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November 21, 2007

**VIA FEDERAL EXPRESS AND E-MAIL**

Honorable Jaclyn A. Brilling  
Secretary  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, New York 12223

Re: Case 06-T-0710 – Application of Consolidated Edison Company  
of New York, Inc. for a Certificate of Environmental Compatibility  
and Public Need for the M29 Transmission Line Project

Dear Secretary Brilling:

Submitted herewith is Time Warner's Response to the revised Environmental Management and Construction Plan ("EM&CP") submitted by Consolidated Edison Company of New York, Inc. ("Con Ed") on November 2, 2007.

Emails of the Response are being transmitted to all active parties.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Marvin B. Mitzner".

Marvin B. Mitzner

cc: All Active Parties (via email)

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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IN THE MATTER of :  
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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 :  
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**CASE NO.: 06-T-0710**

**TIME WARNER NY CABLE D/B/A TIME WARNER  
CABLE OF NEW YORK COMMENTS TO THE REVISED  
ENVIRONMENTAL MANAGEMENT & CONSTRUCTION PLAN**

Time Warner NY Cable d/b/a Time Warner Cable of New York City ("Time Warner") respectfully submits its comments in opposition to the revised Environmental Management and Construction Plan ("EM&CP") submitted by Applicant Consolidated Edison Company of New York, Inc. ("Con Ed") to the Public Service Commission on or about November 2, 2007.

As set forth by Time Warner in connection with its comments to Con Ed's initial EM&CP, submitted on or about June 26, 2007, Con Ed continues to ignore the assurances it provided to the active and interested parties regarding environmental and community impacts resulting from construction of the M29 transmission line (the "Project") throughout the evidentiary hearings and subsequent briefing schedules held in connection with Con Ed's Article VII application. The revised EM&CP once again fails to satisfactorily resolve or offer to mitigate many of the environmental and community issues raised during the evidentiary hearings and post-hearing briefs and submissions.

The revised EM&CP is no more than the same bare-bones summary of how Con Ed intends to construct the Project than the version of the EM&CP that Con Ed submitted to the Public Service Commission this summer. This revised EM&CP neglects to include the necessary specificity and details that Con Ed promised during the evidentiary hearings and in the briefs it submitted to the Public Service Commission.

At the outset, we note that together with its revised EM&CP, Con Ed submitted a series of drawings labeled Traffic Control Plan, one of which (TC-603) shows the proposed construction zone for the portion of the proposed route along West 219<sup>th</sup> Street and Ninth Avenue. This zone now runs directly in front of the entrances and drive ways to Time Warner's operations along West 219<sup>th</sup> Street and along Ninth Avenue. This new route stands in marked contrast to the route proposed by Con Ed during the evidentiary hearings, which was intended to hug the northwest corner of West 219<sup>th</sup> Street and Ninth Avenue and then run along the northern side of West 219<sup>th</sup> Street instead of the southern side of West 219<sup>th</sup> Street, where Time Warner's facilities are located. Such a modified run, when viewed alongside Con Ed's proposed 600 foot lengths of open trench (Con Ed's Revised EM&CP at 5.4), means that all of Time Warner's facilities along West 219<sup>th</sup> Street and Ninth Avenue will be burdened at the same time. These facilities include its primary truck and equipment parking lot, its office building, where customers regularly and continuously pay their bills, and the employee parking lot. Curiously, the revised EM&CP utterly fails to consider any mitigation of impacts to Time Warner's operations, as a result of this newly proposed Project route.

Additionally, the revised EM&CP (at 2.2) sets forth a project schedule with a start date that has already passed, and calls for construction of the trench and laying of pipe in Upper Manhattan to begin on October 8, 2007. Hopefully, this is not indicative of the carelessness that

Con Ed will display during the construction of the project and in addressing the concerns of affected parties, including Time Warner. Certainly, the EM&CP must contain an honest and realistic construction schedule.

In submitting its revised EM&CP, Con Ed continues to completely ignore the framework established by the Recommended Decision, dated May 29, 2007. In his recommended decision, Administrative Law Judge William Bouteiller recommended that certification of Con Ed's Article VII application should wait until after the EM&CP is approved by the Public Service Commission. *See* Recommended Decision at 63 ("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 [Con Ed] receives its certificate.").

The Recommended Decision further provided that Con Ed "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." *See* Recommended Decision at 67. It was suggested that Con Ed's local community impact plans and reports should include:

- a. A noise mitigation plan.
- b. A traffic mitigation plan and public transit coordination plan.
- c. A municipal service plan addressing police, fire and emergency services.
- d. A local commerce and business plan containing Con Ed's actions to inform commercial establishments of construction activity and to minimize interference with their businesses.
- e. A community outreach plan containing Con Ed'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.

*See Recommended Decision at 67-68.*

Despite these recommendations, Con Ed neglected to include specific details relating to any of the above plans and reports in both its initial proposed and its subsequently revised EM&CP, despite its repeated promises. Both the proposed and revised EM&CP contain nothing but generalized statements that may be applicable to any construction project, not tailored to the expected impacts from construction of the M29 transmission line.

The Recommended Decision provides even further evidence of Con Ed's assurances regarding what was expected to be included in its EM&CP. For example, in discussing the specific impacts on traffic, Administrative Law Judge Bouteiller highlighted the fact that during the evidentiary hearing, Con Ed observed that impacts on local business and facilities are normally handled in the EM&CP phase and that Con Ed had reassured the active and interested parties that it has "all of the techniques and procedures needed to address traffic." *See Recommended Decision at 27-28.* However, both the initial and revised EM&CP fail to fully address any specific traffic issues or impacts to local business other than providing generic descriptions of Con Ed's plans.<sup>1</sup>

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<sup>1</sup> For instance, in the section of the proposed EM&CP titled, Representative Construction Activities (section 4.2), Con Ed states that "[t]he BMPs ("Best Management Practices") for erosion and sediment control will be implemented early in the construction process and prior to the start of excavation activities. These include installation of erosion and sediment control measures (i.e., hay bale barriers and/or silt fencing). Procedures for trench dewatering and protection of catch basins will be implemented on an as-needed basis." *See Con Ed's*

With respect to police, fire and emergency services, Administrative Law Judge Bouteiller recited Con Ed testimony alleging that Con Ed "commits itself to working closely with the local authorities at the time of [sic] its [EM&CP] to ensure that their access to the roads, and their ability to respond to the public, are not impeded." *See* Recommended Decision at 31-32 (emphasis added). Again, there is no evidence that Con Ed has kept this commitment other than what amounts to a generic pledge to coordinate construction activities, and to provide notification and maintain access to emergency services. *See* Con Ed's Proposed EM&CP at 11-7 – 11-8, Con Ed's Revised EM&CP at 11-8.

When discussing impacts to public transit, Con Ed "believes that it can fully address any public transit system concerns in the EM&CP phase of this proceeding." *See* Recommended Decision at 33 (emphasis added). Yet, Con Ed refused to include any details surrounding its plans to coordinate construction activities with public transit systems with respect to any specific locations, routes or method of transportation in the EM&CP it submitted. *See* Con Ed's Proposed EM&CP at 11-6 – 11-7. In its Revised EM&CP, Con Ed pledges, without providing any specific details or protections, to maintain all bus stops and to contact NYCT-Surface Planning and the Westchester County Bee Line before starting work. *See* Con Ed's Revised EM&CP at 11-8.

Not only has Con Ed ignored the framework which Administrative Law Judge Bouteiller relied upon in forming the Recommended Decision, Con Ed has also disregarded the arguments and defenses it raised during the briefing periods of these proceedings. For example, in its initial brief, dated April 24, 2007, Con Ed alleged that the EM&CP will reflect that construction of the Project will be conducted in accordance with applicable New York State traffic control standards

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Proposed EM&CP at 4-5. As can be seen from the foregoing, Con Ed fails to identify exactly what practices or procedures are to be utilized during construction and on what basis they are to be implemented.

and local guidelines for each jurisdiction wherein the Project will be located. *See* Con Ed's Initial Brief at 15. However, the EM&CP contains no detailed description of such standards and guidelines or how Con Ed plans to follow same.

Additionally, Con Ed admitted that plans to resolve and mitigate impacts to specific businesses and facilities are "usually left for the EM&CP phase of the project," (*see* Con Ed's Initial Brief at 17 (citing Tr. 1613:4-10)) and that "[t]he EM&CP details the precise field location of the facilities and the special precautions that will be taken during construction to ensure environmental compatibility" (*see* Con Ed's Initial Brief at 18 (citing, THE CERTIFICATION REVIEW PROCESS FOR MAJOR ELECTRIC AND FUEL GAS TRANSMISSION FACILITIES at 15) (emphasis added). However, the submitted EM&CP, even as revised, fails to honor the standards that Con Ed has cited and relied upon.<sup>2</sup> Further, Con Ed recognized that it must properly implement a detailed EM&CP in order to minimize impacts to the human and natural environment. *See* Con Ed's Initial Brief at 38. But in practice, the EM&CP, as initially submitted and revised, contains a generalized description of Con Ed's plans, not detailed specifics.

In its opposition to criticism raised by the City of Yonkers in connection with Con Ed's Article VII application, Con Ed again argued that "detailed environmental and construction protocols" are to be developed and implemented during the EM&CP phase of the Project so that concerns can be "addressed adequately". *See* Con Ed's Reply Brief, dated May 8, 2007, at 3 (emphasis added). In fact, Con Ed even referenced its "long-established ... practice to

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<sup>2</sup> In its Initial Brief, Con Ed even cites to Case 03-T-0644, Niagara Mohawk Power Corporation, *Order Adopting the Terms of a Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need* (issued March 16, 2005) for the proposition that an Article VII applicant is to identify "specific mitigation measures" in its EM&CP in order to minimize disruptions to residential areas. *See* Con Ed's Initial Brief at 18 (emphasis supplied).

coordinate street construction and the mitigation of traffic and noise impacts with local authorities and to coordinate construction times and special needs with schools, houses of worship, and other sensitive facilities before construction begins in the vicinity of those facilities." Con Ed's Reply Brief at 4. Con Ed promised to keep that long-established practice in effect for the Project and that all the aforementioned activities are taken during and in support of the implementation of the Project's EM&CP. *See id.*, *see also* Con Ed's Initial Brief at 22-23.

Apparently, after submission of its Reply Brief, this long-established practice was either revised or forgotten altogether. In both the proposed and revised EM&CP, Con Ed discusses the use of explosives for the tunnel construction (in close proximity to PS/IS 278 and the Allen Pavilion of the New York and Presbyterian Hospital), but presents no plan to mitigate any impacts from this use on the local community other than claiming to comply with NYSDOT land closure restrictions. *See* Con Ed's Revised EM&CP at 5-4. The revised EM&CP also mentions that a specific noise mitigation plan is required under the New York City noise code and NYCDEP requirements and standards. *See* Con Ed's Revised EM&CP at 10-1 – 10-3.<sup>3</sup> However, Con Ed has not provided, nor possibly even developed, this noise mitigation plan as any part of its proposed EM&CP, and does not plan to even provide such a plan to the local community until two weeks prior to the start of construction in the each affected area. *See* Con Ed's Revised EM&CP at 10-2.

Additionally, the Recommended Decision contemplated that Con Ed develop a community outreach plan containing Con Ed's programs for informing local residents, religious institutions, schools and others about construction activity and its plans to minimize interference

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<sup>3</sup> Con Ed's Initial EM&CP stated that Con Ed would "ensure compliance with the New York City noise code," however the EM&CP now has been revised to merely "address compliance" with the New York City, and City of Yonkers noise codes. *Compare* Con Ed's Initial EM&CP at 10-2 with Con Ed's Revised EM&CP at 10-2.



with community and social activity. *See* Recommended Decision at 68. In its EM&CP, as revised, Con Ed responded by simply stating that it will "coordinate closely with schools, houses of worship, firehouses and other sensitive facilities, to prevent or minimize disruptions to their operations." *See* Con Ed's Revised EM&CP at 14-1. It was expected that the revised EM&CP would provide details on how Con Ed intended to minimize the expected disruptions, other than changing its initial EM&CP to simply add the toll-free number that has been established to register concerns and complaints. *Id.*

In its Brief on Exceptions, dated June 26, 2007, Con Ed continued to state which environmental and community concerns are to be specifically addressed by the EM&CP, while ultimately ignoring its own guidance. *See* Con Ed's Brief on Exceptions at 10 (The EM&CP "will adequately address trenching, manhole construction, sediment control, and any street contamination and soil removal necessary during the construction of the Project's transmission line in the public right-of-way.") (emphasis added); *id.* at 13 (Con Ed "fully intends to address in its EM&CP the noise and traffic mitigation, community and local business outreach, and project construction coordination concerns of apparent particular concern to the ALJ.") (emphasis added).<sup>4</sup>

The proposed and revised EM&CP also fails to include any special measures to mitigate potential exposure to contaminated soil along Ninth Avenue between West 219<sup>th</sup> Street and West 220<sup>th</sup> Street. While Con Ed's proposed EM&CP requires the construction contractor to observe

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<sup>4</sup> It should be noted that Con Ed's Brief on Exceptions was submitted to the Public Service Commission and served upon all active parties that same day that Con Ed filed and served its proposed EM&CP, i.e., June 26, 2007. Interestingly, while stating that Con Ed intended for its EM&CP to adequately address concerns relating to trenching, manhole construction, sediment control, street contamination, soil removal, noise mitigation, traffic mitigation, community outreach, local business outreach, and project construction coordination, Con Ed failed to provide a single reference or citation to the proposed EM&CP in its Brief on Exceptions to demonstrate where any of these issues were addressed.

the excavation activities in this location to identify petroleum contamination and to direct loading of potentially contaminated soil, there are no safeguards discussed to prevent migration of contaminated soil or any direction that all work is to be stopped if petroleum contamination is encountered along Ninth Avenue. *See* Con Ed's Proposed EM&CP at 4-9; Con Ed's Revised EM&CP at 4-9.

The proposed and revised EM&CP also provides that "Con Ed and its subcontractors will manage all petroleum products and chemical substances ... in such a manner as to minimize the potential threats to human health and the environment", without any explanation as to how this will be accomplished. *See* Con Ed's Proposed EM&CP at 14-5; Con Ed's Revised EM&CP at 14-5.

In addition, there is no mention anywhere in the proposed and revised EM&CP concerning Con Ed's promise to accommodate the peak times when vehicles enter and leave the Time Warner facilities, only the nebulous statement that "access to driveways will be maintained to the maximum extent possible."<sup>5</sup> *See* Con Ed's Proposed EM&CP at 11-6; Con Ed's Proposed EM&CP at 11-6.

While the revised EM&CP at 11.2.3(j) calls for Con Ed to coordinate with Time Warner before starting work on the sidewalk of Ninth Avenue as relates to traffic concerns, a more certain and definitive commitment by Con Ed to coordinate with Time Warner and accommodate Time Warner's operational needs along both Ninth Avenue and West 219<sup>th</sup> Street is warranted.

Furthermore, in its Brief on Exceptions, Con Ed alleged that certain conditions and requirements proposed by Time Warner should the Public Service Commission not certify Time Warner's alternate route for the transmission line, along West 220<sup>th</sup> Street instead of West 219<sup>th</sup>

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<sup>5</sup> Con Ed makes no direct reference to Time Warner's facilities or operations with this blanket statement.

Street, would be addressed generally in the standard procedures employed by Con Ed and would be reflected in the proposed EM&CP.<sup>6</sup> See Con Ed Brief on Exceptions at 10, n. 6. Yet, the revised EM&CP does not incorporate Time Warner's proposed conditions and requirements. Con Ed has summarily rejected nearly all of the conditions without explanation, saying only that they are "unreasonable and unwarranted". The conditions and requirements proposed by Time Warner, Con Ed's responses submitted to DPS staff on November 2, 2007,<sup>7</sup> and Time Warner's reply, are as follows (as numbered in the Recommended Decision):

1. Comment: Prior to commencing construction, Con Ed should obtain an agreement with the New York State Department of Environmental Conservation (NYSDEC) on a protocol to prevent further inquiry concerning Time Warner's property located adjacent to Ninth Avenue between West 219th Street and West 220th Street as a result of Con Ed's construction of the transmission facility. The protocol should involve a procedure for closing Spill No. 0606021 that was opened because of the strong petroleum odor in Con Ed's soil boring locations.

Response: Con Edison is not in the position to prevent further inquiry from NYSDEC regarding contamination underlying Time Warner's property. Similarly, the closing of Spill No. 0606021 is not Con Edison's responsibility.

Reply: The Time Warner property located adjacent to Ninth Avenue between West 219<sup>th</sup> Street and West 220<sup>th</sup> Street (the "TWC Parcel") was the subject of a remediation project which has been resolved in accordance with applicable law and to the satisfaction of the NYSDEC. A "no further action" determination has been issued concerning the remediation project at the TWC Parcel predicated on the establishment and maintenance of a cap in the nature of asphaltic and concrete cover (the "Cap"). The Cap serves to inhibit migration of residual petroleum contamination and to eliminate pathways to human

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<sup>6</sup> Initially, Con Ed moved to strike Time Warner's conditions and requirements because they were first proposed in Time Warner's reply brief. The Administrative Law Judge denied Con Ed's motion to strike and permitted Con Ed the opportunity to respond to Time Warner's conditions and requirements in Con Ed's Brief on Exceptions. Instead of opposing conditions 2, 3, 5, 7, 8, 12 and 14, Con Ed merely stated that the EM&CP would address such concerns, which it does not.

<sup>7</sup> Notwithstanding that Time Warner's proposed conditions and requirements were included in the Recommended Decision and the Brief on Exceptions, Con Ed chose to distribute its response to those proposed conditions and requirements only to DPS staff and Time Warner.

exposure. The work to be performed by Con Ed pursuant to the EM&CP will disturb the Cap and will require the handling and management of residually contaminated soils and impacted water.

In the course of its investigation work associated with the planning for the Project, Con Ed encountered evidence of petroleum hydrocarbon contamination in soils and opened Spill No. 060621 (the "Spill Case"). Therefore, Con Ed should take appropriate measures to resolve the Spill Case in the course of the performance of the Project. Such resolution should include, but not be limited to, the appropriate handling, transportation for disposal and disposal of impacted soils and water encountered during the Project, the collection and analysis of confirmation samples to demonstrate the condition of the soils remaining after the removal of impacted soils, and appropriate reporting to the NYSDEC. Con Ed should provide copies of such analytical results and reports to Time Warner.

In referring to this spill, discovered by boring investigations along the sidewalk area between West 219<sup>th</sup> and West 220<sup>th</sup> Streets (Tr. at 559), Con Ed stated that it is "obligated to take care of whenever we find something during the course of our geotechnical investigation... We cleaned up what we found. I believe the spills are—spill numbers are closed out" (Tr. at 563). However, the spill number has not been closed (Tr. at 564) and the testimony suggests that it is Con Ed's responsibility to close any spill numbers.

2. Comment: Prior to commencing construction, Con Ed should prepare and submit plans to the NYSDEC for minimizing storm water infiltration in the trench along Ninth Avenue and to control groundwater flow onto the Time Warner property.

Response: The EM&CP includes soil erosion and sediment control measures that satisfy the requirements for a Stormwater Pollution Prevention Plan (SWPPP), and Con Edison will be submitting a Notice of Intent to the NYSDEC for coverage under SPDES General Permit # GP-02-01 for Stormwater Discharges Associated with Construction Activity. The control of stormwater infiltration along Ninth Avenue and groundwater flow onto Time Warner property is an unreasonable and unwarranted request.

Reply: Con Ed should implement appropriate means and methods to prevent storm water from being channeled onto or

otherwise accumulating on the TWC Parcel as a result of the activities undertaken to perform the Project.

The testimony of a representative of the company that prepared the EM&CP for Con Edison indicates that the EM&CP will address the impact of storm water on open trenches excavated in construction (Tr. at 535).

3. Comment: Con Ed should be solely responsible for the proper handling and disposal of any contaminants encountered during the course of excavation, trenching and manhole installation.

Response: The EM&CP provides Con Edison's procedures for the proper handling of excavated materials (Section 4.3) and provides specific reference to the area along Ninth Avenue between West 219<sup>th</sup> Street and West 220<sup>th</sup> Street. Con Edison is prepared to properly remediate any and all contamination found along the route during construction, in accordance with local, state and federal requirements.

Reply: TWC is satisfied with Con Edison's commitment in response to this Comment.

4. Comment: Prior to commencing construction, Con Ed should provide the exact location of the closest excavation to the Time Warner property line. Con Ed 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.

Response: Specific information regarding the trench width and depth is provided in Section 5.3 of the EM&CP, and specific information regarding trench and manhole location are shown on the plan and profile drawings submitted to the Department's Records Access Officer.

Reply: Con Ed should provide a current survey depicting the TWC Parcel property line so that we may confirm the location of the utility easement as it relates to the surface and subsurface features of the TWC Parcel. Based on the survey, we can ascertain whether the fence on the TWC Parcel will be disturbed by the Project and the extent to which the TWC Parcel will be physically disturbed by the construction activities contemplated in connection with the Project.

The EM&CP provides typical trench widths created in excavation, but does not provide specific trench dimensions. Testimony of a Con Ed representative indicates that the excavation site would be within the curb of the sidewalk abutting the edge of the Time Warner property (Tr. at 579). The plan submitted to the Department's Records Access Officer shows "typical work zones" rather than specific information regarding trench and manhole location.

5. Comment: Con Ed 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.

Response: As part of Con Edison's community outreach program, Time Warner will be notified prior to the start of trench excavation along Ninth Avenue and will be apprised of the anticipated construction schedule for that area at that time.

Reply: Con Ed should commit to meeting with Time Warner no less than two weeks prior to the commencement of construction activities within 50 feet of the TWC Parcel in order to coordinate such activities in an effort to minimize interference with the operations of Time Warner.

Testimony from Con Ed indicates that a duration study is the first study conducted for an activity (Tr. at 599). Con Ed should provide any relevant information revealed in the durational study.

6. Comment: Con Ed 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.

Response: Considering the scope and complexity of this construction project, Con Edison cannot restrict excavation activities to any specific time of year.

Reply: Con Ed's response to this Comment is inappropriate.

Con Ed testimony indicates that certain construction activity is prohibited during winter months because of NYSDOT plating requirements (Tr. at 635). Con Ed should consider other seasonal factors in its schedule as well.

7. Comment: Con Ed should minimize the amount of exposed trench during transmission line installation. Non-active trench should be covered by a steel plate or other materials and bermed to limit the amount of storm water draining into the trench.

Response: In accordance with the Maintenance and Protection of Traffic Plan for the M29 project, Con Edison will reduce the amount of open trench at the end of the workday to the minimum practicable (see Section 11.2 of the EM&CP).

Reply: Con Ed should commit to schedule the size of the excavations and the duration of its activities at the TWC Parcel to avoid the interruption of ingress to and egress from the Time Warner facilities. This may require night and/or weekend work hours.

Con Ed should commit to coordinate with Time Warner before beginning work on West 219<sup>th</sup> Street or Ninth Avenue.

8. Comment: Con Ed should provide detailed storm water runoff maps and proposed diverting measures in a submission to the NYSDEC.

Response: The plan and profile drawings provided to the Department show the location of storm sewers and catch basins; therefore, stormwater runoff maps are not necessary. The soil erosion and sediment control measures provided in Section 4.3 of the EM&CP include catch basin inlet protection measures.

Reply: Con Ed should commit to implement appropriate means and methods to prevent storm water from being channeled onto or otherwise accumulating on the TWC Parcel as a result of the activities undertaken to perform the Project.

9. Comment: Con Ed should install some wells along the trench adjacent to the Time Warner property to extract groundwater and control flow. The wells and 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.

Response: The installation of groundwater pumping wells to control groundwater flow adjacent to Time Warner property is an unreasonable and unwarranted request.

Reply: Con Ed's should commit that construction water will be collected, contained and disposed of in a manner that prevents such water from being released to the TWC Parcel.

10. Comment: Con Ed 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 groundwater from entering Time Warner property.

Response: The installation of a bentonite slurry wall to control groundwater flow onto to Time Warner property is an unreasonable and unwarranted request.

Reply: The installation of a slurry wall is both essential and reasonable. The former remediation project conducted at the TWC Parcel was completed with the implementation and maintenance of the Cap. The Project will, for the convenience of Con Ed, require the disturbance of the Cap. **The excavation activities and the resulting disturbance of the Cap will expose a vertical horizon of soils that may have residual contamination contiguous with the utility trench that is to be constructed. That pathway should be capped to prevent exposure in the future to utility workers.** The slurry wall will serve as a cap to prevent exposure to vapors and/or product that might migrate into the newly constructed utility trench.

11. Comment: Con Ed 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.

Response: Considering the documented contamination that exists on Time Warner's property, it is unreasonable to request indemnification from Con Edison for any environmental cleanup that must be conducted on their property.

Reply: As explained above, the Cap that protects against release of and exposure from contaminated soil will be distributed by Con Ed's actions in furtherance of the Project. Con Ed should be made to protect Time Warner against the consequences of disturbing the caps and Time Warner should be indemnified against third party liability resulting from such activity.

12. Comment: Con Ed should limit construction along Ninth Avenue and on West 219<sup>th</sup> Street to nighttime or hours identified by Time Warner as "off-duty" hours to minimize interference with Time Warner operations

Response: Construction activities along Ninth Avenue and West 219<sup>th</sup> Street cannot be limited to any specific hours but will be coordinated



with Time Warner to minimize temporary interference with their operations.

Reply: Con Ed should commit to schedule the timing of its activities at the TWC Parcel to avoid the interruption of ingress to and egress from the TWC facilities and should endeavor to limit their activities to nighttime and off-duty hours to maximum extent possible.

Con Ed has testified that cable pulling can be performed at night (Tr. at 603). The NYCDEP noise code limits hours of construction (Tr. at 530).

13. Comment: Con Ed 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 219<sup>th</sup> Street will allow to ensure that construction does not encroach on Time Warner property and to buffer the migration of contaminants.

Response: The specific alignment of the M29 transmission line reflects required separation from existing utilities and other factors such as bending radii and manhole locations, as shown on the plan and profile drawings.

Reply: Con Ed testimony indicates that “the manhole would be adjacent to the Time Warner property.” The extent of the excavation that will occur to install the manhole will be adjacent to the fence that runs along the east side of the sidewalk of Ninth Avenue (Tr. at 618). If the fence is located within the Time Warner property, excavation will occur on the Time Warner property.

14. Comment: Con Ed 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.

Response: The manhole on Ninth Avenue has been located with consideration of numerous factors, including available clearance from existing utilities. As shown on the plan and profile drawing (Drawing No. 348690-0), the location of this manhole will not interfere with the Time Warner driveways onto Ninth Avenue.

Reply: The cable pulling operation and equipment will interfere with the free movement of trucks and employees in and out of the parking facility along Ninth Avenue. Further, the relocation of the manhole further north will enable the path of the cable onto West 219<sup>th</sup> Street to more closely approximate the originally depicted curvature and allow the cable to run along the north curb of West 219<sup>th</sup> Street,

thereby avoided untenable interference with Time Warner operations.

Based upon the foregoing, we believe the enumerated conditions and requirements are both reasonable and appropriate and we urge the Commission to impose these conditions and requirements upon any approval of the revised EM&CP.

### **CONCLUSION**

For the foregoing reasons, the revised EM&CP proposed by Con Ed should be rejected and should not be certified until Con Ed provides specific, detailed plans to address concerns relating to trenching, manhole construction, sediment control, street contamination, soil removal, noise mitigation, traffic mitigation, community outreach, local business outreach, and project construction coordination. Furthermore, the Public Service Commission should withhold certification of Con Ed's Article VII application until such time as Con Ed submits a suitable EM&CP in line with the issues it promised to address during the evidentiary and briefing portions of these proceedings.

Dated: New York, New York  
November 21, 2007

Respectfully submitted,

By: 

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