

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 11-M-0710 – In the Matter of Reviewing and Amending the Electric Submetering Regulations, 16 NYCRR Part 96.

NOTICE SOLICITING FURTHER COMMENTS
ON REVISED SUBMETERING REGULATIONS
WITH CORRECTED ATTACHMENT

(Issued August 30, 2012)

The New York State Public Service Commission is continuing to seek comments on planned amendments to the Commission's residential submetering regulations. An earlier draft of the proposed regulations was published in the New York State Register in February 2012. The Revised Residential Submetering Regulations was posted to the Commission's Web site on August 21, 2012 and supporting analysis for the revisions are expected to be published in the September 5, 2012 New York State Register. Several changes have been made to the earlier draft regulations, including, primarily, submetering would now be authorized even in new and substantially renovated construction, which was prohibited in the first published draft regulations. Moreover, procedures have been added to Sections 96.2 and 96.8 of the draft regulations to provide notice and an opportunity to be heard before the Department requires any reduction in the authorized rate cap in response to submeterer violations of HEFPA, the Commission order authorizing submetering, the submeterer's plan upon which Commission authorization is based, or the terms and conditions of submetered service as embodied in the regulations. The Revised Draft Residential Submetering regulations are attached to the Notice.

Interested parties may submit comments on the proposed submetering regulations no later than October 4, 2012. Comments should be submitted electronically by e-filing through the Department's Document Matter and Management System (DMM)¹ or to the Secretary at secretary@dps.ny.gov. Those unable to submit electronically may mail or deliver them to Hon. Jaclyn A. Billing, Secretary, New York State Public Service Commission, Three Empire State Plaza, Albany, New York 12223-1350. All comments submitted will be posted to the Commission's Web site and become part of the official case record.

¹ Why Register with DMM, http://www.dps.ny.gov/DMM_Registration.html
How to Register with DMM, <http://www.dps.ny.gov/e-file/registration.html>

Any questions may be directed to LuAnn Scherer, Chief, Consumer Advocacy, Office of Consumer Policy, at (518) 486-2476, luann.scherer@dps.ny.gov or Diane T. Dean, Assistant Counsel, Office of General Counsel, (518) 474-7072, diane.dean@dps.ny.gov.

(SIGNED)

JACLYN A. BRILLING
Secretary

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Part 96. RESIDENTIAL ELECTRIC SUBMETERING

(Statutory authority: Public Service Law §§4, 53, 65 and 66)

§ 96.1 Definitions - The following definitions apply for purposes of this Part:

- (a) Assisted Living Facilities - Multi-unit residential premises, identified as assisted living facilities and certified by the New York State Department of Health as such, which provide congregate residential housing with supportive services including on-site monitoring, and personal care services and/or home care services in a homelike setting.
- (b) Campground, recreational trailer park, marinas and parking facilities- facilities for use on an intermittent, temporary, or irregular basis by campground, recreational, trailer park, marina, or vehicle charging stations where electric service is delivered by the utility to the facility owner and redistributed to individual campsites, trailers, boats, or plug-in electric vehicle charging stations with or without submetering.
- (c) Condominium - Separate ownership of individual units in a multi-unit residential premise. Each unit owner holds title to a unit of real property and also owns a common tenancy with owners of other units for the common areas of the building, which are managed by a homeowners' association, or as established in the condominium bylaws.
- (d) Cooperative Apartment - Multi-unit residential premises in which residents own a share in the corporation that owns the real estate, which entitles the shareholder to occupy a dwelling unit. Each shareholder is granted the right to occupy one housing unit through an occupancy agreement, which is similar to a lease. A board of directors manages the cooperative.
- (e) Direct metering - in multi-unit residential premises, the measurement of electricity use in each unit through a meter that has been provided by the distribution utility company, wherein each individual residential unit is assigned its own meter.
- (f) Electric heating - Heat provided to an entire living space with electricity primarily by means of non-portable electric heating appliances.
- (g) HEFPA - The Home Energy Fair Practices Act, Public Service Law §§30-53 and all Commission regulations adopted to implement such provisions.
- (h) Master-metering – the measurement through a single meter of the quantity of electricity delivered to a multi-unit residential premises by a utility, wherein the owner or manager of such building is the utility customer and wherein the electricity may be redistributed to the individual residential units in the building either with or without submetering.
- (i) Rate cap – the maximum rate, calculated in each billing period, that may be used to compute the charges for electric service to a submetered resident. Unless a different rate cap is set pursuant to §96.2(a) and §96.8(b) and (c) of this Part, the rate cap shall be the rates and charges of the distribution utility for delivery and commodity in that billing period to similarly situated, direct metered residential customers. Where residents are billed for time-of-use, the maximum rate for purposes of calculating the rate cap shall be the average annual residential rate.
- (j) Resident – the occupant of a unit used as a home in a multi-unit residential premises.

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- (k) Senior Living Facility - Multi-unit residential premises in which housing and other services are provided to resident senior citizens and in which electric usage does not vary significantly from unit to unit because units are uniform in size and in the types of appliances.
- (l) Submeterer – any multi-unit residential premises owner or utility customer of record who purchases electricity for delivery by the utility to the premises and facilitates the sale or redistribution of such electricity for use by the premises occupants whose units are separately metered and billed based on the measurement of electricity use in each occupant’s unit. Any entity acting on behalf of such owner that arranges for the installation of submeters and the billing of submetered usage to individual residents shall be considered the agent of the submeterer. The submeterer may engage the services of a submetering service provider to install meters, read meters and/or handle billing.
- (m) Submetering – a system of measuring electricity use in a residential unit in a master-metered multi-unit residential premises, or campground, trailer park, marina or parking facilities by means of a submeter installed on the wiring to each residential unit or campsite, trailer, boat hookup or plug in electric vehicle charging station.
- (n) Time-of-use rates – the pricing of electricity based on actual usage during particular time intervals. Time-of-use rates may be applicable to blocks of time over a 24 hour period.
- (o) Time-of-use meter – a meter that registers accumulated energy consumption (data) over specific time intervals.
- (p) Utility customer – for purposes of this Part, an electricity consumer whose use of electricity is directly metered by the utility and is a customer of record of the distribution utility.

§ 96.2 Electric Service to Submetered Multi-unit Residential Premises.

- (a) General Provisions Applicable to all Submetering.
 - (1) Electric service shall only be provided to a multi-unit residential premises in which individual dwelling units in the premises receive submetered electric service if the submetering (a) is and continues to be authorized by Commission order where a Commission order was necessary, (b) is and continues to be consistent with any conditions imposed by such order, and (c) is and continues to be consistent with this Part notwithstanding previous authorization to submeter that did not include the requirements herein.
 - (2) If electric service is provided to a multi-unit residential premises in which the individual dwelling units in such premises receive submetered electric service, but which, after the procedures provided for in §96.8(b) and (c), has been found to be (a) inconsistent with any conditions imposed by the Commission’s order authorizing such service, or (b) inconsistent with applicable provisions of this Part, the rate cap for such service may be reduced by up to 40%. The rate cap will continue at such reduced level from the date specified in the Notice of Rate Cap Reduction until such time as the Department confirms to the submeterer that such inconsistency has been corrected. Further, when such inconsistency existed for a period of time prior to the Department’s Notice of Alleged Violation contained in §96.8, the reduced rate cap may be extended to all or a portion of such period, not exceeding two years, and the

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submeterer shall refund to residents the difference between the reduced rate cap established for that period pursuant to this paragraph and any charges for electric service paid by residents in such period. A rate cap reduction made pursuant to this section is appealable to the Commission within 15 days from Notice of Rate Cap Reduction.

- (b) Existing Direct Metered Multi-unit Residential Premises. Except as otherwise provided in this Part, electric service provided to individual residential units in existing multi-unit residential premises through direct metering may not be discontinued or replaced by master metering. If, however, a Petition to Submeter is filed, which (1) complies with the applicable requirements of §96.5 and §96.6; (2) seeks to convert such premises from direct metering to master-metering with submetering; and (3) demonstrates that the building or complex for which master metering with submetering is sought will participate in building level demand response programs or will employ on-site co-generation plant or an alternative, advanced energy efficiency design, the conversion to submetering may be authorized by the Commission.
- (c) Assisted Living and Senior Living Facilities. Electric service is authorized to be established or continued to assisted living or senior living facilities through master metering.
- (d) Campgrounds, Recreational Trailer Parks, Marinas, and Parking Facilities. Electric service may be provided to the facility owner or operator of campgrounds, recreational trailer parks, marinas and parking facilities for redistribution to individual campsites, trailers, boat hookups, or plug-in electric vehicle charging stations, with or without submetering. Master metering and submetering, at the facility owner's or operator's option, may be installed and used for billing without Commission approval and are not subject to submetering service conditions.

§ 96.3 Authorizations to Convert Existing Master-metered Residential Rental Premises to Submetering and Submetering in New Premises.

- (a) Notice of Intent to Submeter.

Except when a conversion to submetering results in the cost of electric heat becoming the responsibility of the residents or when a building owner seeks authorization to install submetering in place of direct metering pursuant to §96.2(b), a master-metered multi-unit residential rental premises with submetering shall be authorized:

- (1) after filing a Notice of Intent to Submeter, which includes the information, descriptions, plans, forms, certifications, and other materials and representations specified for such Notices in §96.5 of this Part;
- (2) after individual notices to residents are provided pursuant to §96.3(c);
- (3) upon the Commission's determination and order approving such submetering as in the public interest and consistent with the provision of safe and adequate electric service to residents. In making this determination, the Commission may rely on the Notice of Intent to Submeter and the information therein, when complete, as a rebuttable presumption that submetering at such premises is in the public interest and consistent with the provision of safe and adequate service to residents.

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(b) Petition to Submeter.

- (1) Where payment for electricity for electric heat will become the responsibility of residents, submetering will be authorized:
 - (i) after filing a Petition to Submeter which includes the information, descriptions, plans, forms, certifications, and other materials and representations specified for such Petitions in §96.5 of this Part;
 - (ii) after individual notices to residents are provided pursuant to §96.3(c), where necessary; and
 - (iii) upon the Commission's determination and order approving such submetering as in the public interest and consistent with the provision of safe and adequate electric service to residents. Such determinations will be considered by the Commission on a case-by-case basis. In making such determination, the Commission may rely on the Petition to Submeter, supplemental information provided with the Petition, information supplied in public comments, and staff's investigation.
- (2) Replacement of direct metering with submetering shall be authorized:
 - (i) after filing a Petition to Submeter which includes the information required by §96.5 of this Part and the demonstration described in §96.2(b);
 - (ii) after individual notices to residents are provided pursuant to §96.3(c); and
 - (iii) upon the Commission's determination and order approving such submetering as in the public interest and consistent with the provision of safe and adequate electric service to residents. Such determinations will be considered by the Commission on a case-by-case basis. In making such determination, the Commission may rely on the Petition to Submeter, supplemental information provided with the Petition, information supplied in public comments, and staff's investigation.
- (c) The following notice to residents is required for conversions to submeter. The submeterer shall provide or shall have provided proof that such was provided, in the form of a sworn affidavit, that the following individual, written notices have been provided to all current residents:
 - (1) Prior to Filing a Notice of Intent to Submeter or a Petition to Submeter pursuant to this Part. Prior to submitting a Notice of Intent to Submeter or a Petition to Submeter pursuant to this Part, the prospective submeterer identified in such Notice or Petition shall provide individual notice to current residents of the prospective submeterer's intent to submit a Notice of Intent to Submeter or Petition to Submeter. Such notification to residents shall include the identification of a location in the premises where, and at times convenient to the residents, the information required to be provided to the Commission under §96.5 may be reviewed by residents. Such notification shall also include an offer to provide, upon request by a resident, a copy of such Notice or Petition. Such notification shall also include information on how a current resident may contact the Department of Public Service to comment on such Notice of Intent to Submeter or Petition to Submeter.

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- (2) Prior to Approval. A Notice of Intent to Submeter or Petition to Submeter filed pursuant to §96.3 shall not be noticed for comment in the New York State Register until all information required in §96.5 in connection with such Notice or Petition is filed with the Secretary. Immediately upon publication of the Notice of Intent to Submeter or Petition to Submeter in the State Register, the prospective submeterer shall inform current residents how they may submit comments to the Department of Public Service within the State Administrative Procedure Act comment period.
- (3) After Submetering Approval. After submetering is authorized pursuant to this Part, the submeterer shall notify residents no less than 2 months prior to the actual commencement of billing for submetered electric service. The submeterer shall file with the Secretary a copy of the notice provided to current residents of the date upon which submetering will commence. Such required notice shall include:
 - (i) a statement indicating that prospective residents will be notified prior to signing a lease or purchase agreement that electricity will be supplied on a submetered basis and the residents will be responsible for electric charges;
 - (ii) a copy of the annual notice used or to be used for compliance with PSL §44 which summarizes the residents' HEFPA rights and responsibilities, including complaint handling procedures; and
 - (iii) the precise manner in which submetered residents may contact the Department of Public Service Office of Consumer Services.
- (d) the submeterer shall commit in writing to accept all of the conditions required by the Commission in its order authorizing submetering and in these regulations.
- (e) submeters shall be installed and submetered billing shall commence within five years of the Commission Order authorizing submetering. If submetering has not commenced within five years of such Commission Order, a new Notice of Intent to Submeter or Petition to Submeter shall be filed with the Commission.
- (f) Authorization to submeter shall continue when ownership of a submetered premises is transferred.

§ 96.4 Submetering in Master-metered Residential Cooperatives and Condominiums.

Master-metering with submetering in a master-metered residential cooperative or condominium shall be authorized:

- (a) after filing a Notice of Intent to Submeter which includes the information, descriptions, plans, forms, certifications, and other materials and representations specified for such Notices in §96.5 of this Part;
- (b) after individual notices to owners or shareholders are provided pursuant to §96.3(c);
- (c) upon the Commission's determination and order approving such submetering as in the public interest and consistent with the provision of safe and adequate electric service to residents. In making this determination, the Commission may rely on the Notice of Intent to Submeter and the information therein, when complete, as a rebuttable presumption that submetering at such premises is in the public interest and consistent with the provision of safe and adequate service to residents.

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§ 96.5 Notice of Intent to Submeter and Petition to Submeter– Contents.

Each Notice of Intent to Submeter or Petition to Submeter filed pursuant to this Part shall include:

- (a) a description of the type of submetering system to be installed, including a demonstration that the submetering system, when installed, will be capable of service termination to individual units. Such description shall include the meter classification according to the manufacturer's name and proof of each submeter's conformance to the requirements in 16 NYCRR Parts 92 and 93. Authorization to submeter pursuant to this Part will be, unless modified by Commission order, contingent upon use of the named, or an identified comparable submetering system.
- (b) a description of the methods to be used to calculate the bills for individual residents when submetering is implemented, including the methods to be used to determine that the submetered bills, when rendered, will comply with the rate cap as set forth in this Part.
- (c) a plan for complying with the provisions of HEFPA. Such plan shall include, but is not limited to, a description or sample of the prospective submeterer's form to be used to determine residents assets, budget billing form, quarterly billing form, reminder notice, notice to social services of resident's inability to pay, final termination notice, final suspension notice, the annual resident notification of rights, bill contents, budget or levelized payment plan, deferred payment agreement, and complaint handling procedures.
- (d) a "Submeterer Identification Form," which shall contain the premises' utility company account number(s) and the name, telephone number and address of the individual or individuals responsible for billing and for resolving resident complaints. For new accounts for which account numbers are not available when the Notice of Intent to Submeter or Petition to Submeter is filed, account numbers shall be made part of the Submeterer Identification Form when available to the applicant.
- (e) where applicable, a description of the method to be used to back out electric charges from rent, which shall include:
 - (1) a detailed description of how such monthly reduction to rent will be calculated; and
 - (2) a copy of the individual notice provided to residents explaining the basis and methodology for such rent reductions.
- (f) certification by the prospective submeterer that the following shall be included in plain language in all leases and agreements governing the premises to be submetered, which shall be filed with the Commission in the Notice of Intent to Submeter or Petition to Submeter:
 - (1) submetering complaint procedures;
 - (2) the HEFPA rights and responsibilities of residents; and
 - (3) a provision stating that submetering refunds will be credited to residents affected by the submeterer's actions that led to such refunds provided that the submeterer has contact information for such residents.

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- (g) proof of service that a Notice of Intent to Submeter or Petition to Submeter was sent from the prospective submeterer to the utility company providing electric service to the premises to be submetered.
- (h) documentation sufficient to establish that the refrigerators in all rental dwelling units are no more than ten years old or meet the most recently adopted federal energy efficiency standards for such appliances.
- (i) a description of the electric energy efficiency measures that have been or will be installed.
- (j) a description of the information and education programs that have been and will be provided to residents on how to reduce electric usage. Such programs shall include information to all residents before submetering commences as well as supplemental information to residents with above-average electricity usage in the first twelve months after submetering has begun.
- (k) when a Notice of Intent to Submeter or Petition to Submeter is made with respect to a premises in which 20% or more of the residents receive income-based housing assistance, such Notice or Petition shall include:
 - (1) the name of each such assistance program in place at the premises, the agency administrator of each such program, the number of residents receiving assistance under each such program, whether the administrator of such program must approve the proposed submetering at such premises and, if so, when such approval was or may be granted.
 - (2) the utility allowance or rent reduction applicable to residents pursuant to each such assistance program.
 - (3) proof that an energy audit by a certified energy consultant has been conducted, a description of the energy efficiency plan for the premises, including, but not limited to, a refrigerator replacement plan, other specific conservation and weatherization measures that have been or will be installed, including those sponsored by the New York State Energy Research and Development Authority and/or other organizations, and information and education programs that have been or will be provided to residents on how to reduce electric usage. If a premises owner or operator has participated in a NYSERDA and/or other program to encourage energy efficiency, the prospective submeterer shall provide formal documentation in its Notice of Intent to Submeter or Petition to Submeter describing the energy efficiency rating its premises has achieved, which appliances will be EnergyStar® rated, and NYSERDA certification that its energy reduction plan is complete.
- (l) when a proposed conversion to submetering of an electric heat property or submetering in a new electric heat property is addressed through a Petition to Submeter, such petition shall, unless waived by the Commission for good cause shown, include:
 - (1) a detailed description of the manner and extent to which electric heat is or will be provided to the residential units subject to submetering.
 - (2) a demonstration that electricity consumption for heating in dwelling units may be controlled by the resident of each unit by the use of programmable thermostats.

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- (3) either a forecast based on one year of apartment-level shadow billing or a study of actual submetered data from comparably situated buildings. Such forecast or study shall demonstrate that, when submetering is introduced, more than 60% of residents are expected to pay less, after accounting for savings from energy efficiency measures, energy conservation, and assistance that may be available from the Home Energy Assistance Program or other energy assistance programs, for the submetered electricity during the first 12 months of electric service than the amount of rent reduction they will receive as a result of the introduction of submetering during this period.
- (4) Proof that an energy audit by a certified energy consultant has been conducted, a description of the energy efficiency plan for the premises, including, but not limited to, a refrigerator replacement plan, other specific conservation and weatherization measures that have been or will be installed, including those sponsored by the New York State Energy Research and Development Authority and/or other organizations, and information and education programs that have been or will be provided to residents on how to reduce electric usage. If a premises owner or operator has participated in a NYSERDA and/or other program to encourage energy efficiency, the prospective submeterer shall provide formal documentation in its Petition to Submeter describing the energy efficiency rating its premises has achieved, which appliances will be EnergyStar® rated, and NYSERDA certification that its energy reduction plan is complete.
- (5) when the Petition to Submeter is made with respect to a premises in which at least 25 of the residents receive income-based housing assistance, documentation to establish that the submeterer has registered as a Home Energy Assistance Program (HEAP) vendor. The Commission may require, when necessary, that a submeterer become a HEAP vendor.
- (6) submetering of electric heat in new premises shall not be subject to the filing requirements of § 96.5(1)(3) or (4).
- (m) when a Petition to Submeter is for a conversion from direct metering to submetering pursuant to §96.2(b) of this Part, the Petition shall include a demonstration that the building or complex for which submetering is sought will participate in building level demand response programs or will employ on-site co-generation plant or an alternative, advanced energy efficiency design.
- (n) such other or further demonstration, documentation, commitment or information which, in an order issued prior to the date on which such Notice of Intent to Submeter or Petition to Submeter is filed, the Commission shall have identified as necessary to a determination that approval of such Notice or Petition is in the public interest and consistent with the provision of safe and adequate service to residents.

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§96.6 Electric Submetering Service Conditions.

All submeterers, whether authorized to submeter by Commission order, rule, or past practice, shall provide or continue to provide submetered service under the following conditions unless waived in whole or in part by Commission order for good cause shown:

- (a) a condition that submetering shall be in accordance with, as applicable, the Notice of Intent to Submeter, the Petition to Submeter, or similar filings made prior to the effective date of this Part, as authorized by the Commission or as modified by conditions adopted by the Commission as part of its review and authorization.
- (b) a condition that each submetered residential unit in a multi-unit dwelling must be provided with a submeter or related equipment that allows for the termination of submetered electric service to that unit in the event that termination of such service is consistent with the requirements of HEFPA.
 - (1) The requirements of this paragraph shall not apply to submetering of electricity authorized by Commission order prior to January 1, 2014 or which is the subject of a Notice of Intent to Submeter or of a Petition to Submeter, filed with the Secretary prior to January 1, 2014.
 - (2) When submeters installed as of January 1, 2014 are replaced, any newly installed submeters shall be capable of service termination.
- (c) a condition that the submeterer shall not charge more than the applicable rate cap and that, in the event of charges greater than the applicable rate cap, the submeterer may be directed to provide credits to residents for such overcharges plus interest.
- (d) a condition that the submeterer shall not charge time-of-use rates when the resident has not agreed to be billed using time-of-use rates.
- (e) a condition that the submeterer shall comply with the requirements imposed by HEFPA and that the submeterer shall notify residents, in either the lease to which they are a party, through their condominium or cooperative offering plan, or through other individual notice, of the consumer protections afforded the residents by HEFPA, and that the submeterer shall provide such consumer protections.
- (f) a condition that the submeterer shall respond to complaints filed with the Department of Public Service and forwarded to the submeterer in accordance with the Department's complaint procedures.
- (g) a condition that the lease or other residential dwelling agreement between a submeterer and a submetered resident shall not require or include binding arbitration as a means to resolve submetered resident service or billing complaints and that in addressing any such complaint the submeterer and the submetered resident shall follow the provisions of 16 NYCRR Part 12 – Consumer Complaint Procedures.
- (h) a condition that, at any premises for which submetering of electric service is permitted, but at which, pursuant to §96.6(c), equipment that is capable of terminating electric service to individual units is not required, the submeterer shall provide, in the event that the submetered resident is in arrears for the payment of charges for electric service, each HEFPA protection associated with the termination of electric service for unpaid charges

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that would be available to such resident if the submetered resident had been directly metered. Such HEFPA protections shall be provided notwithstanding the fact that the submetering and related equipment does not technically allow for such termination of service. Each protection shall be provided to such resident prior to the commencement of any other civil enforcement, collection or other proceeding based on such resident's overdue electric charges.

- (i) a condition that the submeterer shall update the information contained in the Submeterer Identification Form submitted pursuant to §96.5(d) of this Part or that is on file with the Department of Public Service by filing with the Department of Public Service notice within ten days of any personnel change.
- (j) a condition that bills to submetered residents shall be sent within thirty days of receipt of the utility and/or Energy Services company bill for the master-metered service, and that the submeterer shall retain billing records for a period of six years beginning with the effective date of these regulations.
- (k) a condition that cross-wiring (for example, service through a shared meter) shall not exist at premises that are submetered.

§ 96.7 Electric Submetering Equipment Requirements.

All submeterers, whether authorized to submeter by Commission order, rule, or past practice shall provide or continue to provide submetered service under the following conditions unless waived in whole or in part by Commission order for good cause shown:

- (a) all submetering products and ancillary equipment used to monitor electric flow to submetered residents and installed or replaced after January 1, 2014 must:
 - (1) comply with the provisions of 16 NYCRR Parts 92 and 93; and
 - (2) be physically compatible with the service endpoints of the premises' electrical system. Submeters shall be equipped with viewable registers, accessible to the resident so the resident may monitor their own kWh consumption or shall provide alternate mechanisms to allow residents to monitor their own consumption such as through a computer program.
 - (3) submeters that are calibrated to register a fixed fraction of the electricity consumed should display the meter register multiplier which will be used to determine the resident's actual kilowatt hour usage. Any register multiplier used should be indicated on resident bills.
- (b) Ensuring Continued Submeter Performance – submeter inspection and testing programs shall be instituted to ensure that residents of submetered premises continue to receive reliable and accurate electric consumption measurements. The submeterer or submeterer's agent shall conduct an annual testing program to analyze a statistically significant sample of the in-service submeters in accordance with the testing procedures and standards outlined in 16 NYCRR Parts 92 and 93. Submeters that do not meet the requirements of 16 NYCRR Parts 92 and 93 shall be corrected or recalibrated as soon as practicable but no later than 1 year after testing unless otherwise ordered by the Commission.

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- (c) Cost of Meter Tests for all Submeters – the cost of testing a submeter’s accuracy shall be borne by the submeterer to the extent described in this paragraph. A recipient of submetered service may request and receive one submeter test at no cost during a twelve month period when the request is made pursuant to a consumer complaint. A recipient of submetered service may request more than one meter test during a twelve month period and may request that the test be witnessed by Department of Public Service staff; however, if the submeter is not out of the limits as prescribed by Part 92, the person requesting more than one annual test will bear the cost of such additional meter tests.

§96.8 Failure to Comply with this Part.

- (a) Any failure to submeter in compliance with this Part or 16 NYCRR Parts 92 or 93, as referenced herein, may result in Commission action that (1) rescinds, suspends, limits or stays the submeterer’s authorization to submeter electricity, or its authority to render bills to and collect payments from submetered residents; (2) terminates electric service to the submetered premises or orders rebilling, or billing refunds; or (3) results in a penalty under the Public Service Law or in other Commission enforcement proceedings. Any such action shall be taken in accordance with the Public Service Law and Commission procedures.
- (b) In addition, or in the alternative, a failure to submeter in compliance with this Part or 16 NYCRR Parts 92 or 93 as referenced herein, may result in up to a 40% reduction of the rate cap. Prior to establishing a reduced rate cap, the Department of Public Service shall:
 - (1) provide to the submeterer a Notice of Alleged Violation stating with specificity the violations(s) of regulations, Commission orders, statute(s) or tariff(s) found after Department investigation as well as a description of the Department’s proposed rate cap;
 - (2) require that the submeterer provide Notice of Alleged Violation to residents along with information on how residents may provide comments within 10 days to the Department of Public Service regarding such Notice.
 - (3) allow the submeterer 15 days from the date of the Notice of Alleged Violation to respond to such notice;
 - (4) allow the submeterer 20 days from the date of such response or 30 days from the Notice of Alleged Violation to cure the failures identified therein; and
 - (5) send to the submeterer a Notice of Rate Cap Reduction stating the basis for the rate cap reduction, the level of rate cap reduction, and the date(s) upon which the rate cap reduction shall be in effect. The rate cap reduction shall be in effect no less than 20 days after the Notice of Rate Cap Reduction.

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- (c) Any rate cap reduction implemented by the Department of Public Service pursuant to §96.2(a)(2) (rate cap) of this Part may be appealed to the Commission within 15 days of the Notice of Rate Cap Reduction. Any such appeal will toll the period during which a Department rate cap reduction will be in effect.
- (d) By undertaking to submeter pursuant to a Commission Order granting a Notice of Intent to Submeter or a Petition to Submeter issued under this Part or by continuing to submeter, the submeterer shall have consented to the jurisdiction of the Commission to impose the enforcement remedies (1) described in this Part or (2) described in the Public Service Law and applicable in the event a company, corporation or person fails to obey and comply with a provision of the Public Service Law, or a regulation or order of the Commission applicable to it.

This Attachment is provided as a courtesy to the public and to parties to Case 11-M-0710. If any discrepancies exist between this Attachment and the Commission's August 21, 2012 Notice of Proposed Revised Rulemaking, the Commission's Notice of Proposed Revised Rulemaking shall be deemed correct.