

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 13, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 15-E-0559 - Notice of Intent of Avalon Willoughby West, LLC
to Submeter Electricity at 100 Willoughby
Street and 214 Duffield Street, Brooklyn,
Located in the Territory of Consolidated Edison
Company of New York, Inc.

ORDER AUTHORIZING SUBMETERING

(Issued and Effective November 7, 2016)

BY THE COMMISSION:

INTRODUCTION

By Notice of Intent filed September 21, 2015, Avalon Willoughby West, LLC (Owner), requested authorization to submeter electricity at 100 Willoughby Street and 214 Duffield Street, Brooklyn, New York. By this Order, the Commission approves the Owner's request for authority to submeter electricity.

NOTICE OF INTENT TO SUBMETER

Construction of the two new rental buildings began on August 26, 2013, and is expected to be completed in January 2017. All 500 units located at 100 Willoughby Street and 326 units located at 214 Duffield Street have been or will be rented at fair market value. The Owner states that the building is

master-metered by Consolidated Edison Company of New York, Inc. (Con Edison) and that submetering equipment has been installed in the building. The residential units do not have electric heat.¹

The Owner provided the following information, which is required by 16 NYCRR §96.5 as a condition to submeter: a description of the type of submetering system to be installed (§96.5(a)); a description of the methods to be used to calculate bills for individual residents when submetering is implemented, including the methods to be used to determine that the submetered bills, when rendered, will comply with the rate cap, as set forth in the regulations (§96.5(b)); a detailed plan for complying with the provisions of the Home Energy Fair Practices Act (HEFPA) (§96.5(c)); a completed "Submeterer Identification Form" (§96.5(d)); a copy of an lease rider consistent with 16 NYCRR §96.5(f); proof of service that the Notice of Intent to Submeter was sent to Con Edison (§96.5(g)); documentation sufficient to establish that the refrigerators in all rental dwelling units are no more than ten years old or meet the most recently adopted federal energy efficiency standards for such appliances (§96.5(h)); a description of the electric energy efficiency measures that have been or will be installed (§96.5(i)); and a description of the information and education programs that will be provided to residents on how to reduce electric usage (§96.5(j)).²

With regard to 16 NYCRR §96.5(a), which requires a description of the type of submetering equipment that will be used, the Owner states that the Quadlogic MC-5 meter has been

¹ The building is heated by hot water packaged terminal air conditioning/heat pump units.

² The information described in 16 NYCRR §§96.5(e), (k), (l), and (m) is not applicable to this submetering application.

installed in the building. The Quadlogic MC-5 meter is not Commission approved; however, the Owner states that installation of the system commenced prior to October 1, 2014, when use of Commission-approved meters was not required.

In a response to a discovery request from Department of Public Service Staff (Staff), dated April 28, 2016, Quadlogic, on behalf of the Owner, provided copies of purchase orders, a sales order and shipping receipt documentation to demonstrate that meter installation began prior to October 1, 2014. The documentation shows that a purchase order for the meters was issued by the building's electrical contractor, S.J. Electric, Inc. (S.J. Electric), on February 19, 2014. On February 21, 2014, Quadlogic issued a sales order to confirm this purchase by S.J. Electric. At the request of S.J. Electric, Quadlogic released the order which was then shipped to All-City Switchboard where the meters were installed in custom-made panels. This occurred in two shipments: the first on July 31, 2014, and the second on August 29, 2014. Quadlogic explains that All-City Electric installed the meters into custom-made panels and, thereafter, S.J. Electric installed the panels into the building. Based on this information, Quadlogic states that installation began no later than August 2014.

When a Notice of Intent or Petition to Submeter is filed on or after January 1, 2014, and not approved by Commission order prior to January 1, 2016, 16 NYCRR §96.6(b) provides that such authorization is also subject to the condition that each submetered residential unit in a multi-unit dwelling must be provided with a submeter or related equipment that allows for the termination of submetered electric service to that unit. The Owner states that the Quadlogic MC-5 submetering system allows for the termination of submetered

electric service to a particular unit consistent with the requirements of HEFPA and 16 NYCRR §96.6(b).

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on June 1, 2016 [SAPA No. 15-E-0559SP1]. The time for submission of comments pursuant to the Notice expired on July 18, 2016. No comments were received.

DISCUSSION AND CONCLUSION

The Notice of Intent to Submeter Electricity at 100 Willoughby Street and 214 Duffield Street, Brooklyn, New York complies with 16 NYCRR §96.5. Pursuant to 16 NYCRR §96.3(a)(3), the provision of a complete Notice of Intent to Submeter creates a rebuttable presumption that such metering is in the public interest and is consistent with the provision of safe and adequate service to residents and, therefore, meets the Commission's requirements for submetering of a new residential building. Except for the type of meter used, which is discussed below, no information in the record refutes this rebuttable presumption.

16 NYCRR §96.7(a)(1) provides that all submetering products and ancillary equipment must comply with the provisions of 16 NYCRR Parts 92 and 93, including that such devices be Commission approved. Prior to October 1, 2014, the requirements

of 16 NYCRR §96.7(a)(1) did not apply.³ The Quadlogic MC-5 submeters are not approved meters; however, the Owner contends that installation of the submeters commenced prior to October 1, 2014.

The language of the regulation contemplates a clear division between meters that are installed before October 1, 2014, and those installed thereafter; however, installations may commence prior to October 1, 2014, but not be completed by that date, despite the owner's best efforts. Accordingly, such matters are considered on a case-by-case basis.

In this case, Quadlogic provided a bill of lading demonstrating that the Quadlogic MC-5 meters were shipped to the electrician in two shipments in July and August 2014, at which time the meters were installed in custom-made panels, which were subsequently installed in the building. The evidence provided suggests that installation began no later than August 2014, which provided ample time for the installation of the meters to have been completed by October 1, 2014. Based on the facts specific to this case, it is reasonable to consider the metering system as having been installed prior to October 1, 2014. Accordingly, the requirement that the meters be Commission approved does not apply in this instance.

16 NYCRR Part 96 requires that building owners must annually test a statistically valid sample of in-service submeters in order to maintain a high degree of metering performance. The tests are standardized and must be performed

³ Case 11-M-0710, In the Matter of Reviewing and Amending the Electric Submetering Regulations, 16 NYCRR Part 96, Order Granting, In Part, the Joint Petition for a Temporary Waiver of 16 NYCRR §96.7(a)(1) and the Joint Petition for a Temporary Waiver of 16 NYCRR §96.7(b) (issued November 20, 2013). This order provided a temporary waiver of 16 NYCRR §96.7(a)(1) for a period from January 1, 2014 until October 1, 2014.

as specified in the Department of Public Service Part 92 Operating Manual (Part 92 Operating Manual). The Part 92 Operating Manual generally allows meter service providers to select from among four different test methods: periodic, selective, variable, and statistical.

In this case, the Commission takes notice that two years have passed since the requirement that submeters be Commission-approved models went into effect. In order to ensure that the Owner's meters function accurately, the Commission directs that the periodic testing method be used, and that all meters installed in the Owner's building be tested at least once every eight years. The Owner may petition for relief from this requirement, following completion of the first eight-year cycle of testing. A meter test plan in accordance with periodic testing procedures and standards, as outlined in the Part 92 Operating Manual, shall be filed under Case 11-M-0710. The Owner shall consult with Staff regarding the contents of its meter test plan before submitting the plan to the Secretary.

With the conditions described above, authorization to submeter electricity is granted. Any changes to the HEFPA Plan or the "Submeterer Identification Form" shall be filed with the Secretary under Case 11-M-0710 in accordance with 16 NYCRR §96.6(i).⁴ In addition, pursuant to 16 NYCRR §96.3(c)(3)(i), the Owner must provide notice to prospective residents that the building is submetered in its lease agreement.

⁴ A management or ownership change would not affect this approval.

The Commission orders:

1. Avalon Willoughby West, LLC is authorized to submeter electricity at 100 Willoughby Street and 214 Duffield Street, Brooklyn, New York, subject to the conditions in the body of this Order.

2. Avalon Willoughby West, LLC is directed to notify prospective residents individually through its lease agreement, or through other individual notice, of the consumer protections afforded the residents by HEFPA, and that the Owner shall provide such consumer protections, as required by 16 NYCRR §96.6(e).

3. Avalon Willoughby West, LLC is directed to provide not less than two months' notice to current residents individually of the date upon which submetering will commence, as required by 16 NYCRR §96.3(c)(3), which shall not be less than two months from the date of this Order.

4. Avalon Willoughby West, LLC is directed to file, in Case 11-M-0710, a meter test plan in accordance with periodic testing procedures and standards as outlined in the Part 92 Operating Manual and the body of this Order, within six months of the date of this Order.

5. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

6. This proceeding is closed pending compliance with the above Ordering Clauses.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary