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ENERGY

IN THE MATTER OF THE PETITION OF RPM, L.L.C.	)	DECISION AND ORDER
AND MANTUA URBAN RENEWAL ASSOCIATES, FOR	)	GRANTING WAIVER OF
WAIVER OF B.P.U.N.J. No. 15 ELECTRIC, ORIGINAL,	)	PSE&G TARIFF
SHEETS, NOS. 26 AND 27, STANDARD TERMS AND	)	REGARDING MASTER
CONDITIONS NO. 9.2	)	METERING
	)	
	)	DOCKET NO. EW18050497

**Parties of Record:**

**Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel**  
**James H. Laskey, Esq., Norris, McLaughlin & Marcus, P.A.** on behalf of RPM, L.L.C.  
and Mantua Urban Renewal Associates, L.P.

BY THE BOARD:<sup>1</sup>

**BACKGROUND**

On May 1, 2018, RPM Development ("RPM") and Mantua Urban Renewal Associates ("Mantua") (collectively, "Petitioners") filed a joint petition, seeking a waiver from the New Jersey Board of Public Utilities ("Board") of Public Service Electric & Gas Company's ("PSE&G") electric Tariff provision related to master metering, specifically B.P.U.N.J. No. 15 Electric, Section 9.2.1. ("Tariff"),<sup>2</sup> for an apartment building under construction in Westville, New Jersey ("RPM Waiver Petition" or "Petition").<sup>3</sup> The facility (the "Project") is a 64 unit, 100% low income residential rental building that provides affordable housing for seniors.<sup>4</sup> As part of the project, the Petitioners have indicated that they will install an on-site photo-voltaic ("PV") system which

<sup>1</sup> Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

<sup>2</sup> A copy of the Tariff is available at <https://nj.pseg.com/aboutpseg/regulatorypage/electrictariffs/-/media/1644BFB58854484BA52B140BEB83F4B4.ashx>

<sup>3</sup> On June 22, 2018, PSE&G filed a Motion to Intervene. On September 5, 2018, PSE&G withdrew its Motion to Intervene.

<sup>4</sup> The project is being designed as age restricted, where at least 80% of the tenants must be age 55 or older and no children under the age of 18 are permitted.

will provide enough solar energy to equal the building's total consumption of electricity on an annual basis, making this building the first Net Zero Building in New Jersey.<sup>5</sup>

B.P.U.N.J. No. 15 Electric, Section 9.2.1 of PSE&G's Tariff states that "the supply of electrical energy to tenants of newly constructed, residential units will be supplied to them through individual meters." The Petitioners are seeking a waiver to permit master metering for the Project.

According to the Petition, the building is financed through the use of Low Income Housing Tax Credits ("LIHTC"), and is therefore subject to various affordability and income restrictions based upon applicable Area Median Income, and occupancy restrictions. Moreover, a LIHTC property must be maintained as an affordable housing building for at least 30 years from the date of commencement of occupancy as required by 26 U.S.C. § 42(h)(6). In addition, RPM agreed to an additional 15-year restriction to enhance its application under the LIHTC program, therefore making a combined 45-year period in which the building must remain as an affordable housing building.

The Petition also states that the building is being designed as a Net Zero Energy Building so that it meets Passive House standards, which include numerous design features to reduce the electric usage in the building to a level below that of even the LEED-Platinum standard.<sup>6</sup> Residential electric usage will be supplied by a PV system that has been sized to meet the anticipated aggregate load of the building as a whole (the 64 apartments, plus common facilities). The Petitioners indicate the estimated annual per unit electric consumption is almost 50% less than other comparably-sized units. This increased efficiency, resulting in almost half the electric use of typical buildings of this size, is due to highly efficient design features.

The requested waiver would allow the total electric energy usage to be billed through a single master meter. The Petitioners represent that Mantua, as the landlord, would be responsible for paying PSE&G's charges, and would also be prohibited from passing these charges on to the tenants. Mantua plans to install measuring devices for statistical and monitoring purposes. If it identifies any instances of excessive onsite energy usage, its onsite building manager will discuss strategies to reduce usage with the tenant. However, excessive usage will not be grounds for lease termination, according to the Petition.

The Petitioners claim that imposing the requirement of individual meters at the apartment building would impose a hardship, and claims the most economically efficient method to achieve Net Zero Energy for the building is to have the PV system offset the entire aggregated load of the building. Otherwise, each unit would require a set of individual panels and a single inverter.

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<sup>5</sup> A Net Zero Building is "a residential or commercial building with greatly reduced energy needs through efficiency gains such that the balance of energy needs can be supplied with renewable technologies." Torcellini, Pless and Deru for the National Renewable Energy Laboratory, Zero Energy Buildings: A Critical Look at the Definition. Available at: <https://www.nrel.gov/docs/fy06osti/39833.pdf>.

<sup>6</sup> There is presently a separate petition pending before the Board where the same parties are seeking a clean energy waiver. In the Matter of Magrann Associates' Appeal for the Residential New Construction Program Incentive Determination Regarding the Westville Senior Housing Project, Docket QO18080903.

### **Rate Counsel Comments**

On August 13, 2018, the New Jersey Division of Rate Counsel ("Rate Counsel") filed comments in this matter. Rate Counsel does not oppose the granting of the waiver of the Tariff as requested in the Petition. Rate Counsel stated that it recognizes that master metering will have some benefits. It indicates the Petitioners have represented that master metering will facilitate the installation of design features that will allow the building to exceed the LEED Platinum standard. Additionally, since the building will be 100% affordable, Rate Counsel noted that all of the units will be subject to maximum rents, which will include heating, cooling, and utilities.

However, Rate Counsel requested that the approval of the waiver be conditioned upon the following:

- (1) Petitioners maintaining the character of the building and the utility service provided to tenants, as described in the petition and discovery responses;
- (2) Requiring the Petitioners to notify the Board of any changes in the factual circumstances described in the petition and in the responses to Rate Counsel's and Staff's discovery requests;
- (3) Requiring the Petitioners implement measures to protect tenants using life-sustaining medical equipment. Specifically, there should be no adverse consequences for tenants requiring additional energy to operate life-sustaining medical equipment, and the Petitioners should maintain back-up generation as stated in the petition;
- (4) Requiring the Petitioners to include provisions protecting tenant usage information from disclosure in its lease agreement; and
- (5) Requiring tenants to be provided with a "plain language" summary of the New Jersey Housing and Mortgage Financing Agency ("NJHMFA") release form, including a statement that participation is voluntary.

### **Petitioners' Response**

By letter dated August 14, 2018, the Petitioners indicated that they have no objection to any of Rate Counsel's proposed conditions.

### **DISCUSSION AND FINDINGS:**

Master metering is the practice of metering and billing the electric usage of multiple tenants or individuals through one utility meter. PSE&G Tariff Sheet, B.P.U.N.J. No. 15 Electric, Original Sheet No. 26, Standard Terms and Conditions Number 9.2.1, Metering on Customer's Premises, General, prohibits master metering in that it requires the service and supply of electrical energy by PSE&G for the use of owners, landlords, tenants or occupants of newly constructed or renovated residential units to be furnished as customers of PSE&G through PSE&G. PSE&G Tariff Sheet, B.P.U.N.J. No. 15 Electric, Original Sheet No. 27, Standard Terms and Conditions Number 9.2.2, Metering on Customer's Premises, Sub-metering, defines sub-metering as the practice where a customer of PSE&G or a customer of record, through the use of direct metering devices, installed, maintained and operated at such customer's expense,

monitors, evaluates or measures their own consumption of electrical energy or the consumption of a tenant for accounting or conservations purposes. This provision indicates that sub-metering will not be permitted in new or existing residential buildings or premises.

Sub-metering of residential service is generally prohibited by the Board. See I/M/O Board's Investigation Into the Check Metering of Gas Service, Docket No. GX85090901 (September 5, 1986); See also, I/M/O the Petition of Marine View Plaza Apartments for a Declaratory Ruling Permitting Check-Metering, Docket No. E099040252, Order Denying Motion (March 30, 2001)

The Petitioners are seeking a waiver of the above-referenced provisions of PSE&G's Tariff in order to permit the use of a master meter and measuring devices in their newly constructed apartment building. The Petitioners assert that requiring individual meters imposes a hardship and requires a waiver of the master metering and sub-metering requirements.

The Board's rules and, by extension, utility tariff prohibitions, effectuate Board policy to provide for a safe and reliable utility system. The prohibition on master meter seeks to encourage energy efficiency and protect customers. The Board is therefore cautious in granting such waivers. If customers are not directly responsible for their own usage, their motivation to conserve is greatly diminished. Conversely, customers who practice conservation and energy efficiency measures directly benefit through decreased electric bills. The Board is further concerned with the protection of tenants who cannot effectively change the conditions of their apartment subjected to a sub-metering device. In occasional and narrow circumstances, however, this goal is not achieved by the Tariff. Exemptions are made on a case-by-case determination.

In the circumstances established in this petition, the goals behind the prohibition of master meters—that is, energy conservation and efficiency—are best met through the use of a master meter.

First, a PV system designed to offset the aggregate load of the entire building is much more practical and economical than 64 individual units. Creating separate bundles of panels, inverters and circuits for each unit is expensive, and would also eliminate the possible benefit of balancing out the overall usage of the site. Additional challenges arise when trying to appropriately match the load for each unit and the individual solar installation. In the alternative, a single PV system will supply the building's entire electric needs, allowing additional flexibility with the system's sizing.

Second, due to the ultra-efficient measures that have already been taken, each unit has below-average heating and cooling needs. Heating and cooling systems do not currently exist that appropriately match these decreased needs for apartments of this size—if traditional methods were used to heat or cool the building, the systems would be oversized by approximately 170%. Petition at 7. The more practical approach, therefore, is to install a heating and cooling system for the building as a whole. While each unit would still have its own programmable thermostat, the master unit would be much more efficient than any that would be installed individually.

Lastly, through non-traditional means, this building achieves the underlying goals of the master meter prohibition—increased conservation and efficiency. A waiver in this instance is appropriate as conventional approaches are not fitting for this innovative design.

There will be little to no adverse effects on PSE&G's other ratepayers, the utility or the public interest. These risks will be borne entirely by Mantua. In fact, Rate Counsel acknowledged that master metering offers some benefits to ratepayers, and the building will be 100% affordable, since all of the units will be subject to maximum rents, which will include utilities.

This building is being designed as a net-zero building, meaning that all electricity is designed to be derived through energy efficient construction and solar generation. The master meter being requested for this project is essentially a 'standby service' which will be used for net metering. The Petitioners do not anticipate electric usage from the grid. Additionally, the Petitioners will not be billing tenants for use of electric service from their onsite solar generation.

Alternatively, the Board has long been concerned with residential sub-metering. Permitting sub-metering, including the measurement and billing of residential customers is contrary to long standing Board policy and precedent for residential installation. Here, Petitioners have committed to use an installed measuring device for the limited purpose of resident education, and have indicated that no tenant will be billed for their electric service. Petitioners maintain that these measuring devices are to be used solely for statistical and monitoring purposes with the goal of being able to measure the efficiency of the individual units under Mantua's commitment to NJHMFA.

Recognizing the unique building techniques being utilized at this proposed development, the Net Zero Energy Building, which is approximately 50% more efficient than a typical building, and the prohibitive impact a master meter would have on achieving a Net Zero Energy Building, the Board **HEREBY APPROVES** the Petitioners' request for a waiver of PSE&G Tariff- B.P.U.N.J. No. 15 Electric, Original Sheets No. 26 Standard Terms and Conditions No. 9.2.1 pursuant the Board's authority under N.J.S.A. 48:2-13. This waiver is for master metering only, and does **NOT** permit the Petitioners to sub-meter the project. Specifically, to the extent the Petitioners install measuring devices regarding the electric use of each apartment, as required by its agreement with NJHMFA, such measurements may not be used to bill tenants, nor in any way adversely be reflected in current or future rents.

After careful review and consideration of the Petition, as well as discovery submitted in this matter and Rate Counsel's comments, the Board **HEREBY FINDS** that a waiver of the Master Meter Tariff provisions is appropriate under the present circumstances. The installation of a master meter will not adversely affect the public interest and will not affect PSE&G's ability to render safe, adequate and reliable service. The master meter waiver would promote the goal of increased energy efficiency, conservation and the construction of a Net Zero Building. Accordingly, the Board **HEREBY APPROVES** the use of a master meter for the Project. The Board **HEREBY DENIES** any request to waive the Board's prohibition on sub-metering. The Petitioners may not bill or otherwise use any metering device to effectuate a tenant's share of the master meter bill.

The approval granted herein is subject to the following provisions:

1. Petitioners must construct and maintain this building consistent with the description set forth in its Petition, discovery and other correspondence in this matter, including those requested by Rate Counsel and agreed to by Petitioners;

2. This Decision and Order is based upon the specific and particular facts of this Petition. Any future master meter waiver requests that may come before the Board must be decided on a case by case determination.
3. Petitioners' shall notify the Board if they anticipate any material changes in the building's design and function, as it pertains to a Net Zero Building or use as age or income restricted housing;
4. The waiver authorization is contingent on the fact that the building owner or landlord will not take any adverse action against tenants based on any tenant's electric usage. Mantua or any subsequent owner of the building shall not, in any way, take any action whatsoever to a tenant as a result of data obtained from any installed measuring devices. Neither the information received by these devices, nor any data obtained therefrom, may be used in any way to adjust rents, bill or otherwise as to any tenants in this building. This Order and any waiver granted herein shall be null and void in the event the Petitioners breach these terms;
5. Petitioners shall provide an annual report to the Board on the energy consumption of the building's aggregate electric use to demonstrate the total output from the solar PV system, to ensure the system remains appropriately sized;
6. Petitioners, and any subsequent landlord of this building, must annually notify all tenants that they are not customers of PSE&G and in the event of any question or issue, such as a power outage, all calls and inquiries should be directed to the landlord;
7. Petitioners, and any subsequent landlord of this building, shall on an annual basis, provide contact information so that a tenant may address concerns regarding the tenant's electric service. Petitioners, and any subsequent landlord, shall provide each tenant, on an annual basis, a detailed description of the process a tenant would follow in the event of an issue or dispute on his or her electric service. Petitioners shall submit this description to the Board within 90 days of this Order's effective date and provide annual updates;
8. This waiver is being granted based on the unique description and energy efficiencies described in the Petition. The Petitioners are on notice that the grant of this master meter waiver is being done at Petitioners' risk. If the character and/or use of this building changes, e.g. it is no longer low income or the building is not or cannot be built to the net zero energy efficiency standards set forth in the petition (even if by no fault of the Petitioners), this waiver is null and void, and the Board will not consider a subsequent waiver. In such an instance, the Petitioners would have to install individual utility meters for each tenant; and
9. Petitioners shall pay the costs of any electric service in this building. This waiver shall be null and void if Petitioners effectuate billing for electric usage either from the master meter or from the onsite solar generation.

Although the Board acknowledges that the Petitioners have advised that it will be installing measuring devices for general uses of each apartment, the Board is not waiving its prohibition on sub-metering. Petitioners anticipate that the measured electric usage will be primarily from

the on-site generation facilities. These devices cannot be used as billing devices nor can Petitioners, either directly or indirectly use data from these devices to bill, adjust a tenant's rent, seek eviction, or in any way effectuate payment by a tenant to the landlord.

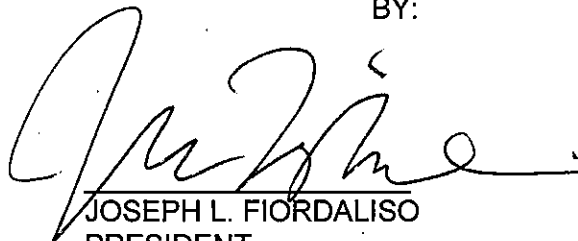
The circumstances of this case create a unique opportunity that justifies Board approval. Given the intended use of this building, the Petitioners appear to have acted in good faith in seeking an energy efficient master meter for its apartment building.

The Board's general prohibitions on master metering and sub-metering remain in full force and are not waived by or through this Order. As such, through this Order, the Board **HEREBY ADVISES** any person who is constructing or constructs a multi-unit building in New Jersey, that master electric meters and sub-meters are prohibited in residential use buildings. Builders and developers are hereby noticed that residential building conversions are required to comply with the Board's Orders, rules and the utility's then applicable Tariff.

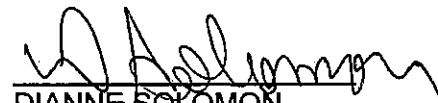
This Order shall be effective on September 27, 2018.

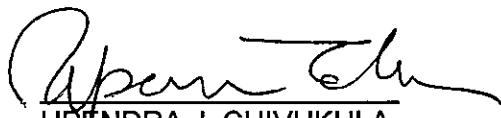
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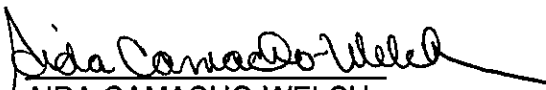
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AIDA CAMACHO-WELCH  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities.

**IN THE MATTER OF THE PETITION OF RPM, L.L.C. AND MANTUA URBAN RENEWAL ASSOCIATES, FOR WAIVER OF B.P.U.N.J. No. 15 ELECTRIC, ORIGINAL, SHEETS, NOS. 26 AND 27, STANDARD TERMS AND CONDITIONS NO. 9.2  
Docket No. EW18050497**

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