

March 18, 2019

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, Pa. 17120

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MAR 18 2019

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Janice DeNito Branagh v. PECO Energy Company  
Docket No. C-2016-2576738

Dear Secretary Chiavetta:

A copy of my objections to PECO's Motion to Admit Counsel Pro Hac Vice is attached for filing. A certificate of service evidencing that service is attached for filing.

Sincerely,



Janice DeNito Branagh  
117 Farview Avenue  
Norristown Pa. 19403

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Janice DeNito Branagh

v PECO

: Docket C-2016-2576738

Reply opposing PECO Energy Company's Motion to Admit Counsel Pro Hac Vice more than 20 months after the hearing was held, more than 12 months after briefing and replies to exceptions briefing were completed, the record was closed, and more than 12 months after ALJ Heep had rendered her initial decision

1. I am filing this response, as I have throughout my formal complaint process, *pro se*, without an attorney.
2. I was unaware of the *pro hac vice* rules or PECO's lack of attorney representation in presenting the its expert testimony of hired experts Davis and Israel, until the PUC notified me recently that they were remanding my case back down to ALJ Heep.
3. The PUC stated in its ruling in my case, that D.C. lawyer Watson was not admitted *pro hac vice* in my case.
4. I have educated myself as much as I can in the limited time I have to file my reply to PECO's motion. I have looked up the

*pro hac vice* rules in Pennsylvania and have looked to other PECO smart meter formal complaint cases.

5. I found out that PECO lacked attorney representation when it attempted to introduce Davis and Israel and asked to enter their testimony on the record in my case.
6. I had a real problem during my hearing and afterwards with the testimony presented by these two offered experts. I am a scientist myself, and much of their testimony regarding the electromagnetic energy caused by smart meters and its effects on humans, including the disabled such as myself was outrageous.
7. Their testimony was carefully honed and was not supported by any independent (non wireless industry) biased scientific peer reviewed literature.
8. There are thousands and thousands of studies that show that wireless signals such as those emitted by smart meters can be harmful to the disabled such as myself, but that is beside the point.
9. I testified and presented my medical evidence, including letters from my physician.
10. Because PECO's offered expert testimony was offered by a non Pennsylvania admitted lawyer (Thomas Watson), all of the evidence presented by Davis and Israel should be disqualified and not regarded for any purposes in my case whatsoever. To

admit Watson to the PA Bar at this extremely late date, would confound the weight that the evidence should be given, and would reveal improprieties on the part of the PUC.

11. PECO is required under the PUC rules and regulations to be represented by a Pennsylvania admitted attorney in formal complaint hearings. To the extent that PECO was represented by *inhouse counsel (Ward Smith and Miss Lee)*, PECO was abiding by the law.
12. To the extent that PECO was offering testimony, and conferring with ALJ Heep through D.C. attorney Watson, all that testimony and all those offerings must be stricken from my record, because Watson was not a member of the Pennsylvania Bar during my hearing, and PECO and its in house lawyers and Watson must be sanctioned for not following the procedural rules required of companies in PUC court.
13. Therefore, all my testimony is uncontroverted by PECO and must be given full weight, that is, the preponderance of the evidence is in my favor throughout my hearing regarding the harm that smart meters have on my health.
14. Judge Heep must amend her ruling in my case, and must find that PECO cannot attach a smart meter to my house for electrical usage, and PECO must remove the smart meter it placed on my house without my consent, after learning that I could not safely tolerate a smart meter on my house.

15. Experience has shown and I testified to that effect, that after PECO deployed a smart meter on my gas supply, that my medical condition had and has worsened considerably. PECO put a smart meter on my gas supply without my consent and knowledge, after I had lodged the formal complaint and before my hearing. This has necessitated physicians' visits, prescription medications, missed work days, and pain and suffering. To throw away and discard all of my evidence of the harm I suffered from the gas smart meter, in favor of the perjured testimony offered by Davis and Israel and presented by Watson would show a miscarriage of justice to the highest degree.
16. I strongly oppose Ward Smith's March 1, 2019 filing of *pro hac vice nunc pro tunc* to admit DC attorney Thomas Watson in my case, for a number of reasons.
17. It is against Pennsylvania law to admit Watson to the PA Bar *pro hac vice*, now, more than 20 months after the close of my hearing which was held on June 6, 2017; more than 12 months after all the briefs including reply exceptions have been submitted, and well over a year since the record was closed, and more than 12 months after Judge Heep has rendered her initial decision in my case on January 12, 2018. To allow PECO to admit DC attorney Watson into the PA bar so long after he participated illegally in my case would be most prejudicial to my case.
18. Under Pennsylvania law, all *pro hac vice* motions must be submitted early in the litigation process, at least 3 days before

the start of the hearing: see PA Rule 301; 52 PA Code Section 1.22(b); PA Rules of Civil Procedure Section 1012.1 and 204 PA Code Section 81.501 et seq.

19. Ward Smith now asks Judge Heep to ignore the willful *ignorance of PECO in not seeking properly to obtain pro hac vice* admittance of Watson in my case. See below.
20. PECO has a stable of in house lawyers. I have none. PECO has multi millions of dollars to fight me in PUC court. I do not even have enough money to hire a lawyer to fight for my rights as a disabled person who is much sicker because of the PECO illegal smart meter on my gas service.
21. PECO erred in not moving to admit Watson *pro hac vice* in my case at least three days before my hearing. PECO's mistake is not harmless mistake. It is a serious breach of required filings. And Watson committed serious breaches of Pennsylvania law in representing PECO and presenting perjured testimony in my case in 2017.
22. PECO has done this repeatedly. This is not an isolated incident. Ward Smith states in number 10, "through inadvertence and oversight PECO did not file a *pro hac vice* Motion in the instant case". He states that "in late June 2018, PECO became aware of its oversight". This statement is not true. PECO became aware of its violations of Pennsylvania attorney practice way before June 2018. In fact, PECO and Ward Smith became aware of this "oversight" in the McKnight v PECO hearing on April 13, 2018, because Dr. McKnight

brought it up to Ward Smith near the end of her hearing, and Ward Smith replied to her about his very topic See McKnight transcript 4/13/2018, page 291: 14-15. This is recorded in the McKnight v PECO transcript, which the court reporter did amend after the McKnights noticed that this conversation had been omitted from the transcript. The McKnights wanted to make sure that their hearing transcript stated the conversation Dr. McKnight had on record, regarding Watson and Renner representing PECO in their hearing without proper admittance to do so.

23. PECO failed to file pro hac vice motions for Watson and his partner Renner In the McKnight v PECO case: C-2017-2616249, in the Gavin v PECO case C-2017-2616249, in the Quigley v PECO case C-2017-2617558; in the Caesar v PECO case C-2015-2475355, in the Bachman v PECO case C-2017-2623504; in the Eckstein v PECO case CF-2017-2601990 and in my case.
  
24. PECO states in its number 5, that Watson “shall comply with and be bound by the applicable statues, case law and procedural rules of the Commonwealth of Pennsylvania, including the Pennsylvania Rules of Professional Conduct.” Watson did not comply with all those rules. First, Watson knew well before my hearing, because he had rehearsed and offered the testimony of these same witnesses Davis and Israel in many other PECO cases, (enumerated by Ward Smith in his motion I am replying to) that the PECO expert witnesses would be offering perjured testimony about the lack of harm to disabled customers like myself from smart meters and other generators of microwaves if used in or near their homes. Certainly, after my hearing and the record was closed, all the perjured testimony was offered into

evidence, so Watson knew at least after the fact that the testimony he presented to Judge Heep was false. Offering perjured testimony to a judge is not in keeping with the Pennsylvania Attorney Rules of Professional Conduct. And especially since that perjured testimony has already resulted in physical harm to disabled Pennsylvania customers and will continue to harm more and more disabled Pennsylvanians. In fact, Mr. Smith is also guilty of violations of this ethics requirement because he has known for some time that PECO's expert witnesses presented by Watson and Renner would offer and have offered perjured testimony. Ethics rules of the Pennsylvania Bar include 204 PA Code Chapter 81, Rule 3.3:

**“ Rule 3.3. Candor Toward the Tribunal.**

(a) A lawyer shall not knowingly

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence before a tribunal or in an ancillary proceeding conducted pursuant to a tribunal's adjudicative authority, such as a deposition, and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false....

**Comment:**

(1) This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of “tribunal.” It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

(2) This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.”

25. **Additionally, even if Watson were not guilty of violating the Candor towards a tribunal Rule 3.3 ethics requirement of all attorneys admitted to the Pennsylvania Bar, and even if PECO had timely filed a *pro hac vice* motion for admittance of DC lawyer Watson to participate as a lawyer representing PECO in my case, Watson’s admittance *pro hac vice* in my case should not have been granted at that time, because Watson and his partner Renner have been practicing law in Pennsylvania for at least two years without a Pennsylvania license to do so.**

**PA Pro Hac Vice 1012.1 requires:**

**“(e) The court shall grant the motion (which has been timely filed) unless the court, in its discretion, finds good cause for denial.**

**Official Note**

**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” .**

**ALJ Long held in PUC v Met Ed, case R-2016-2537349 that:**

**“Attorney Finnigan also notes that he has been granted permission to appear in several Commission dockets including the 2014 base rate proceedings of the First Energy companies, as well as the base rate**

proceedings for PECO Energy Company, PPL, PGW and the 2015 First Energy companies' DSIC petitions. 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.*"<sup>1</sup> 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 . . ."<sup>2</sup> While I will grant the petition to allow Attorney Finnigan's admission *pro hac vice* in this matter, he is strongly urged to seek admission to the Pennsylvania Bar, and on notice that future petitions may not be granted."

The Commission should follow the reasoning precedent of its own Judge Long, and not permit Watson to be admitted *pro hac vice* after 17 earlier admissions in 17 separate cases in a short period of time, and after his partner Renner has been admitted to 24 additional cases, and certainly not almost two years after my hearing and after the case is closed and the Judge has issued her initial decision.

In fact, I recently learned that Renner did get admitted to the Pennsylvania Bar long after my case was concluded, a situation not unlike a restaurant which installs a handrail after a patron slips and falls on the steps which had no handrail before. If I had been informed of that Renner was applying for admission to the PA Bar, I might have opposed his admission to the Pennsylvania Bar for the reasons I stated in this reply.

26. While Ward Smith does list 17 cases of the smart meter formal complaints that Watson and Renner have participated in in PUC court in the last several years, he does not list all of the smart meter formal complaints that Watson and Renner have participated in, with or without *pro hac vice* motions. Ward Smith does not list the Met Ed formal complaints, nor does he list the West Penn Power complaints, nor the PPL formal complaints nor any other utility smart meter formal complaints

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<sup>1</sup> Pa. B.A.R. 301 (*emphasis added*).

<sup>2</sup> Pa.R.C.P. No. 1012.1(e), note (5).

that these two DC lawyers have participated in without being admitted to the Pennsylvania Bar on their own, but through *pro hac vice* filings or otherwise. There were at least 20 *additional cases* which were found as of June 2018. See attached *pro hac vice* chart. The DC bar, which Watson is admitted to, limits *pro hac vice* admissions to 5 times per year in order to maintain the integrity of its bar admittees. The same reasoning applies to the PA Pro Hac Vice admissions. According to Rule 49(c)(7) of the D.C. courts of appeals Rules and Super. Ct. Rule 101(3):

“Pro hac vice appearances are meant to be an exception to the general prohibition against practicing law in D.C. without the benefit of membership to the D.C. Bar. Pro hac vice admission is considered a privilege for out-of-state attorneys who may, from time to time, be involved in a particular case that requires an appearance before a D.C. court.

27. Please also see the \_\_\_\_\_ page to view the requirements for alternative dispute resolution proceedings.
28. Eligibility  
Eligible attorneys are not members in good standing of the D.C. Bar but are members in good standing of the bar of any United States court or of the highest court of any state.
29. Attorneys may provide legal services in or reasonably related to a pending or potential proceeding in a court of the D.C., if the attorney has been or reasonably expects to be admitted *pro hac vice*.
30. Attorneys cannot apply for *pro hac vice* more than five times in one calendar year, except for exceptional cause shown to the court. Attorneys also cannot maintain or operate from an office or location for the practice of law within D.C., unless the attorney qualifies under another express exception provided in section 49(c).”

31. Just because Judge Heep admitted Watson and Renner in PECO’s late filed *pro hac vice nunc pro tunc* motions in the McKnight, Quigley and Caesar cases, does not set any sort of precedent, except to show the extent of collusion between the utilities and the ALJs, that ALJ Heep would rule in the favor of the utility when ruling in favor of the utility meant to violate PA law. Three misguided rulings do not set precedent to commit yet another misguided ruling.

32. Even if Ward Smith had filed to admit Watson *pro hac vice* in the proper time frame before my hearing, giving me notice and an opportunity to plead, as required under Pennsylvania and under the PUC court law, I would have objected, because Watson was in fact, violating PA law in many respects.
33. Watson had been practicing law in PA without a PA license for over a year in violation of Pennsylvania law.
34. See attached *pro hac vice* chart of many of the cases that Watson's DC law partner Renner was admitted in.

Watson and Renner were brought into these smart meter harm cases by PECO (and now on behalf of other electric utilities in the state) solely to present the perjured testimony of Davis and Israel. It is against Pennsylvania attorney ethics for an attorney to knowingly present false testimony in court. Watson and his law partner Renner did so knowingly, time and time again in PUC smart meter harm case, after smart meter harm case.

35. PECO cites prior cases of *nunc pro tunc pro hac vice* motions, but these cases are clearly distinguishable from my case. Those cited cases are extremely rare, and they are cases in which admission did not materially change the weight of the evidence. And they certainly were not granted almost two years after all oral argument was heard!!
36. In *Varner v Roberts* 1988 cited by PECO, the *pro hac vice* admission was granted on November 2, 1987 more than a month before the oral arguments were heard on December 17,

1987, and the late filing was only about preliminary objections nothing further. Also, In *Duquesne Light v PUC* 2006, Docket R-00061346, the case was dismissed and the pro hac admission had no impact in testimony whatsoever. Ward Smith even said in his motion that the order was a settlement acceptance which closed the docket in the *Duquesne Light* case. In my case, granting a defective pro hac vice on so many counts, would materially alter the outcome of my case, if the PUC or the Commonwealth Court follows Pennsylvania law and precedent.

37. Similar pro hac vice cases in nearby states have been appealed up to high courts and have resulted in invalidation of findings and in voiding of judgments. See, for example, *Hadley v Pike*, (2014) Ohio Supreme Court case 2210, where a Pennsylvania lawyer applied for pro hac vice status in Ohio a mere 2 weeks late.

38. In addition I cite the following case:

**Vermeychuk v. Pa. PUC**

**No. 143 C.D. 2016 (Filed April 8, 2016)**

In an unreported opinion, the Commonwealth Court of Pennsylvania granted the Commission's motion to dismiss the appeal of Denial Vermeychuk. On November 5, 2015, the Commission dismissed Mr. Vermeychuk's complaint against PECO Energy Company (PECO). Subsequently, on January 27, 2016, Mr. Vermeychuck, a practicing attorney, filed a petition for review *nunc pro tunc*. The Commission argued that the petition for review was untimely. The Court stated that the

Supreme Court permits *nunc pro tunc* appeals when the appellant proves the following three elements: (1) the notice of appeal was filed late as a result of non-negligent circumstances, (2) the appellant filed the notice shortly after the expiration date, and (3) the appellee was not prejudiced by the delay. The Court found that no breakdown in operations that would justify a *nunc pro tunc* appeal occurred. No evidence of non-negligent circumstances existed and the appeal was filed 36 days after Mr. Vermeychuk learned of the Commission's decision. As the first and second elements were not met, the Court did not examine the third element.

Therefore, for all the above reasons, I, Janice DeNito Branagh, pray that the Commission and Judge Heep deny PECO's March 1, 2019 pro hac vice motion to admit Watson as counsel in my case, and I pray that all expert testimony sworn to by Davis and Israel and presented by DC Attorney Watson be stricken from the record in my case.

## PPL - Pro Hac Vice Filings

Complainant Name v. PPL	PHV Motion	Notice to Plead	Order to Admit PHV	Case Created	Hearing Held	Outcome
D. Bervinchak C-2016-2572824	12/18/2017	No	None (*cases consolidated)	10/26/16	03/23/18	
J. Bervinchak C-2016-2577527	12/18/2017	No	01/8/18*	11/29/16	03/23/18	
S. G. Chapman C-2017-2617625	12/18/2017	No	01/8/18	08/04/17		Satisfied 04/09/18
R.-M. Elam C-2017-2630795	12/18/2017	No	01/8/18	10/25/17		Satisfied 02/23/18
M. Forney C-2017-2614957	12/18/2017	No	01/8/18	07/19/17		Satisfied 02/20/18
K. Hicks C-2017-2628778	12/18/2017	No	N/A	10/12/17		Withdrew- too sick (from meter) 01/02/18
J. Kline C-2017-2621072	12/18/2017	No	01/8/18	08/24/17	03/29/18	
D. Millan C-2017-2623236	12/18/2017	No	01/8/18	09/07/17	11/2/18	
R. N. Myers C-2017-2620710	12/18/2017	No	01/8/18	08/22/17	04/02/18	
M. Peters F-2017-2612900	12/18/2017	No	01/8/18	07/06/17		Satisfied 01/31/18
A. V. Schumkler C-2017--2621285	12/18/2017	No	01/8/18	08/25/17	03/09/18	
D. & B. Zimmerman C-2017-2615038	12/18/2017	No	01/8/18	07/19/17	6/27/18	
K. R. Anthony C-2018-3000490	04/23/18	No	04/24/18	03/15/18	To Be Held 08/30/18	
C. & P. Bamberger C-2018-3000358	04/23/18	No	04/24/18	03/09/18	To Be Held 10/12/18	



I, Janice DeNito Branagh, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter if required to do so. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. 4904 (relating to unsworn falsification to authorities).

Date: *March 18, 2019*

Signature: *Janice DeNito Branagh*

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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Before the Pennsylvania Public Utility Commission**

**Janice DeNito Branagh vs. PECO Energy    Docket No. C-2016-2576738**

**Certificate of Service**

I, Janice DeNito Branagh, hereby certify that on March 18, 2019, I served copies of my objections to **Peco Energy's Motion to Admit Counsel Pro Hac Vice in the above matter, upon all interested parties via first class mail to:**

**Administrative Law Judge Darlene Heep  
Pennsylvania Public Utility Commission  
801 Market Street  
Philadelphia, Pa. 19107**

**AND**

**Ward L. Smith Esq.  
Peco Energy Company  
2301 Market Street, S23-1  
Philadelphia, Pa 19103**

**Dated March 18, 2019**

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**MAR 18 2019**

**PA PUBLIC UTILITY COMMISSION  
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**Janice DeNito Branagh**

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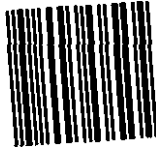
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