

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: March 11, 2011
AT (OFFICE): NHPUC

TO: Commissioners
FROM: Edward N. Damon *END*
SUBJECT: DE 10-329 PSNH Master/Separate Metering Filing



In this docket, Public Service Company of New Hampshire (PSNH or the Company) requests a clarification that N.H Code Admin. Rules Puc 303.02(a) is inapplicable to those situations where master metering is not allowed under IECC 2000. In the alternative, the Company requests a permanent waiver from that rule. In either case, the Company requests the Commission to approve the Company's proposed tariff language change set forth in Attachment 1 that would prohibit master metering for all new or renovated "domestic structure[s] with more than one dwelling unit." Staff understands that the Company's intent is to apply its tariff to new or renovated multi-family apartment buildings.

PSNH filed its petition for declaratory ruling or waiver of rule in this docket as contemplated by Order No. 25,123 (2010), which approved a comprehensive settlement agreement regarding the Company's distribution rates in DE 09-035. The Order noted that such a petition would be filed to resolve an issue regarding the Company's proposed tariff language change. In DE 09-035, PSNH had taken the position that the 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, concluded that the master metering provision in the Company's proposed tariff be modified to conform to the current version of Puc 303.02. In this docket, the Company maintains that the rule is confusing and circular.

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.

Essentially then, under Puc 303.02(a), public utilities are required to install master metering of electric service consistent with its tariffs if the installation is consistent with the 2000 IECC and the “individual temperature control” exception in Puc 303.02(b) does not apply. One possible way to interpret and apply the rule is to conclude that master metering would not be required under PSNH’s proposed tariff since it would be inconsistent with master metering, and therefore the Commission could approve the requested tariff language change. The problem with this approach is that it would allow a utility to vary the outcome of the rule simply by choosing particular tariff language. Such a large grant of authority to the party obligated to comply with the rule is hard to square with the traditional concept of a rule, under which a rule is supposed to tell a party either what to do or not to do.

The rule could also be interpreted another way based on a literal reading of its express terms: because the 2000 IECC requires separate metering for so-called Type A multi-family residential buildings having individual dwelling units,¹ master metering is required by Puc 303.02(a) for other than Type A residential buildings unless the individual temperature control exception in Puc 303.02(b) applies. According to the 2000 IECC, a Type A 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 The exceedingly odd result is that under Puc 303.02(a), master metering is required for duplexes and apartment buildings of more than three stories that do not have the individual temperature controls specified in Puc 303.02(b). Since the Company’s proposed tariff language would require separate metering for all new or renovated multi-family buildings, it would be technically inconsistent with Puc 303.02(a) when applied to duplexes and apartment buildings of more than three stories, i.e., very small and very large apartment buildings, that do not have the individual temperature controls specified in Puc 303.02(b).

¹ The 2000 IECC does not mandate master metering under any circumstances.

² The Puc rule has not kept up with the times. The state building code currently in effect incorporates the 2009 IECC. Under the 2009 IECC, Staff understands that separate metering is required for all new “commercial structures having individual dwelling units,” though not necessarily for billing purposes, but other types of buildings may be master-metered. Apparently, the 2009 IECC defines a “commercial structure having individual dwelling units” as any structure, except a one or two family dwelling, that is taller than 3 stories, or any R-1 building (hotels etc.) Thus, under the 2009 IECC, master metering is allowed for duplexes and other apartment buildings 3 stories or less in height and for R-1 buildings and it does not mandate master metering under any circumstances.

The law does not favor exceedingly odd results and, based on an in-depth review of the history of Puc 303.02, Staff believes that there is good reason to doubt that such a result was intended.

Puc 303.02 was last amended in 2005 in DRM 05-027. 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.”

Similar versions of the 2005 rule date back to at least 1984.

In a memorandum to the Commissioners dated September 1, 2005, Staff explained that the rule was being “simplified and a correction was made to the citation of the appropriate energy conservation code.” However, the goal of simplification is not evident in the 2005 revisions. Under the prior rule, consistent with RSA 155-D, utilities

were prohibited from permitting or installing master metering (i.e., where more than one dwelling unit was master metered and each occupant had control over his or her electric service) in new construction. Apparently, the prior Commission rule was aligned with the then existing state building code provisions. Under a literal interpretation of the current version of Puc 303.02, however, the Commission's rule mandates master metering in certain circumstances, a result that does not align well with either the 2000 IECC or the 2009 IECC.

The literal interpretation described above would make the requested clarification of Puc 303.02(a) problematic. Even so, the Commission could grant a waiver of the rule in order to allow the requested tariff language change to be approved. Under Puc 201.05(a), the Commission shall waive the provisions of any of its rules if the waiver is found to serve the public interest and not disrupt the orderly and efficient resolution of matters before the Commission. In determining the public interest, the Commission shall waive a rule if compliance would be onerous or inapplicable or the purpose of the rule would be satisfied by an alternative method. Puc 201.05(b).

In Staff's view, allowing the requested tariff language to go into effect on the basis of a waiver of the rule is in the public interest since that result would conform with prior versions of Puc 303.02 and carry out the Commission's actual intent in making the 2005 rule revisions. In addition, that result would be consistent with both the 2000 and 2009 versions of the IECC and would assist in promoting energy conservation. Finally, a waiver would not disrupt the orderly and efficient resolution of matters before the Commission. For these reasons, Staff recommends 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 notes that this 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.

At the same time, Staff believes that Puc 303.02 is outdated and potentially confusing. Thus, the Commission may wish to undertake a rulemaking to rectify these deficiencies and make other reasonable changes.

PSNH agrees with the conclusions reached in this memorandum. According to the Company, the proposed tariff language is consistent with its historical master metering policies and practices. PSNH supports approval of the proposed tariff language and, if necessary, granting a waiver of the existing Puc 302.02. The Office of Consumer Advocate has also been consulted and does not object to Staff's recommendation.

cc: Debra Howland
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