



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

06-T-0710
Comments

CHADK
OGC, OED

SCOTT M. STRINGER
BOROUGH PRESIDENT

May 10, 2007

VIA E-MAIL and OVERNIGHT MAIL

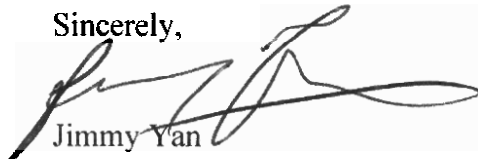
Hon. William Bouteiller
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 06-T-0710 – Consolidated Edison Company of New York, Inc.

Dear Judge Bouteiller:

The Manhattan Borough President's Office ("MBPO") submits the enclosed Response to Consolidated Edison's Motion to Strike / Motion to Have Official Notice Taken of Certain Materials or, Alternatively, to Reopen the Record and a Supporting Affidavit of Anthony Gulotta. These documents are submitted in accordance with 16 NYCRR §3.6 and permission orally granted by you as the Presiding Officer to submit such documents by noon on May 10, 2007. The MBPO is concurrently providing an electronic copy of these documents to each of the parties on the current Active Party List, and five copies to the Commission's Secretary.

Sincerely,



Jimmy Yan
General Counsel

Enclosures

cc: Active Party List

RECEIVED

MAY 11 2007

Office of Hearings and
Alternative Dispute Resolution

2007 MAY 15 AM 9:32
RECEIVED
PUBLIC SERVICE
COMMISSION
OSEC FILES-ALBANY

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

----- X

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IN THE MATTER of the Application of
Consolidated Edison Company of New York, Inc.
For a Certificate of Environmental Compatibility and
Public Need Pursuant to Article VII of the Public
Service Law for the M29 Transmission Line Project,
New York, Bronx, and Westchester Counties,
New York

CASE NO. 06-T-0710

----- X

**Manhattan Borough President's Office's (1) Response
to Consolidated Edison Company of New York, Inc.'s Motion to Strike
the Use of Extra-Record and Confidential Materials
Submitted in Certain Parties' Initial Briefs and (2) Motion to Have Official Notice Taken of
Certain Materials or, Alternatively, to Reopen the Record**

Preliminary Statement

The Manhattan Borough President's Office ("MBPO") submits this response to Consolidated Edison Company of New York, Inc.'s ("Con Edison") Motion to Strike pursuant to 16 NYCRR §3.6 and in accordance with an extended response deadline of May 10, 2007 orally granted by the Presiding Officer on May 7, 2007. Material included as Appendix "D" in MBPO's brief was admitted into the evidentiary record with ample opportunity for Con Edison to examine such material and, notwithstanding its inclusion in the record, is also a public record of which the Presiding Officer may take official notice. In addition, materials included with MBPO's initial brief as Appendices "B" and "C" are public records of which the Presiding Officer may take official notice. Should the Presiding Officer decline to take official notice or

otherwise recognize the inclusion of such materials in the record, the MBPO requests, in the alternative, that the Presiding Officer reopen the evidentiary record to allow consideration of the materials in Appendices “B,” “C” and “D”.

Argument

First, the material constituting Appendix “D” in MBPO’s initial brief, contrary to Con Edison’s assertion, is already in the evidentiary record and should be considered in this case. Appendix “D” consists of a New York City Department of Environmental Protection (“DEP”) issued “Water Main Distribution Map from GDS Geodatabase” and accompanying legend reflecting locations of water main lines that lie within and across the preferred route of the M29 transmission line in Manhattan. MBPO introduced this document at the January 23, 2007 Evidentiary Hearing, and the Presiding Officer allowed reference of the document into the record and provided Con Edison opportunity to examine the document. Tr. at 490-91 (Jan. 23, 2007). Therefore, the material included as Appendix “D” does not constitute extra-record material and should be fully considered as part of the evidentiary record.

Second, materials constituting Appendices “B” and “C,” as well as Appendix “D” even though it is already in the record, are public records and maps of which official notice may be taken. As set forth in the attached affidavit of Anthony Gulotta, these materials are public records obtained from and maintained by government agencies. Appendix “B” consists of official New York City Transit Authority (“NYCTA”) maintained and issued maps and plan drawings of the Washington Heights Line (Eighth Avenue Line) of the subway running on Broadway from W. 204th St. to W. 211th St., Route No. 105 Section Nos. 2 and 3. Appendix “C” consists of an official map of street car lines of the Third Avenue Railway System in Manhattan,

The Bronx and Westchester County in 1936 provided on the website of the City University of New York. Appendix “C” also includes New York City Department of Design and Construction (“DDC”) issued maps and plans of sections of 10th Avenue, Broadway and W. 218th St. showing abandoned trolley tracks, trolley yokes and electric feeder ducts of an old trolley system. By incorporating these materials in the MBPO brief, MBPO has properly requested official notice of these documents and enabled official notice of these documents to be taken. Case 91-E-0462, Proceeding on the Motion of the Commission as to the Rates, Charges, Rules and Regulations of Con Edison, Opinion No. 92-8 (issued April 14, 1992) (holding that “briefs [containing noticed documents] can be construed as embodying requests for official notice”).

The maps and plans of Appendices “B,” “C” and “D” are records of which official notice may be taken. Article 4 of the New York State Administrative Procedure Act (SAPA) provides that “[o]fficial notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency.” SAPA §306(4). It is well established in New York case law that judicial notice may be taken of public records such as the materials in the MBPO brief. Chateau Rive Corp. v. Enclave Development Associates, 802 N.Y.S.2d 366 (2005) (taking “judicial notice of the recorded deeds, maps, and site plans referable to those [land] parcels, which, as public documents, evince indicia of authenticity and reliability.”); Brandes Meat Corp. v. Edward Cromer, 537 N.Y.S.2d 177 (1989) (stating that judicial notice may be taken of matters of public record); In the Matter of Ruth A. Hartman v. Daniel Joy, 365 N.Y.S.2d 182 (1975) (taking judicial notice of a public record in part on the basis that it “would help to speed resolution of the situation.”); Sunhill Water Corp. v. Water Resources Commission, 301 N.Y.S.2d 935 (1969). *See also* Veronica Realty Corporation v. Cranford-Locher, Inc., 267 N.Y.S. 443 (1933) (taking judicial notice “that the construction of

subways in the city of New York is under the jurisdiction of the board of transportation” and that decisions to make street improvements in a certain way were based on subway construction’s disturbance with the street surface).

It is also well established in New York case law, administrative law decisions and Public Service Commission decisions that official notice may be taken of government issued maps similar to the materials in the MBPO brief. *E.g.*, Case 06-E-1528, Petition of Village of Theresa, Opinion 2007 N.Y. PUC LEXIS 88 (issued March 28, 2007); DTA No. 820412, In the Matter of the Petition of 636 Deli, Inc., Opinion 2006 N.Y. Tax LEXIS 182 (August 24, 2006); Dora Homes, Inc. v. Moore, 514 N.Y.S.2d 653 (1987); People v. Rodriguez, 641 N.Y.S.2d 975 (1996); In the Matter of the Application of Brian Zazulka, 2004 N.Y. Env. LEXIS 89 (December 27, 2004).

The materials in the MBPO brief are also facts within the specialized knowledge of the Public Service Commission that warrant official notice. With jurisdiction over the siting of major gas and electric transmission facilities as one of its core missions, the Public Service Commission possesses specialized knowledge of and the need for common reference to structural maps and plans provided by government agencies. The Public Service Commission has taken official notice of materials the types to which it is common for the Commission to refer in making determinations. Case 91-E-0462, Proceeding on the Motion of the Commission as to the Rates, Charges, Rules and Regulations of Con Edison, Opinion No. 92-8 (issued April 14, 1992) (Commission taking notice of publications consistent with Commission’s “ordinary and customary reference to [such data] in reaching...determinations”). The materials in Appendices

“B,” “C” and “D” of the MBPO brief are materials that are specific to the structural siting knowledge of the Commission and thus justify official notice.

Should the Presiding Officer decline to take official notice of all materials in the MBPO brief, the MBPO requests that the record be reopened to allow consideration of all of these materials prior to the issuance of a decision. Consideration of these materials is necessary to ensure a fair and complete evaluation of the matter. First, the subway map and plans of Appendix “B” is new evidence that was requested prior to the public hearings for this case but not received until after the March 19, 2007 public hearing. The MBPO specifically requested in writing such documents on approximately January 10, 2007, prior to the commencement of the hearings. *See* Affidavit of Anthony Gulotta. In addition, this material is necessary to address the factual assertions introduced by representatives of Con Edison that the subway line was only one block long in the area of the Broadway route pertaining to the issue of interference with their proposed route. Tr. at 1733-34 (March 19, 2007). The record should be reopened to permit augmentation of the record and consideration of the material in Appendix “B” for this recently developed and significant factual issue. Second, materials in Appendix “C” address issues regarding the reconstruction of Tenth Avenue that were raised and extensively examined with Con Edison at the public hearing. Therefore, the subject of these documents are familiar to and have been well-examined by Con Edison. As discussed above, materials in Appendix “D” were already introduced in the evidentiary record and are public records of which official notice may be taken. Even if these materials were not in the record and noticed, the record should be reopened in light of the fact that a decision in this case has not yet been formed or issued and consideration of these materials are important to ensure a full and fair evaluation of the matter.

Conclusion

The materials in Appendices "B," "C" and "D" included in the initial MBPO brief should be considered as part of the evidentiary record and are records of which official notice may be taken. Con Edison elevates form over substance without legal basis in an effort to exclude proper evidence that is germane to a fair and complete evaluation of this matter. Should these materials not be considered as part of the evidentiary record and since a decision has not yet been issued in this matter, the MBPO moves the Presiding Officer to take official notice of all of the materials or, in the alternative, order reopening the record to incorporate all of the above-described materials in the record.

Dated: New York, New York
May 10, 2007

Respectfully submitted,
Manhattan Borough President's Office

By: 

Jimmy Yan
General Counsel
1 Centre St., 19th Floor
New York, NY 10007
Tel: (212) 669-8157

IN THE MATTER of the Application of
Consolidated Edison Company of New York, Inc.
For a Certificate of Environmental Compatibility and
Public Need Pursuant to Article VII of the Public
Service Law for the M29 Transmission Line Project,
New York, Bronx, and Westchester Counties,
New York

CASE NO. 06-T-0710

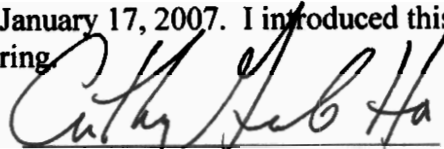
Affidavit of Anthony Gulotta

Anthony Gulotta, being duly sworn, deposes and says:

1. I am employed by the Manhattan Borough President's Office ("MBPO"). My business address is 1 Centre St., 19th Floor, New York, New York 10007. I am a Consulting Engineer and work in MBPO's Land Use Unit.
2. I am a representative of the MBPO in this matter regarding Con Edison's M29 Transmission Line Project. In connection with my duties for this matter, I requested and obtained the official documents included as Appendices in the MBPO's initial brief directly from the respective government agencies in the manner specified below.
3. On approximately January 10, 2007, I requested in writing from the Metropolitan Transportation Authority (MTA) Capital Construction Division the material included in the MBPO initial brief as Appendix "B" which consists of official New York City Transit Authority ("NYCTA") maintained and issued structural maps and drawings of the Washington Heights Line (Eighth Avenue Line) of the subway running on Broadway from W. 204th St. to W. 211th St., Route No. 105 Section Nos. 2 and 3. This request is attached to this affidavit as **Attachment A**. I received a preliminary response to my request in a letter from MTA dated April 2, 2007, which is attached to this affidavit as **Attachment B**. I first received the requested material on March 22, 2007. Documentation of this receipt is attached to this affidavit as **Attachment C**.
4. The MBPO received part of the materials constituting Appendix "C" of the MBPO initial brief from the New York City Department of Design and Construction ("DDC") in the ordinary course of business approximately in March of 2005. The MBPO retains these materials in the ordinary course of business. The materials are official DDC issued maps

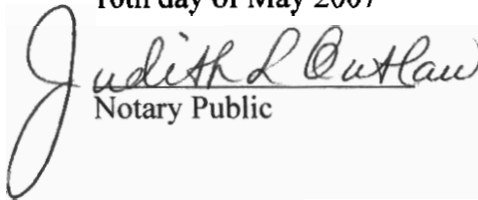
and plans of sections of 10th Avenue, W. 207th St. and W. 218th St. showing abandoned trolley tracks, trolley yokes and electric feeder ducts of an old trolley system. I also included in Appendix "C" of the MBPO initial brief an official map of street car lines of the Third Avenue Railway System in Manhattan, The Bronx and Westchester County in 1936 publicly available on the website of the City University of New York.

5. On January 10, 2007, I requested in writing from the New York City Department of Environmental Protection ("DEP") the material included in the MBPO initial brief as Appendix "D" which consists of an official "DEP" issued "Water Main Distribution Map from GDS Geodatabase" and accompanying legend reflecting locations of water main lines that lie within and across the preferred route of the M29 transmission line in Manhattan. This written request is in **Attachment D** of this affidavit. Documentation of receipt of this request is attached in **Attachment E** of this affidavit. I received the requested documents from DEP approximately on January 17, 2007. I introduced this document at the January 23, 2007 Evidentiary Hearing.



Anthony Gulotta

Sworn to before me this
10th day of May 2007



Notary Public

Judith L. Outlaw
Commissioner of Deeds
City of New York No. 2-6207
Certificate filed in Kings County
Commission Expires April 1, 2008

**Attachment A-
MBPO request for records in Appendix
“B”**



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

Uday Durg, P.E.
MTA Capital Construction
Eighth Floor
2 Broadway
New York, NY 10004-2207

Dear Mr. Durg:

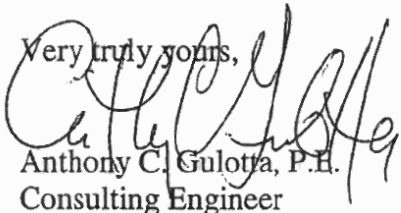
Can your office please provide record data with respect to clearances, in the Borough of Manhattan, at the following locations?

1. Clearances from the top of the subway structure to the finished pavement at the intersection of West 207th Street and Broadway, at the east curb line.

2. Clearances from the underside of the elevated subway line which runs over Tenth Avenue, between West 220th Street and Nagel Avenue at the centers of the following intersections:
 - a) Isham Street
 - b) Sherman Avenue
 - c) W. 212 Street
 - d) W. 213 Street
 - e) W. 214 Street
 - f) W. 215 Street
 - g) W. 218 Street
 - h) W. 219 Street

Any information, elevations or drawings you can provide will be most helpful.

Very truly yours,


Anthony C. Gulotta, P.E.
Consulting Engineer

Attachment B
MTA Preliminary Response to MBPO
record request

2 Broadway, 8th Floor
New York, NY 10004-2207

Mysore L. Nagaraja
President



April 2, 2007

Mr. Anthony C. Gulotta, P.E.
Consulting Engineer
The City of New York
Office of the President
Borough of Manhattan
Municipal Building
1 Centre Street, 19th floor
New York, NY 10007

Dear Mr. Gulotta:

This is in response to your letter regarding the Con Edison Proposed Transmission Line. I have forwarded your request to Mr. Rajen Udeshi, Transit's Principal Engineer who will be able to address any concerns.

He can be reached at 646-252-3673 if you have any questions.

Truly yours,

A handwritten signature in black ink, appearing to read 'Uday Durg', written over a horizontal line.

Uday Durg, P.E.
Program Manager

Attachment C
MTA Documentation of Receipt of
MBPO Request for Records



NEW YORK CITY TRANSIT

File: 925

CAPITAL PROGRAM MANAGEMENT ENGINEERING SERVICES DIVISION

Date: 3 | 22 | 07

NYCT - STRUCTURAL DRAWINGS

Applicant's Name: Anthony GULOTTA
 Company's Name: Manhattan Borough President's Office
 & Address: 1 Centre ST NYC
 Telephone No: 212 669 8301

Site Information

Borough: Man Street Name & Cross roads: Bway, 204 to 218 ST

Reason for Search: Clearances & Location

Payment
Company Check or Money Order
ONLY

- Roof Plan
 - Alignment
 - Section

No. Of Drawings: _____ No. Of Prints: _____

Receipt No: _____ Amount: \$ _____

<u>Route and Section</u>	<u>Drawing No.</u>	<u>Reel No.</u>	<u>File No.</u>
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			183
<u>105, Sec. 2</u>	<u>311 → 317</u>	<u>303, 304</u>	
<u>Surrey Marker</u>	<u>1117 → 1128+20</u>	<u>341 → 343</u>	
		<u>318 → 323, 340</u>	
		<u>311 → 324 → 333</u>	
		<u>339, 334 → 338</u>	
			342

Attachment D
MBPO request to DEP for records in
Appendix “D”



Soriano

THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

E - W E O

January 10, 2007

Hon. Emily Lloyd
Commissioner
NYC Department of Environmental Protection
59-17 Junction Blvd.
Flusing, New York 11373

Dear Commissioner Lloyd

Can you please direct your staff to send me a set of prints of your water main plates for the area noted in red on the attached sheet, Borough of Manhattan.

Thanks in advance for your response and best wishes for the New Year.

Very truly yours,

Anthony C. Gulotta, PE
Consulting Engineer

25126

SEP RECEIVED
OFFICE OF THE COMMISSIONER
2007 JAN 11 P 2:53

Attachment E
DEP documentation of receipt of MBPO
record request



NYC DEPARTMENT OF ENVIRONMENTAL PROTECTION

59-17 Junction Blvd.
Flushing, NY 11373

TICKLER:

**From Correspondence Tracking Unit
Correspondence Routing Slip**

Log #: 25126

Date Routed 1/12/2007

Source Code: CTU

Due Date 1/26/2007

Priority Status Normal

Routing Information

Person Responsible: MOIRA LYN TITTLE

cc: Canty

Bureau Responsible: BWSO

Instructions: Please handle as appropriate

Notes:

Letter Information

Primary Correspondent Information

Name: Anthony Gulotta

Organization: Office of the Manhattan borough
President

Address:

1 Centre Street
19 Floor
New York NY 10007

Secondary Correspondent Information (On Behalf Of)

Name: N/A N/A

Organization:

Address:

Date of Letter: 1/10/2007

Reference Code: N/A

Location of Problem/ Account Information: N/A

Subject of Letter: Water Main Plate Prints

Please respond to the attached correspondence as requested and return once closed out to Cynthia Dilan with Log Number indicated clearly. Please contact Cynthia at (718) 595-6558 or via e-mail if you have any questions.