



Via email: secretary@dps.state.ny.us

Secretary Jaelyn A. Brillling
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350

June 16, 2010

Re: Comments on PSC Case 10-E-0155, Proceeding on Motion of the Commission as to New York State's Electric Utility Transmission Right-of-Way Practices

Dear Secretary Brillling:

Riverkeeper is a non-profit environmental organization dedicated to protecting the Hudson River, its tributaries and the New York City Drinking Water Supply Watershed (NYC Watershed). As a signatory to the 1997 Watershed Memorandum of Agreement, Riverkeeper has a demonstrated interest in all activities that may impact water quality in the NYC watershed. As such, Riverkeeper has particular concerns about Consolidated Edison Company of New York, Inc.'s (Con Edison's) right-of-way (ROW) Vegetation Management Plan (VMP) and its specific management practices. Accordingly, we submit the following comments to the New York State Public Service Commission (NYSPSC) on the above-referenced Case 10-E-0155.

Background

Con Edison has stated that it “operates and maintains approximately 110 miles of electric transmission lines, 122,500 miles of electric distribution lines, 50 miles of gas transmission lines, and 4,199 miles of gas distribution lines.”¹ It is clear that Con Edison maintains a large portion of these facilities throughout the East-of-Hudson NYC Watershed (EOH Watershed), which provides unfiltered drinking water to more than nine million New Yorkers. Because impacts to wetlands and wetland buffers affect water quality in the EOH Watershed, Riverkeeper has continuing concerns regarding recurring impacts to these resources as a result of Con Edison's ROW management practices.

We first voiced our concerns in 2005 in a letter urging the New York State Department of Environmental Conservation (DEC) to require individual permits for ROW maintenance activities when Con Edison applied for a wetlands permit. In that letter, Riverkeeper generally acknowledged that the Specific Best Management Practices (BMPs) outlined in Con Edison's application Section 5.0 were “in compliance with accepted practices to prevent and mitigate erosion and sedimentation.” However, Riverkeeper was and continues to be concerned that Con Edison's use of ill-trained subcontractors in the past already has resulted in circumstances where excessive vegetation has “accidentally” been cleared and BMPs have been improperly installed

¹ Con Edison General Wetlands Permit Application No. 0-9999-00111/00001, at 1.

and maintained. These practices have resulted in heavier stormwater flows leaving Con Edison's ROWs, causing at times excessive erosion and sediment to be transported to wetlands that ultimately drain to EOH Watershed drinking water reservoirs.

Our letter concluded that we had viewed problematic maintenance work in Yorktown, New York, during 2004-2005. Excessive vegetation and trees were cut – some were explained as subcontractor 'mistakes' by Con Edison. In addition, large amounts of fill were placed to 'stabilize' an existing access road through a Town wetland, although it was not recognized by DEC or the U.S. Army Corps of Engineers (ACOE) as a jurisdictional wetland due to its size, or the fact that over time it has become a degraded wetland now dominated by upland species of vegetation. During the preceding year, the fill had begun to wash away, and in heavy rains was carried either overland or through an underground pipe that discharged into a Town wetland that directly connected to a tributary to the New Croton Reservoir. Additional erosion and sedimentation also occurred, and while some BMPs had been installed, often they were installed improperly and ineffectively. For example, Con Edison or its contractors laid nylon-mesh netting over open ditches, then covered the netting with dyed coconut fiber to prevent erosion. However, because the retaining netting was placed *under* the fiber bedding instead of *over* it, stormwater runoff simply carried the unprotected fiber away and exposed bare soil beneath it.

Our letter further noted that local municipal agencies that have enacted far more protective wetland ordinances are powerless to enforce them against Con Edison because, in many instances, Con Edison's activities in streams and wetlands are claimed exempt from additional State and local regulation under Article VII of the New York State Public Service Law; this includes regulations promulgated by New York City's Department of Environmental Protection (DEP), which is charged with protecting the EOH drinking water supply. ACOE can issue Nationwide Permit 12 for Utility Line Activities, with special conditions applicable to the EOH Watershed, which has been granted Critical Resource Waters designation. However, Riverkeeper is gravely concerned that ACOE permitting has become inconsistent, and in light of recent U.S. Supreme Court rulings, that many previously protected wetlands now go unregulated once determined to be non-jurisdictional "isolated" waters.²

Undoubtedly, Con Edison's power delivery is vitally important to millions of New Yorkers. However, outside of work in emergency situations, there is no justification for risking impacts to the public water supply. Wetlands are vital for protection of the environment and public health. They are transitional areas that act as buffers between open waters and uplands and provide functions that filter pollutants such as sediment, nutrients, chemical contaminants and bacteria from our drinking water supplies; recharge groundwater aquifers; and absorb floodwaters, protecting coasts and homes from costly and dangerous flood damage. In the NYC Watershed, the pollution filtration and aquifer recharge provided by wetlands is extremely important. Wetland environments act as buffers for streams, rivers, lakes, and drinking reservoirs because

² A February 2004 study by the U.S. General Accounting Office (GAO) examined numerous ACOE Districts across the country and found that district offices vary in their interpretation of the regulations and guidance used to determine jurisdictional waters and wetlands, and in their efforts to document their practices and make this information available to the public. See GAO, WATERS AND WETLANDS: CORPS OF ENGINEERS NEEDS TO EVALUATE ITS DISTRICT OFFICE PRACTICES IN DETERMINING JURISDICTION, GAO-04-297 (Feb. 2004). The New York District, which regulates the EOH Watershed area, now posts such determination on its website, but only dating back to 2004, which makes any meaningful assessment of the impacts of SWANCC very difficult.

they trap, uptake and transform harmful nutrients, heavy metals, pesticides, and organic pollutants before they can flow into the reservoirs. Wetlands have unique features that improve water quality, including: physical configurations that increase water retention time and thus induce pollutant settling; hydric soils that bind pollutants and provide a substrate for microbial degradation and transformation; and, vegetation that slows water flow and enhances settling, provides nutrient uptake, and also provides a substrate for microbial activity.

Adverse impacts to wetlands and other surface water resources occur in the absence of environmentally sound VMPs when managing vegetation in transmission line ROWs. In addition, there are significant jurisdictional gaps in the authority of various regulatory agencies to regulate Con Edison's work in wetlands and wetland buffers. Because freshwater wetlands must be 12.4 acres or larger and appear on the State's freshwater wetland maps to be under DEC's jurisdiction, the overwhelming majority of smaller wetlands remain entirely unprotected. Due to past and continuing problems with Con Edison's performance and/or oversight of maintenance activities, Riverkeeper submits the following specific comments to address the questions posed by NYSPSC in Case 10-E-0155.

1. Do the programs used by State utilities for transmission ROW vegetation management conform to industry best practices?

From an environmental perspective, clear-cutting the entire width of a ROW in no way represents a "Best Management Practice." In addition to destroying wildlife habitat, clear-cutting removes vegetation that intercepts and processes rainwater, holds soils in place, and thereby significantly reduces overland stormwater runoff. Removal of native vegetation also enhances the establishment of invasive plant species.

In one of Con Edison's ROWs in Yorktown, Riverkeeper staff has observed a gravel service road flooding into an adjacent wetland, failing erosion control practices, clear-cutting of vegetation in a wetland buffer, turbid stormwater runoff discharging from the ROW onto private property, a sinkhole on private property adjacent to a Con Edison ROW where a failed underground stormwater conveyance system eroded and collapsed, and stormwater discharge from the failed underground conveyance draining into a receiving waterbody that flows to a tributary to the New Croton Reservoir.

In addition to its immediate environmental impacts, clear-cutting also degrades viewsheds of private landowners and depreciates property values adjacent to the ROW. Industry "best practices" favor a tiered approach to VM as described below.

2. At what point, at what height, or under what circumstances should the trees be removed from the transmission ROW in order to protect the safety and reliability of the transmission system?

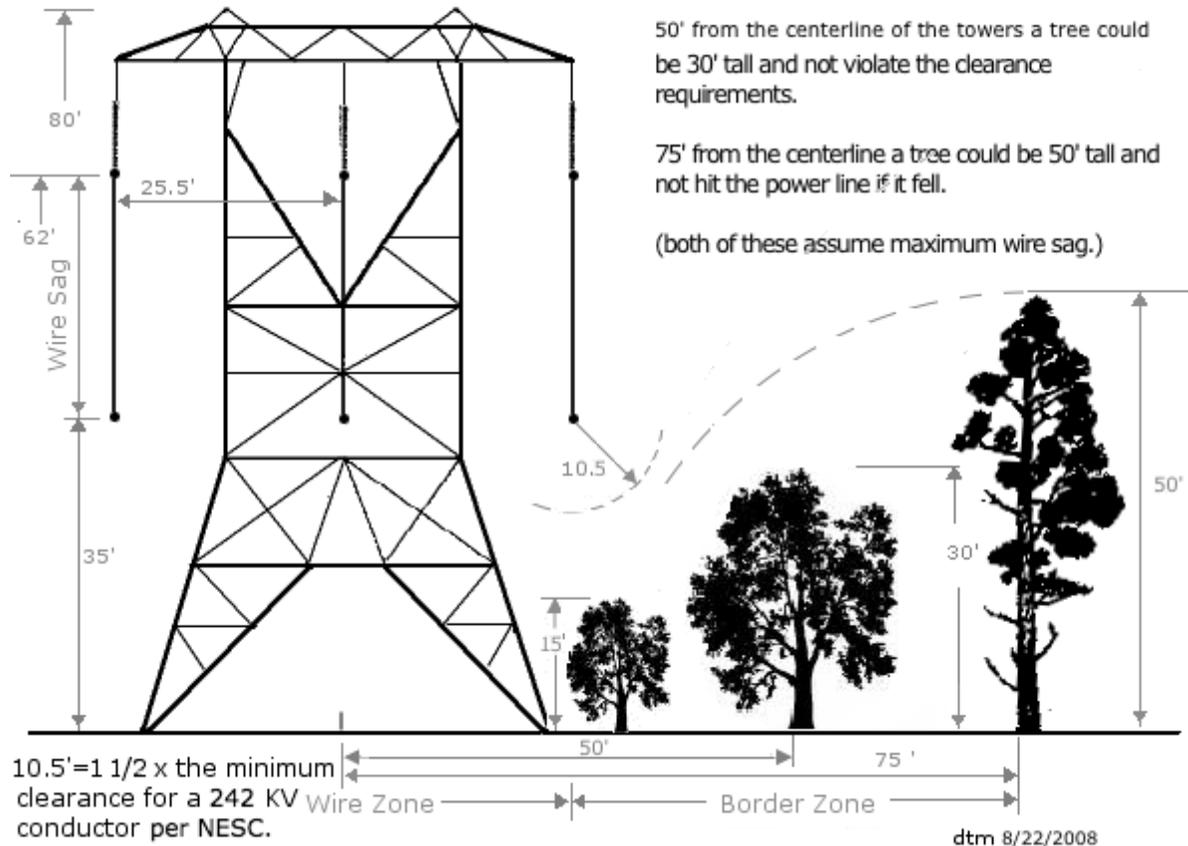
Rather than removing all trees within the ROW wire *and* border zones, a tiered management approach, based on the Federal NERC FAC-003 guidelines, allows for increased tree height as distance from the wire zone increases, without violating the clearance requirements.³

Federal NERC FAC-003 guidelines

Tree heights conforming to distance requirement to avoid arcing for 242 kV lines.

The Federal Guidelines refer to (IEEE) Standard 516-2003 (Guide for Maintenance Methods on Energized Power Lines) for clearance while the NJ BPU refers to the National Electric Safety Code (NESC) (C2 2007) also published by IEEE.

	242 kV	500 kV
NESC C2	7'	16.7'
IEEE 516	5'	14.7'



As illustrated above, a 50-foot-tall tree at the outer edge of the ROW border zone does not present a hazard should it fall toward the wire at its lowest sag point. Likewise, trees that are successively tiered at lower heights closer to the wire zone present no line hazard. For these reasons, the clear-cutting of all trees within the ROW border zone is entirely unnecessary, in addition to the environmental impacts associated with such practices.

³ See Sierra Club, Raritan Valley Group, Board of Public Utilities Vegetation Management Plan, available at http://newjersey.sierraclub.org/RaritanValley/bpu_veg_mgmt.asp#diagram.

3. Are alternate or supplemental practices available which would reduce the environmental or aesthetic impacts of transmission ROW vegetation management without compromising transmission system safety or reliability?

This question appears to be a rephrasing of the preceding question. However, based on Riverkeeper's observations of Con Edison's failing erosion controls and resultant contamination of receiving waters, it is clear that oversight by a regulatory agency is necessary to ensure that the transmission operator (TO) implements the utility's VMP as prescribed and adheres to all of its requirements.

4. If supplemental vegetation management practices are preferred by a community through which transmission ROW passes, how should the community preference for such practices be demonstrated? How should the costs of such practices be distributed to or divided among the utility which owns the transmission line, the ratepayers for that utility, the users of the transmission line, the community through which the transmission line passes, and the owners of properties adjacent to the transmission line?

The costs of supplemental VM practices and mitigation activities should be incorporated in the VMP itself and not distributed among the ratepayers, municipalities or property owners adjacent to the transmission line. It is unreasonable for a utility to ravage a ROW, depreciate property values and degrade the environment, then burden a municipality and/or property owners with the costs of environmental restoration and recovery of depreciated property values. Con Edison's current VM practices have been and continue to cause harm to municipalities, property owners, ratepayers, and the EOH Watershed. It is only fair that the utility shoulder the burden of mitigating the impacts it has generated.

5. In what ways can a utility mitigate the impact of its transmission ROW management practices without sacrificing electric system safety and reliability?

In addition to implementing a tiered management model in its VMP, a utility can reduce or eliminate the application of chemical herbicides by establishing native plant species within the ROW. Disturbed habitat invites the establishment of invasive plant species; increasing foliage height diversity and establishing native vegetation in cleared areas within the ROW will mitigate the impact of ROW management without sacrificing system safety and reliability.

6. Are there cost effective strategies available to utilities to mitigate the aesthetic impacts of transmission ROW management?

As described above, a tiered management VMP will reduce VM costs by eliminating the need to clear-cut every standing tree in a utility's ROW. Furthermore, proper erosion and sediment controls and the establishment of native vegetation within the ROW will cost-effectively mitigate environmental impacts and reduce the need for additional mitigation. Regulatory oversight and enforcement of the VMP will provide incentives for the utility to comply with the VMP requirements, thereby further reducing the need and cost of additional mitigation.

7. Is cleanup after utility ROW management activities adequate?

From Riverkeeper's observations in Yorktown, cleanup after utility ROW management has been inadequate. Brush piles, wood chips, gravel and lime leachate accumulate and are left unattended after clear-cutting has been completed. More oversight is required to ensure proper and timely cleanup.

8. What type of notifications regarding vegetation management do utilities currently employ? What type of notification by utilities would be most effective for landowners who live adjacent to a ROW prior to utility transmission ROW vegetation management work (for example: phone call, letter, newspaper, other)? When and how frequently should such notice be provided? Should others, besides adjacent property owners, be notified? What information should be provided in such notices?

Riverkeeper has received reports of inadequate and/or incomplete homeowner notification in Yorktown. Especially lacking has been the failure to notify property owners of the extent of Con Edison's proposed VM activities. In advance of proposed VM activities, by letter and public notice, Con Edison should provide to property owners more detailed information regarding the location and acreage of the upland areas, wetlands and buffers that exist on lands it proposes to manage. When stream, wetland and buffer impacts are anticipated, they should be clearly delineated with the disturbance acreage provided. In this way, DEC and the public may properly assess any potential wetland losses before they occur, and DEC can require adequate mitigation and restoration.

In addition, Con Edison should be required to provide advance notice to local municipalities describing where VM activities are to take place. We understand that Con Edison does this in some instances as a courtesy, but it should be made mandatory. DEC cannot possibly patrol and oversee all permitted activities throughout the State, but should encourage monitoring by local government officials who are more intimately familiar with local sites and the interests of local residents and business owners on properties adjacent to Con Edison's ROWs.

Furthermore, photo documentation of pre- and post-project site conditions should be mandatory, and not done merely to the extent practicable. Because Con Edison frequently employs contractors and subcontractors to perform activities that impact critical water resources, a thorough record must be maintained to provide additional oversight, prevent mistakes (e.g., cutting down the wrong trees), and assist in restoration if and when such mistakes occur. In addition, this practice will assist Con Edison in evaluating the work of the contractors upon which it relies.

9. Apart from such notices, what information should utilities provide to the owners of property adjacent to utility transmission ROW to suggest strategies or practices a landowner may use to protect his or her land from the aesthetic impacts of transmission ROW maintenance, and at what intervals and through what should this information be provided?

Utilities should provide property owners with full, detailed disclosure of the proposed ROW VM activities (as described above) in advance of any proposed ROW maintenance. This way,

adjacent property owners will have recourse to challenge the proposed activities under authority of the oversight entity, or to seek restitution and mitigation if the utility fails to comply with the terms of its VMP. As recommended earlier, an oversight entity should be established to monitor ROW VM activities and to ensure the utility's adherence to the VMP.

Thank you for the opportunity to comment on these important issues.

Sincerely,

A handwritten signature in blue ink that reads "William Wegner". The signature is written in a cursive style with a long, sweeping tail on the "n".

William Wegner
Staff Scientist