

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 20, 2011

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 10-T-0283 - Joint Petition of Consolidated Edison Company
of New York, Inc. and Orange and Rockland
Utilities, Inc. Under Section 121 of the PSL to
Transfer its Certificate of Environmental
Compatibility and Public Need.

ORDER APPROVING TRANSFER AND ENVIRONMENTAL
MANAGEMENT AND CONSTRUCTION PLAN

(Issued and Effective January 24, 2011)

BY THE COMMISSION:

INTRODUCTION

By joint petition filed June 9, 2010, and amended
September 1, 2010, Consolidated Edison Company of New York, Inc.
(Con Edison) and Orange and Rockland Utilities, Inc. (O&R)
(together, Petitioners) seek approval, pursuant to Public
Service Law §121(2), to transfer a portion of Con Edison's
Certificate of Environmental Compatibility and Public Need
(Certificate) to O&R, to an extent that O&R will be authorized
to install, operate and maintain an additional circuit on
existing transmission towers in Con Edison's right-of-way. The
Petitioners are also seeking approval of a lease agreement for

use of Con Edison's towers, which is being considered in a separate case proceeding.¹

The original Certificate, granted in 1972², authorized Con Edison to construct, operate and maintain approximately 64 miles of 345 kV transmission line traversing Rockland, Orange and Sullivan counties. The Certificate described two separate segments, an East-West segment running from the Rock Tavern Substation located in the Town of New Windsor, Orange County, to the Coopers Corners Substation in the Town of Thompson, Sullivan County, and a North-South segment running from the Ramapo Substation in the Town of Ramapo, Rockland County, to the Rock Tavern Substation described above. The two segments together are known as the Southern Tier Interconnect (STI).

In the Order granting the Certificate, Con Edison was directed to construct the North-South route with towers that could accommodate two 345 kV circuits, although only one circuit was needed at that time. The additional circuit was anticipated to be needed by the early 1980's³; Con Edison was directed to construct the towers as a double-circuit facility in order to minimize future intrusions to the environment where future need or capacity was foreseeable. The Order allowed Con Edison to install the additional circuit with prior notice to the

¹ See Case 08-M-0882, Consolidated Edison Company of New York, Inc., et al. - Lease Agreement.

² Cases 25845 and 25741, Consolidated Edison Company of New York, Inc. - Southern Tier Interconnect, Opinion No. 72-2 (issued January 25, 1972). As the present electronic document filing system does not recognize the five-numeral system previously used by the Commission, a new case number was assigned to this proceeding.

³ Ibid., mimeo p. 33.

Commission⁴; Con Edison has not installed that circuit. The Petitioners are seeking transfer of the portion of the Certificate pertaining to the available space for the additional circuit on the North-South transmission towers as described in detail in Attachment A. As a significant period of time has passed since the original Certificate was granted, Department of Public Service Staff (Staff) requested that O&R present an assessment of potential environmental impacts associated with the installation of the proposed additional circuit, Transmission Line 28, within its Environmental Management and Construction Plan (EM&CP). This order will first discuss the transfer of the Certificate, and then the EM&CP.

Petitioners have provided notice of the proposed transfer and EM&CP to all relevant parties to the original proceedings as well as all owners of property within 500 feet of the edge of the right-of-way. Public statement hearings were held in the project area on September 16, 2010, in Warwick and Monroe, both located in Orange County, New York; one person spoke on the record. Petitioners published notice of the EM&CP submission in the Times Herald-Record and The Journal News, both newspapers of general circulation in the proposed project area. Comments were received from several state agencies. No comments were received relating to the Certificate transfer. The comments received are addressed below.

THE PETITION

The Certificate holder, Con Edison, is a wholly-owned subsidiary of Consolidated Edison, Inc. (CEI) and is an electric, gas, and steam corporation. In addition to its other services, Con Edison supplies electric delivery service to New

⁴ Ibid., mimeo p. 100.

York City and Westchester County. O&R is likewise a wholly-owned subsidiary of CEI, and is an electric and gas corporation. It supplies electric services in Orange, Rockland and Sullivan Counties. In addition to being uniquely positioned to cooperate with Con Edison as an affiliate, the Petitioners state that O&R already maintains, under contract with Con Edison, the 345 kV overhead transmission facilities owned by Con Edison within O&R's service territory, including the North-South leg of the STI. The joint petition states O&R's agreement to comply with the terms, limitations and conditions contained in the original Certificate and has included an affidavit of its Vice President of Operations, James Tarpey, stating its commitment to do so.

EM&CP

An EM&CP for installation by O&R of Transmission Line 28 was attached as Exhibit A to the joint petition. Amendments to the EM&CP were submitted by O&R in response to comments received on September 29 and November 30, 2010. The EM&CP includes the information required by the January 18, 1972 Certification Order for the STI project. That Order directed the preparation of a detailed EM&CP for the STI transmission facility including: construction plans, profiles and specifications that show the right-of-way boundaries, the tower types and other structures, the types and manner of vegetation clearing and disposal, the location of all temporary and permanent access roads, vegetation management techniques to be employed, protective buffer zones for streams, wetlands and other significant natural features, the results of cultural resource and significant habitat studies, proposed landscape screen plantings, mitigation measures, and construction supervision and oversight for ensuring compliance with the Certificate.

The Petitioners provided Staff with a chart showing how the present Transmission Line 28 EM&CP complies with the terms of the original Certificate granted to Con Edison. The EM&CP for installation of Transmission Line 28 meets the requirements of the Certificate, and also provides additional information that is commonly required by more modern Article VII certification proceedings. In addition to the components described above, the EM&CP provides information on: identification, protection and mitigation of impacts on sensitive resources including rare and endangered species and their habitats, long range transmission vegetation management plans, public notification requirements, erosion and sediment control methods, dust suppression, pollution prevention and good housekeeping practices, construction scheduling, transportation and other utility crossings, general cleanup and restoration techniques, supervision and inspection, including issuance of stop work orders, compliance inspections and audits, provisions for EM&CP revisions during construction, and a community outreach plan.

The supplements to the EM&CP submitted on September 29 and November 30, 2010, outline comments that O&R received either directly or, that were filed with the Secretary to the Commission. The supplements address concerns of the Town of Warwick, Rockland County Solid Waste Management Authority, Rockland County Division of Environmental Resources, Rockland County Drainage Agency, Palisades Interstate Park Commission, New York State Thruway Authority, New York State Department of Environmental Conservation, and Staff.

COMMENTS

Comments were received from several State agencies and from Rockland County. One person spoke on the record at the

public statement hearings sessions. No other comments were received from members of the public.

Public Statement Hearings

The Supervisor of the Town of Warwick spoke at the September 16, 2010 public statement hearing held at the Warwick Public Library. He expressed concerns including whether the project would benefit the local community, whether the vegetative clearing would be in accordance with O&R's vegetation management plan, and a statement that he does not want excessive vegetation clearing for this project. He requested O&R to address the effects of the project on the Indiana Bat, Bog Turtle and the Timber Rattlesnake, and requested that measures be taken to protect Trout Brook and other stream crossings. No other parties spoke at the public statement hearing.

New York State Thruway Authority

The New York State Thruway Authority submitted comments stating that it has jurisdiction over the I-87, the New York State Thruway. It noted that a permit for crossing the Thruway must be obtained from it.

Rockland County Division of Environmental Resources

The Rockland County Division of Environmental Resources (Rockland County) stated that the existing North-South transmission line traverses the 497-acre property known as Wrightmen's Plateau which is County/State Parkland property that is jointly owned by the Palisades Interstate Park Commission (PIPC) and Rockland County. It states that the property was purchased to protect the adjacent Torne Mountain and environs and opines that the existing North-South transmission facility has had little impact to the property, other than some visual impact, since its original installation in 1972.

Rockland County offers several recommendations with regards to O&R's EM&CP. It describes that access to the

existing North-South transmission facilities will be over existing unimproved access road originating from Torne Brook Road and states that this will traverse Wrightmen's Plateau. Rockland County states that the road requires significant drainage and grading improvements and that best management practices should be implemented to prevent runoff into the Torne Brook which is classified as a BT-stream that supports trout spawning and is the only such area in Rockland County. It further notes that grading and drainage improvements to the access road will be a benefit to hikers that utilize the road for access to Torne Mountain hiking trails.

Rockland County notes that five wire-pulling sites are located on the Wrightmen's Plateau property and that, as opposed to excavating a "pad" by removing existing rock, it prefers that O&R add a sub-base material to be compacted at the locations to level the sites. It states that upon project completion, the material can be removed and the sites restored to original condition and contours. Rockland County further notes that six locations were identified for requiring removal of rock outcrops and that it could not identify those locations. It states it is opposed to removal of any rock outcroppings on Wrightmen's Plateau.

Rockland County agrees that an Environmental Monitor should be assigned to the site during the entire construction phase. It states that Timber Rattlesnake monitoring is extremely important from May 1 to September 30. It suggests that Timber Rattler monitoring should be undertaken daily before work commences at a construction site and a licensed snake handler should relocate any snakes observed in harm's way. It also supports the use of "spotters" walking in front of any construction vehicles traversing potential snake habitat as described in the EM&CP.

Department of Environmental Conservation

The New York State Department of Environmental Conservation (DEC) submitted comments by letter dated September 27, 2010. DEC states that it believes that in order to help minimize adverse environmental impacts from the project, certain additional items must be incorporated onto the EM&CP. DEC describes that if the recommendations are not followed, the project may result in significant impacts to the environment including but not limited to impacts to endangered or threatened species and their habitat; stream and wetland resource impacts; and the spread or exacerbation of invasive species.

DEC states that the project construction schedule is not sufficiently specific in listing time frames of construction to avoid or mitigate impacts to endangered or threatened species or in specifically describing restrictions for crossing protected streams to avoid fish impacts. DEC states that O&R's General Permit , DEC 3-9903-00066 that is applicable to protected streams, freshwater wetlands, and freshwater wetland adjacent areas only, is an expired version and that the new DEC General Permit should be included in the EM&CP. DEC states that O&R should practice interim measures to contain invasive species including education of right-of-way maintenance workers about invasive species, identification of occasions and work activities that would trigger cleaning activities, identification of methods to prevent and control the transport of invasive species from the utility right-of-way, and identification of methods to clean equipment and clothing. DEC also recommends O&R consider special equipment and personnel clothing cleaning prior to crossing or work in areas near Sterling Forest Park and in the vicinity of the Appalachian Trail in the Town of Warwick. It suggests that any replacement trees, shrubs, or other groundcover plants be of the same

species as those removed and that no invasive species be utilized.

DEC states that it does not support the use of stone as fill in wetland areas and that it should only be used as a last resort when wetland and timber mats are impractical. DEC also notes that the list of stream crossings included in the EM&CP is incomplete. It notes an additional 11 protected streams⁵ that will be impacted by the project and states that all disturbances to New York State protected streams and wetlands should be located and described by O&R for each resource including any disturbances to stream bed, ground disturbances, and access to and clearing around those locations. DEC further describes that wetland boundaries must be delineated and verified describing an inconsistency with the delineations described in certain areas and offers assistance in validating those areas.

DEC requests that the area between Ramapo Substation to three miles west along the right-of-way be monitored for Timber Rattlesnakes, that only State-licensed Timber Rattlesnake Monitors be utilized, and that work should take place only from November 1 through March 30 to further protect the Timber Rattlesnakes.

DISCUSSION AND CONCLUSION

Public Service Law §121(2) permits us to approve the transfer of a Certificate of Environmental Compatibility and

⁵ The identified streams include: NJ-12-3 Class B Torne Brook; NJ-12-4 Class B Trib. to Ramapo; NJ-12 Class A(t) Ramapo; NJ-12-5-1A Class B Trib. to Ramapo; Trib. to NJ-12-5-1A Class B; NJ-12-5 Class B Trib. to Ramapo; NJ-12-5-1-1 Class B Trib. to Ramapo; NJ-12-5-1 Class Trib. to Ramapo; NJ-13-1-5 Class C(t) Summit Brook; NJ-12-15-P1007-2 Class AA(t) Trib. to Warwick Brook; and H-89-19 Class (t) Trout Brook.

Public Need where the transferee agrees to comply with the terms, limitations and conditions of the Certificate. O&R as described, is qualified to comply with the Certificate and has agreed to comply with the terms, limitations, and conditions contained in the Certificate granted to Con Edison in Case 25845. We will approve the transfer of a portion of the Certificate granted in to Con Edison in Case 25845 to O&R, to the extent described in Attachment A.

Several parties raised concerns with regards to the EM&CP. O&R has endeavored to address the concerns of those parties through the supplements to the EM&CP. O&R responded to the concerns raised by the Town of Warwick, and has outlined the sections of the EM&CP where detailed plans for vegetation clearing, details of rare, threatened and endangered species present within the project area, plans for mitigating impacts to the Bog Turtle and Timber Rattlesnake, and methods for crossing streams can be found. Likewise, O&R through its supplements has addressed New York State Thruway Authority's comments and has committed to obtaining a road crossing permit. O&R shall obtain consent of the New York State Thruway Authority prior to construction and shall provide the Secretary with a copy of such consent.

Rockland County Division of Environmental Resources outlined concerns with drainage and grading of Torne Brook Road, runoff into Torne Brook, levelization of wire-pulling sites on the Wrightmen's Plateau, and removal of rock outcrops. Through the supplement to its EM&CP, O&R has responded to these concerns. Access to the STI right-of-way over Wrightmen's Plateau will be over the existing access that originates from Torne Brook Road that the County believes needs significant drainage and grading improvements. O&R describes that it intends to make only minor improvements to the existing access

roads and that it will implement the Soil Erosion and Sediment Control Best Management Practices in accordance with the New York Guidelines for Urban Erosion and Sediment Control. These practices, as described in the EM&CP, are suitable for this area and will ensure that any impacts to water quality will be limited. Rockland County described a preference for use of a compacted sub-base material to levelize five wire-pulling sites located on the Wrightmen's Plateau. O&R responded that it did not find a benefit for installation of the sub-base if removal was required once the project is completed. Staff has advised that one wire-pulling site is within the Ramapo Substation and that another is located on the existing access road. Given the identified pulling site locations for Transmission Line 28, these sites are very likely the same locations used for installation of the original Transmission Line 77 conductor and are adequate without major site disturbance that will adversely affect the environment. Therefore, no bedrock removal shall be permitted as requested by Rockland County.

O&R provided responses to DEC's comments in its November 30, 2010, supplement and provided additional detail of its construction schedule outlining the phasing plan identifying specific work areas and major tasks. It notes that, as described in the EM&CP and the supplements, the construction contractor ultimately selected will be required to comply with calendar restrictions for protected stream crossings and to avoid or mitigate impacts to endangered or threatened species. The schedule presented provides sufficient information regarding the tasks performed and timing for our review and mitigates impacts to habitats and specified species by avoiding construction during select timeframes.

DEC requested that O&R's updated DEC General Permit, that is applicable to protected streams, freshwater wetlands,

and freshwater wetland adjacent areas only, be included as procedures in the EM&CP that includes invasive species control measures. Through its supplement, O&R committed to conducting work in the applicable areas in accordance with its updated DEC General Permit and implementing the interim measures to contain invasive species as specified under Condition 20(c)(ii) of the recently re-issued permit (DEC Permit No. 3-9903-00066/00001). To the extent that the DEC General Permit would apply but for the Article VII process and to the extent that O&R has committed to conducting work in protected streams, freshwater wetlands, and freshwater wetland adjacent areas in conformance with the terms of the updated DEC General Permit, these measures are adopted for application within O&R's EM&CP. O&R noted that required crossings of the Appalachian Trail in the Town of Warwick and the cultural assets within Sterling Forest Park have been coordinated with the National Park Service and Palisades Interstate Park Commission. O&R described that it will be conducting all work in the vicinity of the crossing of the Appalachian Trail in accordance with the Special Use Permit granted it by the National Park Service on March 2, 2010. O&R has also noted that vegetation clearing will be limited and that where required, restoration activities will incorporate the use of native plants. O&R describes that identification of native plant species appropriate for the project segments will be coordinated with the staff of the Native Plants and Compost Education Garden, located in the Town of Ramapo.

DEC offered comments relating to updating the stream crossings provisions that would be required for this project. O&R, through its supplement, has updated information relating to the crossings and has described crossing methods and mitigation techniques that will be implemented. O&R also describes that wetlands within the project area were field delineated by O&R's

environmental consultants. It notes that upon selection of a construction contractor and finalization of proposed site-specific crossing techniques, O&R will provide Staff and DEC with project construction drawings for portions of the right-of-way affecting DEC-regulated wetland areas that will specify the crossing techniques for access roads; depictions or descriptions of the extent of clearing necessary and the disposition of cleared vegetation and spoils; and the mapped boundaries of DEC-regulated freshwater wetlands with field-delineated additions noted. O&R describes that the construction drawings will note the 100-foot wide wetland buffer areas from both the mapped wetlands and all field-delineated additions. Prior to construction, the maps shall be submitted to the Secretary and other parties to this proceeding. The documents will be reviewed pursuant to the minor change provision described in clause 4.(b) of this order unless comments are received from any party in opposition to the contents of the documents, in which case the documents will require our review and approval.

O&R likewise addressed comments relating to Timber Rattlesnake monitoring. It proposes to provide a Timber Rattlesnake monitor as described in Section 13.1 of the EM&CP and for the portion of the right-of-way originating at the Ramapo Substation and extending west three miles along the right-of-way. The monitor will be a DEC-licensed Timber Rattlesnake Monitor/Snake Handler and will be present during construction activities between May 1 and September 15. These measures will ensure that impacts to Timber Rattlesnakes are minimized and they are approved.

The EM&CP as submitted and supplemented complies with the terms of the Certificate and includes adequate measures to mitigate environmental impacts. The EM&CP as submitted and supplemented is approved subject to conditions.

The Commission orders:

1. The transfer of a portion of the Certificate of Environmental Compatibility and Public Need (Certificate) granted to Consolidated Edison of New York, Inc. on January 25, 1972 in Case 25845 to Orange and Rockland Utilities, Inc. (O&R) is approved as described in this order and in Appendix A.

2. Within 30 days after the issuance of this order, O&R shall report to the Secretary of the Commission the date on which the transfer was or will be completed.

3. The Secretary, at her sole discretion, is authorized to extend these deadlines.

4. The Environmental Management and Construction Plan (EM&CP) submitted by O&R on June 16, 2010, and supplemented September 29 and November 30, 2010, for the installation of Transmission Line 28 is approved subject to the following conditions:

- (a) O&R shall construct the certificated facilities pursuant to the requirements and details in the EM&CP, and the Certificate of Environmental Compatibility and Public Need, issued January 25, 1972 in Case 25845;
- (b) O&R shall report to Department of Public Service (DPS) Staff (Staff) any proposed changes to the approved project, including proposed changes to the approved measures and techniques to be applied to the environmental management and construction of this project; Staff shall refer to the Director of the Office of Energy Efficiency and the Environment (OEEE), for approval, those proposed changes that will not cause substantial change in environmental impact or a change in the location of any portion of the

certified site or right-of-way (ROW) of the project and shall refer all other proposed changes to the Commission; O&R shall not execute any proposed change until it receives written notification from the Director of OEEE or the Commission;

- (c) all required permits and approvals must be obtained and copies submitted to the Secretary to the Commission prior to construction;
- (d) all changes and modifications directed to O&R shall be directed to Staff for its review prior to implementation; and,
- (e) prior to construction, O&R shall submit to the Commission and other parties, project construction drawings for portions of the right-of-way affecting DEC-regulated wetland areas that will specify the crossing techniques for access roads; depictions or descriptions of the extent of clearing necessary and the disposition of cleared vegetation and spoils; and the mapped boundaries of DEC-regulated freshwater wetlands with field-delineated additions noted. The construction drawings shall note the 100-foot wide wetland buffer areas from both the mapped wetlands and all field-delineated additions. The drawings shall be reviewed as a minor change as described in Clause 4(b) above, unless comments are received from any party in opposition to the contents of the documents, in which case the

documents will require review and approval by the Commission.

5. This proceeding is continued.

By the Commission,

JACLYN A. BRILLING
Secretary

APPENDIX A

The portion of the Certificate that is transferred is as follows:

B A 345 kV transmission line (to be operated initially at 138 kV) commencing at the Con Edison 345 kV Ramapo Substation in the Town of Ramapo, Rockland County; then occupying the east side of Con Edison's existing double-circuit towers located within Con Edison's Southern Tier Interconnect right-of-way as certified in Case 25845 for a distance of 15.3 miles; thence terminating at the new O&R 138 kV Sugarloaf Substation located on the south side of Sugarloaf Mountain Road in the Town of Chester, Orange County. One additional 125-foot steel pole and six wood poles will carry the transmission line into the Sugarloaf Substation.