ANALYSIS OF DHCR RENT REDUCTIONS FOR CONVERSION TO SUBMETERED ELECTRICITY

Public Utility Law Project of New York, Inc.
194 Washington Avenue, Suite 420
Albany, NY 12210
Tel: 518-449-3375; 1-800-255-PULP
Fax: 518-449-1769
www.pulp.tc

TABLE OF CONTENTS

ANALYSIS OF DHCR RENT REDUCTIONS FOR CONVERSION TO SUBMETERED ELECTRICITY

I. INTRODUCTION

Residential submetering is a system for reselling by landlords of master-metered utility electric service to tenants in multi-family, residential buildings.[1] A "submeter" is installed in each apartment to measure individual tenants' electricity consumption. Tenants are then billed by the landlord each month based on the amount of electricity they use.

Tenants who live in master metered apartment buildings that are rent-regulated by the New York State Department of Housing and Community Renewal ("DHCR") receive rent reductions when the cost of electricity is shifted from the landlord to the tenants upon submetering, because the cost of electricity was previously included in the maximum allowable rent.[2] The current DHCR schedule of rent reductions for New York City apartments converted to submetering is shown in the table which follows.[3]

---

[1] Submetering is also common in cooperative and condominium buildings where residents are owners/shareholders, but for ease of reference, we will refer to multi-family building residents as "tenants." We will also refer to building owners and managers as "landlords."

[2] New York State Division of Housing and Community Renewal ("DHCR"), Office of Rent Administration, Operational Bulletin 2003-1 (November 2003), (hereinafter "2003 DHCR Bulletin") ***(Attachment 1)*** *also available at*: http://www.dhcr.state.ny.us/Rent/OperationalBulletins/orao20031.pdf

[3] DHCR, Update Number 1 to Operational Bulletin 2003-1, (September 3, 2008) (hereinafter "2008 DHCR Bulletin" ***(Attachment 2)***, *also available at*: http://www.dhcr.state.ny.us/Rent/OperationalBulletins/orao20031_updated090308.htm

# OF ROOMS	MONTHLY RENT REDUCTION
1	$29.31
2	$38.06
3	$38.99
4	$46.99
5	$54.06
6	$60.20
Over 6 rooms	Add $6.18 per room

The DHCR rent reductions are significantly smaller than the actual bills most submetered tenants receive from their landlords for electric service. As a result, submetering typically increases tenant costs and decreases landlords' costs. PULP has undertaken an initial investigation of the methodology used by DHCR to develop the schedule of rent reductions. The results are reported below.

II. DHCR'S 2003 RENT REDUCTION SCHEDULE

A. DHCR's Rationale For Reducing Rent Reductions

In November 2003, the DHCR released a schedule of rent reductions in Operational Bulletin 2003-1 ("2003 DHCR Bulletin"),[4] and reported the history preceding it. The 2003 DHCR Bulletin recognized that unless tenants received smaller rent reductions, landlords would not have sufficient incentives to convert to submetering:

> Over the years the rent reduction formula has been subject to revision based on prevailing considerations of policy and economic conditions. Most recently, DHCR's experience has shown that the formula has tended to discourage owners from undergoing the expense of conversion. This has been confirmed by the relative dearth of conversion applications filed with the agency, and a 1996 report by the New York State Energy Research and Development Agency (NYSERDA) entitled *Facilitating Submetering Implementation*.[5]

---

4 2003 DHCR Bulletin, ***Attachment 1***.

5 The 1996 NYSERDA report was authored by Herbert E. Hirschfeld, who also wrote a guidance manual for "agencies, government and buildings" to facilitate submetering. *See*, Residential Electrical Submetering Manual, Revised October 2001.http://www.nyserda.org/publications/SubmeterManual.pdf. Hirschfeld is a frequent petitioner appearing in PSC proceedings on behalf of building owners seeking submetering approval orders, and has

> Recognizing the need for a new rent reduction formula, DHCR consulted with NYSERDA, and joined with that agency to commission a study by a recognized architectural and engineering firm, Wendel Duchscherer. Upon completion of the study, entitled *Rent Reduction Analysis*, DHCR, with the advice and guidance of NYSERDA, developed the rent reduction formula described herein.[6]

In sum, because the prior system for rent reductions was "discouraging" owners from converting to submetering,[7] DHCR and NYSERDA[8] commissioned a joint study to justify new, lower rent reductions.

B. Prior Rent Reduction Methodology and Prior Litigation

The 2003 DHCR Bulletin does not mention the prior methodology for adjusting rent when electricity costs are shifted to tenants with submetering, nor does it mention how DHCR previously attempted to eliminate that methodology, or the court litigation that ensued – all of which preceded issuance of the 2003 DHCR Bulletin.

First, in 1996, NYSERDA published a paper criticizing the lack of incentives for landlords to submeter, which is mentioned in the 2003 DHCR Bulletin.[9] Also in 1996, DHCR

---

facilitated the conversion to submetering of at least 23,800 apartment units. *See*, Public Service Commission Orders in Cases 08-E-0026 (200 units); 07-E-1374 (201 units); 07-E-0865 (1,307 units); 07-E-0264 (99 units); 07-E-0246 (1,800 units); 06-E-0564 (183 units); 06-E-1176 & 06-E-1180 (672 units); 06-E-1179 (383 units); 06-E-1178 (224 units); 06-E-0847 (542 units); 06-E-0252 (237 units); 05-E-0205 & 05-E-0206 (882 units); 05-E-0251 & 05-E-0252 (264 units); 04-E-0103 (960 units); 04-E-0104 (534 units); 03-E-0598 (418 units); 03-E-0889 (3,008 units); 03-E-1575, 03-E-1576, & 03-E-1577 (816 units); 02-E-0655 (75 units); 02-E-0578 (83 units); 01-E-1290 (1,324 units); 01-E-1831 (1,150 units); 01-E-1280 (1,091 units); 01-E-1289(1,690 units); 01-E-1335 (948 units); 00-E-1269 (286 units); 00-E-1918 (420 units); 99-E-0238 (1,221 units); 98-E-1992 (72 units); 97-E-0620 (1,261 units); 95-E-0011 (370 units); 95-E-0008 (1,100 units).

[6] 2003 DHCR Bulletin.

[7] Wendel Duchscherer, Rent Reduction Analysis, Volumes II: (January 2003) (hereinafter "WD Study Volume II"), p. 5

[8] NYSERDA is a "public benefit corporation" funded by New York utility customers. For more information on NYSERDA's money and how it is used, s*ee*, "PSC and NYSERDA Spend Millions for Submetering Projects Violating Residential Tenants' Rights," PULP Blogspot, January 16, 2009, *available at* http://pulpnetwork.blogspot.com/2009/01/psc-authorizes-millions-for-submetering.html.

adopted a new schedule (Operational Bulletin 96-2, hereinafter "OB 96-2") that resulted in much lower rent reductions for submetered tenants. However, DHCR did not follow State Administrative Procedure Act ("SAPA") procedure in issuing OB 96-2.

A tenant association challenged OB 96-2 in court, claiming that DHCR's new schedule permitted "a diminution of services without commensurate rent adjustments."[10] They objected not only to DHCR's change in methodology, from a three-step process to a single-step process, but also to DHCR's failure to comply with SAPA. In a 2000 court decision, a New York State Supreme Court judge explained the difference between DHCR's prior rent reduction schedule and the new, lower rent reductions it attempted to promulgate in OB 96-2.

> Prior to OB 96-2, DHCR maintained a three-step process for determining rent reductions following a conversion to individual metering. First, DHCR determined that the base rents of tenants who had been supplied electricity were increased an average of 6.6%; thus, the first step was to reduce the rent 6.6% to eliminate the effect of past electrical inclusion adjustments issued by the Rent Guidelines Board. Second, DHCR imposed a temporary "Stage 1" monthly rent reduction which amounted to $ 25 per month for a studio; $ 30 for a one bedroom; $ 35 for a two bedroom; and $ 5 more for each additional bedroom. These reductions were intended to offset the cost of electricity which had previously been paid by the owner and which the tenants would now pay. The schedule was not precise but was subject to correction by the next step. *Third, the owner was required to file a "Stage 2" application at the end of one year which allowed the rent reductions to be adjusted to reflect actual savings in electricity costs to the owner, allowing for an increase or decrease in rent to avoid a windfall to the owner or tenants*.
>
> OB 96-2, which changed the method of calculating the rent for converted buildings, was issued on August 28, 1996. It replaced the three-step process with a single-step reduction based on fixed

---

9 Hirschfeld, H.E., Schechter, H., *et al*., Facilitating Submetering Implementation, NYSERDA Report 96-7, May 1996.

10 *Car Barn Flats Residents' Assn. v. DHCR*, 184 Misc. 2d 826, 827 (Sup. Ct., NY County 2000).

schedules derived from the Federal section 8 (*42 USC § 1437f*) program.

* * *

The schedule provides for a one-time rent reduction of $31 for a studio apartment; $35 for a one bedroom; $41 for a two bedroom; $46 for a three bedroom; and $49 for a four or more bedroom unit. In addition, special charges for appliances which consume large quantities of electricity are eliminated. The decreases authorized by OB 96-2 are final. [11]

* * *

With respect to electrical conversions, the [Rent Stabilization Code] expressly authorized DHCR to grant permission to an owner to reduce required services with a reduction in the legal rent . . . In fulfilling this responsibility, since 1984, and prior to the effective date of OB 96-2, in determining the amount of reduction in rent to which a tenant is entitled when a building converts from mass metering to individual metering, DHCR had factored in a 6.6% reduction in addition to the per room reduction, as adjusted by actual savings to the owner, to offset the owner's prior increases due to the electric inclusion adjustments.

In fact, just 15 months before OB 96-2 was issued, in May 1995 DHCR upheld its prior formula with this explanation: 'The DHCR has continued the practice and policy of the CAB[12] which established a procedure for determining appropriate rent reductions upon conversion to an individual electric meter system. *This procedure takes into account the benefits and liabilities incurred by both owners and tenants as a result of the conversion, and is designed to provide a rent reduction fair to both owner and tenant. In each case the rent agency reviews the facts and determines the issue of the value of the service.* Among the factors which are considered in the procedure are the savings in electricity bills which the owner will obtain as a result of the conversion, the difference in electric rates, i.e., the lower "bulk" rate charged to owners as opposed to the higher "retail" rate charged to tenants, the modification of electrical service provided, in that tenants will no longer be provided with unlimited "free" electricity but will now be compelled to conserve electricity, and the fact that all

11 *Id.* at 184 Misc. 2d at 828-29 (emphasis added).

12 New York City Conciliation and Appeals Board.

> future electric rate increases will [now] be borne by the tenants, rather than the owner ... *[In addition], [t]he adjustments are also intended to prevent the owner's windfall profit on the elimination of a service it, unilaterally, no longer chooses to pay for and to compensate the tenants for incalculable but real burdens, such as the tenants' assumption of the risk of increased energy costs, which could well exceed the designated compensation.*"[13]

The Court found that the OB 96-2 schedule was a rule was within the scope of SAPA because it was a "fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers."[14] Despite DHCR's argument that it was merely interpreting statutes and implementing a new rent reduction schedule to afford a "more streamlined process,"[15] the court said:

> DHCR was required to justify both its change in the rule from the three-step method to the single-step fixed schedule, and the elimination of the electrical inclusion allowance. The three-step method took into consideration the 6.6% reduction based on past electrical inclusion increases to owners, a per bedroom reduction which estimated the costs and a final adjustment for actual costs to both the owners and tenants.
>
> * * *
>
> *DHCR offered no justification or explanation for its departure from its prior practice*, stating only that the intent was to insure that the rent decreases reflect the cost of electricity and that this was not inconsistent with the [Rent Stabilization Law] and [Rent Stabilization Code].[16]

---

13 *Car Barn Flats*, 184 Misc.2d at 832-833 (emphasis added).

14 *Id.*, 184 Misc. 2d 830-33 (internal citations omitted).

15 *Id.*, 184 Misc. 2d 830.

16 *Id.*, 184 Misc. 2d 834 (emphasis added).

The Court held "absent justification for the change, the rule is invalid."[17] It reversed the DHCR order permitting the Car Barn Flats building owner to terminate inclusion of electricity in the rent and remanded the matter to DHCR. Against this backdrop, DHCR and NYSERDA commissioned a consultant to perform a study and develop a report to justify the lower rent reductions DHCR wanted. That study is the subject of PULP's analysis which follows.

III. THE JOINT NYSERDA/DHCR STUDY

A joint DHCR/NYSERDA study was performed by the Wendel Duchscherer firm ("WD").[18] The WD Study, consisting of approximately 36 pages, was undertaken in two parts: Volume I, Direct Metering and Volume II, Submetering. The submetering section (Volume II) is based on the Direct Metering (Volume I) data with certain adjustments applied, which are described more fully below.

A. The WD Study was Biased Because it was Undertaken Only to "Verify" a Predetermined Result and was Founded Upon Faulty Premises

1. The study sought merely to "verify" the suitability of pre-determined rent reductions

WD said the purpose of its study was to "determine how much the rent should be reduced if the building converted from master metering to direct metering."[19] As discussed above, DHCR had previously adopted a schedule of rent reductions in OB-96-2 that had been struck down by the Court. apparently, it then drafted a new schedule, and it engaged WD to "verify the rent

---

17 *Id.*, 184 Misc. 2d 833.

18 Wendel Duchscherer, Rent Reduction Analysis, Volumes I and II (January 2003) (hereinafter "WD Study") ***(Attachment 3)***

19 WD Study, Volume II, at p. 1.

reduction amounts under discussion in the DHCR draft schedule. . . ."[20] This rendered the WD Study biased from its inception, because it was implicitly assigned to accept the draft DHCR rent reductions as viable, requiring only "verification" by a search for supporting evidence.

2. The study was founded upon a faulty, undocumented premise

The WD Study states, "a conversion from master metering to either direct metering or submetering will result in each apartment being held accountable for its own energy use."[21] Thus the premise supplied to WD upon its undertaking of the assignment is clearly erroneous. While converting master-metered apartments to either direct metering or submetering allows for measurement of electricity used in each unit, it does not ensure accountability of those responsible for usage. For example, tenants in buildings with inadequate insulation, malfunctioning, aged windows, and obsolete, energy-wasting landlord-owned refrigerators, air conditioners and other appliances, also pay for the cost of energy wasted by their landlord's energy inefficiency – all factors they are powerless to control. The exterior surfaces of some dwelling units in high rises may face the wind or sun, requiring more energy to cool than other units in the same building. It is inaccurate to say these tenants are being "held accountable" for "their own" energy use, when they are burdened with high energy costs that are due to structural or other external factors requiring landlord remediation. Submetering relieves landlords from the cost of electricity, thereby reducing or eliminating financial incentives to invest in repairs, improvements, or new fixtures, controls and appliances that would reduce tenant electricity consumption.

---

[20] WD Study, Volume I, at p. 2. Volume I of the WD Study includes an appendix cover page indicating that DHCR Operational Bulletin 96-2 was attached. NYSERDA refused to produce the WD Study in response to PULP's February 10, 2009 FOIL request and directed PULP to the New York State Archives. OB 96-2 was not appended to the Archives' version of the WD Study and OB 96-2 is not available on the DHCR website.

[21] WD Study, Volume I, at p. 2.

B. Reliance Upon Unreliable and Outdated Usage and Price Data

The centerpiece of the WD study was not based on direct evidence of tenant electric consumption and prices. Instead, it was based on a comparison of two wholly unreliable data sets derived from these sources:

(1) 1999 New York City Housing and Vacancy Survey ("HVS"); and

(2) 1996 U.S. Department of Housing and Urban Development ("HUD") Survey to determine rent allowances for electrical usage.[22]

1. The1999 New York City HVS

The data on electricity costs derived from the now 10-year-old HVS survey was self-reported and highly unreliable. WD tacitly acknowledged this in its description of the data:

> Respondents were asked to estimate their average monthly cost of electricity and gas. If estimated electricity and gas costs could not be separated, then the questionnaire asked for the combined monthly gas and electric payment. . . . *The reported electrical cost data is financially-based, rather than consumption-based.* That is, households are asked about the amount of money they pay for electricity ($), not the amount of electricity that they use (kilowatt-hours).[23]

Thus the HVS data was unreliable, because (i) respondents were asked to estimate their monthly costs, but were expected to respond with an average based on their annual consumption; (ii) the data set included responses from individuals who acknowledged they were unable to separate their electric charges from their natural gas charges; (iii) the data was not expressed in kilowatt hour (kWh) consumption, but rather, in estimated, averaged dollar amounts; (iv) the responses were not validated or corroborated with information from the utility company for the surveyed individuals to determine the accuracy of their estimates; and (v) the data included

---

[22] WD Study, Volume I, at pp. 7-8.

[23] WD Study, Volume I, at p. 7 (emphasis added).

consumption for vacant housing units, "usually spoken for by realtors, building managers and superintendents, and knowledgeable neighbors,"[24] thereby further diluting already unreliable data with responses from individuals who likely never paid or reviewed an electric bill for the dwelling unit about which they responded.

2. The 1996 HUD Survey

WD reported that the 1996 HUD data, like HVS, was cost-based, not consumption-based, and acknowledged that "supporting documentation for this study was unavailable for review."[25]

In acknowledging the HUD data deficiencies, WD noted:

- Data is self-reported and not verifiable because there is no independent check of survey responses against an independent source, such as utility bills. In addition, respondents' answers can be subject to error.
- Electrical consumption data is based on cost, rather than consumption. Cost data can change significantly over time as a result of inflation or variable electricity pricing due to market fluctuations.
- Raw data, such as individual responses, is unavailable for examination due to U.S. Census Bureau confidentiality requirements.[26]

C. "Correcting" for Unreliable Data

In view of the admitted unreliability of the HVS and HUD survey data sets, WD turned to the national 1997 Residential Energy Consumption Survey (RECS), compiled by the U.S. Department of Energy. The RECS study, already five to six years old at the time of WD's analysis, obtained actual consumption data from utilities, but only for a very small sample of

[24] WD Study, Volume I, at p. 7.

[25] WD Study, Volume I, p. 8.

[26] WD Study, Volume I, at p. 9.

households (5,900) nationwide.[27] WD attempted to extract a subset of data from the small RECS national survey to match housing types in New York state likely to be submetered.[28] This further winnowed the sample markedly, from 5,900 to only 141 housing units. The base monthly electric loads for the RECS-derived sample of 141 households ranged from 157 kWh per month for 1-2 rooms, to 306 kWh per month for 6 rooms.[29]

D. Disaggregating Master-Metered Apartment Usage

WD compared the RECS data against the actual electric consumption by dwelling unit in master-metered apartment buildings in New York, but could only roughly estimate consumption by apartment. To derive a consumption estimate, WD identified total building consumption in kWh and subtracted an estimated amount of common space consumption (20-25%).[30] WD did not indicate why 20% would be used in one case and a 25% factor would be used in another. The remainder was divided by the number of apartments in the building,[31] to arrive at an average monthly consumption of 414 kWh per month. This estimate therefore excludes any consideration of differences in apartment size, household composition, deviation from seasonal

---

27 WD Study, Volume I, at pp. 11-12.

28 WD Study, Volume I, at pp. 12-13. WD attempted to isolate households out of the RECS Survey that most closely matched the type of housing found in New York State. This was identified as housing units that were: (1) rental, cooperative or condominium units; (2) located in buildings with 5 or more units; (3) did not use electric heat; (4) is located within a city; and, where available (5) located in New York state. It is not clear whether the subset of 141 RECS households were comprised of tenants in public housing, which tends to have smaller units and less air conditioning.

29 WD Study, Volume I, at pp. 13-14.

30 WD Study, Volume I, at p. 17. If common area usage were less than 20 – 25% of total building usage, the portion of tenant usage would be greater, their submetered charges would be higher, and the rent reductions would need to be larger to defray the actual cost of electricity used. The WD Study does not substantiate the 20 – 25% allowance for landlord common areas, but cites to a NYSERDA study commissioned to provide evidence to "identify and analyze barriers to residential electrical submetering" and "to formulate recommendations [to] remov[e] these barriers and streamline the process of submetering implementation." Hirschfeld, H.E., *et al.* at n. 9, supra.

31 WD Study, Volume I, at p. 17.

temperature norms in the survey year, temperature differences between northern and southern New York state, or unique building characteristics such as southern exposure, prevailing wind exposure, thermal efficiency, or energy efficiency of appliances used in dwelling units. It would also understate the tenants' actual usage to the extent that common area usage is less than 20 to 25 per cent.

Next, WD reduced the 414 kWh estimate by 20 per cent stating, without citation to any supporting data, that tenants will decrease their consumption by that amount when they become responsible to pay for their own electric use, and "[t]his has historically been shown to be about 20 percent."[32] However, NYSERDA currently estimates only an 8% reduction in energy consumption attributable to submetering.[33]

The 414 kWh estimate derived by WD and then reduced by an undocumented 20 per cent (83 kWh), amounts to a monthly consumption to 331 kWh. WD identified the 331 kWh as being "very close to the RECS-derived data set average of 236 kWh" and hence reliable.[34] Yet the two figures vary by 29 per cent, or nearly one-third.

Finally, WD compared the RECS annual electric load to the self-reported, cost-based estimated electric load from the HVS study, and found the variance between the two data sets was within 10 per cent. WD therefore concluded that the HVS study data could be relied upon as a measure of New York household energy consumption.[35]

E. Final Tally of the Rent Reduction for Electricity

32 WD Study, Volume I, at pp. 18-19.

33 Statement of NYSERDA representative Luke Falk, Submetering Summit, New York City, May 16, 2009.

34 WD Study, Volume I, at p. 19.

35 WD Study, Volume I, at p. 19.

After explaining the reliance on HVS data as detailed above, WD applied the per-kWh cost of electricity to the HVS estimates of monthly consumption by apartment size, to arrive at an estimated monthly cost for electricity in New York housing units that received direct-metered electric service from a utility.[36] The per-kWh cost of electricity was obtained from utilities' annual reports to the federal Energy Information Administration ("EIA") made in 1999 for calendar year 1999.[37] However, a large increase in the cost of electricity occurred in 2000, and prices continued to rise rapidly in ensuing years. For example, in 1991, the EIA showed the cost of electricity statewide, as 13.23¢ per kWh. This statewide price, diluted by lower electricity costs in upstate New York, is significantly below Con Edison prices in the New York City area, which were 13.77¢ in 1999, 14.64¢ in 2000. The significant increase in electricity costs beginning in 2000 is illustrated in the chart shown at ***Attachment 4***. By selecting prices from 1999, a year prior to the beginning of a series of known major electricity price increases, and using statewide price benchmarks, the WD Study understated the cost of electricity in the New York City area.

For submetered buildings, WD reduced the cost per-kWh for submetered customers to 12.78¢, to reflect a "bulk rate" which was assumed to be "almost always less expensive than the rate charged to individual households."[38] This is another faulty premise – the bulk rate of electricity to submetered buildings sometimes exceeds the cost of residential rate service.[39]

---

[36] WD Study, Volume I, at p. 21.

[37] WD Study, Volume I, at p. 15.

[38] WD Study, Volume I at p. 1.

[39] In a recent proceeding before the Public Service Commission, the Starrett Corporation, a multi-family property owner/developer in New York City, noted: "It is virtually impossible to buy electricity from the market and ensure that the purchased rate, be it at a monthly rate or a yearly average rate, is at or below the SC1 rate. * * * The issue first arose in early 2008 when Con Edison's SC8 rate exceed that of the residential SC1 rate, placing some submetered properties, (depending upon their load factor) in the position of having passed along to residents charges

F. WD Does Not Explain its Failure to Use Current, Specific, More Reliable and Readily Available Price and Consumption Data

1. More reliable consumption data

More reliable data regarding electricity consumption specific to New York was readily available when the WD Study was prepared. For example:

- The New York State Statistical Yearbook, 32nd Edition, prepared by the Nelson A. Rockefeller Institute of Government of the State University of New York, reports average usage per residential customer in 2002 (6,148 kWh or 512 kWh per month) and 2003 (6,206 kWh or 517 kWh per month). This consumption data is more than twice the usage assumed in the WD Study.[40]

- NY State Department of Public Service Financial Statistics of the Major Investor-Owned Utilities in New York State (2003) reports usage per residential customer in 2003 (5,000 KWh or 416 kWh per month). This consumption data is approximately 26% higher than the usage assumed in the WD Study.[41]

- Utilities and previously submetered buildings have data on actual customer usage and bills. The WD Study reveals no effort to obtain such direct evidence of consumption and price.

---

that exceeded the SC1 rate. In the past, the SC8 rate was lower than the SC1 rate. One of the attractions of converting to submetering was to maintain the lower bulk SC8 rate. . . . Given the vagaries of the commodities market, it was clearly possible that any purchasing scenario could exceed the SC1 price, which changes monthly – not only for a given month, but also for a year or more if a price were locked in for an extended period. In short, the rate cap rule could be violated by continuing to purchase electricity directly from ConEd because the utility's SC8 rate could exceed the SC1 rate and could also be violated by buying market electricity which could also exceed the SC1 rate – unless future SC1 charges were known in advance – which they are not. *See*, *Comments of Starrett Corporation*, In the Matter of Reviewing and Amending the Electric Submetering Regulations, 16 NYCRR Part 96, Case 08-M-1274, filed February 26, 2009.

[40] 2007 New York State Statistical Yearbook, 32nd Edition. Nelson A. Rockefeller Institute of Government, State University of New York, in cooperation with the New York State Division of the Budget, at p. 502.

[41] New York State Department of Public Service, Financial Statistics of the Major Investor-Owned Utilities in New York State (2003), at p. 38, *available at* http://www.dps.state.ny.us/5yrbook/2003/annual_bill_2003.pdf.

2. More reliable price data

Similarly, available price data shows:

- Electricity prices in New York, and particularly in the New York City area, increased significantly after 1999. This is readily apparent from the biennial typical bill reports regularly issued by the New York Public Service Commission.[42] The WD Study failed adequately to recognize the major price increases from 1999 to 2003 because it relied on 1999 data.

- A New York Public Service Commission report shows that the cost per kWh for a Con Edison residential customer in New York City (where most submetering occurs) was 19.79¢ in 2003.[43] The WD report uses a much lower cost of 12.78¢,[44] based on an assumption about lower bulk rates, which may not be accurate.[45]

- The New York State Statistical Yearbook, 32nd Edition shows that the average residential price per kWh in 2002 and 2003 was 13.78¢.[46] WD significantly understated prices by looking at 1999 price data (in 2003 and 2003 when the study was prepared).

WD offered no explanation as to why it used anecdotal reports, secondary sources, survey results, and obsolete data to reach its conclusions, when reliable, more direct data from utility, the New York Public Service Commission, and other reports on average residential customer electric consumption and prices was available. This underscores the bias present in the WD Study from its inception, on the basis of the implicit acceptance of the draft DHCR rent reductions as viable, requiring only "verification."

---

[42] See, Typical Customer Bill Information for Electric Residential Customers, *available at*: http://www.dps.state.ny.us/TypicalBills.htm. See ***Attachment 5***, Typical Bills for Con Edison Residential Electric Customers between 1999 and 2003, showing substantial price increases.

[43] New York State Department of Public Service, Financial Statistics of the Major Investor-Owned Utilities in New York State (2003), at p. 38, *available at* http://www.dps.state.ny.us/5yrbook/2003/annual_bill_2003.pdf. ***(Attachment 6)***

[44] WD Study, Volume II, at p. 8.

[45] See text accompanying n. 41, *supra*.

[46] 2007 New York State Statistical Yearbook, 32nd Edition. Nelson A. Rockefeller Institute of Government, State University of New York, in cooperation with the New York State Division of the Budget, at p. 502.

IV. APPLICATION OF ERRONEOUS ASSUMPTIONS AND UNRELIABLE DATA RESULTED IN AN INADEQUATE RENT REDUCTION THAT WAS NOT CORRECTED IN THE 2008 UPDATE

The 2003 DHCR Bulletin states that the DHCR rent reductions were not intended to completely offset the cost of reasonable electricity usage to tenants, but to merely "ameliorate the financial impact."[47] However, the 2003 rent reduction schedule was developed on the basis of the methodologically flawed WD Study, which used unreliable data, to which dubious assumptions were applied, and based on a price for electricity which preceded price increases known at the time of the study. Although DHCR updated the rent reduction schedule in 2008, the update was founded upon the 2005 New York City HVS. Therefore, the 2008 update relied on three-year-old data plagued by the same infirmities that afflicted the 1999 HVS survey.

For example:

- The 2008 rent reduction schedule provides a rent reduction of $46.99 for a 4-room New York City apartment, based on the WD estimate that monthly electric consumption for an apartment this size is 231 kWh. But in July 2008, $46.99 would buy approximately 139 kWh of electricity from Con Edison,[48] about enough to cover the cost of operating an older refrigerator for one month and no more.[49]

- Assuming the accuracy of two of WD's unproven and unreliable assumptions: (i) that 231 kWh monthly consumption for a 4-room apartment is normal, and (ii) the bulk rate for electricity is no more than the residential rate, if we apply the Public Service Commission's stated cost per kWh for residential electric service from Con Edison for customers using up to 250 kWh, for the last month that such data was available, January 2009,[50] we find that the cost of electricity, inclusive of all charges and taxes, is $0.2708 per kWh. At that rate, an apartment consuming 231 kWh would pay $62.55 for its electricity, or 25% more than the

---

47 New York State Division of Housing and Community Renewal ("DHCR"), Office of Rent Administration, Operational Bulletin 2003-1 (November 2003), *available at*: http://www.dhcr.state.ny.us/Rent/OperationalBulletins/orao20031.pdf

48 *See*, Typical Bills, available at http://www.dps.state.ny.us/typical_bills/util_elec_res_bills_July_2008.pdf

49 Older refrigerators not Energy Star rated consume about 1400 kWh per year, or 116 kWh per month. Landlord-owned appliances supplied to rent stabilized tenants are frequently obsolete.

50 *See*, Typical Bills, available at http://www.dps.state.ny.us/typical_bills/util_elec_res_bills_July_2008.pdf.

DHCR allows in monthly rent reduction. And, as demonstrated previously, the DHCR assumptions of average usage and price are grossly understated.

- NYSERDA reports that the average New York state household consumed 492 kWh of electricity per month in 2002.[51] Therefore the electricity consumed by a 4-room household in New York City in January 2009, using either the NYSERDA monthly consumption estimate for 2002 (492 kWh) or the Public Service Commission monthly consumption estimate for 2003 (416 kWh), and applying the above-cited PSC price data, the submetered tenant's electricity would cost either $98.55 or $83.32, or nearly 50% more than the $46.99 rent reduction allowance desired by DHCR to sweeten the financial incentives to landlords to convert their master metered buildings to submetered electric service.

V. CONCLUSION

The DHCR rent reduction schedule in force today was justified by a single, seriously methodologically flawed study, using unrealistically low usage assumptions and outdated price assumptions that do not adequately account for the impact of major price increases since 2000. The scheduled rent reductions are unrealistically low and are inadequate to "ameliorate the financial impact"[52] of submetering on rent stabilized tenants. It appears that the study was prepared more for litigation defense of a predetermined low rent reduction schedule than to identify actual usage and price of electricity.

The DHCR rent reduction schedule should be based on readily available usage data regarding electric consumption and price. In August 2008, Con Edison reported there are 28,595 residential apartments had been submetered in its territory.[53] Price and energy consumption data derived both from master metered buildings and from actual, submetered apartments could

---

[51] *See*, New York Energy Smart Low-Income Energy Affordability Program Evaluation and Status Report, Appendix C, Residential Energy Statistics, September 2002, *available at* http://www.nyserda.org/Energy_Information/liappendices.pdf

[52] *See* n. 29, *supra*.

[53] Public Service Commission Case 08-E-0539, Con Edison Response to DPS Interrogatories, Set DPS30, Question 466, August 5, 2008.

provide a wealth of more reliable data to guide the DHCR in developing its rent reduction schedules. The schedules should be updated annually to reflect changes in electricity prices.