

What Every Lease Administrator & Attorney Needs To Know About the **NEW** Utility Lease Language...

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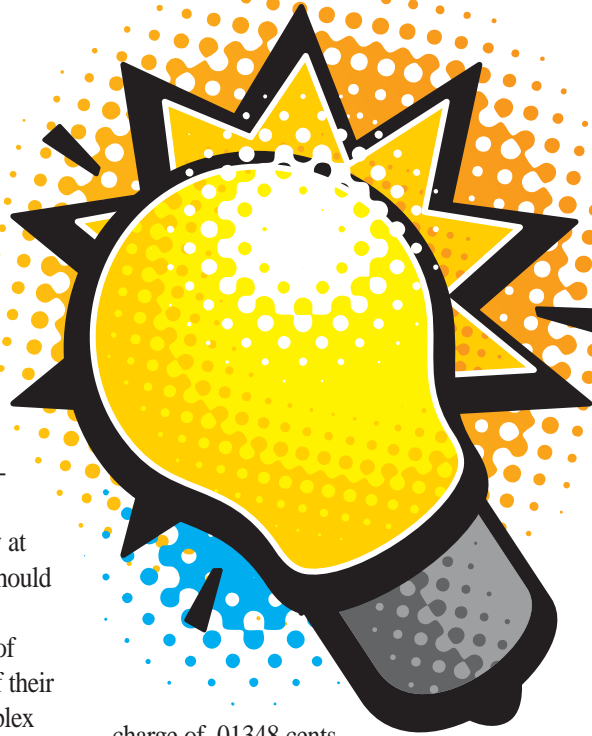
Want a better rate on electricity from your landlord? It's not about asking to be on the landlord's rate, it's about understanding the electric tariff.

Over the last few years many articles have been written about tenants being overcharged for electricity because they failed to negotiate a better rate. The theory is, if the landlord is able to purchase electricity at 5 cents per kilowatt hour, the tenant should benefit from the better rate.

Unfortunately, because of the lack of understanding of the characteristics of their own load profile combined with complex electric tariffs and intricate lease language, most tenants are overpaying their electricity charges. This is costing tenants tens of thousands of dollars per year.

There are many factors which go into an electric rate structure. Utilities throughout the country have multiple rate options based upon the tenant's demand and consumption. For example, Florida Light & Power (FLP) has a general service demand schedule for small commercial customers who use in excess of 20 kW but less than 500 kW per month. This schedule would be applicable to the typical in-line tenant who uses, for example 30 kW and 9,750 kWh's, while a big box tenant may use 200 kW and 80,000 kWh's. Unless the tenant is an anchor or a very large office complex, more than likely they would be on this schedule.

Under FLP's small commercial users rate, the in-line tenant with consumption and demand of 30 kW and 9,750 kWh's would pay a customer charge of \$32.05 plus a demand charge of \$4.94 per kW and a fuel



charge of .01348 cents per kilowatt hour for a total cost of \$309.68. If this same tenant were on the landlord's rate (FLP's large commercial users' rate), they would be subject to a minimum charge of \$11,595.68.

While FLP's minimum charge is the extreme, the majority of utilities in North America have minimum charges on commercial rates which are ten to twenty times that of a small commercial user.

Large developers who are interested in maximizing their profits at the tenant's expense have already incorporated the following language into their leases which could end up costing retailers millions of dollars:

"Tenant shall pay Landlord for the same at the same cost as would be charged to the Tenant by the utility company, but in no event at a cost which is less than the cost than the Landlord must pay the utility company for providing such service, and in no event less than the minimum monthly charge which would have been charged by the utility company in providing such service."

For those lease administrators and attorneys who come across this language, REMCO's engineers recommend either striking the language or adding the following lease language:

"Notwithstanding anything to the contrary tenant shall pay no more than the landlord's net cost per kilowatt hour which is inclusive of the customer charge, minimum charges, demand, fuel charges & adjustments."

For those tenants who receive bills from both the Landlord and the utility, REMCO's engineers also recommend using an outside organization that specializes in landlord utility audits as well as the audit of direct paid bills. Tenants who try to analyze their own bills and decipher their own utility lease language will more than likely end up paying more than their fair share.

Many companies are under pressure to outsource the audit and payment of their utility bills. Turning over the audit function and the lease reviews will not only cut costs, it will drastically improve the bottom line. A utility audit company annually audits millions of bills each year and reviews thousands of leases. Over time, a tenant who enlists the services of a utility audit firm will gain from the knowledge and expertise which is derived from past audits and lease reviews.

