SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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.: 161411/2025

Notice of Constitutional Question
To the New York Attorney General
Pursuant to CPLR 1012(B)

Notice is hereby given pursuant to CPLR 1012(b) and Executive Law §71 that Petitioners in the above-captioned proceeding have raised a constitutional challenge to CPLR 506(b)(2). Petitioners contend that the statute, insofar as it purports to mandate venue in Albany County for proceedings against the Public Service Commission, is unconstitutional as applied in this case.

Specifically, Petitioners allege that CPLR 506(b)(2), when enforced against predominantly low- and middle-income tenants of New York County, deprives them of meaningful access to the courts by requiring them to litigate their claims more than 150 miles away in Albany County. Petitioners assert that this statutory requirement imposes prohibitive costs and burdens, in violation of their rights to due process and equal protection under Article I, §§6 and 11 of the New York Constitution and the Fourteenth Amendment to the United States Constitution.

Pursuant to CPLR 1012(b) and Executive Law §71, the Attorney General is hereby notified of this constitutional challenge and afforded the opportunity to intervene in this proceeding in support of the statute's constitutionality. Proof of service of this notice will be filed with the Court as required by law.

SIGNATURE BLOCK

Dated: New York, New York
October 2, 2025

/s/ F. William Salo

_____

F. William Salo, Esq.
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AFFIRMATION OF SERVICE

F. William Salo, an attorney admitted to practice before the Courts of the State of New York, affirms under penalty of perjury pursuant to CPLR 2106:

On October 2, 2025, I served a true copy of the foregoing Notice of Constitutional Question, together with the Amended Verified Petition annexed thereto, upon the Office of the New York State Attorney General, Litigation Bureau, 28 Liberty Street, 16th Floor, New York, NY 10005, by depositing same in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, properly addressed and sent via USPS Express Mail with tracking.

On the same day I also served copies of the Notice of Constitutional Question and Amended Verified Petition on the attorneys of record listed below via electronic filing with the NYSCEF system, and via courtesy email.

Pursuant to 22 NYCRR § 202.5-b(f)(2)(ii), NYSCEF service constitutes service upon all consenting e-filers in this matter. In addition, I sent courtesy copies by email to the following counsel of record:

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Pursuant to CPLR § 2106 and Rule 130-1.1a of the uniform rules for the trial courts, I affirm that the foregoing is true under penalty of perjury.

Dated: New York, New York
October 2, 2025

/s/ F. William Salo

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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, and LEONA FREDERICKS as President of the METRO NORTH / RIVER VIEW / RIVER CROSSING TENANT COALITION,

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, and MILES 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.: 161411/2025

AMENDED VERIFIED PETITION

Dated: September 17, 2025

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PRELIMINARY STATEMENT

1. This is a proceeding pursuant to Article 78 of the CPLR seeking to annul and vacate the April 28, 2025 Order of the New York State Public Service Commission ("PSC") in Case Nos. 08-E-0836, 08-E-0837, 08-E-0838, and 08-E-0839, which unlawfully authorized residential electric submetering at the Affected Buildings. *See* Exhibit D.

2. The Order is arbitrary and capricious, lacks a rational basis, is affected by errors of law, and was made in violation of the PSC's own regulations. It is *ultra vires*, in excess of jurisdiction, and *void ab initio* under CPLR 7803.

3. Petitioners also seek declaratory and injunctive relief, including a temporary restraining order, a preliminary injunction, and a permanent injunction under CPLR Articles 30 and 63, enjoining the Landlord from commencing submetering.

4. The PSC's 2025 Order unlawfully resurrected a long-expired 2011 submetering approval, mischaracterizing an unlawful modification as a mere "clarification." In reality, the PSC had no authority to revive the 2011 approval, which lapsed in 2016. By encouraging the Landlord's procedurally defective "petition for clarification," the PSC permitted the Landlord to bypass mandatory notice, financial hardship analysis, and evidentiary procedures under Part 96.

5. The Order was further tainted by 13 months of secret, ex parte communications between the PSC and the Landlord, including solicited affidavits never disclosed on the public docket. Tenants were thus denied notice and an opportunity to respond — a plain violation of due process and a breach of the PSC's duty of neutrality.

6. Even if *arguendo* the PSC had jurisdiction (which it did not), the agency still failed to discharge its basic regulatory function. It conducted no rate-cap analysis, no updated

financial hardship evaluation, and no review of the Landlord's history of chronic habitability violations, including lack of heat, lack of water, infestations, elevator outages, leaks, and black mold.

7. In granting the Order, the PSC committed multiple reversible errors, including but not limited to:

(a) Violating its own rules under 16 NYCRR §§ 3.7, 96.3, and 96.5;

(b) Ignoring overwhelming tenant opposition;

(c) Relying on secret and false submissions from the Landlord;

(d) Denying tenants a hearing;

(e) Failing to apply updated tenant protection laws; and

(f) Effectively denying tenants' timely rehearing petition.

8. The Order represents a fundamental breakdown of regulatory oversight: it favors the Landlord's profit-driven scheme at the direct expense of tenants and in contravention of the very protections Part 96 was designed to guarantee.

9. Petitioners further challenge the constitutionality of CPLR 506(b)(2), which purports to mandate venue exclusively in Albany County for actions against the PSC. Petitioners contend that the statute is unconstitutional on its face and, at minimum, as applied to this proceeding, and that venue properly lies in New York County under CPLR §§ 502, 503, and 510(3).

10. For all these reasons, the 2025 Order must be vacated and annulled in its entirety. In the interim, this Court should issue a temporary restraining order and preliminary injunction to prevent unlawful submetering from commencing.

THE AFFECTED BUILDINGS

11. The "Affected Buildings," as referred to herein, are four apartment complexes located in New York County that were acquired by the Landlord in October 2019, commonly known as Schomburg Plaza (also called the Heritage), River Crossing, Roosevelt Landings, and the Miles and Parker.

12. Together, the Affected Buildings comprise 2,769 units of multifamily rental housing located throughout Manhattan and Roosevelt Island.

13. The Affected Buildings are home to approximately 2,769 leaseholders — many with families — of whom roughly 50% receive Section 8 vouchers and/or other forms of rental assistance. Approximately 50-60% of tenants are low-income, and many are senior citizens living on fixed incomes.

14. Schomburg Plaza (a/k/a The Heritage, and a/k/a Frawley Plaza) is a 600-unit mixed-income property located in East Harlem at 1295 and 1309 Fifth Avenue, and 1660 Madison Avenue. The property was originally constructed in 1975 and removed from the Mitchell-Lama program in 2005.

15. Roosevelt Landings is a 1,003-unit mixed-income property located on Main Street, Roosevelt Island (510–580 Main Street). The property was originally constructed in 1978 and removed from the Mitchell-Lama program in 2005.

16. River Crossing is a 761-unit mixed-income property located in East Harlem at 1940–1966 First Avenue and 420 East 102nd Street. The property was originally constructed in 1980 and removed from the Mitchell-Lama program in 2005.

17. The Miles and the Parker are two mixed-income properties comprising 341 units and 64 units, respectively, located in East Harlem at 1890 Lexington Avenue and 1990

Lexington Avenue. Both properties were originally constructed in 1975 and removed from the Mitchell-Lama program in 2005.

THE PETITIONERS

18. This Petition is brought by the leaders of the tenants' associations in three of the four Affected Buildings.

19. Petitioners act on behalf of all residents of the Affected Buildings, who face imminent and irreparable harm from the 2025 Order and who oppose submetering on that basis.

20. Petitioner Diane Mack is the Vice President of the Schomburg Residents' Council, Inc., the duly constituted tenants' association representing residents of Schomburg Plaza (a/k/a Heritage Towers, a/k/a Frawley Towers).

21. The Schomburg Residents' Council, Inc. ("SRC") is a not-for-profit corporation organized under the laws of the State of New York.

22. Petitioner Joyce Short is the President of the Roosevelt Landings Tenants' Association, representing tenants of Roosevelt Landings.

23. Petitioner Bridgette Scott is the President of the Miles and Parker Tenants' Association, representing tenants of the Miles and Parker apartment buildings.

24. Petitioner Leona Fredericks is the President of the Metro North / River View / River Crossing Tenant Coalition, representing tenants of the River Crossing apartment complex.

THE RESPONDENTS

25. Respondent New York State Public Service Commission ("PSC") is an administrative agency of the State of New York, headquartered at 3 Empire State Plaza, Albany, NY 12223, and maintaining offices at 90 Church Street, New York, NY 10007.

26. The PSC regulates electric service pursuant to the New York Public Service Law and is the state agency that issued the unlawful and erroneous 2025 Order challenged in this proceeding.

27. Respondent L+M Development Partners LLC ("L+M") is a for-profit real estate development company organized under the laws of the State of New York, with offices in New York County.

28. L+M is the beneficial owner of the Affected Buildings and the primary beneficiary of the PSC's April 28, 2025 Order.

29. Respondent C+C Apartment Management LLC ("C+C") is a property management company that manages the day-to-day operations of the Affected Buildings, including the implementation of submetering programs pursuant to the challenged Order.

30. L+M and C+C are closely controlled by their beneficial owner, billionaire real estate developer Ron Moelis. For clarity, this Petition refers to these private real estate Respondents collectively as "the Landlord" and uses the pronouns "he," "him," and "his" to reflect the centralized control exercised by Mr. Moelis over the Affected Buildings.

31. The record title owners of each of the Affected Buildings are holding companies organized under the laws of the State of Delaware. Each holding company is a wholly-owned subsidiary of L+M and is directly controlled by Ron Moelis.

32. Respondent Heritage Holdings LLC is the record owner of Schomburg Plaza, located at 1295 Fifth Avenue, 1309 Fifth Avenue, and 1660 Madison Avenue, New York, New York. Heritage Holdings LLC is wholly owned and controlled by L+M.

33. Respondent River Crossing Owner LLC is the record owner of River Crossing, located at 1940–1966 First Avenue and 420 East 102nd Street, New York, New York. River Crossing Holdings LLC is wholly owned and controlled by L+M.

34. Respondent Roosevelt Landings Owner LLC is the record owner of Roosevelt Landings, located at 510–580 Main Street, Roosevelt Island, New York. Roosevelt Landings Holdings LLC is wholly owned and controlled by L+M.

35. Respondent Miles and Parker Owner LLC is the record owner of the Miles and Parker buildings, located at 1890 and 1990 Lexington Avenue, New York, New York. Miles and Parker Holdings LLC is wholly owned and controlled by L+M.

36. Each of the foregoing Respondents is a necessary and indispensable party to this proceeding because they are directly responsible for requesting, implementing, and profiting from the PSC's 2025 Order. In the event that the 2025 Order is annulled, they must be enjoined from carrying out their submetering scheme.

JURISDICTION AND VENUE

37. Jurisdiction is proper under Article 78 of the CPLR because Petitioners challenge a final determination of the PSC, a state agency, namely its April 28, 2025 Order.

38. Petitioners also challenge the constructive denial of their Amended Petition for Rehearing filed with the PSC on June 2, 2025.

39. This Court further has jurisdiction to issue a declaratory judgment pursuant to CPLR 3001 and to grant injunctive relief pursuant to CPLR 6301, as Petitioners seek both judicial review of agency action and provisional relief to prevent immediate and irreparable harm from implementation of the PSC's Order by the Landlord.

40. Venue is proper in New York County under CPLR 502, 503, 506(b), and 510(3), because the proceeding challenges an order affecting housing accommodations located in New York County, where Petitioners reside and where the underlying facts occurred.

41. In addition, Petitioners assert that CPLR 506(b)(2), insofar as it purports to mandate venue exclusively in Albany County for proceedings against the PSC, is unconstitutional both on its face and, at minimum, as applied in this case; accordingly, venue properly lies in New York County under CPLR §§ 502, 503, and 510(3).

42. Respondent Landlord is a necessary and indispensable party under CPLR 1001(a) because he is the direct beneficiary of the 2025 Order. Absent judicial intervention, the Landlord will imminently act on that Order by billing tenants for electricity and enforcing unlawful, excessive, and exorbitant charges as rent, thereby placing tenants at risk of eviction and substantial financial harm.

43. Petitioners therefore seek not only judicial review of the PSC's action, but also (i) a declaratory judgment under CPLR 3001 declaring the 2025 Order unlawful and void, and declaring the Landlord unfit to serve as a submeterer; and (ii) a temporary restraining order, preliminary injunction, and permanent injunction under CPLR 6301–6313 restraining the Landlord from implementing submetering or enforcing any related surcharges.

44. Without such injunctive relief, any judgment in this proceeding would be incomplete and ineffective, and Petitioners would face immediate and irreparable harm even if they prevail on the merits.

STANDARD OF REVIEW

45. This proceeding is brought pursuant to CPLR Article 78 to challenge the April 28, 2025 Order of the New York State Public Service Commission ("PSC"), a state agency.

46. Under CPLR 7803(3), a court reviewing an administrative determination must ascertain whether the decision was affected by an error of law, was arbitrary and capricious, or constituted an abuse of discretion, including abuse of discretion as to the manner of effecting the result. *See* CPLR 7803(3).

47. An agency action is arbitrary and capricious when it lacks a rational basis or when the agency fails to follow its own rules. Courts may annul determinations that are contrary to governing regulations, unsupported by substantial evidence, or otherwise irrational. *See Matter of Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974).

48. Judicial review is particularly appropriate where an agency fails to engage in reasoned decision-making, disregards material evidence in the record, or fails to address important issues raised by petitioners. *See Matter of Charles A. Field Delivery Serv., Inc. v. Roberts*, 66 N.Y.2d 516, 520 (1985).

49. This Court also has the authority to address constitutional challenges to CPLR 506(b)(2), and to construe the statute in harmony with other venue provisions of the CPLR to avoid unconstitutional application.

50. In addition to Article 78 review, this Court has jurisdiction to issue declaratory relief under CPLR 3001 and to grant provisional and permanent injunctive relief under CPLR 6301–6313. Such remedies are warranted where agency action threatens immediate, irreparable harm and where Petitioners have demonstrated a likelihood of success on the merits.

FACTS

I. The History of Submetering at the Affected Buildings (2008-2011)

51. On July 16, 2008, the prior owner of the Affected Buildings petitioned the PSC to implement submetering for the first time.

52. Submetering is a system in which the landlord installs individual submeters in each apartment, but remains the master account holder with Con Edison, thereby assuming the authority of a utility provider: supervising the metering, billing each tenant, and enforcing payment for electricity as added rent. *See* 16 NYCRR Part 96.

53. From the outset, tenants and elected officials objected that submetering at the Affected Buildings would be financially devastating and unsafe.

54. In February 2009, Congressman Charles Rangel, State Senator José Serrano, and Councilmember Melissa Mark-Viverito formally petitioned the PSC, warning that submetering would displace elderly, disabled, and low-income tenants, impose unaffordable bills exceeding $1,000 per month, and expose Section 8 voucher holders to eviction for nonpayment of inflated charges.

55. Tenant affidavits submitted in 2009 confirmed those warnings. Residents reported electricity bills ranging from $300 to over $1,000 — some greater than their entire monthly income. They described broken or missing thermostats, defective electric baseboard heaters, drafty windows, poor insulation, and the use of life-sustaining medical devices that increased consumption. Many testified that unpaid electric bills were being treated as "added rent" — subject to eviction in Housing Court, not the consumer protections of HEFPA.

56. Tenant associations across the Affected Buildings submitted joint opposition, representing 2,769 households. They stressed that rent reductions were illusory, covering less than 10% of actual electricity charges, and warned that families were forced to choose between heat and housing stability. They also pointed out that HEAP emergency assistance would not apply, because unpaid electric bills classified as "rent" would not trigger shutoff protections.

57. Elected officials echoed and amplified these concerns. In 2009, Borough President Scott Stringer, Assemblymember Micah Kellner, State Senator Bill Perkins, and others wrote to the PSC, condemning the landlord's proposal as a scheme to offload costs while retaining control of outdated, inefficient systems. They warned that submetering would function as a backdoor rent increase and a mechanism to displace low-income tenants in favor of higher-paying households.

58. In December 2010, Assemblymember Kellner, joined by Congresswoman Carolyn Maloney, Borough President Stringer, Senator Serrano, Senator Perkins, Assemblymember Keith Wright, and Councilmembers Melissa Mark-Viverito and Jessica Lappin, wrote again. They charged that the landlord had ignored PSC orders, failed to consult tenants, and continued to misclassify electric charges as "added rent," exposing tenants to eviction in contravention of HEFPA. They urged denial of the revised submetering plan or, at minimum, a full evidentiary hearing.

59. Throughout 2009–2011, tenants consistently reported the same defects that persist today: nonfunctional heating systems, broken thermostats, drafty construction, mold, leaks, and vermin infestations. The PSC received hundreds of pages of evidence showing that tenants were being billed for electricity consumed by inefficient building systems that they could not control — conditions that have not improved over 16 years.

60. Ultimately, the PSC stayed implementation of submetering during this period, recognizing the validity of tenant and political opposition. Yet the underlying defects remain unchanged. The record demonstrates a clear through-line: both during 2008-2011 and again in 2025, submetering at these buildings is unaffordable, unsafe, and contrary to the public interest.

II. The PSC's 2011 Conditional Order

61. On August 11, 2011, the PSC issued a conditional order allowing submetering to begin at the Affected Buildings, provided that the Landlord comply with seven conditions precedent (the "2011 Order"), which were:

1) **HEAP Registration:** register as a Home Energy Assistance Program (HEAP) vendor and implement an ongoing enrollment program.

2) **Programmable Thermostats**: install one programmable thermostat in the main living area of every apartment.

3) **Refrigerator Replacements:** replace all refrigerators manufactured before 2001 with EnergyStar® rated refrigerators.

4) **NYSERDA Energy Reduction Plans (ERP):** complete all building-wide Energy Reduction Plans under NYSERDA's Multifamily Performance Program, and provide certificates of completion.

5) **Energy Efficiency Education:** provide tenants with written materials, monthly workshops, access to an energy-efficiency expert, and targeted one-on-one counseling for high users before submetering begins.

6) **Notice Requirements:** give tenants at least two months' written notice before submetering starts.

7) **HEFPA Protections:** commit to affording tenants all Home Energy Fair Practices Act protections (deferred payment plans, complaint rights, medical/emergency protections, etc.) before any civil action or eviction could be pursued for nonpayment.

62. Despite these explicit requirements, the current Landlord admitted in his 2024 Petition that none were ever satisfied, and tenant testimony confirms that the promised protections — from working thermostats to HEFPA safeguards — were never completed.

63. Ultimately, submetering never commenced at the Affected Buildings.

III. In 2024, the Landlord Petitioned to Resurrect the Expired 2011 Order

64. From 2011 through 2016, no tenant received a single submetering bill, and all tenants continued to receive electricity as part of their rent. The prior owner never satisfied the conditions of the 2011 Order, submetering never commenced, and the approval expired by operation of law in 2016. *See* 16 NYCRR § 96.3(e).

65. Three years later, in 2019, the current Landlord purchased the Affected Buildings. By then, the PSC's 2011 approval had been expired for eight years.

66. Five years after that, in 2024, the Landlord petitioned the PSC to "clarify" and effectively resurrect the long-expired 2011 approval, rather than filing the new petition required under Part 96.

A. The 2019 Regulatory Agreements.

67. Upon purchasing the Affected Buildings in 2019, the Landlord entered into binding Regulatory Agreements with the City of New York. In exchange for substantial tax breaks — estimated at $3 to $5 million per complex annually for 40 years — the Landlord promised to preserve affordability for hundreds of units by limiting rent increases to Rent Guidelines Board (RGB) levels.

68. In practice, the Landlord has repeatedly breached these commitments. Since 2019, he has raised rents far above RGB guidelines, in some cases 5% to 18% annually for market-rate tenants, and as much as 10% every six months for Section 8 tenants — directly contradicting his obligations under the agreements.

B. The Landlord's 2024 Petition and the Tenants' Response.

69. In further contravention of his promise to guarantee affordable housing at the Affected Buildings, on March 28, 204 the Landlord petitioned the PSC for an order allowing

him to begin submetering of electricity and to charge the tenants additional rent for the cost of electricity they used, which according to shadow bills from 2009-2010 would have raised rents on average approximately 30% per year, most of which the Landlord intends to book as profit.

70. The PSC established a sixty (60) day public comment period for tenants to respond.

71. Between June and August 2024, the Schomburg Residents' Council (SRC) collected more than 200 comments from tenants — many elderly, disabled, or low-income — describing in their own words how submetering would endanger their health, housing stability, and financial security.

72. These tenant statements echoed the same concerns raised in 2008 through 2011: chronic building neglect, lack of maintenance, unsafe living conditions, unaffordable electricity use due to defective heating systems and lack of insulation in the exterior walls, high cooling costs during summer months, and a pervasive fear of eviction if unable to pay the added charges.

73. Tenants reported that the Landlord had continued the same practices as the prior owner, spending little on building upkeep while allowing hazardous conditions to persist. Complaints included malfunctioning baseboard heaters, lack of heat and water, frequent water leaks, black mold, offensive odors, drafty windows and walls, lack of insulation, vermin infestations (rats, mice, cockroaches, ants, and bedbugs), and chronically broken elevators. Many tenants stated they were forced to use their ovens and plug-in space heaters during winter months simply to maintain habitable indoor temperatures.

74. Numerous tenants also reported reliance on electricity for vital medical devices such as motorized wheelchairs, CPAP machines, and nebulizers. They expressed concern that

submetering would impose unaffordable charges for life-sustaining equipment and place medically vulnerable residents at heightened risk.

75. Senior citizens living on fixed incomes were particularly fearful that they would not be able to pay for both rent and electricity if submeters were installed. Many expressed anxiety that submetering would ultimately lead to eviction and loss of long-term housing assistance, particularly for those relying on Section 8 vouchers.

IV. The PSC's 2025 Erroneous Order

76. On April 28, 2025, the PSC granted the Landlord's petition for "clarification" and "recommencement" of the long-expired 2011 Order. See Exhibit D.

77. As explained in detail below in the Argument section, the 2025 Order was issued in error and must be vacated.

78. On June 2, 2025, Petitioners timely filed an Amended Petition for Rehearing with the PSC pursuant to 16 NYCRR § 3.7, seeking vacatur of the 2025 Order.

79. As of the date of this filing, more than two and a half months have passed, and the PSC has taken no action on that petition. The PSC has issued no email, comment, letter, notice, meeting notice, conference schedule, or interim order granting or denying rehearing.

80. This prolonged inaction constitutes a constructive denial of Petitioners' request for rehearing.

81. Because CPLR 217(1) requires that an Article 78 proceeding be commenced within 120 days of a final or effectively final agency determination, Petitioners are compelled to file the instant Petition to preserve their rights.

82. Moreover, there is no legal requirement that Petitioners exhaust a rehearing remedy before seeking judicial review of a final PSC order. The availability of a rehearing petition is permissive, not mandatory.

83. Accordingly, this Petition is timely and properly before this Court.

ARGUMENT

I. The PSC's 2025 Order Is without Jurisdiction, *Ultra Vires*, and *Void Ab Initio*.

84. The Public Service Commission's 2011 Order authorizing submetering at the Affected Buildings expired by its own terms and by operation of 16 NYCRR § 96.3(e). That regulation provides:

> Submeters shall be installed and submetered billing shall commence within **five years** of the Commission order authorizing submetering. If submetering has not commenced within five years of such Commission order, a new Notice of Intent to Submeter or Petition to Submeter shall be filed with the Commission. § 96.3(e).

85. The 2011 approval expired in 2016 with no action taken by the prior owner. Submetering was never commenced — no submeters were read, no tenants billed, and no additional rent collected. Simply put, the prior landlord allowed the 2011 Order to lapse by inaction. See § 96.3(e).

86. Once that expiration occurred, there was nothing left for the PSC to "clarify," and nothing to "recommence" in 2025. The agency's only lawful option was to deny the Landlord's petition and require him to file a new application under Part 96, subject to all current procedures and tenant protections.

87. The PSC's 2025 Order is conspicuously silent about § 96.3(e). It never addresses the five-year expiration rule, never explains how an expired authorization could be revived nearly

a decade later, and never identifies any legal basis for sidestepping a regulation the agency itself adopted in 2012.

88. That silence is fatal. An agency is bound to follow its own regulations, and when it fails to do so its determinations are invalid. *See Big Tree Energy Partners v. Bradford*, 219 A.D.2d 27, 30 (3d Dep't 1996) (agency "must adhere to its own rules"). By ignoring § 96.3(e), the PSC deprived itself of jurisdiction.

89. By purporting to "clarify" and "recommence" a long-expired approval that never commenced in the first place, the PSC exceeded its statutory and regulatory authority.

90. Much like a grocery clerk trying to appease the wealthy store owner by altering the "sell by" date stamps on expired milk, the PSC tried to re-package an abandoned approval as if it were still viable. But the rule's five-year limit exists precisely because circumstances change — new tenants move in, housing laws evolve, financial-harm standards tighten. The PSC itself adopted this time limit as a kind of regulatory health code, to prevent stale approvals from being passed off as safe. An approval that goes unused is like expired milk; it goes stale. No amount of regulatory "jiggery-pokery" can retrofit a decade-old permission onto a wholly different tenant population under a different regulatory framework.

91. For the foregoing reasons, the 2025 Order must be vacated as lacking jurisdiction.

II. The Landlord's 2024 Petition Was Time-Barred.

92. The five-year deadline in 16 NYCRR § 96.3(e) functions as a statute of limitations. It embodies the PSC's deliberate choice to provide finality and repose, ensuring that approvals not acted upon expire by design.

93. This expiration rule gives tenants certainty. They relied on the lapse of the 2011 approval to plan their lives and financial affairs. Reviving a dead authorization fourteen years

later is the regulatory equivalent of an ambush — undermining predictability, subverting the rule of law, and stripping tenants of the protections of the current Part 96.

94. Section 96.3(e) also mirrors the equitable doctrine of laches, shielding tenants from prejudice caused by a dilatory landlord who slept on his rights.

95. The prior landlord received approval in 2011, contingent on seven protective conditions. He did nothing. Fourteen years passed. Tenants reasonably assumed submetering was dead. They signed leases and renewals, and made financial decisions in reliance on that assumption.

96. Yet in 2025, the PSC resurrected the expired approval — in violation of its own rules, without any rate cap analysis, and without applying the updated financial harm test. Worse, the PSC eliminated every tenant-protective condition it had imposed in 2011. To call this substantial prejudice is an epic understatement, like calling a Category 5 hurricane "a bit of wind."

97. Tenants had no notice of these modifications, which were brokered in undisclosed backroom negotiations in Albany between the PSC and the Landlord from 2023 to 2025.

98. The PSC approved submetering in 2025 using a financial harm test last performed in 2009, which showed just over 50% of tenants would not be harmed by 2009 rates. But sixteen years had passed. During that time the PSC raised the financial harm threshold to 60%, inflation soared, fixed incomes shrank, climate extremes worsened, and tenants aged — children became adults, the middle-aged became seniors, and seniors became even more senior.

99. The PSC's action here is the very definition of irrationality, and is based on stale evidence, bias, and fallacy. To borrow from Winston Churchill, it is a sophistry, wrapped in a deception, inside a fallacy.

100. No rational regulator would impose a major new financial burden on 2,769 households using 16-year-old data under a superseded test. The result is regulatory sleight of hand: a decision where the rules don't apply, heating costs are waved away, protective conditions vanish, and even what never began can somehow be "recommenced."

101. The 2025 Order was not reasoned decision-making; it was a preordained outcome dressed up as regulation.

102. By treating the Landlord's modification petition as a mere "clarification," the PSC disregarded its own rules and eroded public confidence in the rule of law.

103. The five-year deadline is mandatory. It required a new petition under § 96.3(b), with current data, updated financial harm analysis, and full tenant notice. The Landlord's 2024 petition met none of these requirements.

104. The 2025 Order lacks a rational basis, is arbitrary and capricious, and must be vacated.

III. The PSC's 2025 Order Violated Part 96's Substantive Protections

105. The Landlord's 2024 filing was not a "clarification." It sought to eliminate mandatory conditions, alter submetering obligations, and revive an approval that had expired by operation of § 96.3(e). Substance, not labels, controls. Because this was a material modification, the PSC was required to treat it as a new petition under § 3.7(b), with full compliance with §§ 96.3 and 96.5. Its failure to do so rendered the 2025 Order defective.

106. The 2011 Order had expressly conditioned submetering on compliance with tenant protections codified in § 96.5 — including HEAP vendor registration, installation of thermostats, refrigerator replacements, completion of NYSERDA efficiency upgrades, rent offsets, education and counseling programs, HEFPA disclosures, and multiple notice requirements. These were not window dressing; they were prerequisites.

107. By 2024, nearly all of these conditions had been abandoned or diluted. Thermostat and appliance upgrades were incomplete, HEAP enrollment was dropped on the specious claim that unit heating was no longer electric, education was deferred, rent offsets never implemented, and HEFPA compliance undocumented. Yet the PSC approved submetering anyway, effectively converting mandatory rules into optional guidelines. That is not clarification; it is modification without lawful procedure.

108. The 2025 Order also disregarded the core affordability protections of Part 96. A valid petition must include: (1) a rate-cap analysis under § 96.1(i); (2) a financial harm review for vulnerable tenants under §§ 96.5(b), (k), (l); and (3) proof of tenant notice under § 96.6(c). None were provided.

109. By sidestepping these requirements, the PSC authorized submetering without the evidence-based safeguards that Part 96 demands. An agency may not disregard its own regulations. *See Big Tree Energy Partners v. Bradford*, 219 A.D.2d 27, 30 (3d Dept 1996).

110. The PSC's decision to treat the 2024 filing as a clarification while stripping away tenant protections was arbitrary, capricious, and contrary to law.

IV. Disaggregation Is a False Premise that Shifts Heating Costs to Tenants

111. The most consequential change in the 2025 Order was the disaggregation of baseboard heating from submetered plug load. This was never part of the 2011 approval. It

altered what is metered, how bills are calculated, and which protections apply. The PSC approved it by accepting the Landlord's assertions, even where contradicted by tenant evidence.

A. The Record Shows the Baseboard Heating System Is Defective.

112. Tenant complaints about inadequate heat are widespread, severe, and long-standing, rising to a breach of the implied warranty of habitability. Sworn affirmations describe apartments that remain cold in winter, malfunctioning thermostats, inoperable heaters, poor insulation, and gaps in exterior walls. Tenants survive only by using plug-in space heaters. Under disaggregation, those survival loads are billed directly to tenants, shifting the cost of defective heating and lack of insulation onto them. Yet the PSC simultaneously removed HEAP protections—an irrational choice given that HEAP enrollment imposes minimal burden on landlords but provides critical lifelines to tenants.

B. The Landlord's Thermostat Claims Are False.

113. In a sworn affidavit, the Landlord claimed tenants could set thermostats to 74°F. In reality, thermostats reset to 65°F by day and 62°F at night, many cannot be overridden, and all are remotely controlled by management. Tenant evidence—over 600 pages of sworn affirmations—shows widespread reliance on multiple plug-in heaters. The PSC nevertheless adopted the Landlord's fiction, using it to justify eliminating HEAP enrollment and disregarding contrary evidence.

C. Disaggregation Shifts Heating Costs to Tenants.

114. Because the baseboard heaters are ineffective and thermostat control illusory, disaggregation fails at its core premise: tenants are in fact billed for heat. To keep apartments habitable, tenants must rely on plug-in heaters, which are inefficient, costly, and fully metered.

This creates a two-tier system: landlord-controlled baseboards that are ineffective but "free," and tenant-purchased plug-in devices that actually keep apartments livable but come at crippling expense. In effect, tenants are billed for the landlord's failure to maintain energy-efficient buildings. The PSC endorsed this fiction, treating "heat" as a bookkeeping category instead of a survival necessity.

115. The PSC compounded its error by dismissing air conditioning as a discretionary luxury. For seniors, disabled tenants, and others with health conditions, cooling is a medical necessity, especially during extreme heat events. Treating it as nonessential contradicts both public health realities and the PSC's own duty to protect the public interest.

D. The PSC Ignored the Record.

116. Despite extensive evidence of heating failures, defective thermostats, and reliance on plug-in devices, the 2025 Order contains no analysis of how disaggregation affects bills, safety, or equity.

117. The PSC ignored 976 pages of tenant comments and affirmations submitted with the Amended Petition for Rehearing, instead adopting the Landlord's self-serving affidavits wholesale.

118. That omission, whether in the Order itself or the constructive denial of rehearing, deprived the proceeding of the evidence most relevant to tenant health, safety, and affordability.

E. The Harm to Tenants Is Real.

119. Tenants on fixed incomes, including Section 8 residents, cannot absorb winter bills estimated at $400 to $1,700 per month. The PSC's decision exposes vulnerable households to

arrears, eviction, stress, and anxiety, while shielding the Landlord from the cost of repairing his failed heating system, gaps in exterior walls, and lack of insulation.

120. Disaggregation was not clarification. It was a material modification, based on false claims, that eliminated core protections. Approving it without a new petition and full regulatory review was arbitrary, capricious, and unsupported by substantial evidence.

V. The PSC Collaborated with the Landlord

A. Procedural Imbalance and One-Sided Access.

121. The 2025 Order was the product of an imbalanced process, marked by extensive *ex parte* communications between the Landlord and PSC staff. Many of these interactions, referenced obliquely in the Order, occurred outside the public record, depriving tenants of any chance to rebut the Landlord's assertions.

122. From January through December 2023, the Landlord engaged in non-public communications with PSC staff. In early December, PSC attorneys and the Landlord's counsel began discussing the outlines of a proposed "clarification petition," followed by a pre-petition draft on March 12, 2024, and the formal filing on March 28, 2024.

123. Once the petition was filed, tenants were given only a sixty-day SAPA comment period. After that window closed, the Landlord continued submitting materials—including an October 8, 2024 "reply" letter and additional affidavits in late 2024 and early 2025. None were subject to tenant review or rebuttal.

124. One such affidavit, from Peter Curley, was never filed in the PSC's public DMM system but was nevertheless cited in the Order as central to its decision. It claimed thermostats are "programmable" by the tenants, though in reality they are remotely controlled and automatically reset to uncomfortable temperatures.

125. The decision-making process of the PSC was so brazenly one-sided that it lacked even a threadbare veil of due process, and instead stands naked in its bias.

B. Tenants Were Denied Due Process.

126. First, the PSC staff should not have assisted the Landlord's attorneys in drafting the petition for clarification in 2023 and 2024.

127. Second, the PSC should have denied the Landlord's petition for clarification of an order that expired in 2016 as time-barred under § 96.3(e).

128. Third, the PSC should have required the Landlord to follow the upgraded rules it promulgated in 16 NYCRR Part 96, and force the Landlord to file a new petition for permission to commence submetering at the Affected Buildings, and then provided all the safeguards to the tenants that are prescribed in Part 96, ultimately culminating in a public hearing.

129. But the PSC did not do any of this. Instead, the PSC collaborated with the Landlord for over a year in drafting his delusive petition, which allowed the Landlord to avoid the evidentiary and procedural protections for tenants of § 96.3 and § 96.5. Tenants were thereby not only denied the opportunity to meaningfully participate in a proceeding that directly affects their housing costs, safety, and risk of displacement, but were also denied any of the minimum protections embedded in the PSC's rules.

130. This mirrors the Supreme Court's admonition in *Motor Vehicle Mfrs. Ass'n v. State Farm, 463 U.S. 29 (1983),* that an agency rescinding—or in effect bypassing—a regulatory requirement must provide a reasoned analysis and consider alternatives, or risk acting arbitrarily and capriciously.

131. The 2025 Order plainly states that it has relied on materials submitted outside the formal comment process (limited to 60 days as it was), including responses to DPS-1, DPS-2,

and DPS-3, and factual assertions about, *inter alia*, building conditions, tenant education, building maintenance procedures, baseboard heating functionality, and thermostat operability. None were disclosed to tenants or subject to due process testing. By accepting unrebutted *ex parte* submissions while disregarding tenant evidence, the PSC violated lawful procedure and due process.

C. The PSC Adopted and/or Encouraged the Fiction of "Clarification".

132. The PSC's acceptance of the false "clarification" label was not a neutral procedural choice. A genuine "petition for clarification" seeks to resolve textual ambiguity, or accepts an existing order and seeks specific guidance on its implementation; it does not eliminate obligations, authorize new conduct, substantially modify a prior order, nor can it revive an approval that expired thirteen years earlier. The U.S. Supreme Court made clear in *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29 (1983), that agencies may not disguise substantive policy changes as mere procedural adjustments. An agency must articulate a rational explanation grounded in the relevant factors and must consider reasonable alternatives—or its action will be overturned as arbitrary and capricious.

133. Yet the Landlord's 2024 petition sought sweeping relief: resurrection of an expired approval, elimination of HEAP obligations, elimination of rent offsets, and approval of a disaggregated billing model never contemplated in 2011. These were material modifications. By accepting the false pretense of "clarification," the PSC enabled the Landlord to evade the requirements of §§ 96.3 and 96.5, and denied tenants the protections of a full petition process.

134. Most troubling is the thirteen months of pre-filing collaboration between PSC staff and the Landlord's attorneys. That coordination went beyond neutral agency assistance and

functioned instead to corrupt the regulatory process — effectively ensuring that the Landlord would be able to obviate a new submetering petition as Part 96 requires.

D. The PSC Relied on Secret Evidence.

135. The PSC's admitted reliance on at least two non-public affidavits violated the letter of the law that submetering documentation be filed with the Secretary and served on interested parties, but moreover it vitiated the spirit of arms-length regulation and fundamental fairness. This misconduct by the PSC rises to the level of a denial of due process under Article I, § 6 of the New York Constitution and the Fourteenth Amendment. *See Mathews v. Eldridge*, 424 U.S. 319 (1976); *Matter of Simpson v. Wolansky*, 38 N.Y.2d 391 (1975).

136. The PSC's reliance on undisclosed affidavits and other off-record materials also contravenes SAPA's command that findings rest "exclusively on the evidence" and officially noticed matters. *See* SAPA § 302(3). New York courts annul agency determinations that turn on extra-record material. *See Beverly Farms, Inc. v. Dyson*, 53 A.D.2d 720, 721 (3d Dep't 1976) (annulling determination based on extra-record documentary evidence). The PSC's off-record, pre-filing coordination with the Landlord, followed by reliance on undisclosed affidavits, deprived tenants of notice and a meaningful opportunity to rebut — and a fundamental denial of due process.

E. The PSC Abandoned Neutrality.

137. By treating the Landlord's petition to revive and materially alter an approval that had expired nine years earlier as a mere "clarification," the PSC evaded both the substantive requirements of § 96.5 and the procedural safeguards of § 96.3(e). It granted sweeping regulatory relief without transparency, public notice, or a proper evidentiary record. This was a fundamental departure from the PSC's own rules that denied tenants due process and

rendered the 2025 Order jurisdictionally defective. In effect, the PSC abandoned its mission as a protector of the public interest and departed from neutrality and aligned instead itself with the wealthy Landlord, issuing one-sided relief no impartial regulator could lawfully provide.

138. For these reasons, the Order must be vacated.

VI. The Appearance of Bias Alone Is Sufficient to Warrant Vacatur

139. The defects in process and reasoning described above are not isolated lapses but symptoms of a structural failure in regulatory neutrality. The PSC's handling of this matter creates a legitimate appearance of bias and favoritism that undermines public confidence in its role as a neutral regulator.

140. The PSC's reliance on undisclosed affidavits and off-record submissions to resolve disputed facts violates fundamental due process. *See Greene v. McElroy*, 360 U.S. 474, 492–98 (1959) (due process prohibits administrative fact-finding based on secret evidence).

141. The PSC's endorsement of the Landlord's legal fictions — that an expired approval could be revived and substantially modified nine years after is expired — without critical scrutiny, precedent, or jurisdictional justification reflects an outcome-driven process rather than one grounded in law.

142. The governing standard for judicial review of the PSC's decision is not proof of actual bias, but whether a reasonable observer could conclude that the agency acted with favoritism.

143. By collaborating with the Landlord to advance his profit-seeking interests while excluding tenants from meaningful participation in the due process of regulation, the

Commission created such an overwhelming appearance of bias, partiality, and favoritism, that warrants vacatur of the 2025 Order.

VII. Significant Legal and Factual Changes Render the 2025 Order Invalid

144. Profound legal, factual, and party changes have occurred since the Commission's 2011 submetering approval — changes the Commission ignored in issuing its 2025 Order. The failure to address these significant changes renders the Order unlawful, irrational, arbitrary and capricious, and contrary to common sense.

A. Unjust Claim Preclusion for Current Tenants.

145. Many current tenants—particularly in market-rate units—were not residents of the Affected Buildings during the 2008–2011 proceedings. They received no notice of the original submetering petition and had no opportunity to be heard.

146. Binding them to an expired approval, to which they were not parties, violates basic principles of due process: collateral estoppel cannot bind non-parties who lacked notice and a meaningful opportunity to participate. *See Matter of Reilly v. Reid*, 45 N.Y.2d 24, 28–29 (1978).

147. These due process violations constitute "new circumstances warranting a different determination" under 16 NYCRR § 3.7(b), and further confirm that a new petition is legally required.

B. The 2019 Regulatory Agreements Created New Obligations.

148. When the Landlord purchased the Affected Buildings in 2019, he executed at least four Regulatory Agreements with HPD and the City of New York, receiving substantial tax benefits in exchange for setting aside affordable apartments to be treated as rent-stabilized units. These agreements were not part of the 2011 record and impose ongoing obligations akin

to rent stabilization—facts that materially alter the regulatory landscape and the scope of tenant protections since the prior approval.

149. Upon information and belief, the Landlord has failed to provide tenants with any of the affordable housing and rent-stabilization protections promised to them under the 2019 Agreements. The existence — and apparent breach — of the 2019 Agreements underscores the irrationality of relying on an expired 2011 approval and highlights the wisdom in the Part 96 requirement of a new petition that fully accounts for current circumstances.

C. The Public Service Law Changed in 2024.

150. Several key amendments to the Public Service Law were enacted in 2024, each creating substantive new rights for tenants:

1) **PSL § 40(1):** Requires landlords to offer third-party billing notification.

2) **PSL § 41(1):** Limits back-billing to no more than two months.

3) **PSL § 44(7):** Requires disclosure of two years' billing and usage history.

151. The 2025 Order fails to address any of these new statutory mandates. The approved submetering plan includes no mechanism to limit retroactive billing, provide usage history, or implement third-party notifications. By ignoring these recently enacted consumer protections, the PSC effectively authorized a billing scheme that violates current law and exposes tenants to unauthorized charges. These omissions underscore the irrationality of the PSC's decision to forego a new petition that complies with present-day statutory requirements.

D. The Good Cause Eviction Law Was Enacted in 2023.

152. The 2023 enactment of New York's Good Cause Eviction Law (RPL § 213-c) caps annual rent increases at the lesser of 10% or 5% plus local CPI. Based on shadow bills from 2009, submetering would cause effective rent hikes of 17% to 50%, far exceeding these limits.

153. The Commission made no findings addressing the Good Cause Eviction Law or whether the proposed charges would comply with its protections. This legal omission further invalidates the Order as irrational.

E. Conclusion.

154. The tenant population, regulatory obligations, and statutory landscape have fundamentally changed since 2011. By ignoring these developments, the PSC treated a materially different situation as though nothing had changed over fourteen years. This disregard for both law and fact renders the 2025 Order arbitrary and capricious under CPLR § 7803(3), and a denial of due process under Article I, § 6 of the New York Constitution. The Order must be vacated, and any future consideration of submetering must begin with a new petition under the current legal framework.

VIII. The Commission Applied an Obsolete Financial Harm Test from 2009

155. One of the most serious defects in the 2025 Order is its reliance on a financial harm analysis last performed in 2009. That analysis, conducted under outdated standards and economic conditions, cannot legally support a submetering approval in 2025. The financial harm test is the central safeguard in the PSC's submetering framework, designed to ensure tenants are not burdened with unaffordable electricity costs.

156. Applying a 2009 test to a 2025 tenant population, under radically changed housing and energy conditions, not only violates PSC regulations and due process but also defies common sense.

A. The Governing Law Has Changed.

157. The financial harm standard cited by the PSC in 2025 came from a 2010 Order, which under the rules then in effect allowed submetering if 50% of tenants were projected to experience no financial harm.

158. In 2012, however, the PSC amended § 96.5(l)(3), raising the threshold to 60% and requiring the use of recent, apartment-level shadow billing or comparable data.

159. The PSC itself emphasized the importance of the new 60% standard when it adopted it in 2012:

> Because landlords could not forecast definitive annual financial impacts on low-income customers, we are increasing the baseline percentage to 60% to recognize the likelihood of inaccuracies. *Memorandum and Resolution Adopting Residential Electric Submetering Regulations*, Case 11-M-0710, Public Service Commission (Dec. 18, 2012), at 26.

B. The 2009 Data Does Not Meet the Current Financial Harm Standard.

160. The 2025 Order contains no updated financial harm data, no finding that 60% of current tenants would avoid harm, and no explanation for ignoring the current regulatory standard.

161. The 2025 Order justified approval by relying on a 2009 financial harm test, which found that only about 51% of tenants at that time would avoid harm. That outdated figure was then used to justify submetering in 2025.

162. Assuming *arguendo* that the exact same financially at risk people on fixed incomes still have the same income level sixteen years later, and further assuming *arguendo* that the

electricity costs have not gone up, then that 2009 population would fail the 2025 financial harm test because 51% unharmed is below the 60% unharmed threshold in use today.

163. Of course, it is impossible to know what is going on in 2025, until you measure the current tenant population, compare the current electricity costs, and complete a new financial harm test.

164. But the PSC did not do this. Instead they issued the 2025 Order based upon a financial harm test from 2009 that would itself fail the 60% threshold in 2025 to approve submetering, which is a decision so irrational that calling it merely "arbitrary and capricious" is insufficient. It is untethered from logic and reason — the very definition of arbitrary decision-making. Such irrationality warrants vacatur. *See Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983) ('[A]n agency rule would be arbitrary and capricious if the agency has… entirely failed to consider an important aspect of the problem…').

165. Section 96.5(l)(3) requires a new demonstration, with current data, that most tenants will pay less under submetering than the rent reduction they receive. *See* 16 NYCRR § 96.5(l)(3) (requiring demonstration that at least 60% of tenants will experience no adverse bill impact, based on recent, apartment-specific usage data). The 2025 Order contains no such demonstration and instead rests on expired assumptions, rendering it arbitrary and capricious.

C. No Financial Harm Analysis Was Performed in 2025.

166. The current tenant population — which includes Section 8 households, senior citizens, and low-income tenants — was not part of the 2011 proceeding and had no opportunity to contest the earlier findings. Yet the PSC imposed submetering on them based on stale, unauthenticated projections. This procedural shortcut violates due process and fails the "rational basis" requirement under CPLR Article 78.

D. Conclusion.

167. Submetering cannot lawfully proceed without a new financial harm analysis that complies with § 96.5(l)(3), reflects present-day conditions, and accurately measures tenant vulnerability under the 60% standard. The PSC's reliance on expired data, a defunct threshold, and an outdated tenant profile renders the 2025 Order arbitrary, capricious, and unlawful under both agency regulations and CPLR Article 78.

IX. The 2025 Order Must Be Vacated for Noncompliance with Part 96

168. The 2025 Order is legally deficient because it fails to comply with the mandatory requirements of 16 NYCRR §§ 96.3 and 96.5. These provisions are binding rules designed to protect tenants from unaffordable utility costs and to ensure procedural fairness. The PSC's disregard of them renders the Order invalid.

A. The PSC Failed to Apply § 96.5(k).

169. Most critically, the PSC failed to apply § 96.5(k), which mandates specific findings whenever 20% or more of a building's tenants receive income-based housing assistance. Section 96.5(k) requires the PSC to: (1) determine the percentage of tenants receiving income-based housing assistance; (2) conduct a financial harm and affordability analysis specific to those tenants; and (3) identify and implement additional consumer protections, if necessary. None of these findings appear in the Order.

170. This omission is especially egregious given the PSC's own findings in 2011, which acknowledged that the Affected Buildings had high percentages of Section 8 voucher holders. At that time, 292 households were identified as receiving rental assistance, and other subject complexes had assisted-tenant rates ranging from 65% to 77%. cGiven these figures, the

current tenant population almost certainly meets or exceeds the 20% threshold. The PSC's failure even to mention § 96.5(k)—let alone apply it—is a reversible legal error.

171. Section 96.5(k) was adopted precisely to safeguard subsidized and low-income tenants from being forced into unaffordable electricity costs. The PSC's refusal to apply this protection in buildings known to house hundreds of Section 8 families is not a minor oversight but a direct violation of the consumer-protection framework the agency itself created.

B. The PSC Failed to Mandate Compliance with Part 96.

172. The Order also fails to mandate compliance with other critical protections of Part 96, including: the rate cap; HEFPA compliance planning; tenant notification before and after petition filing; and an explanation of rent-reduction mechanics.

173. Instead, the Order refers vaguely to tenant education and energy audits, yet provides no documentation or findings to demonstrate that the technical and legal prerequisites of Part 96 have been met.

C. Conclusion.

174. These cumulative omissions deprive tenants of the protections guaranteed by law and reflect a systemic failure to evaluate the 2024 submetering proposal under the applicable regulatory framework. Without the required findings, notices, and analytical determinations, the PSC's Order lacks a lawful foundation and must be vacated.

X. The Landlord's Submetering Plan is a Profit-Making Scheme.

175. The landlord's submetering plan is not a conservation measure but a scheme to extract extraordinary profits from low- and middle-income tenants.

176. According to his own filings, he purchases electricity in bulk from Con Edison at wholesale rates of $0.12–$0.18 per kilowatt-hour ("kWh"), and will resell it to tenants at $0.32–

$0.38 per kWh — a markup of 78% to 216%. *See* DMM Item No. 163, Ex. 5; DMM Item No. 164, pp. 6–7.

177. This markup violates 16 NYCRR § 96.1(i), which prohibits charging submetered tenants more than similarly situated direct-metered residential customers—known as SC-1 customers—under Con Edison's residential tariff in East Harlem and Roosevelt Island.

178. The first step in reviewing the Landlord's submetering petition should have been to determine the applicable SC-1 residential tariff and set that amount as a rate cap. But this was never done in direct violation of § 96.1(i).

179. In East Harlem, the SC-1 residential rate is approximately $0.22 per kWh—substantially lower than the $0.32–$0.38 per kWh authorized by the PSC in this proceeding.

180. The PSC made no finding of the applicable SC-1 rate, no showing of compliance with § 96.1(i), and no effort to establish a rate cap—departing from its own rules, procedures, and precedent.

181. The Landlord projects submetering will generate approximately $1.8 million in annual profit. See DMM Item No. 163, Ex. 5. That figure, drawn from the Landlord's own filings, likely understates his true profit, but it establishes that his scheme is designed to produce recurring private income for himself, rather than promote any conservation benefits. This projection also omits indirect gains, such as shifting utility cost burdens off the Landlord and onto public housing subsidies.

182. The burden on tenants and taxpayers is far greater, and was never considered by the PSC. Based on recent affirmations and tenant data, between 30% and 50% of households in the affected buildings receive Section 8 or other rental assistance.

183. At the Landlord's inflated rates for electricity, federal subsidy payments are estimated to increase by $1.1 million per month just for electricity — more than $10 million annually — without any regulatory scrutiny or oversight. The landlord holds complete voucher data, verified with HPD, DHCR, and HUD, yet the PSC never inquired into the impact the proposed electricity rates would have on tenants or taxpayers.

184. The financial consequences for tenants are extreme. Shadow bills from 2009 showed electric charges of $300 to $1,200 per month (the last time tenants received shadow bills); adjusted for sixteen years of inflation, equals $441 to $1,765 in 2025 — eviction-level costs.

185. Governor Kathy Hochul recently called an 11.4% Con Edison rate hike "unaffordable." Here, the PSC approved a scheme that multiplies tenant electricity costs several times over, in direct violation of its mandate to ensure affordability.

186. The PSC approved this plan without imposing a rate cap, requiring a compliant pricing plan, or conducting the hardship and affordability analyses mandated by Part 96. These omissions violate 16 NYCRR §§ 96.1(i), 96.5(l)(3), and 96.5(k), as well as PSL § 65, and are arbitrary and capricious under settled law. *See Matter of Charles A. Field Delivery Serv., Inc. v. Roberts*, 66 N.Y.2d 516, 520 (1985).

187. The 2025 Order thus permits the landlord to act as an unregulated utility, extracting millions in private profit while shifting tens of millions of dollars in costs onto low-income tenants and taxpayers, without providing functional heating, energy efficiency, or rent offsets.

188. The Order must be vacated—or at minimum, remanded for a full evidentiary rehearing requiring a lawful rate cap, a current financial harm analysis under § 96.5(l)(3), and full compliance with all procedural and substantive protections in Part 96.

XI. The Landlord Concealed the Regulatory Agreements from the PSC

189. In 2019, when he purchased the Affected Buildings, the Landlord entered into binding Regulatory Agreements with the City of New York and HPD. These agreements generally require that a substantial percentage of units be treated "as if" rent-stabilized — meaning rent increases must track those set by the Rent Guidelines Board (RGB) — in exchange for tax benefits estimated at $3–5 million per year per complex.

190. These obligations create enforceable affordability protections, but the Landlord failed to disclose these obligations to the PSC and, upon information and belief, has not complied with the affordability commitments he made under the agreements.

191. As a result of this non-disclosure, the PSC was unable to evaluate the landlord's binding obligation not to raise rents above rent-stabilized limits, nor his apparent breach of those obligations, when reviewing the submetering petition.

192. Despite the obvious relevance of these agreements to whether submetering is affordable or lawful, the landlord omitted them entirely from his 2024 petition. Nor did he inform the PSC of the conflict between shifting essential heating and cooling costs to tenants and his obligation to preserve affordability under the agreements. This omission deprived the PSC of critical information and left it with an incomplete and misleading record.

193. The 2025 Order contains no findings on how submetering can be reconciled with the affordability mandates in the Regulatory Agreements. Under the landlord's plan—approved by the PSC—essential electricity costs are transferred to tenants in a manner functionally equivalent to a rent increase, in direct conflict with his obligation to follow RGB limits. Across the affected buildings, approximately 1,600 units are supposed to be treated as rent-stabilized, yet the PSC never addressed how submetering undermines those protections.

194. Part 96 prohibits submetering approval unless a property complies with all applicable housing laws. By allowing submetering while ignoring binding affordability restrictions, the PSC effectively converted Part 96 from a tenant-protection framework into a vehicle for evasion.

195. Because the 2025 Order was issued on a materially incomplete record, without disclosure or analysis of the 2019 Regulatory Agreements, it is arbitrary, capricious, and unlawful, and must be vacated.

XII. The Landlord Is Unfit to Be a Submeterer

196. The PSC dismissed tenant habitability complaints as "outside its jurisdiction." *See* 2025 Order at 23. That framing misstates the issue. Tenants did not ask the PSC to order repairs. They asked the PSC to deny submetering authority to a landlord demonstrably unfit to assume it. Submetering is not a mere billing change; it entrusts a landlord with responsibilities akin to a utility provider, with power to set electricity rates. A landlord in chronic breach of the warranty of habitability cannot be entrusted with that role.

197. In explaining its decision, the PSC employed a straw man fallacy—misstating the issue as a request for repairs, then dismissing it as outside its jurisdiction. But that was never the tenants' claim. This is not harmless error; it is a purposeful misdirection that evades the real issue. Courts have long held that agency determinations must address the arguments actually raised—not distortions of them. *See Matter of Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974) (agency decisions must be rationally based on the relevant facts and issues). Here, the PSC mischaracterized tenant evidence of landlord unfitness as a misguided request for a repair order—when in fact, tenants submitted 976 pages of comments and affirmations establishing

that the landlord is unfit to assume utility-like responsibilities. An order resting on such distortion is not rational under New York law and must be vacated.

A. Sworn Tenant Affirmations Show Widespread Habitability Violations.

198. In support of their Amended Petition for Rehearing, tenants submitted 976 pages of complaints, comments, and sworn affirmations documenting chronic habitability violations across all Affected Buildings. Executed under CPLR 2106, these affirmations are admissible as evidence in New York courts. They are not mere public comments, but sworn testimony.

199. The affirmations reveal systemic failures: 83% reported cold apartments; 82% a lack of heat; 75% nonfunctional thermostats; 75% drafts through walls and windows; 73% baseboard heaters not working in one or more rooms; 72% inadequate insulation; 72% lack of hot water; 67% lack of water entirely; 64% chronic elevator outages; 59% infestations; and substantial reports of leaks, mold, and ignored repair requests. These sworn statements document conditions inconsistent not only with habitable housing, but with any standard of fitness to operate a submetered system.

B. HPD Violations Confirm Unfitness.

200. In May 2025, petitioners obtained certified HPD violation summaries across all three Schomburg Plaza buildings. These records include widespread Class B and C violations—including unsafe electrical wiring, broken smoke detectors, lead paint, rodent infestation, nonfunctioning heating systems, and mold.

201. This evidence further rebuts the landlord's sworn claims and the PSC's findings of habitability. A building complex with pervasive Class B and C violations is *per se* unfit to submeter under Part 96, which requires fair and non-burdensome treatment of tenants.

C. New Tenant Complaints Reinforce Unfitness.

202. After the issuance of the 2025 Order, petitioners gathered an additional 73 affirmations from Schomburg Plaza tenants, 60 from tenants of Miles and Parker, and a petition signed by 157 residents of Miles and Parker opposing submetering—all submitted as exhibits to the Amended Petition for Rehearing. These affirmations again contradict the PSC's findings, describing persistent cold, broken heaters and thermostats, reliance on plug-in heaters, unsafe wiring, and increased usage by medical devices.

203. Tenants also testified that air conditioning is not a luxury but a necessity, particularly for seniors, disabled residents, and those with serious medical conditions. In an era of recurring extreme heat events, PSC's treatment of cooling as discretionary contradicts both public health realities and its own policies.

D. Chronic Habitability Violations Prove Unfitness.

204. Part 96 requires that submetering be fair, accurate, and non-burdensome. *See* 16 NYCRR §§ 96.1(i), 96.5(l)(3), 96.5(k). Submetering in unsafe, drafty, and underheated buildings unfairly shifts costs onto tenants forced to use plug-in heaters and medical devices simply to survive. It unfairly penalizes tenants for the Landlord's refusal to maintain habitable conditions—forcing them to shoulder utility burdens created by management's own failures.

205. By dismissing sworn affirmations, certified HPD violations, and petitions from hundreds of residents as "outside its jurisdiction," the PSC avoided the central question of Landlord fitness. This reasoning was arbitrary, capricious, and a misapplication of Part 96. The 2025 Order must be vacated, or at minimum reheard with full consideration of tenant evidence.

XIII. Relief Required Under CPLR Article 78

206. As demonstrated above, the PSC's April 28, 2025 Order is arbitrary and capricious, lacks a rational basis, and is tainted by errors of law.

207. In summary, the PSC revived an expired approval in violation of its own regulations; ignored 976 pages of tenants comments, complaints, and sworn affirmations; accepted *ex parte* submissions from the landlord while disregarding contrary evidence; failed to apply updated statutory and regulatory standards; and removed key tenant protections mandated by its own regulations without a legal basis. No explanation was provided for this action, because none exists.

208. Under CPLR 7803(3), such a determination cannot stand. A decision resting on mischaracterizations, undisclosed evidence, and departures from binding rules lacks a rational basis and must be annulled. *See Matter of Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974); *Matter of Charles A. Field Delivery Serv., Inc. v. Roberts*, 66 N.Y.2d 516, 520 (1985). An agency must articulate a reasoned basis for its decision and adhere to its own rules.

209. Under *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983), an administrative decision must be vacated where the agency fails to explain its departure from existing rules, relies on obsolete data, acts with apparent bias, or fails to consider important aspects of the problem. The 2025 Order must be vacated because:

1) The PSC departed from its own regulations without explanation;
2) It relied on outdated data from 2009–2011 rather than current facts;
3) Its decision reflects bias and favoritism rather than neutral rulemaking; and
4) It failed to require the landlord to file a new petition under 16 NYCRR § 96.3(e), as the law mandates.

210. Based on the foregoing, Petitioners therefore respectfully request that the Court:

1) Annul and vacate the PSC's April 28, 2025 Order in its entirety;

2) Declare that the landlord may not implement submetering absent approval of a new, fully compliant petition under current law; and

3) Grant interim relief under CPLR 6301–6313 enjoining the landlord from imposing submetered charges pending the resolution of this proceeding.

XIV. CPLR 506(b)(2) Is Unconstitutional as Applied, and as Written

211. Petitioners allege that CPLR 506(b)(2), which purports to mandate venue in Albany County for actions against the PSC, is unconstitutional both on its face and, at minimum, as applied to the circumstances of this case. On its face, the statute displaces otherwise applicable venue protections in the CPLR and creates structural barriers to judicial review of agency action. At minimum, as applied here, it imposes burdens that deprive Petitioners of their constitutional rights to due process and equal protection.

212. By requiring predominantly low- and middle-income tenants of New York County to litigate their claims 150 miles away in Albany County, the statute deprives Petitioners of meaningful access to the courts. The forced relocation of this proceeding to a distant forum imposes prohibitive costs and burdens on working-class tenants who already face imminent risk of eviction and financial harm from the challenged submetering scheme. Such geographic and economic barriers violate Petitioners' rights to due process and equal protection under Article I, §§ 6 and 11 of the New York Constitution and the Fourteenth Amendment to the United States Constitution.

213. The disparate impact of CPLR 506(b)(2) falls most heavily on Petitioners, who are overwhelmingly Black and Hispanic residents of Harlem and Roosevelt Island. According to

demographic data, Albany County is approximately 71% white. Forcing Petitioners to litigate outside their home community removes their claims from a court system familiar with the lived realities of New York City tenants — including chronic housing violations, submetering disputes, and the dynamics of large-scale landlord-tenant conflicts.

214. It also strips Petitioners of the practical support of their own communities, elected officials, local judges, and local press, effectively muting the visibility of their struggle. This racially disparate impact, layered atop the economic burdens described above, raises serious concerns under the Equal Protection Clauses of both the New York Constitution (Art. I, § 11) and the Fourteenth Amendment to the United States Constitution.

215. This case presents a question of first impression: whether CPLR 506(b)(2) may constitutionally override conflicting venue rules in CPLR 502, 503, and 510(3), when the PSC is sued alongside a private Landlord doing business in New York County, where the affected buildings are located, the tenants reside, and where the harm will occur. Forcing Petitioners to litigate in Albany under these circumstances effectively shields the PSC from local accountability and erects an unequal barrier against tenants seeking redress.

216. As Petitioners' Affirmation of Proper Venue explains, CPLR 502, 503, and 510(3) otherwise anchor venue in New York County, where the operative facts and witnesses are found.

217. If this Court reads CPLR 506(b)(2) as overriding other venue provisions, this transforms this case from a fair hearing on the merits in a local forum into an upstate proceeding divorced from the communities most affected, and which imposes an impracticable economic burden on financially constrained Petitioners. This result denies

Petitioners the fundamental fairness and "meaningful opportunity to be heard" that due process requires.

218. Accordingly, CPLR 506(b)(2) cannot constitutionally be applied to compel transfer of this proceeding to Albany County, and venue must remain in New York County.

219. Even if this Court is reticent to declare CPLR 506(b)(2) unconstitutional, the statute can and should be construed in harmony with the remainder of the CPLR. Courts are obligated, wherever possible, to interpret statutes to avoid constitutional infirmity. See People v. Liberta, 64 N.Y.2d 152, 171 (1984) ("When a statute is susceptible of two constructions, one of which would render it unconstitutional, the courts should adopt the construction which upholds its validity.").

220. Read in that light, CPLR 506(b)(2) does not displace other venue provisions, such as CPLR 502, 503, and 510(3), when — as here — a state agency is sued alongside private respondents located in New York County. Rather, the statute should be understood to establish Albany County as a default venue for agency-only proceedings, while preserving local venue where mixed public and private respondents are involved. This interpretation gives full effect to all statutory provisions, avoids unnecessary constitutional conflict, and ensures that Petitioners' claims may be heard in the county where the operative facts arose.

XV. Petitioners Are Entitled to Injunctive and Declaratory Relief

221. Because Petitioners have established irreparable harm, a likelihood of success on the merits, and that the balance of equities favors equitable relief, the Court must annul the 2025 Order and enjoin the Landlord from implementing submetering at the Affected Buildings. The record establishes that the Landlord is demonstrably unfit to assume the responsibilities of a submeterer — responsibilities akin to those of a regulated utility provider.

222. A landlord in chronic breach of the warranty of habitability, who conceals binding regulatory agreements, ignores rent stabilization obligations, and misrepresents material facts to the PSC, cannot lawfully or equitably be entrusted with the power to meter, bill, and disconnect tenants for essential electricity service.

A. Irreparable Harm to Tenants.

223. Absent judicial intervention, the Landlord has announced his intent to begin submetering as soon as September 1, 2025. If allowed, tenants will immediately face unlawful, inflated electricity charges ranging from $400 to $1,700 per month — eviction-level bills that cannot later be undone. The harm is not limited to financial loss.

224. For the 30–50% of tenants in the Affected Buildings receiving Section 8 or other rental assistance, the consequences are catastrophic. Section 8 vouchers are tied to the apartment. If a tenant is evicted for nonpayment of inflated electricity charges, the voucher terminates. The evicted tenant must then reapply, a process that can take months or years, during which the tenant remains unassisted and at risk of homelessness. Many never regain their subsidy.

225. Beyond subsidy termination, the threat of eviction will create pervasive fear and anxiety. Families will ration or avoid essential electricity use, even in life-threatening circumstances. Elderly and disabled tenants will be forced to curtail use of essential medical equipment—including CPAP machines, nebulizers, and air conditioners during heat waves—placing them at risk of serious illness or death. The psychological burden—fear, stress, and uncertainty—is itself irreparable and compounds the physical danger.

226. Courts have long recognized that eviction, loss of housing subsidies, and threats to health and safety constitute irreparable harm because they cannot be adequately compensated

by money damages. No award of damages can restore a lost subsidy or undo the destabilization of a family's housing. Likewise, the anxiety and fear caused by the prospect of eviction, or the need to forego heat and cooling to avoid arrears, are harms that the law recognizes as irreparable. For these reasons, equitable relief is essential to prevent unlawful submetering from proceeding. There is no adequate remedy at law.

B. Likelihood of Success on the Merits.

227. As stated more fully above, the PSC's 2025 Order revived an expired approval, eliminated mandatory tenant protections, authorized charges exceeding the SC-1 rate cap in violation of § 96.1(i), relied on extra-record evidence, and ignored 976 pages of tenant complaints, comments and affirmations. These failures violate multiple provisions of law and satisfy every ground for annulment under CPLR 7803(3).

C. The Balance of the Equities Favors Petitioners.

228. The balance of hardships overwhelmingly favors tenants. The Landlord has delayed submetering for 14 years and faces no material prejudice from further delay. By contrast, tenants face enormous electric bills, possible eviction, utility shutoffs, health emergencies, and loss of Section 8 vouchers, and subsidy disruptions if the scheme proceeds.

229. Equity demands that the Court preserve the *status quo* until the merits of this petition are fully adjudicated. Doing otherwise would irreparably harm tenants before any judicial review can occur.

D. Emergency Circumstances.

230. This is an emergency application. The Landlord has stated his intention to begin billing for submetered electricity as soon as September 1, 2025. Without immediate judicial intervention, tenants will be exposed to unlawful charges and cascading harms before the

Court can render a final decision. A temporary restraining order (TRO) is therefore essential to prevent irreparable injury and preserve the Court's jurisdiction to provide meaningful relief. Absent a TRO, Petitioners will be irreparably harmed before the Court can adjudicate the legality of the Order—defeating the very purpose of this proceeding.

E. Declaratory Relief as to Landlord's Unfitness to Submeter.

231. Based upon the record before this Court, and in addition to annulling the PSC's 2025 Order, Petitioners seek a declaratory judgment under CPLR 3001 that the Landlord is unfit to serve as a submeterer.

232. Submetering entrusts a landlord with responsibilities equivalent to those of a regulated utility: metering, billing, and the power to terminate essential electricity service.

233. The record establishes that this Landlord — having chronically breached the warranty of habitability, concealed binding Regulatory Agreements, ignored rent-stabilization mandates, and misrepresented material facts to the PSC — is unfit to exercise such authority.

234. A declaratory judgment confirming the Landlord's unfitness will resolve a live legal controversy, clarify the parties' rights, and give binding effect to this Court's findings in future regulatory proceedings—preventing recurrence of the same dispute and protecting tenants' rights under Part 96 and the Public Service Law.

CONCLUSION and PRAYER FOR RELIEF

For the reasons set forth above, the PSC's April 28, 2025 Order is procedurally defective, substantively flawed, and legally unsustainable. It was issued in violation of the PSC's own regulations, relied on an expired and materially altered approval, failed to consider significant new facts, laws, and evidence, and deprived tenants of the procedural and substantive protections guaranteed by 16 NYCRR Part 96. The PSC's refusal to enforce

mandatory provisions, its acceptance of unsupported representations by the Landlord, and its disregard of governing precedent require that the Order be vacated in its entirety to prevent irreparable harm and restore public confidence in regulatory integrity.

WHEREFORE, Petitioners respectfully request that this Court:

1. Vacate the April 28, 2025 Order in its entirety as issued without jurisdiction, *ultra vires*, and *void ab initio* under § 96.3(e);
2. Declare, pursuant to CPLR § 3001, that the Landlord is unfit to serve as a submeterer;
3. Declare that CPLR 506(b)(2) is unconstitutional on its face, or in the alternative, at minimum, is unconstitutional as applied to Petitioners under the circumstances of this case, and hold that venue properly lies in New York County pursuant to CPLR §§ 502, 503, and 510(3).
4. Enjoin Respondent Landlord from assuming the responsibilities of a utility provider—including metering, billing, or disconnecting submetered service—by issuing:
    a. A temporary restraining order pursuant to CPLR § 6313,
    b. A preliminary injunction pursuant to CPLR § 6301, and
    c. A permanent injunction upon final judgment;
5. Alternatively, remand the matter for a full rehearing under 16 NYCRR § 3.7 and § 3.8, requiring the Landlord to submit a compliant submetering petition subject to all mandatory safeguards of Part 96;

6. Order that any such rehearing include a new financial harm analysis using current data, a complete rate cap analysis, verified tenant notice, HEFPA implementation, rent reduction mechanisms, and findings regarding income-based assistance households;

7. Grant such other and further relief as this Court deems just and proper to protect tenant rights, enforce regulatory standards, and uphold the public interest.

SIGNATURE BLOCK

Dated: New York, New York
September 17, 2025

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F. William Salo, Esq.
Attorney for Petitioners
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Fax: 212-517-3055
Email: billsalo@salolaw.com

VERIFICATION PAGE

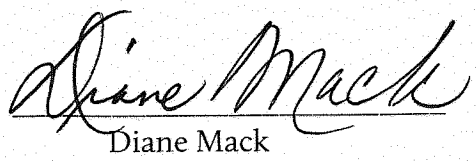
of Petitioner DIANE MACK

I, **DIANE MACK** affirm under penalty of perjury:

I am one of the Petitioners in the within proceeding. I have read the foregoing Amended Verified Petition and know the contents thereof. The same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

I affirm that pursuant to CPLR 2106, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: New York, New York
September 17, 2025



Diane Mack

Case Title: ***Diane Mack, et al., v. Pub. Serv. Comm'n, et al.***

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Verification Page of

Petitioner Bridgette Scott

for the Amended Petition

I, **Bridgette Scott** affirm under penalty of perjury:

I am one of the Petitioners in the within proceeding. I have read the foregoing Amended Verified Petition and know the contents thereof. The same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

I affirm that pursuant to CPLR 2106, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: New York, New York

9/19, 2025

Case Title: ***Diane Mack, et al., v. Pub. Serv. Comm'n, et al.***

Index No.: 161411/2025

Verification Page of

Petitioner JOYCE SHORT

for the Amended Petition

I, **Joyce Short** affirm under penalty of perjury:

I am one of the Petitioners in the within proceeding. I have read the foregoing Amended Verified Petition and know the contents thereof. The same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

I affirm that pursuant to CPLR 2106, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: New York, New York
9/19, 2025

Joyce Short

VERIFICATION PAGE

of Petitioner LEONA FREDERICKS

I, **Leona Fredereicks** affirm under penalty of perjury:

I am one of the Petitioners in the within proceeding. I have read the foregoing Amended Verified Petition and know the contents thereof. The same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

I affirm that pursuant to CPLR 2106, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: New York, New York
9/21, 2025

Leona Fredericks