



## Where Energy Efficiency And Customer Fairness Collide

### SUBMETERING ALLOWS LANDLORDS TO APPORTION ENERGY BILLS AMONG TENANTS

BY LEE D. HOFFMAN

Before the recent storm knocked out power supplies throughout the state, one of the big energy issues being covered by the media was the recent spate of enforcement of the state's submetering laws.

Although submetering has a noble purpose — requiring those who consume utilities to pay for those utilities — concerns over fairness to customers limit the use of submetering in Connecticut. Commercial and residential landlords must use care to follow the appropriate regulatory steps when submetering their tenants. Failure to do so can result in stiff sanctions by regulatory officials.

#### What Is Submetering?

It is a basic tenant of utility regulation that for private companies in Connecticut, only “public service companies,” such as the Connecticut Light & Power Co. or Southern Connecticut Gas, can meter and bill their clients. This is done in large part to ensure that billing is fair and accurate and that if customers have a complaint, they have redress at a state agency, namely the Public Utilities Regulatory Authority (PURA). Submetering, however, removes that option.

Submetering generally occurs when a landlord wishes to ensure that its tenants are paying their fair share of a particular utility bill, be it water, gas or electricity. In the case of electricity, for example, the power company will install a meter at the building and bill the landlord for the amount of electricity consumed in any one particular month.

The landlord, in turn, will divide that

utility bill amongst its tenants, either by actually installing and reading meters at each apartment or office, or by some other method of allocation, such as the number of square feet being rented, etc. In this example, the landlord, in effect, becomes a miniature power company, and issues electric bills to each of its tenants.



Lee D. Hoffman

#### Challenges Of Submetering

Although the concept of submetering has taken a beating in the popular media, there are real public policy benefits associated with submetering. Chief among those benefits is that submetering encourages each tenant to be responsible for their energy use, thereby encouraging efficiency. If each tenant is actually charged for the energy they consume, they will be far more willing to close the window and turn down the thermostat during heating season, or turn off the lights when they leave the room.

Indeed, making tenants responsible for, and conscious of, their energy consumption choices is an element of “green building” design and a laudable goal. However, that goal is balanced against the desire of the state to make sure that utility bills are fair to customers, that meters are tested properly, and that

complaints are appropriately handled. Connecticut addresses such issues through the offices of the PURA; however, private landlords are not usually “public service companies” and therefore not subject to the PURA's jurisdiction.

Because the potential difficulties with submetering outweigh the possible benefits, submetering is allowed, but only if the PURA gives prior approval. For energy-conscious landlords, however, it may be worth it to seek such approval.

#### Getting Submetering Approved

One of the easiest ways that landlords can assure that their tenants pay their fair share of utility costs is to have each tenant metered directly by the water, gas or electric company that services the building. Because the utility company in question handles the metering and billing, there are no questions concerning submetering. While such an option may be possible for new construction, it is often cost-prohibitive to retrofit utility meters onto tenants' space. In such a situation, submetering may still be possible.

Assuming a submetering plan makes financial sense to the landlord, it can be done in Connecticut, although not as easily as in some other jurisdictions. Contrary to the mainstream media's portrayal of the issue, submetering is permitted under Connecticut law; however, regulations regarding submetering must be closely followed. For example, Connecticut General Statutes §16-19ff specifically allows for the submetering of campgrounds and slips at marinas, provided that the use is residential in nature (e.g., restaurants and repair facilities are excluded) and that the rate being charged is the same as the residential rate charged by the area's utilities.

---

Lee D. Hoffman practices energy and environmental law in the Hartford office of Pullman & Comley LLC. He is also a member of the governor's S.T.O.R.M. Irene Panel.

Section 16-19ff also allows for submetering “in any other location as approved by the department,” and several landlords have taken advantage of this provision to have submetering of utilities take place at their properties. To get approval for submetering, landlords must file an application with the PURA and open a docket before the agency to discuss the terms of the submetering. Other parties, including tenants and the Office of Consumer Counsel may also participate in the proceeding to ensure that the

submetering proposal is fair to the tenants and to ratepayers.

Landlords who submeter must comply with submetering regulations including proper handling of customer information, form of utility bills, corrected bills, addressing complaints, identification of employees and meter testing requirements.

Failure to comply with submetering requirements, however, can pose serious consequences for property owners. Under Conn. Gen. Stat. § 16-41, the PURA is en-

abled to levy fines for submetering violations of up to \$10,000 for each offense and, in the case of a continued violation, *each day of the offense shall be deemed a separate offense*. For landlords that have improperly submetered for a period of months, or even years, such fines can accumulate quickly. It is therefore imperative that a landlord who wishes to submeter its property fully understand the consequences of the submetering and adhere to all regulations and PURA orders on the matter. ■