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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Case 06-T-0650 - Application of New York Regional
Interconnect Inc. For a Certificate of Environmental
Compatibility and Public Need Pursuant to Article VII
for a High Voltage Direct Current Electric Transmission
Line Running Between National Grid's Edic Substation in
the Town of Marcy, and Central Hudson Gas & Electric's
Rock Tavern Substation Located in the Town of New
Windsor

Evidentiary Hearing
3 Empire State Plaza
19th Floor
Albany, New York

April 2, 2009
10:19 a.m.

BEFORE: MICHELLE L. PHILLIPS,
Administrative Law Judge

JEFFREY STOCKHOLM,
Administrative Law Judge

1 (Exhibits 308 through 322 marked for
2 identification.)

3 JUDGE STOCKHOLM: I call Case 06-T-0650,
4 application of New York Regional Interconnect, Inc., for
5 a certificate of environmental compatibility and public
6 need under Article VII of the Public Service Law.

7 Could we begin with appearance of counsel?

8 MR. BISSELL: For New York Regional
9 Interconnect, the law firm of Couch White, LLP, by
10 Leonard Singer, Garrett Bissell and William McCarthy.

11 MR. KLUCSIK: For Communities Against Regional
12 Interconnect, Gilberti, Stinziano, Heintz & Smith, P.C.,
13 by Brenda Colella and John Klucsik.

14 MR. BELSITO: Department of Public Service,
15 Steve Blow, assistant counsel, and Anthony Belsito,
16 assistant counsel.

17 MR. MALONE: For the New York Power Authority,
18 Sarah Barish-Straus and Mark Malone.

19 MS. WILKINSON: For the New York State
20 Department of Environment -- of Environmental
21 Conservation, Lisa Wilkinson.

22 MS. HINTZ: For New York State DOT, Donna
23 Hintz.

24 MR. TORIELLO: For the New York State Thruway

1 Authority, John Toriello from the law firm of Holland &
2 Knight.

3 JUDGE STOCKHOLM: Okay. We're beginning this
4 morning with the New York State Thruway Authority
5 witnesses, I believe.

6 MR. TORIELLO: Yes, Your Honor. We're
7 prepared.

8 JUDGE STOCKHOLM: Good morning, gentlemen.
9 Would you please remain standing? Would you both raise
10 your right hand?

11 CHRISTOPHER WAITE and LAWRENCE FRAME,
12 after first having been duly sworn, were examined and
13 testified as follows:

14 JUDGE STOCKHOLM: Thank you. Please be seated
15 and give your full name to the reporter.

16 MR. WAITE: I'm Christopher A. Waite.

17 MR. FRAME: Lawrence J. Frame.

18 JUDGE STOCKHOLM: Go ahead, counsel. You can
19 identify the testimony, et cetera.

20 MR. TORIELLO: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. TORIELLO:

23 Q Mr. Waite, first, do you have a copy of your
24 direct testimony there in front of you with the

1 exhibits?

2 A (Waite) I do.

3 Q And have you had an opportunity to review that
4 direct testimony?

5 A (Waite) Yes, I have.

6 Q And do you have any changes to that direct
7 testimony?

8 A (Waite) I have one change.

9 Q And what change is that, sir, please?

10 A (Waite) The testimony states that I received my
11 professional engineering license in 1981. And upon
12 checking, I realized it's 1982.

13 Q Thank you. Do you have any other changes?

14 A (Waite) No, I don't.

15 Q Did you also have the opportunity to see the
16 cross-examination of Mr. Michael Mariotti?

17 A (Waite) Yes, I did.

18 Q And did you hear the questions and answers with
19 respect to property rights and permitting requirements
20 for the Thruway?

21 A (Waite) Yes, I did hear those.

22 Q Would you please tell us whether from the
23 Thruway's perspective, use-and-occupancy permits and
24 work permits involved property rights?

1 A (Waite) From the Thruway's perspective, both
2 permits, use-and-occupancy and work permits, do involve
3 property rights.

4 Q And would you tell us, please, why the
5 use-and-occupancy permit involves property rights?

6 A (Waite) The use-and-occupancy permit generally
7 is structured to allow, perhaps, a long-term use of
8 Thruway property for some purpose, so a facility or an
9 installation I assume would be there for quite a while.
10 And that permit would also regulate its use.

11 Q And with respect to the work permit, why is it
12 that the work permit involves property rights?

13 A (Waite) Well, the work permit involves
14 permission to enter upon the lands of the Thruway
15 Authority and perform some specified activity.

16 Q Thank you. With respect to permits, does the
17 Thruway Authority require permits for aerial cables even
18 when structures are not located on the Thruway property?

19 A (Waite) Yes, it does.

20 Q And why is that?

21 A (Waite) An aerial cable over the Thruway would
22 involve our air rights, which is a property interest.

23 Q Okay.. And does the Thruway Authority require
24 this for reasons with respect to knowledge and

1 information as well?

2 A (Waite) Yes, it does.

3 Q And why is that?

4 A (Waite) Well, there's an -- there's an
5 inventory aspect so we know what is involved in the
6 permit, say, in an aerial, where it is, what it is, if
7 it has a voltage, we'd like to know that. And then in
8 reviewing the application, we want to apply all the
9 standards and restrictions to that.

10 Q And so are there also conditions involved in
11 those permits?

12 A (Waite) Yes, there are.

13 MR. BISSELL: Your Honor, just I guess a point
14 of clarification, I'm not sure if I'm going to raise an
15 objection at this point in point in time, is it the
16 normal practice we're going to allow supplemental direct
17 testimony beyond what's been filed, or should this be
18 matters raised based on redirect, based on the
19 cross-examination of the parties? Because this is all
20 beyond the scope of the direct testimony that's been
21 filed before us.

22 JUDGE STOCKHOLM: I -- I understand that, but I
23 think that there were opinions expressed on the record
24 with regard to the application of, I think it was DOT

1 witnesses.

2 MR. TORIELLO: That's correct, Your Honor.

3 JUDGE STOCKHOLM: With regard to the
4 application of the permits that this direct testimony is
5 addressing, that my recollection is is contrary to
6 what's currently being put on the record.

7 MR. TORIELLO: That's correct, Your Honor.

8 Well, some of it is contrary and some of it is
9 clarification.

10 JUDGE STOCKHOLM: Understood. I don't mean 100
11 percent contrary, but may not be completely consistent
12 with the prior testimony.

13 MR. TORIELLO: That's correct, Your Honor.

14 JUDGE STOCKHOLM: So I'm going to allow some of
15 this.

16 MR. TORIELLO: There's only a few more
17 questions, Your Honor.

18 JUDGE STOCKHOLM: Go ahead, counsel.

19 MR. TORIELLO: Thank you.

20 BY MR. TORIELLO:

21 Q With respect to permits for boring underneath
22 the Thruway, does the Thruway require a permit for
23 boring underneath the Thruway?

24 A (Waite) Yes, it does.

1 Q And would you please tell us why that is?

2 A (Waite) These are for similar reasons, for the
3 overhead instance, so that we know what is being
4 installed, where it's being installed, how deep perhaps,
5 and -- and would have restrictions and conditions for
6 future maintenance.

7 Q Okay. And does that involve any property
8 rights as well, the boring underneath?

9 A (Waite) Yes, it does.

10 Q And could you tell us what that is?

11 A (Waite) Those property rights obviously are
12 occupation, entering upon lands and occupying the space
13 in the right-of-way.

14 Q Thank you.

15 MR. TORIELLO: Judge, I'm not sure, should I
16 move his testimony -- his original direct testimony in
17 at this time and his exhibits or afterwards?

18 JUDGE STOCKHOLM: Let me ask you, sir, do you
19 have a copy of your direct testimony in front of you?

20 MR. WAITE: I do.

21 JUDGE STOCKHOLM: We can do this with both of
22 you. Is it the same testimony?

23 MR. TORIELLO: No, Judge. Different --
24 different testimonies. And the other witness,

1 Mr. Frame, has a correction to his originally filed
2 testimony.

3 JUDGE STOCKHOLM: Okay.

4 MR. TORIELLO: So that's why I was doing it one
5 at a time.

6 JUDGE STOCKHOLM: Okay. I'm sorry. Did you
7 lay that foundation, counselor?

8 MR. TORIELLO: Yes, I did, Your Honor.

9 JUDGE STOCKHOLM: Then the testimony shall be
10 copied into the record as though given orally. I'm
11 sorry; I was looking for something. I wasn't paying
12 attention.

13 MR. TORIELLO: Thank you, Your Honor.

14 (The following is the prefiled direct testimony
15 of Christopher Waite:)

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BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of

Application of New York Regional Interconnect Inc. for a Certificate of Environmental
Compatibility and Public Need Pursuant to Article VII for a High Voltage Direct Current
Electric Transmission Line Running Between National Grid's Edic Substation in the Town of
Marcy, and Central Hudson Gas & Electric's Rock Tavern Substation Located in the Town of
New Windsor

Case No.: 06-T-0650

January 9, 2009

Prepared Testimony of:

Christopher A. Waite
Chief Engineer
The New York State Thruway Authority
200 Southern Boulevard
Post Office Box 189
Albany, New York 12201-0189

Case No. 06-T-0650

Christopher A. Waite

1 Q. Please tell us your name and current employment.

2 A. Christopher A. Waite. I am the Chief Engineer for the New York
3 State Thruway Authority and the New York State Canal
4 Corporation.

5 Q. What is your educational background and employment history?

6 A. I received my Bachelor of Science in Engineering from Rensselaer
7 Polytechnic Institute in Troy, New York. I have been a registered
8 Professional Engineer in New York State since 1981, as well as a
9 past president and member of the Albany Society of Engineers
10 since 1985. I have worked for the Thruway Authority for 34 years.
11 I became Chief Engineer in March of 2006. Prior to that, my
12 positions with the Authority were as follows: Supervisor of the
13 Pavement Management Unit (1988-1992), Director of Design
14 Quality Assurance (1992-1993), Director of the Bureau of
15 Highway Design (1993-2000), Director of the Office of Design
16 (2000-2002) and Director of Engineering Services (2004-2006).
17 Between 2002 and 2004, I directed a comprehensive study of
18 regional transportation needs in the 30-mile I-287 corridor,
19 including analysis of the Tappan Zee Bridge.

20 Q. What are your current duties as Chief Engineer of The New York
21 State Thruway Authority?

1 A. I am responsible for all engineering at the Authority. In addition, I
2 oversee the development and implementation of the Authority's
3 \$2.1 Billion Capital Construction Program.

4 Q. Have you had the opportunity to review the application of New
5 York Regional Interconnect that has been filed in this matter?

6 A. Yes.

7 Q. How would the siting of the transmission lines as contemplated in
8 the application affect the Thruway?

9 A. As an initial matter, it should be noted that use of the Thruway
10 Right of Way for longitudinal occupancy is restricted by the
11 Accommodation Plan for Longitudinal Use of Freeway Right-of-
12 Way by Utilities issued by the New York State Department of
13 Transportation. The Authority's testimony submitted today does
14 not address longitudinal use of the Thruway Right of Way. Should
15 a longitudinal alternative be adequately supported to merit
16 substantive consideration, the Authority reserves the right to
17 submit further testimony and evidence. Aside from the serious
18 issues posed by such an alternative, the Authority staff has
19 identified issues relating to the transverse crossing of the Thruway
20 to occur at mile post 235 in the Proposed Route and at mile post
21 230.4 in two of the proffered alternatives.

22 Q. Can you identify exhibit number 1?

1 A. Yes. It is a map prepared by the Authority staff that depicts the
2 area of the Thruway that would potentially be affected by the
3 proposal.

4 Q. What are the concerns that have been identified with regard to
5 these transverse crossings?

6 A. Generally, the prime concern is that the applicant abides by all of
7 the Authority's requirements concerning use of the Thruway Right
8 of Way as would any other applicant. In the normal course, such
9 compliance would be ensured through the permitting process. That
10 is, the applicant must apply for work permits and occupancy
11 permits and undergo review of its application in accordance with
12 applicable Authority requirements.

13 Q. Where would the applicant find the applicable requirements which
14 would govern the issuance of the necessary permits?

15 A. Generally, it should be noted that issuance of permits and disposals
16 of real property under the jurisdiction of the Authority must
17 comply with the Thruway Real Property Management Policy.
18 With regard to permit requirements, they are set forth in the Work
19 Permit Application, the Occupancy Permit Application and the
20 New York State Thruway Authority Occupancy and Work Permit
21 Accommodation Policy. The Authority also brings standards to
22 bear upon the application review process that are culled from
23 several outside sources, some of which are referenced in the

1 Authority Occupancy and Work Permit Accommodation Policy.
2 These outside sources include the *Accommodation Plan for*
3 *Longitudinal Use of Freeway Right-of-Way by Utilities* issued by
4 the New York State Department of Transportation, the design
5 standards of the American Association of State Highway and
6 Transportation Officials (AASHTO), the *Policy on the*
7 *Accommodation of Utilities within Freeway Rights of Way, Oct.*
8 *2005*, published by AASHTO, the *Manual of Uniform Traffic*
9 *Control Devices* (MUTCD), the *Highway Design Manual*, the
10 *Requirements for the Design and Construction of Underground*
11 *Utility Installations within the State Highway Right of Way*, and
12 the *New York State Department of Transportation 2002 Standard*
13 *Specifications*, as amended by the Thruway Authority. The
14 Authority usually applies these standards because generally they
15 are accepted standards and embody good engineering judgment.
16 Of course, there can be exceptions where appropriate.

17 Q. Can you identify Exhibit number 2?

18 A. It is the Thruway Real Property Management Policy, to which I
19 just referred.

20 Q. Can you identify Exhibit number 3?

21 A. It is the Work Permit Application, to which I just referred.

22 Q. Can you identify Exhibit number 4?

23 A. It is the Occupancy Permit Application, to which I just referred.

Case No. 06-T-0650

Christopher A. Waite

1 Q. Can you identify Exhibit number 5?

2 A. It is the New York State Authority Occupancy and Work Permit
3 Accommodation Policy, to which I just referred.

4 Q. Why would the applicant be subject to all of the standards and
5 other substantive requirements to which you just referred?

6 A. The Thruway Authority was created by the New York State
7 Legislature through Title 9 of article 2 of the Public Authorities
8 Law and that enabling statute directs the Authority, among other
9 things, to maintain and operate the Thruway system for the
10 convenience, welfare, and the improvement of the health of the
11 people of the State of New York. All of the foregoing standards
12 and substantive requirements for the use, occupancy, work, and
13 installation upon the Thruway property are imposed with the safety
14 of the public and the efficient operation of the Thruway in mind.
15 Suffice it to say, central to the Authority's mission is insuring the
16 safety of the traveling public.

17 Q. What kind of impact could a project, as contemplated by the
18 application at issue here, have upon the Thruway and the
19 Authority's concerns about public safety.

20 A. We understand that whichever transmission route is certified, there
21 will necessarily be at least one crossing of the Thruway somewhere
22 between mile post 235 and mile post 230. For the year 2007, we
23 have calculated the average annual daily two-way traffic, or Two-

1 Way AADT, in that area to be approximately 23,450 vehicles.
2 AADT is an industry standard for measuring how busy a road is—
3 the "two-way" designation simply indicates that it includes traffic
4 traveling in both the east and west bound lanes. All of the
5 passengers in those vehicles will be exposed to any potential safety
6 hazard posed by the disruption of traffic incident to the installation
7 of the facility and by the potential safety hazards posed by the
8 facility once it is in place. Accordingly, the Authority's central
9 concern with respect to the transmission line project is that it is
10 sited, constructed, and maintained properly to minimize the safety
11 threat to the traveling public. Private applicants seeking to use the
12 Thruway Right of Way for commercial purposes may not have the
13 same concerns. We have found the imposition of the foregoing
14 standards and substantive requirements through our permitting
15 process is an effective way to have the private applicants address
16 those safety concerns.

17 Q. After the necessary permits are issued, what would be the
18 applicant's continuing obligation to the Authority?

19 A. The applicant must coordinate with the Authority for all work to be
20 performed in the Thruway Right of Way. Prior to submitting its
21 construction plan for the facility, the applicant will be required to
22 provide to the Authority a preliminary design marked to avoid
23 conflicts with potential transportation projects that the Authority

1 may seek to undertake in the future and must accommodate any
2 Authority concerns. Additional concerns may arise and conditions
3 may be imposed once the applicant's designs have been finalized.

4 Q. Based on what you can discern from the application about the
5 proposed transverse crossing of the Thruway, can you identify any
6 rule, regulation or policy of the Authority that the proposed
7 crossing would be in violation of?

8 A. Yes. The application plainly contemplates an overhead crossing,
9 whereas it is the policy of the Authority to encourage underground
10 installation where possible. This has been the policy because of
11 historical fallen line incidents, which always have the potential to
12 be serious safety hazards. On the other hand, given the high
13 voltage and direct current that is contemplated in the proposal, we
14 recognize that there may also be significant safety hazards
15 presented in the underground placement of the line. We will be
16 interested in hearing the evidence presented at the hearing with
17 respect to such potential safety concerns, and we may have
18 something more to add at that time.

19 Q. Do you have any other concerns?

20 A. Additional concerns may arise as the certification process and the
21 permitting process move forward.

1 BY MR. TORIELLO:

2 Q Mr. Frame, do you have a copy of your direct
3 testimony there?

4 A (Frame) Yes, I do.

5 Q And do you have any changes to that direct
6 testimony?

7 A (Frame) Yes, I have one change.

8 Q And is the change on page 10 -- starting on
9 page 10, line 22, and proceeding on to page 11, line 7?

10 A (Frame) Yes, it is.

11 Q And does the change relate to the vertical
12 height requirements?

13 A (Frame) Yes, it does.

14 Q Could you please tell us what the change is?

15 A (Frame) We would require a 75-foot vertical
16 clearance.

17 Q And is that 75 feet over the canal as well as
18 over the UDS sites?

19 A (Frame) Yes, it is.

20 Q And how did you discover the need for this
21 change?

22 A (Frame) Upon review of the rebuttal testimony,
23 the statement was made there that the 60 feet that we
24 had asked for or had required was in excess of what the

1 National Electrical Safety Code requires. So we did
2 some investigation. I spoke with our division canal
3 engineers, our division permit engineers who would be
4 responsible for writing permits for this project, and
5 there is a guidance document that would require 75 --
6 that's in effect right now that would require 75 feet in
7 this instance.

8 Q And with respect to canal operations, can you
9 tell us what canal operations are impacted by the
10 vertical clearance of these lines?

11 A (Frame) Well, there's two situations. In both
12 cases, it involves dredging, dredging the navigation
13 channel.

14 Q Could you explain to us how that operation is
15 impacted by the vertical clearance?

16 A (Frame) The vertical clearance over the water
17 are dredging activities. One of the pieces of equipment
18 that we use is a Derrick boat, which has a -- basically
19 it's a crane on the water. It's has about -- a boom
20 that the working height is about 60 feet above the level
21 of the water. Excuse me.

22 So during the operation of the Derrick boat, we
23 would need a 60-foot clearance for the boom, and then my
24 safety people have told me that there's a requirement of

1 a 10-foot buffer zone between the piece of equipment and
2 this transmission line. So over the water, we would
3 need something slightly in excess of 70 feet.

4 Q And with respect to the UDS sites which are
5 described in your testimony, what operations are
6 impacted by the vertical clearance?

7 A (Frame) We use several different pieces of
8 heavy equipment in our UDS sites, one of which is a
9 crane with a -- there are two cranes that we use in this
10 location with a boom height of about 65 feet from --
11 from grade. So the 65 feet with that same 10-foot
12 buffer zone would require us to require 75 feet.

13 Q And is there a process in place at the New York
14 State Canals Corporation for considering changes to
15 these requirements?

16 A (Frame) Yes, there is.

17 Q What is that process?

18 A (Frame) An application is made for the permit.
19 That's done in our division offices. If -- if there is
20 a variation requested, then it would -- it would be
21 discussed with headquarters, and then a decision would
22 be made to whether or not that a variance would be
23 granted.

24 Q And are permits required -- required by the

1 Canal Corporation with respect to aerial lines and lines
2 that are bored underneath canal lines?

3 A (Frame) Yes, they are.

4 Q And why is that?

5 A (Frame) Because there are property rights
6 involved. We -- we issue permits that, as Mr. Waite
7 stated, it gives the permittee the right to occupy and
8 use canal land. It also allows us to document what's
9 being done by the permittee on canal land, and
10 additionally, to condition that work that is being done.

11 Q Thank you.

12 MR. TORIELLO: I would move Mr. Frame's
13 testimony, direct testimony into evidence at this time,
14 Your Honor, subject to the change that he has made.

15 JUDGE STOCKHOLM: It will be copied into the
16 record as though given orally.

17 (The following is the prefilled direct testimony
18 of Lawrence Frame:)

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BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of

Application of New York Regional Interconnect Inc. for a Certificate of Environmental
Compatibility and Public Need Pursuant to Article VII for a High Voltage Direct Current
Electric Transmission Line Running Between National Grid's Edic Substation in the Town of
Marcy, and Central Hudson Gas & Electric's Rock Tavern Substation Located in the Town of
New Windsor

Case No.: 06-T-0650

January 9, 2009

Prepared Testimony of:

Lawrence J. Frame, P.E.
Deputy Director
New York State Canal Corporation
200 Southern Boulevard
Post Office Box 189
Albany, New York 12201-0189

1 Q. Please tell us your name and current employment.

2 A. Lawrence J. Frame; I am employed by the New York State Canal
3 Corporation.

4 Q. What is your educational background and employment history?

5 A. I have a Bachelor of Science from Union College in Schenectady,
6 New York and am a Professional Engineer licensed to practice in
7 New York State. I was employed by the New York State
8 Department of Transportation for 14 years as a Bridge Design
9 Engineer and then for 7 years by the New York State Thruway
10 Authority in a similar capacity and also as the Director of the
11 Facilities Design Bureau. Following that, I spent 2 years as
12 Director of the Canal Design Bureau; 3 years as Deputy Director
13 of the Office of Canal Maintenance and Operations; and the last 5
14 years as Deputy Director of the Canal Corporation, in charge of
15 Canal Maintenance and Operations.

16 Q. What are your current duties as Deputy Director of the New York
17 State Canal Corporation, which I'll refer to as the Canal
18 Corporation?

19 A. I oversee the maintenance and operation of the New York State
20 Canal System, as defined in Section 2 of the Canal Law. This
21 involves responsibility for approximately 500 employees in 3
22 divisions and 7 sections across the system. Maintenance activities
23 include the dredging program, the winter maintenance program,

1 navigation season maintenance projects, bank repair and
2 reclamation, movable dam cleaning and structure and channel
3 maintenance. On the operations side, I oversee canal employees
4 who are responsible for the operation of the locks, dams, lift
5 bridges and other structures which make up the system, water level
6 control, movable dam operation, customer service and training.

7 Q. What is the relationship between the Canal Corporation and the
8 New York State Thruway Authority?

9 A. The Canal Corporation, created pursuant to Section 382 of the
10 Public Authorities Law (Chapter 766 of the Laws of 1992) is a
11 subsidiary of the New York State Thruway Authority

12 Q. Have you had the opportunity to review the application of New
13 York Regional Interconnect that has been filed in this matter?

14 A. Yes.

15 Q. How would the siting of the transmission lines as contemplated in
16 the application affect the use, maintenance and operation of the
17 Canals, as defined in Section 2 of the Canal Law (which will
18 henceforth be referred to as the "Canal"), and Canal Corporation
19 lands?

20 A. As an initial matter, the Proposed Route as well as several
21 identified alternative routes contained in the Application do not
22 provide details with respect to the precise location of the proposed
23 installation. As a result, it is not possible to identify all

1 construction and maintenance issues created by the proposal and
2 the alternatives. Notwithstanding that qualification, Canal
3 Corporation staff has identified several concerns and objections
4 regarding the use, maintenance and operation of the Canal as it
5 runs through the towns of Marcy and Utica.

6 Q. What are those concerns and objections?

7 A. Prime concerns are the impact on the Canal and on the Upland
8 Disposal Sites located on Canal Corporation land adjacent to the
9 Canal and the impact on the operation of those sites. These
10 concerns relate to possible placement of the suspension towers in
11 the Upland Disposal Sites, the clearance (both vertical and
12 horizontal) for both the suspension structure and the strung wires,
13 and to the possible placement of the transmission line under the
14 Canal and an adjacent Upland Disposal Site proposed in Alternate
15 MS-A. As I understand it, the applicant has agreed that it will not
16 construct a suspension tower within the Upland Disposal Sites, so
17 this addresses our first concern.

18 Q. What is an Upland Disposal Site?

19 A. An Upland Disposal Site, or a UDS, the acronym that we use, is
20 normally a bermed area with man-made steep berms adjacent to
21 the Canal which is used to contain dredge spoils from dredge
22 operations undertaken by the Canal Corporation to ensure the safe
23 navigation of the Canal.

1 Q. Would you please identify exhibit 1?

2 A. Yes. This is a map that was prepared by the employees of the
3 Canal Corporation to depict the areas of the Canal Corporation
4 lands affected by the proposed and alternative routes. The
5 proposed and alternative routes are labeled on the exhibit. The
6 exhibit depicts the proposed route and the several alternate routes
7 that would run along side and or cross the Canal. On the map, the
8 areas to which I am referring—the upland disposal sites or
9 UDSs—are identified in the map legend as "Canal Dredge Spoil
10 Sites." They are further identified as UDS 4-30, UDS 4-31 and
11 UDS 4-35.

12 Q. What is the function of these sites?

13 A. Dredge operations are an important part of the Canal Corporation's
14 function and are essential to ensure the safe navigation of the
15 canals by the public. UDS preparation and maintenance is carried
16 out by using heavy construction equipment to move large
17 quantities of previously deposited dredge spoil material within
18 each UDS. During active dredging operations, a UDS is typically
19 flooded repeatedly with water and sediment to a depth of several
20 feet and then drained, creating a highly erodible condition. During
21 this operation, the berms of the UDS are generally increased in
22 height so as to maintain the original volume. At present some
23 UDSs have berm heights of 20 to 25 feet.

1 Q. Can you please identify exhibit number 2?

2 A. Yes. That is a document prepared by Canal Corporation staff
3 entitled "Upland Disposal Site Process," which describes the
4 general purpose and function of Upland Disposal Sites. It includes
5 several color photographs that are representative of the UDSs
6 located along the Canal, during dry and flooded conditions and in
7 the process of being flooded and manipulated during the course of
8 their usual operations.

9 Q. Can you identify exhibit number 3?

10 A. Yes. Exhibit Number Three is a collection of four photographs of
11 one of the UDS sites at issue in this matter—that is UDS 4-30.
12 You can see the crane as it deposits dredge spoils into the site.
13 You can also get a good look at the berm at the site as it existed in
14 2004. Presently, that berm measures approximately 4 to 5 feet in
15 height. Based on past activity at other UDSs, we might reasonably
16 expect that berm to increase to a height of approximately 20 to 25
17 feet in the future. As to the other UDSs at issue in this matter—
18 UDS 4-31 and 4-35—they have been inactive in the recent past,
19 but we might reasonably expect that they will become active for
20 the deposit of dredge spoils and, therefore, will present the same
21 concerns as UDS 4-30.

22 Q. Turning now to another issue, please explain the concern with
23 respect to the clearance—both vertical and horizontal—which

1 must be provided for both the suspension structure and the strung
2 wires.

3 A. If transmission wires are strung too low or too close, they may
4 obstruct the safe navigation, operation and maintenance of the
5 Canal.

6 Q. What is necessary to address these concerns?

7 A. The applicant—like any party seeking to use, occupy and/or work
8 on Canal Corporation lands—must abide by the rules and
9 regulations and the permitting process prescribed by the Canal
10 Corporation. The Canal Corporation derives its power to institute
11 those rules and regulations and condition the use of Canal
12 Corporation lands accordingly from the New York State
13 Legislature, section 382 of the Public Authorities Law and the
14 Canal Law. While the Applicant will be required to comply with
15 all of the rules and regulations, and permit requirements, a specific,
16 though not exclusive concern is that the applicant satisfy certain
17 minimum clearance requirements.

18 Q. What is that permitting process?

19 A. Generally, it should be noted that issuance of permits and disposals
20 of real property under the jurisdiction of the Canal Corporation
21 must comply with the Canal Real Property Management Policy.
22 The requirements of the permitting process are set forth in Part 156
23 of the Rules and Regulations of the Canal Corporation. Generally,

1 the process can be described as follows. The applicant must apply
2 for Canal work permits and Canal use and occupancy permits, and
3 undergo review by Canal Corporation staff for the construction
4 and operation of the facility in accordance with the Rules and
5 Regulations and all requirements of the Canal Permit Application.
6 The actual application process begins when the applicant submits
7 its application for a permit. Then Canal Corporation staff
8 determines whether all of the necessary information has been
9 received. If so, a decision is made as to the fee to be imposed and
10 the required insurance. Additionally, it will be determined if any
11 special permit conditions need to be applied to the proposed use.

12 Q. Would you please identify Exhibit number 4?

13 A. Yes, it is the Canal Real Property Management Policy, to which I
14 was just referring.

15 Q. Would you please identify Exhibit number 5?

16 A. It is the Canal Permit Application form that a party seeking to use,
17 occupy and or perform work on Canal lands would use to apply for
18 such right.

19 Q. Would you please identify Exhibit number 6?

20 A. It is the Use and Occupancy permit that would be issued if the Use
21 and Occupancy permit application is granted. It lists many
22 standard conditions, and additional conditions may be inserted
23 once more details are known about a particular project.

1 Q. Would you please identify Exhibit number 7?

2 A. It is the Work permit that would be issued if the Work permit
3 application is granted. It also lists many standard conditions, and
4 additional conditions may be inserted once more details are known
5 about a particular project.

6 Q. Where would the applicant find the rules and regulations which
7 would govern a party seeking to use, occupy and conduct work
8 within Canal lands and the design requirements for underground
9 utilities on canal lands?

10 A. All construction within the New York State Canal System must be
11 designed and performed according to the construction, traffic and
12 safety standards and other substantive requirements contained in
13 the following: (1) Canal Permit Application; (2) Part 156 of the
14 Rules and Regulations of the New York State Canal Corporation,
15 which was promulgated pursuant to the legislative authority
16 granted through sections 10, 86 and 100 of the Canal Law; and (3)
17 the Requirements for the Design and Construction of Underground
18 Utility Installations Within the State Highway Right-of-Way as
19 modified by the Requirements for the Installation of Underground
20 Utilities Within Canal Corporation Right of Way. Construction
21 cannot commence until all necessary permits are obtained from the
22 Canal Corporation.

23 Q. Would you please identify exhibit 8?

1 A. It is a copy of the Rules and Regulations of the New York State
2 Canal Corporation I previously mentioned.

3 Q. Would you please identify exhibit 9?

4 A. It is a copy of the Requirements for the Design and Construction of
5 Underground Utility Installations Within the State Highway Right-
6 of-Way as modified by the Requirements for the Installation of
7 Underground Utilities Within Canal Corporation Right of Way to
8 which I was just referring.

9 Q. With respect to horizontal clearance, what are the applicable
10 regulations?

11 A. Section 156.4(b)(2)(i) would apply. As I understand it, the
12 proposed project would employ 400 kilovolt transmission lines.
13 The rules do not specifically prescribe a minimum corridor width
14 for 400kv. The Canal Corporation's conservative practice—
15 especially when the public health and safety is at issue—would be
16 to apply the minimum prescribed corridor width for the next
17 highest voltage, which is 500kv. Accordingly, 175 feet would be
18 the required horizontal corridor for the proposed transmission line
19 at issue here with the transmission line centered in that corridor.

20 Q. And as to vertical clearance, what would be required?

21 A. With regard to non-UDS sites, the applicant would be required to
22 provide vertical conductor clearances of at least 40 feet. This is
23 consistent with the standards of the National Electric Safety Code,

1 which the Applicant references in Item 1 of the Table located at E-
2 1.3.1 and proposes to apply to the track rails of railroads. For all
3 UDS sites we would require at least 60 feet above the highest
4 elevation within the Site, itself, at the time of the construction.
5 This clearance would be necessary to allow equipment to be used
6 on top of the berms as they exist now and as we anticipate them to
7 grow in the future.

8 Q. How much notice must the applicant give the Canal Corporation
9 before commencement of site preparation.

10 A. The applicant must give at least 60 days advance notice. We are
11 continually performing operation and maintenance activities
12 throughout the Canal System and we plan our operations prior to
13 the navigation season which begins on May 1 and concludes on
14 November 15. We need 60 days notice to allow for sufficient time
15 to modify our plans to execute necessary Canal operation and
16 maintenance activities within the area affected by the proposed
17 transmission route in this matter.

18 Q. Other than your concerns about the UDS and the applicability of
19 the Canal permitting process through which the Canal could ensure
20 compliance with its rules and regulations—including those
21 concerning clearance—do you have any other concerns or
22 objections?

1 A. Yes. The route identified in the application as Alternate MS-A
2 which contemplates placement of the transmission line underneath
3 the Upland Disposal Site is unacceptable. As noted previously in
4 this testimony, our preparation of the UDSs includes significant
5 construction activities by heavy construction equipment including
6 excavation of the site using bulldozers and track mounted
7 excavators. As such, UDSs are active excavation sites and it
8 would be entirely unreasonable to permit high voltage energy
9 transmission wires to run underneath an area whose primary
10 functions calls for regular excavation and earth moving activity.
11 The Canal Corporation has never before permitted an applicant to
12 site any manner of transmission line underneath an active UDS.

Dated: Albany, New York
January 9, 2009

LAWRENCE J. FRAME

1 MR. TORIELLO: Thank you, Your Honor. And the
2 exhibits that are attached to those testimonies, can I
3 move those into evidence as well?

4 JUDGE STOCKHOLM: We'll deal with those at the
5 end of the day. That's our normal practice. However,
6 an identification of the exhibits is necessary.

7 MR. TORIELLO: Okay.

8 JUDGE STOCKHOLM: If you'd have each of the
9 witnesses just very briefly describe the exhibits that
10 they submitted.

11 MR. TORIELLO: Thank you, Your Honor.

12 BY MR. TORIELLO:

13 Q Mr. Waite, if you could open up your testimony.
14 With respect to Exhibit 1, could you tell us briefly
15 what that exhibit is?

16 A (Waite) Yes. Exhibit 1 is a map showing
17 crossings of the Thruway by the various alternatives to
18 the NYRI proposal.

19 Q And also showing the NYRI crossing as well; is
20 that right?

21 A (Waite) Correct.

22 Q And if you take a look at Exhibit 2, would you
23 tell us what that is?

24 A (Waite) Exhibit 2 is a general policy on the

1 management of property for the Thruway Authority,
2 Thruway real property.

3 MR. TORIELLO: Excuse me just one second. If I
4 may approach the witnesses, Your Honor. I forgot to
5 give them one document.

6 JUDGE STOCKHOLM: Yes. Sure.

7 Q Would you take a look at Exhibit 2, please,
8 Mr. Waite? Would you please tell us what that is?

9 A (Waite) Yes.

10 Q What is it?

11 A Exhibit 2 is the Thruway real property
12 management policy.

13 Q And that particular policy that's in front of
14 you is dated March 23rd, 2006; is that correct, sir?

15 A (Waite) Yes, it is.

16 Q And I just handed you a document which I
17 previously left on the tables for the various parties
18 and given a copy to the reporter, which is dated
19 January 21st, 2009; is that correct, sir?

20 A (Waite) That's correct.

21 Q So is this the policy that was more recently
22 adopted by the Thruway?

23 A (Waite) Yes, it is.

24 MR. TORIELLO: Okay. I don't have that

1 designated as an exhibit, Your Honor, but I would offer
2 it and call it Exhibit 2A, if that's acceptable.

3 JUDGE STOCKHOLM: I'll be giving you exhibit
4 numbers on that. And the filed exhibit being, I don't
5 mean to be derogatory, but outdated or superseded will
6 not be marked in evidence, but the new policy will.

7 MR. TORIELLO: Okay. Thank you, Your Honor.

8 Q And then if I can show you what's been marked
9 as Exhibit 3 attached to your testimony. Would you
10 please tell us briefly what that is?

11 A (Waite) Yes. Exhibit 3 is a work permit
12 application for work on the Thruway.

13 Q And turning to Exhibit 4. Would you please
14 tell us what that is?

15 A (Waite) Exhibit 4 is an occupancy permit
16 application.

17 Q And if you would take a look at Exhibit 5.
18 Would you please tell us what that is?

19 A (Waite) Exhibit 5 is the New York State Thruway
20 Authority occupancy and work permit accommodation
21 policy.

22 Q Thank you. And, Mr. Frame, if you could take a
23 look at the exhibits attached to your testimony.
24 Turning to Exhibit 1, would you please tell us what that

1 is?

2 JUDGE STOCKHOLM: Let me interrupt just very
3 briefly and indicate that the exhibits that were just
4 identified by Mr. Waite have been marked for
5 identification sequentially as Exhibits 309-313 for
6 identification.

7 Sorry, counselor. Go ahead.

8 MR. TORIELLO: Thank you, Judge.

9 Q Referring, Mr. Frame, to Exhibit 1 to your
10 testimony. Would you please tell us what that is?

11 A (Frame) Exhibit 1 is a map prepared by
12 canal/Thruway staff to show the proposed NYRI
13 transmission routes.

14 Q And if you would please turn to Exhibit 2.
15 Would you please tell us what that is?

16 A (Frame) This is a narrative put together by
17 canal staff which explains our upland disposal site
18 process.

19 Q And is the upland disposal site also referred
20 to as UDS?

21 A (Frame) Yes, it is.

22 Q If you'd turn to Exhibit 3. Would you please
23 tell us what that is?

24 A (Frame) Exhibit 3 is four pictures of our

1 activities in UDS Number 4-30, which was one of the
2 subject UDS sites in this case.

3 Q And do these photographs fairly and accurately
4 depict the general -- the general activities in these
5 UDS sites?

6 A (Frame) Yes, they do.

7 Q I show you what's been marked as Exhibit 4.
8 Would you please tell us what that is?

9 A (Frame) That's the canal real property
10 management policy.

11 Q If you'd take a look at Exhibit 5. Would you
12 please identify that for us?

13 A (Frame) That is a canal permit application.

14 Q If you would take a look at Exhibit 6. Would
15 you please tell us what that is?

16 A (Frame) It is a typical use-and-occupancy
17 permit for canal land.

18 Q Take a look at Exhibit 7. Would you please
19 tell us what that is?

20 A (Frame) It's a typical canal work permit for
21 canal land.

22 Q And if you'd then turn to Exhibit 8. Would you
23 please tell us what that is?

24 A (Frame) It's a copy of the rules and

1 regulations of the New York State Canal Corporation.

2 Q Thank you.

3 MR. TORIELLO: I defer to Your Honor.

4 A (Frame) There is an Exhibit 9.

5 Q I'm sorry. I missed that. Thank you.

6 Would you tell us, please, what Exhibit 9 is?

7 A (Frame) Yes. It's a copy of the requirements
8 for the design and construction of underground utility
9 installations within the state highway right-of-way as
10 modified by the requirements for the installation of
11 underground utilities within Canal Corporation
12 right-of-way.

13 Q Thank you.

14 JUDGE STOCKHOLM: The exhibits just identified
15 have been marked consecutively for identification as
16 Exhibits 314 through 322.

17 MR. TORIELLO: I have no further questions,
18 Your Honor.

19 JUDGE STOCKHOLM: Witnesses available for
20 cross-examination. Who has cross-examination?

21 Do we not have cross-examination for this these
22 witnesses?

23 I apologize, Mr. Klucsik.

24 The group is very quiet today.

1 MR. KLUCSIK: Your Honor, with the
2 understanding that longitudinal use of the Thruway
3 right-of-way has been the subject of rebuttal testimony
4 by several parties, and with the further understanding
5 that an opportunity for cross-examination on proposals
6 for longitudinal uses in the Thruway right-of-way would
7 be offered at a later time in this hearing, CARI has no
8 questions of these witnesses at this time with respect
9 to the scope of their direct testimony, reserving its
10 right to cross-examination on such longitudinal uses may
11 be addressed in rebuttal on that topic.

12 JUDGE STOCKHOLM: Are you talking about the
13 rebuttal that was due yesterday?

14 MR. KLUCSIK: Yes, Your Honor. I believe it
15 may be necessary based on rebuttal to call certain
16 witnesses back.

17 JUDGE STOCKHOLM: Yes, that's what I'm hearing
18 you say.

19 MR. KLUCSIK: And I would also point out in
20 that connection, that at least Mr. Waite's testimony, if
21 I recall it correctly, specifically cautions that his
22 testimony is not with respect to longitudinal -- his
23 direct testimony that's the subject of his appearance
24 today is not -- does not treat longitudinal uses.

1 MR. TORIELLO: Judge, we did -- Mr. Waite did
2 file rebuttal testimony dealing with the longitudinal
3 use of the Thruway yesterday afternoon.

4 JUDGE STOCKHOLM: Ah, now I understand.

5 We haven't set a date yet for the
6 cross-examination of that testimony, and we obviously
7 will require witnesses to come in and support that
8 testimony.

9 No, I don't think it's appropriate to
10 cross-examine the witness today on a piece of testimony
11 you've had less than 24 hours. So I think I do
12 understand what you're suggesting, and the witness would
13 certainly be brought back for that. However, questions
14 that go to the prefiled direct testimony of these
15 witnesses should be asked now. I am not going to
16 require them to come back and testify again about the
17 testimony that's in front of us today.

18 MR. KLUCSIK: Understood, Your Honor.

19 JUDGE STOCKHOLM: Okay.

20 MS. HINTZ: Your Honor.

21 JUDGE STOCKHOLM: Yes.

22 MS. HINTZ: Is it possible to set a time frame
23 for the Thruway Alternative scheduling of these
24 witnesses? We've been talking about it. And if we need

1 to bring back witnesses, we could get an idea.

2 JUDGE STOCKHOLM: Well, you're going to have to
3 bring back whatever witnesses filed testimony yesterday.
4 And I'd love to be able to pick a date for you, but at
5 this point, I can't. I suspect that we may be able to
6 schedule them during the week of --

7 MR. KLUCSIK: I think we talked about
8 April 20th, that week, Your Honor.

9 JUDGE STOCKHOLM: Yeah. That's the last week.
10 And we may be able to fit some people in or some of this
11 in on the week of the 13th, although that would be late
12 in the week.

13 MS. HINTZ: And there would be a conflict with
14 my expert witness as well the week of the 13th.
15 Actually, the 21st and the 24th are best for the
16 department.

17 JUDGE STOCKHOLM: And it will be the 22nd
18 through the 24th, because the 21st is the Commission
19 session.

20 JUDGE PHILLIPS: I was just suggesting that we
21 should tentatively schedule them for the 22nd since
22 that's the next fully open available day after the 17th.
23 And to the extent there are any problems that arise with
24 that later, parties should let us know as soon as

1 possible. But that gives you about one, two, three.
2 weeks from when you receive their testimony to prepare
3 to cross-examine them.

4 JUDGE STOCKHOLM: Was the testimony filed by
5 both these same witnesses or only Mr. Waite?

6 MR. TORIELLO: Just by Mr. Waite, Your Honor.

7 JUDGE STOCKHOLM: Thank you.

8 MR. BISSELL: Your Honor, just to clarify for
9 the 22nd, are you scheduling the DOT and Thruway
10 Authority, or is that for all rebuttal panels with
11 respect to the Thruway Alternate project?

12 JUDGE PHILLIPS: I'm sorry. I was only dealing
13 with, I believe it's Mr. Waite, who filed rebuttal
14 yesterday. That's the only thing I'm dealing with at
15 this point because we haven't had any other requests
16 yet.

17 MR. BISSELL: Thanks.

18 JUDGE STOCKHOLM: I think you can assume for
19 the most part that most of that testimony will probably
20 be done during the week of the 22nd, 22nd, 23rd, 24th.

21 MR. TORIELLO: Judge, I obviously will need to
22 speak with my witness about his schedule as well. So I
23 assume this is tentative --

24 JUDGE STOCKHOLM: It's tentative. It's

1 flexible. We'll work with whatever schedules, to the
2 best we can anyway.

3 MS. HINTZ: And that would include possibly the
4 Shafer and LaFleur testimony on the alternative?

5 JUDGE STOCKHOLM: Yes.

6 MS. HINTZ: Okay. Thank you.

7 JUDGE PHILLIPS: Ms. Hintz, are you doing
8 cross-examination of Witnesses Shafer and LaFleur?

9 MS. HINTZ: Possibly, Your Honor.

10 JUDGE PHILLIPS: Okay.

11 MR. TORIELLO: Mr. Klucsik already may also do
12 cross-examination of those two witnesses, Your Honor.

13 JUDGE STOCKHOLM: Mr. Klucsik, it looks like
14 those witnesses are probably going to be brought during
15 that last week.

16 MR. KLUCSIK: That has been our expectation,
17 Your Honor.

18 JUDGE STOCKHOLM: Well, you're ahead of me. I
19 can't get that far in the future. Let's -- can you
20 tentatively check the 22nd to see if that's workable?

21 MR. KLUCSIK: I will inquire, Your Honor.

22 JUDGE STOCKHOLM: Thank you. So in any event,
23 to get back to the panel that we have here today, there
24 are no -- there is no cross-examination of this panel?

1 And I don't even have any questions. I'll really
2 surprise you.

3 Wait. Time out.

4 MR. BISSELL: Your Honor, actually, NYRI has
5 one question based on the -- based on the supplemental
6 direct from --

7 JUDGE STOCKHOLM: You gentlemen were so close
8 to getting out of here.

9 MR. BISSELL: I actually just have one question
10 for Mr. Frame.

11 CROSS-EXAMINATION

12 BY MR. BISSELL:

13 Q With respect to the described vertical
14 clearances that you were discussing this morning
15 somewhere in the range of above 70 feet for the barge
16 canal and for the UDS sites, are you aware, is there
17 currently a National Grid transmission line that crosses
18 the barge canal?

19 A (Frame) Not that I'm aware of. I mean, there
20 may be.

21 Q And if they -- assuming there is a line that
22 does cross, would your understanding be that that line
23 would be in compliance with the vertical clearance
24 requirements set forth by the Canal Corporation?

1 MR. TORIELLO: I have an objection, Your Honor.
2 He's asking him to make an assumption.

3 JUDGE STOCKHOLM: Could I hear that question
4 again?

5 (Requested portion of the record read back by
6 the reporter.)

7 MR. TORIELLO: Judge, he's already testified he
8 doesn't know if there is such a line. He's really
9 asking for speculation at this point.

10 JUDGE STOCKHOLM: It sounds to me like a
11 hypothetical, that the question -- that the witness
12 might be able to answer not necessarily with respect to
13 NYRI, unless -- unless NYRI actually has --

14 MR. BISSELL: Your Honor, may I approach the
15 witnesses, show them?

16 JUDGE STOCKHOLM: You may.

17 MR. TORIELLO: Your Honor, may I take a look as
18 well?

19 JUDGE STOCKHOLM: Absolutely. Absolutely.

20 BY MR. BISSELL:

21 Q Mr. Frame, can I please ask you to direct your
22 attention within what has been marked as Exhibit 37 in
23 this case, Figure 5, which is a -- which is an ortho map
24 showing a crossing at the proposed crossing by NYRI of

1 the barge canal?

2 A (Frame) Yes.

3 Q With respect to this picture, is there
4 currently depicted by a yellow dashed line the crossing
5 of the barge canal by a 115 kV line?

6 A (Frame) That appears to be what's depicted
7 here, yes.

8 Q And, again, I will ask you, based on what you
9 have identified as what appears to be a crossing of the
10 barge canal, would it be your understanding that in
11 order to cross the barge canal, that 115 kV line would
12 need to meet the vertical clearance requirements you've
13 described?

14 A (Frame) I would have to make an assumption. I
15 don't have any factual knowledge about this particular
16 situation.

17 JUDGE STOCKHOLM: Are the standards you're
18 recommending here the standards you apply to any
19 overhead electrical crossing of the canal?

20 MR. FRAME: Yes, they are.

21 JUDGE STOCKHOLM: Do you have any reason to
22 believe that -- that counsel's question about the
23 specific line is an exception to your requirements in
24 any way?

1 MR. FRAME: Again, I would have to make an
2 assumption, but I don't have any reason to believe that
3 that's not the case.

4 JUDGE STOCKHOLM: That was my question exactly.

5 MR. BISSELL: I have no further questions.

6 MR. TORIELLO: Judge, I happen to have the
7 guidelines that are used, which I didn't put in at this
8 point, but I can give them and mark them, and they will
9 show that there is a difference in height requirement
10 for 115 kilovolt lines as opposed to 500 kilovolt lines.

11 JUDGE STOCKHOLM: Ah, okay.

12 MR. TORIELLO: I didn't want to clutter the
13 record.

14 JUDGE STOCKHOLM: No. No. We've got -- we
15 have more than enough record. I'm not looking for extra
16 paper.

17 MR. TORIELLO: But all of this would be dealt
18 with in the permitting process, which is all that we're
19 really saying is that they need to go through the
20 permitting process, and they would then deal with all
21 these issues of height requirements.

22 JUDGE STOCKHOLM: And these are in the NYCRR?

23 MR. TORIELLO: I don't know if these are in the
24 NYCRR. These could be policies and procedures -- in

1 fact, I'm sure they're policies and procedures at the --
2 at the Canal Corporation, which may not be in the NYCRR.
3 But I can mark this easily if that's of help to the --

4 JUDGE STOCKHOLM: Do you have enough copies?

5 MR. TORIELLO: I do, Your Honor. I brought
6 about 20 copies.

7 JUDGE STOCKHOLM: Why don't we put it in the
8 record --

9 MR. TORIELLO: Thank you, Your Honor.

10 JUDGE STOCKHOLM: -- just to -- just to make
11 things clear.

12 MR. TORIELLO: So this will be exhibit?

13 JUDGE PHILLIPS: It will be marked as Exhibit
14 323.

15 (Exhibit 323 marked for identification.)

16 JUDGE STOCKHOLM: And just for those keeping
17 track of it, it'll be exhibit -- you may have noted that
18 we skipped 308, but I think that's been -- that's a
19 premarked permanent easement, which I believe is going
20 to be entered by the Power Authority.

21 MR. MALONE: That's correct, Your Honor. It's
22 the -- sponsored by one of our witnesses, yes.

23 JUDGE STOCKHOLM: Gentlemen, counsel handed out
24 a document entitled "Requirements and Conditions for

1 Utility Lines Over Canal Lands and Waters." Can I ask
2 one of you gentlemen to identify that? Are you familiar
3 with it? Tell me what it is.

4 MR. FRAME: Yes. It's -- it's what our permit
5 engineers and division canal engineers would use to set
6 the conditions and requirements for any utility lines
7 that cross over canal lands or canal waters.

8 JUDGE STOCKHOLM: In looking briefly at this
9 document, it would appear that the clearance
10 requirements are set based on voltage, not based on
11 physical requirements for the operation of cranes. Just
12 for example, telephone cable has to have a clearance of
13 35 feet, but your cranes, if I understood your testimony
14 correctly, go up to 60.

15 MR. FRAME: Yes, that is correct.

16 JUDGE STOCKHOLM: So your concern here is the
17 level of voltage in the line, not the height of the
18 line? I'm not quite sure I understand.

19 MR. FRAME: In my investigation, I -- I
20 couldn't -- I couldn't come up with the reasoning behind
21 how these were set. What I -- what I testified to was
22 what myself and my staff felt was what would be required
23 for our -- our -- our current operational needs.

24 MR. TORIELLO: May I point out, Your Honor --

1 sorry.

2 May I point out, Your Honor, that B-3 does only
3 apply to the canal channel, which obviously is a section
4 that the witness has spoken about. It does not apply to
5 the UDS, which is a different --

6 JUDGE STOCKHOLM: I appreciate that
7 distinction. Thank you.

8 MR. TORIELLO: And B-1 does require that
9 everything be satisfactory to the New York State Canal
10 Corporation. So that's sort of a catchall division.

11 JUDGE STOCKHOLM: Understood. But, counselor,
12 these do not appear in 16 NYCRR; is that correct?

13 MR. TORIELLO: I just could not tell you if it
14 does or not, Your Honor. I could find out this
15 afternoon and let you know.

16 JUDGE STOCKHOLM: If you would at some point.
17 It doesn't have to be this afternoon, but yes, if you
18 would let me know if this is from NYCRR, because the
19 document then may have a slightly different place in the
20 record.

21 MR. TORIELLO: I'll let you know, Your Honor.
22 I believe that the two pages here were drawn from two
23 separate documents, and that they are used in the
24 normal -- I could ask the witness, but used in the

1 normal course by the permit engineers themselves.

2 JUDGE STOCKHOLM: I'm willing to accept that
3 arguendo. Not a problem.

4 Does this document raise any questions?

5 MR. KLUCSIK: Yes, Your Honor.

6 JUDGE STOCKHOLM: Mr. Klucsik, I knew you
7 wouldn't disappoint me this morning.

8 MR. KLUCSIK: I'm glad to know that's true,
9 sir.

10 BY MR. KLUCSIK:

11 Q Mr. Frame, on page 2 of the document marked
12 Exhibit 323, it would appear in the table to provide a
13 minimum prescribed corridor width for various power line
14 voltages; is that correct?

15 A (Frame) Yes, it is.

16 Q And does the minimum prescribed corridor width
17 in any way correspond to the required clearing as a
18 transmission line approaches the canal?

19 A (Frame) By "clearing", do you mean clearing of
20 vegetation --

21 Q Vegetation.

22 A No, it doesn't.

23 Q What does -- what does minimum prescribed
24 corridor width relate to?

1 A (Frame) That's related to the property
2 interest.

3 Q And how would that be reflected in a work
4 permit?

5 A (Frame) Work permit is a -- a short-term
6 permit. A use-and-occupancy permit would be required
7 first, and that's where this corridor would come into
8 play, and then a work permit would be issued for the
9 work within the parameters of the work -- or
10 use-and-occupancy permit.

11 Q So would this use-and-occupancy permit be
12 roughly equivalent to an easement across canal lands?

13 A (Frame) Yeah, I guess you could say that.

14 MR. TORIELLO: I have an objection, Your Honor.
15 He's not a lawyer. And how he can draw the comparison
16 to an easement? There's no showing that he has that
17 necessary foundation and knowledge.

18 JUDGE STOCKHOLM: I think his answer actually
19 showed that. And I'll accept it in the record merely as
20 a statement of a layman with regard to legal issues.

21 MR. TORIELLO: Thank you, Your Honor.

22 Q Mr. Frame, the table indicating minimum
23 prescribed corridor width for various power line
24 voltages indicates a minimum corridor width for a power

1 line of 500 kilovolts and a different minimum prescribed
2 corridor width for power line voltages of 230 to 345 kV.

3 Can you tell me what minimum prescribed
4 corridor width would apply to a power line of 400
5 kilovolts?

6 A (Frame) We would use the -- the larger voltage
7 of the 500 kilovolts, 175 feet.

8 Q And do you have an understanding of how that
9 minimum prescribed corridor width relates to the
10 right-of-way proposed by NYRI at the canal crossing?

11 A (Frame) I'm not sure I understand your
12 question.

13 Q I'm trying to figure out whether your
14 requirement of minimum prescribed corridor width is
15 greater or less than the area that NYRI has projected as
16 its necessary right-of-way as it crosses the canal?

17 A (Frame) I don't know that.

18 Q Thank you.

19 MR. KLUCSIK: No further questions, Your Honor.

20 JUDGE STOCKHOLM: Anything further? Okay. You
21 did get off fairly easily today, gentlemen. And let me
22 thank you for your time, your attendance and your
23 testimony.

24 MR. WAITE: You're welcome.

1 JUDGE STOCKHOLM: And you're excused.

2 Mr. Malone.

3 MR. MALONE: Yes, Your Honor.

4 JUDGE STOCKHOLM: We have your witnesses next,
5 yes?

6 MR. MALONE: Yes, we do.

7 JUDGE STOCKHOLM: Gentlemen, if you would
8 please rise. Raise your right hand.

9 KEVIN McGRATH and MARK O'CONNOR,
10 after first having been duly sworn, were examined and
11 testified as follows:

12 JUDGE STOCKHOLM: Please be seated and give
13 your full name to the reporter.

14 MR. McGRATH: Kevin McGrath.

15 MR. O'CONNOR: Mark D. O'Connor.

16 MR. MALONE: Your Honors, I would just indicate
17 that we have supplied you with the CVs with both
18 witnesses' testimony.

19 JUDGE STOCKHOLM: And the disk you gave to the
20 reporter has the CVs as a piece of the testimony?

21 MR. MALONE: No, Your Honor. There were --
22 there was one attachment, there was one exhibit to
23 Mr. O'Connor's testimony, which is 308, as you indicated
24 before. The testimony itself --

1 JUDGE STOCKHOLM: Where are the CVs going to
2 appear?

3 MR. MALONE: Well, the testimony itself, Your
4 Honor, has their qualifications and their employment
5 history with NYPA.

6 JUDGE STOCKHOLM: Okay. Let me -- let me go
7 back. I was asking all the parties to get me a CD
8 readable of the testimony. And my question is, does the
9 CD that you gave to the reporter include the CV with the
10 testimony on that disk?

11 MR. MALONE: It includes the testimony, Your
12 Honor, not --

13 JUDGE STOCKHOLM: Not the CV?

14 MR. MALONE: No.

15 JUDGE STOCKHOLM: Can I ask you to provide one
16 that does have it? That way we will at least have the
17 CVs in the record. I realize it will appear as a CV in
18 what otherwise is a transcript, but at least it's in the
19 record and we can cite to it.

20 MR. MALONE: We can do that. Yes, Your Honor.

21 JUDGE STOCKHOLM: Appreciate that. Thank you.

22 DIRECT EXAMINATION

23 BY MR. MALONE:

24 Q Mr. O'Connor, let me start with you. Do you

1 have before you a copy of your direct testimony filed in
2 this proceeding which consists of eight pages?

3 A (O'Connor) I do.

4 Q And was that testimony prepared by you or under
5 your direction?

6 A (O'Connor) Yes, it was.

7 Q Are there any corrections to your direct
8 testimony as filed?

9 A (O'Connor) There's one minor correction.

10 Q And can you tell me what that is?

11 A (O'Connor) It's on page 3, starting at line 4
12 going over to line 5. The sentence reads, "The Power
13 Authority trustees adopted a permitting process in 1979
14 and amended it in 1987." 1987 should be corrected to
15 read 1988.

16 Q With that correction, if you were asked today
17 these same questions in your direct testimony, would
18 your answers be the same?

19 A (O'Connor) Yes, they would.

20 MR. MALONE: Your Honor, I respectfully request
21 that the direct testimony of Mr. O'Connor be copied into
22 the record as though it was given orally.

23 JUDGE STOCKHOLM: Granted.

24 (The following is the prefiled direct testimony

1 of Mark O'Connor:)

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MARK D. O'CONNOR

1 **Q. Please state your full name, affiliation, and your title.**

2 A. My name is Mark D. O'Connor. I am Director of Real Estate for the Power Authority
3 of the State of New York.

4 **Q. What is the Power Authority of the State of New York?**

5 A. The Power Authority is a body corporate and politic, a political subdivision of the state,
6 exercising governmental and public powers. The Power Authority was created in 1931
7 through the enactment of the Power Authority Act (Chapter 772, Laws of 1931).

8 **Q. Please describe your education.**

9 A. I attended Arizona State University from 1977 to 1981. I graduated with a Bachelor of
10 Arts degree. I graduated from the Albany Law School in 1985. In 1994, I graduated from
11 the Pace University School of Law with a Masters of Law in Environmental Law.

12 **Q. Describe your professional experience.**

13 A. I have been with the Power Authority since 1992 and have been its Director of Real
14 Estate since 1995. Prior to 1992, I was an associate attorney in the private practice of law.

15 **Q. Are you familiar with the Power Authority's Marcy-South transmission line?**

16 A. Yes, I am familiar with the Power Authority's Marcy South Line

17 **Q. What is the Marcy South Line?**

18 A. The Power Authority's Marcy South was licensed by the New York State Public
19 Service Commission by order dated January 30, 1985. The Marcy South Line is a 345 kV
20 transmission facility that originates in Marcy, near Utica, and terminates in East Fishkill in
21 Dutchess County. It includes double circuit, single circuit, overhead, and underground

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1 configurations, with varying widths of right-of-way. The Marcy South Line crosses over
2 private land, state property under New York State Department of Environmental
3 Conservation's jurisdiction, and crosses in the riverbed of the Hudson River, which is
4 under the Office of General Services' jurisdiction.

5 **Q. Do you know how the Power Authority acquired the land rights to build Marcy**
6 **South?**

7 A. From 1985 through 1987, the People of the State of New York, through the New York
8 State Commissioner of Transportation, on behalf of the Power Authority, acquired, by
9 appropriation, the majority of permanent easement rights to the approximately 2,100
10 parcels for the Power Authority's Marcy South Line

11 **Q. Are there any restrictions in the Power Authority's permanent easements**
12 **acquired by appropriation for the Marcy South Line?**

13 A. These easements contain restrictions and limitations on the use of the land and prohibit
14 interference with the use and exercise of the Authority's permanent easements. No building or
15 other structure may be erected or maintained on the land without the written consent of the
16 Power Authority. Attached as Exhibit "A" is copy of a representative permanent easement on
17 the Marcy South Line.

18 **Q. Are there any rights reserved to the landowner in the Power Authority permanent**
19 **easements?**

20 A. In general, the landowner may construct and maintain a set of electric, telephone, water,
21 gas, sewer lines. Additionally, the landowner has the right of ingress and egress.

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1 See, Exhibit "A".

2 **Q. Is there a procedure for obtaining the Power Authority's permission to conduct**
3 **activities on the Power Authority's permanent easements on the Marcy South Line?**

4 A. The Power Authority Trustees adopted a permitting process in 1979 and amended it in
5 1987. In general, a landowner upon whose property the Power Authority has a permanent
6 easement would submit an application to the Power Authority. As set forth in the Marcy
7 South permanent easement language, the Power Authority does not grant permits under
8 circumstances in which the activities of the permittee might interfere with Power Authority
9 operations or prevent the Power Authority from the complete enjoyment of its easement.

10 All permits include provisions for cancellation or termination; removal of facilities;
11 relocation of facilities; and insurance and indemnification.

12 **Q. Please explain the Power Authority's permit review process.**

13 A. Generally, the underlying fee owner or its agent will fill out an application, on a Power
14 Authority form, for a permit and submit it to the Power Authority. If the application is for
15 a permissible use, the Power Authority internally circulates a proposed permit to Power
16 Authority staff. The proposed permit must be reviewed and approved by the Power
17 authority's environmental, engineering, insurance, legal and transmission departments. If
18 each of those Power Authority departments approves the proposed permit and determines
19 that the activity that is the subject of the proposed permit will not interfere or potentially
20 interfere with the Authority's transmission facilities and activities, a permit may be issued.
21 However, all Power Authority permits have provisions providing for revocation of the

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1 permit and termination of the use or activity upon Power Authority notice to the permittee.

2 In addition, the Power Authority maintains the right to demand removal or relocation of
3 any permittee structure.

4 **Q. Does the Power Authority issue permits to third parties?**

5 A. The Power Authority's permanent easements are appropriated by the People of New
6 York State, under Section 30 of the Highway Law as made applicable by Article 5, Title 1
7 of the Public Authorities Law and the Eminent Domain Procedure Law, based upon the
8 Power Authority's certification that the permanent easement is necessary for the
9 construction and operation of the Power Authority's electric transmission line or lines. The
10 majority of the permits issued by the Power Authority are to the landowners and their
11 agents, and, in some circumstances, to third parties. The Power Authority would only issue
12 a permit to a third party where the third party has received sufficient additional real estate
13 rights from the underlying fee owner.

14 On the Marcy South Line, the Power Authority has issued approximately forty-six (46)
15 permits.

16 Typically, however, the Power Authority would not grant any permit or permission to
17 conduct activities on its permanent easement that the Power Authority determined would or
18 potentially could adversely impact the Power Authority's present facilities and operations
19 or future development options on the Marcy South Line right-of-way.

20 **Q. What conditions have been imposed in these permits?**

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1 A. The standard language in the "Permit Requiring Insurance" imposes conditions, such as
2 "Relocation of Facilities", which requires the permittee to relocate its constructed facilities
3 if those facilities interfere or become inconsistent with the Power Authority's use,
4 operation and the maintenance of the transmission line; and "Removal of Facilities", which
5 requires the permittee to remove the constructed or installed facilities if the permittee
6 ceases operation of its facilities. Additionally, a Power Authority permit often includes
7 "Special Conditions" to deal with specific activities and locations.

8 **Q. Has the Power Authority acquired land rights for the Marcy South Line in ways**
9 **other than through permanent easements?**

10 A. The Power Authority acquired approximately 21 parcels in fee and also acquired three
11 parcels through a transfer of jurisdiction from the New York State Department of
12 Environmental Conservation. These transfers are accomplished under New York Public
13 Lands Law Section 3.

14 **Q. Approximately how many acres of the Marcy South Line right-of-way were**
15 **acquired by transfer of jurisdiction?**

16 A. Approximately 49.5 acres.

17 **Q. What is a transfer of jurisdiction?**

18 A. In the case of Marcy South, the New York State Department of Environmental
19 Conservation owned parcels of land along the proposed Marcy South Line. Because of the
20 legal relationship between state agencies and state authority's, jurisdiction of these parcels

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1 was transferred from the Department of Environmental Conservation to the Power
2 Authority.

3 **Q. Are there any restrictions or limitations on these transfers of jurisdiction?**

4 A. Yes. The transfer of jurisdiction between the Department of Environmental
5 Conservation and the Power Authority for the Marcy South Line specifically grants those
6 rights to the Power Authority that the Power Authority deems necessary for purposes
7 connected with the Power Authority's Marcy South 345 kV transmission line. The transfer
8 of jurisdiction specifically states: "This transfer is personal to the Power Authority of the
9 State of New York and may not be transferred, assigned or otherwise conveyed to any
10 other party."

11 **Q. Was any real property for the Marcy South Line acquired in fee?**

12 A. Approximately 288 acres was acquired in fee.

13 **Q. Does the Power Authority have limitations and restrictions on the conveyance of
14 rights on its Marcy South right-of-way?**

15 A. Because the Power Authority's permanent easements for its Marcy South Line were
16 taken by appropriation by the People of the State of New York, the Power Authority may
17 be precluded from transferring or conveying any rights on its Marcy South right-of-way to
18 NYRI. Additionally, those parcels on which a transfer of jurisdiction took place were
19 specifically granted to the Power Authority for its Marcy South Line and may not be
20 transferred, assigned or in any way conveyed to any other party. Furthermore, the Public

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1 Authorities Accountability Act restricts the Power Authority's ability to convey any rights
2 in real estate in which the Power Authority has an interest.

3 Presuming that the Power Authority has a legal right to convey or transfer a real property
4 interest or right, every conveyance of real property interests in excess of ten thousand
5 (\$10,000) dollars in value held by the Power Authority must be approved by the Power
6 Authority Trustees in a resolution. The Trustees have a duty to determine whether the
7 conveyance is in the best interests of the present or future operation of the Power
8 Authority. The Trustees could not convey a real property interest that would adversely
9 impact the Power Authority's ability to maximize the benefits of its transmission assets.

10 **Q. Has NYRI explained its plan for obtaining the necessary real estate property**
11 **rights on its Marcy South alternate route?**

12 A. In response to the Power Authority's Interrogatory NYPA-5, NYRI mentions a vague
13 plan to "negotiate with land owners for all required property rights and interests and to
14 offer property owners at or above fair market value for rights and interests required." In
15 response to the Power Authority's Interrogatory 3 ("2."), NYRI states that it will acquire a
16 "stand alone easement from the appropriate property owners to locate its facilities on the
17 owners' property, including those portions that may involve overlapping easements with
18 existing energy facilities."

19 However, because the People of the State of New York acquired the permanent easements
20 for the benefit of the Power Authority with restrictions on the landowners prohibiting the
21 landowners from any activity that would or could "interfere with or prevent the use and

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1 exercise of the [Power Authority's] permanent easement" it is doubtful that the landowners
2 could convey such rights. Moreover, on those parcels on which the transfer of jurisdiction
3 took place, the transfer was personal to the Power Authority for the specific purpose of
4 constructing and maintaining its Marcy South Line.

5 **Q. Are you aware of any Power Authority future development plan for the Marcy**
6 **South Line?**

7 A. No, I am not aware of any specific future development plans for the Marcy South Line.
8 I am aware that the New York Transmission Owners have recognized the need to evaluate
9 the status of the state's transmission system and determine the most efficient way to
10 provide a reliable system to deliver electricity to support New York's economy in the
11 future. The Power Authority is taking part in the State Transmission Assessment and
12 Reliability Study ("STARS") which will evaluate the state's transmission system and
13 recommend ways to enhance transmission system reliability for the future. I am also aware
14 that the NYISO's economic planning process coupled with the STARS may provide a
15 comprehensive transmission plan for the state for the future. I believe that the NYISO plan
16 and STARS will incorporate a review of the Marcy South Line.

17 The Power Authority, as one of the participants in STARS, will await the findings and
18 recommendations of STARS on the comprehensive state-wide transmission system before
19 initiating development plans for its transmission system.

20 **Q. Does this conclude your direct testimony?**

21 A. Yes.

1 BY MR. MALONE:

2 Q Mr. O'Connor, are there any exhibits to your
3 testimony?

4 A (O'Connor) Yes. There is one exhibit.

5 Q And was this exhibit prepared by you or under
6 your direction?

7 A (O'Connor) Yes, it was.

8 Q And could you briefly describe what that
9 exhibit was?

10 A (O'Connor) Well, it's a -- it's a
11 representative permanent easement for the Marcy South
12 line.

13 MR. MALONE: Your Honor, I believe that's been
14 marked prior -- previously as 308.

15 JUDGE STOCKHOLM: That's correct.

16 MR. MALONE: Your Honor, I'd like to do Mr. --
17 Mr. McGrath at the same time, and then offer both
18 witnesses for cross-examination, if that's agreeable
19 with the court.

20 JUDGE STOCKHOLM: Yes, I think that's fine.

21 Q Mr. McGrath, do you have before you a copy of
22 your direct testimony filed in this proceeding
23 consisting of nine pages?

24 A (McGrath) Yes, I do.

1 Q And was this testimony prepared by you or under
2 your direction?

3 A (McGrath) Yes, it was.

4 Q Are there any corrections to your direct
5 testimony?

6 A (McGrath) No, there aren't.

7 Q If you were asked today the same questions that
8 are in your direct testimony, would your answers be the
9 same?

10 A (McGrath) Yes, they would.

11 Q And have you sponsored or offered any exhibits
12 in your testimony?

13 A (McGrath) No, I have not.

14 MR. MALONE: Your Honor, I would offer both
15 witnesses for cross-examination.

16 JUDGE STOCKHOLM: Did we put the testimony in
17 the record? No.

18 MR. MALONE: I apologize.

19 JUDGE STOCKHOLM: That's all right. That's all
20 right. The witness' testimony as previously described
21 by counsel should be copied into the record as if given
22 orally.

23 (The following is the prefiled direct testimony
24 of Kevin McGrath:)

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KEVIN J. McGRATH

1 **Q. Please state your full name, affiliation, and title.**

2 A. My name is Kevin J. McGrath. I am the Manager, Environmental Studies &
3 Remediation for the Power Authority of the State of New York ("Power Authority").

4 **Q. What is the Power Authority of the State of New York?**

5 A. The Power Authority is a body corporate and politic, a political subdivision of the
6 state, exercising governmental and public powers. The Power Authority was created in
7 1931 through the enactment of the Power Authority Act (Chapter 772, Laws of 1931).

8 **Q. Please describe your education.**

9 A. I have a Ph.D. in Biological Sciences from Fordham University – 1977.

10 **Q. Describe your professional experience.**

11 A. I have been employed with the Power Authority since 1986. From 1986 to the present,
12 I have held the positions of Environmental Scientist, Senior Environmental Scientist and
13 Manager, Environmental Studies and Remediation. Prior to 1986, I worked for nine and
14 one half (9.5) years in the Environmental Division of Consolidated Edison. During my
15 tenure with the New York Power Authority, I was the lead environmental staff person for
16 the licensing, constructing and operation of a 26 mile 345kV ac transmission line (8.8 mile
17 segment in Westchester County, 7.9 mile submarine crossing of Long Island Sound, and
18 9.6 mile segment in Nassau County).

19 **Q. Are you familiar with the Power Authority's Marcy-South transmission line?**

20 A. Yes, I am familiar with the Power Authority's Marcy South Line ("Marcy South
21 Line").

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KEVIN J. McGRATH

1 **Q. What is the Marcy South Line?**

2 A. The Power Authority's Marcy South Line was licensed by the New York State Public
3 Service Commission by order dated January 30, 1985. The Marcy South Line is a 345 kV
4 transmission facility that originates in Marcy, near Utica, and terminates in East Fishkill in
5 Dutchess County. It includes double circuit, single circuit, overhead, and underground
6 configurations, with varying widths of right-of-way. The Marcy South Line crosses over
7 private land, state property under New York State Department of Environmental
8 Conservation's jurisdiction, and crosses in the riverbed of the Hudson River, which is
9 under the Office of General Services' jurisdiction.

10 **Q. Do you have concerns about the possible shared use of existing on and off Right-**
11 **of-Way (ROW) access routes during construction and operation of a NYRI Marcy**
12 **South Alternate?**

13 A. Yes, I have several concerns. NYRI has not provided plans for a coordinated joint
14 ROW program nor has it provided adequate responses to the Parties' numerous
15 interrogatories on such matters. This makes it nearly impossible to evaluate and render an
16 opinion on the impacts the NYRI project would have on (a) the Power Authority's
17 operation and maintenance of Marcy South infrastructure, and (b) the land owners from
18 whom the Power Authority has easements. For example, in response to DPS 39, NYRI has
19 stated that existing access will be used for 76.4 miles of the primary route.
20 In Interrogatory NYPA-14, the Power Authority asked NYRI about their access road
21 assumptions for NYRI's Marcy South alternate, and whether NYRI proposed to use Power

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KEVIN J. McGRATH

1 Authority constructed on and off ROW access. The NYRI response stated that it "...has
2 made no assessment, at this time, of the miles of the Marcy South Alternate Route where
3 no new access roads would be required". NYRI further states, "NYRI recognizes that there
4 is potential to use NYPA constructed on and off ROW access if the Marcy South Alternate
5 were certified by the PSC. As such, during development of the EM&CP, which will occur
6 after route certification by the PSC, use of NYPA constructed on and off ROW access will
7 be evaluated, and, if proposed, NYRI will enter into discussions with NYPA to define their
8 use and mitigation measures during and following construction activities which will then
9 be presented in the EM&CP."

10 NYRI's plan to discuss how it would use the Power Authority's access routes *after*
11 certification is not acceptable and in contravention of the Article VII process. It pre-
12 supposes "acceptability" of use that requires analysis *before* certification.

13 **Q. Has NYRI proposed specific mitigation measures it would use during access road**
14 **construction?**

15 A. No. NYRI has not stated what specific mitigation measures, if any, would be
16 developed during access road construction. When asked, NYRI's response is similar to its
17 response to many of the interrogatories: that such matters will be discussed as part of the
18 EM&CP, which is submitted post certification and *not* an acceptable approach to such an
19 important issue.

20 **Q. Has NYRI made any commitments regarding the scheduling of activities?**

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KEVIN J. McGRATH

1 A. Only conditionally. NYRI has stated that it will follow "...prudent weather sensitive
2 scheduling of maintenance activities **to the extent feasible**". This statement does not
3 provide any plan for coordination with interested parties, such as the Power Authority.

4 **Q. Do you have any other concerns regarding potential use of NYPA ROW by**
5 **NYRI?**

6 A. Yes. Equipment and material laydown areas can impact existing structures, access
7 roads, and vegetation. When asked, NYRI has responded, as it has so often before, that it
8 will address the location of any temporary material laydown areas, and their mitigation
9 measures, *during development of the EM&CP*, which, as I have stated above, will occur
10 after route certification and is not acceptable.

11 **Q. Has NYRI communicated its plan for vegetation management within the**
12 **potentially shared portion of the ROW?**

13 A. No. In Interrogatory NYPA 7, NYRI responded that it would "undertake discussions
14 with NYPA to determine the vegetation management along shared rights of way during the
15 detailed engineering and design phases of the Project [EM&CP]" to develop plans
16 regarding the shared use of the ROW in order to achieve the most compatible
17 configuration. As I stated earlier in my testimony, having this discussion *post certification*
18 is too late to address and avoid or mitigate issues associated with the co-location of NYRI
19 with Marcy South.

20 **Q. Do you have any concerns about NYRI vegetation management?**

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KEVIN J. McGRATH

1 A. Yes. Any modifications (i.e. filling, clearing, grading etc.) to the potentially shared
2 joint Marcy South ROW could significantly alter existing vegetation. NYRI's failure to
3 provide adequate information could result in the Power Authority compiling inaccurate
4 information in its vegetation database and adversely impact the implementation of the
5 Power Authority's Integrated Vegetation Management Plan.

6 **Q. Do you have concerns about NYRI potential impact on wetlands?**

7 A. Yes. During its development of Marcy South, the Power Authority specifically avoided
8 construction in wetlands wherever possible. In response to Interrogatory NYPA 9, NYRI
9 stated that "Since detailed field investigations and final design have not been completed,
10 specific structure placement has not yet been determined that would indicate if fill would
11 be necessary within wetlands along the NYRI-Marcy South ROW. Such field
12 investigations and final design will occur after route certification by the PSC. However,
13 NYRI will keep structures out of wetland resource areas where possible." Once again,
14 NYRI's delay in conducting field investigations and providing a final design until *after*
15 certification is not acceptable.

16 **Q. If NYRI's facility is constructed on new ROW, is this a concern?**

17 A. The Power Authority does not know what NYRI's intentions are at the present time.
18 Their proposed use of the Power Authority's ROW may impact wetlands, and it is
19 impossible to evaluate such proposed use with the little information NYRI has provided. It
20 is clear, however, that underground segments of a NYRI Marcy South Alternate, and

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KEVIN J. McGRATH

1 CARI's underground alternate, would potentially impact wetlands within the existing
2 Power Authority ROW.

3 **Q. Is underground construction within the Power Authority ROW a concern?**

4 A. Yes. Marcy South was specifically designed to avoid placement of structures or fill in
5 wetlands. Transmission towers were placed to avoid wetlands and span open water areas
6 (i.e. rivers, streams etc.). Off ROW access was developed to approach sensitive
7 environmental areas from opposite ends. The proposed development of a continuous,
8 underground transmission facility within 50 feet of the edge of the existing Power
9 Authority ROW is too simplistic, and does not take into account the mitigation measures
10 used by the Power Authority on Marcy South. If NYRI has to avoid such environmental
11 conditions, the potential impacts on Marcy South may change significantly. NYRI has not
12 provided enough information to evaluate these impacts.

13 **Q. Do you have any concerns about threatened or endangered species?**

14 A. Yes. This issue is important to the Power Authority because it could impact its
15 continued use of the Marcy South ROW. DPS proposed condition 50 states:
16 "If previously unidentified threatened or endangered species are encountered during
17 construction, work activities will be temporarily suspended in the identified location until a
18 mitigation plan will be developed in consultation with the staffs of the DEC and DPS."
19 Should such identified threatened and endangered species be federally listed, NYRI would
20 be required to consult with the U.S. Fish & Wildlife Service in addition to the NYSPSC
21 and the DEC. NYPA must also be consulted to the extent that Marcy South is involved.

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KEVIN J. McGRATH

1 **Q. Do you have concerns regarding cultural resources?**

2 A. Yes. NYRI's evaluation of co-locating its line in the NYRI ROW adjacent to the
3 Power Authority's ROW does not take into account the cumulative impacts that such
4 construction would have on the Power Authority's ability to alter or expand the Marcy
5 South facility if future conditions so warrant. Furthermore, in light of the State Historic
6 Preservation Office's ("SHPO") determination that the NYRI project will have adverse
7 impacts on cultural resources (October 28, 2008 letter from SHPO to NYRI), the
8 cumulative impacts as a result of the construction and operation of NYRI become even
9 more of a concern. Because SHPO has already determined that there will be adverse
10 impacts, any additional work that the Power Authority planned would add to the
11 cumulative adverse impacts.

12 **Q. Do you have any concerns about NYRI's visual assessment of the Marcy South**
13 **alternative?**

14 A. Yes. NYRI's Supplemental Visual Impact Assessment (Appendix M) primarily
15 assesses impact of overhead structures on the landscape and does not factor in the impacts
16 of the expanded cleared ROW. The exception to this is where the corridor crosses over
17 ridgelines where NYRI acknowledges the impact of the cleared ROW would be greater.
18 The viewshed assessment of the Marcy South Alternative in Appendix L, section 2.2 does
19 not take into account the decreased screening effect of vegetation in a widened Marcy
20 South ROW.

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KEVIN J. McGRATH

1 NYPA is concerned that NYRI's widening of the Marcy South ROW may actually
2 increase the visibility of the NYPA's ROW and overhead structures.

3 **Q. Do you have any concerns regarding the archeological survey?**

4 A. Yes. The original archeological survey for the Marcy South corridor was for an
5 overhead transmission line. Major impacts were considered to be limited to tower
6 locations. Burying 183 miles of underground line within the Marcy South ROW would
7 create major ground disturbances for the entire length of the line, plus access routes,
8 laydown areas and substations. This work would occur within the Power Authority's ROW
9 and the level of effort required is significantly more than what NYRI has demonstrated.
10 For example, for the Tri-Lakes 46kv project, an overhead project in the Adirondack Park
11 not subject to PSC Article VII process, the Power Authority was required to shovel test
12 about 26 miles of the approximately 56 mile route, with a test pit every 50 feet, with
13 additional test pits where anything of interest was found. NYRI has not conducted any
14 field work for the proposed Marcy South Alternates that are being considered for
15 certification in this proceeding. Finally, as stated earlier, NYRI's response that it would
16 develop specific mitigation measures as part of the EM&CP, which is post certification, is
17 not acceptable.

18 **Q. Do you have any suggestions for a proposed condition regarding cultural**
19 **resources?**

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KEVIN J. McGRATH

- 1 A. Yes. NYRI should be required to provide the Power Authority with proof of
2 compliance with Section 14.09 of the state code for work that is to be conducted on any
3 Power Authority access roads and/or ROWs before commencing work.
- 4 **Q. Does this conclude your testimony?**
- 5 A. Yes.

1 MR. MALONE: Thank you, Your Honor.

2 JUDGE STOCKHOLM: You're welcome.

3 Okay. Cross-examination for these witnesses?

4 We have NYRI, we have CARI, DEC. That looks like it.

5 Ms. Wilkinson, is your cross long or short?

6 MS. WILKINSON: It's not long.

7 JUDGE STOCKHOLM: Okay. Did that answer my
8 question?

9 MS. WILKINSON: If I give you an estimate, I
10 know it's wrong.

11 JUDGE STOCKHOLM: Go ahead. No. Go ahead.

12 MS. WILKINSON: Do you want me to start?

13 CROSS-EXAMINATION

14 BY MS. WILKINSON:

15 Q Okay. Good morning. Mr. McGrath, I think most
16 of my questions are for you.

17 You state that you were -- you've been employed
18 for the New York Power Authority since 1986?

19 A (McGrath) That's correct.

20 Q And were you involved in the construction of
21 the Marcy South line?

22 A (McGrath) On a limited basis. When I joined
23 the Power Authority, I participated on a limited basis
24 in the spill plan for the -- for the Hudson River

1 crossing.

2 Q And today, do your duties involve oversight of
3 the Marcy South line?

4 A (McGrath) Yes. We do vegetation surveys on the
5 right-of-way -- on all the right-of-ways.

6 Q Now, I note in your direct testimony one of
7 your concerns is with the possible shared use of
8 existing on and off right-of-way access roads by NYRI?

9 A (McGrath) Yes.

10 Q And you said that it's impossible for to you
11 evaluate and render an opinion on the impacts the NYRI
12 project would have.

13 I guess as a start, do you know how many access
14 roads are currently on the Marcy South line?

15 A (McGrath) No, I do not.

16 Q You do not.

17 Do you -- have you reviewed the NYRI
18 application with respect to their proposal for access
19 roads?

20 A (McGrath) Yes.

21 Q And after reviewing that document, do you have
22 any opinion on whether their proposal would suffice
23 for -- well, let me strike that.

24 You've been involved in the construction of

1 transmission lines; is that correct?

2 A (McGrath) Yes. I was involved in the Sound
3 cable project.

4 Q And do you have an opinion based on your
5 experience -- on that experience whether you would be
6 able to tell from this application whether NYRI would be
7 able to use Marcy South's existing access roads at the
8 same time that you are using them for your operation
9 maintenance requirements?

10 MR. BISSELL: Your Honor, can I just get a
11 clarification?

12 MS. WILKINSON: Yes.

13 MR. BISSELL: Is the question with respect to
14 the NYRI Marcy South Alternate or the NYRI proposed
15 route?

16 MS. WILKINSON: No. All my questions are about
17 the Marcy South Alternate route because these witnesses
18 are from the New York Power Authority.

19 MR. BISSELL: Thank you.

20 Q And my question is, is given the New York Power
21 Authority's existing need for access roads and use of
22 its access roads, do you have an opinion whether there
23 is enough there to be able to share them with the New
24 York Regional Interconnect during their construction of

1 the transmission line?

2 A (McGrath) I can speak in general terms to that,
3 but I'd also say that some of that might be better asked
4 of -- of a separate panel that has more experience with
5 right-of-way and right-of-way management. Mine is more
6 environmental studies is -- is my field of expertise.

7 Q Okay. So then would that be Mr. Cline?

8 A (McGrath) Mr. Cline is the head of the
9 transmission business unit. That's correct.

10 Q Okay. So then I'll direct -- you state in your
11 testimony that NYRI has not stated what specific
12 mitigation measures would be developed during access
13 road construction. What mitigation measures were you
14 referring to in that testimony?

15 A (McGrath) Stream crossings, work adjacent to
16 wetlands. There might be building spurs off our -- off
17 our -- our access roads to access their construction
18 sites. There's very little information provided in
19 their application specific to Marcy South on any of
20 that. And that's -- that's our concern. We don't know
21 what their impacts are going to be.

22 Q Turning -- turning to right-of-way maintenance.
23 And I'm not sure if you heard testimony last week,
24 but -- and I believe NYRI has stated their intention to

1 have NYISO operate the transmission line and enter into
2 agreements with transmission owners with respect to the
3 maintenance and management of the right-of-way.

4 Has NYRI consulted you or are you aware of
5 whether they consulted NYPA regarding any contractual
6 arrangements for right-of-way maintenance?

7 A (McGrath) I'm aware that there was some
8 preliminary discussions, but my understanding is those
9 were largely data transfer, sort of a request for
10 information. I'm not aware of any contractual matters
11 whatsoever.

12 Q And, again, you may not be the correct witness
13 to answer this question, but do you have any opinion
14 whether the New York Power Authority could maintain a
15 combined right-of-way for the New York Power Authority
16 and for NYRI?

17 MR. MALONE: Judge, I think this may be beyond
18 the scope of what Mr. McGrath's direct testimony was.
19 I'm not sure that our environmental person is the person
20 to ask about access roads.

21 MS. WILKINSON: No, I'm talking about
22 right-of-way management. And I'm referring to his
23 testimony on page 2 where he said, "NYRI has not
24 provided plans for a coordinated joint right-of-way

1 program." And that's what my question refers to.

2 JUDGE STOCKHOLM: And is your question is such
3 a program feasible?

4 MS. WILKINSON: Well, he -- the testimony we've
5 heard is that there has been -- there has been limited
6 discussions regarding that. And what my question is, is
7 does he believe that would be feasible for New York
8 Power Authority to maintain both its right-of-way and a
9 NYRI right-of-way in a coordinated fashion.

10 JUDGE STOCKHOLM: I'm going to allow the
11 question.

12 A (McGrath) The Power Authority does share many
13 right-of-ways, and there is shared right-of-way
14 maintenance. And that's about as much as I can say
15 directly to that. But, again, I suggest that that
16 question might be directed to another panel.

17 Q Sure. Thank you.

18 Now, you also expressed concerns with the lack
19 of plan from NYRI for vegetation management within the
20 potentially shared right-of-way; is that correct?

21 A (McGrath) Yes.

22 Q And you expressed concerns that the
23 modifications to the potentially shared right-of-way
24 could significantly alter existing vegetation; is that

1 correct?

2 A (McGrath) Correct.

3 Q And could you discuss what you mean by
4 "significantly alter existing vegetation"?

5 A (McGrath) Essentially, our position is that we
6 don't know, based upon their application, specifically
7 what right-of-way management practices they plan to use.
8 They're stated in a rather generic and broad-stroke
9 manner. And without knowing the specifics of what
10 they -- what they're planning to do -- we have a very
11 prescribed, a very specific right-of-way management
12 plan. And without knowing what they're going to do, it
13 leaves us wondering what the effects might be.

14 Q And similarly with wetlands, you -- you state
15 some reservation regarding whether NYRI's plan is
16 adequate with respect to the impacts of wetlands. And
17 you note that field investigations and designs should
18 occur -- well, let me first ask you, is it your position
19 that field investigation should occur before the route
20 is certified with respect to wetlands?

21 A (McGrath) The application had considerably more
22 information relative to the proposed right-of-way, and
23 there was less information specific to the Marcy South
24 Alternative. We don't think that there's adequate

1 examination of potential impact on wetlands and
2 potential effects of impacts on wetlands on our
3 right-of-way.

4 Q And you stated that NYRI's delay in conducting
5 field investigations and providing a final design until
6 after certification is not acceptable; is that correct?

7 A (McGrath) That's correct.

8 Q So that would be work that you would want them
9 to do ahead of time?

10 A (McGrath) We would like to know that, yes.

11 Q And if NYRI needed access to any NYPA property
12 to perform that work, do you have any idea whether NYPA
13 would be able to provide that?

14 A (McGrath) I can't answer that.

15 Q You can't answer that.

16 JUDGE STOCKHOLM: Has NYPA offered NYRI access
17 to their property for the purpose of doing any studies
18 in this case, to your knowledge?

19 MR. McGRATH: I'm not aware of it.

20 MR. O'CONNOR: I'm not aware that they have,
21 Your Honor.

22 JUDGE STOCKHOLM: Thank you.

23 Q And with respect to underground construction,
24 your testimony indicates that the proposed development

1 of a continuous underground transmission facility within
2 50 feet of your right-of-way is too simplistic and does
3 not take into account mitigation measures that NYPA used
4 on Marcy South.

5 What additional information would you want to
6 see in order to evaluate the impact of underground
7 construction on the Marcy South?

8 MR. BISSELL: Your Honor, can I just get a
9 point of clarification? That reference is not to NYRI's
10 proposed Marcy South Alternate. That's a reference to
11 the CARI buried cable alternate; am I correct? Just so
12 the record is clear as to what proposal you're asking
13 about, because you said earlier you're asking fully
14 about the Marcy South Alternate route, and now you're
15 asking about a total underground; which is not the NYRI
16 Marcy South proposed alternate.

17 JUDGE STOCKHOLM: Counselor, was that the
18 context of the language that you were quoting, that is
19 to say the CARI underground route?

20 MS. WILKINSON: I don't believe the
21 testimony -- the question was just is underground
22 construction within the Power Authority right-of-way a
23 concern. So if that testimony applies to the CARI
24 route, then I will limit my question to that.

1 JUDGE STOCKHOLM: Okay.

2 MS. WILKINSON: It just wasn't mentioned in the
3 question. The limitation wasn't --

4 JUDGE STOCKHOLM: I thought you were referring
5 to somebody else's testimony earlier in the proceeding.

6 MS. WILKINSON: No.

7 JUDGE STOCKHOLM: Okay. My mistake. The
8 record is clarified.

9 A (McGrath) So could you repeat your question?

10 Q Sure. The question that you addressed in your
11 testimony was, is underground construction within the
12 Power Authority right-of-way a concern?

13 MR. MALONE: Just for the record, that's on
14 page 6, and it begins on line 3.

15 MS. WILKINSON: And I apologize, because my
16 page numbers are different than yours.

17 MR. MALONE: The confusion, Your Honor, we had
18 filed an amended testimony to -- basically for
19 formatting purposes. We hadn't formatted it properly in
20 what we filed. So I'm sure that's where the confusion
21 comes from.

22 JUDGE STOCKHOLM: Yes. We've seen that more
23 than once.

24 BY MS. WILKINSON:

1 jumping between two different scenarios. On page 6, the
2 testimony to which counsel previously asked about is a
3 question regarding construction of an underground
4 facility within the right-of-way. The question on page
5 5 relates to new right-of-way; i.e., outside the
6 right-of-way.

7 MS. WILKINSON: And, Your Honor, I think the
8 question speaks for itself. And I'm asking about the
9 testimony, as I said, on page 5, lines 16 through 20.
10 And I think the question and response speak for
11 themselves with respect to who they apply to.

12 JUDGE STOCKHOLM: Understood. I don't have any
13 problem making certain that it's clear what's being
14 referenced, however.

15 MS. WILKINSON: Okay.

16 JUDGE STOCKHOLM: I also suspect at this point
17 that the witnesses don't have your question. Would you
18 repeat it?

19 MS. WILKINSON: I'll ask my question. Sure.

20 BY MS. WILKINSON:

21 Q Mr. McGrath had discussed concerns with
22 potential wetland impacts from underground construction.

23 And my question is, are those similar concerns
24 with respect to construction on a new right-of-way as

1 indicated in the response on lines 17 through 20?

2 A (McGrath) And as I stated in my response, we
3 don't have enough information at this point on the Marcy
4 South to really be able to specifically know what the
5 impacts are going to be. And that's what I stated in my
6 response.

7 Q No, I understand. The problem was the response
8 before was with respect to the following question, which
9 was the underground proposal. So now I wanted to ask --
10 my question was, I think you answered it, is your
11 response equally applicable to the construction on a new
12 right-of-way? And I think you're saying it is.

13 A (McGrath) I'm totally lost. I apologize, but I
14 don't understand the questions at this point right now.

15 JUDGE STOCKHOLM: I believe, gentlemen, that
16 you testified that you had concerns with regard to
17 wetland impacts and impacts on other systems or
18 construction or plantings, or whatever it may have been,
19 that you did on your right-of-way to avoid environmental
20 impacts to wetlands and otherwise. And you expressed
21 concern again -- I believe this is correct, and if it's
22 not, please tell me if I'm wrong. You expressed concern
23 about those in the context of -- or impacts on those
24 things that the Power Authority had done as a result of

1 underground construction on the right-of-way.

2 And I think counsel is asking you, if you have
3 the same concerns, or would you have the same concerns
4 with regard to overhead construction, as I understand
5 it, not next to your right-of-way, or not on your
6 right-of-way in any event?

7 MR. McGRATH: No -- no shared right-of-way as a
8 proposal?

9 JUDGE STOCKHOLM: I thought that was your
10 question, counsel.

11 MS. WILKINSON: My question refers to the
12 question that he addressed in his testimony.

13 BY MS. WILKINSON:

14 Q If the facility is constructed on a new
15 right-of-way, is this a concern with respect to the
16 potential impacts on wetlands? And I think you're
17 saying it is. And I think you're saying that there's
18 not enough information to make an evaluation. And
19 that's what I wanted to clarify.

20 A (McGrath) The answer is yes.

21 Q That's --

22 JUDGE STOCKHOLM: That was -- that was a very
23 short answer for a very long series of questions, but I
24 like it.

1 MS. WILKINSON: Well, I did refer to his
2 testimony to begin with.

3 Q Okay. And I believe you've also -- and I
4 apologize if I don't have the page numbers correct, but
5 you expressed concern regarding equipment in material
6 laydown areas, that they can impact existing structures,
7 access roads and vegetation. Could you explain the
8 nature of your concern in that respect?

9 A (McGrath) Well, on the Marcy South right-of-way
10 and on all of our right-of-ways, we have a long-term
11 vegetation management plan. And based upon that plan,
12 we've -- we've strived to establish a shrub plant
13 community out there. And any laydown areas, any spurs,
14 access roads, any disturbances are going to disturb --
15 disturb the vegetation that we've worked to establish.
16 And so there potentially are impacts that are associated
17 with that.

18 MS. WILKINSON: Your Honor, I'm done.

19 JUDGE STOCKHOLM: I think your description was
20 reasonably accurate, not long, but you didn't bite on
21 short either. But accuracy is the important part.

22 MS. WILKINSON: Yes, it is.

23 JUDGE STOCKHOLM: Okay. We have NYRI and CARI.
24 And anybody else? Let's go to CARI.

1 BY MR. KLUCSIK:

2 Q Mr. McGrath, returning to the territory
3 Ms. Wilkinson just covered. Is it fair to say that your
4 direct testimony at page 6, lines 3 through 12 expresses
5 a concern that a continuous underground transmission
6 facility within the Marcy South right-of-way would
7 adversely affect NYPA's actions that were taken during
8 the construction of the existing Marcy South line to
9 mitigate impacts to wetlands and open water areas? Is
10 that the nature of your concern?

11 A (McGrath) Can I ask you to repeat that
12 question?

13 MR. KLUCSIK: It was long, so I'll ask the
14 reporter to read it back. And if that poses a problem,
15 I'll try to streamline it with that background.

16 JUDGE STOCKHOLM: Yes. Read that back if you
17 would, please.

18 (Requested portion of the record read back by
19 the reporter.)

20 A (McGrath) Yes.

21 Q And is it fair to say that your direct
22 testimony at page 8, lines 6 and 7, suggests a similar
23 concern with respect to archaeological resources?

24 A (McGrath) The line numbers were 6 through 8 you

1 said?

2 Q Six and 7, I believe.

3 A (McGrath) Yes.

4 Q Are you aware that CARI has proposed
5 construction of an underground transmission facility
6 within the Marcy -- the existing Marcy South
7 right-of-way using horizontal direct drilling to avoid
8 wetland and water body impacts, and if necessary,
9 sensitive archaeological areas?

10 A (McGrath) In the filings that I've read, there
11 is discussion of the use of the shared right-of-way in
12 the documents that I've read. It does not say
13 unequivocally that all wetlands, all stream crossings
14 will be bored. And I think that's what our concern is,
15 I think. In the limited participation that I've had
16 here, I've heard some changes relative to what has been
17 stated in the documents, but my testimony here was based
18 upon the written documents that were in front of me.

19 Q Well, let me offer you a hypothetical then. If
20 horizontal direct drilling were used to avoid wetlands
21 and other water bodies, would your concern regarding the
22 adverse effects on NYPA's environmental mitigation
23 efforts be lessened?

24 MR. MALONE: Objection, Your Honor. That calls

1 for speculation. And also, it's way outside the scope
2 of the direct. I'm not sure that this witness can tell
3 exactly what horizontal directional drilling would be.

4 JUDGE STOCKHOLM: Are either of you gentlemen
5 familiar with horizontal directional drilling?

6 MR. O'CONNOR: No, sir.

7 MR. McGRATH: Slightly.

8 JUDGE STOCKHOLM: Okay. I'll allow slightly
9 questions.

10 MR. KLUCSIK: I'm not sure where that leaves
11 me, Your Honor.

12 JUDGE STOCKHOLM: Well, rephrase -- rephrase
13 your question, and we'll see if the witnesses believe
14 that they have enough knowledge and information to
15 answer it.

16 Q If an underground transmission line were to be
17 constructed in the existing Marcy South right-of-way,
18 that is in the circumstance of a shared right-of-way,
19 and the construction method were such that it were
20 possible to install the line below, that is underneath a
21 wetland or other water body, would your concern
22 regarding the impacts of that construction on previous
23 NYPA efforts to mitigate impacts to wetlands and water
24 bodies, would that concern be lessened in that

1 circumstance?

2 A (McGrath) Yes, I would say it would be, but
3 it's based upon my preconceived idea of what horizontal
4 boring is. My experience of where -- for example, on
5 the Sound cable project, we bored underneath the Bronx
6 River. There were huge pits that were there, a lot of
7 construction equipment, and it was a major, major
8 undertaking. And there were -- there were park lands in
9 the area and there were major disturbances associated.
10 They were mitigated afterwards. But if that's what
11 you're proposing to do, then I think there might be some
12 impacts associated with that during the construction
13 phase, perhaps, that might be able to be mitigated
14 afterwards.

15 JUDGE STOCKHOLM: Mr. McGrath, what is the
16 approximate date of the project you just referred to?

17 MR. McGRATH: The Sound cable project?

18 JUDGE STOCKHOLM: Yes, sir.

19 MR. McGRATH: I would say that that was
20 probably about '87.

21 JUDGE STOCKHOLM: 1987. Thank you.

22 MR. McGRATH: It could be '88. Sometime in
23 that time frame.

24 JUDGE STOCKHOLM: I just needed the general

1 time frame.

2 BY MR. KLUCSIK:

3 Q Mr. O'Connor, your direct testimony at page 5,
4 lines 10 through 16 indicates that three parcels
5 occupying 49.5 acres of Marcy South right-of-way were
6 acquired by transfer of jurisdiction from the Department
7 of Environmental Conservation to NYPA; is that correct?

8 A (O'Connor), That's what -- that is correct.

9 JUDGE STOCKHOLM: While counsel is handing out
10 a document, Mr. McGrath, if I could ask you, did you
11 work for the Power Authority during the time of the
12 proposed or actual construction of Marcy South?

13 MR. McGRATH: Yes, I did, Your Honor.

14 JUDGE STOCKHOLM: Did you participate in that
15 Article VII proceeding?

16 MR. McGRATH: No, I did not.

17 JUDGE STOCKHOLM: That's all.

18 Q Mr. O'Connor, I've just handed you a one-page
19 document. Could you describe that document for me,
20 please?

21 A (O'Connor) It appears to be CARI interrogatory
22 number 303 and my response.

23 Q And you prepared that response or were involved
24 in its preparation?

1 A (O'Connor) Yes, I was.

2 Q And does your response to CARI-303 describe
3 the -- or identify the three parcels that were acquired
4 by transfer of jurisdiction?

5 A (O'Connor) Well, as I say in my response,
6 that's the result of our database search.

7 JUDGE PHILLIPS: Mr. Klucsik, did you want this
8 marked?

9 MR. KLUCSIK: I did, Your Honor. I'm sorry.

10 JUDGE PHILLIPS: Okay. The document CARI-303
11 interrogatory will be marked for identification as
12 Exhibit 324.

13 (Exhibit 324 marked for identification.)

14 MR. KLUCSIK: Thank you, Your Honor.

15 Q And is it correct that your testimony indicates
16 that the transfer of jurisdiction from DEC to NYPA was
17 accomplished under New York Public Lands Law, Section 3?

18 A (O'Connor) That's my understanding.

19 MR. KLUCSIK: Your Honor, I'd ask you to take
20 judicial notice of the provisions of New York Public
21 Lands Law, Section 3, particularly paragraphs 2 and
22 4(a).

23 JUDGE STOCKHOLM: Absolutely.

24 Q Mr. O'Connor, can you tell me how many linear

1 miles it takes for the existing Marcy South transmission
2 line to traverse those three parcels that were the
3 subject of jurisdiction transfer?

4 A (O'Connor) I don't have that information.

5 Q Would it be possible for you to give me a
6 range, an approximation?

7 A (O'Connor) It would not. I would have to -- it
8 would be -- it would be an unnecessarily wild guess.

9 Q I don't want you to make wild guesses under any
10 circumstances.

11 Are you aware of instances where the underlying
12 fee owner, that is the fee owner where NYPA has an
13 easement, where the underlying fee owner for a third
14 party has been permitted to construct electric lines or
15 other utilities within an easement obtained by New York
16 State for NYPA for the existing Marcy South
17 right-of-way?

18 A (O'Connor) If you're asking whether or not we
19 have permitted uses within the right-of-way for other
20 utilities, the answer is yes. And I think my direct --
21 my testimony speaks to that.

22 Q Thank you. That was the question.

23 And are there at least eight instances in which
24 utility lines, gas or electric, for example, have been

1 permitted by NYPA in the existing Marcy South
2 right-of-way?

3 A (O'Connor) In response to an interrogatory, I
4 believe that's what my database did show.

5 Q Let me see if I can provide that interrogatory
6 and flesh out your recollection.

7 Mr. O'Connor, I've just handed you a three-page
8 document. Could you describe it briefly, please?

9 A (O'Connor) These appear to be CARI
10 interrogatory number 301 and my response to it.

11 Q And you prepared the response or were involved
12 in its preparation?

13 A (O'Connor) Yes, I was.

14 MR. KLUCSIK: Your Honor, I'd ask that the NYPA
15 response to CARI-301 be marked for identification.

16 JUDGE PHILLIPS: The document will be marked
17 for identification as Exhibit 325.

18 (Exhibit 325 marked for identification.)

19 Q Mr. O'Connor, does page 2 of Exhibit 325
20 describe those eight instances in which utility lines
21 have been permitted by NYPA in the Marcy South
22 right-of-way?

23 A (O'Connor) As derived by the Power Authority's
24 database.

1 Q Gentlemen, you both reviewed the NYRI
2 application; is that correct?

3 A (O'Connor) I have not.

4 Q Would you agree with me that in certain
5 portions of its Marcy South Alternative, NYRI has
6 proposed an overlap in right-of-way or a shared
7 right-of-way with NYPA; is that your understanding?

8 A (O'Connor) That's my understanding.

9 (McGrath) Yes.

10 Q Have you formed an opinion on whether such
11 sharing of the NYPA right-of-way with another overhead
12 transmission line as proposed by NYRI might interfere
13 with NYPA operations or prevent NYPA from the complete
14 enjoyment of its easement?

15 A (O'Connor) I think I set out in my testimony in
16 sum or substance that we don't have sufficient
17 information to know what the impacts would be of a
18 shared right-of-way. And I set out in some detail the
19 permit process by which an entity would process such an
20 application through NYPA. And we would need a good deal
21 of information to even start that review of that permit
22 process.

23 Q Based on the information currently available,
24 have you formed any opinion with respect to whether a

1 shared right-of-way might interfere with NYPA operations
2 or prevent the complete enjoyment of NYPA's easements?

3 MR. BISSELL: Your Honor, I object to the
4 extent that the question's asked to Mr. O'Connor. It
5 was already indicated that he has not reviewed the NYRI
6 application.

7 A (O'Connor) I'm generally familiar with the --
8 with the idea of a shared right-of-way.

9 Q And based on your understanding to date and
10 based on your perception of the information available to
11 date, have you formed an opinion as to whether such
12 sharing would interfere with NYPA operations or the
13 enjoyment of NYPA's easement?

14 A (O'Connor) As my direct testimony sets out, we
15 have a permit process in place. These permits, once the
16 application is completed, are reviewed by numerous
17 disciplines within the Power Authority, including
18 engineering operations, legal, risk management,
19 environmental.

20 I can't -- I personally have not formed an
21 opinion one way or the other, nor would I -- nor would I
22 form an opinion. This is a collective decision made by
23 various disciplines within the Authority as to what
24 impacts other uses that the right-of-way would have on

1 current or future operation of the Marcy South line. We
2 haven't been provided with a -- nor have we asked, been
3 asked for an application for a permit. We haven't been
4 provided with the information that the permit would
5 require.

6 Q Mr. McGrath, have you formed an opinion?

7 A (McGrath) My response would be identical as
8 Mr. O'Connor's.

9 Q I suspected as much.

10 MR. KLUCSIK: Thank you, gentlemen. I have no
11 further questions.

12 JUDGE STOCKHOLM: Anybody else before we go to
13 NYRI?

14 Okay. Hearing none, counsel.

15 BY MR. BISSELL:

16 Q Mr. McGrath, I believe I'll start by directing
17 a few questions to you, and then I'll just question
18 Mr. O'Connor later.

19 Mr. McGrath, on page 1, lines 20 through 21 of
20 your direct testimony, you state that you are familiar
21 with NYPA's Marcy South line; is that correct?

22 A (McGrath) Yes.

23 Q And I believe you stated earlier in response to
24 a question from DEC counsel, but I'll ask you again, is

1 it your understanding that there are areas along
2 Marcy -- along NYPA's Marcy South line where the Marcy
3 South line is either adjacent to or co-occupies
4 right-of-way with other electric transmission
5 facilities?

6 MR. MALONE: I just object, Your Honor. I'm
7 not sure that that characterizes the answer that was
8 given correctly, but --

9 MR. BISSELL: I'll ask the question separately
10 without relying on DEC's.

11 JUDGE STOCKHOLM: That's fine. Please do so,
12 counsel.

13 Q Are you aware of whether there are areas along
14 NYPA's Marcy South line where the -- where the current
15 existing Marcy South line is either adjacent to or
16 co-occupies right-of-way with other electric
17 transmission facilities?

18 A (McGrath) Yes.

19 Q And referring to page 2, lines 13 through 14 of
20 your direct testimony, you refer to what I'll call a
21 coordinated joint ROW program, which you view as one of
22 your concerns because it has not been provided by NYRI;
23 is that correct?

24 A (McGrath) That's correct. That's what my

1 testimony states.

2 Q And are you aware whether NYPA, during the
3 Article VII process for the Marcy South line, provided
4 such a coordinated joint ROW program for the existing
5 transmission facilities that the NYPA Marcy South line
6 was proposed to be adjacent to prior to route
7 certification by the Commission?

8 A (McGrath) It's my -- I'm not sure that I can
9 specifically answer that, but it's my understanding that
10 when Marcy South was constructed, that it was a --
11 considered to be more of a joint effort between various
12 utilities. And it's my understanding that there was
13 somewhat of a coordinated effort that did occur
14 during -- during the development of Marcy South.

15 Q And with respect --

16 JUDGE STOCKHOLM: During development of the
17 Marcy South project or certificate or application?

18 MR. McGRATH: I can't answer specifically.
19 It's my understanding that it occurred prior to -- prior
20 to the certificate and prior to the EM&CP.

21 JUDGE STOCKHOLM: Thank you.

22 MR. BISSELL: Your Honor, may I approach the
23 witness?

24 JUDGE STOCKHOLM: You may.

1 MR. MALONE: Judge, may I also approach to see
2 what they're showing the witnesses?

3 JUDGE STOCKHOLM: Yes, you may. I recognize
4 the book is NYPSC, which is prior department rulings.
5 Do you have a volume and date on that, counsel?

6 MR. McCARTHY: Volume 25.

7 JUDGE STOCKHOLM: Volume 25.

8 MR. McCARTHY: 1985.

9 JUDGE STOCKHOLM: 1985.

10 MR. BISSELL: And, Your Honor, for the record,
11 I'll be referring to Order Number 85-2, which was issued
12 in January of 1985.

13 JUDGE STOCKHOLM: Probably 1985.

14 MR. BISSELL: I was trying to get the exact
15 date. I believe it's January 30th of 1985, which was
16 the order granting the certificate with respect to the
17 Marcy South line.

18 MR. McGRATH: Can I ask you what you're
19 referring to, please?

20 BY MR. BISSELL:

21 Q Yes. Can I ask you to refer to page 301? And
22 this is with respect to the ordering clauses from the
23 Commission's order granting the certificate for the
24 Marcy South line.

1 And I was wondering if you could please refer
2 to Ordering Clause 23. And just read for the record up
3 to -- before it gets into the subparts, which would be
4 Subpart A. So it would be the section beginning "No
5 major right-of-way..."

6 A (McGrath) "No major right-of-way maintenance
7 following initial clearing and follow-up treatment shall
8 commence until the applicant has submitted to the
9 Commission and the Commission has approved a
10 right-of-way management plan for the certified
11 facility."

12 Q And the next line says that that -- that plan
13 shall contain the following, and it begins a list. And
14 if I can ask you to turn to page 302 and read Subpart F,
15 which is one of the requirements of that plan.

16 A (McGrath) "F: Procedures for coordinating
17 vegetation maintenance schedules and practices between
18 the rights-of-way used for the new transmission
19 facilities and those used for existing parallel
20 transmission or subtransmission facilities."

21 Q And based on the fact that this is an ordering
22 clause that granted the certificate, does that lead you
23 to believe whether that coordinated joint ROW program
24 was developed before or after route certification?

1 A (McGrath) I think I've -- I've already stated
2 that it's my understanding that there was some
3 coordinated efforts prior to the certificate and prior
4 to the EM&CP. So I think I've really answered your
5 question.

6 Q And does this ordering clause appear to
7 indicate that the plan itself would be filed for
8 Commission approval as one of the ordering clauses to
9 that certificate?

10 MR. MALONE: Objection, Your Honor. That calls
11 for speculation by the witness. He testified that he
12 was not part of the Article VII proceeding. The order
13 is what it is. I assume Your Honor will take judicial
14 notice of it, but to ask this witness to interpret it I
15 think is clearly speculation and beyond the ambit of his
16 direct testimony.

17 JUDGE STOCKHOLM: Well, it may be beyond -- a
18 little beyond the ambit of his direct testimony, but he
19 did answer some questions in this regard with regard to
20 other cross-examination. And I think that counsel's
21 general line of cross is appropriate.

22 That being said, I think this witness has
23 tangential information, at best, with regard to the
24 process, the legal process, not the environmental

1 process perhaps, but the legal process that go -- that
2 went on with regard to the original Marcy South
3 proceeding.

4 And I would suggest to counsel that you
5 probably are not going to get any more information on
6 this line with this witness.

7 MR. BISSELL: Thank you, Your Honor. I'll move
8 on.

9 BY MR. BISSELL:

10 Q Mr. McGrath, can I please refer you to page 5,
11 line 20 of your direct testimony? And on line 20, you
12 refer to the underground segments of a NYRI Marcy South
13 Alternate; is that correct?

14 A (McGrath) Can I have a chance to read it?

15 Q Sure.

16 JUDGE STOCKHOLM: How much do you have,
17 counselor, do you think? It looks like more than 10 or
18 15 minutes.

19 MR. BISSELL: I would say 15 to 20.

20 JUDGE STOCKHOLM: Fifteen to 20.

21 MR. BISSELL: If it's --

22 JUDGE STOCKHOLM: Let's go off the record for a
23 second.

24 (Discussion off the record. Thereafter, a

1 brief recess was taken.)

2 JUDGE STOCKHOLM: I believe we left off,
3 Mr. Bissell, with you.

4 MR. BISSELL: I'll just -- I'll just restate
5 the question.

6 JUDGE STOCKHOLM: Oh, good. I appreciate that.

7 MR. BISSELL: Slight break. It might not be
8 remembered.

9 BY MR. BISSELL:

10 Q Referring to page 5, line 20 of your direct
11 testimony, Mr. McGrath, you refer to the underground
12 segments of the NYRI Marcy South Alternate route; is
13 that correct?

14 A (McGrath) Yes.

15 Q And is it your understanding that there are
16 more than one underground segments of NYRI's proposed
17 Marcy South Alternate route?

18 A (McGrath) It's my understanding that there is
19 one underground segment 7.7 miles in the initial -- I
20 think -- I believe it's 7.7 miles in the initial --
21 initial portion of the -- up near the Utica -- up near
22 the --

23 Q So it's your understanding that there is only
24 one proposed underground segment for NYRI's Marcy South

1 Alternate route?

2 A (McGrath) That's correct.

3 Q Given that it's your understanding that there's
4 only one underground segment, which you represented as
5 7.7 miles, with respect to the concerns that you express
6 on both pages 6 and page 8 regarding underground
7 construction within NYPA's Marcy South right-of-way,
8 would it be correct that your concerns would, with
9 respect to NYRI's proposed Marcy South Alternate, be
10 limited to that single 7.7 mile underground section?

11 MR. MALONE: Your Honor, just note my
12 objection. The witness just testified that there is one
13 segment, 7.7. What other segment -- I don't understand
14 the question. There is only one NYRI segment, and I
15 think that's what the witness testified to.

16 JUDGE STOCKHOLM: I thought that's where the
17 question -- what the question was referring to.

18 MR. MALONE: Could you just --

19 JUDGE STOCKHOLM: I don't think there are two
20 segments. There's only one segment, right?

21 MR. MALONE: And that's what the witness
22 testified to.

23 JUDGE STOCKHOLM: Yes. And I think that's
24 correct, and I think NYRI agrees with that.

1 MR. BISSELL: Correct. The question is a
2 follow-up to clarify that with respect to his testimony
3 regarding underground segments, that those concerns only
4 apply with respect to NYRI's Marcy South Alternate route
5 to that single underground segment that he represented
6 as 7.7 miles.

7 MR. MALONE: Sorry, Your Honor. I withdraw my
8 objection.

9 JUDGE STOCKHOLM: With all of that
10 clarification.

11 MR. McGRATH: I ask that you ask the question
12 again.

13 BY MR. BISSELL:

14 Q Sure. With respect to the concerns you express
15 both on pages 6, if you want lines, it would be line 3
16 through line 12, as well as on page 8, and it's
17 respect -- with respect to lines 3 through 17 where you
18 expressed concerns regarding underground construction.
19 Just to clarify that, with respect to NYRI's Marcy South
20 Alternate route, that your concerns regarding
21 underground construction would be limited to that single
22 underground proposed section, which you represented to
23 be 7.7 miles?

24 A (McGrath) Correct. And I'd like to point out

1 that in the statement that you read on page 5, at the
2 bottom, it says, "It is clear, however, that underground
3 segments --" and the segments is referring both to the
4 NYRI Marcy South Alternate and to the CARI underground
5 segment. So that's what that was meant to --

6 Q Mr. McGrath, returning to Order 85-2 that was
7 provided, which is the order granting the certificate
8 for the Marcy South line, can you please refer to
9 Appendix C of that order, which is on page 328? And
10 Appendix C states the general guidelines for an EM&CP
11 for the Marcy South line; is that correct?

12 A (McGrath) I'm just not -- I just don't know
13 that this is Marcy South that it's referring to. I
14 don't see anything here relative to Marcy South
15 specific. So that's my hesitation.

16 JUDGE STOCKHOLM: Do you have the first
17 number -- the first number. Do you have the first page?

18 MR. McGRATH: Case 70126.

19 JUDGE STOCKHOLM: Okay. Is there a caption on
20 that case?

21 MR. BISSELL: Your Honor, the section I'm
22 referring to -- the order itself is contained in the
23 first section. There's also appendices to the order.
24 There's multiple appendices. One of those appendices is

1 Appendix C to which I'm referring to. If --

2 JUDGE STOCKHOLM: So what the witness has to
3 know to know that they're looking at the right thing is
4 they have to actually look through and make sure it's
5 the same case.

6 MR. BISSELL: Yeah. If the witness turns back
7 to the front and follows through, he'll see it's
8 Appendix C to that same order.

9 A (McGrath) Page 205 -- page 205 states that case
10 70126, Power Authority of the State of New York Marcy
11 South --

12 JUDGE STOCKHOLM: Sir, I apologize, but could
13 you please speak a little closer to that microphone?

14 MR. McGRATH: Sure. Apologies.

15 A (McGrath) Page 205 states Case 70126, Power
16 Authority of the State of New York Marcy South 345 kV
17 transmission facilities. So yes.

18 Q Appendix C to the order granting the
19 certificate, which is -- begins on page 328, that
20 appendix sets forth the general guidelines for the EM&CP
21 related to the Marcy South line; is that correct?

22 A (McGrath) That's what the title of the section
23 reads, yes.

24 Q And in your direct testimony, you do refer to

1 at least one other Article VII project you've been
2 involved with; is that correct?

3 A (McGrath) Correct.

4 Q And in your experience with Article VII
5 projects, does an EM&CP normally occur prior to or after
6 route certification by the Commission?

7 A (McGrath) After.

8 Q Referring to page 5, lines 13 through 15 of
9 your direct testimony, you state that one of the things
10 which is not acceptable in your respect is the fact that
11 NYRI has not conducted detailed field investigations
12 with respect to wetlands; is that correct?

13 A (McGrath) Correct.

14 Q And turning back to Appendix C from Order 85-2,
15 could you please refer to page 331?

16 A (McGrath) Yes.

17 Q And could you please read what is marked as
18 Clause G on that page?

19 A (McGrath) Appendix C, page 4 of 10 G: "The
20 location and type of all wetlands; e.g., marsh meadows,
21 bogs, wooded swamps, one acre or larger on or extending
22 into the right-of-way indicating on a site-by-site basis
23 the precautions to be taken to protect such wetland
24 drainage patterns, flora and fauna."

1 Q And is that a reference to a detailed field
2 investigation of a wetland with respect to the Marcy
3 South line?

4 A (McGrath) I have not -- I mean, you're picking
5 out one separate clause in here, and then you're asking
6 me -- if you want me to read through the whole and put
7 it in context, then I will do that, but -- I apologize,
8 but I mean, that specific -- that specific clause,
9 you're asking me to pick that out, and then give you a
10 response.

11 Q It might help if I -- can I refer you back to
12 page 328?

13 MR. MALONE: Judge, with all due respect, I'm
14 going to object. This is not our application. We're
15 here because another entity wants to put their line on
16 our property and use our infrastructure. To ask this
17 witness who testified that he wasn't part of the Article
18 VII proceedings back in the mid '80s to read from the
19 order, I really don't think is material to these
20 proceedings, Your Honor. And I don't see what probative
21 value these questions have based on the inquiry of
22 whether Marcy South should be certified or not.

23 MR. BISSELL: Your Honor, with all due respect,
24 in regards to this question, the witness has testified

1 with respect to what he views as not acceptable
2 practices by NYRI. And what I'm laying a foundation for
3 is in looking at prior Article VII proceedings, and
4 specifically the Marcy South line, whether such detailed
5 investigations that he is requesting be done prior to
6 certification were, in fact, conducted prior to
7 certification, or whether they were conducted post
8 certification during the EM&CP, similar to what NYRI has
9 proposed in this proceeding.

10 MR. MALONE: But here's the difference, Your
11 Honor. In that case, that was virgin territory. They
12 were not co-locating a line on someone else's property.
13 What Mr. McGrath has testified to is, we already have
14 our structures there, we already have our
15 infrastructure. Now, we don't have enough
16 information -- being already there, we don't have the
17 information we need to determine what effects it will
18 have, in his case, on environmental. The Marcy South
19 proceeding, there was no line there to begin with. So
20 certain things could be done. Although, I must say,
21 Your Honor, there were -- there was a lot more
22 information, I believe, given in the Marcy South
23 proceedings as far as certification was concerned. But
24 the big difference is Marcy South -- the document that

1 provides for us to be on that right-of-way, there was no
2 other utility there when we did that proceeding.

3 JUDGE STOCKHOLM: Well, I'm not so certain that
4 Marcy South for its entire length was a greenfield's
5 project. I am sure that it shared or paralleled other
6 rights-of-way, number one.

7 Number two, detailed site-specific studies
8 almost by definition require you to be on the site. And
9 NYPA, like NYRI, had no, as a general matter, no right
10 to be on the private land where their facility was being
11 built. This whole issue about the relative detail of
12 the application versus the relative detail of the EM&CP
13 is based in large part on the accessibility of the land.

14 And I think, for example, staff witnesses
15 testified that they have seen applications which they
16 would rank as a 10, that is perfect, if you will, on
17 facilities where the applicant could get physical
18 access. And I think the extent of physical access is
19 almost by definition going to control how much detail
20 you can get in advance.

21 All of that being said, I understand your
22 point, counselor. I am sure that the Commission's order
23 will speak for itself, and you can cite to it
24 appropriately. I'm going to recommend that you move on

1 to a different topic as I think, you know, whatever
2 points you wanted to make I think have been made, to the
3 extent of this panel's knowledge.

4 MR. BISSELL: Thank you, Your Honor.

5 BY MR. BISSELL:

6 Q Mr. McGrath, turning to page 8, that's lines 6
7 through 9 of your direct testimony, you state that,
8 "Burying 183 miles underground line within the Marcy
9 South ROW would create major ground disturbances for the
10 entire length of that line."

11 Just to clarify the reference to burying
12 183 miles of underground line, is that with respect to
13 CARI's buried cable alternative proposal or NYRI's Marcy
14 South Alternate proposal?

15 A (McGrath) CARI.

16 Q Thank you.

17 Mr. O'Connor, turning to page 1, line 16 of
18 your direct testimony.

19 A (O'Connor) Yes.

20 Q You state that you are familiar with NYPA's
21 Marcy South line; is that correct?

22 A (O'Connor) Yes.

23 Q And with respect to NYPA's Marcy South line,
24 are there locations along that line where the NYPA Marcy

1 South line co-occupies the right-of-way with other
2 electric transmission facilities?

3 A (O'Connor) There are areas where we co-locate
4 facilities on our structures.

5 Q And do you happen to know where those locations
6 are or how many of those locations there are?

7 A (O'Connor) I know it generally. I don't know
8 specific where the locations are. I just know generally
9 that there are facilities that are co-located on our
10 lines. As my testimony said, I've been the director of
11 real estate for the Power Authority since 1995, which
12 was considerably after the Marcy South line was built.
13 So my testimony is that I'm familiar with Marcy South
14 from a lands-rights issue as the director of real
15 estate.

16 JUDGE STOCKHOLM: I think you answered
17 counsel's question with regard to co-locating other
18 lines on your towers. And my question is, are there any
19 instances where other utilities - I'm not quite sure how
20 to describe this - right-of-ways are also part of NYPA's
21 right-of-way?

22 Let me give you an example. It may be the only
23 way to make it clear: Are there any circumstances where
24 a utility pole -- other utility poles run down the edge

1 of your right-of-way, using some portion of your cleared
2 right-of-way as their right-of-way as well?

3 MR. O'CONNOR: I don't believe that situation
4 exists.

5 BY MR. BISSELL:

6 Q Mr. O'Connor, turning to page 8, line 7 of your
7 direct testimony.

8 A (O'Connor) Yes.

9 Q You state therein that you are not aware of any
10 specific future development plans for the Marcy South
11 line, correct?

12 A (O'Connor) That is correct.

13 Q Based on your testimony, as well as your
14 experience with NYPA's land rights that are associated
15 with the Marcy South line, do you have an opinion as to
16 whether NYPA would grant land rights or permits to allow
17 for a total underground HVDC line located wholly within
18 NYPA's existing right-of-way for its entire -- for the
19 entire length of the line?

20 A (O'Connor) Well, as I think I previously
21 answered a similar question, we have a permit review
22 process in place which -- which allows an applicant to
23 apply for a permit. The applicant would certainly have
24 to get legal rights from the underlying fee owner. Then

1 we could permit that, but it would be reviewed
2 internally by NYPA, by our engineering staff, our
3 environmental staff, our legal staff. And probably a
4 permit of that magnitude, we probably would also involve
5 a review of the Power Authority's trustees.

6 MR. BISSELL: Thank you, Your Honor. I have no
7 further questions.

8 MS. WILKINSON: Your Honor, can I ask
9 Mr. O'Connor one question?

10 JUDGE STOCKHOLM: Okay.

11 MS. WILKINSON: Thank you.

12 BY MS. WILKINSON:

13 Q Mr. O'Connor, are you aware of NYPA granting
14 any rights with respect to property which you received
15 through a transfer of jurisdiction with DEC?

16 A (O'Connor) Are we talking about transfers of
17 jurisdiction with DEC for the Marcy South line?

18 Q Correct.

19 A (O'Connor) The transfers of jurisdiction from
20 DEC for the Marcy South line, and I think I set out in
21 my direct testimony, are specifically personal to the
22 Power Authority, and it specifically doesn't allow us to
23 grant rights to third parties.

24 MS. WILKINSON: Thank you.

1 JUDGE STOCKHOLM: I'm not sure which page this
2 is on, but -- oh, actually, it should be at the end of
3 your testimony. In the next to the last question that
4 you ask yourself, at the end of the first paragraph, you
5 refer to NYISO plan and STARS, STARS being the State
6 Transmission Assessment and Reliability Study. Those
7 are two transmission studies that are ongoing at this
8 point; is that right, sir?

9 MR. O'CONNOR: Well, I'm generally familiar
10 with those two transmission studies. My knowledge
11 basically is based on the web site, the NYISO web site.
12 But I believe those studies are ongoing. I'm not
13 involved in those studies.

14 JUDGE STOCKHOLM: Isn't NYPA involved with the
15 STARS study?

16 MR. O'CONNOR: I believe NYPA is involved with
17 the STARS studies. I personally am not involved with
18 the studies.

19 JUDGE STOCKHOLM: Okay. Do you know when those
20 studies are scheduled to be completed?

21 MR. O'CONNOR: I don't.

22 JUDGE STOCKHOLM: Thank you.

23 Any other questions for these witnesses?

24 Hearing none, gentlemen -- oh, redirect. I'm

1 sorry. I forgot.

2 MR. MALONE: Just briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. MALONE:

5 Q Mr. O'Connor, I believe that the Judge directed
6 a question to you about whether NYPA has offered access
7 to NYRI. Do you recall that?

8 A (O'Connor) Yes.

9 Q Has NYRI asked for access to NYPA property
10 along the Marcy South right-of-way?

11 A (O'Connor) Not that I'm aware of.

12 Q I also believe that the Judge indicated -- the
13 Judge talked about access on Marcy South. Are you aware
14 of any procedure that the New York Power Authority could
15 employ to gain access to properties to do studies?

16 A (O'Connor) Well, what -- the process we would
17 undergo is, first of all, we would contact the effective
18 local land owners and ask permission to go on the lands
19 and do studies. Permission is sometimes granted.
20 Sometimes it's not in my experience. If we need to go
21 on lands and permission is denied, I believe the Power
22 Authority has a statutory ability pursuant to the Public
23 Authority's Law and the Eminent Domain Procedure Law to
24 go on lands to do studies and surveys and that sort of

1 thing.

2 Q So you would not have to wait for the PSC to
3 issue a certificate before you could get access to land
4 to do studies; is that correct?

5 A (O'Connor) Right. I don't believe PSC action
6 is a predicate to us accessing, through our statutory
7 rights, accessing private lands to do studies pursuant
8 to the Eminent Domain Procedure Law.

9 MR. MALONE: Nothing further, Your Honor.

10 JUDGE STOCKHOLM: Thank you very much. Did
11 that raise any recross in anybody's head?

12 Okay. Very good.

13 Gentlemen, thank you for your time. Thank you
14 for your testimony. You are excused.

15 That's all we thought we had on our agenda
16 today. Anybody disagree?

17 Are there any procedural matters that we need
18 to deal with?

19 MR. TORIELLO: Judge, do you have to move into
20 evidence the exhibits?

21 JUDGE STOCKHOLM: Thank you, counselor, very
22 much. Mr. Blow is not here to remind me of that.
23 Usually Staff counsel is there to remind me. Thank you
24 very much.

1 MR. TORIELLO: I've only been waiting for that,
2 Your Honor.

3 JUDGE STOCKHOLM: Thank you.

4 JUDGE PHILLIPS: We have marked today Exhibits
5 308 through 325. Are there any objections to moving any
6 of those into evidence?

7 No objections. Okay. The documents marked for
8 identification as 308 through 325 are moved into
9 evidence.

10 (Exhibits 308 through 325 received in
11 evidence.)

12 JUDGE STOCKHOLM: Anything else?

13 Okay. Very good. Thank you all, and we are
14 adjourned for the day.

15 Actually, let's not go off the record yet.

16 What are the estimates of the parties we have
17 here for cross-examination tomorrow? And that is --

18 JUDGE PHILLIPS: Actually, it might speed it up
19 if I go through the estimates we were given previously.
20 And I just want you to either confirm or deny that these
21 are still accurate.

22 CARI, you indicated -- well, I actually made up
23 some numbers for some people because you didn't give me
24 specific numbers. So I think I put down three hours for

1 you.

2 MR. KLUCSIK: That's probably fair, Your Honor.

3 JUDGE PHILLIPS: And, Staff, I did the same,
4 three hours for you.

5 MR. BELSITO: That's about right.

6 JUDGE PHILLIPS: NYPA, I have one hour for you.

7 MR. MALONE: Perhaps even less, Your Honor. If
8 these two guys are going for three hours a piece, I can
9 guarantee you it will be less. I would say half an
10 hour.

11 JUDGE PHILLIPS: Okay. I'm going to leave it
12 at one just because, just to be safe.

13 I have a question mark for LIPA. I don't think
14 they're here today either, but I believe someone
15 indicated that they thought LIPA might have questions.

16 Then, DEC, I put you down for a half hour.

17 MS. WILKINSON: That sounds about right, but
18 Mr. Sampson is -- is in charge of that. So I -- I don't
19 know what he has in mind.

20 JUDGE PHILLIPS: Okay. So based on that, it's
21 I think seven-and-a-half hours, plus whatever LIPA has.

22 MR. BELSITO: LIPA will have some questions.

23 JUDGE STOCKHOLM: Well, if they're not here,
24 could we limit them to five minutes?

1 MR. BELSITO: I would be surprised if it ends
2 up being limited to five minutes.

3 JUDGE STOCKHOLM: Maybe we could charge them if
4 they go over.

5 So what time do you want to start tomorrow?
6 It's going to be a long day.

7 We're going to start at 8:30 tomorrow morning.

8 Anything else before we go off the record?

9 MR. TORIELLO: Judge, just when do you think we
10 might schedule the witnesses for the Thruway Alternative
11 examination? Just that we would like to be heard in
12 some way on that scheduling. And it would be helpful to
13 know when that might take place.

14 JUDGE PHILLIPS: We still have you tentatively
15 down for the 22nd, I believe. Mr. Waite, correct?

16 MR. TORIELLO: That's right. But I mean, I
17 think Shafer and LaFleur have to be scheduled in --

18 JUDGE PHILLIPS: They're also down tentatively
19 for the 22nd. So what I had asked, we've marked them
20 down for those dates. And if people realize they have
21 problems, please let us know as soon as possible,
22 otherwise they're down for the 22nd.

23 MR. TORIELLO: Well, I know that Mr. Waite has
24 an engagement from 9:00 in the morning until 1:00 in the

1 afternoon. So he could be available late in the day if
2 we want to schedule Shafer and LaFleur in first.

3 JUDGE PHILLIPS: I think, Mr. Klucsik, you
4 indicated you had to get back to us on Mr. Shafer and
5 Mr. LaFleur or not. Did you? I can't remember.

6 MR. KLUCSIK: Your Honor, I'd like to confirm
7 their availability, but up until now, our understanding
8 has been they would be -- that they would be available
9 for that week. So I'm not expecting a change, but
10 surprises do happen.

11 JUDGE PHILLIPS: So why don't --

12 JUDGE STOCKHOLM: You expect them to be
13 available first thing on the 22nd, you know, 9:00 or
14 9:30, if you need travel time or something?

15 MR. KLUCSIK: I don't expect travel time would
16 be an issue for them, Your Honor. I would expect they
17 would be here and ready to go.

18 JUDGE STOCKHOLM: Okay. Good. You might want
19 to tell them to expect that, because they may well be on
20 first that time.

21 MR. BISSELL: Your Honor, just a question as
22 we're trying to get through scheduling. Do you have a
23 date you'd like to propose for the NYRI panel to submit
24 its rebuttal as well? Just so we can firm up and put

1 down their availability.

2 JUDGE PHILLIPS: I don't, only because I
3 haven't really had an opportunity to print everything
4 out or read everything. So we're starting on the 22nd
5 if you want to add them. I -- I can't answer that right
6 now.

7 JUDGE STOCKHOLM: I think we'll have a better,
8 more specific idea actually on Monday. However, I think
9 you can tell them to generally plan sometime between the
10 22nd and the 24th.

11 MR. BISSELL: Thank you.

12 MS. WILKINSON: Your Honor, I have one
13 question. Do you know if it would be possible, or maybe
14 I should direct this to NYRI, to provide the parties
15 with a copy of the DVD that we viewed yesterday here so
16 that the rest our witnesses could -- could see it?

17 JUDGE STOCKHOLM: What format would you like?

18 MS. WILKINSON: Tell me my options and I
19 will --

20 JUDGE STOCKHOLM: Blu-ray or not?

21 MS. WILKINSON: My guess -- I don't know if we
22 have blu -- blu-ray at DEC. So I doubt it.

23 MR. BISSELL: Your Honor, just to clarify
24 before you -- before you go into --

1 JUDGE STOCKHOLM: Before I answer for you?

2 MR. BISSELL: With respect to the video that
3 was shown yesterday, the only format in which that video
4 was produced was blu-ray format.

5 JUDGE STOCKHOLM: Understood. You mean there's
6 not a machine you can stick it in and say change the
7 format and you get a copy of a different format?

8 JUDGE PHILLIPS: I actually wanted to ask, too.
9 I thought you had indicated previously that that took
10 several hours because the format was --

11 JUDGE STOCKHOLM: Days.

12 JUDGE PHILLIPS: Oh, days.

13 JUDGE STOCKHOLM: I think we can handle this
14 off the record. We don't need this conversation on the
15 record.

16 Is there anything else that needs to be on the
17 record?

18 Okay. Hearing nothing, we're off the record.

19 (Whereupon, the proceedings adjourned at
20 12:48 p.m.)

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