

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 15, 2026

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 26-E-0117 - Notice of Intent of RXR 5TS Owner LLC to
Submeter Electricity at 592 Seventh Avenue, New
York, Located in the Service Territory of
Consolidated Edison Company of New York, Inc.

ORDER AUTHORIZING SUBMETERING

(Issued and Effective October 23, 2026)

BY THE COMMISSION:

INTRODUCTION

By notice of intent filed on February 20, 2026, RXR 5TS Owner LLC (Owner) requests authorization to submeter electricity at 592 Seventh Avenue, New York, New York and waiver of Title 16 of the New York Codes, Rules and Regulations (NYCRR) §96.5(k)(3), the requirement to conduct an energy audit (Notice of Intent). This new rental building is located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By this Order, the Commission approves the Owner's request to submeter electricity and grants waiver of 16 NYCRR §96.5(k)(3).

NOTICE OF INTENT TO SUBMETER

This new rental building will consist of 957 units. Of the 957 units, 717 units will be rented at fair-market value, 48 units will be reserved for individuals earning at or below 40 percent of area median income, 96 units will be reserved for individuals earning at or below 80 percent of area median income, and 96 units will be reserved for individuals earning at or below 100 percent of area median income. The agency of jurisdiction for the units with income criteria is New York City Housing Preservation and Development. The Petition states that all units will be equipped with Energy Star®-rated refrigerators, cooktops, dishwashers, ovens, washers, and dryers.

The Owner states that each unit will be heated by water-source heat pumps. The water will be heated centrally and then distributed throughout the building to in-unit heat pumps.¹ The Notice of Intent states that the Commission-approved SATEC Inc.'s BFM-II submeters will be installed in the building. Con Edison will master-meter the building. The Owner provided all information required by 16 NYCRR §96.5 for the Commission to consider a notice of intent to submeter electricity, except for the information required by §96.5(k)(3).

The Owner requests waiver of 16 NYCRR §96.5(k)(3), which requires premises in which 20 percent or more of the residents receive income-based housing assistance to conduct an energy audit, develop an energy efficiency plan, and provide

¹ Residents will be able to control the temperature in their respective unit via a programmable thermostat. The central water loop does not constitute "electric heat" for the purposes of 16 NYCRR §96.3(a) and (b)(1) because the cost of heat will not become the direct responsibility of residents; the landlord pays for the centralized heating of the water in the loop. Case 26-E-0117, *supra*, Response Letter to DPS Staff Questions (filed May 4, 2026).

energy efficiency education to residents. The Owner states that waiver is warranted because the building is new construction and, therefore, already subject to the strict energy efficiency standards of the New York State Energy Conservation Code.

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 August 5, 2026 [SAPA No. 26-E-0117SP1]. The comment period expired on October 5, 2026.

On May 4, 2026, an individual submitted a comment opposing the Notice of Intent. The comment expresses concerns that submetering reduces customer protections normally available to directly metered customers by shifting core utility services to a third party. The comment states that private billing agents have a history of noncompliance with Commission orders and poor customer service.² Also, the comment raises concerns that the Notice of Intent has not demonstrated energy efficiency benefits, thus failing to show that it is in the public interest, and requests that the case be refiled as a petition to submeter and require a financial harm test prior to Commission approval. The comment contends that the submetering configuration used by the Owner constitutes electric heat and that the electric consumption used by the water-sourced heat pumps is not "nominal." Finally, the comment objects to the lack of proposed limit on submetering administrative fees. The individual did not provide a lease indicating they will reside at the building.

² The comment cites Case 18-E-0192, Submetering - BOP Greenpoint F LLC, Order Authorizing Submetering (issued February 13, 2019) and Case 22-E-0459, Submetering - Skyline Tower Condominium, Order Authorizing Submetering (issued May 22, 2023).

LEGAL AUTHORITY

Under Public Service Law (PSL) §66, the Commission has general supervision of all electric corporations in New York State, which includes the authority to regulate the terms under which electric corporations provide electric service to their customers (in this instance, the Owner). In addition, PSL Article 2 (§30 et seq.) constitutes the Home Energy Fair Practices Act (HEFPA), the statutory protections governing the furnishing of electric service to residential customers. The Commission's regulations regarding submetering of electricity to residential customers are set forth in 16 NYCRR Part 96.

DISCUSSION AND CONCLUSION

The Commission reviews the request for authority to submeter electricity for consistency with the requirements of 16 NYCRR Part 96. Under 16 NYCRR §96.3, submetering shall be authorized if the request for authority includes all information required by §96.5, after individual notices have been provided to residents, and upon the Commission's determination that submetering is in the public interest and consistent with the provision of safe and adequate electric service to residents.

The Commission finds that the Owner has complied with the informational requirements of 16 NYCRR §96.5 and that submetering is in the public interest, and grants authorization to submeter electricity. To ensure that submetered customers receive consumer protections comparable to directly metered customers, approval of submetering is conditioned upon the Owner's compliance with the requirements of this Order and with the notice and consumer protection requirements of HEFPA; 16 NYCRR Part 11, which implements HEFPA; and 16 NYCRR §96.6. Pursuant to 16 NYCRR §96.3(d), the Owner shall certify to the Secretary to the Commission within 60 days of the issuance of

this Order that it accepts, understands, and will abide by all submetering conditions required in this Order and the Commission's regulations, and that it has or will provide copies of all notices required by 16 NYCRR §96.3(c)(3) to residents.

The Owner shall provide bill discounts to eligible low-income customers consistent with the discounts provided to low-income customers through the incumbent utility's Energy Affordability Program (EAP) and the Enhanced Energy Affordability Program (EEAP). The Owner shall clearly state the process for enrollment in the submetering lease rider. The Commission requires major electric and gas utilities in New York State to offer discount programs to eligible customers.³ As of July 17, 2025, the Commission has expanded eligibility to also include customers with income below the state or area median income who do not qualify for assistance under the traditional EAP.⁴ As explained in Case 20-E-0190 and Case 23-M-0298,⁵ building owners administering submetered accounts must reflect EAP and EEAP bill discounts in the calculation of each eligible

³ Case 14-M-0565, Proceeding to Address Energy Affordability for Low Income Utility Customers, Order Adopting Low Income Program Modifications and Directing Utility Filings (issued May 20, 2016).

⁴ Case 23-M-0298, Budget Appropriations to Enhance Energy Affordability Programs, Order Adopting Enhanced Energy Affordability Policy and Directing Utility Filings (issued July 17, 2025) (EEAP Order).

⁵ Case 20-E-0190, QPP LLC - Submetering, Order Authorizing Submetering (issued March 24, 2021); EEAP Order, p. 15, n. 21.

customer's rate cap⁶ to ensure that submetered customers are afforded the same benefits and protections as similarly situated direct-metered customers. The discount program for submetered customers shall be generally equivalent to the program offered by the incumbent utility, as set forth in Con Edison's Tariff, PSC No. 10 - Electricity, LIC Statement No. 9 and PSC No. 10 - Electricity, LIC Statement No. 3. The Owner shall allow submetered customers to self-identify as eligible for a bill discount equivalent to the relevant utility's EAP or EEAP discount by providing the building owner with appropriate documentation. The process for residents to self-identify, including a list of sufficient documentation, shall be clearly stated in the submetering lease rider.

The Owner should additionally provide all residents with materials regarding the Home Energy Assistance Program (HEAP), administered by the New York State Office of Temporary Disability and Assistance (OTDA), which provides financial assistance for heating to income-eligible households. Information about program benefits and eligibility is available on the OTDA website.⁷

One public comment expresses concern that the Notice of Intent has not demonstrated that authorizing submetering at this location would be in the public interest. The comment

⁶ The rate cap is "[t]he 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 ... 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." 16 NYCRR §96.1(i).

⁷ Home Energy Assistance Program (HEAP), Office of Temporary and Disability Assistance, <https://otda.ny.gov/programs/heap>.

asserts that authorizing submetering at this location would reduce consumer protections, impose additional electricity costs on residents, and increase energy consumption.

The Commission finds that authorizing submetering at this location places customers in at least as good a position as if they were directly metered customers of the utility. The Owner must comply with the conditions and requirements of this Order, HEFPA, and 16 NYCRR Part 96, which include protections related to notice, deferred payment, and disconnection of service, among other protections. These requirements ensure that, as submetered customers, the residents have the same consumer protections as they would have as customers of the utility. Further, the Commission notes that, regarding private billing agents, it is the Owner who is ultimately responsible for ensuring compliance with the conditions and requirements of this Order, HEFPA, and 16 NYCRR Part 96. Additionally, the rate cap ensures that submetered customers will pay no more than similarly situated directly metered customers of the utility.

Regarding the allegation that submetering increases electricity consumption, the Commission does not find the analysis provided to be convincing. Submetered customers receive the same price signals and have the same incentive to conserve electricity as directly metered customers of the utility. The submetering regulations require that submetered buildings have energy efficient appliances and are built to high energy efficiency standards. The difference in electricity consumption could be due to variables such as larger average apartment size or more frequent use of electric heat in submetered buildings. Although electric heat will lead to an increase in electricity demand, efficient electric heat systems may reduce overall energy demand at the building and are consistent with State and local greenhouse gas reduction laws

and policies. Therefore, submetering is consistent with the public interest.

The comment also urges the Commission to consider the water-source heat pumps as electric heat pumps within the meaning of 16 NYCRR §96.3(b), such that the Owner would be required to file the request for authority to submeter as a petition, not a notice of intent. Consistent with past decisions,⁸ the Commission finds that the water source heat pumps do not qualify as electric heat under §96.3(b).

Finally, the Commission notes that the individual who submitted the comment did not provide any evidence of a lease for a living unit on the premises and therefore has presented no evidence that they are directly impacted by this request for authority.

The Commission grants the Owner's request for waiver of 16 NYCRR §96.5(k)(3), which requires an energy audit and energy efficiency plan. The waiver is proper because this building is new construction and thus must comply with the strict energy efficiency standards of the New York State Energy Conservation Construction Code.

Further, the Owner shall file with the Secretary to the Commission, within six months of the issuance of this Order, certification that the Owner has installed the Commission-approved SATEC Inc.'s BFM-II submeters. Within six months of the issuance of this Order, the Owner shall file a meter test plan detailing its annual testing program, in accordance with

⁸ E.g., Case 21-E-0412, BOP Greenpoint D LLC - Submetering, Order Authorizing Submetering (issued September 15, 2022), n. 1 (noting that the owner withdrew the portion of the notice of intent related to a building heated by air source heat pumps and filed a separate petition) and Case 12-E-0460, 2130 ACP Boulevard Investors LLC - Submetering, Order Authorizing Submetering (issued February 27, 2013), p. 1 and n. 3 (explaining water source heat pumps).

the testing procedures and standards outlined in 16 NYCRR Part 92.

If building ownership or property management is transferred, the current Owner shall provide the prospective owner or property manager written notification that the building is submetered. Such notification shall include a copy of the submetering requirements set forth in 16 NYCRR Part 96 and this Order. Pursuant to 16 NYCRR §96.6(i), the current Owner, or any future owner, shall submit an updated Submeterer Identification Form⁹ to the Secretary to the Commission as a record in this case within ten days of any changes to the information provided therein.

The Commission orders:

1. RXR 5TS Owner LLC is authorized to submeter electricity at 592 Seventh Avenue, New York, New York, subject to the conditions in the body of this Order.

2. As discussed in the body of this Order, 16 NYCRR §96.5(k)(3), requiring an energy audit and energy efficiency plan, is waived.

3. RXR 5TS Owner LLC shall, within 60 days of the issuance of this Order, certify in writing to the Secretary to the Commission that it accepts the submetering conditions required in this Order and by the Commission's regulations and that it has, or will, provide copies of all required notices to its residents and to new ownership or property management as applicable.

4. RXR 5TS Owner LLC shall file with the Secretary to the Commission, within six months of the issuance of this Order,

⁹ Available on the Department of Public Service website at <https://dps.ny.gov/system/files/documents/2023/05/submeterer-identification-form.pdf>.

certification that SATEC Inc.'s BFM-II submeters have been installed at the building.

5. RXR 5TS Owner LLC shall file a meter test plan with the Secretary to the Commission within six months of the issuance of this Order.

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 three days prior to the affected deadline.

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

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary