

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

DIANE MACK as Vice President of SCHOMBURG
RESIDENTS' COUNCIL, INC., JOYCE SHORT as
President of ROOSEVELT LANDINGS TENANTS'
ASSOCIATION, BRIDGETTE SCOTT as President of
MILES and PARKER TENANTS' ASSOCIATION,

Petitioners,

-against-

NEW YORK STATE PUBLIC SERVICE
COMMISSION, L+M DEVELOPMENT PARTNERS
LLC, C+C APARTMENT MANAGEMENT LLC,
HERITAGE HOLDINGS LLC, RIVER CROSSING
OWNER LLC, ROOSEVELT LANDINGS OWNER
LLC, MILES AND PARKER OWNER LLC,

Respondents,

For a Judgment Pursuant to Article 78, and for
Ancillary Declaratory and Injunctive Relief under
Articles 30 and 63 of the Civil Practice Law and Rules.

Index No.: 901525-26

**Affirmation of F. William Salo, Esq.,
In Support of Petitioner's Order to Show Cause
To Renew and Reargue**

F. William Salo, an attorney duly admitted to practice law in the courts of the state of New York, affirms the following under penalty of perjury pursuant to CPLR 2106:

1. I am the attorney for Petitioners (hereinafter "Petitioners" or "Tenants") in this proceeding, and I am fully familiar with the facts and procedural history set forth herein.
2. I rely on the Amended Verified Petition, NYSCEF Doc. No. 42, and Petitioners' prior Memorandum of Law, NYSCEF Doc. No. 91, except as supplemented herein.

OVERVIEW

3. I was elected President of the Schomburg Residents' Council, Inc., a not-for-profit corporation and the tenants' association for Schomburg Plaza, one of the Affected Buildings.

4. Although I am an attorney, I am handling this matter *pro bono* on behalf of the Tenants and am receiving no remuneration from any source in connection with this action.

5. This application seeks leave to renew and reargue the Court's March 9, 2026 Order (the "Order"), and upon renewal, seeks a Temporary Restraining Order (TRO) barring the Landlord from continuing to bill tenants for submetered electricity charges at the Affected Buildings pending further order of the Court.

6. The March 9, 2026 Order appears to have proceeded on the premise that the Supreme Court, New York County had already denied Petitioners' request for TRO relief on the merits. That is not what occurred. *See* NYSCEF Doc. No. 115.

7. The Order states that "[a]fter giving the parties full and fair opportunity to brief the issue, ... the Hon. Nicholas W. Moyne granted Respondents' motion to vacate the TRO, the same TRO Petitioners seek to reinstate herein." That description does not accurately reflect the prior proceedings in New York County. The parties were not directed to brief the merits of the TRO as the issues to be decided. Instead, Justice Moyne directed the parties to brief and argue venue, jurisdiction, and ripeness only. *See* NYSCEF Doc. No. 57 [Respondent PSC's reply memorandum of law addressing venue, ripeness, and standing], and NYSCEF Doc. No. 59 [Respondent Landlord's reply memorandum of law addressing venue, ripeness, and standing].

8. On September 19, 2025, Justice Moyne held a virtual conference with counsel for all parties and requested oral argument on the issues of venue, jurisdiction, and ripeness.

9. On October 6, 2025, Justice Moyne heard oral argument on the issues of venue, jurisdiction, and ripeness.

10. The merits of Petitioners' TRO application were not argued before Justice Moyne and were not addressed in his Decision and Order dated January 20, 2026. *See* NYSCEF Doc. No. 75.

11. Justice Moyne's January 20, 2026 Order transferred this proceeding to Albany County based on CPLR 506(b)(2). *See* NYSCEF Doc. No. 75. It did not analyze the merits of Petitioners' TRO application. There is no discussion in that Order of irreparable harm, likelihood of success, or the balance of equities. *See id.*

12. Petitioners filed a notice of appeal from Justice Moyne's January 20, 2026 Order, but that appeal has not yet been perfected. *See* NYSCEF Doc. No. 83. The appeal does not divest this Court of jurisdiction over this proceeding, and no stay is currently in effect.

13. Petitioners therefore seek a new TRO from this Court, in the county where the proceeding is now pending, in order to prevent irreparable harm and preserve the *status quo ante* that existed before the Landlord began billing tenants for electricity at the Affected Buildings.

14. This application seeks leave to renew and reargue because the March 9, 2026 Order appears to have treated Petitioners' request as an improper attempt to reinstate a TRO previously denied on the merits by a sister court. That premise was mistaken. Justice Moyne's prior ruling was procedural and did not adjudicate the merits of Article 63 relief. Under New York law, the grant or denial of provisional injunctive relief does not constitute law of the case or an adjudication on the merits. *Huguenot LLC v. Megalith Capital Group Fund I, LP*, 191 A.D.3d 530, 530 (1st Dept. 2021). Likewise, where a prior denial of similar relief was "not a disposition

on the merits,” a later application is “not barred by the doctrine of law of the case.” *All Terrain Props. v. Hoy*, 277 A.D.2d 50, 50 (1st Dept. 2000). More generally, where an issue “was not actually resolved on the merits in the prior decision, the ‘law of the case’ doctrine does not pertain.” *Locilento v. John A. Coleman Catholic High Sch.*, 134 A.D.2d 39, 43 (3rd Dept. 1987). This Court therefore has authority to entertain Petitioners’ application on the merits and to issue a new TRO to preserve the *status quo ante* pending determination of the parties’ rights.

PROCEDURAL HISTORY

15. On August 26, 2025, the Tenants commenced this hybrid proceeding pursuant to CPLR Articles 63 and 78 by filing a Verified Petition and Order to Show Cause in Supreme Court, New York County, seeking, *inter alia*, a TRO. *See* NYSCEF Doc. Nos. I-10.

16. The Tenants filed their Order to Show Cause *ex parte* pursuant to 22 NYCRR § 202.7(f) because the four-month statute of limitations for Article 78 review was about to expire on August 28, 2025, and because the Landlord had stated that it intended to begin submeter billing on or about September 1, 2025.

17. On August 29, 2025, the Hon. Denis Reo reviewed Petitioners’ application and signed a TRO enjoining the Landlord from commencing submetering at the Affected Buildings. *See* NYSCEF Doc. No. 11.

18. On September 12, 2025, Respondent Landlord filed a cross-Order to Show Cause seeking to vacate the TRO, transfer venue to Albany County, or alternatively dismiss the Petition as unripe on the ground that the PSC had not yet denied the Tenants’ petition for rehearing. *See* NYSCEF Doc. Nos. 14-28.

19. On September 15, 2025, Hon. Nicholas W. Moyne declined at that time to vacate the TRO after receiving Respondent Landlord’s moving papers. *See* NYSCEF Doc. No. 32.

20. On September 18, 2025, Respondent Public Service Commission (PSC) filed a cross-motion to change venue to Albany County, or alternatively to dismiss the Petition for failure to exhaust administrative remedies and for partial dismissal based on standing as to River Crossing. *See* NYSCEF Doc. Nos. 33-38.

21. On September 19, 2025, at 3:00 p.m., Hon. Nicholas W. Moyne held a virtual conference via Microsoft Teams with counsel for all parties and set October 6, 2025, at 10:30 a.m. as the return date for oral argument on venue, jurisdiction, and ripeness. The merits of the TRO were excluded from that oral argument.

22. On September 26, 2025, Petitioners filed an Amended Petition as of right pursuant to CPLR 3025(a). That Amended Petition remains the operative pleading. *See* NYSCEF Doc. No. 42.

23. On October 6, 2025, Hon. Nicholas W. Moyne heard oral argument on venue, jurisdiction, and ripeness only.

24. On January 20, 2026, Hon. Nicholas W. Moyne issued a Decision and Order on Motion transferring venue to Supreme Court, Albany County. *See* NYSCEF Doc. No. 75.

25. In that Order, Justice Moyne stated that “[t]he threshold issue is whether venue is proper in New York County,” thereby making clear that the issue before him was whether the proceeding should remain in New York County or be transferred to Albany County. Justice Moyne held that CPLR 506(b)(2) controlled and that venue was proper in Albany County. *See* NYSCEF Doc. No. 75 at 2-3.

26. In the decretal portion of that Order, Justice Moyne further stated that “the Temporary Restraining Order contained in the Order to Show Cause signed August 29, 2025, is vacated.” *See* NYSCEF Doc. No. 75. The Order gave no analysis of irreparable harm,

likelihood of success, or balance of equities, and gave no merits-based explanation for vacating the TRO.

27. On February 18, 2026, the PSC denied the Tenants' petition for rehearing. *See* NYSCEF Doc. No. 106.

28. With the denial of rehearing, there can be no serious dispute that the proceeding is now ripe for judicial review.

29. On March 5, 2026, the Tenants filed an Order to Show Cause in this Court seeking a new TRO on an emergency basis because the Landlord had stated that it intended to begin submeter billing in early March 2026. *See* NYSCEF Doc. Nos. 88-110.

30. On March 9, 2026, this Court declined to sign the Tenants' proposed Order to Show Cause, stating that "[a]fter giving the parties a full and fair opportunity to brief the issue, by Decision and Order on Motion dated January 20, 2026, the Hon. Nicholas W. Moyne granted Respondents' motion to vacate the TRO – the same TRO Petitioners seek to reinstate herein." *See* NYSCEF Doc. No. 115.

31. Respectfully, that was a misapprehension of what occurred before Justice Moyne. As set forth above, Justice Moyne directed the parties to brief and argue venue, jurisdiction, and ripeness, and expressly did not hear oral argument on the merits of TRO relief.

32. Justice Moyne's January 20, 2026 Order contains no discussion of the merits of Article 63 relief and no explanation for vacating the TRO other than the procedural posture of the transfer ruling itself. Reading the Order as a whole, it is apparent that Justice Moyne did not adjudicate irreparable harm, likelihood of success, or the balance of equities, and thus did not deny TRO relief on the merits.

NOTICE TO RESPONDENTS

33. On April 6, 2026, I provided notice by email to counsel for Respondent PSC and Respondent Landlord that Petitioners intended to present and electronically file an Order to Show Cause seeking: (i) leave to renew and reargue this Court's March 9, 2026 determination; and (ii) a temporary restraining order restoring and preserving the *status quo ante* existing before submeter billing commenced on March 9, 2026. In that email, I advised counsel that the application was being made in good faith pursuant to 22 NYCRR § 202.7(f), that I had contacted Chambers directly regarding presentation of the application, and that I would promptly advise counsel if Chambers directed a different presentation time. *See Exhibit A.*

34. On April 7, 2026, after Respondents' counsel requested clarification of the filing date, I sent a follow-up email correcting a typographical error in the original notice and advising all counsel that I intended to file the OSC on Wednesday, April 8, 2026, at or about 4:00 p.m.

35. On April 8, 2026, I sent a further courtesy update to all counsel advising that, although I had previously expected to file at approximately 4:00 p.m., I was still finalizing the papers and expected to file later that day, after 5:00 p.m., and that I would provide notice promptly once the application had been e-filed.

36. Accordingly, Respondents received advance notice of this emergency application and of the relief sought therein.

**STANDARD OF REVIEW FOR A
MOTION TO REARGUE AND RENEW**

I. Motion to Reargue

37. A motion for leave to reargue is addressed to the sound discretion of the court that decided the prior motion. *See Peak v. Northway Travel Trailers*, 260 A.D.2d 840, 842 (3rd Dept. 1999). Such a motion “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion.” CPLR 2221(d)(2); *see also Liberty Mut. Ins. Co. v. PMI Newco, LLC*, 225 A.D.3d 941 (3rd Dept. 2024).

38. Reargument is warranted here because the Court’s March 9, 2026 Order appears to have misapprehended a critical point in the procedural history. *See* NYSCEF Doc. No. 115. Specifically, the Court appears to have proceeded on the premise that Justice Moyne vacated the TRO after considering and rejecting the merits of Article 63 relief. That is not what occurred.

39. To be sure, two of the parties’ papers before Justice Moyne discussed the TRO factors, including irreparable harm, likelihood of success, and the balance of equities. Petitioners-Tenants addressed those issues out of an abundance of caution, and Respondent Landlord did as well. But Justice Moyne did not request briefing or oral argument on the merits of Article 63 relief as the issues to be decided. Instead, J. Moyne directed the parties to address venue, jurisdiction, and ripeness, and on October 6, 2025, he heard oral argument on those issues only.

40. Justice Moyne’s January 20, 2026 Order confirms that this was the question before him. The Order states that “[t]he threshold issue is whether venue is proper in New York County,” and then transfers the proceeding to Albany County. *See* NYSCEF Doc. No. 75.

Although the Order also vacated the TRO as a naked decree, it contains no discussion of irreparable harm, likelihood of success on the merits, or the balance of equities. Thus, the Order did not constitute a merits determination of the Tenants' TRO application.

41. The misapprehension matters. The March 9, 2026 Order appears to have treated Petitioners' March 5, 2026 application as an attempt to reinstate a TRO previously vacated after full merits consideration by a coordinate court. But the January 20, 2026 Order did not decide the merits of TRO relief. It resolved the threshold procedural issue of where this proceeding should be heard.

42. Accordingly, Petitioners respectfully submit that the Court misapprehended the procedural history when it denied the renewed application on that basis. Reargument is therefore warranted.

II. Motion to Renew

43. A motion to renew, on the other hand, is based on new facts not offered in the prior motion that would change the court's determination, that were not available at the time of the original motion. *See* CPLR 222I(e), *Weaver v. Weaver*, 198 A.D.3d 1140 (3rd Dept. 2021).

A. The FDNY Fire Investigation Report Is New Evidence Bearing Directly on the Safety of Electrical Service at the Affected Buildings and the Landlord's Fitness To Operate as a Submeterer

44. Exhibit B is a Bureau of Fire Investigation report of the Fire Department of the City of New York concerning a fatal fire that occurred on November 15, 2025, at 560 Main Street, Apartment 752, Roosevelt Landings. The report was not previously submitted on the prior motion and constitutes new evidence within the meaning of CPLR 222I(e).

45. This FDNY Fire Marshal's report was only recently obtained by the undersigned attorney last week.

46. According to the FDNY report, the fire occurred on November 15, 2025, at approximately 6:04 p.m. at 560 Main Street on Roosevelt Island, and the incident was classified as an occupied multiple dwelling residential structure. The FDNY investigation identified the cause of the fire as “Electrical Wiring.” The report further states that the fire originated in the south bedroom of Apartment 752, in the area of the electric heater and AC unit, at a point on the south wall approximately five inches from floor level, in combustible material identified as electrical wiring insulation.

47. The report describes a catastrophic interior fire. FDNY found that the fire extended from the wiring insulation to a mattress and then throughout the south bedroom, hallway walls and ceiling, bathroom, living room, kitchen, and apartment entryway staircase. The fire also extended to the person of tenant Catherine Mahouve Same, a 75-year-old female resident, who died as a result of the incident. A related FDNY 10-45 report lists the date of death as November 15, 2025, the time of death as 7:00 p.m., and identifies the cause of incident as “200 Electrical Wiring.” The Medical Examiner cause of death is listed as thermal burns and smoke inhalation.

48. This report is important not merely because a fatal fire occurred, but because of what FDNY recorded about the surrounding electrical conditions. In the investigator notes, FDNY states that the fire originated in the southwest quadrant of the bedroom in the area of the electric baseboard heater and that the outlet near the AC unit and electric baseboard heater showed heavy fire damage with oxidation.

49. FDNY further recorded that the outlet on the west wall in the south bedroom had heavy fire damage with oxidation, and that an electrical component was plugged into that outlet. FDNY also recorded that the outlet panel, located just outside the south bedroom, had

heavy fire damage, multiple breaker switches appeared, as well as a golf-ball-sized hole in the panel itself with beading. FDNY also noted the electrical conduit supplying the electrical panel had a bowed conduit with beading where an arc occurred. These findings are powerful evidence of a serious electrical failure within the apartment's electrical system.

50. The FDNY notes also record witness statements indicating that this was not an isolated electrical concern. According to the report, a tenants' association representative stated that the wires inside the baseboard heaters get so hot that they melt the wire nuts attached to them, and that she had seven complaints for AC unit fires and twenty-two complaints for electric baseboard heater fires in the building. The report also records that the occupant of Apartment 330 stated that the outlet feeding an AC and electric baseboard heater had caught fire three or four years earlier, and that there had been many electrical issues in the building for years. Whether every such complaint is ultimately verified or not, the fact that FDNY memorialized these statements in the course of investigating a fatal electrical fire makes them highly significant in evaluating the safety of the electrical infrastructure in these buildings.

51. The FDNY file also reflects that the Bureau of Fire Prevention issued summons numbers for multiple violations in connection with this incident. That fact further underscores that the fire was not treated as a random or trivial event, but as a serious incident warranting code enforcement attention.

52. This new evidence is directly relevant to the relief sought here. The PSC's approval of submetering presupposes that the Landlord can safely and responsibly assume the role of a private utility provider within these residential buildings. But Exhibit B shows that at Roosevelt Landings, a tenant died in a fire caused by electrical wiring in the area of an electric

heater and AC unit, against a backdrop of repeated tenant complaints about overheated wires, AC fires, and baseboard-heater fires. That is powerful evidence that the electrical infrastructure in at least one of the Affected Buildings was unsafe, and that the Landlord should not be entrusted to expand, monetize, and control in-building electrical service through submetering until the safety of the system has been fully verified.

53. This evidence would have materially affected the Court's prior determination. It strengthens Petitioners' showing of irreparable harm, because the danger presented by submetering is not limited to unlawful bills and unaffordable arrears. It also includes the risk of continued reliance on unsafe electrical conditions in buildings where tenants have already reported fires, overheating, and electrical failures, and where one tenant has already died in a fire officially classified by FDNY as caused by electrical wiring.

54. Petitioners therefore respectfully submit that renewal is warranted based on this new evidence, and that the Court should issue a TRO preserving the status quo until the legality and safety of the Landlord's submetering scheme can be adjudicated.

B. Two Months of Bills Have Been Sent to Tenants in Less than 30 Days

55. Within hours of the Court denying the TRO on March 9, 2026, the Landlord began billing Tenants for electric charges for January 2026.

56. Beginning on or about April 1, 2026, the Landlord sent bills to Tenants for electric charges for February 2026.

57. Thus in a period of approximately 23 days, the Landlord has billed tenants for two months of electric charges. *See Exhibit C.*

58. The monthly bills themselves appear unusually high for such small apartments, ranging from approximately \$58 to over \$1,000 per month. Literally hundreds of tenants have

contacted me to complain about the amounts they are being charged and to ask what they should do. I have no practical answer for them other than to make this application for emergency relief.

59. An employee of the Landlord was recently recorded telling a group of tenants that they were not required to pay the bills at this time because the submetering plan remains under court review, and further stating that the prior TRO was vacated for lack of jurisdiction. Those statements are consistent with Petitioners' position that the prior TRO was not dissolved on any finding that the Landlord's billing scheme was lawful or non-harmful.

60. Since the Court declined to issue a TRO on March 9, 2026, tenants have already been billed twice for electricity allegedly used during January and February 2026.

61. Because the Landlord has issued two months of bills in less than 30 days, some households are now facing combined charges and arrears ranging from approximately \$138 to over \$2,000. The amounts charged are so wildly inconsistent across apartments of similar size that they appear almost random.

C. The Irreparable Harm that Is Now Occurring

62. Arrears are already beginning to accumulate in amounts exceeding \$1,000 for many households. Many low-income households cannot afford to pay these sums and will eventually face collection actions and/or eviction pressure from the Landlord.

63. Many Section 8 tenants are currently receiving electric bills that are equal to or higher than their portion of the rent, effectively causing a rent increase of over 100%.

64. The following table reflects a sample of 30 tenants from the Affected Buildings who provided both their monthly rent obligation and their monthly electric bill under submetering to me. The table illustrates the impact of submetering on each tenant's total monthly housing

burden. Sworn affirmations from these tenants can be obtained for in camera review, if required by the Court.

Type of Tenant	Tenant's Portion of Rent per Month	New Electric Charge per Month	Electric Charge as % of Tenant Rent Share
Rent Assisted	\$160	\$290	181%
Rent Assisted	\$192	\$337	176%
Rent Assisted	\$250	\$400	160%
Rent Assisted	\$318	\$411	129%
Rent Assisted	\$220	\$228	104%
Rent Assisted	\$512	\$508	99%
Rent Assisted	\$707	\$400	57%
Rent Assisted	\$535	\$300	56%
Rent Assisted	\$320	\$112	35%
Rent Assisted	\$1,309	\$450	34%
Rent Assisted	\$1,598	\$426	27%
Rent Assisted	\$1,631	\$416	26%
Rent Assisted	\$2,055	\$492	24%
Rent Assisted	\$785	\$186	24%
Rent Assisted	\$1,466	\$300	20%
Rent Assisted	\$1,393	\$236	17%
Rent Assisted	\$2,100	\$343	16%
Rent Assisted	\$1,913	\$306	16%
Rent Assisted	\$1,903	\$289	15%
Market Rate	\$2,509	\$379	15%
Rent Assisted	\$1,610	\$230	14%
Market Rate	\$4,730	\$653	14%
Rent Assisted	\$2,055	\$251	12%
Market Rate	\$2,865	\$306	11%
Rent Assisted	\$1,619	\$156	10%
Rent Assisted	\$1,443	\$126	9%
Market Rate	\$3,120	\$211	7%
Market Rate	\$3,649	\$243	7%
Market Rate	\$4,782	\$232	5%
Market Rate	\$2,506	\$114	5%

65. Petitioners acknowledge the limits of this sample. It was not randomly drawn. The tenants who responded were self-selected, and tenants who felt the greatest financial pain

were likely more motivated to respond than tenants who were less affected. Even so, the table provides strong real-world evidence that submetering is already causing immediate economic harm to tenants across the Affected Buildings.

66. Every tenant in this sample is financially worse off after submetering, which violates the requirement that 60% of tenants suffer no financial harm from submetering under 16 NYCRR §96.5(l)(3), and *see also* §96.5(k).

67. Electricity is still included in the rent for every tenant, since no proper back out was ever done as required by 16 NYCRR §96.5(e). As such, every tenant now has to pay a separate monthly electric charge on top of the rent. No tenant in this sample is better off. No tenant is even neutral. Every tenant here is financially harmed by submetering.

68. The table also shows that this burden falls hardest on the poorest tenants who receive income-based rent assistance, but who have not been provided proper rent reductions, nor have they been approved for submetering by HPD, DHCR, or any other City agency, in violation of 16 NYCRR §96.5(k).

69. For rent-assisted tenants, the tenant-paid portion of rent is income-based. A rent-assisted tenant paying \$160 per month in rent is, by definition, far poorer than a tenant paying \$4,000 per month at market rate.

70. The table above shows that the lower the tenant's rent share, the greater the electric burden is relative to rent. In five instances, the electric bill equaled or exceeded 100% of the tenant's monthly rent share. In plain speech, some of the poorest tenants in this sample are now being billed for electricity in an amount equal to, or greater than, the rent they were already struggling to pay, e.g., \$160/month in rent, but an increase in monthly cost of \$290 for electricity.

71. Submetering is harming both market-rate tenants and rent-assisted tenants. But the harm is regressive, because every dollar of electric charge has a far more severe impact on a tenant of low means than on a tenant with greater financial resources.

72. A \$300 or \$400 electric bill lands much harder on a tenant paying \$160, \$250, or \$512 per month in rent than it does on a tenant paying several thousand dollars per month. For the poorest tenants, these charges consume such a staggering share of the household budget that they may be unable to pay the bills, and the new charges immediately threaten arrears, instability, and housing displacement pressure.

73. Petitioners acknowledge that this self-selected sample is not a precise statistical measurement of the burden borne by all 2,769 leaseholders affected by submetering. But for purposes of this motion, it makes the point that actual tenants are already suffering actual harm right now. The table shows economic injury across tenant income classes, but it shows especially severe injury among the lowest-income tenants, who are at risk of housing displacement for non-payment of electric charges as a lease violation. That is enough to establish that the threatened harm is real, immediate, and substantial.

74. It should be noted that some free-market tenants probably have the financial means to simply move out to avoid the unfair electric bills, but the low-income and/or rent-assisted tenants probably cannot afford to move, because they lack the funds to move, and cannot easily transfer their housing benefits to a new apartment.

75. This evidence strongly supports temporary injunctive relief. The Court need not speculate about future hardship because the hardship is already occurring. Tenants are already being billed. Arrears are already accumulating. And the poorest tenants are being hit the hardest by charges they plainly cannot afford, and may face eviction in the very near future.

ARGUMENT

76. Petitioners commenced this proceeding to annul the PSC's 2025 Order authorizing submetering as arbitrary and capricious, contrary to 16 NYCRR Part 96, and to prevent the Landlord from implementing submetering in a manner that is already causing immediate and irreparable harm.

77. The Affected Buildings are mixed-income residential complexes in which approximately 67% of the tenants are low-income and receive some form of rental assistance, including Section 8 vouchers, while approximately 33% are market-rate tenants. Exorbitant electric bills imposed on top of rent harm all tenants, but they fall most harshly on the poorest residents.

78. The harm is not limited to higher monthly charges. The Landlord has consistently threatened eviction for nonpayment of submetered electricity charges, regardless of income status. *See* NYSCEF Doc. Nos. 99-100. The Landlord has also required tenants to sign a submetering rider purporting to authorize treatment of unpaid electric charges as a lease violation enforceable in eviction proceedings. *See* NYSCEF Doc. No. 99. When a tenant refuses to sign the rider, the Landlord serves a 10-day notice to cure or face eviction. *See* NYSCEF Doc. No. 100.

79. Now that submeter billing has begun, tenants are being held individually liable for electric charges many of them cannot afford to pay. For low-income tenants, including Section 8 recipients, the consequences of nonpayment extend far beyond a disputed utility bill. They include arrears, possible eviction proceedings, possible loss of rental assistance, and regulatory consequences that cannot easily be undone even if Petitioners ultimately prevail in this proceeding.

80. The emergency is present and ongoing. The Landlord has already billed tenants for two months of electricity charges within approximately 25 days. *See* NYSCEF Doc. Nos. 101-102. As reflected in the bills already submitted, tenants are now facing electric charges and arrears ranging from modest but unaffordable sums for the poorest households to total amounts due exceeding \$1,000 in some instances. For many seniors, disabled tenants, fixed-income households, and voucher recipients, these charges are simply unpayable.

81. These bills are especially harmful because the PSC's 2025 Order failed to impose a clear and lawful rate cap tied to the protection required by Part 96. *See* 16 NYCRR §96.1(i). Had the PSC imposed the proper safeguards, including a lawful and intelligible rate cap, tenants would not now be facing the same level of uncontrolled financial exposure.

82. This application is therefore made on an emergency basis. Billing has already commenced. Arrears are already accumulating. Petitioners seek a renewed TRO to preserve the *status quo ante* pending judicial review of the Article 78 Petition.

83. Petitioners are not asking this Court to reinstate a TRO previously denied on the merits by a coordinate court. The prior TRO was vacated in connection with Justice Moyne's transfer ruling and not after any merits determination of irreparable harm, likelihood of success, or the balance of equities. This case is now pending in this Court, and Petitioners respectfully seek a new TRO preserving the 50-year *status quo ante* while this Court determines whether submetering may lawfully be implemented under the safeguards codified in 16 NYCRR Part 96.

84. The PSC's 2025 Order materially departs from 16 NYCRR Part 96 and omits substantive protections that have historically accompanied submetering approvals. *See* NYSCEF Doc. No. 95; *see also* Petitioners' Memorandum of Law, NYSCEF Doc. No. 91.

85. In sum, Petitioners' application rests on three straightforward points: first, the PSC's 2025 Order materially departs from Part 96 and is therefore arbitrary and capricious, affected by legal error, and without a rational basis; second, implementation of that unlawful Order is causing imminent and irreparable harm to all tenants, with the harshest impact falling on low-income and rent-assisted tenants, who comprise approximately 67% of the affected population; and third, because Petitioners have shown both irreparable harm and a likelihood of success on the merits, this Court should preserve the *status quo ante* pending judicial review.

I. The Landlord Commenced Billing for Submetering on March 9, 2026, and within a few Hours after the TRO Was Declined

86. Exhibit C consists of representative submetering bills sent to tenants after the Court declined to sign Petitioners' renewed TRO application on March 9, 2026.

87. The bills show that the Landlord issued bills for the January 2026 service period almost immediately after the Court's March 9, 2026 ruling. For example, one bill is dated March 9, 2026, was due on March 24, 2026, and charges a tenant \$732.30 for electricity allegedly used from January 1, 2026 through February 1, 2026. Another bill, also dated March 9, 2026 and due March 24, 2026, charges a tenant \$601.60 for that same January billing period.

88. Exhibit C further shows that, less than 30 days later, the Landlord issued bills for the February 2026 service period. Several bills are dated April 3, 2026 or April 5, 2026, and charge tenants for electricity allegedly used from February 1, 2026 through March 1, 2026. Thus, within approximately 25 days of the first bills, the Landlord had already sent out a second month of electric bills.

89. Tenants were required to absorb two separate monthly electric charges in less than 30 days. For low-income households already struggling to pay rent, this is a sudden and substantial increase in the cost of remaining in the home.

90. Exhibit C also shows that arrears are now accumulating for at least some tenants who did not, or could not, pay the first bill before the second one arrived. One April 3, 2026 bill shows current electric charges of \$588.87, an unpaid amount from the last bill of \$732.30, total payments of \$0.00, and a total amount due of \$1,321.17. In other words, before even one full billing cycle had passed, that tenant was already facing arrears in excess of \$1,300.

91. Other bills in Exhibit C show the same pattern. One bill reflects a prior amount of \$601.60, zero payments, a balance forward of \$379.99, and a new total due of \$701.48. Another shows a prior amount of \$395.84, zero payments, a balance forward of \$395.84, and a new total due of \$774.12. Another shows a prior amount of \$410.80, zero payments, a balance forward of \$410.80, and a new total due of \$759.72. These are not hypothetical future arrears. They are present arrears already appearing on the face of the bills.

92. The bills also reflect facially shocking charges. The January and February bills annexed as Exhibit C include monthly charges rising as high as \$732.30 in the sample attached, with second-cycle total amounts reaching \$1,321.17 because of carry-forward balances. These are substantial sums for residential tenants in relatively small apartments, especially in a population in which approximately 67% of the households are low-income and rent-assisted.

93. Exhibit C is concrete evidence of immediate and ongoing irreparable harm. The harm is not speculative. The Landlord is no longer threatening to bill tenants at some future date. The Landlord has already billed them twice in less than 30 days. And for tenants unable to pay immediately, arrears are already accumulating.

94. If the Landlord is permitted to continue billing while this case is pending, more tenants will fall into arrears, the amounts due will continue to compound, and the pressure of collection activity, nonpayment proceedings, and possible eviction will intensify. Money damages after the fact cannot adequately remedy that kind of housing instability, especially for middle- and low-income tenants living paycheck to paycheck or on fixed incomes.

95. Exhibit C shows that submetering is causing irreparable harm now. The harm from the Landlord's aggressive billing is no longer speculative. Exhibit C shows what is already happening and what will continue absent injunctive relief. The TRO should be granted to preserve the *status quo ante* and prevent further accumulation of charges and arrears until the legality of the PSC's approval of submetering, and the Landlord's billing practices under that approval, can be adjudicated.

96. Many tenants, including low-income residents receiving rental assistance, cannot absorb charges of this magnitude. The sudden imposition of these costs will cause tenants to accrue ever-greater arrears, which in turn will spur collection activity, nonpayment proceedings, and possible evictions that may jeopardize housing stability and, for some households, lead to homelessness. Approximately 67% of the apartments in the Affected Buildings are occupied by low-income households. For families living month to month, the forced diversion of hundreds or even thousands of dollars from basic living expenses constitutes a concrete and irreparable injury.

II. The 2025 Order Is Arbitrary and Capricious

97. The PSC's April 28, 2025 Order approving submetering at the Affected Buildings materially departs from mandatory provisions of 16 NYCRR Part 96.

98. As set forth more fully in Petitioners' Memorandum of Law (NYSCEF Doc. No. 91), the 2025 Order, among other things, treats as still operative a 2011 approval that expired by operation of 16 NYCRR § 96.3(e), fails to require a new petition governed by current Part 96 standards, fails to impose a lawful rate cap under 16 NYCRR § 96.1(i), fails to ensure a lawful back-out of electric charges from rent under 16 NYCRR § 96.5(e), and fails to perform the updated financial-harm analysis required by current regulations.

99. The administrative process was also irregular. The record reflects *ex parte* communications between PSC staff and the Landlord, reliance on materials not disclosed to tenants, and the absence of any meaningful opportunity for tenants to respond after submission of the Petition for Rehearing in June 2025.

100. These are not minor technical defects. They are departures from the core consumer protections Part 96 was enacted to guarantee. An agency determination made in violation of its own regulations or lawful procedure is arbitrary and capricious under CPLR 7803(3).

IRREPARABLE HARM

101. Absent immediate judicial intervention, the Landlord will continue aggressively billing tenants for electricity while tenants remain obligated to pay rent under a longstanding structure in which electricity was included in the housing charge.

102. The Landlord has consistently stated that nonpayment of submetered electric charges may result in eviction proceedings. *See* NYSCEF Doc. Nos. 99-100. For Section 8 tenants, eviction may also jeopardize housing subsidies. Many affected tenants are elderly, disabled, medically vulnerable, or living on fixed incomes, and cannot absorb sudden electric bills of this magnitude.

103. The harm is already occurring. Tenants are now incurring arrears, facing collection activity, and suffering the immediate loss of disposable income needed for basic living expenses. For low-income households, those injuries are concrete and irreparable. If billing continues during the pendency of this proceeding, tenants will face mounting arrears, housing instability, and potentially the loss of rental assistance before the Court can adjudicate the merits.

104. These harms cannot be adequately remedied by money damages after the fact. Absent a TRO, they will continue to occur now.

LIKELIHOOD OF SUCCESS ON THE MERITS

105. As set forth in the Amended Petition (NYSCEF Doc. No. 42) and Petitioners' Memorandum of Law (NYSCEF Doc. No. 91), Petitioners have demonstrated a strong likelihood of success on the merits.

106. The PSC's April 28, 2025 Order suffers from multiple legal defects. Among other things, it revives a submetering approval that expired by operation of law in 2016, contrary to 16 NYCRR § 96.3(e); fails to impose a lawful and intelligible rate cap as required by 16 NYCRR § 96.1(i); fails to make required findings concerning financial harm to a tenant population in which a substantial percentage of households receive income-based assistance; and fails to address the extensive tenant submissions documenting affordability and habitability concerns.

107. Under CPLR 7803(3), an administrative determination that lacks a rational basis or fails to follow governing regulations must be annulled. *See Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974). Because the 2025 Order materially departs from Part 96 and omits required protections, Petitioners have shown a strong likelihood that the Order will ultimately be set aside.

BALANCE OF THE EQUITIES

108. The balance of equities strongly favors Petitioners. Granting temporary relief will preserve the longstanding *status quo ante* under which tenants continued to pay for electricity through their housing charges while the Court reviews the legality of the PSC's 2025 Order.

109. The Landlord has operated the Affected Buildings under that structure for decades and will suffer no legally cognizable prejudice from a temporary delay in imposing submeter charges pending judicial review.

110. By contrast, absent relief, tenants face immediate exposure to high electric charges, rapidly accumulating arrears, nonpayment proceedings, possible loss of housing subsidies, and severe disruption to housing stability, health, and safety. Any temporary delay is at most a financial inconvenience to the Landlord. The consequences to tenants are concrete, immediate, and potentially devastating.

111. The equities therefore weigh decisively in favor of preserving existing conditions until the merits can be adjudicated.

EMERGENCY CIRCUMSTANCES

112. This application is made on an emergency basis because the Landlord began billing tenants for submetered electricity on March 9, 2026, within hours after the Court declined TRO relief, and has already issued two monthly bills in less than 30 days. *See* Exhibit C.

113. Tenants are therefore being subjected now to charges Petitioners contend are unlawful, and before this Court can adjudicate the legality of the PSC's Order, tenants are already being exposed to arrears, collection activity, nonpayment proceedings, and related housing consequences. Exhibit C shows that those harms are already occurring.

114. Immediate judicial intervention is necessary to preserve the *status quo ante* and prevent further irreparable harm pending determination of this proceeding.

WHEREFORE, based upon the foregoing, Petitioners respectfully request that this Court grant the within application, issue a temporary restraining order and, upon hearing, a preliminary injunction preserving the *status quo ante* pending determination of this proceeding, and thereafter award Petitioners the final relief demanded in the Amended Petition, together with such other and further relief as this Court deems just and proper.

PRAYER FOR RELIEF

Petitioners respectfully request that this Court issue an Order and Judgment as follows:

1. Temporarily restraining Respondents, pending the hearing and determination of this application, from billing tenants for submetered electricity at the Affected Buildings;
2. Upon hearing, preliminarily enjoining Respondents, pending final determination of this proceeding, from billing tenants for submetered electricity at the Affected Buildings;
3. Upon final determination of this proceeding, vacating and annulling the PSC's April 28, 2025 Order;
4. Declaring that the 2011 submetering approval expired pursuant to 16 NYCRR § 96.3(e);
5. Declaring that any future submetering at the Affected Buildings must proceed only upon a new petition and in full compliance with 16 NYCRR Part 96; and
6. Granting such other and further relief as this Court deems just and proper.

SIGNATURE BLOCK

Dated: New York, New York
April 8, 2026



F. William Salo, Esq.
Attorney for Petitioners
1295 Fifth Avenue, No. 18C
New York, NY 10029
Cel: 917-968-2517
Tel: 212-517-3050
Fax: 212-517-3055
Email: billsalo@salolaw.com

CERTIFICATE OF COMPLIANCE

F. William Salo, Esq., an attorney duly admitted to practice law before the courts of the State of New York, hereby certifies that this Affirmation in Support complies with the word count limitation of 7,000 words as set forth in 22 NYCRR § 202.8-b. The total word count, as determined by the word-processing system used to prepare this document, is 6,831 words, excluding the parts exempted by §202.8-b(b).

Dated: New York, New York
April 8, 2026



F. William Salo, Esq.
Attorney for Petitioners