STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on February 12, 2026

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
James S. Alesi
David J. Valesky
John B. Maggiore
Uchenna S. Bright
Denise M. Sheehan
Radina R. Valova

CASE 08-E-0836 – Petition of Frawley Plaza, LLC to submeter electricity at 1295 Fifth Avenue, 1309 Fifth Avenue, and 1660 Madison Avenue, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc., filed in C 26998.

CASE 08-E-0837 – Petition of Metro North Owners, LLC to submeter electricity at 1940-1966 First, and 420 East 102nd Street, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc., filed in C 26998.

CASE 08-E-0838 – Petition of North Town Roosevelt, LLC to submeter electricity at 510-580 Main Street, Roosevelt Island, located in the Territory of Consolidated Edison Company of New York, Inc., filed in C 26998.

CASE 08-E-0839 – Petition of KNW Apartments, LLC to submeter electricity at 1890 Lexington Avenue and 1990 Lexington Avenue, New York, NY located in the territory of Consolidated Edison Company of New York, Inc., filed in C 26998.

ORDER DENYING PETITION FOR REHEARING AND STAY

(Issued and Effective February 18, 2026)

BY THE COMMISSION:

INTRODUCTION

By petition dated May 28, 2025, the Schomburg Residents' Council, Inc. (SRC or Petitioner), by attorney F. William Salo, President of the Board of SRC, seeks rehearing and a stay of the April 28, 2025 Order issued in these proceedings.[1] On May 30, 2025, SRC provided "new" exhibits to its petition. On June 2, 2025, allegedly in accordance with Mr. Salo's responsibilities under 22 NYCRR §1200.3-3 of the New York Rules of Professional Conduct, SRC filed an amended petition (Petition) purporting to correct a number of "inadvertently inaccurate" citations and representations.[2] The Petition allegedly corrects citations to cases, to provisions in 16 NYCRR Part 96, and to the Commission's 2012 Memorandum and Resolution adopting the then-new (and currently effective) Part 96 regulations. In its June 2 filing, SRC noted that the Petition reflects language changes required to "align with the corrected citations, improve readability and clarity or to ensure internal consistency," and that no factual assertions or substantive arguments were changed.[3]

According to SRC, it represents the tenants at a three-building apartment complex located at 1295 Fifth Avenue, 1309 Fifth Avenue, and 1660 Madison Avenue, New York, New York (now known as Heritage, formerly known as Schomburg or Frawley Plaza). SRC further asserts that residents of the three other apartment complexes subject to the 2025 Order, "acting through

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[1] Cases 08-E-0836 et al., Order Clarifying Conditions of Submetering Approval, Confirming Compliance and Authorizing the Recommencement of Submetering (issued April 28, 2025) (2025 Order).

[2] Cover letter to the Petition.

[3] Id.

their respective tenant associations and leaders," join in the Petition.[4] According to the Petition, Mr. Salo represents the residents of the three other complexes "by default."[5]

On June 12, 2025, Heritage Holdings, LLC, owner of the Heritage complex; River Crossing Owner LLC, the owner of 1940-1966 First Avenue and 420 East 102nd Street, New York, New York (now known as River Crossing, formerly Metro North); Roosevelt Landings Owner LLC, owner of 510-580 Main Street, Roosevelt Island, New York (now known as North Town, formerly North Town Roosevelt or Roosevelt Landings); and Miles Parker Owner LLC, owner of 1890 and 1990 Lexington Avenue, New York, New York (now known as Miles Parker, formerly KNW Apartments) (collectively, Owners) filed a response to the Petition opposing SRC's request for rehearing and a stay.[6] The Petition and the Owners' response are addressed in the Petition section of this Order.

By this Order, the Commission denies the request for rehearing and declines to stay submetering at the Apartment Complexes because the Petition fails to identify an error of law or fact or present new evidence that requires the modification or rescission of the 2025 Order.

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[4] Petition, p. 4.

[5] Id. In support of the Petition, the leaders of the Miles Parker complex have submitted, as an exhibit to and in support of the Petition, a "petition" with 142 signatures. This "petition" is not a formal petition, but rather a list of tenant complaints regarding the habitability of their apartments, followed by survey forms regarding apartment conditions. It is unclear to the Commission to what extent, if any, Mr. Salo represents entities or individuals other than SRC. In any event, because the Commission has long considered these cases as one docket, it will address the request for rehearing as to all four building complexes subject to the 2025 Order.

[6] In this Order, the four apartment complexes will, where appropriate, be referred to collectively as the Apartment Complexes.

BACKGROUND

On October 28, 2008, the Commission issued individual orders granting authority to submeter electricity at each of the four Apartment Complexes, as follows: In Case 08-E-0836, authority to submeter was granted at 1295 and 1309 Fifth Avenue and 1660 Madison Avenue, New York, New York (Heritage). In Case 08-E-0837, authority to submeter was granted at 1940-1966 First Avenue and 420 East 102nd Street New York, New York (River Crossing). In Case 08-E-0838, authority to submeter was granted at 510-580 Main Street, Roosevelt Island, New York (North Town). In Case 08-E-0839, authority to submeter was granted at 1890 and 1990 Lexington Avenue, New York, New York (Miles Parker).[7]

On February 10, 2009, Assemblymember Kellner submitted a petition for rehearing raising affordability concerns for the low-income residents in the Apartment Complexes and concerns relating to the potential impacts to those residents' health and safety if they were unable to pay their electric bills. On February 12, 2009, pursuant to Public Service Law (PSL) §52, one-commissioner orders were issued staying the orders granting authority to submeter.[8]

On August 24, 2011, in Cases 08-E-0836, 08-E-0837, and 08-E-0839 and on October 28, 2011, in Case 08-E-0838, the Commission issued orders lifting the stays and reinstating

[7] Case 08-E-0836, Order Approving Submetering (issued October 28, 2008); Case 08-E-0837, Order Approving Submetering (issued October 28, 2008); Case 08-E-0838, Order Approving Submetering (issued October 28, 2008); and Case 08-E-0839, Order Approving Submetering (issued October 28, 2008) (collectively, 2008 Orders).

[8] Cases 08-E-0836, 08-E-0837, 08-E-0838, and 08-E-0839, Orders Staying Granting Permission to Submeter (issued February 12, 2009). On March 12, 2009, the full Commission confirmed the February 2009 one-commissioner orders.

submetering, subject to certain compliance requirements.[9] In particular, the 2011 Orders required that the building owners: (1) register with the Office of Temporary and Disability Assistance to be a Home Energy Assistance Program (HEAP) vendor and implement a HEAP enrollment program; (2) install a programmable thermostat in each unit; (3) notify each resident of the opportunity and procedure to replace refrigerators that were manufactured before 2001 with an "Energy Star" rated refrigerator upon the tenant's request; (4) complete the New York Energy Research and Development Authority's (NYSERDA's) Energy Reduction Plans and submit certificates of completion; (5) develop energy efficiency pre-submetering education programs and disseminate to residents; (6) make available an energy efficiency expert at least once a month to residents to deliver energy efficiency education in each of the four months prior to submetering and once a month in each of the two months after submetering has commenced; (7) ensure availability of the energy-efficiency expert to provide more personalized counseling to residents with historically high electric usage; (8) provide residents with a utility allowance in the form of a rent reduction; (9) provide residents with Home Energy Fair Practices Act (HEFPA) notices; and (10) provide residents with no less than two months' notice prior to the recommencement of submetering.

On February 26, 2014, upon the petition of North Town's then-owner, the Commission issued an order addressing the October 2011 Order reinstating approval to submeter at North

[9] Cases 08-E-0836, 08-E-0837, and 08-E-0839, Order Reinstating Submetering Approval with Conditions (issued August 24, 2011) (August 2011 Order) and Case 08-E-0838, Order Reinstating Submetering Approval at North Town Roosevelt with Conditions (issued October 28, 2011) (October 2011 Order) (collectively, 2011 Orders).

Town.[10] Notably, before the issuance of the February 2014 Order, North Town "disaggregated" the units' baseboard electric heating from their plug load electricity. Addressing North Town's revised submetering plan, which provided for the submetering of plug load electricity only and would disaggregate or separate the electric load used for the electric baseboard heating in each unit, the Commission determined that the previously established requirement that North Town's then-owner become a HEAP vendor and that it conduct a HEAP enrollment campaign was no longer necessary and would no longer apply. Prior to recommencing submetering, North Town was directed to submit a compliance filing to the Secretary to the Commission confirming it had addressed all other compliance issues established by the Commission in the October 2011 Order.

The 2014 Order was the last action by the Commission in these proceedings. No compliance filings were made by the prior or current owners of the Apartment Complexes until March 28, 2024, when the current owners of the Heritage, River Crossing, and Miles Parker complexes filed in Cases 08-E-0836, 08-E-0837, and 08-E-0839 petitions for "clarification" and compliance materials addressing the compliance matters directed by the Commission in the August 2011 Orders. For Case 08-E-0838, only compliance materials addressing the compliance requirements directed by the Commission in the 2014 Order were filed, as North Town had already been granted authority by the Commission to disaggregate tenants' baseboard heating load from their plug load and had removed the HEAP compliance requirements. In the 2025 Order, the Commission granted the clarification petitions; modified the submetering plans for

[10] Case 08-E-0838, Order Clarifying Conditions of Submetering Approval at North Town Roosevelt (issued February 26, 2014) (2014 Order).

Heritage, River Crossing, and Miles Parker to exclude the energy consumed by the baseboard heating system in each individual unit; removed the requirement that the owners become HEAP vendors and that they conduct a HEAP enrollment campaign; and determined that the Owners had otherwise complied with the 2011 Orders and the 2014 Order and could recommence submetering at the Apartment Complexes.

PETITION

SRC claims the Commission committed errors of law and fact in the 2025 Order. Specifically, SRC argues that the Order lacks a rational basis because the evidentiary record is incomplete and, consequently, that rehearing is required.[11] The bulk of SRC's challenges to the 2025 Order are based on 16 NYCRR §96.3(e), which requires applicants to begin submetering within five years of the Commission's approval of the proposed submetering plan. Given that the Owners did not come into compliance within five years of the issuance of the 2011 Orders and 2014 Order, SRC alleges that the Owners failed to satisfy the deadline in 16 NYCRR §96.3(e) to commence submetering within five years of Commission approval.[12] SRC also asserts that the order violates other provisions of Part 96 and the Public Service Law.[13]

SRC alleges that the petitions for clarification resulted in a material modification of the 2011 Orders and, therefore, that the Owners were required to submit a new notice of intent to submeter or petition to submeter. SRC claims the disaggregation of baseboard heating from submetered plug load

[11] Petition, pp. 21, 35, 37, 39, 40, 45-47.

[12] Petition, pp. 5, 7, 9, 17, 19, 21, 24, 26, 27, 29, 31, 32, 34, 35.

[13] Petition, pp. 12, 22, 24 32, 34, 36, 37, 40.

was not included in the 2011 Orders removing the stay and argues that disaggregation constitutes a structural revision that alters what is being metered, how tenants' bills are calculated, and which consumer protections they are afforded.[14]

SRC also challenges the administrative process in this proceeding, asserting that its members' due process rights have been violated.[15] SRC characterizes the review process as "secretive."[16] It asserts that the Commission failed to address tenants' comments in response to the 2025 Order.[17] According to SRC, the tenant population has also changed since 2011, and the new residents were not notified of the submetering plans for the Apartment Complexes.[18]

SRC asserts that the 2025 Order relies on incorrect information pertaining to the status of the new thermostats installed in the units.[19] SRC further asserts that even with disaggregation of baseboard heating load from plug load, tenants will still be responsible for heating costs because the thermostats reset to 65 degrees Fahrenheit after a period of time and because many tenants use space heaters to supplement heating, which contributes to their plug load usage.[20] SRC notes that the 2025 Order does not include an analysis of how disaggregation will affect tenant bills, safety, or equity, and that the Owners are evading regulatory scrutiny and seeking

[14] Petition, p. 13.

[15] Petition, pp. 16, 17, 18, 19, 25, 38, 46.

[16] Petition, p. 19.

[17] Petition, pp. 35-37, 42-45.

[18] Petition, pp. 22, 24.

[19] Petition, p. 14.

[20] Petition, pp. 14-16, 24, 31-32, 34, 41.

private profits.[21] SRC asserts that approval of disaggregation requires a new financial harm test.[22]

SRC asserts that pursuant to the five-year submetering commencement deadline in 16 NYCRR §96.3(e), the 2011 Orders and 2014 Order have expired and are therefore null and void.[23] According to SRC, the tenants of the subject buildings were entitled to rely on the "expiration" of the 2011 Orders and 2014 Order after five years of "inaction" by the building owners.[24] It argues that ownership and the tenant population of the buildings have changed and the governing law has evolved, requiring that the Owners submit a new proposal for submetering.[25] SRC claims that the principle of 16 NYCRR §96.3(e) echoes the doctrine of laches, which requires consideration of whether a party's unreasonable delay causes prejudice to others.[26] SRC alleges that 2011 Orders and the 2014 Order were conditioned on compliance with 16 NYCRR §96.5, which was disregarded in the 2025 Order.[27] SRC argues that the Owners must submit a new petition in compliance with updated statutory protections because the submetering plan does not include a mechanism to limit retroactive billing, provide usage history, or implement third-party notifications.[28] SRC claims that the financial harm test used in the 2011 Orders is now obsolete, in violation of current law and due process.[29]

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[21] Petition, pp. 15, 24, 28, 29, 32.

[22] Petition, pp. 25, 26, 31-32.

[23] Petition, p. 5.

[24] Petition, pp. 7, 9.

[25] Petition, pp. 8, 26.

[26] Petition, p. 8.

[27] Petition, p. 11.

[28] Petition, p. 23.

[29] Petition, p. 25.

SRC also makes several arguments concerning habitability or alleged violations of legal requirements outside the Public Service Law or the Commission's regulations. SRC claims the Commission failed to consider the rent caps required under the State's 2023 Good Cause Eviction Law.[30] It also asserts that a 2019 "regulatory agreement" between the Owners, "HPD," and the City of New York was not considered in the 2025 Order.[31] SRC raises numerous habitability complaints, including drafty windows, broken baseboard heaters, leaky walls, and defective thermostats, among other housing issues.[32] It claims submetering in these buildings is inherently unfair because the structures themselves are severely energy inefficient.[33] SRC argues that the submetering plan will shift costs to the federal government.[34] Finally, SRC argues that the Commission should consider new evidence of Housing Maintenance Code violations in all three buildings in the Heritage complex.[35]

[30] Petition, p. 23.

[31] Petition, pp. 22-23, 33-34.

[32] Petition, pp. 30, 35, 37, 39.

[33] Petition, pp. 30-31.

[34] Petition, p. 32.

[35] Petition, pp. 40-41.

Owners' Response to Petition

On June 12, 2025, the Owners submitted a response in opposition to the Petition.[36] The Owners argue that the Petition fails to identify, explain, or support any error of law or fact committed by the Commission in the 2025 Order. The Owners claim that requirements of 16 NYCRR §§96.3(b) and 96.5 (regarding the

[36] The Owners assert that SRC failed to properly serve the Petition on them, as it was only provided through the Commission's Document and Matter Management (DMM) system in violation of the requirements of 16 NYCRR §3.7(a). They add that the Petition was incomplete until two days after the deadline to file for rehearing, and the amended petition was filed three days after that filing, addressing missing information and incorrect citations in the original filed petition. Consequently, the Owners argue that the petition is untimely and procedurally deficient under 16 NYCRR §§3.5(e) and 3.7(a) and should be dismissed as such.

Petitioner replies that service via DMM was reasonable and effective and that the petition was filed within the requisite 30-day window. They assert that the exhibits and the Amended Petition "relate back" to the original, timely filed Petition. SRC asserts that their counsel acted in good faith and followed the same procedure for service on opposing parties that is accepted in both state and federal courts in New York. They add that defects in service arose solely from Petitioner's counsel's "unfamiliarity with the Commission's DMM interface and was entirely inadvertent." SRC asserts that in any case, the Owners suffered no prejudice, as they received timely notice and submitted a comprehensive opposition.

Sixteen NYCRR §3.7(a) requires that rehearing petitions must be filed with the Secretary to the Commission and served on each party to the proceeding at the time of filing. However, the generally accepted remedy for defective or untimely service is to grant additional time to the aggrieved party, not dismissal of the petition.

The Commission finds that no extension was necessary or requested in the instant proceeding. Inadvertent service irregularities seldom justify dismissal of a filing regarding the merits of a case, and we recognize the importance of resolving cases on the merits rather than on procedural grounds.

contents of petitions seeking authority to submeter) only apply to new petitions to submeter, not to the petition for clarification filed by Heritage, River Crossing, and Miles Paker, which addressed already conditionally approved submetering at those three apartment complexes.

The Owners dispute SRC's allegations that they have not complied with the requirements of the 2011 Orders and the 2014 Order, as the Owners have addressed both the thermostat and appliance upgrades, including the replacement of refrigerators. The compliance items that remain outstanding are those that the Owners could not complete until they received confirmation that submetering may recommence (as provided in the 2025 Order), such as providing notice to tenants of the recommencement of submetering.

The Owners claim the Petition fails to identify any new circumstances that warrant rehearing of the 2025 Order. According to the Owners, the claim in the Petition that many of the current tenants in the Heritage buildings were not tenants in 2011 and had no opportunity to be heard on the original submetering petition does not qualify as "new circumstances." With regard to the 2024 petitions for clarification, the Owners claim that comments from tenants were properly received pursuant to SAPA and note that many tenants submitted comments, as did elected officials and the Public Utility Law Project, Inc. (PULP). According to the Owners, over 100 comments were received in each proceeding from tenants, including those tenants not residing in the Apartment Complexes when the 2011 Orders and 2014 Order were issued.

Regarding the assertion that the financial harm test was conducted using an outdated standard, the Owners state that they did not file new petitions to submeter, only petitions for clarification and compliance filings. According to the Owners,

the Commission already determined that the Apartment Complexes passed the then-applicable standard even before Heritage, River Crossing, and Miles Parker proposed to disaggregate the heating load in those complexes.

The Owners also note that the Petition repeats allegations regarding alleged defects in or the inadequacy of the Apartment Complexes' baseboard heating systems and the need for space heaters. Regarding the air conditioning units, the Owners state that the Commission correctly determined that the electric usage of tenants' air conditioning units is not a basis to deny recommencement of submetering. Owners take issue with the allegations in the Petition that the Apartment Complexes are unsafe, unheated, structurally unsound, not suitable for submetering, and/or in violation of provisions of the Housing Maintenance Code (such as missing smoke detectors, lead paint, vermin, water leaks, mold, broken elevators, and unsafe wiring). But, according to the Owners, the Commission already addressed these issues in the 2025 Order, stating that the alleged existence of these issues does not constitute a regulatory basis to deny the recommencement of submetering at the Apartment Complexes. Thus, the Owners claim, these are not new circumstances and are not a basis for rehearing.

According to the Owners, the allegation that a 2019 regulatory agreement precludes submetering and that this is a new circumstance or change in law is misplaced. They note that the Commission previously determined that, to the extent tenants believe that their leases preclude submetering (which they state is not the case here), such claims must be brought to the housing agency with jurisdiction over the dispute, but that such claims are not before the Commission and not a basis to grant rehearing.

Petitioner's Reply

By letter dated June 24, 2025, Mr. Salo filed a response to the Owners' opposition to the Petition.[37] In his letter, Mr. Salo asserted that service of the Petition on the Owners was proper; that he assumed that he could rely on the procedures used in state and federal courts; and that he assumed the Commission's electronic document system would serve the Owners, thus obviating the need for him to provide the Owners with the Petition. However, Mr. Salo did not provide any citations to these procedures. Further, Mr. Salo claims the Petition was timely, as the original petition was filed within the 30-day deadline for rehearing, and the filing of the amended petition and revised exhibits related back to the date of the filing of the original petition. The remainder of the reply concerns the alleged errors of fact and law previously addressed in the Petition. The only new argument in Mr. Salo's letter reply is that the Owners' conduct is a basis to deny submetering under 16 NYCRR §96.3(b)(1)(iii) which he claims "explicitly authorizes denial of submetering where the petitioner's conduct indicates unfitness."

NOTICE OF PROPOSED RULEMAKING

Pursuant to SAPA §202(1), four Notices of Proposed Rulemaking were published in the State Register on June 25, 2025 [SAPA Nos. 08-E-0836SP9, 08-E-0837SP8, 08-E-0838SP9, 08-E-0839SP8](Notices). The comment periods expired on August 25, 2025. Comments in response to the Notices were not received within the comment periods; however, one late comment was received on September 9, 2025, in Case 08-E-0837 in which the commenter raised concerns about vermin and holes in walls and

[37] Sixteen NYCRR Section 3.7(c) provides that replies to response will not be entertained except in extraordinary circumstances.

stated that submetering should not be allowed due to the condition of the units and apartment buildings.

LEGAL AUTHORITY

Public Service Law §22 provides the opportunity for a person to request rehearing of a Commission order. Pursuant to 16 NYCRR §3.7(b), rehearing may only be sought "on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination." Petitioners seeking rehearing bear the burden of establishing that the Commission committed an error of law or fact or that new circumstances warrant a different determination. Further, the petitioner must separately identify and plainly explain each alleged error or new circumstance purporting to warrant rehearing.[38] Petitions for rehearing are not an opportunity for the petitioner to repeat points or arguments that were previously presented or assert new legal arguments. Petitioners should not anticipate that the submission of a rehearing petition will automatically result in a "do over" or de novo review.

DISCUSSION AND CONCLUSION

As discussed in detail below, the Commission denies the Petition and declines to stay the 2025 Order because SRC has not identified an error of fact or law or shown the existence of new circumstances warranting a different determination.

As a general matter, as explained in the 2025 Order, it is the Commission's long-standing policy to encourage conservation of electricity and a more equitable allocation of electricity costs though individual metering in multi-family

[38] Sixteen NYCRR §3.7.

buildings. Without metering electric service to each apartment, tenants do not receive a price signal and may use electricity without regard to the cost of service, the additional burdens placed on the electric system, or potential environmental impacts. Here, because individual units will be responsible for their own plug load usage, price signals to the residents in each unit should result in reduced overall electricity consumption. And because the residents of each unit will bear the true cost of their usage, residents who use less electricity will not be forced to, in effect, subsidize residents who use more. Additionally, reduced consumption will further New York State's and the Commission's policy to reduce in-state greenhouse gas emissions and may help to reduce the future need for transmission and/or distribution investments by the utility, Consolidated Edison Company of New York, Inc.

Encouraging a reduction in overall electricity use is particularly important in view of projected reliability needs in the New York City region. Since the Commission issued the 2025 Order, the New York Independent System Operator (NYISO) and Consolidated Edison have published studies indicating that the New York City region (NYISO Zone J) could face reliability deficiencies over the next decade.[39] These deficiencies are the result of increasing electricity demand and the retirement of existing generation resources, among other things.[40] It is the Commission's responsibility under the Public Service Law to

[39] Case 25-E-0764, Proceeding on Motion of the Commission to Address New York City Reliability Needs, Order Initiating Proceeding and Directing Reliability Contingency Plan (issued December 18, 2025), pp. 1-2.

[40] Id., p. 2.

address these needs, and lessening electricity consumption via submetering is one way to fulfill that responsibility.[41]

Having discussed the Commission's general interest in and concern for, among other things, energy conservation and the protection of the environment, we will now address the alleged errors of fact and law in the Petition.

Retroactive Application of 16 NYCRR §96.3

At the end of 2012, the regulations governing submetering were revised in an effort to streamline action on certain petitions to submeter and to strengthen submetering oversight to enhance consumer protection and further energy efficiency goals.[42] These revisions included the new requirement, at 16 NYCRR §96.3(e), that newly approved submetering plans be implemented within five years of Commission approval. Significantly, the requirements of 16 NYCRR §96.3 apply only to *new* requests for submetering, as discussed in the order implementing the revisions to Part 96.[43]

In these proceedings, the Commission originally issued individual orders granting authority to submeter electricity at the four Apartment Complexes in October 2008. In February 2009,

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[41] Id., p. 16 (directing Consolidated Edison to consider, among other things, demand-side management as a means to reduce electricity consumption).

[42] Case 11-M-0710, In the Matter of Reviewing and Amending the Electric Submetering Regulations, 16 NYCRR Part 96, Memorandum and Resolution Adopting Residential Electric Submetering Regulations (issued December 18, 2012), pp. 4-5.

[43] Case 11-M-0710, supra, p. 10. As a general matter, regulations are presumed to be prospective unless there is a clear intent to have them apply retroactively. See Matter of Regina Metro. Co., LLC v. N.Y. State Div. of Hous. & Community Renewal, 35 N.Y.3d 332, 365 (2020); Matter of Town of Greece [Uniformed Patrolmen's Assn. of Greece Police Dept.], 147 AD3d 1382, 1383 (4th Dept 2017).

orders were issued staying the four orders granting authority to submeter. In August and October 2011, the Commission issued orders lifting the stays and reinstating authority to submeter, subject to certain compliance requirements. Because the submetering approvals at issue here were granted in 2008 or, at the very latest, when the Commission issued the order lifting the stays in 2011, the approvals predate the revised Part 96 regulations and so are not subject to them. Nor were the 2024 petitions for clarification for the Heritage, River Crossing, and Miles Parker complexes a new request to submeter; rather, those petitions sought to remove preconditions established in the August 2011 Order that were no longer necessary in view of the disaggregation of the residents' plug load from their total electricity consumption. Because the 2024 petitions for clarification merely sought to remove unnecessary preconditions to commencing the submetering that had been approved in 2008, they cannot reasonably be viewed as a new request for submetering.

Authority to Approve Disaggregation as a Replacement for HEAP Vendor Status

In the 2011 Orders, the former owners of the Apartment Complexes were required to register as HEAP vendors to help offset the cost of electric heating for their HEAP eligible tenants. In 2014, the Commission approved a plan submitted by the former owner of North Town to submeter only tenants' electrical plug load, in effect excluding the electricity used for baseboard heating from the submetering arrangement. In the February 2014 Order, the Commission consequently removed the preconditions for North Town relating to the HEAP program on the ground that electricity costs associated with the units'

baseboard heating systems would not be billed to individual units.

In the 2024 petitions for clarification, the current owners of Heritage, River Crossing, and Miles Parker requested the same relief afforded to North Town in the 2014 Order. With the disaggregation of the Heritage, River Crossing, and Miles Parker residents' plug load from their baseboard heating load, the submetered cost will only reflect plug load electricity, thus removing the electricity cost associated with the units' baseboard heating systems from the tenants' electricity bills. As such, the owners of those complexes need not and are no longer required to register as HEAP vendors. As stated in the 2025 Order, the Commission considered the owners' disaggregation of the heating load from their tenants' bills as a financial benefit to the tenants since the tenants would no longer pay for the baseboard-heating component of the electricity consumption in their units.[44]

Regarding SRC's claims that thermostats "reset" to lower temperatures, SRC does not claim that the tenants cannot manually adjust their thermostats back to a maximum of 74 degrees Fahrenheit for heating, as required by HPD. In any event, this issue is one that should be addressed to HPD, because HPD's regulations control the temperature in the apartments it regulates.

Due Process

SRC alleges that the Owners and Department of Public Service staff (Staff) engaged in improper *ex parte* communications, and that the tenants were not afforded an

[44] 2025 Order, p. 21.

opportunity to rebut the Owners' submissions. These allegations do not warrant rehearing.

As an initial matter, we note that Staff has a responsibility to verify the content of regulatory filings as it deems necessary, and that such efforts are generally undertaken through dialogue with the entity submitting the filings. Here, and as noted in the 2025 Order, Staff communicated with the Owners to pose questions regarding and to resolve ambiguities in the Owners' filings, which is proper.[45] And SRC's further claim that the tenants of the Apartment Complexes were denied an opportunity to comment is clearly false: in response to the Owners' compliance filings and the clarification petitions, the Commission published four notices of proposed rulemaking in the State Register soliciting public comment on those filings.[46] And as noted in the 2025 Order, comments were received from numerous residents of the Apartment Complexes, as well as from elected officials and PULP. Because SRC had notice of the Owners' filings and an opportunity to submit comments, its due process rights were respected.[47]

To the extent SRC additionally claims that the Commission impermissibly relied on a non-public affidavit from a representative of the Owners, Mr. Peter Curley, that claim is untrue. As the record reflects, the affidavit SRC references is included in the materials filed to the public docket in Case 08-

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[45] Id., p. 23.

[46] Id., pp. 11, 23. As discussed in the 2025 Order at pages 11-15, the Notices elicited comments from residents of the Apartment Complexes, elected officials, as well as the Public Utility Law Project, Inc. (PULP).

[47] See Stephens v. Corcoran, 187 AD2d 387, 387 (1st Dept 1992); see also Matter of Village of Woodbury v. Seggos, 154 AD3d 1256, 1261 n 4 (3d Dept 2017) (holding that the opportunity to comment on a permit application at a legislative-type hearing satisfied due process).

E-0838 on March 28, 2024, as reflected in the Commission's publicly accessible electronic filing system. Notably, the Curley affidavit was filed well before the public comment period closed on August 25, 2024.

SRC also criticizes the Commission's reliance on responses to Staff information requests (IRs) DPS-1 through DPS-3 and the October 8, 2024 letter from the Owners responding to public comments. But the IR responses and the October 8, 2024 letter were filed publicly and are part of the record of these proceedings, and so the Commission could properly rely on these documents in making its determination.

Presumption of Administrative Regularity

SRC alleges that the Owners and Staff engaged in a secretive review process that has created the "appearance of bias, favoritism, and regulatory capture."[48] These allegations do not warrant rehearing.

Administrative actions undertaken by a governmental entity are cloaked with a presumption of regularity and are presumed to be valid unless proven otherwise.[49] To prevail on a claim of bias, "[t]here must be a factual demonstration to support the allegation ... and proof that the outcome flowed from it."[50] SRC has not carried that burden here. As discussed above, Staff did not act improperly when it sought to clarify the Owners' submissions, or when it requested additional information necessary to properly evaluate those submissions.

[48] Petition, pp. 20-21.

[49] See Matter of Entergy Nuclear Indian Point 2, LLC v. New York State Dept. of Envtl. Conservation, 23 AD3d 811, 813-814 (3d Dept 2005).

[50] Matter of Warder v. Board of Regents of Univ. of State of N.Y., 53 NY2d 186, 197 (1981), cert denied 454 US 1125 (1981).

The Commission solicited public comment on the Owners' submissions, and tenants from the Apartment Complexes and others took advantage of that opportunity to share their views. To the extent SRC claims the Commission relied on a "secret" affidavit from the Owners' representative, that affidavit was publicly filed to the Commission's electronic docket prior to the public comment period. Nor does the Commission demonstrate bias by disagreeing with SRC's legal theories, as SRC appears to believe. In sum, because SRC does not support its allegations of bias with fact, it fails to raise a legal issue warranting rehearing.

Collateral Attack on the 2011 Orders

A collateral attack on a prior final order is legally impermissible. When an administrative determination becomes final, it is conclusive and binding.[51] SRC argues that, pursuant to the five-year submetering commencement deadline in 16 NYCRR §96.3(e), the 2011 Orders have expired and are therefore null and void.[52] According to SRC, the tenants of the Apartment Complexes were entitled to rely on the expiration of the 2011 approvals after five years of owner inaction.[53] SRC argues that ownership and the tenant population of the buildings have changed and that the governing law has evolved such that the Owners must submit a new proposal for submetering.[54] SRC claims that the principle of 16 NYCRR §96.3(e) echoes the doctrine of laches, which requires consideration of whether a party's

[51] See Matter of Joseph v. Roldan, 289 AD2d 243, 244 (2d Dept 2001).

[52] Petition, p. 5.

[53] Petition, pp. 7, 9.

[54] Petition, pp. 8, 26.

unreasonable delay causes prejudice to others.[55] SRC alleges that 2011 Orders were conditioned on compliance with 16 NYCRR §96.5, which was disregarded in the 2025 order.[56] SRC argues that a new submetering petition is required because the submetering plan does not include a mechanism to limit retroactive billing, provide usage history, or implement third-party notifications.[57] SRC claims that the financial harm test used in the 2011 Orders is now obsolete, in violation of current law and due process.[58]

SRC's arguments amount to a collateral attack on prior Commission orders authorizing submetering at the Apartment Complexes. Those approvals, issued in 2008 or, at the latest, in 2011, are final and binding and not subject to review in this administrative proceeding. Further, the 2008 and 2011 Orders address the terms and conditions of submetering at the Apartment Complexes, including, but not limited to: the rate cap (which is Consolidated Edison Company of New York, Inc.'s Service Class 1 - residential rate for electric service); tenant outreach and education; the rent reductions to be provided to tenants; and compliance with the Home Energy Fair Practices Act (HEFPA), none of which is subject to review here.

Habitability Concerns

Pursuant to Public Service Law §66, the Commission has general supervision over all electric corporations in New York State, which includes regulating the terms under which those corporations provide electric service to their customers (here,

[55] Petition, p. 8.

[56] Petition, p. 11.

[57] Petition, p. 23.

[58] Petition, p. 25.

the Owners). In addition, HEFPA sets forth certain statutory protections governing the furnishing of electric service to residential customers, including those residential customers taking submetered service.[59] The Commission does not, however, regulate habitability issues unrelated to the metering of electric service. Habitability concerns are properly addressed to entities, such as the New York City Department of Housing Preservation and Development, that possess the regulatory authority to review such matters.[60] Thus, to the extent SRC raises what amounts to habitability concerns, those concerns are outside the scope of the 2025 Order and so cannot warrant rehearing.

Energy Affordability Program (EAP)

In Case 20-E-0190,[61] the Commission clarified that building owners shall include utility EAP bill discounts in the calculation of the rate cap as defined in 16 NYCRR §96.1(i) to

[59] See Public Service Law §§30 to 53-a.

[60] See Multiple Dwelling Law §§78, 79, 80; Multiple Residence Law §174; and NY City Bldg Code [Administrative Code of City of NY, title 27, ch 2] §BC 27-2005.

[61] Case 20-E-0190, Notice of Intent of QPP LLC to Submeter Electricity at 29-59 Northern Boulevard, Queens, New York 11101, Located in the Territory of Consolidated Edison Company of New York, Inc., Order Authorizing Submetering (issued March 24, 2021) (March 2021 Order).

ensure that submetered customers are afforded the same benefits and protections as direct-metered customers.[62]

The utilities have a process to afford low-income customers the opportunity to participate in a utility's low-income EAP by providing appropriate documentation (e.g., an award letter) demonstrating that they are beneficiaries in applicable public assistance programs. Utility customers may self-identify as eligible for a utility's EAP. Upon review of the documentation provided by the customer, the utility will then enroll the customer in its EAP. In the March 2021 Order, the Commission clarified that, following a similar process, submetered residents shall be able to self-identify to a submetered building owner as eligible for the relevant utility's low-income discounts, with appropriate documentation. The submetering lease rider must clearly state the process for residents to self-identify as described above. The rate cap for an EAP-eligible submetered customer shall be inclusive of EAP bill discounts.

The Commission orders:

1. The petition for rehearing and stay of the Commission's April 28, 2025 Order in these proceedings is denied in its entirety.

[62] Sixteen NYCRR §96.1(i) defines the rate cap as "The maximum rate, calculated in each billing period, that may be used to compute the charges for electric service to a submetered resident. Unless a different rate cap is set pursuant to sections 96.2(a) and 96.8(b) and (c) of this Part, the rate cap shall be the rates and charges of the distribution utility for delivery and commodity in that billing period to similarly situated, direct metered residential customers. Where residents are billed for time-of-use, the maximum rate for purposes of calculating the rate cap shall be the average annual residential rate."

2. These proceedings are closed pending compliance with the Commission's directives and Ordering Clauses 3 and 4 of the April 28, 2025 Order in these proceedings.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary