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April 24, 2018

**VIA EMAIL AND FIRST CLASS MAIL**

The Honorable Benjamin J. Myers  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
400 North Street  
Harrisburg, PA 17120

**Re: Andrew C. Menichino for Caravan II, LLC v. Pennsylvania Power Company**  
**Docket No. C-2018-2647292**

Dear Judge Myers:

I was just contacted today by Mr. Menichino stating that he was seeking a sixty-day continuance of the hearing scheduled for April 26, 2018 at 10:00 a.m. Please be advised that Pennsylvania Power Company (the "Company") is **not** agreeable to the request for continuance. First, Caravan II, LLC has an outstanding balance owed to the Company in the amount of \$73,959.59. Second, no payments have been received from Caravan II, LLC since March 20, 2017. Lastly, the Company and its witnesses have already expended a significant amount of time and resources in preparation for the hearing scheduled to be held in two-days time. The Company believes that Mr. Menichino's request for continuance is simply a tactic to delay the formal complaint process until he is able to complete a sale of the property located at 1465 Sampson Street, New Castle, Pennsylvania 16101, which is the property where service is being provided by the Company and is the subject of the alleged dispute, and is not being made in good faith. While Mr. Menichino claims that the 60-day extension is due to medical reasons, Mr. Menichino provided me with his medical records, which indicated that he did fracture his vertebrae in August of 2017 and was referred to physical therapy for four to six weeks. There was no mention of any other medical issues. Furthermore, the accident and physical therapy all occurred before Mr. Menichino even filed his Formal Complaint with the Commission on February 6, 2018.

Additionally, please allow this letter to serve as a Motion to Dismiss the Formal Complaint of Andrew C. Menichino for Caravan II, LLC due to lack of filing of an entry of appearance by an attorney on behalf of Caravan II, LLC. Representation before the Commission is governed by the Commission's regulations at 52 Pa. Code §§ 1.21-1.23. These regulations provide that "[i]n adversarial proceedings, partnerships, corporations, trusts, associations, agencies, political subdivisions and government entities shall be represented only by...an attorney."<sup>1</sup> An adversarial

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<sup>1</sup> 52 Pa. Code § 1.21.

proceeding begins with the filing of an Answer.<sup>2</sup> The Commission's regulations requiring attorney representation in adversarial proceedings are consistent with Pennsylvania court decisions holding that a corporation must have counsel in order to proceed in any legal action because a corporation cannot represent itself.<sup>3</sup> Pennsylvania courts have ruled that a corporation can only act through its agents, and an agent representing it in court must be an attorney admitted to practice.<sup>4</sup> More recently, in *Cars R Us c/o Holman Copeland v. Phila. Gas Works*, Docket No. C-2008-2033437 (Order entered February 4, 2010) and *Torino Inc. v. PECO Energy Co.*, Docket No. C-2008-2034595 (Order entered February 2, 2010), the Commission affirmed its decision in *New Fizion* that a corporate officer may file a complaint on behalf of a corporation but that the corporation must be represented by an attorney in an adversarial proceeding.

As this is not Mr. Menichino's first formal complaint filed with the Commission, the Company avers that Mr. Menichino is well-versed in the fact that he must have counsel in order to proceed with the Formal Complaint which was filed on February 7, 2018. Further, Mr. Menichino and Caravan II, LLC filed no reply to the Company's Answer and New Matter filed on March 5, 2018 which specifically addressed the need for Caravan II, LLC to obtain counsel and have said counsel file an entry of appearance. Further, the Telephonic Hearing Notice issued on March 15, 2018 states unequivocally that Mr. Menichino and Caravan II, LLC must be represented by an attorney and that attorney should file an entry of appearance before the hearing. Mr. Menichino has had plenty of time to obtain counsel.

The Company hereby respectfully requests that the Formal Complaint of Andrew C. Menichino for Caravan II, LLC be dismissed with prejudice for lack of counsel.

Please contact me if you have any questions.

Very truly yours,

  
Lauren M. Lepkoski

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Enclosures

c: Secretary Rosemary Chiavetta (Cover letter and Certificate of Service only via e-filing)  
As Per Certificate of Service

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<sup>2</sup> *New Fizion Catering, Inc. v. PECO Energy Co.*, Docket Nos. C-2008-2065498 and C-2008-2079076 (Order entered June 24, 2009).

<sup>3</sup> *Smaha v. Landy*, 638 A.2d 392 (Pa. Cmwlth. 1994).

<sup>4</sup> *Walceavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super. 1984).

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ANDREW C. MENICHINO FOR  
CARAVAN II, LLC**

**DOCKET NO. C-2018-2647292**

v.

**PENNSYLVANIA POWER COMPANY**


**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document of Pennsylvania Power Company to the Formal Complaint of Andrew C. Menichino for Caravan II, LLC upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail and e-mail as follows:

Andrew C. Menichino for Caravan II, LLC  
1465 Sampson Street  
New Castle, PA 16101  
iiiacm@aol.com

Dated: April 24, 2018

  
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Counsel for Pennsylvania Power Company