

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005**

ORDER

April 8, 2019

**FORMAL CASE NO. 1115, IN THE MATTER OF WASHINGTON GAS LIGHT
COMPANY'S REQUEST FOR APPROVAL OF A REVISED ACCELERATED
PIPE REPLACEMENT PLAN,**

**FORMAL CASE NO. 1154, IN THE MATTER OF WASHINGTON GAS LIGHT
COMPANY'S APPLICATION FOR APPROVAL OF PROJECTPIPES 2 PLAN,**

and

**PEPACR-2019-01, IN THE MATTER OF THE ANNUAL CONSOLIDATED
REPORT OF THE POTOMAC ELECTRIC POWER COMPANY, Order No. 19890**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") conditionally grants the Office of the People's Counsel's ("OPC") Motion for Special Appearance Under Rule 110.3 and Request for Partial Waiver Thereof ("Motion").¹ Timothy R. Oberleiton, may participate as OPC counsel in *Formal Case Nos. 1115, 1154, and PEPACR-2019-01*, provided OPC submits further information responding to D.C. Court of Appeals Rule 49(c)(4). Within 10 business days of the date of this Order, OPC shall update its filing indicating whether Mr. Oberleiton has been disbarred or suspended for disciplinary reasons from any jurisdictions and has not resigned with charges pending in any jurisdiction or court.

II. BACKGROUND

2. On March 19, 2019, OPC filed its Motion, requesting that, Timothy R. Oberleiton, a newly-hired OPC attorney, be approved to practice before the Commission in the above-captioned proceedings. To that end, OPC is requesting a waiver of the limitation under Rule 110.3 that "prohibits the [] [Commission] from granting a motion for

¹ *Formal Case No. 1115, In the Matter of Washington Gas Light Company's Request for Approval of a Revised Accelerated Pipe Replacement Plan ("Formal Case No. 1115")*, *Formal Case No. 1154, In the Matter of Washington Gas Light Company's Application for Approval of PROJECTpipes 2 Plan ("Formal Case No. 1154")*, and *PEPACR-2019-01, In the Matter of the Annual Consolidated Report of the Potomac Electric Power Company*, Motion for Special Appearance Under Rule 110.3 and Request for Partial Waiver Thereof, filed March 19, 2019 ("Motion").

special appearance for an attorney who is not admitted to practice in the District of Columbia if the attorney does not maintain an office in the District for the practice of law.”² OPC argues that the Commission should approve the Motion based on D.C. Court of Appeals Rule 49(c)(8), which states that an attorney not admitted to the D.C. Bar may practice law in the District of Columbia, provided that a list of criteria is met.³ OPC explains that Timothy R. Oberleiton joined OPC’s Litigation Services Division on March 4, 2019, and maintains an office in the District for the practice of law.⁴ OPC notes that Mr. Oberleiton is “an attorney in good standing, licensed to practice law in the states of New York and New Jersey”; and “submitted an application for admission to the D.C. Bar with the D.C. Court of Appeals Committee on Admissions on December 19, 2018.”⁵

3. OPC further explains that because Mr. Oberleiton maintains an office in the District of Columbia, and under Commission Rule 110.3, he would not be eligible to obtain approval for special appearance before the Commission. OPC seeks waiver of this requirement, as Mr. Oberleiton’s work before the Commission would be supervised by Travis R. Smith, Sr., Trial Supervisor, at OPC. OPC states that Mr. Smith is a member in good standing with the D.C. Bar and has more than 23 years of experience practicing law. Mr. Smith is also Mr. Oberleiton’s direct supervisor at OPC.

² Motion at 1-2.

³ Motion at 2. D.C. App. R. 49(c)(8), *Limited Duration Supervision by D.C. Bar Member*, states: “In General. (A) person may practice law from a principal office located in the District of Columbia for a period not to exceed 360 days from the commencement of such practice, during pendency of the person’s first application for admission to the D.C. Bar, if:

- (i) the person is authorized to practice law and in good standing in another state or territory;
- (ii) the person is not disbarred or suspended for disciplinary reasons;
- (iii) the person has not resigned with charges pending in any jurisdiction or court;
- (iv) the person is under the direct supervision of an enrolled, active member or members of the D.C. Bar;
- (v) the person has submitted the application for admission within 90 days of commencing practice in the District of Columbia;
- (vi) the D.C. Bar member takes responsibility for the quality of the work and complaints concerning the services;
- (vii) the person or the D.C. Bar member gives notice to the public of the member’s supervision and the person’s bar status; and
- (viii) the person is admitted pro hac vice to the extent he or she provides legal services in the courts of the District of Columbia.”

⁴ Motion at 2.

⁵ Motion at 3. By affidavit, OPC shows that Mr. Oberleiton filed an Application for *Admission by Motion by 5 Year Provision* pursuant to D.C. Court of Appeals Rule 46(c)(3)(I) with the Committee on Admissions for the District of Columbia Courts, which bears a submission and application payment date of December 19, 2018.

III. DISCUSSION

4. The Commission's rule on special appearances clearly requires anyone requesting special appearance to be admitted to practice before the highest court of any state and not to maintain an office within the District of Columbia for the practice of law.⁶ Mr. Oberleiton is a member of the New Jersey and New York Bars, but he also maintains an office in the District of Columbia as a result of his employment at OPC. While he has filed an application to become a member of the D.C. Bar, he is not yet a member and, therefore, cannot represent OPC before the Commission pursuant to D.C. App. R. 49(a). Thus, he does not meet the qualifications set out in Rule 110.3 unless we grant the partial waiver that has been requested and approve OPC's Motion.

5. The Commission may in its discretion waive its rules if good cause exists and there are circumstances which support a waiver of either a portion of, or the entire rule.⁷ OPC has asked us to consider Mr. Oberleiton's D.C. Bar status considering the D.C. Court of Appeals' rules for admission to the D.C. Bar and to find that his circumstances merit a partial waiver of Commission Rule 110.3. OPC referenced for our consideration the exception to the unauthorized practice of law⁸ rule in D.C. App. R. 49(c)(8), *Limited Duration Supervision by D.C. Bar Member*.⁹ Further, the Commission notes that D.C. App. R. 49(c)(4), *District of Columbia Employee*, provides an additional exception to the general Rule 49(a) for employees of the District government stating:

A person may provide legal services to the government of the District of Columbia during the first 360 days of employment as a lawyer for the government of the District of Columbia, when the person:

(A) is authorized to practice law and in good standing in another state or territory;

(B) is not disbarred or suspended for disciplinary reasons;

⁶ 15 DCMR § 110.3 (2011) states: "A person may be represented in any proceedings before the Commission by an attorney at law admitted to practice before the District of Columbia Court of Appeals; or by an attorney admitted to practice before the highest court of any state upon the granting by the Commission of a motion for special appearance; Provided, that the attorney does not maintain an office within the District of Columbia for the practice of law."

⁷ 15 DCMR § 146 (1981) states: "The Commission may, in its discretion, waive any of the provisions of Chapters 1 and 2 of this title in any proceeding after duly advising the parties of its intention to do so."

⁸ D.C. App. R. 49(a) which states: "IN GENERAL. Except as otherwise permitted by these rules, no person may engage in the practice of law in the District of Columbia or in any manner hold out as authorized or competent to practice law in the District of Columbia unless enrolled as an active member of the D.C. Bar."

⁹ *Supra*, n.3.

(C) has not resigned with charges pending in any jurisdiction or court; and

(D) has been authorized by her or his government agency to provide such services.¹⁰

6. Pursuant to D.C. Code § 34-804, the District of Columbia established by statute “within the Public Service Commission of the District of Columbia, an office to be known as the ‘Office of the People’s Counsel’ . . . [who] shall be a party, as a right, in any investigation, valuation, revaluation, or proceeding of any nature by the Public Service Commission of or concerning any public utility operating in the District of Columbia.” Given this statutory mandate and the fact that the People’s Counsel is appointed by the District of Columbia Mayor, OPC is an agency of the District government.

7. Furthermore, OPC’s Motion indicates that Mr. Oberleiton is employed as an OPC attorney, has a principal office located in the District of Columbia, and is an active member in good standing of the highest court of a state or territory, New Jersey and New York. He also applied for admission into the D.C. Bar and until his admission, he will operate under the direct supervision of another of an enrolled, active member of the D.C. Bar. However, regarding D.C. App. R. 49(c)(4), OPC has not explained whether Mr. Oberleiton, while in good standing in New Jersey and New York, is not disbarred or suspended for disciplinary reasons from any other jurisdictions and has not resigned with charges pending in any jurisdiction or court. Thus, while we find that good cause exists to approve OPC’s Motion we must do so conditionally until OPC updates its filing attesting to Mr. Oberleiton meets all required criteria set forth in D.C. App. R. 49(c)(4). Therefore, we conditionally waive Commission Rule 110.3 for Mr. Oberleiton until OPC provides the additional information required under D.C. App. R. 49(c)(4). The condition will be removed without further action by the Commission upon OPC’s filing attesting that Mr. Oberleiton meets all the criteria established in D.C. App. R. 49(c)(4).

THEREFORE, IT IS ORDERED THAT:

8. The Office of the People’s Counsel’s Motion for Special Appearance of Timothy R. Oberleiton Under Rule 110.3 and Request for Partial Waiver Thereof is **CONDITIONALLY GRANTED** provided that within 10 business days of the date of this Order, OPC shall update its filing indicating whether Mr. Oberleiton has been disbarred or suspended for disciplinary reasons from any jurisdictions and has not resigned with charges pending in any jurisdiction or court; and

9. Timothy R. Oberleiton is conditionally granted special admission to appear as Counsel before the Commission, in the following proceedings: *Formal Case Nos. 1115, 1154, and PEPACR-2019-01*.

¹⁰ D.C. App. R. 49(c)(4).

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**