

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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In the Matter of the Siting of Electric :
Transmission Facilities Proposed to be Located : Cases 02-M-0132
at the West 49th Street Substation of : 01-T-1474
Consolidated Edison Company of New York, Inc.: 02-T-0036
: 02-T-0061
et al. :
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PROTECTIVE ORDER

In accordance with the Notice of Opportunity to Participate in Combined Siting Proceedings issued on February 6, 2002, these proceedings will involve an examination of the configuration, capacity, and characteristics of certain utility facilities that are owned and operated by Consolidated Edison Company of New York, Inc. ("Con Edison") in order to investigate issues ("Facilities Issues") regarding the interconnection to Con Edison's utility facilities of the transmission projects proposed by PSEG Power Cross Hudson Corporation; Neptune Regional Transmission System, LLC; TransEnergie U.S. Ltd.; and GenPower New York, LLC. In recognition that these proceedings will entail such examination; that Con Edison will provide and submit in these cases information relating to its utility facilities; and, in further recognition that, pursuant to Section 87(2)(f) of the Public Officers' Law, some of that information may implicate the lives and safety of the public and may merit restrictions on its disclosure and use by the parties to these proceedings ("Parties"); therefore this Protective Order is hereby adopted to provide a suitable and expeditious means for obtaining access to and/or limiting

distribution and copies of documents, data, information, studies and materials (such documents, data, studies and other materials hereinafter collectively referred to as “Protected Material”) to be provided and submitted by Con Edison, which are relevant to the Facilities Issues. In order to limit disclosure and use of the Protected Material, subject to a final determination regarding the applicability of Section 87(2)(f) of the Public Officers' Law, the following provisions are hereby adopted and made applicable in these proceedings:

1. (a) Protected Material shall include (i) all information relating to the configuration or capacity or characteristics of utility facilities that Con Edison provides at the February 14, 2002 Educational Forum, (ii) all information of a similar nature that Con Edison furnishes in any formal or informal proceedings conducted in these cases, (iii) any information contained in or obtained from information described in the foregoing clauses, (iv) Notes of Protected Material, and (v) copies of Protected Material.

(b) "Notes of Protected Material" means memoranda, handwritten notes, or any other form of information (including electronic form) which copies, discloses, or analyzes materials described in Paragraph 1(a). Notes of Protected Materials are subject to the same restrictions provided in this order for Protected Materials except as specifically provided in this order.

(c) The term “Non-Disclosure Certificate” shall mean the certificate annexed hereto by which Parties who would be granted access to Protected Material shall certify their understanding that such access to Protected Material is provided pursuant to the terms and restrictions of this Protective Order, and that such Parties have read the Protective Order and agree to be bound by it. All Non-Disclosure Certificates shall be served on the administrative law judges presiding in these cases

(“Administrative Law Judges”), Con Edison, and the Commission’s Litigation Staff (“Commission Staff”).

(d) The term “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate, who has a need to review the Protected Material for purposes of the Facilities Issues, and who is:

- (1) a member of the Commission Staff or otherwise an employee of New York State or of a county or local subdivision thereof (such members and employees being referred to as “Governmental Employees”);
- (2) an attorney who has made an appearance in this proceeding for a Party;
- (3) attorneys, paralegals, and other employees associated for purposes of this case with an attorney described in (2),
- (4) an expert or an employee of an expert retained by a Party for the purpose of advising, preparing for or testifying in this proceeding with respect to the Facilities Issues;
- (5) a person designated as a Reviewing Representative by order of the Administrative Law Judges; or
- (6) employees or other representatives of Parties appearing in these proceedings with significant responsibility for the Facilities Issues.

2. (a) Protected Material shall be furnished pursuant to the terms of this Order, shall be treated by all persons accorded access thereto pursuant to the terms of this Order, and shall not be used or disclosed except as permitted by this Order. Access to and/or copies of Protected Material shall only be had as provided for in this Order.

(b) Except as otherwise provided herein, all Protected Material produced pursuant to this Order shall be made available solely to the Parties' Reviewing Representatives. The Parties and their Reviewing Representatives shall not disclose the Protected Material to persons that are not Reviewing Representatives or use the Protected Materials for any purpose unrelated to the Facilities Issues. Protected Materials shall be treated as confidential by each Party and Reviewing Representative in accordance with the Non-Disclosure Certificate. Reviewing Representatives may make copies of Protected Materials, but such copies become Protected Materials. Reviewing Representatives may make notes of Protected Materials, which shall be treated as Notes of Protected Materials.

(c) The following designation will be placed on each page of any document containing Protected Material: "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN NYPSC CASES 02-M-0132, 01-T-1474, 02-T-0036, and 02-T-0061."

3. All persons who are afforded access to, any Protected Material by reason of this Protective Order shall use their best efforts to keep the Protected Material secure in accordance with the purposes and intent of this Protective Order. To this end, persons having custody of any Protected Material shall keep copies and/or notes thereof segregated under lock or otherwise properly secured during all times when the same are not being reviewed, and withheld from inspection by any person except those entitled to access thereto as provided by the terms of this Order, unless and until such Protected Material is released from the restrictions of this Order. If a Governmental Employee or the governmental entity employing the Governmental Employee ("Governmental Entity") receives a request for disclosure of Protected Material or is ordered to or otherwise proposes to disclose Protected Material, the Governmental Employee or Governmental Entity shall promptly notify Con Edison so that Con Edison may seek an injunction, protective order, or other appropriate remedy to prevent

disclosure. For a period of 15 days after Con Edison's receipt of such notice (or such shorter period as is specifically set forth in any subpoena or order to which the Governmental Employee or Governmental Entity is subject), the Governmental Employee and Governmental Entity shall not disclose any Protected Material in order to allow Con Edison time to obtain an injunction, protective order or other appropriate remedy to prevent disclosure.

4. In the event that a Party wishes to designate as a Reviewing Representative a person not described in Paragraph 1(d) above, the Party shall seek agreement from Con Edison. If an agreement is reached, that person shall be deemed to be a Reviewing Representative. If no agreement is reached, the disputed designation shall be submitted to the Administrative Law Judge for resolution.

5. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate; provided that if an attorney qualified as a Reviewing Representative has executed such a certificate, the paralegal, secretarial, and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each Non-Disclosure Certificate shall be provided to counsel for Con Edison prior to disclosure of any Protected Material to that Reviewing Representative. Attorneys qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Order.

6. Any Reviewing Representative may disclose Protected Materials to any other Reviewing Representative as long as the disclosing Reviewing Representative and the receiving Reviewing Representative both have executed a Non-Disclosure Certificate. In the event that any Reviewing Representative to whom the Protected Materials are disclosed ceases to be engaged with the

Facilities Issues, or is employed or retained for a position which would disqualify such person from continuing to serve as a Reviewing Representative under the terms of this order, access to Protected Materials by that person shall be terminated. Even if no longer engaged in these proceedings, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the certification.

7. The Administrative Law Judges shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Administrative Law Judges, the parties to the dispute shall use their best efforts to resolve it. Any Party that contests the designation of materials as Protected Materials shall personally serve Con Edison's counsel by hand delivery, fax, or overnight delivery of written notice specifying the materials whose designation is contested. This Protective Order shall automatically cease to apply to such materials seven (7) business days after the notification is personally served unless Con Edison, within said seven-day period, files a motion with the Administrative Law Judge, with supporting affidavits, demonstrating that the materials should continue to be protected. In any challenge to the designation of materials as protected, the burden of proof shall be on Con Edison. The Administrative Law Judge's decision shall be subject to review by the Commission, and the Parties retain their rights to seek additional administrative or judicial remedies after the Commission's decision.

8. All copies of all documents containing or reflecting Protected Materials, including the portion of the hearing testimony, exhibits, transcripts, briefs, and other documents that refer to Protected Materials, shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS" and shall be filed under seal and served under seal upon the

Commission and all Reviewing Representatives who are on the party list. For anything filed under seal, redacted versions or, where an entire document is protected, a letter indicating such, will also be filed with the Commission and served on all Parties. Counsel shall take all reasonable precautions necessary to assure that Protected Materials are not distributed to unauthorized persons.

9. (a) All transcripts, exhibits, response to discovery requests, pre-filed testimony and other information which have been determined by the Administrative Law Judge to be or to contain, discuss, or reveal Protected Material shall be segregated from the balance of the record in these cases and placed in a sealed file or otherwise given appropriate protection against disclosure. Any employee or consultant or facilitator specifically authorized by the Commission to assist the Commission and the Administrative Law Judges in these cases may have access to such records; provided that such persons shall not use the Protected Materials therein except for the purposes of the Facilities Issues and shall not disclose such Protected Materials to any person, firm or corporation except as permitted by this Protective Order.

(b) At any hearing or conference in these cases, no witness, other than any employee or representative of Con Edison, may be questioned with respect to any Protected Material unless that person has read this Protective Order and agreed to be bound by its terms.

(c) No person other than those who have signed an agreement to be bound by this Protective Order shall be permitted to hear or review testimony given or discussion held with respect to Protected Material.

(d) The court reporter(s) shall be instructed as to the nature of certain testimony with respect to the Protected Material and shall be further instructed to and shall start a separate transcription for testimony or discussion on the record of Protected Material. Such transcriptions shall

be marked "Confidential," sealed and filed with the Commission and copies of same shall be made available only pursuant to paragraph (a) hereof. Such transcriptions shall in all other respects be treated as Protected Material under this Order.

10. Nothing in this Protective Order shall be construed as precluding any Party from objecting to the use of Protected Materials on any legal grounds.

11. Nothing in this Protective Order shall preclude any Party from requesting the Administrative Law Judge to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order. The Administrative Law Judge or the Commission may alter or amend this Protective Order as circumstances warrant at any time during the course of these proceedings.

12. Nothing in this Protective Order shall be deemed to preclude any Party from independently seeking through discovery in any other administrative or judicial proceeding information or materials produced in this proceeding under this Protective Order.

13. None of the Parties waives the right to pursue any other legal or equitable remedies that may be available in the event of actual or anticipated disclosure of Protected Materials.

14. Protected Materials shall remain available to Parties until the date that an order(s) terminating these proceedings becomes no longer subject to judicial review. The Parties shall, within fifteen days of such date, either return the Protected Materials to Con Edison or destroy the materials, except that copies of filings, official transcripts and exhibits in this proceeding that contain Protected Materials may be retained if they are maintained in accordance with Paragraph 3 above. Within such time period each Party shall also submit to Con Edison and the Administrative Law Judges an affidavit stating that, to the best of its knowledge, all Protected Materials and all Notes of Protected Materials

have been returned or destroyed or will be maintained in accordance with Paragraph 3. To the extent Protected Materials are not returned or destroyed, they shall remain subject to the Protective Order.

15. Protected Material which shall remain in the possession of the Commission shall continue to be subject to the protective requirements of this Order.

16. The contents of Protected Materials or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order and shall be used only in connection with the Facilities Issues. Any violation of this Protective Order and/or any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

Dated: February 13, 2002,

SO ORDERED:

ADMINISTRATIVE LAW JUDGE
JACLYN A. BRILLING

ADMINISTRATIVE LAW JUDGE
WALTER T. MOYNIHAN

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order in these proceedings, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone and shall not be used for any purpose, other than in accordance with the Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the New York State Public Service Commission.

By: _____

Title: _____

Representing: _____

Date: _____