

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. ER-144, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Charlotte Leased Housing Associates II,)	ORDER DENYING REQUESTS
LLLP, Application for Authority to Resell)	FOR APPROVAL OF MASTER
Electric Service Pursuant to N.C.G.S.)	METERING EXCEPTION AND
§ 62-110(h) at 7800 Creekr Ridge Road,)	FOR ELECTRIC RESELLER
Charlotte, North Carolina 28212)	AUTHORITY

HEARD: Monday, December 11, 2023, at 10:30 a.m., in Commission Hearing Room
2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chair Charlotte A. Mitchell, Presiding, and Commissioners Kimberly W.
Duffley, Jeffrey A. Hughes, Floyd B. McKissick, Jr., Karen M. Kemerait, William
M. Brawley, and Tommy Tucker

APPEARANCES:

For Charlotte Leased Housing Associates II, LLLP:

Robert W. Kaylor, Law Offices of Robert W. Kaylor, PA, 353 East Six Forks
Road, Suite 260, Raleigh, North Carolina 27609

For the Public Staff:

William Freeman and William E. H. Creech, Public Staff – North Carolina
Utilities Commission, 4326 Mail Service Center, Raleigh, North Carolina
27699-4300

BY THE COMMISSION: On March 3, 2023, Charlotte Leased Housing Associates II, LLLP (Applicant), filed with the Commission applications in Docket No. ER-144, Subs 0, 1, 2, 3, and 4 for certificates of authority to resell electric service at Creekr Ridge on the Park, 7800 Creekr Ridge Road, Charlotte, North Carolina, in accordance with N.C. Gen. Stat. § 62-110(h) and Commission Rule R22. The applications indicated that that they were for four different buildings and a clubhouse in one apartment complex, Creekr Ridge on the Park.

On May 1, 2023, the Public Staff filed its correspondence to Applicant in each docket outlining the deficiencies in the application. The Public Staff included a miscellaneous item in its filing stating that Applicant had filed five identical applications under five separate docket numbers for different buildings within the same apartment complex. The Public Staff stated that unless there was a need for separate dockets,

Applicant should submit a request to the Chief Clerk's Office to consolidate the five dockets into a single docket.

On May 2, 2023, the Commission issued an Order Finding Application Incomplete and Request for Additional Information in each docket.

On July 11, 2023, Applicant filed, in the Sub 0 docket only, an Application for Waiver requesting that the Commission grant it approval to use master metering for a planned affordable housing multifamily residential property consisting of 150 residential apartments at Creekridge on the Park.

On September 14, 2023, Applicant filed, in each separate docket, a Request to Consolidate Dockets requesting that the originally filed Docket No. ER-144, Subs 0, 1, 2, 3, and 4 all be placed into Docket No. ER-144, Sub 0.

On September 20, 2023, Applicant filed in Docket No. ER-144, Sub 0 responses to the Public Staff's Deficiency Letter of May 1, 2023.

On November 17, 2023, the Public Staff filed a Second Deficiency Letter in each separate docket seeking further information and clarifications. The Public Staff also stated that it did not object to Applicant's Request to Consolidate Dockets filed on September 14, 2023.

On November 27, 2023, Applicant filed a Motion for Oral Argument in Docket No. ER-144, Sub 0 seeking oral argument on its request for an exemption from the master metering prohibition of N.C.G.S. § 143-151.42(a) at Creekridge on the Park. Applicant states that if permitted, it will contract with Duke Energy Carolinas, LLC (DEC), for the installation of a master electric meter to serve the apartment complex under an applicable commercial rate tariff. Applicant seeks Commission approval to install property-owned submeters for each apartment and to pass through electric rates and fees to the low-income tenant of each apartment. Applicant proposes to calculate the tenant's bill using the commercial rate Applicant is charged and pass along the savings (as compared to DEC's residential rate) to the tenant of each apartment. Applicant states that each apartment will only be billed for the actual kilowatt-hours recorded by the submeters during tenant occupancy plus an administrative fee not to exceed \$3.75 per month. Applicant further states that it will comply with all Commission rules and regulations regarding late fees, administrative charges, required minimum remittance due dates, and return check charges and that individual apartment tenants would not be charged the cost of electricity from any other apartment or common areas of the apartment complex. Applicant plans to pay for all electricity provided by DEC through the master meter and seeks authority to bill the individual apartments via its submeters as an authorized electric reseller in accordance with N.C.G.S. § 62-110(h).

On November 28, 2023, the Commission issued an Order Consolidating Dockets and Scheduling Oral Argument.

On December 11, 2023, at 10:30 a.m., the Commission held an oral argument on the Applicant's Application for Waiver of the Master Metering Prohibition of N.C.G.S. § 143-151.42(a).

On December 15, 2023, the Applicant filed responses to the Public Staff's Second Deficiency Letter of November 17, 2023.

DISCUSSION AND CONCLUSIONS

To gain the relief it seeks in this proceeding, Applicant must both avoid the prohibition on master metering to receive electric service from DEC and meet the statutory requirements for electric resale to bill its tenants. As detailed below, the Commission concludes that Applicant falls short on both counts.

Resale of Electric Service

Applicant's initial filings requested Commission approval as an electric reseller pursuant to N.C.G.S. § 62-110(h). Applicant argues that it has satisfied all the requirements of the statute and Commission rules for electric resale, stating in its proposed order, for example, "Applicant is in full accord with Rule R22-1 since Applicant is a lessor of a multiunit apartment complex that will have individually metered units for electric service in the lessor's name and Applicant has committed to charge each apartment the actual cost for the electric service to the apartment." Applicant Proposed Order at 6. Applicant reiterates that it will pay for all electricity that DEC provides to the apartment complex through the master meters and seeks to bill the individual apartment tenants via its own submeters as an authorized electric reseller in accordance with N.C.G.S. § 62-110(h).

The Public Staff asserts that Commission Rules R22-1 and R22-2 require an electric reseller to determine its tenants' electricity usage through individual meters in the lessor's name owned and read by the electric utility, meaning that an electric reseller receives an individual electric bill for each rented unit and there is no "master meter." Public Staff Proposed Order at 5-6. Applicant disputes this contention in its proposed order, stating that as a lessor of a multiunit apartment complex that will have individually metered units for electric service in the lessor's name and will be charging each apartment the actual cost for the electric service to the apartment, it would be in full accord with Rule R22-1. According to Applicant, the rule does not require that the electric public utility own and read the individual electric meters. Applicant Proposed Order at 7.

The Commission cannot agree with the statutory interpretation urged upon it by Applicant. Rather, the Commission concludes that the statute and Commission rules do clearly state that the supplier, the public utility from which the lessor (or provider¹) — Applicant, in this case — purchases electric service, determines the charge for electric usage by the individual unit. See Rule R22-2. The metered service for the individual unit is "in the lessor's name." N.C.G.S. § 62-110(h). In this case, Applicant would have a master meter with electric service by DEC in its name, but metered service

¹ The electric resale statute, N.C.G.S. § 62-110(h), uses the term "lessor" to indicate the owner of the "leased residential premises." The Commission's rules further define "provider" as the lessor who purchases and resells the electric service to its lessees. Rule R22-2(d). Here, the terms "lessor" and "provider" are used interchangeably. The term "supplier" is used to indicate the electric utility from which the provider purchases electric service.

to the individual units would be by submetering by Applicant, not “individually metered units for electric service in the lessor’s name.” N.C.G.S. § 62-110(h) (emphasis added).

In addition, Rule R22-2(h) defines “Supplier’s Unit Electric Service Bill” as “[t]he actual amount charged by the *supplier* for the unit as a whole” Rule R22-2(h) (emphasis added). Rule R22-5 states that bills for electric service sent by the provider — again, Applicant, in this case — shall include “the name of the supplier” — here, DEC, the public utility — and “the Supplier’s Unit Electric Service Bill for the unit as a whole and the amount of charges allocated to the lessee during the billing period.” These provisions make sense only where the supplier, and not the provider, meters and renders electric bills for each individual unit.

In contrast, in the context of resale of water and sewer services, the applicable statutes and Commission rules do contemplate that the lessor/provider² will be performing the duties of meter reading and billing. The water reseller statute, N.C.G.S. § 62-110(g), states that “all charges for water or sewer service shall be based on the user’s metered consumption of water, which shall be determined by metered measurement of all water consumed,” and that “[t]he rate charged by the lessor shall not exceed the unit consumption rate charged by the supplier of the service.” Thus, in this context, it is the lessor that is submetering and billing its lessees based on the rate charged by the supplier and the usage amount submetered by the lessor.

For example, Rule R18-6(a) allows the lessor to charge rates “equal to the cost of purchased water or sewer service,” and Rule R18-6(c) provides that a request for approval of a monthly fixed administrative fee in excess of \$3.75 shall include, among other things, “the provider’s current and proposed cost of meter reading, billing, and collection.” There are no analogous provisions in Rule R22 because the statute and Commission rules for electric resale do not contemplate a scenario where the electric reseller is installing and reading its own submeters.

Further, Rule R18-7(h) states that each provider shall adopt a means of informing its lessees as to the method of reading meters and requires that the bill contain a toll-free number for contacting the provider regarding service or billing matters. Again, this arrangement is in contrast to the rules governing electric resellers, where it is the utility that is reading the meters and sending the lessor electric reseller a bill for each individual unit.

Thus, the procedures for billing and meter reading in the electric reseller and water reseller contexts are very different. Applicant is attempting to shoehorn electric resale into a water reseller paradigm, and the current statute and regulations governing resale of electric service simply do not permit it.

² Similarly, the water and sewer resale statute, N.C.G.S. § 62-110(g), uses the term “lessor,” whereas the Commission’s rules further define “provider” as the lessor who purchases and resells the water or sewer service to its lessees. Rule R18-2(i). Again, the term “supplier” is used to indicate the utility from which the provider purchases water or sewer service for resale.

Prohibition on Master Metering

Even were Applicant willing to forego recovery of its electric service costs from its lessees based on actual usage as measured by its submeters, collecting instead, for example, through the rent, State law prohibits Applicant's proposed master meter arrangement. North Carolina General Statutes Section 143-151.42 provides that after September 1, 1977, in order to encourage each occupant of an apartment or other individual dwelling unit to be responsible for their own conservation of electricity and natural gas, it would be unlawful for any new residential building to be served by a master meter for electric or natural gas service. The statute further provides: "This section shall apply to any dwelling unit normally rented or leased for a minimum of one month or longer, including apartments, condominiums and townhouses, *but shall not apply to hotels, motels, hotels or motels that have been converted into condominiums, dormitories, rooming houses or nursing homes, or homes for the elderly.*" N.C.G.S. § 143-151.42 (emphasis added).

In its proposed order Applicant concedes that none of the statutory exemptions apply that would allow master metering for low-income housing, including the following draft language:

The Commission understands that usage of the master meters and the commercial electric rate will reduce the monthly electric bill for these low-income affordable apartments; however, the Commission has concern that the master meter prohibition statute does not have an exception for affordable housing. The Commission has reviewed the master meter prohibition statute in detail in an effort to provide Applicant a waiver of the prohibition but at this time cannot find a way to issue such a waiver [U]ntil there is a statutory change to N.C.G.S. § 143-151.42(a), the Commission cannot grant the waiver relief request[ed] herein by Applicant.

Applicant Proposed Order at 7. The Commission agrees with Applicant and concludes that it cannot approve master metering in this instance because there is no exception in the statute applicable to low-income affordable housing.

Notwithstanding this statutory prohibition, Applicant urges the Commission to approve installation of the submeters while Applicant pursues a statutory amendment to change the law. Noting that the submeters have already been purchased and that Applicant plans to have the units ready for occupancy in early 2025, Applicant would have the Commission state that it has

no objection at this time for Applicant moving forward with installing submeters and having DEC install master meters but would emphasize that if the General Assembly does not amend the master meter prohibition statute to add an affordable housing exception Applicant would be in

violation of the statute if, in fact, it did activate the master meters and submeter and bill tenants for their electrical usage.

Applicant Proposed Order at 7-8. The Commission cannot prohibit Applicant from installing its submeters, but it would expect Applicant to amend its application and seek further approval from the Commission based on a change in the law. The Commission will further rely on DEC to not provide service to Applicant through a master meter unless the law is changed to allow it and such arrangement has been approved by the Commission.

IT IS, THEREFORE, ORDERED that the applications filed by Applicant for electric resale and approval of a master meter are denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of April, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script, reading "A. Shonta Dunston".

A. Shonta Dunston, Chief Clerk