

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 12, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 18-E-0194 - Petition of 41-45 Property Owner, LLC to
Submeter Electricity at 520 Park Avenue, New
York, Located in the Territory of Consolidated
Edison Company of New York, Inc.

ORDER AUTHORIZING SUBMETERING

(Issued and Effective September 19, 2018)

BY THE COMMISSION:

INTRODUCTION

By Petition filed March 27, 2018, 41-45 Property
Owner, LLC (Owner) requests authorization to submeter
electricity at 520 Park Avenue, New York, New York.¹ By this
Order, the Commission approves the Owner's request to submeter
electricity.

¹ Pursuant to 16 NYCRR §96.3(a) of the Commission's regulations, 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 electricity. Consistent with the regulations, a Notice of Intent to Submeter receives a rebuttable presumption in favor of approval.

NOTICE OF INTENT TO SUBMETER

This new condominium building is expected to be completed in November 2018, and will consist of 43 units. Initial occupancy commenced in August 2018 and all units have been or will be sold at fair market value. The Owner states that Consolidated Edison Company of New York, Inc. (Con Edison) master-meters the building. The Owner further states that the building will not utilize electric heat.²

The Owner provided the following information, which is required by 16 NYCRR §96.5 as a condition to submeter electricity: a description of the type of submetering system to be installed, including a demonstration that the submetering system is capable of service termination to individual units (§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 copy of an offering agreement rider consistent with 16 NYCRR §96.5(f); proof of service that the Notice of Intent to Submeter was sent to Con Edison (§96.5(g)); a description of the electric energy efficiency measures that have been or will be installed (§96.5(i)); and a description of the information and education programs that will be provided to residents on how to reduce electric usage (§96.5(j)).³ The

² Primary heating is provided by fan coil units with hot water supplied by central steam-fired hot water heaters; however, certain rooms will be equipped with supplemental electric radiators along perimeter locations.

³ The information described in 16 NYCRR §§96.5(e), (h), (k), (l), (m) and (n) is not applicable to this submetering application.

Petition states that the Owner will install the Commission-approved Quadlogic Minicloset 5N submetering system in the building.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on June 6, 2018 [SAPA No. 18-E-0194SP1]. The time for submission of comments pursuant to the Notice expired on August 6, 2018. No comments were received.

LEGAL AUTHORITY

Under Public Service Law (PSL) §66, the Commission has general supervision of all electric corporations in New York State, which includes the ability to regulate the terms under which electric corporations provide electric service to their customers (in this instance, the Owner). In addition, PSL §30 et seq., constitutes the Home Energy Fair Practices Act, statutory protections governing the furnishing of electric service to residential customers. The Commission's regulations regarding the submetering of electricity to residential customers are in 16 NYCRR Part 96.

DISCUSSION AND CONCLUSION

The Notice of Intent to submeter electricity at 520 Park Avenue, New York, New York complies with 16 NYCRR §96.5 and therefore meets the Commission's requirements for submetering of a new residential building. Accordingly, authorization to submeter electricity is granted.⁴

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

Pursuant to 16 NYCRR §96.6, submetered service shall be subject to the conditions set forth in this Order and the Commission's regulations in 16 NYCRR Part 96, including the following: the Owner shall not charge more than the applicable rate cap (§96.6(c)); the Owner shall comply with the requirements imposed by HEFPA (§96.6(e)); any changes to the HEFPA Plan or the "Submeterer Identification Form" shall be filed with the Secretary under Case 11-M-0710 in accordance with 16 NYCRR §96.6(i); and the Owner shall send bills to residents within 30 days of receipt of the distribution utility's bill for master-metered service and retain all billing records for a period of six years (§96.6(j)).

The Owner shall notify current residents individually no less than two months prior to the actual commencement of billing for submetered electric service of the date upon which submetering will commence, which shall include: (a) a copy of the annual notice of HEFPA rights and responsibilities; and (b) contact information for the Department of Public Service Office of Consumer Services. The Owner shall file a copy of such notice with the Secretary, within 60 days of the date of this Order.

Pursuant to 16 NYCRR §96.3(d), the Owner shall certify in writing to the Secretary within 60 days of the date of this Order that all the submetering conditions required in this Order and the Commission's regulations are accepted, including that the Owner has provided, or will provide, all required notices to residents.

Sixteen NYCRR Part 96 requires that building owners annually test a statistically valid sample of in-service submeters to maintain a high degree of metering performance. Therefore, the Owner shall provide a meter test plan detailing its annual testing program, in accordance with the testing

procedures and standards outlined in 16 NYCRR Part 92. The meter test plan shall be filed under Case 11-M-0710 within six months of the date of this Order.

The Commission orders:

1. 41-45 Property Owner, LLC is authorized to submeter electricity at 520 Park Avenue, New York, New York, subject to the conditions in the body of this Order and the Commission's regulations in 16 NYCRR Part 96.

2. 41-45 Property Owner, LLC is directed to notify current residents individually of submetering not less than two months prior to the actual commencement of billing for submetered electric service of the date upon which submetering will commence, and shall file a copy of such notice with the Secretary within 60 days of the date of this Order.

3. 41-45 Property Owner, LLC is directed to notify prospective residents individually through its offering agreement, or through other individual notice, that the building is submetered and of the consumer protections afforded the residents by HEFPA, and that the Owner will provide such consumer protections, as required by 16 NYCRR §96.6(e), and to file a copy of such notice with the Secretary, within 60 days of the date of this Order.

4. 41-45 Property Owner, LLC is directed to file a meter test plan compliant with 16 NYCRR Part 92, in Case 11-M-0710, within six months of the date of this Order.

5. 41-45 Property Owner, LLC shall certify in writing to the Secretary within 60 days of the date of this Order that all the submetering conditions required in this Order and the Commission's regulations are accepted, including that all required notices to residents will be provided.

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 the above Ordering Clauses.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary