

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

At a session of the Public Service
Commission held in the City of
Albany on January 19, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 11-E-0239 – Petition of Park Towers South Company, LLC to submeter electricity at 315/330 West 58th Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

ORDER GRANTING PETITION TO SUBMETER ELECTRICITY

(Issued and Effective January 25, 2012)

BY THE COMMISSION:

INTRODUCTION

By letter dated May 11, 2011, Park Towers South Company, LLC (Owner) requested permission to submeter electricity to the rent-stabilized tenants at 315/330 West 58th Street, New York, New York (Park Towers South). Park Towers South is an existing master-metered building comprised of 274 residential rental units and 55 commercial units. Of the 274 residential units, presently 74 are rent-stabilized under the jurisdiction of the New York State Homes and Community Renewal (HCR). The market-rate residential units are provided

electricity on a submetered basis pursuant to Commission Order.¹ This Order does not modify the 2001 Submetering Order, nor the submetering plan approved for the market-rate apartment units addressed therein. However, we note that Public Service Law (PSL) §53, amended in 2003, now provides that the Home Energy Fair Practices Act (HEFPA) applies to the submeterer (the Owner) and the customers (market-rate tenants) it is submetering electricity to.

The building is not electrically heated. The Owner provided notice of its petition to submeter to Consolidated Edison Company of New York, Inc. (Con Edison or the Company) by letter dated June 29, 2011.

In accordance with the State Administrative Procedure Act (SAPA) §202(1), the petition was noticed in the State Register on June 8, 2011 and the comment period ended on July 25, 2011. Comments were received from six of the affected tenants and are discussed below.

BACKGROUND

The petition concerns the submetering of electricity at master-metered residential rental units owned or operated by private or government entities. Thus, the petition requires Commission approval on a case-by-case basis in accordance with 16 NYCRR §96.2(b).

I. The Submetering Plan

Electric usage at Park Towers South is measured by a utility master-meter that records the electric consumption for

¹ Case 00-E-2134, Park Towers South - Submetering, Untitled Order (issued April 5, 2001)(2001 Submetering Order). The 2001 Order did not address the rent-stabilized units because the petition did not seek approval to submeter electricity to those units.

the entire building. The electric usage for each of the rent-stabilized units will be measured by Quadlogic Control Corporation's (Quadlogic) Mini-Closet-5 submetering system (MC-5). According to the Owner, the MC-5 complies with the current reliability and accuracy standards of the American National Standards Institute (ANSI C12). The MC-5 is capable of recording hourly electric usage for each unit, which can allow for the tracking of individual load profiles, and can keep hourly data for approximately 60 days. The MC-5 may be upgraded to utilize more advanced metering if required. The Owner has advised that the submetering system is not capable of disconnecting electric service to individual apartment units at this time.

A. Benefits of Submetering

According to the Owner, submetering electric usage in the unmetered rent-stabilized units will provide an incentive for the efficient use of electricity in these units, will provide a tool by which the rent-stabilized tenants may manage their energy usage, and will further the State's energy efficiency goals. The Owner also states that submetering allows for the fair allocation of the actual energy costs incurred by the tenants of the rent-stabilized apartments. The MC-5 has the capability of producing daily data for usage analysis and the convenience of remote meter reading so entry into the building is not required. This communication system will allow for a more cost-effective metering system due to the elimination of control wiring.

B. Residents' Submetered Rates

The Owner states that the rates and charges paid by the tenants of the rent-stabilized units will be based on Con Edison's SC-8 rate. Specifically, the monthly cost of the building's electric service will be divided by the kilowatt

hours (kWh) consumed by the building as determined by the master meter to yield a per kWh rate. The calculated kWh rate will then be multiplied by each unit's consumption as determined by the submeter to yield each individual apartment's monthly electric charge. A \$4.00 administrative fee will be added to the bills of each tenant of a rent-stabilized apartment. In no event will a tenant's total charges exceed the Con Edison rate for directly metered residential service (SC-1). Quadlogic will read the meters monthly and prepare and render bills based on the actual usage of each unit. The monthly invoice will include: opening and closing meter readings and dates, usage during a current period, a breakdown of dollars billed, the total charge for the period, the total amount due, and the contact information for Quadlogic. Meter reading data and billing history for each unit will be maintained for up to six years.

Pursuant to HCR guidelines, tenants of the rent-stabilized apartment units will have their rent reduced to reflect that electricity is no longer provided on a rent-included basis. Under HCR's guidelines, tenants will receive the following monthly utility allowances: 1 room, \$42.58; 2 rooms, \$46.99; 3 rooms, \$56.25; 4 rooms, \$59.78; 5 rooms, \$65.29; and, 6 rooms, \$70.97. In accordance with HCR requirements, the Owner will provide shadow bills for the first two billing periods. The two shadow billing periods will assist tenants in understanding their electric consumption and in learning more about energy conservation, if they choose to.

The Owner has implemented several energy efficiency measures at Park Towers South including installation of windows with high efficiency thermal glazing, an updated heating system with low-pressure dual-fuel boilers, and replacement of incandescent lighting with compact fluorescent bulbs (CFLs) in

public areas. As a condition of approval to submeter, the Owner has agreed to replace all tenant refrigerators that are not currently Energy Star® certified or are over 10 years old with Energy Star® certified refrigerators and to replace any incandescent light bulbs in all Owner provided lighting fixtures in the apartments to be submetered with CFLs.

C. Consumer Protection and Complaint Procedures

In the event that there is a complaint regarding electric charges, the tenant should submit the complaint to Quadlogic and/or the property manager of the building in writing, via telephone, e-mail or in person, including the action or relief requested and the reason for the complaint about the submetering charge. Quadlogic and/or the property manager shall investigate and respond to the complaint in writing within 15 days of receipt of the complaint. If the tenant is dissatisfied with the response, he or she may request a review of the outcome in writing, by telephone, or in person within 15 days from the date of the response from Quadlogic or the property manager. Tenants may contact the Department of Public Service at any time regarding a complaint about submetered electric service.

The Owner submitted a detailed HEFPA Plan, including an "Annual Notification of Rights" document, which provides information on: the complaint process; termination or disconnection of service; reconnection of service; special procedures regarding medical emergencies, life support, elderly, blind or disabled customers; special notification of social services; deferred payment agreements; budget or levelized payment plans; quarterly billing plans; and, late payment charges. Sample documents for implementation of HEFPA were submitted as part of the petition.

D. Resident Notification

All of the affected tenants were provided notice of the intent to submeter on March 23, 2010 and on July 1, 2011. The letters to tenants included general information on submetering; benefits of submetering; the rate cap and the method of calculating the bills; an overview of consumer protections; the dispute resolution process, including contact information for the building manager, Quadlogic, and the Department of Public Service; and, energy conservation tips.

An electric submeter lease addendum will notify each resident that their apartment is submetered for electricity. The lease addendum describes in plain language the grievance procedures for tenants and specifies the rate calculation, rate cap, complaint procedures, and tenant protections and enforcement mechanisms which will be in compliance with HEFPA.

In addition to providing a notice to the affected tenants stating when submetering will commence, the Owner has agreed to provide these tenants a brochure on energy efficiency measures tenants may employ to reduce their electric usage. In the first three months after submetering has been implemented, the Owner will again provide such information to tenants in each unit in which electricity charges exceed the HCR utility allowance.

TENANT COMMENTS

Comments were received from six tenants of the unmetered rent-stabilized units at Park Towers South. All of the comments were in opposition to the submetering plan. In their comments, most of the tenants claimed that submetering would be in conflict with their lease and relocation riders for their rent stabilized apartments. The comments indicated that given the terms of the tenant's leases in which electricity is included in the rent, the landlord would be prohibited from

submetering and collecting a separate charge for electricity. Several tenants also commented that the landlord has a history of overcharging the tenants and the landlord-owned appliances are not energy efficient. One tenant claimed that the building is energy inefficient and the costs would be shifted to the tenants.

DISCUSSION AND CONCLUSION

Subject to the terms and conditions discussed below, we will grant the petition to submeter electricity to the rent-stabilized tenants at 315/330 West 58th Street, New York, New York. Regarding the comments filed by six of the affected tenants, the lease provisions which certain rent-stabilized tenants claim require that electricity be provided to them on a rent-included basis require contract interpretation. Generally, we decline to interpret such contracts because these are landlord-tenant issues. Furthermore, after this Order is issued, submetering will not commence until the HCR issues an order also permitting the submetering of electricity to the tenants of the rent-stabilized apartment units. The affected tenants should seek to have HCR address these contract issues.

Regarding the tenant's claims of building inefficiency, the Owner has indicated it has undertaken certain energy efficiency measures, including installation of energy efficient windows and an updated heating system. As a condition of approval to submeter, the Owner has agreed to replace all tenant refrigerators that are not currently Energy Star® certified or which are over 10 years old with Energy Star® certified refrigerators. The Owner will also replace any existing incandescent light bulbs in all Owner provided lighting fixtures in the apartments to be submetered with CFLs.

According to the Owner, submetering electric usage in the currently unmetered rent-stabilized units will provide an

incentive for the efficient use of electricity in these units, will provide a tool by which the tenants of the rent-stabilized apartments may manage their energy usage, and will further the State's energy efficiency goals. The Owner also states that submetering allows for the fair energy cost allocation based on actual consumption. The Owner has certified that the submetering equipment complies with ANSI C12 standards for accuracy and reliability. The petition provides for a rate cap, consumer protections and grievance procedures. All affected tenants have been notified that their units will be provided electricity on a submetered basis. The lease addendum will, in plain language, clearly state the dispute resolution procedures for submetered electric customers, HEFPA consumer protections, rate calculations, and billing methodology. While the Owner states that the submetering system does not have the capability to terminate service at individual meters, it will notify residents that any termination of service must comply with HEFPA.

Furthermore, this approval is conditioned on Park Towers South Company, LLC and its successors fully affording all residents all notices and protections available to such resident pursuant to HEFPA before any judicial action based on nonpayment of electric charges is commenced. These protections include, but are not limited to deferred payment agreements pursuant to Public Service Law (PSL) §37 and 16 NYCRR Part 11, budget and levelized billing plans as set forth in PSL §38 and 16 NYCRR Part 11, the complaint handling procedures contained in PSL §43 and 16 NYCRR Part 11, and the special protections for medical emergencies, elderly, blind and disabled customers and for cold

weather periods as set forth in the PSL §32 and 16 NYCRR Part 11.²

The petition to submeter at Park Towers South meets the Commission's requirements for the submetering of a master-metered residential building owned or operated by private or government entities and approval to submeter electricity to the residents of the rent-stabilized apartment units under the jurisdiction of the HCR at Park Towers South should be granted, contingent on Park Towers South Company, LLC filing with the Secretary to the Commission, within 15 days of issuance of this Order, a completed Submetering Identification Form.³ Any future changes to the HEFPA Plan or the Submetering Identification Form shall also be filed with the Secretary. This approval is also contingent on the Owner replacing incandescent light bulbs with CFLs in all Owner provided lighting fixtures in the rent-stabilized apartment units.

The Commission orders:

1. The submetering of electricity to the rent-stabilized apartment units located at 315/330 West 58th Street, New York, New York, is approved subject to the condition that Park Towers South Company, LLC comply with Ordering Clauses 2 and 4 below.

2. Park Tower South Company, LLC shall file with the Secretary to the Commission within 15 days of issuance of this Order, a completed Submetering Identification Form.

² Case 08-E-0439, Riverview II Preservation, LP-Submetering, Order on Reconsideration (issued February 18, 2010) and Case 08-E-0439, Riverview II Preservation-Submetering, Order Denying Petition for Rehearing (issued June 25, 2010).

³ A management or ownership change would not affect this approval.

3. Park Tower South Company, LLC or its successor shall file an updated Submetering Identification Form and/or the Home Energy Fair Practices Act Plan if any information contained in these documents changes.

4. Park Towers South Company, LLC shall replace any refrigerator in a rent-stabilized apartment unit that is not currently Energy Star® certified or that is over 10 years old with an Energy Star® certified refrigerator and shall replace incandescent light bulbs with compact fluorescent bulbs, as described in the body of this Order, prior to commencing submetering of electricity to the rent-stabilized apartment units at 315/330 West 58th Street, New York, New York.

5. This proceeding is closed pending compliance with clause 2 and 4, above.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary



**New York State Public Service Commission
Office of Consumer Services**



Submetering Identification Form

Name of Entity			Corporate Address		
City	State	Zip	Web Site		
Phone			Utility Account Number		
Chief Executive			Account Holder Name		
Phone			E-mail		
DPS Case Number:					

Primary Regulatory Complaint Contact

Secondary Regulatory Complaint Contact

Name			Name		
Phone			Phone		
Fax			Fax		
E-mail			E-mail		
Address			Address		
City	State	Zip	City	State	Zip

We do not send complaints to personal e-mail addresses. A shared e-mail address must be provided or the transmission will default to the fax number listed above. Please enter the e-mail address, if any, to which we should send complaints: _____

Name of Property			Address		
City	State	Zip			
Electric Heat? Y / N			Electric Hot Water? Y / N		
# Units Occupied by: Sr. Citizens Disabled			Total # of Units		
Rent Stabilized	# Rent Controlled		# Rent-Regulated	# Market Rate	
# Low Income	# Section 8		# Landlord Assist Program	# Other	
Submeter / Billing Agent			Address		
City	State	Zip			
Contact Name		Contact Phone		Contact Fax	

Please return this form with 5 days to:

Hon. Jaclyn A. Brilling, Secretary to the Commission
 NYS Public Service Commission
 3 Empire State Plaza
 Albany, NY 12223
 e-mail: secretary@dps.ny.gov

(Rev. 1/27/2010)

Changes in contact information should be submitted within 5 days of any personnel change.