

Consolidated Edison Company of New York, Inc.

M29 Transmission Line Project

Appendix D

Draft Certificate of Conditions

General Conditions

1. Subject to the conditions set forth in this Opinion and Order, Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”) is granted a Certificate of Environmental Compatibility and Public Need authorizing it to construct and operate a new 345 kV high-pressure fluid-filled (HPFF pipe-type) transmission line along an approximately 9.5-mile route through portions of Westchester County, the Bronx, and upper Manhattan (the “M29 Transmission Line Project” or “Project”), as detailed in the Application. The Project’s transmission line will consist of one feeder (designated M29) and would be installed mostly below grade, primarily within the curb-to-curb portion of the rights-of-way of public roadways. Equipment required to accommodate the new transmission line will be added at both the Sprain Brook Substation and the new Academy Substation.

2. Con Edison’s motion dated June 14, 2006, for modifications and waivers of specified application information requirements is granted.

3. Con Edison’s request that the Public Service Commission (“Commission”) decline to apply specified provisions of the Westchester County and City of Yonkers Codes, as set forth in Exhibit 7 of the Application, is granted.

4. Construction of the Project shall not commence in the affected area(s) subject to receipt of property transfers, easements, consents, or permits, until Con Edison has received such property transfers, easements, consents, or permits for such affected area(s) from the New York State Department of Transportation (“NYSDOT”), New York City Housing Authority (“NYCHA”), Metropolitan Transit Authority (“MTA”), or other private landowners identified in the Application, as are necessary, respectively, to permit

construction to commence in such affected area(s), and the New York State Pollution Discharge Elimination System (SPDES) Permit construction approval from the New York State Department of Environmental Conservation (“NYSDEC”).

5. Con Edison shall not begin site preparation or construction with respect to any portion of the certified transmission line (except for surveying, boring and such other related activities as are necessary to prepare final design plans) before it has submitted to the Commission, and the Commission has approved, an Environmental Management and Construction Plan (“EM&CP”) generally consistent with the guidelines for the construction of the Project’s transmission line set forth in the Appendix to this Opinion and Order.

6. Con Edison shall submit to the Commission three copies of its EM&CP for the certified Project and serve one copy on the NYSDEC Commissioner and a copy on the Commissioner of the Office of Parks, Recreation and Historic Preservation (“OPRHP”) [pursuant to 9 NYCRR Part 428 Section 428.2(c)]. The Company shall also serve at least one copy of its EM&CP on any other New York State agency (and its relevant regional offices), which requests it and on the active parties on the service list who request the document. Copies of the EM&CP shall also be placed for public inspection in at least one public library or other convenient location in each municipality in which construction will occur.

7. Except where this Opinion and Order require otherwise, the terms of the Joint Proposal submitted in the proceeding [**to be developed**] and the environmental protection measures contained in the Application (and in the related statements made by the Applicant) shall be incorporated into the EM&CP and be adhered to during construction,

operation and maintenance of the certified Project and the component facilities. Applicable provisions of the Project's EM&CP and orders approving the EM&CP shall be incorporated into contracts associated with the Project.

8. Con Edison shall, within 30 days after the issuance of this Opinion and Order, submit to the Commission either a petition for rehearing or a verified statement that it accepts and will comply with the certificate requirements. Failure to comply with this ordering clause shall invalidate the Certificate for the Project.

9. (a) Each substantive state and local law and regulation applicable to the facilities authorized by this Opinion and Order shall apply, except the substantive local laws or regulations which the Commission has declined to apply as being unreasonably restrictive.

(b) No state or local laws or regulations purporting to require any approval, consent, permit, certificate or other condition for the construction or operation of the facilities authorized by this Opinion and Order shall apply, except (i) those of the Public Service Law and regulations and orders adopted thereunder, (ii) those provided by otherwise applicable State law for the protection of employees engaged in the construction and operation of the Project, and (iii) those permits issued under a federally-delegated environmental permitting program. Con Edison will submit forms and substantively comply with all applicable State and local regulations for occupancy, construction, and use of rights-of-way. The Company may petition the Commission to seek resolution of any dispute that may arise in connection with its substantive compliance with such permits and approvals.

(c) Nothing in this Opinion and Order precludes Con Edison from voluntarily subjecting itself to any such state or local approval, consent, permit, certificate or other condition.

(d) The specified sections of the Westchester County and City of Yonkers Codes for which Con Edison has sought waivers, as delineated in Exhibit 7 of the Application, shall not apply.

10. Con Edison shall undergo highway work permit and use and occupancy permit review and obtain a highway work permit and use and occupancy permit from NYSDOT pursuant to 17 NYCRR Part 131 for the construction and operation of the Project, subject to the Commission's ongoing jurisdiction. Con Edison shall cooperate with the NYSDOT for all work to be performed in the right-of-way of State highways, subject to the Commission's ongoing jurisdiction. Prior to submitting its construction plans for the Project, Con Edison will provide to NYSDOT a preliminary design marked to avoid conflicts with potential future transportation projects that NYSDOT may seek to undertake and shall offer to consult with NYSDOT concerning any comments it may offer and will use reasonable efforts to accommodate any NYSDOT concerns. All work within State highway rights-of-way shall be designed and performed according to the traffic safety standards and other substantive requirements in 17 NYCRR Part 131, entitled *Accommodation of Utilities Within State Highway Right-of-Way*, applicable design standards of the American Association of State Highway and Transportation Officials ("AASHTO"), the Manual of Uniform Traffic Control Devices ("MUTCD"), the Highway Design Manual, the Policy and Standards for Entrances to State Highways, the Requirements for the Design and Construction of Underground Utility Installations

Within the State Highway ROW, the Accommodation Plan, and the NYSDOT 2002 Standard Specifications

11. Con Edison shall construct the certified Project in accordance with the provisions of Commission Staff's *Revised Interim Standards and Practices for Environmental Management and Construction of Gas Transmission Facilities in New York State (Standards and Practices)*, effective February 21, 2003 (adopted in Case 02-T-1162), that are applicable to this Project and not specifically prescribed in the EM&CP, particularly with regards to archaeological resources, construction practices and techniques, water bodies and wetlands, erosion control, right-of-way ("ROW"), clearing and maintenance, and ROW restoration, except as otherwise specified herein.

12. Con Edison shall report any proposed changes in the approved EM&CP, to the Department of Public Service Staff, NYSDOT, and the NYSDEC. DPS staff will refer to the Secretary of the Commission (or a designee) reports of any proposed changes that do not cause substantial change in the Project's environmental impact. DPS Staff will refer all other proposed changes in the EM&CP to the Commission for approval. Upon being advised that DPS Staff will refer a proposed change to the Commission, Con Edison shall notify all affected statutory and active parties, and all property owners or lessees whose property is affected by the proposed change. The notice shall describe the original conditions and requested change, state that documents supporting the request are available for inspection at specified locations, and state that persons may comment by writing or calling (followed by written confirmation to) the Commission within 15 days of the notification date. Any delay in receipt of written confirmation will not delay Commission action on the proposed change. Con Edison shall not execute any proposed

change to the EM&CP until it receives oral or written approval from the Commission or a designee, except in emergency situations threatening personal injury, property damage or severe adverse environmental impact or as specified in the EM&CP.

13. Con Edison shall make available to the public a toll free or local telephone number of an agent or employee who will receive complaints made during construction of the certified Project. In addition, the Commission's phone number, and the phone number of its Environmental Compliance Section, shall be provided in the event of any questions or concerns. Telephone complaints shall be logged and made available to DPS Staff upon request. During DPS Staff's compliance inspections, the Company shall report to Staff every unresolved complaint.

14. Before commencing site preparation, Con Edison shall give notice to the NYSDOT, Commissioners of Public Works for Westchester County, the City of Yonkers and the City of New York. Such notice shall contain a map and description of the Project in the local area, the anticipated date for start of construction and name, address and local or toll-free telephone number of an employee or agent of the Company. The notice shall also contain a statement that pursuant to Article VII of the PSL, the Project is under the jurisdiction of the Commission, which is responsible for enforcing compliance with applicable environmental and construction conditions contained in Commission Orders, and which can be contacted at an address and telephone number to be provided. Whenever possible, the notice shall be written in terms reasonably understandable to the average person, as determined by the Company. A copy of the notice shall be submitted to the Secretary of the Commission.

15. Con Edison shall provide its construction contractors complete copies of the Certificate for the Project, the Project's EM&CP, and 6 NYCRR Parts 700-704.

16. The authority granted in the Certificate for the Project and any subsequent Commission Order(s) in this proceeding are subject to the following conditions which are necessary to ensure compliance with such Order(s):

(a) Con Edison shall regard the DPS staff representatives (authorized pursuant to PSL Section 8) as the Commission's designated representatives in the field. In the event of any emergency resulting from the specific construction or maintenance activities that violate or may violate the terms of the Certificate or any other Order in this proceeding, such Staff representatives may issue a stop-work order for that location or activity.

(b) A stop-work order shall expire within 24 hours unless a single Commissioner confirms it. If a stop-work order is confirmed, Con Edison may seek reconsideration from the confirming Commissioner or from the Commission. If the emergency prompting the issuance of a stop-work order is resolved to the satisfaction of the Commissioner or the Commission, the stop-work order will be lifted. If the emergency has not been satisfactorily resolved, the stop-work order will remain in effect.

(c) Stop-work authority shall be exercised sparingly and with due regard to the potential economic costs involved and possible impact on construction activities. Before exercising such authority, the DPS Staff field representatives shall attempt (wherever practicable) to direct preventive or remedial action through the Company's representatives possessing comparable authority. In the event that DPS Staff field representatives issue a stop work order, neither Con Edison nor the contractor will

be prevented from undertaking such safety-related activities as they deem necessary and appropriate under the circumstances.

(d) In the event of any emergency involving specific construction or maintenance activities that violate or threaten to violate the terms of the Certificate or any other Order in this proceeding, the DPS staff field representatives may direct the Company to install appropriate mitigative measures or devices.

Notifications

17. Con Edison shall inform the Secretary of the Commission, DPS Staff and other affected agencies or parties at least five days before commencing construction of this Project.

18. The Company shall provide DPS Staff and other affected agencies or parties with monthly status reports summarizing the previous month's construction activity and indicating the locations where construction is scheduled for the next month.

19. Within ten days after the facility is placed in service and is supplying customer loads, the Company shall notify the Commission of this fact.

Rights-of-Way Clearing

20. Con Edison shall confine clearing, where required, and subsequent maintenance activity to the certified ROW and temporary construction areas required for horizontal boring operations.

21. Con Edison shall notify all construction contractors that the Commission may seek to recover penalties for violation of Commission Orders not only from the Company but also from its construction contractors, and that construction contractors may also be

liable for other fines, penalties or environmental damage resulting from actions performed by contractor personnel working on this Project (from work directly or indirectly associated with this Project).

Transmission Line Construction

22. Con Edison shall install sedimentation/erosion control devices, as necessary, to prevent sedimentation into water bodies (i.e., the Saw Mill River and Harlem River) and associated wetlands during construction. The erosion control devices shall be installed prior to construction and shall remain in place while working within 100 feet of the water body or wetland. Erosion and sedimentation controls will be maintained until the ROW has been revegetated and/or stabilized in accordance with pre-existing conditions.

23. Con Edison shall take appropriate measures, as outlined in an approved EM&CP, to minimize fugitive dust and airborne debris from construction activity.

24. Noise mitigation procedures, as described in an approved EM&CP, shall be followed and DPS Staff shall be notified at least 24 hours in advance if unplanned weekend or holiday construction becomes necessary.

25. No vehicular or equipment access across or into streams or wetlands is permitted without adequate protection. Equipment turnouts may be provided for machinery and equipment to pass at intervals in non-sensitive areas.

26. Con Edison shall instruct its contractors to park their vehicles and equipment in areas designated on approved EM&CP drawings, so as not to interfere with normal traffic and so as not to cause any safety hazard or interfere with existing land uses.

Erosion Control

27. In the areas of the ROW or substation sites subject to soil erosion, Con Edison shall install temporary erosion control devices as soon as practicable and appropriate, and as indicated in the Project's approved EM&CP.

Environmental Supervision

28. Con Edison's environmental inspector, engineer or qualified designee shall be on site at the start-up of each field operation during environmentally sensitive phases of construction in areas such as water crossings. Each environmental inspector, engineer or designee and construction inspector shall be equipped with sufficient documentation, transportation and communication equipment to monitor effectively contractor compliance with the provisions of this Opinion and Order, applicable sections of the Public Service Law and the approved EM&CP.

29. Con Edison shall organize and conduct site compliance inspections as needed, but not less frequently than once a month, during the construction and restoration phases of the Project, and at least annually for two years after the Project is operational. Such inspections shall include a review of the status of all certification conditions, requirements, and Company commitments, as well as a field review of the Project, if necessary. Such inspections may also include:

(a) reviews of all complaints received, and their proposed or actual resolutions;

(b) reviews of any significant comments, concerns or suggestions made by the public, local governments, or other agencies;

(c) reviews of the status of the project in relation to the overall schedule established prior to the commencement of construction; and

(d) any other items the Company or DPS Staff consider appropriate.

The Company will circulate a written record of the results of such inspections to involved agencies.

Rights-of-Way and Maintenance

30. Con Edison shall, if necessary, negotiate for temporary easements for construction purposes, which shall be identified in the EM&CP the Commission approves. Any temporary easement or construction areas not identified in the approved EM&CP will be requested through changes thereto. Unless otherwise specified in the EM&CP, the Company shall, following restoration, let the temporary construction area re-vegetate naturally or return to its original land use to the extent that it does not interfere with the inspection, operation or maintenance of the utility facilities.

31. No herbicides will be used for facility construction or maintenance. Con Edison shall employ appropriate non-chemical techniques and apply environmental restrictions in the Company's Detailed Specifications for Transmission Right-of-Way Vegetation Maintenance.

Conservation Measures

32. Wherever ROW construction requires removal of topsoil for trench excavation, the topsoil shall be removed from the site and disposed of with other excavated subsoil material in keeping with conventional construction methods. At the time of backfill, select fills shall be placed around and above placed facilities, compacted

and stabilized to pre-existing conditions. Topsoil shall be restored in accordance with original soil profiles generally not to exceed a maximum of twelve inches.

Cultural Resources

33. Con Edison has consulted with (“OPRHP”), which by letter dated _____, 2006, stated that, based upon its review of the Phase IA Cultural Resources Report submitted as part of the Application, additional testing is not required within the construction work zone to ensure that that potential archeological resources are not impacted by the Project.

34. Should archaeological materials be encountered during construction, the Company shall, in accordance with an Unanticipated Discovery Plan to be provided as part of the EM&CP, stabilize the area and cease construction activities in the immediate vicinity of the find and protect the same from further damage. Within 24 hours of such discovery, the Company shall notify DPS Staff and OPHRP to determine the best course of action. No construction activities shall be permitted in the vicinity of the find until such time as the significance of the resource has been evaluated and the need for and the scope of impact mitigation has been determined.

35. Should human remains or evidence of human burials be encountered during the conduct of archaeological data recovery fieldwork or during construction, all work in the vicinity of the find shall be immediately halted and the remains shall be protected from further damage. Within 24 hours of any such discovery, the Company shall notify the Commission, OPRHP, and the State and local police.

36. Con Edison shall refrain from undertaking construction in areas where cultural resource surveys have not been completed and until such time as the results of any

additional cultural resource surveys that are required have been reviewed by the appropriate authorities, including OPRHP and DPS Staff. DPS Staff shall be contacted prior to commencement of construction in any such areas.

Other Facilities

37. Con Edison shall engineer its facilities to be fully compatible with the operation of nearby electrical, gas and telecommunication facilities. The Company shall take remedial measures with regard to any existing cathodic protection system if, upon monitoring, such measures are indicated.

38. For the service life of the facility, Con Edison, to the extent practicable, shall coordinate maintenance excavation with public ROWs with that of adjacent electric, gas and telecommunication facilities.

39. The Company shall identify and mark-out all existing in-ground utilities in accordance with 16 NYCRR Part 753.

Rights-of-Way Restoration

40. The entire length of the Project ROW and construction work zone is paved area as the transmission line will be buried or mounted under existing road surfaces or bridges, aside from the section that will be installed via horizontal directional drilling (HDD) under the Harlem River. No vegetation clearing or ground surface disturbance will be required.

41. All trees over four inches in diameter (measured four feet above ground) or shrubs over four feet in height that are damaged or destroyed by Con Edison's activities

during construction, operation, or maintenance, regardless of where located, shall be replaced by Con Edison with equivalent type trees or shrubs, except where:

- (a) not required by any approved EM&CP;
- (b) equivalent-type replacement trees or shrubs would interfere with the proper clearing, construction, operation, or maintenance of the Project;
- (c) replacement would be contrary to sound ROW management practices or to any approved long-range ROW management plan applicable to the Project; or
- (d) a property owner (other than the Company) on whose land the damaged or destroyed trees or shrubs were located declines a replacement.

42. Within ten days of the completion of final restoration activity, Con Edison shall notify the Secretary of the Commission that all restoration has been completed in compliance with the EM&CP.

43. This proceeding is continued, but shall be closed ten days after the ROW has been completely restored, unless the Secretary of the Commission finds good cause to continue the proceeding further.

By the Commission,