

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 11-M-0710 - In the Matter of Reviewing and Amending the Electric Submetering Regulations, 16 NYCRR Part 96.

NOTICE OF PROPOSED RULEMAKING

(Issued January 24, 2012)

Notice is hereby given that the Commission is proposing to amend the rules relating to residential electric submetering contained in 16 NYCRR Part 96. The proposed amendments would incorporate the application of the Home Energy Fair Practices Act, through Public Service Law §53, to submeterers, streamline the approval process for most submetering conversions, create specific requirements for residential premises that submeter electric heat, prohibit submetering in new construction except when evidence of on-site generation or demand response programs exist, and identify and clarify the conditions pursuant to which submeterers must provide service to receive continued Commission approval.

Any person wishing to comment may do so no later than March 24, 2012. Comments should be submitted electronically by e-filing through the Department's Document Matter and Management System (DMM)¹ or to the Secretary at secretary@dps.ny.gov. Those unable to submit electronically may mail or deliver them to Hon. Jaclyn A. Brillling, Secretary, Public Service Commission, Three Empire State Plaza, Albany, New York, 12223-1350.

All comments submitted will be posted to the Commission's Web site and become part of the official case record.

(SIGNED)

JACLYN A. BRILLING
Secretary

¹ Why Register with DMM, http://www.dps.ny.gov/DMM_Registration.html
How to Register with DMM, <http://www.dps.ny.gov/e-file/registration.html>

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

PROPOSED RESOLUTION BY THE COMMISSION

Statutory Authority
Public Service Law §§4, 53, 65 and 66

CASE 11-M-0710 - In the Matter of Reviewing and Amending the Electric Submetering Regulations, 16 NYCRR Part 96.

At a session of the Public Service Commission held in the City of Albany on _____, the Commission, by a vote of its members present,

RESOLVED:

1. That the provisions of Section 202(1) of the State Administrative Procedure Act and Section 101-a(2) of the Executive Law having been complied with, the Official Compilation of Codes, Rules and Regulations of the State of New York, 16 NYCRR Part 96, is amended, effective upon publication of a Notice of Adoption in the State Register, as follows (New Material Underline; Deletions are Bracketed).

2. That the Secretary to the Commission is directed to file a copy of this resolution with the Secretary of State.

TITLE 16. DEPARTMENT OF PUBLIC SERVICE
CHAPTER II. ELECTRIC UTILITIES

PART 96. RESIDENTIAL ELECTRIC SUBMETERING
(Statutory authority: Public Service Law §§4, 53, 65 and 66)

§ 96.1 Definitions - The following definitions apply for purposes of this Part:

[Prohibition of residential submetering required]

- (a) Assisted Living Facilities - Multi-unit residential premises, identified as assisted living facilities and certified by the New York State Department of Health as such, which provide congregate residential housing with supportive services including on-site monitoring, and personal care services and/or home care services in a homelike setting.

[New York State Electric & Gas Corporation, Republic Light, Heat and Power Co., Inc., and the City of Dunkirk shall file appropriate amendments to their tariff schedules, to become effective

on January 1, 1955 on not less than 30 days' notice to the public and this commission, prohibiting the submetering, remetering or resale of gas or electricity for residential purposes.]

- (b) Campground, recreational trailer park, and marinas - facilities for use on an intermittent, temporary, or irregular basis by campground, recreational; trailer park or marina customers where electric service is delivered by the utility to the facility owner and redistributed to individual campsites, trailers or boats with or without submetering.

[All gas corporations, electric corporations, gas and electric corporations and municipalities other than those named in subdivision (a) of this section, which have not filed with this commission tariff provisions prohibiting the submetering of gas or electricity for residential purposes, shall, within 30 days after service of this order, file appropriate amendments to their tariff schedules, to become effective on not less than 30 days' notice to the public and this commission, prohibiting the submetering, remetering or resale of gas or electricity for residential purposes.]

- (c) Condominium - Separate ownership of individual units in a multi-unit residential premise. Each unit owner holds title to a unit of real property and also owns a common tenancy with owners of other units for the common areas of the building, which are managed by a homeowners' association, or as established in the condominium bylaws.
- (d) Cooperative Apartment - Multi-unit residential premises in which residents own a share in the corporation that owns the real estate, which entitles the shareholder to occupy dwelling unit. Each shareholder is granted the right to occupy one housing unit through an occupancy agreement, which is similar to a lease. A board of directors manages the cooperative.
- (e) Direct metering - in multi-unit residential premises, the measurement of electricity use in each unit through a meter that has been provided by the utility company, wherein each individual residential unit is assigned its own meter.
- (f) Electric heating - Heat provided to an entire living space with electricity by means of a non-portable device.
- (g) HEFPA - The Home Energy Fair Practices Act, Public Service Law §§30-53 and all Commission regulations adopted to implement such provisions.
- (h) Master-metering – the measurement through a single meter of the quantity of electricity delivered to a multi-unit residential premises by a utility, wherein the owner or manager of such building is the utility customer and wherein the electricity may be redistributed to the individual residential units in the building either with or without submetering.
- (i) Rate cap – the maximum rate, calculated in each billing period, that may be charged a residential submetered customer. Unless a different rate cap is set pursuant to § 96.2(a)(iii) and § 96.8(b) of this Part, the rate cap shall be the rate charged by the distribution utility for delivery and commodity in that billing period to similarly situated, direct metered residential customers. Where customers are billed for time-of-use, the maximum rate for purposes of calculating the rate cap shall be the average annual residential rate.
- (j) Resident – the occupant of a unit used as a home in a multi-unit residential premises.

- (k) Senior Living Facility - Multi-unit residential premises in which housing and other services are provided to resident senior citizens and in which electric usage does not vary significantly from unit to unit because units are uniform in size and type of appliances.
- (l) Submeterer – any multi-unit residential premises owner or utility customer of record who purchases electricity for delivery by the utility to the premises and facilitates the sale or redistribution of such electricity for use by the premises occupants whose units are separately metered and billed based on the measurement of electricity use in each occupant’s unit. Any entity acting on behalf of such owner that arranges for the installation of submeters and the billing of submetered usage to individual residents shall be considered the agent of the submeterer. The submeterer may engage the services of a submetering service provider to install meters, read meters and/or handle billing.
- (m) Submetering – a system of measuring electricity use in a residential unit in a master-metered multi-unit residential premises, or campground, trailer park or marina by means of a submeter installed on the wiring to each residential unit or campsite or trailer or boat hookup.
- (n) Substantial Renovation - a building in which the electrical system has been largely or almost completely rebuilt.
- (o) Time-of-use rates – the pricing of electricity based on actual usage during particular time intervals. Time-of-use rates may be applicable to blocks of time over a 24 hour period.
- (p) Time-of-use meter – a meter that registers accumulated energy consumption (data) over specific time intervals.
- (q) Utility customer – for purposes of this Part, an electricity consumer whose use of electricity is directly metered by the utility and is a customer of record of the utility (local distribution company.)

§ 96.2 Electric Service to Submetered Multi-unit Residential Premises. [Residential submetering]

- (a) General Provisions Applicable to all Submetering.

[Existing Multi-unit Residential Premises. No utility shall provide service to a customer engaged in the submetering, remetering or resale of electric service provided to residential premises, except as provided in subdivisions (b)-(j) of this section.]

- (i) Electric service shall only be provided to a multi-unit residential premises in which individual dwelling units in the premises receive submetered electric service if the submetering (a) is and continues to be authorized by Commission order where a Commission order is necessary, (b) is and continues to be consistent with any conditions imposed by such order, and (c) is and continues to be consistent with this Part.
- (ii) In the event that submetered electric service has been or is proposed to be provided notwithstanding the lack of Commission authorization, the utility or the submeterer may, on a case by case basis seek such authorization on a temporary basis, and the Commission, on a case by case basis, for good cause shown and on such conditions as it deems appropriate, authorize the commencement or continuation of electric service on a temporary basis while a Notice of Conversion to Submetering or a Petition for Submetering is pending

or until other conditions for submetering are met. In the event such temporary authorization is sought and granted, the Commission's order may specify under which of the utility's service classifications such service will be provided, and such service shall be provided under such service classification notwithstanding that the terms of such service classification would not otherwise permit the provision of such service to such customer.

- (iii) If electric service is provided to a multi-unit residential premises in which the individual dwelling units in such premises receive submetered electric service, but which (a) is inconsistent with any conditions imposed by the Commission's order authorizing such service, or (b) is inconsistent with a provision of this Part upon notice to the submeterer from the Department of Public Service, the rate cap for such service shall be 60% of the amount otherwise specified as the rate cap pursuant to this Part. The rate cap will continue at such reduced level until such time as the submeterer is notified that such inconsistency is corrected. Further, when such inconsistency existed for a period of time prior to the notice the Office of Consumer Policy contained in §96.8, the reduced rate cap specified in this paragraph may be extended to all or a portion of such period, not exceeding two years, and the submeterer shall refund to residents the difference between the reduced rate cap established for that period pursuant to this paragraph and any charges for electric service paid by residents in such period. A rate cap reduction made pursuant to this section is appealable to the Commission at which time a waiver of such reduction may be granted for good cause shown.

- (b) New or Substantially Renovated Multi-unit Residential Premises. Except as otherwise provided in this Part, electric service to new or substantially renovated multi-unit residential premises shall only be by direct metering. If, however, a Petition to Submeter with respect to such premises demonstrates that the building or complex for which submetering is sought will participate in building level demand response programs or will employ on-site co-generation plant or an alternative, advanced energy efficiency design, the requirement of direct metering may be modified. The requirements of this paragraph shall not apply to submetering of electricity which is the subject of a Notice of Conversion to Submetering, or of a Petition to Submeter, filed with the Secretary prior to January 1, 2014.

[Master-metered residential rental units owned or operated by private or government entities. Submetering as a substitute for master-metering of private or government entities providing electric service to residential rental units shall be permitted upon application by the prospective submeterer to the commission, which application shall contain the following:

- (1) a statement substantiating the economic advantages of submetering over direct utility metering;
- (2) a description of the type of submetering system to be installed and a validation of its reliability and accuracy;
- (3) the method and basis for calculating rates to tenants, which shall include a maximum rate provision (rate cap) preventing charges to tenants from exceeding the utility's tariffed residential rate for direct metered service to such tenants;

(4) complaint procedures and tenant protections consistent with the Home Energy Fair Practices Act (Public Service Law, sections 31-50; *16 NYCRR Parts 11* and 12);

(5) a procedure for notifying in writing all tenants of the proposal to submeter. The notification shall include a summary of the information provided to the commission under paragraphs (1) through (4) of this subdivision and an invitation to comment to the commission. The notification shall prominently display the address and telephone number of the nearest commission consumer services division office;

(6) a demonstration that an enforcement mechanism is available to the tenants to ensure that their rights are protected under the law (for government entities, the entity or another government agency may enforce the submetering provisions);

(7) certification that the method of rate calculation, the rate cap, complaint procedures, tenant protections and the enforcement mechanism shall be incorporated in plain language into all leases governing submetered premises; and

(8) a description of an appropriate rent reduction formula that accurately reflects the applicant's overall reduction in his total electric costs resulting from conversion to submetering.]

- (c) Existing Direct Metered Multi-unit Residential Premises. Except as otherwise provided in this Part, when electric service is provided to individual residential units in existing multi-unit residential premises through direct metering, such direct metering may not be discontinued or replaced by master metering. If however, a Petition to Submeter that seeks to convert such premises from direct metering to master-metering with submetering demonstrates that the building or complex for which master metering with submetering is sought will participate in building level demand response programs or will employ on-site co-generation plan or an alternative, advanced energy efficiency design, the requirement of direct metering may be modified. The requirements of this paragraph shall not apply to submetering of electricity which is the subject of a Notice of Conversion to Submetering, or of a Petition to Submeter, filed with the Secretary prior to January 1, 2014.
- (d) Assisted Living and Senior Living Facilities. Notwithstanding the prohibitions set forth in paragraphs (b), and (c) of this subdivision, electric service may be established or continued to assisted living or senior living facilities through master metering with or without submetering.

[Directly metered residential cooperatives and condominiums where all tenants are shareholders. Submetering as a substitute for direct metering of residential cooperatives and condominiums where all tenants are shareholders shall be permitted, upon the following conditions:

(1) The prospective submeterer shall certify to the utility that 70 percent of the shareholders participating in a canvass, conducted upon adequate written notice to all shareholders, voted in favor of the submetering proposal.

(2) The prospective submeterer shall certify to the utility that the shareholder-approved submetering proposal includes a rate cap at the utility's tariffed rate for directly metered service to such tenants, and grievance procedures as provided in paragraphs (b) (3) and (4) of this section; provided, however, that any excess revenues resulting from charges to tenants which exceed the utility's billings to the submeterer are used for purposes of energy conservation.]

- (e) Campgrounds, Recreational Trailer Parks and Marinas. Electric service may be provided to the facility owner or operator of new, renovated, or existing campgrounds, recreational

trailer parks, and marinas for redistribution to individual campsites, trailer or boat hookups, with or without submetering. Submetering may be installed and used for billing without Commission approval.

[Master-metered residential cooperatives and condominiums where all tenants are shareholders. Submetering as a substitute for master-metering in residential cooperatives and condominiums where all tenants are shareholders shall be permitted, upon the following conditions:

(1) The prospective submeterer shall certify to the utility that a majority of the shareholders participating in a canvass, conducted upon adequate written notice to all shareholders, voted in favor of the submetering proposal.

(2) The prospective submeterer shall certify to the utility that the shareholder-approved submetering proposal includes a rate cap at the utility's tariffed rate for directly metered service to the tenants, and grievance procedures as provided in paragraphs (b) (3) and (4) of this section; provided, however, that any excess revenues resulting from charges to tenants which exceed the utility's billings to the submeterer are to be used for the purposes of energy conservation.

(f) New or renovated residential cooperatives and condominiums where all tenants will be shareholders. Submetering in new or renovated residential cooperatives and condominiums where all tenants are or will be shareholders may be permitted upon application by the prospective submeterer to the commission, which application shall contain:

(1) a verification that the submetered building will be a cooperative or condominium;

(2) certification that the submeterer will provide a rate cap, grievance procedures, and tenant protections from terminations as provided in paragraphs (b) (3), (4), (6) and (7) of this section; which cap, procedures and protections shall continue until control of the building is assumed by the appropriate cooperative or condominium board.

Upon transfer of control to the appropriate cooperative or condominium board, such board shall certify to the utility that the board will submeter electricity according to a plan that satisfies the conditions set forth in paragraph (e)(2) of this section.

(g) Direct-metered residential cooperatives and condominiums where one or more tenants are nonshareholders. Submetering as a substitute for direct metering in residential cooperatives and condominiums where one or more tenants are nonshareholders shall be permitted, upon the following conditions:

(1) The prospective submeterer shall certify to the utility that all nonshareholder tenants have approved a plan that meets the conditions of paragraph (d)(2) of this section.

(2) Where one or more nonshareholder tenants refuse to agree to the plan proposed by the submeterer, submetering to such tenants shall be permitted only upon approval by the commission of an application by the submeterer meeting the conditions set forth in paragraphs (b)(1)-(7) of this section.

(h) Master-metered residential cooperatives and condominiums where one or more tenants are nonshareholders. Submetering as a substitute for master-metering in residential cooperatives and condominiums where one or more tenants are nonshareholders shall be permitted, upon the following conditions:

(1) The prospective submeterer shall certify to the utility that all nonshareholder tenants have approved a plan which meets the conditions of paragraph (e)(2) of this section.

(2) Where one or more nonshareholder tenants refuse to agree to the plan proposed by the submeterer, submetering to such tenants shall be permitted only upon approval by the commission of an application by the submeterer meeting the conditions set forth in paragraphs (b)(1)-(7) of this section.

(i) Master-metered campgrounds, recreational trailer parks and marinas. Submetering as a substitute for master-metering at campgrounds, recreational trailer parks and marinas shall be permitted.

(j) New or renovated campgrounds, recreational trailer parks and marinas. Submetering in new or renovated campgrounds, recreational trailer parks and marinas shall be permitted.]

§ 96.3 Conversion of Existing Master-metered Residential Rental Premises to Submetering.

(a) Except when the costs of electricity for electric heat will become the responsibility of the tenants or when a building owner seeks to submeter in lieu of direct metering pursuant to §§96.2(b) or (c), conversion of a master-metered multi-unit residential rental premises to submetering shall be authorized:

(i) after filing a Notice of Conversion to Submetering which includes the information, descriptions, plans, forms, certifications, and other materials and representations specified for such Notices in §96.5 of this Part;

(ii) after individual notices to residents are provided pursuant to §96.6(i);

(iii) upon written notice to the submeterer from the Department of Public Service that the Notice of Conversion to Submetering is complete and in compliance with §96.5; and

(iv) upon the Commission's determination and order approving such submetering as in the public interest and consistent with the provision of safe and adequate electric service to customers. In making this determination, the Commission may rely on the Notice of Conversion to Submetering and the information therein, when complete, as a rebuttable presumption that submetering at such premises is in the public interest and consistent with the provision of safe and adequate service to customers.

(b) When electricity for electric heat will become the responsibility of the tenant, conversion of a master-metered multi-unit residential premises will be authorized:

(i) after filing a Petition to Submeter which includes the information, descriptions, plans, forms, certifications, and other materials and representations specified for such Petitions in §96.5 of this Part;

(ii) after individual notices to residents are provided pursuant to §96.6(i); and

(iii) upon the Commission's determination and order approving such submetering as in the public interest and consistent with the provision of safe and adequate electric service to customers. Such determinations will be considered by the Commission on a case by case basis. In making such determination, the Commission may rely on the Petition to Submeter, supplemental information provided with the Petition, information supplied in public comments, and staff's investigation.

- (c) A Petition to Submeter that seeks to submeter in lieu of direct metering pursuant to §§96.2(b) or (c), shall be authorized:
- (i) after filing a Petition to Submeter which includes the information required by §§96.5 of this Part and the demonstration described in §§96.2(b) or (c);
 - (ii) with respect to direct meter to submeter conversions pursuant to 96.2(c), after individual notices to residents are provided pursuant to §96.6(i); and
 - (iii) upon the Commission's determination and order approving such submetering as in the public interest and consistent with the provision of safe and adequate electric service to customers. Such determinations will be considered by the Commission on a case by case basis. In making such determination, the Commission may rely on the Petition to Submeter, supplemental information provided with the Petition, information supplied in public comments, and staff's investigation.

§ 96.4 Conversion of Existing Master-metered Residential Cooperatives and Condominiums to Submetering.

- (a) Unless §96.3(b) or (c) applies, conversion of a master-metered residential cooperative or condominium to submetering shall be authorized:
- (i) after filing a Notice of Conversion to Submetering which includes the information, descriptions, plans, forms, certifications, and other materials and representations specified for such Notices in §96.5 of this Part;
 - (ii) after individual notices to owners or shareholders are provided pursuant to §96.6(i);
 - (iii) upon written notice to the submeterer from the Department of Public Service that the Notice of Conversion to Submetering is complete and in compliance with §96.5; and
 - (iv) upon the Commission's determination and order approving such submetering as in the public interest and consistent with the provision of safe and adequate electric service to customers. In making this determination, the Commission may rely on the Notice of Conversion to Submetering and the information therein, when complete, as a rebuttable presumption that submetering at such premises is in the public interest and consistent with the provision of safe and adequate service to customers.

§ 96.5 Notice of Conversion to Submetering and Petition to Submeter– Contents.

Each Notice of Conversion to Submetering or Petition to Submeter filed pursuant to this Part shall include:

- (a) a description of the type of submetering system to be installed, including a demonstration that the submetering system, when installed, will be capable of service termination to individual units. Such description shall include the meter classification according to the manufacturer's name and proof of each submeter's conformance to the requirements in 16 NYCRR Parts 92 and 93. Authorization to submeter pursuant to this section will be, unless modified by Commission order, contingent upon use of the named, or an identified comparable submetering system.

- (b) a description of the methods to be used to calculate the bills for individual tenants 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 this Part.
- (c) a plan for complying with the provisions of HEFPA. Such plan shall include, but is not limited to, a description or sample of the prospective submeterer's form to be used to determine tenants assets, budget billing form, quarterly billing form, reminder notice, notice to social services of customer inability to pay, final termination notice, final suspension notice, the annual customer notification of rights, bill contents, budget or levelized payment plan, deferred payment agreement, and complaint handling procedures.
- (d) a "Submeterer Identification Form," which shall contain the premises' utility company account number(s) and the name, telephone number and address of the individual or individuals responsible for billing and for resolving customer complaints.
- (e) a description of the method to be used to back out electric charges from rent or monthly maintenance charges, which shall include:
 - (i) a detailed description of how such monthly reduction to rent or monthly maintenance charges will be calculated; and
 - (ii) a copy of the individual notice provided to residents explaining the basis and methodology for such rent or monthly maintenance reductions.
- (f) certification by the prospective submeterer that the following shall be included in plain language in all leases and agreements governing the premises to be submetered, which shall be filed with the Commission in its Notice of Conversion to Submetering or Petition to Submeter:
 - (i) submetering complaint procedures,
 - (ii) the HEFPA rights and responsibilities of tenant's, unit owners or shareholders, as applicable, and
 - (iii) a provision stating that submetering refunds, when ordered by the Commission, will be credited to the submetered unit occupant.
- (g) a copy of the letter and proof of service that was sent from the prospective submeterer to the utility company providing electric service to the premises to be submetered notifying the utility of the Notice of Conversion to Submetering or Petition to Submeter.
- (h) documentation sufficient to establish that the refrigerators in all rental dwelling units are no more than ten years old or meet the most recently adopted federal energy efficiency standards for such appliances.
- (i) when the Notice of Conversion to Submetering or Petition to Submeter is made with respect to a premises in which 20% or more of the tenants receive income-based housing assistance, such Notice or Petition shall include:
 - (i.) the name of each such assistance program in place at the premises, the agency administrator of each such program, the number of tenants receiving assistance under each such program, whether the administrator of such program must approve the proposed submetering at such premises and, if so, when such approval was or may be granted.

- (ii.) the utility allowance or rent reduction applicable to tenants pursuant to each such assistance program.
 - (iii.) a description of the electric energy efficiency measures that have been or will be installed.
 - (iv.) a description of the information and education programs that have been and will be provided to residents on how to reduce electric usage. Such programs shall include information to all tenants before submetering commences as well as supplemental information to tenants with electricity usage that exceeds the building average in the first twelve months after submetering has begun.
- (j) when the proposed submetering of an electric heat property is addressed through a Petition to Submeter, such petition shall, unless waived by the Commission for good cause shown, include:
- (i) a detailed description of the manner in which electric heat is or will be provided to the residential units subject to submetering, including a statement of whether all or a part of the electricity supplied through the submetering equipment will be used to supply electricity for heating for such units.
 - (ii) a demonstration that electricity consumption for heating in a dwelling unit may be controlled by the resident of that unit by the use of programmable thermostats.
 - (iii) either a forecast based on one year of apartment-level shadow billing or a study of actual submetered data from comparably situated buildings to demonstrate that, when submetering is introduced, more than 60% of residents are expected to pay, after accounting for savings from energy efficiency measures and energy conservation and for assistance which may be available from the Home Energy Assistance Program or from other energy assistance programs, less for the submetered electricity during the first 12 months of electric service, than the amount of rent reduction they will receive as a result of the introduction of submetering during this period.
 - (iv) a description of the energy efficiency plan for the premises, including, but not limited to, refrigerator replacements plans, other specific conservation and weatherization measures that have been or will be installed, including those sponsored by the New York State Energy Research and Development Authority and/or other organizations, and information and education programs that have been or will be provided to residents on how to reduce electric usage. If a premises owner or operator has participated in a NYSERDA and/or other program to encourage energy efficiency, the prospective submeterer shall provide formal documentation in its Petition to Submeter describing the energy efficiency rating its premises has achieved, which appliances will be EnergyStar® rated, and NYSERDA certification that its energy reduction plan is complete.
 - (v) When the Petition to Submeter is made with respect to a premises in which at least 25 of the tenants receive income-based housing assistance, documentation to establish that the submeterer has registered as a Home Energy Assistance Program (HEAP) vendor. The Commission may require, when necessary, that a submeter become a HEAP vendor.

- (k) When a Petition to Submeter is for a new, substantially renovated, or a direct metered multi-unit residential premises pursuant to §§ 96.2(b) or (c) of this Part, the Petition shall include a demonstration that the building or complex for which submetering is sought will participate in building level demand response programs or will employ on-site co-generation plant or an alternative, advanced energy efficiency design.
- (l) such other or further demonstration, documentation, commitment or information which, in an order issued prior to the date on which such Notice of Conversion to Submetering or Petition to Submeter is filed, the Commission shall have identified as necessary to a determination that approval of such Notice or Petition is in the public interest and consistent with the provision of safe and adequate service to customers.

§96.6 Conditions to Submeter.

Every Commission authorization to submeter is deemed to include the following conditions, unless waived in whole or in part by Commission order for good cause shown:

- (a) a condition that submetering pursuant to such order shall be in accordance with, as applicable, the Notice of Conversion to Submetering, or the Petition to Submeter, or similar filings made prior to the effective date of this Part, as approved by the Commission or as modified by conditions adopted by the Commission as part of its review and approval.
- (b) a condition that each submetered residential unit in a multi-unit dwelling must be provided with a submeter or related equipment that allows for the termination of submetered electric service to that unit in the event that termination of such service is consistent with the requirements of HEFPA; provided, however, that the requirements of this paragraph shall not apply to submetering of electricity authorized by Commission order or which is the subject of a Notice of Conversion to Submetering, or of a Petition to Submeter, filed with the Secretary prior to January 1, 2014.
- (c) a condition that the submeterer shall not charge more than the applicable rate cap and that, in the event of charges greater than the applicable rate cap, the submeterer may be directed to provide refunds to customers for such overcharges plus interest.
- (d) a condition that the submeterer shall not charge time-of-use rates when the resident has not agreed to be billed using time-of-use rates.
- (e) a condition that the submeterer shall comply with the requirements imposed by HEFPA and that the submeterer shall notify residents, in either the lease to which they are a party, through their condominium or cooperative offering plan, or through other individual notice, of the consumer protections afforded the customer by HEFPA, and that the submeterer shall provide such consumer protections.
- (f) a condition that the lease or other residential dwelling agreement between a submeterer and a submetered customer shall not require or include binding arbitration as a means to resolve submetered customer service or billing complaints and that in addressing any such complaint the submeterer and the submetered customer shall utilize the provisions of 16 NYCRR §12 – Consumer Complaint Procedures.
- (g) a condition that, at any premises for which submetering of electric service is permitted, but at which, pursuant to §96.6(b), equipment that is capable of terminating electric service to individual units is not required, the submeterer shall provide, in the event that

the submetered customer is in arrears for the payment of charges for electric service, each HEFPA protection which is associated with the termination of electric service for unpaid charges which would be available to such customer if the landlord could terminate service to the customer's individual unit. Such HEFPA protections shall be provided notwithstanding the fact that the submetering and related equipment does not technically allow for such termination of service. Each of such protections shall be provided to such customer prior to the commencement of any other civil enforcement, collection or other proceeding based on such customer's overdue electric charges.

- (h) a condition that the submeterer shall update the information contained in the Submeterer Identification Form submitted pursuant to §96.5(d) of this Part by filing with the Department of Public Service notice of any personnel change within ten days of such change.
- (i) a condition that the submeterer shall provide or shall have provided proof, in the form of a notarized affidavit, that the following individual, written notices have been provided to all current residents:

- (i) Prior to Filing a Notice of Conversion to Submetering or a Petition to Submeter pursuant to this Part. Prior to submitting a Notice of Conversion to Submetering or a Petition to Submeter pursuant to this Part, the prospective submeterer identified in such Notice or Petition shall provide individual notice to current residents of the prospective submeterer's intent to submit a Notice of Conversion to Submetering or Petition to Submeter. Such notification to residents shall include the identification of a location in the premises where, and times convenient to the residents when, the information required to be provided to the Commission under §96.5 may be reviewed by residents. Such notification shall also include an offer to provide, upon request by a resident, a copy of such Notice or Petition. Such notification shall also include information on how a current resident may contact the Department of Public Service to comment on such Notice of Conversion to Submetering or Petition to Submeter;

- (ii) Prior to Approval. A Notice of Conversion or Petition to Submeter filed pursuant to §96.3 shall not be noticed for comment in the New York State Register until all information required in §96.5 in connection with such Petition is filed with the Secretary. Immediately upon publication of the notice of the Notice of Conversion or Petition to Submeter in the State Register, the prospective submeterer shall inform current residents how they may submit comments to the Department of Public Service within the State Administrative Procedure Act (SAPA) comment period.

- (iii) After Submetering Approval. After submetering is authorized pursuant to this Part, the submeterer shall file with the Secretary a copy of the notice provided to current residents of the date upon which submetering will commence. Such notice shall be made no less than 2 months prior to the actual commencement of billing for submetered electric service and shall include:

- (a) a statement indicating that prospective residents will be notified prior to signing a lease or purchase agreement that electricity will be supplied on a submetered basis and the tenants will be responsible for electric charges;

- (b) a copy of the annual notice used or to be used for compliance with PSL §44 which summarizes the customers' HEFPA rights and responsibilities, including complaint handling procedures; and
- (c) the precise manner in which submetered customers may contact the Department of Public Service Office of Consumer Services.
- (j) a condition that the billing periods used for submetered electric service shall coincide with the billing periods used by the utility to bill the master-metered service provided by the utility and/or Energy Services company that supplies the premises, that the bills to submetered customers should be sent within thirty days of the submeterer's receipt of the utility bill, and that the submeterers shall retain billing records for a period of six years.
- (k) a condition that cross-wiring (for example, service through a shared meter) does not exist.
- (l) A condition that submeters will be installed and billing will commence within five years of the Commission Order approving submetering.

§ 96.7 Electric Submetering Equipment Conditions. Every order authorizing submetering shall include the following conditions, unless waived in whole or in part by Commission order for good cause shown:

- (a) a condition that all submetering products and ancillary equipment used to monitor electric flow to submetered customers and installed or replaced after the effective date of this Part must:
 - (i) comply with the provisions of 16 NYCRR Parts 92 and 93; and
 - (ii) be physically compatible with the service endpoints of the premises' electrical system and shall be equipped with viewable registers, accessible to the tenant, that monitor energy flow. The submeter register shall indicate the kWh consumption.
 - (iii) submeters that are calibrated to register a fixed fraction of the electricity consumed should display the meter register multiplier which will be used to determine the customer's actual kilowatt hour usage. Any register multiplier used should be indicated on customer bills.
- (b) Ensuring Continued Submeter Performance – a condition that submeter inspection and testing programs shall be instituted to ensure a premises' submetered customers continue to receive reliable and accurate electric consumption measurements. The submeterer or submeterer's agent shall conduct an annual testing program to analyze a statistically significant sample of the in-service submeters in accordance with the testing procedures of 16 NYCRR Parts 92 and 93. Submeters that do not meet the requirements of 16 NYCRR Parts 92 and 93 shall be corrected or recalibrated as soon as practicable but no later than 1 year unless otherwise ordered by the Commission.
- (c) Cost of Meter Tests – a condition that the cost of testing a submeter's accuracy shall be borne by the submeterer as set forth in this paragraph. A recipient of submetered service may request and receive one submeter test at no cost during a twelve month period when the request is made pursuant to a consumer complaint. A recipient of submetered service may request more than one meter test during a twelve month period and may request that the test be witnessed by Department of Public Service staff; however, if the submeter is not out of the limits as prescribed by Part 92, the person requesting more than one annual test will bear the cost of such additional meter tests.

§96.8 Failure to Comply with this Part.

- (a) Any failure to submeter in compliance with this Part or 16 NYCRR Parts 92 and 93, as referenced herein, may result in Commission action that (i) rescinds, suspends, limits or stays the submeterer's authorization to submeter electricity, or its authority to render bills to and collect payments from submetered customers, (ii) terminates electric service to the submetered premises or orders rebilling, or billing refunds, or (iii) other Commission enforcement proceedings; provided, however, that no action shall be taken by the Commission pursuant to this paragraph with respect to any such failure to comply identified in the Department of Public Service's Notice of Failure to Comply, if the submeterer shall, within 30 days of such notice, cure such failure.
- (b) Any failure to submeter in compliance with this Part or 16 NYCRR Parts 92 and 93, as referenced herein, may result in the establishment of a reduced rate cap upon notice to the submeterer of a determination by the Office of Consumer Policy pursuant to section 96.2(a)(iii) of this Part; provided, however, that
 - (i) no action shall be taken by the Commission pursuant to this paragraph with respect to any such failure to comply, as identified in the Department of Public Service's Notice of Failure to Comply, if the submeterer shall, within 30 days of such notice, cure such failure; and
 - (ii) such a determination by the Office of Consumer Policy pursuant to section 96.2(a)(iii) of this Part may be appealed to the Commission. Any such appeal will toll-the 30-day period during which a submeterer may-correct such failure to comply.
- (c) By undertaking to submeter pursuant to a Commission Order granting a Notice of Conversion to Submetering or a Petition to Submeter issued under this Part, the submeterer identified in such Notice or Petition shall have consented to the jurisdiction of the Commission to impose the enforcement remedies (1) described in this Part or (2) described in the Public Service Law and applicable in the event a company, corporation or person fails to obey and comply with a provision of the Public Service Law, or a regulation or order of the Commission applicable to it.