Legal Services
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April 8, 2009

Hon. Jaclyn Brilling, Secretary
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Riverview II, Yonkers, NY

Dear Hon. Secretary Brilling:

Enclosed please find the Petition of the Riverview II Tenants Association for the stay, re-hearing and vacatur of the Commission's August 27, 2008 Order permitting submetering of electricity at the premises.

Thank you for your kind attention.

Sincerely,
Legal Services of the Hudson Valley

Nancy J. Marrone
Of Counsel

cc: Michael Corso, Director
Office of Industry and Governmental Relations
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

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Senator Bill Perkins, Chairman
Committee on Corporations, Authorities and Commissions,
New York State Senate

Senator Kevin S. Parker, Chairman
Senate Energy Committee
New York State Senate

Legal Services
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April 7, 2009

Garry Brown, Chairman
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

RE: Petition for Stay, Rehearing, and Vacatur of Order Granting Petition to Submeter in CASE 08-E-0439 – Petition of Riverview II Preservation LP to submeter electricity at 47 Riverdale Avenue, Yonkers, New York.

Dear Chairman Brown:

Legal Services of the Hudson Valley represents the Riverview II Tenants Association. The Tenants Association consists of the approximately 343 households who occupy the Riverview II complex located at 47 Riverdale Ave., Yonkers, New York. I am writing to petition for a stay, rehearing, and vacatur of the Commission's August 27, 2008 order ("Order") granting the petition ("Petition") of Riverview II Preservation LP ("Owner") to submeter electricity at 47 Riverdale Avenue, Yonkers, New York, known as Riverview II, on behalf of the Tenants Association and their membership. I understand that the Owner is an affiliate of the Related Companies who purchased the property from Vark Street Houses, Inc. on or about May, 2008. For further details, see Owner's brochure entitled, "Riverview II FAQs" referred to on page 11 infra.

The premises are a Mitchell-Lama housing project organized under the New York State Private Housing Finance Laws and are also a U.S. Department of Housing and Urban Development 236 preservation project. The Owner of the building was awarded Low-Income Housing Tax Credits under the Internal Revenue Code through the City of Yonkers Industrial Development Agency to enable the owner to rehabilitate the project and maintain its affordability for a period of approximately thirty years. The County of Westchester also promised financial assistance to the Owner in exchange for an even longer period of affordability, up to forty (40) years, I believe. Affordability in this case means that at least 40% of the units are occupied by households whose income does not exceed 60% of the Westchester County Area Median Income (AMI).

The majority of residents have Section 8 Enhanced Vouchers from the Municipal Housing Authority for the City of Yonkers ("MHACY"). The MHACY provided their voucher-holders with a utility allowance based upon bedroom size[1]. Within the past six months, the U.S. Department of Housing and Urban Development ("HUD") and the New York State Division of Housing and Community Renewal ("DHCR") approved rent increases at the project ranging from approximately over $200 to $500. (See Exhibit A which is a copy of a July 31, 2008 rent increase approval from HUD). I have been advised by counsel for DHCR that these rents were set under the assumption that heat was included in the rent.

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[1] Below is the MHACY utility allowance schedule:

One Bedroom	$114
Two Bedrooms	$143
Three Bedrooms	$173
Four Bedrooms	$214

The grounds for this petition are that the Commission overlooked, misapprehended, or was not apprised by the Owner of relevant facts and law in that the premises have electric baseboard heat; residents of are predominantly low-income families whose housing subsidies will not offset the high cost of submetered electric service; the premises are not rent stabilized but are subject to other laws and agreements; the Owner did not reduce the Gross Rents and Market Rents at the project to reflect the reduction in services but rather the rents were increased; the Owner did not provide adequate notice to residents of the consequences of submetering and their right to comment to the Commission on the Owner's submetering Petition; and the rates, charges, and terms and conditions of submetered electric service at Riverview II are not just and reasonable. Further, facts arising since the order reveal actual and potential hardship to the homes and welfare of low-income tenants as a consequence of the Commission's order approving the deeming of charges for electric service to be "additional rent."

The High Bills for Submetered Electricity and the Owner's Response Reveal Confusion

On March 1, 2009, Riverview II residents received their first actual bill under the Commission's August 5, 2008 submetering Order. The Tenants Association sought assistance from our firm because the bills were so high. Although we are still in the process of collecting actual bills, attached as Exhibit B is a copy the Owner's utility consumption data for three billing periods starting on October 29, 2008 and ending on February 3, 2009. This data was received through a FOIL request to MHACY.

I made two analyses of the data. The first analysis divided the total usage for all units of a given size by the number of units of that size to derive the average cost per unit by unit size. The results are as follows:

Nov. 2008	No. of Units	Actual Usage	Avg Cost Per Unit
1 bedrm	128	$17,243.00	$134.71
2 bedrm	178	$38,983.00	$219.01
3 bedrm	13	$3,700.00	$284.62
4 bedrm	5	$1,687.00	$337.40

Dec. 2008	No. of Units	Actual Usage	Avg Cost Per Unit
1 bedrm	128	$27,159	$212.18
2 bedrm	178	$55,767	$313.30
3 bedrm	13	$7,521	$578.54
4 bedrm	5	$3,101	$620.20

Jan. 2008	No. of Units	Actual Usage	Avg Cost Per Unit
1 bedrm	128	$31,994	$249.95
2 bedrm	178	$64,041	$359.78
3 bedrm	13	$8,299	$638.38
4 bedrm	5	$3,189	$637.80

I did a further analysis to determine the average actual usage per unit size as a multiplier of the utility allowance. The results are:

Nov. 2008	Utility Allowance	Actual Consumption	Average Actual Consumption As Multiplier of UA
1 bdrm	$14,592.00	$17,243.00	1.18
2 bdrm	$25,454.00	$38,983.00	1.53
3 bdrm	$2,249.00	$3,700.00	1.65
4 bdrm	$1,070.00	$1,687.00	1.58

Dec. 2008	Utility Allowance	Actual Consumption	Average Actual Consumption As Multiplier of UA
1 bdrm	$14,592.00	$27,159.00	1.86
2 bdrm	$25,454.00	$55,767.00	2.19
3 bdrm	$2,249.00	$7,521.00	3.34
4 bdrm	$1,070.00	$3,101.00	2.90

Jan. 2009	Utility Allowance	Actual Consumption	Average Actual Consumption As Multiplier of UA
1 bdrm	$14,592.00	$31,994.00	2.19
2 bdrm	$25,454.00	$64,041.00	2.52
3 bdrm	$2,249.00	$8,299.00	3.69
4 bdrm	$1,070.00	$3,189.00	2.98

The data shows that the average actual usage is always greater than the amount of the utility allowance and in some instances over two and three times the amount of the utility allowance. Clearly, the utility allowances do not offset the costs of the submetered electricity[2].

In addition, Residents advise me that there is confusion about the billing. I understand that one resident who receives Section 8 from Westchester County and who pays his rent on time each month has outstanding charges on his monthly statement and

[2] Assuming that the Owner's raw data is correct, its analysis of the "overage % vs UA" for the 1 and 2 bedroom units in the month of January, 2009 are incorrect and should read 119.26% and 151.60% respectively as indicated in my worksheet in the exhibit section.

does not know why. The only conclusion he could come to is that the utility charges were included on his rent statement. (See copy of redacted bill attached as Exhibit C showing charges of unknown origin, namely, "Period Beginning Balance of $160.75; March late fees $22.00; Rent $426.") .

Adding to the confusion, the Owner sent a letter to residents on March 18, 2009 (copy attached as Exhibit D) stating "[W]e recognize that the sub metering of electricity has caused great concern to many residents." The Owner goes on to state, "The reality is the bills you were asked to pay on March 1st represented your electrical usage for the month of January, one of the coldest months of the year and many of our families are having a hard time paying the bill." The Owner further states, "In order to mitigate the financial difficulty of the utility charges for these winter months, please be advised..." and then states that for a limited period - the months of March through August, 2009 - residents will only be asked to pay utility charges equivalent to the amount of the MHACY utility allowance schedule for their unit size. Presumably the full charges would resume after August.

This is not a satisfactory solution. The only satisfaction solution is a stay of enforcement pending the re-hearing the Order. This is because Riverview II residents still face eviction for nonpayment of utility charges because they are "deemed" to be additional rent without compliance with the Home Energy Fair Practices Act; and some residents do not receive a utility allowance at all – not from the MHACY or any other Section 8 program. See Exhibit E which is a copy of redacted bill from a resident whose actual usage is less than the utility allowance for the unit. The resident lives in a two-bedroom unit where the utility allowance is $143 but the actual charges were only

$101.70 on the March bill and $110.58 on the April bill. The note from AMPS enclosed with the bill directs payment of $143 – the amount of the utility allowance.

In recent orders staying prior submetering orders, extremely high bills and confusion over billing were factors in the granting a request for a stay: "the "shadow" electric bills supplied to the tenants are two to three times higher than the rent reductions specified in the DHCR rent reduction formula, with some electric bills in excess of $1,000;[3]

Neither the Owner's Petition to Submeter Electricity Nor the Staff Recommendation Upon Which the Commission's Order was Based Addresses the Fact that Electric Heat Would Be Submetered

The submetering of electricity for heating fixtures is not mentioned in the publicly available documents in the case file. The Staff Recommendation, which was "So Ordered" by the Commission on August 27, 2008, contains no mention of electric heat. A review of the owner's application similarly shows that there is no specific mention the request for permission to submeter involves electric heating fixtures.

Indeed, the Owner submitted a document which indicates that heat is provided to tenants by the Owner. See Exhibit F which is a copy of an attachment to the Petition entitled, "Riverview II Apartments Lease Language." The first paragraph states:

> "[A]s long as Tenant obeys all of the provisions of this Agreement, Landlord agrees to provide to Tenant, only insofar as the existing building equipment and facilities allow, the following services: (1) elevator service; (2) hot and cold water in reasonable amounts at all times; (3) **heat** as required by law." [emphasis added]

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[3] See Case 08-E-0837 – Petition of Metro North Owners, LLC, to submeter electricity at 1940-1966 First Avenue and 420 East 102nd Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., filed in C 26998. *Order Staying Order Granting Permission to Submeter* (Issued February 12, 2009), at p.2.

As a result, it appears that the Commission was unapprised that electric heat was being submetered. In recent cases, the Commission's lack of awareness that an owner was submetering electric heat was one of the grounds for granting rehearing and a stay. *E.g.,* Case 08-E-0838 – Petition of North Town Roosevelt, LLC, to submeter electricity at 510-580 Main Street, Roosevelt Island, New York, *Order Staying Order Granting Permission to Submeter* (Issued Feb. 12, 2009) ("The Commission was not informed of . . . the fact that Roosevelt Landings utilized electric heating. . . .").[4] The same relief should be granted here. As discussed below, there are other similarities to the recent cases where the Commission halted submetering.

The Commission's Order Misapprehends the Facts Regarding Riverview II, its Low-Income Residents, and the Laws Applicable to the Premises and the Tenants

The Commission Order misstates the nature of the premises. The Order states at page 1: "[a]ccording to the petition, the residential rental units are under the jurisdiction of the New York City [sic] Department of Housing and Community Renewal (DHCR)". This description is wholly inaccurate. There is no New York *City* Department of Housing and Community Renewal (DHCR).

At page 2 the Commission Order approving the Staff Recommendation states "the calculations for rent reductions to rent regulated tenants will be in accordance with DHCR guidelines and determined by the *City of New York Department of Housing and Preservation and Development*." Riverview II is in the City of Yonkers so there is no

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[4] *Accord*, Case 08-E-0836 (Frawley Plaza Stay Order, Issued Feb. 12, 2009) ("The Commission was not informed of . . . the fact that Schomburg Plaza utilized electric heating . . . ."); Case 08-E-0837, (Metro North Apartments Stay Order Issued Feb. 12, 2009, p. 3) ("The Commission was not informed of . . . the fact that Metro North Apartments utilized electric heating,); Case 08-E-0839 (KNW Apartments Stay Order Issued Feb. 12, 2009, p. 2) ("The Commission was not informed of the . . . fact that KNW Apartments utilized electric heating . . . .").

involvement at all by the New York City agency referenced in the order. And as I indicated below, neither HUD nor the New York State DHCR adjusted the Riverview II tenant rents downward to offset electricity charges; indeed, to the contrary, rents were raised twice within six months, the second increase taking effect on March 1st – the date the submetering was instituted.

Nowhere in the Staff Recommendation to allow submetering which was "So Ordered" by the Commission is there any reference to the low-income tenants at Riverview II and the required affordability of the charges to residents for rent and utility service. And although the Owner stated in its petition for submetering that Residents are subject to the jurisdiction of HUD and DHCR, the Owner did not specify the nature of the project.

As indicated in the introduction, the premises are a Mitchell-Lama housing project and also a HUD 236 Preservation project. Under this structure, tenants generally pay approximately 30% of their income towards rent within the limitations of a minimum Base Rent (Gross Rent) and a maximum Market Rent[5].

The property is also subject to an agreement entitled, "Amended and Restated Tax Regulatory Agreement" dated May 9, 2008 between the City of Yonkers Industrial Development Agency, Riverview II Preservation, L.P. ("the Company") and Vark Street Houses, Inc. ("the Housing Company") for $28M in bonds to rehabilitate the Riverview II project and maintain its affordability. The Agreement states a copy of which is

[5] There are some exceptions of course, for instance some Section 8 tenants may be paying approximately 30% of their income towards rent without regard to the Base Rent minimum. And Enhanced Section 8 Voucher tenants generally pay the greater of 30% of their income or the last rent they were paying prior to the conversion of the property to a Preservation project which occurred on or about May, 2008.

annexed hereto as Exhibit G, in part, at Article V, Operating Rules, Section 5.1 Project Restrictions, pgs. 7-8:

> "...All of the units in the Facility will contain within the unit complete living, sleeping, eating, cooking and sanitation facilities, all of which are separate and distinct from other units. Except as provided herein, all facilities used in connection with the Facility are: (i) located on the Land, (ii) solely for the benefit of tenants at the Facility, and (iii) of a character and size commensurate with the needs of such tenants. *Each unit will also be provided with heat and hot water.* [emphasis added]. The Company shall use its best efforts to ensure that handicapped or disabled individuals in the Project are afforded equal access to such facilities."

The Commission Order allowing submetering does not discuss this commitment on the part of the Owner to provide heat, and indicates no intention to override the covenants made between the Owner and entities that financed the rehabilitation of Riverview II.

In sum, the Commission Order allowing submetering is premised on a serious misapprehension of the nature of the tenant population, the housing law applicable to the premises, agreements related to the provision of heat, and the impact of transferring the Owner's heat obligation to low-income tenants. In the recent Roosevelt Landings case, cited above, the premises also had been misdescribed as rent stabilized when most of the tenants, like Riverview II tenants receive subsidies based on their low income which did not offset the new electric charges. *Accord*, Case 08-E-0836 (Frawley Plaza Stay Order, Issued Feb. 12, 2009) ("The Commission was not informed of . . . the fact that Schomburg Plaza utilized electric heating . . . ."); Case 08-E-0837, (Metro North Apartments Stay Order Issued Feb. 12, 2009, p. 3) ("The Commission was not informed of . . . the fact that Metro North Apartments utilized electric heating,); Case 08-E-0839

(KNW Apartments Stay Order Issued Feb. 12, 2009, p. 2) ("The Commission was not informed of the . . . fact that KNW Apartments utilized electric heating . . . .").

Tenants were Misinformed Regarding Adequacy of Adjustments to Offset New Charges for Electricity.

Granting a stay and rehearing is warranted where the Owner and the SAPA notice failed to inform tenants of the true impact of submetering. The Staff Recommendation which the Commission "So Ordered" recites at page 2 that "No comments were received" in response to the Commission's SAPA notice. I believe that had tenants been made aware of the actual magnitude of the electric charges, and the inadequacy of offsetting adjustments, they would have responded to the application.

To the contrary, when the Owner purchased the building it informed the residents that it was going to make $10 million in renovations and submeter the units for electricity but assured tenants they would receive a utility allowance so that the total amount they would pay in rent plus utility charges would be roughly equivalent to the contract rent if there was no submetering at all. (See Exhibit H, Riverview II FAQs, p. 4). New evidence arising since the Order was issued shows this clearly was not an accurate foreshadowing of the impact of submetering

The Owner also alleged in its petition that rents would be reduced by the amount of the utility schedule set forth by the MHACY. See excerpt of Petition, pages 3-4, attached as Exhibit I. However, the Owner did not reduce the Base and Market rents. To the contrary, HUD and DHCR approved two rent increases for the building – one in November, 2008 and the second to be implemented upon completion of renovations. The Owner implemented the second rent increase on March 1, 2009 – the same date the

Owner instituted submetering. These rent increases ranged from approximately over $200 to $500 per month. (See Exhibit A referred to above which is a copy of the HUD approved schedule of rent increases for the building dated July 31, 2008.) I have already asked HUD and DHCR to reopen the rent increase determinations for public comment and hearing and to direct the owner to rescind the March 1st rent increase because renovations are still not completed and to direct the owner to cease and desist from charging any utility costs to the tenants until the public hearing is held and a determination in made. No action has been taken by HUD and DHCR to protect the tenants from continued charges for submetered electricity under the Commission's Order.

I believe the MHACY provided their Section 8 tenants with a reduction in the tenant portion of their rent equivalent to the amount of the utility allowance in the schedule given to the PSC by the Owner in its Petition and as set forth earlier. However, I do not know whether the MHACY increased its subsidy by payment to owner the equivalent amount. If MHACY did increase its subsidy payment, the Owner has effectively received a third rent increase which is the amount of utility charges paid by the tenant. Even if the MHACY did not increase its subsidy amount, the Owner still reaps a net increase in rent by whatever amount the utility charges exceed the amount of the utility allowance. And because the Owner did not reduce the Base and Market rents, residents with no Section 8 subsidy did not receive any reduction in rent to compensate for the reduction in services. They will bear the entire cost of the utility charges which in some instances could be equivalent to the amount of their entire rent or a large portion thereof.

Because the true impact of submetering was not disclosed in the Owner's application and in notices and information provided to tenants, tenants received inadequate notice of the PSC action. For that reason, the order should be vacated and tenants provided a new opportunity to respond. We also urge the Commission hold a hearing in Yonkers to facilitate input from affected tenants.

PSC Authorized Charges for Electric Service Should Not be Deemed to be "Additional Rent"

In an "Electricity Rider to Lease Amendment" which I believe was provided to residents at the time they signed their last lease (see copy annexed as Exhibit J) the Owner states,

> "...The electricity charges will be billed to the Tenant as additional rent and will be payable on a monthly basis by the Tenant as additional rent. Tenant specifically understands that if the electricity charges are not paid in full on a monthly basis by the Tenant, that the Landlord may commence a summary proceeding to recover a money judgment and a judgment for possession against the Tenant and the Tenant can be evicted from the apartment for failure to pay electricity charges."

I note that the Lease Language attached to the Owner's Petition (Exhibit K) also states that if electricity is submetered, it will be deemed additional rent.

The Home Energy Fair Practices Act (HEFPA), Public Service Law §§ 30, *et seq.* does not authorize utilities to use eviction as a collection remedy for nonpayment of charges for utilities. HEFPA allows termination of the unpaid service only after detailed advance notice, with many protections. These include deferred payment agreements that can allow a customer to catch up on arrears over time, budget billing, protection of customers with medically necessary equipment or serious medical conditions requiring continued service, and referral to social services departments for financial assistance.

In contrast, according to paragraph 38(e) of the lease (see copy annexed as Exhibit L), the Owner can bring a nonpayment eviction proceeding on ten days notice, and if the court finds that rent is unpaid, a warrant of eviction can be issued in as little as five days. The Owner's plan to collect unpaid utility charges through eviction proceedings is equivalent to service termination in violation of HEFPA.

HEAP and Utility Assistance is Not Available

Lastly, there is no recourse to HEAP or public assistance when tenants fall behind in their payments of the charges for submetered electric service. The Owner engaged a company called AMPS to electronically read the meters and generate bills to the tenants. As of early March, I was advised that Westchester County Department of Social Services did not have any agreement with AMPS that enables them to make payments on behalf of public assistance recipients or individuals who wish to obtain access to a Home Energy Allowance Program (HEAP) grant. Although the Owner verbally advised residents on March 18th that it would ask AMPS to work with the New York State Office of Temporary and Disability Assistance (OTDA) and enter into the necessary agreements, there is no requirement contained in the PSC Order that makes it necessary for the Owner to do so. Further, the statutes and regulations which apply to HEAP and utility emergency assistance authorize payments to utilities only. AMPS is not a utility, and so it may be necessary for the Owner to enter into such agreements.

There is yet another impediment to accessing emergency HEAP or public assistance that requires further investigation by the Commission. The Owner verbally advised tenants that it was unable to disconnect electric service to an individual apartment even if it wished to do so. This is contrary to the Owner's statement in its

Petition that "[T]enants of Riverview II Apartments may have their electricity disconnected for nonpayment of electric bills...". If the Owner is unable to terminate electricity services for nonpayment, tenants who fall behind in payment will be unable to access substantial emergency HEAP benefits or assistance under Social Services Law Section 131-s. Such benefits are often necessary to prevent hardship for many low income families.

The Grievance Procedure is Not in Accordance with the Public Service Law.

The Staff Recommendation which the Commission "So Ordered" briefly mentions the proposed customer complaint procedure for Riverview II tenants:

> In the event there is a question or complaint regarding the electric charges, an inquiry or complaint by the tenant would be directed to the building's managing agent for investigation, with the assistance of the Applicant and Quadlogic Controls Corporation, if required, for a timely response under its grievance procedure. The Applicant also states that HEFPA will be adhered to for tenants.

The Owner in its Petition describes a complaint procedure that is unfounded in HEFPA or the Commission's regulations. There is no requirement for residents to submit a written complaint to the Owner nor is there a requirement for the resident to file a written protest within fourteen days is dissatisfied with the response. Some low-income tenants have limited capacity to read and write. These requirements, coupled with the Owner's inclusion of an option to go into arbitration unnecessarily confuses the complaint procedure and is contrary to the HEFPA requirement of "prompt" action by the utility service provider on a complaint in PSL § 43.2.

The Owner's plan does not clearly state that the resident can, at any time, not only contact the PSC by telephone, that a question about service or complaint will be decided

by the PSC under its complaint handling procedures in 16 NYCRR Part 12. Also, the procedure does not clearly state that the Resident has a right to have their meter tested free of charge at least once – without arbitration. The Commission overlooked the details of the Riverview II complaint procedures, and the requirements of HEFPA when it approved the application continuing the defective grievance procedures.

The Commission was Unaware that the Premises were not Renovated to Achieve Energy Efficiency of the Structure and the Owner-Provided Major Energy Consuming Fixtures and Appliances

As a consequence of any unawareness that submetering of heating fixtures is involved, it was necessarily unaware that its order, if not vacated, enables the Owner to shift to tenants all future financial responsibility for an energy inefficient structure and energy inefficient fixtures and appliances which tenants do not own. Riverview II tenants saddled with high bills for inefficient landlord-owned fixtures and appliances cannot replace them (as owners of a co-op or condo might decide to do when they are submetered), even if they could afford to do so.

At building-wide meetings, residents advised me of the following conditions at Riverview II:

- Electric baseboard heating is used.
- No thermostats exist in the apartments to regulate room temperature.
- Electric baseboard heaters have no "turn-off" switch.
- Electric baseboard heaters have a knob with the settings, "Low, Comfort and High" without indication of their meaning or temperature correlation.
- The electric baseboard heater knob is located directly on the baseboard making it highly inconvenient for elderly or disabled individuals to adjust the setting
- In some instances, newly installed windows are poorly sealed.
- In some instances, newly installed A/C sleeves are poorly sealed.
- Some of the electric baseboard heaters are placed directly by drafty areas such as poorly sealed windows, A/C sleeves, or sliding doors.

- Tenants have no independent knowledge of building wall insulation but some tenants report that despite the heat setting used, their units are always cold.

The Implementation of Submetering Approved by the Commission is Not in Compliance with the Leases.

The Commission's Order refers to notification of tenants regarding submetering "in all current and future lease agreements." It appears that the Commission was not aware that the current leases cannot be modified at all without specific procedures, which have not been followed. Also, the Commission Order makes no findings that would be necessary if the Commission had intended to abridge existing contract rights of the tenants consistent with constitutional requirements.

The Resident's leases permit the owner to institute changes in the lease only after giving tenants 60 days notice prior to the expiration of their lease of the change that will be implemented in the new lease term and allowing the tenant the option to accept the change and renew the lease, or move out. See Exhibit L, paragraph 37, Changes in Rental Agreement" which states:

> "[L]andlord may, with prior approval of HUD, change the terms and conditions of this Agreement. **Any changes will become effective only at the end of the initial term or a successive term. Landlord must notify Tenant of any change and must offer Tenant a new Agreement or an amendment to the existing Agreement. Tenant must receive the notice at least 60 days before the proposed effective date of the change.** [emphasis added] Tenant may accept the changed terms and conditions by signing the new Agreement and returning it to the Landlord. Tenant may reject the changed terms and conditions by giving Landlord written notice that he/she intends to terminate the tenancy. Tenant must give such notice at least 30 days before the proposed change will go into effect. If the tenant does not accept the amended agreement, Landlord may require Tenant to move from the project as provided in paragraph 38."

Here, the landlord Owner advised the tenants by letter dated January 28, 2009 that they should sign a Submetering Rider and return it to the landlord by February 10, 2009. (See copy of Owner letter and Rider attached as Exhibit M). The Owner did not

implement the change after the expiration of the existing leases. The Owner did not provide 60 days advance notice prior to the expiration of existing leases that the tenant can either accept the change, or reject it and move out. It is also unclear whether HUD even granted approval to the Owner to modify the lease to allow submetering at all.

The failure of the Owner to abide by provisions of the lease regarding changes should be considered by the Commission as additional grounds to grant rehearing. The Owner's rapid implementation of submetering without following the procedures in the lease also vitiates any claim of hardship on the part of the owner if a stay is issued.

The Commission should Scrutinize the Method of Bill Calculation

Upon rehearing, the Commission should undertake a complete review of the submetering implementation, including the method of bill calculation. AMPS sent a letter to one resident incorrectly advising them that the administration fee of $4.00 is not added to the utility charges before determining whether the cost is less than the Con Edison Residential Rate. (See redacted letter attached as Exhibit N). This certainly implies that AMPS is incorrectly measuring the utility cost to the tenant prior to comparing the Owner's rate to the Con Edison Residential Rate.

The Residents Were Not Advised of the Their Right to Comment of the Proposed Submetering as Required by PSC Regulations

The Owner submitted an affidavit of tenant notification to the Commission on or about June 16, 2008. A copy of the affidavit is attached as Exhibit O. The affidavit was sworn to by George Claude and states that the Owner notified all tenants of the proposed submetering plan on 6/5/08 and that the notification included "plain language the maximum rate cap provisions as specified in Part 96.2b3 Residential Submetering (Public Service Law, §§65.66), the tenant grievance procedures and tenant protections which are

compliant with the Home Energy Fair Practices Act, and the applicable rent reduction that will be adopted upon approval of the submetering plan."

Nowhere does Mr. Claude state that residents were invited to comment to the Commission or that the Owner gave residents the address of the Consumer Services Division as required by Public Service Commission Regulations.[6] In fact, the Owner did not give such notice. I am advised that the only notice the residents received on June 5, 2008 was a letter which I attach a copy of as Exhibit P. This letter does not invite residents to comment to the Commission nor does it have an address for the Consumer Services Division. I am advised by residents that they had no idea they could comment on or oppose the submetering petition and had they known the impact it would have upon them, they surely would have opposed the plan. The Petition should be opened for re-hearing to provide residents with the opportunity to comment upon the plan in conformance with New York State Public Service Commission regulations.

Conclusion

For the reasons set forth above, rehearing should be granted, a stay should be issued, and the prior order allowing submetering should be vacated. The imminent hardships to the tenants far outweigh any possible hardship to the Owner flowing from a stay of the submetering Order, which appears to have been issued without a full apprehension by the Commission of the facts and law, and which subsequent events have shown to be harmful if not disastrous for the residents of Riverview II.

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[6] "The notification shall include a summary of the information provided to the commission . . . and an invitation to comment to the commission. The notification shall prominently display the address and telephone number of the nearest commission consumer services division office." 16 NYCRR §96.2(b)(5).

In closing, I wish to thank the Commission for your kind attention to this petition and am available to discuss the matter with you.

Sincerely,
Legal Services of the Hudson Valley

Nancy J. Marrone
Of Counsel

Encl: Attachments

cc: Hon. Jaclyn Brilling, Secretary
Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350
(Original and 25 copies)

Michael Corso, Director
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