

BROWN & WEINRAUB, PLLC

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ATTORNEYS AT LAW

79 Columbia Street • Albany, New York 12210  
Telephone (518) 427-7350 • Facsimile (518) 427-7792

New York City Office:  
233 Broadway, Suite 2070  
New York, New York 10279  
Telephone (212) 566-4600  
Facsimile (212) 566-4603

J. Michael Boxley

e-mail: [mboxley@brownweinraub.com](mailto:mboxley@brownweinraub.com)

April 24, 2012

Hon. Jaclyn A. Brillling  
Secretary to the Commission  
New York State Public Service Commission  
Agency Building 3  
Albany, NY 12223-1350  
Via: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

Re: Petition of CAMBA for Declaratory Ruling and Waiver of Certain Applications  
of Consolidated Edison Company of New York, Inc. P.S.C No.10 Tariff Service  
Installation Provisions

Dear Secretary Billing:

CAMBA, through CHV 690-738 Albany Avenue LP, as Owner and CAMBA Housing Ventures as Developer of CAMBA Gardens, hereby submits this Petition for Public Service Commission Declaratory Ruling and Waiver of Certain Applications of Consolidated Edison Company of New York, Inc. P.S.C. No. 10 Tariff, Service Installation Provisions.

Background:

CAMBA is among the largest and most diverse social services agencies in New York City, having served the Brooklyn and greater New York City Community for over 35 years. In 2005, in response to the pressing need for permanent, stable and affordable housing for Brooklyn residents, CAMBA created an affiliated, non-profit, affordable housing development 501c3 corporation called CAMBA Housing Ventures, Inc (CHV). The CHV mission is to develop sustainable and energy efficient buildings that provide safe and affordable housing for low income and formerly homeless families and individuals.

Developed by CHV, CAMBA Gardens is a \$68 Million residential development consisting of two LEED platinum-rated buildings on side-by-side parcels: 690 and 738 Albany Avenue, Brooklyn, NY, separated by an access road on land operated by Kings County Hospital Center

and owned by the New York City Health and Hospitals Corporation (NYC HHC). These two buildings of CAMBA Gardens will provide 209 affordable and supportive residential rental units for those earning at or below 60% of Area Median Income. Community tenants will be selected via a lottery. The remaining units will be occupied by those exiting the New York City shelter system and will have a project based section 8 rental subsidy. This residential development is approximately 193,150 square feet of space, including cellar space and parking. CAMBA Gardens is designed to be energy efficient and provide healthy indoor air quality that is vital for tenants with chronic illnesses. It was designed in accordance with the standards set by the New York State Energy and Research Authority (NYSERDA); LEED and Enterprise Green Communities standards.

The project is financed by tax-exempt bonds issued through the New York State Housing Finance Agency (HFA); and loans and grants from New York City Department of Housing Preservation and Development (NYCHPD) Special Needs Division; New York State Homeless Housing Assistance Corporation (NYS HHAC); Brooklyn Borough President; New York City Council Capital Allocation; Federal Home Loan Bank of New York; NYSERDA; and Federal Low Income Housing Tax Credits syndicated by Enterprise Community Investment.

As mentioned, the two subject buildings are located on land owned by the NYC HHC. CAMBA through the entities previously outlined, entered into a 99-year land lease agreement with NYC HHC, rendering CAMBA defacto owner of the parcel except for the HHC charter restrictions. Moreover, separate tax lots are being created for the respective buildings.

#### Discussion:

CAMBA duly applied for non-resident service with Consolidated Edison Company of New York, Inc. (Con Ed or the Company) under P.S.C. No. 10-Electricity. In said application,

- CAMBA requested that service be brought directly to the premises of 690 and 738 Albany Avenue;
- Consolidated Edison not subject CAMBA Gardens to an excess distribution facilities cost determination, as set forth in P.S.C No. 10, section 5.2.4; and
- That service through the Kings County Hospital would subject the project to prohibitive costs, and cause undue delays, thereby jeopardizing bond covenants and the projects financing. (See Attachment A, CAMBA, January 6, 2012 Letter to Consolidated Edison; See also Attachment B, HHC Letter in Support of CAMBA Petition).

Consolidated Edison denied CAMBA's application, and made these finding for which a declaratory ruling and waiver is now requested:

- That under P.S.C. No 10, it is required to provide service to "premises", which "means a parcel of land; or more than one building and/or parcel of land proximate to each other if there is common use, whether or not such buildings or parcels are individually owned or leased or separated by public or private roads" (P.S.C. No. 10, section 5.1) (See Attachment C, Con Ed January 12<sup>th</sup> electronic transmittal;

- That it deems “service adequate” through the existing service adjacent to CAMBA Gardens at Building C located on Clarkson Avenue which can accommodate the estimated loads for 690 and 738 Albany Avenue; and
- To provide service directly to 690 and 738 Albany Avenue, service would need to be provided as an excess distribution facility (EDF), and an agreement between the Company and CAMBA as EDF, then sub-metering, or a waiver granted pursuant to PSC guidelines. (See Attachment D, Con Ed April 18, 2012 Determination)

That under P.S.C. No. 10, section 3.1.2, CAMBA as the applicant, was duly advised of its rights to seek an investigation and review by the Public Service Commission and hereby submits this Petition in accordance with these rights.

Contentions:

CAMBA hereby seeks a Declaratory Ruling of these Tariff Applications and Waiver, for the reasons fully outlined below, namely,

- Consolidated Edison has misapplied the definition of “Premises”;
- The public policy rationale for the EDF tariff provisions was never intended to apply to CAMBA under these conditions;
- The policy justification for EDF provided for exceptions and waiver for circumstances where energy efficiencies are being promoted;

1. Consolidated Edison has misapplied the definition of “Premises”:

Consolidated Edison determined that under the tariff definition of “premises”, it is required to provide one service to a parcel of land. Under its reading of the tariff, all of the subject land is owned by the NYC HHC, and that constitutes a parcel of land, and they deemed that there is “common use”. We respectfully submit that the Company has misapplied the definition.

First, there is no common use of the parcel of the land, as CAMBA Gardens and the NYC HHC have no agreed to common use of their respective property areas, nor with respect to any operations as it relates to costs or other operational aspects that would serve as an underpinning for determining that there is “common use”.

Moreover, because there is no common use between the two entities, HHC objects to service being brought through their building. (See Attachment B). HHC in the attached letter sets forth its objections to service being provided through its Building C, specifically,

- That HHC cannot provide electricity from a hospital building to a residential building;
- That HHC Building C is a hospital use and CAMBA Gardens is a residential use;
- That HHC is provided power through a special tariff between the New York Power Authority and Consolidated Edison (P.S.C. No. 12) and that under its terms, it explicitly prohibits HHC from providing powers to a third-party;
- That HHC’s uses and properties are entirely separate from CAMBA’s both in purpose, financing, governance and legal requirements, and thus no common use.

Second, CAMBA has entered into a 99-year lease with NYC HHC, as HHC is not authorized to sell their land under charter provisions. As such, these are defacto separate parcels, and the Courts have never drawn a clear legal distinction between properties that are owned and lands that have been leased for a term of 99 years---or in other words, lands that are legally considered, permanent leaseholds. The respective properties are separately assessed tax lots, separate and apart from the HHC campus.

In summary, 690 and 738 Albany Avenue are separate parcels of land, and under the tariff provisions, service can be provided directly to each building, consistent with P.S.C. No 10.

2. The Public Policy Rationale for the EDF Tariff Provisions was never intended to apply to CAMBA under these conditions:

In the PSC proceeding by which Consolidated Edison's P.S.C No. 10 Tariff was approved, there is staff discussion concerning the EDF provisions, and the policy rationale for the staff recommending that the Company's proposal be approved. (See, Case 08-E-0539, Staff Recommendations, January 29, 2010). To wit, this excerpt sets forth the policy rationale for the EDF construct,

In the 2009 Rate Order, the Commission found that some real estate development projects impose significant capital costs on the Company that benefit the individual customer or developer more than the general body of ratepayers. The Commission indicated that the fact that ratepayers as a whole borne all of these costs in the past decade does not justify the continuation of the practice, and that it agreed with Staff's recommendation that steps should be taken to permit the imposition of greater share on the customers that would directly benefit by any expenditure that the Company would make to serve them (at page 2).

CAMBA respectfully submits that in the present case, these provisions are implicated only because the Company construed the tariff term "premises" under the narrowest application. That imposing upon this quasi-public entity, whose charge is to address homelessness and to provide other critical legal, housing, job training, and education services as sanctioned by the City of New York, and its chief executive, and by a myriad of other public agencies and authorities who have deemed the public policy grant here to be compelling, would ostensibly unseat those declarations. CAMBA Gardens, funded by the City of New York and part of the Mayor's New Housing Marketplace Plan, will provide critically needed affordable housing for New York City. The residential development will be an asset to the community and help the City of New York reduce homelessness.

Clearly, the staff could not have intended these provisions to apply to CAMBA under these circumstances.

3. The Tariff provides Exceptions and Waiver for circumstances where Energy Efficiencies are being promoted:

The staff also recommended the following exception,

[The Company's] efforts of exploring the incorporation of a waiver that would be tied to a measurable and verifiable energy efficiency commitment from the customer requesting service, which would allow for the reduction of the otherwise applicable CIAC (at page 4).



As outlined previously, this project has been designed under the aegis of the most stringent energy efficiency standards.

CAMBA Gardens is expected to save 26% more energy than a building built to code. This will be achieved through a number of energy efficiency measures that have been incorporated into the design documents:

- ENERGY STAR appliances;
- Highly efficient condensing boilers (88% Et);
- ENERGY STAR window air conditioners;
- Optimized fluorescent lighting with occupancy sensors in common spaces;
- Extra-insulated envelope with continuous blown in wall insulation above and below grade and at least 6" of polyisocyanurate on the roof;
- Fiberglass windows with low-e coating;
- Continuous ventilation via rooftop fans with ECM motors;
- Low flow plumbing fixtures.

Consistent with the PSC staff recommendations, CAMBA has designed this project following the most stringent energy efficiency standards. Moreover, CAMBA is committed to considering other energy efficiency measures as they become available.

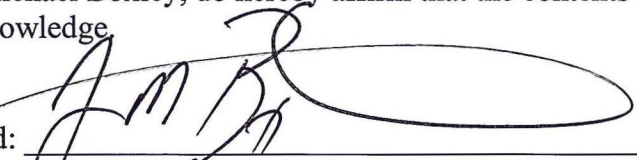
Conclusions:

For the reasons fully set forth above, CAMBA requests that the PSC declare that CAMBA is authorized to receive service directly at 690 and 738 Albany Avenue, under the provisions of P.S.C. No.10 and that with respect to any other applications of that tariff they are hereby waived consistent with that declaration.

Respectfully Submitted,

J. Michael Boxley, Esq.,  
Attorney for CAMBA  
Brown & Weinraub, PLLC  
79 Columbia Street  
Albany, NY 12210  
[mboxley@brownweinraub.com](mailto:mboxley@brownweinraub.com)

I, J. Michael Boxley, do hereby affirm that the contents of this document are true to the best of my knowledge.

Signed:   
Date: April 24, 2012

cc: David Rowe,  
Assistant Deputy Director/Director of Housing Development  
CAMBA/CAMBA Housing Ventures, Inc.  
19 Winthrop Street  
Brooklyn, NY 11225  
Fax: 718-703-7210  
Email: [davidr@camba.org](mailto:davidr@camba.org)

Marc Richter  
Deputy General Counsel  
Consolidated Edison Company of New York, Inc.  
4 Irving Place, Room 1815-S  
New York, NY 10003  
Fax: 212-677-5850  
Email: [richterm@coned.com](mailto:richterm@coned.com)

Jeremy Berman,  
Deputy Counsel  
New York City Health and Hospital Corporation  
125 Worth Street  
Room 527  
New York, NY 10013  
Fax: 212-267-6905  
Email: [Jeremy.Berman@nychhc.org](mailto:Jeremy.Berman@nychhc.org)