



Public Service Commission of Wisconsin

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Public Service Commission of Wisconsin
RECEIVED: 7/11/2023 12:20:04 PM

July 11, 2023

To the Parties:

Re: Request of Energy Concepts LLC, for a Waiver of Wis. Admin. Code § PSC 113.0803(1) Regarding Individual Electric Meters 4220-EI-109

Comments Due:

Tuesday, July 25, 2023 - 1:30 p.m.

This docket uses the Electronic Records Filing system (ERF).

Address Comments To:

Public Service Commission

P.O. Box 7854

Madison, WI 53707-7854

The Commission memorandum concerning Energy Concepts LLC's request for a waiver of Wis. Admin. Code § PSC 113.0803(1) regarding individual electric meters being provided to the parties for comment. Comments must be received by 1:30 p.m. on Tuesday, July 25, 2023. Party comments must be filed using the Commission's ERF system. The ERF system can be accessed through the Public Service Commission's web site at <http://psc.wi.gov>. Members of the public may file comments using the ERF system or may file an original in person or by mail at the Public Service Commission, 4822 Madison Yards Way, P.O. Box 7854, Madison, WI 53707-7854.

Please direct questions about this docket or requests for additional accommodations for persons with a disability to the Commission's docket coordinator, Kayleigh Chiono at (608) 266-5739 or Kayleigh2.Chiono@wisconsin.gov.

Sincerely,

Joe Fontaine
Administrator
Division of Digital Access, Consumer and Environmental Affairs

JF:KC:kle DL:01954133

Attachment: Commission Memorandum

PUBLIC SERVICE COMMISSION OF WISCONSIN

Memorandum

July 11, 2023

FOR COMMISSION AGENDA

TO: The Commission

FROM: Joe Fontaine, Administrator
Tara Kiley, Deputy Administrator
Bradley Rose, Bureau Director
Kayleigh Chiono, Consumer Affairs Analyst
Division of Digital Access, Consumer and Environmental Affairs

RE: Request of Energy Concepts LLC, for a Temporary Waiver of 4220-EI-109
Wis. Admin. Code § PSC 113.0803(1) Regarding Individual
Electric Meters

Suggested Minute: The Commission determined Energy Concepts' application (is/is not) exempt from the individual metering requirements of Wis. Admin. Code § PSC 113.0803(1).

The Commission (granted under Wis. Admin. Code § PSC 113.0803(5)/granted under Wis. Admin. Code § PSC 113.0803(5) with conditions/granted under Wis. Admin. Code § PSC 113.01(2)/granted under Wis. Admin. Code § PSC 113.01(2) with conditions/denied) the request of Energy Concepts for a waiver of Wis. Admin. Code § PSC 113.0803(1) regarding individual electric metering for a newly constructed building.

Background

On March 8, 2023, Energy Concepts, LLC (Energy Concepts) filed a petition on behalf of Gerrard Companies requesting that the Commission grant a waiver of Wis. Admin. Code § PSC 113.0803(1) related to individual electric metering requirements for a newly constructed building. ([PSC REF#: 461477.](#)) The initial application indicated the request was temporary in nature, however, subsequent responses to data requests confirmed this request is intended to be for a permanent waiver of Wis. Admin. Code § PSC 113.0803(1). ([PSC REF#: 463381.](#))

The Commission issued a Notice of Investigation in this docket on April 6, 2023. ([PSC REF#: 463698](#).) The Notice made Northern States Power Company – Wisconsin (NSPW), as the utility for the requesting customer, a party. No other parties have requested to intervene. No hearing was required or held.

The Commission has jurisdiction under Wis. Stat. §§ 196.02, 196.03, 19.16, 196.37, 196.40, and Wis. Admin. Code ch. PSC 113 to establish reasonable electric metering rules, regulations, specifications and standards, and to grant or deny waivers of metering rules. Wisconsin Admin. Code § PSC 113.0803 provides the individual electric metering requirements for multi-dwelling unit residential buildings, mobile home parks, and commercial establishments. Wisconsin Admin. Code § PSC 113.0803(1) provides that “[e]ach dwelling in a multi-dwelling unit residential building and mobile home park constructed after March 1, 1980, shall have installed a separate electric meter for each such dwelling unit.”

The individual metering requirements are generally intended to promote energy conservation, ensure that each customer is billed for his or her own consumption only, and ensure that the utility is able to disconnect the electric service to an individual unit without affecting the service of other units at a property. Energy Concepts’ petition requests a waiver of the requirement that the utility install a separate electric meter for each separate tenant space at the Prairie Heights Residences located along River Prairie Drive in Eau Claire, Wisconsin.

The Commission has specific authority to grant waivers of the individual metering requirements pursuant to Wis. Admin. Code § PSC 113.0803(5), which provides:

For reasonable cause shown, the commission may grant waivers of this rule on a case-by-case basis. Applications for a waiver must be submitted to the commission in writing and set forth the facts or reasons applicant believes justify a waiver. In cases involving multi-dwelling unit residential buildings, the applicant must show that the electric equipment under tenant control is substantially more efficient than required by applicable codes and that the overall electric usage under tenant control is minimal. Example cases which

would not qualify for waiver are buildings which are electrically heated or buildings which have individual unit electric water heaters.

In cases in which applications for a waiver do not meet the above standard, the Commission also has the authority to grant a waiver due to unique, exceptional or unusual situations. Wisconsin Admin. Code § PSC 113.01(2) provides:

Nothing in this chapter of the Wisconsin Administrative Code shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances therein involved, the adoption of requirements as to individual utilities or services which shall be lesser, greater, other, or different than those provided in said rules.

The Commission has granted three permanent waivers of Wis. Admin. Code § PSC 113.0803(1) since 2017 and denied two requests for a permanent waiver.¹

Application

The Prairie Heights Residences is being developed by Gerrard Companies and will be managed by non-profit West Central Wisconsin Community Action Agency Inc. (West CAP)

¹ Final Decision, *Request of Wisconsin Public Service Corporation for a Waiver of Wis. Admin. Code § PSC 113.0803(3) Regarding Individual Electric Metering for a Renovated Building*, docket 6690-EI-112 (Wis. PSC Oct. 17, 2017) ([PSC REF#: 332355](#)) (granting waiver finding that the equipment under tenant control was substantially more efficient than required by code and overall electric usage under tenant control was minimal, that individual metering would not be required if the housing project were new construction under Wis. Admin. Code § PSC 113.0803(4)(c) because alternative renewable energy systems would be used in connection with central heating ventilating and air conditioning systems); Final Decision, *Request of Wisconsin Electric Power Company for a Waiver of Wis. Admin. Code § PSC 113.0803(3) Regarding Individual Metering for a Renovated Building*, docket 6630-EI-114 (Wis. PSC Nov. 1, 2019) ([PSC REF#: 378692](#)) (granting waiver finding individual metering would not be required under Wis. Admin. Code § PSC 113.0803(4) if the housing project applied for were new construction as residential care facilities are exempt from individual metering); Final Decision, *Request of Nicholas Balazs for a Waiver of Wis. Admin. Code § PSC 113.0803 Regarding Individual Electric Metering, for the Purpose of Installing a Photovoltaic Solar Array*, docket 3270-EI-102 (Wis. PSC Aug. 22, 2022) ([PSC REF#: 445750](#)) (finding exceptional and unusual circumstances justified a waiver); Final Decision, *Request of Wewerka Group, LLC for a Waiver of Wis. Admin. Code § PSC 113.0803(1) Regarding Individual Electric Meters*, docket 6690-EI-113, docket 6690-EI-113 (Wis. PSC Jan. 18, 2023) ([PSC REF#: 456765](#)) (denying requested waiver because the record did not demonstrate that the equipment under tenant control was substantially more efficient than required by applicable codes or that the overall electric usage under tenant control was minimal, and failing to demonstrate “exceptional or unusual circumstances”); Final Decision, *Request of Dominion Properties for a Waiver of Wis. Admin. Code § PSC 113.0803(2) Regarding Individual Electric Meters in a Commercial Building*, docket 6630-EI-117 (Wis. PSC June 2023) (denying requested waiver because the record did not demonstrate that the equipment under tenant control was substantially more efficient than required by applicable codes or that the overall electric usage under tenant control was minimal, and failing to demonstrate “exceptional or unusual circumstances”).

with utility service billed to Prairie Heights Residences, LLC. The development will consist of 60 apartment units and a 54-stall underground parking garage. The project is being developed under the Wisconsin Housing and Economic Development Authority (WHEDA) Section 42 low-income program. Thus, 85 percent of the households occupying the property will be at or below 60 percent of the county median income. Twelve units have been reserved for homeless and disabled veterans. Additionally, the development will include a community services facility that is open to the public as well as accessible by Prairie Heights Residences which will provide services such as financial literacy and counseling, access to public benefits, employment opportunities, and a food bank.

The development is planned to include three solar array systems – a 157 kilowatt (kW) fixed rooftop solar array, four decorative solar trees totaling 8 kW, and a 184 kW ground-mounted, seasonally adjustable solar array. Energy Concepts estimates these solar array systems will offset 20 percent of the development's annual energy needs. All utility services will be included in the tenants' rent and electricity will not be resold to tenants. Nonpayment of rent would result in an eviction process rather than service disconnection.

While the building will utilize a central air conditioning unit and furnace, each tenant will have control over the temperature of his or her own unit. Individual units will be heated using a centralized Variable Refrigerant Flow (VRF) heat pump system, which will run on electricity. The applicant notes this VRF system allows for temperature migration, meaning that if one unit is calling for heat while another unit on the same heat pump is calling for cooling, the energy from one unit will migrate to the other via the heat pump without requiring any outside energy input. The parking garage will be heated using natural gas.

The building will be constructed using 6 ½-inch Structural Insulated Panels (SIP) that provide a wall insulation value of R-38. The R-value is a measurement of insulation's ability to resist heat traveling through it. The higher the R-value, the better the thermal performance of the insulation. Energy Star recommendation is that walls provide an insulation value of R-13 to R-21.² The roof truss cavity will be blown full of attic insulation plus two-inch rigid insulation for a total insulation value of R-70. This exceeds Energy Star recommendations for attics to have an insulation value of R-49 to R-60. The windows will have an overall U of 0.26. The U-factor measures how well the window insulates. The Department of Energy prescribes energy efficient windows with a U-factor of 0.30 or less.³

Tenants will have control over an Energy Star-rated refrigerator, range, microwave, dishwasher, and stacked laundry units. Each unit will have its own individual electric hot water heater. The applicant notes the developer chose to utilize individual electric hot water heaters to minimize the loss of heat otherwise experienced when hot water has to travel a longer distance from a centralized water heater to the point of use.

Exemption

Wisconsin Admin. Code § PSC 113.0803(1) provides various exemptions to the requirement that a multi-dwelling unit residential building or mobile home park be individually metered. It exempts “transient” multi-dwelling buildings such as “community-based residential facilities, residential care apartment complexes or similar facilities.” The Commission may wish to consider whether the inclusion of a community services center within the Prairie Heights

² See Figure 2, page 9

<https://www.energystar.gov/sites/default/files/asset/document/Insulation%20Fact%20Sheet.pdf>

³ See page 2 https://www.energy.gov/sites/prod/files/guide_to_energy_efficient_windows.pdf

Residences would qualify the development as a facility similar to a “community-based residential facility” or “residential care apartment complex.”

On November 1, 2019, the Commission approved a waiver of Wis. Admin. Code § PSC 113.0803(1) for the renovation of the National Soldiers Home in Milwaukee, Wisconsin. ([PSC REF#: 378692](#).) The National Soldiers home provided 80 individual apartments for homeless veterans, counseling services and programming, with medical care obtained by the adjacent Milwaukee Veterans Affairs Medical Center. Residents of the National Soldiers Home were not charged rent, nor were they billed for utility service. The Commission concluded that this project was exempt from individual metering requirements because it was a “community-based residential facilit[y], residential care apartment complex[] or similar facilit[y]” that is excluded from the definition of “dwelling unit.”⁴

Similar to the National Soldiers Home development, Prairie Heights Residences will be able to access economic assistance programming on-site. However, there is no requirement that tenants utilize these services, and the services will be available to the general public rather than being exclusively for the use of tenants. Additionally, unlike National Soldiers Home residents, tenants will be charged rent and will be on term leases with no intention of transitioning the tenants to different, permanent housing.⁵ NSPW does not believe this project qualifies as a transient-style dwelling. ([PSC REF#: 463523](#).)

If the Commission concludes that the Prairie Heights Residences qualifies for an exemption pursuant to Wis. Admin. Code § PSC 113.0803(1), such as a “transient” multi-

⁴ See also, Final Decision, *Request of Compass Real Estate Management of Eau Claire for a Waiver of Wis. Admin. Code § PSC 113.0803(3) Regarding Individual Electric Metering for a Renovated Building*, docket 4220-EI-108 (Wis. PSC Nov. 7, 2022) ([PSC REF#: 451904](#)) (finding building housing exclusivity transient students enrolled at Chippewa Valley Technical College qualified for exemption).

⁵ See also, Final Decision, *Request of Wewerka Group, LLC for a Waiver of Wis. Admin. Code § PSC 113.0803(1) Regarding Individual Electric Meters*, docket 6690-EI-113 (Wis. PSC Jan. 18, 2023)([PSC REF#: 456765](#)) (finding that building did not qualify for transient building exception where it would house long term tenants),

dwelling building, which may include community-based residential facilities, residential care apartment complexes or similar facilities, the Commission need not determine whether the applicant meets the criteria for a waiver pursuant to Wis. Admin. Code § PSC 113.0803(1).

Commission Alternative – Exemption

Alternative One: Determine that the project qualifies for an exemption contemplated under Wis. Admin. Code § PSC 113.0803(1), such as a “transient” multi-dwelling building, and thus is exempt from individual metering requirements.

Alternative Two: Determine that the project does not qualify for an exemption contemplated under Wis. Admin. Code § PSC 113.0803(1) and is not exempt from individual metering requirements on that basis.

Waiver Analysis

NSPW opposes Energy Concept’s application for a waiver of Wis. Admin. Code § PSC 113.0803(1) because it believes the presence of central electric heating and individual unit water heaters conflicts with Wis. Admin. Code § PSC 113.0803(5), which states that “example cases that would not qualify for a waiver are buildings which are electrically heated or buildings which have individual unit electric water heaters.” NSPW has voiced concerns that should a waiver be approved, other multi-dwelling apartment projects will seek the same waiver. Wis. Admin. Code § PSC 113.0803(5) already allows any owner or representative of a multi-dwelling apartment project to apply for such a waiver, which is then evaluated by the Commission on a case-by-case basis.

Prairie Heights Residences tenants will have control over lighting, Energy Star kitchen appliances and laundry units, as well as the dwelling unit’s temperature. In docket 6690-EI-112, the Commission found the electrical equipment under tenant control was minimal as it consisted

only of LED lighting, apartment outlets and Energy Star kitchen appliances in each unit. ([PSC REF#: 332355](#)). While Prairie Heights Residences will be electrically heated, it will utilize a central VRF heat pump system. Heat pumps have an exterior unit that extracts heat from the outside air which is then carried by refrigerant to an interior unit for distribution throughout the building. The system works in reverse to provide cooling. While traditional methods of electrical heating and cooling demand significant amounts of electricity, VRF heat pumps allow for greater energy efficiency⁶ and this technology did not exist when Wis. Admin. Code § PSC 113.0803 was drafted. Additionally, while the specifications of the individual hot water heaters are not known, modern day individual hot water heaters are most likely more energy efficient than those that existed when Wis. Admin. Code § PSC 113.0803 was drafted.

To obtain a waiver, an applicant must show that the “electrical equipment under tenant control is substantially more efficient than required by applicable codes.” As noted above, Wis. Admin. Code § PSC 113.0803(5) cites example cases which would not qualify for a waiver as “buildings which are electrically heated or buildings which have individual unit electric water heaters.” This language could be seen as providing examples in which the electrical equipment under tenant control would not be minimal. The Commission could then decide that it need only find that reasonable cause is shown for a waiver in this particular case. The Commission could consider whether reasonable cause could be shown in these circumstances because the electrical usage under tenant control is minimal as the heating and cooling system utilizes energy efficient technology that did not exist when the relevant rule was enacted.

⁶ In a 2022 capstone project in the University of Wisconsin-Madison Energy Analysis and Policy program, electric air source heat pumps (ASHPs) were identified as a “crucial tool for electrification and climate action.” Student analysis noted that ASHPs have “the potential to operate more efficiently and use less fuel than fossil-fuel-run furnaces.” However, “while not yet providing benefits over natural gas furnaces [...], [ASHPs] are expected to become the lowest-cost option for typical residential buildings across the U.S. by the mid-2030s., with ASHPs expected to be cost competitive with new natural gas furnaces and air conditioners by the 2030s.” <https://www.climateactionlab.com/visualizations/wi-heat-pump-benefits>.

Alternatively, the Commission could find that the record does not demonstrate that the Wis. Admin. Code § PSC 113.0803 standards for permitting individual metering are met, but consider whether a waiver is nonetheless justified under the unique circumstances presented by this application, pursuant to Wis. Admin. Code § PSC 113.01(1)-(2). The Commission granted a waiver under that provision in docket 3270-EI-102, justified in part on the finding that the applicant's solar photovoltaic (PV) system was estimated to offset building usage. ([PSC REF#: 445750.](#)) However, the applicant in that case estimated that the PV system offset 70 percent of the building's total usage, and tenants did not have control over heating and cooling. By contrast, the solar PV system installation proposed in this case is estimated to offset approximately 20 percent of the building's total usage, with tenant control over heating and cooling.

Commission Alternatives – Waiver

Alternative One: Determine that the electrical equipment under tenant control is minimal and is substantially more efficient than required by applicable codes, and grant Energy Concepts' request for a waiver of Wis. Admin. Code § PSC 113.0803(1)'s individual electric metering for a newly constructed building requirement.

Alternative Two: Grant Energy Concepts' request for a waiver of Wis. Admin. Code § PSC 113.0803(1)'s individual electric metering for a newly constructed building requirement due to the "exceptional or unusual" circumstances presented by this request, by exercising the Commission's authority to adopt requirements different than those provided in the Administrative Code, pursuant to Wis. Admin. Code § PSC 113.01(2).

Alternative Three: Deny the request of Energy Concepts for a waiver of Wis. Admin. Code § PSC 113.0803(1) regarding individual electric metering for a newly constructed building.

Commission Alternatives – Conditions

Alternative One: Imposition of one or more of the following conditions is necessary for approval of the waiver:

Sub-Alternative One: Energy Concepts shall not resell energy to tenants.

Sub-Alternative Two: Energy Concepts may not disconnect tenants for nonpayment.

Sub-Alternative Three: Any other condition deemed necessary by the Commission.

Alternative Two: It is not necessary to impose conditions on the approval of the waiver.

JF:TK:BR:KC:kle DL: 01950518

Key Background Documents

[Petition for Single Meter per PSC 113.0803 - 461477](#)

[Notice of Investigation Signed and Served 4/6/2023 - 463698](#)

[Response-Data Request-PSC-Chiono-1 - 463381](#)

[Response-Data Request-PSC-Chiono-2 - 463523](#)