



Chris Nelson, Chair
Kristie Fiegen, Vice Chair
Gary Hanson, Commissioner

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue
Pierre, South Dakota 57501-5070
www.puc.sd.gov

Capitol Office
(605) 773-3201
1-866-757-6031 fax

Grain Warehouse
(605) 773-5280
(605) 773-3225 fax

Consumer Hotline
1-800-332-1782

January 30, 2012

Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Re: EL12-002 – In the Matter of the Notification Pursuant to ARSD 20:10:26:04(6) by Why Not Investments, LLC regarding Its Central Water Heating System in a Unit Efficiency Apartment Building, Rapid City, South Dakota

Dear Ms. Van Gerpen:

On January 23, 2012, the Commission received a filing by Why Not Investments, LLC requesting approval of its notice of an existing exception to the Master Metering Variance Rules under ARSD 20:10:26. Why Not Investments has purchased a 23-unit efficiency apartment building in downtown Rapid City and states that because it contained a central water heating system, the building meets the exception criteria under ARSD 20:10:26:04(6) exempting it from individual metering requirements.

Pursuant to parts (3) and (4) of ARSD 20:10:26:03, individual metering systems shall be required:

(3) for an existing multiple-occupancy building receiving either master metered gas service or electric service, or both, which is substantially remodeled or renovated, beginning after June 13, 1980, for continued use as a multiple-occupancy building. Either gas service or electric service, or both, shall be individually metered to the units of the building after completion of the remodeling or renovation. However, if the owner of the building can demonstrate to the commission that converting the building to individual meters after the remodeling or renovation is impractical, uneconomical, or infeasible, the commission may grant the owner a master metering variance allowing the building to remain master metered after the remodeling or renovation. The commission shall not consider expenditures made prior to the filing of the application in its determination of what is impractical, uneconomical, or infeasible; and (4) [f]or any multiple-occupancy building constructed, owned or operated with funds appropriated through the department of housing and urban

development, or any other federal or state government agency, unless a formal regulation of the funding agency requires master metering.

If a building does not fall within one of the exceptions listed in this section or does fall within one of the subdivisions of § 20:10:26:03, the applicant may file an application for a variance with the commission consistent with this chapter.

ARSD 20:10:26:04 lists the exceptions to the above-stated rule. Part (6) provides individual metering is not required:

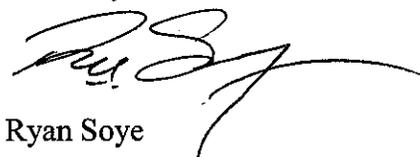
"[f]or multiple-occupancy buildings which have central heating or cooling systems, central ventilating systems, or central water heating systems. However, the applicant shall notify the commission so it may determine whether the applicant's system falls within this exception or whether the applicant is required to file an application for a variance."

Prior to Why Not Investment's acquisition of the above-referenced apartments, the building utilized a central water heating system and a central electric metering system. However, these systems were removed and new central water heating and electric systems have been designed by West Plains Engineering to be installed during the renovation process. Why Not Investments is renovating these apartments to provide affordable housing for low income individuals, those with mental disabilities, and those associated with the Rebound Program. Why Not Investments is working with local housing authorities and is applying for HUD funding assistance for this project.

As this apartment building will undergo substantial renovation, ARSD 20:10:26:03(3) requires an individual electric metering system be installed. In addition, as Why Not Investments plans to use HUD funding for this project, ARSD 20:10:26:03(4) also requires individual electric metering as the applicable HUD authority does not specifically require a master metering system. However, ARSD 20:10:26:04(6) seems to provide an exception to the individual metering requirements despite the pending renovations and use of HUD funding. This rule provides a blanket exception to individual metering rules for buildings which have central water heating systems. Further, this rule does not distinguish between maintaining a central water heating system and a master metered electric system as long as the building has a central water heating system. Although Staff finds this administrative rule peculiar if the purpose is to move towards decreased use of central systems, the current situation seems to fall within the exception provided in ARSD 20:10:26:04(6).

Finally, if the Commission does not find the exception in part 6 applies to this apartment building; Staff recommends a variance be granted. Staff has contacted the human services authorities interested in this property and all have expressed overwhelming support for central utility systems. This support is due to the relatively transient nature of the potential tenants, the fact that many tenants will be lacking credit or the ability to obtain credit, and some tenants may simply lack the organizational skills to handle the additional burdens of establishing and maintaining utility services. Under the circumstances, Staff feels individual metering systems are simply impractical due to the purposes this housing structure is intended to serve.

Sincerely,



Ryan Soye