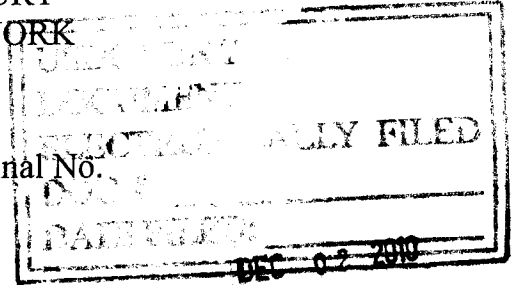


DEF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

: Criminal No.

v.

: Filed:

: Violation: 18 U.S.C. § 371

ROBERT D. ROSENBERG,

Defendant.

10 CRIM 1195

PLEA AGREEMENT

The United States of America and the defendant, ROBERT D. ROSENBERG ("ROSENBERG"), hereby enter into the following Plea Agreement ("Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.").

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

1. ROSENBERG agrees to waive indictment pursuant to Fed. R. Crim. P. 7(b), and plead guilty to a one-count Information, in the form attached, in the United States District Court for the Southern District of New York, in which ROSENBERG is charged with one count of violating 18 U.S.C. § 371, in connection with a conspiracy to commit bribery and wire fraud from approximately November 2003 to approximately August 2008, in violation of 18 U.S.C. §§ 666 (a)(2) and 1343.

DEFENDANT'S COOPERATION

2. ROSENBERG will continue to cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the award of supply contracts by Consolidated Edison of New York ("Con Edison"), as well as any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (collectively referred to herein as "Federal Proceeding"). The ongoing, full, and truthful cooperation of ROSENBERG shall include, but not be limited to:

(a) ROSENBERG agrees to produce to the United States all documents, information, and other materials, including any personal documents, in the possession, custody, or control of ROSENBERG that may be requested by the United States in connection with or that may relate to any Federal Proceeding;

(b) ROSENBERG agrees to make himself available for interviews with the attorneys and agents of the United States, not at the expense of the United States, at the New York Office of the Antitrust Division, or at other mutually-agreed upon locations, upon the request of attorneys and/or agents of the United States;

(c) ROSENBERG agrees to bring to the attention of the United States all crimes which he has committed, and all administrative, civil, and/or criminal proceedings,

investigations, or prosecutions in which he, to his knowledge, is or has been a subject, target, party, or witness;

(d) ROSENBERG agrees to respond fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(e) ROSENBERG, when called upon to do so by the United States in connection with any Federal Proceeding, will testify in grand jury, trial, and other judicial proceedings fully, truthfully and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*); and

(f) ROSENBERG agrees to commit no further crimes whatsoever.

3. ROSENBERG agrees that any assistance he may provide to federal criminal investigators in connection with any Federal Proceeding shall be pursuant to the specific instructions and control of the Antitrust Division of the Department of Justice and those federal criminal investigators.

GOVERNMENT'S AGREEMENT

4. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 2 of this Agreement and upon the Court's acceptance of his guilty plea called for by this Plea Agreement, the Antitrust Division of the Department of Justice will not bring further charges against ROSENBERG for any act or offense committed prior to the date of this Agreement arising from the following activity (to the extent that ROSENBERG has disclosed his participation in such criminal activity to the United States as of the date of this agreement): (a) a scheme to pay bribes to a former procurement official at Con Edison in exchange for which that procurement official awarded Con Edison industrial pipe supply contracts to Vendor-1, from approximately November 2003 until approximately August 2008, as described in the attached Information; and (b) a scheme to pay bribes to the former procurement official at Con Edison in exchange for the award of a Con Edison industrial pipe supply contract to another industrial pipe supply vendor, from approximately January 2009 and continuing through July 2010. This Agreement does not provide any protection against prosecution for any crimes except as set forth above. The non-prosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax and securities laws, or to any crime of violence.

5. It is understood that this Agreement does not bind any other federal agency or local prosecuting authority or administrative agency other than the Antitrust Division of the United States Department of Justice. However, if requested, the Antitrust Division will

bring the fact, manner and extent of ROSENBERG's cooperation to the attention of other prosecuting, administrative, and other agencies as a matter for such agencies to consider as appropriate.

POSSIBLE MAXIMUM PENALTIES

6. ROSENBERG understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 371 is:

(a) a term of imprisonment of not more than five (5) years;

(b) a fine of not more than the greater of \$250,000, or the greater of twice his gross pecuniary gain from the offense or twice the victim's gross pecuniary loss from the offense (18 U.S.C. § 3571); and

(c) a term of supervised release of no more than three (3) years following any term of imprisonment. (18 U.S.C. § 3583(b)(2) and U.S.S.G. § 5D1.2(a)(2)). Pursuant to 18 U.S.C. § 3583(e)(3), if the defendant violates any condition of supervised release, he could be imprisoned up to two (2) years.

7. ROSENBERG also understands that:

(a) the Court shall impose an order of restitution, pursuant to 18 U.S.C. § 3663A and U.S.S.G. § 5E1.1; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

8. ROSENBERG understands that the United States Sentencing Guidelines (“Sentencing Guidelines”) are advisory, not mandatory, but that the Court must consider the Sentencing Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing a sentence. ROSENBERG understands that the Sentencing Guidelines determinations will be made by the Court by a preponderance of the evidence standard. ROSENBERG understands that although the Court is not ultimately bound to impose a sentence within the applicable Sentencing Guidelines range, its sentence must be reasonable based upon considerations of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Agreement will not be used in determining the defendant’s applicable Guidelines range as it relates to the payment of bribes to a former procurement official at Con Edison from approximately January 2009 and continuing through July 2010, except to the extent provided in U.S.S.G. §1B1.8(b).

SENTENCING AGREEMENT

9. ROSENBERG understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. It is understood that the Sentencing Guidelines are not binding on the Court. ROSENBERG acknowledges that the entry of his guilty plea to the charged offense authorizes the sentencing court to impose any sentence up to and

including the statutory maximum sentence. The United States cannot and does not make any promises or representations as to what sentence ROSENBERG will receive. However, the United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of ROSENBERG's activities with respect to this case, and all other activities of ROSENBERG which the United States deems relevant to sentencing; and (c) the timeliness, nature, extent and significance of ROSENBERG's cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by ROSENBERG both prior and subsequent to the signing of this Agreement. The United States reserves the right to make any statement to the Court or the Probation Office concerning the nature of the offense charged in the attached Information, the participation of ROSENBERG therein, and any other facts or circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of ROSENBERG, and to supply any other information that the Court may require.

10. If the United States determines that ROSENBERG has provided substantial assistance in any Federal Proceeding, and has otherwise fully complied with all of the terms of this Agreement, it will file a motion, pursuant to U.S.S.G. §5K1.1, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence ROSENBERG in light of the factors set forth in U.S.S.G. §5K1.1(a)(1)-(5), and thus enabling the Court, in its discretion, to impose a sentence below the applicable

Sentencing Guidelines ranges for incarceration and fine. The United States and ROSENBERG are free to recommend or argue for any specific sentence to the Court.

11. ROSENBERG understands that this Agreement does not in any way affect or limit the right of the United States to respond to and take positions on post-sentencing motions or requests for information that relate to reduction or modification of sentence.

12. ROSENBERG acknowledges that the decision as to whether he has provided substantial assistance in any Federal Proceeding is within the sole discretion of the United States. It is understood that should the United States determine that ROSENBERG has not provided substantial assistance in any Federal Proceeding, such a determination will release the United States from any obligation to file a motion pursuant to U.S.S.G. §5K1.1, but will not entitle ROSENBERG to withdraw his guilty plea once it has been entered.

ROSENBERG further understands that whether or not the United States files its motion pursuant to U.S.S.G. §5K1.1, the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

13. It is understood that should the United States determine in good faith, subsequent to the filing of a motion pursuant to U.S.S.G. §5K1.1 of the Sentencing Guidelines, that ROSENBERG has violated any provision of this Agreement, the Antitrust Division shall have the right to withdraw such motion .

14. ROSENBERG understands and agrees that should the conviction following his plea of guilty pursuant to this Agreement be vacated for any reason, then any

prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced or reinstated against him, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

REPRESENTATION BY COUNSEL

15. ROSENBERG has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. ROSENBERG has thoroughly reviewed this Agreement with his attorney, and has received satisfactory explanations from his attorney concerning each paragraph of this Agreement and alternatives available to ROSENBERG other than entering into this Agreement. After conferring with his attorney and considering all available alternatives, ROSENBERG has made a knowing and voluntary decision to enter into this Agreement.

VOLUNTARY PLEA

16. ROSENBERG hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, ROSENBERG waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the United States has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to

Brady v. Maryland, 373 U.S. 83 (1963), other than information establishing the factual innocence of ROSENBERG, and impeachment material pursuant to Giglio v. United States, 405 U.S. 150 (1972), that have not already been produced as of the date of the signing of this Agreement.

17. The defendant's decision to enter into this Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Agreement.

VIOLATION OF PLEA AGREEMENT

18. ROSENBERG agrees that should the United States determine in good faith that ROSENBERG has given false, misleading, or incomplete information or testimony, or that ROSENBERG has failed in any other way to fulfill any of the obligations set out in this Agreement, the United States shall notify counsel for ROSENBERG in writing by personal or overnight delivery or facsimile transmission of its intention to void any of its obligations under this Agreement (except its obligations under this paragraph), and ROSENBERG will be subject to prosecution for any federal criminal violation of which the United States has knowledge, including but not limited to the substantive offenses relating to the investigation resulting in this Agreement. It is the intent of this Agreement to waive

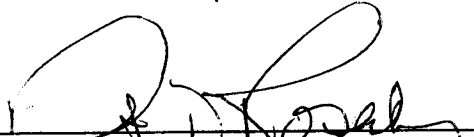
all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

19. If ROSENBERG violates any provision of this Agreement, he agrees that any documents, statements, information, testimony or evidence provided by him, whether before or after the execution of this Agreement, and any leads derived therefrom, shall be admissible in evidence in any and all criminal proceedings hereafter brought against ROSENBERG, and that he will not assert a claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that such evidence, or any leads therefrom, should be suppressed.

ENTIRETY OF AGREEMENT

20. This Agreement constitutes the entire agreement between and among the United States and ROSENBERG concerning the disposition of the charges contained in the attached Information. The United States has made no other promises to or agreements with ROSENBERG. This Agreement cannot be modified other than in a writing signed by the parties.

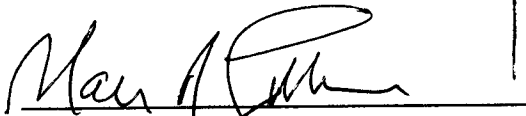
Dated: 12/2/10




ROBERT D. ROSENBERG



ELIZABETH PREWITT



BLAIR R. ZWILLMAN, ESQ.
Counsel for
ROBERT D. ROSENBERG



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