**STATE OF NORTH CAROLINA**
**UTILITIES COMMISSION**
**RALEIGH**

DOCKET NO. ER-100, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
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| Petition for Rulemaking to Implement | ) | ORDER ON MOTION |
| North Carolina Session Law 2011-252 | ) | FOR RECONSIDERATION AND |
| (Senate Bill 533) | ) | AMENDMENT |

BY THE COMMISSION: On June 23, 2011, SB 553 was signed into law. SB 553 authorized the Commission to adopt procedures to allow lessors of residential buildings to bill tenants for electric service where there are individual meters for each dwelling unit, the lessor is the account holder for those meters, and the lessor has a separate lease for each bedroom within the dwelling unit. The bill required the Commission to adopt implementing rules. On April 19, 2012, the Commission issued an Order Adopting Final Rules.

On October 29, 2012, the Public Staff – North Carolina Utilities Commission (Public Staff) filed a Petition for Rule Clarification in the above-captioned docket requesting that Rule R22 be clarified to resolve the issue of whether a conservation cap methodology for billing is an appropriate method. Specifically, in its October 29, 2012 filing, the Public Staff stated that certain landlord providers reselling electric service to tenants were using a "conservation cap" billing methodology. Under the "conservation cap"[1] methodology, the landlord pays the first $30 or $40 of each tenant's monthly electric bill, with the tenant paying for usage above that amount. However, if the tenant uses less electricity that the "conservation cap" amount, the landlord does not refund the savings to the tenant. The Public Staff argued that this methodology is unlawful under G.S. 62-110(h)(1) and Rule 22-5 and is unfair to the tenant.

The Public Staff recommended changes to Rules R22-4(a) and R22-5(h) which would require the provider to credit tenant bills or otherwise refund to tenants the amount, if any, that a tenant's actual electricity usage is below the conservation cap amount in the previous month.

On November 15, 2012, the Commission issued an Order Requesting Comments On Petition For Rule Clarification requesting comments from interested parties by December 7, 2012 and reply comments on or before December 21, 2012.

On December 6, 2012, the Apartment Association of North Carolina (AANC) filed Apartment Association of North Carolina's Reply Comments to Public Staff's Petition for Rule Clarification.

[1] Also referred to as a "courtesy credit" by other companies in the industry.

On December 7, 2012, Conservice filed Conservice, LLC's Comments Regarding Public Staff Petition For Rule Clarification. Conservice's comments aligned with AANC. Conservice argued that neither G.S. 62-110(h) nor Rule R22 require a provider to provide refunds to a tenant where the landlord agrees to pay a "conservation cap" toward a tenant's electric charges.

On December 7, 2012, Duke Energy Carolinas, LLC (DEC) and Progress Energy Carolinas, Inc. (PEC)(collectively Duke) filed Duke Energy Carolinas, LLC's and Progress Energy Carolinas, Inc.'s Comments In Support Of Public Staff's Petition For Rule Clarification. In its comments, Duke agreed with the Public Staff's position that the conservation cap methodology is unfair to tenants and is unlawful due to the fact that the landlord collects more from the tenant than a pass-through of the bill of the utility provider.

On December 21, 2012, AARP, Conservice and the Public Staff each filed its reply comments.

On May 31, 2013, the Public Staff filed a non-unanimous Agreement and Stipulation of Settlement (Agreement) resolving issues in Docket Nos. M-89, Sub 8, and ER-100, Sub 1. The parties signing on to the Agreement were the Public Staff, Campus Apartments, LLC, Campus-Raleigh, LLC, Conservice, LLC, Campus Edge Raleigh JV, LLC, the Apartment Association of North Carolina, Duke Energy Carolinas, LLC, and Duke Energy Progress, Inc., formerly Progress Energy Carolinas, Inc. The pertinent portions of the Agreement to Docket No. ER-100, Sub 1 are located in paragraphs 4, 5, 6, 8 and 10.

In Paragraph 4 of the Agreement, the parties agree that in any month in which a tenant does not consume at least the dollar amount of the electric allowance provided for in any lease with Campus/Conservice entered into more than 30 days after the date of the Commission's approval of the Agreement, the provider will refund such underage to the tenant. The parties agree that this refund provision shall not, in any event, apply to any lease entered into prior to the date of the Commission's approval of the Agreement.

In Paragraph 5 of the Agreement, the parties agree that the Public Staff shall recommend like treatment for any claims made against other landlords and/or apartment owners relating to billings for electricity.

In Paragraph 6 of the Agreement, the parties agree to the Public Staff's proposed revision to the language of Commission Rule R22-5(h).

In Paragraph 8 of the Agreement, the parties agree that if the Commission does not accept the Agreement in its entirety that Campus Raleigh and Campus Apartments reserve the right to appeal any and all aspects of the Commission's decisions in this docket.

In Paragraph 10 of the Agreement, the parties acknowledge that the Agreement is only binding if accepted in its entirety.

On September 4, 2013, the Commission issued its Order Granting Rule Clarification, accepting the Agreement with one modification to change the implementation of the rule clarification from future leases to future bills. Specifically, the Commission disagreed with the portion of Paragraph 4 of the Agreement which states that refunds for underages shall not apply to any lease entered into prior to the date of the Commission's approval of the Agreement. The Commission determined that a more appropriate benchmark is that the rule clarification which requires refunds for underages shall apply to all bills issued after the date of the Order. The Commission reasoned that if the rule clarification is tied to the lease agreement, as opposed to the issuance of bills, the rule clarification may not take full effect for another full school year. The Commission further reasoned that all of the parties to Agreement, including the landlords have had notice of the Public Staff's requested rule clarification since the Public Staff filed comments in Docket No. ER-5, Sub 0 on August 16, 2012. The Commission stated that the parties entered into the settlement agreement and filed the Agreement on May 31, 2013. Therefore, any argument of unfair surprise, or any argument that the property managers did not have notice of a possible rule clarification while entering into leases with tenants over the past couple of months is baseless. Lastly, the Commission indicated that other billing agents, not a party to the Agreement, have already changed their lease agreement to remove any type of conservation cap billing methodology to obtain Commission approval of its electric reseller application.

On October 18, 2013, the Public Staff, AANC, and Conservice (the Parties) filed a Joint Motion for Reconsideration and Amendment pursuant to G.S. 62-80 and NCUC Rule R1-7. The Parties requested that the Commission amend its September 4, 2013 Order to provide that an obligation to provide underage refunds only apply to leases entered into after May 31, 2013 and to accept the Parties' modification to paragraph 4 of the Agreement. The Parties argue that the Commission's Order suggests that the Commission does not have a complete view of when most student housing lease agreements are executed. The Parties indicate that at the time that the Parties entered into the Agreement on May 31, 2013 that over 80% of the leases for the 2013-2014 school year had been executed. As such, Paragraph 4 of the Agreement was an integral component of the Agreement and without Paragraph 4 of the Agreement, the parties "would not likely have reached a consensus and would have continued litigating M-89, Sub 8 and the instant docket on the merits." The Parties argue that by changing the implementation date of the rule clarification to bills from leases, the Commission effectively disregarded the parties' collective efforts and the intent of the Agreement. The parties argue that requiring immediate refunds would result in losses greater than negotiated in the Agreement for most landlords. Lastly, the Parties offer a compromise on the implementation date and agree to adjust the implementation date in paragraph 4 of the Agreement from 30 days from a Commission order approving the Agreement to May 31, 2013, the date of the execution of the Agreement.

Based upon the fact that over 80% of the leases for the 2013-2014 school year had been executed prior to the entry of the Agreement and the fact that maintaining these leases for the 2013-2014 school year was an integral component of the Agreement, the Commission finds good cause to grant the Joint Motion for Reconsideration and Amendment. The Commission finds that the implementation date for the rule clarification that requires providers to refund underages to tenants shall be for leases entered into after May 31, 2013, and shall also apply to any leases signed before May 31, 2013, if the lease extends beyond the last day of the month when the 2013-2014 school years ends, as determine by the academic calendar of the school attended by a majority of the tenants at the rental property.

IT IS, THEREFORE, ORDERED that the Commission allows the Joint Motion for Reconsideration and Amendment and amends its previous Order by requiring that the rule clarification to provide underage refunds to tenants shall apply to leases entered into after May 31, 2013, and shall also apply to any leases signed before May 31, 2013, if the lease extends beyond the last day of the month when the 2013-2014 school years ends, as determined by the academic calendar of the school attended by a majority of the tenants at the rental property and accepts the Parties' amendment to Agreement which modifies the language of paragraph 4 of the Agreement as follows:

4. REFUNDS OF FUTURE UNDERAGES. In any month when a tenant's electric use is less than the dollar allowance or conservation cap stated in the lease, the property owner will refund or credit the difference (the "Underage") to the tenant. This refund shall apply to all leases signed after May 31, 2013. It shall also apply after May 31, 2013, to any leases signed before May 31, 2013-2014 school year ends, as determined by the academic calendar of the school attended by a majority of the tenants at the rental property.

ISSUED BY ORDER OF THE COMMISSION.

This the __5th__ day of November, 2013.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Chief Clerk

Commissioner Don M. Bailey did not participate.