STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Consolidated Edison Company of New York, Inc. for the Notice of Refunds to the Company of Gross Receipts Tax and Excess Dividends Tax, Pursuant to 16 NYCRR Section 89.3 and Request for Commission Approval of the Proposed Disposition of these Refunds	**Case No. 10-E-0308**

JOINT PROPOSAL

THIS JOINT PROPOSAL, made as of the 29th day of March 2011, by and between Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") and New York State Department of Public Service Staff ("Staff") (collectively referred to herein as the "Signatory Parties"), sets forth the Signatory Parties' joint recommendations to the New York State Public Service Commission ("Commission") regarding the disposition of two tax refunds received by Con Edison.

In a filing dated May 27, 2010 ("May 27 Filing"), Con Edison notified the Commission, pursuant to section 89.3 of the Commission's regulations,[1] of the successful completion of litigation resulting in refunds to the Company of Gross Receipts Tax[2] and Excess Dividends Tax[3] (referred to collectively as "Tax Refunds") paid to the State of New York (the "State" or "NYS") and the proposed disposition of the Tax Refunds. In the May 27

[1] 16 NYCRR §89.3.
[2] NYS Tax Law §186-a.
[3] NYS Tax Law §186(1) (now repealed).

Filing, the Company estimated that the refunds would total approximately $36 million, consisting of prior tax, interest and penalty payments.[4]

Con Edison proposed in that filing to recover its incremental expenses to achieve the Gross Receipts Tax refund from the refund amount and to retain 14 percent of the balance of the refund, or about $1.3 million, and to defer 86 percent of the balance, or about $7.7 million, for the benefit of the Company's electric customers. The Company further proposed to retain the entirety of the estimated Excess Dividends Tax refund of approximately $25.6 million.

On November 24, 2010, Con Edison filed a Notice of Impending Settlement Negotiations with the Commission's Secretary, Staff and the Presiding Officer.[5] Following negotiations, Con Edison and Staff have reached agreement on the disposition of the Tax Refunds as set forth below.

I. Background

A. Gross Receipt Tax Refund

In August 2001, Con Edison filed a refund claim with the New York State Department of Taxation and Finance ("Taxation and Finance") for the Gross Receipts Tax paid for the year 1999. The claim was based on a revised calculation of the gain on the Company's 1999

[4] The total Gross Receipts Tax refund, including interest, was estimated to be approximately $10.6 million, and the total Excess Dividends Tax refund, including interest, was estimated to be approximately $25.6 million. As discussed in this Joint Proposal, the actual amounts received from the State for the Tax Refunds are slightly higher than the amounts estimated in the May 27 Filing as additional interest was added to the final payments due to delays in payment of the Tax Refunds.
[5] There is currently no Active Parties List in this proceeding.

sale of its in-City electric generating fossil-fueled facilities (referred to herein as the "Divested Assets").

The sale of the Divested Assets was made as part of the restructuring of the electric utility industry,[6] pursuant to a Commission approved Generation Divestiture Plan (the "Divestiture Plan"),[7] under which the Company divested all of its in-City electric generating facilities divided into three asset bundles.[8] On August 20, 1999, the Company completed the sale of the Divested Assets. Based on the gain from the sales, the Company made payment to the State of approximately $5.8 million for the 3.25-percent Gross Receipts Tax and approximately $1.0 million for the MTA surcharge of 17 percent.

Subsequently, Con Edison filed a tax refund claim for the year 1999 based on a revised calculation of the gain on the sale of the Divested Assets. In its refund claim, the Company asserted that the calculation of the original cost of the Divested Assets should have also included approximately $177 million of costs of retired-in-place assets that were then still physically located at the Divested Assets and transferred as part of the sale. As a result of

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[6] Cases 96-E-0897 and 96-E-0916, *Order Adopting Terms of Settlement Subject to Conditions and Understandings*, issued September 23, 1997; *Confirming Orde*r, issued October 1, 1997; and Opinion No. 97-16, issued November 3, 1997 (the "1997 Settlement Agreement").

[7] Case 96-E-0897, *Order Authorizing the Process for Auctioning of Generation Plant*, issued July 21, 1998.

[8] These three bundles were: Arthur Kill Generating Station, located in Staten Island, Richmond County, and 20 gas turbines located at the Company's Astoria facility in Queens County (the "Arthur Kill bundle"); Ravenswood Generating Station, located in Long Island City, Queens County, and 16 gas turbines also located at the Ravenswood facility (the "Ravenswood bundle"); and Astoria Generating Station, located in Queens County and 32 gas turbines located in the Gowanus section of Brooklyn, Kings County, and 16 gas turbines located in the Sunset Park section of Brooklyn, Kings County (the "Astoria bundle"). The Commission Orders approving the transfers of the bundles were: Case 96-E-0897, *Order Approving Transfer of Generating Facilities and Making Other Findings*, issued July 28, 1999 ("the Astoria Order") (approving the transfer of the Company's Astoria asset bundle to an affiliate of Orion Power Holdings, Inc.); Case 96-E-0897, *Comprehensive Order Approving Transfers of Generating Facilities and Making Other Findings*, issued June 17, 1999 ("the Ravenswood/AK Comprehensive Order") and *Order Approving Transfers of Generating Facilities and Making Other Findings*, issued June 8, 1999 ("the Ravenswood/AK Short Order") (approving the transfer of the Company's Ravenswood and Arthur Kill asset bundles to affiliates of KeySpan Energy and affiliates of NRG Energy, Inc., respectively).

adding these additional costs, the gains on the sale of the Divested Assets were reduced, allowing the Company to seek a tax refund of approximately $6.8 million. The Company was assisted in developing this Gross Receipts Tax refund claim by a consultant, the Grant McCarthy Group, LLC ("GMG").

B. Excess Dividends Tax Refund

In 1999, when the Divested Assets were sold, Con Edison was subject to the Excess Dividends Tax.[9] Although Con Edison distributed to Con Edison, Inc. ("CEI"), its parent holding company, quarterly dividends of approximately $234 million in the third and fourth quarters of 1999, the Company did not pay any Excess Dividends Tax on these distributions because these were distributions from the proceeds of the sale of the Divested Assets and not the distribution of profits in the ordinary course of business subject to that tax.[10]

In March 2004, Taxation and Finance issued a notice of deficiency to the Company asserting that the dividends paid by the Company to CEI in the third and fourth quarters of 1999 were subject to the Excess Dividends Tax as these dividends were "profits earned in the ordinary course of business" under former Section 186(1) of the Tax Law.[11] The Company paid the Excess Dividends Tax deficiency in March 2004, but advised Taxation and Finance

[9] In 1999, when Con Edison sold the Divested Assets, former Section 186(a) of the NYS Tax Law imposed an Excess Dividends Tax of 4.5 percent on the dividends that an electric, gas, water, or steam utility paid out above four percent of its actual paid-in capital in the State. The Excess Dividends Tax was repealed on May 15, 2000, when Governor Pataki signed into law the State Budget for 2000-2001 that made several changes in the taxation of utility companies, retroactively effective to January 1, 2000.

[10] In January 1999, before the sale of the Divested Assets was completed, the Advisory Opinion Unit of the Department of Taxation and Finance had confirmed that Con Edison's distribution to CEI of the proceeds from the sales of the Divested Assets would not be the distribution of profits in the ordinary course of business and, as such, that the divestiture proceeds would not be subject to the Excess Dividends Tax.

[11] Con Edison also issued a special dividend of $850 million to CEI in the third quarter of 1999. Taxation and Finance initially claimed on audit that this special dividend was also subject to the Excess Dividend Tax, but Taxation and Finance ultimately abandoned this claim.

that it disagreed with the proposed adjustment and was making the tax payment only to stop the accruing of interest and penalties on the alleged Excess Dividends Tax deficiency. [12]

The Excess Dividends Tax deficiency payment was approximately $18.9 million, consisting of approximately $13.3 million of principal, including the MTA surcharge, $4.4 million of interest, and $1.2 million of penalties.

C. State Tax Appeals Tribunal

A hearing on both the Company's refund claim related to the Gross Receipts Tax and the Company's challenge to the deficiency notice on the Excess Dividends Tax was held at the Division of Tax Appeals before a Division of Tax Appeals Administrative Law Judge ("ALJ") on May 2, 2007. On July 31, 2008, the ALJ ruled against the Company on both claims. The Company subsequently challenged the decision of the ALJ to the New York State Tax Appeals Tribunal ("TAT").

The TAT issued a Decision dated March 29, 2010, in favor of the Company on its Gross Receipts Tax claim[13] and its Excess Dividends Tax claim.[14] As a result of the TAT's Decision, the Company received a refund of approximately $37 million, consisting of the refund of prior tax, interest, penalty payments, and approximately $11 million in related interest, as detailed in the following table:

[12] Letter from Stephen Ianello, Assistant General Counsel, Consolidated Edison Company of New York, Inc. to Charles E. Hanny, Tax Auditor III, New York State Department of Taxation and Finance, dated March 29, 2004.
[13] *Matter of Consolidated Edison Company of New York, Inc.*, Tax Appeals Tribunal, March 29, 2010, p. 29.
[14] *Id*., p. 24.

Actual Proceeds for NYS Gross Receipts Tax & Excess Dividend Tax Refund Received August 2010

Excess Dividends and GRT Refund	Total	Principal	Interest
Total GRT	$10,945,293	$6,839,015	$4,106,278
Total Excess Dividend	$26,022,560	$18,886,808	$7,135,752
Total	**$36,967,853**	**$25,725,823**	**$11,242,030**

II. The Terms of the Joint Proposal

A. Distribution of the Gross Receipts Tax Refund

Con Edison incurred incremental expenses of $1,240,269 to achieve the Gross Receipt Tax refund. The Signatory Parties agree that Con Edison should recover the incremental expenses to achieve the Gross Receipts Tax refund and retain fourteen percent of the net Gross Receipts Tax refund. Allowing the Company to retain a portion of the tax refund is consistent with the provisions of section 113(2) of the Public Service Law and the Commission's policy of permitting utilities to retain a portion of tax refunds as an incentive for continuing efforts to reduce tax expense.

B. Distribution of the Excess Dividends Tax Refund

The Excess Dividends Tax refund, with interest, totals $26,022,560. The Signatory Parties agree that Con Edison's customers should receive $11,224,565 of the Excess Dividends Tax refund and that Con Edison should retain $14,797,995 of the Excess Dividends Tax refund.

The Company paid the Excess Dividends Tax deficiency including interest and penalties in March 2004. The Excess Dividends Tax expense was not included in base rates under the rate plan then in effect[15] or otherwise charged to customers as part of base rates. However, $10,630,800 of the Excess Dividends Tax payment was reflected in the Company's actual operating expenses for the 12 month period ended March 31, 2004. The charge impacted the annual earnings test filed with the Commission for purposes of determining if the thresholds for the earnings sharing provision then in effect were triggered. The sharing targets were in fact triggered and, because this cost was included in operating expenses for the 12 month period ended March 31, 2004, reduced the customer's share of earnings above the sharing threshold applicable to that period of time. Had the $10,630,800 million payment not been reflected in the annual earnings, the customers' additional share of earnings would have been $6,910,000. The Signatory Parties agree that Con Edison's customers should receive $6,910,000 from the Excess Dividends Tax refund, plus an additional $973,065, which represents interest on the $6,910,000 for the period of March 31, 2004 through December 31, 2010.

In addition, a portion of the Excess Dividends Tax payment, equivalent to $5.4 million, was recorded by the Company as a prepayment in PSC Account 165. The prepaid balance was erroneously included as part of the working capital section of rate base in several subsequent rate filings. As a result, the Signatory Parties agree that Con Edison's customers should receive an additional $3,341,500 of the Excess Dividends Tax refund representing the

[15] The rate plan in effect in March 2004 was established in Case 00-M-0095, et al., *Joint Petition of Consolidated Edison Company of New York, Inc. and Northeast Utilities Regarding Merger and Stock Acquisition,* Opinion and Order Adopting Terms of Settlement Subject to Modifications, Opinion No. 00-14 (issued November 30, 2000).

carrying costs on the prepayment included in rate base since March 2004. The total for the three customer-benefit adjustments is $11,224,565.

III. CONCLUSION

Based on the foregoing, the Signatory Parties agree as follows:

1. With respect to the Gross Receipts Tax refund, Con Edison will recover its incremental expenses of $1,240,269 to achieve the Gross Receipt Tax refund from the tax refund of $10,945,293 and retain 14 percent of the balance of the refund, or $1,358,703, and defer 86 percent of the balance, or $8,346,321 million, for the benefit of the Company's electric customers.

2. With respect to the Excess Dividends Tax refund, Con Edison will defer $11,224,565 of the Excess Dividends Tax refund for the benefit of its electric customers and retain the balance of the refund, or $14,797,995.

3. The total amount deferred for the benefit of Con Edison's electric customers includes interest through December 31, 2010. The Company will accrue interest from January 1, 2011 forward at the unadjusted customer cost of capital rate until later disposed of as determined by the Commission.

4. This disposition of the Tax Refunds satisfies the requirement of Public Service Law §113(2) that a refund be passed on to the Company's customers in a just and reasonable manner.

5. This Joint Proposal is intended to be a complete resolution of all the issues relating to Con Edison's litigation concerning the sale of the Divested Assets and the resulting Tax Refunds, which is the subject of this proceeding. It is understood that each provision of this Joint Proposal is in consideration and support of all the other provisions, and expressly conditioned upon acceptance by the Commission.

6. Except as set forth herein, none of the Signatory Parties is deemed to have approved, agreed to, or consented to any principle, methodology, or interpretation of law underlying or supposed to underlie any provision herein.

7. If the Commission fails to adopt this Joint Proposal according to its terms, then the Signatory Parties will be free to pursue their respective positions in this proceeding without prejudice.

8. Appendix 1 summarizes the Tax Refunds resulting from the TAT litigation and computes the customer and Company shares of the Tax Refunds, net of the Company's costs to achieve the Gross Receipts Tax refund.

IN WITNESS WHEREOF, the Signatory Parties hereto have affixed their signatures below as evidence of their agreement to be bound by the provisions of this Joint Proposal.

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

Dated: 4/5/11

By: Daniel P. Warren

DEPARTMENT OF PUBLIC SERVICE
STAFF

Dated: 3/29/11

By: David R. Van Ort

Consolidated Edison of New York Inc.

GRT / Excess Dividend Petition - Case 10-E-0308

Calculation of Sharing Adjustments Outlined in the Joint Proposal

Adj. #	Excess Dividends Tax Refund:				
	Deficiency Payment by Con Edison			$	13,287,754
	Interest Charged on tax above				4,374,271
	Penalty Charged on tax above				1,224,783
	Total Excess Dividend Payment by Con Edison in 2004			$	18,886,808
	Actual Interest Received (2004 - 2010)				7,135,752
	Total Excess Dividends Tax Refund			$	26,022,560
1	To reflect an additional $10.6M in 2004 income related to Excess Dividend Tax in the Electric Over Earnings	$	6,910,000		
1A	Interest accrued on ratepayer money in Adjustment 1.		973,065		
3	To reflect the inclusion of $5.4M in prepayments in base rates. (per Con Edison's response to IR-12)		3,341,500		
	Total ratepayers' share of the Excess Dividend refund **(A)**			$	11,224,565
	Total Con Edison's share of the Excess Dividend refund **(B)**			$	14,797,995

	GRT Tax Refund:				
	Gross Receipts Tax Refund	$	6,839,015		
	Interest on GRT Refund		4,106,278		
	Total Refund Received			$	10,945,293
	Cost to Achieve		(1,710,000)		
4	To eliminate the cost to achieve related to legal fees already reflected in rates.		469,731		
	Cost to Achieve as adjusted				(1,240,269)
	Net Proceeds			$	9,705,024
	Ratepayers' Share **(A)**		86%		8,346,321
	Company's Share (14% of Net Proceeds plus cost to achieve as adjusted plus recovery of net cost to achieve) **(B)**		14%		2,598,972
	Total GRT Tax Refund Received			$	10,945,293

GRT & Excess Dividend Total Refund w/interest		
Ratepayers' Share **(A)**	$	19,570,886
Company' Share **(B)**		17,396,968
Allocation of Total Refund	$	36,967,854