

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alfred Stempo – Sammy Jo’s Inc.	:	
	:	
v.	:	C-2016-2532581
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This initial decision dismisses the complaint for failure to prove that it was unreasonable for the electric distribution company (EDC) to deny transfer of electric service regarding a commercial service property into Complainant’s name.

HISTORY OF THE PROCEEDING

On March 3, 2016, Alfred Stempo – Sammy Jo’s Inc.’s proprietor (Mr. Stempo or Complainant), filed a Complaint against Metropolitan Edison Company (Met-Ed or Respondent) alleging that it was unreasonable for Met-Ed to refuse to transfer electric service regarding a commercial service property from his landlord’s name, Ricca, Inc., into his name. The Complaint was served upon Respondent on March 7, 2016. Met-Ed filed an Answer and New Matter on March 28, 2016.

By Notice dated April 19, 2016, a Telephonic Hearing was scheduled for May 31, 2016, and the case was assigned to Administrative Law Judge (ALJ) Ember Jandebaur. On April 20, 2016, ALJ Jandebaur issued a Prehearing Order. By Judge Change Notice dated April 27, 2016, the case was reassigned to ALJ Elizabeth Barnes. A Corrected Hearing Notice was issued on May 2,

2016. On or about May 12, 2016, a formal joint request for a continuance of the hearing was made in order to facilitate settlement negotiations. A Notice dated May 17, 2016 cancelled the May 31, 2016 hearing and rescheduled it for July 13, 2016. Upon a second request for continuance made by Complainant, the hearing was continued to August 16, 2016. N.T. 52. By Notice dated July 5, 2016, the hearing was rescheduled for August 16, 2016. Upon request by Complainant, the telephonic hearing was changed to an in-person hearing and was held on August 16, 2016, at which time electric service had not yet been terminated to the retail service property in question, located at 831 South Delaware Drive, Easton, Pennsylvania. However, on the day of the hearing, August 16, 2016, Complainant, who appeared pro se, became aware by a posting of notice on the porch of the property, that a shut off for nonpayment was tentatively scheduled for August 22, 2016. On August 22, 2016, Complainant filed a petition for interim emergency order, which stated that Sammy Jo's Inc. was asking to be granted an interim emergency order. The petition was filed and signed by Alfred Stempo, and it requested service remain connected to the service property pending final disposition of this complaint at the Commission.

A Further Call In Telephonic Hearing Notice was issued August 23, 2016. On August 26, 2016, I issued a Prehearing Order scheduling a hearing regarding the Petition for Emergency Interim Order on September 1, 2016. August 29, 2016, Met-Ed filed an Answer to the petition averring that the petitioner, Sammy Jo's Inc., is a corporation unrepresented by counsel and not a party to this action. The Respondent further asserted that the Complainant can only represent himself, an individual, and cannot represent a corporation, as it is an adversarial proceeding. Met-Ed further argued the corporation never attempted to establish service in its name, only Mr. Stempo attempted to initiate service for a commercial account. Met-Ed further contended the petition was moot and insufficient on its face as service had already been terminated the morning of August 22, 2016, before the petition was filed on the same date.

A further emergency telephonic hearing was held on September 1, 2016 at 2:00 p.m. Philip Laurer, Esquire appeared on behalf of Alfred Stempo and Sammy Jo's Inc. d/b/a Stemie's Place (hereinafter Petitioners). Alfred Stempo testified on behalf of Petitioners. Margaret Morris, Esquire appeared on behalf of Met-Ed. Gina Dietrich and Georgina Ricca testified on behalf of Respondent.

At the hearing I gave counsel leave until the close of business on September 6, 2016, within which time to file memorandums of law on this case. Mr. Laurer was directed to enter a notice of appearance. Mr. Laurer filed an Entry of Appearance on September 2, 2016. Respondent filed a Memorandum of Law on September 6, 2016. Petitioners electronically transmitted a Brief to the Secretary's Bureau at 9:23 p.m. on September 6, 2016; however, it was officially filed at 8:00 a.m. on September 7, 2016. The petition for interim emergency relief was denied by Order Denying Petition for Emergency Interim Relief and Certifying Material Question issued on September 6, 2016, as amended on September 9, 2016. On September 6, 2016, a transcript of the August 16, 2016 hearing was filed. The record closed on September 9, 2016 for decision writing.

FINDINGS OF FACT

1. Complainant is Alfred Stempo, 831 South Delaware Drive, Easton, Pennsylvania. N.T. 8.
2. Respondent is Metropolitan Edison Company, a jurisdictional public utility providing electric distribution service in the Commonwealth.
3. Complainant is the current President and operator of a restaurant named "Sammy Jo's, Inc. d/b/a Stemie's Place" located at 831 S. Delaware Drive, Easton, PA. N.T. 8-10.
4. The restaurant uses electric services to operate a business selling food and alcohol, including refrigerated beer. N.T. 8-10, 33.
5. Mr. Stempo and his wife, Maria Stempo, owned Stemie's Place, which later became incorporated under the name Sammy Jo's Inc. d/b/a Stemie's Place in order to maintain a liquor license. N.T. 33, 52.
6. During the summer of 2013, some reconstruction took place in the building involving the separation of meters from two residential apartment units located on the second floor from the commercial service meter for the restaurant located on the first floor. N.T. 87-89.

7. During reconstruction, the two residential units were separated from the commercial unit's meter. N.T. 88.

8. The landlord to the lease is DJM Holdings Group, LLC, and Ricca, Inc. appears to be the owner or property manager. Cross Exhibit R-2, N.T. 38-39.

9. When Mr. Stempo called to apply for service on or about September 17, 2015, and provided a copy of the lease, he was told that an outstanding balance of \$3,749.45 existed on Ricca Inc.'s account and the company offered Mr. Stempo the option of establishing an account on the precondition that he would pay a \$2,000 security deposit over a six month period in addition to a lump sum toward the account's arrearage. N.T. 36, 50-51, 74.

10. Mr. Stempo benefitted from electric service since his restaurant was operating from the service property beginning July 1, 2013 pursuant to the lease provided to Met-Ed. N.T. 18, 106-110.

11. There was a zero balance on Ricca, Inc.'s account as of July 13, 2015; however, arrearages began to accrue after that date. Exhibits C-1 and R-8; N.T. 71.

12. Complainant made some payments to DJM Holdings, Inc., which appeared as credits later on Ricca, Inc.'s account records; thus, landlord and tenant cooperated to pay electric bills until July 13, 2015; however, this cooperation did not last throughout the term of the lease. N.T. 137.

13. Complainant found a termination notice on the front porch of the service property the morning of the hearing, on August 16, 2016. It was dated August 15, 2016, and specified a termination date of August 22, 2016. N.T. 19-21, 28. Exhibit C-2.

14. The balance on the account for Ricca, Inc. for 831 South Delaware Drive as of the date of hearing August 16, 2016, was \$14,510.22. N.T. 152-153. Exhibit R-8.

15. The lease states that effective July 1, 2013, Mr. Al Stempo, the Tenant, shall be responsible for the payment of all utility bills, water, electric, telephone, garbage, sewage, cable, and Internet. N.T. 17. Cross Exhibit R-2.

16. The lease states that the tenant would be given a reduction of \$400 a month in rent to go towards the electric bill that is still in tenant's name until the landlord separated the electric for the restaurant and two residential apartments. N.T. 89, Cross Exhibit R-2.

17. Mr. Stempo made an oral application on September 17, 2015 for service, was told the balance on Ricca Inc.'s account was \$3,749.45, and the application was ultimately verbally denied after Met-Ed received a copy of the lease. Exhibit R-1, at 4. N.T. 104-105, 176.

18. Mr. Stempo was assigned a temporary account number pending completion of the terms of the application; however, the company denied the application because Mr. Stempo did not make any lump sum payment towards the outstanding account balance of \$3,749.45 at the time he applied and he refused to pay a \$2,000 security deposit over six months. N.T. 105, 176. Exhibit R-8.

19. On November 10, 2015, Mr. Stempo filed an informal complaint and the Commission's Bureau of Consumer Services (BCS) denied Mr. Stempo's informal complaint at Case No. 3400366 on the same date. N.T. 127. Exhibit R-4.

20. Service to the service property has been continuously provided from July 1, 2013 through August 21, 2016. N.T. 108.

21. The first 10-day termination notice in question was mailed on or about August 8, 2016 to Ricca, Inc., 3273 Vista Drive, Danielsville, Pennsylvania. Exhibit R-7.

22. A second service termination notice dated August 15, 2016 was left on the front porch of the service property; however, it was also addressed to Ricca, Inc., 3273 Vista Dr., Danielsville, PA. Exhibit C-2; N.T. 135-136.

23. The second termination notice notifies Ricca, Inc. that non-residential electric service was intended to be shut off at 831 S. Delaware Dr., Easton, PA 18042 on or after August 22, 2016, because Ricca, Inc.'s bill was 90 days overdue in the amount of \$4,106.54. This represents part of the balance of \$14,510.22. Exhibits C-2 and R-8. N.T. 135-136.

DISCUSSION

The proponent of a rule or order in any Commission proceeding has the burden of proof, 66 Pa. C.S. § 332, and therefore, the Complainant has the burden of proving its case by a preponderance of the evidence, or evidence which is more convincing than the evidence presented by the other parties. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. Publ. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. Ct.1982); *Edan Transportation Corp. v. Pa. Publ. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. Ct.1993), 2 Pa. C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. V. Pa. Publ. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa. Super. Ct.1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. Ct.1984).

The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 2000 Pa.Super. 178, 754 A.2d 1283 (2000).

The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a trial. If the party (initially, this will usually be the complainant, applicant, or petitioner, as the case may be) with the burden of production fails to introduce sufficient evidence the opposing party is entitled to receive a favorable ruling. That is, the opposing party would be entitled to a compulsory nonsuit, a directed verdict, or a judgment notwithstanding the verdict. Once the party with the initial burden of production introduces sufficient evidence to make out a prima facie case, the burden of production shifts to the opposing party. If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to

introduce more evidence favorable to his position. The burden of production goes to the legal sufficiency of a party's case. *Id.*

Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion to be entitled to a verdict in his favor. “[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings.” *Riedel v. County of Allegheny*, 159 Pa.Cmwlth. 583; 591, 633 A.2d 1325; 1328 n. 11 (1993). The burden of persuasion, usually placed on the complainant, applicant, or petitioner, determines which party must produce sufficient evidence to meet the applicable standard of proof. See, 66 Pa.C.S.A. §§ 332(a). *Hurley v. Hurley*, 2000 Pa.Super. 178, 754 A.2d 1283 (2000). It is entirely possible for a party to successfully bear the burden of production but not be entitled to a verdict in his favor because the party did not bear the burden of persuasion. Unlike the burden of production, the burden of persuasion includes determinations of credibility and acceptance or rejection of inferences. Even unrebutted evidence may be disbelieved. *Suber v. Pa. Comm’n on Crime and Delinquency*, 885 A.2d 678 (Pa.Cmwlth. 2005), app. denied, 586 Pa. 776, 895 A.2d 1264 (2006). In order to bear the burden of proof and be entitled to a decision in his favor, a party must bear both the burden of production and the burden of persuasion.

Met-Ed’s Tariff No. 52, at pp. 23-24 states in relevant part:

The Company may require, as a condition of the furnishing of service to an Applicant, the payment of any outstanding account in the Applicant’s name which accrued within three past four years or for any outstanding account for which the Applicant is determined to be legally responsible and for which the Applicant was properly billed.

The Company may require an Applicant/Customer to make the payment of any outstanding balance or portion of an outstanding balance if the Applicant/Customer resided at the property for which service is requested during the time the outstanding balance accrued and for the time the Applicant/Customer resided at the property not to exceed four years. The Company may establish that an Applicant/Customer previously resided at a property through the use of mortgage, deed, lease information, a consumer credit reporting service, a Financial Summary that provides the names and income of adult occupants of a household, and a web-based tool such as “Accurint” to research Applicant/Customer information.

Exhibit R-1.

In the present case, the above-referenced portion of Tariff 52 was in effect at the time Complainant first verbally requested a transfer of service into his name, September 17, 2015. A public utility's Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and customer. 66 Pa. C.S. § 316; *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa.Cmwlth. 1997). Where the complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable or that the application of the existing tariff at issue is applied unreasonably. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa.Cmwlth. 1981).

In the instant case, the disagreement is whether service is reasonable on the part of Met-Ed regarding the verbal denial of transfer of service to Mr. Alfred Stempo regarding the service property in question. The question before the Commission is whether the utility has provided adequate, efficient, safe and reasonable service within its Commission-approved tariff.

I find Met-Ed acted properly and within its above-referenced tariff in determining Mr. Alfred Stempo, the lessee to DJM Holdings, Inc. for the service property since July 1, 2013, was responsible for payments for electric service used by Mr. Stempo's business, Sammy Jo's Inc. d/b/a Stemie's Place during the period of time arrearages accrued on Ricca Inc.'s account since July 13, 2015. Thus, the utility reasonably required a security deposit and lump sum payment towards an arrearage of \$3,749.45 as precondition for transfer of service. The denial of service to Mr. Stempo when he applied was reasonable within the meaning of 66 Pa. C.S. § 1501 because Mr. Stempo insisted upon a zero balance as part of his application.

A utility is required to provide just and reasonable service:

§ 1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. . . .

66 Pa. C.S. § 1501.

The statutory definition of “service”¹ is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). Met-Ed's handling of the billing falls within the category of service in this context.

At the hearing held on August 16, 2016, Complainant testified that Ms. Ricca was the owner of the service property with whom he has a “discrepancy on what he paid on his bills.” N.T. 8. Complainant claims he had a contractual relationship with the landlord such that he paid the landlord for electric bills, and then in turn, Ms. Ricca was to pay the electric company the same amount. N.T. 8. I believe given the testimonies of both Mr. Stempo and Ms. Ricca in addition to copies of checks payable to DJM Holding, Inc. that Mr. Stempo did pay the landlord property manager, DJM Holding, Inc., some monies towards electric service at the service property. N.T. 158-159. However, Mr. Stempo’s evidence is insufficient to show he timely paid the landlord for every electric bill. Exhibit C-1, N.T. 8 – 15. Exhibit R-9. There is no evidence to show Mr. Stempo ever directly paid Met-Ed for electric service at 812 South Delaware Avenue. There is evidence to show Ricca Inc. had a poor payment history in 2015-2016. Exhibit R-9 shows copies of electric bills mailed to Ricca, Inc. and Ms. Ricca’s notations on the bills shows partial payments were made. Cross Exhibit R-4 shows a detailed statement of account for 831 S. Delaware Dr., Easton PA from October 4, 2014 through September 5, 2015. This exhibit shows payments made to the account identical in amount to payments made to DJM Holdings Group, LLC from Mr. Stempo in June, July and August of 2015. Cross Exhibit R-4. Respondent’s Exhibit 8 shows the statement of account for Ricca Inc. and shows two payments were made in January and April 2016, but none for October-December, 2015 or in February, March, May or June, 2016. Exhibit R-8.

Further, I find credible the testimony of Ms. Ricca that she entered into a lease agreement with Al Stempo for retail premises at 831 South Delaware Drive effective July 1, 2013. N.T. 157; Exhibit R-2, Cross Exhibit R-2; Exhibit C-1. Ms. Ricca faxed Complainant copies of electric bills every month to

¹ “Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them, but shall not include any acts done, rendered or performed, or any thing furnished or supplied, or any facility used, furnished or supplied by public utilities or contract carriers by motor vehicle in the transportation of voting machines to and from polling places for or on behalf of any political subdivision of this Commonwealth for use in any primary, general or special election, or in the transportation of any injured, ill or dead person, or in the transportation by towing of wrecked or disabled motor vehicles, or in the transportation of pulpwood or chemical wood from woodlots. 66 Pa. C.S. § 102.

make sure he received the bills in full and that when he sent her checks for electric; she seemingly paid that amount to Met-Ed. N.T. 158-162; Exhibit R-9. Once a check for \$1,307.07 was returned for insufficient funds, but Mr. Stempo later provided a replacement check. N.T. 159; Exhibits C-1 and C-4.

Mr. Stempo claims he has a problem getting the bills from Met-Ed. Met-Ed is not sending him the bills. Also, he did not know if Ms. Ricca was paying all of the electric bills. N.T. 15. Mr. Stempo no longer wishes Ms. Ricca to be the customer of record for the service property located at 831 South Delaware Drive, Easton, Pennsylvania, 18042. N.T. 8. He wishes to have service transferred into his name. N.T. 8-9. Complainant first contacted Met-Ed on or about September 17, 2015, and attempted to get service placed in his name. N.T. 18, 33, 117. He was advised that a lease was required for the retail premises. Complainant provided a copy of the lease at that time to Met-Ed. A true copy of the lease provided is Exhibit R-2. N.T. 33, Cross Exhibit R-2. Cross Exhibit R-2 shows the lease was effective as of July 1, 2013. Cross Exhibit R-2. The lease provides for a reduction in rent to go towards the electric bill and that the landlord would not be responsible for any of the electric bill over \$400. N.T. 37-38; Cross Exhibit R-2. The landlord to the lease is DJM Holdings Group, LLC, and Ricca, Inc. appears to be the owner or property manager. Cross Exhibit R-2; N.T. 38-39. When Mr. Stempo called again to apply for service in October, 2015, and provided a copy of the lease, he was told that an outstanding balance of \$3,749.45 existed on Ricca Inc.'s account and the company offered Mr. Stempo the option of establishing an account on the precondition that he would pay a \$2,000 security deposit over a six month period. N.T. 36, 50-51, 74. As Met-Ed considered Mr. Stempo to have benefitted from electric service since his restaurant was operating from the service property beginning July 1, 2013 pursuant to the lease provided to Met-Ed, Mr. Stempo's request to begin service with a zero balance was denied. N.T. 18, 106-110. The evidence shows that there was a zero balance on Ricca, Inc.'s account as of July 13, 2015; however, arrearages began to accrue after that date. Exhibit C-1; N.T. 71.

There is evidence to show Complainant made some payments to DJM Holdings, Inc., which amounts identically appeared as credits later on Ricca, Inc.'s account records; thus, showing that for some time-period, landlord and tenant cooperated to pay electric bills. However, this cooperation did not last throughout the term of the lease. N.T. 137. For example, payments in May and June 2015 appear to have been made from Mr. Stempo to DJM Holdings Group, LLC, and in turn, these amounts appear as credits upon Ricca, Inc.'s account. N.T. 137. Exhibits R-5 and R-6. The evidence shows that Complainant's check dated August 28, 2015, made payable to DJM Holding Group, LLC in the amount

of \$1,307 was returned for insufficient funds on September 3, 2015. Cross Exhibit R-3. Cross Exhibit R-4 and Exhibit R-8 show the account history and Ricca Inc.'s poor payment history in 2015-2016 regarding the service property.

Complainant found a termination notice on the front porch of the service property the morning of the hearing, on August 16, 2016. It was dated August 15, 2016, and specified a termination date of August 22, 2016. N.T. 19-21, 28. Exhibit C-2. The current balance on the account as of the date of hearing August 16, 2016, was \$14,510.22. N.T. 153.

The lease states that effective July 1, 2013, Mr. Al Stempo, the Tenant, shall be responsible for the payment of all utility bills, water, electric, telephone, garbage, sewage, cable and Internet. N.T. 17. Cross Exhibit R-3. Mr. Stempo and his wife, Maria Stempo owned Stemie's Place, which later became incorporated under the name Sammy Jo's Inc. in order to maintain a liquor license. N.T. 33, 52. During the summer of 2013, some reconstruction took place in the building involving two apartment units that were connected to the meter for the restaurant. N.T. 87-89. During reconstruction, the two residential units were separated from the commercial unit's meter. N.T. 88. The lease states that the tenant would be given a reduction of \$400 a month in rent to go towards the electric bill that is still in tenant's name until the landlord separated the electric for the restaurant and hotel. N.T. 89, Cross Exhibit R-2.

Mr. Stempo made an oral application for service, which was initially accepted under the condition that Mr. Stempo provide Met-Ed with a copy of a lease for the service property. However, service was ultimately verbally denied because Mr. Stempo would not agree to pay a \$2,000 security deposit or towards a lump sum arrearage on the account. Exhibit R-1 at 4; N.T. 104-105. Ms. Gina Dietrich testified Mr. Stempo was assigned a temporary account number pending completion of the terms of the application. N.T. 105. On November 10, 2015, the Commission's Bureau of Consumer Services denied Mr. Stempo's informal complaint at Case No. 3400366. N.T. 127. Service to the service property has been continuously provided from July 1, 2013 through August 21, 2016. N.T. 108. The first 10-day termination notice in question was mailed on or about August 8, 2016 to Ricca, Inc., 3273 Vista Drive, Danielsville, Pennsylvania. Exhibit R-7. A second service termination notice dated August 15, 2016 was left on the front porch of the service property; however, it was also addressed to Ricca, Inc., 3273 Vista Dr., Danielsville, PA. The second termination notice notifies Ricca, Inc. that non-residential electric

service was intended to be shut off at 831 S. Delaware Dr., Easton, PA 18042 on or after August 22, 2016, because Ricca, Inc.'s bill was 90 days overdue in the amount of \$4,106.54. Exhibit C-2. N.T. 135-136.

If Mr. Stempo had been a residential tenant in a similar situation, he may have been entitled to 30-days tenant notice from Met-Ed prior to the Company terminating service to a landlord ratepayer for failure to pay. 66 Pa. C.S. § 1526. However, commercial tenants or individuals running a business at a commercial service property are not as protected a class of customers as residential tenant customers. The property is located in a "residential building" because of the two units located above the property having residential service. However, the property in question cannot be considered a "dwelling" as no one resides in the commercial unit. Section 1521 defines a "residential building" as "A building containing one or more dwelling units occupied by one or more tenants. The term does not include nursing homes, hotels and motels or any dwelling of which the landlord ratepayer is the only resident." 66 Pa. C.S. § 1521.

A "tenant" is defined as "any person or group of persons who are contractually obligated to make rental payments to the landlord ratepayer pursuant to a rental arrangement including but not limited to, an oral or written lease with the landlord ratepayer for a dwelling unit in a residential building or mobile home park which is provided gas, electric, steam, sewer or water as an included service under the rental agreement and who are not the ratepayers of the utility which supplied the gas, electric, steam, sewer or water service. 66 Pa. C.S. § 1522.

Mr. Stempo's commercial business, Sammy Jo's Inc. d/b/a Stemie's Place operates from the commercial property with commercial electric service. N.T. 40. Thus, although this was a residential building, with three separately metered units, the residential tenant protections under Chapter 15 of the Public Utility Code do not apply to Mr. Stempo because his unit is for commercial purposes and is billed for electric service at a commercial rate. N.T. 45. Accordingly, the consumer protection for residential tenants under Sections 1526 – 1529 do not apply. Sections 1526 and 1527 allow for residential tenants to apply for continuation or resumption of service for termination on the account of nonpayment of charges by the landlord ratepayer. 66 Pa. C.S. § 1527. Additionally, under Section 1527(b), a utility shall not terminate service or shall promptly resume service previously terminated if it receives from the tenants an amount equal to the bill for the affected account of the landlord ratepayer for the billing month. Section 1527(b) also provides that a tenant is entitled to 30 days notice of termination prior to termination due to a

landlord ratepayer's nonpayment. 66 Pa. C.S. § 1527(b). Accordingly, in the instant case, it appears that Met-Ed was not required to give Complainant 30 days tenant notice and an opportunity to pay the delinquent landlord ratepayer's bills prior to the shut off occurring on August 22, 2016. 66 Pa. C.S. § 1527(b).

I know of no provision authorizing the Commission to direct a utility to reconnect service to a customer that has not requested service be reconnected based upon the request of a third party commercial tenant beneficiary of the service. Respondent is under no legal obligation to reconnect service as tenant is not a residential tenant to a landlord ratepayer. Such a residential tenant would have been entitled to at least 30 days notice prior to termination. 66 Pa. C.S. § 1526.

Complainant may have a cause of action in civil court under landlord-tenant law regarding the contractual provisions of his lease; however, the Commission has no jurisdiction to determine civil contractual disputes between landlords and tenants. The Commission only has jurisdiction to determine whether the utility is acting in compliance with provisions of the Public Utility Code, Commission regulations, and Orders.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to, and the subject matter of, this proceeding. 66 Pa. C.S. § 331.

2. The proponent of a rule or order in any Commission proceeding has the burden of proof, 66 Pa. C.S. § 332, and therefore, the Complainant has the burden of proving its case by a preponderance of the evidence, or evidence which is more convincing than the evidence presented by the other parties. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

3. Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. Publ. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. Ct.1982); *Edan Transportation Corp. v. Pa. Publ. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. Ct.1993), 2 Pa. C.S. § 704. More is required than a mere trace of evidence or a suspicion

of the existence of a fact sought to be established. *Norfolk & Western Ry. V. Pa. Publ. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa. Super. Ct.1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlt. Ct.1984).

4. The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 2000 Pa.Super. 178, 754 A.2d 1283 (2000).

5. The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a trial. If the party (initially, this will usually be the complainant, applicant, or petitioner, as the case may be) with the burden of production fails to introduce sufficient evidence the opposing party is entitled to receive a favorable ruling. That is, the opposing party would be entitled to a compulsory nonsuit, a directed verdict, or a judgment notwithstanding the verdict. Once the party with the initial burden of production introduces sufficient evidence to make out a prima facie case, the burden of production shifts to the opposing party. If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to his position. The burden of production goes to the legal sufficiency of a party’s case.

6. Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion to be entitled to a verdict in his favor. “[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings.” *Riedel v. County of Allegheny*, 159 Pa.Cmwlt. 583; 591, 633 A.2d 1325; 1328 n. 11 (1993). The burden of persuasion, usually placed on the complainant, applicant, or petitioner, determines which party must produce sufficient evidence to meet the applicable standard of proof. *Hurley v. Hurley*, 2000 Pa.Super. 178, 754 A.2d 1283 (2000).

7. It is entirely possible for a party to successfully bear the burden of production but not be entitled to a verdict in his favor because the party did not bear the burden of persuasion. Unlike the burden of production, the burden of persuasion includes determinations of credibility and acceptance or

rejection of inferences. Even un rebutted evidence may be disbelieved. *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa.Cmwlth. 2005), app. denied, 586 Pa. 776, 895 A.2d 1264 (2006). In order to bear the burden of proof and be entitled to a decision in his favor, a party must bear both the burden of production and the burden of persuasion.

8. A utility is required to provide just and reasonable service. 66 Pa. C.S. § 1501.

9. The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

10. It was not unreasonable within the meaning of Section 1501 for Met-Ed to require a \$2,000 security deposit over a six month period prior to establishing service in Complainant’s name in October, 2015. 66 Pa. C.S. § 1501.

11. Complainant is not a “tenant” within the meaning of Sections 1522 or 1526 of the Public Utility Code; thus, he was not entitled to thirty days notice prior to termination of service for failure of the landlord ratepayer to timely pay electric bills regarding the service property. 66 Pa. C.S. §§ 1522- 1529.

12. Complainant has failed to sustain his burden of proving that the utility has provided service which is unjust or unreasonable.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Alfred Stempo – Sammy Jo’s Inc. against Metropolitan Edison Company at Docket No. C-2016-2532581 is dismissed.

