

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on November 19, 2015

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 15-E-0077 - Notice of Intent to Submeter Electricity at the
Island House Apartments at 551, 555, 575 Main
Street, New York, New York 10044, Located in
the Territory of Consolidated Edison Company of
New York, Inc.

ORDER AUTHORIZING SUBMETERING WITH CONDITIONS

(Issued and Effective November 20, 2015)

BY THE COMMISSION:

INTRODUCTION

On February 4, 2015, Island House Tenants Corp. and IH Preservation Partners, LLC (collectively, Island House) filed a Notice of Intent to Submeter (Notice) the Island House apartments located at 551, 555, and 557 Main Street, New York, New York (Roosevelt Island). The properties withdrew from the Mitchell-Lama Housing Program¹ in 2012, at which time Island House agreed to submeter electric service for its tenants as part of its withdrawal plan. In accordance with the withdrawal plan, the residential apartments (400 in total) are being converted to cooperative apartments. Current tenants may purchase their current apartments, or remain renters at below-

¹ The Mitchell-Lama Housing Program encourages the development of affordable housing in New York City through tax abatement, low-interest mortgages and government subsidies.

market rents. To date, 302 units have been purchased, 97 units are being rented, and one unit is reserved for the building superintendent.

Under the Commission regulations², there are two filing options for seeking authorization to submeter electric service: a Notice of Intent to Submeter, and the more comprehensive Petition to Submeter. Island House filed a Notice of Intent to Submeter, arguing that this was proper under the Commission's regulations. Department of Public Service Staff (Staff) disagreed, arguing that a Petition to Submeter was required because of the presence of rental units and electric heat. After discussions with Staff, Island House amended its filing³ to request that submetering only apply to the cooperative apartments.

Having addressed the issue of tenants and electric heat, the Commission finds that the Notice to Submeter is consistent with the Commission's stated policy and regulations on submetering and authorizes the submetering of electric service at the Island House property as proposed in Amended Notice.

² 16 NYCRR Part 96.

³ Case 15-E-0077, Island House Tenants Corp. and IH Preservation Partners, LLC - Submetering, Amended Notice of Intent to Submeter Electricity at the Island House Apartments at 551, 555, 575 Main Street, New York, New York 10044, Located in the Territory of Consolidated Edison Company of New York, Inc. (filed June 18, 2015) (Amended Notice).

BACKGROUND

On December 18, 2012, the Commission adopted its current submetering regulations.⁴ The Commission identified the creation of the Notice and Petition procedures for parties seeking to submeter, stating,

[t]he proposed changes to 16 NYCRR Part 96 establish a bifurcated process, one for routine petitions to submeter ("Notices of Intent to Submeter" or Notices), by which the Department intends to expedite submetering authorizations that pose no novel, electric heat, or other public interest concerns. Submetering applicants should expect more rigorous review of "Petitions to Submeter," (Petitions) which must be filed when submeters will measure the electricity used for electric heat or when a landlord seeks to convert direct metering to submetering.⁵

The regulations adopted allow for the filing of a Notice "[e]xcept 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...⁶" When residents will become responsible for electric heat, submetering will not be authorized until "after filing a Petition to Submeter which includes the information, descriptions, plans, forms, certifications, and other materials and representations

⁴ Case 11-M-0710, In the Matter of Reviewing and Amending the Electric Submetering Regulations, 16 NYCRR Part 96, Memorandum and Resolution Adopting Residential Electric Submetering Regulations (issued December 18, 2012) (2012 Memorandum).

⁵ Ibid., p 4.

⁶ 16 NYCRR §96.3(a).

specified for such Petitions in §96.5...⁷" and other requirements are met.⁸

Separate from these general provisions, 16 NYCRR §96.4, (Submetering in Master-metered Residential Cooperatives and Condominiums), states that submetering in residential cooperatives or condominiums shall be authorized after the filing of a Notice, and the satisfaction of the standard requirements.

PETITION

The Notice states that the residence to be submetered consists of three buildings with 400 residential units and associated common areas. As it exits the Mitchell-Lama program, the ownership of the building will be converted to a leasehold condominium consisting of a Residential Unit (the 400 residential units becoming cooperative apartments), and two Commercial Units (non-residential areas, the former pool, management offices and commercial spaces). Current tenants would have the opportunity to purchase their individual units and become co-op owners, or remain tenants at below market rent.

The Notice states that the apartments are heated by electric baseboard heaters and Island House states that it is important to submeter the property "so that individual apartment occupants, whether as cooperative apartment owners or as nonpurchasing tenants, could reduce their occupancy costs through their own electric conservation efforts."

⁷ 16 NYCRR §96.3(b)(1)(i). The section also requires individual notices to residents and the Commission's determination that the proposed submetering is in the public interest.

⁸ For both Notice and Petition, residents must be individually notified and the Commission must determine that the proposed submetering is in the public interest.

The Notice states that the submetering equipment to be used has not yet been determined, but Island House is aware of the need to use equipment approved by the Commission and will ensure this requirement is met. Bills for residents would be calculated using Consolidated Edison Company of New York, Inc.'s (Con Edison) Service Classification No. 8 for multiple dwellings - redistribution.

The Notice also contains the following: Island House's plans to comply with the Home Energy Fair Practices Act (HEFPA) requirements, Island House's Submetering Identification Form, a statement that tenant's rent will be reduced by an amount determined by New York State Homes & Community Renewal and IH Preservation Partners, LLC to reflect the removal of electric charges from rent, a certification that information concerning the submetering complaint procedure, HEFPA rights, residents' rights and responsibilities, and provisions concerning the refund of submetering payments shall be included in all leases or agreements governing the premises, proof of service of Notice to Con Edison, documentation concerning refrigerators in dwelling units, a statement that the exterior windows will be replaced, a statement that information and education programs will be provided to residents, and a statement that less than 20% of residents receive income-based housing assistance.

Finally, the Notice states that residential units are heated by electric heat with controls in the baseboard, but Petition requirements of §96.3(b) do not apply because the building is a condominium/cooperative conversion, and therefore governed by §96.4, which only requires a Notice be filed.

Attachments to the Notice include: certification of IH Preservation Partners, LLC's legal formation from the Department of State, an Affidavit of Service certifying that the

tenants received notice of the Island House's submetering filing, a copy of the notice, Island House's Plan for Preservation of Affordable Housing and Withdrawal from the Mitchell-Lama Program (Affordability Plan), a copy of Island House's HEFPA notification and Special Protection form, Island House's Procedure to Pursue Collection of Utility Charges and related forms, Island House's submetering identification form, a copy of the lease rider reflecting post-Mitchell-Lama arrangements and House Rules, a letter informing Con Ed of Island House's filing of the Notice, and a sheet containing energy saving tips for residents.

Amended Notice

The Amended Notice updates the initial filing in two ways. First, it states that the Amended Notice to Submeter Electricity will only apply to co-op apartments; while rental units will not receive submetered electric bills (submetering equipment would be installed to accommodate future conversion to a co-op unit). Second, it identifies the submetering equipment to be used (Leviton Manufacturing Mini Meter) and the date of Commission approval of such equipment (November 20, 2013).

PUBLIC NOTICE

In accordance with State Administrative Procedure Act (SAPA) §202(1), notice of the filing of the Notice of Intent to Submeter was published in the State Register on March 18, 2015 (DOS SAPA Number 11-15-00024-P). The comment period expired on May 4, 2015. Multiple comments were received from tenants of Island House opposing the filing.

Response of Residents

The first comments received on February 13, 2015, from Ms. Helen Chirivas, claimed that the Island house buildings had 40 year old windows, no effective insulation, non-Energy Star

compliance appliances and antiquated baseboard heating units without thermostats. The comments also included a 2005 Conditions Assessment Report prepared by LZA Technology for the Island House Tenant Association, Inc. regarding the building at 555 Main Street, which generally supported Ms. Chirivas' assertions.

Ms. Chirivas filed additional comments on April 6, 2015, in which she alleges that Island House was misrepresenting heating costs to prospective buyers by using a summary of past heating/cooling costs and denying access to the actual bills upon which the summary was based. Ms. Chirivas also alleges that the Island House Tenants Association (IHTA) is working with Island House to mislead tenants on the effects of the conversion to co-op apartments. Ms. Chirivas also argues that a Notice of Intent to Submeter is the improper form of filing because tenants still occupy rental units in the buildings. An email excluding Ms. Chirivas from the IHTA electronic forum on the conversion and two analyses of the costs of needed repairs, dated 2006 and 2009 were also included.

On April 30, 2015, the Residents of Island House Association (RIHA) filed a motion for the dismissal of Island House's Notice of Intent to Submeter on the following grounds: Island House's failure to disclose the need for significant energy-efficiency improvements, the lack of thermostats on the existing, original baseboard heaters, the filing of a Notice of Intent to Submeter rather than a Petition to Submeter, and failure to state that submetered electric service (including heat) would be affordable for a moderate-income resident.

On May 1, 2015, the RIHA filed a petition requesting improvements be made to the buildings before submetering is allowed, signed by 63 tenants. On May 4, 2015, RIHA filed comments of two tenants opposing submetering and a separate

request to the Secretary to the Commission to extend the comment period to allow time for additional input from tenants. On the same date, the office of Assembly Member Rebecca A. Seawright wrote in support of the extension of the comment period. The Secretary's Office responded on May 4, 2015 and extended the comment period to June 1, 2015.

On June 1, 2015, the RIHA filed comments arguing Island House's attempt to submeter should be denied because: the presence of electric heat required a Petition to Submeter; despite future plans, the buildings are not now condominiums or co-ops; the electric heaters are 40 years old, lack thermostats and are inefficient; the walls lack proper insulation; generally, the building's construction, which favored additional heaters over proper insulation, makes it a poor candidate for submetering; lack of information to tenants and potential purchasers regarding seasonal swings in electric bills; and the model apartment used to show potential residents has features (programmable and wireless thermostats) not present in other units.

On June 2, 2015, a letter from Assembly Member Seawright and City Council Member Benjamin J. Kallos was filed requesting that the Commission confirm that, in accordance with the Amended Notice, tenants will not be charged for electric service and prospective purchasers will be made aware of the current state of the building and cost to make it energy efficient.

On June 8, 2015, a letter was filed by IHTA, which challenged the authority of the RIHA to speak for the residents of the Island House buildings, stating that the IHTA alone has the authority to represent the tenants of Island House on the issue of submetering. The IHTA states that it supports Island House's submetering plan with the understanding that new windows

would be installed in September, 2015 and that billing would not commence until a majority of windows are replaced. The IHTA states that the engineering reports submitted in this proceeding are out of date, and it supplies a current engineering report, and states that the buildings are undergoing various energy improvements: new windows, façade work, thermographic studies, new wall insulation, and baseboard replacement.

The IHTA also asserts that tenants effectively already pay for the electricity consumed through their rent, though on a socialized basis with all tenants paying an equal share. The IHTA argues that submetering would be a more equitable arrangement. The IHTA argues that the submeters should be installed at once to allow for consumption information to be available and the co-op board be allowed to institute billing when it sees fit (reflecting the Amended Notice's provision that tenants would not be directly billed for electricity). The letter addresses an earlier filing from a resident of a building (Roosevelt Landing)⁹ that was converted to submetering in the past and states that it is anticipated that 60% of the residential units will be converted to co-ops.

In addition to the above, 17 Island House residents filed comments generally in support of the positions of Ms. Chirivas and the RIHA.

DISCUSSION

This proceeding has highlighted an apparent inconsistency in the Commission's regulations on submetering electric service that should be addressed before moving on to

⁹ The writer's building neighbors Island House and its submetering conversion was highly controversial, ultimately requiring significant improvements before submetering was allowed.

the substance of the current filing. While §96.3 establishes that a Petition to Submeter is required when tenants will become responsible for paying for electric heat directly or when submetering will replace existing direct metering, §96.4 appears to provide an exception for cooperative buildings and condominiums.

To clarify the meaning of the regulations for future filings, the Commission provides the following interpretation. Per §96.3, a Petition is required in any situation in which the cost of electric heat will be the responsibility of a resident. The provisions of §96.4 apply only for buildings that are fully cooperatives or condominiums.¹⁰ Present or future plans for a building's conversion to cooperatives or condominiums will not qualify a building while rental units still exist. Furthermore, the Commission notes that authorization of any submetering filing requires a finding that it is in the public interest. A review of past submetering cases would indicate that such a finding may be unlikely for cases involving electric heat.

With that issue clarified, the Commission now addresses the substance of the Amended Notice. As noted above in the "Petition" section, the Amended Notice identifies the equipment to be installed, a Leviton Manufacturing Mini Meter submetering system and equipment (approved by the Commission in 2013), and repeats the information contained in the original notice, as required by 16 NYCRR §96.5.

The significant difference in the Amended Notice is the statement that non-purchasing rental tenants will not be submetered for electric service. The presence of tenants potentially paying for electric heat is the only element of this case that would require a Petition to Submeter. To ensure that

¹⁰ The owner of a co-op or condo unit renting the space to a third party would not prevent a building from using the provisions of §96.4.

non-purchasing rental tenants are aware of the terms of the Amended Notice, the Commission requires that Island House inform all non-purchasing rental tenants in writing that they will not be subject to submetering of electric service. With that matter addressed, the Commission can now address the Amended Notice as it applies to present and future co-op owners.

The Notice of Intent to Submeter at 551, 555, 575 Main Street, New York, New York complies with 16 NYCRR §96.5. Pursuant to 16 NYCRR §96.3(a)(3), the provision of a complete Notice of Intent to Submeter receives a rebuttable presumption that such submetering is in the public interest and is consistent with the provision of safe and adequate service to residents and, therefore, meets the Commission's requirements for submetering of an existing residential building.

The presence of electric heat, even in co-op apartments, is a concern. Historically, electric heat, especially older systems without thermostatic controls, is an inefficient means of heating a space that subjects residents to excessive electric bills. The submitted plan for renovating the buildings includes installation of new baseboard heaters with thermostats, new windows, and other energy efficiency provisions. Given these improvements, we believe the Notice satisfies the requirements to receive a rebuttable presumption of being in the public interest, and no information has been presented to refute this presumption.

Approval to submeter electricity at the building is granted. Pursuant to 16 NYCRR §96.3(c)(3)(i), Island House must provide notice to prospective residents that the building is submetered in co-op contracts. The Commission also requires that future co-op contracts must disclose that the units are heated by electric heat to ensure prospective purchasers are fully aware of the condition of the living space. Any changes

to the HEFPA Plan or the "Submetering Identification Form" shall be filed with the Secretary under Case 11-M-0710 in accordance with 16 NYCRR §96.6(i).¹¹

CONCLUSION

With the terms of the Amended Notice, and the additional requirements of notice detailed in the body of this Order, the Commission concludes that submetering electric service at the Island House location is authorized as in the public interest.

The Commission orders:

1. The Notice of Intent to submeter electricity for 551, 555, and 575 Main Street, New York, New York is authorized subject to the conditions in the body of this Order.

2. Island House Tenants Corp. and IH Preservation Partners, LLC shall notify prospective residents individually through co-op contracts that the units are heated by electric baseboard heaters and that they will be billed for electric submetered service as required by 16 NYCRR §96.3(c)(3)(i).

3. Island House Tenants Corp. and IH Preservation Partners, LLC shall file a meter test plan as required by 16 NYCRR §92 within 30 days of this Order.

4. Island House Tenants Corp. and IH Preservation Partners, LLC shall, within 30 days of this Order, notify all existing tenants in writing that they will not be subject to submetering for electric service so long as they remain renters.

5. Island House Tenants Corp. and IH Preservation Partners, LLC shall, within 14 days of compliance with the

¹¹ A management or ownership change would not affect this approval.

requirements of Ordering Clause 4, file with the Secretary's Office a copy of the notice provided to tenants.

6. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

7. This proceeding is closed pending compliance with Ordering Clauses 3, 4, and 5.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary