



CULLEN and DYKMAN LLP

Comments
06-T-0710
DHARR
06c
06E

44 Wall Street

New York, New York 10005-2407

Telephone (212) 732-2000 • Facsimile (212) 571-2838

Peter M. Metzger

Direct Dial: 212-510-2273

Direct Fax: 212-742-8268

E-Mail: pmetzger@cullenanddykman.com

November 21, 2007

VIA FEDERAL EXPRESS AND E-MAIL

Hon. Jaclyn A. Brilling
Secretary
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, New York 12223-1350

2007 NOV 23 AM 10:02

EXECUTIVE SECRET
JACLYN A. BRILLING
NEW YORK STATE PUBLIC SERVICE COMMISSION
ALBANY, NY 12223-1350

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

Dear Secretary Brilling:

Enclosed for filing in the above-referenced proceeding are an original and 5 copies of the "Comments of The New York and Presbyterian Hospital to Environmental Management and Construction Plan." In accordance with the permission granted by your office on November 16, 2007, this filing is being made via overnight delivery and electronic mail on November 20, and served on all parties to this proceeding via electronic mail.

Kindly acknowledge receipt of this filing by date-stamping the copy of this letter and returning it to the undersigned in the postage paid envelope included for your convenience.

Respectfully submitted

Of Counsel for
The New York and Presbyterian Hospital

cc: All Active Parties (Via E-Mail)

Founded 1850

BROOKLYN

LONG ISLAND

MANHATTAN

WASHINGTON, D.C.

NEW JERSEY

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

COMMENTS OF THE NEW YORK AND PRESBYTERIAN HOSPITAL
TO ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN

Cullen and Dykman LLP
44 Wall Street
New York, New York 10005
Tel: (212) 732-2000

Attorneys for
The New York and
Presbyterian Hospital

Peter M. Metzger
Joseph P. Stevens
Deborah M. Franco

Of Counsel

Dated: November 21, 2007

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

**COMMENTS OF THE NEW YORK AND PRESBYTERIAN HOSPITAL
TO ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN**

1. The New York and Presbyterian Hospital ("Hospital") hereby submits its comments to Con Edison's Environmental Management and Construction Plan filed with the Commission on November 2 in this proceeding (EM&CP).

I. PERMANENT EASEMENT ON HOSPITAL'S PROPERTY

2. While the EM&CP appears to be generally consistent with the statements Con Edison has made on the record in this case regarding the impact of its proposed transmission facility on the Hospital's property, certain matters require clarification. First, while the plan and profile drawings dated October 31, 2007 provided to the Hospital by Con Edison as part of the EM&CP generally indicate the location and dimensions of the Con Edison facilities that will be constructed on the Hospital's property, they do not include the location or dimensions of the permanent easement that Con Edison will require from the Hospital for these facilities.¹ As part of the EM&CP approval process, it is the

¹ The October 31 plan and profile drawings provided to the Hospital were marked "Preliminary – Not For Construction" and were incomplete. At the Hospital's request, Con Edison

Commission's responsibility to determine the extent and manner in which Con Edison's transmission route is authorized to impact the Hospital's property.² Indeed, the Commission stated (at 27) in its August 23 Order approving the Con Edison transmission route that:

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.*** (Emphasis added).³

Hence, it is incumbent on the Commission to ascertain and evaluate the extent and location of any permanent easement Con Edison may be seeking on the Hospital's land. Under these circumstances, the Commission cannot conduct such an evaluation because this information has not been included in the EM&CP.

3. During the course of the hearings before Administrative Law Judge Bouteiller, Con Edison conceded that the size of any permanent subsurface and

subsequently provided what appears to be a more complete second set of the plan and profile drawings, dated November 14, 2007 and marked as final. As best as the Hospital can determine, this second set of documents could not have been part of the November 2 Con Edison EM&CP filing submitted 12 days earlier.

² See, e.g. Case 04-T-1687, Long Island Power Authority, "Order Adopting The Terms of a Joint Proposal and Granting Certificate of Environmental Compatibility and Public Need," 2005 NY PUC LEXIS 466, 11-12 (Nov. 23, 2005), wherein the Commission stated that "***the specific location and acreage of all needed real property or real property rights will be determined in the Environmental Management & Construction Plan phase of the proceeding.***" (Emphasis added).

Indeed, if Con Edison were to seek to acquire any necessary easement rights via eminent domain, the sole responsibility of the eminent domain court would be to determine the appropriate compensation to be paid for such property rights "taken" by Con Edison. In determining such amount, the court would look to the Commission's orders approving the project to determine the exact nature, extent, and duration of any easement or other property right the Commission approved on the Hospital's land.

³ Included among these Hospital conditions referenced by the Commission was a requirement that the location and size of any Con Edison permanent easement on the Hospital's property be clearly identified. See Initial Brief of the New York and Presbyterian Hospital, at 15.

surface easements it would require for its structures and facilities located on the Hospital's property would be only slightly larger than the facilities themselves. T. 1256, 1262, 1327.⁴ Therefore, Con Edison should be bound by this on-the-record representation and required to amend the EM&CP to state that any permanent subsurface and surface easements necessary for its structures and facilities located on the Hospital's property would be approximately coterminous with Con Edison's transmission facilities.

II. TEMPORARY EASEMENT ON HOSPITAL'S PROPERTY

4. Second, the plan and profile drawings Con Edison provided to the Hospital as part of its November 2 EM&CP filing also fail to show the location and dimensions of any temporary easement Con Edison will require for its facility construction on the Hospital's property. At hearings, Con Edison stated that the temporary easement would cover an area of approximately 20,000 square feet. Con Edison should be bound by this on-the-record statement. Moreover, consistent with the Commission's declaration in its Order that it will consider appropriate conditions proposed by the Hospital as provisions for the EM&CP phase of the case, the Commission should also require Con Edison to amend the EM&CP to include the specific details regarding the dimensions, location, duration and any other requirements pertinent to any temporary easement Con Edison may require on the Hospital's property.⁵

⁴ The transcript of the hearing before Judge Bouteiller is cited to herein as "T. ____."

⁵ In contrast to the October 31 plan and profile drawings provided to the Hospital as part of the November 2 EM&CP filing, the second set of the plan and profile drawings provided by Con Edison to the Hospital on November 14, 2007 contain what appears to be a work stage area representing Con Edison's temporary easement on the Hospital's land, with a location and dimensions generally satisfactory to the Hospital.

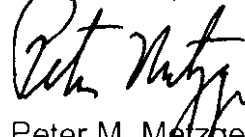
III. FUTURE AMENDMENTS TO EM&CP

5. Finally, if in the future Con Edison seeks to amend any portion of the EM&CP affecting the Hospital's property, Con Edison should be required to provide the Hospital notice of any such proposed amendment and the Hospital given adequate opportunity to comment on any such proposed change.

CONCLUSION

For all the foregoing reasons, the Hospital respectfully requests that the Commission order Con Edison to amend and clarify the EM&CP, as requested herein.

Respectfully submitted,



Peter M. Metzger
Joseph P. Stevens
Deborah M. Franco
Cullen and Dykman LLP
44 Wall Street
New York, New York 10005
Tel: (212) 732-2000

Attorneys for
The New York and
Presbyterian Hospital

Dated: November 21, 2007