

Electricity Submetering: Connecticut Appellate Court Addresses Application to Apartment Building HVAC Billing



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The Appellate Court of Connecticut (“Court”) addressed in an April 16th opinion whether unauthorized electricity submetering had occurred. See *PMC Property Group, Inc., et al. v. Public Utilities Regulatory Authority et al.*, 2019 WL 1593888.

The issue arose in connection with a heating, ventilation, and air conditioning (“HVAC”) system installed in a multifamily apartment building in New Haven, Connecticut.

PMC Property Group, Inc. (“PMC”) is described as an owner and property manager of the multifamily apartment building. The building has 65 residential apartments and one commercial unit. Energy Management Systems, Inc. (“EMS”) provides billing services for PMC. PMC and EMC renovated the building and installed the HVAC system. The HVAC system is described as a heat pump system with heat recovery.

The rental spaces in the building incorporated sensors and valves in the indoor piping. Computer software measured the HVAC thermal use of each space. Further, each rental space is stated to have a thermostat to control heating and cooling level which is separately served through its own meter from the United Illuminating Company (electric company).

PMC’s electric service is stated to be measured through one electric company meter that supplies electricity to seven HVAC outdoor units and the common areas of the building. Two non-utility wattmeters, installed after PMC’s electric company meter, are stated to measure the electricity used by the seven outdoor units and provide an input signal to an HVAC billing program.

PMC, acting through EMS, began in 2012 billing each tenant for a portion of the seven HVAC compressors’ electric use in proportion to the HVAC thermal use of the rental space of each tenant.

The Public Utilities Regulatory Authority (“Authority”) was asked to investigate possible unauthorized submetering at the building. After conducting a hearing, it determined that unauthorized submetering was occurring. PMC was ordered to immediately stop submetering electricity. EMS was also required to cease submetered billing to building tenants.

PMC and EMS appealed to the Superior Court (a lower court) which held that:

1. Deferring to the Authority’s definition of submetering where that definition was not time-tested with respect to the HVAC issue in the appeal;
2. Affirming the Authority’s determination that PMC and EMS use of the HVAC system constituted submetering electricity.

PMC and EMS appealed this decision to the Court.

In assessing the issues, the Court reviewed the Connecticut statutory authorities addressing submetering. However, such statutes did not provide a definition of submetering. Therefore, the Authority had relied on a different source (i.e., a prior Decision and Order dealing with submetering in a natural gas context).

The Court noted that the determination of what constitutes submetering is a “complex and technical regulatory issue that calls for specialized expertise and policy considerations.” As a result, it concluded that the Superior Court properly deferred to the Authority’s definition of submetering.

The Court then determined whether the Superior Court gave reasoned consideration to all the relevant factors or whether it abused its discretion in concluding that PMC and EMS had engaged in unauthorized submetering. It concluded that the definition of submetering relied upon by the Authority “does not focus on the form of energy that the tenants received,” but “[rather], it focuses on the type of energy billed.” Rejected was the argument that the fundamental component of electric submetering is the furnishing of electric service by non-utilities such as that electric service is the physical delivery through wires of electricity to the end user for consumption, combined with measuring the electric consumption with an electric submeter.

The Court noted that the two companies acknowledged that the computer software was used to determine the amount of refrigerant used by each unit and that such results were used to allocate the cost of electricity used by the compressor units across all the connected indoor units. This was deemed to be metering electricity.

The Superior Court’s decision was upheld.

A copy of the decision can be downloaded [here](#).