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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES, STANLEY MOSK COURTHOUSE**

15 CITY OF TORRANCE, a charter city and
16 municipal corporation,

17 Plaintiff,

18 v.

19 SOUTHERN CALIFORNIA EDISON CO.,
20 a California corporation, and DOES 1 through
100,

21 Defendants.

CASE NO. 19STCV10249
Unlimited Jurisdiction

**COMPLAINT FOR DECLARATORY
RELIEF; REQUEST FOR ORDER TO
COMPEL COMPLIANCE WITH
TORRANCE MUNICIPAL CODE**

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1 Plaintiff City of Torrance (“City”) hereby alleges as follows:

2 **INTRODUCTION**

3 1. The City brings this action against Southern California Edison Co. (“Edison”) to
4 remedy Edison’s continuing violations of the City’s Utility Users’ Tax Ordinance, Torrance
5 Municipal Code (“TMC”) Chapter 25 of Division 2 (“UUT Ordinance”). The UUT Ordinance
6 includes a 6.5 percent tax on “charges” for electricity consumed within the City (the “Electricity
7 Tax”) (TMC, § 225.1.4). Edison has failed to remit the full amount of the Electricity Tax it owes the
8 City due to its erroneous calculation of the Electricity Tax.

9 2. The UUT Ordinance imposes the Electricity Tax on “charges” made by Edison to
10 every person in the City who uses electricity. These charges include charges for metered energy,
11 customer charges, service charges, demand charges, standby charges, and annual and monthly
12 charges. (TMC, § 225.1.4, subd. (a).) Edison is required to collect the Electricity Tax from its
13 customers and remit the Electricity Tax to the City monthly. (TMC, § 225.1.4, subd. (e).)

14 3. In September 2006, the Legislature adopted the Global Warming Solutions Act of
15 2006 (AB 32), Health and Safety Code, section 38500 et seq. (the “GWS Act”), which led to
16 development of a “cap-and-trade” program to reduce greenhouse gas (“GHG”) emissions statewide.
17 Broadly speaking, cap-and-trade sets a statewide limit on total GHG emissions from all sources
18 covered by the GWS Act and regulates a marketplace where GHG “allowances” (i.e., permits to emit
19 a discrete volume of GHGs) are allocated, sold, or traded.

20 4. The California Public Utilities Commission (“Commission”) has developed financial
21 assistance programs for electric utility customers affected by the impact of the cap-and-trade
22 program. The CA Industry Assistance Credit (“IA Credit”), one of the Commission’s assistance
23 programs, is an annual credit intended to incentivize and reward businesses that implement energy
24 efficient programs to reduce GHG emissions. The IA Credit compensates eligible businesses for a
25 portion of GHG emission costs associated with the purchase of electricity.

26 5. Edison contends that by implementing the IA Credit, the “charges” to which the
27 City’s Electricity Tax applies should be reduced in an amount equal to the IA Credits afforded its
28 customers. As a result, Edison has unilaterally decided to under-collect the Electricity Tax owed by

1 its customers under the UUT Ordinance resulting in a consistent failure by Edison to remit the full
2 amount of the Electricity Tax owed.

3 6. The City, however, contends the Electricity Tax applies to the total amount of
4 electricity consumed by Edison customers in the City, regardless of any IA Credit thereafter applied.
5 The City contends Edison has no authority to reinterpret the City’s UUT Ordinance and reduce the
6 Electricity Tax Edison is obligated to remit to the City.

7 7. The City has demanded Edison remit the total amount of Electricity Tax owed to the
8 City; however, Edison has failed to comply. Therefore, the City is left with no alternative but to
9 bring this action to request the Court (1) declare the meaning of the City’s UUT Ordinance; (2)
10 compel Edison to remit the proper Electricity Tax amount owed to the City henceforward; and (3)
11 require Edison to remit all past underpaid amounts according to proof, plus penalties and interest.

12 **PARTIES**

13 8. Plaintiff City is a charter city organized and operating in the County of Los Angeles,
14 State of California, under the City’s Charter and Article XI, Section 5 of the California Constitution.

15 9. Defendant Southern California Edison Co. is a public utility that engages in the
16 generation, transmission and distribution of electricity in Southern California whose principal office
17 is located at 2244 Walnut Grove Avenue, Rosemead, California 91770, in the County of Los
18 Angeles. Edison serves residential and business electricity customers in the City under the grant of a
19 franchise by the City.

20 10. The City is unaware of the true names and capacities, whether individual, corporate,
21 or otherwise, of Defendants Does 1 through 100, inclusive, and therefore sues those parties by such
22 fictitious names. The City will seek leave to amend this Complaint to state the true names and
23 capacities of the fictitiously named parties and to insert appropriate allegations concerning them
24 when their true names have been ascertained.

25 11. The City is informed and believes, and thereon alleges, that each defendant is, and at
26 all times mentioned herein were, the agents, servants, representatives, employees, or assigns of the
27 defendants herein, whether named or unnamed, and in doing the things hereinafter mentioned, were
28 acting within the scope of such authority as agent, servant, representative, employee, or assign with

1 the knowledge, permission, consent, and authorization of each such co-defendant. Actions taken, or
2 omissions made, by each defendant are considered to be actions or omissions of the other defendants
3 for purposes of this Complaint.

4 **JURISDICTION AND VENUE**

5 12. This Court has jurisdiction over this action because the events alleged herein occurred
6 in Los Angeles County. The City and Edison are located in Los Angeles County.

7 13. The City contends the jurisdiction of the Commission is not relevant to this action as
8 the dispute between the City and Edison concerns the application of the City's UUT Ordinance and
9 its Electricity Tax — questions over which the Commission has no jurisdiction. (*Monterey Peninsula*
10 *Water Management Dist. v. Public Utilities Com.* (2016) 62 Cal.4th 693, 698 [Commission has no
11 authority to regulate local government “absent a statute expressly authorizing such regulation”].)

12 14. Venue is, therefore, proper in this Court under Code of Civil Procedure section 395.5.

13 **GENERAL ALLEGATIONS**

14 15. The UUT Ordinance is codified in Chapter 25 of Division 2 of the TMC.
15 Section 225.1.4 (Electricity Users’ Tax) of Chapter 25 imposes the Electricity Tax — “a tax upon
16 every person in the City using electrical energy in the City.” (TMC, § 225.1.4(a).) Since 1991, the
17 Electricity Tax has been “at the rate of six and one-half (6 1/2) percent of the charges made for such
18 energy by an electrical corporation franchised to serve the City.” (*Ibid.*) The “charges” taxed include
19 “charges made for (1) metered energy, and (2) minimum charges for service, including customer
20 charges, service charges, demand charges, standby charges and annual and monthly charges.” (*Ibid.*)

21 16. Edison has an exclusive franchise with the City to provide electricity to all
22 households and businesses within the City limits. As a supplier of electricity, Edison must collect the
23 Electricity Tax from service users. (TMC, § 225.1.4, subd. (e).)

24 17. Absent conditions not relevant here, there are no exceptions or circumstances under
25 the UUT Ordinance that would permit Edison to reduce the “charges” subject to the Electricity Tax
26 based on credits provided by the state or any other entity (TMC, §§ 225.1.4(b)–(d), 225.1.17 [listing
27 exceptions for taxpayers who are 62 years of age or older or permanently disabled, storage of
28 electrical energy in a battery, electricity used to produce water, and electricity generated from natural

1 gas.]) None of the exceptions or special circumstances allow for a reduction of the Electricity Tax
2 based on credits provided by the state or any other entity. (*Dean v. Superior Court (Lever)* (1998)
3 62 Cal.App.4th 638, 641 [“*expressio unius*” rule].)

4 18. The Electricity Tax must be “paid by the person using such [electricity] services,” and
5 it “shall be collected from the service user by the person supplying such energy.” (TMC,
6 §§ 225.1.4(a) & (e).) The amount the service supplier (here Edison) collects in any given month
7 must be remitted to the City “on or before the 20th day of the following month.” (TMC,
8 § 225.1.4(e).) Delinquency in the remittance of the full amount owed results in a penalty:

9 Any service supplier who fails to remit any tax imposed by this
10 Chapter on or before the due dates provided in this Chapter is
11 delinquent and shall pay a penalty of ten (10) percent of the total tax
12 collected or imposed herein in addition to the amount of the tax.

13 (TMC, § 225.1.10(a).)

14 19. A service supplier’s continued delinquency results in additional penalties:

15 Any service supplier who fails to remit any delinquent remittance on
16 or before a period of thirty (30) days following the date on which the
17 remittance first became delinquent shall pay a second delinquency
18 penalty of ten (10) percent of the amount of the tax due in addition to
19 the amount of the tax and the ten (10) percent penalty first imposed.

20 (TMC, § 225.1.10(b).)

21 20. Under the UUT Ordinance, the City is also entitled to interest on the amount of the
22 Electricity Tax the service supplier owes:

23 In addition to the penalties imposed, any service supplier who fails to
24 remit any tax imposed by this Chapter shall pay interest at the rate of
25 one-half (1/2) of one (1) percent per month or fraction thereof on the
26 amount of the tax, exclusive of penalties, from the date on which the
27 remittance first became delinquent until paid.

28 (TMC, § 225.1.10(d).)

1 21. The City is empowered to sue a service supplier to collect the full amount of
2 Electricity Tax due the City: “Any person owing money to the City under the provisions of this
3 Chapter shall be liable to an action brought in the name of the City for the recovery of such amount.”
4 (TMC, § 225.1.14.)

5 22. Edison is the electricity “service provider” for the City and, thus, is responsible for
6 timely and fully collecting the City’s Electricity Tax from its City customers and promptly remitting
7 the full amount of the Electricity Tax owed to the City.

8 23. As stated in Paragraph 4 above, the Commission implemented Assistance Programs
9 after the 2006 passage of the GWS Act. However, none of the Assistance Programs have lowered the
10 rates applicable to energy consumption in the City.

11 24. The IA Credit was implemented by the Commission for businesses operating in an
12 “emissions-intensive and trade-exposed” (“EITE”) industry. This credit is designed to prevent GHG
13 “emissions leakage.”

14 “Emissions leakage” is when emissions decrease within California, but
15 increase outside of California, as a result of the Cap-and-Trade
16 Program. This credit protects eligible industrial sectors against
17 emissions leakage by compensating them for a portion of the GHG
18 emission costs associated with the electricity they buy.

19 Cal. Pub. Util. Com., *GHG Cap-and-Trade – CA Industry Assistance*
20 <www.cpuc.ca.gov/industryassistance> (as of Mar. 22, 2019).

21 Eligible EITE businesses receive this credit once per year, usually in April.

22 25. However, the IA Credit does not reduce the amount Edison customers are charged for
23 using electrical energy in the City. Rather, this program partially reimburses eligible customers
24 afterward as an incentive to meet the energy goals of the GWS Act.

25 26. Citing the IA Credit, Edison has unilaterally reduced the Electricity Tax it collects and
26 remits to the City. The City contends the Electricity Tax should be applied to Edison’s full “charges”
27 for electricity service. Any credit to the electric customer is to be applied after the calculation of the
28 Electricity Tax.

27. Nevertheless, without consulting the City, Edison consistently reduces the base electrical service usage amount to which the Electricity Tax applies, wrongly crediting the service user with an applicable IA Credit before calculating the Electricity Tax owed the City. Edison’s failure to properly calculate and collect the Electricity Tax has substantially reduced the revenue the City is entitled to receive under the provisions of the City’s UUT Ordinance.

28. The City discovered this error on or about July 13, 2018, and promptly corresponded with Edison (a) to explain the Electricity Tax applies to the total amount charged for electricity service, before credits are applied, and (b) to demand Edison immediately remit the delinquent amount owed under section 225.1.4 of the City’s UUT Ordinance. The City offered to waive penalties and interest otherwise applicable to the late payments, provided Edison met the City’s demand within ten business days.

29. The City’s demand letter prompted negotiations with Edison, all which have proved fruitless. Edison continues to refuse to remit the full amount of Electricity Tax due the City, which has left the City with no alternative but to bring this action.

FIRST CAUSE OF ACTION
(DECLARATORY RELIEF)

(Against All DEFENDANTS AND Does 1-100)

30. The City realleges and incorporates by reference the allegations set forth above in paragraphs 1 through 29.

31. An actual controversy has arisen and now exists between the City and Edison concerning City UUT Ordinance section 225.1.4 and the proper calculation of the Electricity Tax, as well as the rights, claims and obligations related thereto as alleged herein.

32. The City seeks a judicial declaration that as the electric service provider for the City, Edison must apply the Electricity Tax to every person in the City utilizing electrical energy at a rate of six and one-half (6 1/2) percent (or in an amount subsequently determined by City resolution) of all the charges made for such energy, including charges made for (1) metered energy, and (2) minimum charges for service, including customer charges, service charges, demand charges, standby

1 charges and annual and monthly charges with no reduction for credits that may be provided for by
2 the Commission, or otherwise.

3 33. A judicial declaration is necessary and appropriate under the circumstances in order
4 for the City to ascertain its rights relative to the imposition, collection and remittance of the
5 Electricity Tax to the City, as well as Edison’s obligations with respect thereto.

6 **SECOND CAUSE OF ACTION**
7 **(FAILURE TO COMPLY WITH TORRANCE MUNICIPAL CODE**
8 **CHAPTER 25 OF DIVISION 2)**
9 **(Against EDISON AND Does 1–100)**

10 34. The City realleges and incorporates by reference the allegations set forth above in
11 paragraphs 1 through 29.

12 35. Section 225.1.4 of the City’s UUT Ordinance applies the Electricity Tax to all
13 electricity consumed within the City. (TMC, § 225.1.4.)

14 36. As the electricity service provider for the City, Edison is legally responsible to collect
15 the full amount of the Electricity Tax due from its customers, and to remit that amount to the City on
16 a monthly basis. (TMC, § 225.1.4(e).)

17 37. Edison has abrogated its legal responsibility under section 225.1.4 of the UUT
18 Ordinance by reinterpreting section 225.1.4 and under-collecting the Electricity Tax due from its
19 customers, which has resulted in a monthly underpayment of the Electricity Tax to the City. Edison
20 has breached its duty to comply with section 225.1.4 and is now liable to the City for the
21 underpayment of the Electricity Tax, plus penalties and interest, in an amount to be determined at the
22 time of trial (TMC, § 225.1.10, subds. (a), (b), and (d).)

23 38. Section 225.1.14 of the UUT Ordinance empowers the City to bring this action to
24 request the court issue an order compelling Edison to comply with the provision of the City’s UUT
25 Ordinance and (1) pay all Electricity Taxes owed in the future without reduction for credits provided
26 for by the Commission; (2) remit all previously underpaid Electricity Taxes in an amount to be
27 determined at the time of trial; and (3) pay all penalties and interest on the underpaid amounts as
28 required by section 225.1.10 of the UUT Ordinance.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, the City respectfully prays for judgment as follows:

3 **FIRST CAUSE OF ACTION**

4 1. For a declaration that the City’s UUT Ordinance section 225.1.4 requires Edison, as
5 the City’s electrical service provider, to apply the Electricity Tax to every person in the City utilizing
6 electrical energy at a rate of six and one-half (6 1/2) percent (or in an amount subsequently
7 determined by resolution of the City) which shall apply to all the charges made for such energy,
8 including charges made for (1) metered energy, and (2) minimum charges for service, including
9 customer charges, service charges, demand charges, standby charges and annual and monthly
10 charges henceforward, with no reduction for credits that may be provided for by the Commission, or
11 otherwise;

12 2. That the City’s UUT Ordinance section 225.1.10 requires Edison to pay all penalties
13 and interest on all previously underpaid Electricity Tax amounts in an amount to be determined at
14 trial.

15 3. For the costs of the suit;

16 4. For such other and further relief as the Court may deem just and proper.

17 **SECOND CAUSE OF ACTION**

18 1. That the court issue an order:

19 a. compelling Edison to apply the Electricity Tax to every person in the City
20 utilizing electrical energy at a rate of six and one-half (6 1/2) percent (or in an
21 amount subsequently determined by resolution of the City) which shall apply
22 to all the charges made for such energy, including charges made for (1)
23 metered energy, and (2) minimum charges for service, including customer
24 charges, service charges, demand charges, standby charges and annual and
25 monthly charges henceforward, with no reduction for credits that may be
26 provided for by the Commission, or otherwise;

27 b. requiring Edison to account for and remit all previously underpaid Electricity
28 Taxes owed the City;

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c. requiring Edison to pay all penalties and interest on all previously underpaid Electricity Tax amounts owed the City as required by section 225.1.10 of the UUT Ordinance.

- 2. For costs of the suit;
- 3. For such other and further relief as the court may deem just and proper.

DATED: March 22, 2019

**COLANTUONO, HIGHSMITH &
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