

Public Utility Law Project of New York, Inc.

Shared Meter Situations

2019 LIFE Regional Meetings

Public Utility Law Project of NY, Inc.

- ❑ www.utilityproject.org
- ❑ www.facebook.com/UtilityProject
- ❑ www.twitter.com/UtilityProject
- ❑ Email: info@utilityproject.org
- ❑ Toll Free: (877) 669-2572
- ❑ Fax: (877) 669-2572
- ❑ USPS Mail: 90 S. Swan St., Suite 305, Albany, NY 12210

Presenters:

Richard Berkley, Esq. Rberkley@utilityproject.org

Laurie Wheelock, Esq. LWheelock@utilityproject.org;

What We Will Talk About. . .

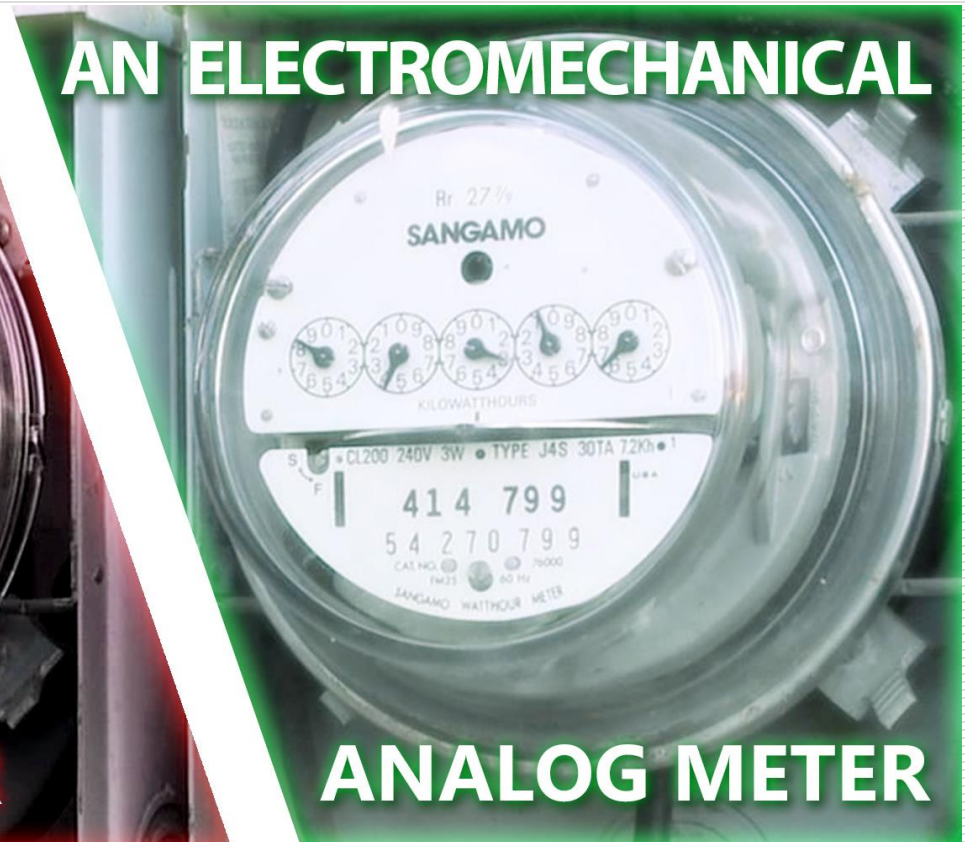
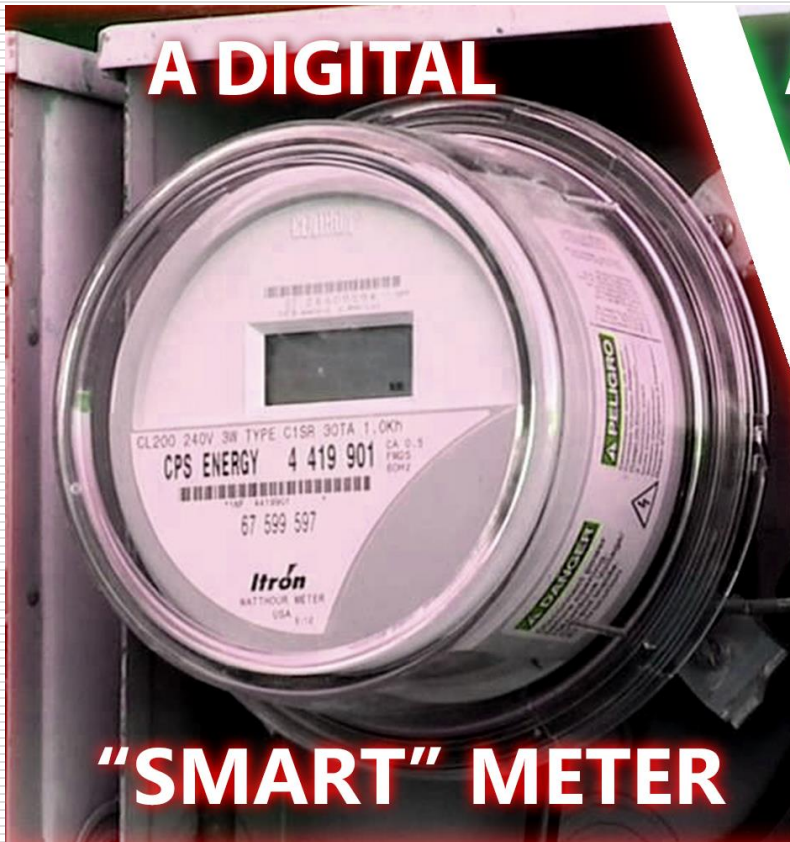
- ☐ What is a shared meter situation?
- ☐ What are a tenant's rights when it comes to a meter investigation?
- ☐ What can be done if the investigation determines that a shared meter situation exists?
- ☐ If a shared meter situation exists, what must the owner do?
- ☐ Can the tenant receive a refund?

What does a utility meter track?

- ❑ A utility meter measures gas, electricity or steam service in a tenant's dwelling.



There are different types of utility meters



What is a shared meter

- ❑ **Shared meter**- when an electric, gas or steam meter not only records service furnished to an account holder's apartment/dwelling but also supplies service to fixtures/appliances outside a tenant's area of responsibility and is not under the tenant's exclusive use and control.
- ❑ **Example:** a hot water heater or furnace may be located inside a tenant's apartment, but it is also providing hot water and heat to other apartments or common areas of the building

How does a "shared meter" situation happen?

- ❑ **Accident-** Sometimes, shared meter conditions happen 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.
- ❑ **Original construction-** older buildings were built without house meters for common areas, basements, attics, garages or other outside facilities.
- ❑ **Intentionally-** Sometimes someone in the building deliberately connects his or her usage to the meter serving another tenant.

What rights do tenants have if they are worried they may be paying for a shared meter condition?

- ❑ In 1991, the NYS Legislature passed a bill that says that rentals with shared meters where service is billed to the shared meter tenant are contrary to public policy
- ❑ This bill became the NYS "shared meter" law, which requires owners of rental dwellings to eliminate any shared meter condition, or to place the utility service in the owner's name or in the case of minimal shared usage (not involving an outlet) sign a mutual agreement indicating how the tenant will be compensated for the shared usage.
 - See, New York Shared Meter Law, N.Y. Pub. Serv. Law § 52(1)(b).

A tenant who is worried they may have a "shared meter" situation can ask the utility to investigate

- ❑ **Step 1:** the tenant should *call and complain* with the utility;
- ❑ **Step 2:** 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 owner and/or tenant should schedule the investigation appointment;
- ❑ **Step 3:** the utility then investigates, which may include testing, examination of piping, wiring, meters and heating equipment, review of consumption records, and preparing an estimate of the gas, electricity or steam used in inside and outside the shared meter customer's dwelling;

What happens if my landlord refuses the investigation?

- ❑ **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. See, PSL § 52(4).*
- ❑ This determination will be based on the tenant's estimated monthly appliance usage versus the actual or monthly billed **consumption** history of the load on the tenant's meter at the time of the investigation.
- ❑ The case will be suspended indefinitely if both the owner and the tenant refuse to cooperate with the shared meter investigation.

What happens after the utility investigates?

- ❑ Once the tenant's complaint is received, the utility has **30 business days** to inspect and make a written determination. See, PSL § 52(4).
- ❑ **The written determination 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. All communication to the Department of Public Service must be in writing (mail or fax).

Next Steps- After An Investigation

- Within 120 days of a determination that a shared meter condition exists, the owner must have either:
 - Eliminate the condition by rewiring (Electric) or re-piping (gas) as needed and either provide the utility with a electrician/plumber report detailing corrections or ask the utility to complete a re-check at the premise; or
 - Establish an account in the owner's name for all shared charges on the shared meter; or
 - In cases of minimal shared, enter into an agreement with the tenant for apportionment of the shared meter charges.

3 Exceptions to repairing a shared meter situation

- **The owner may enter into a written agreement with the tenant for apportionment of the cost of the shared meter service when:**

(1) There is the existence of a legal impediment

- Ex: zoning ordinances, landmark or historic preservation regulations, or other legal restrictions

(2) Extraordinary cost (See, PSL § 52(2)(a))

- 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

(3) Minimal use (See, PSL § 52(2)(a))

- Less than 10% of the total monthly consumption measured on the meter, based on the average monthly consumption for the preceding 12 months;
- 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.

*Any shared condition involving an outlet requires a permanent repair and an agreement cannot be accepted for these conditions. Very specific documentation must be provided by the owner before the expiration of the 120 days to satisfy either the legal impediment and the extraordinary cost stipulations of shared meter law.

How are tenants protected if the "shared meter" is not corrected by the owner

- ❑ Owners who are not required to physically eliminate a shared meter condition due to one of the exceptions may enter into a **mutually acceptable written agreement** with the shared meter tenant and any third parties (such as other affected tenants) (PSL § 52(2)(b)(i)).
- ❑ The written agreement will 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.
- ❑ If the owner and tenant cannot come to an agreement the Commission may apportion the charges for service to the tenant and order a remedy
- ❑ Account established in owner's name effective 121st day.

What happens if the owner fails to do anything to correct the shared meter

- **120 days** after the utility's written determination that a "shared meter" exists, the owner established on record by the utility for the shared meter account.
 - See, PSL § 52(2)(a)

If the owner is established on record for the shared account they will be billed for the following charges:

- ❑ All shared area charges measured through the shared meter **for a maximum of 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

The utility must follow-up when a shared meter determination is made

- ❑ **After 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 re-piping, 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
- ❑ ***If the owner failed to take the appropriate action** then 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.
- ❑ If the owner makes repairs within the 120 days and the shared meter condition is billable, the owner is still billed for the estimated shared usage and the assessment amount.

Refunds, Cancellation of Charges, Credits and Owner Billing

After the expiration of the **120 days** of the shared meter determination, the utility must

- ❑ Credit the shared meter tenant all estimated shared area charges billed by the utility up to a maximum of six years if supported.
- ❑ If charges for utility service to a third party (tenant B) were billed to the shared meter, the utility must credit the shared meter customer (tenant A, who is paying for the shared meter) for the third party's (tenant B's) estimated charges.
- ❑ If the shared meter condition affected a third party (tenant B) who received service on the shared meter, the utility will bill the third party (tenant B) for its portion of the charges

Tenants' protections from the landlord

- ❑ 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.
- ❑ The owner cannot bill the tenant for any future charges the owner may incur as a result of the shared meter being established in his/her name.
- ❑ The owner may increase future rents "to the extent otherwise permitted by law," but may not directly bill the tenant for electricity. See, PSL § 52.6(a)
- ❑ *For two-family and multiple dwellings- a tenant who makes lawful payments to a utility pursuant to PSL §§ 33 and 34 can deduct utility payments from their rent so that a shared meter customer can "seek and obtain relief for payments made for service not provided to his or her dwelling." See, Real Property Law § 235-a.

The take-away

- ❑ Read your utility bills every month
- ❑ If a bill seems disproportionate to the amount of utility service received for any given month, a tenant should reach out to the utility provider and request a high bill investigation that may include shared meter investigation (you should also check to make sure you are not being overcharged by an ESCO)
- ❑ If a shared meter situation is found the utility's involvement could prevent overpayment for service that may not actually be the customer's responsibility and you may receive a refund once all protections under PSL § 52 have been followed.

Public Utility Law Project of NY, Inc.

- ❑ www.utilityproject.org
- ❑ www.facebook.com/UtilityProject
- ❑ www.twitter.com/UtilityProject
- ❑ Email: info@utilityproject.org
- ❑ Phone: (877) 669-2572 – Toll Free
- ❑ Mail: 90 S. Swan St. – Suite 305
Albany, New York 12210