NEW YORK SHARED METER LAW

Public Utility Law Project Manual
8th Edition 2018

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The PULP Law Manual was originally funded in part by a grant from the New York State Bar Foundation. The 7th Edition was funded in part by a grant in 2017 from the Berk Foundation of New York. The 8th Edition was funded in part by the 2017 Berk Foundation grant and by other funds provided by PULP.

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NEW YORK SHARED METER LAW

I. Introduction

A “shared meter” is a utility meter that measures gas, electricity, or steam service in a tenant’s dwelling, and to areas outside the dwelling, with the tenant paying for service to more than one area.\(^1\) Simply put, residential rental tenants whose utility meters measure consumption inside and outside their homes, have a shared meter. Service outside a tenants’ dwellings may include service to equipment that is used for the benefit of the building.\(^2\) For example, a hot water heater or furnace may be located inside a tenant’s apartment but provide hot water and heat to other apartments or common areas of the building. Conversely, the hot water heater or furnace may be located outside the tenant’s apartment and used to provide services to the entire building, but the gas and electric service used to fuel and power them is connected to the tenant’s meters.

Sometimes, shared meter conditions arise accidentally, as a result of electrical wiring or gas pipes being attached to a tenant’s meter when a building is renovated or when systems are upgraded. Shared meter conditions may also be created intentionally, when someone in the building deliberately connects his or her usage to the meter serving another tenant. Shared meter conditions frequently arise in buildings that are converted from single family homes to apartments, when separate meters are not installed for each apartment. New York’s Shared Meter Law requires owners of rental dwellings to eliminate any shared meter condition, or to

\(^1\) New York Shared Meter Law, N.Y. Pub. Serv. Law § 52(1)(b). Hereinafter, “PSL.” For the purpose of the Shared Meter Law, a “dwelling” is “any building or structure or portion thereof which is occupied in whole or part as the home, residence or sleeping place of one or more human beings, including any equipment located outside such building or structure or portion thereof which is under the exclusive use and control of the occupant, and is either rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of one or more human beings.” PSL § 52(1)(c).

\(^2\) PSL § 52(1)(c).
place the utility service in the owner’s name.\textsuperscript{3} The provisions of the Shared Meter Law may not be waived by owners, tenants or utilities,\textsuperscript{4} and “the legislature [declared in 1991] that the rental of dwellings with shared meters where service is billed to the shared meter tenant is contrary to public policy.”\textsuperscript{5}

II. Utility’s Responsibility under the Shared Meter Law

A. Notice to Owners and Tenants

The Shared Meter Law requires every utility\textsuperscript{6} to provide annual notice to tenants and owners that summarizes the requirements of the law. The notice must be approved by the Public Service Commission (“PSC” or “Commission”) and mailed separately from the utility’s monthly bill for service. Every utility must also implement an outreach program, approved by the PSC, to advise customers of the protections of the Shared Meter Law.\textsuperscript{7} Finally, each utility may arrange for the publication of notices in newspapers or the broadcasting in other media of notices describing such requirements.

B. Investigation of Shared Meter Conditions

If a customer receives a utility bill that appears to be too high for the amount of service that he or she used during the course of the month, then, there could be a shared meter condition on the premises. Any utility customer in a rental dwelling who suspects that their utility meter is measuring service to an area or appliances outside their dwelling should first file a written or oral

\textsuperscript{3} PSL § 52(2)(a).
\textsuperscript{4} PSL § 52(3)(a).
\textsuperscript{5} See, §1 of ch. 654 of the Laws of 1991.
\textsuperscript{6} For purposes of the Shared Meter Law, a “utility” is “any gas, electric and steam corporation and/or municipality providing service to residential customers.” PSL § 52(1)(d).
\textsuperscript{7} PSL § 52(9).
complaint with the utility. Upon receipt of the complaint, the utility must notify the building owner in writing that a shared meter complaint has been received and that the utility is required to investigate the complaint. The notice must also apprise the owner of his or her responsibilities under the shared meter law. If the utility contacted by the tenant is not in control of the meters and related pipes, fittings, wires and other apparatus associated with the establishment and measurement of service to such customer’s dwelling, the utility is required to provide notice to the appropriate metering utility.

Upon receipt of a tenant-customer’s complaint, the utility must undertake an investigation of the shared meter condition. The investigation may include testing, examination of piping, wiring, meters and heating equipment, review of billing records, and preparing an estimate of the gas, electricity or steam used in inside and outside the shared meter customer’s dwelling. Owners who refuse the investigating utility’s reasonable requests, or who do not cooperate with the utility by providing access to common areas in the building, will receive a determination from the utility that a shared meter condition exists. The utility will suspend its investigation entirely if the complaining tenant refuses to cooperate by providing access to the dwelling unit or refuses other reasonable requests made by the investigating utility. In either case, the utility will not be liable for any subsequent claims for monetary damages made by the owner or the tenant customer.

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8 Investigations may also be prompted upon request of an owner, or upon the utility’s receipt of information indicating that a shared meter condition may exist. PSL § 52(4)(a).
9 PSL § 52(4)(a).
10 Id.
11 PSL § 52(4)(c).
12 Id.
13 Id.
C. Written Determination after Investigation

Within thirty (30) business days of the date the utility received the tenant’s complaint, owner’s request, or other information triggering the investigation, the utility must make a written determination on the investigation.\(^4\) If the utility fails to make a written determination within 30 business days, the tenant or owner may contact the Commission, which will investigate the shared meter condition and issue a written determination.\(^5\) The determination must be provided to the complaining tenant, the owner, any other tenants receiving service through the shared meter, and to any other utilities providing service through the shared meter.\(^6\) The determination provided to the building owner must also state whether separate metering, rewiring or repiping is possible, and must describe how the shared meter condition can be eliminated.\(^7\) The contents of the determination to all parties must include:

- a description of the areas outside the dwelling that are served by the shared meter;
- the nature of the uses of the utility service used outside the dwelling;
- the proportional amount of service measured on the shared meter that is provided to the tenant’s dwelling and the areas outside the dwelling; and
- the availability of Commission complaint handling procedures and the Commission’s address and telephone number for filing objections to the determination.\(^8\)

If the owner or tenant is dissatisfied with the utility’s determination, they may use the Commission’s complaint handling procedures to seek review and a written determination of the Commission.\(^9\) A complaint, either written or oral, must be made to the Commission within 45 days of receipt of the utility’s determination. The Commission will issue a written determination

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\(^{14}\) PSL § 52(4)(b).
\(^{15}\) PSL § 52(4)(d).
\(^{16}\) Id.
\(^{17}\) PSL § 52(4)(a).
\(^{18}\) PSL § 52(4)(b).
\(^{19}\) See PULP Law Manual Chapter 6 entitled, “Complaint Handling Procedures.”
and has the authority to apportion charges for utility service measured by a shared meter between the owner, the shared meter customer, and any third party.\textsuperscript{20}

IV. Owners’ Responsibilities under the Shared Meter Law

A. Elimination of Shared Meter Condition

Within 120 days of a determination that a shared meter condition exists, the owner must have either (i) eliminated the condition by rewiring or repiping as needed; (ii) entered into an agreement with the tenant for apportionment of the shared meter charges,\textsuperscript{21} or; (iii) established an account in the owner’s name for all shared area charges.\textsuperscript{22} The last two remedies are more fully described below.

1. Apportionment Agreement in Lieu of Eliminating Shared Meter Condition

There are three circumstances under which the owner is not obligated to eliminate the shared meter condition but may instead enter into a written agreement with the tenant (and any third parties, such as other affected tenants) for apportionment of the cost of the shared meter service. The three circumstances are: (1) the existence of a legal impediment; (2) extraordinary cost; or (3) minimal use.\textsuperscript{23} Each will be described below.

a. Legal Impediment

A legal impediment is defined by the Shared Meter Law as a restriction which prevents separate metering, rewiring or repiping. Legal impediments may arise from zoning ordinances, landmark or historic preservation regulations, or other legal restrictions.\textsuperscript{24}

\textsuperscript{20} Id.
\textsuperscript{21} PSL § 52(5)(a).
\textsuperscript{22} PSL § 52(2)(a).
\textsuperscript{23} PSL § 52(2)(b)(i).
\textsuperscript{24} PSL § 52(1)(g); 16 NYCRR § 11.30(c).
b. Extraordinary Cost

To determine whether the cost to eliminate a shared meter condition is “extraordinary,” a qualified professional must prepare an estimate of the required work.\(^{25}\) The cost is extraordinary if:

- it exceeds four months rent; or
- it exceeds two months rent, provided the amount of utility service used outside the tenant’s dwelling is less than 20% of the average total monthly consumption shown on the meter for the preceding 12 months.\(^{26}\)

c. Minimal Use

Minimal use is defined as:

- less than 10% of the total monthly consumption measured on the meter, based on the average monthly consumption for the preceding 12 months; or
- 75 kilowatt hours per month of electricity; five therms per month of gas, or one pound per hour per month of steam;
- whichever is greater.\(^{27}\)

Owners who are not required to physically eliminate a shared meter condition due to a legal impediment, extraordinary cost, or minimal use, may enter into a mutually acceptable written agreement with the shared meter tenant and any third parties (such as other affected tenants) to apportion the shared meter charges so that in the future, the complaining tenant pays only for service to their dwelling and third parties pay for their own usage.\(^{28}\) A copy of the executed agreement must be provided to all parties and to the utility.\(^{29}\)

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\(^{25}\) A “qualified professional” means “a person who is permitted to install or repair gas, steam or electric equipment, including rewiring or repiping, by the local code of the municipality where the meter in question is located.” 16 NYCRR § 11.30(b).

\(^{26}\) PSL § 52(1)(f); 16 NYCRR § 11.30(a).

\(^{27}\) PSL § 52(2)(b)(i); 16 NYCRR § 11.30(d).

\(^{28}\) Id.

\(^{29}\) PSL § 52(2)(c)(i).
are unable to reach a mutually acceptable agreement, the Commission may apportion the charges for service to the tenant and order a remedy.\textsuperscript{30}

Any written agreement for apportionment of the cost of shared meter service entered into before October 24, 1991 (when the original Shared Meter Law became effective) remains effective until the lease or the rental agreement expires. Upon the complaint of a shared meter tenant or an affected third party that the terms of an agreement entered into before October 24, 1991 are unfair or unreasonable, the Commission will review the agreement and assist the parties in negotiating a mutually acceptable written agreement.\textsuperscript{31}

2. Establishing Account in Owner’s Name

If within 120 days of a determination that a shared meter condition exists, the owner has not eliminated the condition by rewiring or re-piping as needed; and has not entered into an agreement with the tenant for apportionment of the shared meter charges because one of the exceptions applies as explained above, then the owner must establish an account in the owner’s name for all shared area charges.\textsuperscript{32} The owner’s account will also be billed for the following charges, whichever is most recent:

- all shared area charges measured through the shared meter for six years before: (i) the shared meter was discovered, or (ii) the shared meter determination was made; or
- all shared charges from the first day of the tenancy, or;
- all shared charges from the date the shared meter condition began, or;
- all shared charges from the 60th day after the owner knew or should have known that third parties were involved; or
- all shared charges from the date the owner assumed title to the dwelling.\textsuperscript{33}

\textsuperscript{30} PSL § 52(4)(d); 16 NYCRR § 11.30(d).
\textsuperscript{31} PSL § 52(2)(b)(ii).
\textsuperscript{32} PSL § 52(2)(a)
\textsuperscript{33} PSL § 52(2)(a).
V. Utility Confirmation of Remedial Action

Within 120 days of the utility’s written shared meter determination, the utility must confirm that the owner has either eliminated the shared meter condition by rewiring or repiping, or has remedied the condition by entering into a written agreement to apportion charges, or established the shared meter account in the owner’s name.\(^\text{34}\) If the owner has not taken the appropriate remedial action, the utility must establish an account for the shared meter in the owner’s name and bill the owner for the appropriate previous consumption shown on the shared meter and for future consumption.\(^\text{35}\) The Commission can grant the owner a 90-day extension of time to comply with the requirements of the Shared Meter Law if circumstances beyond the owner’s control prevented the owner from eliminating the shared meter condition, establishing an account in his or her name, or entering into a written agreement to properly apportion the charges.\(^\text{36}\)

VI. Refunds, Cancellation of Charges, Credits and Owner Billing

Within 120 days of the shared meter determination, the utility must refund to the shared meter tenant all shared area charges already paid, and it must cancel all shared area charges billed but unpaid,\(^\text{37}\) for the period during which the shared meter condition existed or six years, whichever is shorter.\(^\text{38}\) These charges are then billed to the owner.\(^\text{39}\)

If the shared meter determination was not issued in response to an owner’s request for a shared meter investigation, then the utility must also bill the owner for an additional assessment,

\(^{34}\) Id.
\(^{35}\) PSL § 52(5)(b).
\(^{36}\) Id.
\(^{37}\) PSL § 52(5)(c). Tenants are not often aware that a landlord may seek reduction of the award made by the Commission. Tenants may appeal such a reduction. See, 2004 N.Y. PUC LEXIS 119.
\(^{38}\) PSL § 52(1)(h).
\(^{39}\) PSL § 52(5)(d).
referred to by the PSC as the “12-month bill,” i.e., the amount of twelve months estimated service on the shared meter (inclusive of all usage measured).\textsuperscript{40} If the owner believes the 12-month bill is unduly burdensome and unfair, he or she may petition the PSC for an adjustment, but any resulting adjustment will not reduce the bill to less than 25% of the original 12-month bill.\textsuperscript{41}

If charges for utility service to a third party were billed to the shared meter, the utility must credit the shared meter customer for the third party’s estimated charges.\textsuperscript{42} If the shared meter tenant received any payments from the owner or from a third party for the shared utility service, the tenant must return a proportional amount of the refund to those parties.\textsuperscript{43}

If the shared meter condition affected a third party who received service on the shared meter, the utility will bill the third party for its portion of the charges.\textsuperscript{44} The Public Service Law establishes a right of action for owners and shared meter customers against third parties, to recover charges billed to their respective utility accounts, upon a demonstration of the existence of third-party involvement.\textsuperscript{45}

\textbf{VII. Tenant – Owner Relationship After the Investigation}

Owners may not seek recovery from tenants of the shared charges that the owner was required to pay as a result of the shared meter determination. Nor can the owner bill the tenant

\textsuperscript{40}Id.
\textsuperscript{41}PSL § 52(5)(d). See also, Commission Determination on Rehearing, Matter of a Commission Designee’s Determination Pursuant to PSL Section 52 – Cross Rehearing Petitions by Mr. Francis Farley and Mr. Patrick Guzzi of the Designee’s Determination Rendered in Favor of Mr. Patrick Guzzi and Consolidated Edison Company of New York, Inc., Case 02-E-0303 (Issued and Effective August 16, 2002) (The determination of whether a 12-month bill is “unduly burdensome and unfair” is made by comparing the amount of the 12-month bill (which includes all charges measured by the shared meter) against the shared area charges over the 12 month period. Where the 12-month bill is more than six times the annual estimate of shared area charges, it is unduly burdensome and unfair).
\textsuperscript{42}PSL § 52(5)(c).
\textsuperscript{43}PSL § 52(6)(b).
\textsuperscript{44}PSL § 52(5)(e).
\textsuperscript{45}PSL § 52(7).
for any future charges the owner may incur as a result of the shared meter remedies. The owner may increase future rents “to the extent otherwise permitted by law,” but may not directly bill the tenant for electricity, because the owner is not authorized by the Commission to sell electricity.

The Public Service Law also expressly reserves the rights of a shared meter customer “to seek and obtain relief for payments made for service not provided to his or her dwelling.” One possible way to obtain such relief is for the tenant to assert a claim under Real Property Law § 235-a, which allows a tenant who makes lawful payments to a utility pursuant to PSL §§ 33 and 34 (governing termination of service to two-family and multiple dwellings) to deduct utility payments from rent obligations.

VIII. Conclusion

It is important to remember that when a bill seems disproportionate to the amount of utility service received for any given month, a rental customer should reach out to the utility provider and request a shared meter investigation. It costs nothing to make this request and depending on what is determined after the utility’s investigation, it could prevent overpayment for service that may not actually be the customer’s responsibility.

Additionally, in the City of New York, residential utility customers may seek a shared meter determination from their borough’s office of the NYC Buildings Department (“DOB”), which may occur more quickly than an investigation by the utility. DOB may also bring a

46 PSL § 52(6)(a).
47 Id.
48 PSL § 52(11). In case 04-M-0234, clarified utility procedures related to billing and debiting of shared meter charges, as well as how landlord appeals to reduce an award should be handled. See, 2004 N.Y. PUC LEXIS 400.
49 See, e.g., Ross v. Genova, 2016 NY Slip Op 51040(U), 52 Misc. 3d 1205(A), 41 N.Y.S.3d 721 (Civ. Ct.).
landlord to an administrative hearing on the matter, which does not disallow remedies under the Public Service Law.  

See, e.g., Various Tenants of 1058 Bergen St. v. 1058 Bergen St., LLC, 2006 NY Slip Op 51259(U), 12 Misc. 3d 1177(A), 820 N.Y.S.2d 846 (Civ. Ct.).