

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 20, 2017

COMMISSIONERS PRESENT:

Gregg C. Sayre, Interim Chairman
Diane X. Burman

CASE 16-E-0399 - Notice of Intent of 325 Kent LLC c/o Two Trees Management Co., LLC to Submeter Electricity at 325 Kent Ave, Brooklyn, New York, Located in the Territory of Consolidated Edison Company of New York, Inc.

ORDER AUTHORIZING SUBMETERING

(Issued and Effective April 27, 2017)

BY THE COMMISSION:

INTRODUCTION

By amended Notice of Intent, filed October 6, 2016, 325 Kent LLC c/o Two Trees Management Co., LLC (Owner) requests authorization to submeter electricity at 325 Kent Avenue, Brooklyn, New York, and a waiver of the energy audit requirement of 16 NYCRR §96.5(k)(3), respectively. By this Order, the Commission approves the Owner's request to submeter electricity and waives the energy audit and energy efficiency plan requirements of 16 NYCRR §96.5(k)(3).

NOTICE OF INTENT TO SUBMETER

This new residential rental building, consisting of 522 units, is under construction and not yet occupied. Of the 522 units, 416 units will be rented at fair market value, 104 will be offered to residents earning 50% or below the area

median income and the remaining 2 units will be reserved for building staff. The affordable units are under the jurisdiction of New York City Housing Finance Agency (HFA) and New York State Division of Housing and Community Renewal (DHCR). The Owner states that the building is master-metered by Consolidated Edison Company of New York, Inc. (Con Edison), and submetering equipment will be installed in each unit prior to billing residents. 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 electricity: 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 a 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 The Notice of Intent states that the

¹ The building will be heated by gas-fired furnaces.

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

Commission-approved SATEC, Inc. BFM136 (SATEC BFM136) submetering system will be installed in the building and that this submetering system allows for the termination of submetered electric service to a particular unit consistent with the requirements of HEFPA and 16 NYCRR Part 96.

The Owner requests a waiver of 16 NYCRR §96.5(k)(3), which requires proof that an energy audit has been conducted by a certified energy consultant for any building where 20 percent or more of the residents receive income-based housing. The Owner states that a waiver is warranted because the building is new construction and subject to the New York City Energy Conservation Construction Code (ECCC), which sets strict energy efficiency standards for new construction and alterations to existing buildings. As such, the Owner asserts that there is no need for an energy audit.

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 November 2, 2016 [SAPA No. 16-E-0399SP1]. The time for submission of comments pursuant to the Notice expired on December 19, 2016. No comments were received.

DISCUSSION AND CONCLUSION

The Notice of Intent to Submeter Electricity at 325 Kent Avenue, Brooklyn, New York complies with 16 NYCRR §96.5, except for §96.5(k)(3), which is addressed below. 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. No information in the record refutes this rebuttable presumption.

The Commission grants the Owner's request for a waiver of the energy audit and energy efficiency plan requirements in 16 NYCRR §96.5(k)(3). The waiver is appropriate because, since adoption of the current submetering regulations, New York State has updated, effective January 1, 2015, provisions of the ECCC which are applicable to commercial buildings,³ as defined under the ECCC.⁴ The updated ECCC provides for strict energy conservation requirements for new and renovated buildings, which address the design and construction of energy efficient building envelopes, mechanical, lighting, and power systems. As the building is newly constructed, and therefore must comply with the updated ECCC, the Commission waives the energy audit and energy efficiency plan requirements of 16 NYCRR §96.5(k)(3).

Accordingly, authorization to submeter electricity is granted. 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 rider. 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).⁵

³ This building falls under the definition of a commercial building and therefore must comply with the provisions provided for commercial buildings (19 NYCRR §1240.2).

⁴ On October 3, 2016, New York State adopted an update to the residential and commercial ECCC which further addresses the design and construction of energy-efficient building envelopes and the installation of energy-efficient mechanical, lighting and power systems through requirements emphasizing performance.

⁵ A management or ownership change would not affect this approval.

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. Therefore, the Owner shall provide a meter test plan detailing its annual testing program, in accordance with the testing procedures and standards outlined in 16 NYCRR Part 92. The meter test plan shall be filed under Case 11-M-0710.

The Commission orders:

1. 325 Kent LLC c/o Two Trees Management Co., LLC is authorized to submeter electricity at 325 Kent Avenue, Brooklyn, New York, subject to the conditions in the body of this Order.

2. The requirements of 16 NYCRR §96.5(k)(3), as to the energy audit and energy efficiency plan requirements applicable to the Notice of Intent herein, are waived.

3. 325 Kent LLC c/o Two Trees Management Co., LLC is directed to notify prospective residents individually through its lease rider that they will be billed for electric submetered service, as required by 16 NYCRR §96.3(c)(3)(i).

4. 325 Kent LLC c/o Two Trees Management Co., LLC is directed to file a meter test plan, in Case 11-M-0710, as required by 16 NYCRR Part 92, 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