



Jeffrey L. Riback
Associate Counsel

March 20, 2002

FILES
C99-F-1314

VIA E-MAIL AND OVERNIGHT MAIL

The Hon. Janet H. Deixler
Secretary
New York State Board on Electric Generation
Siting and the Environment
Three Empire State Plaza
Albany, NY 12223

**Re: Case 99-F-1314: East River Repowering Project
Consolidated Edison Company of New York, Inc.**

Dear Secretary Deixler:

At the request of Boilermakers Local 5, I am submitting herewith for filing a copy of the March 13, 2002 Supplemental Joint Stipulation in the above-referenced case, executed on March 19, 2002 by the designated representative of Boilermakers Local 5. Please include this document with the copy of the Supplemental Joint Stipulation signed by various parties to this proceeding on March 13, 2002 and presented to the hearing examiners for their consideration that day.

Respectfully submitted,

Enclosure

cc: Hon. Robert R. Garlin (via e-mail)
Hon. Daniel P. O'Connell (via e-mail)
Active Party List (3/11/02) (via e-mail)

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International Brotherhood

BOILERMAKERS - IRON SHIP BUILDERS

LOCAL LODGE NO. 5

JERRY CONNOLLY
BUSINESS MANAGER-SEC. TREASURER



BLACKSMITHS - FORGERS & HELPERS

320 NORTHERN BOULEVARD
GREAT NECK, N.Y. 11021
516-487-3404
718-895-7722
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March 19, 2002

Jeffrey L. Riback, Esq.
Con Edison
4 Irving Place, Room 1820
New York, NY 10003

Re: Application of Consolidated Edison
Company of New York, Inc.

Dear Sir:

Enclosed herewith please find signed copy of the Supplemental Joint Stipulation dated March 13, 2002 in connection with the above-referenced matter.

I trust the enclosed meets with your approval. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jerry Connolly

Jerry Connolly
Business Manager
Secretary-Treasurer

Enc.

AIRBORNE EXPRESS 3131 643 6012

NEW YORK STATE BOARD ON ELECTRIC
GENERATION SITING AND THE ENVIRONMENT

Department of Public Service
Case No. 99-F-1314

Application of Consolidated Edison Company of New York, Inc.
for a Certificate of Environmental Compatibility and Public Need
to Repower its East River Generating Station Located in the Borough
of Manhattan, New York City.

SUPPLEMENTAL JOINT STIPULATION

March 13, 2002

SUPPLEMENTAL JOINT STIPULATION

Consolidated Edison Company of New York, Inc. (hereinafter, "Con Edison"), as the Applicant for a Certificate of Environmental Compatibility and Public Need ("Certificate"), the staffs of the New York State Department of Public Service ("NYSDPS"), New York State Department of Environmental Conservation ("NYSDEC"), and New York State Department of Health ("NYSDOH") (together, the "Agencies"); The City of New York; the intervening parties East River Environmental Coalition ("EREC"), Manhattan Community Board 3 ("CB3"), New York Public Interest Research Group, Inc. ("NYPIRG"), Environmental Defense, and Assemblyman Steven Sanders (together, the "Intervenors"), and the other signatories hereto, including Manhattan Community Board 6 (collectively, the "Parties"), agree to the following Stipulation ("Stipulation"), submit it to the Presiding and Associate Examiners for their review and consideration, and request that the Examiners submit such Stipulation to the New York State Board on Electric Generation Siting and the Environment (the "Siting Board"), along with their recommendation that it be approved.

WHEREAS, Con Edison submitted to the Siting Board on June 1, 2000 an Application (the "Application") and supplemental information dated July, August and December 2000, for a Certificate to repower its East River Generating Station located in the Borough of Manhattan, City of New York (the "Project"); and

WHEREAS, the East River Complex is a steam and electric generating facility that includes two existing generating units (identified as Unit Nos. 6 and 7), and an assembly of package steam boilers known as the "South Steam Station"; and

WHEREAS, included in the Application were applications for permits required from NYSDEC with respect to the Project (the “NYSDEC Permits”); and

WHEREAS, on August 16, 2001, the NYSDEC Commissioner determined the NYSDEC Permits should be granted and, on August 21, 2001, submitted the air permits to the Siting Board, pursuant to Public Service Law (“PSL”) § 172(1); and

WHEREAS, subsequent to its receipt of the NYSDEC Permits, the Siting Board issued an Opinion and Order on August 30, 2001 (“Opinion”), making each of the statutory findings required by PSL § 168, including those related to public health, and granting a Certificate for the Project, subject to certain conditions set forth in Appendix B to the Opinion (the “Certificate Conditions”); and

WHEREAS, EREC, NYPIRG, Assemblyman Sanders and CB3 timely submitted petitions for rehearing of the Siting Board’s decision to issue the Certificate (the “Rehearing Petitions”); and

WHEREAS, such Rehearing Petitions requested that the Siting Board reopen the hearing record to allow for additional testimony on PM_{2.5}, noise, modifications to the existing East River Generating Station, alternatives, and environmental justice; and

WHEREAS, on January 24, 2002, upon further consideration and pursuant to its authority under PSL § 170, the Siting Board issued an order granting rehearing in part, which directed that an evidentiary hearing be convened “solely on the issue of air quality impacts of PM_{2.5} as it relates to the Project”; and

WHEREAS, all parties agree that this Stipulation creates, in conjunction with the record established prior to August 30, 2001, a sufficient record in this proceeding to resolve the issues raised in the Rehearing Petitions and provides a sufficient basis for the Siting Board to make all findings required by PSL § 168;

NOW, THEREFORE, in consideration of the foregoing and the mutual undertakings set forth herein, the signatories hereto agree as follows:

I. Con Edison's Obligations

1. Con Edison shall, in lieu of the commitments set forth in paragraph VI.E.2 of the Certificate Conditions dated August 30, 2001 (relating to a \$2,500,000 funding commitment to the New York City Economic Development Corporation) provide funding: (i) in the amount of \$2,750,000 towards the combustion of natural gas in place of residual oil in Unit Nos. 6 and 7 at the East River Generating Station during the time period from November 15th through March 31st of each year (the "Winter Period") (the "fuel-switching account"), subject to the additional terms and conditions discussed below; (ii) in the amount of \$480,000 towards the conversion of apartment building or community facility boilers in the geographic area of CB3 and/or the general neighborhood of the East River Complex from fuel oil to steam service (the "steam conversion account"), subject to the additional terms and conditions discussed below; and (iii) in the amount of \$500,000 towards the installation of a nozzle in Stack 3 at the East River Generating Station similar in design to the nozzle presently installed in Stack 4 (the "Stack 3 nozzle account"), subject to the additional terms and conditions discussed below.

2. The time period during which Con Edison shall limit the use of fuel oil in Unit Nos. 6 and 7 pursuant to paragraphs III.B and III.C of the Certificate Conditions dated August 30, 2001, shall be extended to November 14th of each year.

3. With respect to the fuel-switching account, Con Edison shall use these monies to purchase natural gas in lieu of residual oil for Unit Nos. 6 and 7 in order to seek to ensure as a target that the fuel oil burned in Unit Nos. 6 and 7, on a heating value basis, will on average be not greater than forty-five percent of the fuel used at these units during each Winter Period, subject to the provisos set forth below. After the end of each month during this period, Con Edison shall calculate the monies used for this purpose during the preceding month so as to keep a running tally of the draw down of the \$2,750,000 funding commitment and shall send a summary of same for the Winter Period (which shall include the actual fuel mix for the Winter Period) to the City of New York, CB3, and the staff of the NYSDPS by May 1st of each year. Upon such request as the Intervenors may make, Con Edison shall provide, not more than every two months, documentation with respect to fuel use and fuel costs of Unit Nos. 6 and 7 to the Intervenors for their use in connection with tracking Con Edison's activities under this paragraph. The Intervenors shall not share any information Con Edison has designated as confidential with any third parties, except as required by law. Con Edison shall not purchase natural gas for the purpose of meeting the gas/fuel oil ratio of this paragraph at such times as the price of natural gas exceeds the price of fuel oil by 50¢/Dth or more. In addition, unless CB3 designates an alternative range as set forth below, Con Edison shall seek to ensure that it does not draw down more than \$600,000 each Winter Period but shall seek to ensure that at least \$400,000 of monies are drawn down from the fuel-switching account each Winter Period, if necessary to achieve the goal of combusting not more than forty-five percent fuel oil during the

Winter Period. If the average price of natural gas during the month (expressed in \$/MMBTU) is greater than the average price of residual oil during the month (expressed in \$/MMBTU), then (i) the differential fuel costs for that month shall be calculated by subtracting the average price of residual oil for that month (in \$/MMBTU) from the average price of natural gas for that month (in \$/MMBTU) and (ii) the draw down from the fuel-switching account for that month shall be calculated by multiplying the differential fuel costs (in \$/MMBTU) by the total MMBTUs of natural gas combusted in Unit Nos. 6 and 7 during that month. In the event that Con Edison, the Intervenors and NYSDPS all agree that a modification to the foregoing formula is appropriate, by unanimous agreement of these parties the formula shall be so modified. An inability of such parties to agree on any proposed modification to the formula shall not be a dispute or controversy subject to Section IV of this Stipulation or other review. No provision related to the fuel-switching account shall require Con Edison to forego the combustion of fuel oil during such time, if any, during which the supply and/or delivery of natural gas to the East River Complex has been interrupted, curtailed or suspended. Any period of such interruption, curtailment or suspension, and any period in which the price of natural gas exceeds the price of fuel oil by 50¢/Dth or more, shall not be considered in assessing achievement of the goal of using less than forty-five percent fuel oil during the Winter Period. In any Winter Period in which Con Edison draws down an amount from the fuel-switching account not less than the lower end of the \$200,000 range applicable to that Winter Period, Con Edison shall be deemed to have met its fuel-switching obligation for that Winter Period. Prior to September 15th of each year, CB3 may, by written notice to Con Edison, the City and the NYSDPS, modify the annual draw down range of \$400,000 - \$600,000 to a different range for the next Winter Period, while maintaining the \$200,000 differential between the lower and upper limits. CB3 may, by written notice to Con

Edison, the City and the NYSDPS, designate that a specified portion of the balance of the fuel-switching account should be placed in the steam-conversion account or should be used for alternative air quality improvement projects in the general neighborhood of the East River Complex, as set forth in paragraph 7 below.

4. The use of the monies in the fuel-switching account shall continue during each annual Winter Period for this purpose until the earliest of the following dates, upon which time the fuel-switching account shall be terminated: (i) the fuel-switching account of \$2,750,000 is exhausted; (ii) CB3 provides written notice to Con Edison that the remaining balance of the fuel-switching account should be placed in the steam conversion account (at CB3's option) or should be used for alternative air quality improvement projects in the general neighborhood of the East River Complex, as set forth in paragraph 7 below; or (iii) the ten year anniversary of the date on which the Project commences operation, at which time any remaining balance of monies in the fuel-switching account shall be used for alternative air quality improvement projects, as set forth in paragraph 7 below. Upon the termination of the fuel-switching account for any of the above reasons, the fuel mix provisions set forth in this Stipulation shall no longer apply for the Winter Period and the obligations shall cease thereunder.

5. With respect to the steam conversion account, Con Edison shall use commercially reasonable efforts to use these monies to encourage the conversion of existing oil-fired apartment building or community facility boilers in CB3 to the steam system, unless CB3 and NYPIRG jointly provide written notice to Con Edison that any remaining balance of the steam conversion account should be used for alternative air quality improvement projects in the general neighborhood of the East River Complex, as set forth in paragraph 7 below.

6. With respect to the Stack 3 nozzle account, Con Edison shall use these monies to pay for the installation of a nozzle on Stack 3 of the East River Generating Station, unless CB3 provides notice to Con Edison on or before December 1, 2002 that such monies should be used for alternative community benefit projects, as set forth in paragraph 8 below. Prior to making such decision, CB3 shall (i) consider any information NYSDEC and Con Edison provide to it concerning the effectiveness of the nozzle in improving air quality; and (ii) convene a meeting of the community to present such information. To the extent that the actual installation cost of a nozzle in Stack 3 exceeds \$500,000, then such excess amounts shall be deducted from the balance remaining in either the fuel-switching account or the steam conversion account, at the option of CB3. To the extent that the actual installation cost of a nozzle in Stack 3 is less than \$500,000, then the difference between \$500,000 and such actual cost shall be credited towards either the fuel-switching account or the steam conversion account, at the option of CB3.

7. In the event that any monies remaining in any of the foregoing accounts are re-designated for alternative air quality improvement projects in the general neighborhood of the East River Complex, no such projects shall be funded with such monies unless they are first identified by CB3 and the City of New York, and approved by Con Edison as prudent expenditures.

8. In the event that any monies remaining in any of the foregoing accounts are re-designated for alternative community benefit projects, no such projects shall be funded with such monies unless they assist the local community in the development and implementation of projects such as local air quality improvement, health improvement, or amenities programs in the vicinity of the East River Complex and have been first identified by CB3 and the City of New York, and approved by Con Edison as prudent expenditures.

9. Con Edison shall not be obligated to begin spending monies for fuel-switching or steam conversions (or alternative air quality improvement projects or alternative community benefit projects) prior to the commencement of commercial operation of the Project. Unless CB3 provides notice that the monies in the Stack 3 nozzle account should be used for alternative community benefit projects, Con Edison shall install the nozzle in Stack 3 so that it is in place within 6 months of the date on which the Project commences commercial operation. The funding with respect to each account will be provided as such amounts are needed to satisfy the obligations set forth in Section I of this Stipulation.

10. Con Edison, the City, the Intervenors, and NYSDPS, in consultation with NYSDEC, agree to work together to seek additional funding from the New York State Energy Research and Development Authority and other sources for steam conversions and other air quality improvement projects.

II. PSL § 168 Findings

1. The Intervenors agree that this Stipulation resolves all issues they have raised, or could have raised, in this proceeding. Accordingly, they: (i) withdraw and/or waive all objections to the issuance of the Certificate; (ii) confirm that they have no objection to the Siting Board making findings with respect to the Project under § 168 of the Public Service Law, including in particular, findings pursuant to PSL § 168(2)(c)(ii), taking into account the factors set forth in PSL § 168(2)(b); and (iii) support the modification of the Certificate for the Project by the Siting Board to reflect the commitments set forth in Section I hereof. The Intervenors' commitments in this paragraph are made cognizant of the fact that the various accounts identified in Section I are likely to be depleted prior to the end of the useful life of the Project.

2. The parties to this Stipulation, other than the Intervenors, agree that the terms and conditions of the Certificate, as such terms and conditions would be modified by this Stipulation, adequately address the concerns raised in the Rehearing Petitions, and permit the Siting Board to reaffirm the findings required by PSL § 168 that the Project will be compatible with public health and safety.

3. The Parties jointly request that the Siting Board waive its requirements that: (i) the NYSDEC submit a report providing background information on PM_{2.5}; and (ii) a hearing be conducted to answer the questions posed on page 3 of its January 24, 2002 Order in this proceeding.

III. Release by Intervenors

1. (a) Each of the Intervenors hereby releases and discharges Con Edison and its successors and assigns from any and all actions, claims, petitions, demands, suits, and proceedings, whether arising in equity or in law, or under any statute or regulation, with respect to any and all claims, matters or issues they raised or could have raised in proceedings before the NYSDEC with respect to the NYSDEC permits for the East River Complex approved by the NYSDEC Commissioner's Decision in this matter on August 16, 2001;

(b) Each of the Intervenors hereby releases and discharges Con Edison and its successors and assigns from any and all actions, claims, petitions, demands, suits, and proceedings, whether arising in equity or in law, or under any statute or regulation, with respect to any and all claims, matters or issues that they either have raised or could have raised in this Article X proceeding for the East River Complex;

(c) Each of the Intervenor agrees to waive its right to object to the proposed Clean Air Act Title V operating permit issued by NYSDEC in January 2002, for the East River Complex;

(d) This release shall not constitute a waiver by Intervenor of any rights they may have:

i. to participate in, comment on, and/or challenge any permit or approval required in connection with a modification or operational change to the East River Complex (other than such modifications or operational changes as are contemplated by the Certificate and the NYSDEC Permits) subsequent to the date hereof; provided, however, that the Intervenor shall not assert in such proceedings that currently permitted air emissions from the East River Complex, in combination with the Project: (a) violate any law or regulation in effect on the date of this Stipulation or (b) are inconsistent with the finding required by PSL § 168(2)(c)(ii);

ii. to enforce compliance with the terms and conditions of the Certificate, NYSDEC permits, and/or permits from any other agency in accordance with relevant provisions of law; or

iii. to participate in any administrative process held in connection with any revision proposed by the NYSDEC or the United States Environmental Protection Agency ("USEPA") to the New York State Implementation Plan under the Clean Air Act.

2. Intervenor agree not to bring any action or proceeding concerning the East River Complex against the USEPA, the NYSDEC, or the New York City Department of Environmental Protection that they could not bring directly against Con Edison pursuant to the

release set forth in paragraph 1, or any action or proceeding precluded by the release in which Con Edison would be considered a necessary party.

IV. Dispute Resolution

In the event of any dispute or controversy between Con Edison and any of the Intervenors arising out of or relating to Section I of this Stipulation, such parties agree to first meet at their earliest mutual convenience to attempt to resolve the dispute through negotiations. In the event such negotiations do not resolve such dispute after a reasonable time period, the matter shall be submitted to binding arbitration under the procedures of the Public Service Commission before NYSDPS and NYSDEC Administrative Law Judges, to be appointed by the NYSDPS and NYSDEC, respectively. The parties agree that the ALJs' decision shall be final and binding and shall not be subject to appeal or any further administrative or judicial review.

V. Cooperation of the Parties

The Parties recognize that certain provisions of this Stipulation require that actions be taken in the future to fully effectuate their agreements. Accordingly, the Parties agree to cooperate with each other in good faith in taking such actions. Without limiting the foregoing, no Party shall: (i) object to the modification of the Certificate by the Siting Board, to insert the provisions set forth in Section I hereof in place of the commitments currently appearing in paragraphs III.B, III.C and VI.E.2 of the Certificate Conditions; (ii) with respect to matters covered by this Stipulation, submit any statement to the Siting Board that is inconsistent with this Stipulation; or (iii) commence any action or proceeding challenging the validity of the Certificate or the NYSDEC Permits. Con Edison, the City and CB3 shall, upon the reasonable request of any Party, from time to time meet for the purpose of exchanging readily available non-confidential information for the purpose of implementing this Stipulation.

VI. Miscellaneous

1. The Parties have negotiated and accepted this Stipulation in toto with each provision in consideration for, in support of, and dependent on the others. If the Siting Board does not approve this Stipulation in its entirety, without modification, any Party may withdraw its acceptance of this Stipulation by serving written notice on the other Parties, and shall be free to pursue its position in this proceeding without prejudice. If the Siting Board approves this Stipulation or modifies it in a manner acceptable to the Parties, the Parties intend that this Stipulation thereafter be implemented in accordance with its terms. If a material modification is thereafter authorized or required by the Siting Board that is unacceptable to any Party to this Stipulation adversely affected by such modification, then, in addition to any other remedies a Party may have, such Party may withdraw from this Stipulation and will not be bound thereafter to its provisions.

2. The Parties hereby acknowledge that the expenditures Con Edison has agreed to make pursuant to Section I of this Stipulation, plus the expenditures heretofore incurred under paragraph VI.E.2 of the Certificate Conditions dated August 30, 2001, represent reasonable and prudent costs associated with the Project and the operation of the East River Complex.

3. None of the terms or provisions of this Stipulation (excepting paragraph VI.2) and none of the positions taken therein by any Party may be referred to, cited, or relied upon by any other party in any fashion as precedent or otherwise in any other proceeding before the Siting Board or any other regulatory agency or before any court of law for any purpose, except in furtherance of ensuring the effectuation of this Stipulation.

4. This Stipulation may be executed in counterpart originals, and shall be binding on each Signatory Party when the counterparts have been executed.

5. Notices pursuant to Section I hereof shall be submitted to Con Edison by the Intervenor as follows:

(a) Such Notice shall be submitted by:

FOR NYPIRG

Lisa Garcia, Esq.
New York Public Interest Research Group
9 Murray Street
Third Floor
New York, New York 10067-2272

FOR CB3

Manhattan Community Board No. 3
Attn: Community Board Chair
59 E. 4th Street
New York, New York 10003

(b) Such Notice shall be submitted to:

FOR CON EDISON

Peter Garam, Esq.
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003-3589

FOR CITY OF NEW YORK

Richard B. Miller
Senior Vice President, Energy
New York City Economic Development Corporation
110 William Street
New York, New York 10038
rmiller@nycedc.com

or to such other person hereinafter identified by such Party.

CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC.

NEW YORK STATE DEPARTMENT OF
PUBLIC SERVICE

By: s/Jeffrey L. Riback
Its Associate Counsel

By: s/Kevin M. Lang
Its Assistant Counsel

Dated: 3-13-02

Dated: 3/13/02

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

NEW YORK STATE DEPARTMENT OF
HEALTH

By: s/Wm. G. Little
Its Associate Attorney

By: s/David W. Quist
Its Senior Attorney

Dated: 3/13/02

Dated: 3/13/2002

THE CITY OF NEW YORK

By: _____
Its

Dated: _____

EAST RIVER ENVIRONMENTAL COALITION

By: s/Edward Lloyd
Its Counsel

Dated: March 13, 2002

MANHATTAN COMMUNITY BOARD 3

By: s/Edward Lloyd
Its Counsel

Dated: March 13, 2002

ENVIRONMENTAL DEFENSE

By: s/Edward Lloyd
Its Counsel

Dated: March 13, 2002

NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC

By: s/Edward Lloyd
Its Counsel

Dated: March 13, 2002

ASSEMBLYMAN STEVEN SANDERS

By: s/Edward Lloyd
Its Counsel

Dated: March 13, 2002

MANHATTAN COMMUNITY
BOARD 6

By: _____
Its

Dated: _____

By: _____
Its

Dated: _____

BOILERMAKERS LOCAL 5

By: Jerry Connolly
Its BUSINESS MANAGER

Dated: 3-19-02

By: _____
Its

Dated: _____

By: _____
Its

By: _____
Its

Dated: _____

Dated: _____