

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held in the City of
New York on December 12, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 06-T-0710 - Application of Consolidated Edison Company of
New York, Inc. for a Certificate of
Environmental Compatibility and Public Need
under Article VII of the New York State Public
Service Law for the M-29 Transmission Line
Project

ORDER GRANTING APPROVAL OF PORTIONS OF THE ENVIRONMENTAL
MANAGEMENT AND CONSTRUCTION PLAN

(Issued and Effective December 13, 2007)

BY THE COMMISSION:

INTRODUCTION

On August 23, 2007, the Commission granted to the Consolidated Edison Company of New York, Inc. (Con Edison or the Company) a Certificate of Environmental Compatibility and Public Need (Certificate) to construct and operate a 345 kilovolt, high-pressure, fluid-filled, pipe type underground transmission line. The line, referred to as M-29, will be located primarily in roadways in Yonkers, Riverdale, the Bronx and upper Manhattan. It will be placed in the curb-to-curb portion of public road right-of-ways connecting the existing Sprain Brook substation in Yonkers to the new Academy Street substation being constructed in the Inwood section of upper Manhattan. The total length of the underground transmission facility is about 9.5 miles.

In an effort to expedite construction of the M-29 line, Con Edison filed an Environmental Management and Construction Plan (EM&CP) on June 26, 2007, seeking approval of detailed plans for the construction of the facility concurrent with issuance of the Certificate. Comments on the proposed EM&CP were filed by the City of Yonkers (Yonkers), Westchester County (Westchester), Time Warner Cable (TWC), New York State Department of Transportation (NYDOT) and Department of Public Service Staff (Staff).

While portions of the EM&CP regarding the substations were determined to be acceptable, Con Edison was ordered to revise its EM&C to address and reflect comments and concerns raised by DPS Staff, the administrative law judge, and intervenors. On November 2, 2007, the Company submitted a revised EM&CP and forwarded copies to the Active Parties List for comment. The submittal included the EM&CP segments covering construction of the transmission line between the Sprain Brook and Academy Street substations. Comments on the revised EM&CP were timely filed on or before November 19, 2007, by Westchester, New York State Assemblyman Jeffery Dinowitz of the 81st District Bronx, and New York City Community Board 12 in Manhattan (CB-12), and Staff. The New York and Presbyterian Hospital (NYPH) and TWC filed comments on November 21, 2007, pursuant to a two day extension. Con Edison subsequently provided its response to the comments.

LOCATION OF THE FACILITY

The transmission facility interconnects with Con Edison's Sprain Brook substation and runs along the Sprain Brook Substation access road, traveling west on Tuckahoe Road, under the New York State Thruway (Interstate 87) and over the New York City New Croton Aqueduct. It then travels on the Saw Mill River Road, Old Nepperham Avenue, Nepperham Avenue and Prospect Street. At the intersection of Riverdale Avenue, the project turns and runs on Riverdale Avenue road into the Bronx.

The facility continues through Riverdale and enters the western service road for the Henry Hudson Parkway (Parkway). From there, it turns on West 252nd Street and crosses the Parkway. Returning to Riverdale Avenue, the transmission facility travels to West 230th Street and continues southeast to the intersection of Broadway. Running south on Broadway, the line enters private property south of West 225th Street and crosses under the Harlem River into Manhattan.

In Manhattan, the transmission facility passes under property owned by The New York and Presbyterian Hospital, goes south on Ninth Avenue and turns on West 219th Street. At the intersection of Broadway, the facility runs along Broadway to the intersection of West 204th Street. From West 204th Street, the line travels to Tenth Avenue, turns south and runs to the intersection of West 201st Street. On West 201st, the transmission facility turns east and continues to the Academy Substation that will be constructed on the site formerly occupied by the Sherman Creek Generation Station.

COMMENTS AND DISCUSSION

1. Westchester County

a. Maintenance and Protection of Traffic and Traffic Flow

Westchester expresses interests in the maintenance of two-way traffic on County roads during rush-hour, the coordination of traffic control with Westchester representatives, and the production of by Con Edison of a specific "Traffic Plan" acceptable to the Westchester County Department of Public Works. Westchester also requests that Con Edison provide police officers to direct and control traffic during construction when requested by Westchester.

In response to Westchester's comments, Con Edison indicates that it will cooperate with Westchester to establish appropriate work hours and road restrictions, and will comply with any road restrictions. Con Edison notes that a Traffic Plan is addressed in the EM&CP, which provides standard measures and guidelines for the maintenance and protection of traffic. In addition, Con Edison agrees to provide flag-persons and police officers to ensure traffic flow as requested by Westchester County.

We find that Con Edison's response is adequate to address the concerns raised by Westchester. While Westchester requests a separate Traffic Plan, the EM&CP already provides such a plan. The Maintenance and Protection of Traffic Plan (MPT) consists of drawings depicting the project route overlain with generic and specific details as to how traffic will be handled or maintained in particular areas. These drawings, combined with revised text in the EM&CP constitute the MPT.

We note that Westchester does not raise any objections with that plan, or suggest that it is inadequate to resolve its specific interests. By consulting with Westchester and agreeing to appropriate road restrictions, the Company should be able to satisfactorily address Westchester's traffic-related concerns.

b. Storage of Construction Materials

Westchester seeks assurances that no building materials or equipment would be placed on streets or sidewalks within 15 feet of any hydrants, on any existing manholes, valves or catch basins. This limitation is intended to ensure sufficient access in case of fire, utility outage or flooding, and allow for proper drainage from the roadway. Westchester requests that Con Edison provide the location of any storage or fabrication yards.

In response to Westchester's requests, Con Edison agrees to the storage restrictions requested by Westchester, and to provide all requested information concerning storage and fabrication yards. These measures should adequately resolve Westchester's issues.

c. Bus Transportation Plan and Bus Stops

Westchester raises concerns about the restoration of any bus stops that might be damaged during construction, and requests that Con Edison restore any damaged bus stops in compliance with the "Westchester County Department of Transportation's Bus Services Guidelines for Westchester County Municipalities." While Con Edison commits to bear the costs of any required bus stop relocations, it does not address the issue of restoration of bus stops. Therefore, Con Edison shall consult and coordinate with the Westchester County Department of Transportation to ensure proper restoration of any damaged bus stops in conformance with applicable guidelines.

d. Protection of Sewer Systems

Westchester expresses concern over the possible effect construction might have on existing sewer systems along the project route, and requests the inclusion of six conditions. These conditions indicate that:

- 1) no groundwater should be discharged into County Sanitary Sewers;
- 2) detailed techniques of the construction and methods and equipment to be used to protect County Sewers from damage or structural overloading must be provided to the County Department of Environmental Facilities for review prior to construction;
- 3) crossings of sewer lines should be as close to perpendicular as possible;
- 4) Con Edison must maintain the maximum possible vertical clearance when crossing sewer lines;
- 5) no blasting should be allowed near the County Trunk Sewer due to the potential for severe damage; and,
- 6) attempts should be made to limit sheeting near the County's Trunk Sewer or Tunnel and at any crossing of the County's trunk sewer due to the potential for severe damage. If sheeting must be driven, seismic vibration monitors must be installed to insure vibrations are less than 2 inches per second at the County's Trunk Sewer and Tunnel.

In reply, Con Edison anticipates that if dewatering is required, clean water will be discharged into the storm-water drainage system. Con Edison agrees to consult with Westchester to ensure the facility will not undermine the integrity of the sewer system.

The remaining conditions proposed by Westchester relate

to construction details that can only be assessed and addressed in real time in the field. A prescriptive approach, as is suggested by Westchester, could unnecessarily limit the engineering and construction approaches necessary to complete the M-29 line in a timely and efficient manner. The engineering requirements of the project and the actual construction constraints will determine if any or all of these goals can be met. However, consultations with Westchester to identify the construction techniques and methods necessary to protect County sewers from damage should resolve many of Westchester's concerns.

e. Pre-construction Planning

Westchester suggests that Con Edison coordinate with its public works personnel to determine the location, nature and extent of underground utilities and ensure their protection during construction. In response, Con Edison has committed to pre-construction planning with the appropriate County agencies and personnel. This level of coordination between the Company and Westchester is appropriate to resolve Westchester's concerns to the extent practicable.

f. Insurance, Record Keeping, Construction Reports, and Spill Reporting

Westchester requests that Con Edison and its contractors maintain adequate levels of insurance and name Westchester as an additional insured. Further, Westchester asks that the Company maintain storm-water pollution records for six years from completion of the project, instead of Con Edison's planned retention of 3 years. Westchester also requests monthly environmental and construction reports, as well as information on any spill of hazardous materials.

Con Edison maintains that it will comply with applicable requirements for insurance, record keeping, and reporting spills. We find that those requirements are sufficient and that additional measures are unwarranted. No rationale has been presented by Westchester for why Con Edison should be required to go beyond what is already required. Regarding Westchester's interest in receiving monthly environmental and

construction reports, Con Edison has agreed to provide such reports as they relate to activities in Westchester.

g. Construction Project Coordination and Notice

Westchester seeks notification of construction activities by Con Edison before, during and after completion of the project. Con Edison has agreed to add the requested County personnel to its notification list. This adequately addresses Westchester's concerns.

2. Community Board 12

CB-12 presents 29 comments on the revised EM&CP (Appendix A), ranging from the inclusion of specific language in the revised EM&CP, notifications of specific City personnel of construction activities, to other matters related to construction. In response to these comments, Con Edison agrees to provide the requested information or contact the individuals and offices requested in CB-12's comments numbered 1, 8, 11, 13, 14, 18, 19, 20, 21, 24, 25, 26, and 29. We find Con Edison's responses are adequate to satisfactorily resolve these comments, and address the remaining sixteen comments below.

a. Monitoring for Hazardous Waste

CB-12 indicates that the suspected contamination on Ninth Avenue between West 219th and 220th Streets should be handled in the same manner as contaminated soils present at the Academy Substation. Con Edison indicates that it will continue to comply with the appropriate waste disposal regulations under state and local law. This comment is resolved since the procedures for handling hazardous waste and contaminated soil for the Academy Substation are the same as those that will be followed for the entire project.

b. Hiring of Additional Third Party Environmental Monitors and Additional Con Edison Monitors

CB-12 requests in two separate comments that Con Edison hire an independent, third-party environmental monitor to deal with the issue of hazardous waste removal, as well as other environmental concerns. In response, Con Edison argues that it

has sufficient experience to obviate the need to hire a third-party environmental monitor or additional environmental inspectors.

While Con Edison will be responsible for environmental monitoring and compliance in the first instance, Staff will act as a third-party monitor by providing oversight and ensuring that Con Edison is in full compliance with its Certificate and applicable portions of the EM&CP. Moreover, Con Edison has significant experience in undertaking similar type of projects and has demonstrated that it is capable of performing the necessary work in an adequate manner. Therefore, there is no basis or need to require Con Edison to incur additional expenditures in hiring third-party environmental monitors.

c. Pest Management

CB-12 indicates that recent construction activities in Manhattan have produced rodent control problems, and suggests that a "rodent control strategy" should be included in the EM&CP. Con Edison notes that if a rodent control problem is encountered, an exterminator will be utilized. This commitment is sufficient to address CB-12's concern.

d. Trench Dewatering and Maintenance of Catch Basins

Noting that catch basins should be cleaned on a regular basis, CB-12 requests information regarding who will determine when trench dewatering and protection of catch basins will occur, and why this activity should not be performed on a scheduled basis. Con Edison responds that it will conduct dewatering as necessary based upon construction conditions.

While Con Edison will conduct periodic inspections to determine whether dewatering is appropriate in the first instance, Staff responsible for monitoring construction activities will ensure that Con Edison is taking appropriate measures to clean and protect catch basins. No special conditions are therefore warranted in the EM&CP.

e. Period of Time Trench Will Be Left Open

CB-12 requests that Con Edison identify within the

EM&CP those areas where open trench is precluded during off-hours. Con Edison responds to this request by indicating that it will comply with the requirements set forth in New York City Department of Transportation (NYCDOT) traffic stipulations.

Staff indicates that the NYCDOT will stipulate in its permits, which Con Edison intends to obtain, the length of open trench and those areas that will be plated during off-hours. Rather than prejudge the appropriateness of stipulations that will be imposed by the NYCDOT, we decline to specify in the EM&CP those areas where open trench is precluded at this time. However, Con Edison should file such stipulations with Staff and CB-1 within two days after receipt.

f. Adequacy of Sewer and Discharge at the Academy Substation

CB-12 raises concerns that the existing sewer for both the existing Sherman Creek Substation and the planned Academy Street Substation may be insufficient to handle all discharges. Con Edison replies that the adequacy of the proposed sewer connection at the Academy Substation is being reviewed by the New York City Department of Environmental Protection, the agency with oversight over sewer and storm-water management in New York City. We expect that any necessary modifications to the proposed sewer connection resulting from such review will be filed with the Commission as a change to the design of the Academy Street Substation that was previously approved.

g. Traffic Coordination During Construction

CB-12 expresses concern about traffic and business disruptions that might occur along Broadway between West 219th and 204th Streets. They request that Con Edison provide traffic control officers for Manhattan, as they have agreed to do in Yonkers.

Con Edison indicates that it will comply with the requirements set forth in NYCDOT traffic stipulations on this matter, and that normally NYCDOT does not require provision of police officers. However, to be consistent with the approach Con Edison has agreed to in the City of Yonkers, Con Edison should

provide uniformed officers for traffic control along Broadway in Manhattan between West 219th Street and 204th Street, if requested by CB-12.

h. Curb to Curb Milling and Re-pavement of Streets

CB-12 requests that Con Edison repave, from "curb-to-curb," all roads in Manhattan that are affected by construction. Their concern is that construction will leave the roads in "rutted and ragged condition." Con Edison indicates that CB-12's request exceeds the requirements of the project and would result in excessive costs to Con Edison customers and ratepayers.

We note that Assemblyman Dinowitz also expresses an interest in having all streets in the Bronx that are affected by the project repaved, and we address that comment here. While Con Edison has voluntarily agreed to repave affected streets in Westchester that are less than five years old, Con Edison suggests that the cost to repave all remaining streets that are crossed or used by the M-29 facility would add an additional \$19 million dollars to the cost of the project, which they maintain represents an unfair burden on ratepayers.

While interested parties suggest that Con Edison should be required to completely repave from "curb to curb" any roadway that is affected by construction, we find such a requirement to be overly-broad. Such requirement would require Con Edison to unnecessarily expend additional ratepayer monies to repave portions of roadways that have not been disturbed by its construction activities. However, we find that under the circumstances Con Edison should restore affected roadways beyond merely patching those portions of the roadway that are disturbed, as is proposed.

Accordingly, Con Edison should restore affected roadways by milling and repaving the entire width of travel lanes, including parking lanes, where the road has been excavated or damaged due to construction, in order to restore the pre-construction profile of the road. Moreover, we expect Con Edison to consult with local representatives prior to commencing repaving to determine if there are any instances where a de

minimum amount of damage has occurred and a patch would satisfy local interests, or where the local community desires to contribute the additional funds necessary for full curb-to-curb repavement.

This approach will ensure the safety of restored travel lanes by eliminating any uneven surfaces, and will place the roadway in as good a condition or better than prior to construction. Moreover, it will ensure that adverse environmental impacts, such as the aesthetic and visual impacts associated with a rutted and ragged road, will be minimized, as required under the Public Service Law. We also anticipate that a smooth driving surface will reduce any noise impacts that could otherwise result from tire traffic negotiating uneven roadway surfaces.

We find that this approach strikes an appropriate balance between intervenors concerns and the Company's interests in minimizing costs and construction time. The cost to repave affected travel lanes should be significantly less than the \$19 million Con Edison estimates to repave the entire roadway from curb-to-curb for the length of the line. While this may add several additional months to the construction time, it should not adversely affect the anticipated in-service date of M-29, since the line could be made operational during any remaining repavement activities.

i. Noise Mitigation Plan

CB-12 requests that a copy of the noise mitigation plan be provided to CB-12 and elected officials in Northern Manhattan at least two weeks prior to construction activities. They also suggest that "improved or hospital-grade mufflers" should be used "on the plates" covering streets in order to minimize noise impacts.

Con Edison has agreed to comply with all applicable noise ordinances governing this project, including New York City's noise code, §§24-219 through 24-224 of the Administrative Code of the City of New York, which requires those engaged in construction activities to develop a noise mitigation plan

approved by the City before the initiation of construction. Because Con Edison will prepare a noise mitigation plan tailored to Manhattan's unique characteristics, CB-12's concerns will be addressed. However, Con Edison should provide such plan to CB-12, as it has agreed to do, at least fifteen days prior to construction.

j. Traffic Study

CB-12 believes that Con Edison has not provided an adequate traffic study for the M-29 Project and that this constitutes a "major omission" from the EM&CP. Con Edison responds that the MPT Plan that has been developed and distributed as part of the revised EM&CP is sufficient. We agree that the MPT plan provides municipalities and citizens with sufficient information to determine the project's impact on their particular streets or neighborhoods.

k. Coordination of In-Street Construction

CB-12 suggests that the underground construction should provide an opportunity for all utilities to inspect the condition of their equipment and to repair or replace the utility's infrastructure if needed, since this should avoid future street openings. Con Edison indicates that notifications will be made to all affected entities under New York State Code Rule 753 at least 48 hours prior to construction. Past experience has shown that most, if not all, utilities with facilities in proximity to the trench will have personnel on hand to observe excavation.

l. Length of Time for Permanent Repairs of Roadways

CB-12 argues that six months is too long a period to allow Con Edison to make permanent repairs to the roadways affected by construction. They believe this is far too long a period unless curb-to-curb repaving is performed.

Con Edison responds that they plan to take the minimal time necessary to conduct repairs and that, in most cases, the repaving will be done within three months of initial excavation. We find that six months is a reasonable amount of time to permanently repair the affected roadways, especially considering that Con Edison will need to completely repave entire travel lanes as discussed above. Moreover, six months provides sufficient flexibility in case cold temperatures delay repair work.

m. Off-Site Reporting of Hazardous Materials Spills

Similar to Westchester, CB-12 requests information on any spill or release of hazardous substances resulting from

project construction within the Borough of Manhattan. They ask that reference to a "major" spill be removed from the EM&CP.

As noted above, the existing spill reporting requirements are sufficient and additional notifications are unwarranted. There is no practical reason for Con Edison to provide notice of every spill of hazardous materials to CB-12 or Westchester, which would go above and beyond local, State and Federal reporting requirements. Appropriate local officials will receive notification of any spill or release that triggers reporting requirements under the law.

n. Removal of Paper Insulated Lead Cables (PILC)

CB-12 requests that Con Edison remove all PILCs along the Manhattan portion of the M-29 Project. In response, Con Edison states that this condition is outside the scope of the M-29 project. We agree with Con Edison and find that there is no basis to require removal of PILCs. This proposed condition is therefore rejected.

o. Contractor "Stop Work" Authority

CB-12 suggests that contractors and their personnel on the project should have authority to issue a stop work order. Con Edison counters that contractors and certain designated personnel already have the right to issue a stop work order for safety or environmental issues. As such, no further action is need to address CB-12's suggestion.

3. Time Warner Cable (TWC)

a. Location of the Project along West 219th Street

TWC contends that Con Edison has moved the location of its cable on West 219th Street and the project is now directly in front of its entrances and driveways on that Street. TWC also contends that this alignment is different from the route proposed by Con Edison during the evidentiary hearings.

Con Edison replies that TWC is wrong about the proposed route along West 219th Street and that the route has not been changed. Moreover, a comparison of drawings provided to TWC in

December 2006 is consistent with current drawings contained in the EM&CP. Upon our review, we find the two sets of drawings and those provided in the MPT plan to be consistent and no further action is necessary.

b. Disturbance of Contaminated Soil

TWC's facilities lie on top of contaminated soils. The specific details of the site and the nature of its contamination is covered under New York State Department of Environmental Conservation (DEC) Spill No. 060602. A "cap" of clean soils was placed over the site as part of the remediation process. TWC believes that Con Edison's test bores and sub-surface investigations have already disturbed this cap and that further work will exacerbate the situation.

Con Edison replies that TWC's concerns about their disturbing the cap are groundless. Con Edison contends that they will not disturb TWC's property or the site of the contamination. Based on an examination of the detailed construction drawings, TWC's property will not be disturbed during construction.

c. Potential Ground Water Flow onto TWC Property

TWC raises concerns that contaminated trench water may seep from the project onto their property. To help prevent this from happening, TWC requests that Con Edison submit plans to DEC prior to construction to minimize water infiltration into the trench and prevent any contaminated trench water from entering TWC's property.

Con Edison has submitted a Construction Storm Water Pollution Prevention Plan with its revised EM&CP. This plan was submitted to and approved by DEC for coverage under SPDES General Permit #GP-02-01 for storm water discharges associated with construction activities. Con Edison indicates that this plan is sufficient to cover any and all concerns TWC might have with regard to this potential issue. We find that the Construction Storm Water Pollution Prevention Plan adequately addresses how contaminated trench water will be handled, and that additional

studies or plans are unnecessary.

d. The Exact Location of Con Edison's Facilities

TWC requests that Con Edison provide the exact location of the closest excavation to TWC's property and include the exact width, length and depth of the trench in that location. Further, TWC would like the same information for the proposed manhole in the vicinity of their property.

Con Edison responds by pointing to specific information regarding trench dimensions in Section 5.4 of the EM&CP and the exact location of the proposed facilities in the construction drawings. Con Edison believes that the information detailed in the EM&CP is sufficient for TWC to determine the exact proposed location of facilities in relationship to their property. We find that the EM&CP provides sufficient detail regarding the location of the facility and that no further surveys are required.

e. Timing of Trench Excavation, the Length of Time Trench will Remain Open and Work Hours

In its comments, TWC expresses concern over the timing of trench excavations on 9th Avenue, the length of time said trenches will be open and the plating of open trench to allow temporary entrance and egress to TWC facilities. TWC also seeks to limit construction to nighttime or non-working hours in order to limit impacts to TWC operations.

Con Edison believes that Section 5.4 of the EM&CP details the length, depth and width of trench associated with construction. Con Edison agrees to coordinate construction with TWC and all affected entities on 9th Avenue, as per the stipulated agreement with NYC DOT. Because consultation with affected landowners is critical, Con Edison should consult with TWC prior to construction to ensure the timing of excavation and other activities minimize the impacts to TWC's property.

f. Storm Water Diversion Plan, Well Installation and the Construction of Bentonite Slurry Walls

In an effort to minimize any possibility of contamination moving onto their property, TWC requests that Con Edison provide a detailed storm water runoff map and proposed diversion measures to DEC. In addition, TWC asks that Con Edison install wells along TWC's property to extract and control the flow of groundwater. Lastly, TWC suggests that Con Edison install a slurry or freeze wall below the water table to create a physical barrier that would inhibit petroleum laden groundwater from entering TWC property.

While we understand TWC's concerns about the possible movement of contaminated groundwater, we find that the EM&CP, as revised, is more than adequate to address TWC's concerns. The storm-water and sediment control measure combined with the hazardous waste protocols contained in the EM&CP offer sufficient protection to adjacent landowners concerned about the movement of contaminated trenchwater or soils. Moreover, the installation of wells and a slurry wall would likely involve an extraordinary effort and expense. It is neither practical nor fiscally prudent to require Con Edison to attempt to create an impermeable subsurface barrier between excavations for the project and TWC's property. TWC has not presented any information detailing the practicality or costs entailed in their proposal. In light of these facts, we do not order Con Edison to incur these additional expenses.

g. Indemnification

TWC suggests that Con Edison indemnify TWC from any and all environmental clean-up costs that may arise directly or indirectly from construction of the transmission facility. We find such a requirement to be unnecessary since Con Edison is responsible for any and all environmental remediation required as a result of construction of this project. Any contaminated soils and liquids encountered during construction will be handled by Con Edison at their expense. This condition would also be unreasonable since it would require Con Edison to assume liability for a pre-existing condition on TWC property, and would expose Con Edison to potentially significant liability.

h. Movement of the Facilities Further from TWC Property

TWC requests that Con Edison move its proposed facility as far away from their property as possible and locate its nearest manhole at the furthestmost point north on 9th Avenue as is practical. These requests were made so as to limit construction impacts on TWC property and further reduce the possibility of the migration of contaminants in the vicinity of TWC's property.

As noted above, sufficient precautions are being taken to minimize the migration of contaminants that are encountered. While moving the facilities away from TWC's property may be in their best interest, such interest must be balanced against the need to locate and design the M-29 line so as to best provide for its safe and efficient construction. There is no basis to conclude that TWC's interests outweigh these needs, and therefore we find that the current proposed location of Con Edison's M-29 facility is appropriate.

4. New York Presbyterian Hospital

a. The Size and Location of Temporary and Permanent Easements on NYPH Property

NYPH expresses concerns that the revised EM&CP, while consistent with descriptions and drawings provided to the NYPH earlier, does not indicate the location and dimension of permanent and temporary easements sought by the Company. They state that the plan and profile drawings provided to NYPH by the Company were marked "Preliminary - Not For Construction" and that no finalized construction drawings existed that would allow them to determine the nature and extent of Con Edison's proposed temporary or permanent easements across their property.

We recognize that the revised EM&CP does not include finalized construction drawings that detail the exact nature of the Harlem River Crossing or its exit tunnel in the NYPH parking lot. While Con Edison has subsequently revised its design drawings for the Harlem River, these drawings were submitted to Staff on an informal basis well after the revised EM&CP was submitted for review and the comment period had closed. As a result, parties have not been afforded an adequate opportunity to comment upon the location of the facility and how it may impact individual property owners along the route. Therefore, the detailed construction drawings for the tunnel crossing of the Harlem River will not be approved at this time. We expect Con Edison to formally submit a final set of construction drawings for review and comment by interested parties.

Finally, we will not require Con Edison to indicate the location and dimension of any necessary permanent and temporary easements, which are the subject of on-going negotiations between the Company and NYPH, and are beyond the scope of this proceeding.

b. Future Amendments to the EM&CP

NYPH requests notification of any amendments or changes to the approved EM&CP, as it affects NYPH's property. Con Edison agrees to provide NYPH with copies of all proposed changes to the EM&CP that may impact their property, and we find this condition to be reasonable.

5. New York State Assemblyman Dinowitz

As a representative of the 81st District, Bronx County, NYS Assemblyman Jeffrey Dinowitz requests that all streets affected by construction in his District be repaved curb-to-curb. He also questions the veracity of Con Edison's assertions that curb-to-curb repaving of all streets would add 140 weeks and \$19 million dollars to the cost of the project. This issue is addressed above, where we indicated that Con Edison shall completely repave any traffic lanes that have been physically disturbed during construction.

6. DPS Staff

Staff raises concerns about the final design for the crossing the Harlem River. According to Staff, the drawings submitted with the revised EM&CP were incomplete and marked "Preliminary - Not For Construction." Staff informed Con Edison that these documents were missing, which prompted the informal submission of a final set of design drawings on November 22, 2007.

Because interested parties, particularly Staff and NYPH, were not afforded an opportunity to review these drawings with the revised EM&CP, we find that these portions of the EM&CP cannot be approved at this time. We expect Con Edison will formally submit these drawings for our review and provide at least two weeks days for public comment.

7. City of Yonkers

In a letter dated August 6, 2007, Yonkers expresses various concerns with the original EM&CP. Yonkers also includes 22 proposed Ordering Clauses. Although Yonkers did not comment on the revised EM&CP, its August 6, 2007 comments are relevant to the revised EM&CP, and are therefore addressed herein.

a. Con Edison's Failure to Adequately Address Traffic Impacts

Yonkers raises concerns that a detailed traffic control plan had not been provided to municipalities along the project route. Yonkers specifically mentions the reduction of travel lanes on Tuckahoe Road, Saw Mill Road, Old Nepperham Avenue, and Nepperham Avenue. Yonkers points to an apparent lack of coordination of traffic control in relation to emergency services and bus routes.

In response to Yonkers, Con Edison states that it has specifically addressed the maintenance of two-way traffic during rush hours and has revised the EM&CP to include a MPT plan. Con Edison notes that it continues to discuss and consult with the all affected municipalities on specific concerns. These efforts should adequately address Yonkers' concerns.

b. Con Edison's Failure to Adequately Address Impacts on Emergency Services and Public Safety

During the evidentiary hearings, representatives of the Yonkers Fire and Police Departments expressed concerns about the project's possible effects on emergency services. Yonkers contends that Con Edison has ignored these concerns chiefly by failing to produce a bona fide MPT plan which would detail how traffic would be maintained for emergency services.

Con Edison reiterates that it has prepared a detailed MPT plan, which includes drawings and substantial modifications to the EM&CP. These drawings include the location of the trench line and detour method to be employed on specific streets. Con Edison claims it has been in consultation with all affected municipal entities and services and is actively seeking to resolve any issues not specifically dealt with in the MPT plan. Section 11.2.7 of the revised EM&CP, "Municipal Services Plan,"

details the time frame and manner in which all municipal services will be contacted before, during, and after construction.

We find that Con Edison's MPT plan adequately addresses Yonkers' concerns regarding vehicular traffic, emergency services and pedestrian access to roads and sidewalks. In the instance of emergency services, when individual firehouses, hospitals and police stations are approached by construction, Con Edison has a variety of methods at their disposal to ensure that these vital services are not interrupted. These methods should minimize impacts on emergency services and protect public safety by facilitating ingress and egress to these essential services.

c. Con Edison has Failed to Adequately Address Community Concerns About Noise Impacts

Yonkers contends that Con Edison should prepare detailed noise studies along the project route, as promised by Con Edison. Further, they maintain that the EM&CP lacks sufficient mitigation techniques.

Con Edison states that it will comply with all applicable noise ordinances governing the project. In addition, they state that they will produce pre-construction noise studies, as required by law. While these studies should address the concern raise by Yonkers, the studies should be submitted to Staff and Yonkers at least two weeks days prior to construction, so that any deficiencies may be resolved.

d. Con Edison has failed to Address Impacts on Local Commerce and Business

Yonkers contends that Con Edison has failed to provide any detailed analysis of the impacts on businesses and specific mitigation techniques it plans to employ during construction. Also they state that Con Edison has failed to provide specific details of its community outreach plan.

Con Edison responds that it has revised the EM&CP section covering Community Outreach and Project Coordination. These revisions are designed to ensure that the project is coordinated and scheduled in such a manner as to reduce adverse impacts to the communities to the maximum extent practicable.

Con Edison has submitted detailed documents showing the precise location of the project in all streets, how traffic control will be managed on specific streets, and how it will provide for improved coordination with municipal and private entities. We find that these documents provide a sufficient level of detail to ensure that impacts on local businesses can be kept to a minimum, and problems can be addressed if they arise.

e. Con Edison Has Failed to Adequately Address Impacts of Construction on Local Development Projects

Yonkers states that several large development projects in Westchester County will be jeopardized or adversely impacted by Con Edison's construction of the M-29 line. Yonkers expresses concern that the combination of construction impacts from the various projects with the electric line's construction could represent an undue burden to surrounding communities. As such, Yonkers believes that Con Edison should coordinate its construction of the M-29 project with other area construction in an effort to reduce impacts to the community.

Con Edison responds that it has modified its community outreach and project coordination protocols and procedures in the revised EM&CP. In addition, they state that they have been in communication with all municipalities involved with the project and, in so far as they will be providing electric and possibly other service to any new construction in Yonkers, they will be in contact with the developers as well.

While we recognize that coordination of planned projects can be useful to minimize impacts, we are also cognizant of the need for this project to progress in a timely manner. Coordination of construction with existing entities, municipal services and business is far different than attempting to coordinate activities with projects under construction which may have their own, far different construction schedules. Therefore, while Con Edison should endeavor to coordinate its construction with other planned projects, we will not mandate conditions that could constrain or jeopardize the projects schedule.

f. Suggested Ordering Clauses

Yonkers submits twenty two recommended Ordering Clauses it believes should be included in any order approving Con Edison's EM&CP. These Clauses would require Con Edison to:

- 1) provide the City of Yonkers with sheeting details prepared by a Licensed Professional Engineer for all trench locations greater than 5 feet;
- 2) conduct a video tape inspection of all sewers along the route within the City of Yonkers;
- 3) gunite all brick sewers along the route within the City of Yonkers;
- 4) line all non-brick sewers along the route within the City of Yonkers;
- 5) supply the City of Yonkers with a Computer Aided Design file of Ground Penetrating Radar (GPR) conducted along the route within the City of Yonkers;
- 6) develop a procedure for repair of house services from the main to the premises;
- 7) replace all catch basin chutes along the route within the City of Yonkers with 12-inch ductile iron pipe from manhole to basin;
- 8) clean out all catch basins along the route within the City of Yonkers;
- 9) conduct a survey to locate and access and vaults along the route;
- 10) use "K-crete" backfill along the entire route within the City of Yonkers for backfill;
- 11) mill and repave all City roadways that are disturbed, from curb to curb;
- 12) create a Maintenance and Protection of Traffic Plan that includes school buses and is acceptable to the City of Yonkers Traffic Engineer, as it affects traffic on Yonker's roadway(s);
- 13) use Police Officers to direct traffic when requested by the City of Yonkers at the expense of Con Edison;

- 14) provide details as to how many crews will be working at one time and in what locations during construction;
- 15) conduct periodic construction meetings within the City of Yonkers Department of Engineering;
- 16) store construction materials according to the New York State Guidelines for Erosion and Soil Control;
- 17) include notification to the City of Yonkers as part of its hazardous waste management program;
- 18) protect all of the City of Yonkers' trees, while any damage is reported and inspected by a City of Yonkers Arborist, and Con Ed is required to follow the determination and direction of the City Arborist;
- 19) seek permission from the City of Yonkers Arborist before severing tree roots greater than three inches in diameter;
- 20) conduct spill prevention in accordance with New York State Department of Environmental Conservation (NYSDEC) requirements;
- 21) conduct an ambient noise level study near schools along the M-29 route and reduce construction noise if ambient levels are exceeded; and,
- 22) monitor noise levels at schools along the M-29 route.

Each of these Clauses is addressed in turn. The first item has been satisfied, given that Con Edison has committed to comply with this request by providing sheeting details for all trench locations greater than five feet.

Objecting to items two through four, Con Edison contends that these conditions are beyond the requirements of the M-29 Transmission Line Project and would result in excessive costs to the Con Edison ratepayers. Staff indicates that neither Yonkers nor Con Edison has presented any factual data detailing the costs of any of the proposed requirements. Because there is insufficient evidence regarding the relevance, costs, and benefits of these requests, we reject each of these proposed ordering clauses.

Con Edison responds to the fifth item, noting that it used GPR in Yonkers to determine the location of existing underground utilities in conjunction with research and

development of the technology as a tool for future use. Con Edison states that it is willing to "informally" share the results of these studies with Yonkers, which we find to be sufficient.

Con Edison rejects the sixth proposed ordering clause, indicating that it exceeds the requirements of the M-29 Transmission Line Project and would result in excessive costs to the Con Edison ratepayers. To the extent that Yonkers seeks to restore service interruptions caused during construction, we find such condition is unnecessary because Con Edison will restore such services as per existing rules and regulations.

Con Edison also objects to conditions seven through ten, which they similarly contend are beyond the requirements of the M-29 Transmission Line Project and would result in excessive ratepayer costs. As with previous requests, neither Yonkers nor Con Edison has presented any detailed information or data to justify Commission action. Yonkers has failed to demonstrate how any of its requests are related to, or directly impacted by, project construction. For this reason, we reject these proposed ordering clauses.

Likewise, Con Edison rejects the eleventh proposed ordering clause as exceeding the requirements of the project and resulting in excessive ratepayer costs. However, for the reasons discussed above, we reject Con Edison's argument, and direct Con Edison to repave the entire width of any traffic lane where such lane has been excavated or damaged during construction activities.

We find that conditions 12 and 13 have been satisfied by Con Edison, given their development of a detailed MPT plan, which has been submitted to Yonkers and all other municipalities. Con Edison has also agreed to provide Police Officers at their own expense when requested by Yonkers.

Con Edison states that items 14 and 15 have been addressed in revisions to the revised EM&CP. We concur and find that all reasonable requests for pre-construction coordination and audit meetings have been addressed.

Con Edison indicates that the 16th condition has been addressed in the EM&CP. Con Edison will store all construction materials in accordance with the New York Guidelines for Urban Erosion and Sediment Control and the Westchester County Best Management Practices for Erosion and Sediment Control. We are satisfied with Con Edison's response. No further action is necessary regarding this condition.

We also find that no further action is needed with respect to item 17. Con Edison has revised its EM&CP to comply with this request.

Con Edison contends that items 18 and 19 have been addressed the EM&CP. The construction Right-of-Way will be primarily within the curb-to-curb sections or roadways, limiting the amount of vegetation clearing required. In addition, as indicated in Section 9.1 of the EM&CP, Con Edison will determine construction-related damage and replace any damaged or removed trees in accordance with the American Standard for Nursery Stock. On the question of prior consultation, Con Edison states that this request has been addressed in Section 5.5, Root Protection during Trench Excavation, within the EM&CP. Therefore, this request has been satisfied.

We note that, in both instances, Con Edison will rely on its own personnel when determining the nature and extent of damage to trees caused by the project, and when determining whether roots over three inches would be cut. While it is reasonable to require Con Edison to report and consult with the City of Yonkers Arborist regarding any damaged trees, forcing Con Edison to follow their recommendations would be too onerous a burden.

Condition 20 has been adequately addressed. Con Edison states that it will comply with applicable NYSDEC laws and regulations.

Lastly, we address conditions 21 and 22, which are designed to ensure compliance with the noise code for the City of Yonkers. Con Edison states these conditions are satisfied by the requirement that construction contractors will prepare a noise mitigation plan. Prior to the start of construction in Yonkers, Con Edison will provide a copy of the noise mitigation plans to Staff. Con Edison should also provide this plan to Yonkers at least two weeks days prior to construction so that the sufficiency of such plan can be evaluated.

8. NYS Department of Transportation (DOT)

In a letter dated July 17, 2007, DOT submitted 15 separate pieces of language that it wanted inserted in any revised EM&CP. The proposed language conforms with the revised EM&CP, and therefore resolves NYS DOT's comments.

The Commission orders:

1. The Environmental Management and Construction Plan segments submitted by the Consolidated Edison Company of New York, Inc. (Con Edison) on June 26, 2007, as amended by the supplemental filing on November 2, 2007, are approved, with the exception of the Harlem River Tunnel Crossing and its immediate landfalls, and construction is authorized to commence for these segments, subject to the modifications discussed in this Order.

2. Con Edison shall submit its revised EM&CP construction drawings and plans for the Harlem River Tunnel Crossing to the Secretary and all active parties, as well as all entities from which an easement or property right must be obtained. The Company shall provide proof of service and provide at least two weeks days for comment by such parties.

3. Con Edison shall provide uniformed traffic control personnel to facilitate traffic control along Broadway in Manhattan between West 219th Street and 204th Street when requested by CB-12.

4. Con Edison shall provide uniformed traffic control

personnel to facilitate traffic control when requested by the County of Westchester or the City of Yonkers.

5. Con Edison shall consult and coordinate with the County of Westchester to establish appropriate work hours and road restrictions for roadways within the County of Westchester.

6. Con Edison shall maintain access to fire hydrants, manholes, valves and catch basins during construction.

7. Con Edison shall provide information regarding storage and fabrication yards to Westchester County.

8. Con Edison shall consult and coordinate with the Westchester County Department of Transportation to ensure proper restoration of any damaged bus stops in conformance with applicable guidelines.

9. Con Edison shall consult and coordinate with the County of Westchester's Department of Environmental Facilities to determine the location of underground utilities, such as water and sewer facilities, and to ensure the protection of those facilities to the extent practicable.

10. Con Edison shall provide the County of Westchester with monthly environmental and construction reports.

11. Con Edison shall coordinate construction activities with the County of Westchester and provide notifications of construction plans to appropriate Westchester County agencies.

12. Con Edison shall hire an exterminator if a rodent control problem is encountered.

13. Con Edison shall submit any stipulations or requirements identified by the New York City Department of Transportation to CB-12 and Staff within two days after receipt.

14. Con Edison shall submit a noise mitigation plan to CB-12, Staff, and the City of Yonkers at least two weeks days prior to commencing construction.

15. Con Edison shall provide the New York and Presbyterian Hospital with copies of all proposed changes to the EM&CP that may impact their property.

16. Con Edison shall restore affected roadways by

milling and repaving the entire width of travel lanes, including parking lanes, where the road has been excavated or damaged due to construction, in order to restore the pre-construction profile of the road.

17. Con Edison shall consult with local representatives prior to commencing repaving to determine if there are any instances where a de minimus amount of damage has occurred and a patch would satisfy local interests, or where the local community desires to contribute the additional funds necessary for full curb-to-curb repavement.

18. Con Edison shall consult and coordinate construction activities with Time Warner Cable, so as to minimize disruptions to the extent practicable.

19. All stipulations, agreements and promises agreed to by Con Edison in responses to comments on the revised EM&CP shall be binding on the Company.

20. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary

Community Board 12, Manhattan
Comments on Con Edison's Revised EM&CP
November 19, 2007

1. We are very concerned about the subsurface conditions and soil contaminants in the 2.3-acre Academy substation site. Con Edison should disclose the exact readings in the 12 test pits, indicating which samples exceeded the recommended soil cleanup objectives (RSCOs) for one or more individual carcinogenic polycyclic aromatic hydrocarbons. (See page 4-9, last paragraph and first paragraph of p. 4-10.) According to the EM&CP, "The metals found to most frequently exceed their RSCOs were mercury, arsenic and, to a lesser extent, barium, lead and selenium."
2. The same procedure for the removal of hazardous waste should be followed at the substation site as at another suspected contamination site at Ninth Avenue between West 219th Street and West 220th Streets, where the construction contractor will "be required to observe the excavation activities to identify petroleum contamination and to direct loading to designated trucks that will transport petroleum-contaminated soil to an approved disposal facility."
3. Best management practices should require the hiring of an independent, third-party environmental monitor, as previously requested by Northern Manhattan's elected officials and Community Board 12, to deal with the issue of hazardous waste removal as well as other environmental concerns.
4. The Maintenance Requirements section (4.5 on page 4-13) fails to include a rodent control strategy, a very serious omission. Con Edison must hire a reliable exterminator with a proven track record working on major construction projects (e.g., Con Edison hired an exterminator firm for a project on 13th Street between Avenues A & B, and the City has hired one for the current Mosholu-Croton Water Treatment Project). Stephen Beccalori, of Con Edison, agreed that a comprehensive rodent abatement plan will be written into the contract at a June 12, 2007 meeting with Northern Manhattan's elected officials & Community Board 12 representatives.
5. Who will determine when trench dewatering and protection of catch basins will be done on an as-needed basis? Why not do this on a scheduled basis? Catch basins affected by major construction should be cleaned on a regular basis.
6. The roadway areas where the contractor is precluded from leaving the trenches open during off-hours should be indicated in Section 5.4 – Length of Open Trench. Presumably, this would apply in residential and business areas with pedestrian traffic.
7. There is only one sewer for both the new Academy substation and existing Sherman Creek substation, a four-foot wide combined sewer for all discharges located on 201st

Street. We are concerned that this one sewer may not be sufficient to handle all emissions, storm water runoff and drainage control.

8. Community Board 12 and the local elected officials should be informed 48 hours in advance before any blasting is scheduled at the tunnel boring site at Ninth Avenue and West 220th Street. Please amend part (c) of section 5.6.3 of page 5-4 to indicate that Community Board 12 and Northern Manhattan's elected officials offices will be notified at least 48 hours before blasting is initiated in Inwood.
9. We are concerned about the lack of specifics in Section 7.3 on cable delivery, installations and splicing on page 7-4. Municipal requirements will be greatest during the construction on Broadway from West 219th to 204th Streets. Traffic control officers and all necessary traffic control and pedestrian safety measures must be enforced during the entire 1.5 miles of construction in Inwood, especially along Broadway. If Con Edison can provide a police officer to direct traffic in Yonkers, it certainly should do so on this heavily trafficked thoroughfare in Manhattan.
10. Section 9 - General Cleanup & Restoration Activities includes "repaving the roadways and restoring the sidewalks to match pre-existing conditions." Curb-to-curb roadway restoration is essential in construction of the M-29 transmission line, which will leave 1.5 miles of Inwood's roads in rutted and ragged condition. Pavement restoration (Section 9.5 on page 9.3) should include curb-to-curb roadway restoration of the route in Inwood.
11. Section 9.1 - Tree and Shrub Restoration should include the New York City Department of Parks & Recreation as the agency Con Edison will consult about replacement trees as well as tree and shrub planting methods.
12. Despite the PSC's directive, the EM&CP passes the buck to the contractor to create a noise mitigation plan (Section 10.3 - Noise Mitigation & Control). Northern Manhattan has many sensitive receptors that will require carefully designed noise mitigation plans. Community Board 12 and Northern Manhattan's elected officials must be added to the list of entities who will receive a copy of the noise mitigation plans at least two weeks before the start of construction of the overall project as well as the tunnel construction. The contractor must also use improved or hospital-grade mufflers on the plates that will cover streets during construction, especially at night, to reduce the amount of noise produced when cars, trucks and buses drive over the plates in Inwood.
13. Section 10.2 should be corrected to refer to Public Schools 18 and 278.
14. Table 11-1: Affected Roadways and Affected Agencies should include 207th Street and 211th Street/Isham Street, as previously agreed by Stephen Beccalori, of Con Edison, at the June 12, 2007 meeting with Northern Manhattan's elected officials and Community Board 12. NYCDOT is the affected agency for both streets.
15. Con Ed still has not completed a traffic study for the M-29 transmission line project – another major omission from the EM&CP.

Appendix A

16. Section 11.2.4 (a) on p. 11-6 is an opportunity for all utilities to see the conditions of its equipment and repair or replace infrastructure if needed. This will avoid ripping up the streets again, especially Broadway. Section 11.3.2 Underground Utility Crossings also offers a similar opportunity.
17. Con Edison is allowing itself up to six months to make permanent repairs of the roadways, which is far too long unless it agrees to do curb-to-curb roadway restoration. (Section 11.2.5).
18. Section 11.2.6 (d) Public Transit Coordination Plan on p. 11-7 must also include Community Board 12, which can post pertinent transit advisories on its web site, <http://www.cb12manhattan.com>.
19. The Public Transit Coordination Plan must include notifications to Access-a-Ride and school bus operators.
20. Section 11.2.7 (b) Municipal Services Plan should include notification to the Community Boards and the elected officials in The Bronx, Westchester, Yonkers and Northern Manhattan. Timely notice should be given each district before the start of each respective phase of construction – not simply two days before the start of entire project. This section also makes a meeting with the contractor essential since each district has its own needs.
21. Reports of complaints and their resolution must be available for inspection by the active parties.
22. Section 12.2 Off-Site Reporting Requirements the word “major” should be deleted from the third line in the first paragraph. Northern Manhattan’s elected officials and Community Board 12 should be informed of all spills.
23. Section 12.3 - Feeder Leak Protections should include the removal of Paper Insulated Lead Cables (PICL) along the Northern Manhattan portion of the M-29 transmission line construction.
24. Section 14.1.1 the Community Outreach Plan must include Community Board 8 in the Bronx and Community Board 12 in Manhattan. It also should must “hospitals” (i.e. New York-Presbyterian Hospital’s Allen Pavilion) and “funeral homes” (i.e. Riverdale Funeral Home on 214th Street & Broadway) in the last sentence.
25. Section 14.1.2, line 6 of the Construction Project Coordination Plan must include the “New York City School Construction Authority” since a new 600-seat public school is planned to be constructed at 200 Sherman Avenue (northwest corner of 204th Street).
26. Section 14.2, last line of the Responsibilities of the Engineer Inspector or Chief Constructor Inspector must be edited to read, “and affected state and local elected officials and community boards to review the status and schedule of the project.

Appendix A

27. Section 14.3, line 2 of the Procedure for Issuing a Stop Work Order should extend the right to stop work to the contractor and all employees of the contracted companies for both the M-29 transmission line and Academy substation construction. This is yet another reason why a meeting with the contractor(s) is important.
28. Section 14.4 - Deployment of More Than One Environmental Inspector underscores the importance of having a third-party environmental monitor.
29. Section 14.7 - Monthly Environmental and Construction Reports should also be provided to the elected officials and Community Board 12, as Con Edison agreed to do at our June 12, 2007 meeting.