

Submetering Myths and Realities: A Tenant Perspective



**Richard Berkley, Esq., Executive Director
Public Utility Law Project of New York, Inc.**

90 South Swan St., Suite 401

Albany, NY 12210

Phone: 917-512-5334

877-669-2572

Fax: 518-286-2392

Website: www.utilityproject.org

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Residential submetering is . . .

- A system for selling electric service to tenants in multi-family, residential buildings dating back to 1915, but only formalized in 1952. See *Campo Corp v. Feinberg*, 279 App. Div 302, 303 (3d Dept 1952) Aff'd 303 N.Y. 995 (1952).



Residential submetering is . . .

- Installation of a “submeter” in each apartment to measure individual tenants’ electricity consumption.
- The issue was litigated for almost 40 years until the Campo decision; see, *8284 Corp. v. Garey*, 137 Misc. 197 and *Owners & Tenants v. Trachtenberg*, 286 N.Y. Supp. 570 (Munic. Ct. 1936)





Residential submetering is . . .

Different from a “direct meter” that utility customers have.



Residential submetering is. . .



Not a bill from Con Edison


conEdison

BARBARA MONROE
Your account number: 83-2092-0106-0003-9
Service delivered to: 102 GAETANO ST PD
Your electric rate: EL1 Residential or Religious
Your gas rate: GSS Residential or Religious Heating
Next meter reading date: Monday, Oct 29, 2008
Avoid estimated bills - please give us access to read your meter.

Your billing summary as of Oct 01, 2008

Your previous charges and payments

Total charges from your last bill	\$96.48
Payments through Sep 30, thank you	-\$96.48
Remaining balance	None

Your new charges - details start on page 2
Billing period: Aug 31, 2008 to Sep 30, 2008

Electricity charges - for 30 days	\$100.06
Gas charges - for 30 days	\$531.23
Total new charges	\$632.19
Total amount due	\$632.19

Payment is due upon receipt of this bill. To avoid a late payment charge of 1.5%, please pay the total amount due by Oct 27, 2008.

Message Center
Your dollar for EnergyShare makes a difference. If you pay the total amount of this bill and exactly \$1 more, that dollar will go into the EnergyShare fund sponsored by Con Edison, which then matches each dollar. EnergyShare helps eligible residential customers who are struggling to pay their bills with one-time grants of up to \$200.

ON IT. Working for you 24/7.

Contact us 24 hours a day, 7 days a week

- To report a service problem, call 1-800-75-CONEED (1-800-752-6669) or visit www.conEd.com
- For payments, visit www.conEd.com or call 1-888-922-5016
- For other information, call 1-312-243-1900 or 1-800-75-CONEED (1-800-752-6633)

CoE Edison
Cooper Station
P.O. Box 138
New York, NY 10276-0138

Wondering if you can get a better deal on your energy needs? Explore your choices at www.PowerYourWay.com.

Payment slip
Please make checks payable to Consolidated Edison Company of N.Y. Inc.

To avoid a late payment charge of 1.5%, please pay the total amount due by Oct 27, 2008.

Your account number: 83-2092-0106-0003-9
Total amount due: \$632.19
Amount enclosed:

BARBARA MONROE
102 GAETANO ST PD
BRONX NY 10456

JAF STATION
P.O. BOX 1702
NEW YORK, NY 10116-1702

632092010600039 00000063219 0000063219





Residential submetering is. . .

- Landlords billing tenants each month for the electricity they use.

**AMERICAN
METERING &
PLANNING
SERVICES**

This Bill Is For Your Information Only. Payment Is To Be Made With Your Rent Statement.

356 Veteran's Memorial Highw
Suite 8S
Commack, NY 11725
Tel: (631) 864-1959
Tel: (212) 725-8400
Fax: (631) 864-1953

ACCT. #	SERVICE PERIOD		# DAYS	READINGS		CODE	MTR. MULT.	KW DEMAND	KWH USAGE	SVCE CLASS	AMOUNT
	FROM	TO		PREV.	PRES.						

Codes: A - Actual E - Estimate R - Residential C - Commercial D - Commercial Demand



NYS Public Service Commission

- “I recommend that master-metered residential buildings currently [in Con Edison’s service territory] be required to submeter each dwelling unit within four years. . . .”

**NY Dept. of Public Service Staff
testimony in Con Edison rate case
September 2008**



Local Law 88 – Greener Greater Buildings Plan

- <http://www.energymanagertoday.com/new-york-city-ushers-in-first-sub-metering-rule-0112574/>
- This law requires large non-residential buildings to install electrical sub-meters for each large non-residential tenant space and provide monthly energy statements
- Helps achieve OneNYC Plan

Submetering Myth #1

- **“Submetering Reduces Energy Usage by 18% - 26%**
- When tenants must pay the electric bill they will learn the cost, conserve energy and
 the building will be more energy efficient

Sounds *GREEN*
But where's the *SCIENCE??*



Myth # 2: “Only Tenants Who Waste Electricity Will Pay More”

- Rent adjustments do not offset the cost of normal, prudent usage of electricity, and tenants must pay more.
- Low income tenants face hardship, displacement, or homelessness due to the added cost of electric service

Reality



DHCR rent reductions were deliberately set low, to ENCOURAGE landlords to shift electricity costs to tenants. See, *Car Barn Flats v. DHCR*, 184 Misc 2d 826 (Sup. Ct. N.Y. Co. 2000).

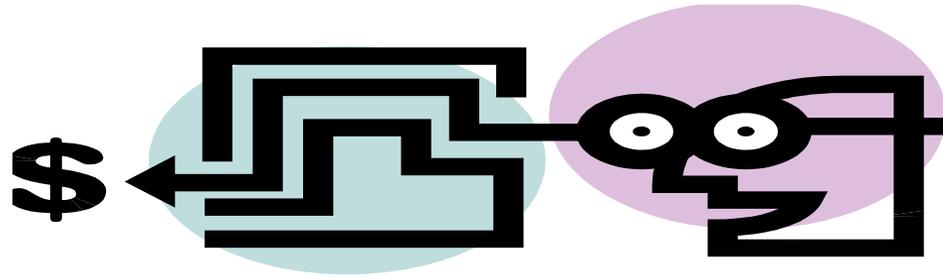
Landlords & REBNY liked shifting costs, which is why they got sub-metering re-established in 1979 after an almost 30 year ban.



SCHEDULE OF RENT REDUCTIONS

Nassau County		
Number of Rooms	Direct Metering	Submetering
1	\$42.92	\$34.80
2	\$47.01	\$38.43
3	\$50.89	\$41.87
4	\$62.93	\$52.56
5	\$66.80	\$56.00
6 or more add	\$5.97 per room	\$5.30 per room

New York City		
Number of Rooms	Direct Metering	Submetering
1	\$60.00	\$40.77
2	\$65.00	\$45.10
3	\$70.00	\$49.21
4	\$85.00	\$61.98
5	\$90.00	\$66.08
6 or more add	\$7.50 per room	\$6.33 per room



- PSC “Typical Bill” from Con Edison
- January 2013 - 500 kWh -- **\$129.67**
- **DHCR rent adjustment: \$40 - \$66**

Reality

- **Tenants cannot control excess electric consumption due to:**
 - ✓ **Poor insulation**
 - ✓ **Leaky windows and doors**
 - ✓ **Old, inefficient, landlord-owned fixtures, refrigerators and air conditioners**
 - ✓ **Overheated buildings requiring AC in winter**

Submetering Myth # 3: Submetered Electric Service Costs Less than Direct Service

- PSC Orders say, e.g., “the buildings will be billed at Con Edison’s bulk electric . . . rate which will be less expensive than the rate for directly metered service. . . .”
- Reality: bulk SC 6 rate at times exceeds Con Edison SC 1 direct residential rate.
- DHCR rent reduction schedules assumed much lower rates for submetered buildings
- PSC assumed tenants would always be better off submetered than Con Ed Metered

Myth #4: The “Rate Cap” Protects Submetered Customers

- The PSC “Rate Cap” Has not Prevented Submetering Landlords from Charging More than Con Edison Direct Metered Service
- Difficult to check
- \$20,000 refund of overcharges in a 2009 case PULP brought
- No sanction for overcharge violations

Reality

PSC does not audit submetered charges, tenants cannot readily determine Con Edison's prices, and therefore cannot determine whether their landlord's bill is higher than Con Edison's would be.



HEFPA



- Enacted in 1981
- NY Public Service Law §§ 30 – 52
- Comprehensive set of statutory rights and protections for residential gas and electric customers
- Sometimes called the “Utility Consumer’s Bill of Rights”

Myth #5: Landlords Are Required by the PSC to Comply with HEFPA

Compliance with the Home Energy Fair Practices Act (HEFPA) is not required by the PSC before submetering begins



Reality

- NYSERDA manual urged landlords to avoid HEFPA by making electric “added rent” and evict tenants for nonpayment of electric bills
 - Tenants were not made aware of HEFPA protections
- PSC approved grievance procedures involving court and arbitration, depriving them of HEFPA protections.

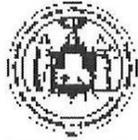
Lease Amendment Deeming Electric Charges “Additional Rent”

Electricity Rider to Lease Agreement

The Tenant understands that electricity is currently being provided to the Tenant through a master electricity meter and that electricity is part of the monthly rent paid by the Tenant. Tenant further understands that Landlord will have installed an electricity submeter for the Tenant’s apartment without further notice to tenant and that once the submeter is installed, the Tenant will be billed on a monthly basis for the electricity that is provided to the Tenant’s apartment through the submeter. The electricity charges will be billed to the Tenant as **additional rent** and will be payable on a monthly basis by the Tenant as **additional rent**. Tenant specifically understands that if the electricity charges are not paid in full on a monthly basis by the Tenant, that the Landlord may commence a summary proceeding to recover a money judgment and a judgment for possession against the Tenant and that the **Tenant can be evicted from the apartment for failure to pay electricity charges**.



Operational Bulletin 2003-1



New York State
Division of Housing and Community Renewal
Office of Rent Administration

Operational Bulletin 2003-1
(Replaces Operational Bulletin 96-2)

Conversion from Master to Individual Metering of Electricity with Direct Payment by Tenant
Schedule of Rent Reductions Affecting:

New York City Rent Stabilization Code (RSC) *New York City Rent and Eviction Regulations (CRER)*
Emergency Tenant Protection Regulations (TPR) *New York State Rent and Eviction Regulations (SRER)*

Submetering

Under submetering the owner or contractor retained by the owner is not permitted to charge the tenant more than the bulk rate for electricity plus a reasonable service fee to cover the cost of meter reading and billing. **However, after the conversion, the cost of electricity and service fee are not part of the legal regulated rent, and billing disputes are not under the jurisdiction of DHCR.**

Circumvention of HEFPA



- “No Termination” policy in submetering orders
- Many HEFPA protections kick in with termination notices
 - Deferred payment agreements to avoid termination;
 - Budget billing
 - Administrative determination of billing disputes
 - Medical certifications

Circumvention of HEFPA



Con Edison cannot evict people from their homes for failure to pay the electric bill!!! Some courts would block landlords from evictions in such cases.

See, Related Tiffany, L.P. v. Faust, 191 Mis.2d 528 (App. T. 2nd Dept 2002).



Circumvention of HEFPA



- Alternative Grievance Procedures
 - Written complaints required by landlords
 - Arbitration or court proceedings
 - **No disclosure that tenants may contact PSC by telephone and their complaints will be decided by the PSC under its complaint handling procedures**

Myth #6: Leases Fix Terms and Conditions of Submetered Service

- PSC Sub-metering Orders require lease amendments to include:
 - Method of electric rate calculation
 - Price cap
 - Complaint procedures
 - Tenant protections (notice of HEFPA)
 - Method of enforcement
 - But ... No proof of compliance before sub-metering begins

MYTH # 7: Tenants Participate in Sub-metering Process

- No informed voluntary tenant consent
- Often short notice to tenants of landlord application to PSC
- No disclosure of energy efficiency of structure, fixtures, appliances, controls
- No information about future bills until after PSC approval

Impact on Low Income Tenants



- Mismatch between charges and rent reductions causes hardship and inability to pay
- Landlord may lack vendor agreement to accept HEAP and public assistance
- Emergency utility aid triggered by shutoff notice not available when eviction is used for collection

Impact on Public Assistance



- No emergency utility assistance 131-s without termination notice – landlord evicts rather than terminate electricity for non-payment.

Other Impacts on Low Income Tenants



- Partial payments applied to electric service, eviction cases then brought for nonpayment of rent
- **An engine for displacement of subsidized tenants; landlord re-lets at market rates**

Current PSC Proceeding

**08-M-1274 Amending the Electric Sub-metering Regulations, 16 NYCRR
Part 96**

PSC Submetering Regulations

- PSC proposed revisions to:

“Improve [and] streamline the process by which multi-unit building owners may sub-meter their premises.”



PSC Submetering Regulations

- Prohibition against resale of electricity would be removed from utility tariffs
- May lay foundation for introduction of RUBS (Ratio Utility Billing System) for shifting all utility costs to non-metered tenants with variable rent surcharges



PSC Submetering Regulations

- Landlords seeking to eliminate
 - Price cap
 - Meter testing requirements
 - Lease provisions for price cap, billing methodology, HEFPA protections and complaint procedures

PULP's Proposals for New Regulations



No deeming electricity charges as “additional rent”

No transfer of space heating costs to tenants

Certify tenants’ voluntary, informed consent in leases
(Ontario EB Decision 8/17/09)

Monthly bill must disclose Con Edison price for same
service

No markup for profit

Landlord’s books and records subject to Commission
audit and review

PULP Proposals for PSC Submetering Regulations

Require building and landlord-owned appliances to meet NYSERDA-specific energy efficiency benchmarks, documented by an energy audit by a NYSERDA-approved contractor, before submetering

PULP Proceedings for New PSC Submetering Regulations



Tenant Impact Assessment

- Identify building consumption history
- Identify seasonal usage patterns
- Impact on low-income tenants
- Estimated average charges
- Estimated average financial impacts for typical apartments
- SEQRA Compliance

PULP Proposals for PSC Submetering Regulations

Certify tenants are informed of HEFPA and other rights BEFORE submetering commences

PULP Proceedings for PSC Submetering Regulations



Certify that prospective submeterer & agents have received basic HEFPA training



PSC Submetering Regulations

 Provide tenant outreach and education services

 Provide tenants continuing information on PSC complaint determination process



PSC Submetering Regulations



Timely notify tenants of submetering application so they can comment to the Commission and react to information regarding energy efficiency of the building



PSC Submetering Regulations

Require submeterers to report complaint statistics to the PSC



Require PSC to include submetering complaint statistics in its monthly reports





PSC Submetering Regulations

Protect the privacy of information on electricity usage and usage patterns





PSC Submetering Regulations

Require landlords to show vendor agreements/ financial arrangements  to accept HEAP and other energy assistance benefits



PSC Submetering Regulations



Require submeterers to honor tenant allocations of partial payments

PULP Webpage on Submetering

- For further information:
- <http://utilityproject.org/utilities/electricity-and-natural-gas-utilities-faq/>
- <http://utilityproject.org/?s=submetering>

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Facebook: www.facebook.com/utilityproject