

Filed Session of June 19, 2002  
Approved as Recommended  
and so Ordered  
By the Commission

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JANET HAND DEIXLER  
Secretary  
Issued and Effective June 21, 2002

STATE OF NEW YORK  
DEPARTMENT OF PUBLIC SERVICE

May 31, 2002

TO: THE COMMISSION

FROM: OFFICE OF ELECTRICITY AND ENVIRONMENT

SUBJECT: CASE 96-E-0897 - In the Matter Consolidated Edison Company of New York, Inc.'s Plans for (1) Electric Rate/Restructuring Pursuant to Opinion No. 96-12; and (2) the Formation of a Holding Company Pursuant to PSL, Section 70, Section 108, and Section 110, and Certain Related Transactions.

SUMMARY OF

RECOMMENDATION: The Commission should allow Consolidated Edison Company of New York, Inc. to terminate its auction plan regarding the divestiture of five potential in-City generating sites.

INTRODUCTION

On September 14, 1998, Consolidated Edison Company of New York, Inc. (Con Edison or the company) filed a plan, in accordance with its Rate/Restructuring Order,<sup>1</sup> to make several potential generating sites available for sale (the Auction Plan). The Auction Plan set forth the details of Con Edison's proposal to divest five potential generating sites<sup>2</sup> through an auction

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<sup>1</sup> Case 96-E-0897, Consolidated Edison Company of New York, Inc.'s Plans for Electric Rates and Restructuring, Order Adopting Terms of Settlement Subject to Conditions and Understandings (issued September 23, 1997); Confirming Order (issued October 1, 1997); and Opinion No. 97-16 (issued November 3, 1997).

<sup>2</sup> The five sites are known as Sherman Creek, Hell Gate Yard, Victory Boulevard, North First Street Oil Terminal, and 500 Kent Avenue.

process similar to the one by which Con Edison auctioned its electric generating facilities.<sup>3</sup> The Plan was approved by the Commission in May 1999.<sup>4</sup> Because of the possibility that one of Con Edison's affiliates would participate in the auction as a bidder, Con Edison selected Cushman & Wakefield, Inc. (C&W) to conduct the auction, and the Commission directed Department of Public Service Staff (Staff) to closely monitor the auction activities.

For the reasons set forth below, the auction process has either been frustrated by other events or has not been successful. Con Edison therefore seeks permission to terminate the Auction Plan.

### AUCTION STATUS

#### Sherman Creek

Con Edison reports that during the auction process, it determined that it needed to install emergency diesel generators to preserve system reliability during the summer of 2000. The Sherman Creek site was identified as one location for these generators. After discussing the matter with Staff, C&W advised bidders of the change in status of the property and Con Edison withdrew the site from the auction. The site continues to be used by Con Edison for utility-related purposes.

#### Hell Gate Yard

C&W actively marketed this site and attracted some interest in it. Additionally, a local community group expressed interest in obtaining the site for use as a community center. Pursuant to the Auction Plan, both interested parties and the community group submitted bids for the property.

Subsequently, to meet the growing energy demands and preserve system reliability in the City of New York in the summer 2001, the New York Power Authority (NYPA) constructed single cycle turbines on ten sites in the City. After identifying the Hell Gate Yard

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<sup>3</sup> Case 96-E-0897, supra, Order Authorizing the Process for Auctioning of Generating Plants (issued July 21, 1998).

<sup>4</sup> Case 96-E-0897, supra, Order Authorizing Process for the Auctioning of Five Potential Generating Sites (issued May 3, 1999). (May 3 Order)

site as a preferred location, NYPA condemned the property pursuant to its eminent domain authority. As a result, the auction activities associated with this property were terminated.

Victory Boulevard

C&W actively marketed this site to power producers and others. Some initial interest was expressed in the site, but, for several reasons, no bids were received. C&W determined that due primarily to the site's size (approximately 80 acres) and location (next to the Fresh Kills Landfill on Staten Island), an auction process was not the appropriate method to garner interest in the property. In discussions with Con Edison and Staff, C&W suggested that the preferable way to proceed with this site would be to initiate a directed marketing program that would focus on more traditional industrial and manufacturing users as well as power producers.

North First Street

Similar to the Hell Gate Yard site, NYPA identified this site as a desirable location for one of its turbines. Due to the size of the site (approximately nine acres), NYPA determined that it needed only a portion of it and therefore did not condemn the entire property.

Prior to NYPA's action, C&W had successfully attracted interest in the site and had received a number of bids. Because NYPA did not condemn the whole site, C&W and Con Edison entered into negotiations with the high bidder over the terms and conditions of the sale contract. When these negotiations reached an impasse, Staff was asked to mediate and assist in resolving the open issues. For a variety of reasons, the disputed issues could not be resolved and the bidder eventually advised Con Edison it was no longer interested in the property.

500 Kent Avenue

Immediately after approving the Auction Plan, Staff became aware of a Memorandum of Understanding (MOU) among the City of New York and a number of community groups and others pursuant to which the City agreed to investigate the suitability of the Kent Avenue site for use as subsidized housing. As a result of the MOU, by Order dated August 18, 1999<sup>5</sup>, the Commission exempted the Kent Avenue site from the bidding and auction process and allowed Con Edison to enter into negotiations with the City and community groups on the potential redevelopment of the site. After analyzing the condition of the site and the

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<sup>5</sup> Case 96-E-0897, Order Clarifying Process for the Auctioning of Five Potential Generation Sites (issued August 19, 1999).

potential costs associated with its redevelopment, the City advised Con Edison that it was not interested in acquiring the property.

C&W did advertise and market the site, but did not receive any serious expressions of interest in it. Based on the environmental analysis of the site, and Con Edison's estimate of the cost to remediate it, C&W advised Staff and the company that it was questionable whether the site would be considered attractive to anyone.

For the foregoing reasons, Con Edison reported in a March 19, 2002 letter to the Secretary that the auction process is inactive. The company therefore proposed to terminate the Auction Plan and market the available sites through its real estate department with assistance from a local real estate broker.

#### DISCUSSION

As noted above, Staff actively monitored the auction process and related activities. C&W properly conducted the auction process and undertook significant efforts to market the sites and attract interest in them. For a number of reasons, including size, location, environmental contamination, and NYPA's actions, it is understandable that the auction was not successful.

Staff agrees with Con Edison's proposal and recommends that the Auction Plan, as authorized by the May 3 Order, be terminated. Because these properties are being supported by, but no longer providing any real benefit to, ratepayers, it would be appropriate to pursue other methods to market these properties and provide relief to ratepayers.

#### Recommendation:

##### It is recommended that:

1. The Auction Plan authorized by the May 3, 1999 Order be terminated.
2. Consolidated Edison Company of New York, Inc. be directed to employ commercially reasonable efforts to attempt to divest the properties, or portions thereof not acquired by the New York Power Authority.
3. Consolidated Edison Company of New York, Inc. be directed to keep Department of Public Service Staff advised of the status of its efforts.

4. This proceeding be continued.

Respectfully submitted,

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