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November 10, 2011

Hon. Jaelyn A. Brillling
Acting Secretary
New York State Public
Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Petitions for Rehearing

07-E-0598 Phipps Houses Services vs. Con Edison (605655)
07-E-0627 Ciampa Jamaica LLC vs. Con Edison (706846)
07-M-1530 Weinreb Management vs. Con Edison (724208)
08-E-0473 Beechwood Hutchinson Management vs. Con Edison (722798)
07-E-0638 Lowell Houses and RMDM of Queens vs. Con Edison
(533490/533437)
07-E-0862 Tenant Stockholder Corp. vs. Con Edison (7114080)

Dear Secretary Brillling:

Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”) hereby submits its response to the October 20, 2011 filing by Utility Rate Analysis Consultants (“URAC”) and the October 26, 2011 request for reconsideration filed by Utility Check Ltd. (“Utility Check”). URAC and Utility Check represent complainants, the owners and managing agents of multiple dwellings, in these matters.¹ The filings were made in response to the October 17, 2011 Determination of the Public

¹ URAC represents complainants in 07-E-0598 (Phipps Houses Services), 07-E-0627 (Ciampa Jamaica LLC), 07-M-1530 (Weinrab Management), and 08-E-0473 (Beechwood Hutchinson Management). Utility Check represents complainants in 07-E-0638 (Lowell Houses and RMDM of Queens) and 07-E-0862 (Tenant Stockholder Corp.).

Service Commission (“Commission”), which concluded that complainants were not entitled to backbilling at the Company’s residential electric rate (“Determination”).

URAC’s filing requests clarification as to whether complainant’s employee-occupied apartments (“Employee Apartments” – usually a superintendant’s apartment) can be served under either the Company’s residential Service Classification (“SC”) 1 or its small non-residential rate, SC 2. According to URAC’s filing, complainants are seeking reconsideration only if the Commission clarifies that Employee Apartments must be served under SC 1, and that there is no option to be served under SC 2. Utility Check, on the other hand, appears to argue that SC 1 is a mandatory rate for Employee Apartments and that the Company does not have the authority to serve Employee Apartments under SC 2. Utility Check requests that the Commission reconsider its decision and direct Con Edison to backbill complainants.

Because both filings contain substantially similar arguments regarding the same issue, and because the Commission considered all of these matters together, the Company hereby responds to the filings together. For the reasons discussed below, Utility Check’s request for reconsideration should be denied and URAC’s filing should be dismissed as unnecessary because the Commission has already clarified that SC 1 is not mandatory for Employee Apartments.

The Company relies on the facts and issues surrounding these matters as detailed in the Commission’s Determination. In the Determination, the Commission correctly identified that in 1992, it approved a Con Edison tariff amendment that for the first time permitted the apartments of employees of a customer (Employee Apartments) to be served under the Company’s residential SC 1 rate. Prior to that time, all residential

directly-metered apartments were required to be in the occupant's name. At the time of the tariff amendment, the Company sent a brochure to all SC 2 customers notifying them of the new availability of SC 1 for Employee Apartments. Additionally, the Company has included this information in its notice of rights brochure that is sent as part of a new customer's welcome package and in the notice of rights brochure sent to all non-residential customers on an annual basis. As was the case with each complainant here, when notified by a customer of an Employee Apartment, the Company switches the account from SC 2 to SC 1, effective prospectively.

Utility Check argues that Con Edison does not have the authority to serve Employee Apartments under the non-residential SC 2 rate and that the Company failed to provide sufficient notice of the availability of SC 1.

The first argument, namely that Employee Apartments can only be served under SC 1, has already been addressed and dismissed by the Commission. In fact, the Commission has determined that serving Employee Apartments under SC 2 "was always permissible under the utility's tariff; until the 1992 tariff revision these accounts were properly billed at SC No. 2, and since the tariff revision (except for the immediate six-month period following that revision) landlords are only entitled to SC No. 1 for these accounts prospectively, after they request the rate."² The Commission even more clearly articulated that Employee Apartments can be served under SC 1 or SC 2 when it stated: "Currently, the tariff does not bar such apartments from being billed at SC No. 2; rather SC No. 1 billing is permissible, if employers request it and the accounts satisfy the

² See 48th Street Owners at 14.

tariff's requirements."³[emphasis added] Thus, the Company's 1992 tariff amendment merely permitted Employee Apartments to be served under SC 1, it did not require it. Therefore, Utility Check's argument is without merit and should be dismissed.

Utility Check goes on to assert that the Commission's Determination in these matters is somehow contrary to the Commission's prior determination in Carol Turner.⁴ In Carol Turner, the Commission determined that complainant, the owner of a directly-metered multiple dwelling, could not take service under SC 1 for each directly-metered apartment. The Commission stated "that a landlord may not hold electric accounts in its name for apartments of individually metered residential tenants (not employees of the landlord) at any rate."⁵

Utility Check fails to recognize that the Commission's Determination in these matters is not contrary to Carol Turner.⁶ In its Determination, the Commission noted that Carol Turner has no relevance to these matters because, although Carol Turner stated that the owner of a building could not hold SC 1 accounts in its name where the apartments were directly metered, it also directly acknowledged that the 1992 tariff amendment provided a specific exception to that blanket prohibition for Employee Apartments. Thus, Utility Check's argument is misplaced and fails to recognize that the Commission has already clearly articulated the reasons that Carol Turner is not relevant to accounts, like complainants, involving Employee Apartments.

³ See 48th Street Owners at 13.

⁴ Case 93-E-0152, Appeal by Carol Turner of the Informal Decision Rendered in Favor of Con Edison, Commission Determination (issued December 7, 1993), Art. 78 petition dismissed, Matter of Grenadier Realty Corp. v. PSC, 218 A.D.2d 883, 884 (3rd Dept. 1995).

⁵ See Commission Determination at p. 17.

⁶ See 48th Street Owners.

Lastly, Utility Check argues that the Company has somehow failed to provide adequate notice of the availability of SC 1, and that the Company has a responsibility to assign accounts to the correct rate. The Commission has repeatedly determined that the Company actions summarized above, which includes providing information regarding the availability of SC 1 for Employee Apartments in the customer welcome package sent to new customers and the annual rights brochures, provide sufficient notice to customers of the availability of SC 1 to Employee Apartments.⁷ Utility Check has not identified any facts or law to distinguish these matters from past Commission determinations and, thus, has not demonstrated sufficient justification for a different result. Moreover, although the Company is required to assist customers in choosing the appropriate rate, it is a customer's responsibility when applying for service to inform the Company about the nature of service, and to alert the Company of any changes in the nature of service.⁸ This is especially true where the rate is not mandatory and the customer has the option of choosing among service classifications, in this case, between the SC 1 or SC 2 rate for their Employee Apartments.

Because SC 1 is not a mandatory rate for Employee Apartments and the Company provided complainants with sufficient notice as to the availability of that rate, Con Edison respectfully requests that the Commission confirm that Employee Apartments can be

⁷ Case 05-E-1133, Appeal by Kaled Management, Commission Determination (issued January 29, 2008), Cases 99-E-0274, et. al., Appeal by 48th Street Owners Corp., Commission Determination (issued September 6, 2000), Cases 97-E-0928, et. al. ("48th Street Owners") Appeal of the Informal Decision in Favor of 500 West End Ave. Corp., Commission Determination (issued March 14, 2001), Case 99-E-0408, Appeal by Presbyterian Hospital/Phipps Houses, Commission Determination (issued November 14, 2001); Art. 78 petition dismissed, sub nom., Phipps Houses Services, Inc. v. PSC, slip op., Index No. 1868-02, Sup. Ct., Albany Co. (October 2, 2002).

⁸ See Appeal by Orange and Rockland Utilities, Inc. of the Informal Decision Rendered in Favor of West Clarkstown Jewish Center, Commission Determination, (issued February 26, 1992), Case 90-E-0192.

served either under SC 1 or SC 2 at the customer's election and therefore no backbilling is warranted.

Please contact me if you have any questions.

Very truly yours,



Kerri Kirschbaum

c: Utility Check Ltd.
Utility Rate Analysis Consultants