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September 30, 2010

Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301

Re: DE 10-067 Public Service Company of New Hampshire et al.
Joint Waiver of Puc Rule 303.02
Staff Recommendation on Waiver Request



Dear Ms. Howland:

On March 24, 2010, Public Service Company of New Hampshire (PSNH), Community Action Program, Belknap-Merrimack Counties, Inc. (BM-CAP), and Pembroke Housing for the Elderly, Inc. jointly requested a waiver, pursuant to N.H. Code Admin. Rules Puc 201.05, of Puc 303.02 to allow master metering of PSNH's supply of electricity at a development known as the Village at Pembroke Farm for as long as the facility is operated as elderly subsidized housing. Puc 303.02 is the Commission's rule establishing requirements for master metering of residential multi-tenant buildings as well as for the metering of individual dwelling units in certain cases. The Commission is asked to waive its rule requiring metering of individual dwelling units and not to require the installation of individual wiring and meter sockets for the units.

According to the request, PSNH has operated in the past on an interpretation by a former energy code administrator of the Commission that allowed master metering of subsidized housing projects as long as the builder individually wired the apartments and installed meter sockets and the apartments continued to be subsidized. The request further states that BM-CAP and Pembroke Housing for the Elderly, Inc. intend to operate the facility as subsidized elderly housing for the full length of the agreement with the United States Department of Housing and Urban Development (HUD). The request asserts that application of the rule would be onerous or inapplicable to BM-CAP and Pembroke Housing for the Elderly, Inc. because today's vintage meters may never be used in the future when and if the facility is not operated as subsidized housing and because utility costs are included in the rent. The request concludes that the public interest is served by the waiver because the cost of construction, which is financed by tax dollars, is reduced by the cost of purchasing and installing the meter sockets.

Staff has reviewed the joint request, the responses to a set of data requests issued by Staff to PSNH, BM-CAP and Pembroke Housing for the Elderly, Inc., and information obtained during a conference call with PSNH and BM-CAP.

The Village at Pembroke Farm Project

The Village at Pembroke Farm is a low income elderly housing project in Pembroke, New Hampshire, with 40 rental units in one building that is three stories high. BM-CAP is the sponsor and developer of the project. Funding for the project was obtained through a grant awarded by HUD under its so-called "202/811 Program." No CORE funds were expended for the project. Consistent with HUD requirements, the project is to be owned by a single asset non-profit corporation, Pembroke Housing for the Elderly, Inc., that contracts with BM-CAP to operate the facility. The contract is for 40 years with an option to renew the operating agreement for an additional 40 years. The rents are federally subsidized, and heat, hot water, air conditioning and light and other general electric uses are included in the rent paid by or on behalf of the tenants. The rents payable by tenants are based on a fixed percentage of income and do not depend on the tenants' consumption of utility services.

The Town of Pembroke issued a building permit for the project on May 22, 2009 and issued a certificate of occupancy for the premises on June 22, 2010. In addition, HUD issued a permit to occupy dated June 24, 2010 which found that all required certificates of permission to occupy as issued by public authorities are in proper order. The building is already partially occupied.

The project includes a number of energy efficiency measures. According to BM-CAP, pursuant to HUD requirements, Energy Star standards have been observed. In addition, these standards have been exceeded in certain respects, including the use of spray foam and fiberglass insulation with increased R values and densities, and augmentation of the central heating and cooling systems with a geothermal system. High efficiency heat pumps and higher quality insulated doors and windows have also been installed. Natural gas is used as a backup energy source for water heating. The fresh air exchange system uses an internal air heat exchanger that reduces the need to use energy to pre-heat the fresh air brought into the building.

As built, separate meters for each apartment have not been installed nor have individual wiring and meter sockets for the apartments been installed. BM-CAP estimates that the cost of retrofitting the apartments with individual meters is approximately \$52,000.

Applicable Rule Provisions

Puc 201.03(a) provides that the Commission shall waive provisions of its rules if it finds that the waiver serves the public interest and will 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 or inapplicable and whether the purpose of the rule would be satisfied by an alternative method. Puc 201.03(b).

Puc 303.02(a) requires a utility to install master metering¹ of electric service consistent with its tariffs if the installation is consistent with the 2000 International Energy Conservation Code (2000 Code).² Puc 303.02(b) provides an exception to the general rule in Puc 303.02(a) for

¹ Under Puc 302.12, "master metering" means "the use of a single meter to supply electric service at a building that contains two or more residential premises." A "meter" is defined as "a device installed for the measurement of electrical quantities to be used as a basis for determining charges for electric service." Puc 302.15.

² RSA 155-A:2 establishes the International Energy Conservation Code (IECC) as revised from time to time as part of the state building code, which is defined in RSA 155-A:1, IV. The 2000 Code was replaced by the 2006 version of the IECC as part of the state building code; the 2006 IECC was the version of the state building code in effect during the

residential multi-tenant buildings³ where the occupants receiving electric service through the master meter [sic] have temperature control over electric space heating, electric air conditioning and or electric water heating, in which case installation of master metering is prohibited and thus separate metering is required. In effect, Puc 303.02 requires master metering of residential multi-tenant buildings unless (i) the installation is inconsistent with the 2000 Code, which would be the case where separate metering is required by the 2000 Code, and/or (ii) is prohibited by Puc 303.02(b).

The 2000 Code requirements apply to newly constructed residential multi-tenant buildings such as the Village at Pembroke Farm. See also RSA 155-D. Section 505.1 of the 2000 Code requires that in Type A-2 residential buildings having individual dwelling units (i.e., multifamily buildings such as the Village at Pembroke Farm with more than two family dwelling units but having three stories or less), provision be made to determine the electrical energy consumed by each tenant by separately metering individual dwelling units. The commentary to the 2000 Code states that 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; the commentary clarifies, however, that this requirement does not imply that dwelling unit occupants must actually be billed separately for electrical service. Nor does section 505.1 establish who (tenant, landlord, or utility) must own the meter.

Staff Analysis and Recommendation

In Staff's view, the rule provision to which the waiver request is applicable is Puc 303.02(b), and not Puc 303.02(a). The prohibition against master metering in Puc 303.02(b) applies because the tenants have individual temperature controls over space heating and air conditioning. On the other hand, the master metering provision of Puc 303.02(a) does not apply. Under this paragraph, master metering is required if the installation is consistent with the 2000 Code; however, master metering is not consistent with the 2000 Code. Accordingly, Puc 303.02(a) does not require master metering in this case, and a waiver of that paragraph is not appropriate.

In Docket No. DE 03-217, the Commission considered a waiver request of the master metering rule then in effect with respect to the independent living units at The Ridge at River Woods (River Woods), an elderly care facility in Exeter not subsidized by HUD. Staff supported the waiver request for several reasons, several of which are applicable to the present docket.

First, “[t]he purpose of the master metering prohibition is to encourage energy efficiency and conservation, inasmuch as a resident who sees and has to pay an individual electric bill is more likely to conserve energy than if those costs are blended into the rent. In this case, however, the residents do not pay rent and would not see the electric bill. They pay an initial fee and monthly maintenance fees that are the same for all, regardless of one’s energy usage. The link between the consumption of electricity and the user is already broken. Installation of meters will do nothing more than add costs to construction of the facility, for no real benefit.” See Secretarial Letter issued December 19, 2003. Second, Riverwoods had undertaken to install energy efficiency measures and

construction of The Village at Pembroke Farm. In turn, the 2009 IECC replaced the 2006 IECC effective as of April 1, 2010 by action of the Building Code Review Board. Nevertheless, the 2000 Code is still the applicable version for purposes of Puc 303.02(a). It should also be noted that the IECC established under RSA 155-A as part of the state building code is also the Code for Energy Conservation in New Construction for purposes of RSA 155-D. See RSA 155-D:2.

³ For purposes of the rule, hotels, motels, dorms and time share units are not considered to be residential multi-tenant buildings. Puc 303.02(c).

the facility was therefore serving the purposes of the prohibition against master metering through its construction plans. *Id.* Third, although the electric distribution utility would experience a revenue decrease from master metering, causing a revenue shift to other customers, the decrease and the shift would be slight. *Id.* Fourth, one beneficial result of allowing master metering was the potential that a competitive supplier might seek to serve the load of the facility overall. A supplier would be unlikely to be interested in a facility with many separately metered, very low use customers.”⁴

Similarly, in the present docket, as a result of the contractual arrangements between the landlord and tenants, the link between the consumption of electricity and the users is already broken and installation of meters will do nothing more than add costs to construction of the facility, for no real benefit. In addition, a number of energy efficiency measures have been installed at The Village at Pembroke Farm that will serve the same purposes of the prohibition against master metering.⁵ Finally, any revenue decrease and revenue shift from master metering is likely to be slight, and there is a greater potential that a competitive supplier would be interested in serving the project than it would be for 40 separately metered, very low use customers. In Staff’s view, the reasons for granting a rule waiver in this docket are as persuasive as they were in DE 03-217.

Staff included two qualifications to its recommendation for a waiver in DE 03-217. First, Riverwoods should be required to take all reasonable measures to further the efficiency of the facility and its operations. Second, in the event RiverWoods were to change hands or undergo a change in use, the waiver might no longer be in the public interest. Thus, RiverWoods should be required to put any successor on notice, in writing, that it may have to install meters upon the transfer of ownership or control. In the present docket, Staff believes that a reasonable amount of energy efficiency measures have already been installed at The Village at Pembroke Farm and thus Staff is satisfied that the first qualification is not necessary in this case. However, the second qualification is equally applicable to a waiver in this case and should be required.

In summary, Staff recommends that the waiver request in this case be granted as to Puc 303.02(b) subject to the qualification that The Village at Pembroke Farm put any successor on notice, in writing, that it may have to install meters upon the transfer of ownership or control. In DE 03-217, the notice was recorded in the Registry of Deeds, and notice should be given in the same manner in this case. Staff notes that the recommended rule waiver only extends to the Puc rule and not to any independent requirements of the state building code.

Sincerely yours,



Edward N. Damon, Esq.
Director, Legal Division

cc Service List

⁴ Another consideration in that case was that the shared living facilities were similar to the facilities exempted from the separate metering requirement, i.e., motels, hotels, dormitories and time share units. This consideration is not applicable in the present docket since the apartments in this case are self contained and there are relatively few common areas.

⁵ Moreover, these measures were installed without reliance on ratepayer-subsidized CORE funds.