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1 STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

2
3 Case 06-T-0650 - Application of New York Regional
4 Interconnect Inc. For a Certificate of Environmental
5 Compatibility and Public Need Pursuant to Article VII
6 for a High Voltage Direct Current Electric Transmission
7 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

8 Evidentiary Hearing
9 3 Empire State Plaza
10 19th Floor
11 Albany, New York

12
13 March 27, 2009
14 8:30 a.m.

15
16 BEFORE: MICHELLE L. PHILLIPS,
Administrative Law Judge

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18 JEFFREY STOCKHOLM,
19 Administrative Law Judge
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1 (Exhibits 233 and 234 marked for
2 identification.)

3 JUDGE PHILLIPS: Good morning. If we could
4 please come to order. I am calling case 06-T-0650,
5 application of New York Regional Interconnect, Inc. for
6 a certificate of environmental compatibility and public
7 need pursuant to Article VII for a high voltage direct
8 current electric transmission line running between
9 National Grid's Edic substation in the Town of Marcy and
10 the Central Hudson Gas and Electric's Rock Tavern
11 substation located in the Town of New Windsor.

12 At this time I would like to take appearance
13 of counsel.

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

17 MR. KLUSCIK: For Communities Against
18 Regional Interconnect, the law firm of Gilberti,
19 Stinziano, Heintz and Smith, PC by Brenda Collela and
20 John Kluscik.

21 MR. BELSITO: For the Department of Public
22 Service, Anthony Belsito, assistant counsel and Steve
23 Blow, assistant counsel.

24 MR. MALONE: For the New York Power

1 Authority, Mark Malone and Sarah Barish-Straus.

2 MS. LEARY: For the NY Attorney General's
3 Office, Maureen Leary.

4 MS. HINTZ: For the New York State
5 Department of Transportation, Donna Hintz.

6 JUDGE PHILLIPS: I believe that's everyone
7 for appearances.

8 Do we have any preliminary matters before we
9 return to cross of the panel?

10 MR. KLUSCIK: Yes, Your Honor.

11 JUDGE PHILLIPS: We'll start with Mr.
12 Kluscik and then move to Mr. Belsito.

13 Your Honor, we learned last night that one
14 of our witnesses currently scheduled for Monday
15 afternoon has been ordered in a civil matter to appear
16 in a way that will prevent his appearance here.

17 I've spoken with counsel for the applicant
18 regarding rescheduling Mr. Shafer and Mr. LaFleur who we
19 had planned to put on as a panel Monday afternoon. Our
20 proposal is to combine their Monday afternoon appearance
21 with that which we spoke of earlier in this proceeding
22 as better scheduled with respect to Thruway issues at
23 the end of other appearances.

24 We would propose to have Mr. LaFleur and Mr.

1 Shafer combine their appearances on alternatives and the
2 Thruway issues at the end of the proceeding as we had
3 spoken earlier.

4 My understanding is counsel for the
5 applicant has no objection. So with that, we would ask
6 your leave to adjust the schedule in that manner if
7 there are no objections from other parties.

8 MS. HINTZ: Your Honor, the only request
9 would be if they are scheduled towards the end of the
10 proceedings, my engineer, Mr. Mariotti, would not be
11 available to attend the hearing until after the 20th.
12 He would be available the 13th, but then not the 14th,
13 15th, 16th, 17th or the 20th. It may be moot once we
14 get closer towards the end of the proceeding, but that
15 would be my only concern.

16 JUDGE PHILLIPS: Okay.

17 MR. KLUSCIK: Your Honor, in all likelihood,
18 I think as a result of the progress in our appearances,
19 it's likely that Mr. Shafer and LaFleur would not be on
20 until after the 20th in any event.

21 JUDGE PHILLIPS: Okay.

22 JUDGE STOCKHOLM: I thought you were going
23 to be optimistic and say that we will be done by then.

24 MR. KLUSCIK: I was being optimistic.

1 JUDGE PHILLIPS: Does anyone else have any
2 kind of comment or concern they wish to express right
3 now?

4 What I would like to do -- I'm hearing no
5 comment or objection -- is simply ask that you also
6 communicate that to the litigation parties list so that
7 it's known to any parties who may have planning to
8 attend on Monday who are not here today.

9 MR. KLUSCIK: We will do so, Your Honor. We
10 will do so today.

11 JUDGE PHILLIPS: Thank you.

12 Mr. Belsito.

13 MR. BELSITO: Staff became aware this
14 morning that we failed to ask a couple of the questions
15 of this panel and would just like the opportunity to go
16 ahead and do that.

17 If it helps our case, I believe it's on a
18 topic of interest to your Honors concerning Exhibit 215,
19 the cost differentials between Staff's proposed routes.

20 JUDGE PHILLIPS: Okay. If there are no
21 other preliminary matters then we will resume with
22 Staff's cross of the panel and I will simply remind the
23 witnesses you are still under oath.

24 MR. BELSITO: Thank you very much, Your

1 Honor.

2 CHRISTOPHER THOMPSON, RICHARD BUCCI, STEPHEN
3 WOOD, LAURA ERNST SIMS, and JEFFREY NIELD, after
4 previously having been duly sworn, were examined and
5 testified as follows:

6 BY MR. BELSITO:

7 Q. If you could please look at Exhibit 215. Do you
8 have copies of that?

9 A. (Wood) No. We would need a copy of that.

10 JUDGE PHILLIPS: 215 is the panel's Exhibit
11 A4, I believe, correct?

12 Q. Basically we are just looking for a general
13 explanation of how you came up with the numbers in the
14 table, the different components. And by way of example,
15 if you could just explain the first line that begins
16 MS-C-1 where it seems like Staff's costs is -- or the
17 cost, excuse me, for Staff's proposed deviation is less
18 than the route proposed by the company.

19 And then compare that to MS-D-1, where it appears
20 that Staff's deviation would cost more?

21 A. (Wood) The figure that we have is very difficult
22 to read. Do we have a larger version?

23 Q. We are happy to give you the copy we have. I am
24 not sure if I was clear. On the lines that I gave as

1 examples I was referring to the overhead construction.

2 A. (Thompson) Let me make sure. You would like us
3 to walk through the logic in what we did here; is that
4 correct?

5 Q. Yes, please.

6 A. (Thompson) Let me give you the portion of it and
7 then we may have to send it down to our engineer for a
8 different portion.

9 Basically we will start with MCS-1, your first --

10 Q. On the overhead page or the underground? Or is
11 it the explanation the same for both?

12 There's two separate sheets.

13 A. (Thompson) This is your underground segments
14 versus our bypass segments.

15 Q. Okay.

16 A. (Thompson) in other words, we are above ground
17 deviating away from the Marcy South route and you were
18 proposing to underground and stay on the Marcy South
19 route.

20 Q. Correct.

21 A. (Thompson) So, what happens is we look at -- we
22 identify -- let's skip over to deviation rationale. See
23 that? What is it, fifth columns over?

24 Q. Sorry to interrupt you. There is two separate

1 sheets. I just want to make sure we are all on the same
2 page.

3 What's the title on the top?

4 A. (Thompson) Says rough order of magnitude cost
5 difference DPS staff underground segments versus NYRI
6 overhead deviations for Marcy South right of way.

7 Q. Okay. That's the page we are on.

8 A. (Thompson) Okay. So, moving over to the fifth
9 column which starts off with the deviation rationale,
10 correct?

11 Q. Yes.

12 A. (Thompson) That's an explanation basically of
13 what NYRI was trying to accomplish or why we were
14 deviating from the Marcy South route.

15 Then we go through and we identify the county and
16 the town that this is located in in the area. We talk
17 about the estimated number of parcels per mile in this
18 area.

19 We also identify the closest station number
20 relative to our mapping and all of our tables and so
21 forth. So, then we look at the NYRI Marcy South
22 alternate.

23 So, this is the segment where we are deviating
24 away from the Marcy South line. So, this is our

1 proposal. This is above ground so we get the length of
2 the deviation in miles. We give the deviation right of
3 way acres. In other words, the amount of property we
4 would be looking to get a right of way for, correct?

5 Then we look at the deviation right of way total
6 land. I am sorry. I skipped the deviation segment
7 right of way land market value. Look at the deviation
8 right of way land acquisition cost.

9 What this is is this takes the base value or the
10 market value. It increases I believe we talked about a
11 20 percent premium that we would expect to pay above
12 market, plus then it's got all the acquisition costs
13 that's detailed down here under footnote number two,
14 including land acquisition surveys, legal fees,
15 abstracts, certain amount per each parcel.

16 So we end up then with a deviation right of way
17 total land acquisition cost and then we have a deviation
18 estimated construction cost.

19 In other words, this is the cost of erecting the
20 towers along our route. So, that's adding the right of
21 way land acquisition cost plus the material costs
22 basically gives you a total base cost for our portion.

23 In this analysis, we have assumed that a number
24 of the overhead costs and whatnot would not be affected

1 relative the differences between the two tasks.

2 So then the next group of columns represents the
3 costs and the information relative to the DPS staff
4 proposed route for the similar segment. In this case,
5 you are going to stay on the right of way but go
6 underground.

7 So, we have the length adjacent to the Marcy
8 South line, and obviously it's a little bit shorter
9 distance because you haven't deviated around.

10 We have the segment right of way acreage
11 associated with that. Again, that's because it's not as
12 long and because it's underground, the right of way is
13 not as wide so it saves the amount of acreage that would
14 be purchased.

15 Same kind of thing. We go through the right of
16 way land market values. Then we do the acquisition
17 costs which basically marks it up with the same
18 premiums, the same acquisition costs, and so forth.
19 Then there is the underground construction costs.

20 So, in other words, the estimate for constructing
21 an underground portion of that distance as opposed to
22 the above ground portion costs.

23 Again, adding your segment construction costs,
24 plus your segment right of way land cost, gives you a

1 total then for your segment to compare to our segment,
2 and the difference then is back over here in this fourth
3 column, which is the dark. It's the red in color column
4 which talks about total construction land acquisition
5 cost increase, so forth. I can't quite read the column.

6 (Bucci) Do you want us to read that?

7 (Thompson) Yeah, if you want to, but anyway,
8 that's the total difference. So, it's a comparative
9 table between our proposed deviation route, basically,
10 with your proposed underground route.

11 Q. That's the same format for the second sheet
12 that's entitled cost estimates for overhead construction
13 along DPS staff segments adjacent to Marcy South with
14 purchase of entire property for parcels with buildings
15 located within NYRI ROW position?

16 A. (Thompson) Correct.

17 Q. On that sheet that I just described, on the first
18 line, MS-C-1, the parentheses indicates that the cost
19 actually for Staff's deviation would be lower than the
20 cost for NYRI's proposal; is that a correct
21 interpretation of that?

22 A. (Thompson) That is correct.

23 MR. BELSITO: Thank you.

24 That's all we have, Your Honors.

1 JUDGE PHILLIPS: Thank you. Before we move
2 off of this request we would like to request a
3 replacement copy of this that's exactly the same but
4 blown up so that it's not so tiny. It's very difficult
5 to read. So, if you could bring that on Monday, we
6 would appreciate it.

7 MS. LEARY: Your Honor, would that be also
8 distributed to the parties?

9 JUDGE PHILLIPS: They are shaking their
10 heads yes.

11 MR. SINGER: We will blow it up so that
12 people can read it and bring it that way even if it's
13 bigger than 8 and a half by 11.

14 MR. BELSITO: It's also been entered into
15 the record as Exhibit 180, as an exhibit of witness
16 DeWaal Malefyt, and we gave the big sheets. The parties
17 may already have a larger copy.

18 JUDGE PHILLIPS: They still have to bring
19 it. Sorry.

20 MR. BELSITO: Just trying to help.

21 JUDGE PHILLIPS: I believe we are moving to
22 NYPA.

23 MR. MALONE: Thank you, Your Honor.

24 BY MR. MALONE:

1 Q. Panel A, can you turn to page 40, lines 21
2 through 23.

3 A. (Wood) Yes, we have it.

4 Q. You see the section that says NYRI acknowledges
5 that during construction of the bus spans the Marcy
6 South lines may need to be removed from service for
7 limited amounts of time to ensure worker safety.

8 Do you see that?

9 A. (Bucci) Yes.

10 Q. Do you anticipate taking out both circuits or
11 removing both circuits from service at the same time
12 when you do your construction of the bus spans?

13 A. (Bucci) Yes.

14 Q. Has NYRI done a system reliability impact study
15 with the NYISO concerning the removal of both Marcy
16 South circuits during the bus span construction on the
17 proposed route?

18 A. (Bucci) I am not intimately familiar with the
19 SIRS.

20 MR. BISSELL: Your Honor, the questions
21 regarding the details of the SIRS, as we mentioned
22 yesterday, are probably best for panel C, as they were
23 involved in the actual conduction of the SIRS study for
24 for the New York ISO.

1 MR. MALONE: The only reason I ask, your
2 Honor, is on page 41, in response -- on line 14 and 15
3 -- panel A talks about -- Panel A testifies NYRI will
4 follow NYISO process to request scheduled outages. I'm
5 just asking if they know whether the study has been
6 done.

7 JUDGE STOCKHOLM: We will allow that
8 question.

9 (Bucci) I don't know if that was covered in
10 the SIRS.

11 BY MR. MALONE:

12 Q. You talk about construction of the bus spans.
13 What specific activities do you mean when you talk about
14 construction of the bus spans? Are they done in stages?

15 A. (Bucci) I am not sure--

16 Q. Let me make it easy for you. How do you
17 construct a bus span?

18 A. (Bucci) first you would have to do foundations.
19 Maybe this is what you meant by stages. You do the
20 ground work foundations and then you would put the both
21 structures on to -- in this case it would be bus support
22 structures on to foundations, and then you bolt the bus
23 on to insulators which support the bus.

24 Q. And how long would it take you to pour the

1 foundation for a bus structure, specifically a bus
2 structure that you anticipate using crossing the Marcy
3 South line on the proposed route?

4 A. (Bucci) Like I say, these are fairly small as
5 compared to any of the other foundations for the actual
6 towers. These are 14-foot high bus support structures,
7 so it will be relatively quick.

8 Q. One day? Two days?

9 A. (Bucci) For?

10 Q. Pouring the foundation.

11 A. (Bucci) For one pole? For the whole -- for all
12 the support structures?

13 Q. Right, for the support structures for --

14 A. (Bucci) All the structures for the bus span, you
15 want an estimate of the time?

16 Q. That's what I would like.

17 A. (Bucci) Couple days.

18 Q. Couple meaning two?

19 A. (Bucci) It wouldn't be continuous operation. Oh,
20 I see what your question is.

21 Q. There wouldn't be continuous operation, so tell
22 me how it would be done. How would you do that
23 construction?

24 A. (Bucci) First of all, we would have to

1 coordinate, as we say, with the outage issue. So, for
2 example, if the outage issue limited us to work
3 overnight I could anticipate that being done over --
4 during two evenings, a couple evenings.

5 Whereas during the day the lines would be
6 returned to service, for example, could be one possible
7 solution.

8 Q. So, you would be able to pour the foundations for
9 the bus crossings in two days?

10 A. (Bucci) I am not limiting it to two days. I was
11 just giving that as an example of how it doesn't
12 necessarily have to be a continuous operation where the
13 line would have to be out for the entire duration.

14 Q. And how much time to bolt the structure, the bus
15 support structure, on to the concrete foundation?

16 A. (Bucci) That's also a fairly quick, along the
17 same time frame operation.

18 Q. When you say along the same time frame, you
19 didn't give me time.

20 A. (Bucci) Couple, few days period time. You could
21 get it all done in a day probably if you worked
22 continuously putting up the structures.

23 Q. And to bolt the bus insulators and the support,
24 approximately how much time?

1 A. (Bucci) I was referring to the entire let's say
2 above ground installation.

3 Q. The entire above ground installation, how much
4 time?

5 A. (Bucci) It would be days or less, yes.

6 Q. Days or less?

7 A. (Bucci) Yes.

8 Q. So, would it be one day?

9 A. (Bucci) Again, depending on the continuity of the
10 operation, the ability to keep the line out of service,
11 whether it was done at night, weekends, there is not a
12 lot of work there.

13 All other things being out of the picture, you
14 could bring a crew in and construct one of these in a
15 day, the above ground structures.

16 Q. How long do you anticipate on the Marcy South
17 line doing the bus crossing from the proposed route?
18 How long do you anticipate it's going to take you
19 specifically?

20 A. (Bucci) We haven't gotten into the -- it would
21 really depend on the scheduling, the discussions with
22 NYPA. We could accommodate -- it's not a hard thing to
23 accommodate schedules in this kind of piece. It's not a
24 complex construction operation.

1 Q. Have you done it before on any other projects?

2 A. (Bucci) Constructed bus spans, yes, definitely.

3 Q. How long did it take you?

4 A. (Bucci) As I indicated, anywhere from a day to a
5 few days for a bus span.

6 Q. Those were done under energized lines?

7 A. (Bucci) No. Well, I'm talking about -- well, we
8 have constructed bus work in substations, in an
9 energized substation where portions of the substations
10 would be deenergized, but I'm just speaking in general
11 terms of putting up a bus structure.

12 Q. So, is it your testimony that you don't know
13 specifically with regard to the bus crossing in Orange
14 County how long it would take you to construct that bus
15 crossing?

16 MR. BISSELL: Objection, Your Honor. The
17 witness already answered the question as to how long it
18 would take.

19 JUDGE STOCKHOLM: I think he has to the
20 extent he's going to on this record, counsel.

21 MR. MALONE: I would agree with that. Yes,
22 Your Honor.

23 BY MR. MALONE:

24 Q. Now, how many bus crossings are there on the

1 proposed line?

2 A. (Bucci) Two.

3 Q. And one is in Orange County; is that correct?

4 A. (Bucci) Yes.

5 Q. And the other one is in Otisville?

6 A. (Bucci) Yes.

7 Q. Would you be conducting the two bus crossings
8 simultaneously?

9 A. (Bucci) That detail hasn't been scheduled or
10 determined yet.

11 Q. So, you don't know whether you would have to
12 remove both circuits of the Marcy South line for each
13 construction?

14 A. (Bucci) There is no restrictions. When you say
15 have to, I am saying that the operation is fairly
16 flexible and we could accommodate the necessities and
17 needs of the Marcy South line.

18 Q. Let me put it another way. You construct the bus
19 crossing in Orange County and you take out -- you would
20 have to remove the Marcy South line, both circuits, from
21 service; is that correct?

22 A. (Bucci) Yes.

23 Q. Then you start the Otisville crossings and you
24 would have to remove the Marcy South double circuit line

1 from service, correct?

2 A. (Bucci) Yes.

3 JUDGE STOCKHOLM: Would you plan to do that
4 consecutively or simultaneously?

5 (Bucci) It could be done concurrently, Your
6 Honor.

7 Q. The question was: How do you plan to do them?

8 A. (Bucci) We plan to, as I mentioned, discuss the
9 issue with NYPA and with New York ISO and come to a
10 mutually agreeable.

11 (Thompson) I think it's fair to say that's a
12 detail that's not been worked out. It will be highly
13 dependent upon how the EM&CP evolves.

14 We have testified that our plan is to basically
15 permit and approve the EM&CP in segments. Obviously
16 that would be a concern. And so if we got both elements
17 or part of the EM&CP portion or both were approved,
18 obviously it would be desirable to try and coordinate
19 those two.

20 If for some reason one's lagging and one's not
21 and there's pressure to keep schedule on, then they
22 might be separated. Such is the detail we don't know
23 right now.

24 Q. And you won't know if, based on your testimony,

1 you won't know it until the EM&CP stage?

2 A. (Thompson) Correct.

3 Q. Could you turn to page 42, line five?

4 A. (Wood) We have it.

5 Q. See the phrase sharing of right of way?

6 A. (Wood) Yes.

7 Q. What do you mean by that, sharing the right of
8 way?

9 A. (Wood) I think that's what we talked about
10 earlier in this proceeding, what we called the overlap
11 in the right of way. I think we talked about the
12 potential of 25 to 50 feet of overlap between the NYPA
13 right of way and the NYRI right of way.

14 Q. And what would be your plan for sharing
15 maintenance of the right of way?

16 A. (Wood) I think we also testified that we would
17 want to try and coordinate that with NYPA and to adopt
18 essentially the maintenance plans and activities that
19 NYPA undertakes, and coordinate that, potentially share
20 responsibilities for maintaining different sections, all
21 of that to be worked out at a later date.

22 Q. What would that later date be?

23 A. (Wood) I think we would have those discussions
24 during the development of the EM&CP.

1 Q. And how about repairs of the right of way, what's
2 your plan for sharing on the repairs of the right of
3 way?

4 A. (Wood) I think my answer would be the same as
5 what I just said.

6 Q. We would have to wait until the EM&CP?

7 A. (Wood) Yes.

8 Q. How about access roads, what would be your plan
9 for maintaining access roads in a shared right of way?

10 A. (Thompson) One of our plans, obviously, is if we
11 wound up paralleling a utility's transmission like the
12 Marcy South line is, we view the fact that we have an
13 overlap as a potential win/win for both entities. That
14 obviously we can help offset some of the costs or share
15 in some of the costs that you are already currently
16 incurring.

17 That maybe then we would hope somehow we could
18 combine maintenance of the entire combined right of way,
19 and at a significant discount to both of us maintaining
20 independently.

21 There are a number of avenues. There are
22 opportunities, I think, for us to sit down and work
23 together and both come out very much beneficial.

24 Q. So, you would be willing to share costs with

1 NYPA?

2 A. (Thompson) Correct.

3 Q. If NYPA and NYRI disagreed on a particular policy
4 would you follow the NYPA policy on the shared right of
5 way?

6 A. (Thompson) I think I can't answer that until we
7 had the specifics. Obviously if we were limited or
8 through our certificate or something where we had a
9 conflict, then we would have to sit down and figure out
10 something.

11 But for the most part, I can't imagine that there
12 is going to be a problem there unless, in fact, it were
13 required by our circuit to do something different.

14 Q. Now, who would get preference on the shared right
15 of way? For instance, if NYPA had to do some type of
16 repair and you had to do a repair at the same time,
17 would NYPA get preference to do the repair first, if
18 there wasn't enough space or room to accommodate both?

19 A. (Thompson) Certainly we could work with you. I
20 can't believe that you are going to run into a dual
21 failure at the exact specific point that is so
22 restricted that there is not enough space there for both
23 entities to be working, but I would say we could talk to
24 the ISO and figure out what priority they placed on

1 trying to get these back in service or something, if
2 truly it were that kind of an extreme condition.

3 Q. Now, in the figures that I had seen I didn't see
4 any figure for payment for the shared right of way.

5 Do you intend to pay for the shared right of way?

6 A. (Thompson) We have established -- basically, we
7 believe that the right of way that you currently have
8 already contracted for with the land holders probably
9 would not be applicable to us.

10 So, as part of our acquisition of our right of
11 way we would in essence have to go back and negotiate
12 with those same land owners for something there.

13 Q. How about these bus crossings, do you intend to
14 acquire the real estate necessary to put these bus
15 crossings on the NYPA right of way? Do you intend to
16 acquire them in fee?

17 A. (Thompson) In general where we had to erect a
18 permanent fence to surround a particular facility that
19 would normally be our intent, yes, or some long term
20 lease or something like that.

21 MR. MALONE: I have no further questions.

22 JUDGE PHILLIPS: Thank you. I believe we
23 are moving to AG.

24 MS. LEARY: Thank you, Your Honor.

1 BY MS. LEARY:

2 Q. I want to direct this question to Mr. Thompson.
3 Good morning, Mr. Thompson. My name is Maureen Leary.
4 I work with the Attorney General's office in New York.

5 Lots of alternatives here. Lots of different
6 routes. I believe some of your testimony yesterday left
7 me with the impression, which may be incorrect, that
8 NYRI will take any route just about.

9 A. (Thompson) Just about.

10 Q. As proposed.

11 A. (Thompson) I think it's fair to say that was one
12 of our goals in addressing all of these options. As I
13 think is clearly demonstrated in the record, there are a
14 number of different evaluation factors in how you
15 evaluate a route. Depending upon where you put
16 priorities is how you end up with a different answer.

17 Unfortunately, there is no quantifiable method or
18 formula on how you rate these. It's basically in the
19 eye of the beholder, as you can imagine. So, we have
20 tried to address all of the different concerns and
21 provide different alternatives, depending upon which of
22 these areas you put priority to, which would be the most
23 attractive.

24 Yes. We have identified what we believe are a

1 number of different viable alternatives, but depending
2 upon which evaluation factor you are using one would be
3 more desirable than another.

4 Q. I am trying to get a sense of the company's
5 position, but I think you have responded consistent with
6 my recollection yesterday, that sort of any route would
7 work.

8 A. (Thompson) Our plan is, yes -- I mean our project
9 is to get basically from point A to point B delivering a
10 substantial amount of what we believe lower cost energy
11 to an area breaking across a congestion area.

12 As long as the alternatives that are proposed or
13 stipulated, whatever, are cost effective or still
14 economic, we would be comfortable with that.

15 Q. So now I am hearing a qualifier.

16 A. (Thompson) Yes. It's always been there.

17 Q. That's okay. That's why I am asking the
18 question.

19 The qualifier is: Any route as long as it's cost
20 effective.

21 A. (Thompson) And economically beneficial to the
22 state. It makes no sense, obviously, to the state to
23 build a line whose net benefits are a tenth of what the
24 total cost of the project is.

1 Q. So, as you sit there there is not necessarily a
2 preference for the proposed route or any particular
3 alternative, including the Marcy South. It's just a
4 route any of those that you would deem cost effective
5 and that would benefit the state?

6 MR. BISSELL: Your Honor, can I just ask for
7 a clarification.

8 Ms. Leary, when you refer to any alternative
9 are you referring to Exhibit 3 and the alternatives
10 identified therein?

11 MS. LEARY: And I include also the analysis
12 in Appendix L in the Marcy South. So, it would be all
13 the alternatives listed.

14 (Thompson) The alternatives that has NYRI
15 proposed, we believe any of those would be viable
16 alternatives.

17 BY MS. LEARY:

18 Q. What about the alternative that staff has
19 proposed?

20 A. (Thompson) Again, those have some advantages and
21 some disadvantages. I know our engineers don't like the
22 proposal of going underground multiple times where we
23 were looking to deviate.

24 The other table that we addressed, where they

1 looked at rather than deviating just purchasing the
2 property, as they pointed out that actually is a lower
3 cost than what we had proposed, but one of our
4 underlying principles we tried to hold to is not to have
5 to require purchasing or forcing anyone to sell their
6 property, so. Where it looked like that would be
7 required, we tried to find an alternate route.

8 JUDGE STOCKHOLM: Have you considered an
9 alternate process by which you might be able to get with
10 staff, with ADR specialists perhaps, with the
11 landowners, to find out what they would prefer?

12 I mean it strikes me that it would -- maybe
13 equally you would find people who would not want to
14 leave the land regardless, and other people who would
15 say, you know, fine, we will sell it to you, no problem,
16 but you have to actually sit down and talk to the
17 people.

18 (Thompson) Correct. In many cases where we
19 are looking at just a single residence that would work
20 very well. Where all of a sudden you have got three
21 residences together it may not work so well and may get
22 two that say, yeah, buy me out, I would love to go, and
23 the third guy says, no, you got to go around me.

24 JUDGE STOCKHOLM: I agree that you could

1 have that problem, but I don't necessarily agree that
2 you can't get a resolution even in those circumstances
3 if you sit down and talk to people.

4 Sometimes you won't. I agree with that. If
5 you have got a dozen different situations like that
6 sometimes you will.

7 (Thompson) We are totally in agreement with
8 that. If, in fact, we get to the point where Marcy
9 South alternate where proposed to be certified, we would
10 have no problems putting in those kinds of conditions
11 that we go through some sort of a series process, first
12 where we sit down and talk and say, here's our options,
13 do you have a preference, before we make a final
14 selection on those kinds of things.

15 I think that makes perfect sense, but we had
16 to put something into the proposal for now.

17 JUDGE STOCKHOLM: Mr. Belsito, I realize you
18 don't have all your staff with you, but it just occurs
19 to me that -- have you given any thought -- has staff
20 given any thought to certificate conditions with regard
21 to dealing with the whole issue of islanding that staff
22 brought up quite early in this case?

23 MR. BELSITO: I don't know that we have come
24 up with language for those conditions, but I believe our

1 intent with bringing up the islanding issue is to go
2 along with something similar to what your Honor has just
3 proposed.

4 I believe an explanation of that is in
5 Mr. DeWaal Malefyt's testimony.

6 JUDGE STOCKHOLM: I honestly don't remember
7 that. I will have to go back and look. Sorry.

8 But in any event, would you address this --
9 any recommendation you have -- at least in the circuit
10 conditions that you are going to be putting in your
11 brief?

12 MR. BELSITO: Certainly.

13 JUDGE PHILLIPS: Thank you.

14 JUDGE PHILLIPS: Ms. Leary.

15 MS. LEARY: Thank you.

16 BY MS. LEARY:

17 Q. So, Mr. Thompson, are you from New York?

18 A. (Thompson) I am not. I am from Denver, Colorado.

19 Q. I thought I detected that. I have family from
20 Denver.

21 Mr. Nield, are you from New York?

22 A. (Nield) No.

23 Q. Ms. Sims?

24 A. (Ernst Sims) No.

1 Q. Mr. Wood?

2 A. (Wood) No.

3 Q. Mr. Bucci, I know you are from New Jersey.

4 A. (Bucci) Only the last 15 years. I was born and
5 raised in New York.

6 Q. But for 15 years you have lived in New Jersey and
7 now you live in New Jersey, right? You do not live in
8 New York right now?

9 A. (Bucci) I do not. I have family that does. I do
10 not.

11 Q. So, Mr. Thompson, are you aware of the opposition
12 to this line by the people in New York, some of the
13 people in New York?

14 A. (Thompson) Some of the people in New York,
15 correct.

16 Q. Can you give me an idea on a one to ten scale
17 what you think that opposition is in terms of
18 significance and the number of people?

19 A. (Thompson) For a major linear infrastructure
20 project like this, this I would say is average.

21 Q. About a five --

22 A. (Thompson) About a five. If you go outside the
23 immediate areas it becomes pretty much a non-issue. If
24 you talk to the people down in New York City obviously

1 they are very supportive of it.

2 Q. They don't have to live with it, now, do they?

3 A. (Thompson) Unfortunately, part of our society has
4 gotten to the point that if we are going to have large
5 metropolis areas we have to build infrastructure to
6 support those.

7 Q. Isn't it the sort of state of the art that you
8 build generation close to the load source of where they
9 need it, where somebody needs energy?

10 A. (Thompson) Some of that works well. In this
11 case--

12 Q. Isn't that the state of the art?

13 JUDGE STOCKHOLM: You have to allow the
14 witness to answer the question.

15 JUDGE PHILLIPS: I don't think he was
16 finished.

17 A. (Thompson) I think there a number of factors that
18 go into it. There are a number of major cities in the
19 world that have actually gone the opposite, like Paris,
20 France, that precludes generation anywhere near the
21 city. Because it's already such a concentrated area of
22 air pollution emissions it get to be a significant
23 health hazard to those people.

24 As has been testified to in our record, the only

1 viable fuel generation in southeast New York is gas, and
2 that reduces your fuel diversity, which has major
3 repercussions, potential economic repercussions.

4 So, there are lots of reasons, health and safety,
5 fuel diversity. There's a major renewable energy effort
6 going on both nationally and in the State of New York.

7 Unfortunately, New York's major renewable energy
8 resources are in upstate New York. The load's in
9 downstate. If you are going to try and connect the two
10 you need transmission.

11 (Bucci) Ms. Leary asked about state of the art.
12 And I would just like to add to Mr. Thompson's answer.
13 When you talk about renewables actually the state of the
14 art or the fact of the art is that renewables are
15 typically not -- this is countrywide, this is worldwide
16 -- are typically -- wind renewables are not near the
17 load centers.

18 So, more and more the state of the art is the
19 necessity to build transmission infrastructure to get
20 that renewable energy, such as wind power, to the load
21 centers.

22 Q. So, let's get back to the NYRI proposal because I
23 wasn't reading the project as delivering exclusively a
24 renewable energy source; is that correct?

1 A. (Thompson) You can't, with a transmission line,
2 identify or segregate or filter or separate electrons
3 and identify what their generation source came from,
4 correct.

5 Q. But can you build a line so that it's more likely
6 that you will have those electrons be generated by wind
7 or renewable source? Can you locate a route to make it
8 more likely that you will serve to create a diversity
9 that increases the use of renewables?

10 A. (Thompson) Absolutely and that's what we think
11 one of the things this project does is if you look at
12 the renewable energy sources they are in upstate New
13 York. We have I believe a map in our application that
14 shows the NYSERDA sites that have already been and they
15 are all up long there.

16 If you are going to continue to build those and
17 expand those, the only way you get that power down in
18 the southeast is to build transmission lines like NYRI.

19 Q. The reason I am asking, because it was my
20 understanding there would be some level of loss over a
21 long distance and I want to ask you if that is true for
22 an HVDC line.

23 A. (Thompson) That's true for any transmission line
24 but an HVDC line, one of the business advantages is,

1 it's significantly lower than a comparable AC
2 transmission line would be.

3 Q. Lower loss?

4 A. (Thompson) Lower loss, correct.

5 Q. Can you give me a percentage? And let me assume
6 -- would you agree that an AC line is roughly around ten
7 percent?

8 A. (Thompson) That's probably a reasonable
9 estimation.

10 Q. Could be more?

11 A. (Thompson) It could be more. And one of the
12 differences is obviously the AC network is made not just
13 for transmission, but also distribution along the way.

14 It's very analogous to a highway system. The DC
15 line is not for distribution along the way. It's like a
16 limited access highway or freeway from point A to point
17 B. Nothing gets dropped off or picked up along the way.

18 Q. No exits?

19 A. (Thompson) No exits, no on ramps. So, that's
20 one of the reasons why it flows. In an AC network,
21 depending upon how many intermediate substations,
22 whatever you have, just introduces that many more losses
23 in a comparable path.

24 But just a direct AC line is I believe is

1 probably about ten percent. Rich can probably verify
2 that. But I believe for a DC, comparable DC line, it's
3 probably about a quarter of that. In the two to three
4 percent range.

5 (Bucci) I also comment that HVDC is specifically
6 designed and specifically intended for economical
7 transfer of power over long distances because of it's
8 angle. That's the whole point of HVDC. It does that
9 more economically than any other method available.

10 JUDGE STOCKHOLM: Isn't it also true that
11 high voltage AC has lower losses than lower voltage AC?

12 (Bucci) That's also correct.

13 JUDGE STOCKHOLM: If you had a theoretical
14 Marcy South AC line without intermediate points
15 identical to your proposal, DC, is it your testimony
16 that the AC losses for that distance on a 345 kv line
17 would be ten percent?

18 (Bucci) No. It is my testimony it would be
19 higher than DC losses.

20 JUDGE STOCKHOLM: Yes.

21 (Bucci) Approximately, I couldn't give you a
22 number. And the range is six percent and above. That
23 would be the range for an AC line versus one to three
24 percent for a DC line.

1 JUDGE STOCKHOLM: Thank you. That clarifies
2 that for me. Thank you.

3 MS. LEARY: Your Honor, just for the record,
4 would you characterize just for the record the number
5 that you were referring to when you said high voltage,
6 or Mr. Bucci can do it.

7 JUDGE STOCKHOLM: Well, I was specifically
8 talking about 345 kv. If you look at the losses by
9 voltage level, you will see a significant difference.

10 At your house, the total losses from the
11 plant may well be in the ten percent range, but people
12 who are taking voltages at higher and higher voltage
13 levels in the utility tariffs incur less losses on a
14 percentage basis. Ten percent seemed high to me.
15 That's why I asked the witness that question.

16 MS. LEARY: I just wanted to make sure
17 whether it was 115 or 345 or whatever.

18 JUDGE STOCKHOLM: My actual question was
19 about 345, but the more general question really deals
20 with all kinds of voltages all the way down to 12 and a
21 half kv, I think. I mean I have to look at how these
22 things are characterized by tariff, so I can't really
23 tell you how far down it goes but it goes down a long
24 way. You are all the way at 120 volts. That's the

1 bottom.

2 MS. LEARY: Right. I would like to approach
3 the witnesses with an exhibit if you would.

4 My question will be directed to Mr. Thompson
5 so I am just going to give him this exhibit rather than
6 the rest of the panel.

7 JUDGE STOCKHOLM: That's fine.

8 JUDGE PHILLIPS: Marked for identification
9 as 235. I am going to ask counsel to describe it a
10 little, please.

11 (Exhibit 235 marked for identification.)

12 MS. LEARY: This is a March 6, 2006 letter
13 to the Office of Electricity, Delivery and Energy
14 Reliability of the United States Department of Energy
15 from the law firm of Couch White, regarding the National
16 Interest Electric Transmission Corridor designations and
17 a request for early designation of constrained area as a
18 National Interest Electric Transmission Corridor, which
19 hereinafter I will refer to as a NIET corridor.

20 BY MS. LEARY:

21 Q. Mr. Thompson, have you seen that letter? Are you
22 familiar with it?

23 A. (Thompson) I have. Not for a number of years but
24 I remember it, yes.

1 Q. Would you describe for the record your
2 understanding of what that letter is about?

3 A. (Thompson) Certainly. The DOE was doing their
4 studies on National Interest Electric Transmission
5 Corridor and they solicited a request for corridors that
6 people thought should be designated early on so they
7 could move forward on an expedited basis, at least that
8 was my understanding.

9 Q. You were requesting an early designation of a
10 NIET of your project area, your geographic project area
11 as a NIET?

12 A. (Thompson) We were nominating our area as an area
13 that could be considered for early designation at the
14 request of DOE. They are the ones that were soliciting
15 requests.

16 Q. I want to refer you to pages four and five of
17 that letter, in which there is a bolded heading that
18 states, existing transmission constraints jeopardize
19 reliable service in SENY, which I believe refers to
20 southeastern New York?

21 A. (Thompson) Correct.

22 Q. Can you review those two pages with this question
23 in mind. Would you make -- would NYRI make the same
24 representations to the Department of Energy today that

1 it made in March of 2006?

2 A. (Thompson) Certainly New York has continued to
3 upgrade their studies on an annual basis, so some of
4 those findings have changed and their forecast continues
5 to change.

6 Q. How so? How have they changed?

7 A. (Thompson) I know the Governor passed his -- I
8 can't remember all the names but -- 15 by 15 target
9 program for reducing power consumption in the state and
10 so that's now factored in.

11 They continue to look at projects that have been
12 proposed by the market, and assuming those projects are
13 built, they analyzes what their reliability -- minimum
14 reliability needs are and identify if any further
15 projects are required to meet the minimum reliability
16 needs as long as those projects are built. And so
17 that's changed their forecast of additional needed
18 projects.

19 Q. So from a reliability perspective is New York in
20 better shape today than it was in 2006, or the same, or
21 worse?

22 A. (Thompson) I'm not sure I can comment to that.

23 Q. Why not?

24 A. (Thompson) That's not my area of expertise. The

1 ISO puts out a report, they have a process, as I said,
2 based on a number of assumptions what they think is
3 required to meet a minimum standard.

4 There is a required minimum standard required.
5 That doesn't address overall reliability. It just
6 addresses if they are going to have a shortfall to meet
7 a very minimum standard.

8 I think the ISO, in some of these same reports,
9 have in fact reported on our project. They haven't
10 analyzed it in detail but they go to say that certainly
11 the building of our project would further enhance or
12 improve the reliability of the system.

13 Q. You are stating the New York Independent System
14 Operator has said that?

15 A. (Thompson) Correct.

16 Q. In what document have they said it?

17 A. (Thompson) I would have to go back and look.

18 MR. SINGER: There is an exhibit in this
19 case that actually shows where the New York ISO has said
20 that New York Regional Interconnect would improve
21 reliability. I believe it's in the rebuttal testimony
22 of panel C.

23 MS. LEARY: Do you have the exhibit number
24 for the record, Mr. Singer? I don't.

1 MR. SINGER: It hasn't been entered into the
2 record because panel C hasn't testified yet.

3 MS. LEARY: Okay.

4 JUDGE STOCKHOLM: Let me ask you this
5 question: In 2005, in the 2005 RNA, I'm looking at the
6 document counsel marked on page four, the ISO projected
7 a need in the future for some amount of reliability.

8 I think the most recent ISO RNA was issued
9 in December of 2008. Are you aware of what the ISO's
10 conclusions were with regard to the need for facilities
11 to maintain reliability?

12 (Thompson) In general, yes. I believe, as I
13 stated, that based upon their forecast, that if a number
14 of projects that are identified as market projects were
15 built, and if the Governor's forecast reduction plan is
16 successful, and based on their most recent economic
17 forecast for load, that at least for the next I believe
18 five years there are no projects needed to maintain this
19 minimum reliability requirement.

20 JUDGE STOCKHOLM: Are you proposing this
21 project as a reliability project or an economic project?

22 (Thompson) One of our challenges, and we
23 will probably be getting to this later, is that we
24 believe a project of this size and stature can't be so

1 easily identified as just a reliability project or just
2 an economic project.

3 That, in fact, it's both of those, plus it's
4 a public policy facilitation project in that it enables
5 achievement of renewable energy. It has health and
6 safety benefits, as far as reduction and emissions down
7 in a non-attainment area like the City of New York.

8 So, it has a number of benefits and
9 justification factors that basically need to be looked
10 at in total as opposed to segregated to a single one.

11 MS. LEARY:

12 Q. Have you taken a look -- would you take a look,
13 Mr. Thompson, at the last paragraph on page five which
14 states, the economic viability and development of the
15 end markets served by the corridor proposed by NYRI for
16 designation as a NIET will be constrained by lack of
17 adequate electricity resources?

18 MR. BISSELL: Objection, Your Honor. I
19 believe that sentence actually reads the economic
20 vitality, not the economic viability.

21 MS. LEARY: Thank you, Mr. Bissell. That is
22 correct.

23 A. (Thompson) I see it.

24 Q. What are the end markets to which this letter

1 refers? Specifically what geographic area is the end
2 market referred to in this letter?

3 A. (Thompson) Yes. I think this is probably going
4 to be better addressed at a later date by our other
5 panel but clearly, we have provided economic studies
6 that show the positive impact of this project on the
7 wholesale electric prices in zones H, I, J, K and
8 basically all of southeast New York.

9 Q. Can you give me a metropolitan area or specific
10 municipality, county, to which you are referring?

11 A. (Thompson) Well --

12 Q. Other than New York City, I mean, can we agree
13 that you are referring to New York City?

14 A. (Thompson) Certainly New York City, as I said, if
15 you look at the ISO zones and you look at H, I, J, K,
16 G., it's basically the southeastern third of the state.

17 Q. So, you are referring I believe to exhibit B in
18 that letter, which is the last page of the letter?

19 A. (Thompson) Yes.

20 Q. Or the exhibit. Exhibit 235.

21 A. (Thompson) Correct.

22 Q. So, can you take a look at exhibit A, which is
23 attached to that letter?

24 A. (Thompson) Okay.

1 Q. Exhibit A, if I may, reflects the proposed NIET
2 corridor; is that correct?

3 A. (Thompson) That's not correct. The proposed -- I
4 am sorry.

5 Q. Let me rephrase that question because I
6 understand your confusion.

7 There is a section in exhibit A, which is a map,
8 that outlines a particular geographic area in which the
9 NYRI project is located. And on this map that area is
10 identified as proposed National Interest Electric
11 Transmission Corridor; is that correct?

12 A. (Thompson) That's correct. This was the area we
13 were proposing be given the early identification.

14 Q. Thank you for that clarification.

15 And the NYRI project is also identified on this
16 map as what I will call sort of a loop that goes to the
17 left?

18 A. (Thompson) Correct.

19 Q. And it goes from Edic to Rock Tavern, correct?

20 A. (Thompson) Correct.

21 Q. Now, this is the confusion I have because if you
22 look at where it ends in Rock Tavern, do you see a line
23 that for -- out of Rock Tavern that goes north toward
24 Leeds and Roesten?

1 A. (Thompson) Correct.

2 Q. Do you also see another line that is traveling --
3 that line is traveling northeast. There is another line
4 traveling northwest toward Coopers Corners, correct?

5 A. (Thompson) Correct.

6 Q. Let's go in the southerly direction. There is a
7 line that appears to go in a southeastern direction and
8 then there are two sort of offshoots that go into New
9 Jersey; is that correct?

10 A. (Thompson) At least the representation I have
11 doesn't necessarily show New Jersey, but it might just
12 be a bad copy.

13 Q. Let me ask you: Is it your understanding that
14 there is a line traveling in a southeasterly direction
15 that serves two separate lines in what appears to be New
16 Jersey?

17 JUDGE STOCKHOLM: Counsel, why do you assume
18 that is New Jersey? I don't see --

19 MS. LEARY: Because I know it is.

20 JUDGE STOCKHOLM: Fine. Could you tell us
21 the locations of those substations that are the dots?

22 MS. LEARY: They are not marked on this map.

23 JUDGE STOCKHOLM: Let me go back. There is
24 a line that runs southeast out of Rock Tavern. That

1 line splits. Now you can't really see the dot on this
2 because it looks like something has been written over
3 the top that circles the area of discussion.

4 Now, below that, there are two lines that go
5 forth to two other dots. How do you know those dots --
6 those dots are substations, at least that's the way they
7 are normally referred to in these diagrams. Where in
8 New Jersey are those substations?

9 MS. LEARY: If the witness knows whether
10 they are in New Jersey or not he can testify to.

11 JUDGE STOCKHOLM: That's fine.

12 BY MS. LEARY:

13 Q. Do you know if those two dots are in New York or
14 New Jersey?

15 A. (Thompson) That I don't know. I know the dot
16 above those is the Ramapo substation. That's the only
17 one I know beyond that.

18 Q. So, Rock Tavern, at least out of Rock Tavern
19 there is a line that leads to Ramapo?

20 A. (Thompson) Correct.

21 Q. Do you know whether that line from Ramapo feeds
22 the other lines designated by two dots to the south of
23 that? Does Ramapo feed into New Jersey?

24 A. (Thompson) I don't know. Probably, I mean

1 obviously all of these things are interconnected. Which
2 way the normal power flow goes, I can't tell you that.

3 Q. Well--

4 A. (Bucci) I can comment in general there is a
5 thousand megawatt wheel that goes from New York through
6 New Jersey and into New York City, so, it doesn't --
7 when you say feed New Jersey. The thousand megawatts
8 actually feed New York City through New Jersey, a wheel.

9 Q. A wheel. It wheel, through. Thank you. That's
10 very helpful.

11 A. (Thompson) Could I interrupt for just one second.
12 We do have another panel where we have a consultant
13 who's much more familiar with the load flows and so
14 forth that did all the studies. I think it would be
15 more appropriate to have him answer these questions.

16 Q. I may have misconstrued the dates of your
17 involvement in the project but my recollection was the
18 project originally was going to go to Ramapo. You may
19 have -- let me ask you: Were you involved with the
20 project at that time?

21 A. (Thompson) Actually, the project has
22 metamorphosed several times, especially early in the
23 stages, and Ramapo was one of the earlier points that we
24 considered, correct.

1 Q. You were involved at that time?

2 A. (Thompson) I was.

3 JUDGE STOCKHOLM: A witness, I don't know
4 whether it's earlier this week or last week, referred to
5 the project originally looking at the 49th Street
6 substation in New York City; is that correct?

7 (Thompson) At a very early stage of -- I
8 will call it the origination or the origins of the
9 project, that was correct.

10 JUDGE STOCKHOLM: Why did you decide to move
11 that point further north ultimately to Rock Tavern?

12 (Thompson) Do you want the long answer or
13 the short answer? I mean it went through a series
14 basically of I wouldn't call them studies, but meetings
15 where we consulted with a variety of our advisors
16 looking at what were critical issues to the project,
17 where we were likely to run into substantial permitting,
18 financial, engineering, economic, any kind of issues.

19 And the majority of the -- I will call them
20 potential fatal flaw type issues that might evolve out
21 of a project all seemed to be concentrated down there
22 crossing the river, trying to interconnect into the
23 city's grid there. Trying to find space for a converter
24 station. The additional cost of trying to build within

1 the city.

2 Those were dramatic. Looking at the
3 congestion that we were trying to bridge, the majority
4 of the congestion was in the UPNY SENY area. Going
5 those last couple miles, while there is some congestion
6 there it's not nearly as significant or it's congested a
7 much lesser amount of time.

8 So, we recognize that we were eliminating a
9 major portion of the risk giving up a very minimal part
10 of the economic benefits, but reducing substantially the
11 cost and the -- I will call it the permitting risk of
12 the project.

13 Obviously, just trying to permit a 200-mile
14 long line is daunting enough. Trying to combine that
15 with all of these other issues, it reminded me of a
16 World War II military operation that's fairly famous
17 called Operation Market Garden, which has been
18 popularized by a book and a movie called A Bridge Too
19 Far.

20 You can't solve all of the problems of New
21 York in one project. It would be nice if you could, but
22 we identified what we thought was a major significant
23 project that would improve reliability. It would bridge
24 the majority of the congestion area, or the most

1 important congested area, and still in a manageable
2 fashion that we might have a chance of getting it
3 permitted and approved and financed.

4 JUDGE STOCKHOLM: Thank you.

5 MR. MALONE: Judge, could I ask a follow up
6 question to what you just asked?

7 JUDGE STOCKHOLM: Please save those. We
8 will finish with the Attorney General first.

9 BY MS. LEARY:

10 Q. Based on your testimony, your response to Judge
11 Stockholm's question, was the decision just to stop at
12 Rock Tavern based upon opposition that you -- public
13 opposition that you believed would be evident in that
14 lower southeastern New York area?

15 A. (Thompson) No. It had more to do with getting
16 from the last part. Obviously the further southeast you
17 move, the more congested it becomes. The more difficult
18 it becomes to do things.

19 One of the things we identified very early is the
20 line you have correctly identified between Rock Tavern
21 and Ramapo is a major 345 kv circuit that's built, but
22 it was originally designed to be a dual circuit.

23 The right of way, that transmission line,
24 whatnot, is actually owned by Orange & Rockland.

1 Obviously there would be a much easier project for that
2 existing utility to build that leg and continue to
3 expand on it.

4 We believe one of the keys to our project is it's
5 an enabling project. It doesn't solve all the problems
6 of the state but it does solve a major portion, but then
7 it enables other projects that right now doesn't make
8 any sense to go forward with because they have a limited
9 benefit, but if our project were built first some of
10 these other projects could be built because then they
11 are viable.

12 Q. Is there any intention by NYRI to participate or
13 otherwise propose a future project that would involve
14 bringing -- what I will call extending the Rock Tavern
15 part of the line of, the NYRI line, into New York see or
16 into any other geographic area, including New Jersey or
17 anywhere in the PJM?

18 A. (Thompson) No. Right now I can tell you
19 absolutely that NYRI is in fact a single purpose company
20 looking to build this line and this line exclusively.

21 Q. There's nothing on the drawing board that would
22 extend beyond what we see before us in the application
23 today?

24 A. (Thompson) That is correct. We did have early on

1 some discussions with Con Edison, Orange & Rockland if
2 there was some way work together, but those never really
3 got very far. They are obviously complicated with the
4 ownership issues.

5 Because our project is going to be project
6 financed, it's important basically to keep it -- I will
7 call it fairly clean of other entanglements and whatnot,
8 so it's important not to get too involved with some of
9 these other things.

10 Q. Let me jump over to Mr. Wood and Ms. Sims because
11 I know you prepared Exhibit 4, and in terms of the
12 routing and the discussion we have been having is there
13 anywhere in the application that you have discussed the
14 cumulative impact, the cumulative environmental impact
15 of this project when considered with the other projects
16 that it may likely spawn, as Mr. Thompson has been to
17 some degree testifying about?

18 So, the Orange & Rockland potential upgrade or
19 other actions, is there anything in the application
20 Exhibit 4 that would discuss that?

21 MR. SINGER: Your Honor, I object. I don't
22 think Mr. Thompson said anything about likely spawning.
23 I think he said that NYRI is an enabling infrastructure,
24 but I don't think he had characterization of likely

1 spawning.

2 JUDGE PHILLIPS: I actually have a different
3 question. Before you rephrase it you might want to take
4 into consideration.

5 Does this panel -- I didn't think this panel was
6 sponsoring Exhibit 4, I thought that was a different
7 panel. Is that correct? Please keep that in mind as
8 you rephrase the question.

9 Q. Is there anything in the application that
10 discusses the cumulative impact of the enabling of other
11 projects as a result of the construction of this
12 project?

13 A. (Wood) No, there isn't.

14 Q. Thank you. Mr. Thompson, I want to -- I believe
15 I know the answer to this but I am going to ask this
16 because I'm not an expert in the area in which you are.

17 Will the NYRI line serve, to any degree, areas
18 outside of the State of New York?

19 A. (Thompson) As we have talked earlier, electric
20 transmission systems don't differentiate the origin nor
21 the destination of electrons. So, to say could any of
22 the electrons passing down the NYRI line somehow go
23 through the system elsewhere, I couldn't say.

24 I can tell you the economic studies that we have

1 done, which I probably should wait until they come up on
2 the panel, but those were all looked at and the economic
3 benefits seem to be all concentrated within the
4 southeast New York.

5 JUDGE STOCKHOLM: Do you know if it's true
6 that where NYRI constructed there would be electrical
7 impact on systems surrounding us, PJM, etc?

8 (Thompson) That's something I could not
9 address but I am certain the panel coming up next week
10 who did all those studies could probably opine about
11 that.

12 BY MS. LEARY:

13 Q. I want to refer you to the bottom of page six and
14 top of the page seven in this letter in which I believe
15 it states quote, this path?

16 A. (Thompson) I'm sorry. Page six, where?

17 Q. Bottom of page six, it's a bolded area 3, the
18 proposed transmission corridor will alleviate the
19 existing constraints.

20 What is your understanding of the term
21 constraints? What does that mean?

22 A. (Thompson) That has to do with the congestion.
23 Basically the way the New York system -- ISO works on
24 dispatching their power generation, it's on an economic

1 dispatch.

2 So that basically the lowest cost producers are
3 the first units put on load and then as it progresses
4 the next lowest cost producer comes on line. At some
5 point one of the lower cost producers that should be
6 dispatched is in an area where there is no longer
7 sufficient transmission to bring their power down to
8 where the load is. So, they have to in essence
9 artificially dispatch to higher cost generator because
10 that transmission is fully loaded. That's a condition
11 of congestion. So, that's what we are talking about as
12 far as transmission constraints.

13 Q. You also mentioned the term congestion. I want
14 to roughly define this here and see if this is a
15 definition of congestion that we can agree upon.

16 The physical limitation in the power system that
17 prevents low cost resources from reaching a market or
18 some market.

19 A. (Thompson) That sounds correct.

20 Q. There is a lot of confusion between those two
21 terms but -- that is congestion and constraints -- but
22 my question to you in reviewing this section of the
23 letter, section 3, can you tell me the areas that are
24 congested or constrained along the NYRI route?

1 Again, I am asking for very specific geographic
2 locations where you would see congestion or constraint.

3 A. (Thompson) I think that question might be better
4 addressed next week to our experts.

5 Q. They won't have seen this letter, that's the
6 problem, but you may be on that panel.

7 A. (Thompson) I will be on the panel.

8 Q. You are not going to answer it then anyway.

9 A. (Thompson) But I will -- with their assistance we
10 can answer it for you.

11 Q. In the middle of page seven there is a reference
12 to a General Electric energy proprietary MAPS software
13 report. The footnote apparently is proprietary in
14 nature.

15 Did you contract with General Electric, did NYRI
16 contract with General Electric directly to do that?

17 A. (Thompson) Correct.

18 Q. There was no consultant involved?

19 A. (Thompson) No. It was with General Electric.

20 Q. Correct?

21 A. (Thompson) Correct. That was who our contract
22 was with.

23 Q. Just a couple more questions on this letter. I
24 am assuming that the GE MAPS report is still

1 proprietary?

2 A. (Thompson) It is. It's one of the reasons we
3 ended up hiring CRA to do a subsequent economic analysis
4 for us.

5 JUDGE STOCKHOLM: Yes. There is a number of
6 MAPS runs in this record from various and sundry
7 parties.

8 MR. SINGER: The GE MAPS report was provided
9 in the original application that was filed on May 31,
10 2006. It's not in this record but it was made public
11 through that filing.

12 (Thompson) The report was, that's correct.
13 I thought her question was to the proprietary software
14 data base.

15 MS. LEARY: I am sorry. I didn't realize
16 that, Mr. Singer, that it had been made public.

17 MR. SINGER: As Mr. Thompson states, the
18 report was made public. We were referring to the
19 proprietary data base in the footnote to the letter that
20 you referenced as 235.

21 MS. LEARY: My confusion. The footnote
22 states the GE report is not attached to this filing
23 because it contains proprietary, trade secret
24 information that cannot be disclosed to the general

1 public. That's no longer true.

2 (Thompson) There is -- I wouldn't want to
3 call it whitewash but I desensitized version that GE was
4 willing to publish that doesn't include any of their
5 proprietary, confidential trade information.

6 BY MS. LEARY:

7 Q. I'm going to refer you to page nine of the letter
8 in which -- it's the second paragraph from the bottom --
9 which you discuss or the letter discusses expedited
10 designation.

11 And let me quote. Expedited designation of the
12 proposed corridor as a NIETC would also help carve out
13 rights for the NYRI project that might otherwise not be
14 available. For a project developer with no current
15 transmission related revenue stream, it would provide
16 invaluable assistance in helping develop a project.
17 This includes sending appropriate signals about the
18 project's importance to other regulators and lenders and
19 investors. The viability of a meritorious project will
20 thus be bolstered.

21 So, I want to ask you about this appropriate
22 signal to the regulator. Did that mean an appropriate
23 signal to the New York Public Service Commission?

24 A. (Thompson) I think the intention here certainly

1 was the fact that by being designated as a NIETC
2 corridor that it did, in fact, send appropriate signals
3 that said about the project's importance to other
4 regulators which clearly would include the Public
5 Service Commission lenders and investors.

6 Basically what the DOE was trying to do was
7 identify what they believe were the most severely
8 congested areas in the country and to identify that
9 those were areas that they were looking for projects to
10 address those needs.

11 Obviously if we were or our area was one of those
12 that got priority selection, that certainly sent a
13 message we felt or would send a message of the
14 importance of addressing this area.

15 Q. Did that reference to regulator also include the
16 Federal Energy Regulatory Commission?

17 A. (Thompson) Certainly that, too.

18 Q. Was the geographic area in which the NYRI project
19 had been proposed ultimately designated by the
20 Department of Energy as a NIET, as included in a NIET
21 corridor?

22 A. (Thompson) Ultimately it was. They did not do
23 any early identifications as we were applying for here,
24 but when they came out with their final designations,

1 yes, the area we are talking about is part of a NIET.

2 Q. What's that mean?

3 A. (Thompson) National Interest Electric
4 Transmission Corridor.

5 Q. What does it mean to have your geographic area in
6 that NIET corridor? What effect does that have?

7 MR. SINGER: I object. That calls for a
8 legal conclusion.

9 MS. LEARY: It doesn't call for a legal
10 conclusion. It's what is your understanding what that
11 means.

12 Why was NYRI sending this letter and asking for
13 early designation?

14 JUDGE STOCKHOLM: I will allow the question
15 as you last phrased it, what is your understanding.

16 MS. LEARY: Thank you.

17 (Thompson) The NIET designation is just
18 that. It was a national designation of areas of the
19 country where they felt like transmission, congestion or
20 basically under building of transmission in these areas
21 had lead to transmission congestion.

22 And so they were trying to identify areas
23 that they felt like needed immediate attention as far as
24 improving and upgrading investment and transmission in

1 those areas where they could actually potentially
2 become, as they say, detrimental to national interest,
3 not just local interest.

4 BY MS. LEARY:

5 Q. I just want to refer you back to the first
6 sentence in that paragraph that talks about carving out
7 rights for the NYRI project that might otherwise not be
8 available.

9 So, my question is: What is your understanding
10 of the NIET corridor designation and how it created
11 rights that otherwise might not be available for the
12 NYRI project. What rights?

13 A. (Thompson) Well, certainly the NIETC creates
14 what's called a federal backstop authority for siting of
15 projects.

16 Q. What's that about?

17 A. (Thompson) I am probably not the person to go
18 through the details of that.

19 Q. I am not asking you about the details. I am
20 asking you what's your understanding of federal backstop
21 authority -- or I think you may have said FERC. I
22 apologize.

23 Did you say FERC?

24 A. (Thompson) Federal, either one.

1 Q. Okay. What's your understanding of that?

2 A. (Thompson) My understanding of that is one of the
3 reasons for passage of this was that in some instances
4 there were concerns where states were either failing to
5 act or delaying in their action and impacting approval
6 of projects or potential approval of projects.

7 And that if that seemed to be happening, there is
8 certain criteria that you could, in fact, appeal to FERC
9 to take oversighting. And there was some specific dates
10 and time frames and whatnot associated with that, but
11 you did to be within an NIETC corridor for that to
12 apply.

13 Q. You had to be in a NIET corridor to go to the
14 federal government to get an approval; is that correct?

15 A. (Thompson) Correct. For this -- under these
16 provisions.

17 Q. You mentioned some time limitations or dates?

18 A. (Thompson) There were time limitation, yes, and
19 dates.

20 Q. Is it your understanding that a state has about
21 one year to approve a project?

22 A. (Thompson) I believe that's correct.

23 Q. Is it your understanding that a state has one
24 year to perform any environmental review that may be

1 necessary for a project?

2 A. (Thompson) I am not sure I would agree with that.
3 Certification doesn't mean you don't continue with your
4 environmental review. I view going into the EM&CP
5 process very much integral to your environmental review
6 and there are no time restrictions placed upon that.

7 Q. Well, the horse is out of the barn. You have
8 your certificate, right?

9 A. (Thompson) I wouldn't say that. What it does is
10 allows you to move into the details, the detail design,
11 the detail analysis. You now have a routing that you
12 are focused on. To me that's really where the majority
13 of the environmental review and work is.

14 Q. Does NYRI intend to go to the Federal Energy
15 Regulatory Commission with this project?

16 MR. SINGER: Your Honor, I object. I think
17 that's irrelevant and it calls for a legal conclusion
18 and it also calls for the witness to discuss potential
19 strategies.

20 MS. LEARY: Let me just address why I think
21 it's important to know whether there is going to be an
22 effort by the company to go to the federal government
23 and exert the rights that are referred to on page nine
24 of this letter.

1 Obviously, the company has undertaken a strategy
2 that's obvious from the letter, and I don't think it's a
3 mystery that this right could be exercised. And I am
4 simply asking the witness whether NYRI intends to
5 exercise that right -- or let me just ask that.

6 It's not a legal conclusion. I am not asking
7 about a law. The letter states the right. I think
8 Mr. Thompson's testimony is about the federal backstop
9 authority and I think the tribunal is entitled to know
10 whether NYRI intends to move in that direction.

11 (Thompson) We have not made a determination to
12 that effect. Clearly, I think the fact that we are here
13 doing this shows our support in trying to work through
14 the state process.

15 BY MS. LEARY:

16 Q. There is currently no plan to do that?

17 A. (Thompson) That is correct.

18 JUDGE STOCKHOLM: To do what?

19 MS. LEARY: I am sorry.

20 Q. To go to the Federal Energy Regulatory Commission
21 for approval of this project.

22 A. (Thompson) There is no current plan to do that,
23 that's correct. I will add that doesn't preclude
24 sometime in the future that we might do that.

1 Q. You have that right.

2 A. (Thompson) Yes.

3 Q. On page ten of this letter you talk about an
4 increase in the amount of renewable generation that may
5 be available as a result of the project. You also refer
6 I think to encouraging development of renewable
7 generation.

8 Since 2006, when this letter was authored, are
9 you aware of any renewable generation that has been
10 developed that the NYRI line would serve?

11 In other words, is there some renewable
12 generation that was encouraged and is actually in
13 planning or development or construction stage now?

14 MR. SINGER: Can I get a clarification. Are
15 you talking about as a result of the NYRI proposal?

16 MS. LEARY: Yes.

17 MR. SINGER: That because we proposed the
18 line that someone might be developing new generation; is
19 that your question?

20 MS. LEARY: Let me quote from the letter,
21 Mr. Singer. This may assist you. I am referring to
22 number four on page ten, the last sentence.

23 Increased transmission capacity available will
24 encourage the development of renewable energy sources,

1 which will proportionately lessen the dependence of New
2 York resources on imported fossil fuels.

3 MR. SINGER: I still have an objection to
4 this sentence states and refers to increased
5 transmission capacity available and I'm just trying to
6 get a clarification.

7 Are you asking him about that or are you asking
8 him about whether the fact that we made a proposal has
9 encouraged new generation to be built, or for someone to
10 attempt to permit that generation based on the proposal
11 itself?

12 MS. LEARY: The latter.

13 A. (Thompson) I don't know of any specifics there.
14 I guess I would be skeptical that anybody would propose
15 to move forward on a project contingent upon another
16 proposed project.

17 Q. On page 11 of this letter, the top of page 11,
18 the last paragraph before you get to number six.

19 And I believe it states in the last sentence, GE
20 Energy's analysis of the NYRI project shows that
21 emissions of SO2 or SOX will be reduced by 10,406 tons
22 annually, and emissions of NOX will be reduced by 2,032
23 tons annually as a result of this project.

24 Are those numbers today, as you understand them,

1 correct?

2 A. (Thompson) That I cannot comment on. These were
3 outputs from GE's proprietary data base model that they
4 ran that basically analyzed what projects their analysis
5 or proprietary software would show would run and they
6 had emissions data for all these plants in there. So
7 they were able to generate those. Beyond that, I can't
8 comment.

9 Q. Thank you.

10 JUDGE STOCKHOLM: Can you tell me
11 approximately when these numbers were run? The letter
12 is dated March 6, 2006, so I assume the runs had to be
13 at some point earlier than that.

14 (Thompson) Correct. I believe they were
15 late 2005 was the study, but Counselor Singer probably
16 can correct me.

17 MR. SINGER: I actually think they were run
18 based on a 2004 load flow analysis.

19 JUDGE STOCKHOLM: Okay. Then, counsel, I
20 just advise you that data from 2004 and data from 2008
21 are going to be different. If these numbers are exactly
22 the same today it would be the merest of coincidence.

23 MS. LEARY: That's all I was trying to
24 establish.

1 BY MS. LEARY:

2 Q. I did miss a question on page seven. I wanted to
3 ask you about a statement in the letter that says -- I
4 am looking at the second to the last paragraph on that
5 page.

6 Again, it's referring to the GE MAPS report. It
7 says, A project like NYRI's proposed transmission
8 facility would provide economic benefits to New York
9 electricity consumers by reducing the cost to serve New
10 York load by \$421 million per year or roughly three
11 percent.

12 Are you aware of how that figure was calculated?

13 A. (Thompson) Only in very general terms.

14 Q. We will take general terms.

15 A. (Thompson) I believe that the GE study was
16 looking at reductions in wholesale electric prices, and
17 that that's how they generated the \$421 million.

18 Q. I am not a financial person, and you may not -- I
19 know you are, so pardon me if I don't phrase this
20 absolutely on the money.

21 But would that figure change if the New York
22 Independent System Operator did not use what I will call
23 a clearing price auction? Would that number change?

24 MR. SINGER: Your Honor, I object. This is

1 well beyond the scope of anything that's been proposed
2 in this proceeding.

3 JUDGE STOCKHOLM: It does seem to me some of
4 the -- not this panel, but some of NYRI's witnesses may
5 be able to address this kind of an issue.

6 (Thompson) I would say when we get to
7 another panel those people can address that for you.

8 JUDGE STOCKHOLM: I am not guaranteeing you,
9 counselor, they will give you the answer that you are
10 specifically asking a question to, but I don't think
11 it's this council that really has the expertise to
12 answer that.

13 MS. LEARY: He's a financial man. I heard
14 that the first day.

15 JUDGE STOCKHOLM: Ma'am, I understand that,
16 but the way the market prices electricity in New York is
17 an extraordinarily complicated issue. It is not simply
18 an issue of a Dutch auction, which is really an auction
19 in the retail market, not the wholesale market.

20 There are -- suffice it to say it's very
21 complicated and I don't believe this panel has the
22 expertise to address it, but I do believe that the panel
23 or panels that the company still has to present will be
24 able to address this to some level.

1 Hopefully to specifically answer your
2 question, but we at least will get closer to it with
3 that panel than I think we will with this panel. The
4 \$421 million is a lot of money, but it has nothing
5 really to do with finance.

6 MS. LEARY: I am just asking this witness
7 how it was calculated and did it assume the NYISO
8 auction process.

9 (Thompson) I am not familiar with what GE
10 does.

11 JUDGE STOCKHOLM: I am suggesting to you,
12 Ma'am, that it doesn't have much to do with the NYISO
13 auction process.

14 BY MS. LEARY:

15 Q. If the Commission were to grant a certificate for
16 the NYRI -- for a NYRI route of the many routes, would
17 NYRI agree to accept a certificate condition that would
18 waive its rights to go to FERC, to proceed and exercise
19 the rights we discussed a few moments ago?

20 A. (Thompson) I think it would be dependent upon
21 what other conditions and certificate criteria were
22 associated with that.

23 Q. So, if I understand your testimony, if there were
24 conditions that NYRI did not find acceptable you would

1 go forward with a proceeding before FERC to see if you
2 could obtain approval for the line?

3 A. (Thompson) I don't know that. I am just telling
4 you I don't think we would waive our rights necessarily.

5 Q. Assume for a minute that you see--

6 A. (Thompson) We would want to keep our options
7 open?

8 Q. I'm sorry?

9 A. (Thompson) I said we would want to keep our
10 options open.

11 Q. You would not waive your rights?

12 A. (Thompson) Right.

13 Q. Mr. Nield, you are listed as the routing expert
14 on the panel; is that correct?

15 JUDGE PHILLIPS: Can I just interrupt. You
16 are getting ready to change topics, correct? We need to
17 take our morning break. If everyone can come back at
18 11:10 I would appreciate it.

19 So, thank you.

20 (Recess taken.)

21 JUDGE STOCKHOLM: Let's go back on the
22 record.

23 Mr. Thompson, you answered a question to the
24 Attorney General indicating that your effort here was

1 indicative of your support for the state proceeding.

2 Is that accurate, sir?

3 (Thompson) That is correct.

4 JUDGE STOCKHOLM: In supporting that state
5 proceeding, would you consider agreeing to, as you
6 discussed it with counsel, waive your rights to go to
7 FERC for a period of time that would allow this process
8 to function as it ordinarily would, with a recommended
9 decision, ultimately taking to the Commission?

10 Without regard to specific time frames, but
11 would you consider doing that?

12 (Thompson) I can't give you an answer on
13 that. That's obviously a decision that would have to be
14 made with the investors with consultation to a number of
15 people.

16 JUDGE STOCKHOLM: You understand from a
17 state administrative perspective why I am asking that
18 question.

19 (Thompson) I guess I am not exactly clear.

20 JUDGE STOCKHOLM: We have a process here
21 that can at least be described as expedited. Are you
22 aware of that?

23 (Thompson) Certainly I know you went to
24 great efforts to make sure the schedule all fit within

1 the 12-month period, correct.

2 Is that what we are --

3 JUDGE STOCKHOLM: Yes. That's what I am
4 talking about. This is an extremely short schedule.

5 The Marcy South proceeding had 59 days of
6 hearings and took two and a quarter years to finish.
7 This is two NYRI proceedings in a sense. I mean two
8 Marcy South proceedings in a sense.

9 And we are trying to push this through in a
10 year. And my question is -- really goes back to your
11 answer about support for the state regulatory process.

12 Now, I am not going to ask you the question
13 again because I think your question answer is clear,
14 that you would have to talk to a bunch of people. What
15 I would like to ask you is if you would have that
16 conversation.

17 (Thompson) Okay.

18 JUDGE STOCKHOLM: And let us and the parties
19 know. Thank you.

20 MS. LEARY: Thank you.

21 If you would identify the document you just
22 handed up.

23 BY MS. LEARY:

24 Q. If I might -- before I get to that document, your

1 Honor -- go back to the document we were discussing,
2 which is Exhibit 235, the March 6, 2006 letter to the
3 Department of Energy.

4 I am going to refer Mr. Thompson to exhibit A,
5 again, as well as to pages -- I believe page six with
6 respect to discussion of congestion and constraints
7 along the NYRI project line.

8 Can you identify for the record those areas that
9 are congested or constrained in the geographic area in
10 which the NYRI project is located. That is from Edic
11 station to Rock Tavern.

12 A. (Thompson) Correct. I think if you look at
13 exhibit B, that actually shows the major congestion zone
14 that's -- and because they are not really geographical,
15 it's somewhat, but the dotted line going up above G
16 which is normally called the UPNY/SENY.

17 Q. Would you identify where that is on exhibit B.

18 A. (Thompson) This is dotted line basically above
19 the area G I think is a reasonable facsimile. If you
20 need something more definitive certainly the panels next
21 week can give you a much more definitive indication.

22 MR. SINGER: Ms. Leary, just so you know,
23 you can't see it on the black and white copy but it is
24 identified on the exhibit.

1 Q. So, is it your testimony -- I want to refer you
2 to exhibit A now. Is it your testimony that the
3 geographic area in which the NYRI line is located, as
4 identified by a broken line from Edic to Rock Tavern, is
5 an area that is congested or constrained?

6 JUDGE STOCKHOLM: Ma'am, there is --
7 congestion is something that happens on the far side of
8 a transmission constraint. Constraint is a line. An
9 area that is congested is all of the geography on one
10 side of that line.

11 Q. Let me ask it each way, then. Can you identify
12 areas that are congested between Edic and Rock Station?

13 A. (Thompson) That's what we just identified was
14 kind of a general congestion boundary.

15 Q. And you are referring to exhibit B?

16 A. (Thompson) Correct. No, I cannot take that and
17 translate it. The group next week can tell you
18 specifically where the constraints are that caused that
19 congestion break or barrier.

20 Q. Would that be your same answer for if I
21 substituted the word constrained?

22 A. (Thompson) Correct. I think we exhausted the
23 limit of my knowledge in this.

24 Q. Thank you. Your testimony earlier was about in

1 . referring to the line as no on ramp, no off ramp?

2 A. (Thompson) Correct.

3 Q. Is it your understanding that the NYRI project
4 will benefit southeastern New York?

5 A. (Thompson) Actually, as our economic studies
6 show, the project ultimately will benefit virtually all
7 of New York but, yes, the immediate beneficiaries are
8 southeast New York.

9 Q. Can you identify for me how the line will benefit
10 those residents of New York who are located and reside
11 along the NYRI project route or any of the routes?
12 Let's say the proposed route first.

13 A. (Thompson) Sure.

14 Q. How will they benefit?

15 A. (Thompson) We have identified that in our
16 testimony and our filings is that looking at the
17 economic benefits of the project on the wholesale
18 electric market of New York, the immediate relief of
19 congestion provides benefits to downstate New York.

20 By doing that then actually then enables new
21 builds to be built in upstate New York which ultimately
22 actually improves or lowers wholesale electric pricing
23 in upstate New York as well.

24 So, they also ultimately become beneficiaries of

1 the project. In addition, we have identified that,
2 again, depending upon the route, somewhere in excess of
3 \$30 million a year will be paid by the project to local
4 communities in the form of real estate taxes.

5 In addition, there will be, during the
6 construction of this project, somewhere in excess of 300
7 construction jobs created. There will be significant
8 amounts of local materials procured for the building and
9 erection of the project.

10 There is identified a \$30 million host community
11 benefit fund that was proposed. Anyway, I believe those
12 are the major benefits to the communities.

13 Q. Will the residents who live along the NYRI route
14 directly benefit from the line itself? That is, will
15 they be able to obtain electricity from the NYRI line at
16 a lower cost? That's the nature of the benefit I am
17 asking you about, that direct?

18 A. (Thompson) That was my point in talking about the
19 economic studies is that initially all of southeast New
20 York certainly receives benefits as we lower the
21 wholesale electric prices.

22 Q. I'm not talking about southeast New York.

23 A. (Thompson) So, then I said what the economic
24 studies show by relieving the congestion is we allow new

1 builds to be built in upstate New York which ultimately
2 lowers the wholesale electric rates in those areas as
3 opposed to what they were forecast to be without the
4 project.

5 Q. So, their benefit is contingent upon these new
6 builds that you envision?

7 A. (Thompson) That is correct, that particular
8 benefit.

9 Q. Would you term that an indirect benefit or a
10 direct benefit?

11 A. (Thompson) I guess I wouldn't know how you are
12 differentiating that, so...

13 JUDGE STOCKHOLM: Can I interrupt just for
14 a second?

15 Mr. Thompson, the transmission line delivers
16 electricity to the Rock Tavern substation.

17 (Thompson) Correct.

18 JUDGE STOCKHOLM: The electricity that is
19 delivered to that substation would be available in zone
20 G, for example?

21 (Thompson) Correct.

22 JUDGE STOCKHOLM: Part of the transmission
23 line is built in zone G; is it not?

24 (Thompson) Correct.

1 JUDGE STOCKHOLM: Thank you.

2 BY MS. LEARY:

3 Q. How much of the transmission line is built in
4 zone G? Can you give me an amount of miles or feet?

5 A. (Thompson) I cannot. My understanding, though,
6 is that the New York ISO zones really are not so much
7 geographical as they are electrical. And so it's tough
8 to make that kind of a comparison.

9 Q. As reflected on exhibit B, does it look like
10 about a tenth of the line or thereabouts in zone G?

11 JUDGE STOCKHOLM: There is no scale on this
12 map and I think it's very difficulty to tell. I agree
13 with counsel that it appears that it's a small portion.

14 Q. You mentioned 300 jobs being created in New York.
15 You are referring to the construction of the line; is
16 that correct?

17 A. (Thompson) That is correct.

18 Q. Will all of those members of the construction
19 crews be residents of the State of New York?

20 A. (Thompson) I can't say all of them will, but we
21 have signed an MOU with the Local Building Trades
22 Association and have committed that this will be a union
23 built project with preference to them.

24 Q. Can you identify the local union to which you are

1 referring?

2 A. (Thompson) It's the Building Trades Association
3 so they represent multiple unions.

4 Q. Is that the name of the group, the Building
5 Trades?

6 A. (Thompson) Maybe counselor can help me, but we
7 can get that for you.

8 Q. If you don't know that's okay.

9 A. (Thompson) I don't know off the top of my head.

10 Q. Have you reached any agreement with any host
11 community on what you termed benefit funds?

12 A. (Thompson) No. We have not done anything
13 relative to what we are going to do there.

14 Q. Can you briefly explain?

15 A. (Thompson) Obviously, that's dependent upon a
16 final routing before we know even what communities to
17 deal with.

18 Q. Let's say you haven't reached an agreement in the
19 community in which the Edic station is to be located; is
20 that correct?

21 A. (Thompson) That is correct.

22 Q. You have not reached an agreement in the
23 community in which the Rock Tavern station is located?

24 A. (Thompson) That is correct.

1 Q. Can you briefly explain what the host community
2 benefit fund will entail, type of funds is the company
3 willing to provide to the host community?

4 A. (Thompson) Basically right now we have just
5 identified a pool of money. We have not developed any
6 specific plans. We can cite what some of the previous
7 major projects have been relative to these kinds of
8 poles.

9 They bought new fire trucks for some communities,
10 built new playground or park development. It's really
11 been dependent upon the specific communities.

12 Q. Would you company have any control over the type
13 of expenditure that the community would make?

14 A. (Thompson) We would propose or we have talked
15 about was trying to find or identify a suitable third
16 party, independent party, that could administer that for
17 us.

18 Q. And would this community fund be available to
19 every community that the NYRI project traverses?

20 A. (Thompson) That's the intention. Again, we
21 haven't worked out any specifics or details.

22 MS. LEARY: Thank you.

23 May I turn your attention to request number
24 -- interrogatory document request DEC 30, which I

1 request be marked for identification. I believe the
2 next exhibit is Exhibit 236.

3 JUDGE STOCKHOLM: That is correct and it has
4 been marked.

5 (Exhibit 236 marked for identification.)

6 MS. LEARY: Thank you, Your Honor.

7 Q. I refer the panel's attention to page one of that
8 document. And I want to clarify -- actually pages one
9 and two. Page two listing the alternates and the number
10 of stream crossings.

11 This is a fairly general question. Anyone on the
12 panel can answer it. Is it the company's intention that
13 for each route alternative, including the Marcy South
14 route, Exhibit 4, the environmental impact statement,
15 would be applicable to all of those routes?

16 A. (Wood) Well, in very general terms, I mean
17 Exhibit 4 is written specifically to cover the proposed
18 route, but many of the general concepts, in other words,
19 that section identifies stream crossings on the proposed
20 route so clearly those would not apply to the alternate
21 routes, but some of the general discussion in there
22 would be universally applied.

23 Q. The general discussion is applicable but the
24 specifics about the proposed route would not be.

1 And so, with respect to the Marcy South alternate
2 you have, exhibit L, is that correct? I am sorry.
3 Appendix L, is that correct, which in this proceeding
4 has been marked as Exhibit 26.

5 A. (Wood) Appendix L I believe is associated with
6 Exhibit 3, not Exhibit 4.

7 Q. Correct. I was actually -- I should have asked
8 you that first.

9 And what has been marked as Hearing Exhibit 3,
10 which is Exhibit 3 in the application, is a discussion
11 of the alternate routes?

12 A. (Wood) Yes.

13 Q. Do Exhibit 3 and Exhibit L contain specifics that
14 you would substitute into Exhibit 4, the environment
15 impact statement, in place of those specific details
16 about the proposed route?

17 A. (Wood) I am not really sure what you mean by
18 specifics. Exhibit 3 is a discussion of the
19 alternatives in more general terms than in the -- than
20 we discussed the proposed route in Exhibit 4.

21 Q. But it doesn't -- Exhibit 3 does not discuss
22 environmental impact?

23 A. (Wood) That is correct.

24 Q. Is it your view that Appendix L discusses

1 environmental impact?

2 A. (Wood) Yes. Exhibit L is a comparison between a
3 proposed route and the Marcy South alternative, so it
4 does describe in some general terms the impacts between
5 the two, but it doesn't go into the specifics to the
6 same level as Exhibit 4.

7 Q. Mr. Nield, your resume states that you are the
8 routing expert for the NYRI project; is that correct?

9 A. (Nield) My resume, counselor?

10 Q. I refer you to your direct testimony.

11 A. (Nield) Yes. I have a copy of that.

12 Q. Appended to that is your resume?

13 A. (Nield) That is correct.

14 Q. So, I refer you to question three in Exhibit 236.
15 And the question -- it appears on page two although this
16 exhibit is not paginated -- the question is: Identify
17 what person or persons were involved in the selection of
18 the proposed route and consideration of alternative
19 routes.

20 And the response is: The consideration of the
21 alternate routes was a detailed process leading to the
22 development of the information contained in Exhibit 3.
23 This process was conducted by multidisciplinary staff
24 from the various professional consulting organizations

1 engaged by NYRI and NYRI.

2 And listing of these individuals is as follows:
3 Bob Malecki, Bill Cooney, Greg Rowe, Steve Wood, Rich
4 Bucci, Tony Lopez, Laura Ernst, Bill Nye, Carissa Lord.

5 I do not see your name appearing in response to
6 DEC 30. So, were you not available for -- can you
7 explain why your name does not appear on DEC 30 as
8 having been a part of this detailed process and yet your
9 resume indicates that you are the route expert.

10 A. (Niield) Yes, counselor. With relation to your
11 question about request number DEC 30, question 3 is, and
12 I'll read it, identify what person or persons were
13 involved in the selection of the proposed route in
14 consideration of alternative routes.

15 It's not fair to say I was involved in the
16 selection of the proposed route because of the timing
17 upon which that I was hired by ESS Group, and then
18 became a part of the project team to support this case.

19 All of the individuals that you listed, Bob
20 Malecki, Bill Cooney, Greg Rowe, Steve Wood, Rich Bucci,
21 Tony Lopez, Laura Ernst, Bill Nye and Carissa Lord, with
22 the exception of Tony Lopez, I have worked with each one
23 of those individuals on routing for the NYRI project.

24 But, again, that was after the selection of the

1 proposed route, and my involvement happened after that
2 selection. But in my work to support all of those
3 individuals and working with them for this project,
4 that's where I gained my expertise about this particular
5 case.

6 Q. When were you hired by ESS?

7 A. (Niield) My official hire date I cannot recall
8 except it's October 2007, I believe.

9 Q. Prior to that date were you working on this
10 project?

11 A. (Niield) No.

12 Q. Did you begin working on the NYRI project
13 immediately after being hired by ESS?

14 A. (Niield) Began working on the project in December
15 of 2007.

16 Q. December of 2007?

17 A. (Niield) December of 2007.

18 Q. What is your understanding of when the selection
19 of the proposed route and various alternatives occurred?

20 A. (Niield) Prior to my arrival at ESS Group.

21 Q. I am going to direct my next question to the
22 other members of the panel.

23 Mr. Thompson, when was the proposed route
24 selected?

1 A. (Thompson) Certainly, the original proposed route
2 we made a filing back in 2006, so it was prior to that
3 time.

4 Q. How much prior?

5 A. (Thompson) I can only speak to the basic route
6 going along the railroads was prior to my hiring, which
7 was in 2004.

8 So, I believe the actual lease agreements may
9 have been signed in 2003, possibly, for the railroad
10 rights of way.

11 Q. With respect to the alternatives, when were they
12 selected? The alternative routes, when were they
13 selected?

14 JUDGE STOCKHOLM: These are the alternatives
15 that are proposed by the company?

16 MS. LEARY: Yes.

17 A. (Wood) I think it's fair to say it was an
18 evolving process that occurred over the length of the
19 development of the project. So, to come up with an
20 actual specific date for each alternative would be
21 rather difficult at this point.

22 Q. Can you give me a range? Range of dates?

23 A. (Wood) Range of dates for the alternatives would
24 have gone back -- some of the alternatives were I

1 believe examined before the original filing, as
2 Mr. Thompson mentioned, back in 2006.

3 And then subsequent to that filing and the filing
4 in February of 2008 for the supplemental application was
5 the main time frame when the routes were -- the
6 alternative routes were developed.

7 Q. I want to direct your attention to the Marcy
8 South alternative that was the subject of a stipulation
9 between NYRI and Department of Public Service staff.

10 Are you aware generally of that stipulation?

11 A. (Wood) Yes.

12 Q. Prior to that stipulation had you evaluated the
13 Marcy South alternative route, Mr. Thompson?

14 A. (Thompson) I don't believe we had done anything
15 more than a cursory review with the -- at the time the
16 original railroad routes were selected. I know, just in
17 general, looking at the state congestion and trying to
18 identify potential corridors going from the north to the
19 south, the Marcy South route was obviously identified as
20 one of the potential corridors, but a very cursory
21 review revealed that there was not sufficient space on
22 the existing corridor for another transmission line.

23 Therefore, we would have to procure rights of
24 way. And it was our original goal, or the project's

1 original goal to minimize how much additional right of
2 way had to be procured. That's what lead them to the
3 railroad rights of way. I am not aware of anything
4 beyond that.

5 Q. Would it be fair to say that the Marcy South
6 alternative was not a preferred alternative in the
7 February 2008 application?

8 I am referring specifically to the Marcy South
9 alternative that is discussed in Appendix L, Hearing
10 Exhibit 26.

11 A. (Thompson) As I believe we testified just
12 earlier, I wouldn't call it not a preferred route. As
13 we mentioned, there are a number of evaluation factors.

14 Our original design was based on the premise that
15 we wanted to minimize how much land had to be acquired
16 from private land owners and so we were utilizing an
17 existing right of way, the railroad's right of way. The
18 Marcy South route provides an alternative that has other
19 benefits, but other impacts so...

20 Q. I am going to go back to your -- what I will call
21 your pre-February 2008, as you term it, cursory review
22 of the Marcy South alternative.

23 A. (Thompson) Correct.

24 Q. Did you know when you undertook that cursory

1 review that the Marcy South alternative would traverse
2 the New York City watershed?

3 A. (Thompson) Let me clarify a point. I was not
4 part of that cursory review. What I was reporting on
5 was what I was told when I came on just doing some due
6 diligence on the project, you know, why were we
7 proposing to utilize railroad rights of way. That's
8 what I was told.

9 Q. I'm directing this to the rest of the panel. Was
10 ESS aware, when it was asked to evaluate the Marcy South
11 alternative -- again, this predates Appendix L -- but
12 were you aware after the signing of the stipulation with
13 DPS staff that the Marcy South route alternative would
14 go through the New York City watershed?

15 A. (Wood) No. We did not.

16 Q. And when did you become aware that it would
17 traverse the New York City watershed?

18 JUDGE STOCKHOLM: Counselor, can you explain
19 to me how this is useful for the record, when they
20 became aware that the Marcy South alternative went
21 through the watershed?

22 MS. LEARY: It is my understanding that at
23 the time that the Marcy South alternative was being
24 discussed between NYRI and DPS staff that neither of

1 those parties was aware that it would traverse the New
2 York City watershed.

3 MR. BLOW: Your Honor --

4 JUDGE STOCKHOLM: Okay. The stipulation is,
5 as I understand it, is a stipulation whereby NYRI agreed
6 to study the Marcy South route. As a matter of fact,
7 the stipulation was really the outcome of the
8 Commission's order in that regard.

9 So, my assumption is -- I mean I think the
10 record shows when the stipulation was signed the company
11 did not know that it went through the New York City
12 watershed.

13 Stipulation was signed. They did a study.
14 After they finished the study -- when you finished the
15 study in February of 2008 were you aware that the Marcy
16 South alternative would go through the New York City
17 watershed?

18 MS. LEARY: It's obvious from Appendix L
19 that they knew it.

20 JUDGE STOCKHOLM: Explain to me why it makes
21 any difference in this record when, what month, or at
22 what time between the signing of the stipulation and the
23 filing of the February 9, 2008 filing, what difference
24 does it make whether they learned about the watershed in

1 January of 2008 or October of 2007?

2 MS. LEARY: I would assume that if it was
3 known at the time the stipulation was signed, or brought
4 to the attention of DPS staff before the stipulation was
5 signed, the outcome may have been different.

6 It may have been viewed either by NYRI as a
7 fatal flaw in the project or by DPS staff as a factor in
8 their decision.

9 JUDGE STOCKHOLM: How, then -- are you
10 suggesting they should have gone back to the Commission
11 and say, look, Commission, you ordered us to study this
12 alternative but it's really fatally flawed. Don't study
13 it.

14 MS. LEARY: Your Honor, I am not under oath
15 nor am I here to testify in that regard.

16 JUDGE STOCKHOLM: You have to explain to me,
17 if I am going to allow you to ask the question that you
18 posited, when did they find out between the signing of
19 the stipulation saying they would study it and the
20 filing of the results.

21 BY MS. LEARY:

22 Q. Let me ask a separate question.

23 Did anyone on the panel advise DPS staff when you
24 found out that the Marcy South alternative went through

1 the New York City watershed? Did you ever advise staff
2 of that fact?

3 A. (Wood) Well--

4 MR. BLOW: Your Honor, if I might, DPS was
5 aware at the time of the stipulation -- I would not do
6 this except that the record is totally confused by Ms.
7 Leary's assumptions.

8 DPS staff was aware at the time the stipulations
9 were signed that the Marcy South alternative would go
10 through the New York City watershed. What relevance it
11 had, again, as to when we were aware of it or when
12 anybody was aware of it is beyond me.

13 MS. LEARY: I appreciate the clarification,
14 Mr. Blow. My understanding is not based on an
15 assumption, but I will leave this area of questioning
16 since it obviously is not acceptable to either you or
17 the bench, so, let me just move forward if I can.

18 Q. I want to direct your attention to your rebuttal
19 testimony -- I'm sorry. I do have one more question
20 about DEC 30. I am not sure who on the panel can
21 respond to it.

22 But DEC 30 refers to, again, question three, page
23 three. This is after the listing of names of the
24 individuals who engaged in the detailed process.

1 The selection of the proposed route was made by
2 the project developers following nominations and
3 recommendations of the above noted individuals.

4 Mr. Thompson, is the reference to project
5 developers, who does that include? Is that NYRI, Inc.
6 or what persons, entities, does that term refer to?

7 A. (Thompson) That term would refer to the project
8 development team at that point in time, which basically
9 is the -- one of the current investors, American
10 Consumer Industries, and the original founder or the
11 conceptual person behind the initial project, a Mr. Rick
12 Muddiman. Those were the two primary entities at that
13 point.

14 Q. Thank you. May I refer the panel to their
15 rebuttal testimony at page six, lines three to ten. I
16 don't want to take this out of context so I'm going to
17 read the bottom of page five and if you would refer to
18 that first.

19 The bottom of page five, line 19. A long range
20 vegetation management plan is developed around site
21 specific information along the certified right of way,
22 taking into account the location and type of woody
23 vegetation along the right of way, conditions negotiated
24 with the property owner, existing land uses on and

1 adjacent to the right of way, location of access roads,
2 location of features such as streams, wetlands, and
3 highways, specific structure locations and conductor
4 heights, and any additional requirements of the
5 Commission order certifying the proposed transmission
6 line. As such, a long range vegetation management plan
7 is best optimized by incorporating site specific
8 information depending on the route certified, etc.

9 With respect to a vegetation management plan,
10 would it be the panel's opinion that you need that kind
11 of site specific information in order to state in the
12 application that you will undertake a program that
13 involved either integrated pest management or integrated
14 vegetation management as a part of a vegetation
15 management plan?

16 A. (Wood) I guess I am not clear on what you mean by
17 a pest management plan.

18 Q. An integrated pest management plan as outlined in
19 some of the testimony Dr. Schreiber from my office
20 offered involves the limited use of pesticides, if at
21 all, as a part of a vegetation management plan.

22 An integrated vegetation plan, or IVM, is
23 similar, and is based on some premises of IPM. In other
24 words, pesticide use is more limited.

1 So, I think my question is, as you are shaking
2 your head, Mr. Wood, do you need site specific
3 information to say that in a vegetation management plan
4 such as the one NYRI has proposed here?

5 A. (Wood) The vegetation management plan that we
6 have proposed I guess could be characterized as an
7 integrated pest management plan the way we have proposed
8 it.

9 We have included herbicides but we have also
10 included other vegetation management techniques to be
11 developed in more detail once we do have the site
12 specific information, but we have included areas where
13 we have indicated no herbicide will be used or selective
14 hand clearing would be used, and those sorts of things.
15 So, I think we are probably talking about the same type
16 of plan.

17 Q. Is it your testimony that you characterize the
18 vegetation management plan that's been included as a
19 part of the application is, in fact, an integrated pest
20 management plan?

21 JUDGE STOCKHOLM: Can I have a
22 clarification? Integrated pest, not integrated
23 pesticide. You have asked the question integrated pest
24 management plan.

1 MS. LEARY: I apologize, your Honor.

2 JUDGE STOCKHOLM: Because I don't think
3 there is any pests they spray chemicals for.

4 MS. LEARY: You are absolutely correct.
5 It's some nomenclature I'm a little bit used to in my
6 office and I apologize.

7 It would be an integrated pesticide
8 management plan that would include those chemicals known
9 as herbicides. And I apologize that I did not state the
10 full name of it for the record. It is pest integrated
11 pesticide management plan.

12 (Wood) I believe what we are calling
13 vegetation management plan incorporates the elements, if
14 I understand what you are saying, that are included in
15 your integrated pesticide management plan.

16 BY MS. LEARY:

17 Q. So, would NYRI have any difficulty in agreeing to
18 a condition in the certificate that would require an
19 integrated pesticide management plan for right of way
20 clearing or vegetation management and maintenance?

21 JUDGE STOCKHOLM: Has staff proposed
22 language that would cover that in any of your paragraphs
23 that you set forth in the record so far?

24 MR. BLOW: Your Honor, we have proposed a

1 long range vegetation management plan for the rights of
2 way.

3 JUDGE STOCKHOLM: That would include the use
4 of herbicides and pesticides?

5 MR. BLOW: The judicious use of.

6 JUDGE STOCKHOLM: Judicious, of course, but
7 it would cover that topic.

8 MR. BLOW: Yes. So if the parties wanted to
9 refine a condition or whatever we have indicated, both
10 to the company and to the various parties, that we are
11 willing to try to work on condition and language in
12 Exhibit 178, I believe it's clauses 72 and 73 right now.

13 JUDGE STOCKHOLM: Thank you very much.
14 Always at the ready.

15 BY MS. LEARY:

16 Q. May I have a response to my question, please?

17 JUDGE STOCKHOLM: Absolutely.

18 A. (Wood) Based on my previous testimony as to my
19 understanding of what your integrated pesticide
20 management plan is, and what our proposed vegetation
21 management plan, again, I think we are saying the same
22 thing. I think it's just nomenclature and maybe we
23 could agree to that type of condition.

24 Q. What if it wasn't just nomenclature, would the

1 company agree to a certificate condition that would
2 require an integrated pesticide management plan, which I
3 will now refer to as IPM, as a condition?

4 JUDGE STOCKHOLM: What if your definition of
5 IPM and the company's definition of IPM is different?

6 MS. LEARY: It's not my definition, your
7 Honor. It's a standard term that is utilized in the
8 state and Cornell Cooperative Extension has defined the
9 term.

10 JUDGE STOCKHOLM: That's fine. I got the
11 impression this panel was not familiar with the term.

12 MS. LEARY: If they aren't, your honor, I
13 think they could say that.

14 (Wood) I think I said I wasn't familiar with
15 the term. I asked you to define it for me.

16 Again, I don't know what I can really add to
17 my response. I mean if what you are referring to is the
18 same thing we referred to as a vegetation management
19 plan, then, it's fine. We could agree to that.

20 BY MS. LEARY:

21 Q. Suppose it's not.

22 A. (Wood) I can't answer that because I don't know
23 what it would be.

24 Q. Okay, thanks.

1 At page 13 of your testimony, in response to the
2 question that refers to DPS staff DeWaal Malefyt stating
3 that, The transmission route with the least
4 environmental impact and the greatest electrical system
5 benefit is the underground New York Thruway route from
6 Utica to New York City proposed by CARI.

7 Your response is, In making this assertion
8 Mr. DeWaal Malefyt fails to consider the cost or
9 reliability concerns associated with an underground line
10 of this length.

11 Can you address for me what you mean by the
12 reliability concerns associated with the New York
13 Thruway alternative?

14 Mr. Thompson, you are looking down at Mr. Bucci.
15 I don't know. Does anybody want to answer this?

16 A. (Bucci) There weren't any reliability concerns
17 addressed. Reliability concerns are -- definition of
18 reliability is -- there weren't any addressed.

19 Q. Yes, I know. You say Mr. DeWaal Malefyt failed
20 to consider.

21 A. (Bucci) Reliability concerns, yes.

22 Q. What are they? If he were to consider them what
23 would you tell him to consider?

24 A. (Bucci) Failure of the underground circuit.

1 Q. What underground circuit?

2 A. (Bucci) Underground line of this length.

3 Q. Failure -- if the line were built along the
4 Thruway there would be failures?

5 MR. SINGER: Your Honor, that's not the
6 testimony. We went over this yesterday. I think the
7 witnesses are referring to what we did go over yesterday
8 which was the reliability concerns associated with an
9 underground line that's 230 miles in length.

10 JUDGE PHILLIPS: That is my recollection.
11 We have been here already, so, if you would move on I
12 would appreciate it.

13 MS. LEARY: I'm just trying to understand.
14 There would be some failure.

15 JUDGE PHILLIPS: You were here yesterday?

16 MS. LEARY: I was.

17 JUDGE PHILLIPS: We already addressed this
18 yesterday, the reliability concerns of the length of the
19 line, and so on and so forth. So, unless you are going
20 to do something that has not yet been covered yesterday,
21 with this panel, I would like to move on, please.

22 BY MS. LEARY:

23 Q. The paragraph goes on to state or characterize
24 the Thruway alternative as a different project.

1 Is that correct, line 23?

2 A. (Thompson) That is correct.

3 (Bucci) Yes. It says effectively a different
4 project, yes.

5 Q. Thank you. I want to understand from
6 Mr. Thompson. The Thruway alternative would not be an
7 acceptable alternative if certified by the Commission
8 for NYRI to build?

9 MR. BISSELL: Your Honor, objection. The
10 Thruway alternative in this proceeding, as determined by
11 the Commission, is not being considered as an alternate
12 route. It's being considered as an alternate project to
13 the NYRI project.

14 Q. Let me ask it a different way.

15 Mr. Thompson, as a different project, would NYRI
16 be willing to accept a Commission certificate for the
17 New York Thruway route?

18 A. (Thompson) Obviously I would have to see what all
19 the conditions are, but in general I would think, short
20 of some sort of guarantees, that I can speak on behalf
21 of the investors, they would not be interested in
22 investing in a project such as that.

23 JUDGE STOCKHOLM: Why, Mr. Thompson?

24 A. (Thompson) Basically the cost of the project, the

1 benefits of the project, we don't think ultimately would
2 ever be approved.

3 We think the detailed engineering and
4 environmental issues that come out with that kind of a
5 project would quite potentially be insurmountable. We
6 think the probability of litigation could just go on
7 forever, that completion of that project I think would
8 just, at least from a private investor standpoint, would
9 just not be of interest to them.

10 Q. On page 14, the panel goes through Mr. DeWaal
11 Malefyt's testimony about other electric system
12 alternatives that he claims are electrically and
13 economically preferable and have less environmental
14 impacts.

15 In your response -- well, with respect to the
16 Thruway alternative, is it your testimony that the
17 Thruway alternative would have greater environmental
18 impacts than any -- than the proposed route or the Marcy
19 South route, or any alternative in the application?

20 A. (Wood) We have not evaluated that route so we
21 can't really comment on that.

22 Q. Can you tell me whether the Thruway alternative
23 would have a greater visual impact than the proposed
24 route, the Marcy South route, or any other alternative?

1 A. (Wood) As I understand the route, it's completely
2 an underground route so it would have less visual
3 impact, yes.

4 Q. How about no visual impact?

5 A. (Thompson) I would like to further clarify that
6 in actuality that proposal states that they will, in
7 fact, go above ground any time they encounter I believe
8 it was wetlands or significant rock outcroppings or
9 whatever. So, if those happen to occur in a very
10 sensitive, very visible area, there could be significant
11 impacts. I am just saying they possibly could.

12 JUDGE STOCKHOLM: What proposal are you
13 talking about?

14 A. (Thompson) This was the document we received
15 relative to the proposed alternate.

16 MR. KLUSCIK: Your Honor, I don't believe
17 that's an accurate characterization of the proposal.

18 JUDGE STOCKHOLM: That's what I was trying
19 to get at. It seems to me that we started -- and this
20 may be hopelessly confused, but let me try this anyway.

21 We started with the Commission directing
22 NYRI to undertake a review of the Thruway route. The
23 company did not do an environmental review or what I
24 would characterize at least as an environmental review

1 of the Thruway route. As a matter of fact, I think they
2 just said that a minute ago.

3 The next time we see the Thruway route pop
4 up in the history of this case is CARI's recommended
5 underground Thruway route, which was described in
6 considerable detail ultimately in the documents that
7 have been incorporated from the Conjunction case.

8 Now, I don't know that it's clear, it's not
9 clear to me, if CARI's Thruway route was meant to be the
10 same as Conjunction, whether the proposal that you just
11 talked about was a Conjunction proposal or a CARI
12 proposal, and I don't know if CARI is saying we are
13 going to follow the Conjunction proposal but be
14 underground at all times, unlike the Conjunction
15 proposal.

16 That's the explanation of my confusion.
17 Now, let me actually start with CARI because CARI does
18 have a buried Thruway alternative, which I think is the
19 Thruway alternative that the staff was referring to in
20 their testimony which NYRI is now rebutting in their
21 testimony.

22 Those are the complications. Can you
23 explain that to me, counsel.

24 MR. KLUSCIK: I was just going to ask

1 whether there was a question in there somewhere.

2 JUDGE STOCKHOLM: Yes. Explain my
3 confusion, please.

4 MR. KLUSCIK: Your Honor, I don't have the
5 volumes of material that represent the Conjunction
6 application immediately available.

7 I would also note that what was proposed as
8 part of CARI's underground Thruway buried cable
9 alternative incorporated materials from that Conjunction
10 application as a description of the leg of that proposal
11 that basically runs north and south. There is also a
12 component of our proposal that runs east-west right from
13 Marcy.

14 JUDGE STOCKHOLM: Right.

15 MR. KLUSCIK: As a general proposition, our
16 proposal is one that would have that alternative
17 underground the entire length from Marcy to its terminus
18 in New York City, but for what we would expect to be the
19 rare occasion when there is a physical impossibility of
20 construction to do otherwise.

21 JUDGE STOCKHOLM: Fair enough. That
22 clarifies one point.

23 Mr. Thompson, let me go back to you. You
24 made reference in your answer to -- I think you used the

1 word project and in your answer described Thruway buried
2 alternative that would come above ground in some
3 circumstances.

4 And my question is: What project are you
5 referring to when you said that?

6 (Thompson) I apologize. I thought we were
7 focused on the CARI Thruway alternative project.

8 JUDGE STOCKHOLM: Okay.

9 (Thompson) That was in reference to that
10 project.

11 JUDGE STOCKHOLM: You are saying your
12 testimony was in error with regard to the above ground
13 portions?

14 (Thompson) No. I was quoting what was in
15 the Conjunction documentation that was provided as part
16 of the CARI alternative.

17 JUDGE STOCKHOLM: Thank you. That's exactly
18 what I wanted.

19 Counselor, I am sorry for the interruption
20 but it really was very confused in my mind.

21 MS. LEARY: Your Honor, I thought that was
22 very helpful to clarify that for the record.

23 I just have a couple more things.

24 BY MS. LEARY:

1 Q. At page 27 of your testimony, at lines six
2 through nine, you state that -- I don't want to take
3 this out of context so I'm going to read the preceding
4 sentence which begins at line three.

5 However, it is important to note that Mr. LaFleur
6 fails to provide details regarding the impact of the
7 number of road crossings (i.e. 224) associated with
8 CARI's Marcy South buried cable alternative. In
9 contrast, NYRI has proposed to schedule deliveries of
10 oversized equipment during traffic off peak hours and
11 coordinate with the New York State Department of
12 Transportation to avoid and minimize impacts to traffic.

13 What is meant by off peak hours? Is that off
14 rush hour peak or is that at night? What is off peak
15 hours?

16 A. (Bucci) It's a general term meaning when the
17 roads are not at their peak usage, as we would
18 discontinue, we would coordinate that whole situation
19 with the DOT, New York State DOT.

20 Q. What is your understanding of not at their peak
21 usage? When would that be?

22 A. (Thompson) I think it's fair to say it varies
23 from region to region, that there are some roads that
24 obviously are very heavily dependent upon businesses

1 that operate during the week days.

2 That would be totally different out in an area
3 that might be more of a resort area where they are
4 heavily traveled on weekends. So, I think what Rich is
5 saying we would work with DOT and coordinate
6 appropriately.

7 Q. Would you agree to an Article VII certificate
8 condition that limited the hours on which you would be
9 able to deliver oversize equipment along the NYRI route?

10 A. (Thompson) Again, which hours would you limit it
11 to? In one case you might be putting it in peak usage
12 for a certain type highway, and another area you might
13 be putting it in an off peak.

14 So, just to say -- I guess -- are you saying
15 would we be willing to coordinate with them specific
16 areas to specific limitations? Is that what you are --

17 Q. No. I was assuming that the certificate would
18 take into consideration those two situations that you
19 just mentioned, and would indicate what off peak hours
20 during the week were and off peak hours were during the
21 weekend in a particular geographic location that was
22 certified.

23 A. (Thompson) That's what I am saying. I think it
24 varies all up and down the line.

1 Q. Assuming it does vary. So, the certificate would
2 say that NYRI may not deliver oversize equipment during
3 peak hours in these particular regions during the week
4 and on weekends in, say for example, resort areas?

5 MR. SINGER: Your Honor, if I could step in
6 here and help out. A number of the municipalities have
7 laws that govern the delivery and the use of oversized
8 vehicles. We didn't request waivers from any of those
9 so we intend to comply with all local laws that address
10 this issue.

11 JUDGE STOCKHOLM: And there are also state
12 laws enforced by DOT that you could not waive. You
13 would have to comply with them.

14 MS. LEARY:

15 Q. So to the extent -- I did attempt to get through
16 all the waiver requests last night and I fell asleep,
17 but it was several inches -- to the extent that a
18 municipality does not have a local law that would
19 prevent the use of roads during peak hours, would NYRI
20 agree to a certificate condition that would impose that
21 type of limitation?

22 A. (Bucci) There is no definition of oversized
23 equipment either specifically --

24 Q. Mr. Bucci, you are using it on page 27.

1 A. (Bucci) As a general term, yes. It would have to
2 be defined, and that definition could vary from area to
3 area, road to road.

4 Q. So, what's oversized for one road isn't oversized
5 for another road?

6 A. (Bucci) Not necessarily, yes.

7 Q. Let's take the smallest road and the biggest
8 equipment. How about that as an example. Would you
9 agree?

10 A. (Bucci) We might not use that road if the
11 equipment was too big for the road.

12 Q. This is -- I am sensing that the answer might be
13 no or it might be I don't know, but can you give me one
14 of those two answers.

15 JUDGE PHILLIPS: How has this not been
16 responded to by what counsel said? I think this has
17 been answered.

18 MS. LEARY: There are certain municipalities
19 that do not, in fact, have the types of regulations in
20 place.

21 JUDGE STOCKHOLM: Yes, but DOT does and
22 DOT's laws have to be complied with.

23 MS. LEARY: Understood.

24 JUDGE STOCKHOLM: To be honest, I don't

1 think that this panel has the information today where
2 they could sit down and agree to a condition that would
3 specify road by road, and hour of day by hour of day
4 when they can put oversized equipment on that road.

5 It's a level of detail that is, in my
6 experience, always dealt with during the EM&CP, and
7 usually handled directly between the applicant and the
8 New York State Department of Transportation.

9 So, I appreciate your interest in these
10 details, but I think that the details can't be provided
11 today, or at least I haven't heard this panel being able
12 to provide them.

13 MS. LEARY: I am hearing that, too.

14 BY MS. LEARY:

15 Q. I refer you to page 46 of your testimony in which
16 you discuss -- lines 18 to 20 -- a preconstruction noise
17 monitoring program.

18 Is it a correct assumption that this will be
19 performed after the certificate is issued and as part of
20 the EM&CP?

21 A. (Wood) Yes, that is correct.

22 Q. How would that monitoring program be done?

23 A. (Wood) Generally speaking, it would involve
24 taking sound ambient sound level measurements at both of

1 the converter site locations over a period of time,
2 typically over 24 hours to 36-hour period. We would
3 have to design the program, but that's generally what it
4 would be.

5 Q. Is there is a reason that it can't be done before
6 the certificate is issued? Or is it just -- is there a
7 reason it can't be done before the certificate is
8 issued?

9 A. (Thompson) One of the issues as part of the
10 certificate is on the southern end we have two potential
11 converter locations. We don't have access to either of
12 those properties to install that equipment to monitor
13 that. Is there a reason why you would look to try to
14 have it done in advance?

15 Q. Just to assess impact, noise impact.
16 Have you requested access?

17 A. (Thompson) As I indicated, we don't even know
18 which site we are trying to access, so, to answer your
19 question, no, I am sorry.

20 Q. I am sorry. I may have misunderstood this. I
21 apologize.

22 I believe this refers to sound levels at each
23 converter station?

24 A. (Thompson) Correct.

1 JUDGE STOCKHOLM: Are there standards for
2 sound that -- maximum sound at those converter stations
3 that are discussed in the application?

4 MR. SINGER: I think it's 4.16 if that helps
5 you.

6 (Bucci) The southern converter station
7 located in the towns of New Windsor and Hamptonburgh
8 both have zoning ordinances that do limit noise levels.
9 Both towns have zoning ordinances that limit noise
10 levels measured at a facility's property line.

11 JUDGE STOCKHOLM: Have you requested waiver
12 of those requirements?

13 Counsel, do you know?

14 MR. BISSELL: No, we have not.

15 JUDGE STOCKHOLM: Thank you.

16 So, let me just cut to the chase. There are
17 standards that currently exist under the law which you
18 intend to comply with I assume; is that correct?

19 (Wood) Yes. That's correct.

20 MR. BISSELL: Your Honor, if it's helpful
21 there is also a preliminary report provided in Appendix
22 Q of the application and that is also covered by panel B
23 which will be available on Monday.

24 JUDGE STOCKHOLM: Thank you. With regard to

1 noise.

2 MR. BISSELL: Yes.

3 MS. WILKINSON: Your Honor, is Mr. Thompson
4 going to be on panel B?

5 (Thompson) I am.

6 MS. WILKINSON: Thank you.

7 MS. LEARY: I have nothing further, Your
8 Honor.

9 JUDGE PHILLIPS: Thank you.

10 I just actually want to do a revised time
11 check because obviously mine was way off. I thought we
12 were going to take about a half hour or so for what has
13 now taken several hours.

14 I believe DOT had questions; is that
15 correct?

16 MS. HINTZ: I do, your Honor. I think maybe
17 15 minutes, but I don't know.

18 JUDGE PHILLIPS: And DEC you had said hour
19 and a half to two hours.

20 MS. WILKINSON: We may be shorter than that
21 now with all the questions that have been asked.

22 JUDGE PHILLIPS: Mr. Malone, you wanted to
23 ask I thought one question. Is it really one question
24 or is it three or five?

1 MR. MALONE: Depends what the answer is,
2 Your Honor. It will be very brief.

3 MS. HINTZ: In terms of Mr. Mariotti, I know
4 that he wanted to watch the film today.

5 JUDGE PHILLIPS: I'm trying to get a sense
6 of when we would get him on. Right now it sounds like
7 maybe 3:30 he might be going on but that's a rough
8 guess.

9 How long will the DVD take?

10 MR. SINGER: Three hours.

11 JUDGE PHILLIPS: I'm not even going to say
12 anything.

13 Mr. Malone, do you want to ask your
14 question before lunch, or three or five?

15 MR. MALONE: That would be great. I promise
16 it won't take any more than five minutes.

17 JUDGE PHILLIPS: Thank you.

18 BY MR. MALONE:

19 Q. Mr. Thompson, in response to Judge Stockholm's
20 question you indicated that one of the first versions or
21 iterations of your proposed line was to bring
22 electricity into the New York City metropolitan area; is
23 that correct?

24 A. (Thompson) That is correct.

1 Q. Then you listed a number of obstacles, or
2 testified to a number of number of obstacles and as a
3 result of that you made a decision to I think you said
4 metamorphoses the line or basically scale back the line;
5 is that correct?

6 A. (Thompson) That is correct.

7 Q. Would you agree that the NYRI ideal project would
8 have been to bring your transmission line into the New
9 York City metropolitan area?

10 A. (Thompson) I don't think I would characterize it
11 that way, no.

12 Q. How would you characterize it?

13 A. (Thompson) I think that it would have been a
14 viable option for the project to go into New York City.

15 Q. It was your first option, correct?

16 A. (Thompson) Well, obviously looking at the total
17 congestion and the difference in pricing, the total was
18 greatest was from upstate to New York City.

19 So, it appeared that from an economic benefit
20 that probably would have been the greatest differential.
21 I was just going to say from a practical project
22 standpoint, as I pointed out, eventually you make a
23 project so large with so many difficult obstacles to
24 overcome, and the cost of that particular project

1 becomes so great, I think it becomes almost
2 insurmountable to achieve.

3 Q. If some of those obstacles were not there, you
4 would have wanted to bring your line into the New York
5 City metropolitan area, correct?

6 A. (Thompson) Without doing any of the studies we
7 have got it appeared that would have provided the most
8 economic benefit, that is correct.

9 (Bucci) Can I jump in here. And are you
10 considering the technical obstacles or just conceptual
11 obstacles? In other words, if New York City was an open
12 area where you could just plop a converter station down,
13 is that one of the possibilities in your concept of -- I
14 mean New York City is not going to change. New York is
15 there. That obstacle is there. So to plop down a
16 converter station is a technological challenge that I am
17 not sure a project like that could overcome.

18 Q. Here's my question. The first line that was
19 proposed went from Edic down to New York City, correct?

20 And then Mr. Thompson testified that there were
21 certain obstacles and that he had to make a business
22 decision and scaled back his project, correct?

23 MR. SINGER: My objection to that question
24 is the characterization of the first line that was

1 proposed.

2 There was no proposed line going into New
3 York City. I think what Mr. Thompson stated was that it
4 was considered by NYRI at one point, just like any other
5 type of potential alternate may have been considered.

6 JUDGE PHILLIPS: That was my understanding
7 as well so could you maybe restate that. It was never
8 officially proposed to us.

9 MR. MALONE: I understand, your Honor.

10 Q. One of the first concepts that you had was to
11 bring the line from Edic into the New York City
12 metropolitan area, correct?

13 A. (Thompson) Correct.

14 Q. But for the fact that you encountered what you
15 perceived to be certain obstacles, that would have been
16 your plan, correct?

17 A. (Thompson) That's not necessarily true. Like I
18 stated, that was the first cut of basically just looking
19 at economics. We hadn't looked at environmental. We
20 hadn't looked at technical issues. We hadn't looked at
21 costs or looked at a whole bunch of other factors.

22 So, obviously, all of those things enter into the
23 decision as to where we would have picked it to go to or
24 evolve to.

1 Q. If those had not come up as obstacles, if they
2 had worked out, that would have been your plan, correct?

3 A. (Thompson) I don't believe so. As I stated
4 earlier, the economic benefit of the project, as
5 compared to the economic benefit of that project as we
6 now know, including now all of the additional costs in
7 getting to where we are, and including the technical
8 challenges, that would not be the project we would
9 collect.

10 Maybe I am -- that's what you are saying, I
11 should ignore all of that. I am not sure.

12 MR. MALONE: I have no further questions.

13 MR. BLOW: Your Honor, may I have one follow
14 up based on Mr. Malone's questions?

15 JUDGE PHILLIPS: Go ahead.

16 BY MR. BLOW:

17 Q. Didn't NYRI present to the various staff members
18 in the early stages of development a route that would
19 have gone to -- from Edic into New York City?

20 A. (Thompson) That's correct. What was originally
21 put together was the railroad right of way which they
22 had acquired. And thinking -- not knowing any of the
23 other factors yet -- that was the interconnection.
24 That's what I stated. That's where the original premise

1 of the project came from, originated before any
2 engineering, economic, environmental studies or anything
3 else were done.

4 MR. BLOW: Thank you.

5 JUDGE PHILLIPS: We are going to break for
6 lunch until 1:40. Thank you.

7 (Luncheon recess taken.)

8 JUDGE PHILLIPS: Please come to order. We
9 will continue with the cross-examination from DOT and
10 then DEC.

11 BY MS. HINTZ:

12 Q. Yesterday there had been testimony about the life
13 expectancy of underground cables. I believe Mr. Bucci
14 talked about the life expectancy being typically 20 to
15 30 years.

16 I have some questions about underground cables.
17 How is the end of the life of an underground cable
18 determined?

19 A. (Bucci) You mean when is the life over or when do
20 you predict it to be over? I mean, which one?

21 Q. Well, both. Do you do on site inspections? Do
22 you have a schedule that you follow? How do you know
23 when the cable has the reached end of its useful life?

24 A. (Bucci) Usually you have field testing

1 periodically of the cable. Ultimately when it fails is
2 when the life is over, but you will be testing -- you
3 can get some indication from that from testing.

4 Q. And is the testing done at manholes or specific
5 sites along the line, or is it random sites along the
6 line?

7 A. (Bucci) Usually testing is done at a terminal
8 point where you can get access to the conductor.

9 Q. At the end of a cable's useful life is it removed
10 or replaced in kind, alongside?

11 A. (Bucci) It depends on the installation. Some
12 cables are removed. Some cables are left in place.
13 Just depends on the specific situation.

14 Q. What are some of the factors or the specifics
15 that would lead to a determination of whether it's going
16 to be replaced altogether or something else is done?

17 A. (Bucci) When you say replaced altogether, it is
18 replaced in the circuit with another cable, or sometimes
19 -- if it's just one portion of the cable that's not
20 usable anymore could be another piece could be spliced
21 in.

22 Q. Would deviations in a route of the underground
23 cable, or the need for additional joints in the
24 underground cable, reduce the expected life expectancy

1 of the cable?

2 A. (Bucci) Additional joints would reduce --
3 additional joints would increase the failure probability
4 of the cable. So, there is not a direct correlation
5 between useful life and failure probability.

6 Q. Could you describe the type of operation that's
7 generally required to repair an underground cable?

8 A. (Bucci) Actually, we described that in the
9 testimony a couple days ago, but I could briefly restate
10 it.

11 You need to cut out the -- let's, first of all,
12 you need to locate where the failure occurred, and then
13 you would -- if it was trenched cable, direct buried
14 cable, you would have to dig up the cable, cut out the
15 failed piece, find out why it failed, see if they could
16 be possibilities of damage on the rest of the cable.

17 And then you would either, if there was enough
18 length in the cable you could do a splice to repair it.
19 Otherwise you would have to bring in a new piece.

20 If the cable was installed in conduit you would
21 have to go to the nearest manhole and pull out -- pull
22 the cable, the failed part out, and pull a new piece in,
23 splice it at each end.

24 That may sound like a simple explanation, but

1 that's the basic steps. Each one of those steps
2 obviously involves some analysis and decisions to be
3 made based on what you actually find when you look at
4 the failure.

5 Q. And with an underground cable, can it be
6 installed in a rock slope area or a rock -- bed rock
7 area?

8 A. (Bucci) Yes, it can.

9 Q. How would it be installed there?

10 MR. BISSELL: Your Honor, I object. These
11 all appear to be questions that should have been
12 directed to when the witness panel B, in terms of
13 construction methodology, was up.

14 I am not sure where this is related to the
15 testimony for panel A in regards to the construction
16 methodology for underground cable.

17 MS. HINTZ: I'm sorry, your Honor, but there
18 was testimony earlier regarding construction in the
19 railroad beds for this panel.

20 JUDGE STOCKHOLM: Yes, as a matter of fact,
21 I think questions for this panel have gone well beyond
22 where this panel has testified; however, I will allow
23 you a few more questions in that line.

24 MS. HINTZ: That was the only question in

1 that line, how it might be installed in a rock slope
2 area.

3 (Bucci) Did you say rock slope area.

4 BY MS. HINTZ:

5 Q. Bed rock or rock slope. If you encounter
6 anything but soil, pure soil.

7 A. (Bucci) We have a blasting plan as part of the
8 application that describes if you were going to use
9 blasting method how you would go about that controlled
10 blasting, which you could -- that would be most likely
11 way if you encountered rock in the spot where you need
12 to have a trench.

13 Q. That blasting plan would be part of the EM&CP?

14 A. (Bucci) Yes. If we decided that we needed to
15 blast, yes.

16 Q. My last question is: Regarding the EM&CP, what
17 is the estimated time frame for preparing and completing
18 an EM&CP, if you know?

19 A. (Thompson) What we have proposed in the offering
20 is that we will break the project into multiple segments
21 so that we can deal with individual pieces and get
22 individual pieces on the EM&CP approved.

23 So, it could be multiple -- each one of those
24 segments, I don't know, I think overall I think the

1 project was expecting probably 12 to 18 months to
2 complete the entire process.

3 I don't know if that answers your question.

4 Q. It does. When you mentioned segments, are you
5 talking route segments, or type of work segments or
6 both?

7 A. (Thompson) It would be primarily route segments.
8 I would expect each of the converter stations on each
9 end is one separate EM&CP and then the balance of the
10 line would be broken into segments.

11 MS. HINTZ: Nothing else, Your Honor.

12 JUDGE PHILLIPS: Thank you. Let's move to
13 DEC.

14 MS. WILKINSON: Thank you, Your Honor.

15 Q. I wanted to follow up on the last question from
16 Ms. Hintz. And what I need a better understanding of is
17 the construction schedule -- not the construction
18 schedule but the schedule for going from certification
19 to operation.

20 So, assuming you got your certificate in August,
21 I am trying to understand what steps would be involved
22 in the time line to go from that to operation.

23 A. (Thompson) There are still a number of parallel
24 paths that are ongoing besides the site certification.

1 There is also a New York ISO process going on relative
2 to the facility study.

3 There is some additional ongoing rate regulations
4 proceedings that we are dealing with at FERC. So there
5 are a number of these sorts of issues going on.

6 Going back specifically just to the Article VII
7 process, after the certification the next step in that
8 process would be the EM&CP process. There may be some
9 stipulations in the certificate requiring certain work,
10 certain studies done prior to moving into the EM&CP, but
11 that would then get rolled into the EM&CP.

12 As we discussed, our plan is to break the EMC
13 process into segments or portions and those would be --
14 we mentioned that would probably take 12 to 18 months
15 depending upon how extensive or how difficult some of
16 that became.

17 At that point or somewhere, some of these things
18 could overlap or they may not, depending upon if things
19 are being litigated or challenged in court.

20 We also have the right of way acquisition issues
21 for whatever properties that we don't have existing
22 right of way. So, we would have to work on those
23 issues. Depending upon which site or which route we
24 take there is varying amounts of that. Obviously the

1 railroad route, we already have a large portion of the
2 right of way secured there.

3 Q. Let me -- we might have to break this up. This
4 might have to be more than the five-minute version.

5 On day one you get your certificate. Following
6 that, is it your intention to go directly to the
7 preparation of the EM&CP?

8 A. (Thompson) As I mentioned, there is a number of
9 parallel path activities going on right now.

10 Q. I understand, and --

11 A. (Thompson) What those are doing.

12 Q. I want to focus on Article VII just so that we
13 can proceed in a focused way, so I am not asking about
14 the other parallel paths.

15 A. (Thompson) I'm just telling you. That would --
16 some of those could impact how quickly we move into the
17 next stage.

18 Q. Okay. Maybe we need to focus on that. Why don't
19 you go and explain that, please?

20 A. (Thompson) That's what I thought I just did. I'm
21 just saying there are a number of moving pieces here.

22 Q. I understand. What I am trying to understand is:
23 After you get your certificate, what are your
24 expectations with respect to the Article VII, what you

1 need to do.

2 Not what you need to do with NYISO, not what you
3 need to do with FERC, but what you need to do to
4 construct and build your transmission project.

5 A. (Thompson) Sure. As I said, there may be
6 stipulations in the certificate that require us to do
7 some additional work prior to moving forward with the
8 EM&CP.

9 Q. So you would start with your studies prior.

10 A. (Thompson) Probably so, correct. That's one of
11 the things.

12 Q. Do you have an estimate for how long that would
13 be?

14 A. (Thompson) You asked the Judge how many
15 stipulations I am going to have and I mean -- no. I
16 have no idea.

17 In addition to that, depending upon which route
18 is selected, one of the issues is going to be right of
19 way obtaining. We will at least need some options for
20 some of the right of ways just to gain access to do some
21 of the preliminary work and whatnot in support of the
22 EM&CP.

23 We will also have to do surveying. We will begin
24 the detailed design and that then begins to formulate

1 some of the other issues.

2 There is -- I know as part of the EM&CP there is
3 a number of environmental plans and so forth. So, there
4 is a number of activities that all go into the EM&CP.
5 So, there is all of that preliminary work even before we
6 start to file the first segment of the EM&CP.

7 Q. Do you have an outside date that you are
8 discussing with your investors for when the project
9 would be operational?

10 A. (Thompson) No, for all the above reasons that we
11 have just discussed we have told them we cannot even
12 begin to estimate. I mean there is I guess an earliest
13 possible that would be the most optimistic, which is
14 probably 2012, that if everything were just to go
15 perfectly and everybody felt really good about things
16 and everything fell in place, we could probably achieve
17 that.

18 If we have litigation, if we have other issues or
19 problems, then it could be extended.

20 Q. Mr. Thompson, have you ever represented to
21 investors an operational date for the project?

22 A. (Thompson) We have had target dates, certainly.
23 Obviously, we put together what we thought might be a
24 reasonable estimate. Back when we filed our original

1 2006 filing we had a target date. When we filed or
2 updated our supplement obviously we delayed that date.

3 Q. Understandably. I believe the target date -- I
4 believe in response to a discovery request DPS 105
5 asking for -- excuse me 106 -- asking for presentations
6 made by NYRI to banks or other entities, and
7 understandable this was --

8 MR. BISSELL: Your Honor, can the witness
9 please see a copy of this reference to discovery
10 response.

11 MS. WILKINSON: Absolutely.

12 JUDGE STOCKHOLM: Absolutely.

13 BY MS. WILKINSON:

14 Q. Mr. Thompson, I am just going to preface this I
15 think this was in your 2006 filing, and you said that
16 you expected to complete the Article VII process in
17 2007, that you would commence engineering and
18 construction in early 2008, and commercial operation in
19 2011?

20 A. (Thompson) That's probably consistent with what
21 we still believe are most of those durations.

22 Q. Okay, so --

23 A. (Thompson) We basically think there is about a
24 three-year construction period. We basically believe

1 that the EM&CP process is probably a 12 to 18-month
2 period.

3 But there are obviously, depending upon the
4 selected route and some of these other issues that we
5 talked about when those different activities begin
6 changes fairly significantly.

7 Q. Have you -- with reference to the attachment to
8 DPS 106, have you updated that presentation for
9 investors?

10 A. (Thompson) Relative to the last page, which I
11 believe you are referring to, the plan says -- which has
12 got the schedule dates, milestone dates?

13 Q. We will start there. Have you updated that?

14 A. (Thompson) We had discussions about all of these
15 things. Certainly what we told them now is the Article
16 VII process will not be complete in late 2007. We
17 believe it will be complete in August 2009.

18 Q. So, your testimony is that you have not updated
19 that document, you just had discussions with investors?

20 A. (Thompson) Yes, because beyond being able to
21 forecast when the Article VII process we believe is
22 going to end, we really have no certainty on a lot of
23 other moving pieces at this point in time.

24 Q. You have not developed another document that you

1 are presenting to potentially new investors?

2 A. (Thompson) No. We have not had specific
3 discussions with new investors or new anybody recently.

4 Q. So, we are looking at, though, about a three-year
5 time frame.

6 A. (Thompson) For construction.

7 Q. Looking at that document I take it it stated that
8 operation was expected in 2011; is that correct?

9 A. (Thompson) According to this one, that was
10 correct.

11 Q. And it expected commencing correction --

12 A. (Thompson) 2008, three-year construction period.

13 Q. Construction would commence about a year or so
14 after you got your certificate.

15 A. (Thompson) That was our thinking back then, yes.

16 Q. Is it your thinking today that construction would
17 commence about a year after you got your certificate?

18 A. (Thompson) No, as I just mentioned, as a minimum
19 the EM&CP process probably is going to run 12 to
20 18 months. We also have right of way acquisition issues
21 that, depending upon which route we take, may extend
22 that in addition to that, so...

23 Q. You have no estimate -- do you have an estimate
24 on the amount of time that's going to be required to

1 acquire property rights?

2 A. (Thompson) No, because it varies depending upon
3 which route is certified. As I mentioned, if we are on
4 the railroad we have a significant amount of the right
5 of way already acquired. If we end up going one of the
6 other routes, then obviously we have that much more land
7 that we are going to have to work on.

8 Q. You talked about doing the EM&CP in segments.

9 A. (Thompson) Correct.

10 Q. Is it your expectation that you will get approval
11 for those segments and then commence construction on the
12 segment doing it step wise fashion?

13 A. (Thompson) That was our expectation, yes.

14 Q. So, before -- you would not then have an EM&CP
15 for the entire route approved, you would have segments
16 approved and as soon as soon a segment was approved you
17 would then begin constructing that segment; is that your
18 expectation?

19 A. (Thompson) That was our expectation, that there
20 would be a general EM&CP process in the front that
21 basically established certain guidelines, parameters and
22 whatnot that the segments could be detailed out and
23 proceeded from.

24 Q. Is that general EM&CP process what you envision

1 to come out of this Article VII proceeding, or something
2 else?

3 A. (Thompson) I guess I don't quite understand.

4 Q. Sure. Once you get your certificate you are
5 going to have certificate conditions?

6 A. (Thompson) Correct.

7 Q. Do you envision having an EM&CP at that point in
8 time as a spring board for your more detailed segment
9 EM&CPs?

10 A. (Thompson) I don't believe so, if I am
11 understanding your question.

12 Q. I am just trying to understand what you are
13 saying. Your testimony is that you want to do EM&CPs in
14 segments. Is there going to be an umbrella EM&CP that
15 will cover all the segments?

16 A. (Thompson) Maybe I am getting too far ahead of
17 myself and pass that on to something else.

18 Q. You're the president?

19 A. (Thompson) There were going to be certain
20 parameters, certain guidelines, certain things that we
21 would agree to up front with all of the agencies on how
22 we were going to proceed with the project.

23 That we were going to work on the detailed design
24 and those individual pieces then would -- utilizing

1 those general agreements -- would work out all the
2 specific details for that specific segment.

3 That segment then could, in fact, be certified or
4 given an approval on the EM&CP and at that point that
5 portion of the line could, in fact, begin construction.

6 Q. Would that commencement of construction occur
7 potentially before you completed your detailed site
8 specific studies of the entire route?

9 A. (Thompson) I don't believe there are site
10 specific studies for the entire route. I believe there
11 are site specific studies for the specific sites or
12 portions of the site.

13 Q. Let's take an example. If you completed your
14 EM&CP for the northern converter station, correct?

15 A. (Thompson) Correct.

16 Q. And you hadn't completed your studies for the Rio
17 reservoir, would you anticipate --

18 A. (Thompson) You would propose with the northern
19 converter.

20 Q. You would proceed with the northern converter not
21 withstanding that there were still outstanding studies
22 and EM&CP on the Rio segment?

23 A. (Thompson) Probably so. That was the intent of
24 breaking it into segments.

1 Q. All right. With respect to property acquisition,
2 you are aware that the state has some issues and
3 concerns with the crossing of the Rio.

4 Have you been in discussions with anyone
5 regarding the acquisition of that property at the Rio
6 reservoir that you would need to build your facility as
7 proposed?

8 A. (Thompson) Our intention was not to acquire
9 property, I don't believe, at the Rio river. I am not
10 aware of any specific discussions.

11 Q. According to the application you are going to be
12 crossing I think approximately 135 feet of land that's
13 owned by the State of New York.

14 Have you had discussions with the State of New
15 York regarding the acquisition of that land?

16 MR. BISSELL: I just ask for clarification.
17 Are you asking about property rights or actually
18 acquiring that land in fee?

19 MS. WILKINSON: Well, anything. Either of
20 the above.

21 Q. What you need to do in order to be able to build
22 your project on state owned land, have you had any
23 discussions with the State of New York?

24 A. (Thompson) Not that I am aware of.

1 Q. Are you aware of the testimony of Mr. Keating
2 regards the state's position on at least some of that
3 property -- I believe the 135 feet along the shore line
4 -- that's owned in fee by the state?

5 Have you read his testimony?

6 A. (Thompson) I don't recall it at the moment, no.

7 Q. Mr. Thompson, we are getting into somewhat of a
8 legal position, but I am concerned because we have a
9 construction schedule on a project and anticipation that
10 once a route is certified will be able to be
11 constructed.

12 My question is: Let's assume hypothetically that
13 the state owned land would be subject to a
14 constitutional amendment if the state were to grant
15 property rights. Let's just assume for discussion that
16 we had a constitutional amendment that needed to be
17 completed before you could have rights to that property?

18 A. (Thompson) Okay.

19 Q. That process is a very long and drawn out
20 process. I guess my question is: If it appears that
21 that process, acquisition process, is taking a very long
22 time to complete --

23 MR. BISSELL: Your Honor, I object. Is
24 there a foundation as to the time in which that process

1 is going to take?

2 MS. WILKINSON: The foundation for the
3 process is in Mr. Keating's testimony and I believe he
4 testified about the need and the constitutional
5 amendment, that you need to have passage of two separate
6 sessions of the legislature and it needs to go a vote of
7 the state.

8 JUDGE STOCKHOLM: I believe twice.

9 MS. WILKINSON: Twice.

10 Q. And my question is that let's hypothetically
11 assume that's the process because it's not going to be a
12 short process if it is a process.

13 And my question to you is: Is NYRI going to wait
14 for that to play out, or is NYRI going to -- if it takes
15 too long -- come back for a modification of the Article
16 VII certificate to pick a different route?

17 A. (Thompson) I can't address that specifically. I
18 can only say that if that were what was required that
19 the project would evaluate what the various options
20 might be and what the repercussions of those things
21 might be, and make a decision.

22 Q. Do you agree that it would be very expensive for
23 NYRI to have to go to plan B if plan A, which involved
24 the crossing of the Rio, could not be executed or not

1 executed within a reasonable time frame to meet your
2 construction deadlines?

3 MR. BISSELL: Objection, your Honor. I have
4 no idea what we are comparing between plan A, plan B and
5 for the expensive reference.

6 Q. We will go at it very slowly. Let's assume that
7 we are going through this constitutional amendment
8 process, and we are 18 months into the process and you
9 don't have your approval, and you have got deadlines
10 that your investors want you to meet with respect to the
11 construction of this project.

12 I would expect -- you can verify -- that you
13 would possibly change your routing in order to proceed
14 more quickly with the project? Yes or no?

15 A. (Thompson) I think that I can't answer that.
16 Obviously trying to change the route is not going to be
17 a simple, quick, easy thing either.

18 As I said, we would obviously continue to
19 evaluate circumstances and make decisions.

20 Q. Understood, but you have a cost estimate for the
21 project, and if you need to change the routing of the
22 project after certification do you agree that could run
23 into a lot of money?

24 A. (Thompson) Changing the route, absolutely. It's

1 another delay as well.

2 Q. Delay in time and money?

3 A. (Thompson) Correct. Time is money.

4 Q. It is. If you had to go back to another Article
5 VII process to get approval for that revised route that
6 would continue to be time and money; would it not?

7 A. (Thompson) I would agree with that.

8 Q. Mr. Thompson, I want to focus for a minute on
9 alternative D.

10 A. (Thompson) Okay.

11 Q. You testified this morning, and I just want to
12 make sure I have an understanding, am I correct that
13 NYRI's intent in presenting these alternatives is not
14 necessarily to express an opinion one way or the other
15 but just present information to the Commission, or do
16 you have an opinion?

17 MR. BISSELL: Objection, your Honor. It's
18 already been asked and answered this morning as regards
19 to the foundation of the alternates in Exhibit 3.

20 MS. WILKINSON: Your Honor, I'm not going to
21 belabor this, but just to proceed with the rest of my
22 questioning, I just want a foundation.

23 JUDGE STOCKHOLM: I will allow it as a
24 foundational question.

1 (Thompson) As I explained this morning,
2 there are a number of factors that obviously are
3 utilized in evaluating routes. And so what we try to do
4 is if one route seemed to be heavily criticized in one
5 area, we would try and find an alternate that might
6 offer up something else.

7 It would have some benefits, but some
8 detriments as well. Our initial proposal tried to
9 minimize the amount of new land that would be converted
10 into a transmission line right of way. That's why we
11 tried to stay on the railroad, to address some of the
12 environmental sensitivities that clearly were raised as
13 a concern.

14 We found a way around the Nine-Mile swamp,
15 very sensitive area, but then that would require
16 additional land.

17 BY MS. WILKINSON:

18 Q. You don't care that it would require
19 approximately 200 acres? I will give you page number
20 ten.

21 A. (Thompson) 200 incremental acres.

22 Q. Is about what you estimated?

23 A. (Thompson) what we estimated.

24 Q. You note that it would increase project costs by

1 \$2.83 million. Is that the cost associated with the
2 property acquisition?

3 A. (Thompson) Also the additional transmission line
4 distance.

5 Q. I will direct this to the panel. In making this
6 assessment of alternative D, was there any comparative
7 assessment of environment impacts between alternative D
8 and going through the Nine-Mile swamp?

9 A. (Wood) I think the comparison of that route is
10 contained in Exhibit 3, which I believe is what you are
11 reading from, page nine.

12 Q. If you could just focus me on what you are
13 referring to in response to my question on the
14 comparison of environmental impacts.

15 A. (Wood) Again, this is an alternate route. We
16 didn't do a detailed comparison, but it does discuss the
17 differences for this route versus the proposed route in
18 general terms as to why this alternative has been
19 proposed.

20 Q. This alternative was proposed -- was investigated
21 it says to the proposed route to avoid constructing
22 transmission structures in the swamp; is that correct?

23 A. (Wood) That is correct.

24 Q. And did you examine -- maybe you didn't, but did

1 you examine the extent of avoidance that would be
2 achieved by using alternative D versus going through the
3 Nine-Mile swamp?

4 A. (Wood) The avoidance of what.

5 Q. Of the wetlands, for example.

6 A. (Wood) In terms of wetlands, there is a table,
7 exhibit 3, table 18 for alternate D that catalogues the
8 wetlands that would be along that route, and table 17,
9 which is the DEC wetlands. Table 18 is the NWI
10 inventory wetlands.

11 Q. So we could look at those tables in Exhibit 3 and
12 compare them with the tables in Exhibit 4?

13 A. (Wood) Yes, in terms of the wetlands that are
14 crossed. That's what this is.

15 Q. When you look at alternate D did you examine the
16 amount of stream paralleling or crossing that would
17 occur between alternate D and the similar area on the
18 proposed route that alternate D would replace?

19 A. (Wood) Well, the streams along alternate D are in
20 Exhibit 3, table 16.

21 Q. Understood. Does that table indicate whether the
22 crossings would be perpendicular crossings or parallel
23 crossings?

24 JUDGE STOCKHOLM: I don't think you can

1 cross parallel.

2 Q. Traverse parallel versus perpendicular crossings.

3 What I am trying to understand is comparing the
4 alternatives with respect to potential impacts in
5 streams.

6 JUDGE PHILLIPS: I just want to ask: Should
7 that be two different questions, like how many they
8 traverse and then how many they cross? I am just
9 getting confused the way you worded it.

10 MS. WILKINSON: I apologize. Part of the
11 impact assessment is looking at what a project is doing.
12 So, one project may have several perpendicular
13 crossings. Another project may run parallel for
14 extended periods of time.

15 JUDGE PHILLIPS: Right, but my only concern
16 is by mixing the two you make it an overall number, but
17 if you really want to know how many they traverse and
18 how many they cross, maybe you ought to separate that
19 question in the first instance.

20 That's my only suggestion. Is that how you
21 are trying to compare, traverse to traverse and cross to
22 cross, or you want an overall number that has both
23 traverse and cross?

24 MS. WILKINSON: I want the area of impact

1 taking into account how the project is either crossing
2 the streams or running parallel to the streams. That
3 is, a comparative between the two.

4 One project may cross -- you may have 20
5 perpendicular crossings. Another project may have a
6 significant amount of paralleling.

7 JUDGE PHILLIPS: Right. I'm only asking:
8 Do you want to compare apples to apples basically? Do
9 you want to compare how many they traverse on one route?
10 That's all I am asking.

11 MS. WILKINSON: Sure, that's fine.

12 (Wood) I am not sure what the question was.

13 BY MS. WILKINSON:

14 Q. Sure. Why don't we start with just the number of
15 perpendicular stream crossings between the two routes,
16 if you know, and then I will ask my second question
17 after that.

18 A. (Wood) Well, again, table 16 in Exhibit 3 is a
19 listing of the streams that are crossed on alternate D.

20 Q. Is there any indication in that table of the
21 nature of the crossing?

22 A. (Wood) No. Again, Exhibit 3 is the alternates,
23 so we didn't go into this in as much detail. We tried
24 to provide information that you can use to go back and

1 do some level of comparison. We did not do a
2 comparative assessment.

3 JUDGE STOCKHOLM: Alternate D as it exists
4 is overhead; is it not?

5 (Wood) It is.

6 JUDGE STOCKHOLM: All of the stream
7 crossings would be overhead?

8 (Wood) Yes, they would. As would the
9 Nine-Mile swamp. That's overhead also.

10 BY MS. WILKINSON:

11 Q. Now, when you prepared this exhibit, did you
12 consider the differences in mitigation costs between the
13 two alternatives with respect to wetlands?

14 A. (Wood) No. Not specifically, no.

15 Q. And you didn't consider the potential costs
16 associated with mitigation of then the Nine-Mile swamp
17 wetlands which include a number of acres of forested
18 wetlands? I can point you to a section in the
19 application, table 4.13.3.1-1.

20 A. (Wood) Your question is did we consider the cost?

21 Q. The potential cost of mitigation associated with
22 the potential forest clearing in the area of the Nine-
23 Mile swamp?

24 A. (Wood) Again, we haven't done a detailed design

1 and layout on this, so, I think our cost estimates are
2 of a general nature, but we can't come up with a
3 detailed cost estimate until we have done the design.

4 Q. Understood. So, it's possible that the costs - I
5 guess what I am asking is: Is it possible that the cost
6 associated with acquiring 200 incremental acres of land
7 might be partly offset by the costs that would be
8 associated with mitigating the costs to Nine-Mile swamp
9 if the project went through Nine-Mile swamp?

10 A. (Wood) Again, we can't really say at this point
11 in time.

12 MS. WILKINSON: Your Honor, may I mark an
13 exhibit for identification. It's the DEC Policy on
14 Freshwater Wetlands Regulation Guidelines on
15 Compensatory Mitigation. I believe it was referenced in
16 Mr. Jacobson's testimony.

17 JUDGE PHILLIPS: The document described will
18 be marked for identification as Exhibit 237.

19 (Exhibit 237 marked for identification.)

20 Q. Mr. Wood, if you could turn to page four, IV
21 under guidelines.

22 Do you have that?

23 A. (Wood) Yes, I do.

24 Q. And under number one where it says, the first

1 priority is to avoid impacts and then minimize impacts,
2 would you say that alternative D, with respect to
3 wetlands, would avoid more impacts than going through
4 the Nine-Mile swamp?

5 MR. BISSELL: I don't know that it's -- can
6 we get a clarification on the reference you provided.
7 I'm not sure we have the same document.

8 MS. WILKINSON: Does everyone have the
9 wetlands policy?

10 JUDGE PHILLIPS: We have Freshwater Wetlands
11 Regulation Guidelines on Compensatory Mitigation October
12 1993.

13 MS. WILKINSON: That's what you should have.

14 BY MS. WILKINSON:

15 Q. Mr. Wood, starting with guideline number one, do
16 you think that alternate D avoids more wetland impacts
17 than going through the Nine Mile swamp as proposed by
18 NYRI?

19 A. (Thompson) Actually isn't it correct that we have
20 proposed both?

21 Q. Well, I'm talking about --

22 A. (Thompson) We proposed alternate D and we
23 proposed --

24 Q. Okay, let me ask: Which of those two proposals

1 avoids more impacts? Would you agree it would be D?

2 A. (Wood) I mean at this point, based on the
3 information that we have, there are fewer wetlands that
4 are crossed of total acres as far as crossing on
5 Alternate D, that is true, although we haven't done the
6 detailed delineations in the field on either route.

7 Q. No, but the potential clearing that we discussed
8 from -- I hate to say this table number again but I will
9 if I have to.

10 Table 4.13.3.1-1 would seem to note substantially
11 more clearing than is noted for alternate D. That's
12 just the forested.

13 A. (Ernst) I think if we look at Exhibit 3, table 17
14 which indicates the DEC wetlands and the regulated acres
15 were within the alternate route right of way for
16 alternate D, and then you look at the table you just
17 referenced, which also indicates regulated acres within
18 the proposed route transmission corridor, you can see
19 that proposed route transmission corridor contains more
20 acres of wetlands.

21 Q. Thank you. So, alternate D would avoid more
22 wetlands, potentially, than what you proposed going
23 through the swamp?

24 A. (Wood) Yes, that is correct.

1 Q. Mr. Wood, if the route does go through the swamp,
2 you would agree that there is going to be a more
3 significant mitigation effort than might be associated
4 with alternate D?

5 A. (Wood) Potentially, yes.

6 Q. I guess I will ask this of -- I am not sure,
7 Mr. Thompson, if you have read this. But would you
8 agree with respect to wetland mitigation that the NYRI
9 project, in proposing mitigation, would follow DEC
10 policy guidelines as contained in this document?

11 A. (Thompson) I have not seen the document in
12 general, but in general I believe we would be probably
13 try and follow in general certainly published
14 guidelines.

15 (Wood) I think just generally we would follow the
16 DEC guidance as well as the Corps of Engineers to the
17 extent that was applicable and most likely would be on
18 wetlands.

19 Q. You would agree that the Commission, in its
20 ordering clause, if it grants a certificate could order
21 -- I don't want to use the word compliance -- but could
22 order adherence in the guidelines, best efforts in
23 adhering to these guidelines?

24 JUDGE STOCKHOLM: The Commission can, but I

1 am not sure these witnesses can speak for the.

2 MS. WILKINSON: I am asking would they agree
3 to a condition, whether adherence to these guidelines...

4 JUDGE STOCKHOLM: You mean a stipulation in
5 advance? Yes, okay, fine. I will allow your question.
6 Go ahead.

7 MR. SINGER: We would have to take a more
8 detailed look at the document before we could make any
9 kind of commitment.

10 JUDGE STOCKHOLM: That's sort of what was in
11 my head. I mean you can ask them if they would
12 generally agree, but if you want them to specifically
13 agree I think you have to have actual language, would
14 you agree to this language, this paragraph, etc., and
15 then they could give you yes or no answer.

16 I don't know how they can go much further
17 than they have gone without specific language in front
18 of them and then counsel gets involved.

19 MS. WILKINSON: I understand. There's been
20 questions today from other attorneys regarding potential
21 areas of agreement, and this document was referenced in
22 Mr. Jacobson's testimony and the general principles
23 outlined in his testimony, which I presume the panel has
24 read, so that's why I asked the question now with

1 Mr. Thompson from NYRI on the panel. That's why I am
2 asking the question now.

3 JUDGE STOCKHOLM: You understand the
4 limitation of not having specific language in front of
5 them. You can ask them what you have, as other counsel
6 have, and they have generally been satisfied with the
7 representation that, yes, as a general matter we will do
8 X, as you suggest, but it's always qualified with as a
9 general matter because I think there would be many
10 opportunities for the parties to sit down and work these
11 kinds of things out under normal circumstances and that
12 would be much better.

13 But I don't think that you can negotiate the
14 individual language of an agreement during
15 cross-examination. That's my only point. I'm not
16 cutting you off. You can proceed as you will.

17 MS. WILKINSON: We will move on.

18 MR. BLOW: Your Honor, while Ms. Wilkinson
19 is moving to a different topic I do have a question, if
20 you don't mind, on the process that -- and I think Mr.
21 Wood just mentioned it -- the Corps of Engineers.

22 I haven't heard any testimony as to how
23 seeking a Corps permit would fit into the post
24 certification process either, because often it's

1 actually sought during the certification process.

2 So, that's my question. How would that
3 Corps permit be -- when would that be sought? And the
4 follow up, might it not be likely that the Corps would
5 have different conditions than the Commission would put
6 in the certificate?

7 JUDGE STOCKHOLM: You are attempting to ask
8 that question to the panel, I hope, and not to me.

9 MR. BLOW: Yes, your Honor.

10 JUDGE STOCKHOLM: That's a start. I don't
11 know if the panel can answer that question because, at
12 least in part, it may require some legal analysis;
13 however, I will allow them to answer it to the extent
14 that they can.

15 (Wood) I think as a general matter we really
16 can't start discussions with the Corps until we have a
17 definitive route that has been certified. And to the
18 point that we have been able to delineate the wetlands
19 that would be along that route.

20 And so to that extent we would envision that
21 the discussions with the Corps would kind of run
22 concurrently with the development of the EM&CP, and any
23 discussions that we would be having with DEC or staff on
24 wetland issues to try and coordinate the process.

1 BY MR. BLOW:

2 Q. How would you ensure that a certificate condition
3 that has already been imposed by the Commission would be
4 consistent with whatever the Corps might impose? Or
5 would you think it likely to have to come back for
6 certificate amendment?

7 A. (Wood) I think that's why we answered the way we
8 did, that we could generally agree to a certificate
9 condition, but as the Judge pointed out, we need to work
10 out the details.

11 Q. I wasn't talking about what you agreed to. I'm
12 talking about what the Commission imposes.

13 If the Commission imposes a condition in the
14 certificate but you haven't gone to the Corps or you
15 haven't even made a proposal to the Corps, filed the
16 application with the Corps, so you don't even know what
17 the Corps might do, how can you ensure, to the maximum
18 extent possible, that a certificate condition that the
19 Commission has already imposed that you have presumably
20 accepted because there is a condition in the certificate
21 that usually requires the company to accept within 30
22 days or the certificate is void, how can you ensure that
23 a Corps permit condition is not inconsistent with that
24 when you haven't even filed with the Corps?

1 A. (Wood) I think we would have to see the language
2 in the condition and go from there.

3 MR. BLOW: Thank you, Your Honor, for the
4 indulgence.

5 Thank you, Ms. Wilkinson.

6 JUDGE STOCKHOLM: Mr. Blow, in your
7 experience, do Article VII applicants generally apply
8 for Corps permits before a line is certified?

9 MR. BLOW: Your Honor, it really depends on
10 the type of project, but we have seen Article VII
11 applicants apply at least before the Corps for a Corps
12 permit, so that the Corps at least is -- the Corps is
13 aware of the Article VII application and the Article VII
14 process is aware of the Corps application and there can
15 at least be some kind of coordination. This is
16 problematic from our point of view in this regard.

17 JUDGE PHILLIPS: I just have a follow up.
18 If you know, on those instances where they have
19 coordinated with the Corps prior to a certificate were
20 those instances of new construction or were they, for
21 example, a rebuild application?

22 MR. BLOW: Mostly on rebuilds, but I believe
23 there have been smaller projects on which coordination
24 has happened.

1 And the reason I raise the point, I know
2 it's a generation project, but a case I worked on --
3 some of staff people here -- the Athens Generation
4 project I believe there had to be amendments to the
5 certificate or some changes at least after the Corps had
6 approved, even though there was a Corps application that
7 had been filed during the Article X process, but it's
8 problematic I guess.

9 JUDGE STOCKHOLM: I think it has to be
10 problematic. Unless the applicant seeks permission to
11 cross all of those regulated areas on all of the
12 alternatives, I don't know how in the world they would
13 put together an application. And maybe they would be
14 willing to put together an application if you will tell
15 them exactly what routes they are going to have to apply
16 for. That's my concern. I don't know how it could be
17 done in a situation like this.

18 MR. SINGER: Your Honor, I believe that was
19 the concern that Mr. Wood just expressed and they would
20 be also the difference between this project and the
21 Athens project where they had a particular site where
22 they were going to build their facility and they could
23 probably take some preliminary steps with the Corps.

24 It's also my understanding that in a lot of

1 cases it's somewhat of an iterative process between the
2 Commission certificate conditions and the Corps, where
3 the Commission might impose a certain certificate
4 condition and then someone goes to the Corps and says,
5 if the Commission imposed this condition will you, the
6 Corps, approve it or do you want us to go back -- and if
7 you are not going to accept that condition, can we go
8 back to the Commission and say the Corps isn't going to
9 approve that and so need to go back and we need to work
10 something else out.

11 Remember, we are not going to be in the
12 situation unless the Commission determines that there is
13 a public need for the project.

14 JUDGE STOCKHOLM: I am surprised to hear you
15 make that argument.

16 MR. SINGER: I like to state the obvious
17 very often.

18 So, if the Commission does determine, as we
19 hope they will, that there is a public need for the
20 project we would hope that the Commission would work
21 with us and the Corps to come up with conditions that
22 were mutually acceptable so that it could go forward.

23 MR. BLOW: Your Honor, the problem with that
24 is if the Commission is going to make a decision in

1 August and impose certificate conditions, there is
2 pressure little time for us to work with the applicant
3 and the Corps before a certificate gets issued, if one
4 is issued.

5 JUDGE STOCKHOLM: Indeed. I think I was
6 making a point about the speed of this process already
7 today.

8 MS. WILKINSON: May I join in?

9 JUDGE STOCKHOLM: Join in with what?

10 MS. WILKINSON: This discussion of the Army
11 Corps and wetland issues.

12 JUDGE STOCKHOLM: I haven't kept you out of
13 any issues, counselor.

14 MS. WILKINSON: I understand, but so far
15 it's mostly Mr. Blow and Singer.

16 JUDGE PHILLIPS: She just couldn't get a
17 word in edgewise.

18 MS. WILKINSON: That's fine. I just want to
19 remark that DEC attempts in most projects to work very
20 closely with the Corps, and the Article VII examples I
21 have are wind projects, so they are not -- small
22 transmission projects associated with wind.

23 But because of the mitigation requirements
24 of the Corps and the state we try to make it very

1 streamlined for applicants because sometimes they have
2 to acquire property to compensate, for example, forested
3 acres that are being removed.

4 They have to acquire property or development
5 rights to ensure an equal number of forested acres in
6 that wetland complex in that watershed are being
7 protected. And that could take time. And to try to
8 coordinate that so that mitigation for one purpose is
9 the same as mitigation for another so there is not
10 conflicting dual efforts going on.

11 So, I think Mr. Blow has a very good point
12 about trying to coordinate this and make sure that the
13 Army Corps is brought into this as soon as possible so
14 that a mitigation plan can be developed and satisfy
15 everyone's needs.

16 JUDGE STOCKHOLM: I am tempted to ask how
17 many pages of simple applications to DEC and the Corps
18 are necessary for this expedited process; however, I
19 won't ask that question.

20 Nevertheless, every example I have heard
21 here about getting the Corps cooperation and even making
22 decisions, stipulations, whatever, with the Corps in
23 advance of an Article VII certificate was only on
24 Article VII rebuilds. On a rebuild you know exactly

1 where the line is going to go.

2 Here we have 290 mile possibilities, not to
3 mention the smaller deviations. It does not make sense
4 to me that the applicant can, at this time, without
5 wasting a lot of time, perhaps money, put together an
6 application for the Army Corps or for DEC to get Army
7 Corps permits with regard to regulated wetland areas
8 when we don't know where in the world this line is going
9 to go.

10 That is a slight exaggeration. We know it's
11 going to go one of two places assuming it gets
12 certified. I'm sorry. I don't see it as practicable.

13 Is staff aware of any transmission facility
14 where rights were not available to the applicant to go
15 on site longer than 50 miles where the Army Corps
16 applications were negotiated and approved in advance?

17 MR. BLOW: No. The only -- closest analogy
18 might be the Power Authority, but even there they would
19 have rights to get on to have access.

20 My question started with that I hadn't heard
21 any discussion, when we were talking about the EM&CP
22 process, and the post certification process, of how the
23 Corps was going to fit into that. Then I raised the
24 question -- a concern, really, that a certificate

1 condition, unbeknownst to us perhaps because we don't
2 know what the Corps might do, would conflict with
3 whatever the Corps would do in the future.

4 And I wonder whether the panel had any ideas
5 of how to minimize that -- the possibility -- maybe I
6 didn't ask it exactly correctly, but how do we minimize
7 the possibility of conflicts so that we don't need a
8 certificate amendment and wait and spend more time?

9 JUDGE STOCKHOLM: Has the panel considered
10 that -- this particular problem?

11 (Wood) I think we have considered it, Your
12 Honor. I think that's what I tried to described, is
13 just the nature of the project is such at this point
14 that discussions with the Corps really wouldn't get us
15 anywhere. We can't give them the specifics they would
16 typically be looking for. In our view, that would be
17 handled after certification as a coordinated effort, as
18 I mentioned, between the project and DEC and the Corps.

19 JUDGE STOCKHOLM: In your professional
20 opinion, would you be able to fill out an application
21 for Corps permit in all cases without being on site,
22 without having access to physically be there on the
23 ground?

24 (Wood) No, we couldn't.

1 JUDGE STOCKHOLM: Thank you..

2 MR. KLUSCIK: Your Honor, in this line I
3 have perhaps three or maybe four questions at the most
4 related to the physical world rather than the permitting
5 process and its relationship to this Article VII
6 proceeding and the application.

7 JUDGE STOCKHOLM: Does it deal specifically
8 with alternate D?

9 MR. KLUSCIK: In as much as alternate D has
10 implication relative to Corps of Engineers review.

11 I will be very brief.

12 JUDGE STOCKHOLM: I will allow it.

13 BY MR. KLUSCIK:

14 Q. I would ask the panel if you are familiar with
15 the US Army Corps of Engineers no net loss of wetlands
16 policy?

17 A. (Wood) Yes.

18 Q. And would you agree with me that in order to
19 honor the Corps of Engineers' no net loss of wetlands
20 policy it is frequently required that offsetting wetland
21 creation be undertaken in order to achieve that no net
22 less?

23 A. (Wood) Yes, that's true.

24 Q. And would you agree with me that if you had --

1 let me go to the third question.

2 Does the pending Article VII application address
3 or consider in any way the creation of wetlands to
4 offset those that might be taken in the course of
5 project construction?

6 A. (Wood) No, we haven't considered that. We can't
7 really do that until we delineate wetlands and figure
8 out exactly what impacts are going to occur and what we
9 need to mitigate.

10 MR. KLUSCIK: If I can go over by one, I
11 have got one more question.

12 Q. Would you agree with me that the no net loss
13 policy -- give me a moment because I want to make sure I
14 formulate the question in a way that gives us a
15 productive.

16 JUDGE STOCKHOLM: I will give you a moment
17 because this is your bonus question.

18 MR. KLUSCIK: I will stop there, Your Honor.

19 MR. SINGER: Your Honor, just so the record
20 is clear -- I have to belabor this point more than it
21 already has been -- Exhibit 8 does state that we would -
22 and will as a requirement seek to obtain the Corps
23 permits that are necessary.

24 So, to the extent that that permit would

1 require us to follow the no net loss of wetlands policy,
2 I would say that the application does consider that
3 because it does consider obtaining those permits from
4 the Corps.

5 JUDGE STOCKHOLM: Thank you.

6 MR. KLUSCIK: If I may make one observation,
7 Your Honor, or ask that bonus question.

8 JUDGE STOCKHOLM: Okay, go ahead.

9 Q. Does the application identify where such
10 offsetting wetlands would be created?

11 JUDGE STOCKHOLM: Asked and answered.

12 JUDGE PHILLIPS: Let's go back to DEC.

13 MS. WILKINSON: All right, your Honor. I
14 don't want to cover extra ground but there was a lot of
15 intervening discussion, so, if you indulge me for a
16 couple of questions.

17 Q. Mr. Wood, or the panel members, do you agree that
18 there is an order of preference with respect to wetland
19 mitigation? And I can itemize three items if that would
20 help you answer the question.

21 A. (Wood) That would be helpful. Thank you.

22 Q. Not to ask a compound question.

23 The first would be restoration to original
24 conditions. The second would be to create a new

1 wetland. And the third would be some other kind of
2 enhancement.

3 Do you agree those would be the order of
4 preference in wetland mitigation?

5 A. (Wood) Yes.

6 Q. And restoration means fully restoring the wetland
7 functions that were lost by the action?

8 A. (Wood) Yes.

9 Q. Thank you. I just have a couple more questions.
10 I want to turn to alternate K.

11 JUDGE STOCKHOLM: Do you have a station
12 number on alternate K by any chance?

13 MS. WILKINSON: It's at the proposed route
14 location south of station number 134. I'm reading from
15 page 16 of Exhibit 3.

16 Q. My question is: In proposing alternate K did you
17 have -- were you aware of the location of this route
18 through the Wolf Brook multiuse area?

19 A. (Wood) Were we aware that it went through that
20 area, yes.

21 Q. You were. Is there a discussion of that area as
22 a resource in the application? Is it --

23 A. (Wood) No. I don't believe we have listed that.

24 Q. Mr. Wood, are you aware of Mr. Keating's

1 testimony regarding this property?

2 A. (Wood) I don't recall it at this point.

3 Q. Just give us a minute, then. Mr. Wood, we are
4 going to give you a copy of his testimony. If you could
5 turn to page nine and ten of his testimony. Start at
6 page nine, and I am going to start with the first parcel
7 which Mr. Keating notes was acquired with Bond Act
8 monies from 1960.

9 Without reading his testimony into the record,
10 but focusing on lines ten through 23, do you think that
11 the use of this property by NYRI is consistent with the
12 purpose expressed in lines ten through 23 of what the
13 property was acquired for?

14 MR. SINGER: I take it this question is just
15 as a general matter and not as a legal -- seeking legal
16 conclusion?

17 MS. WILKINSON: Generally speaking. I'm not
18 asking for a legal conclusion.

19 A. (Wood) So, your question is do we think it's
20 consistent with this?

21 Q. Boil it down for you. Do you think -- Mr.
22 Keating notes that the lands that this portion of the
23 Bond Act, the goal of it was to acquire lands for park
24 conservation and other recreational purposes.

1 Do you think the NYRI project is consistent with
2 the park conservation and other recreational purposes?

3 A. (Wood) Yes, I think it can be. The route that we
4 are following through the park is adjacent to a NYSEG
5 line that I believe was certified under Article VII, so.

6 Q. So, if there is one transmission line already a
7 second transmission line would be consistent with park,
8 recreational and conservation purposes?

9 A. (Wood) Yes. I said it didn't make it
10 inconsistent.

11 MS. WILKINSON: If I could have one minute,
12 Your Honor. I guess I'm done.

13 JUDGE PHILLIPS: We are actually going to
14 take the afternoon break. If you could come back at
15 3:20. Thank you.

16 (Recess taken.)

17 JUDGE STOCKHOLM: Back on the record. I
18 would just note for the record that Mr. Singer has
19 produced a larger, more eligible copy of Exhibit 215
20 which we have marked now as 215 and substituted that
21 blown up version for Exhibit 215 in the record.

22 Redirect for NYRI.

23 MS. WILKINSON: Your Honor, we just wanted
24 to clarify that one point for the record.

1 JUDGE STOCKHOLM: Please do.

2 MS. WILKINSON: During cross-examination
3 Mr. Wood made reference to a NYSEG transmission line in
4 the area of alternate K, and I believe that it is a NYPA
5 line that's there.

6 And Mr. Malone can maybe further describe
7 that.

8 MR. MALONE: I believe, Your Honor, that it
9 was referred to as a NYSEG line. It goes through Wolf
10 Brook. I believe that's a NYPA line and that the Power
11 Authority gained its ability to build in that area
12 through a transfer of jurisdiction from the DEC to the
13 Power Authority for those specific purposes and I
14 believe that it's referred to in one of the testimonies,
15 I believe Mr. O'Connor, of the Power Authority.

16 JUDGE STOCKHOLM: I do think I remember that
17 now that you mention it. Thank you for that
18 clarification.

19 MR. SINGER: Your Honor, we discussed this
20 during the break also. There is a point that I think
21 Mr. Wood wants to make with respect to that particular
22 issue.

23 JUDGE STOCKHOLM: Mr. Wood.

24 (Wood) Yes, your Honor.

1 The question was with respect to alternate
2 K, and alternate K does run parallel to a NYSEG 115
3 line. Alternate K then ties into the Marcy South E
4 alternative, which is the NYPA line, which does go
5 through the Wolf Brook area. So, I think that was the
6 confusion.

7 JUDGE STOCKHOLM: Thank you.

8 Anything else before we go back to redirect?
9 No. Hearing nothing, Mr. Singer.

10 MR. BISSELL: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. BISSELL:

13 Q. Mr. Bucci, yesterday you were asked questions by
14 Judge Stockholm regarding the basis for the name HVDC
15 light and whether this is simply a trade name.

16 Do you have any additional information regarding
17 the basis for the name HVDC light?

18 A. (Bucci) Yes. My recollection came to me after
19 the hearings yesterday. The use of the word HVDC light,
20 use of the word light was in fact by the manufacturer,
21 was a promotional name, but the basis was that
22 previously HVDC was only applicable to large capacity
23 power transfers over long distances and large capacity.

24 And with the new technology that was developed by

1 the manufacturer, it was specifically geared to making
2 this HVDC applications economical for low power
3 applications.

4 So, it opened up a new area and termed HVDC
5 light. So, light corresponded to the low power
6 capability, feasible at low power.

7 JUDGE STOCKHOLM: Low power and low voltage?

8 (Bucci) Low power and low voltage pretty
9 much go together, yes.

10 JUDGE STOCKHOLM: Thank you.

11 BY MR. BISSELL:

12 Q. Mr. Bucci, yesterday you were also asked a series
13 of questions regarding Exhibit 224, which was a
14 technical paper regarding system reliability for
15 distribution systems.

16 Do you recall that exhibit?

17 A. (Bucci) Yes.

18 Q. And Mr. Bucci, can system reliability data
19 regarding distribution systems be extrapolated to
20 provide information on system reliability of a
21 transmission line?

22 A. (Bucci) No. My opinion it cannot be, no.

23 Q. Is the NYRI project a transmission or
24 distribution project?

1 A. (Bucci) Transmission project.

2 Q. Mr. Thompson, earlier today you were asked a
3 series of questions regarding Exhibit 235, which is a
4 March 6, 2006 letter.

5 To the best of your knowledge, was all of the
6 information set forth in that letter accurate as of the
7 date that it was drafted?

8 A. (Thompson) Yes. It was accurate as of the date
9 that it was drafted.

10 Q. Mr. Bucci, yesterday you were asked regarding --
11 you were asked a series of questions regarding the
12 potential for encountering other underground facilities
13 in urban areas where the proposed NYRI route is also
14 proposed to be in an underground configuration.

15 Could you please describe your prior experience
16 with underground construction of electric facilities in
17 urban areas where such other underground facilities have
18 been encountered?

19 A. (Bucci) Yes. I have been involved in a number of
20 underground cable projects, for example, within New York
21 City, and often encountered other utilities along the
22 route that we had to engineer and design solutions
23 around.

24 JUDGE STOCKHOLM: You say you often

1 encountered them. In New York City didn't you always
2 encounter them?

3 (Bucci) Yes, always, every project and often
4 along the route. Yes, your Honor.

5 Q. Can you describe generally the type of
6 engineering solutions that were developed in order to
7 handle those situations?

8 A. (Bucci) Generally, you would generally try to
9 either go over or under, and the city streets are pretty
10 crowded obviously. Generally we try to go under.

11 It's simply a matter of diverting the route for a
12 slight, short distance. It's more expensive because you
13 have to obviously change the slightly or construction
14 technique or that, but it's very, very doable.

15 JUDGE STOCKHOLM: Do you go under them using
16 the HDD kind of piece of equipment?

17 (Bucci) No. Usually you can just simply dig
18 under. Might have to be hand digging to avoid any
19 impact on the other utility.

20 Q. I believe I will direct my next question to
21 either Ms. Sims or to Mr. Wood. Yesterday you were
22 asked questions regarding page 107 of Exhibit 4, which
23 provides information regarding the proposed route
24 paralleling or being adjacent to Saquoit Creek,

1 Sangerfield River and the Chenango River.

2 Where the proposed route parallels or is adjacent
3 to these water bodies, is the proposed route primarily
4 within existing railroad rights of way?

5 A. (Ernst) Yes.

6 MR. BISSELL: I just have one more question.

7 Q. Mr. Bucci, yesterday you were asked to read the
8 first sentence on page three of Exhibit Panel A9, which
9 has been marked as Exhibit 220; is that correct?

10 A. (Bucci) Yes. That was the reference to vapor?

11 Q. Did I say A3? Let me reference A9 rather than
12 A3.

13 A. (Bucci) Yes, I have it now.

14 Q. Could you please just read the remainder of that
15 first paragraph.

16 JUDGE STOCKHOLM: Where is that paragraph?

17 MR. BISSELL: On page three of Exhibit A9.

18 It's just under a bold subject heading.

19 A. (Bucci) Reliability issues; do I have the right?

20 Q. Yes.

21 A. (Bucci) The first sentence did you say?

22 Q. You were asked to read the first yesterday. If
23 you could read the remainder of the paragraph.

24 A. (Bucci) Consequently, the damaged cables must be

1 located and then exposed and time consuming repairs must
2 be completed before the cables can be returned to
3 service. Typical repair times for underground
4 transmission forced outages are one to three weeks or
5 longer, months in some cases.

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

8 JUDGE PHILLIPS: Do any parties have recross
9 that's based on the redirect?

10 MR. BLOW: No, Your Honor.

11 MR. MALONE: No, Your Honor.

12 JUDGE PHILLIPS: Okay. I guess then the
13 panel is excused and we thank you for your time.

14 (Panel excused.)

15 We are next going to have witness Mariotti
16 for DOT.

17 MICHAEL MARIOTTI, after first having been
18 duly sworn, was examined and testified as follows:

19 JUDGE PHILLIPS: Mr. Mariotti, please state
20 your name for the court reporter.

21 THE WITNESS: Michael Mariotti.

22 DIRECT EXAMINATION

23 BY MS. HINTZ:

24 Q. Mr. Mariotti, do you have before you a document

1 entitled the direct testimony of Michael Mariotti?

2 A. Yes.

3 Q. What is the date of that testimony?

4 A. That is March 12, 2009.

5 Q. And did you make any changes or corrections to
6 your testimony?

7 A. I changed my original testimony dated January 9,
8 2009 to amend the margins, solely for the margins. None
9 of the text was changed.

10 Q. If I were to ask you the same questions contained
11 in that document would your answers be the same today?

12 A. Yes.

13 Q. Do you adopt this as your sworn testimony?

14 A. Yes.

15 Q. Are there any exhibits with your testimony?

16 A. Yes.

17 Q. Are you familiar with the exhibits?

18 A. Yes.

19 Q. These exhibits have been marked for
20 identification?

21 A. Correct.

22 Q. And what are the exhibits?

23 A. Exhibit MM-1 is New York State Department of
24 Transportation's accommodation plan for the

1 accommodation of utilities on freeways.

2 MM-2 is New York State DOT's exception policy for
3 accommodation of utilities on freeways.

4 MS. HINTZ: Your Honors, I would ask that
5 Mr. Mariotti's direct testimony of March 11th of 2009 be
6 entered as if given orally.

7 JUDGE PHILLIPS: Granted.

8 (The following is the direct testimony of
9 Michael Mariotti:)

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Mariotti

1 Q. Please state your name and business address.

2 A. My name is Michael A. Mariotti and I work for the New York State
3 Department of Transportation (NYSDOT) at 50 Wolf Road in Albany,
4 NY.

5 Q. In what capacity are you employed?

6 A. I am currently the Statewide Utilities Engineer, the Statewide Railroad
7 Agreements Coordinator and the Statewide Value Engineering
8 Coordinator for NYSDOT. I have been with NYSDOT since 1994.

9 Q. What are your current duties?

10 A. My duties consist of ensuring NYSDOT compliance with the regulations
11 in 23 CFR 645 in developing and managing utility policies; providing
12 technical expertise for all utility matters; overseeing the processing of
13 utility agreements and billings associated with NYSDOT capital projects
14 and updating related procedures; acting liaison to FHWA regarding utility
15 accommodations on all federal-aid highways within the State; managing
16 NYSDOT's Subsurface Utility Engineering program; managing
17 NYSDOT's Value Engineering program; providing liaison services with
18 railroad companies for projects that impact a railroad.

19 Q. Please describe your educational background.

20 A. I received my Bachelor of Science in Engineering degree from Syracuse
21 University in 1987. In addition, as part of my Professional Engineering

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1 licensing requirements I have taken a number of accredited professional
2 development credits.

3 Q. Please summarize your professional experience.

4 A. I have been a New York State licensed Professional Engineer since 1992.
5 I have 21 years of experience in a variety of transportation engineering
6 disciplines. After college, I worked for Wilbur Smith Associates as a
7 Junior Engineer, eventually progressing to Project Engineer. I was
8 engaged generally in bridge inspection, bridge and highway design, traffic
9 impact studies, and maintenance and protection of traffic activities. In
10 1993, I joined MJ Engineering as a Project Engineer. There, I worked
11 primarily on construction inspection and highway design. In 1994, I
12 joined NYSDOT as a Transportation Analyst in the Passenger
13 Transportation Division where I was involved with annual financial and
14 performance analysis of major public transportation systems in support of
15 the NYSDOT's budget development and annual performance reporting
16 process. In 1998, I transferred as a Civil Engineer II to the Design Quality
17 Assurance Bureau, where I currently work. I am primarily involved in
18 Value Engineering and Utilities related activities. In 2002, I assumed the
19 role of Statewide Utilities Engineer.

20 Q. In your capacity as the Statewide Utilities Engineer, have you worked on
21 any Article VII applications for NYSDOT?

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- 1 A. Yes, I have reviewed at least ten. I have also reviewed a number of
2 transmission line applications that do not fall under the requirements of
3 Article VII, but which do require a Statewide Environmental Quality
4 Review Act (SEQRA) analysis. My review of such projects is focused
5 primarily on the impacts of proposed alternatives on State highways,
6 including interstate highways and other federal-aid highways.
- 7 Q. In your capacity as the Statewide Utilities Engineer, are you familiar with
8 the New York Regional Interconnect (NYRI) project?
- 9 A. Yes, I have reviewed NYRI's Article VII application and have attended
10 several meetings.
- 11 Q. What is the purpose of your testimony in this proceeding?
- 12 A. To provide background on the possible impact of the NYRI project on
13 NYSDOT facilities such as highways.
- 14 Q. Are you familiar with NYRI's preferred route for this project?
- 15 A. Yes, but my familiarity is limited to impacts on State highways.
- 16 Q. Are you familiar with NYRI's proposed alternate routes for this project?
- 17 A. Yes, but my familiarity is limited to impacts on State highways.
- 18 Q. Are you familiar with Communities Against Regional Interconnect's
19 (CARI) proposed alternative route for this project?
- 20 A. I have heard that CARI is proposing a Thruway alternative.
- 21 Q. What are controlled access highways?

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- 1 A. Controlled access highways are highways in which access to and from
2 adjacent properties or roadways is limited in some way. The degree of
3 access control can vary from partial control to full control. Highways with
4 full control of access are commonly referred to as freeways. On freeways,
5 access is strictly limited to designated interchanges; all other at-grade
6 intersections or connections are prohibited. Freeways are generally high
7 speed, high volume roadways such as interstate highways; they typically
8 include an access control fence located along each side of the highway to
9 restrict improper access.
- 10 Q. Does NYSDOT have any policies regarding utilities on freeways?
- 11 A. Yes, because federal funds are used to construct and/or maintain these
12 types of highways, there are certain limits or restrictions on how the
13 rights-of-way can be used pursuant to federal regulations. In accordance
14 with 17 NYCRR Part 131, NYSDOT has an agreement with, and an
15 obligation to, the Federal Highway Administration (FHWA) on how
16 utilities are accommodated on freeways throughout New York State; this
17 agreement is the "Accommodation Plan For Longitudinal Use of Freeway
18 Right-of-Way By Utilities." NYSDOT's Accommodation Plan is based
19 upon Title 23, Part 645 of the Code of Federal Regulations and has been
20 approved by FHWA. This policy applies to any designated freeway and
21 specifies the circumstances under which certain utilities can be installed

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1 on freeway rights-of-way in the State. Under the Accommodation Plan,
2 the only utilities which are permitted to longitudinally occupy New York
3 State freeway rights-of-way (within the control of access) are
4 communication utilities. The Thruway which is under the jurisdiction of
5 the New York State Thruway Authority (NYSTA) is also covered by the
6 Accommodation Plan.

7 Q. Does the Accommodation Plan apply to both above ground and
8 underground utility installations?

9 A. Yes, it applies to both above ground and underground utility installations.

10 Q. What is Exhibit MM-1?

11 A. Exhibit MM-1 is the Accommodation Plan.

12 Q. What are communication utilities?

13 A. Communication utilities are utilities that transmit messages over a distance
14 using electric or electromagnetic impulses. These generally include fiber
15 optic telephone, television cable and broadband facilities.

16 Q. Is NYRI a communication utility?

17 A. No, NYRI is an electric Transportation Corporation.

18 Q. Why are communication utilities permitted to longitudinally occupy
19 freeway rights-of-way?

20 A. Communication facilities provide a transportation benefit by affording
21 NYSDOT the opportunity to include Intelligent Transportation System

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1 (ITS) facilities within the utilities' duct bank. ITS systems improve
2 transportation safety and mobility by integrating advanced
3 communications technologies into the transportation infrastructure and in
4 vehicles. Traffic monitoring cameras and variable message signs are
5 examples of ITS facilities.

6 In addition, the physical nature of communication lines is
7 relatively unimposing as compared to other types of utilities. For instance,
8 these types of facilities do not pose the threat of electrocution or explosion
9 in the event they are struck by maintenance or construction forces. Also,
10 communication lines are generally easier to relocate in the event
11 NYSDOT needs to expand or realign the highway.

12 Q. How are requests for non-communication utilities' use of freeways
13 handled?

14 A. Any requests for non-communication utilities' use of freeways are
15 considered exceptions to the NYSDOT's Accommodation Plan and,
16 therefore, require FHWA approval. NYSDOT has an established
17 procedure for exception requests under which it reviews requests prior to
18 submission to FHWA. NYSDOT requires a SEQRA and FHWA-
19 regulations-based National Environmental Policy Act (NEPA) review for
20 each and every feasible alternative. If NYSDOT approves the request, it is

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1 forwarded to FHWA for approval. All alternatives must be exhausted
2 before NYSDOT and FHWA approval of an exception can be granted.

3 Q. Has NYRI been apprised of this Accommodation Plan?

4 A. Yes, NYRI has been provided with a copy of the Accommodation Plan.

5 Q. What are the exception requirements and procedure?

6 A. SEQRA and NEPA reviews are required for all feasible alternatives.

7 Generally, if the impacted highway receives federal funding, then a NEPA
8 analysis is triggered. NYSDOT's experience has been that its NEPA
9 requirements are more rigorous than what other agencies may require.

10 NYSDOT's NEPA requirements include a full and thorough analysis of all
11 alternatives before a preferred alternative is identified. All feasible non-
12 freeway alternatives must be identified, analyzed and eliminated as viable
13 alternatives before NYSDOT can present the request to FHWA for their
14 review. Based upon our review of previously submitted Article VII
15 applications for other projects, NYSDOT has learned the level of detail
16 required under its NEPA process is generally required earlier than when
17 PSC's process requires it. For example, construction details that may
18 more typically appear in the Environmental Management and Construction
19 Plan (EM&CP) are required sooner for NYSDOT's assessment. One of
20 the requirements for locating a facility longitudinally within a freeway
21 right-of-way is that the project must be placed within 10' of the right-of-

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1 way line. This means that it would be farther away from the existing
2 travel way and shoulders, but closer to adjacent properties.

3 Q. What is Exhibit MM-2?

4 A. Exhibit MM-2 is the exception requirements and procedure.

5 Q. Has NYRI been apprised of these requirements?

6 A. Yes, NYRI has been advised of the requirements and the procedure for
7 requesting an exception in order to utilize any freeway rights-of-way for
8 their project regardless of the highway's owner.

9 Q. Are there any fees associated with occupancy?

10 A. Yes, and the fees are set by appraisal and handled on a case-by-case basis
11 by NYSDOT Real Estate.

12 Q. What are the possible impacts to the State for non-compliance with the
13 Accommodation Plan and its requirements?

14 A. As stewards of Federal highway funds, NYSDOT and the NYSTA must
15 ensure compliance with federal laws, regulations and requirements.

16 Failure to comply may result in a sanction issued by FHWA and could
17 result in the affected highway facilities becoming ineligible for any
18 federal-aid funding. Loss of federal aid means the State will have to find
19 alternative funding sources for maintaining and improving the impacted
20 highway facility.

21 Q. Do any portions of the preferred NYRI route impact any freeways?

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- 1 A. It impacts two freeways, the New York State Thruway and Interstate 88,
2 but only with transverse crossings; there are no longitudinal occupancies.
3 By way of background, generally, transverse crossings are crossings that
4 cross a highway perpendicular to traffic. In contrast, longitudinal
5 occupancies parallel a highway. The Accommodation Plan prohibits
6 longitudinal occupancies on freeway rights-of-way unless an exception is
7 granted.
- 8 Q. Do any portions of NYRI's alternative routes impact any freeways?
- 9 A. Yes.
- 10 Q. Do any portions of CARI's proposed alternative route impact any
11 freeways?
- 12 A. Based on the limited information I have reviewed, yes. For example,
13 CARI has mentioned the Thruway as an alternative for a portion of the
14 route; this would require an exception.
- 15 Q. What is the timeframe for getting an exception?
- 16 A. It varies based on the requested exception, but one could expect a
17 minimum of six months for NYSDOT's review. Based upon NYSDOT's
18 experience, due to the type of utility, the length and complexity of the
19 project and the multiple parties involved, we anticipate this project's
20 exception process would exceed 18 months. NYSDOT cannot speak for
21 FHWA's review timeframe.

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- 1 Q. Have you ever communicated, on behalf of NYSDOT, that an exception f
2 for any routes of the NYRI project, whether preferred or alternate, could
3 not or would not be granted?
- 4 A. No, because NYSDOT has not received any exception requests for this
5 project and such a determination is premature.
- 6 Q. Do any portions of the preferred route impact any non-freeways?
- 7 A. Yes.
- 8 Q. Do any portions of NYRI's alternate routes impact any non-freeways?
- 9 A. Yes.
- 10 Q. How is a request to use a non-freeway handled?
- 11 A. In general, such occupancies are governed by Transportation Corporations
12 Law, 17 NYCRR Part 131 and Highway Law.
- 13 Q. If this application is approved and a certificate is granted, would NYRI
14 need any permits for any work in the State rights-of-way?
- 15 A. Yes, construction could not commence within any State highway rights-
16 of-way until all necessary permits and easements are obtained from
17 NYSDOT. NYRI would need to undergo highway work permit and use
18 and occupancy permit applications and review from NYSDOT for the
19 construction and operation of the utility subject to the Public Service
20 Commission's ongoing jurisdiction as set forth in Article VII of the NYS
21 Public Service Law. All work within State Highway rights-of-way must

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1 be designed and performed by NYRI according to the traffic and safety
2 standards and other substantive requirements contained in New York State
3 Highway Law Section 52, 17 NYCRR Part 131, entitled "Accommodation
4 of Utilities Within State Highway Right-of-Way," applicable design
5 standards of the American Association of State Highway and
6 Transportation Officials (AASHTO), the *Manual of Uniform Traffic*
7 *Control Devices* (MUTCD), the *Highway Design Manual*, the *Policy and*
8 *Standards for Entrances to State Highways*, the *Requirements for the*
9 *Design and Construction of Underground Utility Installations within the*
10 *State Highway ROW*, the *NYSDOT 2002 Standard Specifications* and the
11 requirements of the FHWA and 23 CFR 1.23. NYSDOT would not
12 withhold or unreasonably delay or condition the issuance of any necessary
13 permits and easements. NYRI would coordinate with NYSDOT all work
14 to be performed in the rights-of-way of State highway subject to the
15 Commission's ongoing jurisdiction. As soon as practicable after the
16 issuance of a certificate, NYSDOT would provide NYRI with the location
17 and description of potential future transportation projects that NYSDOT
18 may seek to undertake within any State highway rights-of-way crossed by
19 the NYRI project. Prior to submitting its construction plan for the utility,
20 NYRI would provide to NYSDOT a preliminary design marked to avoid
21 such conflicts with potential future transportation projects within any State

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1 highway rights-of-way crossed by the NYRI project that NYSDOT may
2 seek to undertake in the future and shall offer to consult with NYSDOT
3 concerning any comments it may offer and will use reasonable efforts to
4 accommodate any NYSDOT concerns.

5 Q. Are there any terms that NYSDOT would like to see included in the
6 EM&CP?

7 A. Yes, the EM&CP should include a plan for the maintenance and protection
8 of traffic, inclusion of NYSDOT in any preconstruction meetings and
9 notice of construction commencement. Additionally, NYSDOT should be
10 notified of any changes in the EM&CP. NYSDOT would actually require
11 this information prior to certificate issuance as part of any exception
12 request review.

13 Q. What is maintenance and protection of traffic?

14 A. As safety is of the utmost importance to NYSDOT, maintenance and
15 protection of traffic represents NYSDOT's policies and procedures for
16 protecting the traveling public and those who are working in the highway
17 right-of-way. It includes, but is not limited to, highway work permit
18 acquisition and proper use of traffic control devices such as signage and
19 channelization devices. Additionally, for freeways, maintenance and
20 protection of traffic involves designating access points onto the freeway
21 right-of-way for construction and future maintenance of the utilities. A

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1 utility cannot be constructed or maintained from the shoulder of the travel
2 lane; access to a freeway right-of-way may only be obtained from outside
3 of the access control fence which may require obtaining property rights
4 from adjacent property owners.

5 Q. Does this conclude your testimony at this time?

6 A. Yes.

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Michael Mariotti

13 DKH:en

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1 MS. HINTZ: The witness is available for
2 cross-examination.

3 JUDGE PHILLIPS: I am just going to indicate
4 you provided us the copies of the exhibits and those
5 have been marked already. You will note we are going a
6 little bit backwards because we got those this morning.

7 They are marked for identification as
8 Exhibits 233 and 234. MM-1 is 233. MM-2 is 234.

9 MS. HINTZ: Thank you.

10 JUDGE PHILLIPS: I believe we have cross
11 from staff, the company and NYRI. Is there anyone who
12 wants to go first?

13 MR. BLOW: I will go first, your Honor, if
14 you don't mind. I only have three questions.

15 JUDGE PHILLIPS: Thank you.

16 CROSS EXAMINATION

17 BY MR. BLOW:

18 Q. Mr. Mariotti, please refer to page nine of your
19 testimony where you mention easements, highway work
20 permits and use and occupancy permits.

21 Do you have that?

22 A. Yes, I do.

23 Q. Please explain the difference between a highway
24 work permit and a use and occupancy permit?

1 A. Highway work permit is something that needs to be
2 obtained before construction equipment, construction
3 operations would be allowed on the highway for the
4 freeway right of way.

5 A use and occupancy agreement or use and
6 occupancy permit is the agreement that would spell out
7 the costs associated with occupying that right of way
8 and other conditions associated with that occupation.

9 Q. Which of these types of permits, the two, the
10 highway work permit and the use and occupancy permit,
11 involve the granting of property rights?

12 A. That would be the use and occupancy permit.

13 Q. So, the highway work permit is a regulatory-type
14 permit?

15 A. It's a permit that informs the agency that
16 construction operations will be taking place, an
17 informative document that allows the operations of the
18 highway to be notified.

19 Q. Thank you. If you could refer to page ten of
20 your testimony, where you mention that DOT wants the
21 EM&CP to require a few things including that DOT be
22 included in any preconstruction meetings.

23 Do you have that?

24 A. What line was that?

1 Q. I believe it's 16, 17 -- 16, I think. About the
2 middle of the page if I am not mistaken.

3 A. I am not sure I am seeing what you are.

4 MS. HINTZ: I think that might be on the
5 January version, the original version.

6 MR. BLOW: Yes, I am sorry.

7 JUDGE STOCKHOLM: Probably be after page ten
8 because of those changes.

9 MS. HINTZ: Actually be on page 12, line
10 eight.

11 THE WITNESS: Okay, got it.

12 BY MR. BLOW:

13 Q. Now, does this request that DOT be included in
14 any preconstruction meeting -- that the EM&CP contain
15 this requirement -- does that relate to every
16 preconstruction meeting or only to those having to do
17 with the crossing or occupancy of state highways?

18 A. Only the ones that would occupy a state highway.
19 In other words, if the Thruway or any other state
20 highway was not occupied there would be no need for
21 representation by the department.

22 MR. BLOW: No further questions. Thank you.

23 JUDGE STOCKHOLM: Mr. Mariotti, a question.
24 If the project is bored, using HDD or some other

1 technique, under the Thruway, would they need an
2 occupancy permit?

3 THE WITNESS: Generally not. If the utility
4 was considered a transportation corporation it would
5 have to be determined whether or not it was a
6 transportation corporation, in which case they would be
7 allowed to occupy at no cost as a crossing.

8 Things change when we are talking about a
9 longitudinal installation on a freeway.

10 JUDGE STOCKHOLM: Let me ask the same
11 question only let my assumption be overhead. And you
12 have got -- you obviously -- I shouldn't say obviously,
13 but I assume you would need a work permit to allow the
14 cables to be strung, but if the poles and everything are
15 off of Thruway property, and the wires are simply hung
16 at whatever distance above ground above the Thruway, is
17 an occupancy permit required for that?

18 THE WITNESS: No.

19 JUDGE STOCKHOLM: Thank you.

20 JUDGE PHILLIPS: Does NYRI want to go next?

21 Go ahead.

22 BY MR. SINGER:

23 Q. Good afternoon, Mr. Mariotti. I apologize
24 because I have the old version of your testimony also

1 and I wanted to refer to -- I will give you the question
2 -- it is: What are the exception requirements and
3 procedures? I believe it's referring to the
4 accommodation plan. It's on page six in mine.

5 A. Okay, got it.

6 Q. About midway through your answer there is a
7 sentence that states, All feasible and non-freeway
8 alternatives must be identified, analyzed and eliminated
9 as viable alternatives before NYSDOT can present the
10 request to FHWA for their review.

11 Do you see that?

12 A. Yes.

13 MS. HINTZ: That's page seven, starting at
14 line 11.

15 Q. My question, Mr. Mariotti, is: What do you mean
16 by feasible non-freeway alternatives?

17 A. Again, this would only be -- this would only
18 apply if one of the -- if we were presented with a
19 request for an exception.

20 We would need to look at all of the feasible
21 alternatives for running the line in order to grant that
22 exception. I am not sure...

23 Q. My question is: Could you define what you mean
24 by feasible?

1 A. Well, the Article VII includes a number of
2 alternatives that don't occupy the Thruway. We would
3 need to look at a thorough analysis containing all of
4 the environmental issues that the -- as is contained in
5 the Article VII now, land use, ecology, transportation
6 impacts, noise, construction, and all of the other
7 impacts that Article VII explores, except for the fact
8 that we would need to look at each of those thoroughly
9 in order to make an assessment as to whether or not the
10 Thruway should be considered, or a freeway should be
11 considered as a feasible alternative.

12 In other words--

13 JUDGE STOCKHOLM: In determining
14 feasibility, do you consider the cost of the
15 alternative? Is that part of the equation?

16 THE WITNESS: It's part of the equation.
17 It's looked at amongst several different issues.

18 Q. Did you read staff witness Powell's testimony in
19 this case?

20 A. I may have, but I am not familiar with it off the
21 top of my head.

22 Q. Let me read you a sentence from that and ask you
23 whether you agree with it or not. It states, because
24 other reasonable alternatives, including non-routing

1 alternatives, are being identified in this case, it is
2 unlikely in my opinion that FHWA would grant an
3 exception and allow the underground placement of the
4 proposed facility on the Thruway right of way.

5 Do you agree with that?

6 MS. HINTZ: Your Honor, Mr. Mariotti said he
7 does not recall if he's read that and it's an opinion of
8 Mr. Powell and Mr. Mariotti can't speak for FHWA.

9 JUDGE STOCKHOLM: All of those things
10 understood, I still think it's a fair question in cross
11 to ask him if he agrees with the conclusion of another
12 witness that really is in his field of expertise.

13 The witness, of course, can point to pieces
14 of the question that don't give you enough information.
15 In other words, the answer isn't necessarily yes or no.
16 It may well require an explanation. And I am not
17 suggesting anything to the contrary with that.

18 But I am going to allow the question.

19 THE WITNESS: Based on what has been
20 submitted in the Article VII, really, we have only seen
21 a thorough analysis of one alternative, the preferred
22 alternative. We would not -- that would not be enough
23 for us to make an assessment.

24 So, again, until we see a thorough

1 assessment which contains all of the items I mentioned
2 before, again, land use, ecology, traffic impacts for
3 each and every alternative, such that we can weigh the
4 options or weigh the impacts we would not be able to
5 make an assessment whether or not it was feasible.

6 Q. If you could turn to the accommodation policy,
7 the exhibit attached to your testimony, and page seven.
8 I believe -- actually it's the -- you refer to it as the
9 exception policy stated at the top, accommodation of
10 non-communication utilities on New York State freeway or
11 controlled access rights of way.

12 In the paragraph on that page, it's paragraph E,
13 in the last sentence? Page seven.

14 A. Yes.

15 Q. There is a phrase called -- or a phrase that
16 states the clear zone. Could you tell me what the clear
17 zone is?

18 A. The clear zone is the linear distance from the
19 edge of the pavement or the driving lane at which an
20 errant vehicle would be expected to recover without
21 hitting any fixed deadly objects.

22 Q. So, this policy states no above ground facility
23 that constitutes a fixed object will be allowed within
24 the clear zone.

1 Is that a correct statement?

2 A. Yes.

3 Q. So, my question is: If someone was building an
4 electric transmission line in the Thruway right of way
5 underground, and had to come above ground and wanted to
6 affix the transmission line to a bridge facility, would
7 that be allowed?

8 A. Well, fixing to a bridge is different than being
9 within the clear zone. That's an issue unto itself.

10 It's strongly discouraged, attaching utilities to
11 bridges. In most cases when we have a bridge crossing
12 we would require, if practical, underground horizontal
13 directional drill or some other method of going under
14 the crossing.

15 Q. Let me ask you another question about the same
16 subject matter, and that is that if there was a facility
17 that was underground in the Thruway right of way, and
18 had to come above ground for some particular reason, are
19 you aware that such a construction technique would
20 require what's called a transition station for the
21 transmission line to go from an underground
22 configuration to an above ground configuration?

23 A. I am not thoroughly familiar with that, but I
24 know there is some sort of a station or shed or some

1 sort of structure, yes.

2 Q. If such a transition station was required in that
3 instance, could it be built within the Thruway right of
4 way?

5 A. Again, it would be strongly discouraged,
6 depending on what the conditions were and, again,
7 assuming that an exception was granted in the first
8 place.

9 Q. If an exception was granted, and the facility was
10 built, is there a particular area within the right of
11 way where an above ground facility would have to be
12 constructed?

13 A. Well, the entire facility, according to the
14 federal regs, should be located along the edge of the
15 right of way line, within ten feet. So, either one side
16 or the other of the right of way, but it should be
17 adjacent to the right of way within a ten-foot utility
18 strip.

19 Q. If the transition station was greater than ten
20 feet, where would you have to build it?

21 A. Well, again; depending on what the conditions
22 were, and the terrain and the availability for land
23 outside of the right of way, all of those things would
24 need to be considered, but the strong preference is

1 certainly within the utility strip.

2 And any deviations from that would be taken into
3 account as to whether the exception would be granted in
4 the first place.

5 Q. I guess my question is: If something couldn't be
6 built within that ten-foot utility strip because it was
7 greater than ten feet, and it was an above ground
8 structure, is there something in the accommodation
9 policy that dictates where that structure would have to
10 go?

11 A. Well, again, it would have to remain outside the
12 clear zone area. If it was an isolated condition where
13 perhaps it did have to encroach into or beyond the
14 utility strip, again, an exception might be made, but we
15 are trying to keep objects or the utility itself as far
16 from or as close to the right of way line as possible,
17 as far away from the pavement.

18 MR. SINGER: That's all I have. Thanks.

19 JUDGE PHILLIPS: CARI.

20 JUDGE STOCKHOLM: If I could interrupt
21 before you begin, counselor, just a quick question.

22 If the facility were proposed to be built
23 hypothetically, and let's say it's an overhead facility,
24 and the poles are located, again hypothetically, five

1 feet outside of the Thruway's property, but the cables
2 were hung on the side of the pole, or at least some of
3 the cables were hung on the side of the pole that hung
4 over the Thruway property, would any permissions be
5 required from the Thruway?

6 THE WITNESS: Yes, and from FHWA it would
7 require an exception to the freeway accommodation
8 policy.

9 JUDGE STOCKHOLM: Same example but all the
10 wires are on the other side of the pole, none are
11 hanging over the Thruway. That I think would mean that
12 nothing is either on or over any of the Thruway
13 property. Would that not need?

14 THE WITNESS: As long as there was no
15 encroachment on to Thruway or the freeway right of way
16 there would not be a need for an exception.

17 JUDGE STOCKHOLM: You are defining the right
18 of way to include the air space above the right of way;
19 is that correct?

20 THE WITNESS: Yes, that is correct.

21 JUDGE STOCKHOLM: Thank you.

22 BY MR. KLUSCIK:

23 Q. Mr. Mariotti, in your direct testimony at page
24 five, lines 14 through 19.

1 A. Is this the March testimony?

2 Q. My copy is dated January 9, 2009.

3 JUDGE PHILLIPS: There is a new version of
4 the testimony that has a change in the margins, so all
5 of the page numbers and references are going to be
6 different if you are using the January 9th version.

7 A. Just give me the question. I can find it.

8 Q. I will try to do that. The text that I am
9 referring to speaks about the physical nature of
10 communication lines.

11 MS. HINTZ: Page six, line six.

12 MR. KLUSCIK: Thank you.

13 A. Yes.

14 Q. Do you see the paragraph that begins, in
15 addition, the physical nature of communication lines is
16 relatively unimposing?

17 A. Yes.

18 Q. The next sentence speaks to types of facilities
19 that do not pose the threat of electrocution or
20 explosion in the event that they are struck by
21 maintenance or construction forces.

22 In your view, would underground facilities be
23 less likely to be struck by maintenance forces?

24 A. Underground as opposed to aerial?

1 Q. Yes, as opposed to above ground facilities.

2 A. Well, the intent here was referring to
3 underground, so what was...

4 Q. Do you have an opinion on whether above ground
5 facilities are more likely than underground facilities
6 to be struck by maintenance equipment?

7 A. Well, aerial facilities are not even considered
8 freeways. Any commendation would need to be an
9 underground facility. So, that's what the reference was
10 to.

11 Perhaps a sign being installed within the right
12 of way requiring some piles to be driven, or sign posts
13 to be driven, in the event they struck a communications
14 facility would be much less catastrophic than perhaps
15 striking a gas line or an electric line. That's where
16 the comparison came.

17 Q. Let me try the question one more -- in a
18 different way.

19 Would a grass cutting tractor be more likely to
20 strike a surface facility or an underground facility?

21 A. I would say a surface facility.

22 Q. Now we are together.

23 A. Okay.

24 Q. I want you to help me understand, if you will,

1 sort of the progression of areas as we move from the
2 center line of the highway to the edge of the right of
3 way.

4 A. Okay.

5 Q. From the center of the highway to the edge of the
6 paved surface, is that generally referred to as the
7 traveled way?

8 A. Generally. Beyond the traveled way we generally
9 have an eight to 12 foot shoulder, paved shoulder.

10 Q. Beyond the shoulder, does that area encompass the
11 clear zone?

12 A. Yes.

13 Q. Beyond the clear zone, is that where you would
14 find the ten-foot utility strips?

15 A. Yes, in most cases, yes.

16 Q. And at some distance beyond the ten foot utility
17 strip you would find the edge of the right of way.

18 A. The utility strip should be adjacent to the edge
19 of the right of way.

20 Q. So, the edge of the ten-foot utility strip would
21 be the edge of the right of way?

22 A. Correct.

23 Q. And would you agree with me that the reason for
24 the existence of the clear zone is to minimize the

1 opportunity for vehicles leaving the traveled way to
2 encounter obstructions?

3 A. That is correct.

4 Q. I am going to ask you to make reference to what
5 is attached to your testimony and entitled accommodation
6 of non-communication utilities on New York State freeway
7 or controlled access right of way.

8 A. Okay.

9 Q. I think we have been referring to it as the
10 accommodation policy; is that right?

11 A. Actually, the accommodation policy is the first
12 of the two exhibits.

13 Q. I am sorry. This would be the exception policy.

14 A. This is the exception policy you are referring
15 to.

16 Q. Would you agree with me that its very existence
17 anticipates that there will be, in certain cases, an
18 accommodation of non-communication utilities on New York
19 State freeways or controlled access rights of way?

20 A. It anticipates that there may be some exploration
21 of the fact that those utilities might be looking to be
22 accommodated.

23 Q. Doesn't it, in fact, describe the process by
24 which that would be accomplished?

1 A. Yes.

2 Q. Let me ask you if you would go to what I hope
3 would still be page seven of the exception policy.

4 A. Okay.

5 JUDGE STOCKHOLM: I don't believe that
6 document was changed.

7 MS. HINTZ: It was not.

8 Q. I am looking to paragraph J, which begins with
9 the words longitudinal occupancy. Are you with me?

10 A. Yes.

11 Q. That paragraph begins with the sentence,
12 Longitudinal occupancy of controlled access rights of
13 way shall be for transmission type facilities only; is
14 that correct?

15 A. Correct.

16 Q. Would you agree with me that that sentence
17 anticipates the potential of a transmission facility,
18 such as an electric transmission facility to
19 longitudinally occupy the right of way?

20 A. It does anticipate the potential, yes.

21 Q. Judge Stockholm asked you a few questions, or
22 rather Mr. Singer I guess asked you a couple of
23 questions relating to transition stations.

24 Is there anything in the accommodation policy or

1 the exception policy that would preclude installation of
2 an underground cable within the utility strip, and exit
3 the Thruway right of way for transition station and at
4 some other location re-enter the right of way
5 underground?

6 A. No. In fact, that would be the preferred
7 approach.

8 MR. KLUSCIK: No further questions, Your
9 Honor.

10 JUDGE PHILLIPS: I don't believe anyone else
11 had cross-examination for this witness, correct?

12 Ms. Hintz, do you have redirect?

13 MS. HINTZ: I have three questions, Your
14 Honor.

15 JUDGE PHILLIPS: Okay.

16 REDIRECT EXAMINATION

17 BY MS. HINTZ:

18 Q. Mr. Mariotti, would a project such as NYRI or
19 another utility project require both a highway work
20 permit and a U&O?

21 A. Rephrase the question.

22 Q. At what stage would a project require a highway
23 work permit?

24 A. Any project or?

1 Q. Any project in general, yes.

2 A. Prior to sending forces out to the highway.

3 Q. At what stage would any project require a use and
4 occupancy agreement?

5 A. Again, if it's a transportation corporation, by
6 law transfer corporations are granted the right to be on
7 a highway. So, in those cases, a use and occupancy
8 agreement is superceded or trumped by the law.

9 If it's not a transportation corporation it would
10 need to be obtained prior to -- it could be obtained at
11 the same time as a highway work permit. At some point
12 prior to the utility being allowed on the right of way.

13 Q. Would it typically be obtained after all the work
14 is done?

15 A. Typically not.

16 Q. And there were questions to you regarding
17 occupancies on the Thruway. Would the New York State
18 Department of Transportation itself be issuing any
19 permits for a utility project on the Thruway or would
20 that be the Thruway?

21 A. That would be the Thruway; however, the Thruway
22 follows the Department of Transportation accommodation
23 plan which would require the exception to come from New
24 York State Department of Transportation.

1 JUDGE STOCKHOLM: The substantive
2 requirements are the same.

3 THE WITNESS: Yes.

4 Q. You mentioned in response to a question, driving
5 piles to install signs in regards to maintenance
6 activity. Are there any other types of New York State
7 Department of Transportation maintenance activities that
8 would involve work underground?

9 A. Well, the highway might be realigned. It might
10 have lanes added to further the capacity of the highway.
11 Primarily those would be the instances.

12 MS. HINTZ: I have nothing further.

13 JUDGE STOCKHOLM: Thank you.

14 JUDGE PHILLIPS: Do any of the parties have
15 recross that was based on that redirect?

16 Hearing nothing, Mr. Mariotti, you are
17 excused. We thank you for your time.

18 (Witness excused.)

19 JUDGE PHILLIPS: I am actually going to move
20 to putting the exhibits into evidence, and then I will
21 ask if there are any other matters that we need to deal
22 with and then I do have at least one announcement.

23 We have marked today Exhibits 233 through
24 237. Are there any objections to moving those into

1 evidence? Okay. Those exhibits will be moved into
2 evidence.

3 (Exhibits 233 through 237 received in
4 evidence.)

5 We had also originally planned today to view
6 a DVD. Judge Stockholm and I have discussed it, and
7 according to our estimation of the current witness
8 schedule, we believe that that viewing can take place on
9 April 1st. I will just explain briefly how we came to
10 that conclusion.

11 Right now, on Monday we have scheduled NYRI
12 Panel B and CARI's witnesses Scott and York. On
13 Tuesday, Millenium witnesses Allen and Burnley and NYISO
14 witnesses Corey and Buechler, I believe, as well as
15 staff witnesses Kimby and Schrom, which then leaves
16 possibly no one for Wednesday unless we are running over
17 time.

18 So, the plan right now is to view the DVD on
19 Wednesday. Are there any other matters or comments that
20 need to be addressed?

21 MR. KLUSCIK: Yes, Your Honor. Unless I
22 have my weeks scrambled, that Wednesday was the deadline
23 for identifying additional stops on the site visit tour.
24 Does the scheduling of the video in any way affect that

1 deadline?

2 JUDGE STOCKHOLM: No. My hope is that
3 people -- well, first of all, I am not the optimist on
4 this particular timing. I think we will probably use
5 Wednesday morning. If not, of course, we can go
6 directly to the video, but my guess is we are going to
7 be looking at the video Wednesday afternoon.

8 By Wednesday afternoon, I would hope that
9 the parties would have the locations that they are
10 interested in, that they would be knowledgeable of the
11 locations they are interested in so that we could talk
12 about that in going through the movie.

13 I'm not sure I said this on the record, I
14 have said it otherwise but let me say it on the record
15 as well. The intent, of course, of this process,
16 watching the movie I mean, is to help the parties decide
17 where we want to stop on the on site visits.

18 It is my hope that we can have an informal
19 meeting and reach a consensus on the schedule on
20 Wednesday afternoon.

21 To the extent we don't reach a consensus on
22 the schedule by the end of the day Wednesday, we will of
23 course consider any written submissions at the end of
24 that day and we will choose the locations for the stops.

1 I would much prefer, however, that the
2 parties have more input on those decisions than they
3 ordinarily would in written papers on a motion, for
4 example, but if that doesn't work we obviously can do it
5 the other way, too.

6 So, that's what I intend at the moment.

7 Yes, ma'am.

8 MS. LEARY: At Mr. Singer's recommendation
9 we discussed with Mr. Malecki and -- I am sorry, I
10 forget the other -- Mr. Lowe the possibility of actually
11 taking existing documents and mapping so that the
12 parties could visually see what's been proposed by staff
13 and what's been proposed by the applicant in order to
14 either supplement or otherwise.

15 So, I think that may help the process. We
16 are trying to do that by Monday.

17 JUDGE STOCKHOLM: You mean mapping the
18 locations for the viewings that have already been
19 proposed?

20 MS. LEARY: Exactly. It would enable us to
21 not be redundant, but to also suggest to the other
22 parties and they can visually see, so that is a thought
23 that may help us on Wednesday.

24 JUDGE STOCKHOLM: May help us on the actual

1 site visits, too.

2 MS. LEARY: Help us on site visits.

3 If I could just -- I am sorry, Judge
4 Phillips -- panel B is on Monday and Quimby and Schrom
5 Tuesday with Millenium, DPS staff --

6 JUDGE PHILLIPS: Current status of the
7 schedule I have, on Monday NYRI witness panel B and CARI
8 witnesses Scott and York. On Tuesday, Millenium
9 witnesses Allen and Burnley and NYISO witnesses Corey
10 and Buechler.

11 That would basically leave Wednesday open --
12 I am sorry. Also on Tuesday, staff witnesses Quimby and
13 Schrom. With that, there should be no one scheduled for
14 Wednesday; however, given the past --

15 JUDGE STOCKHOLM: Judge Stockholm's
16 pessimism.

17 JUDGE PHILLIPS: -- no, past practice and
18 history, I fully expect we are probably going to run
19 over. However, I am still hoping that there will be
20 time on Wednesday, probably in the afternoon, to view
21 the video, therefore, we are setting aside some time on
22 Wednesday for the viewing of the video.

23 MR. POND: Your Honor, George Pond of the
24 law firm of Hiscock & Barclay for Millenium Pipeline.

1 It might help the schedule that Your Honors
2 are putting together if we could inquire whether there
3 will be any testimony for the Millenium panel on
4 Tuesday.

5 It was my understanding that the Attorney
6 General and DEC were going to look at that. We have
7 offered to explore other alternatives, like
8 stipulations, if there are any issues that reasonably
9 need to be resolved, but neither DEC nor the Attorney
10 General filed any testimony directly contradicting
11 anything our witnesses said, nor have we received any
12 discovery, so, we are at a bit of a loss to know what
13 the issues are.

14 JUDGE PHILLIPS: Have you talked to the
15 other parties?

16 MR. POND: We've tried, but so far we
17 haven't really been successful.

18 JUDGE PHILLIPS: I would suggest you do
19 that.

20 JUDGE STOCKHOLM: As we sit here right now
21 who has cross-examination for Millenium?

22 MS. LEARY: Your Honor, what Mr. Pond is
23 referring to is a discussion Ms. Wilkinson and I had
24 where we were not prepared to say we had no questions,

1 and in fact, when pressed for an answer I really
2 couldn't give an answer so I indicated to Mr. Pond that
3 we might.

4 And so we actually were going to discuss
5 that this afternoon, Ms. Wilkinson and I, and get back
6 to Mr. Pond hopefully today. But as I sit here I cannot
7 tell you there -- I did review an e-mail that would
8 suggest that we had a question for Millenium. I can't
9 say for sure that we do.

10 So, if I can be given a little bit of time
11 with Ms. Wilkinson we can get back to Mr. Pond hopefully
12 by the end of today.

13 JUDGE STOCKHOLM: I am sorry, sir. That's
14 all I can get you at the moment.

15 MR. POND: That would be great, your Honor.
16 I just want to say there's two witnesses that would
17 enjoy their weekend a lot more if it weren't followed
18 with the prospect of a trip to Albany.

19 JUDGE STOCKHOLM: Is that a rationale for us
20 to require them to come?

21 MR. POND: I am not sure. Just don't tell
22 the greater Albany travel people.

23 MS. LEARY: I have one more question, Your
24 Honor, about the week of the site visits.

1 JUDGE PHILLIPS: Yes.

2 MS. LEARY: Can we just ask what the
3 proposed week of the site visits will be again?

4 JUDGE STOCKHOLM: The last week in April.

5 MS. LEARY: The week of the 27th?

6 JUDGE STOCKHOLM: I believe that's correct,
7 yes, Ma'am.

8 MS. LEARY: Because the preceding week I
9 have a possible hearing date on the 20th but nothing
10 else that week.

11 JUDGE STOCKHOLM: I think that that week, if
12 we have to go to that week, we will be meeting
13 Wednesday, Thursday and Friday, probably not on the
14 20th. And the reason not on the 20th is because the
15 Commission has a session on the 21st.

16 MS. LEARY: Thank you.

17 MR. KLUSCIK: Your Honor.

18 JUDGE STOCKHOLM: Yes.

19 MR. KLUSCIK: As a follow up to discussion
20 that the presiding officers, CARI and the applicant and
21 I believe probably a couple of other parties had over
22 one of the breaks with respect to the video, I am
23 informed by the Commission's video contractor that it is
24 possible to directly feed or use the video feed to the

1 webcast and to overlay audio from the room.

2 So, it would be possible for consultants,
3 all who would tune into the webcast, to both see the
4 video and to experience what questions, answers or
5 discussions might be had in the room with respect to it.

6 JUDGE STOCKHOLM: Well, maybe and maybe not.
7 That all depends on the audio piece, because for the
8 people out there to hear the audio piece everything that
9 we do and discuss in the room has to be done on
10 microphone.

11 MR. KLUSCIK: Yes, that would be correct.
12 That's the way I understand it, your Honor. So, any
13 comments that might be made as to the video we are
14 watching would have to be through the microphones in
15 order to be captured by the webcast.

16 The one other bit of information that may be
17 relevant is that the video contractor, the webcast
18 contractor, would need a day or two of notice in order
19 to set up the requisite equipment and whatever they do.

20 JUDGE STOCKHOLM: And there may be audio
21 equipment we could use which is not so physically
22 attached to a hole in the floor, literally. So, there
23 may be other ways to deal with the audio as well.

24 Let us make inquiries. That's all I can do

1 at this point.

2 MR. KLUSCIK: I appreciate that, your Honor,
3 in view of the fact that we have some consultants that
4 we would rather not have on the road traveling in order
5 to see the video and I'm quite sure that a number of our
6 clients would be extraordinarily interested in seeing
7 that as well.

8 JUDGE STOCKHOLM: Understood.

9 In an off the record conversation -- I am
10 sorry, Mr. Singer, I am going to put words in your mouth
11 -- I think you said that you would provide them a copy
12 of the disk.

13 MR. SINGER: We are going to try to do that,
14 but I don't think we are going to be able to get any
15 copies made today.

16 JUDGE STOCKHOLM: No. I wasn't suggesting
17 today but you would provide the parties who wanted them
18 with a copy.

19 MR. SINGER: Yes. We will probably try to
20 send it out for copying on Monday, and then hopefully if
21 we can do that we can copies ready on Tuesday. I don't
22 know that for sure, but I know there are services that
23 we use that could probably do that.

24 JUDGE STOCKHOLM: I would like to get

1 something in the mail Monday FedExed to CARI's
2 consultants if that's possible. Please check to see if
3 that's possible.

4 MR. SINGER: We will.

5 I have one other scheduling issue. That is,
6 given the way the schedule appears to be going, would it
7 be advisable to see if Dr. Lesser and Mr. Puga could be
8 available on Thursday?

9 JUDGE PHILLIPS: Just clarify, do you mean
10 to start with them on Thursday, carrying over to Friday?
11 Is that the plan?

12 MR. SINGER: Yes, so that there would be a
13 greater chance that they would finish on Friday.

14 JUDGE PHILLIPS: It's up to you. I would
15 make those arrangements but I am loathe to promise you
16 that we are going to get to them on Thursday.

17 JUDGE STOCKHOLM: If they are not here on
18 Thursday they weren't scheduled for Thursday, so that's
19 all right, but if you want to bring them in that's fine,
20 too.

21 Yes, sir.

22 MR. BELSITO: There was a question from the
23 bench concerning the -- yesterday concerning the
24 Shawangunk trail and where it could be found in the

1 record.

2 JUDGE STOCKHOLM: Yes.

3 MR. BELSITO: It's part of exhibit 172.

4 That exhibit consists of a series of maps. Specifically
5 within that exhibit, ACD28 through 30, I believe,
6 illustrates where that trail is.

7 JUDGE STOCKHOLM: Thank you. Appreciate
8 that.

9 MR. BELSITO: Quick question, you may be
10 getting to this. What time do we plan to start on
11 Monday?

12 JUDGE STOCKHOLM: 9:00.

13 Anything else on the record before we close
14 today? Hearing nothing, I wish you all a good weekend
15 and we will see you Monday morning.

16 (Hearing adjourned.)

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Exhibits 233 through 237 received in evidence