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March 11, 2026

VIA NYSCEF ONLY

Honorable James R. Farrell
Supreme Court Justice
Supreme Court of the State of New York
414 Broadway
Monticello, New York 12701

Re: *Mack, et al. v. New York State Public Service Commission, et al.*
Index No. 901525-26

Dear Justice Farrell:

Petitioners write in response to the Landlord's letter of March 11, 2026.

The Landlord says the default rate cap here is SC-1. That is not correct.

First, the PSC's 2025 Order did not identify any rate cap at all. That is unusual. In prior submetering orders, the PSC typically identifies the rate cap expressly, usually as SC-1 or SC-8. *See* NYSCEF Doc. Nos. 48-51, 109. The silence of the 2025 Order on that point is one of the defects now before the Court.

Second, Part 96 does not make SC-1 the automatic rate cap in every residential submetering case. The regulation defines the rate cap as the rate charged "to similarly situated direct-metered residential customers." 16 NYCRR § 96.1(i). These buildings are bulk-service, master-metered residential buildings located in Manhattan.

Case 24-E-0046 shows that for a master-metered residential building in Manhattan, the PSC approved use of Con Edison's SC-8 bulk rate as the billing benchmark. The Landlord is therefore wrong to present SC-1 as if it were automatic or obvious.

At most, the Landlord has shown that if SC-1 applies, then Metergy may have followed the SC-1 calculator. But the Landlord has not shown that SC-1 is the correct rate cap.

Petitioners acknowledge one narrow point: assuming *arguendo* that SC-1 were the correct comparator, the Con Edison calculator appears to support the Landlord's arithmetic. But that does not resolve the case.

Even assuming that SC-1 applies, that still does not answer the larger problems: whether SC-1 is the right rate cap in the first place; whether the submeters are accurate; whether cross-wiring has really been eliminated; whether the electrical wiring associated with submetering is safe; whether tenants are being forced to rely on plug-load heaters because the buildings are poorly sealed and inefficient; whether electric costs were properly backed out of the rent before submetering began; and whether the PSC unlawfully revived a 2011 approval that expired under the five-year rule in 16 NYCRR § 96.3(e). So even if the Con Edison calculator is correct under SC-1, that proves only that Metergy may be billing at SC-1. It does not prove that the 2025 Order was lawful, or that the Order should not be annulled.

The same is true of the late-payment charge. The Landlord is correct that New York law permits a late-payment charge of up to 1.5% per month in this context. But that does not make the charge minor. A 1.5% monthly charge, compounded monthly, equals a 19.56% effective annual rate. That is the real burden on tenants. In other consumer contexts, the law requires annualized disclosure because the yearly cost matters. Here, the real annualized burden is nearly twenty percent.

That matters because interest on late payments increases pressure on tenants to pay now. It increases arrears. It increases the risk of collection activity and damage to credit scores. And it increases the cost of resisting charges that may be unlawful.

The Landlord also argues that there is no real eviction risk because unpaid electric charges are not "additional rent." That argument is incomplete.

It is true that submetered electric charges may not be treated as additional rent in a rent-stabilized tenancy. But that does not mean a landlord is barred from using lease-based violations as a predicate for eviction.

In *C.H.T. Place, LLC v. Rios*, 36 Misc. 3d 1 (App. Term 2d Dept. 2012), the court upheld a holdover proceeding based in part on breach of a substantial obligation of the lease to pay submetered electric charges. The court explained that, although electric charges could not be treated as additional rent, the landlord could still proceed on a lease-breach theory.

That is the problem here. The Landlord's submetering rider classifies nonpayment of electric charges as a breach of the lease, not as "additional rent." See NYSCEF Doc. No. 99 at ¶18. That wording is designed to preserve eviction and other lease-based remedies for nonpayment of electric charges. Further proof that the threat of eviction remains is that the

Landlord is currently threatening tenants with eviction for failure to sign the submetering rider itself. See NYSCEF Doc. No. 100.

Part 96 does not prohibit eviction or holdover proceedings based on nonpayment of submetered electric charges. The PSC has recognized that tenants may not be evicted where electric charges are treated as additional rent. That is why the wording of the rider matters. The Landlord has not used the phrase “additional rent.” The Landlord has instead intentionally labeled nonpayment of electric charges as a lease violation.

If the Landlord calls nonpayment a lease violation, then the Landlord is plainly trying to preserve lease-based enforcement. Under that framework, tenants still face a real threat of eviction, civil enforcement, collection activity, and mounting arrears. So the Landlord is wrong to tell the Court that there is no serious housing-related consequence here.

The basic point is simple. The Landlord has shown, at most, that if SC-1 applies, then Metergy may have followed the SC-1 calculator on Con Edison’s website. But the Landlord has not shown that SC-1 is the correct rate cap. The Landlord has not answered the defective meter and wiring issues. The Landlord has not answered the lack of proper rent back-outs. The Landlord has not answered the expired 2011 approval. The Landlord has not answered the coercive effect of bills that carry a 19.56% effective annual late charge. And finally, the Landlord has not answered the practical effect of the lease rider that preserves eviction against tenants under the predicate of a lease-terms violation.

For those reasons, Respondents’ March 11 letter does not cure the defects in the PSC’s approval and does not eliminate the immediate harm now facing tenants.

Respectfully submitted,

/s/ F. William Salo

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