

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 27, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
James L. Larocca
Gregg C. Sayre

CASE 11-E-0316 – Petition of 92 Equities LLC to Submeter Electricity at 201 West 92nd
and 200 West 93rd Streets, New York, New York Located in the
Territory of Consolidated Edison Company of New York, Inc.

ORDER APPROVING SUBMETERING OF ELECTRICITY
SUBJECT TO CONDITIONS

(Issued and Effective December 3, 2012)

BY THE COMMISSION:

INTRODUCTION

By letter dated June 7, 2011 and revised on March 30, 2012, 92 Equities LLC (Owner or 92 Equities LLC) requested permission to submeter electricity to the tenants of two multi-family residential buildings located at 201 West 92nd and 200 West 93rd Streets, New York, New York (the Buildings) totaling 134 units. Of the 134 units, 23 units are fair market rentals, 103 units are rent stabilized and eight units are rent controlled under the jurisdiction of New York State Homes and Community Renewal (HCR). The units are not electrically heated and heat is included in rent. The Owner submitted notice of this petition to submeter to the Consolidated Edison Company of New York, Inc. (Con Edison) by letter dated June 10, 2011.

In accordance with the State Administrative Procedure Act (SAPA) §202(1), the petition was noticed in the State Register on July 6, 2011. The comment

period ended on August 22, 2011. Comments were filed by nineteen tenants and the 200/201 Tenants Association, Inc. on behalf of the tenants of the Buildings. The Owner also filed comments addressing the issues raised in the comments. Although some of the comments were filed outside of the comment period, they are discussed and addressed in this Order.

BACKGROUND

The petition involves the submetering of electricity at an existing rental property 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).

The Submetering Plan

Electric usage at the Buildings is measured by utility master-meters that record electric consumption for each of the buildings. According to the Owner, electric usage for each unit will be measured by a Quadlogic Control Corporation's (Quadlogic) S-10 Apartment Model Digital Electric Meter (S-10). According to the Owner, the S-10 complies with current reliability and accuracy standards of the American National Standards Institute (ANSI C-12). The S-10 is capable of recording hourly electric usage for each unit, which can allow for the tracking of individual load profiles, and can keep the hourly data for approximately 45 days. The S-10 may be upgraded to provide more advanced metering data.¹ The Owner has advised that the submetering system does not have the capability to terminate service to an individual unit.

¹ The application to submeter does not propose to bill tenants based upon time of use or real time pricing. However, we caution the Owner that we apply the policy contained in Public Service Law (PSL) §66(27)(a) and require, among other things, the consent of each residential submetered customer to be billed at such rates. Case 04-E-1335, Cooperative Coalition to Prevent Blackouts – Submetering and Time of Use Rates, Declaratory Ruling on the Submetering of Residential Customers at Time of Use Rates (issued June, 2005).

Benefits of Submetering

The Owner states that submetering will allow for fair cost allocation of the Buildings' electric usage based on each tenant's actual consumption. Additionally, the S -10 is a remote metering system so entry into the building is not required and, according to the Owner, this communication system is more cost-effective because control wiring is unnecessary.

Tenants' Submetered Rates

The Owner states that the rates and charges paid by the tenants will be based on the Con Edison SC-1 rate. Specifically, the electric consumption in each individual unit will be multiplied by a calculated kilowatt hour (kWh) rate. The kWh rate will include, in accordance with the relevant Con Edison tariff provisions, a basic service charge, supply and delivery charges, the fuel adjustment charge, systems benefit charge and taxes. The kWh rate will be multiplied by each unit's kWh usage. In no event will the total submetered charges for any tenant (including monthly administrative charges) exceed Con Edison's SC-1 rate for directly metered service.

Quadlogic, as the Owner's billing company, will read the submeters monthly and render bills based on the actual usage of each unit. Tenant bills will include: opening and closing meter reads and dates; kWh usage for the period; a breakdown of dollar amounts billed; total charge for the period; the total amount due; and, the billing company's contact information. Meter data and billing calculations will be retained for up to six years. Under HCR regulations, tenants will receive two months of shadow billing prior to being billed for their electric usage. The Owner advises that rent reductions will be made in accordance with HCR Operational Bulletin 2003-1, Update 2.²

92 Equities LLC has agreed to replace refrigerators that are 10 years old or older with EnergyStar® units within 14 months after issuance of a Commission Order.

² The HCR rent reductions which apply to the units at the Buildings are \$56.25 for one bedroom units, \$59.78 for two bedroom units and \$65.29 for three bedroom units.

Billing based on submetering at the Buildings will not commence until refrigerator replacement has been completed.

The Owner has also agreed to provide to the tenants, along with the notice that submetering will commence, a brochure on energy efficiency measures tenants can implement to reduce energy usage. In each of the first three months after submetering has been implemented, the Owner will again provide such information to tenants in each apartment in which the electricity charge exceeds the rent adjustment.

Tenant Protections and Complaint Procedures

In the event that there is a complaint regarding electric charges, the tenant should contact the property manager by writing, telephone, Internet or in person. The property manager will investigate and respond to the tenant's complaint, in writing, within 15 days of receipt of the complaint. If the tenant is not satisfied with the property manager's response, the tenant may file a protest within 15 days of receipt of the response. The tenant may contact the Department of Public Service at any time regarding a complaint about submetered service. The Owner submitted a detailed Home Energy Fair Practices Act (HEFPA) Plan which includes an "Annual Notification of Rights" document which provides information on: complaint process; termination or discontinuation of service; reconnection of service; special procedures regarding medical emergencies, life support, elderly, blind or disabled customers; cold weather periods; special notification to social services; voluntary third-party notice; deferred payment agreements; budget or levelized payment plans; quarterly billing plans; deposits; and, late payment charges. Sample documents for implementation of HEFPA were also submitted as part of the petition.

Notification of Submetering Plan

The Owner provided, along with copies of the notices given to the tenant, an affidavit that the notices were either hand-delivered to or slipped under the doors of all tenants on August 2 and October 6, 2011. In addition, the Owner has summarized in a lease rider the information contained in the application to submeter, including the method of rate calculation, rate cap, complaint procedures, and consumer protections, including

contact information for the Department of Public Service. According to the Owner, each tenant will be provided a written notice of the Commission's action in this matter.

Comments of Tenants in Opposition to Submetering

Comments were received from nineteen tenants and the 200/201 Tenants Association, Inc. on behalf of the tenants. The majority of the comments were in opposition to the proposed submetering of electricity and raised concerns about: tenant notification; treatment of rent and air conditioner charges; rate calculations and billings; electric usage in the common areas; building electrical wiring; and, meter accuracy. The tenants also raised concerns about asbestos in the buildings. By letters dated April 15 and June 13, 2012, the Owner submitted responses to the tenant comments. The following provides more detail on the tenant's comments and the Owner's responses to those comments.

Tenant Notification

According to the comments, the initial notice of the submetering proposal, dated July 13, 2011, was not hand delivered to each tenant until August 2, 2011. The 45 day comment period pursuant to SAPA ran from July 6, 2011 through August 22, 2011 and the tenants claim that they had only a limited opportunity to submit informed comments on the proposal by the deadline.

The Owner distributed a second tenant notice, dated October 6, 2011, which again advised tenants of their ability to provide comments to the PSC. All comments received after the SAPA deadline were considered.³ According to the Owner, management and Quadlogic representatives also attended a December 7, 2011 meeting arranged by the 200/201 Tenants Association, Inc. to discuss the submetering proposal and to address tenant questions.

³ We accept these comments because they contribute to the development of a complete record in this proceeding and are not prejudicial.

Rent Reductions and Air Conditioning Surcharges

The tenants raised questions on the treatment and accuracy of rent reductions and the application of air conditioning unit surcharges. They sought clarification on the timing for the rent reductions and elimination of the air conditioning surcharges and expressed concern that these reductions may not sufficiently cover the cost of electricity and may cause financial hardships. Concern was expressed regarding the inability of elderly and disabled tenants to pay for submetered electric service. Finally, the comments sought assurances that there would be fairness and accuracy in the billings given that there is a combination of HCR and fair market tenants.

In response, the Owner stated that for the rent stabilized apartments rent reductions will be applied at the time submetering is started and will be in accordance with HCR requirements. The rent reductions, set by HCR, will be \$56.25 for one bedroom units, \$59.78 for two bedroom units and \$65.29 for three bedroom units. Furthermore, according to the Owner, in instances where a monthly fee of \$29.13 per air conditioner is included in a rent as a surcharge, such surcharge will be eliminated upon commencement of submetering pursuant to HCR Bulletin 2003-1 and its updates. Fair market apartments will receive the same rent reductions as the rent stabilized apartments.⁴

Rate Calculations and Billings

The tenants' comments sought clarification on Commission oversight with respect to rate calculations and billings to ensure that electricity charges from the Owner are accurate and clearly documented. The tenants also stated that it was their understanding that if a tenant was not able to provide full or partial payment on an electric bill, the tenant could be evicted for nonpayment of the electricity charges.

92 Equities LLC's' revised petition, which was filed on March 30, 2012, stated that "electric will not be treated as additional rent by the Owner" and, therefore,

⁴ The Owner indicates that the fair market tenants are not assessed air conditioner surcharges.

tenants will not be evicted solely for nonpayment of electricity charges. The Owner reiterated that the rate calculation to be used will be based on the Con Edison SC-1 rate and will include charges in accordance with the relevant Con Edison tariff as presented in the petition. In no event will the rate charged to tenant exceed the SC-1 rate.

Additionally, the Owner states that after HCR's approval of submetering it requires that tenant receive two months of shadow billing prior to actual billing for electricity.

Electricity Usage in Common Areas

The tenants sought clarification on the responsibility for charges related to electricity usage in common areas of the building and whether such charges would be passed on to them. The Owner stated that the cost of electricity in common areas will be the Owner's responsibility.

Wiring and Meter Accuracy

The tenants' raised concerns about the potential for cross wiring during the submetering conversion process, safety and whether there would be sufficient capacity to provide electricity through the submetering system. They also expressed concern regarding the accuracy of submetering.

In the Owner's response, it noted that the submetering installation will be performed by a licensed electrician in accordance with relevant regulations and codes. The Owner is also required, under HCR Operational Bulletin 2003-1 and its updates, to provide to HCR a sworn affidavit from a licensed electrician that the buildings' existing wiring is safe and the electric service has sufficient capacity to serve all of the buildings needs.

The Owner reiterated that the submetering system to be installed at West Street complies with the ANSI C-12 standards for accuracy and reliability. According to the Owner, the submetering system features self-diagnostics to identify operational problems and that Quadlogic monitors the meters to pinpoint any malfunctions and reviews meter data for accuracy prior to issuing billings. If a complaint regarding meter accuracy cannot be resolved remotely, Quadlogic will conduct an on-site inspection.

Asbestos

One tenant raised a concern of potential exposure to asbestos if the submetering installation required access to walls. The Owner claims that there is no known asbestos in the Buildings.

DISCUSSION AND CONCLUSION

Subject to conditions described below, we approve the submetering of electricity to the residential tenants of the Buildings. The tenants have not raised any issues that would require a stay of a consideration of this petition to submeter.⁵ Furthermore, the Owner has adequately addressed each of the issues raised by the tenants.

While there was delay in the delivery of the notice of the Owner's intent to submeter to tenants of the Buildings, additional notice was provided which allowed an adequate opportunity for tenants to provide comments to us. The rate calculation to be used by the Owner to calculate submetered electric bills is a fair and accurate way to allocate the master-meter charges for the Buildings.⁶ The Owner also states that it will not treat submetered electricity charges as additional rent. The Owner has stated that the application of rent reductions and the elimination of air conditioning charges will be in

⁵ In Case 08-E-0439, we established a methodology to assess potential financial harm in situations where the tenants become, as a result of submetering, responsible for electric heat. Under this test, we evaluate whether a majority of tenants as a group will not be economically harmed by submetering, taking into account the rent reductions, the benefits available to tenants, such as HEAP, and any energy efficiency improvements. However, we do not apply this test in instances where the building is not electrically heated, such as in this proceeding. Case 08-E-0439, Riverview II Preservation, LP – Submetering, Order on Reconsideration (issued February 18, 2010) and Case 08-E-0439, Riverview II Preservation, LP, Order Denying Petition for Rehearing (issued June 25, 2010).

⁶ The Owner states that the submetering system complies with ANSI C-12 standards for metering.

compliance with HCR guidelines. Fair market tenants will assume responsibility for their electric charges and will receive a similar rent adjustment.⁷ The Owner has also agreed, and it is a condition of this Order, that it will replace all refrigerators at least 10 years old with new Energy Star® models prior to the commencement of billing for electric submetering at the Buildings. In addition, the Owner will provide tenants brochures with information on energy efficiency measures, as described above. Submetering is economically advantageous over direct metering in that the installation and maintenance costs, in addition to the building's total electricity costs, will be lower. According to the Owner, the submetering at the buildings will comply with ANSI C-12 standards for reliability and accuracy. Submetering may encourage tenants to further reduce energy costs and electric consumption through additional conservation measures. The rate cap, rate calculations and billing methodology, consumer protections and grievance procedures are in compliance with our regulations and policies. All tenants have been notified that their apartments will be submetered. A lease rider will be provided to tenants that will, in plain language, clearly state grievance procedures for the tenants and will specify rate caps and tenant protections, and such provisions will be in compliance with HEFPA. The submetering system does not have the capability to terminate service to individual meters. The Owner states it will provide tenants all the notices and procedures required under HEFPA prior to terminating service to a tenant.

This approval is conditioned on 92 Equities LLC and its successors fully affording all tenants all notices and protections available to such tenants 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 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

⁷ Fair market tenants are not presently charged air conditioning fees, but will otherwise receive the same rent reductions provided to the rent stabilized tenants for their apartments.

emergencies, elderly, blind and disabled customers and for the cold weather period as set forth in PSL §32 and 16 NYCRR Part 11.⁸

The petition to submeter the Buildings meets our requirements for submetering of existing residential rental buildings owned or operated by private or government entities and this approval allowing the submetering of electricity to the residential tenants of the Buildings is granted, subject to the conditions that 92 Equities LLC not treat submetered electric charges as additional rent, not apply any of a tenant's rent payment to the tenant's submetered electric bill, and the replacement of all refrigerators 10 years or older with EnergyStar® units prior to commencement of billing based on submetering. This approval is also conditioned on 92 Equities LLC filing with the Secretary to the Commission, within 15 days of issuance of this Order, a completed Submetering Identification Form. Any future changes to the HEFPA Plan or the Submetering Identification Form shall also be filed with the Secretary.⁹ In addition, all tenants of the Buildings shall receive an additional notice regarding the date on which submetering of electricity will commence, including the date when shadow billing will end and the tenants will responsible for paying for their electric consumption.

The Commission orders:

1. The submetering of electricity at 201 West 92nd Street and 200 West 93rd Street, New York, New York is approved, subject to the conditions in the body of this Order, including but not limited to, not treating submetered electric charges as additional rent, replacing all refrigerators 10 years or older with EnergyStar® units prior

⁸ Case 08-E-0439, Riverview II Preservation, LP – Submetering, Order on Reconsideration (issued February 18, 2010) and Case 08-E-0439, Riverview II Preservation, LP – Submetering, Order Denying Petition for Rehearing (issued June 25, 2010).

⁹ A management or ownership change would not affect this approval.

to commencing any billing for submetered electric charges, and that 92 Equities LLC provide tenants brochures with information on energy efficiency measures.

2. 92 Equities LLC is directed to provide written notice to tenants of 201 West 92nd Street and 200 West 93rd Street 15 days prior to the commencement of submetering, and file with the Office of the Secretary, within 30 days of providing such notice to tenants, documentation proving that notice was provided to all tenants. 92 Equities LLC shall file with the Secretary to the Commission, within 15 days of issuance of this Order, a completed Submetering Identification Form.

3. 92 Equities LLC or its successors 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. The Secretary is authorized to extend the deadlines set forth in this Order.

5. This proceeding is closed pending compliance with clauses 1, 2 and 3, above.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary