



BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER,
STATE OF NEW YORK

INTRODUCED BY:
ABINANTI, KAPLOWITZ, NONNA

Resolution No. 26 - 2010

REQUESTING CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. TO CEASE IMPLEMENTATION OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION'S "ENHANCED TRANSMISSION RIGHT OF WAY MANAGEMENT PRACTICE" RULES AND FURTHER REQUESTING THAT THE NEW YORK STATE PUBLIC SERVICE COMMISSION RESCIND OR UNDERTAKE A REVIEW OF SAME

WHEREAS, the Westchester County Board of Legislators ("Board of Legislators") has received numerous complaints from property owners whose property, or adjacent to whose property, Consolidated Edison Company of New York, Inc., ("Con Edison") has an easement or right-of-way for the erection and maintenance of high voltage towers and wires, concerning the cutting and/or removal of trees and other vegetation thereon by Con Edison and/or by contractor(s) hired by Con Edison for that purpose; and

WHEREAS, Con Edison has asserted that its tree clearing activities are mandated by rules adopted by the New York State Public Service Commission ("PSC") "Requiring Enhanced Transmission Right of Way Management Practices by Electric Utilities" in Case 04-E-0822 issued and effective June 20, 2005 ("PSC's Rules"); and

WHEREAS, Con Edison's interpretation and implementation of PSC's Rules has resulted in the unreasonable cutting of trees in an arbitrary and intermittent manner and in such a way that often amounts to unnecessary clear-cutting, excessive and unsightly debris piles, and extreme vegetation removal that exposes bare soil in the entire easement area and beyond, resulting in unsightly visual impacts, unnecessary and uncontrolled erosion due to denuded land, and the virtual decimation of carefully planned and maintained buffers; and

WHEREAS, Con Edison has not provided adequate public notice of its plans to implement the PSC Rules, including failure to properly survey affected properties and failure to communicate with affected property owners regarding the work that is to be performed by contractors of Con Edison; and

WHEREAS, a lack of an appropriate communication and complaint handling protocol between Con Edison, its contractors, PSC and the public has caused significant frustration and exacerbated the problem; and

WHEREAS, the PSC has failed to properly oversee Con Edison's implementation of its transmission vegetation management plan, resulting in unnecessary economic, environmental, and aesthetic harm to numerous property owners and communities; and

WHEREAS, the PSC's Rules were not accompanied by a fair and adequate environmental review, as only a limited, inaccurate review was conducted, with little notification to the affected public; and

WHEREAS, the PSC's Rules remain unrevised, even though the North American Electric Reliability Corporation ("NERC"), under authority provided by Congress in the Energy Policy Act of 2005, has developed national transmission vegetation management standard FAC-003-1 in 2007 and as of January 2010 is reviewing a revised standard FAC-003-2; and

WHEREAS, the Board of Legislators believes that given the size and location of many of the trees being removed, the trees are not now, nor in the future, likely to reach or otherwise interfere with Con Edison's transmission lines and towers; and

WHEREAS, the County Board believes that the PSC's Rules, to the extent the Rules actually mandate the Transmission Vegetation Management Plan (TVMP) being employed by Con Edison and/or Con Edison's interpretation of the regulations, far exceed those steps reasonably required to protect Con Edison's transmission assets and the legitimate public interest in maintaining an uninterrupted flow of power through the region; and

WHEREAS, the Board of Legislators believes that Con Edison's TVMP, as it is being implemented in Westchester County's communities, violates the real property rights of the immediately affected property owners and otherwise adversely affects the legitimate land use interests of the residents of Westchester County; and

WHEREAS, there are equally important town, county and state laws that must be enforced and honored, which regulate land usage, zoning, permits, land preservation, easement agreements, trespassing outside of legal easements and right-of-ways, that are being violated and ignored by the Public Service Commission and Con Edison in the adoption and implementation of this TVMP; and

NOW THEREFORE BE IT RESOLVED, that the Board of Legislators urges the New York State Public Service Commission direct Con Edison to immediately cease its TVMP, until such time as there has been a full, open public examination by the PSC, within the communities affected, as to the conditions that exist and the management steps required to be taken in Westchester County, to ensure compliance with town, county and state law and to revisit the PSC Rules as being interpreted by Con Edison and to make adjustments to same so that certain goals can be achieved, including but not limited to (i) preservation of non-offensive vegetation, (ii) control of erosion and run-off, (iii) retention and maintenance of sight lines and integrity of the residential appearance, (iv) retention and maintenance of vegetation providing noise abatement, (v) preservation of woodland and wetland habitats to the greatest extent possible, (vi) avoidance of herbicide use for vegetation management, but if required, that only

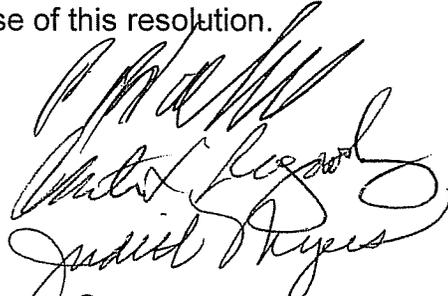
herbicides approved by NYS DEC for use along wetlands and watercourses be utilized, (vii) stricter oversight and management of subcontractors hired to implement the TVMP, (viii) timely communication with impacted communities and an opportunity for public input prior to work commencing in a community and (ix) compliance with local and state laws; and be it further

RESOLVED, that Con Edison should further be directed to implement a full mitigation plan, establish a proper plan of public notification of future work sites, establish a management plan that requires it to properly remove and dispose of all debris generated by its clearing and/or cutting activities within three weeks, including but not limited to the remnants of any tree cut or cleared from its easements or other right-of-ways, as well as to develop a replanting plan whereby any tree removed as undesirable is replaced with a more desirable and right-of-way compatible species and not by seedlings but rather more mature trees. Such replanting plan should apply both going forward and to those areas already affected by Con Edison's clearing activities; and be it further

RESOLVED, that Congress enact legislation requiring the North American Electric Reliability Corporation to include proper environmental review, dispute resolution, and mitigation and restitution measures in the revision of its transmission vegetation management standard; and be it further

RESOLVED, that the County Attorney is requested to see what actions can be taken with regard to the PSC's Rules and the way these have been implemented in Westchester County and to take whatever actions may be necessary to achieve the goals stated herein, including but not limited to initiating litigation against Con Edison or bringing a proceeding against the Public Service Commission on behalf of the citizens of Westchester County; and be it further

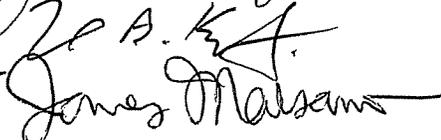
RESOLVED, that the Clerk be and is hereby authorized and directed to send a certified copy of this resolution to U.S. Senators Charles Schumer and Kirsten Gillibrand; U.S. Representatives Nita Lowey, Eliot Engel, and John Hall; New York State Governor David Paterson; New York State Senators Jeff Klein, Andrea Stewart-Cousins, Ruth Hassell-Thompson, Suzi Oppenheimer, and Vincent L. Leibell, III; New York State Assembly Members Gary Pretlow, Amy Paulin, Sandra Galef, George Latimer, Richard Brodsky, Michael Spano, Robert Castelli and Greg Ball; the President Pro Tem of the New York State Senate; the Speaker of the New York State Assembly; the Majority and Minority Leaders of New York State Senate and Assembly; Westchester County Executive Robert Astorino; Chairman Kevin Burke of Consolidated Edison, Inc.; the New York State Public Service Commission; the New York State Department of Environmental Conservation and to such other persons as the Clerk, in his discretion, may deem proper in order to effectuate the purpose of this resolution.



March 1, 2010

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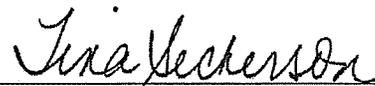
COMMITTEE ON ENVIRONMENT



STATE OF NEW YORK)
) ss.
COUNTY OF WESTCHESTER)

I HEREBY CERTIFY that I have compared the foregoing Resolution, Resolution No. 26 - 2010, with the original on file in my office, and that the same is a correct transcript therefrom, and of the whole, of said original Resolution, which was duly adopted by the Westchester County Board of Legislators, of said County on March 1, 2010.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said County Board of Legislators on this 2nd day of March, 2010.



Tina Seckerson

The Clerk of the Westchester County
Board of Legislators

County of Westchester, New York

(seal)