

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

**COMMITTEE ON OPERATIONS
MINUTES**

Thursday, March 25, 2010

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Access to the Region's Core Project – Authorization of Agreements with Consolidated Edison Company of New York Inc., for a Fee Acquisition, Permanent and Temporary Subsurface Easements, a Temporary Surface Construction Easement at Block 674, Lot 1 and a Lease of Portions of Block 675 in New York City for Construction of a Fan Plant and Construction Access Shaft (This matter, which was adopted in executive session by the Committee, is no longer confidential.)	3

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COMMITTEE ON OPERATIONS**

225 Park Avenue South

New York, NY

Thursday, March 25, 2010

PRESENT:

Hon. Anthony R. Coscia, Chair
Hon. Henry R. Silverman, Vice-Chair
Hon. Virginia S. Bauer
Hon. H. Sidney Holmes III
Hon. David S. Steiner
Committee Members

Hon. Stanley E. Grayson
Hon. Raymond M. Pocino
Commissioners

William Baroni, Jr., Deputy Executive Director
Karen E. Eastman, Secretary

Susan M. Baer, Director, Aviation
A. Paul Blanco, Chief Financial Officer
Michael G. Fabiano, Deputy Chief Financial Officer/Comptroller
Michael B. Francois, Chief, Real Estate and Development
Kevin N. Georges, Leadership Fellow, Human Resources
Christopher M. Hartwyk, First Deputy General Counsel
Mark D. Hoffer, Senior Counsel, Law
James E. McCoy, Manager, Board Management Support, Office of the Secretary
Sanjay S. Mody, Advisor to the Chairman
Peter L. Rinaldi, Assistant Director Special Projects, Engineering
Howard Sackel, Director, Access to the Region's Core Project

Guest:

Johanna Jones, Authorities Unit, Office of the Governor of New Jersey

The Committee meeting was called to order in executive session by the Chair at 11:20 a.m. and ended at 12:15 p.m. The Committee met in public session prior to and following the executive session. Commissioners Grayson and Pocino were present for a portion of the meeting.

Action on Minutes

The Secretary reported that the Minutes of the meeting of October 22, 2009 had been signed and distributed to the Commissioners.

Whereupon, the Committee approved the Minutes of the meeting of October 22, 2009.

ACCESS TO THE REGION'S CORE PROJECT – AUTHORIZATION OF AGREEMENTS WITH CONSOLIDATED EDISON COMPANY OF NEW YORK INC., FOR A FEE ACQUISITION, PERMANENT AND TEMPORARY SUBSURFACE EASEMENTS, A TEMPORARY SURFACE CONSTRUCTION EASEMENT AT BLOCK 674, LOT 1 AND A LEASE OF PORTIONS OF BLOCK 675 IN NEW YORK CITY FOR CONSTRUCTION OF A FAN PLANT AND CONSTRUCTION ACCESS SHAFT

It was recommended that the Committee on Operations (Committee) authorize the Executive Director to enter into agreements with the Consolidated Edison Company of New York, Inc. (ConEd), regarding certain portions of Block 674, Lot 1 (the ConEd site) and Block 675 in the City of New York, County of New York, for the Port Authority to effectuate the following in connection with the construction of tunnels for the Access to the Region's Core (ARC) Project: (1) a fee acquisition of the fan plant site; (2) to obtain permanent and temporary deep subsurface easements for the ARC tunnels, a ventilation/access shaft and plenum; (3) to obtain a temporary surface construction easement for an eight-year period to construct the access shaft, plenum and fan plant; and (4) an eight-year lease of certain portions of Block 675 to ConEd. The cost for the fee acquisition, the permanent and temporary deep subsurface easements and the temporary construction easement would be approximately \$42 million.

The full use of the ConEd site for the ARC Project will require the relocation of affected ConEd activities to the adjacent Block 675 for eight years. The previously acquired temporary surface construction easements for the benefit of ConEd on nearby Block 675 will serve as a "cost to cure," and, consequently, there is *de minimis* financial compensation (\$1 per annum) for this eight-year lease to ConEd. The relocation costs are anticipated to be approximately \$3 million, which includes returning ConEd to Block 674 and the payment of restoration costs.

Initiation of construction of the ARC tunnel in Manhattan requires the acquisition of ConEd property on Block 674 for the construction of an access shaft, ventilation fan plant, and temporary construction staging. Acquisition of the ConEd property requires the relocation of ConEd's operations during the tunnel construction period through 2018.

The base period for the temporary surface easement is eight years. If the Port Authority holds over beyond the eight-year term, it will be liable to ConEd for actual damages, capped at a total of \$200 million, for years nine through twelve. For years nine and ten, the actual damages will be capped at a total amount of \$25 million for the two years combined. In the event that the property is not vacated after ten years, the Port Authority would be liable to ConEd for actual damages capped at a total amount of \$150 million through year 11, including amounts previously paid, and capped at a total amount of \$200 million through year 12, including amounts previously paid. In the event any such damages are incurred, they would be charged as an operating expense to the Port Authority and deducted from the Port Authority's ARC funding commitment.

At its meeting of September 25, 2009, the Committee authorized an agreement with Valeray Real Estate Company Inc. (Valeray), for permanent and temporary deep subsurface easements and a temporary surface construction easement located on Block 675, Lots 12, 24, 26, 29 and 36. The Committee concurrently authorized an agreement with C/S 12th Avenue LLC (C/S 12) for permanent and temporary deep subsurface easements and a temporary surface construction easement located on Block 675, Lot 1. Each easement agreement contained two

one-year extension options for use of the temporary surface construction easements beyond the ten-year term. In the event the ARC Project requires continued use of the ConEd site, the Port Authority would be required to pay for the applicable costs associated with the extension options provided by both the C/S 12th Avenue and Valeray easement agreements, in addition to the actual damages associated with holdover, as set forth above. For the C/S 12th Avenue easement, the cost of each extension option is capped at \$25 million per year. For the Valeray easement, the cost of the extension option is \$2,182,125 per year, adjusted for the Consumer Price Index for the second year (at a minimum of two percent).

On June 30, 2008, the Board authorized an aggregate \$3 billion commitment toward the ARC Project and the expenditure of up to \$100 million for Project costs in connection with property acquisitions, planning, final design, engineering and construction, and administrative expenses through year-end 2008. Subsequently, on December 17, 2008, the Board extended, through 2009, the time period to use the balance of the \$100 million authorized by the Board in June 2008 for ARC Project expenditures. At its meeting of July 23, 2009, the Board authorized the expenditure of up to an additional \$500 million for Project costs expected to be required through mid-year 2010.

The Port Authority would acquire the interests at the ConEd site in accordance with the General Project Agreement entered into between New Jersey Transit Corporation and the Port Authority in March 2009. The agreements with ConEd are contingent upon Federal Transit Administration approval. The agreements would remain confidential until such time as they become a matter of public record.

The proposed action would permit the Port Authority to continue to fulfill its commitment to effectuate the development of the ARC Project through the identification and acquisition of real property in New York City.

At its meeting of June 30, 2008, the Board authorized the Committee to approve the final terms of the purchase or transfer of real property interests required in connection with the development of the ARC Project.

Pursuant to the foregoing report, the following resolution was adopted by the Committee in executive session with Commissioners Bauer, Coscia, Holmes, Steiner and Silverman voting in favor; none against:

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into agreements with the Consolidated Edison Company of New York, Inc. (ConEd), regarding certain portions of Block 674, Lot 1 (the ConEd site) and Block 675 in the City of New York, County of New York, for the Port Authority to effectuate the following in connection with the construction of tunnels for the Access to the Region's Core (ARC) Project: (1) a fee acquisition of the fan plant site; (2) permanent and temporary deep subsurface easements for the ARC tunnels, a ventilation/access shaft and plenum; (3) a temporary surface construction easement for an eight-year period to construct the access shaft, plenum and fan plant; (4) an eight-year lease of portions of Block 675 to ConEd, with the total cost to the Port Authority for the fee acquisition, the permanent and temporary deep subsurface easements, and the temporary construction easement to be approximately \$42 million; (5) the Port Authority's

liability for actual damages payable to ConEd for holding over the temporary surface construction easement in years nine through twelve is capped at a total amount of \$200 million; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to reimburse ConEd for their costs associated with relocation from the ConEd site, in an amount up to \$3 million; and it is further

RESOLVED, that the form of all agreements, contracts and other documents in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representative.

Whereupon, the meeting was adjourned.

Secretary