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**VIA ELECTRONIC FILING**

Hon. Kathleen H. Burgess  
Secretary to the Commission  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

**Re: Case 15-E-0249 – Petition of Community Counseling and Mediation to Submeter Electricity at 226 Linden Boulevard, Brooklyn, NY 11226, Located in the Territory of Consolidated Edison Company of New York, Inc.**

Dear Secretary Burgess:

On behalf of Quadlogic Controls Corporation (“Quadlogic”) and at the request of New York State Department of Public Service Staff (“DPS Staff”), please file in the above-referenced proceeding Quadlogic’s request, on behalf of Community Counseling and Mediation (“CCM” or the “Owner”), for a waiver, pursuant to 16 NYCRR § 96.2 (c), of the individual metering requirements established in Opinion 76-17 and 16 NYCRR Part 96.

The property located at 226 Linden Boulevard, Brooklyn, New York 11226 (“Ruby’s Place” or the “Building”) is a newly-constructed supportive housing facility that has 72 units. All units are rent regulated. Construction of the Building began in or around July 2013 and was completed in early December 2015. The units at Ruby’s Place are currently occupied.

The majority of the tenants at Ruby’s Place are chronically-homeless individuals with a diagnosed serious mental illness. Specifically, 60 units at Ruby’s Place are “program units,” which are reserved for tenants who are referred to CCM exclusively by the New York City Department of Homeless Services (“DHS”).<sup>1</sup> To become a program unit resident at Ruby’s Place, a potential tenant first has to be deemed eligible for Community Care Supportive Housing under the NY/NY I, II, or III (population A) Housing Agreement by the New York City Human Resources Administration (“HRA”). Then, if the potential tenant is deemed eligible, HRA will refer the potential tenant to DHS for a determination of whether the potential tenant qualifies as a chronically-homeless single adult with a diagnosed serious mental illness. If DHS makes such a

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<sup>1</sup> Of the remaining 12 units at Ruby’s Place, one is reserved for the Building Superintendent, and 11 are reserved for Low Income Tax-Credit tenants (“community tenants”). Community tenants can apply for residency at Ruby’s Place through a lottery system by submitting documentation establishing an annual income of less than \$36,300. Certain Low Income Tax-Credit community tenants will receive Section 8 subsidies as a result of their status as veterans.

determination, DHS will refer that person to CCM for placement at Ruby's Place as a program unit tenant.<sup>2</sup>

Most of the program units are under contract to receive either Project Based Vouchers from the United States Department of Housing and Urban Development ("HUD") or rental assistance from the City of New York Department of Housing Preservation and Development ("HPD"). Further, Ruby's Place is under contract with the New York City Department of Health & Mental Hygiene ("DHMH") to provide certain health and mental hygiene services to program tenants.

When a program tenant arrives at Ruby's Place, CCM will collaborate with the tenant to develop an individualized housing and support services plan that will be designed to encourage the tenant to maintain his or her housing at Ruby's Place and integrate the tenant into the broader community. All Building tenants will have access to a variety of supportive housing services, opportunities, and care, including: onsite case managers who will work closely with the tenants; mental health and substance abuse counseling and treatment provided by a clinical specialist; nutrition classes; weight management and physical activity classes, such as yoga; financial literacy classes; and crisis counseling. The Director and Assistant Director of Ruby's Place are both New York State licensed social workers.

CCM is dedicated to educating tenants of Ruby's Place on energy-conservation measures and to ensuring that Ruby's Place is an energy-efficient Building. To this end, CCM has installed the following energy-efficient features at the Building: all appliances are ENERGY STAR® rated; the Building is heated by high-efficiency hot water boilers that disperse heat to units via hydronic baseboards; all units have LED lighting; the Building's general common areas, including community room(s) and office areas, are connected to motion detectors; and, the Building is enrolled in Enterprise Green Communities, which mandates several additional energy-efficient measures.

Above and beyond these features, CCM purchased and had installed at the Building a Quadlogic MiniCloset-5N submetering system. This submetering system, which was completely installed by March 2016, enables CCM to monitor each unit's electrical usage and better educate tenants on energy-conservation measures. Ruby's Place has on-site case managers and will work directly with property management to meet tenants' individual needs for energy consumption based on tenants' monthly electric usage. However, Ruby's Place is designed for a certain tenant population for which a price signal from an individual meter is unlikely to produce a meaningful conservation response.

As a result, CCM does not intend to directly charge tenants for their monthly electric consumption. Instead, CCM will pay the Building's monthly mastermeters electric bill directly to the Building's utility provider. Notwithstanding the fact that tenants are not directly responsible for their own electric consumption, the energy-savings programs and green

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<sup>2</sup> Currently, all 60 program unit residents at Ruby's Place are on a fixed low income and receive supplemental income from either Supplemental Security Income or other public assistance.

technology employed at Ruby's Place, coupled with monitoring tenants' electric consumption through individual submeters and counseling tenants on their energy usage, ensure that energy conservation will be a top priority for tenants and staff.

DPS Staff has indicated that, because tenants will not pay for their electricity consumed, CCM must seek a waiver of the individual metering requirements under 16 NYCRR § 96.2 (c) even though each unit does have an individual submeter.<sup>3</sup>

In Opinion 76-17, the Commission indicated that the individual metering requirements and the prohibition against mastermetering could be waived.<sup>4</sup> Subsequent revisions to Part 96, specifically section 96.2 (c), now expressly permits electric service to be provided to "assisted living facilities" certified by the New York State Department of Health ("DOH") through mastermetering.<sup>5</sup> The Commission has clarified that it did not intend "to limit the definition of 'Assisted Living Facilities' to only facilities identified and certified by the New York State Department of Health."<sup>6</sup> Following that clarification, the Commission began granting waivers of the individual metering requirements to facilities not certified by DOH pursuant to section 96.2 (c).<sup>7</sup>

As demonstrated above, Ruby's Place meets the definition of an assisted living facility as set forth in 16 NYCRR § 96.1 (a), except that it is not certified by DOH. Further, Ruby's Place is similar to those facilities that the Commission has granted waivers of the individual metering requirements pursuant to section 96.2 (c).<sup>8</sup> Additionally, the living arrangements for the

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<sup>3</sup> Should the Public Service Commission (the "Commission") determine that the submetering system installed in the Building is sufficient to satisfy the individual metering requirement, CCM defers to the relief originally sought in the Revised Notice of Intent filed on August 19, 2015, seeking Commission approval to submeter electricity at the Building.

<sup>4</sup> See Case 26998, *Proceeding as to Rent Inclusion and Submetering*, Opinion 76-17 (Aug. 16, 1976), at 6.

<sup>5</sup> 16 NYCRR § 96.2 (c) ("Electric service is authorized to be established or continued to assisted living or senior living facilities through mater metering").

<sup>6</sup> See Case 12-E-0579, *Petition of Concern for Independent Living, Inc. for Waiver of the Individual Living Unit Metering Requirements at 3349 Webster Avenue, Bronx, New York, Located in the Territory of Consolidated Edison Company of New York, Inc.*, Order Granting Waiver Of The Individual Residential Living Unit Metering Requirements Established In Opinion 76-17 And Clarification Of The Definition Of Assisted Living Facilities In Public Service Law Section 96, Residential Electric Submetering (June 19, 2013), at 4.

<sup>7</sup> See *id.* (granting a waiver of the individual metering requirements for a building that provided housing to individuals with severe mental illness and a history of homelessness notwithstanding the fact that the building was not certified by DOH); Case 12-E-0543, *Petition of Hegeman Avenue Housing L.P. to Submeter Electricity at 39 Hegeman Avenue, Brooklyn, N.Y. 11212, Located in the Territory of Consolidated Edison Company of New York, Inc.*, Order Granting Waiver Of The Individual Residential Living Unit Metering Requirements Established In Opinion 76-17 And 16 NYCRR Part 96 (Jan. 14, 2014) (granting a waiver of individual metering requirements for a building that provided housing to chronically homeless and mentally ill tenants but was not certified by DOH); see also Case 11-E-0248, *Petition of Volunteers of America of Western New York, Inc. for a Waiver to Allow Master Metering at 322 Chenango Street, Binghamton, Located in the Territory of New York State Electric & Gas Corporation*, Order Granting Waiver Of The Individual Residential Living Unit Metering Requirements Established In Opinion 76-17 (March 22, 2012) (granting waiver of the individual meter requirement for a building that provided housing for chronically homeless individuals ranging from 20 to 60 years old, particularly those with substance abuse or mental illness).

<sup>8</sup> See *id.*

Building's tenants are distinguishable from the typical apartment complex where the Commission's policies underlying the prohibition of mastermetering otherwise require individual metering. Moreover, as demonstrated above, Ruby's Place is committed to energy conservation and has already installed a submetering system in the Building to assure that tenants are aware of their energy-consumption levels. In the event that the tenant population at Ruby's Place ever changes to that of a more typical apartment complex, the installed submeters would be available for individual metering.

For all of these reasons, Quadlogic, through CCM, respectfully requests a waiver of the individual meter requirement to mastermeter Ruby's Place.

If you have any questions about this letter, please contact me directly. Thank you for your continuing attention to this matter.

Respectfully submitted,

*/s/ John T. McManus*

John T. McManus

cc: Craig Carroll, DPS (*via electronic mail*)  
Martin Insogna, DPS (*via electronic mail*)  
Michael Wirth, Quadlogic (*via electronic mail*)