

# **NEW YORK SHARED METER LAW**

## **Public Utility Law Project Law Manual** **5th Edition 2009**

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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 to a tenant’s dwelling, and to areas outside the dwelling, with the tenant paying for service to both areas.<sup>1</sup> Simply put, residential tenants whose utility meters measure consumption inside *and* outside their homes, have a shared meter. Service outside tenants’ dwellings may include service to equipment that is used for the benefit of the building.<sup>2</sup> 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, but the gas and electric service used to fuel and power them is connected to the tenant’s meters.

Shared meter conditions may 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. The Shared Meter Law requires owners of rental dwellings to eliminate any shared meter condition, or to place the

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<sup>1</sup> 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).

<sup>2</sup> PSL § 52(1)(c).

utility service in the owner’s name.<sup>3</sup> The provisions of the Shared Meter Law may not be waived by owners, tenants or utilities.<sup>4</sup>

## **II. Notice to Owners and Tenants**

The Shared Meter Law requires every utility<sup>5</sup> 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 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.<sup>6</sup>

## **III. Investigation of Shared Meter Conditions**

Any utility customer in a rental dwelling who suspects that their utility meter is measuring service to an area outside their dwelling may file a written or oral 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.<sup>7</sup> The notice must also apprise the owner of his or her responsibilities under the shared meter law. If the tenant contacts the wrong utility, the utility that received the complaint must notify the proper utility.<sup>8</sup>

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,

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<sup>3</sup> PSL § 52(2)(a).

<sup>4</sup> PSL § 52(3)(a).

<sup>5</sup> 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).

<sup>6</sup> PSL § 52(9).

<sup>7</sup> 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).

<sup>8</sup> PSL § 52(4)(a).

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.<sup>9</sup>

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 that a shared meter condition exists.<sup>10</sup> 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.<sup>11</sup> In either case, the utility will not be liable for any subsequent claims for monetary damages made by the owner or the tenant customer.<sup>12</sup>

Within thirty (30) business days of the date the utility received the tenant's complaint, owner's request or other information triggering the investigation, it must make a written determination on the investigation.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> The determination provided to the building owner must also state whether separate metering, rewiring or repiping is

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<sup>9</sup> *Id.*

<sup>10</sup> PSL § 52(4)(c).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> PSL § 52(4)(b).

<sup>14</sup> PSL § 52(4)(d).

<sup>15</sup> *Id.*

possible, and must describe how the shared meter condition can be eliminated.<sup>16</sup> The contents of the notice 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.<sup>17</sup>

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.<sup>18</sup> 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 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.<sup>19</sup>

#### **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,<sup>20</sup> or; (iii) established

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<sup>16</sup> PSL § 52(4)(a).

<sup>17</sup> PSL § 52(4)(b).

<sup>18</sup> PSL § 52(4)(d). See PULP Law Manual Chapter entitled, “*Complaint Handling Procedures.*”

<sup>19</sup> *Id.*

<sup>20</sup> PSL § 52(5)(a).

an account in the owner’s name for all shared area charges.<sup>21</sup> The latter 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 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.<sup>22</sup> 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.<sup>23</sup>

**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.<sup>24</sup> 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.<sup>25</sup>

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<sup>21</sup> PSL § 52(2)(a).

<sup>22</sup> PSL § 52(2)(b)(i).

<sup>23</sup> PSL § 52(1)(g); 16 NYCRR § 11.30(c).

<sup>24</sup> 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).

<sup>25</sup> PSL § 52(1)(f); 16 NYCRR § 11.30(a).

**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.<sup>26</sup>

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.<sup>27</sup> A copy of the executed agreement must be provided to all parties and to the utility.<sup>28</sup> If the owner and tenant are unable to reach a mutually acceptable agreement, the Commission may apportion the charges for service to the tenant and order a remedy.<sup>29</sup>

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,

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<sup>26</sup> PSL § 52(2)(b)(i); 16 NYCRR § 11.30(d).

<sup>27</sup> *Id.*

<sup>28</sup> PSL § 52(2)(c)(i).

<sup>29</sup> PSL § 52(4)(d); 16 NYCRR § 11.30(d).



1991 are unfair or unreasonable, the Commission will review the agreement and assist the parties in negotiating a mutually acceptable written agreement.<sup>30</sup>

## **2. Establishing Account in Owner's Name**

If the owner is not required to physically eliminate a shared meter condition due to a legal impediment, extraordinary cost or minimal use, i.e., if the shared meter condition is not physically eliminated by repiping or rewiring, the owner must establish an account in his or her name for all future utility service measured by the shared meter, including all shared area charges.<sup>31</sup> 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.<sup>32</sup>

## **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 eliminated the shared meter condition by rewiring or repiping, or has remedied the condition by entering into a written agreement to apportion charges and established the shared meter account in the owner's name.<sup>33</sup> 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

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<sup>30</sup> PSL § 52(2)(b)(ii).

<sup>31</sup> PSL § 52(2)(a)

<sup>32</sup> PSL § 52(2)(a).

<sup>33</sup> *Id.*

and bill the owner for the appropriate previous consumption shown on the shared meter and for future consumption.<sup>34</sup> 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.<sup>35</sup>

## **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,<sup>36</sup> for the period during which the shared meter condition existed or six years, whichever is shorter.<sup>37</sup> These charges are then billed to the owner.<sup>38</sup>

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, 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).<sup>39</sup> 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.<sup>40</sup>

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<sup>34</sup> PSL § 52(5)(b).

<sup>35</sup> *Id.*

<sup>36</sup> PSL § 52(5)(c).

<sup>37</sup> PSL § 52(1)(h).

<sup>38</sup> PSL § 52(5)(d).

<sup>39</sup> *Id.*

<sup>40</sup> 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*

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.<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup> 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.<sup>44</sup>

## **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 for any future charges owner may incur as a result of the shared meter remedies.<sup>45</sup> The owner may increase future rents “to the extent otherwise permitted by law,”<sup>46</sup> but may not directly bill the tenant for electricity, because the owner is not authorized by the Commission to sell electricity.

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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).

<sup>41</sup> PSL § 52(5)(c).

<sup>42</sup> PSL § 52(6)(b).

<sup>43</sup> PSL § 52(5)(e).

<sup>44</sup> PSL § 52(7).

<sup>45</sup> PSL § 52(6)(a).

<sup>46</sup> *Id.*

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.”<sup>47</sup> 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.

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<sup>47</sup> PSL § 52(11).