

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 8, 2015

COMMISSIONERS PRESENT:

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

CASE 14-E-0052 - Petition of Plaza Athenee Company Limited, to
Submeter Electricity at 35 East 64th Street, New
York, New York in the Service Territory of
Consolidated Edison Company of New York, Inc.

ORDER AUTHORIZING SUBMETERING

(Issued and Effective January 14, 2015)

BY THE COMMISSION:

INTRODUCTION

By letter filed February 12, 2014, Plaza Athenee
Company Limited, (Petitioner) requested permission to submeter
electricity at 35 East 64th Street, New York, New York.¹
Construction of this building was completed in 2011. The
building is comprised of five residential rental units and one

¹ Under 16 NYCRR §96.3(a) of the Commission's rules, submetering shall be authorized after, among other things, filing of a Notice of Intent to Submeter; except when a conversion to submetering shifts electric heating costs to residents, or when a building owner seeks to install submetering in place of direct metering. As these exceptions do not apply in this case, the Petitioner's request will be treated as a Notice of Intent to Submeter. Consistent with the regulations, a Notice of Intent to Submeter receives a rebuttable presumption in favor of approval.

commercial art studio. All of the residential units are rented at market value.

The Petitioner states that the building is master-metered by Consolidated Edison Company of New York, Inc. (Con Edison) and submetering equipment has been installed in each of the residential units. The residential units do not have electric heat.²

THE NOTICE

The Petitioner provided the following information, which is required by 16 NYCRR §96.5 as a condition to submeter: a description of the type of submetering system to be installed (§96.5(a)); a description of the methods to be used to calculate 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 the regulations (§96.5(b)); a detailed plan for complying with the provisions of the Home Energy Fair Practices Act (HEFPA) (§96.5(c)); a completed "Submeterer Identification Form" (§96.5(d)); a description of the method to be used to back out electric charges from the rent (§96.5(e)); a lease rider consistent with the 16 NYCRR §96.5(f)); proof of service that the Notice of Intent to Submeter was sent from the prospective submeterer to Con Edison (§96.5(g)); a description of all of the refrigerators in the units and an attestation that they meet federal energy standards (§96.5(h)); a description of the electric energy efficiency measures that have been or will be installed (§96.5(i)); and a description of the information

² The heat is distributed via a gas boiler and HVAC heat pumps.

and education programs that will be provided to residents on how to reduce electric usage (§96.5(j)).

In accordance with the State Administrative Procedure Act (SAPA) §202(1), the request for permission to submeter was noticed in the State Register on March 19, 2014 (14-E-0052SP1). The comment period ended on May 5, 2014. No comments were received.

DISCUSSION AND CONCLUSION

The Notice of Intent to Submeter at 35 East 64th 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 metering 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 a residential rental building. No information in the record refutes this rebuttable presumption; however, the requirements regarding the Petitioner's submetering system merit discussion. The Petitioner has installed the QuadLogic MiniCloset-5 (MiniCloset-5) submetering system, which is not a Commission-approved meter; however, the MiniCloset-5 was installed in the building prior to October 1, 2014. Thus, the requirement in 16 NYCRR §96.7 regarding the initial installation of only Commission-approved meters does not apply.³

³ 16 NYCRR §96.7(a)(1); Case 11-M-0710, In the Matter of Reviewing and Amending the Electric Submetering Regulations, 16 NYCRR Part 96, Order Granting, In Part, the Joint Petition for a Temporary Waiver of 16 NYCRR §96.7(a)(1) and the Joint Petition for a Temporary Waiver of 16 NYCRR §96.7(b) (issued November 20, 2013). This order provided a temporary waiver of 16 NYCRR §96.7(a)(1) for the period from January 1, 2014 until October 1, 2014.

Authorization to submeter electricity at the building is granted. Pursuant to 16 NYCRR §96.3(c)(3)(i), the Petitioner must provide individual notice to affected tenants. The Owner complied with this regulatory requirement and provided notice to all affected tenants on March 20, 2014. Additionally, submetering regulations require that current tenants receive at least two months notice from the date the Commission authorizes submetering before submetering may commence. Any changes to the HEFPA Plan or the "Submetering Identification Form" shall be filed with the Department of Public Service under Case 11-M-0710 in accordance with 16 NYCRR §96.6(i).⁴

Part 96 requires that building owners must annually test a statistically valid sample of in-service submeters in order to maintain a high degree of metering performance. Therefore, Petitioner shall provide a meter test plan detailing its annual testing program for 2015, in accordance with the testing procedures and standards outlined in 16 NYCRR Part 92.

The Commission orders:

1. Plaza Athenee Company Limited is authorized to submeter electricity at 35 East 64th Street, New York, New York.
2. Plaza Athenee Company Limited, is directed to notify residents individually no less than two months prior to the actual commencement of billing for electric submetered service and to file with the Office of the Secretary a copy of the notice provided to all affected tenants of the date upon which submetering will commence as required by 16 NYCRR §96.3(c)(3)(i).

⁴ A management or ownership change would not affect this approval.

3. Plaza Athenee Company Limited, is directed to file a meter test plan as required by 16 NYCRR §92 within 30 days of the date of this order.

4. The Secretary, in her sole discretion may extend the deadlines set forth in this order, provided the request for such extension is in writing, including a justification for the extension, and filed on a timely basis, which should be on at least one day's notice prior to any affected deadline.

5. This proceeding is continued, but will be closed pending compliance with ordering clauses two, and three.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary