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VIA ELECTRONIC MAIL

Honorable Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

***Re: Consolidated Edison Company of New York, Inc.
– Notification of Property Tax Refund
and Proposed Disposition of Benefits***

Dear Secretary Burgess:

Consolidated Edison Company of New York, Inc. (“Con Edison” or “the Company”) hereby notifies the Public Service Commission (“PSC” or “the Commission”), pursuant to Section 89.3 of the Commission’s regulations, 16 NYCRR § 89.3, of its receipt of a property tax refund and the proposed distribution of this refund.

As discussed in greater detail herein, this property tax refund results from Con Edison’s successful settlement of its challenges to certain property tax assessments in connection with the Company’s Astoria, Ravenswood and Hudson Avenue generating stations levied by the City of New York (“the City”) for several past tax years.¹ Pursuant to the terms of Con Edison’s current electric and steam rate plans,² and consistent with the provisions of section 113(2) of the Public Service Law, the Company will defer for the benefit of electric and steam customers 86 percent

¹ The Astoria and Ravenswood generating stations, located in Queens, were divested by Con Edison in 1999. The Hudson Avenue generating station, located in Brooklyn, remains the property of Con Edison but was retired by the Company in 2010.

² Con Edison’s proposed retention of 14 percent of this refund, net of costs to achieve, is in accordance with the Company’s current electric and steam rate plans. Case 09-E-0428, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service*, Order Establishing Three-Year Electric Rate Plan (issued March 26, 2010), Joint Proposal, Section F.3; Case 09-S-0794, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service*, Order Establishing Three-Year Steam and Gas Rate Plans (issued September 22, 2010), Joint Proposal, Section D.

of its property tax refund, net of i) costs to achieve and ii) a share of the refund that the Company owes the purchaser of the Ravenswood generating station,³ with the Company retaining 14 percent of the net refund. As will be discussed in more detail below, the Company's retention of its portion of the refund is in accordance with its electric and steam rate plans, is in recognition of its continuous and targeted tax reduction efforts, and provides an incentive to the Company to continue such efforts in the future.

Con Edison's Efforts Challenging the City's Property Tax Assessments

Starting in 1994, Con Edison commenced tax certiorari petitions against the City under Article Seven of the Real Property Tax Law challenging, among others, the City's property tax assessments of the Arthur Kill,⁴ Astoria, Ravenswood and Hudson Avenue generating stations for tax years 1994/1995 through 1998/1999.⁵ For Hudson Avenue, the Company also filed tax certiorari petitions for tax years 1999/2000 through 2011/2012. In 2004, the Company successfully litigated its claims relating to the Arthur Kill generating station.⁶ In that tax litigation, Con Edison and the City agreed that an electric generating facility is "specialty property" and should therefore be appraised using the Reproduction Cost New Less Depreciation ("RCNLD") method of valuation. The parties differed, however, in whether one type of

³ Con Edison sold the Ravenswood generating station on June 18, 1999 and was reimbursed at the closing for the previously paid property taxes allocable to the twelve days that remained in the tax year ending June 30, 1999. Pursuant to the sale agreement, TC Ravenswood, LLC, formerly a KeySpan subsidiary and now a TransCanada subsidiary, is owed a share of the tax refund allocable to that twelve-day period.

⁴ The Arthur Kill Generating Station was divested by Con Edison in 1999.

⁵ The 1994/95 proceeding was commenced by the service of a verified petition on the New York City Tax Commission on October 19, 1994. The 1995/96, 1996/97, 1997/98 and 1998/99 proceedings were commenced by the filing of a verified petition with the clerk of the court of October 20, 1995, October 22, 1996, October 23, 1997, and October 14, 1998, respectively. Issue in all of these actions was deemed joined pursuant to section 712 of the Real Property Law.

⁶ *Consolidated Edison Co. of New York, Inc. v. The City of New York*, (Trial Order) (NY Sup. Oct 05, 2004) (No. 8564/98, 8672/94, 8780/95, 8801/96, 8864/97), *aff'd*, 33 AD3d 915 (3d Dep't 2006), *aff'd*, 8 NY3d 591 (2007) (the "Arthur Kill litigation"). The Company's distribution of the refunds received was approved by the Commission. Case 07-E-0927, *Petition for Approval, Pursuant to Public Service Law Section 113(2), of a Proposed Allocation of Certain Tax Refunds between Consolidated Edison Company of New York, Inc and Ratepayers*, Order Concerning Two Property Tax Refunds (issued June 23, 2008).

depreciation, “functional obsolescence due to excess construction cost,” should be included in calculating the value of the facilities.

The RCNLD method of valuation first calculates the cost to reproduce an exact duplicate of the subject property with the same materials, standards, design, and workmanship, including all of the property’s deficiencies, super adequacies, and obsolete features. The RCNLD method then subtracts from this amount an allowance for physical and functional depreciation. The final step in the RCNLD calculation is to add in the value of land to arrive at a “value” for an entire property.⁷

The dispute in the tax litigation with the City concerning Arthur Kill arose over a particular type of depreciation, functional obsolescence due to excess construction cost, which represents the cost of reproducing outmoded and obsolete features of a property. Con Edison included the value of functional obsolescence due to excess construction costs in its calculation of depreciation in valuing the Arthur Kill facility since the emergence of new power plant technologies made certain equipment at the facility obsolete for tax valuation purposes. The City argued that the Company’s approach was invalid since it produced a valuation based on replacement cost, rather than reproduction cost, which the City believed was prohibited by New York State law.⁸

In 2005, the Supreme Court ruled in favor of the Company and awarded it a property tax refund. The City appealed that decision to the Appellate Division, Second Department, which affirmed the lower court’s decision on October 24, 2006. The City then filed an appeal to the New York State Court of Appeals which, on June 5, 2007, also ruled in favor of the Company.⁹

⁷ RCNLD is used to value utility structures and equipment, in contrast to the valuation of land and non-utility specific properties (e.g., general office buildings), which is determined by comparable sales data or income capitalization.

⁸ Replacement cost is the cost of replacing the existing property with a facility of similar productive capacity using modern materials and technology.

⁹ Arthur Kill litigation, *supra*.

The refund amount awarded to the Company in the litigation was distributed 86 percent to the Company's electric customers, net of costs to achieve, with the Company retaining 14 percent of the net refund.¹⁰

Following the Company's success in the Arthur Kill-related litigation, the parties agreed to focus initially on trying to settle the portions of the Company's outstanding tax certiorari claims that concerned other generating stations. The Company had filed tax certiorari claims against the City in Supreme Court, Queens County, with respect to properties in Queens that included, among others, the Astoria generating station and the Ravenswood generating station for the tax years 1994/95 to 1998/99. While the Company sold these generating stations in 1999, the Company retained the rights to property tax refunds allocable to the period prior to the sales. The Company also had filed tax certiorari claims against the City in Supreme Court, Kings County, with respect to various properties in Brooklyn. The Brooklyn properties that were the subject of those claims included the Company's Hudson Avenue generating station. The tax years that ultimately became the subject of the Hudson Avenue negotiations were the tax years 1994/95 to 2011/12.

The parties focused exclusively on the electric production property and steam production property portions of the refund claims as opposed to transmission, distribution or other property types. This was consistent with the parties' agreed-upon plan to first attempt to settle the electric and steam production property portions of the claims pertaining to the Astoria, Ravenswood, and Hudson Avenue generating station sites. If successful with regard to these three sites, the parties then planned to focus on the production property portions of the Company's other generating stations in Manhattan, and then ultimately attempt to settle the transmission, distribution and other portions of the Company's pending tax claims.

¹⁰ Case 10-E-0308, *Re Consolidated Edison Company of New York, Inc.*, Order Adopting Terms of the Joint Proposal (issued May 20, 2011).

In late 2007, the parties commenced implementing their planned process to meet and exchange data regarding the electric and steam production property at the Astoria, Ravenswood and Hudson Avenue sites. In connection with this focused effort, the Company engaged Podell, Schwartz, Schechter & Banfield, LLP (the law firm that litigated the Arthur Kill claim) to assist in the settlement discussions and AUS Consultants, Inc. (the appraisal firm that was used in the Arthur Kill claim) to provide property valuations (and, if necessary, trial-ready appraisals) and to otherwise support the settlement negotiations. The City hired DAI Management Consulting to assist it in evaluating the properties. In 2008, the Company met at least six more times with the City Law Department in an attempt to reach a mutually satisfactory settlement. The parties engaged in numerous telephone calls, exchanged multiple pieces of assessment valuation data, and jointly inspected the Hudson Avenue generating station. Following this effort, in September of 2008, the City made a preliminary offer to settle the electric and steam production property claims at the Astoria, Ravenswood and Hudson Avenue generating station sites. This preliminary offer would have resulted in a property tax refund of approximately \$43 million. The Company declined the offer, advising the City that the proposed tax refund was insufficient to resolve the Company's claims.

In 2009, the Company continued its settlement efforts with the City, meeting several times with City Law Department personnel, participating in numerous telephone conference calls, and working with the Company's appraiser, outside counsel and internal staff to arrive at values of the properties for settlement and trial purposes. In September of 2009, the City made a further offer to settle the electric and steam production claims for a total of \$62.4 million. The Company analyzed and discussed the offer in detail internally, with its outside counsel, and with its appraiser to determine the adequacy of the offer and the risks associated with rejecting the offer and litigating the claims before the trial court. The Company ultimately rejected the City's

\$62.4 million offer.

The Company nonetheless continued to pursue a settlement with the City during 2011 and 2012. To facilitate the settlement discussions and permit the claims to proceed to trial if this last round of negotiations failed, the Company placed the Astoria and Ravenswood claims on the trial calendar in Supreme Court, Queens County, and the Hudson Avenue claims on the trial calendar in Supreme Court, Kings County. The Company again met several times and participated in numerous calls with the City Law Department. Additionally, Company representatives attended several conferences in Supreme Court, Kings County, where the Hudson Avenue claims were pending.

As a result of placing the claims on the trial calendar and conferencing the Hudson Avenue claims before court personnel in Supreme Court, Kings County, the Hudson Avenue electric and steam production claims were scheduled for trial in early 2013, with a court-ordered appraisal exchange date of October 15, 2012. Accordingly, in early 2012, the Company's appraiser, AUS Consultants, Inc., began to prepare a trial-ready appraisal with respect to the Hudson Avenue property. This appraisal preparation work was in addition to providing detailed data and analysis concerning the Ravenswood and Astoria properties to assist the Company in its settlement negotiations with the City. This work included identifying and reviewing book costs of the electric and steam production property located at the three sites, reviewing industry cost indices and guides, and performing analysis and calculations to determine RCNLD valuations for the three sites with and without the application of certain variables, and comparing the Company's valuation positions to those of the City.

In 2012, the City had expressed interest in various electric reliability projects that the Company was analyzing with an eye towards the Company possibly making certain commitments to the City concerning particular projects if the property tax claims under

discussion were settled on terms acceptable to the Company. AUS Consultants, Inc. was nearing completion of its trial-ready appraisal and the Company was preparing for trial when, in September of 2012, the City offered \$140 million to settle the electric and steam production property portions of the claims with respect to the Astoria (tax years 1994/95 to 1998/99), Ravenswood (tax years 1994/95 to 1998/99), and Hudson Avenue (tax years 1994/95 to 2011/12) sites. The Company communicated its agreement in principle to this amount. Following Superstorm Sandy in late October, 2012 and the ensuing recovery effort, the City's interest in the Company's projects centered on the pursuit of storm resiliency work.

From September through December of 2012, term sheets and revisions thereof were drafted and exchanged between the parties and discussions were held in an attempt to capture some of details of the anticipated settlement. At the City's request and to permit the process for finalizing the settlement to continue, the Company agreed to adjournments in the appraisal exchange date in the Hudson Avenue litigation. In January of 2013, the process of negotiating a definitive settlement agreement commenced and concluded in February of 2013. The settlement agreement that was agreed upon between the Company and the City in February was then submitted by the City Law Department to the City Comptroller's Office for review and approval.

In early May of 2013, the City Law Department personnel reported that the Comptroller's Office had approved the Settlement Agreement. A copy of the Settlement Agreement is attached to this petition as Appendix A.¹¹ The City Law Department personnel also reported that, in lieu of funding the settlement amount from a particular budget as apparently had been contemplated, the Comptroller's Office was requiring that the settlement amount be funded through the customary means for property tax refunds. This meant that the assessed values for the electric and steam production property for each of the Astoria, Ravenswood, and Hudson Avenue sites in

¹¹ Settlement Agreement Between Consolidated Edison Company of New York, Inc. and the City of New York, dated July 22, 2013.

each of the prior tax years at issue had to be reduced by the City so that when all of the reductions were applied to the applicable tax rates, the result would be a \$140 million refund amount in the aggregate. Besides making certain that the math was correct, the Company also had to ensure that the assessment reductions in the tax years at issue were made only to the City property accounts that contained electric and steam production property as the claims for other types of property (*e.g.*, transmission and distribution property) at the same sites were not being settled and were to remain viable. Sufficient assessment values had to remain on the City's books with respect to those other property types so there would be enough assessment to later reduce and generate refunds should the Company be successful in settling or litigating the claims that remained for those other property types. This work necessitated several further discussions with the City Law Department, the exchange and review of the City Department of Finance records, and negotiating and drafting of stipulations and proposed orders to be presented to the applicable courts. The agreed upon stipulations containing the numerous assessment reductions and the proposed court orders were filed with the Supreme Court, Queens County, and the Supreme Court, Kings County. Signed court orders authorizing the refunds agreed to in the stipulations were obtained on July 19, 2013,¹² and additional paperwork was prepared and filed with the NYC Department of Finance to enable NYC to sign the definitive settlement agreement on July 22, 2013 and pay the \$140 million refund amount to the Company on July 25, 2013.

In return for the \$140 million refund amount, Con Edison agreed to dismiss the electric and steam production property portions of the claims with respect to the Astoria (tax years 1994/95 to 1998/99), Ravenswood (tax years 1994/95 to 1998/99), and Hudson Avenue (tax

¹² *In the Matter of Consolidated Edison Company of New York, Inc. v. The Commissioner of Finance and the Tax Commissioner of the City of New York*, Order of Partial Settlement, Sup Ct, Queens County, July 19, 2013, Rios, J., Index No. 3687/94 et. al.; *In the Matter of Consolidated Edison Company of New York, Inc. v. The Commissioner of Finance and the Tax Commissioner of the City of New York*, Order of Partial Settlement, Sup Ct, Kings County, July 19, 2013, Pesce, J., Index No. 35817/94 et. al.

years 1994/95 to 2011/12) sites. All other portions of the claims with respect to these sites are preserved and remain viable, including with respect to steam distribution property, electric transmission and/or distribution property, and common utility plant. The Company also committed to perform, during the three year period ending December 31, 2015, \$140 million of work to protect its utility systems from or make its systems more resilient to storms.

By entering into this settlement, the Company will avoid years of costly litigation and additional appraisal fees, as well as the uncertainty of court decisions.

The Property Tax Refund

Pursuant to the settlement, assessment reductions for the properties in the prior tax years in question were implemented and the Company became entitled to a refund from the City totaling \$140,000,000, broken down as follows: Astoria - \$38,059,288.60; Ravenswood - \$49,029,507.41; and Hudson Avenue - \$52,911,203.99. A detailed table showing the original assessments, the assessment reductions and the refund amounts is attached as Appendix B.

To date, the Company has incurred \$249,478 for incremental expenses, consisting of \$105,363 in external legal fees and \$144,115 in appraisal fees, in connection with the settlement of its claims against the City. A summary of the costs to achieve the property tax refund is attached as Appendix C.

To fulfill an obligation arising from the sale agreement under which Con Edison sold the Ravenswood generating station in 1999, Con Edison is obligated to pay TC Ravenswood, LLC the portion of the refund amount allocable to the twelve days of the tax year 1998/1999 for Ravenswood. This is because Con Edison received funds for the taxes allocable to this twelve-day period at the 1999 closing of the sale.¹³ The refund for the 1998/1999 tax year with regard to the Ravenswood site is \$10,023,240.94, which comes out to \$27,460.93 dollars per day.

¹³ See fn. 2 above.

Accordingly, the Company is obligated to reimburse TC Ravenswood, LLC for the twelve days at \$27,460.93 per day for a total of \$329,531.21.

Pursuant to the terms of the settlement, Con Edison received a \$140,000,000 cash refund from the City on July 25, 2013.

Con Edison's Proposed Distribution of the Property Tax Refund

The property tax refund will benefit the Company's electric and steam customers. The Company has allocated the property tax refund to its electric and steam departments based on the book cost of the plant that was the basis for the assessments for each fiscal year. A summary of the net refund for each generating station and the proposed distribution between electric and steam customers is attached as Appendix D. Con Edison will retain 14 percent of the net tax refund received from the City, or approximately \$19.519 million, with the balance, or approximately \$119.902 million, deferred for future disposition to electric and steam customers.¹⁴

Conclusion

For the reasons set forth above, Con Edison respectfully requests that the Commission approve the Company's proposed distribution of the tax refund resulting from the settlement of the aforementioned property tax challenges between the Company and the City. Please contact me if you need any additional information.

Respectfully submitted,



¹⁴ The Commission has consistently authorized the Company to retain 14 percent of such refunds, in accordance with the terms of the company's rate plans, recognizing Con Edison's extensive efforts to manage and reduce local property tax expenses and as an incentive to continue such efforts in the future. *See*, Case 12-M-0506, Order Adopting Joint Proposal and Approving Disposition of Property Tax Benefits (Pleasant Valley) (issued June 14, 2013); Case 09-M-0867, Order Adopting Terms Of Joint Proposal (East Fishkill) (issued January 26, 2011); Cases 08-E-0539, 08-M-0618, Order Setting Electric Rates (East Fishkill) (issued April 24, 2009); Cases 07-E-0927, 08-M-0281, Order Concerning Two Property Tax Refunds (Stony Point) (issued June 23, 2008).

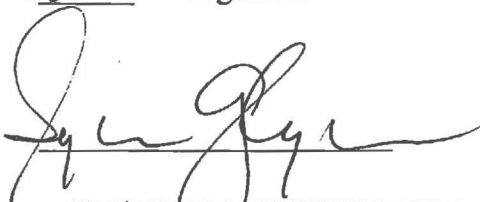
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

ROBERT MUCCILO, being duly sworn, deposes and says that he is Vice President and Controller of Consolidated Edison Company of New York, Inc.; that he has read the foregoing Notification of Property Tax Refund and knows the contents thereof; and that the same is true to the best of his knowledge, information, and belief.


Robert Muccilo

Sworn to before me this
22nd of August 2013



SYLVEN GLYNN
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01GL5065881
Qualified in Kings County
Commission Expires September 16, 20 14

**PROPOSED RULEMAKING
NO HEARING(S) SCHEDULED**

Notification of Property Tax Refund and Proposed Disposition of Benefits

I.D. No. PSC-

PURSUANT TO THE PROVISIONS of the State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. (“Con Edison”) regarding disposition of property tax benefits.

Statutory authority: Public Service Law, section 113(2).

Subject: Disposition of property tax benefits.

Purpose: To authorize Con Edison to distribute certain property tax refunds between customers and the Company.

Substance of the proposed rule: The Commission is considering a request by Con Edison for authority to distribute certain property tax refunds between customers and the Company. The Commission may approve, reject or modify, in whole or in part, Con Edison’s request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500.

Data views or arguments may be submitted to: Jeffrey C. Cohen, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530.

Public Comment will be received until: 45 days after the publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analysis are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.