

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 10-329

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Declaratory Ruling or Waiver Regarding Master Metering Rule

Order Approving Waiver and Proposed Tariff Language Change

ORDER NO. 25,222

May 10, 2011

I. INTRODUCTION AND POSITIONS OF PARTIES AND STAFF

The New Hampshire Public Utilities Commission (Commission) opened this docket on December 15, 2010 in response to a petition filed by Public Service Company of New Hampshire (PSNH) for a declaratory ruling or, in the alternative, a waiver of N.H. Code Admin. Rule Puc 303.02(a) regarding master metering. The petition was accompanied by a Technical Statement and an Affidavit of Stephen P. Hall, the Company's Rate and Regulatory Services Manager. PSNH's petition was contemplated by Order No. 25,123 (June 28, 2010) in Docket No. DE 09-035, which approved a comprehensive settlement agreement regarding the Company's distribution rates. The settlement agreement noted that PSNH and Staff were unable to reach an agreement regarding changes to the Company's tariff concerning master metering and that PSNH would file a request with the Commission for an interpretation of, or waiver from, the rule concerning master metering.

In DE 09-035, PSNH took the position that the proposed tariff language change was an attempt to clarify the policy it has utilized since the early 1980s in conformity with Commission

rules. Staff, on the other hand, recommended that the master metering provision in the Company's proposed tariff be modified to conform to the current version of Puc 303.02.

In the instant docket, PSNH requested that the Commission clarify the interpretation of Puc 303.02(a) and find that the rule is inapplicable to those situations where master metering is not allowed under International Energy Conservation Code (IECC) 2000. In the alternative, the Company requested a permanent waiver from that rule. In either case, PSNH requested that the Commission approve the Company's proposed tariff language change (set forth in Attachment 1 to its petition) that would prohibit master metering for all new or renovated "domestic structure[s] with more than one dwelling unit."

In support of its petition, PSNH contended that Puc 303.02(a) is confusing. PSNH argued that Puc 303.02(a) requires a utility to install master metering if the installation is consistent with IECC 2000. However, section 505.1 of the IECC 2000 requires that in Type A-2 residential buildings, provisions must be made for determining the amount of electric energy consumed by each tenant by separately metering each dwelling unit. Therefore, under PSNH's interpretation of Puc 303.02(a) and section 505.1 of the IECC 2000, a utility cannot install master metering because the IECC requires separate metering of each dwelling unit. PSNH noted, however, that exceptions exist for hotels, motels, dormitories and time-sharing interests in condominiums under Puc 303.02(c). PSNH maintained that its policy and practice has been to prohibit master metering in all new or substantially renovated residential buildings. PSNH stated that the public policy justification for this rule is to provide each user of electric service with information on their consumption and cost of electric energy.

PSNH requested, in the alternative, that if the Commission determines that master metering of buildings with individual dwelling units is required, the Commission grant a waiver of Puc 303.02(a) in order to continue its practice of requiring individual metering of dwelling units in multi-unit residential buildings.

On March 11, 2011, Staff filed a memorandum regarding PSNH's petition. Staff stated that it understands that PSNH's intent is to apply its tariff to new or renovated multi-family apartment buildings. Staff stated that its position in DE 09-035 was that the master metering provision in the Company's proposed tariff should be modified to conform to the current version of Puc 303.02. Staff stated that in the instant docket, it undertook an in-depth review of the history of Puc 303.02.

Staff's final recommendation was that allowing the requested tariff language to go into effect on the basis of a waiver of the rule is in the public interest since the result would conform with prior versions of Puc 303.02 and carry out the actual intent of the Commission. Staff stated that, in addition, such a result would be consistent with the IECC and would assist in promoting energy conservation. Finally, Staff said that a waiver would not disrupt the orderly and efficient resolution of matters before the Commission. For these reasons, Staff recommended that the requested tariff language change be approved and, to the extent that the tariff is inconsistent with the rule, the rule be waived. Staff noted that its recommendation is based on the Company's representation that the proposed tariff language change is intended to be consistent with its historical master metering policies that conformed to the then-existing rules.

In its memorandum, Staff stated that PSNH agreed with Staff's conclusions and, according to PSNH, the proposed tariff language is consistent with its historical master metering

policies and practices. Staff stated that PSNH supported approval of the proposed tariff language and, if necessary, granting a waiver of the existing Puc 302.02. Also, according to Staff, the Office of Consumer Advocate has been consulted and does not object to Staff's recommendation.

II. COMMISSION ANALYSIS

PSNH has requested either a declaratory ruling or waiver of Puc 303.02(a) regarding master metering. Declaratory rulings are authorized by Puc 207.01. We may grant a waiver of a rule upon a finding that the waiver serves the public interest and that the waiver does not disrupt the orderly and efficient resolution of matters before the Commission. In determining the public interest, the Commission considers whether compliance with the rule would be onerous given the circumstances of the petitioner or that the purpose of the rule is satisfied by alternate means. Puc 201.05(a) and (b).

Puc 303.02 in its current form provides:

(a) A utility shall install master metering of electric service consistent with its tariffs if the installation is consistent with the International Energy Conservation Code 2000 as adopted in RSA 155-A:1,IV, except as set forth in (b) below.

(b) No utility shall install master metering at a multi-tenant building containing any residences if the occupants of any unit receiving electric service through the master meter have temperature control over any portion of the electric space heating, electric air conditioning or electric water heating service for the unit.

(c) Section (b) above shall not apply to hotels, motels, dormitories and time-sharing interests in condominiums as defined in RSA 356-B:3.

Under Puc 302.12, master metering is defined as the use of a single meter to supply electric service at a building that contains two or more residential premises.

For purposes of this docket, we take administrative notice of the provisions of the IECC 2000 pursuant to Puc 203.27(a)(4). The IECC 2000 does not mandate master metering under any circumstances. However, section 505.1 of the IECC 2000 requires separate metering, that is, prohibits master metering, for Type A-2 residential buildings having individual dwelling units.¹ According to the IECC 2000, a Type A-2 residential building is one with more than two family dwelling units but having three stories or less, i.e., a medium sized apartment building, typically.² Section 202 General Definition of Residential Building, Type A-2; compare General Definition of Residential Building, Type A-1. Master metering of Type A-2 residential buildings is inconsistent with the IECC 2000 but otherwise master metering can be said to be consistent with the IECC 2000.

Puc 303.02(a) can be interpreted in either of two ways. On the one hand, it can be interpreted to permit electric utilities to master meter residential buildings if master metering is allowed under the IECC 2000.³ On the other hand, it can be interpreted to require electric utilities to master meter residential buildings other than Type A-2 residential buildings. Under the latter interpretation, Puc 303.02 in conjunction with the IECC 2000 would require electric utilities to master meter duplexes and apartment buildings more than three stories, but not medium sized apartment buildings, that do not have individual temperature controls described in

¹ The accompanying commentary states,

Dwelling units in multifamily buildings must be equipped with separate electric meters. If occupants can track their energy use, it is easier for them to operate the systems and equipment in their residence efficiently and determine cost-effective investments in energy efficiency. This requirement does not imply that dwelling unit occupants must be separately billed for electrical service.

² Residential buildings taller than three stories are treated as commercial buildings under the IECC 2000. Section 202 General Definition of Commercial Building.

³ In any event, without regard to the provisions of the IECC, separate metering is required under Puc 303.02(b) for any multi-tenant residential building (other than a hotel, motel, dormitory or time-sharing interest described in Puc 303.02(c)) that has the individual temperature control(s) described in subsection (b).

Puc 303.02(b). This would be an exceedingly odd result, and one the Commission did not intend.

The Commission's metering rule was most recently changed in 2005. At that time, the changes were presented as a "simplification" of the then existing rule, similar versions of which date back to 1984,⁴ and as a correction to the appropriate energy conservation code. The rule in effect until 2005 *prohibited* master metering in certain situations and did not mandate master metering in *any* circumstances. Accordingly, interpreting the current metering rule to require master metering in instances where it is not prohibited by the energy conservation code would not reflect the Commission's intent to simplify the rule. In addition, the Commission's prior metering rule was intended to be consistent with the applicable state building code provisions.

PSNH requests that we approve the following tariff: "Each unit of a new or renovated domestic structure with more than one dwelling unit will be metered separately and each unit

⁴ Puc 303.02 was last amended in Docket No. DRM 05-027, resulting in the current version. The rule in effect prior to that time stated:

- (a) "Control" means direct manipulation such as by a thermostat or by direct use, but does not include indirect manipulation such as activating water flow as in the case of hot water usage.
- (b) "Dwelling unit" means a space occupied for a residence consisting of contiguous living, sleeping, kitchen and bathroom facilities.
- (c) "New construction" means all multi-tenant buildings excluding motels, hotels, dormitories, and time sharing interests in condominiums as defined in RSA 356-B:3, as follows:
 - (1) For which construction commenced after November 18, 1980;
 - (2) Which are undergoing renovations after November 18, 1980, in which the cost of the renovations exceed 50 percent of the value of the building; or
 - (3) Which are converted to electric service and/or electric water heating after November 18, 1980.
- (d) No utility shall install or permit master metering of electric service in new construction pursuant to RSA 155-D [Energy Conservation in New Buildings, part of the state building code] and the New Hampshire Commercial and Industrial Energy Code, § 5.4.1.2.
- (e) Electric service shall be considered master metered if:
 - (1) More than one dwelling unit in a building receives electric service through the master meter; and
 - (2) The occupant(s) of each unit receiving electric service through the master meter have control over any portion of the electric service for their unit.

will be billed as an individual customer.” Because the Company’s proposed tariff language would require separate metering for all new or renovated multi-family buildings, as discussed above, there is an argument that it would be inconsistent with Puc 303.02(a) when applied to duplexes and apartment buildings of more than three stories, such as very small and very large apartment buildings, that do not have the individual temperature controls specified in Puc 303.02(b). Under the circumstances, we conclude that it would not be appropriate to grant the declaratory ruling requested by PSNH.

We find, nevertheless, that, to the extent Puc 303.02(a) can be interpreted to require master metering in situations where master metering is not prohibited by the applicable energy conservation code, it serves the public interest and will not disrupt the orderly and efficient resolution of matters before the Commission to waive application of the rule to PSNH. We note that PSNH supports a waiver and the OCA does not object to a waiver. Furthermore, we approve PSNH’s proposed tariff language on the understanding that PSNH will apply its proposed tariff to new or newly renovated multi-family apartment buildings consistent with its historical policies and practices. We reserve the right to revisit the waiver and the tariff language change in the event any question regarding this ruling should arise, or if there is a change in our rules. Finally, we will open a docket to consider changes to Puc 303.02 to better reflect the Commission’s intent and to reflect updated reference to the currently applicable building code.⁵

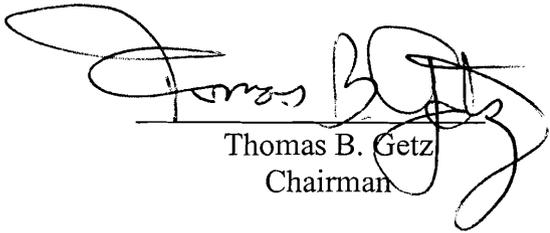
Based upon the foregoing, it is hereby

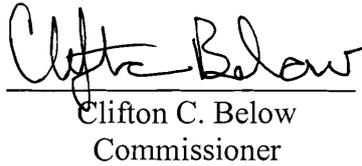
⁵ Although the IECC 2000 has been superseded by later editions which have been adopted as part of the state building code pursuant to RSA 155-A, with the IECC 2009 edition being the currently applicable code, Puc 303.02 has not been updated in a comparable fashion.

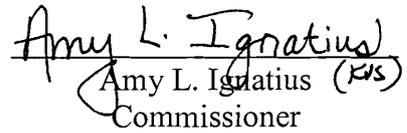
ORDERED, that a waiver of Puc 303.02(a) is GRANTED, consistent with the above findings; and it is

FURTHER ORDERED, that PSNH filed a compliance tariff within 30 days of the date of this order.

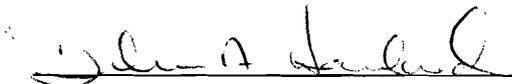
By order of the Public Utilities Commission of New Hampshire this tenth day of May, 2011.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius (R/S)
Commissioner

Attested by:


Debra A. Howland
Executive Director