

**MEMORANDUM OF AGREEMENT
BETWEEN
THE NEW JERSEY PINELANDS COMMISSION AND THE NEW JERSEY
BOARD OF PUBLIC UTILITIES**

I. PURPOSE

This Memorandum of Agreement ("MOA") is entered into between the New Jersey Pinelands Commission (the "Commission") and the New Jersey Board of Public Utilities (the "BPU"). The Commission is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act, N.J.S.A. 13:18A-1, et seq., and charged with the implementation of the Act and the Pinelands "Comprehensive Management Plan" (the "CMP"), N.J.A.C. 7:50. The Commission is also the planning entity authorized under Section 502 of the National Parks and Recreation Act of 1978. The BPU is an independent political subdivision of the State of New Jersey charged with general supervision of and jurisdiction over New Jersey public utilities including the functions, powers and duties assigned to it pursuant to N.J.S.A. 48:2-1 et seq. and 52:18A-2.1 and is allocated in, but not part of, the Department of Treasury pursuant to Reorganization Plan No. 001-1994.

There is a critical need for additional electric transmission capacity in the eastern part of the Atlantic Region, especially the southern New Jersey region. In 2000, transmission planning studies were performed by Atlantic City Electric Company ("Atlantic Electric") and by PJM Interconnection, LLC ("PJM") to assess the future needs of the Atlantic Region transmission system. These transmission studies determined that the eastern portion of the transmission line system, as a whole, would be susceptible to severe low voltages and thermal overloads under peak demand conditions. In fact, severe low voltages were predicted to occur by the summer of 2003 and thermal overloads, which could occur as a result of possible transmission outages, were predicted to occur by the summer of 2004, absent an upgrade of the eastern portion of the transmission line system. These studies determined a need for additional reactive supplies and additional thermal delivery capability into the eastern part of the Atlantic Region.

In response to that need, Atlantic Electric has proposed to upgrade sections of its existing 54.9-mile Oyster Creek to Cardiff electric transmission line from 69 kV to 230 kV and construct new 230 kV transmission lines. Atlantic Electric has submitted a petition to the BPU regarding this project seeking a determination and Order pursuant to N.J.S.A. 40:55D-19 that any zoning, site plan review or other municipal land use ordinances or regulations promulgated by the affected municipalities and counties shall not apply to the siting of or construction and operation of the transmission line.

Recognizing that delays in the approval of its 230 kV electric transmission line project would result in completion of the project after the summer of 2004, Atlantic Electric implemented interim measures to insure the reliability of the eastern portion of its transmission line system. These measures, which were for the most part temporary, included an upgrade to the Landis Substation, the placement of emergency diesel

generators at the Ship Bottom and Beach Haven Substations and the placement of mobile transmission capacitors at the Cedar and Motts Farm Substations. These interim measures, however, did not eliminate the need for the 230 kV electric transmission line project.

Portions of the project are proposed to be constructed within the Pinelands Area. With regard to the "Southern" Route, approximately 33 miles of the project will be constructed within the Pinelands Area, of which approximately 17.5 miles will be constructed within the Preservation Area District and Forest Area. Within the Preservation Area District and Forest Area, approximately 34% of the proposed project will be constructed within existing electrical transmission rights-of-way ("ROW"). The balance of the project in these areas, with one minor exception, will be constructed within new electrical transmission line ROW that will be constructed within the right-of-way for the Garden State Parkway. Construction of the proposed electric transmission line project in these areas is not fully consistent with the requirements of the Pinelands CMP. In addition, deviations from the standards within the Pinelands CMP concerning wetlands, N.J.A.C. 7:50-6.13, will also be required to permit construction of the proposed project to proceed. This MOA is intended to authorize those portions of the proposed electric transmission line project to be constructed within the Pinelands Area in accordance with N.J.A.C. 7:50-4.52(c)2 and to establish alternative application procedures in accordance with N.J.A.C. 7:50-4.52(c)1.

II. BACKGROUND

A. The Proposed Route

As discussed above, Atlantic Electric is proposing to upgrade sections of its existing 54.9-mile Oyster Creek to Cardiff electrical transmission line from 69 kV to 230 kV and construct 230 kV electric transmission lines within new ROW as part of this line. The project is being constructed in two phases.

1. The "Northern" Route

The first phase, the "Northern" Route, consists of approximately 14.2 miles of new 230 kV electric transmission line beginning at the Oyster Creek Substation in Lacey Township and ending at Atlantic Electric's Cedar Substation in Stafford Township. Approximately 7.8 miles of the proposed Northern Route is located within the Pinelands Area. Of this 7.8 miles, 4.75 miles consists of upgrades to existing electric transmission line ROW (69 kV to 230 kV) and construction of approximately 3.05 miles of 230 kV electric transmission line within new ROW. The Pinelands Commission issued a Certificate of Filing for the Northern Route on April 23, 2004.

2. The "Southern" Route

The second phase, the "Southern" Route, is the subject of this MOA. The "Southern" Route measures approximately 35 miles in length and will extend from Atlantic Electric's

Cedar Substation across Ocean, Burlington and Atlantic Counties and will terminate at its Cardiff Substation in Egg Harbor Township, Atlantic County. As was the case with the Northern Route, portions of the Southern Route will be constructed within the Pinelands Area. Specifically, approximately 33 miles of the Southern Route is proposed to be constructed within the Pinelands Area. Unlike the Northern Route, however, approximately 17.5 miles will be constructed within the Preservation Area District or Forest Area. Within the Preservation Area District and Forest Area, approximately 34% of the proposed project will be constructed within existing electrical transmission rights-of-way ("ROW"). The balance of the project in these areas, with one minor exception, will be constructed within new electrical transmission line ROW that will be constructed within the right-of-way for the Garden State Parkway.

3. Unique Components of the Project

The proposed 230 kV electric transmission line upgrade project is unique for the following five reasons. First, it is being proposed to address the critical need for additional transmission capacity in the eastern part of the Atlantic Region. Second, although a portion of the proposed line will traverse approximately 17.5 miles of the Pinelands Preservation Area District and Forest Area, the project minimizes significant land use and ecological impacts, to the maximum extent possible, by utilizing existing electric transmission line ROW and the ROW of the Garden State Parkway. The Garden State Parkway is a limited access north-south highway that constitutes the most eastern boundary of the Pinelands Area and the Pinelands Preservation Area District in most areas. The Garden State Parkway has been nationally recognized for its landscaped and well maintained, visually aesthetic roadside environment. The use of the Garden State Parkway ROW not only minimizes incursion into this most sensitive area of the Pinelands, but also minimizes the potential for fragmentation of the forest resources in this area as a result of the project. Third, to the extent that new ROW will be constructed within the Preservation Area District and Forest Area but outside of existing ROW or the Garden State Parkway ROW, such ROW is only being proposed for construction in order to minimize impacts to a significant wetlands system located in the vicinity of Stafford Forge. Fourth, the proposed alignment has been designed to reduce the width of the ROW to 50 feet, the minimum amount feasible for use for 230 kV electric transmission lines. This will reduce the impacts associated with construction of the project on the unique resources of the Pinelands while maintaining the minimum required electrical line safety clearances from existing vegetation. Fifth, as a result of this MOA, the subsequent BPU Order and the MOA between the BPU and the public utility proposing to construct the proposed electric transmission line project, the public utility shall contribute thirteen (\$13,000,000.) million dollars to the Pinelands Commission to help further the Pinelands protection program. While each of the above factors makes the proposed electric transmission line project unique, all of these factors taken together make the proposed project *sui generis* (one of a kind).

B. Public Need for the Proposed Project

1. Public Need

As discussed above, a critical need for the proposed electric transmission line project has been identified by both the PJM and Atlantic Electric. PJM is the Regional Transmission Organization ("RTO") for the Mid-Atlantic Region. As an RTO, PJM is responsible for the planning and operation of the electric lines that transport electricity to the lower voltage distribution lines that ultimately deliver electricity to individual consumers. PJM identified the need for the Cardiff to Oyster Creek 230 kV transmission line upgrade in its 2000 Regional Transmission Expansion Plans. This analysis determined that the 230 kV electric transmission line project must be completed in 2004 to continue to ensure the reliability of the system under peak demand conditions. PJM recommended the Cardiff to Oyster Creek 230kV electric transmission line project to solve two reliability problems: (1) load deliverability and (2) local overloads. According to PJM, in the event that sufficient local generation is not available to meet the demands of local customers, sufficient bulk transmission capacity must be available to deliver energy from other parts of the PJM system to those customers during peak load conditions. Because of the limited number of import lines from the Camden/Philadelphia area to feed the eastern portion of the Atlantic Electric territory, the loss of any of those lines (i.e. the New Freedom to Cardiff 230 kV line) affects the other lines (i.e. Landis to Minotola 138 kV line and the Landis to Dorothy 138 kV line). PJM performed a Capacity Emergency Transfer Objective/Capacity Emergency Transfer Limit Deliverability Analysis of the Atlantic System. As a result of that analysis, PJM determined that in 2004, the Landis to Minotola 138 kV line and the Landis to Dorothy 138 kV line would be thermally overloaded under peak conditions if the New Freedom to Cardiff 230kV line were out of service¹. Such an event could result in thermal overloads that would require PJM to invoke emergency operating procedures.

2. BPU Process

The BPU is the State entity charged with regulating public utilities, including but not limited to electric utilities such as Atlantic Electric. The Municipal Land Use Law at N.J.S.A. 40:55D-19 authorizes the BPU to order that zoning, site plan review and all other municipal land use ordinances or regulations promulgated under the auspices of Title 40 of the New Jersey Statutes and the Land Use Act shall not apply to a development proposed by a public utility for installation in more than one municipality for the furnishing of service. In order to issue such an order, BPU, upon petition and after a hearing, must decide that the proposed installation of the development in question is reasonably necessary for the service, convenience or welfare of the public. N.J.S.A. 40:55D-19. The phrase "for the service, convenience or welfare of the public" is not limited to the local group benefited by the zoning ordinance, but rather refers to the whole "public" served by the utility. In re Public Service Electric & Gas Co., 35 N.J. 358, 376-377 (1961). Moreover, the standard of reasonableness does not require that the proposed use be absolute or indispensable, only that it is reasonably necessary for the public service, convenience or welfare. Id. It is the BPU's obligation to weigh all

¹ As discussed previously, Atlantic Electric has implemented interim measures to insure the reliability of the eastern portion of its transmission line system during the Summer of 2004.

interests and factors in light of the entire factual picture and adjudicate the existence or non-existence of reasonable necessity therefrom. Id.

On August 9, 2002, Atlantic Electric filed a petition with the BPU pursuant to N.J.S.A.40:55D-19, requesting a determination from the BPU that the installation of its proposed electric transmission line was reasonably necessary for the service, convenience or welfare of the public. On January 21, 2004, Atlantic Electric filed a petition amending the original petition of August 2002. The BPU subsequently conducted public and evidentiary hearings and on April 14, 2004, issued a Decision and Order finding, among other things, that the proposed 230 kV electric transmission line project was necessary for the service, convenience and welfare of the public. This Order, with the exception of a portion of the route located in Barnegat Township and Ocean Township, approved the Northern route. The BPU issued a Supplemental Decision and Order and an Amended Supplemental Decision and Order as to the portion of the Northern Route located in the Townships of Barnegat and Ocean on April 23 and April 29, 2004, respectively, and a Decision and Order approving the Southern Route on June 15, 2004.

C. Basis for the MOA

The Pinelands CMP (N.J.A.C. 7:50-4.52(c)2) authorizes the Commission to enter into intergovernmental memoranda with any agency of the Federal, State or local government which authorizes specified development activities that may not be fully consistent with the provisions of the CMP, specifically the land use and environmental standards set forth at N.J.A.C. 7:50-5 and 6. The agency must demonstrate, and the Commission must find, that any proposed development that is not fully consistent with the standards of the CMP is accompanied by measures that will, at a minimum, afford an equivalent level of protection of the resources of the Pinelands as would be provided through strict application of the CMP's standards.

As part of this MOA, the BPU is agreeing that the public utility proposing to construct the proposed electric transmission line project will undertake certain measures that will afford, at a minimum, equivalent levels of protection to the resources of the Pinelands. Specifically, pursuant to a subsequent Order issued by the BPU and a MOA between the BPU and the public utility proposing to construct the proposed electric transmission line project, the public utility shall contribute thirteen (\$13,000,000) million dollars to the Pinelands Commission to further the Pinelands protection program and ensure a greater level of protection for the unique resources of the Pinelands Area. This amount was determined by the Pinelands Commission based upon the nature of the regulatory deviations. These funds will be utilized by the Pinelands Commission to protect, preserve and enhance the unique resources of the Pinelands Area. The payment would provide a source of funds that would be used by the Pinelands Commission for activities that advance the protection of the Pinelands Area and that have a direct nexus to the preservation of the resources of the Area. Such activities could include: 1) the acquisition of land or interests therein, 2) environmental improvement measures (such as the retrofitting of stormwater facilities), 3) smart growth initiatives that advance conservation objectives within Pinelands development areas, particularly those that address Regional

Growth Areas, and 4) research, planning and conservation projects designed to improve Pinelands protection practices (such as preparation of the Comprehensive, Ecologically Based ROW Maintenance Plan described below). The BPU, as the regulatory entity with jurisdiction over electric utilities, has also agreed to require the public utility proposing to construct the project and to encourage all other electric utilities within its jurisdiction to fully participate with the Pinelands Commission in the development of a Comprehensive, Ecologically Based ROW Maintenance Plan. The objectives of this plan will be to establish characteristic Pinelands vegetation types and habitats that reflect the structure, species composition and patch geometries (i.e. size and shape) of habitats found in the area, promote natural regeneration, minimize homogeneity, and avoid soil and ground layer disturbance unless it can be demonstrated that such disturbance is needed to establish an appropriate characteristic habitat, and address the ROW maintenance needs of the utilities. In addition, BPU and the Pinelands Commission have agreed to take the steps necessary, including rulemaking if required, to implement the Plan upon its completion. Through these measures an equivalent level of protection will be afforded to the resources of the Pinelands as would have been provided through strict application of the land use and environmental standards of the Pinelands CMP.

Moreover, provisions are included in this MOA to minimize the impact of the proposed development on wetlands and threatened or endangered flora or fauna. Such provisions will also minimize the impact upon and ensure proper treatment of historic resources of significance to the Pinelands, such as any significant archeological resources associated with Stafford Forge and the Mullica River-Chestnut Neck Historic District.

In accordance with N.J.A.C. 7:50-4.52(c)1, the Commission also may enter into intergovernmental memoranda with any agency of the Federal, State or local government which authorizes specified development activities without securing individual development approvals from the Commission, provided that the specified development activities are consistent with the provisions of N.J.A.C. 7:50-5 and 6. As discussed above, the BPU, as part of this MOA, has agreed that the public utility shall undertake measures that will afford an equivalent level of protection to the resources of the Pinelands. As a result, entry of a MOA authorizing alternative application procedures is warranted.

D. Possible Need for an Amendment to the Pinelands Comprehensive Management Plan

As a result of the proposed electric transmission line project, the Pinelands Commission has become cognizant of the potential need for an amendment of the Pinelands CMP to address issues associated with development within the Garden State Parkway ROW. The Garden State Parkway, a limited access north-south highway, represents the eastern most boundary of the Pinelands Area in most areas. Different portions of the Garden State Parkway are located within various Pinelands Management Areas, including the Preservation Area District. The Pinelands Management Areas were established to ensure the long-term integrity of the Pinelands environment while accommodating growth. N.J.A.C. 7:50-5.21. The Pinelands CMP establishes minimum standards governing the

character, location and magnitude of development and use of land. Id. Despite being located in various Pinelands Management Areas with differing permitted land uses, the Garden State Parkway's principal use is as a transportation corridor. The differing regulatory standards applicable to different portions of the Garden State Parkway have created regulatory issues for both the Pinelands Commission and the New Jersey Turnpike Authority (NJTA) as they implement their respective mandates. Given the potential issues associated with development within the Garden State Parkway ROW, the Pinelands Commission, as part of this MOA, has committed to consider whether a potential amendment of the Pinelands CMP to refine the land use and/or environmental standards applicable to development within the Garden State Parkway ROW is appropriate. Moreover, the NJTA has committed in correspondence to the Commission to provide assistance and to consult with the Pinelands Commission regarding any potential amendments to the Pinelands CMP to address the issues involving the Garden State Parkway.

III. AGREEMENTS

A. The BPU agrees that:

1. It will issue an Order to the public utility proposing to construct the project delineated in Paragraph II.A.2. above incorporating the requirements of Paragraphs III.A.1 through 10 of this MOA and the Environmental Conditions set forth in Attachment B
2. It will require the public utility proposing to construct the project delineated in Paragraph II.A.2. above to construct the project in accordance with the list of documents set forth in Attachment A attached hereto and made a part hereof.
3. It will require the public utility proposing to construct the project delineated in Paragraph II.A.2. above to satisfy all of the obligations of this MOA and the Pinelands CMP, unless a deviation therefrom is expressly authorized by this agreement.
4. It will require the public utility proposing to construct the project delineated in Paragraph II.A.2. above to obtain any and all certificates, licenses, consent, approvals or permits required from any local, State and/or Federal entity prior to commencing construction of the project. No part of this MOA is intended to release the public utility from its responsibility to obtain all other required local, State and/or Federal approvals.
5. It will require the public utility proposing to construct the project delineated in Paragraph II.A.2. above to comply with all of the environmental conditions set forth in Attachment B, attached hereto and made a part hereof, and the terms of this agreement.

6. It will require the public utility proposing to construct the project delineated in Paragraph II.A.2. above to provide notice to the Pinelands Commission staff seven (7) days prior to commencing any clearing or construction activities for the project.
7. Any significant deviation from or modification to the proposed project as delineated in Paragraph II.A.2. above and the documents listed in Attachment A will require formal application to the Pinelands Commission in accordance with the Pinelands CMP and no clearing or construction activities regarding such deviation may occur until an application has been completed and the Pinelands Commission has approved the project.
8. It will require the public utility proposing to construct the project delineated in Paragraph II.A.2. above and encourage all other electric utilities within its jurisdiction to fully participate and work cooperatively with the Pinelands Commission in the development of a Comprehensive, Ecologically Based ROW Maintenance Plan for use in all electric transmission ROW located within the Pinelands Area.
9. When a Comprehensive, Ecologically Based ROW Maintenance Plan, as contemplated by Paragraph III.A.8. is completed, BPU agrees to take all necessary steps, including rulemaking if required, to implement such plan and to require electric utilities within its jurisdiction to comply with such plan along their respective ROW located within the Pinelands Area.
10. It agrees that the public utility proposing to construct the project delineated in Paragraph II.A.2. above shall contribute thirteen (\$13,000,000) million dollars to the Pinelands Commission to further the Pinelands protection program and ensure a greater level of protection for the unique resources of the Pinelands Area. These funds may be paid in installments over two years as follows:
 - a. A payment of \$3,250,000.00 shall be paid to the Pinelands Commission, unless advised otherwise pursuant to Paragraph III.A.10.c. below, every six months for the two years following the effective date of this MOA;
 - b. The first payment of \$3,250,000.00 shall be paid within sixty (60) days of the effective date of this MOA; and
 - c. All payments shall be made to the Pinelands Commission unless the Commission notifies the public utility, in writing, fifteen (15) days prior to the due date of such installment payment that such installment payment or a portion thereof shall be made to another

entity. The Pinelands Commission may, in its sole discretion, authorize the public utility to make an installment payment or portion thereof to a third-party of the Commission's choosing. The third-party shall utilize such funds as directed by the Pinelands Commission to protect, preserve and enhance the unique resources of the Pinelands Area.

B. The Pinelands Commission agrees that:

1. Based on its review of the documents listed in Attachment A, the provisions of the Pinelands CMP and the terms of this MOA, including the Environmental Conditions delineated in Attachment B, and with the exception of those standards for which a deviation is being granted pursuant to this MOA, the project as proposed is consistent with the minimum requirements of the Pinelands CMP. No further action by the Commission, or its staff, shall be required regarding the proposed construction project unless there is a deviation from or modification to the proposed project as discussed in Paragraph III.A.7. above.
2. This MOA shall constitute a conditional Certificate of Appropriateness pursuant to N.J.A.C. 7:50-6.156. Provided the public utility complies with the conditions contained within Attachment B that pertain to cultural/historic resources, and the recommendations set forth in the Cultural Resource Survey report entitled "New Jersey Pinelands Commission, Cultural Resource Survey, Conectiv Power Delivery, Cedar to Cardiff, 230 kV Transmission Line, Southern Phase – Approved Route", prepared by Cultural Resource Consulting Group and dated June 29, 2004, no further action by the Commission or its staff shall be required unless there is a significant deviation from or modification to the proposed project as discussed in Paragraph III.A.7. above.
3. With the participation of the public utilities and the BPU, the Pinelands Commission shall develop a Comprehensive, Ecologically Based ROW Maintenance Plan. The objectives of this plan will be to establish characteristic Pinelands vegetation types and habitats that reflect the structure, species composition and patch geometries (i.e. size and shape) of habitats found in the area, promote natural regeneration, minimize homogeneity, and avoid soil and ground layer disturbance unless it can be demonstrated that such disturbance is needed to establish an appropriate characteristic habitat and address the ROW maintenance needs of the utilities.
4. When a Comprehensive, Ecologically Based ROW Maintenance Plan, as contemplated by Paragraph III.A.9., is completed, the Pinelands Commission agrees to take, in consultation with the BPU, the steps necessary, including rulemaking if required, to implement the Plan.

5. It will consider possible amendments to the Pinelands Comprehensive Management Plan regarding refinement of the standards of the Pinelands CMP concerning land use and/or environmental standards as they apply to development within the Garden State Parkway ROW.
6. It agrees to use the thirteen (\$13,000,000) million dollar contribution made by the public utility in accordance with Paragraph III.A.10. above, to further the Pinelands protection program and ensure a greater level of protection for the unique resources of the Pinelands Area. Specifically, the contribution will provide a source of funds that would be used by the Pinelands Commission for activities that advance the protection of the Pinelands Area and that have a direct nexus to the preservation of the resources of the Area.

C. The Commission and the BPU agree:

1. To meet periodically to discuss this MOA, the status of the electric transmission line project and other issues of mutual concern.

IV. EFFECTIVE DATE AND DURATION

1. In accordance with N.J.S.A. 13:18A-5(h), this MOA shall take effect following the conclusion of the Governor's review period and/or approval of the Pinelands Commission meeting minutes authorizing entry of this MOA and then upon approval and signature by the authorized representative of both parties.
2. This MOA shall remain in effect for five (5) years from its effective date unless one of the following occurs:
 - i. It is amended by written consent of both parties;
 - ii. The amendments to the Pinelands CMP discussed in Paragraph III.B.5. above are adopted by the Pinelands Commission and both parties consent to such termination in writing; or
 - iii. Both parties mutually agree, in writing, to otherwise terminate this agreement.

V. SIGNATURES

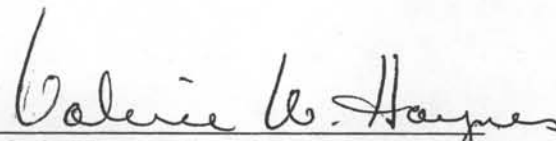
NEW JERSEY PINELANDS COMMISSION

Date 9/2/04

By: 
John C. Stokes, Executive Director

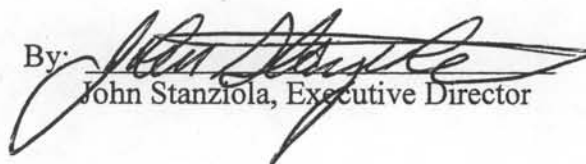
Approved as to form by:

Date 9/3/04

By: 
Valerie Haynes, Deputy Attorney General
State of New Jersey

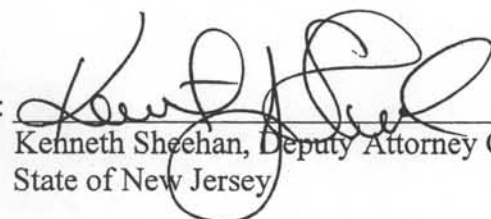
NEW JERSEY BOARD OF PUBLIC UTILITIES

Date 9/13/04

By: 
John Stanziola, Executive Director

Approved as to form by:

Date 9/13/04

By: 
Kenneth Sheehan, Deputy Attorney General
State of New Jersey

ATTACHMENT A

Conectiv Documents

APPLICATION MATERIALS:

NJ Pinelands Commission Application Package: Cedar to Cardiff 230 kV Transmission Line, Southern Phase Approved Route - Ocean, Burlington and Atlantic Counties, New Jersey

Prepared for: Conectiv Power Delivery

Prepared by: ENSR International

Dated June 2004

Document Number 1855-026

SITE PLANS:

Prepared by LGA Engineering, Inc., consisting of 31 sheets and dated July 9, 2004.

STORMWATER MANAGEMENT:

Soil Erosion and Sediment Control Report for Cedar Substation to Cardiff Substation 230 kV Transmission Line Project - Ocean, Burlington and Atlantic Counties, New Jersey

Prepared for ENSR

Prepared by LGA Engineering, Inc.

Dated June 16, 2004

Plans prepared by LGA Engineering, Inc. consisting of 32 sheets and dated as follows:

Sheet 1: Cover Sheet: July 12, 2004

Sheets 2 through 10: June 11, 2004 last revised July 9, 2004

Sheet 11: June 11, 2004 and last revised July 12, 2004

Sheets 12 through 32: June 11, 2004, last revised July 9, 2004

THREATENED AND ENDANGERED SPECIES:

Habitat Assessment and Mitigation Procedures for Rare, Threatened and Endangered Species: Oyster Creek to Cardiff 230 kV Transmission Line Project Southern Phase, Cedar Substation to Cardiff Substation, Ocean, Burlington, Atlantic Counties, New Jersey

Prepared for: Conectiv Power Delivery

Prepared by: ENSR Corporation

Dated July 2004, Revised July 13 2004, and last amended by letter dated August 12, 2004

Project:01855-026-430

CULTURAL RESOURCES:

1. New Jersey Pinelands Commission Cultural Resource Survey: Conectiv Power Delivery Cedar to Cardiff 230 kV Transmission Line Southern Phase - Approved Route, Atlantic, Burlington and Ocean Counties, New Jersey
Prepared by Cultural Resource Consulting Group, Dated June 29, 2004
2. Phase IB and II Cultural Resource Investigation, Conectiv Power Delivery Cedar

to Cardiff 230 kV Transmission Line Southern Phase - Approved Route, Atlantic,
Burlington and Ocean Counties, New Jersey, Volume 1: Text and Graphics
Prepared by Cultural Resource Consulting Group, Dated June 25, 2004

ATTACHMENT B

Environmental Conditions

General Conditions

1. Any areas disturbed as a result of construction activities, including existing pole removal, shall be graded to natural conditions and seeded with native Pinelands grass species.
2. Only native Pinelands species shall be used for revegetation purposes.
3. Existing poles shall be removed and the resulting void filled with soil excavated from the replacement pole location.
4. The use of herbicides are prohibited during construction of the ROW. The use of herbicides for future vegetation management purposes shall also be prohibited in any portion of the ROW, unless specifically authorized by the Pinelands Commission through development of the Comprehensive, Ecologically Based ROW Maintenance Plan.
5. The limits of the proposed new ROW shall be flagged in the field prior to the commencement of any clearing.
6. All vegetation (timber, woodchips) removed from the ROW shall be lawfully disposed of unless the property owners adjacent to the ROW can promptly remove this debris for their personal use or the Executive Director approves the disposition of vegetative material on sites within the Pinelands Area prior to the disposition of any such material.
7. No construction debris or excess fill shall be disposed of in the Pinelands Area without the prior approval of the Pinelands Commission Executive Director.
8. No off-site storage/staging areas (i.e. locations for the storage, temporary or otherwise, of equipment or materials) for the project shall be located within the Pinelands Area unless approved by the Pinelands Commission Executive Director prior to their use.
9. The Pinelands Commission staff shall be permitted to inspect construction activities to ensure compliance with the conditions set forth in this agreement.
10. Any minor modifications to the proposed ROW alignment or construction plans for ROW located within the Pinelands Area shall be submitted to the Pinelands Commission Executive Director for review and approval prior to any construction commencing in such areas.

11. Following completion of construction, steps shall be taken to prevent unauthorized access to the ROW from paved public roads, except as may otherwise be authorized by the Comprehensive, Ecologically Based ROW Maintenance Plan, in which case, the mechanisms contained within the Plan shall be implemented.

Cultural Resources

12. All recommendations set forth in the Cultural Resource Survey report prepared by Cultural Resource Consulting Group entitled "New Jersey Pinelands Commission, Cultural Resource Survey, Conectiv Power Delivery, Cedar to Cardiff, 230 kV Transmission Line, Southern Phase – Approved Route" and dated June 29, 2004 shall be implemented.
13. No clearing or construction activities shall commence within 300 feet of poles 137 to 143 (i.e. the vicinity of Stafford Forge) until the Phase II Investigation discussed in the Cultural Resource Survey report prepared by Cultural Resource Consulting Group entitled "New Jersey Pinelands Commission, Cultural Resource Survey, Conectiv Power Delivery, Cedar to Cardiff, 230 kV Transmission Line, Southern Phase – Approved Route" and dated June 29, 2004 is completed, the final report delineating the results of the Phase II Investigation work is submitted to the Pinelands Commission and accepted by the Executive Director and the public utility receives written confirmation from the Executive Director of such acceptance. Any resources discovered during the Phase II Investigation that are determined by the Pinelands Commission to be eligible for Pinelands Designation shall be appropriately treated. Such treatment shall include, if at all possible, relocation of any poles proposed for placement in the vicinity of Stafford Forge that would otherwise affect significant archeological resources.
14. A qualified archeologist shall be present during all clearing or construction activities conducted in the vicinity of Stafford Forge, Pole No. 137 to Pole No. 143, to ensure that any new resources of potential significance that may be discovered during construction in this area are appropriately treated. Such treatment shall include, if at all possible, relocation of any poles proposed for placement in the vicinity of Stafford Forge that would otherwise affect significant archeological resources.
15. At the Mullica River crossing, the public utility shall disassemble the two existing lattice towers in a manner that does not impact the Osprey nests presently located in the vicinity of such towers.
16. A qualified archaeologist shall be present to monitor the installation of any geotechnical test borings within the Mullica River flood plain/tidal marsh, Pole Nos. 447, 477, 479, 480, 481, 485, and 488, prior to the placement of any poles within this area, to examine or test the core samples for evidence of significant cultural activity.

17. In accordance with N.J.A.C. 7:50-6.158(b), if, at anytime after construction of the project has commenced, archeological data is discovered on the project site, the public utility will immediately cease construction, notify the Pinelands Commission and take all reasonable steps to protect the archeological data.

Wetlands

18. No disposal of wood chips shall be permitted during construction nor shall any temporary stockpiling or placement of woodchips occur in wetlands or within 300 feet of wetlands.
19. Appropriate measures, such as installation of hay bales, shall be taken during construction to preclude sedimentation from entering wetlands.
20. When activities will occur in wetlands the construction contractor shall utilize palettes, mats, or other appropriate devices to prevent tire rutting by construction vehicles. Vegetation may be cut prior to placement of palettes or matting. These devices shall be removed promptly upon completion of the construction of the portion of the line necessitating the use of such tire rutting prevention devices.
21. Vegetation clearing in wetlands shall be accomplished by techniques developed to minimize impacts to the wetlands. Such techniques include but are not limited to hand clearing, low impact vehicles (i.e. balloon tired all-terrain vehicles) designed for mechanical clearing, and mechanical clearing with equipment placed on mats.
22. All cut vegetation shall be removed from wetlands and areas within 300 feet of wetlands.
23. Any wetlands disturbed as a result of construction activities, including existing pole removal, shall be graded to natural conditions and seeded with native Pinelands grass species suitable for wetland areas.
24. No storage/staging areas (i.e. locations for the storage, temporary or otherwise, of equipment or materials for the project) shall be located within wetlands or areas within 300 feet of wetlands unless approved by the Pinelands Commission Executive Director prior to utilization of such areas. Notwithstanding this provision, materials and equipment required for the installation of a specific portion of the line may be placed in that portion of the ROW immediately prior to installation.
25. No culverts or fill, with the exception of devices to prevent tire rutting discussed in Paragraph 20 above, may be placed or deposited into wetlands or areas within 300 feet of wetlands to create access roads, temporary or otherwise, for the construction of new ROW.

26. No refueling shall occur within wetlands or areas within 300 feet of wetlands unless approved by the Pinelands Commission Executive Director prior to the initiation of any refueling activities.

Threatened or Endangered Species

27. At least one biologist qualified in the identification of threatened and endangered plants and animals and their habitats, as delineated at N.J.A.C. 7:50-6.27 and 6.33, shall be present at each site of the project where clearing and/or construction activities are being undertaken. The biologist(s) shall ensure that clearing and/or construction techniques being utilized do not adversely impact any habitat critical to the survival of any threatened and/or endangered species of animals or plants and that any such plants and animals discovered during construction are protected.
28. All clearing and/or construction activities shall be performed in accordance with the recommendations as to field measures, construction practices and/or time restrictions and protocols discussed in the report entitled "Habitat Assessment and Mitigation Procedures for Rare, Threatened and Endangered Species: Oyster Creek to Cardiff 230 kV Transmission Line Project Southern Phase, Cedar Substation to Cardiff Substation, Ocean, Burlington, Atlantic Counties, New Jersey", prepared by ENSR Corporation and dated July 2004, revised July 13, 2004.
29. All additional survey work delineated in the report entitled "Habitat Assessment and Mitigation Procedures for Rare, Threatened and Endangered Species: Oyster Creek to Cardiff 230 kV Transmission Line Project Southern Phase, Cedar Substation to Cardiff Substation, Ocean, Burlington, Atlantic Counties, New Jersey," shall be conducted according to the protocols set forth in such report. No clearing or construction activities may commence in any areas requiring additional survey work until such survey work is completed, the results of such work are submitted to the Pinelands Commission and accepted by the Executive Director and the public utility receives written confirmation of the Executive Director's acceptance of such results.
30. The Pinelands Commission shall be notified immediately if any threatened and/or endangered species of plants or animals or habitat critical to their survival, the report entitled "Habitat Assessment and Mitigation Procedures for Rare, Threatened and Endangered Species: Oyster Creek to Cardiff 230 kV Transmission Line Project Southern Phase, Cedar Substation to Cardiff Substation, Ocean, Burlington, Atlantic Counties, New Jersey", prepared by ENSR Corporation and dated July 2004, revised July 13, 2004, are identified or discovered during construction. All clearing or construction activities in the vicinity of such species or critical habitat shall immediately cease pending direction from the Pinelands Commission Executive Director. During that time, the public utility shall authorize the biologists to take all reasonable steps to

ensure that such species or critical habitats are protected.