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ATTORNEY FOR PETITIONERS

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ALFRED STEMPO – SAMMY JO’S, INC.

Docket No. C-2016-2532581

v.

METROPOLITAN EDISON COMPANY

**BRIEF IN SUPPORT OF PETITION FOR
INTERIM EMERGENCY RELIEF**

FACTS/PROCEDURAL HISTORY:

Complainant, Alfred Stempo, operates a bar and restaurant business owned by Complainant, Sammy-Jo’s, Inc., at 831 South Delaware Drive, Easton Pennsylvania. Those premises are owned by Ricca Inc. (Customer), a corporation which has an account with Metropolitan Edison Company (Met-Ed) for commercial electric service under account number 100105482416.

Complainants filed a Complaint on March 3, 2016, seeking relief from Met-Ed’s refusal to establish commercial service in the name of Complainants at the aforesaid location. After an initial evidentiary hearing before Judge Barnes on August 16, 2016, Complainants filed, on August 22, 2016, a Petition for Interim Emergency Order, seeking relief from the termination of service scheduled on or after August 22, 2016. Service was terminated on August 22, 2016. A hearing was held on the issues raised by the Petition for Interim Emergency Order by telephone on September 1, 2016.

In that proceeding, Complainant Stempo testified and established that he had operated a bar and restaurant business, under the same name, at this and other

locations, in the same name, for a period in excess of 30 years. He testified, in this and the prior proceeding, that he has been at odds with the landlord/Customer for some time regarding Met-Ed billings, and stated that [1] he had paid money to the Customer for said billings, which had not been paid to Met-Ed; [2] he had requested that he be provided with copies of the billings by Met-Ed, and that request had been denied; [3] had his payments been transmitted to Met-Ed, the unpaid balance would have been considerably smaller, probably amounting to 2 months; [4] for the foregoing reasons, he had requested that the electric service be placed in his name, or that of Sammy-Jo's, Inc.; [5] without electric service he is unable to conduct business; [6] to the date of the hearing, and because of the unavailability of electric service, he estimated that he had sustained food loss and spoilage amounting to approximately \$7000, beer and alcohol loss of approximately \$6000, and a total loss of revenue and additional expenses of approximately \$14,000; [7] he received a copy of the shutoff notice from Met-Ed on August 15, 2016, and from the landlord on August 16, 2016, 8 days after the landlord had been informed of same; [8] on or about the date when electric power was terminated, workers on behalf of Customer came to the subject premises, and reconnected the water pump which provided service not only to Complainants, but to the residential tenants in the building, for whom Complainants had apparently been paying at commercial rates for over 3 years; [9] if provided with the emergency relief requested, Complainants would be able to complete a borrowing from a financing source which had already tentatively agreed to provide assistance, in amounts sufficient to satisfy all obligations to Met-Ed and the Customer; and [10] that financing source would likely not do so if the business remained closed.

Evidence was presented by Met-Ed to the effect that the Customer had received notice of the termination of the service, and a copy of said notice had been delivered to

the subject premises at 9:44 AM on August 15, 2016, although the witness was unable to say where on the property the notice had been left, or with whom. Med-Ed detailed the amounts owed, and the amounts which would have to be paid to reinstate service absent the relief requested. They also presented testimony from the representative of the Customer, indicating that they did not wish to continue their relationship with Met-Ed. Counsel for Met-Ed detailed the requirements for Complainants to obtain service.

ISSUE:

ARE COMPLAINANTS ENTITLED TO EMERGENCY RELIEF PURSUANT TO 52 Pa.Code § 3.7(A)?

Suggested Answer: Yes.

ARGUMENT:

The Commission's regulation at 52 Pa.Code § 3.7(a) provides that a presiding officer may issue an interim emergency order upon finding that the following exist:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if relief is not granted.
- (4) The relief requested is not injurious to the public interest.

With regard to the clarity of Petitioners' right to relief, Met-Ed simply asserts that there have been no pleadings or evidence to support this. Complainants agree to the need for a *prima facie* showing of a basis for relief, and it is suggested that same has been shown.

Under circumstances where, as testified by Complainant Stempo, the utility bill has been paid to a landlord who then does not pass it along to the utility; the business tenant is paying for utility services provided to other residential tenants, at

commercial rates; and the tenant, who all agree is the party using the utility services, cannot obtain prompt and accurate information, from the landlord or the utility, regarding the utility expenses, the need for the initially requested relief – placing the utility service in the name of the Complainants – a has been established to a *prima facie* level. Similarly, the right to the relief requested in the petition is apparent. Based on the facts asserted by Complainants, this is not simply someone not paying a utility bill, but someone who, because of the manner in which billings are made, is being prevented from doing so.

The need for immediate relief, and the irreparable injury resulting if relief is not granted, has likewise been made out by the testimony thus far presented. Respondent complains that Complainants have offered no documentation to support these matters, and have relied upon opinion evidence. It is difficult to imagine the documentation that would support the readily apparent inability of complainants to continue their business without electric power.

Although monetary losses generally are insufficient to support an emergency order, such losses can satisfy the rule's irreparable injury requirement. In *Peoples Natural Gas v. Public Utility Commission*, 124 Pa.Cmwlth. 59, 555 A.2d 288, 291 (1989), the Commonwealth Court, referring to its decision in *Brink's, Inc. v. Pennsylvania Public Utility Commission*, 76 Pa.Cmwlth. 496, 464 A.2d 639 (1983), stated that “[Brinks] held that a finding that economic detriment would result if the temporary grant were not issued did not amount to an “emergency” as a matter of law.” However, a review of the *Brinks* case reveals that the court only stated that:

Without ruling on the issue of whether the potential for economic detriment can rise to the level of an “**emergency**” ... we observe that *due to the ALJ's failure to conduct an evidentiary hearing, there is no evidence of record to support the ALJ's finding [that an **emergency** existed].*

76 Pa.Commonwealth Ct. at 502, 464 A.2d at 641.

Thus, the court in *Brink's* did not hold that economic detriment can never support a finding that an emergency exists. The facts in this case, although offering nothing of the magnitude of the financial issues in the foregoing cases, establish reasonably that this small bar and restaurant business, dependent for continued operation on regular customers, is facing irreparable and immediate harm if unable to resume its business activities, which simply cannot be accomplished without electric power.

Finally, the requested relief, which does not seek to excuse, but rather briefly delay, the collection of utility payments, is in no meaningful way injurious to the public interest. Given the facts of this case, the closure of this business, given all of the foregoing, could very well be said to be injurious to that interest.

CONCLUSION:

Based on the foregoing, Complainants respectfully request that their Petition for Interim Emergency Relief be granted forthwith.

Respectfully submitted:



PHILIP D. LAUER, ESQ.
Counsel for Petitioners

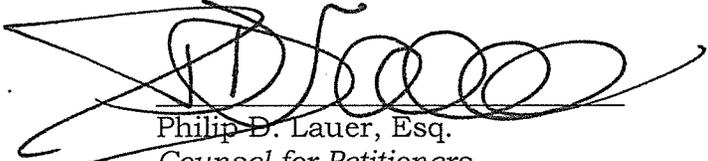
CERTIFICATE OF SERVICE

I, Philip D. Lauer, Esq., counsel for Petitioners, Alfred Stempo and Sammy-Jo's, Inc., hereby certify that I have this day served a copy of the foregoing document to the persons listed below by sending a copy of same by electronic mail and facsimile, which satisfies the requirements of 52 Pa. Code § 5.61:

Hon. Elizabeth H. Barnes
Administrative Law Judge
Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
[Fax: 717-787-0481]

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Date: September 6, 2016



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