



**NORTH CAROLINA  
PUBLIC STAFF  
UTILITIES COMMISSION**

January 16, 2024

Ms. A. Shonta Dunston, Chief Clerk  
North Carolina Utilities Commission  
4325 Mail Service Center  
Raleigh, North Carolina 27699-4300

Re: Docket No. ER-144, Sub 0  
Charlotte Leased Housing Associates II, LLLP (Applicant)  
Creekridge on the Park Apartments

Dear Ms. Dunston:

Enclosed for filing please find the Public Staff's Proposed Order. The Public Staff has reviewed the Applicant's application, as supplemented and amended, and the Public Staff's remaining issues with the application are those raised in the Proposed Order.

By copy of this letter, I am serving all parties of record.

Sincerely,

Electronically submitted  
/s/ William E. H. Creech  
[zeke.creech@psncuc.nc.gov](mailto:zeke.creech@psncuc.nc.gov)

cc: Lucy E. Edmondson, Chief Counsel  
Robert B. Josey, Staff Attorney, Manager, Electric Section  
William S. F. Freeman, Staff Attorney  
Parties of Record

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**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, LLLP )	
Application for Authority to Resell Electric )	
Service Pursuant to N.C.G.S. § 62-110(h) )	<b>PROPOSED ORDER OF</b>
at 7800 Creekridge Road, Charlotte, )	<b>THE PUBLIC STAFF</b>
North Carolina 28212 )	

HEARD: Monday, December 11, 2023, at 10:33 a.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chair Charlotte A. Mitchell, Presiding; 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 II, LLLP:  
Robert W. Kaylor, Law Office of Robert W. Kaylor, P.A., 353 Six Forks Road, Suite 260, Raleigh, North Carolina 27609

For the Using and Consuming Public:  
William E. H. Creech and William S. F. Freeman, Staff Attorneys,  
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 (collectively, the Application) for certificates of authority to resell electric service under N.C. Gen. Stat. § 62-110(h) at Creekridge on the Park, 7800 Creekridge Road, Charlotte, North Carolina, and for an exemption from the master metering prohibition of N.C.G.S. § 143-151.42(a). The

Application regards electric service to four different buildings and a clubhouse in one apartment complex. The Applicant's limited liability limited partnership agreement filed in this matter provides that the Applicant's "sole purpose" relates to "a to-be-built low-income multifamily apartment complex" (the Project).

The Application provided that the Applicant intended to obtain (from Duke Energy Carolinas, LLC (DEC)) electricity under Schedule LGS (large general service schedule) (LGS). The Application further provided that the Applicant would install "property-owned submeters." Per the Application, residents would pay the Applicant (not DEC) for electricity. The Applicant proposes to allocate charges to residents for their portion of the building's electricity usage based on the Applicant's submeters, at the non-residential rate under which the Applicant receives service, plus the maximum monthly administrative fee allowed by law for electric resellers (currently \$3.75 per month per Commission Rule R22-5(d)).

On May 1, 2023, the Public Staff of the North Carolina Utilities Commission (Public Staff) filed correspondence noting several deficiencies in the Application. Among these, the Public Staff flagged the Applicant's planned usage of Applicant-owned submeters and usage of DEC's LGS rate schedule. 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, the 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.

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 does not object to Applicant's Request to Consolidate Dockets filed on September 14, 2023.

On November 27, 2023, the Applicant filed a Motion for Oral Argument in Docket No. ER-144, Sub 0.

On November 28, 2023, an Order was issued scheduling this matter for oral argument; consolidating the pending applications into ER-144, Sub 0; and closing Sub Dockets 1, 2, 3, and 4.

On December 11, 2023, the parties conducted oral arguments before the full Commission. A transcript of same was filed December 15, 2023.

On December 15, 2023, the Applicant filed a response to the Public Staff's Second Deficiency Letter which included DEC's Schedule SGS (small general service) Rates (SGS).

Based on the entire record in this proceeding, the Commission makes the following conclusions.

### **DISCUSSION**

The Commission's analysis of the Application is divided into consideration of two separate and independent issues: (1) whether the Applicant may use a master meter and Applicant-owned submeters to charge residential customers for electric utility service based on the customers' actual usage; and (2) whether the Applicant may receive service from DEC under a non-residential rate and charge its residential tenants under this non-residential rate.

#### **Eligibility for exemption from N.C.G.S. § 143-151.42(a) to Master Meter under N.C.G.S. § 62-110(h)**

Applicant seeks an exemption from the master metering prohibition of N.C.G.S. § 143-151.42(a). Use of master meters is governed by N.C.G.S. § 143-151.42 (the Master Meter Statute) which generally prohibits the use of a master meter except under certain circumstances (including the installation of HVAC or water heater systems that conserve energy, or for service to a nursing home or home for the elderly). Applicant has not argued nor made a showing that its

proposal would meet any of these criteria. The exemption Applicant does seek to use is that allowed for resellers of electricity under N.C.G.S. § 62-110(h).<sup>1</sup> As discussed below, the Project is not eligible to be an electric reseller.

The traditional electric reseller scenario (set forth in N.C.G.S. § 62-110(h)) contemplates utility-owned meters at the tenant level, with electricity remaining in the landlord's name as a matter of convenience for the parties. N.C.G.S. § 62-110(h) provides the Commission with authority to permit the Applicant to charge residents for electric service by using "individually metered units for electric service in the lessor's name." The same language is found in Commission Rule R22-1. Tr. vol. 1, 38-39.

Applicant seeks certification as an electric reseller pursuant to N.C.G. S. § 62-110(h) and Commission Rule R22. Under Commission Rule R22-1 (and Rule R22-2), an electric reseller must determine the usage of its tenants through individual meters in the lessor's name owned and read by the electric public utility, meaning that an electric reseller receives an individual electricity bill for each rented unit. Because the Applicant proposes to use Applicant-owned submeters (as opposed to DEC-owned submeters), the Applicant is not eligible for this exemption.

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<sup>1</sup> There is a second exemption (under N.C.G.S. § 143-151.42(b)(2)) whereby a lessor may use a master meter and include a portion of the cost of the building's electricity usage in the residential customer's fixed gross rental amount rather than a charge based on actual usage of each individual tenant. However, the Applicant does not propose to use this arrangement, but to install its own submeters and charge the tenants based on their individual usage. Since this exemption is neither sought nor applicable, Applicant cannot fit within it.

This is demonstrated by the applicable jurisprudence. The Applicant is obligated to provide residents with DEC's contact information and schedule of charges (Commission Rule R22-4(a)(7),(8)). Moreover, the Rules provide that the Applicant may not "disconnect or request the supplier to disconnect electric service for the lessee's nonpayment of a bill." Commission Rule R22-7(c). Therefore, the Rules contemplate that it is the supplier (DEC in this case, not the landlord) that has the ability to disconnect electric service for an individual. But conformity with these Rules is impossible when the Applicant seeks to install its own meters at the unit level. Finally, the Applicant has not described the manner in which it would ensure its meters are accurate and subject to the Commission's quality control Rules. See, e.g., Commission Rules R8-9 to -15.

Accordingly, the Application must be denied.

The Public Staff indicated in oral argument that it supports the Applicant's efforts to provide affordable housing and has worked with and suggested to the Applicant that it could move forward with its project under the existing regulatory framework by either (1) offering the traditional reseller model of Duke-owned submeters for each residential unit under N.C.G.S. § 62-110(h) and N.C.G.S. § 143-151.42(b)(i) or (2) by including utility service into a gross rental amount under N.C.G.S. § 143-151.42(b)(ii). Tr. vol. 1, 35-37. The Applicant instead asks the Commission to find that its proposal meets the spirit of the statute governing the resell of electricity in this case. Tr. vol. 1, 7-9. At the heart of this matter is the fact that the Applicant has already purchased submeters for each tenant unit, without

ensuring that this arrangement would comply with North Carolina law. Tr. vol. 1, 32. The Applicant sought to have the General Assembly enact a provision to add a low-income housing exemption in the Master Meter Statute late last year, but the General Assembly adjourned before such a change could be fully explored. Tr. vol. 1, 9, 17-18, and 40. The Applicant has indicated that it intends to seek such a statutory change once the General Assembly reconvenes later this year. Tr. vol. 1, 9.

### **Serving Residential Customers and Charging a Non-Residential Rate**

Under N.C.G.S. § 62-110(h), an exception to the rule forbidding master metering is only made for “residential premises.” In so doing, it is intuitive to conclude that the Legislature contemplated that the lessor would charge residential electric rates. This restriction is echoed by Commission Rule R22-1, which allows electric resale to “a single-family dwelling, residential building, or multiunit apartment complex.” Commission Rules also provide that the Applicant is a “provider” within the meaning of Commission Rule R22-2 as the Applicant would be a lessor that will purchase electric service from a supplier (in this case, DEC) and will charge the costs of providing the electric service to residents of its apartments. Under Commission Rule R22-3(b), a “provider” is “subject to all rules, regulations, tariffs, riders, and service regulations associated with the provision of *residential* electric service to retail customers of the supplier.” (italics added). Thus, the statutes and rules contemplate that electricity will be supplied to residential customers, who would be charged under residential rates. However, in this case, the Applicant seeks to charge residential customers at a non-residential rate.



Additionally, the residential class receives and uses power in a different manner than either LGS or SGS customers. Customer classes have differing distribution, voltage losses, voltage taking, consistency of usage, transmission, fuel impacts, *etc.*, which is the rationale for charging differing customer classes differing rates based on cost causation. In Session Law 2021-165 (HB 951), the Legislature charged the Commission to allocate the revenue requirement based on a customer class's use of the electric system and the utility's costs in the provision of electric service to each customer class. N.C.G.S. § 62-133.16(a)(1). Further, HB 951 directed that interclass subsidization should be minimized. N.C.G.S. § 62-133.16(b). While the Applicant's aim to provide low-income customers with lower priced electricity is commendable, allowing the Applicant to provide residential customers electricity at non-residential rates is contrary to the requirement that different classes be charged different rates based on cost causation. Further, residential customers served on a non-residential rate would be sent price signals that do not align with their usage and discourage conservation.

Finally, the language of Schedules LGS and SGS (Schedules) prohibits service to residential customers under these rates. The Schedules both provide as follows: "Service under the Schedule shall be used solely by the contracting Customer in a single enterprise, located entirely on a single, contiguous premises. This Schedule is not available to the individual customer who qualifies for a residential or industrial schedule nor for auxiliary or breakdown service." Individual apartments with residential customers are not a "single enterprise" but are multiple

customers. Further, since the Applicant's tenants are to be residential customers, they would only qualify for the residential rate. Thus, the Schedules themselves do not allow the Applicant to serve residential customers under any other rate except the residential rate.

The Commission finds that it is inappropriate for the Applicant to serve residential customers based on a non-residential rate. This is contrary to cost of service principles and could open the door to other requests for service under rates for which a customer is ineligible.

In addition, while Applicant's proposal to provide electric service under a non-residential schedule as well as the \$3.75 administrative fee may result in lower rates for customers, use of this non-residential rate could bar its low-income customers from access to beneficial programs. For example, because the utility bill would remain in the landlord's name (not the resident's) and be supplied under commercial schedules, these residents would likely be ineligible for the \$42 bill credit low-income customer assistance program recently approved by the Commission. Regardless of whether the Applicant's proposal to utilize a non-residential rate would on balance be more beneficial to its residents, it is simply not permitted under North Carolina law.

Accordingly, the Application must be denied.

## CONCLUSIONS

The Applicant's master metering plan does not fall within a specific statutory exemption in subsection (a) of the Master Meter Statute, such as meeting conservation criteria or being a nursing home or home for the elderly. The Applicant's master metering plan also does not fall within subsection (b)(i) of the Master Meter Statute in that Applicant's master metering plan does not meet the requirements for Commission approval of an electric reseller certificate under subsections (h) through (j) of N.C.G.S. § 62-110. The Applicant could offer tenants a lease that includes the cost of electric service under N.C.G.S. §143-151.42(b)(ii), but this solution is hampered by the fact that the Applicant has already purchased submeters.

While the Commission applauds the Applicant's efforts to provide low-income housing, the Commission finds that Applicant does not meet the criteria to be an electric reseller when the tenants will not be served through individual utility-owned meters or when the Applicant provides service through a master meter but charges tenants for electricity based on their usage rather than as a fixed charged collected as part of their rent. Nor does the Applicant qualify for an exception to the Master Meter Statute when it has not shown that the design of certain systems will conserve energy, that the project will serve as a nursing home or home for the elderly, nor that it qualifies under N.C.G.S. § 62-110(h). Regardless of the nobility of purpose, "the law is the law" *Honacher v. Everson* 2008 N.C. App. Lexis 253 at \*6 (Ct. App. Feb. 19, 2008) (unpublished) and the Commission cannot exceed the statutory authority given it by the Legislature. See, e.g., *State ex rel. Utilities*

*Commission et al. v. Thornburg et al.*, 84 N.C. App. 482, 490, 353 S.E. 2d 413, 418 (1987).

Accordingly, the Commission must deny the Applicant's Application. However, this denial is without prejudice to the Applicant's correcting the deficiencies or there being a change in the law. The Applicant's intent to provide housing to low-income residents is commendable and the Commission encourages the Applicant to return with an application that conforms with the law.

IT IS, THEREFORE, ORDERED as follows:

1. That the Application for a certificate of authority to resell electric service under N.C.G.S. § 62-110(h) and for an exemption from the master metering prohibition of N.C.G.S. § 143-151.42(a) is denied.
2. That this denial is without prejudice to the Applicant to seek authority should the facts, Applicant's proposals, or law change.

ISSUED BY ORDER OF THE COMMISSION.

This the \_\_\_\_ day of \_\_\_\_\_, 2024.

NORTH CAROLINA UTILITIES COMMISSION

A. Shonta Dunston, Chief Clerk

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing on all parties of record, the attorney of record of such party, or both in accordance with Commission Rule R1-39, by United States mail, postage prepaid, first class; by hand delivery; or by means of facsimile or electronic delivery upon agreement of the receiving party.

This the 16th day of January, 2024.

Electronically submitted  
/s/ William E. H. Creech