs in support of or in opposition to the instant Petition are due on September 10, 2018.

No additional hearings are scheduled or anticipated. Other than the Reply Briefs, which are due no later than September 7, no additional filings are scheduled or anticipated until after issuance of the Initial Decision.

### **Summary of Argument**

The Quigleys claim that the ALJ was in error in granting *pro hac vice* status to Mr. Watson can be addressed during the normal Commission review process. Interlocutory review is thus not appropriate.

Moreover, the Quigleys are incorrect in their claim of error. The ALJ properly granted *pro hac vice* status to Mr. Watson.

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<sup>3</sup> PECO is filing its Reply Brief today, September 4, 2018, contemporaneously with this Brief in Opposition.

## Argument

### I. Legal Standard

Interlocutory review is generally considered to be disruptive to the orderly flow of a proceeding, and thus is not favored. *Re: Philadelphia Gas Works Universal Services Plan*, M-00072021 (Oct. 23, 2009).

The Commission's standard for interlocutory review was established in the mid-1980s in *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985): The "pertinent consideration" is whether the error claimed, if ultimately determined to be a valid claim of error, can be cured during the normal Commission review process. If it can be resolved during the normal Commission review process, then interlocutory review is not appropriate. The Commission recently reiterated this standard for interlocutory review in *Zied v PECO Energy*, 2016 WL 5121966, F-2015-2500342 (PaPUC Opinion and Order, Sept. 15, 2016) (emphasis added):

The standards for interlocutory review are well established. Section 5.302 of our Regulations requires that the petitioning party "state ... the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding." *The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice — that is, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process.* *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002, *et al.* (Order entered June 10, 1999); *Pa. PUC v. Frontier Communications of Pa. Inc.*, Docket No. R-00984411 (Order entered February 11, 1999); *In re: Knights Limousine Service, Inc.*, 59 Pa. P.U.C. 538 (1985).

*See also Schell v PPL Electric Utilities Corporation*, 2016 WL 6698883, C-2016-2535220 (Opinion and Order, Nov. 6, 2016) (ALJ admitted testimonial exhibits of utility over objections of *pro se* complainant; interlocutory review denied because rulings "regarding the admissibility of evidence or testimony constitute routine evidentiary rulings which do not warrant interlocutory review"); *In re Application of First Class Transportation*, 2016 WL 825709, P-2-15-2501758 and A-2015-2466538 (Opinion and Order, Feb. 25, 2016) (ALJ refused

to issue a subpoena to compel testimony of a specific witness; interlocutory review denied because the parties could develop their cases through alternative discovery and testimony and any error in the evidentiary ruling could be addressed during the normal review process).

**II. The Quigley's claim of error can be addressed during the normal Commission review process**

As noted in the Background section of this Brief, the evidentiary hearing was held in April 2018, Main Briefs were filed on August 3, 2018, and Reply Briefs are due no later than Sept. 7, 2018. Briefs in support of and in opposition to the Quigley's Petition for Interlocutory Review are due contemporaneously (on September 10, 2018).

In the normal Commission review process, the next step is that the Administrative Law Judge will issue an Initial Decision. (Although the timeline for issuance of Initial Decisions is not set by regulation, in PECO's AMI/health cases the Commission has typically issued ALJ Heep's Initial Decisions approximately 90 days after the filing of Reply Briefs. In this case, PECO therefore anticipates an Initial Decision in December 2018.) After the issuance of the Initial Decision, the parties will have the opportunity to file exceptions (and reply exceptions), at which time the parties will have the opportunity to raise any procedural or evidentiary errors that they believe that the ALJ committed during the course of the proceeding.

In that normal Commission review process, the Quigleys thus could raise their *pro hac vice* arguments in their exceptions (and PECO would respond in its reply exceptions), which would place both parties' arguments before the full Commission.

There are no additional hearings or filings that are scheduled to occur between now and the Initial Decision. There is thus no prejudice to any party to waiting to address the Quigley's *pro hac vice* arguments during the exception/reply exception stage of this proceeding. Indeed, in their Petition, the Quigleys did not even present an argument or reason that their *pro hac vice*

argument needs to be addressed now, rather than at the exception stage when it would normally be addressed. *See, e.g., Schell* at 3 (“the Complainant has not made any arguments in its Petition to establish that answering the Material Question before us will expedite the conduct of the proceeding. Nevertheless, we find that there are little grounds for an expediency argument at this late stage in the proceeding, as the evidentiary hearing has already been conducted on the issues raised in the three Complaint proceedings. We find no reason to preempt the normal review process prior to the ALJ rendering his decision on the Complaints. The Complainant may raise any evidentiary issues in Exceptions.”)

In sum, there is no need for interlocutory review because the next steps in the normal Commission review process – an Initial Decision and exceptions – will provide the Quigleys with an opportunity to raise their procedural *pro hac vice* issue.

### **III. The ALJ was correct to admit Mr. Watson *pro hac vice***

In her August 17, 2018 Order granting *pro hac vice* admission, the ALJ carefully reviewed the Quigley’s arguments and correctly concluded that *pro hac vice* admission is appropriate in this proceeding.

The Quigleys did not explicitly state a material question in their Petition. However, it is clear that their primary concern is that they believe that admitting Mr. Watson *pro hac vice* was inappropriate. As noted in PECO’s August 3, 2018 Reply to Objection, the Quigley’s primary basis for this claim is their belief that Mr. Watson has recently appeared in too many Commission proceedings, and thus should not be allowed to appear *pro hac vice* in the instant proceeding.

Simply, Mr. Watson’s appearances in other cases have been limited in scope and duration; his appearances involved limited, focused, special expertise in AMI/health issues; and

his appearances were all under the close supervision of an experienced Pennsylvania regulatory attorney. *Pro hac vice* admission is appropriate in such circumstances. (PECO also incorporates into this Brief in Opposition the arguments that it made in its August 3, 2018 Reply to Objection.)

PECO is aware that several AMI/health complainants in both its service territory and PPL's service territory have adopted a strategy of arguing that the jurisdictional utilities should not be allowed to retain Mr. Watson, and his partner Mr. Renner, as *pro hac vice* counsel in AMI/health cases. *See, for example, Wilfred Sunstein v PPL Electric Utilities Corp.*, C-2018-3000078 (Second Interim Order, June 19, 2018) (denying Motion to Quash *pro hac vice* admission); *Mary Paul v PECO*, C-2015-2475355 (Petition for Reconsideration pending before the Commission in which Ms. Paul claims that grants of *pro hac vice* status are proof of collusion against her and other complainants); *McKnight v PECO*, C-2017-2621057 (Orders Granting *pro hac vice* Motion over objections, August 17, 2018); *Caesar v PECO*, C-2017-2605462 (Order Granting *pro hac vice* Motion over objections, August 15, 2018).

But despite multiple Complainants coordinating to make the same arguments in various dockets,<sup>4</sup> *pro hac vice* status is appropriate for the type of appearance at issue here: out-of-state attorneys with focused expertise who appear under the supervision of experienced, licensed, Pennsylvania regulatory attorneys. As ALJ Heep correctly stated in this proceeding (pp. 6-7.):

There is no indication that the *Pro Hac Vice* admission of Mr. Watson would be detrimental to the interests of the Complainant or PECO. There is nothing to suggest that Mr. Watson is not fit to practice law for any reason or before the Commission.

\* \* \*

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<sup>4</sup> The Complainants' pleadings in the various cases cited above are largely cut-and-pasted from each other.

There is also value in the concerns raised in Nos. 4, 5, 7 and 12 that Mr. Watson's appearance in several matters before the Commission *Pro Hac Vice* may constitute practicing in Pennsylvania without a license. Nevertheless, given the totality of circumstances, this is not a basis upon which to deny granting the Motion to admit Mr. Watson *Pro Hac Vice*.

PECO has had over 30 smart meter matters before the Commission and the undersigned. Attorney Watson has been admitted *Pro Hac Vice* in at least 8 of these matters heard by the undersigned. In those cases, as well as here, Mr. Watson did not act as lead counsel and examined only Dr. Davis and Dr. Israel alongside and assisted by PECO Pennsylvania lead counsel Mr. Smith and Ms. Lee. There is no evidence that Mr. Watson is unlawfully without a license appearing in various legal venues in Pennsylvania practicing a variety of legal subjects or has maintained a law office in Pennsylvania as contemplated by Rule 1012.1(e)(5) as a basis for denying a *Pro Hoc Vice* motion.


The ALJ was correct in this assessment and in her final conclusion (p. 9) that “[t]here is nothing prejudicial to the Complainants in granting the admission of Mr. Watson *Pro Hac Vice Nunc Pro Tunc* and it would be inefficient and wasteful of the resources of the Commission and of the parties to set this matter for another hearing because of the curable and technical time of filing error.”

**Conclusion**

PECO respectfully submits that the Quigleys did not demonstrate that interlocutory review is appropriate in this proceeding. Their procedural argument regarding *pro hac vice* status can be reviewed during the normal Commission review process.

If the Commission deems it appropriate to provide interlocutory guidance and rule on the substance of the Quigley’s request at this time, then it should uphold ALJ’s Heep’s ruling admitting Mr. Watson to appear in this matter *pro hac vice*.

Respectfully submitted,



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