

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 22, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 06-T-0710 - Application of Consolidated Edison Company of
New York, Inc. for a Certificate of
Environmental Compatibility and Public Need
Under Article VII of the New York State Public
Service Law for the M29 Transmission Line
Project.

ORDER GRANTING CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED ALSO APPROVING, IN PART,
THE ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN

(Issued and Effective August 23, 2007)

BY THE COMMISSION:

INTRODUCTION

On June 14, 2006, Consolidated Edison Company of New York, Inc. (Consolidated Edison or the Company) filed, pursuant to Public Service Law (PSL) Article VII, an application for a certificate of environmental compatibility and public need for an electric transmission facility. The Company proposes to build and operate a 345 kilovolt, high-pressure, fluid-filled, underground transmission cable contained in a pipe. It will be located primarily under well-traveled, main roads in Yonkers, Riverdale, the Bronx and upper Manhattan. It will be placed in the curb-to-curb portion of public road rights-of-way in route to a new substation being constructed in the Inwood section of upper Manhattan. The total length of the underground transmission facility is about 9.5 miles.

Hearings were held to obtain the public's views about the transmission facility proposal. The presiding officers assigned to this case conducted three public statement hearings in Yonkers, the Bronx and Manhattan on September 9, October 16 and 17, 2006, respectively. A fourth public statement hearing, attended by Commissioner Robert E. Curry, Jr., was held in Riverdale on January 22, 2007. The hearings were well attended by concerned citizens, and their local and elected representatives. We have also received many written comments about the proposal and comments provided by electronic mail.

Hearings were also held to consider Consolidated Edison's evidence supporting its application and the evidence presented by the other parties who participated in this proceeding. The evidentiary hearings were held in our New York City offices on January 22, 2007 and three consecutive days thereafter. The hearing was continued and concluded on March 19, 2007.

On May 30, 2007, a recommended decision prepared by Administrative Law Judge William Bouteiller was issued. The public comments received in this case, and the parties' positions concerning the transmission facility, are fully described in the recommended decision. In June 2007, the parties were provided an opportunity to submit exceptions to the recommended decision. Briefs on exception were filed by Consolidated Edison, a group of local and elected officials from the Bronx, the Manhattan Borough President's Office, the City of Yonkers, Time Warner Cable of New York City (Time Warner), The New York and Presbyterian Hospital (the Hospital), and Department of Public Service (DPS) Staff.¹ The City of Yonkers submitted a brief letter reiterating its basic position in this case. Westchester County and the City of New York, who support

¹ The coalition of Bronx officials includes New York State Assembly Member Jeffrey Dinowitz, New York City Council Member G. Oliver Koppell, New York State Senator Jeffrey Klein, Bronx Borough President Adolfo Carrion and Bronx Community Board 8. Manhattan Community Board 12 submitted a late brief on exceptions which effectively adopts the Manhattan Borough President's Office brief.

the Company's transmission facility proposal, have not taken exception to the recommended decision.² Reply briefs were received from the Company, DPS Staff, the Hospital, Time Warner and the Manhattan Borough President's Office.

THE RECOMMENDED DECISION

The presiding officer's recommendations follow the strictures of Public Service Law §126. First, he observed that no party raised any issue about the need for the transmission facility to provide electric system reliability and economical electricity for the greater New York City service area. He also found that the proposal conforms to the State's long-range plan for the expansion of the electric power grid and that the transmission facility would be entirely underground, except for where it is hung under bridges. None of these matters have been challenged and they present no issues of concern.

Next, the presiding officer addressed the uncontroverted portions of Consolidated Edison's environmental analysis. The transmission facility will be installed in a densely populated urban area where it does not present any substantial concern for the natural environment.

The transmission facility presents the minimum environmental impact for visual, aesthetic, and cultural resources because it will be installed underground. Also, on the proposed route from Yonkers to upper Manhattan, there are no terrestrial ecology or wetland concerns. Wildlife habitat and vegetative communities are unaffected by the proposal and it is not expected that any archeological resources will be encountered in the curb-to-curb portion of the roads where the transmission facility will be located. Water resources will not be adversely affected by placing the transmission facility in the road bed or under existing bridges, or by the construction of a tunnel under the Harlem River. No controversy surrounds

² Westchester County has submitted certificate conditions. The only issue it raises concerns the need to include the conditions in the certificate or the environmental management and construction plan (EM&CP) for the transmission facility.

any of these likely environmental impacts and no party presents any issues concerning them.

The remainder of the presiding officer's recommendations addresses the parties' issues concerning the impacts that local communities and citizens will incur during the construction of the transmission facility. The administrative law judge also evaluated the proposed route and the alternative routes presented by various parties.

The representatives and citizens of Yonkers, Riverdale, the Bronx and upper Manhattan are deeply concerned about construction noise, traffic congestion, the provision of municipal services and the quality of life in their respective neighborhoods. Time Warner and the Hospital are concerned about the placement of the transmission facility on and adjacent to their respective properties in upper Manhattan. They are also concerned about their ability to operate a large business and a hospital while Consolidated Edison is tunneling under the Harlem River and constructing the transmission facility in upper Manhattan.

The administrative law judge has recommended against a proposal made by the local and elected officials from Yonkers, Riverdale, the Bronx and Manhattan to place the transmission facility within the boundaries of Interstate 87. He also rejected a DPS Staff proposal to move the Manhattan segment to the Bronx side of the Harlem River. With respect to the placement of the transmission facility between Ninth Avenue and Broadway, the administrative law judge recognized that the transmission facility could be placed on West 219th Street as Consolidated Edison proposed. However, he recommended that it be located on West 220th Street, as Time Warner proposed, if the construction and operation of the transmission facility did not adversely affect the flow of traffic at the entrance to the Allen Pavilion.

Overall, the administrative law judge has recommended that we grant Consolidated Edison a certificate of environmental compatibility and public need for an underground transmission facility on almost the entire route the Company has proposed.

To properly address the local community concerns about construction noise, traffic congestion, municipal services and the quality of life, he has recommended that we consider the environmental management and construction plan (EM&CP) for the project at the same time we consider the matters pertaining to the grant of a certificate. In this manner, he believed that we would be able to ensure that the local community impacts related to the construction activity would be kept to a minimum and properly mitigated.

THE PARTIES' EXCEPTIONS

Consolidated Edison

Consolidated Edison has submitted six exceptions to the recommended decision. The first concerns a possibility that did not occur. The Company thought that a party might attempt to introduce a new alternative route at this stage of the proceeding. The administrative law judge, in addressing construction noise, traffic congestion and local business impacts on the route the Company proposed, observed that these impacts might be less intrusive and inconvenient on other local roads. He also noted that no such alternatives were presented by the parties representing the local interests and that none of the local parties supported any of the alternative routes that Consolidated Edison presented in its application.

On exceptions, the Company states that the parties who oppose its proposed route were provided an ample opportunity to present alternative routes at the beginning of this proceeding. It points out that a group of local parties proposed that the transmission facility be located within the confines of Interstate 87 and the group choose not to present any local road alternatives. According to Consolidated Edison, it would be inconsistent with an orderly administrative process, and violate fundamental fairness, to provide the parties any additional opportunities to present alternative routes.

This exception can be quickly resolved. The only alternative routes we have been asked to consider are the ones presented on the record. No party has identified any new alternatives at this stage of the proceeding.

Next, Consolidated Edison is opposed to Time Warner's proposal to locate the transmission facility on West 220th Street between Ninth Avenue and Broadway. The Company continues to support its proposal to place the facility on West 219th Street. This issue is also addressed by Time Warner, the Hospital and DPS Staff. All the exceptions concerning the location of the transmission facility on one of these streets are addressed below.

Consolidated Edison's third exception concerns the conditions Time Warner has proposed for the certificate of environmental compatibility and public need. According to the Company, the matters raised by seven proposed conditions are better left to the review of the EM&CP for the project. The Company also objects to five conditions as requiring excessive mitigation of the petroleum contamination found on Ninth Avenue near property owned by Time Warner. The Company considers two conditions particularly egregious. One concerns the involvement of the New York State Department of Environmental Conservation in the matters presented by the petroleum contamination found on Ninth Avenue. The other concerns indemnification for any environmental clean up costs.

Consolidated Edison also takes exception to the certificate conditions proposed by the Hospital. The Company claims that we should not adopt any of the Hospital's proposed conditions because they relate to the easements Consolidated Edison must obtain to construct the transmission facility on the Hospital's property. According to the Company, we should not intrude upon the parties' negotiations or interfere with the condemnation process. In support of its position, the Company points to guidance documents, and prior decisions, establishing that the Commission plays no role in property acquisition matters or in the condemnation of private property.

Time Warner and the Hospital oppose the Company's position on the certificate conditions they have proposed. DPS Staff has also addressed the proposed conditions, and Westchester County has presented conditions for us to consider. The certificate conditions are addressed below.

Consolidated Edison has also submitted an exception urging us to issue a certificate of environmental compatibility and public need at the first available opportunity and not to delay. It opposes the presiding officer recommendation that the certificate coincide with our approval of the EM&CP for the project. The Company believes that we should adhere to the usual practice where approval of the EM&CP follows, in due course, after the certificate is granted. Consolidated Edison filed its EM&CP on June 26, 2007.

Finally, on exceptions, the Company asks us to note in the certificate for the transmission facility that it must acquire property owned by the Hospital in upper Manhattan and property owned by Kingbridge Associates in the lower Bronx for the tunnel that is needed to cross the Harlem River. In addition to this transmission facility, the tunnel will be used for various other transmission and distribution facilities.

We are granting this exception. The transmission facility is needed to provide the public electric service. The route we are certifying for the transmission facility will cross the Harlem River in the vicinity of the Broadway Bridge and the transmission facility requires a tunnel under the Harlem River. We find that Consolidated Edison requires access and rights to the property owned by Kingbridge Associates in the Bronx, and the Hospital in upper Manhattan, to construct the tunnel needed for this facility.

The Bronx Coalition

The Bronx officials do not believe that Consolidated Edison should receive a certificate of environmental compatibility and public need because the Company did not provide noise, traffic or business impact studies to support its application. They also claim that Consolidated Edison lacks sufficient knowledge of the features and establishments along the proposed route to support the grant of a certificate. The Bronx representatives fault the Company for not providing community members advance information about the project, and they claim that Consolidated Edison's ability to oversee the

contractors who will perform the construction work may be inadequate. Further, they assert that the Company did not use proper criteria to evaluate the alternative routes available for the transmission facility.

According to the Bronx officials, without noise, traffic and economic impact studies, the application does not show the transmission facility's probable environmental impact or that the facility will have a minimum adverse impact, as required by Public Service Law §126 (b) and (c). Without a study indicating the construction noise impacts on residences, business, schools and religious institutions, the Bronx officials state that the application is unable to provide adequate noise mitigation. Without a study of the land use impacts, they assert that the Company has not shown that it can minimize the project's conflicts with existing land uses and those planned for the future.

By not providing a traffic study, the Bronx representatives assert that Consolidated Edison has failed to plan adequately for local road impacts, including those on Riverdale Avenue, a primary thoroughfare that previously collapsed and caused a serious traffic disruption for over two years while the road was reconstructed and restored. They point out that the Company did not contact the Metropolitan Transit Authority (MTA) regarding the bus routes and schedules that would be affected by the project and neither did it analyze the project's impact on school bus schedules. They also note that Consolidated Edison's witnesses were unaware of another construction project on the route it selected. They insist that any casual viewing or informal observation of the traffic along the proposed route is not a traffic study that can be used for planning purposes and to mitigate the project impacts.

The Bronx representatives also believe that Consolidated Edison's application does not fully comply with the applicable regulations because it did not contain a detailed description of the effects of construction on residential, commercial and industrial land uses adjacent to the proposed facility. Nor did the Company provide any study of the

project's economic effects on business. Absent a quantitative analysis of the business impacts, the Bronx representatives assume that the local establishments will be devastated.

Highlighting a lack of information, the Bronx representatives point to numerous instances where Company witnesses stated their unfamiliarity with the specific schools, religious institutions, public safety agencies, bus routes and construction activity on the route selected for the transmission facility. They seriously doubt that the Company can perform its construction in front of an identified fire house without having an adverse impact on emergency vehicle response times.

The Bronx representatives fault the Company for not discussing the transmission facility proposal with local school officials, emergency service providers, clergy, local businesses, the postal service or Community Board 8. Rather than wait for the environmental management and construction plan to address community concerns, traffic, noise and economic impacts, the Bronx representatives insist that these matters should have been addressed by the application.

With respect to Consolidated Edison's ability to manage the outside contractors who will perform the construction work, the Bronx representatives point to a recent report issued by the City of New York which states:

Consolidated Edison should examine and strengthen their contractor oversight process from initial design, to on-site inspection, and through acceptance testing, to ensure that proper controls are being exercised over contractor work.³

With respect to the alternative routes considered for the transmission facility, the Bronx representatives criticize the criteria the Company's engineers used. They believe the

³ New York City March 22, 2007 Report, Investigation by the City of New York Into The Northwest Queens July 2006 Power Outages submitted in Case 06-E-0894, Investigation of Consolidated Edison Electric Power Outages on the Long Island Electric Network.

criteria are skewed and improperly favor the route that Consolidated Edison prefers. They also believe that an independent body, not the Company's internal staff, should have evaluated the alternatives. They fault the Company for not considering community impacts among the primary factors for the transmission facility route.

In sum, the Bronx officials believe that Consolidated Edison has neither provided substantial evidence, nor met its burden of proof, to demonstrate that the preferred route represents the minimum adverse environmental impact. They consider the construction period for the facility sufficiently long as to have required noise, traffic and land use studies with the application.

Manhattan Borough President's Office

The Borough President's Office states that the Manhattan segment of the transmission facility route is complicated, winding and will disturb traffic in upper Manhattan and on Broadway. It believes that construction on this route will adversely affect hospitals, schools, community centers and residents. According to the Borough President's Office, construction activity will disrupt commuters who work and live in northern Manhattan and it will limit access to local businesses, religious institutions and community activities.

Like the Bronx officials, the Borough President's Office faults Consolidated Edison for not conducting a traffic study. Similarly, it states that construction noise along the entire route should have been studied. It doubts that the disruptions to local businesses and residents will be temporary and limited. The Office emphasizes the importance of the local businesses to the welfare of northern Manhattan and its residents.

The Borough President's Office supports an alternative route proposed by DPS Staff on the Bronx side of the Harlem River as a "straight shot" to the new substation that would avoid significant disruptions and negative impacts. It states

that the DPS Staff alternative has none of the traffic, noise and community impacts that the Company's route has.

The Borough President's Office takes exception to the administrative law judge's acceptance of Consolidated Edison's rebuttal testimony in rejecting the DPS Staff alternative route. According to the Office, Consolidated Edison has asserted, but has not provided requisite facts to prove, that the DPS Staff alternative is not viable. To the contrary, the Office considers the DPS Staff proposal a reasonable and acceptable alternative to minimize the impacts for the local community.

Addressing Consolidated Edison's assertion that direct current electricity from the Metro North railroad on the Bronx side of the Harlem River would cause the transmission facility to corrode excessively, the Borough President's Office claims that the record evidence does not prove that the risk of corrosion is any greater than the risk of corrosion on the Company's proposed route. It states that the contrary may be true. According to the Borough President's Office, 1280 feet of the proposed route, along the Eighth Avenue subway in Manhattan, is exposed to the risk of excessive corrosion and only about 1,000 feet on the DPS Staff alternative is exposed to this risk. In addition, the Borough President's Office believes that there are at least three other locations on the proposed route where excessive corrosion could occur. The Borough President's Office suggests that Consolidated Edison be required to perform an engineering study of the area along the Metro North railroad tracks to determine if direct current electricity would cause excessive corrosion before the DPS Staff alternative route is rejected.

The Borough President's Office also doubts that the DPS Staff alternative would add \$40 to \$45 million to the project cost as Consolidated Edison has asserted. It concedes that special equipment may be needed for construction near the railroad tracks; however, it believes that the remainder of the DPS Staff alternative route is straighter and less costly than working on the streets of Manhattan where potential obstructions and problem areas can be expected.

The Borough President's Office doubts that special construction methods would be needed to dig under two large sewer lines on the alternative route. It believes that more analysis is needed to determine if it is possible to run the transmission facility over or through the sewers without using any specialized construction methods. The Borough President's Office also believes that additional analysis is needed to determine whether slurry walls or secant pilings are needed to protect the transmission facility from flooding; whether supports are needed for the Metro North bulkhead along the Harlem River; and, whether a specialized rigid shoring system is needed to minimize track bed settlement. The Borough President's Office states that Consolidated Edison's unsupported assertions should not be accepted at face value and that the Company's estimate of the additional construction costs is unsupported.

Finally, the Borough President's Office claims that Consolidated Edison asserted, but did not prove, that Metro North would not allow the alternative route because of its potential interference with railroad operations. The Borough President's Office doubts that the alternative route would conflict or interfere with the railroad. The Office does not believe that Metro North has plans to use the property DPS Staff identified for its alternative. The Office believes that the Company could secure the necessary easements to use the Metro North property and that it would be successful in a condemnation proceeding. According to the Office, in similar circumstances the Long Island Railroad was required to provide an electric company easement because nothing suggested that the electric facilities would interfere with the railroad's operations.⁴

⁴ Long Island R.R. Co. v. Long Island Lighting Co., 103 A.D.2d 156, 167 (N.Y. App. Div. 1984).

Manhattan Community Board 12

On exceptions, Manhattan Community Board 12 endorsed the exceptions submitted by the Manhattan Borough President's Office concerning construction impacts and the advantages of the alternative route presented by DPS Staff. According to Community Board 12, the administrative law judge should have recommended the alternative route and recognized that Broadway is a primary road to the Bronx. Construction on Broadway will adversely affect the traffic flowing north and south from commuters who avoid the Henry Hudson Bridge. Also on exceptions, the Community Board questions whether Consolidated Edison will return the streets in Manhattan to their original condition by repaving them from curb to curb. It has also requested that the Company provide the Community Board a study of the electromagnetic field impacts for the Academy and Sherman Creek substations.⁵

The City of Yonkers

In a two-page letter, dated June 26, 2007, the City of Yonkers states that it stands by the position it held throughout this proceeding. The City believes that Consolidated Edison's preferred route should not be approved because it unreasonably jeopardizes the safety of persons and property in Yonkers. The City adheres to the arguments it presented to the administrative law judge and states that it has no new arguments to offer.

Time Warner

On exceptions, Time Warner states the following concerns about Consolidated Edison's proposed route in upper Manhattan:

1. The soil and groundwater under the Ninth Avenue sidewalk (between West 219th Street and West 220th Street) contain significant levels of

⁵ In its response to Community Board 12, Consolidated Edison states that it has provided the study of electromagnetic fields that the Community Board has requested.

petroleum contamination due to the former use of this land by the Belcher-River Oil Terminal.

2. An elementary and intermediate school (PS/IS 278) located on West 219th Street has an entrance on Ninth Avenue where school buses park to drop off and pick up school children.
3. Time Warner has three business operations (on Ninth Avenue, West 219th Street and Broadway) that would be significantly and adversely impacted by excavation, trenching and manhole construction.

For these reasons, Time Warner believes that the transmission facility should be installed on West 220th Street and the manhole on Ninth Avenue should be located at the intersection of West 220th Street. According to Time Warner, this alternative would eliminate school safety concerns, traffic disruption, environmental and health exposure risks, and adverse impacts to its business. Time Warner also believes that this alternative has less impacts and inconveniences than the Company's proposed route on West 219th Street.

Addressing the administrative law judge's reservation about using West 220th Street, Time Warner states that its alternative would not conflict with the Allen Pavilion. According to Time Warner, the entrance to the Allen Pavilion would not be significantly impacted or compromised by construction at the intersection of West 220th Street and Broadway. As proposed, the transmission facility would follow a curved line at the intersection of Broadway and West 220th Street similar to the routing Consolidated Edison proposed for the intersection of West 219th Street and Broadway. The transmission facility would be well south of the Allen Pavilion entrance and would approach a bus shelter on the west side of Broadway. Time Warner points out that Broadway has two driving lanes and a parking lane in both directions at this location. Construction in the eastern driving lane on Broadway would leave two unimpeded lanes at the entrance to the Allen Pavilion. Thus, Time Warner does not believe that its West 220th Street proposal would interfere with the Allen Pavilion.

In response to DPS Staff's opposition to West 220th Street, Time Warner asserts that the car wash on this street would not be affected. Time Warner does not believe that the vehicles using the car wash on the south side of West 220th Street would be disturbed by construction on the north side of the street. Also, in opposition to the DPS Staff claim that West 220th Street is narrower than West 219th Street, Time Warner asserts that the streets are the same width according to the land records it reviewed.

Also, on exceptions, Time Warner objects to Consolidated Edison's characterization of the contamination found on Ninth Avenue as minor and non-hazardous. It states that the organic vapor concentrations found by the Consolidated Edison environmental experts were considered by them to be a safety hazard or a safety condition. According to Time Warner, the full environmental impact associated with this contamination remains unknown.

Time Warner also takes exception to a description contained in the recommended decision stating that excavation along the proposed route would generally be up to five feet wide and eight feet deep. Time Warner points out that the dimensions for the trenches needed for manholes are larger, 9 feet wide and up to 11 feet deep.

Finally, Time Warner takes exception to the administrative law judge's recommendation that we find that the environmental impacts for the transmission facility are known and represent the minimum adverse impacts to the environment. It claims that Consolidated Edison has not identified the environmental impacts associated with the new substation in upper Manhattan (the Academy Substation) being constructed where an electric generation station once stood. Due to the prior use of this land, Time Warner insists that Consolidated Edison should have arranged for the safe removal of any contaminated materials and soil found at this location.

The New York and Presbyterian Hospital

On exceptions, the Hospital describes the Allen Pavilion and the location where the Harlem River tunnel would surface on land straddling the Hospital's property and Ninth Avenue. The Allen Pavilion is a 212 bed, full-service, community hospital serving the residents of upper Manhattan and the Bronx. It provides emergency service in response to "911" calls; and, it is a state-certified chest pain center. It is located in a "health professional shortage area" and, in any given year, it is apt to handle 32,000 emergency room visits and discharge 13,500 patients. The Hospital plans to expand the Allen Pavilion and use the adjacent land that it owns. To the maximum extent possible, the Hospital seeks to preserve its surface and subsurface rights in the currently underutilized property.

The Hospital takes exception to the administrative law judge's recommendations concerning the conditions it proposed for the certificate. The Hospital acknowledges that he considered ten of the eleven proposed conditions proper; however, it believes that the administrative law judge should have expressly recommended all the conditions for inclusion in the certificate. The Hospital states that the conditions are necessary to minimize the transmission facility's impacts to its property.

With respect to the proposed condition the administrative law judge rejected, the Hospital claims that the Commission has authority to order Consolidated Edison to transfer to it a 10-foot by 100-foot parcel. According to the Hospital, the transfer of this property would provide mitigation and would offset the impairment that the Hospital suffers from Consolidated Edison's use and occupancy of its property. The Hospital states that this condition is an eminently reasonable mitigation measure because the Consolidated Edison property is equivalent to the surface easement rights Consolidated Edison seeks to acquire. The Hospital also believes the proposed condition serves the public interest by providing it the ability to expand the Allen Pavilion and provide local health services.

The Hospital also takes exception to the administrative law judge's recommendation concerning the use of West 220th Street. The Hospital believes the transmission facility would interfere with the Allen Pavilion's only entrance and exit at the intersection of Broadway and West 220th Street. According to the Hospital, construction at the intersection could endanger patient healthcare because the traffic at the Pavilion entrance is heavy and unpredictable. It points out that, at the intersection of Broadway and West 220th Street, traffic moves in twelve directions in contrast to the T-intersection at Broadway and West 219th Street where traffic moves in only six directions. The Hospital is concerned about traffic backing up at the Pavilion entrance and interfering with other vehicles moving quickly through the intersection. It states that it is less difficult to control traffic at the West 219th Street intersection where there are fewer options for vehicles and a greater potential to maintain an unimpeded traffic flow.

Like DPS Staff, the Hospital believes that the car wash on West 220th Street and the corner of Broadway would be adversely affected by construction. It points out that one lane on Broadway is currently taken up with customers' vehicles and that transmission facility construction could close another two lanes. It believes that re-routing traffic at the intersection of West 220th Street and Broadway would be very difficult in these circumstances. It also believes that the flow of emergency and other vehicles at the intersection exacerbates the traffic concerns at this location.

Finally, the Hospital states that it supports the alternative route segment proposed by DPS Staff that would avoid upper Manhattan. If the DPS Staff alternative were adopted, the transmission facility would not interfere with the Allen Pavilion or the Hospital's plans to develop its property and expand the medical facility.

DPS Staff

On exceptions, DPS Staff addresses two matters, certificate conditions and the proposed use of West 220th Street. DPS Staff believes that the conditions proposed by the Hospital and Time Warner are inappropriate and only a few should be included in the certificate. DPS Staff believes that the proposed conditions are more suitable for consideration during the EM&CP process for inclusion in the EM&CP requirements.⁶

DPS Staff recognizes the Commission's authority to grant a certificate upon such terms, conditions, limitations and modifications of the construction or operation of the facility as is appropriate. However, it believes it is better to consider conditions like those proposed by the Hospital and Time Warner in the EM&CP process. At that time, Consolidated Edison will be expected to provide its detailed engineering and construction plans for the transmission facility.⁷ With the detailed engineering and construction plans, and comments provided by the interested parties and the affected landowners, DPS Staff believes the proposed conditions can be better evaluated. DPS Staff urges the Commission not to prejudge the outcome of the EM&CP process by accepting the Hospital's and Time Warner's proposed conditions at this time.

With respect to the conditions the Hospital proposed, DPS Staff believes that six should await the EM&CP. As to the

⁶ DPS Staff agrees with the judge's recommendation to reject the Hospital's condition concerning the transfer of Consolidated Edison property to the Hospital.

⁷ According to DPS Staff, Consolidated Edison's EM&CP should provide the Company's final estimate of where, when and how the facility will be built, including the Company's most recent surveys of surface and subsurface conditions, and other aspects of the project's microenvironment. DPS Staff believes that the concerns of interested parties and affected landowners should be addressed using the documents, maps and drawings provided with the EM&CP. It also believes that minor changes to the project, that do not alter the environmental impacts, can be handled expeditiously by the EM&CP process and they would not require either a certificate amendment or Commission approval.

conditions proposed by Time Warner, DPS Staff recommends postponing eleven concerning the availability of the storm water pollution prevention plan, the details of the Company's planned excavation activity, and the engineering plans for the location of the transmission facilities and the construction activity.

With respect to other conditions proposed by the Hospital, DPS Staff believes that one concerning responsibility for excavation and blasting (as re-drafted by Staff), and another precluding above-grade structures on the Hospital's property, could be included in the certificate. Two other proposed conditions DPS Staff considers inappropriate because they address above grade structures that the Company has not proposed and consequential damages that are unrelated to the construction or operation of the transmission facility.

As to the conditions proposed by Time Warner addressing the authority of the State Department of Environmental Conservation, responsibility for contaminated materials and indemnification for environmental remediation costs, Staff considers the first inappropriate as drafted, and the other two beyond the matters that bear upon the construction and operation of the transmission facility.

With respect to the placement of the transmission facility between Ninth Avenue and Broadway, DPS Staff supports the use of West 219th Street. DPS Staff states that Time Warner did not show that the use of West 220th Street would mitigate any adverse environmental impacts. Specifically, it maintains that Time Warner has not shown that the use of West 220th Street would minimize the exposure of the petroleum contamination found on Ninth Avenue. DPS Staff also considers West 220th Street narrower than West 219th Street and objects to shifting the impacts that Time Warner would incur to the car wash business that could suffer a significant adverse financial impact.

DISCUSSION

Construction Performance

Public officials from Yonkers, Riverdale, the Bronx and Manhattan state concerns about the potential disruptions expected from the noise, traffic, business and land use impacts resulting from the construction of the transmission facility. The application broadly considered these impacts and addressed the potential routes for the transmission facility. The analysis and the route comparisons indicate that any such transmission facility constructed in Yonkers, Riverdale, the Bronx and upper Manhattan will result in adverse noise, traffic and land use impacts on the local communities during the construction performance. It is not possible to build a transmission facility without subjecting the communities to the attendant noise, traffic and land use impacts.

The issue presented here is whether any specific or detailed study was necessary, in Consolidated Edison's application, for the Company to develop and use the best available mitigation measures to minimize the unavoidable noise, traffic and land use impacts. We find that the submission of detailed studies on these impacts as part of the application are not necessary to accomplish the impact minimization and mitigation that is required by statute and by the certificate we are issuing for this project.

Comprehensive monitoring of construction performance will occur with the assistance of the EM&CP that is specifically designed for this project. The EM&CP categorizes the concerns that need to be addressed during construction and identifies the steps to be taken to minimize and mitigate the impacts.

For example, the noise levels commonly produced by the construction machinery that will be used on this project are known. Before these noise sources begin and the noise levels on community roads, buildings and structures are affected, Consolidated Edison will have put into place all the measures necessary for achieving noise minimization and mitigation. It will have required its contractors to use adequately muffled equipment and will have advised building owners, administrators

and occupants of the impending construction activity. The Company will be held accountable for the steps identified in the EM&CP for addressing the construction noise impacts.

Similarly, the adverse impact that road construction will have on traffic is generally known and the need to minimize this impact is well understood. The record is clear that all of the roads on the preferred route are major thoroughfares that are heavily used by local residents and commuters. The need to keep this impact to a minimum is paramount and this requirement is established by the certificate we grant. The EM&CP will list the elements of the plan required for the coordination of construction performance with local traffic management and the Company's performance will be monitored. The Company will be in direct contact with public transit officials and transportation operators. It will be responsible for informing the traveling public about potential traffic delays and alternative transit routes.

Adverse business impacts are anticipated and interference with current land uses is expected. We have fully considered this point in granting the Company its certificate. Businesses will be notified of the upcoming construction performance and the Company will cooperate with the firms to minimize and mitigate the impacts for the duration that the project remains active in the vicinity of the local establishments. The EM&CP recognizes this requirement and identifies the measures to be taken.

We also recognize that Consolidated Edison may have been slow, at first, to inform the local communities of its proposal to construct a transmission facility from Yonkers to Manhattan. In order to provide more information to local communities, this order and the EM&CP require systematic dissemination of project information to affected residents to keep them informed of construction performance impacts and provide them an opportunity to prepare for the impacts.

In sum, we deny the exceptions filed by the local community officials concerning the noise, traffic and land use impacts that will occur. The impacts have been sufficiently

identified and addressed on the record and the Company has the means available to it to minimize the adverse construction performance impacts that the communities and citizens along the route will incur. We fully expect Consolidated Edison to oversee and manage the outside contractors it employs to perform this work. We also expect the Company to become fully aware and knowledgeable about all the features and facilities along the transmission route in the preparation and submission of its engineering design and construction plans for the EM&CP. Before construction begins, the Company will know the precise location for every structure and feature proximate to the transmission route. With this detailed information, we expect Consolidated Edison to inform and work with every school, religious organization, residential complex, business, fire house and police station along the route to mitigate and minimize the adverse impacts due to construction performance and to allow the affected entities to make any necessary arrangements to manage their operations during the time the transmission facility is under construction.

West 220th Street and the DPS Staff Route

Turning to the exceptions submitted by Time Warner, the Hospital, Consolidated Edison and DPS Staff, we have considered whether the transmission facility should be located on West 219th Street or on West 220th Street. To begin, we note that the use of West 220th Street is favored by Time Warner and has not been proposed by the applicant. We would, therefore, expect Time Warner to make its best case to demonstrate that West 220th Street is a viable and preferable route for the transmission facility.

While Time Warner has had the burden of going forward with the West 220th Street alternative, the applicant is responsible to examine all reasonable alternatives. Accordingly, if a party shows a reasonable alternative, the applicant must demonstrate that its proposed route should be authorized. Consolidated Edison incorrectly suggests that Time Warner should present as much information as we would require an

applicant to provide for its routing proposals. For example, we would not expect Time Warner to have taken on the efforts necessary to demonstrate that an underground lane is available for the transmission facility on West 220th Street. In fact, Consolidated Edison, due to no fault of its own, was not able to provide any such demonstration for a substantial portion of the preferred route located in Yonkers. The absence of such information does not bar us from considering an alternative route of interest.

While it is correct that we would expect a party like Time Warner to address generally the environmental impacts and the costs of any alternative route it prefers, we would not exclude a reasonable alternative from consideration because it was not accompanied by the environmental assessments and cost estimates that an applicant is expected to provide. Further, the fact that an alternative route could add to the engineering costs for a project and delay a project does not provide a proper basis for us to refuse to consider an alternative route. Accordingly, we find that Time Warner has presented sufficient information for us to seriously consider its proposal to route the transmission facility on West 220th Street.

Time Warner has alleged that West 220th Street is a desirable route to avoid the petroleum contamination that was found on Ninth Avenue. However, the record in this case does not provide a systematic evaluation of the petroleum contamination found in upper Manhattan that is related to the Belcher-River Oil Terminal that once operated there. For example, it does not establish that use of the West 220th Street route would remedy the petroleum contamination concern or otherwise minimize potential adverse impacts. The record also does not establish that the petroleum contamination found on Ninth Avenue is either as serious as Time Warner would lead us to believe or as insubstantial as Consolidated Edison has portrayed it. The extent of the contamination is unknown. It is clear, however, that the Company is prepared to remediate properly any and all contamination that may be found along the route during construction performance, in accordance with local,

state and federal requirements. We, therefore, find that there is no known environmental benefit or advantage achieved by routing the transmission facility on West 220th Street.

It is also not clear from the record whether West 220th Street is narrower than West 219th Street and that the size difference could create impediments for construction performance on West 220th Street. DPS Staff visually observed the two streets and it believes that West 220th is narrower.⁸ Time Warner examined the street maps and ascertained that they are the same width.⁹ Additional information would be needed for us to rule definitively on this point. In any event, this factor relates only to the issue of whether construction performance may be more difficult on West 220th Street. It does not establish that construction on West 220th Street is impossible, is too costly or differs substantially from the construction performance that would occur on West 219th Street. We find that this point is not controlling for our determination as to which street is best to use for the transmission facility.

The selection between the two streets depends on an evaluation of the construction performance impacts on four entities--Time Warner, the Allen Pavilion, a local car wash and a public school complex. It also involves an evaluation of the impact on the traffic traveling on Broadway.

We are persuaded by the Hospital that construction at the intersection of Broadway and West 220th Street should be avoided so as not to impede the flow of traffic to the Allen Pavilion with its only entrance and exit located at this intersection. We are influenced in reaching this decision by the fact that the local car wash operates at this intersection and complicates the flow of traffic at this location. In comparison, the intersection of Broadway and West 219th Street, where Consolidated Edison has proposed to place the transmission facility, is further away from the entrance to the Allen

⁸ Tr. 1447.

⁹ Time Warner's Reply Brief, p. 10.

Pavilion and the traffic flow appears to be less complicated there.

We are not persuaded by Time Warner that school bus access to the public school complex presents a potential impact that must be avoided. The record in this case contains no direct evidence from any school administrators or City officials indicating that construction performance would preclude students from entering and leaving the complex at suitable locations. We find also that the EM&CP process will evaluate such requirements and provide any necessary alternatives for school bus access at the school complex and any other schools located along the transmission route.

Turning to the alternative segment proposed by DPS Staff that would remove the transmission facility from Manhattan and locate it on the Bronx side of the Harlem River, we are aware that the Manhattan Borough President's Office favors this alternative and Consolidated Edison is very much against it.

We find that this alternative has not been shown on the record to be a viable route for the transmission facility. The record establishes that, for a distance substantially longer than the Borough President's Office acknowledges, the route would be parallel and in close proximity to Metro North railroad tracks that are powered with direct current electricity. For a distance of about a mile, any transmission facility located on the route would be subject to an unacceptable and an excessive risk of corrosion that is not present on the route in Manhattan proposed by the Company. While it is true, as noted by the Office, that similar concerns about corrosion may be associated with the placement of the transmission facility in Manhattan next to a subway, the extent of the corrosion risks in Manhattan is substantially less than that existing on the route proposed by DPS Staff.

We also find that the construction methods needed on the Bronx side of the Harlem River differ substantially from the more routine, open-street construction that will be used on the remainder of the transmission facility route. The presence of large storm sewers, and the proximity of the Metro North

railroad tracks and the Harlem River to the transmission facility, would make construction on this alternative more difficult and costly. We find that these considerations also support the use of the route proposed by the applicant and we, therefore, deny the exception submitted by the Manhattan Borough President's Office. We are therefore authorizing the Manhattan segment of the route as proposed by Consolidated Edison and as presented in its application.

Finally, we reject the Bronx representatives' suggestion that the Company did not use proper criteria for evaluating alternative routes. The application submitted by Consolidated Edison evaluated numerous alternative routes and demonstrated the respective advantages and disadvantages of constructing each of them. None of the available alternatives would avoid construction performance in Yonkers, the Bronx or Manhattan. Consequently, it is not possible to locate the transmission facility that the Company has proposed without resulting in the community impacts that are of concern to the local representatives. Given the undisputed need for this facility and the unavoidable incurrence of community impacts on any of the available routes, the community disruptions are necessary to construct the facility for the reliable energy and economic advantages it will provide. The community impacts are expected and they are susceptible to measures that can reduce or minimize the potential disturbances to the affected communities.

Alternatives other than those provided by Consolidated Edison have been explored. The temporary noise, traffic and community impacts identified by the local and elected officials who contributed to the record have been considered. We are satisfied that the community impacts have been evaluated in reaching the decision we have made to certify this transmission facility. We are directing Consolidated Edison to include in its EM&CP the measures available to mitigate the community impacts.

Certificate Conditions

A substantial portion of the parties' briefs and arguments address the conditions that should or should not be included in the certificate that we grant for the transmission facility. In its reply brief on exceptions, Consolidated Edison continues to assert that the conditions proposed by the Hospital are not needed because the Hospital has not shown that it has any specific plans for the imminent development of the land that the Company would use for a tunnel shaft. According to the Company, the Hospital may have had preliminary discussions with an interested party to consider development opportunities but nothing else. Absent any architectural and engineering designs for the use of this land, Consolidated Edison believes we should not encumber the transmission facility certificate in the manner that the Hospital has proposed. We agree.

Rather than provide in the certificate the demarcation between Consolidated Edison's allowable use of the Hospital's property, and the reservation of rights that the Hospital seeks to preserve, we will allow the parties to accomplish this work in their easement negotiations or in the condemnation process that will ensue if the parties are unable to come to terms. To the extent that the Hospital's proposed conditions are warranted in the regulatory process that we oversee, we will consider them as provisions for the EM&CP that is issued for the transmission facility. This determination includes the Hospital's proposed condition concerning excavation and blasting that was supported by DPS Staff in a modified form. The excavation and blasting requirements are detailed in the EM&CP; and, the EM&CP is effective and suitable for establishing the Company's responsibilities in these areas.

Time Warner, in its reply brief on exceptions, continues to argue in support of the conditions it proposed for the certificate; however, we find that the construction details addressed by the Time Warner conditions are better considered in the EM&CP process and they should not be included in the certificate. We agree with DPS Staff that the established process that has worked very well for many transmission facility

projects should also be used in this case. In the EM&CP process specific construction methods, restoration techniques, and mitigation measures are crafted. Provisions like those proposed by Time Warner are established with the benefit of the Company's detailed engineering plans. This determination includes the Time Warner proposed condition concerning the disposal of excavated material. The specific disposal techniques the Company will employ are included in the EM&CP.

Westchester County has not taken exception to the recommended decision but it has presented, in accordance with the administrative law judge's suggestion, certificate conditions for us to consider. According to Consolidated Edison, the administrative law judge should not have encouraged Westchester to present, in the certification process, some 25 conditions addressing traffic flow, road restoration, bus operations and sewer infrastructure. The Company states that these conditions were not raised during the hearings and they go beyond the informal commitments the Company has made to the County. Further, the Company believes that the consideration of these conditions belong in the EM&CP process. DPS Staff agrees with the Company that the conditions proposed by Westchester County belong in the EM&CP review process along with the other proposals relating to traffic flow, roadway restoration, bus transportation, and other matters.

Consistent with our determinations to entertain the Time Warner's and the Hospital's proposed conditions in the EM&CP process, we will consider Westchester's proposed conditions there as well.

STATUTORY DETERMINATIONS

From our examination of Consolidated Edison's application and our consideration of the record, we find that:

1. The proposed transmission facility is needed.
2. The nature of the probable environmental impacts have been fully identified and evaluated.
3. The proposed transmission facility represents the minimum adverse environmental impact, considering the state of

available technology and the nature and economics of the various alternatives, and other considerations such as the effects on agricultural lands, wetlands, parklands and river corridors.

4. The entire transmission facility will be located underground except for certain river crossings.
5. Construction of the transmission facility is consistent with the most recent New York State Energy Plan which sets forth the State's energy policies and long-range planning objectives and strategies.
6. The transmission facility conforms to all applicable State and local laws and regulations.
7. Need has been demonstrated for the acquisition of additional real property or real property rights.
8. The transmission facility will serve the public interest, convenience and necessity.

ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN

In all cases in which the Commission certifies electric transmission facilities pursuant to PSL Article VII, the applicant is required to submit an environmental management and construction plan (EM&CP). Such a plan contains the detailed construction information for the project and specifies its exact location and the manner in which it will be built. Typically, the applicant is ordered to provide its EM&CP in compliance with a list of standards and practices adopted by the Commission.

Throughout this proceeding, the parties expressed concern and requested information about the traffic control measures that will be employed during the construction performance. In addition, the parties expressed concerns about how the project could be constructed to minimize adverse traffic, noise and economic impacts on residences and businesses along the project route. Given the nature of the underground transmission facility construction, and previous regulatory practices, these details are expected to be provided by the applicant in the EM&CP submitted for our approval.

Consolidated Edison stated in its Initial Brief that it would provide the parties an opportunity to review its proposed EM&CP prior to its submission to the Commission.

However, the parties' opportunity to preview the EM&CP did not occur. Additionally, the administrative law judge recommended that Consolidated Edison not receive its certificate of environmental compatibility and public need until it provides acceptable plans that address the construction related, local community impacts in Yonkers, Riverdale, the Bronx and Manhattan. Specifically, he recommended that the local community impact plans and reports include:

1. A noise mitigation plan.
2. A traffic mitigation and public transit coordination plan.
3. A municipal services plan addressing police, fire and emergency services.
4. A local commerce and business plan containing the Company's actions to inform commercial establishments of construction activity and to minimize interference with their businesses.
5. A community outreach plan containing the Company's plans to inform institutions, schools and others about construction activity and its plans to minimize interference with community and social activity.
6. 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.

In this case, Consolidated Edison chose to submit an EM&CP for our review before receiving its certificate. On June 26, 2007, Consolidated Edison filed an EM&CP for this project. A 30-day comment period was established and, on July 27, 2007, we received comments from DPS Staff, Time Warner, the Hospital, the City of Yonkers, Westchester County, Manhattan Community Board 12 and the Bronx representatives.

The comments we received are such that the EM&CP will require substantial revisions before it can be approved. Only two portions of the EM&CP warrant approval at this time: the

Academy and Sprain Brook Substation provisions. Specifically, the plans Consolidated Edison submitted on August 7, 2006 and the portions of the EM&CP detailing the expansions of the Sprain Brook Substation are approved.¹⁰ Approval of all other portions of the EM&CP will await Consolidated Edison's revised EM&CP which should be consistent with this Order and address the issues raised by the commenting parties.

The Commission orders:

1. The recommended decision in this case, to the extent consistent with this Order, is adopted and, together with this Order, constitutes the decision of the Commission in this proceeding.

2. Subject to the provisions and conditions set forth in this Order, a Certificate of Environmental Compatibility and Public Need is granted pursuant to Article VII of the Public Service Law to Consolidated Edison Company of New York, Inc. (Consolidated Edison or the Company) for the construction and operation of an underground 345 kV electric transmission facility as detailed in the application submitted in this case.

3. Consolidated Edison, within 30 days of the issuance of this Order, shall submit either a petition for rehearing or a verified statement that it accepts and will comply with its terms and the Certificate requirements. Any failure to comply with this ordering clause could invalidate the Certificate for this project.

Laws and Regulations

4. Consolidated Edison's motion, dated June 13, 2006, for modifications and waivers of specified application

¹⁰ Time Warner has alleged that Consolidated Edison did not adequately evaluate the environmental conditions and potential impacts associated with the Academy Substation. To the contrary, we find that the substation location was properly evaluated and the impacts associated with the construction and operation of the new substation will be minimized and mitigated.

information requirements, as set forth in Appendix A of the Application, is granted.

5. Each substantive state and local law and regulation applicable to the project authorized by this Order shall apply.

6. No state or local laws or regulations purporting to require any approval, consent, permit, certificate or other condition for the construction or operation of the project authorized by this Order shall apply, except (i) Public Service Law, regulations and orders adopted thereunder, (ii) applicable State law adopted for the protection of employees engaged in the construction and operation of the project, and (iii) permits issued under a federally delegated environmental permitting program. Consolidated Edison shall submit forms and substantively comply with all applicable state and local regulations for occupancy, construction, and use of rights-of-way (ROW). The Company may petition the Commission to seek resolution of any dispute that may arise in connection with its substantive compliance with such permits and approvals.

7. Nothing in this Order precludes Consolidated Edison from voluntarily subjecting itself to any state or local approval, consent, permit, certificate, or other condition.

8. Construction of the project shall not commence until Consolidated Edison has received any property transfers, easements, or consents needed from the New York State Department of Transportation (DOT) to permit construction to commence.

9. Consolidated Edison shall undergo highway work permit and use and occupancy permit review, and obtain a highway work permit and use and occupancy permit, from DOT pursuant to 17 NYCRR Part 131 for the construction and operation of the project, subject to the Commission's ongoing jurisdiction. Consolidated Edison shall coordinate with DOT for all work to be performed in the ROW of state highways, subject to the Commission's ongoing jurisdiction. Prior to submitting its construction plans for the project, Consolidated Edison shall provide to DOT a preliminary design marked to avoid conflicts with potential transportation projects that DOT may seek to

undertake in the future, offer to consult with DOT and use reasonable efforts to accommodate any DOT concerns. All work within state highway ROW shall be designed and performed according to the traffic and safety standards and other substantive requirements contained in 17 NYCRR Part 131, entitled Accommodation of Utilities Within State Highway Right-of-Way, applicable design standards of the American Association of State Highway and Transportation Officials, Manual of Uniform Traffic Control Devices, Highway Design Manual, Policy and Standards for Entrances to State Highways, Requirements for the Design and Construction of Underground Utility Installations Within the State Highway ROW, Accommodation Plan, and DOT 2002 Standard Specifications.

Environmental Management and Construction Plans

10. Consolidated Edison shall revise its Environmental Management and Construction Plan (EM&CP) submitted June 26, 2007 to address and reflect comments and concerns raised by DPS Staff, the administrative law judge, and intervenors. Construction of the transmission line shall not commence in any manner until the pertinent portions of the EM&CP are approved.

11. Those portions of the EM&CP relating to construction of the Academy and Sprain Brook Substations are approved.

12. Except where this Order requires otherwise, the environmental protection measures contained in the Application and in the related statements made by Consolidated Edison have been incorporated into the EM&CP and shall be adhered to during construction, operation and maintenance of the authorized project. Applicable provisions of the project's EM&CP and orders approving the EM&CP shall be incorporated into contracts associated with the project.

13. Consolidated Edison shall construct the facilities in accordance with the portions of the Revised Interim Standards and Practices for Environmental Management and Construction of Gas Transmission Facilities in New York State

(Standards and Practices), effective February 7, 2007 (adopted in Case 06-T-1383), that are applicable to this project and not specifically prescribed in the EM&CP, including standards and practices relating to archaeological resources, construction practices and techniques, water bodies and wetlands, erosion control, ROW clearing, restoration, and maintenance, except as otherwise specified herein.

14. Consolidated Edison shall report any proposed changes in the approved EM&CP to DPS Staff. DPS Staff shall refer to the Secretary of the Commission (or a designee) reports of any proposed changes that do not cause substantial change in the project's environmental impact. DPS Staff will refer all other proposed changes in the EM&CP to the Commission for approval. Upon being advised that DPS Staff will refer a proposed change to the Commission, Consolidated Edison shall notify all affected statutory and active parties, and all property owners or lessees whose property is affected by the proposed change. The notice shall describe the original conditions and requested change, state that documents supporting the request are available for inspection at specified locations, and state that persons may submit comments in writing, electronically, by regular mail or by telephone followed by written confirmation to the Commission within 15 days of the notification date. Consolidated Edison shall not execute any proposed change to the EM&CP until it receives oral or written approval from the Commission or a designee, except in emergency situations threatening personal injury, property damage or severe adverse environmental impact or as specified in the EM&CP.

15. Consolidated Edison shall make available to the public a toll free or local telephone number of an agent or employee who will receive complaints made during construction of the certified facilities and accept complaints electronically at a designated location on its web site. The Company shall inform the public of its telephone numbers, web site address, and of the Commission's numbers and address for receiving complaints. Consolidated Edison shall maintain a log of the complaints it

receives and must account for the status of the resolution of the complaints. The Company's log and status accounts must be made available to DPS Staff upon request. During DPS Staff's compliance inspections, the Company shall provide a report on each unresolved complaint.

16. Before commencing site preparation, Consolidated Edison shall give notice to DOT and the Commissioners of Public Works for Westchester County, the City of Yonkers and the City of New York. Such notice shall contain a map and description of the project in the local area; the anticipated date for the start of construction; and, the name, address, web site address and toll-free or local telephone number of an employee or agent of the Company who is able to provide information. The notice shall also contain: a statement that, pursuant to PSL Article VII, the project is subject to the jurisdiction of the Commission and the Commission is responsible for enforcing compliance with applicable environmental and construction conditions contained in Commission orders; notification that any person may submit questions and complaints to the Commission; information necessary to contact the Commission, including a postal and electronic address, a telephone number and the name of a contact person. The notice shall be written in plain language reasonably understandable to the average person, as determined by the Company. Consolidated Edison shall submit a copy of the notice to the Secretary for review before providing the notice to the state and local officials listed above.

17. Consolidated Edison shall provide its construction contractors complete copies of the Certificate for the project, the project's EM&CP, and 6 NYCRR Parts 700-704.

18. The authority granted in the Certificate for the project, and any subsequent Commission order in this proceeding, are subject to the following conditions which are necessary to ensure compliance with such orders:

- (a) Consolidated Edison shall regard the DPS Staff representatives authorized pursuant to PSL §8 as the Commission's designated representatives in the field. In the event of any emergency resulting from specific

construction or maintenance activities that violate or may violate the terms of the Certificate or any other order in this proceeding, the DPS Staff representatives may issue a stop-work order for that location or activity.

- (b) A stop-work order shall expire within 24 hours unless confirmed by a single Commissioner. If a stop-work order is confirmed, Consolidated Edison may seek reconsideration from the confirming Commissioner or the Commission. If the order is resolved to the satisfaction of the Commissioner or the Commission, the stop-work order will be lifted. If the emergency is not satisfactorily resolved, the stop-work order will remain in effect.
- (c) Stop-work authority shall be exercised sparingly and with due regard to the potential economic costs involved and possible impact on construction activities. Before exercising such authority, the DPS Staff field representatives shall consult (wherever practicable) with Consolidated Edison representatives possessing comparable authority. All attempts shall be made to address any issue and resolve any dispute in the field. In the event that the dispute cannot be resolved, the matter shall be immediately brought to the attention of the Consolidated Edison Project Manager and to the DPS Director of the Office of Electricity, Gas and Water. In the event that a DPS Staff field representative issues a stop-work order, neither Consolidated Edison nor the contractor will be prevented from undertaking safety-related activities deemed necessary and appropriate under the circumstances.
- (d) In the event of any emergency involving specific construction or maintenance activities that violate or threaten to violate the terms of the Certificate or any order in this proceeding, the DPS Staff field representatives may direct the Company to install appropriate mitigation measures or devices.

Notifications

19. Consolidated Edison shall inform the Secretary of the Commission, DPS Staff, and other affected agencies or parties at least five days before commencing construction of this project.

20. Consolidated Edison shall provide DPS Staff and other affected agencies or parties monthly status reports summarizing the previous month's construction activity and indicating the locations where construction is scheduled for the next month.

21. Within ten days after the facility is placed in service and is supplying customer loads, the Company shall notify the Commission of this fact.

Right-of-Way Clearing

22. Consolidated Edison shall confine clearing, where required, and subsequent maintenance activity to the certified ROW and temporary construction areas required for horizontal boring operations.

23. Consolidated Edison shall notify all construction contractors that the Commission may seek to recover penalties for violation of Commission orders not only from the Company but also from its construction contractors, and that construction contractors may also be liable for other fines, penalties and environmental damage resulting from actions performed by contractor personnel working on this project (from work directly or indirectly associated with this project).

Transmission Line Construction

24. Consolidated Edison shall install sedimentation/erosion control devices to prevent sedimentation into water bodies (e.g., the Harlem River) and any associated wetlands during construction. The erosion control structures shall be installed prior to construction and shall remain in place while working within 100 feet of the water body or wetland. Erosion and sedimentation controls shall be maintained until the ROW is revegetated and/or stabilized in accordance with pre-existing conditions.

25. Consolidated Edison shall take appropriate measures, as outlined in the EM&CP, to minimize fugitive dust and airborne debris from construction activity.

26. Noise mitigation procedures shall adhere, as described in the approved EM&CP, and DPS Staff shall be notified at least 24 hours in advance if unplanned weekend or holiday construction becomes necessary.

27. No vehicular or equipment access across or into streams or wetlands is permitted without provision of adequate protection. Equipment turnouts may be provided for machinery and equipment to pass at intervals in non-sensitive areas.

28. Consolidated Edison shall instruct its contractors to park their vehicles and equipment in areas designated on EM&CP drawings, so as not to interfere with normal traffic and not to cause any safety hazard or interference with existing land uses.

Erosion Control

29. In the areas of the ROW or substation sites subject to soil erosion, Consolidated Edison shall install temporary erosion control devices as soon as practicable and appropriate, and as indicated in the project's EM&CP.

Environmental Supervision

30. Consolidated Edison's environmental inspector, engineer or qualified designee shall be on site at the start-up of each field operation and during environmentally sensitive phases of construction in areas such as water crossings. Each environmental inspector, engineer or designee, and construction inspector shall be equipped with sufficient documentation, transportation and communication equipment to monitor effectively contractor compliance with the provisions of this Order, applicable sections of the Public Service Law and the approved EM&CP.

31. Pre-construction meetings shall be held prior to the start of construction on each phase of the project (e.g., the construction of the micro-tunnel and commencement of construction in each municipality). Invitees shall include, DPS Staff, DOT, contractor personnel, Consolidated Edison

construction and environmental personnel, and any other state or local officials or entities deemed appropriate.

32. Consolidated Edison shall organize and conduct site compliance inspections as needed, but not less frequently than once a month, during the clearing, construction and restoration phases of the project, and at least annually for two years after the project is operational. Such inspections shall include a review of the status of all Certificate conditions, requirements, and Company commitments, as well as a field review of the project, if necessary. Such inspections may also include:

- (a) reviews of all complaints received, and their proposed or actual resolutions;
- (b) reviews of any significant comments, concerns or suggestions made by the public, local governments or other agencies;
- (c) reviews of the status of the project in relation to the overall schedule established prior to the commencement of construction; and
- (d) any other items the Company or DPS Staff consider appropriate.

The Company shall circulate a written record of the results of such inspections to involved agencies.

Right-of-Way and Maintenance

33. Consolidated Edison shall, if necessary, negotiate for temporary easements for construction purposes, which shall be identified in the revised EM&CP. Any temporary easement or construction areas not identified in the approved EM&CP shall be requested through changes thereto.

Conservation Measures

34. Wherever ROW construction requires removal of topsoil for trench excavation, the topsoil shall be removed from the site and disposed of with other excavated subsoil material in keeping with conventional construction methods. At the time

of backfilling, select fills shall be placed around and above the project, compacted and stabilized to pre-existing conditions. Topsoil shall be restored in accordance with original soil profiles, generally not to exceed a maximum of twelve inches.

Cultural Resources

35. Consolidated Edison shall submit to the Secretary the archaeologist's revised Phase I report describing the results of additional testing along the ROW and the basis for the decision concerning the design and extent of the testing.

36. Should archaeological materials be encountered during construction, the Company shall, in accordance with the Unanticipated Discovery Plan provided in Appendix D of the Application, stabilize the area and cease construction activities in the immediate vicinity of the find and protect the same from further damage. Within 24 hours of such discovery, the Company shall notify DPS Staff and the Office of Parks, Recreation, and Historic Preservation (OPRHP) to determine the best course of action. No construction activities shall be permitted in the vicinity of the find until such time as the significance of the resource has been evaluated and the need for and the scope of impact mitigation has been determined.

37. Should human remains or evidence of human burials be encountered during the conduct of archaeological data recovery fieldwork or during construction, all work in the vicinity of the find shall be immediately halted and the remains shall be protected from further damage. Within 24 hours of any such discovery, the Company shall notify DPS Staff, OPRHP, and state and local police.

38. Consolidated Edison shall refrain from undertaking construction in areas where cultural resource surveys have not been completed and until such time as the results of any additional cultural resource surveys that are required are reviewed by the appropriate authorities, including OPRHP and DPS Staff. DPS Staff shall be contacted prior to commencement of construction in any such areas.

Other Facilities

39. Consolidated Edison shall engineer its facilities to be fully compatible with the operation of nearby electric, gas and telecommunication facilities. The Company shall take remedial measures with regard to any existing cathodic protection system if, upon monitoring, such measures are indicated.

40. Consolidated Edison shall coordinate maintenance of these facilities with those of adjacent electric, gas, and telecommunication facilities.

41. Consolidated Edison shall identify and mark-out all existing in-ground utilities in accordance with 16 NYCRR Part 753.

Right-of-Way Restoration

42. Within the limited areas where the disturbance of mowed ground cover may be required at the edges of a roadway ROW, a suitable seed mixture shall be applied to such areas to re-vegetate and stabilize the ROW or work area.

43. All trees over four inches in diameter (measured four feet above ground) or shrubs over four feet in height that are damaged or destroyed by Consolidated Edison's activities during construction, operation, or maintenance, regardless of where located, shall be replaced by Consolidated Edison with equivalent type trees or shrubs, except where:

- (a) not required by any approved EM&CP;
- (b) equivalent-type replacement trees or shrubs would interfere with the proper clearing, construction, operation, or maintenance of the project;
- (c) replacement would be contrary to sound ROW management practices or to any approved long-range ROW management plan applicable to the project; or
- (d) a property owner (other than the company) on whose land the damaged or destroyed trees or shrubs were located declines a replacement.

44. Within ten days of the completion of final restoration activity, Consolidated Edison shall notify the

Secretary of the Commission that all restoration is complete in compliance with the EM&CP.

45. This proceeding is continued; it is closed ten days after the ROW is completely restored, upon receipt of the notice required in ordering clause 44, unless the Secretary of the Commission finds good cause to continue the proceeding further.

By the Commission,

JACLYN A. BRILLING
Secretary