



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PETITION OF PS&S)
ARCHITECTURE AND ENGINEERING, PC FOR A) DECISION AND ORDER
WAIVER OF THE PUBLIC SERVICE ELECTRIC AND)
GAS (PSE&G) TARIFF FOR INDIVIDUAL METERS) DOCKET NO. GW23080558

Parties of Record:

Kenneth J. Sheehan, Esq., Genova Burns on behalf of Petitioners, WinnCompanies and PS&S Architecture & Engineering, PC
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Danielle Lopez, Esq., on behalf of Public Service Electric and Gas Company

BY THE BOARD:

BACKGROUND

On August 7, 2023, PS&S Architecture and Engineering, PC (“PS&S”) and WinnCompanies (collectively, “Petitioners”) filed a petition with the New Jersey Board of Public Utilities (“Board”) seeking waiver of a provision contained within Public Service Electric and Gas Company’s (“PSE&G” or “Public Service”) gas tariff requiring individual gas meters in residential buildings (“Petition”).¹

By the Petition, the Petitioners explained that they are currently developing a new four (4)-story residential building at 365 Terhune Road, Princeton, New Jersey 08540, named “The Alice,” which will provide 125 units of mixed-income rental housing with numerous public amenities (“Project”).² WinnCompanies is the owner of the Project. The Project received approval from the New Jersey Department of Community Affairs (“DCA”) and local officials. The Project is funded, in part, with governmental financing from the Municipality of Princeton. The Petitioners noted that they provided notice to proceed with construction of the Project on February 21, 2023, and the Project is currently under construction.

¹ Counsel for the Petitioners clarified via emails dated October 17, 2023 and November 9, 2023 that the Petition had been filed on behalf of both Petitioners and that counsel represented both Petitioners.

² Mixed-income housing includes both market rate and restricted affordable rental housing units.

According to the Petition, The Alice will use natural gas for: 1) the central domestic hot water heating system; 2) a single gas cooktop in each of the residential units; and 3) a handful of small gas-fired appliances located in shared amenity spaces.³ Additionally, the Petitioners explained that WinnCompanies committed to pay for gas consumption in the building, including cooking appliances located in the residential units, without a chargeback to the tenants, and would provide necessary documentation to certify this declaration.

The Petitioners noted that they designed The Alice to use a single common natural gas meter, with all gas loads fed by gas piping from the meter to the individual equipment and appliances that require natural gas. All gas piping will be run internally to the building with no underground piping downstream of the common natural gas meter.

The Petitioners further noted that, on August 1, 2023, PSE&G informed them that individual natural gas meters are required for each individual residential unit under the provisions of the applicable PSE&G tariff ("Tariff"), specifically Section 8.3.1 of the Tariff's Standard Terms and Conditions.

According to the Petitioners, they require a waiver of the Tariff because the separation of gas service within The Alice solely for cooking in each residential unit is impractical and presents an unnecessary hardship. The Petitioners asserted and demonstrated in plans submitted to, and approved by, the DCA and local authorities, that the gas piping scope, both inside and outside the building, would increase greatly if individual gas meters for each rental unit were required instead of only one (1) natural gas meter for the entire building. The Petitioners further identified that the overall site plan would need to be rearranged significantly to provide adequate space to house the 126 individual gas meters, with one (1) per unit and one (1) for common area equipment.

By Order dated November 17, 2023, the Board retained this matter for hearing and designated President Guhl-Sadovy as the presiding commissioner with authority to rule on all motions arising during the pendency of the proceeding and to modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.⁴ Additionally, by the November 2023 Order, the Board granted a Motion to Intervene filed in this matter by PSE&G.

³ Electricity will be used for 1) clothes dryers in the individual dwelling units and 2) the building's heating, ventilation, and air conditioning equipment. Additionally, the Petitioners proposed that the emergency generator for the building be fueled by diesel.

⁴ In re the Petition of PS&S Architecture and Engineering, PC for a Waiver of the Public Service Electric and Gas (PSE&G) Tariff for Individual Meters, BPU Docket No. GW23080558, Order dated November 17, 2023 ("November 2023 Order").

Following a review of the Petition, and conducting discovery, Board Staff (“Staff”), the New Jersey Division of Rate Counsel (“Rate Counsel”), and the Petitioners (collectively, “Parties”) engaged in discussions in this matter. Subsequently, the Petitioners supplemented the Petition and provided a list of the following commitments and guarantees (“Commitments”):

1. Petitioners will replace the proposed diesel generator with a natural gas generator, at the sole cost of the Petitioners, and subject to permitting, compliance, and operation in accordance with the New Jersey Department of Environmental Protection’s Air Quality Permit requirements as set forth in the General Permit (005B) for Emergency Generator(s) Burning Gaseous Fuels. Permitting and operation will be at the sole responsibility of the Petitioners or the Petitioners’ designee.
2. Petitioners, as customer of record, will pay the cost of the gas service in the building.
3. Petitioners will provide to new tenants notice in the welcome package that they are not customers of PSE&G for their natural gas service and in the event of any question or issue, including in the event of the odor of natural gas, the tenant can call the management or the 24-hour emergency maintenance service hotline or 911. Maintenance will arrive on site within 30 minutes to assess the situation and will make any necessary calls, including to a 24-hour emergency plumber or 911, to help rectify the situation. The 24-hour emergency maintenance service hotline operator will also advise the tenant to call 911 directly for any suspected gas leaks.
4. Petitioners will provide notice in the Tenant Handbook that they are not customers of PSE&G for their natural gas service and in the event of any question or issue, including in the event of the odor of natural gas, the tenant call 911 and/or PSE&G, the management, or the 24-hour on-site maintenance service to respond to any and all concerns.
5. Petitioners agree that they will ensure that a representative of the maintenance service will be available for PSE&G in the event of an emergency or repair per the WinnResidential Emergency Action Plan 24-7 and will provide access to common spaces or individual units if necessary. Maintenance will arrive on site within 30 minutes of notification and provide necessary access and assistance to PSE&G or other emergency services.
6. Petitioners will construct and maintain the building consistent with the description provided in the proceeding.
7. Petitioners will notify the Board and all parties if they anticipate any material changes in the building’s design or function as it relates to natural gas use.
8. Petitioners acknowledge that the Board’s existing prohibition on sub-metering remains in full force and is not waived by or through this action.
9. Petitioners agree that the Board Decision applies only to this particular matter and does not operate to authorize any other waiver.
10. Petitioners understand and agree and that neither they nor any subsequent owner will be permitted to install or operate any meter, measuring device or sub-meter designed to measure gas service used by individual tenants or otherwise allocate gas usage to individual apartments.

11. Petitioners understand and agree that any Order approving the requested waiver shall become null and void and of no effect and any gas service permitted subject to such Order shall be terminated if any sub-metering or alternative measurement device is installed.
12. Petitioners agree that any Order would become null and void and of no effect and any gas service permitted hereto shall be terminated if Petitioners or any subsequent owner attaches any appliances other than cooktop gas units in the individual apartments as described in the Petition.

DISCUSSION AND FINDINGS

B.P.U.N.J. No. 16 Gas, Original Sheet No. 22, Standard Terms and Conditions No. 8.3.1 “General” (“Section 8.3.1”) provides that “[t]he service and supply of gas by Public Service for the use of owners, landlords, tenants, or occupants of residential buildings or premises will be furnished to them as customers of Public Service through Public Service individual meters . . .” and explicitly prohibits sub-metering of residential gas service. Consistent with the Tariff, prior orders of the Board reflect general prohibition of sub-metering.⁵ In this case, the Petitioners seek a waiver of Section 8.3.1’s requirement that the Petitioner install individual meters to each unit.

The Board has authority over utility tariffs pursuant to its authority under N.J.S.A. 48:2-13. The Board’s rules, and, by extension, utility tariffs subject to modification under the Board rules, effectuate Board policy to provide for a safe and reliable utility system.⁶ Each utility must operate in accordance with its tariff at all times, “unless specifically authorized in writing by the Board to do otherwise.”⁷ Pursuant to N.J.A.C. 14:1-1.2, the Board may relax or waive its rules for good cause shown.

Here, the Petitioners noted that altering the Project’s design mid-construction to install individual meters for “the sole purpose of capturing gas consumed by in-unit cooktops” is impractical and would result in significant hardship to the Petitioners by burdening the Project’s design, construction, timely completion, and operations. Further, the Petitioners explained that they will bear the cost of gas service rather than the residents of The Alice, thus obviating the need to alter the Project’s design to accommodate individual, per-unit meters. The Petitioners sought a waiver in relation to Section 8.3.1 for these reasons.

The circumstances of this case create a unique condition wherein adverse additional costs are projected to arise for both the Petitioners and tenants in the event the Petitioners are required to modify the planned gas service. Absent a waiver of Section 8.3.1, the Petitioners must redesign the Project and significantly alter construction already underway to ensure compliance with PSE&G’s Tariff. Additionally, the Petitioners have shown that pursuing alternative solutions, like installing electric appliances rather than gas, would similarly require significant alteration to the Project and result in significant undue hardship by delaying the Project and increasing its costs, potentially rendering the Project’s completion infeasible.

⁵ See In re Board’s Investigation Into the Check Metering of Gas Service, BPU Docket No. GX85090901 (Order dated September 5, 1986); In re Petition of Marine View Plaza Apartments for a Declaratory Ruling Permitting Check-Metering, BPU Docket No. E099040252, Order Denying Motion (Order dated March 30, 2001).

⁶ See e.g., N.J.A.C. 14:1-5.11 and 5.12

⁷ N.J.A.C. 14:3-1.3.

As such, having carefully reviewed the record in this matter, including the Petition and the Commitments, the Board **HEREBY FINDS** that, consistent with the statutory authority of the Board, and pursuant to N.J.A.C. 14:1-1.2(b), good causing having been shown, the waiver of Section 8.3.1 is appropriate. Consequently, the Board **HEREBY APPROVES** the Petitioners' request for a waiver of Section 8.3.1. Further, the Board **HEREBY ORDERS** that Section 8.3.1 be waived with respect to the Project subject to the following conditions:

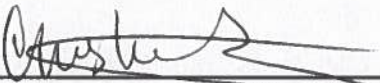
1. The Petitioners shall replace the proposed on-site diesel generator with a natural gas generator, at the sole cost of the Petitioners, and subject to permitting, compliance, and operation in accordance with the New Jersey Department of Environmental Protection's Air Quality Permit requirements as set forth in "General Permit (005B) for Emergency Generator(s) Burning Gaseous Fuels." Permitting and operation shall be at the sole responsibility of the Petitioners or the Petitioners' designee;
2. The Petitioners, as customer of record, shall pay the full cost of the gas service provided to The Alice;
3. The Petitioners will provide notice to new tenants, in the welcome package, that tenants of The Alice are not PSE&G customers for their natural gas service and, in the event of any question or issue including in the event of the odor of natural gas, tenants may call management, the 24-hour emergency maintenance service hotline, or 911. Maintenance shall arrive on-site within 30 minutes to assess the situation and shall make any necessary calls, including to a 24-hour emergency plumber or 911, to help rectify the situation. The 24-hour emergency maintenance service hotline operator shall also advise the tenant to call 911 directly for any suspected gas leaks;
4. The Petitioners shall provide notice to tenants of The Alice, in the Tenant Handbook, that tenants of The Alice are not PSE&G customers with respect to their natural gas service and in the event of any question or issue, including in the event of the odor of natural gas, the tenant call 911 and/or PSE&G, the management, or the 24-hour on-site maintenance service to respond to any and all concerns;
5. The Petitioners agree that they will ensure that a representative of the maintenance service will be available for PSE&G in the event of an emergency or repair per the WinnResidential Emergency Action Plan 24-7 and will provide access to common spaces or individual units if necessary. Maintenance shall arrive on site within 30 minutes of notification and provide necessary access and assistance to PSE&G or other emergency services;
6. The Petitioners shall construct and maintain The Alice consistent with the description provided in this proceeding;
7. The Petitioners shall notify the Board and all parties to this proceeding if they anticipate any material changes in the Project's design or function as it relates to natural gas use;
8. The Petitioners acknowledge that the Board's existing prohibition on sub-metering remains in full force and is not waived by or through this action;

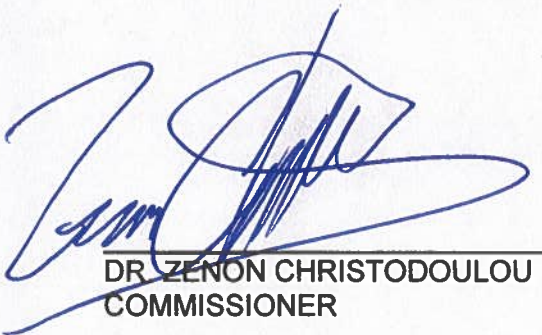
9. The Petitioners agree that this Decision applies only to this particular matter and does not operate to authorize any other waiver pertaining to this matter or to apply any waiver to any other matter;
10. The Petitioners understand and agree that neither they nor any subsequent owner will be permitted to install or operate any meter, measuring device, or sub-meter designed to measure gas service used by individual tenants or otherwise allocate gas usage to individual apartments;
11. The Petitioners understand and agree that any Order approving the requested waiver shall become null and void and of no effect and any gas service permitted subject to such Order shall be terminated if any sub-metering or alternative measurement device is installed, and;
12. The Petitioners agree that any Order would become null and void and of no effect and any gas service permitted hereto shall be terminated if the Petitioners or any subsequent owner attaches any appliances other than cooktop gas units in the individual apartments as described in the Petition.

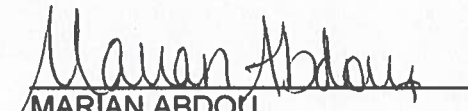
This Order shall be effective on May 7, 2024.

DATED: April 30, 2024

BOARD OF PUBLIC UTILITIES
BY:

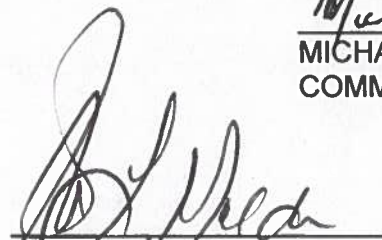

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MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

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SHERRI L. GOLDEN
SECRETARY

IN THE MATTER OF A PETITION OF PS&S ARCHITECTURE AND ENGINEERING, PC FOR A WAIVER OF THE
PUBLIC SERVICE ELECTRIC AND GAS (PSE&G) TARIFF FOR INDIVIDUAL METERS

DOCKET NO. GW23080558

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