

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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 M29 Transmission Line Project.

NOTICE OF SCHEDULE FOR FILING EXCEPTIONS

(Issued May 30, 2007)

Attached is the Recommended Decision of Administrative Law Judge William Bouteiller in this proceeding, together with a copy of the Commission's rules governing the procedures to be followed. Briefs on exceptions, an original and 20 copies, will be due in hand to the undersigned and all active parties on Tuesday, June 19, 2007. Briefs opposing exceptions will be due in hand to the undersigned by noon (and may be mailed to all active parties) on Friday, July 7, 2007.

The parties' briefs on exceptions and opposing exceptions may not exceed 50 pages in total and including attachments. The parties should use the same size fonts, margins and line spacing as were used in their briefs to the presiding officer and they should limit their use of footnotes to proper purposes.

(SIGNED)

JACLYN A. BRILLING
Secretary

Attachments

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RECOMMENDED DECISION

BY

William Bouteiller
Administrative Law Judge

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RECOMMENDED DECISION

William Bouteiller, Administrative Law Judge:

INTRODUCTION

On June 14, 2006, Consolidated Edison Company of New York, Inc. (Consolidated Edison or the Company) filed an application, pursuant to Public Service Law Article VII, for a certificate of environmental compatibility and public need to construct and operate an electric transmission facility from Yonkers to Manhattan. In August 2006, the Company supplemented the application by providing the site work plans and the building design for the new substation it plans to build in upper Manhattan to receive the electricity the new transmission facility would provide. In October 2006, Consolidated Edison altered the application by changing its method for crossing the Harlem River.

In accordance with Public Service Law §123(1), the initial hearing in this case was held on September 9, 2006 in the City of Yonkers. At the hearing, public comments were obtained from interested persons and local officials. Public statement hearings were also held in the Bronx and Manhattan on October 16 and 17, 2006, respectively. A fourth public

statement hearing, attended by Commissioner Robert E. Curry, Jr., was held in Riverdale on January 22, 2007.

Evidentiary hearings were also held in this case on four consecutive days, from January 22 to 24, 2007, at the Commission's New York City offices. The evidentiary hearings were continued and concluded on March 19, 2007, at which time the record was closed.

The active parties who participated in this proceeding include the City of Yonkers, Westchester County, the Office of the Manhattan Borough President, New York City Council Member G. Oliver Kopell, New York State Assembly Member Jeffrey Dinowitz, The New York and Presbyterian Hospital, Time Warner Cable of New York City, New York City Community Board 12, New York City Economic Development Corporation, New York State Thruway Authority, New York State Department of Transportation, and the Department of Public Service (DPS) Staff.

The New York Thruway Authority participated in this proceeding by providing expert testimony from two civil engineers, one who manages highway restoration, rehabilitation and reconstruction projects and another who develops and implements traffic safety, traffic control and transportation management systems. The New York State Department of Transportation participated in this case by providing, on December 22, 2006, its support for the transmission facility route that Consolidated Edison prefers. In addition, the State Department of Transportation, in correspondence dated December 14, 2006, stated the applicable federal and state rules and regulations for any request for a non-highway use of controlled access highways, such as Interstate 87 and the parkways that travel through Westchester County.

New York City, by letter dated May 8, 2007, has stated its support for the proposed transmission facility as long as Consolidated Edison works in close coordination with the City's agencies to minimize potential disruptions to traffic, city services and infrastructure, including water supply and sewer facilities.

The other parties listed above have submitted initial and reply briefs that state their respective positions on the matters considered in this proceeding.¹ The following sections of this report to the Commission present salient information concerning Consolidated Edison's application for a certificate and its proposal to construct a new transmission facility between Yonkers and upper Manhattan. Uncontested matters significant to the issuance of a certificate are addressed first. The parties' positions on the contested issues are presented next as stated in their respective briefs. The presiding officer's recommendations to the Commission, and his suggestions to the parties, conclude this report of the case proceedings.²

THE PROPOSED FACILITIES AND PREFERRED ROUTE

Consolidated Edison has proposed to construct a 345 kV high-pressure, fluid-filled transmission facility from the Sprain Brook Substation in the City of Yonkers to a new substation to be built in upper Manhattan. The transmission facility would be installed underground for 9.5 miles except where it is suspended under bridges.

Construction requires an excavation up to five feet wide and eight feet deep. For the most part, the transmission cable would be placed within the curb-to-curb portion of public road right-of-ways. During construction, the use of one or more traffic lanes will be needed to accommodate equipment and

¹ DPS Staff submitted only an initial brief.

² For the most part, the presiding officer's recommendations are provided in the last section of this report; however, a few observations appear in prior sections.

A separate ruling is being issued simultaneously with this recommended decision. It concerns two motions submitted by Consolidated Edison about the initial briefs filed by The New York and Presbyterian Hospital and the Manhattan Borough President's Office, and the reply brief filed by Time Warner.

materials. Staging locations, stockpiles and work areas will also be required for the trench excavation, the laying of the pipes for the transmission feeder, manhole construction, and the backfilling and re-pavement of the road.

In Yonkers, the transmission cable would run along the Sprain Brook Substation access road and travel west on Tuckahoe Road, under the New York State Thruway (Interstate 87) and over the New York City New Croton Aqueduct. The cable would travel on the Saw Mill River Road, Old Nepperham Avenue, Nepperham Avenue and Prospect Street. At the intersection of Riverdale Avenue, it would turn and run on this road into the Bronx.

The transmission facility would continue through Riverdale and enter the western service road for the Henry Hudson Parkway. From there, it would turn on West 252nd Street and cross the Parkway. Returning to Riverdale Avenue, the transmission facility would travel to West 230th Street and continue southeast to the intersection of Broadway. Running south on Broadway, the line would enter private property south of West 225th Street and cross under the Harlem River into Manhattan.

In Manhattan, the transmission facility would pass under property owned by The New York and Presbyterian Hospital, continue south on Ninth Avenue and turn on West 219th Street. At the intersection of Broadway, the facility would begin to run on Broadway and go to the intersection of West 204th Street. From West 204th Street, the line would travel to Tenth Avenue, turn south and run to the intersection of West 201st Street. On West 201st, the transmission facility would turn east and continue to the Academy Substation that will be constructed on the site formerly occupied by the Sherman Creek Generation Station.

PUBLIC STATEMENTS AND COMMENTS

The September 6, 2006 Hearing in Yonkers

Three members of the Yonkers City Council attended the first hearing. Council President Chuck Lesnick expressed concern about homeowner and shopkeeper inconvenience during construction on five miles of city streets. He stated that Consolidated Edison should minimize such disturbances and compensate residents for their inconvenience. Rather than use local roads, he suggested that the transmission cable be placed on the shoulder of a highway passing through Westchester County -- the New York Thruway, the Sprain Brook Parkway, the Bronx River or the Sawmill River Parkway. He also suggested a train right-of-way that is no longer used, the Putnam right-of-way. If Consolidated Edison must use the city streets, the Council President believes it should compensate the community for its inconvenience by raising an overhead electric line that crosses the Sprain Brook Parkway. This would allow a ramp to be built from the Parkway to Ridge Hill. The Council President also endorsed local businesses and contractors for the transmission facility construction work.

John Murtagh, Council Member for the 5th District, spoke at the hearing about the weather-related electric system outages his constituents recently suffered.³ City Council Majority Leader Patricia D. McDow submitted written inquiries for Consolidated Edison to clarify matters related to the proposed facility and its impacts on the local community.

Two representatives for the City administration also spoke at the hearing. The Director of Planning, Lee Ellman, favors new development but has reservations about transmission facility construction and its impacts on the residents and business community in Yonkers. Mr. Ellman criticized

³ Westchester County Legislator Andrea Stewart-Cousins also spoke at the hearing about electric service outages and Consolidated Edison's efforts to restore service.

Consolidated Edison for not providing an analysis of the project impact on local business, including parking along the proposed route and the means the Company will use to mitigate street opening impacts on local establishments. Mr. Ellman suggested that Consolidated Edison conduct a comprehensive traffic impact study addressing major intersections, east-west access, school bus routes and rush hour traffic, among other things. He also noted that water mains, sewer pipes and service connections below the City's roads could be adversely impacted by the transmission facility excavation work.

A representative of the City's Engineering Department stated that Consolidated Edison would be responsible to repair any damage done to water services, and that the current configuration of the existing sewer system would have to be maintained. The City also expects that the construction excavation would be sheeted; the amount of open roadway would be limited; and the City would inspect the integrity of the municipal infrastructure facilities during construction.

In addition to the local officials, a citizen who read Consolidated Edison's application expressed concerns about the Company's request to waive certain filing requirements pertaining to maps and photographs. She also urged the Company to contact the New York State Department of Environmental Conservation and the State Office of Historic Preservation concerning the project's potential environmental impacts. As to changes proposed for the Sprain Brook Substation, the speaker expressed concern about visual impacts and potential clutter at the substation. She also urged the Company to keep noise impacts within the levels allowed by the City ordinance; to adequately address traffic congestion on local roads; and, to take into consideration plans for development on Ridge Hill that include a new hotel and residential housing close to the transmission facility.

Representatives for Time Warner also attended the hearing and stated the cable television company's concerns about transmission facility construction near its facilities in upper

Manhattan. Previously, the Belcher-River Oil Terminal was located on the property now occupied by Time Warner. This site suffered contamination and Time Warner is concerned about disturbing it, releasing the contamination, and creating an environmental hazard. Time Warner is also concerned about the transmission facility interfering with its daily operations in upper Manhattan. The cable television company uses this property to store equipment, dispatch work crews, and for customers to pay their bills.

The October 16, 2007 Hearing in the Bronx

At the hearing in the Bronx, Assemblyman Jeffery Dinowitz requested that another hearing be held in Riverdale. He also stated that Consolidated Edison should consider a different route for the transmission facility. He suggested that the Major Deegan Expressway be used to avoid community impacts in Riverdale. The Assemblyman noted that local travel paths in the community are limited, and previous construction activity in 2002 caused Riverdale Avenue to collapse.

The October 17, 2007 Hearing in Manhattan

In Manhattan, six individuals commented on the project. Assemblyman Adriano Espaillat stated support for new facilities and electric system improvements in upper Manhattan and New York City. He spoke about the hardships that merchants and residents experience when blackouts occur and the compensation customers should receive for the injuries they incur during electric system outages.

A spokesperson for City Council Member Miguel Martinez expressed concern about the construction project's impact on Marble Hill and Washington Heights. In particular, he requested that the environmental impacts be studied and the impact on local businesses be considered carefully.

A spokesperson for the Manhattan Borough President's Office supported the transmission facility for the improvement it would provide Washington Heights and Inwood. However, she

also expressed concern about the construction activity impacts on these communities, including the need to coordinate traffic and to inform local schools about the construction project. She encouraged the Company to keep the local communities well informed and requested that employment opportunities be extended to local residents.

The Chair of Community Board 12 spoke at the hearing.⁴ He recognized the importance of the transmission system upgrade and spoke about the need to increase distribution system reliability to avoid blackouts. Addressing the proposed route for the transmission facility, he believes it will create traffic congestion and substantial inconvenience for local businesses. He criticized the Company for not conducting a traffic impact study and for not pursuing a route down Tenth Avenue where the New York City Department of Transportation has engaged in reconstruction.

In addition to traffic congestion, Community Board 12 is concerned about construction noise impacts on three schools and in residential neighborhoods. The Board hopes that public access to the Harlem River waterfront will improve with the work that Consolidated Edison has planned for the Sherman Creek area. Also, the Board hopes that the properties in the Sherman Creek area will improve. If possible, the Board would like to see local residents employed on the construction crews and in security jobs. The Board has an on-going interest in the environmental management and construction plan (EM&CP) for the project and expects to participate in its development.

A local resident who spoke at the hearing noted that Consolidated Edison provided substantial community benefits at another location where it constructed a facility. He would expect the Company to provide comparable neighborhood improvements for upper Manhattan to compensate its residents and businesses for the inconvenience they will incur.

⁴ The Community Board 12 representatives also spoke at the hearings in Yonkers and Riverdale.

The January 22, 2007 Hearing in Riverdale

The Riverdale hearing was well attended as a result of the advance arrangements made by Assemblyman Jeffrey Dinowitz and other local officials. A couple hundred persons attended the hearing and 43 persons spoke. In addition to Assemblyman Dinowitz, New York City Councilman Miguel Martinez, who represents Washington Heights, Inwood and Marble Hill, spoke at the hearing. Spokespersons for Congressman Eliot Engel, State Senators Eric Schneiderman and Andrea Stewart-Cousins, New York City Councilmembers G. Oliver Kopell and Robert Jackson, Bronx Borough President Adolph Carrion and Manhattan Borough President Scott Stringer also attended the hearing. The City of Yonkers was represented at the hearing by its Council President and four Council Members. Officers of Bronx Community Board 8 also spoke at the hearing.⁵

Many of the speakers detailed the traffic and parking impacts that are expected to occur in their respective communities, including the congestion expected during construction on Tuckahoe Road, in downtown Yonkers, and along Riverdale Avenue in the Bronx. Speakers at the hearing faulted Consolidated Edison for not performing a traffic impact study and for not identifying alternative traffic routes to be used during construction.

Larger businesses and small merchants, located in shopping areas and on local streets, expect to suffer a loss of business for as long as it takes Consolidated Edison to complete construction near their establishments. Speakers at the hearing faulted Consolidated Edison for not performing an economic

⁵ The Yonkers City Council submitted at the hearing a resolution urging the Commission to select the least disruptive route for the transmission facility. The resolution also urges Consolidated Edison to pay for raising an overhead transmission line that crosses the Sprain Brook Parkway. The elevation of the transmission line would allow an access ramp to be built for the Ridge Hill area just north of the Sprain Brook substation. The access ramp would help to alleviate traffic congestion on Tuckahoe Road.

impact study to quantify the business impacts to commercial establishments.

Concerns were also expressed about construction noise and inconveniences that will be experienced at schools, religious institutions and residences along the route. Representatives for the affected communities have inventoried the buildings along the route. In the Bronx, 145 businesses, 20 apartment buildings, 65 homes, six school, six religious institutions, five gasoline stations, a fire house and a post office were identified. In Manhattan, 1,758 residences, two public housing developments, three religious institutions, eight schools and a hospital were noted.

Speakers believed that fire, police, emergency services and public buses will also be inconvenienced by Consolidated Edison's construction work. Various persons fear that vital community services dispatched from fire houses and police stations would be adversely affected by congested traffic corridors.

In addition to detailing the community impacts expected from the construction of the transmission facility, many speakers urged that an alternative route, without such impacts, be considered. Some, but not all who spoke, believed that the transmission facility should use Interstate 87 rather than local roads. In Yonkers, the Putnam railroad right-of-way was identified by some who recognized that any alternative route could pit the interests of certain community members against those of others.

Members of Bronx Community Board 8 complained about receiving inadequate information about the project and having an insufficient opportunity to confer with Consolidated Edison in advance of the submission of the Company's proposal. They believe that greater effort should have been made to assess the project's traffic and economic impacts. Members of the Board also questioned whether the Company should be entrusted with such a sizable construction project and expressed concern about

the project's impact on community redevelopment along Broadway and near a shopping center on 225th Street.

The proposed crossing of the Harlem River also elicited comments. The Bronx Borough President expressed concern about the duration of this construction disrupting transportation, businesses and residents at the river crossing. The Borough President also believes that Consolidated Edison should have solicited more local community input at the beginning of its application process.

Residents familiar with other Consolidated Edison construction projects and repair work addressed the inconveniences that can be experienced if and when the transmission facility incurs a leak. Concerns were also expressed about electric and magnetic fields, the quality of Consolidated Edison road repairs, and the transmission facility traversing bridges.

Correspondence, Electronic and Voice Mail

Before the public statement hearings, and subsequently, the public has submitted letters, electronic and voice mail about the Consolidated Edison transmission facility. In large measure, the correspondence expresses views comparable to and consistent with those heard at the hearings. A petition was received from 225 residents of Riverdale who are opposed to the installation of the transmission facility in their community and who support consideration of an alternative route. Residents of Manhattan have also submitted petitions concerning the transmission facility. Letters and messages were also received from individual residents of Yonkers, the Bronx and Manhattan.

THE ALTERNATIVE ROUTES

In addition to the preferred route, the Company's application described and evaluated seven alternative routes each of which were ruled out by Consolidated Edison for specified reasons.

Alternative 1

The first alternative follows the Major Deegan Service Road in Yonkers and runs through Van Cortlandt Park in the Bronx to Jerome Avenue. From Jerome Avenue it would go to Bainbridge Avenue, on to Van Cortlandt Avenue, to Mosholu Parkway and back to Bainbridge. Continuing on East 198th Street, it would run to Creston Avenue, south to West 181st Street and to Martin Luther King Jr. Boulevard. From there the route goes to West 179th Street, Osborne Place, West Burnside Avenue, Sedgwick Avenue, Cedar Street and to Roberto Clemente State Park before crossing the Harlem River to the Academy Substation.

Consolidated Edison ruled this route out because of existing transmission facilities along the Major Deegan Expressway and Jerome Avenue. The Company wants to avoid boring below the New York State Thruway and the Metro North railroad tracks. In Roberto Clemente State Park, the Company plans to keep an existing 12-inch steel pipe as a spare for other facilities. Also, the roadways between Jerome Avenue and the Park are narrow and would make construction difficult.

This route was not endorsed by any parties who participated in the proceedings. Neither did it come up during the public statement hearings, nor was it the topic of any comments the Commission received. DPS Staff does not favor this route given its length and potential impacts on Van Cortlandt Park, Woodlawn Cemetery and Roberto Clemente State Park. DPS Staff noted the existence of other transmission facilities on Jerome Avenue between Van Cortlandt Park and Woodlawn Cemetery and that construction between Jerome Avenue and Roberto Clemente Park would be very difficult on the narrow streets that would

have to be closed were they to be used for the transmission facility.⁶

Alternative 2

In Yonkers, this alternative travels west on Tuckahoe Road to Mile Square Road, to Lockwood Avenue and to the Saw Mill River Road (Route 9A). Continuing south on Walnut Street, Van Cortlandt Park Avenue, Lawrence Street and Leighton Avenue, it crosses into the Bronx on Leighton Avenue and continues to West 261st Street. From West 261st Street, it runs south on Fieldston Road and east on West 250th Street to Waldo Avenue. From there, it travels east on West 240th Street to Van Cortlandt Park South, to Bailey Avenue, to Sedwick Avenue, to West Fordham Road, to Cedar Street and to Roberto Clemente Park before crossing the Harlem River in route to the Academy Substation.

The Company did not prefer this route because Mile Square Road is narrow, curvy and has large elevation changes. Also, the bridge on Mile Square Road is not suitable for a transmission facility. Like Alternative 1, this route would require borings under the Thruway and the Metro North railroad tracks and would use the spare pipe under Roberto Clemente Park that is being saved for other purposes.

DPS Staff noted that this route did not impose any significant environmental impacts. However, narrow roads on this route would be closed during construction and this would exacerbate impacts to many private residences.⁷

Alternative 3

This alternative begins in Yonkers and is the same as Alternative 2 until it reaches Van Cortlandt Park Avenue. From there, it goes on Caryl Avenue to Broadway and crosses into the Bronx. Through the Bronx, it continues on Broadway to a retired feeder easement and crosses the Harlem River and enters

⁶ Tr. 1441-42; 1497-98.

⁷ Tr. 1442; 1498-99.

Manhattan next to property owned by The New York and Presbyterian Hospital. In Manhattan, this alternative (and Alternative 4) run south on Ninth Avenue to West 218th Street and west to Broadway. On Broadway, they run to West 204th Street and east to Tenth Avenue and from there to the Academy Substation.

The Company does not prefer this route because of the condition of Mile Square Road and the bridge. In the Bronx, elevated train tracks on Broadway provide only ten feet of clearance and there are only parking lanes to the east and west of the tracks. This would make construction difficult, particularly for installing manholes and placing the cable tub for the cable installation. DPS Staff saw no advantage to using this route instead of the preferred route. This alternative presents the same environmental considerations as Alternative 2 and does not reduce any impacts. According to DPS Staff, it merely shifts the impacts to another location. DPS Staff concurs with the Company that the elevated train tracks in the Bronx are problematic and do not provide sufficient clearance for construction equipment.⁸

Alternative 4

In Yonkers, Alternatives 4, 5 and 6 (and Consolidated Edison's preferred route) are the same until they reach the vicinity of City Hall. Alternatives 4 and 5 leave Nepperhan Avenue at New Main Street and use it to continue on Broadway. Alternative 6 leaves Nepperhan Avenue at Broadway and continues on Broadway.

In the Bronx, Alternative 4 runs on Broadway, turns west on West 238th Street, goes to Kingsbridge Avenue, and runs south to West 230th Street. From West 230th Street, it continues south on Exterior Street, across West 225th Street, and parallels the train tracks through the access ramp of the Kingsbridge Associates property to the area adjacent to the Metro North

⁸ Tr. 1442; 1499.

railroad tracks. After crossing the Harlem River, Alternative 4 is the same as Alternative 3.

Consolidated Edison rejected this route because of the elevated train tracks in the Bronx on Broadway that would interfere with construction. The Company also noted that a new easement would be needed to parallel the Metro North railroad tracks from Exterior Street to the Harlem River.

According to DPS Staff, the environmental impacts of Alternatives 4, 5 and 6 are comparable except for where they cross the Harlem River. None of them, DPS Staff states, provide any environmental benefits that would make them any better than the route Consolidated Edison prefers. Here too, DPS Staff considers the overhead train tracks on Broadway to be an impediment to construction. The Harlem River crossing for this alternative has inadequate space and presents construction difficulties.⁹

Alternative 5

Alternative 5 is the same as Alternative 4 in Yonkers and the Bronx until the route reaches Kingsbridge Road where it continues south to West 231st Street and goes east to Godwin Terrace. From there, it travels to West 230th Street. At this point, the route is the same as Alternative 4 until it reaches West 215th Street in Manhattan. There it continues on Ninth Avenue until it reaches West 218th Street and goes to Broadway. From Broadway, it takes West 204th Street to Tenth Avenue and proceeds to the Academy Substation.

Consolidated Edison did not prefer this route because of the overhead train tracks in the Bronx and the new easement required to parallel the Metro North railroad tracks from Exterior Street to the Harlem River. DPS Staff discounted the use of this alternative for the same reasons it is opposed to Alternative 4.¹⁰

⁹ Tr. 1443; 1499-1500.

¹⁰ Tr. 1443; 1500.

Alternative 6

In Yonkers, Alternative 6 differs from Alternatives 4 and 5 in the vicinity of City Hall; nonetheless, it runs on Broadway into the Bronx. In the Bronx, it goes east on West 230th Street, continues south on Exterior Street and crosses West 225th Street. From there, it parallels the train tracks to the Kingsbridge Associates property before crossing the Harlem River. In Manhattan, the route is the same as Alternative 5.

The elevated train tracks in the Bronx, and the need for a new easement to parallel the Metro North railroad tracks, are the main reasons Consolidated Edison has given for not preferring this route. DPS Staff concurs with the Company that it would be extremely difficult to construct the transmission facility below the elevated train tracks in the Bronx.¹¹

Alternative 7

Alternative 7 differs entirely from the preferred route and the other alternates. It follows the abandoned Putnam railroad corridor through Yonkers and the Bronx. In Yonkers, the Putnam railroad corridor runs by the Bryn Mawr Park residential area and follows the eastern edge of Dunwoodie County Golf course. It also runs parallel to and within Tibbetts Brook County Park before entering Van Cortlandt Park. It continues through Van Cortlandt Park South and parallels the Major Deegan Expressway. This alternative could link up with either the preferred or several alternative routes to cross the Harlem River and enter the Academy Substation in Manhattan.¹²

Consolidated Edison does not support the use of Alternative 7 (or the variation) because of the many new easements it would have to acquire and because the route

¹¹ Tr. 1500-01.

¹² Consolidated Edison also presented a variation of Alternative 7 that would follow the Old Croton Trail Way through Tibbetts Brook County Park. The Trail Way is managed by the New York State Office of Parks, Recreation and Historic Preservation as a hiking and cycling trail.

contains many narrow and isolated sections where construction and maintenance would be difficult. The Company notes that extensive vegetation clearing would be required where the corridor is overgrown, and environmental impacts are a consideration in Van Cortlandt Park. Also, transmission line security is a concern given the route's lengthy, unpaved and isolated corridor.

According to DPS Staff, Alternative 7 has benefits and detriments. DPS Staff recognizes that this alternative would significantly reduce construction impacts on the communities in Yonkers and the Bronx. Fewer residences, businesses and local roads would be impacted were this route to be used. However, Alternative 7 presents greater environmental impacts due to the clearing activity it would require. Moreover, Alternative 7 presents significant construction hurdles for the Company. According to DPS Staff, the Putnam railroad right-of-way is a narrow corridor with a steep grade that is not suitable for a transmission facility. It would be difficult to excavate and to weld pipe in the trench. It would also be difficult for trucks to make deliveries and for workers to perform their tasks safely. DPS Staff recommends that Alternative 7 not be used.¹³

Alternatives Proposed by Other Parties

1. The Joint Monitoring Committee and the City of Yonkers
A coalition of elected and local officials from Yonkers, Westchester, Riverdale, the Bronx and Manhattan joined in opposition to Consolidated Edison's preferred route. They

¹³ Tr. 1443-44; 1501-02.

support an alternative route that would use the New York Thruway (Interstate 87).¹⁴ This alternative would begin at the Sprain Brook substation and travel west on Tuckahoe Road to the Interstate 87 south-bound access ramp. From there, the transmission facility would continue along Interstate 87 through the Bronx to a point directly across from West 208th Street in Manhattan where it would cross the Harlem River and run to Ninth Avenue. On Ninth Avenue it would continue to Academy Street and the site of the new substation.

The City of Yonkers also proposed that the transmission facility be placed on Interstate 87 instead of City roads.

2. The New York and Presbyterian Hospital

At first, The New York and Presbyterian Hospital presented multiple alternatives for the Manhattan segment of Consolidated Edison's preferred route. However, by the time the Hospital filed its initial brief, it decided to withdraw its proposals and has chosen to support the alternative route segment sponsored by DPS Staff.

3. DPS Staff

DPS Staff has presented an alternative for the portion of the transmission facility in Manhattan.¹⁵ Instead of crossing the Harlem River at the Broadway Bridge, the alternative would

¹⁴ The Joint Monitoring Committee submitted its alternative route proposal on December 22, 2006. This submission is endorsed by U.S. Congressmen Rangel and Engel; the Manhattan Borough President; the Mayor of Yonkers; the Yonkers City Council President and six Council Members; State Senate Members Schneiderman, Klein and Stewart-Cousins; Assembly Members Dinowitz, Pretlow and Spano; New York City Council Members Koppell, Martinez and Jackson; Westchester County Legislators Sprechman and Burrows; and three members of Manhattan Community Board 12 and two members of Bronx Community Board 8.

¹⁵ Tr. 1449-1453; 1492-94.

continue in the Bronx, turn south and parallel a Metro North line for about 1000 feet before crossing beneath active and abandoned rail lines. The transmission facility would continue south on an unused grassed area adjacent to the Harlem River and travel on the remnants of a private road. It would pass a concrete fabrication plant, a self storage facility, enter a public thoroughfare and pass under the University Heights West 207th Street Bridge. The facility would continue along the shore of the Harlem River and cross the river using either a tunnel or directional drilling. The facility could either enter Manhattan on the property owned by Consolidated Edison at the Academy Substation or it could enter on West 203rd Street, proceed west to Ninth Street and continue south to the Academy Substation.

DPS Staff proposed this route segment because it is shorter and has less impact on the local community. It would not impact any homes, schools, bus routes, emergency services or houses of worship. Nor would it impact any valued environmental resources. The Staff acknowledges that no sub-soil tests or geological surveys were conducted for its proposed segment and at least one storm drain would be intersected. Easement rights to private property would have to be acquired to use this route segment.

By letter dated April 13, 2007, the Bronx Community Board 7 opposes the DPS Staff proposed segment. The Board believes that it poses unacceptable and unnecessary hardships for its community. It points to the road parallel to the railroad tracks and states that access here is only possible from a ramp on the West 207th Street Bridge. Construction activity would add to the congestion on the ramp and exacerbate current conditions. Also, another access road controlled by the Kingsbridge Mall is too narrow and could not be used by the construction crews. Further, the Board points to the commercial entities along the waterfront and states that they would experience difficulties operating their businesses while Consolidated Edison constructs the transmission facility.

4. Time Warner

In upper Manhattan, Time Warner has three facilities: a parking lot on Ninth Avenue bounded by the Harlem River to the east; a warehouse at the intersection of West 219th Street and Ninth Avenue at which 203 employees work; and, an office building at the intersection of West 219th Street and Broadway at which 48 persons work. To avoid impacts to the parking lot, warehouse and office building, Time Warner has proposed that Consolidated Edison's route avoid West 219th Street and use instead West 220th Street. According to Time Warner, several months of construction activity in the vicinity of its facilities would adversely impact business revenues and operations at the three locations. A Time Warner witness testified that several hundred customers use this office daily to pay their cable bills.¹⁶

UNCONTESTED MATTERS

Public Need

Consolidated Edison periodically examines its electric transmission network and substations to determine whether the facilities are adequate for the electric supply loads expected on the system. The Company projects its electric loads for a ten-year period and takes into account the amount of load growth that occurs in the areas served by its substations. Consolidated Edison has proposed to construct and operate this electric transmission cable to serve its current, emerging and long-term electric system requirements. The need for this facility has not been questioned or challenged by anyone during the course of this proceeding.

The transmission facility is designed to enhance the electric supply provided to the East 179th Street load area in the Bronx and upper Manhattan. The additional transmission capacity is needed to satisfy first contingency design

¹⁶ Tr. 925-27.

requirements.¹⁷ It will also provide sufficient transmission capacity to cover second contingency capability requirements for the next ten years. The additional electricity provided by the transmission facility will directly benefit customers served by the Sherman Creek Substation and customers in the Dunwoodie North load area in Westchester where significant load growth is expected.

The transmission facility will have its own line capacitance and autotransformers. This will improve electric system voltage performance and enhance voltage regulation on the bulk power transmission system. This facility will become part of the New York City cable interface and it will increase the amount of transfer capability into the City by about 300 MW. In sum, the proposed facility is expected to provide electric system reliability, and economic energy benefits, for electric customers throughout New York City. If it is not built, customers in the Bronx and upper Manhattan would be more susceptible to low-voltage and service-outage conditions.

The Probable and Minimum Adverse Environmental Impacts

Consolidated Edison has identified the environmental impacts associated with the proposed transmission facility. The Company has explained its efforts and plans to keep adverse environmental impacts to a minimum. Much of the Company's environmental analysis is undisputed.

By installing the transmission cable in the curb-to-curb portion of public roads, the Company would minimize long-term land use impacts. No agricultural lands, or any other land uses, would be affected by the proposed facility. The placement of the transmission facility under public roads eliminates its visual and aesthetic impacts. The transmission facility may be noticeable on the underside of the bridges it will cross.

¹⁷ A first contingency condition occurs either with the loss of an area transformer or its associated 138kV feeder.

The right to use small amounts of private land is necessary for this project. Consolidated Edison plans to obtain easements, consents and approvals to use property owned by Kingsbridge Associates, the Metropolitan Transit Authority, The New York and Presbyterian Hospital and the New York State Department of Transportation.

The Academy Substation is not expected to have any adverse visual impacts because it is designed to be consistent with its urban, industrial surroundings. It will also be consistent with New York City's planned residential and commercial redevelopment of the Sherman Creek area. Its façade will be consistent with the marinas located to the south. The substation's enclosed design will ensure public safety and security. Additional equipment being installed at the Sprain Brook Substation will be visually compatible with the current use of the site.

The transmission facility is not expected to have any impact on cultural resources, including any historic, architectural and archeological resources. The curb-to-curb portion of the public roads has previously been disturbed and it is not likely that any significant archeological sites would be encountered on the intended route. Were any archeological sites to be found, the Company would use an Unanticipated Discoveries Plan to address them. The project will not adversely affect any structures on the National or State Historic Register because the transmission facility will be installed underground.

The proposed transmission facility has little, if any, impact on terrestrial ecology and wetlands. No adverse ecological impacts are expected because the project does not traverse any unusual or unique ecological communities. By using existing bridges, and a tunnel under the Harlem River, there will be no impacts to any rivers. No wetlands or streams will be impacted by excavation and construction. The vegetative communities in the area of this project consist mostly of roadsides and previously developed areas. No significant vegetation or wildlife habitat will be removed.

The topography and soil conditions along the proposed route are suitable for routine and ordinary construction methods. After construction, the excavated areas will be returned to their original condition. Excavated soil and asphalt will be disposed by a state-licensed contractor in accordance with applicable requirements.

Consolidated Edison has also evaluated water resource impacts and will minimize them. Any water required for construction activity will be brought by tanker trucks to the site. The transmission facility does not require a water supply to operate. Storm water management, water supply and sanitary requirements at the Sprain Brook Substation require no changes for this project. Storm water at the Academy Substation will be discharged to a sewer on West 201st Street and be routed to a New York City wastewater treatment facility. Consolidated Edison will provide a Construction Stormwater Pollution Prevention Plan to avoid impacts related to uncontrolled storm water runoff. The Company plans to work with various municipal agencies to ensure that the project does not impact existing infrastructures, including water supply distribution facilities, sanitary sewer and storm water sewer systems.

Consolidated Edison has evaluated the electric and magnetic fields associated with the proposed facility. Its calculations indicate that the magnetic fields for the buried transmission cable will be below the Commission's standards. The cable will not produce electric fields because it is shielded by the steel pipe, construction material and soil encasing the cable. At the Sprain Brook Substation, some magnetic fields would increase but would remain below the Commission's standard. At the Academy Substation, the electric and magnetic fields will also be below the standard. No significant effects are expected on telecommunications, radio and television signal transmissions.

DPS Staff concurs with Consolidated Edison that the environmental impacts of the transmission facility are minimal and limited to temporary construction disturbances. Staff also

believes that the adverse environmental impacts associated with this project can be minimized. But some of the impacts associated with the facility--particularly its noise, interference with traffic, and its impact on municipal infrastructures and public services--are in dispute. These items are addressed below.

CONTESTED MATTERS¹⁸

At the hearings in Yonkers, Riverdale, the Bronx and Manhattan, and in the comments received, many local residents, businesses and elected officials expressed concern about the construction of the proposed transmission facility and the impact it will have on the local communities. The opposition to this transmission facility is not directed against the facility, as such. In fact, the public generally recognizes that the transmission facility is needed to serve electric customers and to provide electric system reliability. However, the public concern here anticipates the adverse impacts that the underground construction activity will have on these neighborhoods for its duration.

Community impacts were addressed at the evidentiary hearings held in New York City. The community representatives detailed the adverse impacts for residents, local businesses and organizations. Time Warner and The New York and Presbyterian Hospital addressed the construction impacts in the vicinity of their respective facilities.

Traffic

1. Local and Municipal Representatives

The City of Yonkers considers the construction project's traffic impacts to be severe. The preferred route runs through busy and densely populated neighborhoods with

¹⁸ The presiding officer's discussion of the contested matters is provided in the last section of this report.

commercial establishments and industrial activity. Yonkers states that one-third of its population lives along the proposed route and would be affected by this road work and the lane closings on major arterials. The City is anticipating grid lock conditions along Tuckahoe Road, Saw Mill Road, Nepperhan Avenue, Old Nepperhan Avenue and Riverdale Avenue and at the intersections with these roads. No alternative routes are available to divert the traffic that routinely uses these streets. The City's concerns are not limited to peak traffic hours. It applies to off-peak periods and to the round-the-clock cable splicing operations Consolidated Edison is planning. According to the City, even a brief loss of a single lane is capable of backing local traffic for blocks.

With these conditions in mind, the City of Yonkers faults Consolidated Edison for not providing a traffic study that shows the best means to minimize the construction-related traffic impacts. Without a traffic analysis, Yonkers insists that there is no basis provided on this record for the Commission to conclude that the traffic impacts will be minimal.

Westchester County is also concerned about traffic conditions on the roads it controls. It states that Consolidated Edison should provide a traffic plan that is acceptable to its Department of Public Works. According to Westchester, the plan should address lane closings, the hours for allowed construction activity and the storage of construction materials. The County believes that Consolidated Edison should assume all costs incurred for the traffic plan.

Without any traffic study or analysis provided in advance, the local officials representing Riverdale and the Bronx believe that Consolidated Edison has not adequately considered the adverse impacts to the local communities. They point out that the Company's informal visual observations do not amount to a traffic study. They also note that Consolidated Edison has demonstrated no awareness of other large construction projects simultaneously affecting the communities, including work on the Kappock Street underpass. They point to the

collapse of Riverdale Avenue in 2002 and reconstruction efforts that took over two years. The Bronx and Riverdale representatives seek but have no assurances that the road will not collapse again and will not require an extended period of reconstruction. They note, as well, that Consolidated Edison has provided no plans addressing or mitigating the anticipatable traffic impacts.

The Manhattan parties generally prefer the route proposed by DPS Staff because it would eliminate all the traffic impacts presented by Consolidated Edison's preferred route. Time Warner is particularly concerned about traffic impacts on West 219th Street; The New York and Presbyterian Hospital is concerned about traffic on West 220th, across from the entrance to the Allen Pavilion, and along Broadway.

2. Consolidated Edison

Consolidated Edison states that its application adequately evaluated the project's impacts to traffic and transportation. Pointing to its transmission line construction experience, the Company states that it has previously been able to resolve traffic issues with the relevant permitting authorities, either in advance of construction or by adjusting to changed conditions as they arise. Previously, the Company has installed transmission lines on streets in front of schools, religious institutions, police stations, fire houses, hospitals and other such facilities and has done so with minimal impact. It anticipates no insurmountable difficulties or any greater impacts along this project.

Among the techniques it plans to use to minimize the impacts are: working during off-hours where it is permissible to do so; specifying the number of lanes that may be closed; using signs, arrows or persons with flags; detouring traffic where possible; relocating bus stops and routes; eliminating temporarily a limited number of parking spaces; and, by hiring local police officers to assist with traffic management.

Consolidated Edison states that it will comply with the State's traffic control standards, and guidelines provided by the State Department of Transportation, the New York City Department of Transportation, Yonkers and Westchester. In fact, the Company states that it has discussed this project with the NYC Department of Transportation which has provided its stipulations for project construction in Manhattan and the Bronx. They address work hours, school zone and street work limitations, holidays, embargoes, maintenance of traffic lanes, intersections, bus stops, pedestrian sidewalk access, and notice to property owners and appropriate agencies.

The Company is willing to enter into comparable stipulations with Yonkers and Westchester. It commits itself to working closely with the governmental agencies to ensure that traffic impacts due to lane closures are minimized. Where required to do so, Consolidated Edison will develop and implement a Maintenance and Protection of Traffic Plan to ensure safe and adequate traffic operation. In advance of its construction plans, the Company will provide to the State Department of Transportation its preliminary design so as to avoid conflicts with other transportation projects.

In response to the local representatives for Yonkers, Riverdale, the Bronx and Manhattan, Consolidated Edison states that a quantitative traffic impact analysis is not mandatory for the issuance of a Commission certificate. The Company points to Public Service Law Article VII, and the implementing regulations, and states that no such analysis is required. It observes that the specific impacts on local business and facilities are normally handled in the environmental management and construction plan (EM&CP) phase of the project and that this approach was used successfully in several recent Article VII projects in Westchester County.

Consolidated Edison points to the record of the New York City hearing and the cross-examination of its witness, Mr. Beccalori, as showing that the construction challenges presented by this project are no more challenging than other

projects it routinely performed in decades of operation. The Company states that it has all the techniques and procedures needed to address traffic (and other construction-related impacts) and to minimize them. According to the Company, it is prepared for construction work in Yonkers, on Riverdale Avenue, along Broadway, at the intersection of Broadway and West 211th Street, in front of the firehouse at the Henry Hudson Parkway, and various other locations of strong interest to the local communities.

Consolidated Edison points out that it is currently preparing EM&CPs for the transmission facility, the Harlem River tunnel and the two substations. It expects to have drafts of the EM&CPs available for review in mid-May 2007 and plans to submit them to the Commission in late June 2007.

Noise

The City of Yonkers faults Consolidated Edison for not conducting any noise impact studies, particularly for the schools along the proposed route. Similarly, the representatives for Riverdale and the Bronx claim that the Company should have determined and presented construction noise impacts for residences, businesses, schools and religious institutions along the preferred route. Having failed to analyze the noise impacts, they assert that the Company's application has not adequately addressed noise and provides no plans for noise mitigation. The Manhattan parties raise similar concerns about the noise impacts for their local schools, hospital facilities, religious institutions, residences and business establishments.

Consolidated Edison states that it has evaluated the construction project's noise impacts that will be short-term at any given location. It will comply with the local noise standards, including those established by Yonkers. The Company notes that noises will vary and depend upon the construction equipment in use. It expects the noises to be short-lived and intermittent; mufflers and distance from the construction will

mitigate their impact. According to the Company, there is nothing unusual about the noises that this construction project will emit and they will move along the construction corridor with no one location being exposed to significant noise levels for an extended period. Thus, the Company believes it was not necessary for it to conduct any quantitative noise analysis.

The tunnel activity at the Harlem River crossing will increase ambient noise levels. However, the noise sources will recede as the tunnel submerges below ground level and the equipment enters deep bedrock. A detailed noise assessment will be provided with the final engineering design for the tunnel. It will include proposed noise mitigation measures as required.

Construction noise will also be generated temporarily at the substations in Manhattan and Yonkers. In Manhattan, they are expected to be minimal, and in compliance with the City's noise standards, because of the masonry wall that will surround the substation. No new noise sources are planned for the Sprain Brook Substation.

Municipal Infrastructure

The City of Yonkers is concerned that Consolidated Edison's construction activity will compromise municipal services located in the roads. Yonkers notes that its sanitary sewers, storm sewers, sewer trunk lines and water mains are old, fragile and susceptible to failure. Given their sensitive condition, the City believes it would be best if Consolidated Edison avoided deep trenching activity in the vicinity of the municipal services. The City points out that the Company has not fully assessed the subsurface road conditions and the risks of an infrastructure collapse or failure are unknown.¹⁹

As noted above, the representatives of the Bronx and Riverdale communities are aware of the previous collapse of

¹⁹ Consolidated Edison has sought to conduct test pits in Yonkers but it incurred difficulties obtaining local authority to do so.

Riverdale Avenue and are fearful that this construction project could cause a similar event. The Manhattan Borough President's Office is also concerned about construction in the vicinity of the Eighth Avenue subway. It claims that the Company did not show that it was feasible to install the transmission facility between the subway and the sidewalks on Broadway. The Borough President's Office is also concerned about stray voltage and ground currents from this project. It also notes that below Broadway there are water mains, old trolley facilities, sewers and other utilities that could interfere with the lane needed for the transmission facility.

Consolidated Edison denies that its construction in public road right-of-ways will interfere with or cause any municipal infrastructures to fail. In response to the City of Yonkers, the Company points out there have been nine major projects on the City's streets in the past decade and there has been no history of any detrimental impacts to the sensitive infrastructure. Consolidated Edison is confident that the test pits it will perform in Yonkers will provide it useful information to make minor route deviations, avoid any existing facilities and locate a clear lane for the transmission facility.

In response to the Manhattan Borough President's Office concerns about stray voltage in the vicinity of the Eighth Avenue subway, Consolidated Edison believes that the concerns at this location are far less than those presented by the DPS Staff alternative route that is supported by the Borough President's Office. In any event, the Company asserts that it has conducted an extensive and comprehensive underground survey of the proposed route in upper Manhattan and has verified a clear lane for the transmission facility.

Police, Fire and Emergency Services

At the New York City hearing, two high-ranking police and fire officers from Yonkers testified about public safety. In Yonkers, the preferred route passes police headquarters and

three fire stations, including fire headquarters and an emergency rescue squad.²⁰

Not only is Yonkers concerned about ingress and egress at these stations, it is concerned about police, fire and emergency services traveling on Tuckahoe Road. If this road is reduced to a single lane in each direction, the City fears that response times will be adversely affected. No practical alternate route exists for this road. Similarly, the City is concerned about construction on Old Nepperhan Avenue (a two lane road) and on Saw Mill River Road where a fire station is located. Yonkers notes that without a detailed plan to coordinate traffic during construction, transit access for emergency and essential services is not assured.

In the Bronx, a similar concern was expressed about construction adversely affecting dispatches from a firehouse on Henry Hudson Parkway East. The representatives for the local communities questioned whether Consolidated Edison was adequately aware of this firehouse and could reasonably accommodate its dispatches.

In Manhattan, the preferred route passes in the vicinity of the Allen Pavilion, a full service community medical facility operated by The New York and Presbyterian Hospital. The Hospital is concerned about keeping the entrance to the Pavilion clear of construction and maintaining a free flow of traffic along Broadway. The Pavilion receives 32,000 emergency room visits a year and discharges 13,500 patients annually.

Consolidated Edison's response to the concerns about the delivery of police, fire and emergency services is the same as its response to concerns about local traffic conditions. The Company commits itself to working closely with the local authorities at the time if its environmental management and construction plan (EM&CP) to ensure that their access to the

²⁰ Additional fire stations, with primary response areas in the vicinity of the preferred route, are also affected by the transmission facility construction activity.

roads, and their ability to respond to the public, are not impeded. Consolidated Edison points to a long history of construction projects in the service area and a track record of no substantial interference with the delivery of necessary police, fire and emergency services.

Public Transit

Westchester operates the County's public bus system. The main facility for servicing and dispatching buses is located in Yonkers and on Consolidated Edison's preferred route for the transmission facility. The County expects to enter into stipulations with the Company concerning construction in the vicinity of the bus garage. With respect to the bus stops along the preferred route, if any of them must be relocated the County expects Consolidated Edison to be responsible for the temporary locations and to reestablish the permanent bus stops in their original condition.

In the Bronx, many bus routes run along the preferred route. The local representatives doubt that the Company is fully aware of the transit system operations and is capable of constructing the transmission facility without impairing bus system performance.

In Manhattan, the overhead and underground subways factored into Consolidated Edison's route selection, and complicated its construction work. Tenth Avenue would have provided the Company a more direct route to the Academy Street Substation; however, the overhead subway on this city street precludes underground construction activity. Consolidated Edison is unable to use large vehicles and equipment on this street with its limited clearances. Also, the New York City Department of Transportation has placed a moratorium on road construction work on Tenth Avenue. The road is undergoing repairs and improvements that the City seeks to preserve.

The Manhattan Borough President's Office is also concerned about the transmission facility intersecting with or coming into contact with subway lines and elevated transit

facilities. The Office is concerned about the potential for stray ground currents and interference with the transit signal system.

Consolidated Edison believes that it can fully address any public transit system concerns in the EM&CP phase of this proceeding. It will coordinate construction activity with the local authorities responsible for the public transit and school bus systems.

Local Commerce and Business

According to Consolidated Edison, the amount of time it will take to construct the transmission facility will not adversely impact the local economy sufficiently to change local land use patterns nor do any such impacts warrant mitigation. The City of Yonkers, however, points to an upcoming development on Ridge Hill that was not considered by the Company. Yonkers also notes that Consolidated Edison did not survey or inventory the local businesses and stores along the route that will experience traffic gridlock and incur adverse impacts to their parking spaces, driveways, parking lots and roadways. The City believes that the Company should have evaluated the economic impact to business and quantified the impact to local commerce.

The representatives for Riverdale and the Bronx also believe that Consolidated Edison did not adequately evaluate commercial land use patterns and economic effects. They fear that the businesses on the preferred route will be devastated during construction. They believe that the Company should have conducted outreach in the business community and the impacts should have been addressed in the Company's application.

Community Board 12 points out that small businesses comprise much of the commercial sector that is important to Inwood. It states that this sector provides 4,000 jobs, a \$111 million payroll and closing portions of Broadway will make it difficult for customers to obtain goods and services from these businesses.

Alternative Routes

1. The DPS Staff Alternative Segment

a. Support

The DPS Staff alternative segment avoids upper Manhattan and crosses the Harlem River in close proximity to Academy Street. It is supported by the local parties representing interests in Manhattan.

The Manhattan Borough President's Office supports the DPS Staff alternative because it avoids impacts on residences, businesses, schools, public transportation and religious institutions. The Borough President's Office notes that the Staff route is shorter, more direct and does not come in contact with the Eight Avenue subway. It also notes that the Staff-proposed route eliminates adverse traffic impacts and avoids construction work on city roads. Manhattan Community Board 12 supports the Staff-proposed route for similar reasons.

The New York and Presbyterian Hospital would prefer to preserve its upper Manhattan property for future development and it therefore supports the Staff alternative. In addition to Consolidated Edison's permanent use and occupancy of its property, the Hospital is concerned about construction project impacts on its operations. During the construction of the transmission facility, the Hospital will put on hold any future plans for the undeveloped property at this location. The Hospital is also concerned that construction work will interfere with the emergency vehicles and traffic using Broadway to enter the Allen Pavilion.

b. Opposition

Consolidated Edison opposes the Staff alternative because of access right difficulties, constructability concerns, the potential for feeder pipe corrosion, and the limited usefulness of a Harlem River tunnel crossing at the points suggested by Staff.

To use the route Staff has suggested, Consolidated Edison would have to obtain easements from six property owners,

a difficult process it expects would delay the project.²¹ With respect to one such property owner, Metro North, condemnation procedures would only be available if the electric transmission facility does not cause substantial interference with the operation of the railroad. Consolidated Edison's discussion with Metro North's engineering staff indicates that the placement of the transmission facility close to the train tracks is problematic. Until the Metro North engineers' concerns are adequately resolved, Consolidated Edison is denied access to this property. Consolidated Edison does not believe it can demonstrate that the transmission facility will not cause substantial interference with the railroad and it doubts it would be successful in a condemnation proceeding.

Consolidated Edison has several constructability concerns, including the perpendicular crossing of sewer facilities at a depth of 20-24 feet; the use of reinforced protective sheeting to control water leakage from the Harlem River; temporary structural supports needed to augment the Metro North waterfront bulkhead; and, specialized rigid shoring systems needed to minimize track bed settlement. All of this would add about \$40 to \$45 million to the cost of the transmission facility.

According to Consolidated Edison, potential pipe corrosion along the mile that the transmission facility parallels the railroad tracks effectively precludes the use of the Staff-proposed route. The Company acknowledges that its preferred route in Manhattan also parallels a subway route but for a far shorter distance with less potential for corrosion impacts.

Finally, a Harlem River crossing at the locations suggested by Staff is less useful for the Company to expand its system. At the Broadway Bridge, Consolidated Edison can use the

²¹ In contrast, the Company's preferred route requires easements from two property owners, one on each side of the Harlem River.

tunnel for up to three solid dielectric feeders, 16 distribution feeders and a high pressure gas main. At the locations suggested by Staff, Consolidated Edison already has a high concentration of facilities that precludes the installation of any more. Also, at the Harlem River near Fordham Road in the Bronx, access for electric facilities is restricted by the Metro North train tracks and the Major Deegan Highway.

2. Time Warner's West 220th Street Proposal

In support of its proposal to use West 220th Street instead of West 219th Street, Time Warner claims that West 220th Street would eliminate problems for its business operations and concerns about school safety, traffic disruption and environmental and health risk exposures.

However, The New York and Presbyterian Hospital is opposed to the Time Warner proposal. According to the Hospital, if the transmission facility were located on West 220th Street, it would impede access to the Allen Pavilion. The Allen Pavilion provides full hospital services for residents of upper Manhattan and the Bronx. It is a "911" receiving hospital and a certified chest pain center. It handles 32,000 emergency room visits and 13,500 patient discharges annually. The Pavilion is located in a "health professional shortage area" as designated by the Federal Department of Health and Human Services.

The Hospital states that the corner of West 220th Street and Broadway is across from the only entrance to the Allen Pavilion. While no traffic study has been performed to evaluate the potential impact of placing the transmission facility either on West 219th or West 220th Street, the Hospital seems confident that construction work opposite the Pavilion's entrance would disrupt access at the entrance.

Consolidated Edison is also opposed to using 220th Street. To begin, Consolidated Edison discounts Time Warner's concerns about disturbing contaminated soil. It points out that the Harlem River tunnel and the transmission facilities entering Manhattan will entirely avoid and not use of any Time Warner

property. Moreover, Consolidated Edison conducted subsurface environmental testing along Ninth Avenue which shows that the amount of contamination is minor and non-hazardous. According to the Company, its trenching techniques and storm water control measures can adequately handle any contaminated material found adjacent to the Time Warner property.

As to interfering with Time Warner's business operations, Consolidated Edison states that it will accommodate the peak times when vehicles enter and leave the facility, and plate the entrance ways and street crossings when construction is inactive. Also, the Company will coordinate with Time Warner before it starts to work on the sidewalk near its facilities.

With respect to the potential impact on the nearby school, Consolidated Edison points out that its work in the school zone will be limited from 9 a.m. to 2 p.m. on weekdays. Addressing the customers who pay their bills at the Time Warner business office, Consolidated Edison believes that its construction activity will only be a minor inconvenience for them.

Finally, according to the Company, there may not be an available lane on West 220th Street for the transmission facility. No subsurface investigation has been performed along this street to confirm that the facility can be installed there. Consolidated Edison estimates that it would cost an additional \$140,000 to route the transmission facility on West 220th Street and construction could take up to four months. Consolidated Edison agrees with The New York and Presbyterian Hospital that construction on West 220th Street could impact the entrance to the Allen Pavilion.

DPS Staff does not support the use of West 220th Street. It believes that this street is narrower than West 219th Street. Staff also pointed out that a car wash business on West 220th Street could be substantially affected by construction on this block.

In response, Time Warner insists that its alternative is feasible and preferable. According to the cable television

company, it is desirable to route the transmission facility away from the contamination found on Ninth Avenue between West 219th and West 220th Streets. It believes that the amount of contamination is sufficient to warrant such action and it criticizes Consolidated Edison for not taking environmental borings to quantify areas of potential contamination along the preferred route.

With respect to the potential impacts for the Allen Pavilion and a car wash business on West 220th Street, Time Warner considers them to be "red herrings." It denies that construction at the intersection of Broadway and West 220th Street would impede traffic at the entrance of the Allen Pavilion if it is kept to the south and across from the entrance. As to the car wash, Time Warner faults Consolidated Edison for not considering all such impacts to individual businesses and doubts that this business would be severely affected if it is advised of the construction and advance arrangements are made to queue cars entering the establishment. In response to DPS Staff, Time Warner states that West 220th Street is not narrower than West 119th Street. Land maps show the two streets having the same width. Finally, in support of its alternative, Time Warner states that by using West 220th Street the proposed manhole location on Ninth Avenue would be closer to the Harlem River tunnel shaft. This would help minimize cable pulling at this location.

3. The Consolidated Edison Alternatives

Time Warner claims that the Consolidated Edison's application did not consider all the reasonable alternative routes it should have. According to Time Warner, the Company's alternatives are but straw men presented to enhance the selection of the preferred route. In particular, Time Warner believes that West 220th Street is a reasonable alternative to West 219th Street and it should have been evaluated by the Company.

The representatives for the Bronx and Riverdale also believe that Consolidated Edison has skewed the evaluation of alternative routes. Addressing the criteria that Consolidated Edison's engineers used to evaluate the preferred and alternative routes, the community representatives believe that the Company should not have relied exclusively on its engineering criteria expertise. Instead, they believe that broader and more objective criteria should have been used to take community impacts into account to consider other alternatives.

The Manhattan Borough President's Office and Community Board 12 have also examined Consolidated Edison's alternative routes. While they prefer the DPS Staff segment which avoids construction in Manhattan, the Borough President's Office does not oppose the Manhattan segment identified in the Company's Alternatives 1 and 2. They would cross the Harlem River and enter Manhattan from the Roberto Clemente State Park in the Bronx. The Borough President's Office is opposed to the other alternatives through Manhattan.

4. The Joint Monitoring Committee and Yonkers Alternatives

Consolidated Edison and DPS Staff oppose the proposals to place the transmission facility on Interstate 87. The Company is opposed because the construction effort is extraordinary, costly and would require lengthy and specialized construction methods. This construction also poses safety concerns for motorists and construction workers. Such construction is not endorsed by the federal and state agencies responsible for the operation and maintenance of the interstate highways. And the Company does not believe that this alternative has had adequate technical analysis to allow the Commission to certify its use. Nor does the Company believe that the temporary construction impacts related to the transmission facility should be transferred to the users of the interstate highway.

According to the Company, a civil engineering and traffic analysis would be necessary for the Commission to consider any proposal to use the interstate highway system for the transmission facility. It points out that the record in this case does not contain any such analyses.

Nonetheless, Consolidated Edison's engineers are aware of substantial impediments that preclude such routing. They note that Interstate 87 has 21 bridges and the transmission facility would have to be installed beneath a traffic lane on seven bridges. Interstate 87 also has 14 exit and entrance ramps that require special construction methods to avoid them being shut down during construction. The special methods would add to the cost of the project and construction difficulties would add to the expected duration of the project.

Two witnesses presented by the New York State Thruway Authority testified at the New York City hearing about the traffic congestion and grid lock that would occur on the interstate highway if a lane was closed for transmission facility construction. Consolidated Edison is particularly concerned about the safety of placing manholes either on the shoulder of the interstate highway or in the travel lanes.

The federal and state agencies responsible for the interstate highways discourage the longitudinal use of the highways in any and all instances where feasible alternatives exist. In this instance, Consolidated Edison believes that its application presents feasible alternatives and a longitudinal use would not be approved.

DPS Staff also believes that the interstate highway is a poor choice for the transmission facility. It points out that the highway rests largely on exposed bedrock that is not susceptible to easy construction. Without a grass median or wide shoulders, Staff believes the interstate highway in Westchester and the Bronx is unsuitable for an underground electric facility.

In response to Consolidated Edison, the City of Yonkers insists that it is reasonable to place the transmission

facility along Interstate 87 to minimize impacts. Yonkers does not believe that it had to provide any engineering studies or technical analysis to sponsor an alternative route. However, if that is the case, it believes that Consolidated Edison should be faulted for not performing various studies and analyses for the route it selected. According to Yonkers, it is not clear that safety concerns for motorists and workers on Interstate 87 outweigh the safety concerns related to construction in city streets. Further, Yonkers believes that an exception could be made for a longitudinal occupancy of the highway in Westchester, similar to other exceptions that have been granted. Until Consolidated Edison submits an application, it is not certain that the request would be denied.

Also in response to Consolidated Edison, the representatives for the Bronx and Riverdale point out that they supplied traffic statistics from the State Department of Transportation in support of the proposal to use Interstate 87. Like Yonkers, they believe it is the Company's responsibility to provide the engineering evaluation for the reasonable alternative routes. In general, the representatives for the Bronx and Riverdale discount the informal observations provided by Company and Staff witnesses and state that the witnesses' assertions have not been proved or supported by any evidence.

LOCAL LAWS, FILING REQUIREMENTS AND CERTIFICATE CONDITIONS²²

Local Laws

Consolidated Edison states that the transmission facility is designed to comply with applicable building codes and with local, state and federal requirements. In a few instances, the Company had requested that the Commission waive the application of certain local law provisions. This matter is

²² The matters presented in this section are also discussed in a separate ruling and in the last section of this report.

now moot. Consolidated Edison has withdrawn its requests.²³ They are reported here to summarize the Company's concerns and their resolution.

1. City of Yonkers Procedural Rules

Consolidated Edison requested the Commission to waive procedural aspects of the City of Yonkers Code that require City Council approval for technical and engineering permits provided by the Yonkers Department of Engineering. According to the Company, the review of the transmission facility in this proceeding, pursuant to Public Service Law Article VII, eliminates any requirement for review by the Yonkers City Council.

DPS Staff, however, states that there is no need for the Commission to waive "procedural" requirements because the local procedures are supplanted by the Commission's certification process. Staff insists that no local municipality can exercise any approval process because Public Service Law Article VII provides the forum for the resolution of all matters concerning the location of the transmission facility.

To be clear, Consolidated Edison plans to comply with the City of Yonkers substantive requirements for the opening and excavation of city streets. It also plans to comply with the technical and substantive provisions of the Yonkers Code applicable to utility substations. Inasmuch as the Company plans to comply with the substantive provisions and the local procedural requirements do not pertain, DPS Staff proposed that the request for waivers be denied.

The DPS Staff understanding of Public Service Law §130 is correct. Local municipalities are not allowed to impose any approvals, consents, permits, certificates or other conditions for the construction or operation of a major facility. A waiver

²³ Consolidated Edison's Initial Brief, p. 44; Reply Brief, p. 2, fn. 2.

is not needed to accomplish what the statute provides and for this reason Consolidated Edison has withdrawn its request.

2. Westchester County Laws

In its application, Consolidated Edison requested that the Commission waive a substantive requirement of Chapter 813 of the Westchester County Laws. The provision provides specifications for road construction and restricts the storage of material on county roads. Westchester does not believe that the Company has shown that it needs to store material in excess of 20 percent of an area or for more than 100 feet in length. The County suggested that Consolidated Edison consider using alternative storage and the Company has withdrawn this waiver request.

Filing Requirements

With its application, Consolidated Edison submitted a *Motion for Waivers of Application Requirements*. The motion was noticed in the State Register as a rulemaking matter but no comments concerning the motion were received outside of this proceeding. At the public statement hearing in Yonkers, a commenter questioned whether the Company's requests should be granted. In its Initial Brief, DPS Staff provides its review of the Company's requests and states that they are reasonable.

The Commission's regulations require the submission of New York State Department of Transportation maps that show the proposed right-of-way and an area at least five miles to either side of the proposed facility location.²⁴ Consolidated Edison requested that it only be required to show one mile on either side of the transmission facility because it will be underground and the work at the substations will be within the established property lines.

The regulations also require maps and drawings for all the known archeological, geologic, historic, scenic area, parks

²⁴ 16 NYCRR §86.3(1)(i).

and wilderness areas within three miles of the right-of-way.²⁵ The Company considers it impractical to map them all given the urban setting and the underground installation of the transmission facility in existing roadway rights-of-way. Instead, Consolidated Edison identified all such resources within a mile of the project and mapped those directly adjacent to the preferred route.

The regulations further require Consolidated Edison to provide New York State Department of Transportation maps showing the relationship of the transmission facility to the Company's overall system.²⁶ Instead of this map, Consolidated Edison provided a 1993 New York Power Pool Map that shows the project area and the Company's electric transmission system in the New York metropolitan area.

Consolidated Edison is also required to provide aerial photographs of urban areas and urbanizing fringe areas taken within six months of filing its application.²⁷ The Company states that the development of its engineering design precluded photographs of the preferred route within the six month period. Instead, it presented aerial photographs acquired in December 2004 which it believes are sufficiently recent for purposes of this proceeding.

Staff considers the Company's requests reasonable largely because the underground transmission facility is being installed in roadways and previously disturbed sites in an urban setting. It appears clear that granting these waiver requests does not detract from the quality of the application. In each instance, the Company has sought to fulfill the basic requirements with sufficient information, or practically equivalent information. Accordingly, it is recommended that the Commission grant Consolidated Edison's waiver requests.

²⁵ 16 NYCRR §86.3(a)(1)(iii).

²⁶ 16 NYCRR §86.3(a)(2).

²⁷ 16 NYCRR §86.3(b)(2).

Certificate Conditions

1. DPS Staff

In support of the Commission granting Consolidated Edison a certificate for a new transmission facility from Yonkers to Manhattan, DPS Staff has prepared conditions for the Commission's order that cover such matters as the submission of the EM&CP; compliance with local, substantive requirements; work on highways; standards and practices for underground transmission facilities; complaints; site preparation; construction contractors; stop work authority; notifications; right-of-way clearance; transmission line construction; erosion control; environmental supervision; right-of-way maintenance and restoration; conservation and cultural resources.²⁸

Consolidated Edison states in its initial brief that the DPS Staff proposed conditions are acceptable and it does not oppose them.

2. The New York and Presbyterian Hospital

Addressing the possibility that the Commission may decide that the Harlem River tunnel crossing should be near the Broadway Bridge on land that The New York and Presbyterian Hospital owns, the Hospital has proposed the following conditions to minimize and mitigate the impacts to its property:

1. The Company should be required to locate and configure its facilities (including its horizontal tunnel and vertical shaft) and any associate permanent easements situated on the Hospital's property in a manner that is consistent with certain drawings Consolidated Edison has provided to the Hospital, recognizing that certain minor adjustments to the facilities' location may be required during construction as ultimately reflected in "as-built" drawings.

²⁸ Exhibit 21.

2. The Company should be required to place its ventilation chamber and cable pulling chamber that form a part of its proposed facilities, to the maximum extent practicable, within the Ninth Avenue street lines, consistent with certain drawings provided by Consolidated Edison.
3. The size of the permanent subsurface and any surface easements Consolidated Edison actually requires for its structures and facilities on the Hospital's property should be consistent with certain drawings provided by the Company and sized to be only slightly larger than the structures and facilities themselves.
4. The Company should be required to place the surface access hatches that it installs as part of its proposed facilities within the Ninth Avenue street lines wherever practicable and in a manner consistent with the information the Company furnished the Hospital.
5. The Company should be required, to the maximum extent possible, to use Ninth Avenue, rather than the Hospital's property, for staging and temporary workspace. In addition, the duration and extent of any temporary easement Consolidated Edison ultimately requires on the Hospital's property should be as short as possible to minimize interference with the Hospital's medical healthcare and development plans for the affected property.
6. The Company should be required to use Ninth Avenue, rather than any part of the Hospital's property, for any workspace or staging area it may subsequently need for facility maintenance and repair work after the transmission line construction is completed.
7. Consistent with the Company's representations to the Hospital, Consolidated Edison should not be authorized to

install any above grade structures on the Hospital's property.

8. The Company should be required to design any surface structures on the Hospital's property in a manner that will afford the Hospital reasonable ingress and egress to the rest of its property.
9. The Company should be solely responsible for the excavation and blasting it performs under the Hospital's property and for the proper handling and disposal of excavated material, including any contaminants encountered during the course of such excavation or blasting.
10. To mitigate and offset Consolidated Edison's easements, use and occupancy of the Hospital's property, the Company should be required to transfer to the Hospital a 10-foot by 100-foot fee strip of land that bisects the Hospital's property with the understanding that the fair value of the fee strip can properly be taken into account in determining the amount of compensation or damages payable by the Company for necessary property rights and/or construction damages.
11. The Company should be required to reimburse the Hospital for any lost license revenues or other damages that the Hospital incurs as a result of the New York City Transit Authority relocating its vehicles during the period that Consolidated Edison uses and occupies the Hospital's property.²⁹

In response to the Hospital's proposed certificate conditions, Consolidated Edison points out that the parties have

²⁹ The Hospital licenses parking space to the City Transit Authority on the Hospital's property.

been trying to negotiate the terms of the easements it requires. Consolidated Edison considers the Hospital's demands to be unreasonable and a fanciful "wish list." More significantly, the Company claims that the Commission does not have jurisdiction to adopt the Hospital's proposed conditions and they should therefore be rejected out of hand.

According to Consolidated Edison, Public Service Law Article VII addresses the licensing of the transmission facility and does not grant the Commission authority to become embroiled in easement negotiations. The Company asserts that the Commission has no authority to resolve such disputes or to dictate the terms and conditions for property easements between it and private property owners. In support of its position, the Company points out that the Commission's certification process does not supplant the process for obtaining private property rights. It also notes that the Commission has no authority, express or implied, to grant land, easements, licenses, franchises, revocable consents, or any other kind of property rights. Moreover, it states, the Commission plays no role in the property acquisition process or in condemnation proceedings.

For these reasons, the Company claims that the Commission should not address and should leave to the applicant the responsibility to obtain any necessary rights-of-way required for the project. Consolidated Edison particularly objects to the proposal that the Commission direct it to transfer property to the Hospital. It also asserts that the Hospital had an opportunity in this case to demonstrate its future plans for the unused property in upper Manhattan but it did not do so.

In sum, Consolidated Edison believes the Commission should decline the Hospital's invitation to establish the terms and conditions for the easements to use the Hospital's property. Should the parties' negotiations be unsuccessful, the Company believes that the easements are best resolved by the appropriate judicial process that can determine the value of the private property and the rights to be acquired.

On the other hand, the Hospital asserts that the Commission has authority, pursuant to Public Service Law Article VII, to impose conditions governing Consolidated Edison's acquisition of the Hospital's property. According to the Hospital, the conditions it has proposed here have little to do with the negotiation of easement terms. Instead, it states, they pertain to the extent and manner that the Company's preferred transmission route can impact the Hospital's property. The proposed conditions address the impacts and provide reasonable mitigation and sets limits on the impacts. Thus, the Hospital states that they go to the very core of the Commission's responsibility under Article VII to grant a certificate upon such terms, conditions, limitations or modifications of the construction or operation of the facility as is proper and appropriate.

Consolidated Edison and the Hospital also debate the significance of a court decision, *Simonds v. Power Authority of the State of New York*,³⁰ and a Commission order to the circumstances presented here.³¹ According to the Hospital, the Third Department stated in the *Simonds* case that "a determination of the location and routing of a major utility transmission facility and, thus, the acquisition of lands or easements over lands, is within the jurisdiction of the Commission." In response, however, Consolidated Edison points out that the property owners in the *Simonds* case were challenging the condemnation of their properties by the Power Authority and they apparently did not participate in the Commission's certification proceedings. Thus, the Company asserts that the Commission played no role in the property dispute addressed by the courts in the *Simonds* case.

³⁰ *Simonds v. Power Authority of the State of New York*, 64 A.D.2d 746, 406 N.Y.S.2d 639 (Third Dept. 1978).

³¹ Case 04-T-1687, *Long Island Power Authority*, Order Adopting the Terms of a Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need (issued November 23, 2005).

The Hospital also cites the Commission's order concerning a Long Island Power Authority project in support of the proposition that a proper evaluation of environmental impacts includes consideration of disturbances to residential and commercial properties in densely populated areas. Consolidated Edison observes that there is no indication in the order that there were any disputes before the Commission from any property owners opposed to Power Authority's acquisition of their property.

3. Time Warner

If the Commission does not adopt Time Warner's proposal to place the transmission facility on West 220th Street (instead of West 219th Street), the cable television company proposes that the Commission's certificate contain the following conditions and requirements:

1. Prior to commencing construction, the Company should obtain an agreement with the New York State Department of Environmental Conservation on a protocol to prevent further inquiry concerning Time Warner's property located adjacent to Ninth Avenue between West 219th and West 220th Street as a result of Consolidated Edison's construction of the transmission facility. The protocol should involve a procedure for closing spill number 0606021 that was opened because of the strong petroleum odor in Consolidated Edison's soil boring locations.
2. Prior to commencing construction, the Company should prepare and submit plans to the New York State Department of Environmental Conservation for minimizing storm water infiltration in the trench along Ninth Avenue and to control ground water flow on to Time Warner property.
3. The Company should be solely responsible for the proper handling and disposal of any contaminants encountered

during the course of excavation, trenching and manhole installation.

4. Prior to commencing construction, the Company should provide the exact location of the closest excavation to the Time Warner property line. Consolidated Edison should also provide the width of the trenching area; the total depth of the excavation activities to install the transmission line; the width, length and depth of the excavation required for installation of the manhole; and the distance from the closest edge of the excavation for the manhole to the Time Warner property line.
5. The Company should provide the length of time any excavated portion along Ninth Avenue will remain open and the time of year construction work is scheduled along Ninth Avenue.
6. The Company should schedule excavation and trench work during low-precipitation months to control storm water runoff. Installation during the summer would minimize the potential for storm water infiltration to occur during drier weather.
7. The Company should minimize the amount of exposed trench during transmission line installation. Non-active trench should be covered by steel plate or other materials and bermed to limit the amount of storm water draining into the trench.
8. The Company should provide detailed storm water runoff maps and proposed diverting measures in a submission to the New York State Department of Environmental Conservation.

9. The Company should install wells along the trench adjacent to the Time Warner property to extract ground water and control flow. The wells and the pumping system should be designed to capture storm water that may infiltrate the trench. The pumping system effluent should be treated and discharged into the New York City sewer system.
10. The Company should install a bentonite slurry wall or temporary freeze wall east of the trench. The wall should be installed to a depth below the water table and should create a physical barrier to limit petroleum-impacted ground water from entering the Time Warner property.
11. The Company should indemnify Time Warner for any environmental cleanup that must be conducted on Time Warner's property that was directly or indirectly caused by construction of the transmission facility.
12. The Company should limit construction along Ninth Avenue and on West 219th Street to nighttime or hours identified by Time Warner as "off-duty" hours to minimize interference with Time Warner operations.
13. The Company should locate the transmission facility trench as close to the western edge of the sidewalk on Ninth Avenue as the bend from Ninth Avenue to West 219th Street will allow to ensure that construction does not encroach on Time Warner property and to buffer the migration of contaminants.
14. The Company should relocate the manhole on Ninth Avenue to a location north and closer to the tunnel exit so that access to the Time Warner driveways on Ninth Avenue are not blocked or impeded.

Consolidated Edison did not have an opportunity to address Time Warner's proposed conditions because they appeared for the first time in the cable television company's reply brief. The Company has therefore moved to strike them. This matter is addressed in the procedural ruling issued today and is discussed further in the discussion section of this report.

4. The City of New York and Westchester County

The City of New York requests a certificate condition that would require Consolidated Edison to work closely with the City's agencies to ensure that the design, construction and operation of the project will minimize disruptions to traffic and to ensure that city services and infrastructures (such as water supply and sewer facilities) will not be adversely affected. The City agencies the Company should work with include its Department of Transportation, Department of Environmental Conservation and the Police and Fire Departments, among others.

Like New York City, Westchester County is relying on representations that Consolidated Edison made to it during this proceeding. The County requests that the Commission's decision in this case contain a condition that incorporates by reference the Company's commitments. In response, Consolidated Edison asserts that its commitments to the County belong in the EM&CP for the project and they should not be made into certificate conditions.

With respect to both the City of New York and Westchester County, the parties should draft the specific condition(s) they believe the Commission should adopt on their behalf and provide them with their respective briefs on exceptions. This will provide the Company an opportunity to respond to the actual conditions the parties believe are warranted. It will also provide the Commission an opportunity to examine the conditions desired by the local municipalities.

ACADEMY SUBSTATION

No party has presented any contested issues concerning Consolidated Edison's proposal to construct and operate the Academy Substation. However, Community Board 12 has stated, in its initial and reply briefs, several concerns about the substation that the Company has not addressed in its briefs.

Community Board 12 considers the site for the new substation a "brown field" because a power generation station previously operated at this location. Because of the prior use, Community Board 12 is concerned about the safe removal of ground materials and soil that may be contaminated. The Board is concerned also about the distribution system facilities in the substations that will serve Washington Heights and Inwood.

Community Board 12 requests that the local community receive advance notice of construction activity and periodic reports of the progress made on the transmission line and the substation. The Board also requests that Consolidated Edison address construction noise levels and provide it the Company's noise mitigation measures. It also asks that Consolidated Edison provide information concerning fire safety matters and its plans for a worst-case scenario.

The Board has proposed that the Company hire an independent environmental inspector to oversee substation construction and safety. It also believes that multilingual personnel should be available to receive community complaints and suggestions.

As a consequence of installing the new substation, Community Board 12 believes that Academy Street can become again a public street after having been closed for 100 years. It also believes that the north side of Sherman Creek can be improved and be made available for public uses, such as picnicking, fishing and recreation. Similarly, it believes that the Company property adjoining the Harlem River can be improved and a promenade can be installed to link five streets and form a park. In addition to maintaining waterfront park areas and providing

adequate security for the substation, the Board recommends that trees and shrubs be provided, where appropriate, along the transmission route.³²

It appears that the Company may be able to satisfy some of Community Board 12's concerns by providing the Board an opportunity to examine the EM&CP provisions addressing the substation. However, the record is unclear in this case because Consolidated Edison's briefs do not address these matters that the Community Board raised throughout this proceeding.

DISCUSSION AND RECOMMENDATIONS

In this case, the Commission must decide whether or not to provide a certificate of environmental compatibility and public need to Consolidated Edison for the new transmission facility it has proposed between Yonkers and upper Manhattan. Public Service Law §126 states clear parameters for the Commission's action.

§ 126. The decision

1. The Commission shall render a decision upon the record either granting or denying the application as filed or granting it upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the Commission may deem appropriate. If the Commission denies the application, it shall file, with its order, an opinion stating in full its reasons for the denial. Except as provided in subdivision two of this section, the Commission may not grant a certificate for the construction or operation of a major utility transmission facility, either as proposed or as

³² Community Board 12 also proposes that discount electric rates be provided to customers who are affected by this project. However, the Board does not appear to know that any such discounts are generally precluded by the Public Service Law. See PSL §65(2).

modified by the Commission, unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations including but not limited to, the effect on agricultural lands, wetlands, parklands, and river corridors traversed;

(d) in the case of an electric transmission line, (1) what part, if any, of the line shall be located underground; (2) that such facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, which will serve the interests of electric system economy and reliability;

(e) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, all of which shall be binding upon the Commission, except that the Commission may refuse to apply any local ordinance, law, resolution or other action or any regulations issued thereunder or any local standard or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of such municipality.

(f) that the facility will serve the public interest, convenience, and necessity,³³

³³ PSL §126 (e) pertains only to gas transmission lines and the remainder of subsection (g) is inapplicable here.

3. If the Commission determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities and persons residing in such municipalities affected by the modification shall have had notice of the application as provided in subdivision two of section one hundred twenty-two.³⁴

With these requirements in mind, matters related to the need for the transmission facility can be quickly laid to rest. Consolidated Edison and DPS Staff have demonstrated that the transmission facility will provide system reliability, opportunities for economic energy dispatches, and that it fits into the long-term plans for expanding the electric power grid. None of these matters is challenged by the parties who participated in this proceeding. Thus, the Commission can find that the proposed transmission facility is needed and is in keeping with the State's plans for the delivery of electricity in the greater New York City metropolitan area.

It can also be quickly noted that the proposed transmission facility is an underground cable that will only surface when it crosses several bridges. This statutory matter is addressed by the applicant and it is not a contested matter. No party has proposed that the transmission facility be placed overhead or that any alternative technology be used. Thus, the Commission can rule on these matters with dispatch as well.

Moreover, the underground transmission facility will be located in a densely populated urban area where it does not raise any substantial concerns for the natural environmental setting. Minimum adverse environmental impacts to visual, aesthetic, and cultural resources are achieved by the underground installation of the cable. Also, on the proposed route between Yonkers and upper Manhattan, there are no terrestrial ecology or wetlands of note or concern. And the use

³⁴ PSL §126 (2) is inapplicable here.

of the curb-to-curb portion of existing roads, and other disturbed areas, eliminates potential concerns about archeological resources and vegetative communities. Wildlife habit will not be affected by this transmission facility. Nor does it appear that any water resources will be adversely impacted by using bridges and a tunnel to cross the rivers and streams between Yonkers and upper Manhattan. Consequently, with respect to the natural environment where the transmission facility will be placed, the Commission can find that the probable environmental impacts are known and that the transmission facility represents the minimum adverse impacts to the natural environment.

The impacts of most concern here are those related to the construction activity Consolidated Edison's contractors will perform. If performed poorly, the construction work could have an adverse environmental impact. For this reason, the Company will provide an environmental management and construction plan (EM&CP) and submit it for Commission approval before any construction work begins. Compliance with the EM&CP will ensure that only proper construction activity is performed and no damage to the natural environment occurs. Also, the certification conditions that DPS Staff has proposed will provide it the ability to monitor construction work and see to it that all adverse environmental impacts are kept to a minimum.³⁵

While it is a relatively easy matter for the Commission to render its need and environmental findings for this transmission facility, this case is far more difficult when it comes to the selection of the best route for the proposed facility to minimize construction work impacts on the local communities.

The local community concerns presented here do not relate to the application of any local ordinances, laws, resolutions, standards or requirements. The Company has

³⁵ Exhibit 21. See also, Exhibits 22 and 23.

withdrawn its request for the Commission to waive any of the substantive provisions of local law. Thus, the construction and operation of the transmission facility will comply with the existing municipal requirements. Consolidated Edison has also withdrawn its request for Commission action with respect to any local procedural requirements on the basis of a proper understanding of Public Service Law §130 which states that no municipality, or any of its agencies, may require any approval, consent, permit, certificate or other condition for the construction or operation of a major facility for which a Commission certificate is had.

Addressing first the local community concerns about the route chosen for the transmission facility, the alternatives identified by Consolidated Edison were fully considered on the record and no party expressed any interest or full support for them.³⁶ The Company and DPS Staff testimony, in fact, ruled out the use of these alternates and generally support the selection of the preferred route in whole or in part. No party has controverted the evidence ruling out the alternatives examined by Consolidated Edison in its application.

Instead, the parties (including DPS Staff) have identified their own alternative routes, and segments, and have requested that the Commission use its statutory authority to require that the transmission facility be located elsewhere. As noted above, the Commission has full authority to modify the location of the proposed facility and to grant a certificate for an electric transmission facility which, in its judgment, best serves the public interest, convenience and necessity.

In Yonkers, the local parties have presented a case for routing the transmission facility on Interstate 87.

³⁶ The Manhattan Borough President's Office supports the final leg of Consolidated Edison Alternatives 1 and 2 crossing the Harlem River from the Roberto Clemente State Park in the Bronx. However, it takes no position on the Company's alternative routes that are entirely outside of Manhattan's interests in this case.

However, the case for placing the facility within the highway area is not persuasive. Transmission facility construction along Interstate 87 is highly problematic and its impact on interstate motorists is potentially severe. The testimony provided by Consolidated Edison, DSP Staff and the New York State Thruway Authority demonstrate that Interstate 87 is a poor choice and does not provide a good route for the transmission facility.

The local parties from Riverdale and the Bronx also decided to present a case for using Interstate 87, but to no greater advantage than the parties from Yonkers. The difficult construction problems and the substantial potential for interference with interstate traffic present in Yonkers are also manifest in the Bronx.

Consolidated Edison's preferred route was purposefully chosen by the Company for possessing attributes that its engineers, in their professional and expert capacity, deemed necessary for this project to succeed. The engineers' criteria appear to be in keeping with the generally accepted and commonly applied principles used to construct major transmission facilities in urban settings. Attached to the Joint Proposal entered into by Consolidated Edison and the State Department of Transportation is a description of the selection criteria that were used to distinguish the preferred route from several alternatives. The criteria call for a direct route between the Yonkers and Manhattan substations (with few bends and manholes) that avoids other transmission routes that are currently used to provide electricity to the greater New York City metropolitan area. Consolidated Edison has also sought a route with the fewest bridge crossings that does not require specialized construction methods and avoids major transportation corridors.

The Company applied these criteria to the eight routes detailed in its June 2006 Application and determined that the preferred route ranked well because it minimized bridge crossings, required fewer bends and manholes, did not require specialized construction methods, and it avoided other

transmission line routes and the limited-access highways that run through Westchester and the Bronx.

Consolidated Edison's route selection criteria were a major focus of the New York City hearings because the Company's criteria do not evaluate and rank any of the factors of importance to the municipalities and private citizens who are most impacted by the Company's proposal to construct a new facility. For example, the criteria do not consider the impacts that transmission line construction will have on neighborhoods and commerce in Yonkers, Riverdale, the Bronx and Manhattan. Moreover, the inconveniences related to transmission line construction are not detailed in Consolidated Edison's application. These considerations, their management and resolution, are relegated to the next phase of the construction review process--the management and construction plan (EM&CP) portion of the project and this proceeding.

To be clear, the June 2006 Application and the evidence adduced in this case provide an ample basis for the Commission to find that that the project's construction, operation and maintenance requirements do not impose any permanent or unacceptable environmental impacts that would preclude the construction of the proposed facility on the preferred route. While local community inconvenience was not an explicit part of the route selection process, as presented by Consolidated Edison in its June 2006 Application, the nature of the construction impacts was fully evaluated and the impacts do not suggest that this facility should not be constructed.

The record of the public statement hearings, the comments received, and the active participation of local representatives in the evidentiary hearings, all provide the Commission a clear indication of how much the transmission facility construction work will disturb the residents, businesses and municipal services in Yonkers, Riverdale, the Bronx and upper Manhattan. Construction noise is inevitable and traffic lanes will be needed for construction. For as long as it takes to install the transmission cable, the local

communities will be adversely affected by this construction activity. For this reason, only the most suitable route on city roads should be selected and a concerted effort should be used to minimize the community impacts.

Noises produced during construction will be within the range commonly experienced during such activity and will be in keeping with the type of construction equipment that this project requires. Consolidated Edison plans to mitigate construction noise as much as possible so as to reduce and minimize the community impacts. Nonetheless, noise impacts during construction are not entirely avoidable nor should they be considered a valid reason for not certifying this transmission facility. The salient question here is whether the noise impacts might best be sustained elsewhere, along some other local route, where they would be less intrusive and inconvenient. No such alternative has been identified on the record established in this case to date.

Traffic congestion and interference will also occur in each of the local communities for as long as it takes Consolidated Edison and its contractors to open the road, lay the pipe, close the pit and repave the roadway along the preferred route. In general, the Company estimates that this process could take from two to four weeks at any given location, assuming ground and road conditions do not present any unexpected circumstances that require special techniques or more time consuming construction activity. As is the case with the noise impacts along the preferred route, one can only wonder whether there are any local roads, other than the ones on the preferred route, where traffic impacts would be less disruptive to the local communities. No such alternatives have been established on the record.

Local businesses will certainly incur adverse impacts to their operations as this project will make it more difficult for their customers and suppliers to gain access to their facilities. The Company has committed itself to make the best suitable arrangements with the local firms that it can; however,

these impacts cannot be eliminated and they will be disconcerting to the business establishments. Again, the only serious question outstanding is whether there are any more suitable local roads available for the transmission facility where the impact on local commerce would be less disruptive.

The civic support needed for effective police, fire and emergency services is a responsibility that cannot be taken lightly. The potential for transmission facility construction to impede the delivery of these vital services is a real possibility that cannot be ignored. It should not be assumed from the record established here, however, that Consolidated Edison, or any of its contractors, would intentionally place the provision of police, fire and emergency services at risk. The Company has not exhibited any intent to ignore or evade its civic responsibilities. As Consolidated Edison has suggested, the best approach for addressing the details for maintaining access and good road conditions for the provision of these public services is in the environmental management and construction planning (EM&CP) process. However, the EM&CP process, in this instance, should not follow the certification process. The Commission should examine the components of the EM&CP that pertain to the local community impacts of greatest concern to ensure that they are acceptable before Consolidated Edison receives its certificate.

Consolidated Edison indicates that it plans to provide parties an opportunity to review its EM&CP in May 2007 for submission to the Commission in June 2007.³⁷ If the Company executes this process, it may be possible for it to provide an adequate EM&CP for the Commission to review and approve at the same time it considers the Company's application for a certificate. If not, the EM&CP review process could have the effect of postponing the Company's receipt of a certificate if the presiding officer's recommendation is adopted.

³⁷ Consolidated Edison's Initial Brief, pp. 22 and 23.

Focusing now on the issues related to the Manhattan portion of the transmission facility, a persuasive case has not been made for the alternative route proposed by DPS Staff and supported by several Manhattan parties. It does not appear that the transmission facility is compatible with the Metro North rail lines that are proximate to the alternative route. The transmission facility feeder pipe would be highly vulnerable and susceptible to corrosion due to the direct current electricity emanating from the Metro North lines. Construction along this route is also encumbered by two, very large storm sewers and special construction techniques would be required on the waterfront where the transmission facility would run to keep the support bed for the Metro North trains stable. Before further consideration could be given to any such alternative, DPS Staff (or another party) would have to address Consolidated Edison's construction concerns and demonstrate that they are surmountable at a reasonable cost, or that they are not as severe or as substantial as the Company has suggested.

Another significant routing alternative was presented by Time Warner. In this instance, construction of the transmission facility on West 220th Street cannot be ruled out by the record information. At most, Consolidated Edison has established that it has not studied the use of West 220th Street as closely as it has studied West 219th Street. However, the same could be said about every alternative identified on the record in comparison to the preferred route, including the alternatives offered in the Company's application. Consolidated Edison's lack of familiarity with a reasonable alternative presented by another party does not provide sufficient grounds to rule the alternative out of the running.

The most critical concern about the Time Warner alternative has been identified and pursued by The New York and Presbyterian Hospital. The alternative segment comes closer to the entrance of the Allen Pavilion than does the route proposed by Consolidated Edison. However, whether or not the alternative comes too close to the medical facility entrance so as to

preclude the siting of the transmission facility on West 220th Street is a close call made difficult to assess by the parties' marshalling of the available evidence and the quality of their arguments.

Time Warner contends that the alternative route does not come too close while the Hospital claims it does. Unfortunately, the information supplied by the Company and DPS Staff does not help to resolve this difficult matter. On the one hand, the Allen Pavilion is a health facility that cannot be impeded from providing important medical services to the local community. On the other hand, the Time Warner cable television facility in upper Manhattan is a significant local business that should not be put to any enterprise or commercial disadvantage. The use of either street appears to be viable at this stage of the proceedings and the most salient question is whether the placement of the transmission facility on one street or the other produces unacceptable impacts, or major inconveniences, for either of the two entities involved. If it can be clearly shown, by the arguments provided in the parties' briefs on exceptions, and replies, that the use of West 220th Street does not conflict with the entrance to the Allen Pavilion, I would recommend the alternative route segment presented by Time Warner.

Related to The New York Presbyterian Hospital and Time Warner siting proposals are various certificate conditions the parties have submitted for the Commission to consider. The proposed conditions recognize that the Harlem River tunnel crossing is the most difficult and time consuming construction planned for the transmission facility. The river crossing is at a congested location near the Broadway Bridge and both parties are deeply concerned about the construction impacts on their respective operations and properties in upper Manhattan.

Consolidated Edison has claimed that none of the conditions proposed by The New York and Presbyterian Hospital pertain to this proceeding and that they can only be considered in the context of the easement rights the Company must acquire

to proceed with the project. With the exception of but one of the Hospital's proposed conditions, I find that all the rest are entitled to careful consideration in this proceeding and are within the Commission's authority to adopt.

The certificate that Consolidated Edison may receive can be granted on such terms, conditions, limitations and modifications to the construction and operation of the facility as the Commission determines is in the public interest and convenience. The Commission could well find that the Company's compliance with the Hospital's conditions is necessary to minimize the facilities' impact in the vicinity of Allen Pavilion and on the Manhattan side of the Broadway Bridge. Only Hospital Condition Number 10 has no direct bearing on the construction and operation of the transmission facility. In this proceeding, the Commission has no reason or basis to direct Consolidated Edison to transfer to the Hospital any of the land rights it has in upper Manhattan. That being so, there is no basis for the Commission to consider adopting it; nonetheless, the remaining conditions are proper and can be adopted.

Time Warner also proposed certificate conditions but they were presented in the cable television company's reply brief. This deprived Consolidated Edison of an opportunity to address them. For this reason, the Company should address the Time Warner proposed conditions in its brief on exceptions.

Finally concerning the substations for the transmission facility in Yonkers and upper Manhattan. Consolidated Edison's initial brief did not adequately address substation construction in light of the public comments and the local community involvement in this case. With respect to the Sprain Brook Substation, the Company has indicated that the visual impacts will be consistent with the existing facilities; however, the citizens and representatives of Yonkers are aware of new development planned for the Ridge Hill area and traffic congestion on Tuckahoe Road, all in the vicinity of the Sprain Brook Substation. The Company has not addressed these matters sufficiently.

Similarly, with respect to the Academy Street Substation, Community Board 12 has stated clearly its concerns about the area surrounding the new substation. Consolidated Edison has not provided a detailed response to the Community Board nor has it shown how the construction of the new substation will serve and improve the Inwood community. These matters about the two substations are important and they should be addressed in the Company's brief on exceptions.

THE PRESIDING OFFICER'S RECOMMENDATIONS:

1. The Commission should certify Consolidated Edison's preferred route in Yonkers and the Bronx unless the local community representatives identify other local roads just as suitable for a transmission facility that would reduce and minimize the local community impacts.

2. The Commission should reject the proposed use of Interstate 87 as a route for the transmission facility.

3. In Manhattan, the Commission should certify Consolidated Edison's preferred route, using either West 220th Street or West 219th Street.

4. The Commission should reject the DPS Staff proposal to route the facility in the Bronx adjacent to the Metro North railroad lines on the banks of the Harlem River.

5. Consolidated Edison should not receive a certificate of environmental compatibility and public need from the Commission until it provides acceptable plans that address and show how the construction related, local community impacts in Yonkers, Riverdale, the Bronx and Manhattan will be minimized. The Company's local community impact plans and reports should include:

- a. A noise mitigation plan.
- b. A traffic mitigation and public transit coordination plan.
- c. A municipal services plan addressing police, fire and emergency services.

- d. A local commerce and business plan containing the Company's actions to inform commercial establishments of construction activity and to minimize interference with their businesses.
- e. A community outreach plan containing the Company's programs for informing local residents, religious institutions, schools and others about construction activity and its plans to minimize interference with community and social activity.
- f. A construction project coordination plan for timing the installation of the transmission facility construction with other construction and community projects along the approved route so as to avoid unacceptable combined impacts for local residents, businesses, and community services.

May 29, 2007
WB/emn