

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 13, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman  
Patricia L. Acampora  
James L. Larocca  
Gregg C. Sayre

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

(Issued and Effective June 19, 2013)

BY THE COMMISSION:

INTRODUCTION

On December 21, 2012, Concern For Independent Living, Inc. (Concern or Petitioner), filed a letter requesting that the Commission allow it to master meter a portion of its building currently under construction at 3349 Webster Avenue, Bronx, New York (the Facility). The Facility, when complete, will consist of 58 studio units for single adults with severe and persistent mental illness who are leaving state operated psychiatric centers or who are chronically homeless. It is for these units that the Petitioner seeks waiver of the individual metering requirements pursuant to Opinion 76-

17.<sup>1</sup> In addition, the Facility will include 57 one, two and three bedroom living units for low income individuals and families without special needs. These living units will be constructed with direct utility metering by Consolidated Edison Company of New York, Inc. (Con Edison) and these residents will be responsible for payment of their electricity usage.

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), notice of the petition seeking the waiver was published in the State Register on February 27, 2013. The comment period ended on April 15, 2013. No comments were received.

### BACKGROUND

The Petitioner describes the Facility as a two story 96,000 square foot building which will be used for residential purposes. Each of the 58 studio units that will be master metered will be under the jurisdiction of the New York State Division of Homes and Community Renewal (HCR). An agreement with HCR requires that the 58 studio units be rented exclusively to individuals with psychiatric disabilities earning 35% or less of the Area Median Income. The term of the regulatory agreement, which will be executed once the Facility is completed, will be for 50 years and any rent increases will be subject to HCR approval. The residents will pay 30% of their income towards their rent. Additional operating funds for the Facility and its residents with psychiatric disabilities will be provided pursuant to a contract between Concern and the New York State Office of Mental Health (OMH).<sup>2</sup>

The Facility will also include staff offices, a computer room, lounge area, laundry facilities, recreational areas and an exercise room. The purpose of the Facility is to provide permanent housing and supportive services for the severely and persistently mentally ill residents of the 58 studio units while assisting them to become and remain as

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<sup>1</sup> Case 26998, Proceeding as to Rent Inclusion and Submetering, Opinion No. 76-17 (issued August 16, 1976).

<sup>2</sup> OMH submitted a letter of support, dated December 18, 2012, for the Facility.

independent as possible. These support services will be funded, along with other operating expenses of the Facility, by OMH.

The Petitioner also provided information regarding the Facility's design, which will incorporate energy efficiency measures. Concern is participating in the New York State Energy Research and Development Authority's (NYSERDA) Multifamily Performance Program and has employed contractors to execute energy efficiency measures, such as the installation of EnergyStar® lighting and appliances throughout, a planted roof, and high efficiency natural gas boilers. Concern will also install roof top solar panels to provide up to 87 kW for the Facility's common areas and the studio units. Additionally, the Facility has been designed to incorporate a system that will use a key-card or infra-red detection mechanism to regulate electric usage in the units when the resident is not home. The Petitioner claims that both systems will further reduce energy consumption and costs.

The Petitioner indicates that, in view of the character and use of the 58 studio units at the Facility and the fact that it is designed to provide special services to those with severe mental illnesses, waiver of our individual living unit metering requirements is warranted. Furthermore, the Petitioner indicates that while there is no intention of selling the Facility in the future inasmuch as it is subject to long-term regulatory agreements, the Facility is being constructed so that the electric service to the 58 studio units could be converted easily from master metering to either direct utility metering or submetering if necessary.<sup>3</sup>

The Petitioner further states that master metering of the Facility will allow for savings in utility costs as the multiple meter charges for the studio units will be avoided. In addition, the implementation of a master metered service will allow the

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<sup>3</sup> By letter dated December 14, 2012, Concern's engineering firm indicated that all electric circuits from each of the residential units are run separately to the common electric panels. In the event that the Facility is put to a different use, each of the studio units can be routed to a new electric panel and utility meter or submeter for each unit, which will be located in a closet in a storage room.

Facility to be in compliance with OMH requirements that Concern provide all of the services discussed above, including utilities, to the mentally ill tenants on a rent-included basis.

### DISCUSSION AND CONCLUSION

In Opinion 76-17, we indicated that our individual metering requirement and the prohibition against master metering could be waived under certain conditions.<sup>4</sup> Such waivers have been sought and granted for senior living facilities, which serve the particular needs of senior citizens, and in which most or all services, including utility services, are provided under a single fee.<sup>5</sup>

Additionally, our recently adopted revisions to 16 NYCRR §96, Residential Electric Submetering, §96.1(a) defines Assisted Living Facilities as “multi-unit residential premises, identified as assisted living facilities and certified by the New York State Department of Health as such, which provide congregate residential housing with supportive services, including on-site monitoring, and personal care services and/or home care services in a homelike setting.”<sup>6</sup> The purpose of this definition was to avoid the necessity of assisted living facilities from having to seek waivers of our individual metering requirement. Concern’s petition highlights the need to expand this automatic waiver. It was not our intent to limit the definition of “Assisted Living Facilities” to only facilities identified and certified by the New York State Department of Health. Other jurisdictional governmental agencies, such as OMH, have programs that provide financial

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<sup>4</sup> Opinion 76-17, at 6.

<sup>5</sup> The Commission’s policy and electric utility tariffs exempt qualifying senior living facilities from our individual metering requirements. Case 99-E-1797, Rent Inclusion and Master Metering for Senior Citizen Housing Facilities, Order Modifying Opinion 76-17 and Establishing Criteria for Classifying Senior Living Facilities (issued March 28, 2000), at 2.

<sup>6</sup> Case 11-M-0710, In the Matter of Reviewing and Amending the Electric Submetering Regulations, Memorandum and Resolution Adopting Residential Submetering Regulations (issued and effective December 18, 2012).

support in similar housing situations as DOH for specific populations that require compliance with certain regulatory policies. These policies include mandates that specific services, including utilities, be available on a rent-included basis.

Therefore, the particular facts presented by Concern indicate that it should qualify as a Assisted Living Facility within the meaning of 16 NYCRR §96.1(a). The installation of individual meters for the 58 studio apartments to be occupied by individuals with severe mental illness would not advance the goals which underlie our policy that new individual living units in multi-family buildings be individually metered.<sup>7</sup> As described by Concern, the studio units in the Facility are designed for use by a special population for which a price signal from an individual meter is unlikely to produce a meaningful conservation response.

Therefore, in accordance with PSL §96.2(c), the Facility as described by Concern and future facilities regulated by OMH with similar characteristics should be treated as Assisted Living Facilities within the meaning of 16 NYCRR §96.1(a). We therefore authorize that electric service be established or continued through master metering.

Our decision today is based on the characteristics and programmatic requirements associated with serving a specific OMH or similar population in assisted living situations, which is in the public interest. This exemption, pursuant to PSL §96.2(c), shall terminate if the studio units of the Facility are put to a different use.

The Commission orders:

1. As described in the body of this Order, the 58 studio units at 3349 Webster Avenue, Bronx, New York, are defined as an assisted living facility and electric service is authorized to be established or continued through master metering.

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<sup>7</sup> Opinion 76-17, at 2.

2. This exemption will no longer apply should the studio units of the Facility discontinue the provision of living services for single individuals with mental illness at 3349 Webster Avenue, Bronx, New York.

3. The definition of Assisted Living Facilities in 16 NYCRR§96.1(a) is clarified to include facilities certified by other jurisdictional governmental agencies which have compliance requirements and provide financial support for congregate residential housing with supporting services.

4. This proceeding is closed.

By the Commission,

(SIGNED)

JEFFREY C. COHEN  
Acting Secretary