

1 STATE OF NEW YORK  
2 PUBLIC SERVICE COMMISSION

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4 Case 06-T-0710 - Application of Consolidated  
5 Edison Company of New York, Inc. For a  
6 Certificate of Environmental Compatibilty and  
7 Public Need Under Article VII of the New York  
8 State Public Service Law for the M29  
9 Transmission Line Project.

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10 Evidentiary Hearing  
11 90 Church Street  
12 New York, New York

13 January 23, 2007  
14 9:30 a.m.

15 PRESIDING:

16 WILLIAM BOUTEILLER,  
17 Administrative Law Judge

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24 ORIGINAL  
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1 JUDGE BOUTEILLER: This is a resumption of the  
2 evidentiary hearings held in case 06-T-0710,  
3 Consolidated Edison Company, concerning what they call  
4 the M29 line. I prefer to call it the line from Yonkers  
5 through the Bronx to upper Manhattan.

6 I won't call for appearances today unless there  
7 is someone who was not present yesterday who needs to  
8 make an appearance. We will accommodate those.  
9 Otherwise, I will note for the record that there is no  
10 obligation that all parties be in attendance at all  
11 times during the hearing. My expectation is that the  
12 parties will be in attendance at the time they are  
13 needed or required for maintaining our schedule.

14 But if there is new appearances or additional  
15 appearances we can note those at any point in time as  
16 necessary.

17 So, our understanding for today's activity is  
18 that we would continue with the Consolidated Edison  
19 panel that was primarily responsible for the content of  
20 the application and also for the contents of the Joint  
21 Proposal and all the attachments and exhibits associated  
22 with it.

23 Our cross-examination yesterday was with the  
24 representatives from Manhattan. They will continue in  
25 the line of cross-examination for this panel. Two

1 conventions we are following for purposes of continuing  
2 with this panel are as follows: We have Mr. Dempsey,  
3 who is absent today. However, he is a member of another  
4 panel who will return to the witness stand, and the  
5 understanding is that Mr. Dempsey is subject to  
6 cross-examination on any portion of the application of  
7 the Joint Proposal for which he is responsible given his  
8 absence today.

9 And we expect Mr. Agresti to be joining us in  
10 progress. When he does so he's already sworn in. Just  
11 join the panel. I am just asking the cross-examiners to  
12 be patient with him and if they have noise questions to  
13 ask we make sure those get answered at some point when  
14 the panel member is here.

15 If there are any other preliminaries I am  
16 prepared to take them now. If not, I will turn to the  
17 cross-examiners and ask them to continue with their  
18 cross-examination.

19 CROSS EXAMINATION

20 BY MR. GULOTTA:

21 Q. Good morning. We were talking about the  
22 clearances yesterday on the 10th Avenue elevated subway  
23 line and response was the clearances were as low as ten  
24 to 13 feet.

25 Can you please--are those just at certain points

1 or is that along the entire?

2 A. (Chu) That's at various locations.

3 Q. Other locations is there 14 foot clearance?

4 A. (Chu) I have not seen any location where there  
5 were 14 feet clearance.

6 Q. You are not saying there aren't?

7 A. (Chu) Right, but in the area where the proposed  
8 transmission route is located there are locations where  
9 the elevated train tracks are as low as ten feet.

10 Q. But that's only at certain points; is that  
11 correct?

12 A. (Chu) That is correct.

13 Q. Now, you are also passing under the L on Broadway  
14 between 218th and 219th Street?

15 A. (Chu) Correct.

16 Q. What are the clearances there?

17 A. (Chu) I don't have that information directly  
18 available.

19 Q. So that basically you are coming up the east side  
20 on 219th Street and you have your equipment, and so how  
21 do you pass--how do get the equipment under the L to the  
22 other side, to the westerly side of the elevated line?

23 A. (Chu) The cable tub, which houses the cable  
24 reels, is 14 foot in height. That piece of equipment  
25 would have to be strategically placed when they do the



1 proposed tunnel crossing.

2 In order to get the cable across the river, the  
3 cable tub can be placed on the Bronx side, and the  
4 corresponding winch on the Manhattan side, which has a  
5 height of 12 foot six. So that piece of equipment would  
6 fit underneath the elevated train.

7 Q. So the winch which pulls the cable, that has  
8 adequate clearance to be used?

9 A. (Chu) That is correct.

10 Q. And so primarily it's the cable. So, for  
11 example, could the--if there wasn't clearance could the  
12 cable be ground mounted and spun off a ground mounted  
13 device?

14 A. (Chu) In order to be ground mounted the cable  
15 reels would have to be placed on the jack stands. In  
16 order to place the cable reels on the jack stands the  
17 crane is required to place the reels on to its position.  
18 Based upon the 14 foot elevation or the less than 13  
19 foot elevation underneath the elevated tracks, there is  
20 not adequate room to place reels underneath the elevated  
21 train tracks.

22 Q. Can you give us a little more information about  
23 the cable pulling operation?

24 A. (Chu) The cable pulling operation requires  
25 equipment be placed on the other side of the panel

1 location. On one location a winch will be set up, and  
2 on the corresponding opposite end a cable reel will be  
3 set up. The winch line is pulled through the cable pipe  
4 through the cable reels and subsequently the cable reels  
5 are fed into the manhole by feed tubes. The winch then  
6 pulls the cable through the sections.

7 Q. And what's the maximum length of cable that can  
8 be pulled between the two points?

9 A. (Chu) That's a function of number of bends on the  
10 route. The increased number of bends decreases the  
11 length of the cable pull.

12 Q. What if it's just a straight run?

13 A. (Chu) If it's just a straight run with that it  
14 could be up to maybe 2,000 feet.

15 Q. And basically had the manholes--do you splice the  
16 cable in the manholes; is that what happens?

17 A. (Chu) Yes.

18 Q. Basically the points that you pull the cable are  
19 determined by where you locate the manholes?

20 A. (Chu) That is correct, in addition to the pulling  
21 operation. After the cable pulling operation is  
22 performed, splice shelters or trailers are placed over  
23 the manhole covers to provide an atmospherically  
24 controlled environment during the splicing operation.

25 Q. Okay, so, basically if you put the manhole,

1 probably just one manhole on 10th Avenue where there was  
2 adequate clearance, if you made that investigation then  
3 would that then be possible to put the cable on 10th  
4 Avenue?

5 A. (Chu) Two cable manholes might be required  
6 depending on the subsurface interference and number of  
7 bends you introduce into the pipe.

8 Q. One or two. If that was examined in detail you  
9 would be able to give more definitive answer?

10 A. (Chu) It's possible, yes.

11 Q. Okay, thank you. With respect to  
12 constructability it's been stated that it takes about  
13 two to four weeks at any location at any set up. That  
14 was heard several times yesterday.

15 Now, is that--it's not clear to me how big that  
16 set up is. Let's say on Broadway from typical area, how  
17 big is the staged construction? Do they put a manhole?  
18 I mean, do they do one stretch of trench and then do the  
19 next one or do they alternate or every third one and  
20 then go back and do the middle? What exactly is going  
21 to happen in that two to four week period?

22 A. (Chu) What they do is they start at one location  
23 basically doing test pitting to establish the labor as  
24 the contractor is starting his work. The first pass is  
25 to do sewer cutting on the pavement. As the contractor

1 does the sewer cutting followed behind him is the  
2 removal of the blacktop plus any spoils. Those spoils  
3 are subsequently removed from the site location, they  
4 are not stored at the location.

5         Following behind the excavator we have the pipe  
6 installed. Once the pipes are installed, bent, they  
7 will be tested. Each well will be radiologically tested  
8 for any signs of leaks.

9         Once the pipe passes the radiological testing,  
10 non-destructive testing on the wells, it's tape coated  
11 which ensures it's cathodically protected, which ensure  
12 the pipe is properly protected.

13         Once that is complete, following directly behind  
14 that is the truck that will install the thermal backfill  
15 for the feeder. That will start the restoration of the  
16 roadway surface and that progresses for the length of  
17 the feeder.

18         There are locations where we do have to go to  
19 locations possibly on the weekends. Due to the  
20 stipulations granted by the New York City DOT, for  
21 instance, there may be critical intersections where our  
22 stipulations require that excavation be done during the  
23 night or off shift hours. We will leapfrog over those  
24 areas and then continue and then at a more opportune  
25 moment go back to the locations as per the stipulations

1 and permits.

2 Q. Could you just go one stage to the next, or do  
3 you alternate and then in between? How does that work?

4 A. (Chu) One continuous train.

5 Q. So you keep going?

6 A. (Chu) Just keep going. One continuous operation,  
7 sewer cutting the pavement, removing the excavations,  
8 installing pipe, restoring backfill and then continuing  
9 on.

10 Q. If there are no problems when you are doing that  
11 do you have to go back to those points again?

12 A. (Chu) Can you repeat that?

13 Q. If there are no problems.

14 A. (Chu) Then there is no reason to go back.

15 Q. No reason to go back, okay.

16 What happens if there is a utility interference  
17 at a particular location, could that take six months to  
18 a year before the utility interference gets moved if  
19 it's not a Con Edison company?

20 A. (Chu) Typically not. Typically when we issue our  
21 plan and profile drawings as part of the construction  
22 package, Con Edison does a very extensive review of the  
23 subsurface utilities. We do--we gather all the  
24 information from all the municipalities of subsurface  
25 installation. Con Edison creates a map or a drawing

1 illustrating all surface interferences.

2           There are occasions where we could possibly hit  
3 locations because they are either not marked or could  
4 have been installed differently than the drawings. Then  
5 we will make modifications to our route or we might make  
6 modifications to those facilities.

7       Q. Has that been done already?

8       A. (Chu) That can be done, yes.

9       Q. Was it done?

10      A. (Chu) No.

11      Q. It wasn't done.

12      A. (Chu) But we did test pitting in Manhattan to  
13 verify our lane to ensure that we do not come across any  
14 unforeseen interferences.

15      Q. Could you tell me where the lane will be on  
16 Broadway, when you come down Broadway?

17      A. (Chu) It's on the east side of Broadway.

18      Q. On the east side of Broadway?

19      A. (Chu) On the east lane, almost where the parking  
20 lane is. Typically Con Edison likes to install their  
21 facilities next to the curb lane, not in the middle of  
22 the street, to ensure that the traffic--any traffic  
23 constraints or traffic problems are addressed, not  
24 interfered with.

25      Q. So basically you are on the east side and you are

1 on the curb lane; is that correct?

2 A. (Chu) Yes.

3 Q. How far do you have to be away from a water main  
4 if there is a water main which is running parallel?

5 A. (Chu) Our specific figures calls for one foot  
6 minimum clearance between two facilities.

7 Q. What about city DET, what's their--

8 A. (Chu) I know their requirements are also the  
9 same.

10 Q. So, basically if there is a water main ten feet  
11 from the curb you have enough clearance to install  
12 your--

13 A. (Chu) Yes.

14 Q. What about the house connections from the water  
15 main, do you have to remove those or replace them?

16 A. (Chu) No. We basically maneuver the pipes so the  
17 that the house facilities are cleared with the same  
18 minimum clearances we do for major facilities going  
19 parallel to our proposed pipe.

20 Q. So you say you have to go under the house  
21 connections?

22 A. (Chu) Could go under, could go over. Depends  
23 on--

24 Q. What if you can't do either, what do you have to  
25 do?

1       A. (Chu) Typically house services are small. They  
2 are very readily easy to move. We do have provisions if  
3 it is damaged. A plumber will be on call to modify and  
4 fix any damages that may result during the excavation so  
5 there are locations which may require relocation of  
6 those facilities.

7       Q. Is that anticipated within the two to four week  
8 period, the time period?

9       A. (Chu) Yes. That's already included in the time  
10 frame.

11       Q. What about when you are crossing the  
12 intersections? You have some critical intersections.  
13 If we talk about the intersection of, say, Broadway and  
14 211th Street, are you aware how many water mains are  
15 passing through that intersection?

16       A. (Chu) I don't have that information in front of  
17 me.

18       Q. Would you like to look at a water main plate  
19 which I have here?

20       A. (Chu) Sure.

21       JUDGE BOUTEILLER: Is this something from the  
22 record or can you describe it for the record?

23       MR. GULOTTA: This basically comes from New York  
24 City DEP and it shows the water mains in the area we are  
25 talking about. It's basically a public record. It's



1 not in the record.

2 JUDGE BOUTEILLER: You can provide it to the  
3 witness and company counsel can look over the witness'  
4 shoulder to see the document. You can engage in  
5 cross-examination of it and we will see where it goes.

6 When the witness feels comfortable with the  
7 document look in my direction and I will instruct the  
8 cross-examiner to inquire.

9 MR. CHU: Okay.

10 BY MR. GULOTTA:

11 Q. Would you say there are eight water mains  
12 converging at that intersection?

13 A. (Chu) The area that you are referring to is what  
14 is back circled?

15 Q. Yes. 211th and Broadway I think.

16 A. (Chu) Okay.

17 Q. Thank you. So, basically would you agree there  
18 is two way traffic in both directions at that  
19 intersection?

20 A. (Chu) The drawing does not indicate traffic flow.

21 Q. Based on your visits to the site would you verify  
22 it's two way traffic?

23 A. (Chu) On Broadway?

24 Q. Yeah, Broadway.

25 A. (Chu) Yes, definitely.

1 Q. The side street you are not sure.

2 A. (Chu) That is correct.

3 (Wolfgang) We could accept that subject to check.

4 Q. When you go to that intersection basically how  
5 many stages and how long will that take?

6 A. (Chu) Depending on the existing subsurface  
7 interferences, which you indicate there's water here and  
8 there's also electric and there's also gas, also depends  
9 on the stipulations presented by the DOT.

10 If the DOT only allows us to excavate during  
11 weekends, obviously that time frame will be extended.  
12 However, during the times that we are not there the  
13 roadway will be plated to allow any vehicle traffic.

14 Q. Right. Are you aware that the steel plates are  
15 considered a traffic hazard?

16 A. (Chu) No.

17 Q. You are not aware that New York State DOT has  
18 steel plates as flag condition on the roadway? I am not  
19 sure if it's a red flag condition or an emergency flag  
20 or if it's basically considered a hazard that has to be  
21 maintained and anchored and inspected on a regular  
22 basis. You are not aware of that?

23 A. (Chu) We do that as part of our normal everyday  
24 operation during construction, where we have road plates  
25 in the streets for other activities involved, not just

1 transmission.

2 Q. Is that checked on a daily basis to make sure  
3 they don't come loose?

4 A. (Chu) For the transmission system we have a CCI  
5 on site during excavation for the duration of the  
6 project so they will be checked.

7 JUDGE BOUTEILLER: Let me just backtrack a little  
8 bit on the line of inquiry you just made. We had you  
9 focusing in on a specific intersection. We have an  
10 understanding that construction might take two to four  
11 weeks at any specific location.

12 Did you have any specific estimate for this  
13 particular intersection that you can provide with the  
14 knowledge you have at hand?

15 MR. CHU: Let me say I have to determine what  
16 other subsurface utilities are in the area. The print  
17 only shows the water.

18 MR. GLASS: Point of clarification. Number one,  
19 DOT has been referenced twice. Once it was identified  
20 as New York State and once it wasn't clear whether it  
21 was New York State or New York City's own DOT, so in the  
22 future if people could clarify that for us.

23 Also, when initials are being used, I know it may  
24 be common for some people, some of us may not be  
25 familiar with the initials, so if you at least identify

1 that it will be appreciated.

2 JUDGE BOUTEILLER: All very helpful guidance and  
3 I think you were responsive to my question.

4 We will go back to the cross-examiner.

5 BY MR. GULOTTA:

6 Q. It's basically conceivable that intersection  
7 could be plated for a period of six months?

8 A. (Chu) No.

9 Q. A year?

10 A. (Mooney) There is really nothing unusual about  
11 this intersection. This is something that Con Edison  
12 deals with almost on a daily basis as far as the number  
13 and the congestion of the utilities and the subsurface  
14 of the city streets. It's kind of like what we do on a  
15 daily basis to get around things like this.

16 JUDGE BOUTEILLER: You are fairly confident that  
17 you would stay within an interval of two to four weeks  
18 at this particular intersection?

19 MR. MOONEY: Yes, sir.

20 JUDGE BOUTEILLER: Thank you. Please proceed.

21 MR. CHU: I could also add to that. Previous  
22 projects that we had in midtown Manhattan, similar to  
23 this but larger in scope, directly in midtown Manhattan  
24 we were crossing an intersection and we were within  
25 there for four weeks, but based on the stipulations we

1 can only work there during the weekends.

2 JUDGE BOUTEILLER: Did that extend the four  
3 weeks?

4 MR. CHU: No. That was four weeks.

5 JUDGE BOUTEILLER: With the reservation and  
6 conditions that were applicable you stayed within the  
7 four week interval?

8 MR. CHU: Right.

9 JUDGE BOUTEILLER: Thank you. Please proceed.  
10 BY MR. GULOTTA:

11 Q. How do you pass through the water mains?

12 A. (Chu) Typically over the water mains. The water  
13 mains are typically a lot deeper than feeder would be  
14 routed.

15 Q. So you anticipate going over--

16 A. (Chu) Anticipate if we go over and if we do go  
17 over we go over and if we are shallow we put protection  
18 plates on our feeder to ensure that there are--to  
19 prevent any cut-ins from other contractors that may be  
20 working after we vacate the area.

21 Q. Haven't there been problems on City and  
22 Department of Transportation projects and street  
23 construction you had asked Con Edison to move and  
24 utilities respective interference with the contractors  
25 held up for a year or two years for Con Edison to move

1 their utilities?

2 JUDGE BOUTEILLER: That question is way too  
3 general to elicit an informative response for my record.  
4 If you have a specific instance that you want to cite to  
5 you can follow up with that.

6 Q. Construction of 125th Street. Construction of  
7 14th Street in Manhattan.

8 A. (Chu) I'm not familiar with those projects.

9 Q. Let's say there is another utility, let's say  
10 Empire City subway and interference on your route of  
11 Broadway. How do you get them to move?

12 A. (Chu) Typically we don't get them to move. If  
13 it's an abandoned facility we contact them to see if  
14 they would possibly move those facilities. We have gone  
15 over the top and once again we have gone underneath them  
16 in order to avoid any interference.

17 Q. So you are saying you don't anticipate any other  
18 utilities being required to move during this operation?

19 A. (Mooney) We have done test pitting in Manhattan  
20 to verify that we have a clear lane. That test pitting  
21 has been completed in Manhattan and in the Bronx and we  
22 have verified our design that we have a clear lane to  
23 install this feeder.

24 Q. So, basically, if I understand your response, you  
25 are saying that you don't know how long it's going to

1 take to clear that intersection, that particular  
2 intersection?

3 A. (Mooney) No. I think what we said is it wouldn't  
4 take more than four weeks.

5 Q. For the intersection based on the stipulation?

6 JUDGE BOUTEILLER: We have to have just one  
7 person at a time. She can accommodate the speed at  
8 which we speak down here in the city, but she can't  
9 accommodate two people going at full out. So, we have  
10 to have that kind of courtesy.

11 So, if one person is speaking the other one has  
12 to cease and desist immediately. Let's have a question,  
13 please.

14 Q. Now, basically we started off referring to this  
15 letter, why you couldn't go down 10th Avenue, and one of  
16 the reasons that Con Edison gave was that it was a  
17 protected street. Is that one of the major impediments  
18 to going down 10th Avenue?

19 A. (Mooney) New York City Department of  
20 Transportation, who we met with early on in the project  
21 when we did our community--as part of our community  
22 outreach, essentially told us that we would be  
23 prohibited from 10th Avenue due to their reconstruction  
24 of the street repaving, and that the street would be a  
25 protected street thereafter.

1 Q. Do you recall who said that at City DOT?

2 A. (Mooney) I would have to check my notes.

3 JUDGE BOUTEILLER: That's an on the record  
4 request that that information needs to be provided to  
5 the cross-examiner at the first available convenience  
6 unless counsel rejects the request.

7 A. (Mooney) I know that New York City DOT has also  
8 sent a letter and it has sent a letter both to the  
9 Community Board 12 and stating the same thing.

10 JUDGE BOUTEILLER: Do you have a copy of that  
11 letter?

12 MR. MOONEY: Not on me. No, sir.

13 JUDGE BOUTEILLER: Do you have possession of such  
14 a letter in your files?

15 MR. MOONEY: I think I can get it, yes.

16 JUDGE BOUTEILLER: That's another on the record  
17 request that needs to be provided for this proceeding.

18 BY MR. GULOTTA:

19 Q. Can you give the definition for a protected  
20 street?

21 A. (Mooney) Do I have the definition, no.

22 Q. Would you agree that it's a street that's been  
23 reconstructed within the last five years?

24 MR. RIBACK: Your Honor, he said he doesn't have  
25 the definition.



1 Q. Now, are there any other protected streets on the  
2 route that Con Edison has selected in Manhattan?

3 A. (Mooney) Not to my knowledge.

4 Q. I have a list here of protected streets that I  
5 downloaded from the DOT web site. And would you like to  
6 take a look at this because I have a couple locations  
7 here I would like to ask you about.

8 JUDGE BOUTEILLER: We will allow the witness and  
9 counsel to examine the list and after they have examined  
10 the list we can see whether or not we will continue with  
11 the line of cross-examination.

12 Mr. Riback, are you prepared to accept the  
13 representation that's a list of protected streets  
14 provided by New York City DOT?

15 MR. RIBACK: No, your Honor, I'm not. All this  
16 is is a print out of 70 pages of listings. I have no  
17 reason to--

18 JUDGE BOUTEILLER: There is no self identifying  
19 information on those pages?

20 MR. RIBACK: There is a heading that says  
21 Department of Transportation but I don't know who put  
22 that in or when.

23 JUDGE BOUTEILLER: Let's proceed in this fashion:  
24 Hand back the book to the cross-examiner. You can ask  
25 him whether or not he knows whether any specific street

1 is protected or not, and that will be one inquiry.

2 BY MR. GULOTTA:

3 Q. Are you aware if the intersection of Broadway and  
4 west 208th Street in Manhattan on the Con Edison  
5 transmission route is a protected street?

6 JUDGE BOUTEILLER: The witnesses can either  
7 respond they are aware of that or they are not aware of  
8 that.

9 A. (Mooney) I am not aware of that.

10 JUDGE BOUTEILLER: Thank you. Please proceed.

11 Q. Is west 204th Street between Broadway and 9th  
12 Avenue in Manhattan on the New York City Department of  
13 Transportation's list of protected streets?

14 JUDGE BOUTEILLER: Are you aware or not aware of  
15 that?

16 A. (Mooney) We are not aware of that.

17 JUDGE BOUTEILLER: Thank you. Please proceed.

18 Q. Is Broadway between west 204th and west 207th  
19 Street in Manhattan on the list of New York City  
20 Department of Transportation's protected streets?

21 JUDGE BOUTEILLER: Are you aware?

22 A. (Mooney) No, not aware.

23 Q. Is the intersection of Broadway, 10th Avenue and  
24 west 218th Street in Manhattan, are you aware it's on  
25 the list of protected streets?

1 A. (Mooney) We are not aware of that.

2 Q. Didn't you previously state that 10th Avenue  
3 within those limits was a protected street? Didn't you  
4 previously testify to that?

5 A. (Mooney) What I testified to was the guidance we  
6 received from the New York City Department of  
7 Transportation specifically forbidding us from routing  
8 the route down 10th Avenue.

9 Q. Didn't that cover the intersection of 10th Avenue  
10 and Broadway at west 218th Street?

11 A. (Mooney) That's why we went on 219th Street, sir.  
12 We were told we couldn't be on Broadway south of 219th  
13 Street.

14 JUDGE BOUTEILLER: Let me just clarify with the  
15 witness. You have a letter to that effect?

16 MR. MOONEY: Yes.

17 JUDGE BOUTEILLER: You are going to provide it  
18 for this record?

19 MR. MOONEY: Yes.

20 JUDGE BOUTEILLER: Thank you.

21 BY MR. GULOTTA:

22 Q. Basically, aren't you coming down Broadway  
23 between 218th and 219th which crosses the intersection  
24 at 10th Avenue?

25 A. (Mooney) We were told we couldn't go across 10th

1 Avenue--couldn't be on 10th Avenue south of 219th  
2 Street.

3 Q. Basically now does the Commissioner of the New  
4 York City Department of Transportation have the  
5 authority to authorize--

6 MR. RIBACK: Object, your Honor.

7 JUDGE BOUTEILLER: You have got to let the  
8 question be asked before you can state the objection.  
9 Make sure we have the question first.

10 Q. Does the Commissioner of the New York City  
11 Department of Transportation have the authority to  
12 authorize work on a protected street, to your knowledge?

13 MR. RIBACK: Objection, Your Honor. It's asking  
14 for a legal conclusion.

15 JUDGE BOUTEILLER: We can't ask engineers to  
16 provide legal guidance for us.

17 Q. Are you aware that there is a permit fee of \$380  
18 to perform work on a protected street at the Department  
19 of Transportation in the City of New York?

20 MR. RIBACK: Again, Your Honor, objection.  
21 Asking for regulatory information about an agency.

22 JUDGE BOUTEILLER: It's not a legal conclusion.  
23 He's asking whether or not there is an imposition of a  
24 fee associated with work on a protected street. If the  
25 witnesses are aware of such a fee they can indicate

1 that. If they are not aware of such a fee they can  
2 indicate they are not aware.

3 A. (Mooney) I am not aware.

4 JUDGE BOUTEILLER: Thank you. Please proceed.

5 Q. To your knowledge, has Con Edison ever done work  
6 in Manhattan on a protected street?

7 A. (Mooney) Not to my knowledge but that doesn't  
8 mean it hasn't happened.

9 Q. Anyone else on the panel like to answer that? Is  
10 it from--do you think the New York City Department of  
11 Transportation would authorize work on 10th Avenue if  
12 that was the only route to put in this transmission  
13 line?

14 MR. RIBACK: Object, your Honor.

15 Q. Do you think the City Department of  
16 Transportation would authorize work on 10th Avenue  
17 protected street if that was the only feasible route for  
18 the transmission line since this is intended to prevent  
19 the interruption of electrical service which has to be  
20 maintained?

21 MR. RIBACK: Objection, Your Honor. He's asking  
22 for a speculative response from another agency.

23 JUDGE BOUTEILLER: Sustained on those grounds.

24 Q. Have you made a request to New York City  
25 Department of Transportation to do work on 10th Avenue?

1       A. (Mooney) Initially the fact--that's what we  
2 wanted to route the feeder when we met with New York  
3 City DOT and they expressed the fact that they would not  
4 give us permission to do the work on 10th Avenue, we  
5 looked at it in more detail. It looks good on a map.

6               When we went out to actually look at the street,  
7 just in case we--to gather information should we decide  
8 to pursue it further, it quickly became apparent that  
9 that route would be very difficult, if not impossible,  
10 for us to install the feeder based on the height  
11 limitation of the L that we discussed previously.

12       Q. I see. Basically have you reviewed the route  
13 that the joint committee has submitted to Con Edison,  
14 which is on 9th Avenue and crosses the river at 208th  
15 Street?

16               MR. RIBACK: Your Honor, I think that's more  
17 appropriate for later in this proceeding when we will  
18 discuss the Joint Proposal.

19               JUDGE BOUTEILLER: I would prefer to do that as  
20 well. Right now we have the panel addressing their  
21 Joint Proposal and their application. The way I  
22 understand this case to be structured is that we have a  
23 panel that will address their testimony which rebuts the  
24 position taken by the M29 committee. That panel would  
25 be the one most appropriate to deal with with respect to

1 the contents of the M29 proposal. Is that correct, Mr.  
2 Riback?

3 MR. RIBACK: Yes.

4 JUDGE BOUTEILLER: If that's the case it's beyond  
5 the scope of this specific panel to ask that question.  
6 If you have one or two questions along those lines I  
7 have no problems with it, but let's understand that's  
8 primarily the line of cross-examination reserved for a  
9 separate panel.

10 MR. GULOTTA: Thank you. I have no further  
11 questions.

12 JUDGE BOUTEILLER: Let's turn to the other  
13 representative for Manhattan.

14 Mr. Bing, will you be conducting some  
15 cross-examination?

16 MR. BING: Yes.

17 CROSS EXAMINATION

18 BY MR. BING:

19 Q. Actually, Mr. Chu and Mr. Mooney, we dealt with  
20 the dielectric fluid yesterday and it's a continuation  
21 of a few more questions that we had regarding that.

22 Yesterday you explained to us how the system  
23 works in terms of the PFT, what you do to detect leaks.

24 In Washington Heights-Inwood, that has been over  
25 the years, especially since 1999, the blackout, feeder

1 problems and feeder failures have been a real issue for  
2 us.

3 And we really have been looking at this closely.  
4 One of the things I would like you to discuss with us,  
5 you know, we talked about dielectric fluid, but one of  
6 the problems, as it has been explained to us, that the  
7 reasons the cables break down, there is a possibility  
8 they lose fluid, they lose pressure and in the summer  
9 time heat and load.

10 MR. RIBACK: Your Honor, is there a question?

11 MR. BING: Yes. There is a question.

12 Q. Actually, I would like for you to explain to us:  
13 Has there been anything to improve how you locate the  
14 leaks and deal with them in a timely manner?

15 JUDGE BOUTEILLER: Just for clarification for my  
16 purposes, Mr. Bing, are you asking about the safety of  
17 the use of these facilities or are you asking about  
18 their reliability?

19 MR. BING: Their reliability.

20 JUDGE BOUTEILLER: That's somewhat different than  
21 a safety consideration as we had yesterday.

22 I think you are being asked to address whether or  
23 not feeders of this nature and this type provide a  
24 reliable source of service or are they unreliable  
25 because they are subject to being broken and leaking.



1 Can you address those topics?

2 MR. MOONEY: The dielectric fluid we use as a  
3 synthetic fluid process from various mineral oils  
4 yielding a highly distilled clean fluid. The fluid used  
5 is an oxybenzene, relatively benign oil as evidenced by  
6 MSDS sheets in various sections.

7 It's not hazardous as defined under 29 CFR  
8 1910.1200.

9 JUDGE BOUTEILLER: I'm going to jump in here. I  
10 think we are asking you for information about  
11 reliability. My plan is not to go back to yesterday's  
12 subject matter until you get to redirect.

13 MR. CHU: The Consolidated Edison Company  
14 transmission backbone is based upon high pressure fluid  
15 filled system. First circuit 345 I believe went in  
16 service 1964, and it's been in service for over 40  
17 years, so we have a proven reliability and experience  
18 with that type of cable system.

19 The bulk--we have approximately, just to give you  
20 a number, we have 307 underground feeders, which of that  
21 198 are high pressure fluid filled which can accomplish  
22 over 345 kv and 138 kv feeders.

23 Just to give you a sample. I believe, just for  
24 length of miles, just to give you a comparison, total  
25 number of miles for the 345 plus 138 is probably

1 over--according to my records over 600 miles of high  
2 pressure fluid filled system.

3 BY MR. BING:

4 Q. That's throughout the city?

5 A. (Chu) Throughout the city, including Westchester  
6 County.

7 Q. I am really sort of trying to focus on Washington  
8 Heights-Inwood area. Especially, like I said, since we  
9 have had disruptions. When we had the loss of Sherman  
10 Creek station we lost something like ten feeders. I  
11 mean those are the distribution feeders, but just  
12 feeders in general.

13 When you describe the technique for using the PFT  
14 to some of us it does seem like a time consuming way to  
15 locate a leak. I mean it's--I'm sure it's efficient but  
16 it just appears to be time consuming.

17 And again, I am just asking--it's time consuming.  
18 Does that give the time the feeders to overload,  
19 overheat, especially on summer days when the system is--

20 JUDGE BOUTEILLER: Let me see if I can ask that  
21 question. Will the introduction of this facility in the  
22 Heights and the Inwood area, in your opinion, improve  
23 upon reliability or detract from reliability?

24 A. (Chu) I think there is--a distinction has to be  
25 made here between the transmission and distribution

1 system. The transmission system basically will be  
2 feeding--the Academy Street substation will subsequently  
3 be feeding the 179th Street load pocket.

4 In there, there is no direct connection to the  
5 Inwood section of Washington Heights. Washington  
6 Heights I believe is fed from the Sherman Creek  
7 substation.

8 So, when we compare the ten feeders and the  
9 overloads it has no direct relationship to the  
10 transmission feeder we are installing.

11 Q. So the failures are just on the distribution side  
12 of these feeders?

13 A. (Chu) Obviously transmission also has their  
14 failures as well, but we like to believe we keep our  
15 system in tiptop shape and running under peak  
16 performance. Because of the criticality of these type  
17 of feeders, basically the transmission feeders bring in  
18 bulk power to our switching station, which are then  
19 distributed to the area station and then subsequently  
20 distributed to the area networks.

21 (Mooney) I would like to add to that if I might.  
22 In that the Con Edison system is the most reliable power  
23 system in North America, and while it's true that  
24 Washington Heights lost power for three days or so in  
25 1999, subsequent to that Consolidated Edison Company has

1 spent a lot of effort, a lot of money, bulking up this  
2 system. And this feeder will make the entire system  
3 more robust, benefitting the people in the entire Con  
4 Edison service area.

5 JUDGE BOUTEILLER: I believe that's responsive to  
6 your question.

7 Q. On this new transmission line in the event of a  
8 leak you will be able to pinpoint it in a timely manner?

9 A. (Chu) Yes. One thing I wanted to clarify is that  
10 you specifically mentioned about overloads. The  
11 transmission feeders are controlled and operated by the  
12 senior system operator at the energy control center and  
13 he's regulated to abide by the ratings that are provided  
14 by engineering to operate within.

15 So, if an overload situation should occur he's  
16 required by our procedure to take action and reduce that  
17 overload.

18 Q. Just another question. On a transmission line  
19 like this, how do you forecast the temperatures on this  
20 line? Is this also done from the substation? How do  
21 you monitor the feeder cables in this line? How are  
22 they monitored, cable temperatures, pressure fluids?

23 A. (Chu) Cable ratings are based upon calculations,  
24 based upon assumptions of the ground temperature and  
25 soil resistivity measurements that we encounter

1 during--that we encounter.

2 Calculations are performed and corresponding  
3 ratings are developed as a result of those design  
4 inputs. Those are the same ratings.

5 So that's the basis of the feeder ratings. Once  
6 again, the senior system operator with those ratings is  
7 ensured that the--if the capacity of the cable is below  
8 or within the operating bounds, the cable will never be  
9 overloaded.

10 Q. Okay. Just one more question concerning--this  
11 cable is monitored from, will be monitored from the  
12 Academy Street station, Sprain Brook station. Just a  
13 question. The hydraulic systems in these plants, what  
14 would happen if they failed and lost fluid pressure?

15 A. (Chu) Your answer is if the pressure is lost, the  
16 operator gets an alarm. Each plant that he tends are  
17 alarmed to the control rooms. Control room operator  
18 must take action immediately upon the loss of pressure.  
19 If the pressure goes below a certain set point the  
20 feeder must come out of service.

21 Q. So, you can't operate that feeder at a reduced  
22 pressure, it has to come out?

23 A. (Chu) Has to come out. The pressure is required  
24 to maintain the dielectric strength of the system.

25 JUDGE BOUTEILLER: Mr. Bing, does that conclude

1 the questions you have for the panel?

2 MR. BING: No. Actually I have just a couple  
3 more.

4 JUDGE BOUTEILLER: What I want to do is move in a  
5 sequence, I don't want to go backwards, so I would like  
6 to have all your questions of this panel presented  
7 before we move on to something else.

8 Q. Again, Mr. Chu or--this concerns construction  
9 down Broadway, 204th, 207th Street, that area there.

10 Yesterday we talked about subsurface structures  
11 and we just went through a lot of them, rock formations,  
12 gas line. Also one of the concerns we have about  
13 construction coming down that avenue is the network  
14 distribution of the fluid filled cables.

15 I would imagine that there would be a lot of  
16 these cables in that particular area there. That's a  
17 concern. You also mentioned duct banks and water mains,  
18 sewer lines, concrete structures, and then we talked  
19 about the time frame of the construction in that area.

20 And we would just like to ask: Because this area  
21 is so densely populated and narrow, I mean we were just  
22 a little uncomfortable about that time frame in terms of  
23 running into all of the structures and whether you might  
24 have to reconfigure the pipe. It just seems very, very  
25 time consuming if you run into these problems.

1 MR. RIBACK: I am not sure I heard a question.

2 Q. Will that present--will these structures  
3 conceivably extend the time of this project, of the  
4 construction work?

5 A. (Chu) As part of the design of the M29, Con  
6 Edison did an extensive underground survey of the area  
7 including the area to Sherman Creek, which addresses all  
8 your existing transmission lines there.

9 Several test pits were done in the area to verify  
10 our lane. With the information that we see from those  
11 test pits there were locations where we had to modify  
12 the lane in order to get into the Academy Street  
13 substation.

14 So, in the process of developing those drawings,  
15 those comprehensive drawings of the subsurface  
16 identifies a lane for where we can go into. What we  
17 subsequently do is where we have pinch points for  
18 locations where we think we are going to have  
19 interference and we will do test pitting to verify that  
20 lane, and that's what we have done so far to verify the  
21 lane into the substation to minimize any subsurface  
22 interference we encounter.

23 Q. So, you do feel this work can be completed within  
24 the time frame that you are looking at?

25 A. (Chu) Yes, I do.

1 Q. Just one more question. Again, the transmission  
2 line coming down Broadway, just a question in general,  
3 this is about--would you have any other components,  
4 steam mains, main ducts, or anything that could produce  
5 an external heat source that would have an effect on the  
6 current carrying capability of this line?

7 A. (Chu) There are no steam mains in the upper area  
8 which you are referring to. There are distribution and  
9 other transmission lines in the area.

10 As part of our calculations we compensate for the  
11 external heat sources in the area in our calculations.  
12 So we incorporate that conservatism as part of our  
13 design and operation of the facility.

14 Q. Of the whole route?

15 A. (Chu) The whole route.

16 MR. BING: Thank you.

17 JUDGE BOUTEILLER: Let's turn now to Mr. Collins  
18 for any questions he may have of the panel.

19 CROSS EXAMINATION

20 BY MR. COLLINS:

21 Q. In drafting the proposed route to come down  
22 Broadway from 219th to 204th and east on 204th, have  
23 they taken into consideration or are you aware of the  
24 fact there are eight schools along this proposed route?  
25 Yes or no.



1 JUDGE BOUTEILLER: I believe that would go to  
2 Mr. Dempsey; is that right? Or Mr. Wolfgang, do you  
3 want to address it?

4 A. (Wolfgang) I believe, to the extent that the  
5 question talks about the routing, the routing of this  
6 project was done by Con Edison. So, to the extent that  
7 that was taken into consideration, as I think it was  
8 stated yesterday, that community concerns are considered  
9 during the routing of these feeders in addition to the  
10 criteria that were mentioned yesterday.

11 I can leave it up to the folks from Con Edison to  
12 answer that, but I am not sure they tabulated the number  
13 of schools but I think it probably was considered.

14 Q. Were they also aware, and if so to what degree  
15 did they give the consideration merit for the 4600  
16 residential units that are along the Con Edison proposed  
17 route through the mile and a half in Inwood, along with  
18 the three houses of worship, five bus routes, the  
19 approximately hundred commercial units, and the  
20 inevitable traffic tie-ups which will certainly result  
21 in the rerouting or movement of traffic as a result of  
22 15 blocks of work on Broadway? What consideration, to  
23 what degree did Con Ed consider those factors in  
24 crafting their proposed route?

25 A. (Mooney) Con Edison's objective is to always

1 select the route that best meets our criteria while at  
2 the same time minimizing the impact on the affected  
3 community, and to the best extent possible we do so and  
4 have done so in this case.

5 We certainly want to minimize the impact on this  
6 project on the affected communities because it's in our  
7 best interest to do so, and it's also the right thing to  
8 do.

9 I wish I could tell you that there would be no  
10 impact to the community wherever we put the feeder. The  
11 reality is we don't have a better alternative. We chose  
12 the best alternative route, recognizing that it would  
13 have some impact. We believe these impacts will be  
14 temporary and also unavoidable.

15 Q. Thank you. In the Joint Proposal for this case I  
16 have several--in reviewing the recent  
17 submission--concerns of omissions of things that the  
18 Community Board but also the active parties had  
19 advocated for, some of which at the November 2nd  
20 conference had been agreed to by Con Edison. I was  
21 baffled by the fact that some are not in here.

22 MR. RIBACK: Your Honor, I believe that's a  
23 mischaracterization of negotiations that were  
24 confidential.

25 JUDGE BOUTEILLER: He's not revealed any specific

1 items that were under negotiations, and if there are any  
2 such areas which would reveal the status perhaps we can  
3 go off the record and ask the two of you to confer to  
4 see where you are, if your understandings coincide or  
5 differ.

6 Let's go off the record.

7 (Recess taken.)

8 JUDGE BOUTEILLER: The panel is here. We can  
9 resume with the cross-examination, and I can note for  
10 our record that Mr. Agresti is here and if there were  
11 any questions concerning noise that were deferred to his  
12 presence clearly he is available now to handle such  
13 question.

14 Let's return to Mr. Collins and see where he  
15 wants to go with cross examination.

16 BY MR. COLLINS:

17 Q. Go back with outreach to our community at Inwood  
18 and ask if these entities had been spoken to by Con  
19 Edison. The school PS-278, 219th Street and 9th Avenue,  
20 Did you speak to the folks at PS-278, which is almost  
21 500 children that go to school at that location?

22 JUDGE BOUTEILLER: Mr. Wolfgang, are you aware of  
23 the outreach efforts made by Consolidated Edison before  
24 the application was filed or subsequently?

25 MR. WOLFGANG: I personally have not been

1 involved with any community outreach efforts and I'm not  
2 aware of what efforts Con Edison has undertaken as part  
3 of this process.

4 JUDGE BOUTEILLER: Are you spokesperson for the  
5 entire panel?

6 MR. WOLFGANG: No, I'm not.

7 MR. MOONEY: Con Edison has made an attempt to  
8 reach out to numerous local officials and community  
9 boards, meeting individually with most if not all  
10 elected officials and community boards.

11 JUDGE BOUTEILLER: Can you testify at this time  
12 that Consolidated Edison has talked to any officials  
13 associated with PS-278?

14 MR. MOONEY: Specifically the schools typically  
15 are addressed during the actual construction?

16 JUDGE BOUTEILLER: That is an indication that  
17 probably Con Edison has not spoken to anyone located at  
18 PS-278.

19 MR. MOONEY: I have not.

20 JUDGE BOUTEILLER: Thank you. Please proceed.

21 BY MR. COLLINS:

22 Q. Same would hold true for PS-18, also on 9th  
23 Avenue, PS-176, where there's about 500 kids; PS-311,  
24 PS-314, the proposed school which now the school  
25 construction authority is in the process of closing and

1 purchasing 200 Sherman Avenue at the northwest corner of  
2 204th Street and Sherman Avenue, 282 seat school.

3 The same would also be true for the Shepherd  
4 School and PS-5, where there is approximately 600  
5 students, adjacent to where the new Academy Street  
6 substation would be.

7 None of those have been spoken to as of today.  
8 They would be spoken to during the construction phase;  
9 is that correct?

10 A. (Mooney) Yes. Again, we reached out to leaders  
11 in the community including yourself, Congressman Engel,  
12 several other elected officials, Mr. Divinovich and  
13 people like that, but to go to the specifics of the  
14 individual schools, that would be addressed during the  
15 actual construction.

16 JUDGE BOUTEILLER: Let me just be clear. You  
17 have not spoken to anyone at the Board of Education or  
18 anyone with managerial responsibility over the school  
19 systems?

20 MR. MOONEY: Not to my knowledge.

21 JUDGE BOUTEILLER: Thank you. Please proceed.

22 Q. The subject of the Allen Pavilion, have you  
23 spoken to anyone, 219th Street and Broadway, 230 beds,  
24 and receive annually 26,000 emergency visits?

25 A. (Mooney) Yeah. We have talked to several

1 representatives from New York Presbyterian Hospital and  
2 I believe the entrance to the Allen Pavilion is more  
3 like 220th Street, but I won't argue with you.

4 Q. Who did you speak to at the Allen?

5 A. (Mooney) Talked to Martin Cohen on numerous  
6 occasions at the Presbyterian Hospital and  
7 representatives, some of whom are here today.

8 Q. And the houses of worship along the route running  
9 directly in front of Good Shepherd Church on Ishom  
10 Street and Broadway and also going by St. Matthew's  
11 Church and also St. Jude's Church.

12 Has anyone been spoken to at those institutions?

13 A. (Mooney) Again, specifically, we would talk to  
14 the leaders of--priests, rabbis, religious institutions,  
15 during the actual construction and make arrangements not  
16 to do construction work during services. That's  
17 typically what we do.

18 JUDGE BOUTEILLER: Let me just be clear on our  
19 record. Your testimony is that during the preparation  
20 work for putting the application together and with the  
21 processing of the application to date there's been no  
22 outreach or education made to any of the leaders of  
23 these worship communities that's been listed in  
24 Manhattan; is that correct?

25 MR. MOONEY: Aside from the public hearings and

1 such, Your Honor, I believe that's correct.

2 JUDGE BOUTEILLER: When you're referring to  
3 public hearing you are referring to those hearings that  
4 were noticed by the Public Service Commission?

5 MR. MOONEY: That is correct.

6 JUDGE BOUTEILLER: I just want to be clear on our  
7 record. Did Consolidated Edison make any effort to  
8 invite or solicit at our public statement hearings any  
9 attendance from any churches or other institutions of  
10 worship along the route in Manhattan?

11 MR. RIBACK: Your Honor, can we--

12 JUDGE BOUTEILLER: Can the witness respond? Yes  
13 or no?

14 MR. MOONEY: Not to my knowledge.

15 JUDGE BOUTEILLER: Mr. Riback.

16 MR. RIBACK: I was going to say if the witnesses  
17 might be able to consult with other Con Edison people  
18 here today we might be able to give you a more  
19 definitive answer.

20 JUDGE BOUTEILLER: I would like to have on our  
21 record some knowledge about the quality and degree of  
22 the outreach and education program. I am assuming that  
23 this panel was capable of indicating in general terms,  
24 but if we go beyond their knowledge and there was other  
25 efforts made I don't want to have an inaccurate record

1 so I leave that open to you, Mr. Riback, and I will  
2 accept representation from counsel and to the degree you  
3 would be responsive and precise.

4 Thank you. Please proceed.

5 BY MR. COLLINS:

6 Q. Also Dykeman houses where there is almost 200  
7 housing developments, almost 30,000 housing units. Any  
8 dialogue with the folks at Dykeman houses? Also the  
9 senior center and the Dykeman community center, which  
10 takes in 250 people on a daily basis for a variety of  
11 school and after school programs.

12 A. (Mooney) Again, I can't testify specifically to  
13 what our public affairs group has or has not done as far  
14 as outreach.

15 Q. Last question is the business community. Many of  
16 those businesses on Broadway will be impacted, as we  
17 spoke to earlier, with regard to parking or delivery  
18 areas. Has there been any dialog with any of the  
19 business entities or the LDC for the area, Audubon  
20 Partnership?

21 MR. MOONEY: Same answer, your Honor.

22 JUDGE BOUTEILLER: You have not spoken to any  
23 specific individual--

24 MR. MOONEY: I have not.

25 JUDGE BOUTEILLER: --operators or owners of



1 businesses?

2 Are you aware of any company efforts?

3 MR. MOONEY: Aside from the public hearings and  
4 specific invitations to individual business owners, I am  
5 not. That doesn't mean it didn't happen.

6 JUDGE BOUTEILLER: Did you speak with any  
7 Chambers of Commerce or groups or any organizations that  
8 would represent business interests in general with  
9 respect to this application?

10 MR. MOONEY: Community Boards, not Chambers of  
11 Commerce, I don't believe.

12 JUDGE BOUTEILLER: Community Boards like the one  
13 Mr. Collins and Mr. Bing are associated with?

14 MR. MOONEY: Correct.

15 JUDGE BOUTEILLER: Thank you. Please proceed.

16 BY MR. COLLINS:

17 Q. How would you answer the question there is still  
18 a great deal more work and outreach in the Inwood  
19 community that must be done in order for the many  
20 entities that will be impacted by the proposed route to  
21 be fully informed of what is coming?

22 A. (Mooney) Again, while we didn't give specific and  
23 special invitations to individual businesses, individual  
24 churches, synagogues, places of worship, we have on a  
25 couple of occasions spoke to the community boards; lent

1 our services and went and made ourselves available to  
2 present the route, discuss the route in public forums  
3 that were advertised, and in the local communities,  
4 making our best effort I believe to reach as many people  
5 as reasonable or possible during the course of this  
6 project.

7 Q. I think it's safe to say there's more community  
8 outreach that needs to be done in our community.

9 MR. RIBACK: Objection, Your Honor, with the  
10 characterization.

11 JUDGE BOUTEILLER: That wasn't a question, and I  
12 will try to encourage the cross-examiner to just ask  
13 questions and elicit information from the witnesses,  
14 information that will be made to their expertise or  
15 factual information that they have access to.

16 MR. COLLINS: Yes, Your Honor.

17 Q. The proposal that was submitted by the monitoring  
18 committee including a resolution from Community Board 12  
19 which spoke to changes in the plan that had been agreed  
20 to so far, I am just going to high light the salient  
21 points that we wanted to see Con Edison do.

22 MR. RIBACK: Why are we discussing the M29 joint  
23 committee's proposal at this stage?

24 JUDGE BOUTEILLER: I need to understand what the  
25 purpose of the line of cross-examination with the

1 witnesses are to be able to determine whether or not the  
2 line of cross-examination is permissible.

3 Are you trying to establish for our record,  
4 first, whether or not there is an agreement or  
5 disagreement with respect to Consolidated Edison and the  
6 Community Board with respect to specific items that you  
7 asked to be incorporated into the application?

8 MR. COLLINS: Yes. There are several outstanding  
9 concerns that have not been satisfied and that we feel  
10 are very important and that should be in the proposal.

11 JUDGE BOUTEILLER: For purposes of the record and  
12 I think its completeness, you can identify items that  
13 you have sought to have something accomplished or  
14 satisfied by Consolidated Edison and you can elicit for  
15 our record from the witnesses if they have knowledge as  
16 to what might be the reason or the rationale for why  
17 your request may or may not have been able to be  
18 accommodated by them.

19 Mr. Riback, is that a line of inquiry that you  
20 would object to?

21 MR. RIBACK: No.

22 JUDGE BOUTEILLER: Thank you. Can you proceed  
23 along those lines?

24 MR. COLLINS: Yes.

25 JUDGE BOUTEILLER: Identify them one by one

1 specifically. Let's not group them entirely just for  
2 clarity on the record.

3 BY MR. COLLINS:

4 Q. With regard to the schools along the proposed  
5 route, noise, and the effective noise on students'  
6 learning abilities is very, very important. What hopes  
7 can those eight schools expect Con Edison to work  
8 cooperatively with the neighborhood on mitigating noise  
9 and construction during hours when the school is not in  
10 session?

11 MR. RIBACK: Your Honor, again, yesterday we  
12 established I thought that a lot of the details dealing  
13 with noise are addressed in the EM&CP and the  
14 maintenance and protection of traffic plans and other  
15 community outreach that occurs at the back ends of the  
16 Article VII process, and I don't see the point of  
17 raising these issues with this panel at this point.

18 JUDGE BOUTEILLER: And that was explained to the  
19 Community Board?

20 MR. RIBACK: Yes.

21 JUDGE BOUTEILLER: And Mr. Collins, do you  
22 understand the company's position with respect to how  
23 noise impacts would be handled at specific locations?

24 MR. COLLINS: Fine.

25 JUDGE BOUTEILLER: Do you want to inquire about

1 that with this panel?

2 MR. COLLINS: I would like to for our community's  
3 sake hear their statement.

4 JUDGE BOUTEILLER: So, you disagree with the  
5 proposal that all the noise impacts be either specified  
6 or addressed or mitigated at the time of the--after a  
7 certificate is granted?

8 MR. COLLINS: Yes.

9 JUDGE BOUTEILLER: Mr. Agresti, can you address  
10 the sufficiency of the approach that the company plans  
11 to use for purposes of noise abatement and mitigation in  
12 this case given the knowledge you have currently of what  
13 the noise impacts are.

14 MR. AGRESTI: As mentioned earlier, once a site  
15 or a route is approved at any specific areas where noise  
16 impacts may occur mitigation measures are employed, but  
17 there are construction is--construction noise is one of  
18 those things that, for lack of a better word, is what it  
19 is.

20 There are--construction does generate noise.  
21 Construction really, to any project, whether it be a  
22 transmission line or even the construction of a new  
23 school or a home, there are certain construction  
24 activities which occur.

25 The impacts that that noise from construction

1 generates really is based on, one, the level of the  
2 noise and, two, the duration of the noise. For example,  
3 if you are building a building somewhere, a school or  
4 apartment building, that could take a year, year and a  
5 half.

6 A residence or other sensitive type of areas  
7 there would be subject to more of potential impact  
8 because of the duration of the noise. For projects such  
9 as this, the noise is really mobile. It moves along the  
10 transmission line, which is one reason that the  
11 potential for impact is really minimized because of  
12 that.

13 And further I would add that most jurisdictions,  
14 towns, states, recognize that noise from construction  
15 does occur, and the real way that's mitigated is through  
16 many ordinances.

17 In particular, the City of Yonkers has an  
18 ordinance where they limit construction to certain hours  
19 of the day to prevent sleep interferences. That is one  
20 of the most significant ways to mitigate noise is to  
21 limit the hours of construction. And certainly any  
22 ordinances that apply through the route would be adhered  
23 to on construction schedule.

24 JUDGE BOUTEILLER: That's true with respect  
25 specifically to Manhattan?

1           MR. AGRESTI:  Manhattan, also the New York City  
2 Department of Environmental Protection has a noise code  
3 that also limits the hours of construction, not the  
4 levels, because the levels--really to mitigate--  
5 construction noise is active.  You have pieces of  
6 equipment that move.  It's not like if it were a  
7 permanent source of noise it could be within a building  
8 to reduce noise construction.  It's an outdoor activity  
9 that does generate some noise.

10           JUDGE BOUTEILLER:  Refresh my recollection.  With  
11 respect to the application, has Consolidated Edison  
12 sought any waivers of local ordinances from the  
13 Commission?

14           MR. AGRESTI:  No, they have not.

15           JUDGE BOUTEILLER:  Thank you.  Is there another  
16 area of interest or concern?

17           MR. COLLINS:  Yes.

18 BY MR. COLLINS:

19           Q.  What level of air monitoring and testing for dust  
20 and debris will be done in and around schools?

21           A.  (Agresti) That would be outside of my area.

22           JUDGE BOUTEILLER:  Is there anyone on the panel  
23 that can address air quality impacts in the air around  
24 the school locations related perhaps to construction?

25           MR. MOONEY:  I think that's best answered by

1 Steve Beccalori, the construction manager.

2 JUDGE BOUTEILLER: That's noted for the record.

3 Other areas?

4 MR. COLLINS: Two other questions I would like to  
5 discuss.

6 Q. One of the unresolved issues for us was improving  
7 the area on the south side, the Academy Street on the  
8 south side of the substation so it could be used as a  
9 public street once again.

10 Con Ed closed that off for about a hundred years.  
11 What will Con Edison do to provide usable community  
12 space about the Academy Street substation?

13 MR. RIBACK: Your Honor, I object to that  
14 question because it's outside the scope of the  
15 application.

16 JUDGE BOUTEILLER: Is no member of the panel  
17 prepared to respond or address the question of the use  
18 of a road that was once public and now has not been made  
19 public, whether or not--had that been evaluated or  
20 considered in light of the community interest in that  
21 area?

22 Is there no member of the panel that can address  
23 how that consideration was either considered by  
24 Consolidated Edison or state for our record what your  
25 current position is?



1           MR. RIBACK: That issue, which is outside the  
2 scope of the transmission line construction project, is  
3 under negotiations with the City of New York and has not  
4 been resolved at this time.

5           JUDGE BOUTEILLER: That has a history preceding  
6 this application?

7           MR. RIBACK: Yes, it does.

8           JUDGE BOUTEILLER: I will accept that response.  
9 Any other areas, Mr. Collins?

10          MR. COLLINS: Yes.

11 BY MR. COLLINS:

12          Q. In our resolution and has been discussed  
13 previously with Con Edison, coming into the Inwood  
14 community the overwhelming majority of our business  
15 owners and persons are Spanish speaking. And to what  
16 degree will Con Ed provide multi-lingual personnel to  
17 receive complaints, suggestions during the construction  
18 project at Academy substation?

19          JUDGE BOUTEILLER: I think that one is pertinent.  
20 Is it not, Mr. Riback?

21          MR. RIBACK: It is. As I mentioned to  
22 Mr. Collins earlier, it's a subject that Con Edison is  
23 willing to discuss and entertain during the construction  
24 phase of this project.

25          JUDGE BOUTEILLER: Can you make any general

1 statement for the record with respect to the company's  
2 position on the ability of the company to understand  
3 concerns that may be raised during the construction  
4 period by people who are primarily Spanish speaking?

5 Do you have any general position on that that you  
6 can state for the record either by yourself or a member  
7 of the panel?

8 MR. RIBACK: I think I would defer on stating a  
9 general position pending a discussion with public  
10 affairs department.

11 JUDGE BOUTEILLER: Can you come back during the  
12 course of the hearing and give us that statement?

13 MR. RIBACK: Sure.

14 MR. COLLINS: That's it.

15 JUDGE BOUTEILLER: Is there anything further from  
16 the members of the Manhattan group? Again, I am just  
17 doing it because our rules and our principles become  
18 clear after execution, but generally we go in one  
19 direction and we don't overlap or we don't do three  
20 times what one person is doing.

21 Mr. Bing.

22 MR. BING: I just have one more question, one  
23 more environmental question.

24 JUDGE BOUTEILLER: Sure.

25 BY MR. BING:

1       Q.   It's in regards to the trenching and excavation  
2 coming down Broadway and it concerns infiltration storm  
3 water, storm water infiltration.

4           What happens when it fills up? Is the effluent  
5 treated in the trenches? How is that dealt with?

6           JUDGE BOUTEILLER: Let me see if I can understand  
7 your question. While the trench is open and we have a  
8 rainstorm and we have--

9           MR. BING: Two or three days rainstorm.

10          JUDGE BOUTEILLER: Right. Can you address this  
11 hypothetical? If the trench were open for an extended  
12 period of time and we had a major rain event that would  
13 occur, can you describe what would happen within the  
14 trench and how that might be handled or addressed?

15          Is that your question?

16          MR. BING: Yes.

17          JUDGE BOUTEILLER: Does it rain in the city?

18          MR. MOONEY: Yes, sir. It's a construction issue  
19 in general but the people who do the construction are  
20 required to have a HASP, health and safety plan, which  
21 deals with storm water control and they have to talk  
22 about how they are going to deal with things like that.

23          JUDGE BOUTEILLER: During construction?

24          MR. MOONEY: That is correct.

25          JUDGE BOUTEILLER: That would be an element of a

1 plan that would be able to be reviewed?

2 MR. MOONEY: Yes, sir.

3 MR. WOLFGANG: I think I can elaborate a little  
4 bit on that.

5 JUDGE BOUTEILLER: Please do so.

6 MR. WOLFGANG: I believe I can refer to the  
7 application in section 4.7 regarding water resources.  
8 4.7-9 makes reference to construction activities for the  
9 project will be subject to a construction SPEDES permit  
10 for storm water management. A storm water pollution  
11 protection plan will be prepared as part of the  
12 environmental management and construction plan.

13 The environmental management and construction  
14 plan, also known as the EM&CP, will be formally filed  
15 with the Department of Public Service, the communities  
16 will be provided the opportunity to comment and review  
17 that plan as part of a 30 day public comment period on  
18 that document.

19 So, the information that you are requesting in  
20 terms of best management practices, dewatering plans,  
21 things of that nature, will be addressed in the storm  
22 water pollution prevention plan.

23 BY MR. BING:

24 Q. We will receive that?

25 A. (Wolfgang) You will have a copy of that 30 day

1 comment period prior to formal approval by the Public  
2 Service Commission.

3 JUDGE BOUTEILLER: Let me ask counsel, Mr.  
4 Riback, a question. Can you give us a status report  
5 with respect to where the company's EM&CP stands  
6 currently?

7 MR. RIBACK: The EM&CP is under development.  
8 Actually one portion of it, dealing with the Academy  
9 substation, in draft form was provided to the parties  
10 several months ago. There has not been any further  
11 discussion of that segment of the plan.

12 JUDGE BOUTEILLER: Was that copy provided to the  
13 Manhattan Community Board?

14 MR. RIBACK: Yes, it was.

15 JUDGE BOUTEILLER: You have one more question?

16 BY MR. GULOTTA:

17 Q. Was it your testimony when the construction of  
18 this transmission line is completed that it won't  
19 contribute or improve the distribution of electrical  
20 services at Community Board 12?

21 A. (Chu) That's best answered by planning folks.

22 (Elmi) The project M29 will benefit the  
23 distribution as well. The distribution system itself  
24 will be affected or improved when a contingency or  
25 unforeseen events occurs on the distribution system.

1           So, when the event or contingency occurs on the  
2 transmission system, so by reinforcing the transmission  
3 system you are actually reinforcing the supply  
4 capability into the distribution system.

5           MR. GULOTTA: Thank you.

6           JUDGE BOUTEILLER: I believe one last question  
7 from Mr. Collins.

8 BY MR. COLLINS:

9           Q. What conversations has Con Edison had with the  
10 MTA about the effects on the 12, 7, 100, 20 and the BXM  
11 number one? What conversations has Con Edison had with  
12 MTA with regard to the effects of these five bus routes?

13          A. (Mooney) None to my knowledge.

14          JUDGE BOUTEILLER: That's your response.

15          MR. COLLINS: Last item. In the Con Edison  
16 report they are missing PS-278. It's not mentioned in  
17 the report and it should be.

18          JUDGE BOUTEILLER: You want to just note that for  
19 our record.

20          I believe that concludes the cross-examination of  
21 the panel by the representatives for Manhattan.

22          Mr. Glass, since you seem to be an officer of the  
23 Court, can you tell us where we stand now?

24          MR. GLASS: I am up next.

25          (Recess taken.)

1 JUDGE BOUTEILLER: Mr. Glass, take a few minutes  
2 to prepare yourself.

3 Mr. Collins, can we just clarify on the record  
4 before we go too far, you made a statement that you just  
5 wanted to have on the record. Can you just make it  
6 correctly at this point.

7 MR. COLLINS: Yes. The Joint Proposal omits  
8 PS-278 from its record and PS-278 needs to be included  
9 in the Joint Proposal.

10 JUDGE BOUTEILLER: Which is what you believe.

11 MR. COLLINS: Yes.

12 JUDGE BOUTEILLER: Thank you very much.

13 Mr. Glass, whenever you are ready you can  
14 proceed.

15 CROSS EXAMINATION

16 BY MR. GLASS:

17 Q. Do you remember yesterday questions being asked  
18 by the judge about alternative number seven identified  
19 as an abandoned railroad right-of-way?

20 A. (Mooney) Yes.

21 Q. Are you aware that Westchester County has  
22 acquired that area and dedicated and developed it as a  
23 linear park?

24 A. (Mooney) Yes.

25 Q. Are you aware that Westchester County has spent

1 over \$2 million on development of that park?

2 A. (Mooney) Yes.

3 JUDGE BOUTEILLER: Let me just follow up with  
4 that. We spoke about appendix A to the Joint Proposal  
5 yesterday. Do you have that still handy there?

6 MR. MOONEY: Yes.

7 JUDGE BOUTEILLER: The considerations that  
8 Mr. Glass just raised, would those be captured by any  
9 one of the criteria that you are listing there, one  
10 through six, and if so can you tell me which of those  
11 criteria captures the kinds of considerations that  
12 Mr. Glass just raised?

13 MR. MOONEY: Specific fact that it's a county  
14 park, Your Honor, is not listed on one of the criteria.

15 JUDGE BOUTEILLER: Thank you very much.

16 Please proceed, Mr. Glass.

17 BY MR. GLASS:

18 Q. Mr. Chu, the original filing states that Con  
19 Edison is installing additional equipment at the  
20 Dunwoodie substation to accommodate the demands of the  
21 new transmission line; is that correct?

22 A. (Chu) You made reference to Dunwoodie.

23 Q. Yes, the substation.

24 A. (Chan) Let me answer that. The equipment being  
25 added at Sprain Brook substation, not Dunwoodie



1 substation.

2 Q. So but with that change that is a correct  
3 statement?

4 A. (Chan) Yes.

5 (Mooney) So we are all clear, the equipment added  
6 for M29 will be added at the Sprain Brook substation,  
7 not Dunwoodie.

8 Q. How much additional future capacity will remain  
9 at the Sprain station above the current usage right now?

10 A. (Chan) How do you define future capacity?

11 Q. That is not either being used at the moment or  
12 will be used for the new M29 line.

13 A. (Chan) The Sprain Brook substation has what is  
14 described as bay, which is a connection point at the  
15 substation. Currently the M29 is connected to a spare  
16 position at bay number two.

17 The existing has total of five bay, two through  
18 six. There is physical space today at the substation to  
19 add bay number seven. If you were to do that you will  
20 add two additional connection points at Sprain Brook and  
21 the substation itself with additional work can  
22 presumably expand further, but that will be at a cost.

23 Q. Why is the pressuring plant--and I think it's  
24 referenced in E-2.1 in your original filing, and may  
25 also be mentioned in appendix C.

1           Why is the pressurizing plant going to be housed  
2 in a skid mounted trailer rather than a more attractive  
3 building designed to blend into the surrounding property  
4 at Sprain Brook?

5           A. (Mooney) That is in fact what a skid mounted  
6 trailer is. I think I get the impression--I guess  
7 misunderstanding what it will look like. It will be in  
8 a--when it's completed it will be in a building that  
9 blends in with the rest of the facilities in the  
10 substation. It's basically a modular unit.

11          Q. And what will it look like? Because the filing  
12 states that it's a skid mounted trailer.

13          A. (Mooney) Right. I think that may be a little bit  
14 too technically specific. It comes--it's a modular unit  
15 that we buy in one piece. In other words, we don't have  
16 pipe fitters putting it together. It's constructed  
17 almost like a modular house. It comes to the unit, they  
18 off load it off of a trailer, and it's housed in a  
19 building very similar to the rest of the structures.

20          Q. Could you describe what the building looks like?

21          A. (Chu) It's an outdoor structure that you are  
22 referring to, that modular skid, and the reason why it's  
23 modular is that for ease of placing on to the location.  
24 Units are typically built at a manufacturing facility  
25 and then transported up to the location and off loaded,

1 minimizing any construction on the site.

2 The building consists of aluminum sheeting  
3 siding, fully insulated. It would match the existing  
4 pressurizing plants directly adjacent to it which has  
5 been in service for several years.

6 Q. Could you describe then the Academy substation  
7 and what that building looks like?

8 A. (Mooney) The Academy substation will be a state  
9 of the art building which we can probably show you an  
10 artist rendering of the building. It will in my opinion  
11 greatly enhance the beauty of the area. It's designed  
12 with a nautical theme. It doesn't look like a "typical"  
13 substation. It's nice. It's going to be a very nice  
14 building.

15 JUDGE BOUTEILLER: Let me interject here. Who  
16 picked the design for the building?

17 MR. MOONEY: Design was approved by Con Edison  
18 CEO Kevin Burke.

19 JUDGE BOUTEILLER: Was any community involvement  
20 entertained for purposes of considering what the final  
21 design of the building should look like?

22 MR. MOONEY: The design was presented at the  
23 community board meetings we attended and were actually  
24 very favorable.

25 JUDGE BOUTEILLER: Thank you very much.

1 BY MR. GLASS:

2 Q. Was Yonkers given an opportunity to comment or  
3 input on to the design of the buildings that are being  
4 placed at Sprain Brook?

5 A. (Mooney) Yonkers--as part of the normal building  
6 process we submitted the plans to the Yonkers building  
7 department as we are required to do.

8 Q. But you wouldn't characterize the skid mounted  
9 trailer as a comparable type of building to what you are  
10 building at Academy Street.

11 A. (Mooney) It's much smaller. It's really not a  
12 direct comparison. One building is a stand alone  
13 structure that contains a transmission substation. It's  
14 a good size building.

15 The building that you are referring to at Sprain  
16 Brook will, one, not be seen from the road and, two, I  
17 guess blends in and is basically the same as all the  
18 other existing buildings on the facility.

19 Q. Is Con Edison in the future willing to work with  
20 the county and the local municipalities in the design of  
21 buildings that are being erected in Westchester to the  
22 same extent that they are willing to work with New York  
23 City on the Academy Street building?

24 MR. RIBACK: Your Honor, I object to the question  
25 as being outside the realm of this application.

1 JUDGE BOUTEILLER: I guess the question I would  
2 have is how do you plan on making that a matter that  
3 would be enforceable either through the issuance of this  
4 certificate or through the agencies' continuing  
5 jurisdiction with respect to this particular line?

6 It wasn't clear from your question how you  
7 planned on integrating that with the systems employed in  
8 this process. So you can either follow up or withdraw  
9 or the status of that question.

10 MR. GLASS: I will hold it for the time being,  
11 Your Honor.

12 JUDGE BOUTEILLER: Withdrawn temporarily.

13 BY MR. GLASS:

14 Q. Am I correct that the expected cost of the M29 is  
15 about \$153 million?

16 A. (Chan) The cost of project, total project, which  
17 encompassing the work at Sprain Brook substation we  
18 described earlier, nine and a half mile of feeder of the  
19 street from Yonkers to Manhattan, as well as the  
20 construction of the Academy substation in Manhattan,  
21 total about \$266 million. The cost was an updated cost  
22 that was incorporated in I believe in the Joint Proposal  
23 packages that were submitted on December 22nd.

24 Q. So it's about \$73 million increase from what was  
25 originally put out in the original documents, is that

1 correct, from the original application?

2 A. (Chan) I believe the previous update was in the  
3 order of \$214 million. It's not quite as much as what  
4 you described.

5 Q. How many megawatts will this line be able to  
6 handle?

7 A. (Chan) Initially will be able to increase the  
8 input into the city by 300 megawatts. It's capable  
9 of--I believe the rating is upward about 600 megawatt  
10 capability.

11 Q. So, is the cost per megawatt for this feeder  
12 consistent with other projects that have been undertaken  
13 by Con Edison?

14 A. (Chan) I don't have that information.

15 JUDGE BOUTEILLER: Let me interrupt for just a  
16 brief question. You said that this line is capable if  
17 not initially ultimately of providing 600 megawatts to  
18 the city?

19 MR. CHAN: The feeder itself, thermal capability  
20 of the feeder is about 600 megawatts. Initially as it  
21 connected at Academy substation it will bring in 300  
22 megawatt of input from Yonkers or Westchester into New  
23 York City.

24 JUDGE BOUTEILLER: Would additional construction  
25 be necessary to be able to upgrade the status to a 600

1 megawatt facility?

2 MR. CHAN: No, it's not necessary.

3 JUDGE BOUTEILLER: No additional cost would be  
4 incurred to be able to operate the line at 600 megawatt  
5 capacity?

6 MR. CHAN: That is correct.

7 JUDGE BOUTEILLER: Did you want to add anything  
8 to that?

9 MR. ELMI: I just wanted to add that the line  
10 itself, the capability of the line is about 600  
11 megawatts. Initially it could be utilized up to 350 and  
12 no additional construction would be necessary to improve  
13 that. What will happen is that as load grows the load  
14 itself will absorb the additional capability.

15 JUDGE BOUTEILLER: And just for clarification, I  
16 want to make sure my understanding is correct, there is  
17 no impediment with respect to operating the line at 600  
18 megawatts initially?

19 MR. ELMI: You could operate the line at 600  
20 megawatts only under conditions different than the  
21 design conditions. We propose a project under design  
22 conditions.

23 The design conditions are peak load, meaning that  
24 everywhere on the system you experienced peak load  
25 demand, but under other types of circumstances you could

1 actually operate the line at 600. Say as an example one  
2 of the other line has failed, this line could pick up  
3 the slack.

4 JUDGE BOUTEILLER: Thank you very much for your  
5 response. I appreciate that.

6 Please proceed, Mr. Glass.

7 BY MR. GLASS:

8 Q. Now, if Westchester County needed the 300  
9 megawatts that are being diverted to New York City, is  
10 there the capability to replace that 300 megawatts in  
11 Westchester at the Sprain Brook facility?

12 MR. RIBACK: Could you define what you mean by  
13 diverted.

14 Q. Really it's clear, I think the witnesses have  
15 made it clear that you are being able to use this line  
16 to carry 300 megawatts from Westchester County into New  
17 York City; is that correct?

18 A. (Chan) That is correct.

19 Q. And that's 300 megawatts that could have been  
20 available in Westchester if Westchester needed it?

21 A. (Elmi) I don't think that those are the right  
22 words to describe it. Maybe if by Westchester County  
23 you mean the area station that serve the load in  
24 Westchester County, those are not affected. We are  
25 talking about the transmission system here, the



1 overlaying transmission system, which serves both the  
2 Westchester load and the Bronx load, so on, so forth.

3           You simply have free capability north of Sprain  
4 Brook, which are the--which is served by the major  
5 overhead feeders coming from the north.

6           What we are doing here is we are tapping into it  
7 at Sprain Brook so that we can utilize the extra  
8 capability to serve or push additional power into the  
9 city pocket and subpockets of the in-city that need it.

10           We are not taking anything away from Westchester  
11 County. When we propose a project we don't do so to  
12 benefit a pocket at the expense of another pocket. In  
13 fact, I am sorry if I am a little lengthy in my  
14 response.

15           We stated in our testimony that M29 not only will  
16 benefit--will mitigate deficiency that currently exists  
17 in the East 179th Street load area, which serves mainly  
18 the Bronx load and some Manhattan load, but you also  
19 have a benefit on pipelines which are electrically  
20 connected to this pocket, namely also the Westchester  
21 pocket, which we call in turn the Dunwoodie north  
22 pocket, which includes I believe two stations in  
23 Westchester County. One is Cedar Street and the other  
24 one is Mount Vernon.

25           JUDGE BOUTEILLER: Let me just follow up on the

1 question. If I understood your response you do not  
2 agree with any characterization which would indicate  
3 that the energy to be provided to New York City from  
4 this line would be energy that would be either taken  
5 away from or another location would be deprived of  
6 energy by virtue of any deliveries made over this line;  
7 is that correct?

8 MR. ELMI: That is correct. I am also adding to  
9 that that this line will also provide additional benefit  
10 to the Westchester County load, because any time that  
11 you reinforce the transmission system overall you give a  
12 benefit to the entire system, even though in this  
13 particular case the major benefit was centered in the  
14 East 179th Street load area.

15 JUDGE BOUTEILLER: Thank you very much.

16 Please proceed, Mr. Glass.

17 BY MR. GLASS:

18 Q. So my question becomes: If there is future  
19 growth in the area served by the Sprain station in the  
20 Westchester area will the capability exist for the  
21 additional load to be served out of Sprain Brook?

22 A. (Elmi) Yes..

23 MR. GLASS: Earlier I asked and you indicated you  
24 did not know, so I would ask that the counsel arrange  
25 for it to be provided, leave a blank in the transcript.

1 I asked whether the cost per megawatt for this facility  
2 is comparable to other projects undertaken by Con  
3 Edison, and I think the panel indicated that they were  
4 not aware or did not have that information, so if that  
5 could be provided I would make that request on the  
6 record.

7 MR. RIBACK: I would ask Mr. Glass what other  
8 specific projects he has in mind to make the comparison.

9 MR. GLASS: Leave that up to Con Edison. I am  
10 asking the cost per megawatt.

11 JUDGE BOUTEILLER: Counsel?

12 MR. RIBACK: Your Honor, we will be happy to  
13 provide a cost per megawatt of this particular project,  
14 but the request for a comparison is very open ended.  
15 Projects have been built over decades and I am not sure  
16 how to make the appropriate comparison.

17 JUDGE BOUTEILLER: Is there any relevant  
18 statistic that Consolidated Edison keeps on the cost per  
19 megawatt of delivery I guess over transmission  
20 facilities? I'm not aware of the statistics you keep,  
21 and clearly I wouldn't require you to generate any new  
22 additional information. If there is any specific  
23 statistics that you keep will you search for those?

24 MR. RIBACK: I will investigate.

25 JUDGE BOUTEILLER: And provide those at the time

1 that you provide your estimate for what the cost per  
2 megawatt delivery is for purposes of this transmission  
3 facility?

4 MR. RIBACK: Yes.

5 JUDGE BOUTEILLER: Thank you.

6 BY MR. GLASS:

7 Q. Mr. Chan, has Con Edison committed to mill and  
8 pave any county roads affected by the project? When I  
9 talk about milling and paving I mean repaving it curb to  
10 curb.

11 A. (Chan) Because the road was recently completed we  
12 have--in prior negotiation discussion we agreed to have  
13 it repaved because it was done fairly recently.

14 Q. It will be milled and repaved from curb to curb?

15 A. (Chan) That is correct.

16 Q. Thank you very much. I would like to bring your  
17 attention to figure 6-1 in the exhibits. Specifically I  
18 bring your attention to page four and page five. I note  
19 that it shows in both of the pages there is  
20 approximately three and a half months of trenching  
21 before pipe laying takes place, and that there is a  
22 period of time, approximately three and a half to four  
23 months, where pipe laying is shown but no trenching  
24 activity is shown.

25 So, would I be correct in assuming that we are

1 going to have open trenches until such time as the pipe  
2 can be laid?

3 A. (Chan) Are you referring to--let's pick example  
4 for package four, the line right underneath package four  
5 say trench and lay pipe?

6 Q. That is correct.

7 A. (Chan) And the question is?

8 Q. The question is: You show three and a half  
9 months, approximately, of trenching before you are  
10 laying pipe. And therefore we were wondering: Are you  
11 going to be leaving open trenches for that time period  
12 before you lay the pipe?

13 A. (Chan) How do you draw that conclusion? Which  
14 line you compare against?

15 Q. This is a construction schedule, if I am correct;  
16 is that correct?

17 A. (Chan) That is correct.

18 Q. And it shows that on the line, let's use package  
19 four, it shows trenching taking place from January 2,  
20 '07 to June 18th of '07, with the first three and a half  
21 months of that showing just trenching activity.

22 And it doesn't show until April 24th the start of  
23 the laying of pipe. So, my question is: What is  
24 happening with the open trenches from January 2nd of '07  
25 to April 23rd of '07?

1       A.   (Chan) You put a date I couldn't follow. Could  
2 you help me?

3               JUDGE BOUTEILLER: Let's go off the record.

4               (Discussion held off the record.)

5               JUDGE BOUTEILLER: Back on the record and  
6 now we can continue. I would ask you to pose your  
7 question and see what answer it elicits.

8               MR. GLASS: I have been informed that there  
9 has been an amendment to the schedule which incorporates  
10 the trenching and laying of the pipe as one continuous  
11 activity on the construction schedule, and I do not have  
12 that amendment so I am withdrawing those questions.

13              JUDGE BOUTEILLER: That's fine.

14              MR. DREXLER: Your Honor, could I clarify  
15 where the amendment was contained?

16              JUDGE BOUTEILLER: Mr. Riback.

17              MR. RIBACK: The amendment was contained in  
18 the packet of revisions that were filed with the Public  
19 Service Commission on October 6, 2006.

20              JUDGE BOUTEILLER: Let's go off the record.

21              (Discussion held off the record.)

22              JUDGE BOUTEILLER: Back on the record. We  
23 sorted our papers out and we can proceed with  
24 cross-examination.

25       BY MR. GLASS:

1 Q. Did you ask for any waiver from any New York City  
2 regulations?

3 A. (Mooney) I don't believe so, no.

4 Q. Is there any reason why you did not think it was  
5 necessary to ask for waivers in New York City as you  
6 asked for waivers from Yonkers and Westchester County's  
7 regulations?

8 A. (Mooney) Can you be more specific?

9 (Chu) Are you talking about the requirement for  
10 the coverage of the feeder during construction?

11 Q. For the operation and installation, such as how  
12 much land you are going to use to store materials,  
13 operating hours, things such as that?

14 JUDGE BOUTEILLER: Can the witnesses describe the  
15 process by which you determined which local ordinances  
16 required waiver, be they any particular municipality,  
17 and was there any specific reasons for why no waivers  
18 needed to be sought for construction either in New York  
19 City as has been represented so far?

20 Can you explain the process? Is there some  
21 systematic bias in the process?

22 A. (Mooney) I believe what you are talking about  
23 were the stipulations that were covered. Again, Steve  
24 Beccalori I think is the guy you want to talk to who  
25 went and got the waivers.

1 JUDGE BOUTEILLER: Let me interrupt. I am  
2 looking at exhibit 7, local ordinances to the  
3 application. I thought this was a panel that was  
4 incorporated to be able to address all the elements of  
5 the application. Is that correct, counsel?

6 MR. RIBACK: It is.

7 JUDGE BOUTEILLER: I need somebody on this panel  
8 to take me through exhibit number 7 if that's where the  
9 cross-examiner wants to go.

10 MR. WOLFGANG: I will start the ball rolling  
11 here.

12 JUDGE BOUTEILLER: Thank you, Mr. Wolfgang.  
13 Let's go.

14 MR. WOLFGANG: Exhibit 7 is a compendium of local  
15 ordinances looking at Westchester County, Yonkers and  
16 the New York City administrative code. I think it  
17 fairly speaks for itself.

18 We have identified applicable sections of these  
19 local ordinances and codes, and have identified those  
20 where specific waivers are going to be requested or have  
21 been requested as part of the application.

22 And the explanation for and the justification for  
23 those waivers is included in this section of the  
24 application. I think it stands alone, but if there are  
25 questions on this.



1 BY MR. GLASS:

2 Q. So you will follow any Westchester or Yonkers  
3 regulations dealing with noise and hours of operations?

4 A. (Wolfgang) I believe that's correct unless there  
5 is a waiver here, and I don't see that. I see a waiver  
6 in terms of the Westchester code, a waiver with regard  
7 to the storage of material on county roads.

8 Q. Did Con Edison make any arrangements or attempt  
9 to identify any private property where they could store  
10 or stage materials during the course of this project so  
11 that they don't have to use the city streets?

12 A. (Wolfgang) The identification of storage yards  
13 and lay down areas is typically addressed during the  
14 EM&CP. It's usually a requirement in terms of EM&CP  
15 guidelines that are issued with the Article VII  
16 certificate.

17 So those locations, those facilities, will be  
18 identified in that document. To a certain extent  
19 sometimes that is left to the individual construction  
20 contractors as well to make those private arrangements.

21 JUDGE BOUTEILLER: Let me follow up though. You  
22 have asked for a waiver of a local ordinance, and I  
23 think the import of that question is whether or not the  
24 waiver request is a matter of necessity or is a matter  
25 of discretion on the part of the applicant.

1           If it's a matter of necessity then perhaps the  
2 Commission needs to waive it. If it is a matter of  
3 discretion because you can obtain private property and  
4 then the local ordinance need not to be waived, there's  
5 a matter I think of import that's been implied at least  
6 by the question that's been asked.

7           Can you address that? Is this request a request  
8 of necessity or is this a request of discretion?

9           MR. WOLFGANG: I believe this is a request of  
10 necessity in Westchester County. As explained in the  
11 section here, the waiver or the ordinance restricts  
12 storage of material on county roads to 20 percent of  
13 area or 100 feet in length. And it's then emphasized  
14 that the waiver for the hundred feet will help expedite  
15 construction in those areas.

16           MR. RIBACK: Your Honor, can I just interject  
17 something? The Joint Proposal, which Con Edison filed  
18 on December 22nd, also includes an appendix B that  
19 summarizes the local ordinances and waiver requests.

20           And based on discussions with Westchester county,  
21 the waivers that were requested initially in the  
22 application were restricted somewhat, and fine tuned in  
23 that appendix B. So the appendix B reflects the current  
24 request of the company for waivers.

25           JUDGE BOUTEILLER: Thank you for that

1 clarification on the record. We appreciate it.

2 BY MR. GLASS:

3 Q. I have a few questions about the impact of the  
4 operation of the project. Is it better to bring it to  
5 this panel or wait for Mr. Dempsey and Mr. Beccalori?

6 A. (Wolfgang) In terms of operation you are  
7 referring to after construction is completed and  
8 restoration?

9 Q. During construction, such as what actions will be  
10 taken to provide access to bus stops in Westchester  
11 County.

12 A. (Chan) I think those are best deferred to Mr.  
13 Beccalori and when his panel comes.

14 MR. GLASS: Just give me a minute, your Honor.  
15 With that representation, Your Honor, I am done with  
16 this panel.

17 JUDGE BOUTEILLER: Thank you very much. Can we  
18 go off the record.

19 (Recess taken.)

20 JUDGE BOUTEILLER: Let's begin the  
21 cross-examination from counsel for Time Warner.

22 CROSS EXAMINATION

23 BY MR. KESSLER:

24 Q. Mr. Chan, are you aware that a spill number has  
25 been assigned by the New York State DEC relating to a

1 spill discovered by Fleming Lee Shue during boring  
2 investigations along the sidewalk area of 9th Avenue  
3 between 219th and 220th Street?

4 MR. RIBACK: Your Honor, this line of inquiry  
5 goes beyond the application. This is not in the  
6 application.

7 MR. KESSLER: This is along the preferred route  
8 that Con Edison is proposing.

9 JUDGE BOUTEILLER: As I recall the public  
10 statement hearings, I believe the Time Warner is trying  
11 to emphasize the Consolidated Edison put on the record  
12 the fact that potentially there was going to be some  
13 environmental damage done to a location by which it  
14 would be transgressed or moved upon by Consolidated  
15 Edison.

16 Are you indicating that the potential  
17 environmental impact from their construction on your  
18 proposed route ought not to be considered in  
19 cross-examination now?

20 MR. RIBACK: In a general sense they can be, but  
21 the specifics of this location are set forth in the Time  
22 Warner's testimony and rebutted in Con Edison's.

23 JUDGE BOUTEILLER: Are you just talking about the  
24 appropriate panel for which this line would be going to  
25 and not for the correctness or permissibility of the

1 line of inquiry itself?

2 MR. RIBACK: Yes.

3 JUDGE BOUTEILLER: You are just indicating this  
4 might be a better matter to be addressed by a subsequent  
5 panel?

6 MR. RIBACK: Yes.

7 JUDGE BOUTEILLER: To the extent you have  
8 questions directed to specific provisions of the Joint  
9 Proposal or to the application itself, those lines of  
10 inquiry can be pursued. With respect to the subject  
11 matter that is addressed principally through your own  
12 testimony and the rebuttal panel, that seems to be the  
13 location of preference.

14 However, if you can indicate a specific member of  
15 this panel with particular information or knowledge that  
16 should be elicited for our record, I will entertain such  
17 a request.

18 MR. KESSLER: I believe this relates to the  
19 amount of investigation work done by Con Edison prior to  
20 submitting its application.

21 JUDGE BOUTEILLER: So you are asking--

22 MR. KESSLER: I am asking just if they are aware  
23 that a spill number has been opened along their  
24 preferred route. That's my question. If anyone on the  
25 panel can answer that, it's a yes or no question. I am

1 not asking specifics of what was found.

2 MR. RIBACK: Your Honor, again, the application  
3 was filed in June. The report that they are referring  
4 to I believe was issued in August of 2006.

5 JUDGE BOUTEILLER: Subsequent to the filing of  
6 the application?

7 MR. RIBACK: Yes.

8 JUDGE BOUTEILLER: Are those the facts and  
9 circumstances that you are inquiring about?

10 MR. KESSLER: The application was amended in  
11 October of 2006 subsequent to the environmental  
12 investigation report.

13 JUDGE BOUTEILLER: Now are you limiting your  
14 question to were any of the modifications or changes  
15 made to the application in October a function of a  
16 report that was issued after the application was filed  
17 or before those modifications were made?

18 MR. KESSLER: That is the question I intend to  
19 ask.

20 JUDGE BOUTEILLER: Is that your question?

21 MR. KESSLER: I'll ask my question now.

22 BY MR. KESSLER:

23 Q. If any of the modifications to the application  
24 were a result of the environmental investigation report.

25 A. (Mooney) Let me give this a shot. The simple

1 answer is no. We didn't alter our design due to any  
2 environmental reports.

3 Q. Why not?

4 A. (Mooney) The design of the Harlem River crossing  
5 was changed from HDD, horizontal directional drill, to  
6 tunnel, mostly to accommodate the local people that  
7 lived in the Marble Hill housing projects, that we  
8 considered HDD which would have taken place in their  
9 parking lot as overburdensome.

10 We started investigating alternatives to HDD  
11 primarily to address the concerns that were raised as  
12 part of our outreach and dealing with the people in the  
13 Marble Hill housing projects and the New York City  
14 Housing Authority.

15 In addition, we designed the tunnel as a side  
16 benefit, if you will, to the tunnel design. The tunnel,  
17 working with the affected property owners where the  
18 tunnel shafts are located, Kings Bridge associated on  
19 the Bronx side and New York Presbyterian Hospital on the  
20 Manhattan side, we worked closely with them to locate  
21 the shafts such that has the least amount of impact on  
22 the property.

23 And by the way, it should be noted the new design  
24 completely bypasses Time Warner property completely--  
25 essentially, if you will, takes the Time Warner property

1 out of the picture as far as the preferred route, or M29  
2 were no longer on any bit or any part of Time Warner  
3 property. The feeder comes out of the tunnel and goes  
4 down public street, 9th Avenue.

5 Q. So Con Ed didn't feel it was necessary to address  
6 the environmental report that was issued prior to the  
7 submission of the amendment to their application?

8 A. (Mooney) The spills that you referred to, I  
9 believe, and it's--again, we talked to environmental  
10 people on Con Edison, but we are obligated to take care  
11 of whenever we find something during the course of our  
12 geotechnical investigation which, by the way, we are on  
13 9th Avenue primarily because Time Warner wouldn't give  
14 us permission to do the borings on their property.

15 We cleaned up what we found. I believe the  
16 spills are--spill numbers are closed out. I am not  
17 positive about that.

18 Q. Do you have any proof to show those spill numbers  
19 have been closed?

20 A. (Mooney) Like I said, I am not really sure about  
21 that.

22 Q. Is there anyone at Con Ed who has that  
23 information?

24 A. (Mooney) Yes, there is.

25 MR. KESSLER: I would ask that that information



1 be produced.

2 MR. RIBACK: The spill number has not been  
3 closed.

4 Q. What prompted Con Edison to take those borings  
5 along 9th Avenue?

6 A. (Mooney) The borings were taken along 9th Avenue  
7 because the original design of the feeder using the HDD,  
8 the horizontal directional drilling, would have required  
9 the exit of the drill on New York Presbyterian Hospital  
10 property, and the feeder subsequent to it would come out  
11 and would have hit the corner of a very small portion of  
12 Time Warner property.

13 And in order for us to do a proper design we  
14 needed geotechnical information. We made over--made  
15 several borings, both on the Manhattan side, in the  
16 river itself, and on the Bronx side. We requested  
17 repeatedly Time Warner permission to do geotechnical  
18 borings on the property. That permission was denied.

19 Therefore, we tried to get as close to the area  
20 affected as possible for our geotechnical surveys, so  
21 that we could properly design the substation for the  
22 feeder.

23 Q. Do you know why Time Warner denied permission?

24 MR. RIBACK: Your Honor, they are asking Con  
25 Edison to speculate on another entity's situation.

1       Q.   Have you had any communication or correspondence  
2 with Time Warner regarding their denial of permission to  
3 bore on their property?

4       A.   (Mooney) Yes.

5       Q.   What were those communications?

6       A.   (Mooney) Time Warner's communication--Time Warner  
7 on the record I think at one of the public hearings  
8 stated that their property was on a known contaminated  
9 site that was a former oil storage depo. Time Warner  
10 repeatedly stated that should we encounter any  
11 contaminants that we would be liable for the complete  
12 remediation of the entire property.

13           Con Edison declined to assume that liability  
14 while offering to clean up whatever we might find  
15 specific to the bore. We declined to offer to clean up  
16 the entire Time Warner property.

17       Q.   Why did Con Edison decline to take Time Warner's  
18 offer to clean up the entire property for contamination  
19 that would spread as a result of their construction  
20 work?

21           MR. RIBACK: Your Honor, there is an assumption  
22 there that the contamination would spread and nobody's  
23 established that's the fact.

24           JUDGE BOUTEILLER: I think we are going to a  
25 conversation had at the time of the boring and the

1 conversation as is being recalled and relayed by your  
2 witness indicates that there was a request made that was  
3 denied at the time that the boring was sought, and I  
4 guess we are following up on the conversation had at  
5 that point.

6 MR. KESSLER: Correct. I am just asking why Con  
7 Ed denied Time Warner's--why did Con Edison deny Time  
8 Warner's request for them to clean up whatever  
9 contamination was found, if any.

10 JUDGE BOUTEILLER: I don't want to suggest any  
11 answers, but did you consider it reasonable, their  
12 request?

13 MR. MOONEY: We didn't decline the offer to clean  
14 up the contamination. We declined to clean up the  
15 entire site. We said we would clean up, as we did in  
16 fact, or we are in the process of doing.

17 Again, I think in the rebuttal Con Edison on the  
18 subsequent panels there will be people that can talk--  
19 who are environmental people--that can talk more  
20 specifically to this. However, what my understanding  
21 that Time Warner insisted upon was that we clean up  
22 their entire site versus a six inch bore.

23 JUDGE BOUTEILLER: You didn't consider their  
24 request reasonable?

25 MR. MOONEY: That is correct.

1 JUDGE BOUTEILLER: Please proceed.

2 BY MR. KESSLER:

3 Q. Isn't it possible--isn't it probable that if you  
4 had broken surface around the Time Warner site and  
5 contamination was found, the entire site would have to  
6 be cleaned up as a result of that contamination?

7 MR. RIBACK: Your Honor, that's totally  
8 speculative.

9 JUDGE BOUTEILLER: Again, we will take testimony  
10 with respect to any communication or correspondence had  
11 at the time of the boring, just understand what was  
12 discussed at that time, unless a privilege is claimed  
13 for those conversations.

14 A. (Mooney) Could you repeat the question?

15 Q. The question was: If you broke the surface and  
16 contamination was found wouldn't it be likely that the  
17 entire site would need to be cleaned up due to the  
18 contamination if any that was found?

19 A. (Mooney) I can't speak to the likeliness of  
20 spread of contamination.

21 Q. Is it possible?

22 A. (Mooney) I can't speak to that either.

23 Q. Once contamination was known in that area, did  
24 Con Ed pursue any alternative routes that would avoid  
25 the area of contamination?

1       A. (Mooney) We pursued alternative routes not  
2 because of the known areas of contamination on Time  
3 Warner property.

4       Q. Were any alternatives pursued that would avoid  
5 traveling down 9th Avenue between 219th and 220th Street  
6 in Manhattan?

7       A. (Mooney) No.

8       Q. Proceeding across 220th Street was never pursued  
9 by Con Ed?

10      A. (Mooney) 220th Street was looked at as initially  
11 one of the paths that we would have to take east-west.  
12 With that, 219th Street was chosen instead, recognizing  
13 that in the future, subsequent to the tunnel design  
14 which is designed to take multiple feeders, that 220th  
15 Street and 219th Street will probably have to be used as  
16 well, but specifically our subsurface investigation, our  
17 engineering for this specific project, looked at 219th  
18 Street.

19           JUDGE BOUTEILLER: Let me see if I am  
20 understanding. Ultimately on full development over some  
21 period of time you are indicating that there will be  
22 Consolidated Edison's facilities likely to be needed on  
23 both of these streets.

24           MR. MOONEY: Likely, Your Honor. I don't know  
25 what the time frame is. 219th Street was more desirable

1 to 220th, not for the least of reasons is that 220th  
2 Street exits on to Broadway immediately opposite the New  
3 York Presbyterian Hospital's emergency exit/entrance to  
4 their pavilion there.

5 So, 219th Street was chosen. That's where we did  
6 our investigation, our engineering.

7 JUDGE BOUTEILLER: Please proceed.

8 BY MR. KESSLER:

9 Q. Was there any other basis other than New York  
10 Presbyterian Hospital emergency room entrance or exit on  
11 220th Street that led you to consider 219th as opposed  
12 to 220th?

13 A. (Mooney) Yes.

14 Q. What were those factors?

15 A. (Mooney) Well, initially, based on where the HDD  
16 exited on to Manhattan, we would not have been able to  
17 make the bend from its position back to 220th Street  
18 physically. And so we did our investigation on 219th  
19 Street.

20 Subsequent to that, to the tunnel, because that  
21 engineering had already been completed, we chose to stay  
22 with the work that we had already done rather than  
23 duplicate efforts.

24 JUDGE BOUTEILLER: How much cost or effort is  
25 that? Can you explain that to me? Are we talking how

1 many days worth of work or how many dollars of cost that  
2 was avoided by sticking with the original decision under  
3 a different set of circumstances?

4 MR. MOONEY: I wouldn't feel comfortable  
5 answering that off the top of my head.

6 JUDGE BOUTEILLER: Let me just ask by order of  
7 magnitude: How many days' worth of work, weeks' worth  
8 of work, months' worth of work?

9 MR. CHU: The amount of rework require resurvey,  
10 aerial surveys to be performed, surveying of the street  
11 subsurface investigation, development of plan and  
12 profile drawings as part of new construction package,  
13 and revival of the existing design to coincide with the  
14 new route.

15 JUDGE BOUTEILLER: That's responsive. Thank you.

16 BY MR. KESSLER:

17 Q. So, because of the cost associated to be borne by  
18 Con Ed you did not investigate whether 220th Street  
19 could become part of the route as opposed to 219th  
20 Street?

21 A. (Mooney) We already had engineering completed for  
22 219th Street. We thought it would be wasteful at this  
23 time to go back in to reduplicate effort. It wasn't  
24 just the cost, although that was a consideration, but it  
25 was more than just the cost. It was the actual effort

1 involved with using--going back and redesigning the  
2 route because of the route that was very similar to  
3 219th Street.

4 JUDGE BOUTEILLER: Just as a follow up. Can you  
5 tell me--do you have any ideas or notions as to when in  
6 the future Consolidated Edison would be in a position of  
7 needing to use the right-of-way in both of those  
8 streets? When would the second necessity occur under  
9 your current planning scenario?

10 MR. MOONEY: I wouldn't feel comfortable  
11 answering that question.

12 JUDGE BOUTEILLER: Again, by order of magnitude,  
13 are we talking a year away, a decade away or a century  
14 away?

15 MR. MOONEY: I would say more in the order of a  
16 decade.

17 JUDGE BOUTEILLER: Thank you. Please proceed.  
18 BY MR. KESSLER:

19 Q. Now that Con Edison is no longer forwarding the  
20 proposal based on the HDD drilling and instead is using  
21 the tunneling approach, is it possible that the cable  
22 can curve to bend across 220th Street?

23 A. (Mooney) Yes.

24 Q. For future uses you just mentioned that Con Ed  
25 will most likely have facilities along 220th Street.



1 Will this be a similar type of facility or equipment as  
2 to what's being proposed for 219th Street currently?

3 A. (Mooney) It could be but not necessarily. It  
4 could be a solid dielectric feeder in the future. I  
5 can't answer that question specifically but it would be  
6 an electric feeder. It could be a gas main.

7 Q. So Con Edison may be duplicating its work at some  
8 point in the near future along 220th Street?

9 A. (Mooney) Again, it could be a totally different  
10 design where this is a pipe type oil filled feeder. In  
11 the future could be a solid dielectric feeder. Could be  
12 a gas feeder. Could be a distribution feeder. Could be  
13 any number of things.

14 So, to say that we have to have exactly duplicate  
15 it is not correct.

16 Q. Has Con Ed done previous work in the vicinity of  
17 9th Avenue between 219th and 220th Streets?

18 A. (Chu) Can you be more specific?

19 JUDGE BOUTEILLER: Do you have a project in mind  
20 or do you have a particular time period in mind?

21 Q. I'm just asking specifically if you recall any  
22 previous projects in the exact area.

23 JUDGE BOUTEILLER: In recent times?

24 Q. Within the past ten years.

25 A. (Chu) Not within the past ten years. Con Edison

1 has facilities already routed down 9th Avenue prior to  
2 that.

3 Q. Where do those facilities travel?

4 A. (Chu) Those facilities travel down 9th Avenue  
5 and they also go across 219th Street.

6 Q. Between where?

7 A. (Chu) Between 10th Avenue, 9th and 10th.

8 Q. What about 220th Street?

9 A. (Chu) Not that I am aware of.

10 Q. Did you rely on any map or studies or analysis  
11 from the previous Con Ed routes when selecting the  
12 preferred route for this project?

13 A. (Chu) That is part of the selection criteria for  
14 a route to avoid existing streets where existing  
15 facilities are routed. Facilities that go across 219th  
16 have been retired since.

17 Q. When were they retired?

18 A. (Chu) I believe in 1995.

19 Q. So, were any maps or reports from the retired  
20 lines relied upon for this project?

21 A. (Chu) Yes. They were incorporated into the  
22 design evaluation of the selected route.

23 Q. Have they been produced as part of this  
24 proceeding?

25 A. (Chu) I don't believe so.

1 MR. KESSLER: I would ask that they be produced.

2 JUDGE BOUTEILLER: We will note that as an on the  
3 record request. Can company counsel indicate their  
4 intent to respond?

5 MR. RIBACK: Okay.

6 Q. Once contamination was found on 9th Avenue did  
7 Con Ed consider evaluating 220th Street at that time as  
8 an alternative?

9 A. (Mooney) No.

10 Q. Why not?

11 A. (Mooney) I think I talked about the reasons why  
12 we didn't re-evaluate the route.

13 Q. What permits will be needed from New York State  
14 DEC in order to complete this project, permits or  
15 approvals?

16 A. (Wolfgang) If I could answer that question. The  
17 DEC will be involved in the review of the storm water  
18 pollution prevention plan that will be provided as part  
19 of the EM&CP, as I mentioned earlier. That the approval  
20 from DEC will be a construction SPEDES permit, general  
21 permit.

22 Q. That deals with storm water discharge?

23 A. (Wolfgang) It goes with, yes, protection of  
24 water resources during construction related to storm  
25 water runoff.

1 Q. So no other permits will be needed from DEC for  
2 the trenching and excavation activity to be performed?

3 A. (Wolfgang) To the best of my knowledge that is  
4 correct.

5 Q. And do you know if Con Ed has obtained approvals  
6 or permits from New York State DEC when there has been  
7 an open spill number over the path you are seeking a  
8 permit for?

9 A. (Wolfgang) I am not aware of any specific  
10 instances like that.

11 Q. Where they received the permit or where a permit  
12 has been denied because there is an open spill?

13 A. (Wolfgang) Either case. I am not familiar with  
14 any other projects that have involved open spill  
15 numbers.

16 Q. Mr. Wolfgang, you work for TRC Environmental  
17 Corporation, correct?

18 A. (Wolfgang) Correct.

19 Q. You are not employed by Con Ed?

20 A. (Wolfgang) That is correct.

21 Q. Con Ed has retained your company to assist with  
22 the planning of this application?

23 A. (Wolfgang) That is correct.

24 Q. Have you worked with Con Ed in the past?

25 A. (Wolfgang) Yes.

1 Q. On how many occasions?

2 A. (Wolfgang) We have recently prepared two previous  
3 Article VII applications for Con Edison.

4 Q. When you say "recently" what time frame are you  
5 talking about?

6 A. (Wolfgang) In the last five years.

7 Q. Your company or you personally?

8 A. (Wolfgang) Both.

9 Q. Have you worked with Con Ed on other applications  
10 other than the two you have previously mentioned?

11 A. (Wolfgang) I was not personally involved but TRC  
12 was involved in some work at the Dunwoodie and Sprain  
13 Brook substations and a substation in White Plains.

14 Q. What about before you joined TRC?

15 A. (Wolfgang) I am not aware of what involvement  
16 TRC has had with Con Edison on projects such as this.

17 Q. What about you personally?

18 A. (Wolfgang) No.

19 Q. Have you testified at PSC hearings on behalf of  
20 Con Ed previously?

21 A. (Wolfgang) No.

22 Q. This is your first?

23 JUDGE BOUTEILLER: Let's be careful. Let's go  
24 off the record.

25 (Discussion held off the record.)

1 JUDGE BOUTEILLER: I think the witness was  
2 answering you.

3 MR. WOLFGANG: Yes. In the previous proceedings  
4 there was prefiled testimony submitted with the  
5 application. In both of those instances there was a  
6 Joint Proposal that was negotiated and adjudicatory  
7 proceedings such as this were avoided.

8 BY MR. KESSLER:

9 Q. That's been your only experience working on  
10 behalf of Con Ed?

11 A. (Wolfgang) That is correct.

12 Q. What about for other clients, how many times have  
13 you testified in a PSC hearing either by direct  
14 testimony, prefiled direct testimony, or at a hearing?

15 A. (Wolfgang) That might have been stated in my  
16 testimony, but my recollection is I testified in one  
17 other Article VII proceeding, and I have testified in  
18 several Article X proceedings which deal with major  
19 generating facilities.

20 Q. Has all of your testimony been on behalf of a  
21 utility company?

22 A. (Wolfgang) Yes.

23 Q. How far from the Time Warner property will the  
24 transmission line currently be located?

25 A. (Mooney) I would--we would have to pull the

1 drawings to give you the exact answer. The manhole is  
2 located on the curb.

3 JUDGE BOUTEILLER: Again, without providing a  
4 very accurate answer, can you give us an order of  
5 magnitude how close or approximate does it come to the  
6 property? Are we talking inches, yard, feet?

7 MR. CHU: The proposed manhole location is  
8 currently on the sidewalk adjacent to the Time Warner  
9 property.

10 JUDGE BOUTEILLER: That's the closest point to  
11 their property?

12 MR. CHU: Closest point. Once it exits the  
13 manhole it will make strategic routing to go on to 219th  
14 Street.

15 JUDGE BOUTEILLER: I think we established on the  
16 record the closest point.

17 BY MR. KESSLER:

18 Q. What are the dimensions of the manhole, the  
19 proposed manhole?

20 A. (Chu) 22 feet long, nine feet high, nine feet  
21 wide.

22 Q. How much space will be need to excavate in order  
23 to install the manhole?

24 A. (Chu) Probably about two feet, based on the  
25 dimensions I gave you, on each side to allow for

1     sheeting and shoring.

2           Q.    So the width of the excavation site would be  
3     approximately 11 feet?

4           A.    (Chu) Correct, but within the curb of the  
5     sidewalk but not within Time Warner property.

6           Q.    To your knowledge, do you know the width of the  
7     sidewalk in that location?

8           A.    (Chu) Not--I wouldn't say directly offhand.

9           Q.    Has this been studied by Con Ed?

10          A.    (Chu) Yes, it has.

11          Q.    How?

12          A.    (Chu) On our survey drawings, when we lay out  
13     manhole locations we place the exact size of the manhole  
14     with the exact size of the sidewalk so we know our  
15     physical clearance to the property line and to all the  
16     subsurface utilities.

17          Q.    Where is the Time Warner property line with  
18     relation to the sidewalk?

19          A.    (Chu) Right at the edge.

20          Q.    How did you determine that?

21          A.    (Chu) Based on survey.

22          Q.    Have the surveys been produced?

23          A.    (Chu) That's part of our design.

24          Q.    Where has that been produced?

25          A.    (Chu) In this application, no.



1 Q. It hasn't?

2 MR. KESSLER: I would like to ask on behalf of  
3 Time Warner to produce that survey.

4 MR. RIBACK: I believe those survey documents  
5 were provided in response to interrogatories.

6 JUDGE BOUTEILLER: Over lunch time can counsel  
7 find out whether or not the information was previously  
8 requested and if so identify it? If it wasn't  
9 previously requested you may raise that as a matter of  
10 record.

11 BY MR. KESSLER:

12 Q. What type of equipment will be needed to excavate  
13 this manhole on the sidewalk?

14 A. (Chu) Just typical backhoe used on normal  
15 construction, probably see normal construction during  
16 the street a typical backhoe.

17 Q. What's the size of a typical backhoe?

18 A. (Chu) As far as what? Typical size, height wise,  
19 probably 15 foot long, probably eight foot wide in the  
20 back.

21 Q. Will there be sufficient room to excavate using  
22 the backhoe without encroaching on Time Warner property?

23 A. (Chu) Yes.

24 Q. What's your basis for that statement?

25 A. (Chu) We have done numerous manhole locations in

1 Manhattan adjacent to property lines. We were able to  
2 get in with a backhoe and not infringe on anyone's  
3 property. If the manhole has to be hand dug it can be  
4 hand dug as well.

5 Q. Has Con Edison previously excavated under  
6 sidewalk on 9th Avenue? I am asking: In your  
7 knowledge, have you encountered a situation where Con Ed  
8 has excavated under a sidewalk?

9 JUDGE BOUTEILLER: Within his own personal  
10 knowledge or are you asking--again, I like questions  
11 within a time interval.

12 MR. KESSLER: If it's within his knowledge.

13 JUDGE BOUTEILLER: Is it within your knowledge?

14 MR. CHU: Referring just to Time Warner or  
15 referring to 9th Avenue down from 220th Street all the  
16 way to 215th Street?

17 BY MR. KESSLER:

18 Q. 220th to 215th Street.

19 JUDGE BOUTEILLER: Thank you.

20 A. (Chu) No.

21 Q. Are the procedures for excavating under a  
22 sidewalk any different than the procedures for  
23 excavating under a roadway?

24 A. (Chu) No.

25 Q. There are no other--no additional precautions or

1 safeguards that need to be taken?

2 A. (Chu) None I am aware of.

3 Q. In Mr. Mooney's and Mr. Chu's prefiled direct  
4 testimony on page six, line 18, they are asked: In your  
5 opinion does the proposed routing of the project's  
6 transmission lines reflect Con Edison's best efforts to  
7 minimize potential environmental impacts associated with  
8 the construction and operation of these facilities?

9 The question is answered: Yes. The project's  
10 design and the construction methods to be employed  
11 minimize, to the extent practicable, potential  
12 environmental impacts.

13 What is your basis for that conclusion?

14 A. (Mooney) The basis is answered in the following  
15 question is, based upon description, analysis and  
16 environmental impacts as set forth in Exhibit 4 of the  
17 application of prefiled direct testimony offered in  
18 support of that exhibit.

19 Q. What specific description and analysis set forth  
20 in Exhibit 4 are you referring to?

21 A. (Mooney) In total. The entire exhibit.

22 Q. What specific prefiled direct testimony are you  
23 referring to in your answer contained on page seven of  
24 your prefiled testimony?

25 A. (Mooney) Specifically the project would be

1 installed following Con Edison's work practices, the  
2 following task of making sure we comply with all  
3 applicable rules, regulations and standards for normal  
4 work that is done typically in the city.

5 JUDGE BOUTEILLER: I want you to be responsive to  
6 the last asked question. There is a direct reference to  
7 prefiled testimony in the response which is the response  
8 to the question what is your basis. Can you  
9 specifically identify to whose testimony you are making  
10 reference to here?

11 MR. MOONEY: Is that Mr. Wolfgang?

12 JUDGE BOUTEILLER: I don't want to suggest  
13 answers here but we need to find out if you have  
14 something specific in mind here.

15 BY MR. KESSLER:

16 Q. When did you review Mr. Wolfgang's testimony?

17 A. (Mooney) What day? I don't recall.

18 Q. Approximately.

19 A. (Mooney) I honestly don't recall.

20 Q. Did you review any data reports, any analysis  
21 prepared by Mr. Wolfgang, or just the five or six pages  
22 of prefiled testimony?

23 A. (Wolfgang) No. Actually Con Edison was very much  
24 involved in the preparation.

25 Q. I was asking Mr. Mooney what he looked at.

1 JUDGE BOUTEILLER: We can turn to Mr. Mooney  
2 first and then we can come to Mr. Wolfgang.

3 A. (Mooney) Before we filed our testimony we looked  
4 at many documents provided by TRC. I don't recall  
5 specifically. I don't have them in front of me.

6 Q. Generally can you tell me what you reviewed.

7 A. (Mooney) The reports that they put out for  
8 the--that supported their documentation in this  
9 testimony.

10 Q. Are these reports what is contained in Exhibit 4,  
11 do you know?

12 A. (Mooney) I don't know specifically which reports  
13 they provided that were listed in this exhibit.

14 Q. Can you repeat that, please.

15 A. (Mooney) I said I don't recall specifically which  
16 of these reports listed in this exhibit they provided.

17 Q. Were there reports other than what was provided  
18 in this exhibit that you reviewed?

19 JUDGE BOUTEILLER: Off the record.

20 (Recess taken.)

21 JUDGE BOUTEILLER: There is an outstanding  
22 question. I will note for the record that there has  
23 been a little bit of conversation with Mr. Wolfgang but  
24 the question really is to Mr. Mooney, the outstanding  
25 question. Do you have a response for his question?

1           MR. MOONEY: I reviewed the application in detail  
2 before it was submitted. I don't recall which specific  
3 of these documents that are listed in this exhibit I  
4 looked at.

5           MR. KESSLER: That wasn't my question.

6           JUDGE BOUTEILLER: Your recollection does not go  
7 back to the information as sorted or used either for  
8 purposes of inclusion in the application or exclusion  
9 from the application.

10           Are you aware of any information that you  
11 reviewed that was purposefully excluded from inclusion  
12 in the application?

13           MR. MOONEY: No.

14           JUDGE BOUTEILLER: Thank you. Please proceed in  
15 the fashion you care to, and when you reach the end of  
16 this line of cross-examination I would like you to  
17 indicate that to me.

18           MR. KESSLER: I will.

19 BY MR. KESSLER:

20           Q. Specifically on page seven of your testimony you  
21 state that your conclusion, along with Mr. Chu, is based  
22 upon the description and analysis of the project's  
23 environmental impacts.

24           Can you identify what those environmental impacts  
25 are? This question is for Mr. Mooney or Mr. Chu since

1 it's your combined testimony.

2 A. (Mooney) I know personally that the environmental  
3 impacts were minimal because of the type of  
4 construction, the type of feeder that we were using, and  
5 the other information that was listed in the exhibit.  
6 That this was essentially a benign construction typical  
7 to Con Edison throughout its service area.

8 Q. Was the known contamination on 9th Avenue between  
9 219th and 220th Street one of the impacts you looked at  
10 when giving this testimony?

11 A. (Mooney) No.

12 Q. Mr. Chu?

13 A. (Chu) No.

14 Q. On the same page of this testimony, line 18, you  
15 state, Con Edison only considered an underground  
16 transmission line because underground lines are  
17 consistent with this type of line and voltage in the  
18 project area. Underground lines substantially minimize  
19 any environmental and visual impact as compared to  
20 overhead facilities.

21 Please explain what you mean by substantially  
22 minimizing any environmental impact.

23 A. (Mooney) I think if we had proposed to install  
24 overhead lines from Sprain Brook to Manhattan I think we  
25 would be having an entirely different conversation here.

1 I think the environmental impact of the overhead feeders  
2 are pretty obvious as compared to a feeder that's  
3 installed the way we are planning on installing this.

4 Aesthetic impacts, EMF, other types of things,  
5 standard and quality of life type of issues, as compared  
6 to a buried feeder, not to mention the reliability and  
7 things of that nature.

8 Q. According to your testimony one of the factors  
9 that Con Ed uses to evaluate different routes is to  
10 minimize the number of bends and manholes along the  
11 route; is that correct?

12 A. (Mooney) Yes.

13 Q. If the transmission line had been made across  
14 220th Street as opposed to 219th Street would the same  
15 number of bends have been included in the route?

16 A. (Mooney) Without reasonably looking at it  
17 probably will be approximately the same.

18 Q. Due to the known contamination along 9th Avenue  
19 will there be the need for any specialized construction  
20 methods?

21 A. (Mooney) No.

22 Q. Why not? Mr. Chu, you can answer if you would  
23 like.

24 A. (Chu) As required by the contractor's HASP, all  
25 safety procedures, contractors are required to have the



1 proper PPE.

2 Q. Proper what?

3 A. (Chu) PPE, protective equipment, personal  
4 protective equipment, when the known substance is  
5 encountered.

6 Q. Has the HASP for this project been developed yet?

7 A. (Chu) No. That's only developed when the  
8 contractor is awarded the contract.

9 Q. You can't tell me now that specialized  
10 construction methods may not be necessary since the HASP  
11 hasn't been developed?

12 A. (Chu) I don't know the extent of the  
13 contaminants that were found, but any contaminant found  
14 along any construction on Con Ed's service territory is  
15 handled pretty much in the same way that we encounter in  
16 the street and other locations.

17 Q. What is that way?

18 A. (Chu) Have the proper PPE disposal, notification  
19 to the appropriate agency.

20 Q. Do you have to stop work once you uncover the  
21 contaminant?

22 A. (Chu) Typically notification has to be made,  
23 yes.

24 Q. Do you have to stop work when you encounter a  
25 contaminant?

1 A. (Chu) Yes.

2 Q. How long will this work be stopped for when  
3 contaminant it found?

4 A. (Chu) Depending on when the notifications are  
5 made, the substance is identified, and the proper  
6 procedure to remediate it is put into place.

7 Q. Your construction experience, on average how long  
8 does this process take?

9 A. (Chu) Couple days.

10 Q. The construction or excavation work could be  
11 stopped for a couple of days once the contaminant is  
12 found?

13 A. (Chu) Yes.

14 Q. How will this result in altering your  
15 construction schedule?

16 A. (Chu) I think--are you implying that all of 9th  
17 Avenue is contaminated or just strictly the area along  
18 Time Warner property?

19 Q. I am not implying anything. I do not know the  
20 extent.

21 A. (Chu) Really, I don't know if the area away from  
22 Time Warner is not contaminated.

23 Q. Has Con Ed conducted any studies or  
24 investigations to determine the extent of contamination  
25 along 9th Avenue?

1 A. (Chu) No.

2 Q. Why not?

3 A. (Chu) We would handle the contaminant as part of  
4 our normal construction procedures and protocols.

5 JUDGE BOUTEILLER: Let me ask you this question.  
6 There is on the record an indication by you there was  
7 test borings taken for the geotechnical nature of the  
8 substrata. Is that correct?

9 MR. CHU: Yes, there was.

10 JUDGE BOUTEILLER: Would that evaluation ever  
11 indicate whether or not there is contamination?

12 MR. CHU: I believe there was some contaminants.  
13 I am not certain as to the identity of the contaminant.

14 JUDGE BOUTEILLER: How many borings were taken on  
15 9th Avenue?

16 MR. MOONEY: Five, I believe.

17 JUDGE BOUTEILLER: Five? Were contaminants found  
18 in all five or any five or one of the five?

19 MR. MOONEY: Three of the five.

20 JUDGE BOUTEILLER: Three of the five borings?  
21 Were they in a sequence? Were the borings proximate to  
22 one another or were they at different locations not  
23 adjacent to one another?

24 You took five borings on 9th Avenue, if we call  
25 them borings, number one, two, three, four and five.

1 Can you tell me which of those five are the three in  
2 which contaminants were found?

3 MR. MOONEY: I can.

4 JUDGE BOUTEILLER: Then do so, please. Was it  
5 one, two or three?

6 MR. MOONEY: Would it be acceptable to get you a  
7 map that shows specifically without trying to guess  
8 which ones?

9 JUDGE BOUTEILLER: A map that would show the  
10 location of the five borings?

11 MR. MOONEY: Right.

12 JUDGE BOUTEILLER: And then the three of which  
13 contaminants were found. That's what you are offering  
14 in response to my question?

15 MR. MOONEY: Yes.

16 JUDGE BOUTEILLER: I will accept that.

17 MR. RIBACK: Your Honor, we have a rebuttal  
18 witness who can specifically talk about these borings  
19 and the contamination found on 9th Avenue between 219th  
20 and 220th Street.

21 JUDGE BOUTEILLER: You opened a door and I am  
22 sure we are going to go there.

23 Any further questions? Off the record.

24 (Recess taken.)

25 JUDGE BOUTEILLER: Back on the record.

1 BY MR. KESSLER:

2 Q. The borings that were taken, those were  
3 geotechnical borings, correct?

4 A. (Mooney) Yes.

5 Q. What is the purpose of taking those type of  
6 borings?

7 A. (Mooney) As explained, we were trying to design  
8 the feeder from the output--the outlay of where the HDD  
9 would have come up on to New York Presbyterian Hospital  
10 property where the feeder emanated out, and then  
11 originally was designed to go across the corner of Time  
12 Warner property for continued on into the street.

13 Q. This was for construction purposes, correct?

14 A. (Mooney) Yeah.

15 Q. These are not the same as environmental borings?

16 A. (Mooney) No, I guess not. There is--we were  
17 looking for geotechnical subsurface information. We  
18 encountered a petroleum smell and things developed from  
19 there.

20 Q. Did you personally observe the smell?

21 A. (Mooney) No.

22 Q. After the geotechnical borings were taken and  
23 contamination was found did Con Edison seek to take any  
24 environmental borings?

25 A. (Mooney) I don't know.

1 Q. Do you know why not?

2 A. (Mooney) No.

3 MR. RIBACK: Again, Your Honor, I think the  
4 witness that will be here for rebuttal can directly  
5 respond to these questions.

6 JUDGE BOUTEILLER: We will accept that offer.

7 MR. KESSLER: We can break now.

8 JUDGE BOUTEILLER: Let's take a lunch recess. We  
9 will take a recess until 1:45 and we will resume the  
10 hearing at 1:45.

11 (Lunch recess taken.)

12 JUDGE BOUTEILLER: Before lunch we were engaging  
13 in cross-examination of Consolidated Edison's panel by  
14 the representatives for Time Warner. You can continue  
15 your cross-examination.

16 MR. KESSLER: Prior to recommencing I would just  
17 like to state we do have a number of questions for  
18 Mr. Dempsey and we want to go on the record and reserve  
19 our right to cross-examine his prefiled direct testimony  
20 when he appears with one of the rebuttal panels.

21 JUDGE BOUTEILLER: I did that this morning, but  
22 we can do it specifically with respect to Time Warner,  
23 and I appreciate the knowledge.

24 MR. KESSLER: Thank you.

25 BY MR. KESSLER:

1 Q. I previously asked about the dimensions of the  
2 manhole that will be built along the sidewalk on 9th  
3 Avenue. What are the dimensions of the trench for the  
4 transmission line?

5 A. (Chu) The proposed trench width about 26 inches  
6 by five feet deep.

7 Q. Do you have any knowledge of what depth the  
8 ground water table is in this 9th Avenue between 219th  
9 and 220th Street?

10 A. (Chu) I have some knowledge based upon some of  
11 the geotechnical borings performed in New York  
12 Presbyterian Hospital.

13 JUDGE BOUTEILLER: Can you use the microphone,  
14 please.

15 A. (Chu) Yes, I do have knowledge of the water  
16 table based on geotechnical borings that were done in  
17 New York Presbyterian Hospital. They range anywhere  
18 from six feet down.

19 Q. You propose to build the manhole trench with a  
20 depth of nine feet, correct?

21 A. (Chu) Correct.

22 Q. How do you propose--how does Con Ed propose that  
23 the ground water table will not be breached in the  
24 process of digging the trench and the manhole in order  
25 to prevent contaminated soil from entering?

1       A. (Chu) I don't understand your question. Can you  
2 repeat.

3       Q. Sure. You just said that you believe at some  
4 areas the ground water area starts at six feet in depth  
5 and the manhole is nine feet in depth.

6               What safeguards has Con Ed put in place to  
7 prevent the possible infiltration or migration from  
8 contaminated soil into the ground water based on these  
9 depths?

10       A. (Chu) We would handle the normal excavation  
11 according in with our standard procedures for ground  
12 water encounter.

13       Q. Can you repeat that? I'm sorry.

14       A. (Chu) We would handle the excavation of the  
15 manhole to that depth in accordance with our procedure  
16 for handling of ground water during excavation.

17       Q. At which depth?

18       A. (Chu) Nine foot depth.

19               MR. RIBACK: Your Honor, a witness on one of the  
20 rebuttal panels can be much more specific for this  
21 location and this particular issue.

22               JUDGE BOUTEILLER: Which witness is that?

23               MR. RIBACK: Mr. Greene.

24               JUDGE BOUTEILLER: Thank you.

25               MR. KESSLER: Mr. Greene will be part of which



1 panel?

2 MR. RIBACK: Be part of the rebuttal panel for  
3 the Time Warner testimony.

4 MR. KESSLER: Thank you.

5 BY MR. KESSLER:

6 Q. Do you know if any lead was found in the soil on  
7 9th Avenue between 220th and 219th Street?

8 A. (Chu) Not that I am aware of.

9 Q. Would you expect to find lead in the soil --  
10 withdrawn. Are you aware of the prior use of the Time  
11 Warner property by Belcher Oil?

12 A. (Chu) Yes, I am.

13 Q. Would you expect to find lead in the soil of that  
14 property knowing of the former use of the property by  
15 Belcher Oil?

16 A. (Chu) I am not an expert to determine whether as  
17 a result of oil storage facilities whether lead would be  
18 encountered.

19 MR. RIBACK: Your Honor, these questions are very  
20 specific to that location and I think are better dealt  
21 with on the rebuttal side of this case rather than the  
22 general panel.

23 JUDGE BOUTEILLER: By Mr. Greene once again?

24 MR. RIBACK: Yes, and other members of that  
25 panel.

1 MR. KESSLER: What other members?

2 MR. RIBACK: Mr. Fleming.

3 JUDGE BOUTEILLER: There's no outstanding  
4 question and the response was provided to the last  
5 question. Ask your questions if necessary. If they  
6 elicit a basis for objection I'll expect to hear a basis  
7 for the objection before the witness answers.

8 BY MR. KESSLER:

9 Q. Mr. Agresti, as part of your prefiled direct  
10 testimony you stated--this is on page seven of your  
11 testimony--that the studies conducted found that the  
12 project's construction and operation will have minimal  
13 impact on the environment and the residents of the City  
14 of Yonkers, Bronx County and upper Manhattan; is that  
15 correct?

16 A. (Agresti) Yes. From a noise standpoint, that's  
17 true.

18 Q. What noise studies were conducted?

19 A. (Agresti) We evaluated type of construction  
20 equipment used and duration of the construction at any  
21 one location.

22 Q. What type of equipment was proposed to be used by  
23 the Time Warner property?

24 A. (Agresti) By the Time Warner property  
25 specifically?

1 Q. Specifically, yes.

2 A. (Agresti) I don't know specific to any one  
3 location. Generally a backhoe is used for excavation,  
4 dump truck to take away, flat bed for the pipeline and  
5 the pipe itself, maybe a crane, equipment like that.  
6 Typical construction equipment.

7 Q. What is the noise impact from that type of  
8 equipment?

9 A. (Agresti) The noise levels from that type of  
10 equipment, they could range anywhere depending on  
11 specific equipment from--in a general number anywhere  
12 from 70 to 85, maybe 90, dba at 50 feet, depending how  
13 the equipment being used, if they are full throttle or  
14 not one specific sound level for a piece of equipment.

15 Q. Will the noise impact be greater for the  
16 tunneling aspect of the project?

17 A. (Agresti) Tunneling is different from the  
18 installation of the cable itself because that would have  
19 different equipment used. Would be at one location for  
20 a longer period of time as well.

21 Q. Will the noise impact be greater from the use of  
22 the equipment for tunneling?

23 A. (Agresti) Potentially greater, and that's  
24 something that once the EM&CP plan is put together we  
25 look at what the potential impacts could be at that area

1 and what mitigation measures would be needed to minimize  
2 those impacts.

3 Q. At this point no analysis has been done to see  
4 what the potential impacts would be based on that noise?

5 A. (Agresti) For the tunneling activities itself,  
6 detail analysis has not been done yet, no.

7 Q. What about for the trenching and manhole work?

8 A. (Agresti) For the trenching, as I said earlier,  
9 one of the factors--one of the most important factors  
10 that determines impact is duration of an activity. This  
11 type of work does not last for more than a few days to a  
12 week as work moves down the line. That fact alone is a  
13 significant mitigating factor. I will give you as an  
14 example.

15 Q. I just want to know what studies have been  
16 conducted. I am not asking about mitigation right now.  
17 What studies have been done about the noise impact from  
18 trenching and manhole work?

19 A. (Agresti) A detailed study was not conducted for  
20 the cabling itself. It's not required typically for the  
21 type of activity because of the duration. If you want  
22 to say what type of study was conducted, the study  
23 looked at duration was the first thing that's looked at.  
24 How long will an activity last.

25 Activity is only a few days to a week possibly in

1 front of any one area. That alone and the fact that the  
2 noise level for the equipment used is typical of  
3 construction you find anywhere if a house is being  
4 built, a school, road being paved. Any type of public  
5 work activity. There is no extreme type of sound  
6 associated with this type of activity.

7 Q. The manhole work is only expected to take one to  
8 two days?

9 A. (Agresti) I'm talking about the cable  
10 installation.

11 Q. What about the manhole, how long would that be?  
12 What would the duration of the noise impact be for that  
13 aspect of the project?

14 A. (Agresti) I don't know the specific duration of  
15 the manhole installation, how long that would take. I  
16 don't have that information. It's approximately two  
17 days for excavation, I was told.

18 Q. And so the record reflects accurately, who told  
19 you that?

20 A. (Chu) Kenneth Chu.

21 Q. Thank you. Do you know what the distance from  
22 where the tunneling work will be done in Manhattan to  
23 New York Presbyterian Hospital?

24 A. (Agresti) I don't have the specific distance. As  
25 I said, we have not done a detailed analysis for the

1 tunneling yet. That will be done as part of the EM&CP.

2 Q. Will there be a noise impact on the hospital's  
3 operations from the tunneling work?

4 A. (Agresti) That is something that will be looked  
5 at as part of the analysis. If mitigation is required,  
6 what type of mitigation.

7 Q. That analysis is not done yet, correct?

8 A. (Agresti) Not at this time.

9 Q. I assume that no analysis has been done to study  
10 the effect of the tunneling work on PS-278 or PS-18  
11 either?

12 A. (Agresti) The tunneling itself, that will be done  
13 as part of the EM&CP.

14 Q. Has there been any analysis on the effect of the  
15 trenching and manhole work and the noise impact that  
16 will create on PS-278 or PS-18?

17 A. (Agresti) Trenching itself, that would be  
18 expected to be of short duration.

19 Q. Your basis for that statement is?

20 A. (Agresti) Amount of time typically required to  
21 install cabling of this type on a project.

22 Q. What about the noise impacts of the trenching and  
23 manhole work on the operations of New York Presbyterian  
24 Hospital, has any analysis been done on that?

25 A. (Agresti) Again, the analysis for the trenching

1     itself really looks at the type of equipment being used,  
2     sound levels from that which are typical of public works  
3     type of equipment and the duration.

4             Maybe as an example I would say if someone were--  
5     if you were to wake up one day and your neighbor's  
6     cutting down a tree. You look outside to see what the  
7     noise is. If the neighbor cuts down a tree every day  
8     for 365 days that's a significant impact. If it occurs  
9     for one or two days, kind of look at it and it's not a  
10    significant impact. So the duration is very important  
11    to be looked at for this type of work.

12    Q.    The aspect of the project where the cable will be  
13    pulled through the transmission line, what is the  
14    duration of that aspect of the project?

15    A.    (Agresti) The cable pulling itself?

16    Q.    Yes.

17    A.    (Chu) The cable pulling operation takes  
18    approximately one night per section.

19    Q.    What is the length of one section?

20    A.    (Chu) The one section is between manhole to  
21    manhole in this case might be about 1600 feet.

22    Q.    Where is the closest manhole to the proposed  
23    manhole on the sidewalk of 9th Avenue between 219th and  
24    220th Streets both to the north and to the south, if one  
25    exists?

1       A.   (Chu) To the south it's on Broadway. To the  
2 north it's across the river crossing on the other side  
3 of the shaft tunnel.

4       Q.   The cable pulling from the manhole across the  
5 river to the one by the Time Warner property will only  
6 take one night?

7       A.   (Chu) Yes.

8       Q.   What is the noise impact associated with that  
9 aspect of the job if it's been studied?

10      A.   (Agresti) It's in the application, sound level of  
11 cable pulling machine. I don't have that off the top of  
12 my head.

13           MR. KESSLER: One minute. I want to see if I  
14 have any other questions.

15      Q.   Mr. Chu, do you know if any other portions of the  
16 M29 project will be either excavated or pulled  
17 underneath the sidewalk?

18           By "any other" I mean besides the sidewalk on 9th  
19 Avenue between 220th and 219th Street?

20      A.   (Chu) None that I can recall.

21      Q.   Mr. Wolfgang, you prepared exhibit 4?

22      A.   (Wolfgang) As the project manager I took  
23 responsibility for exhibit 4. There were a number of  
24 individuals at TRC that contributed to the document.

25      Q.   On the first page of Exhibit 4 it states on the



1 second paragraph, the introduction 4.1-1, extensive  
2 field investigation, literature reviews and agency  
3 consultations were conducted to identify and assess  
4 existing environmental conditions within the project  
5 area.

6 Are all of these investigations, reviews and  
7 consultations made a part of Exhibit 4 to the  
8 application?

9 A. (Wolfgang) Yes. Those are reflected in the  
10 various subsections of the exhibit. So for each section  
11 or each technical area we have identified who was  
12 contacted, what agencies were contacted, field  
13 investigations, reconnaissance surveys, things of that  
14 nature.

15 Q. Have all of the referenced documents in this  
16 exhibit been produced, to your knowledge?

17 A. (Wolfgang) Produced in terms of provided as part  
18 of this record?

19 Q. Correct.

20 A. (Wolfgang) No, that's not--no, they have not.  
21 Any referenced documents are certainly subject to  
22 discovery as part of a proceeding like this.

23 MR. KESSLER: I will ask that all referenced  
24 articles, investigations, consultations, be produced.

25 JUDGE BOUTEILLER: I'm going to ask you what are

1 you looking for? Time for discovery was before this  
2 hearing. That seems open ended. Sounds like a fishing  
3 expedition to me. If you have something specific in  
4 mind, we can look for it. We're not going to let you  
5 have a blanket request as on record request.

6 You are going to have to tailor that down a wee  
7 bit.

8 MR. KESSLER: I would like some time to review  
9 the cited reference.

10 JUDGE BOUTELLER: We will not require action on  
11 your current request but that's not to preclude you from  
12 making future requests.

13 MR. KESSLER: Correct.

14 I am concluding my questioning. Mr. Mitzner has  
15 some questions on different topics.

16 MR. MITZNER: Thank you. I just have a few very  
17 short questions.

18 CROSS EXAMINATION

19 BY MR. MITZNER:

20 Q. Mr. Wolfgang, are you familiar with the State  
21 Environmental Quality Review Act and the City  
22 Environmental Quality Review Act coming out of SEQRA?

23 A. (Wolfgang) In general terms, yes. There are  
24 others on my staff at TRC who take the lead on those  
25 type of projects.

1 Q. Right. Are you familiar with the guidelines that  
2 have been established for conducting a review, an  
3 environmental review?

4 A. (Wolfgang) No, I am not.

5 MR. RIBACK: Excuse me. Your Honor, what's the  
6 relevance of dealing with SEQRA and the city's SEQRA  
7 when Article VII precludes their use?

8 JUDGE BOUTEILLER: Why don't you hold that and  
9 let's ask the next question. If the witness will just  
10 pause a second to give counsel an opportunity to state  
11 his objection.

12 Q. In connection with the rebuttal to the rebuttal  
13 testimony to Yonkers submission is exhibit SB-1 which--

14 MR. RIBACK: Your Honor, I object. We're not  
15 here to discuss rebuttal testimony.

16 MR. MITZNER: I am not discussing rebuttal  
17 testimony. Just give me a chance to ask the question.

18 JUDGE BOUTEILLER: Give me a chance to get to the  
19 pages you are looking to. Can we just have that? You  
20 are looking to Consolidated Edison's submission of  
21 January the 12th.

22 MR. MITZNER: SB-1.

23 MR. WOLFGANG: Your Honor, I don't have a copy of  
24 that in front of me.

25 JUDGE BOUTEILLER: I don't know that you need one

1 yet. We will go slow.

2 BY MR. MITZNER:

3 Q. That document ostensibly reflects a--

4 JUDGE BOUTEILLER: Let me ask company counsel to  
5 provide the witness a copy of that document so he can  
6 look at it as you are posing a question.

7 The witness has a document. Pose a question. I  
8 just ask everyone to go slow so we give everyone a full  
9 opportunity to do whatever they have in mind to do.

10 BY MR. MITZNER:

11 Q. On the third page of that document.

12 A. (Wolfgang) Just for clarification, you're talking  
13 about exhibit SB-1?

14 Q. That is correct.

15 A. (Wolfgang) Thank you. Okay.

16 Q. Paragraph G refers to--has a statement when  
17 working on the east side of 9th Avenue on the sidewalk  
18 the contractor can fully close the sidewalk and post  
19 signs, meeting NYC DOT specifications for directing  
20 pedestrians to the opposite--the opposing sidewalk.

21 Do you see that?

22 A. (Wolfgang) Yes.

23 Q. The work that's proposed to be conducted on the  
24 sidewalk, would that also involve encroachment onto the  
25 roadway during any portion of the construction?

1 MR. RIBACK: Again, Your Honor, this is an  
2 exhibit in testimony that is part of the rebuttal case  
3 of Con Edison. The witness for this testimony is not on  
4 this panel.

5 JUDGE BOUTEILLER: Who is that witness?

6 MR. RIBACK: Stephen Beccalori.

7 JUDGE BOUTEILLER: Let me ask the witness: Do  
8 you have any knowledge of the contents on this page?  
9 Have you seen this before?

10 MR. WOLFGANG: No, I have not.

11 JUDGE BOUTEILLER: You have not seen this page at  
12 all?

13 MR. WOLFGANG: That is correct.

14 JUDGE BOUTEILLER: With respect to the specific  
15 question he asked do you have any knowledge with respect  
16 to that matter?

17 MR. WOLFGANG: No.

18 JUDGE BOUTEILLER: You have no direct knowledge?

19 MR. WOLFGANG: No.

20 JUDGE BOUTEILLER: I think you are going to have  
21 to accept the response and questions about the document  
22 will have to be referred to the sponsoring witness.

23 BY MR. MITZNER:

24 Q. Mr. Chu, are you aware of any work that will be  
25 conducted in the road bed of 9th Avenue during any phase

1 of the construction?

2 A. (Chu) Can you be more specific?

3 Q. The line is intended to go under the sidewalk of  
4 9th Avenue. My question is whether any construction  
5 activities have to take place in the road bed other than  
6 the sidewalk?

7 A. (Chu) In order for the route to get off the  
8 sidewalk on to 219th Street you have to go in the street  
9 and on that bed.

10 Q. Will that involve closing any portion of the road  
11 bed of 9th Avenue?

12 A. (Chu) No.

13 Q. Are you aware, with respect to PS-18, are you  
14 aware that the school buses that pick up children and  
15 drop them off at PS-18 congregate on 9th Avenue?

16 MR. RIBACK: Again, your Honor, I believe these  
17 issues are more directed to the rebuttal case.

18 JUDGE BOUTEILLER: I am going to allow the  
19 question to see what knowledge these witnesses have.

20 A. (Mooney) I am aware that for a period of about an  
21 hour in the morning and then again in the afternoon that  
22 there are buses in the vicinity of 9th Avenue and  
23 Broadway, 9th Avenue and 219th, yes.

24 Q. I am specifically speaking of 9th Avenue and  
25 220th.

1 A. (Mooney) And also on 220th.

2 Q. On 9th Avenue?

3 A. (Mooney) Yes.

4 Q. Have you conducted a survey and questioned  
5 anybody at the school to determine exactly where the  
6 school buses drop their children off and pick them off?

7 JUDGE BOUTEILLER: Would that be our traffic  
8 engineer?

9 MR. RIBACK: Probably, Your Honor. I don't know  
10 the answer.

11 JUDGE BOUTEILLER: Probably is not good enough.  
12 I am going to allow the question.

13 A. (Mooney) We haven't done a formal traffic study.  
14 We have observed the traffic at the area and have  
15 observed that the traffic is--there is activity in the  
16 morning for about an hour, and then again in the  
17 afternoon and then essentially it's very quiet for the  
18 large majority of the day.

19 Q. So, the answer to the question is no specific  
20 analysis has been done with regard to the method and the  
21 manner and times and the amount of school buses that  
22 would congregate on 9th Avenue?

23 A. (Mooney) We also have a traffic study that we  
24 have in draft form that hasn't been fully developed that  
25 looked at the traffic in that vicinity that was

1 contracted when we were planning on using HDD to cross  
2 the Harlem River, as that would have had a much more  
3 significant impact on the local area or the lay down  
4 area and traffic control.

5 That survey, again, was never finalized, it was  
6 only in draft form, and once we decided to go to a  
7 tunnel there was no real need to finalize it. It  
8 concluded that there was basically light traffic in that  
9 area, I believe.

10 Q. Did that traffic analysis specifically look at  
11 the school bus mode of operation?

12 A. (Mooney) I don't believe so. It didn't  
13 differentiate school buses from any other vehicle  
14 traffic. I don't believe. I would have to relook at  
15 the draft.

16 Q. Do you have--are you aware of and have knowledge  
17 of the Time Warner facilities that are located in the  
18 vicinity of the preferred route?

19 A. (Mooney) Yes.

20 Q. And what are they?

21 A. (Mooney) There is a--as I understand it there is  
22 an area where you park your service vehicles and across  
23 the street where the people from Time Warner go back and  
24 forth to get the equipment and boxes and such that they  
25 used to service customers.



1 Q. Would that be at the corner of 9th Avenue and  
2 219th Street?

3 A. (Mooney) I believe so. Could be on 218th. I  
4 will take your word for it.

5 Q. And what you are saying is there is a facility on  
6 9th Avenue and 219th Street that comprises both a  
7 facility, an office facility as well as parking  
8 facility?

9 A. (Mooney) I understand the parking is across the  
10 street, yes.

11 Q. So the work will be traveling back and forth  
12 crossing 219th Street and 9th Avenue to access both  
13 facilities?

14 A. (Mooney) Yes.

15 Q. Are you aware of any other Time Warner facilities  
16 along the preferred route?

17 A. (Mooney) There is an antennae station apparently  
18 on the route.

19 Q. Who gave you that information?

20 A. (Mooney) Mr. Chu.

21 Q. Where is that location? Mr. Chu, you can answer.

22 A. (Chu) 219th.

23 Q. Which part of 219th?

24 A. (Chu) In the middle of the block opposite the  
25 south side of the block on 219th Street.

1 Q. Is there also a Time Warner facility you are  
2 aware of at 219th Street and Broadway?

3 A. (Mooney) We would just be guessing.

4 Q. You don't know?

5 A. (Mooney) Yeah.

6 Q. You mentioned parking facility in the middle of  
7 the block on 219th. Is that what you are referring to,  
8 Mr. Chu?

9 A. (Chu) No. I was referring to Time Warner's  
10 satellite antenna, which were caged in on 219th Street.

11 Q. Do you know if that operates as a parking  
12 facility also?

13 A. (Chu) At times I have went by I have seen no cars  
14 inside the lot. The main parking facilities I believe  
15 is on 9th Avenue between 219th and 220th on the  
16 waterfront.

17 Q. Do you know whether customers utilize any of the  
18 Time Warner facilities on a daily basis to pay their  
19 bills?

20 A. (Chu) Not that I am aware of.

21 (Mooney) Yes.

22 Q. Yes, you are aware?

23 A. (Mooney) Yes, I am aware of that.

24 Q. Do you know the amount of pedestrian traffic that  
25 generates?

1           MR. RIBACK: Your Honor, again, this is material  
2 that has been raised in Time Warner's rebuttal testimony  
3 and responded to by Con Edison and more appropriate for  
4 later panels.

5           JUDGE BOUTEILLER: My biggest fear is that we  
6 allow this panel to leave and then we find that we want  
7 to go back to a provision of the Joint Proposal or a  
8 provision in the application.

9           I am allowing lines only to the extent that we  
10 are dealing with those types of documents and if  
11 necessary we can move to a line of inquiry with which to  
12 preface these questions what piece of information we are  
13 using.

14           Clearly to the extent information is gained here  
15 but it's not very helpful and we have a specific witness  
16 coming up later on, the inquiry is going to the extent  
17 of additional information these witnesses have to the  
18 extent that we are speaking either to the application or  
19 the Joint Proposal.

20           That's my general understanding to these lines of  
21 inquiry and to the extent you would inject yourself I  
22 will start assuming that the information we are probing  
23 is not necessarily related to either of those two  
24 documents.

25           Is that true?

1 MR. RIBACK: That would be my point, yes.

2 JUDGE BOUTEILLER: Counsel, you believe we are  
3 dealing with either the Joint Proposal or the  
4 application?

5 MR. MITZNER: Yes, we are. To the extent that  
6 the application is based upon an analysis of what was  
7 conducted and what knowledge the panel has.

8 JUDGE BOUTEILLER: We are testing now for  
9 knowledge of the panel at the time the application was  
10 filed. That's the understanding for this line of  
11 questions.

12 With that understanding, I will allow the  
13 questions. Was there an outstanding question? Can you  
14 repeat it or have it read back?

15 BY MR. MITZNER:

16 Q. Have you conducted any studies or analysis to  
17 indicate the number of customers that would visit the  
18 facility on a daily basis?

19 A. (Mooney) Again, the draft traffic study that was  
20 performed counted pedestrian traffic along 9th Avenue.

21 Q. And the facility is located where?

22 A. (Mooney) Which facility is that?

23 Q. The facility where customers pay their bills.

24 A. (Mooney) Specifically I am not sure. 219th.

25 Q. 219th and Broadway?

1       A.   (Mooney)   Right.

2               MR. MITZNER:   I would just like to ask a few  
3       questions about the construction activity that you've  
4       indicated abuts the Time Warner property.   I think some  
5       of this was asked before and I have asked Mr. Riback to  
6       indicate where on any document it's shown the Time  
7       Warner property line in relation to the excavation and  
8       installation activities.   And I will defer questions on  
9       that until I receive or understand what those documents  
10      portray or do not portray.

11             MR. RIBACK:   Your Honor, I object to that.   We  
12      have provided Time Warner with the appropriate documents  
13      to indicate the sidewalk and its property and they have  
14      had plenty of time to ask for additional documents.

15             JUDGE BOUTEILLER:   Do you want to take me through  
16      the track record of the request and the timing of that  
17      response and the quality of the response and show me the  
18      documents and determine whether or not we need to  
19      reserve time in the hearing process to establish to the  
20      satisfaction or provision--let's go off the record.

21             (Conversation held off the record.)

22             JUDGE BOUTEILLER:   Back on the record.

23             We had a conversation concerning the documents  
24      that pertain to the precise location of the proposed  
25      facility to the Time Warner properties.   I understand

1 the documents have been provided for discovery to Time  
2 Warner.

3 Time Warner is in the process of reviewing them.  
4 That review may be done and completed in time for your  
5 cross-examination of an upcoming company panel. If so,  
6 then perhaps that information can be pursued at that  
7 time. If however that's not suitable we will leave to  
8 Time Warner and their efforts whatever kind of motion or  
9 practice they will ask for in the future.

10 At this point in time there's nothing for me to  
11 act upon, there's nothing for me to do, there's no  
12 preservation or reservation of rights that I am prepared  
13 to make at this time.

14 Let's continue with cross-examination.

15 MR. MITZNER: Thank you.

16 BY MR. MITZNER:

17 Q. Mr. Mooney, are you aware of a fence that runs  
18 along the east side of the sidewalk of 9th Avenue  
19 between 219th Street and 220th?

20 A. (Mooney) Yes.

21 Q. What distance from that fence will the eastern  
22 most extremity of your excavation occur?

23 A. (Mooney) I would have to look at a drawing.

24 Q. Can anybody else on the panel answer that  
25 question?

1 A. (Chu) Can you repeat it again.

2 Q. I would like to know the distance of the shortest  
3 distance that excavation will occur from that fence that  
4 runs along the east side of the sidewalk of 9th Avenue.

5 A. (Chu) The largest facility that's proposed to be  
6 installed would be the manhole and the manhole would be  
7 adjacent to the Time Warner property.

8 Q. So the manhole itself will be adjacent to the  
9 fence or extent of the excavation would be adjacent to  
10 the fence?

11 A. (Chu) The extent of the excavation.

12 Q. Will be adjacent to that fence?

13 A. (Chu) Yes.

14 Q. A few more questions on the construction  
15 activities. What is the size of the truck that will be  
16 needed to pull cable at the manhole located on 9th  
17 Avenue?

18 A. (Chu) What you are referring to is the winch  
19 truck.

20 Q. Yes.

21 A. (Chu) Approximately 12 foot high, six inches  
22 high, 25 foot long.

23 Q. What length of period do you expect that truck to  
24 be in place to pull the cable?

25 A. (Chu) Each pull will take one night to pull each

1 section of cable.

2 Q. How many sections will be pulled out of that  
3 manhole?

4 A. (Chu) Out of that manhole will be two sections.

5 Q. In installing the manhole what equipment will be  
6 necessary for both excavation and installation of the  
7 manhole box?

8 A. (Chu) For the installation--actually, for the  
9 excavation, typical backhoe would be required.  
10 Depending on the type of manhole we install we have the  
11 option to do a cast in place concrete manhole, which  
12 does not require any type of lifting equipment.

13 To expedite the installation, we propose that we  
14 install a precast concrete manhole which such would  
15 require a crane to be on location to lift it up until  
16 they drop into location.

17 Q. Where will that crane be stationed?

18 A. (Chu) That crane will be stationed in the  
19 street.

20 Q. In the road bed?

21 A. (Chu) In the roadway.

22 Q. For what period of time?

23 A. (Chu) Approximately eight hours.

24 Q. And the length of that crane, and width?

25 A. (Chu) I don't have that location, that



1 information.

2 Q. Can that information be provided?

3 A. (Chu) Sure it could, yes.

4 MR. MITZNER: Can we make a request for it?

5 JUDGE BOUTEILLER: That's an on the record  
6 request. I think we have an indication company counsel  
7 will provide it, knowledge of the dimensions of the  
8 crane and the piece that will be used at the manhole  
9 proximate to Time Warner facilities.

10 MR. MITZNER: I have no further questions.

11 JUDGE BOUTEILLER: Thank you for your  
12 cross-examination of this panel.

13 By my look at the road map the parties put  
14 together, does that mean then the Department of Public  
15 Service staff has cross-examination for the panel at  
16 this time?

17 MR. DREXLER: Yes, Your Honor.

18 CROSS EXAMINATION

19 BY MR. DREXLER:

20 Q. Good afternoon. I have a few questions that I  
21 would like to ask with regard to some infrastructure and  
22 the sewers. I am not sure who on the panel is the right  
23 individuals to address these questions. Perhaps  
24 Mr. Mooney, Wong or Chu could answer these questions.

25 MR. RIBACK: Mr. Wong is not on this panel.

1 Q. Whoever is on this panel, if you can answer these  
2 questions.

3 JUDGE BOUTEILLER: I think the cross-examiner is  
4 indicating that you in the first instance might  
5 coordinate who might provide the response and we will  
6 take it from there.

7 Q. Is there a sewer main along the preferred route  
8 in Yonkers?

9 A. (Chu) There are several sewer mains on the  
10 preferred route in Yonkers.

11 Q. And where are those sewers located, as far as the  
12 burial, depth?

13 A. (Chu) You have to give me a specific location.  
14 We, as part of our field investigations, we had  
15 requested all subsurface utilities leaving the sewer  
16 from the City of Yonkers.

17 The City of Yonkers has provided us some  
18 information, but they also indicated that their records  
19 are somewhat deficient and records are not available.

20 Q. So, you don't--it's not clear where the exact  
21 depth and location of those sewer mains are?

22 A. (Chu) Typically sewers are deep below the water  
23 main for sanitary reasons. Talking about five to six  
24 feet below grade typically on a typical installation.  
25 If you are referring to a specific location, then

1 detailed drawings for that location would have to be  
2 looked at.

3 Q. And do you know the size, the approximate size,  
4 of those sewer mains?

5 A. (Chu) Also varies from 12 inch reinforced  
6 concrete. Some are 18 inch sewer connections. Catch  
7 basins, typically smaller.

8 Q. What's the largest sewer main you know of in  
9 Yonkers?

10 A. (Chu) I believe the largest one I came across was  
11 probably order of 24.

12 Q. 24?

13 A. (Chu) 24 inches.

14 Q. Do you know how far the M29 line would be located  
15 from the sewer mains?

16 A. (Chu) The intent of our design is to keep away  
17 from any subsurface facilities. We allow a one foot  
18 separation between facilities to facilitate any repairs  
19 that might be required on our pipes or any facility--any  
20 repairs on other facilities.

21 So depending on subsurface investigation we  
22 basically look for a clear lane which minimizes any  
23 avoidance of interferences from either sewer or water.

24 Q. And to determine the exact location of the  
25 infrastructure would you need to conduct boring, borings

1 tests to determine the exact location?

2 A. (Chu) In order to identify critical areas where  
3 potential interferences are identified in the  
4 investigation, engineering and design, we do typically  
5 request test pits be dug at the location to verify the  
6 content of the drawings supplied to the as built.

7 Q. And it's my understanding, is it correct, that  
8 you have requested the ability to conduct borings in  
9 Yonkers?

10 A. (Chu) We have requested but we have not received  
11 permission to do so.

12 Q. And when did you request permission to conduct  
13 the borings?

14 A. (Chu) It was sometime in 2006, probably May of  
15 2006.

16 Q. And how many borings did you request, if you  
17 know?

18 A. (Chu) Typically, for the whole run on M29 we had  
19 requested roughly about a hundred test pits. 50 of  
20 those were in Manhattan and the Bronx the other  
21 remaining 50 were typically in Westchester county. To  
22 answer your question, 50.

23 (Mooney) It was actually over 50. It was 50 some  
24 odd test pits in the City of Yonkers.

25 MR. DREXLER: I make an on the record request to

1 get a copy of your application to the City of Yonkers to  
2 conduct those test borings.

3 MR. MOONEY: Sure, yes.

4 Q. And just to reiterate, the borings will reveal  
5 the exact location and size of the sewer mains and the  
6 other infrastructure underneath the preferred route?

7 A. (Chu) Yes.

8 Q. So, is the time since you made the application  
9 with the City of Yonkers to conduct the tests since May  
10 of 2006, is that period typical of how long it would  
11 take to obtain approval to conduct the borings?

12 A. (Chu) Typically it's not. Typically--this is a  
13 lot longer than what we expected.

14 Q. What is a typical request? How long does a  
15 typical request take?

16 A. (Chu) Typical request from the City of New York  
17 could take up to two weeks for granting permission for  
18 permit to a test pit boring.

19 (Mooney) The test pits that we requested  
20 approximately the same time of the City of New York have  
21 all been processed and the information noted and  
22 engineering package is updated reflecting the actual  
23 test pit information.

24 Q. You indicated, at least this panel did, that you  
25 had sought approval for Manhattan and Bronx to conduct

1 test pits.

2 A. (Chu) We applied for the permit. We received  
3 the permits. We had performed our test pitting. We  
4 modified our design to reflect changes in the--or the as  
5 found conditions of those test pits.

6 Q. What was the timing? How long did it take from  
7 when you applied for the boring tests until you actually  
8 got approval? I want to know exactly how long.

9 A. (Chu) It varies because it depends on the depth,  
10 naturally the DOT how fast the turn around is on the  
11 applications.

12 Q. Do you recall how long it took to get approval  
13 from Manhattan and Bronx regarding your request to  
14 conduct test pits?

15 A. (Mooney) It would be better if we--it was  
16 approximately a couple weeks, but we could get you the  
17 exact information so we are not speculating.

18 MR. RIBACK: Does staff need the specific time  
19 frame or will a time frame of weeks, days, months  
20 satisfy you?

21 MR. DREXLER: I think you can--I guess I will  
22 make an on the record request. If he could confirm the  
23 period of time it took to get approval I appreciate it.

24 JUDGE BOUTEILLER: On the record we have a  
25 request that you indicate for us when did you request

1 permission to do test borings I believe probably from  
2 the Bronx and Manhattan, from whatever authorities those  
3 are, and indicate to us from Bronx and Manhattan when  
4 you got approvals and permission to do so.

5 Thank you.

6 BY MR. DREXLER:

7 Q. If you don't receive approval to conduct the  
8 borings can the borings be done as part of the EM&CP  
9 process and prior to construction?

10 A. (Chu) Yes.

11 MS. O'SHEA: The City of Yonkers has issued all  
12 the permits it can. We have copies of the permit here  
13 today.

14 JUDGE BOUTEILLER: You are indicating you have  
15 available for us in the hearing right now that the  
16 requests to do borings that were asked for by  
17 Consolidated Edison in the month of May of 2006 were in  
18 fact granted at that time?

19 MS. O'SHEA: I believe we have. My engineer I  
20 believe has copies of the permits.

21 JUDGE BOUTEILLER: I would like to go off the  
22 record. I would like you to show those to  
23 representatives of Consolidated Edison and to department  
24 staff. I would like all parties to take a look at that  
25 and then we should follow up and clarify on the record

1 what the state of affairs is or do you want to speak on  
2 the record?

3 MS. O'SHEA: The terminology has gone back and  
4 forth. I have the permit for all of the test pits.

5 JUDGE BOUTEILLER: Let's go off the record.

6 (Recess taken.)

7 JUDGE BOUTEILLER: I want to note for the record  
8 there has been an interruption in the cross-examination  
9 of the staff attorney of the company inquiring of them  
10 as to the dates and times and actions taken with respect  
11 to their request for test borings in Yonkers.

12 Counsel for Yonkers is here and she indicated  
13 that she had some relevant information which would  
14 impact upon this line of cross-examination. I would  
15 like to continue with counsel for Yonkers. I would like  
16 her to make her counsel's representations on our  
17 records.

18 She is an officer of the Court, she can do that  
19 if it's needed to pursue the factual information, but  
20 let's have counsel's representation and that may  
21 facilitate us in conducting this line of  
22 cross-examination, but that's the first order of  
23 business.

24 Counsel.

25 MS. O'SHEA: I would just like to have on the



1 record that City of Yonkers has issued all of the  
2 permits that Con Edison has requested with regard to  
3 test pits. They have issued them with conditions.

4 JUDGE BOUTEILLER: Let's go back to the--can you  
5 indicate for the record when those requests for test  
6 boring permits were made?

7 MS. O'SHEA: Yes, Your Honor. These permits were  
8 issued in September of 2006 and I also have a letter of  
9 October 19, 2006 that set forth the conditions on these  
10 permits. I also have and showed to counsel for Con  
11 Edison today copies of all the permits.

12 JUDGE BOUTEILLER: That sounds to me a little bit  
13 different than what we were understanding in the  
14 testimony provided. So, thank you for the statement of  
15 the position of the City of Yonkers with respect to the  
16 request for permits. That will inform the  
17 cross-examiner and allow the cross-examiner to either  
18 begin afresh in this area or take whatever steps he  
19 believes is necessary.

20 MR. RIBACK: Con Edison would like to request  
21 copies of the permits and the conditional letter that  
22 Yonkers has referred to today.

23 JUDGE BOUTEILLER: Seems to me you might be able  
24 to search your own records to obtain those, but for your  
25 convenience and to get to the heart of this matter I

1 guess I would like to ask Yonkers as a courtesy: Can  
2 you provide a copy of these within the next day as a  
3 courtesy for our proceedings?

4 MS. O'SHEA: Yes, your Honor.

5 JUDGE BOUTEILLER: I appreciate that. Thank you  
6 very much.

7 MR. DREXLER: I would like to request on behalf  
8 of Department of Public Service Staff if we could also  
9 get a copy of permits and the conditions and any  
10 stipulations that were made.

11 JUDGE BOUTEILLER: And we appreciate the courtesy  
12 you extended, counsel.

13 You can continue your line of cross-examination  
14 here or move on to another. It's your option, your  
15 call.

16 BY MR. DREXLER:

17 Q. I'm just trying to close the loop here. Is this  
18 the first time you have heard of the permits being  
19 issued for the project?

20 A. (Mooney) The permits have not been completely  
21 issued. What counsel for Yonkers has showed you is that  
22 Yonkers has permits that have--they have given  
23 permission, however, the permits are still outstanding  
24 for all but as I understand six of the test pits from  
25 other--New York State DOT.

1           There is only agreement to do both permission  
2 from DOT and the City of Yonkers, as I understand it, on  
3 six test pits. And those test pits have not got final  
4 decision primarily because of the conditions that, as  
5 stated by Yonkers' counsel, that we have not yet met.

6           JUDGE BOUTEILLER: Let me interrupt the  
7 cross-examination here at this point. If Consolidated  
8 Edison had the information that would be available from  
9 conducting the test pits at the time of their  
10 application, is it possible that the route that you  
11 propose would be different than the route as contained  
12 in your application?

13           MR. MOONEY: No. The--

14           JUDGE BOUTEILLER: I will accept that as an  
15 answer that your route is not a function of the  
16 information or quality of the information you obtained  
17 from the test pits; is that correct?

18           MR. MOONEY: That is correct.

19           JUDGE BOUTEILLER: And if you were to conduct  
20 those tests today, with all the conditions being met,  
21 with that information, that information would not be  
22 used by you to determine the route that you would select  
23 for this facility; is that correct?

24           MR. MOONEY: Yes, that is correct.

25           JUDGE BOUTEILLER: And now tell me what value,

1 what significance, what importance, those test pit  
2 information would have provided you at the time of the  
3 application, and tell me what value it provides you if  
4 you were in a position to do the test pits as of today.

5 MR. MOONEY: Test pits, Your Honor, simply  
6 confirm our design. It confirms that what we believe is  
7 happening subsurface is in fact happening. That we have  
8 a clear lane within the route that we have selected.

9 JUDGE BOUTEILLER: Would that information help  
10 you to make more perfect your estimates of how long  
11 construction would take?

12 MR. MOONEY: Yes.

13 JUDGE BOUTEILLER: Would that information tell  
14 you whether or not minor deviations would have to be  
15 made from the intended line that you had in mind?

16 MR. MOONEY: Yes.

17 JUDGE BOUTEILLER: Thank you. That's enough.  
18 Counsel.

19 BY MR. DREXLER:

20 Q. Is there sufficient room in the right-of-way  
21 along the preferred route to accommodate the M29 line in  
22 light of the existing infrastructure along the preferred  
23 route?

24 A. (Mooney) Yes.

25 Q. If any part of the infrastructure is damaged

1 during construction, can you explain what steps Con Ed  
2 will take to repair such infrastructure.

3 A. (Mooney) Specifically it's a construction issue,  
4 but in general if we break something we fix it.

5 (Chu) If something should get broke or damaged  
6 the facility will be fixed by Con Edison in accordance  
7 with the owner's procedures and recommendations.

8 Q. More specifically, will the repairs be conducted  
9 simultaneously with construction of the engineering line  
10 or will construction be halted until the repairs on the  
11 infrastructure are completed?

12 A. (Chu) Repair of the damaged facility will go on  
13 concurrently with the M29 project.

14 Q. Therefore the repairs would not result in  
15 delaying and completing the project?

16 A. (Chu) That is correct.

17 Q. Can you explain what certificate conditions are  
18 proposed to address any damage to the infrastructure?

19 A. (Chu) I don't understand the question.

20 Q. Is there anything in the Joint Proposal or the  
21 certificate of proposed certificate conditions which  
22 address damage to any infrastructure that may occur  
23 during construction?

24 A. (Chu) None that I am aware of.

25 Q. Switching gears. The projected in service date

1 for this project is March 2009; is that correct?

2 A. (Chan) No. That's the dated I amended at the  
3 initial, indicating that the March 2009 date is prefaced  
4 at that time based on this construction starting around  
5 February of '07.

6 In other words, that's based on having a  
7 settlement. The settlement did not take place and  
8 because of that our current projection is now at  
9 December 2009.

10 JUDGE BOUTEILLER: Can you tell me what  
11 construction--what's the date that corresponds with  
12 February of '07 in that schedule?

13 MR. CHAN: In 2007 they are starting construction  
14 but all work--generally start all the work on the  
15 street, particular for the work in the City of Yonkers.

16 JUDGE BOUTEILLER: Let me withdraw that question  
17 and let me ask you the question this way: With a  
18 February of '07 date that you had for initiating  
19 construction, you were estimating that in service date  
20 for the facility would be March of 2009; is that  
21 correct?

22 MR. CHAN: That is correct.

23 JUDGE BOUTEILLER: Now you are estimating an in  
24 service date of December 2009; is that correct?

25 MR. CHAN: That is correct.

1 JUDGE BOUTEILLER: What date are you estimating  
2 for the beginning of construction?

3 MR. CHAN: August '07.

4 JUDGE BOUTEILLER: Thank you. Please proceed.  
5 BY MR. DREXLER:

6 Q. Is the December 2009 in service date the same  
7 date at which the line is needed?

8 A. (Chan) I am going to answer the question as far  
9 as the need is going to be, as we said in the  
10 application, earlier than 2009. However, I am going to  
11 defer to Mr. Elmi to explain what the impact of that  
12 delay from the need day is.

13 (Elmi) The need for the project is really an  
14 immediate need. Actually it was needed a couple years  
15 ago in the sense that the deficiency of East 179th  
16 Street load area was uncovered in 2004. Allowing for  
17 two, three years for construction of the project, I  
18 believe that the initial original in service date for  
19 project M29 was summer of 2007.

20 So, at this point with the consideration of the  
21 new date, which is December of 2009, we have now slipped  
22 by approximately three years in terms of summer  
23 capability, which is the consideration that we give to  
24 establish a deficiency and therefore a mitigation for  
25 the deficiency in a particular pocket.

1 Q. Approximately how long will construction last?

2 A. (Chan) We estimate it as normal about two years.  
3 In the case of our project here, because that there was  
4 extensive amount of street work, and because some of the  
5 construction activity will be prohibited during certain  
6 winter months because of New York State DOT requirement  
7 in terms of plating, from the month of November through  
8 March, that some additional time is required.

9 So, the overall schedule is driven by the street  
10 construction work in this case in Yonkers. So, it's a  
11 little more than two years.

12 Q. So, is that a best case scenario for construction  
13 time, or does that schedule contemplate unanticipated  
14 events occurring?

15 A. (Chan) It's an estimate. That's why it's called  
16 projection. A lot of these are experience from  
17 construction folks. There are perhaps some built in  
18 conservatism in the estimate, in the current estimate,  
19 to the extent I can't tell you.

20 That's what Mr. Beccalori is on the panel, can  
21 explore that better. But I think the two year normal  
22 load duration is something that we have spoken about and  
23 we are trying to maintain that schedule so that we have  
24 a reasonable opportunity to complete the work when we  
25 need it.



1       Q. I guess going back to your statement it's been  
2 needed, this line has been needed for some time now,  
3 what measures has Con Edison had to take in order to  
4 address the fact that there is no M29 line currently  
5 available?

6       A. (Elmi) In the years intervening prior to the  
7 actual installation of the project, although we have a  
8 deficiency in the transmission level, this deficiency is  
9 predicated on the occurrence of a particular event,  
10 which is the loss of the largest transmission facility  
11 in the area.

12             It's a particular feeder called X28, which runs  
13 from Sprain Brook to Tremont in the Bronx. Until that  
14 contingency actually occurs in real life there is no  
15 deficiency, but if it did then there will be a  
16 deficiency.

17             So, in expectation of the deficiency actually  
18 occurring in real life, Con Edison has operational  
19 protocols that will address the deficiency in an  
20 operational manner as to avoid an actual loss of load.

21             The protocol involves a few mitigating actions,  
22 such as invoking on a temporary basis emergency ratings  
23 on transmission feeders in the area, and other measures  
24 such as assistance from neighboring utilities to the  
25 extent possible.

1 Q. Would you be considering the use of emergency  
2 mobile generation at the distribution level?

3 A. (Elmi) It's not to be excluded.

4 Q. And you mentioned emergency feeder ratings as  
5 well?

6 A. (Elmi) Yes.

7 MR. DREXLER: I have some questions with regard  
8 to traffic, but is that a Beccalori bucket issue or is  
9 that something that may be--

10 MR. WOLFGANG: Those questions are probably best  
11 posed to Brian Dempsey who is going to be here as part  
12 of the rebuttal testimony panel.

13 MR. DREXLER: Then I will I guess reserve the  
14 opportunity to ask my questions with regard to traffic  
15 at that time.

16 JUDGE BOUTEILLER: That's consistent with the  
17 established practice that we have since yesterday and  
18 today.

19 BY MR. DREXLER:

20 Q. Will the Academy substation, the construction of  
21 the Academy substation, be completed prior to the in  
22 service date of the M29 line?

23 A. (Chan) Yes.

24 Q. Do you have the approximate date at which you  
25 expect the substation to be completed?

1 A. (Chan) Project it to be April 2009 time frame.

2 MR. DREXLER: I have no more questions of this  
3 panel at this time.

4 JUDGE BOUTEILLER: Mr. Glass, is there anyone  
5 else on your list for cross-examining the panel?

6 MR. GLASS: Now it's time for the redirect.

7 JUDGE BOUTEILLER: Let me check that for myself.  
8 Is there any further cross-examination for the panel?  
9 If not, let's go off the record.

10 (Recess taken.)

11 JUDGE BOUTEILLER. Let me ask company counsel:  
12 Do you have redirect for any of the witnesses on this  
13 panel?

14 MR. RIBACK: Yes, we do, Your Honor.

15 JUDGE BOUTEILLER: Okay. Please proceed.

16 REDIRECT EXAMINATION

17 BY MR. RIBACK:

18 Q. Mr. Agresti, during your cross-examination on  
19 this panel a number of questions were directed to you  
20 about the need for a quantitative noise impact analysis  
21 in association with this project.

22 In your professional opinion is a quantitative  
23 noise impact analysis typically warranted along the  
24 route of the temporary street opening project?

25 A. (Agresti) No, not for this type of project.

1 Typically a detailed quantifiable noise assessment is  
2 done for a project with the potential for either a long  
3 term or a permanent impact.

4 This project, as part of the application, is  
5 really very short term construction noise at any one  
6 location as the excavation and cable laying goes along  
7 the corridor. No one location is impacted more than a  
8 few days to a week.

9 Detailed noise assessment is done, for example,  
10 for a power plant project. If someone proposed to put a  
11 power plant in the study it would consist of and  
12 identify who the potential people, impacted residents or  
13 schools or hospitals, what are the noise sources going  
14 in.

15 It would establish what the background levels  
16 are, how much noise the source will generate, and then  
17 what type of mitigation measures or noise control  
18 measures, and we use the applicable standards in  
19 minimizing any potential impact.

20 JUDGE BOUTEILLER: Let me follow up on that  
21 question. You provided a general answer. Is that  
22 general answer equally applicable to the tunneling  
23 that's being proposed for the Harlem River?

24 MR. AGRESTI: Even the tunneling is really not  
25 that long term a project because the initial tunneling

1 is done above the surface and the equipment moves down  
2 into the tunnel. Certainly as part of the EM&CP we can  
3 look at the potential noise impacts from tunneling.

4 JUDGE BOUTEILLER: Thank you. Your next  
5 question.

6 BY MR. RIBACK:

7 Q. Mr. Chu, do you now have a cost estimate for  
8 redesigning the preferred route along west 220th Street?

9 A. (Chu) Yes, I do. Based upon my estimate of the  
10 rework and redesign of the current proposed route I  
11 estimate approximately \$130 to \$150 thousand of rework  
12 is required to modify that lane change.

13 Q. Mr. Mooney, during your cross-examination a  
14 number of questions were raised about the extent to  
15 which Con Edison considers community concerns.

16 Can you address these issues?

17 A. (Mooney) Yes. Con Edison goes to great lengths  
18 to obtain community input when determining the routes,  
19 Con Edison's public affairs representatives have been  
20 advised that we discuss plans and percent of drawings at  
21 multiple community 12 meetings and that Con Edison  
22 attends the monthly district cabinet meeting.

23 We discussed plans and presented substation  
24 drawings to the New York City Economic Development  
25 Corporation and City Planning. We have discussed the

1 project with the leadership in the Audubon Economic  
2 Partnership. They are well aware of it. In fact, one  
3 of the Community Board meetings was held at the Audubon  
4 Partnership office.

5 Con Edison has initiated communications with  
6 representatives from several schools including PS-5,  
7 PS-18, PS-278, Manhattan Christian Academy and Columbia  
8 University. Con Edison has initiated communications  
9 with the Dykeman Houses Community Association, Dykeman  
10 Houses Tenants Association, and Dykeman Senior Citizens  
11 Center and New York Presbyterian Hospital.

12 Con Edison conducts extensive community outreach.  
13 We do this routinely on each major project. Every  
14 effort is made to coordinate with and accommodate  
15 institutions such as schools.

16 This is typically done in advance of beginning  
17 work, but where we have a more definite--when we have a  
18 more definite schedule. Con Edison currently has two  
19 bilingual employees who speak both English and Spanish  
20 who regularly attend meetings in the Washington  
21 Heights-Inwood community, and respond to customer  
22 inquiries.

23 The company also sought input from a large number  
24 of affected parties, including New York City itself,  
25 Manhattan, the Bronx, Yonkers, New York City Housing

1 Authority, New York Presbyterian Hospital, and Time  
2 Warner.

3 Con Edison reached out to local elected officials  
4 and Community Boards, meeting individually with most if  
5 not all elected officials and Community Boards whose  
6 constituents are affected by M29. For example,  
7 community board 8, community board 12, Congressman  
8 Engel, to name a few.

9 All things being equal, we select our routes that  
10 have the least community impact because, one, it's the  
11 right thing to do and, two, it makes our job ultimately  
12 easier.

13 Evidence of Con Edison's concern for the  
14 communities was the redesign of the Harlem River  
15 crossing from horizontal directional drilling, which  
16 would have had a huge detrimental effect on the  
17 residents of the Marble Hill houses, and Time Warner and  
18 New York Presbyterian Hospital, to a tunnel.

19 The tunnel completely removes the requirement for  
20 use of any Time Warner property and bypasses the Marble  
21 Hill houses. It was designed and has been, in fact,  
22 redesigned in large part to accommodate the wishes of  
23 the respective property owners.

24 Con Edison presented the preferred route to the  
25 Mayor of the City of Yonkers as well as several City

1 Council members. At this meeting Yonkers asked Con  
2 Edison to look into I87 as an alternative. In the  
3 spirit of cooperation, a team of engineers revisited  
4 this route even though avoidance of major thoroughfares  
5 was a stated routing criteria, and performed an  
6 objective analysis.

7 I personally promised the Mayor and City Council  
8 members while we couldn't guarantee our analysis and  
9 maybe wouldn't produce the result they liked, I could  
10 promise that we would give it an honest review.

11 I lead a team and gave instruction that our job  
12 was not to come up with reasons why we couldn't use the  
13 route, but to honestly evaluate the route as if it was  
14 our only choice. In other words, if we had to build it  
15 here could we.

16 We presented the results, much of which was  
17 discussed in rebuttal testimony, or will be discussed in  
18 rebuttal testimony to the Mayor and the City Council  
19 members and concluded that the route was not feasible.

20 In summary, Con Edison's objective is to select  
21 the best means for its criteria and minimizes the impact  
22 on the affected community. We want to minimize the  
23 impact of this project on affected communities. It is  
24 in Con Edison's best interest to do so and we spend a  
25 lot of time on evaluating alternatives.



1           We conducted a lot of outreach and solicited  
2 input from a large number of affected parties, including  
3 New York City Housing Authority, New York Presbyterian  
4 Hospital, Time Warner, and officials of New York City,  
5 Manhattan, Bronx and Yonkers.

6           We listened to parties' concerns and addressed  
7 them to the extent we could. We made some very  
8 significant changes to our proposal to address these  
9 concerns.

10           We will deal with the remaining impacts during  
11 construction to the extent we can, and we will take all  
12 reasonable steps to mitigate them.

13           Any residual impacts of this construction project  
14 will be temporary and unavoidable. We wish we could  
15 avoid all of these residual impacts, but we do not have  
16 a better alternative. Of the two alternatives now on  
17 the table, the one of I87 is simply not feasible.

18           JUDGE BOUTEILLER: Are there further questions on  
19 this line? Let me interject at this point. This is  
20 probably my best opportunity.

21           Mr. Mooney, then, would it be your position that  
22 no one interested in any community about this project at  
23 the time it was being considered and planned, and before  
24 the time of the application, should subsequently  
25 indicate that they were surprised by the company's

1 proposal, and the route that you selected?

2 Was your outreach and education sufficient such  
3 that no one, to your knowledge, should claim that they  
4 were surprised by either your intents to proceed or your  
5 specific plans to use a particular route?

6 MR. MOONEY: It doesn't surprise me, your Honor,  
7 that people are surprised. I think that if you ask me  
8 if we took all reasonable steps to ensure that people  
9 were informed and were communicated to I would say yes,  
10 that we did.

11 JUDGE BOUTEILLER: I will accept that response.

12 Do you believe that representatives of various  
13 communities had an adequate opportunity to weigh in on  
14 the company's plans before the time that you filed your  
15 application?

16 MR. MOONEY: Yes, sir, I do.

17 JUDGE BOUTEILLER: You don't believe that anyone  
18 or any person you are hearing from currently should have  
19 had a better opportunity to the time the application was  
20 filed to be influencing the proposals that you have made  
21 here at this time?

22 MR. MOONEY: I am not sure I understand the  
23 question.

24 JUDGE BOUTEILLER: I will withdraw the question.  
25 Your next question.

1 BY MR. RIBACK:

2 Q. Mr. Mooney, earlier you indicated that prior to  
3 submitting the application under Article VII you had  
4 submitted drawings to the City of Yonkers for approval.  
5 Could you clarify that response?

6 A. (Mooney) Yes. We submitted preliminary drawings  
7 early on in the process prior to entering into the  
8 Article VII process. Article VII, we understand and  
9 recognize, supercedes that process and we are not  
10 looking for any approval from the City of Yonkers.

11 Q. I just wanted to clarify: You are taking about  
12 the Sprain Brook substation?

13 A. (Mooney) Yes, that is correct, on the Sprain  
14 Brook substation I previously testified to.

15 MR. RIBACK: No further questions.

16 JUDGE BOUTEILLER: Okay, I will ask counsel to  
17 remain in your seats. What I will do is I will go  
18 around the room starting with probably Mr. Glass.

19 MR. RIBACK: Let me--I just forgot. Mr. Dempsey  
20 obviously is not here today. There are some redirect  
21 questions that I wanted to address to him.

22 JUDGE BOUTEILLER: With respect to Mr. Dempsey,  
23 what we will do is he will join the rebuttal testimony  
24 panel to which he's associated. At the time that he is  
25 being considered as a rebuttal witness he is also

1 available for continued cross-examination with respect  
2 to the information he would have provided had he  
3 remained today a member of this panel.

4 So the cross-examination is still open with  
5 respect to Mr. Dempsey. There is no limitations with  
6 respect to Mr. Dempsey. Therefore, you need not worry  
7 about your opportunity to redirect Mr. Dempsey until  
8 such time as all the cross-examination is had of  
9 Mr. Dempsey.

10 I think that takes care of Mr. Dempsey fully and  
11 completely and we can then deal with the remainder of  
12 this panel fairly completely as soon as we finish this  
13 exercise.

14 What I would like to do is counsel can remain in  
15 their position. I put microphones all around the table.  
16 Again, I would ask you speak at an upstate pace as  
17 opposed to city pace and also let's not speak over one  
18 another. We don't do that in upstate New York.

19 And so therefore, if we can approach it that way.  
20 We will start with Mr. Glass. We will work our way  
21 around the table. If the attorneys or cross examiners  
22 are in the back of the room, you will also have an  
23 opportunity.

24 But, again, you have to pose your question in  
25 light of what you just heard counsel raise as a matter

1 of redirect and that's the restriction.

2 Mr. Glass.

3 MR. GLASS: No redirect.

4 JUDGE BOUTEILLER: Thank you very much.

5 Mr. Drexler.

6 MR. DREXLER: No recross, although I would like  
7 to just confirm that the--before this panel is  
8 excused--that the appendices or exhibits to the Joint  
9 Proposal are considered part of the record?

10 JUDGE BOUTEILLER: Yes, and that's a worthy  
11 clarification on the record. The Joint Proposal as it  
12 was received when filed with the Commission, it and all  
13 its appendicis and all the set of exhibits associated  
14 with it are, for our purposes, being considered all a  
15 part of exhibit number 2. So, that's all inclusive.

16 If, in fact, there is any portion of that that  
17 warrants specific cross-examination and we need to for  
18 the convenience of the reviewers of the record give it a  
19 separate identification, we can do so at such time.

20 Generally speaking, yes, it's all in the record.  
21 It's all a matter of an application that was filed in  
22 the processing thereof, and hopefully we are just  
23 working through the semantics in the first instance.

24 MR. GLASS: Clarification.

25 JUDGE BOUTEILLER: Hold your clarification until

1 we finish this exercise.

2 MR. TORIENO: I have no questions.

3 JUDGE BOUTEILLER: Thank you. This opportunity  
4 is only constricted or limited to those people who  
5 conducted the cross-examination as well, so I will skip  
6 counsel for New York Presbyterian unless you were  
7 cross-examining while I was sleeping.

8 Let me turn to counsel for Time Warner.

9 MR. MITZNER: I just have one question for Mr.  
10 Agresti.

11 RECROSS EXAMINATION

12 BY MR. MITZNER:

13 Q. Is it your testimony that there is never any  
14 circumstance where a two to four week construction  
15 period would generate any noise impacts?

16 A. (Agresti) Just repeat that question. I am sorry.

17 Q. Is it your testimony that there is never any  
18 circumstance where a two to four week construction  
19 period would generate noise impacts?

20 A. (Agresti) No, it's not. A two to four week  
21 construction project could generate noise impacts if the  
22 noise levels from the construction were excessive or out  
23 of the norm. It would have the potential.

24 Q. It would also depend on the ambient noise  
25 conditions?

1 A. (Agresti) That is part of the assessment, yes.

2 Q. My question is: Have you conducted any studies  
3 to establish the ambient noise levels along the  
4 preferred route?

5 A. (Agresti) As I mentioned earlier--

6 Q. Just a yes or no. I just want either you have  
7 done them or you haven't done them.

8 A. (Agresti) It's a two-part answer. Part of the  
9 interrogatory response from the City of Yonkers provided  
10 a study that had conducted ambient noise level  
11 measurements in the one of the areas of the  
12 installation, and that monitoring actually showed sound  
13 levels that were maximum sound levels that would exceed  
14 any of the sound levels generated during construction.

15 Q. But not along the remainder of the route?

16 A. (Agresti) Only a portion of the route.

17 MR. KESSLER: My question is for Mr. Chu.

18 CROSS EXAMINATION

19 BY MR. KESSLER:

20 Q. You just testified that the cost estimate for  
21 developing the route along 220th Street would be between  
22 \$130 and 150 thousand. What is the basis for this  
23 estimate?

24 A. (Chu) Basis for my estimate is to redesign the  
25 existing drawings presently been developed, aerial

1 photographs that could be shot from a helicopter of new  
2 route. Also test pitting required as part of  
3 establishing a lane. And there is no guarantee that if  
4 all this engineering is done that there is a clear lane  
5 for the new route to go down 220th Street because of  
6 potential interferences with the Broadway bridge and  
7 bridge abutments.

8 Q. How long would this process take?

9 A. (Chu) This process would take up to three, four  
10 months. There's also a mobilization fee and time for  
11 the contractors to mobilize and demobilize to start the  
12 work. So there would be associated premium for any jobs  
13 that they are currently on to remove them and to  
14 expedite this request.

15 Q. Is this mobilization fee included in the estimate  
16 you already testified to?

17 A. (Mooney) Yes.

18 JUDGE BOUTEILLER: Mr. Collins.

19 RECROSS EXAMINATION

20 BY MR. COLLINS:

21 Q. Is it Con Edison's contentions still at this  
22 point that having not done a traffic study of any nature  
23 that still a minimal impact will be felt by the  
24 communities such as ours, and the other impacted  
25 communities for this project, that traffic will be



1 minimally impacted during the construction of the M29  
2 line?

3 JUDGE BOUTEILLER: Mr. Collins, which question do  
4 you hear from which witness that would open the door for  
5 consideration of traffic impacts?

6 MR. COLLINS: I'll ask it of Mr. Mooney.

7 JUDGE BOUTEILLER: Mr. Mooney addressed community  
8 concerns and the efforts that the company engaged in to  
9 provide various representatives of various communities,  
10 and the laundry list has examples.

11 He also went on to speak about the number of  
12 bilingual employees the company has in their employ. He  
13 went on to talk about some of the meetings he attended  
14 at the various Community Board levels. I think he made  
15 mention of the Audubon Partnership as well.

16 I don't recall Mr. Mooney speaking or addressing  
17 noise specifically. Did you, Mr. Mooney?

18 MR. MOONEY: Sir, I did not.

19 JUDGE BOUTEILLER: We don't have any questions  
20 about noise.

21 MR. COLLINS: Is there anyone on the panel who  
22 will address that?

23 JUDGE BOUTEILLER: I don't recall any redirect  
24 question raising the question of noise.

25 MR. COLLINS: Let me rephrase my question.

1 BY MR. COLLINS:

2 Q. As a function of the outreach to the community  
3 then in discussing with these various entities--I have  
4 ten here which you reached out to in our community--in  
5 discussing the project with these entities the subject  
6 of traffic had to come up at some point, and if so what  
7 was the response?

8 A. (Mooney) Again, I don't believe--during  
9 discussions with the local communities we emphasized  
10 that there would be an impact on the communities and  
11 there would be no doubt about it. We didn't pretend  
12 that there wouldn't be. What we tried to describe was  
13 that it would temporary in nature and unavoidable.

14 MR. COLLINS: No further questions.

15 JUDGE BOUTEILLER: Mr. Bing, did you have any  
16 questions?

17 MR. BING: No.

18 JUDGE BOUTEILLER: Thank you very much.

19 Counsel for Yonkers.

20 RE CROSS EXAMINATION

21 BY MS. O'SHEA:

22 Q. My first question is for Mr. Agresti. In  
23 answering counsel for Time Warner's question you  
24 referred to a noise study that you had looked at from a  
25 City of Yonkers interrogatory. You hadn't seen this

1 noise study prior to determining the route, had you?

2 A. (Agesti) I didn't determine the route. I just  
3 saw this recently in the last few days.

4 Q. You hadn't seen it before you testified that the  
5 noise impact would be minimal, had you?

6 A. (Agesti) No. It just supports my conclusion.

7 Q. I had a question for Mr. Mooney. My first  
8 question is: What kind of community outreach was  
9 conducted by Con Edison and Yonkers regarding this  
10 project prior to the filing of the application?

11 A. (Mooney) I don't recall if we specifically--the  
12 meeting that I was referring to was after the  
13 application was filed.

14 Q. So, to the best of your recollection, community  
15 outreach was not conducted in Yonkers prior to the  
16 filing of the application?

17 A. (Mooney) I don't know if I can say that for sure.  
18 The meetings that I referred to, I was talking about,  
19 occurred afterwards, yes.

20 Q. After you chose your route?

21 A. (Mooney) That is correct.

22 Q. And also we heard from this panel about how there  
23 was no quantitative noise impact analysis study done  
24 prior to choosing the route or the traffic impact  
25 analysis on specific locations along the route or

1 comparative across alternate routes.

2 I would just like to ask what your basis was in  
3 stating that Con Ed chose the route with the least  
4 community impact?

5 A. (Mooney) Again, there is going to be--there would  
6 be impact to the community no matter where we routed the  
7 feeder. What we tried to do was accommodate Yonkers'  
8 request to look at an alternate route down a major  
9 interstate highway that completely bypasses the City of  
10 Yonkers except for the section of Tuckahoe Road we  
11 talked about before.

12 We never really said that there would be no  
13 impact on the community. We said we would minimize it  
14 as best we could based on our construction techniques  
15 and methods, and that any community issues would be  
16 temporary and basically unavoidable.

17 Q. Is it still your testimony that Con Ed chose the  
18 route with the least community impact?

19 A. (Mooney) Con Edison chose the route based on  
20 considering the impact to the community. That wasn't  
21 the primary driver to the route selection, but it was  
22 considered during the selection criteria.

23 MR. GARUM: Your Honor, I would like to make a  
24 counsel's representation from personal knowledge that  
25 prior to the time we filed the application executives of

1 Con Edison had briefed the Mayor's office, as well as  
2 most if not all City Council members, about this project  
3 in advance of the filing.

4 JUDGE BOUTEILLER: And, no, you may not make any  
5 such representation because you are not testifying as a  
6 witness in our proceeding, but I will not strike your  
7 statement from the record.

8 JUDGE BOUTEILLER: The representative for Council  
9 Member Oliver Koppell, Jamin Sewell.

10 CROSS EXAMINATION

11 BY MR. SEWELL:

12 Q. Mr. Mooney, you have indicated that you made  
13 presentations to Community Boards regarding the M29  
14 transmission line project?

15 A. (Mooney) Yes.

16 Q. Did that include Community Board 8 in the Bronx?

17 A. (Mooney) Yes.

18 Q. Do you know approximately when that presentation  
19 occurred?

20 A. (Mooney) It was after the filing, if that's what  
21 you are asking, the one I personally went to. We also  
22 discussed it with Joe Gordon of Mr. Koppell's office.

23 Q. Do you know when that discussion occurred?

24 A. (Mooney) I can't remember if it was--it was  
25 around the time of the filing. I don't remember if it

1 was before or after.

2 Q. When you made the presentation to the Community  
3 Board your application had already gone in, that's  
4 correct?

5 A. (Mooney) I believe so.

6 Q. What was the nature of your presentation?

7 A. (Mooney) We met a couple of times with community  
8 8. We wanted to give them a basic overview of the  
9 project and to basically just inform them, an effort to  
10 instill good communications with the local community, to  
11 get their feedback.

12 Q. Did you discuss any alternative routes?

13 A. (Mooney) Yes. In fact, we had a separate meeting  
14 where we presented the route and talked about some of  
15 the alternatives to the members of the Community Board  
16 and I believe it was the committee. I don't think it  
17 was a general meeting that I recall.

18 Q. That was after the application?

19 A. (Mooney) That is correct, yes.

20 MR. SEWELL: I don't have any further questions.

21 JUDGE BOUTEILLER: Next would be the  
22 representative for the Manhattan Borough President.

23 RECROSS EXAMINATION

24 BY MR. GULOTTA:

25 Q. Mr. Agresti, you indicated that the noise

1 generated by this project in terms of a typical location  
2 would be similar to that by a temporary street opening.  
3 Is that correct?

4 A. (Agresti) Yes.

5 Q. And could you describe, for example, how big a  
6 temporary street opening is and how long a period of  
7 noise is generated from that activity?

8 A. (Agresti) Exact duration I wouldn't have an  
9 answer to, but a street opening is--what I mean by  
10 street opening is excavating, paving, of a street  
11 itself.

12 That type of equipment in those types of sound  
13 levels are similar to what would be done with this  
14 project.

15 Q. Sounds like more a street reconstruction. A  
16 typical street opening, compare this to how long would  
17 that last?

18 A. (Agresti) I don't know if maybe it's a matter of  
19 semantics. By street opening perhaps better definition  
20 would be a street repair or street repaving, something  
21 of that nature.

22 Q. For what period of time?

23 A. (Agresti) Typically probably couple of days,  
24 three, four days. Something like that.

25 Q. You testified that this process would take about

1 two to four weeks from any location. And then also we  
2 don't really know how big the stages are, but the  
3 project progresses two to four weeks and the next  
4 section two to four weeks, maybe do an intersection.

5 So, isn't it likely that any one noise receptor  
6 that people might be exposed to the noise for a period  
7 of may be a month or two months?

8 A. (Agresti) My understanding of the construction  
9 process is that at any one section of 50 to 200 feet the  
10 process doesn't last more than three days to a week.

11 Further, the sound levels from the construction  
12 equipment, such as those presented in the application,  
13 those are sound levels that occur when equipment is  
14 running at full load or idle.

15 Many time equipment running at idle is not  
16 operating at all. There's also periods of time when the  
17 sound levels are near ambient conditions. I would not  
18 expect anyone to be exposed to the maximum sound levels  
19 for long periods of time.

20 Q. Have we identified what that equipment is?

21 A. (Agresti) What equipment?

22 Q. The construction equipment.

23 A. (Agresti) Specific construction equipment is not  
24 detailed in the application; however, the basis of  
25 construction are detailed in the application on page



1 48-7.

2           However, the construction equipment is typical of  
3 any trenching operation, backhoes to excavate soil.  
4 Repaving that gets done. Trucks to bring in equipment  
5 and take out equipment and cable pulling machines.

6           JUDGE BOUTEILLER: Let me interject at this point  
7 and just remind the cross-examiner is that the question  
8 as I heard it to Mr. Agresti, which asked whether or not  
9 he believed that there was a need for a quantitative  
10 analysis of the noise impact here and went to explain  
11 why he thought no need for an impact or assessment or  
12 quantitative analysis was necessary.

13           So, that's the direct line of redirect and I will  
14 be holding you to that line.

15           Q. When you take the total amount of noise generated  
16 over the project, each stage, two to four weeks,  
17 whatever, nine and a half miles, two years, doesn't the  
18 total of the noise generated by the project really call  
19 for a total noise analysis of the project?

20           A. (Agresti) No.

21           Q. Is there anything in the noise analysis that  
22 indicates that the noise has to be heard by the same  
23 person every day?

24           A. (Agresti) Yes. Noise is specific to a person  
25 being impacted by it. Your analogy would be trying to

1 say should we evaluate noise from the Los Angeles  
2 airport in New Jersey. We are not being impacted by it,  
3 therefore an analysis is not warranted for it.

4 Q. I did have a question for Mr. Mooney. You  
5 indicated that the City of Yonkers asked you to examine  
6 the feasibility of using I87 and you did that and you  
7 found it was not feasible. Could you give us the  
8 reasons why it's not feasible?

9 MR. RIBACK: Your Honor, that will be elaborated  
10 upon in Con Edison's rebuttal testimony.

11 JUDGE BOUTEILLER: You did ask a question that  
12 elicited a response which indicated the nature of the  
13 conversation had by either the company's representatives  
14 or Mr. Mooney with Yonkers.

15 I think it's warranted and allowed. Can you  
16 indicate for us what did you tell Yonkers in response to  
17 their request that you consider I87?

18 MR. MOONEY: Very briefly. We looked at it from  
19 both a regulatory perspective and an engineering  
20 perspective. From a regulatory perspective we reached  
21 out and found that there is--New York State DOT has a  
22 document called an accommodation plan for longitudinal  
23 placement of utilities in conjunction with the Federal  
24 Highway Administration. The plan specifically prohibits  
25 non-communication utilities from longitudinal placement

1 in what they call major roadways.

2 And there is lots of conditions that go into that  
3 which I will go into more detail. So, just from a  
4 regulatory perspective it would have been prohibited by  
5 regulation.

6 From an engineering perspective, we looked at it  
7 and we looked at one of the--

8 JUDGE BOUTEILLER: Let me interject at this  
9 point. Would you be stating anything different or in  
10 addition to what was the engineering evaluation done by  
11 the rebuttal panel that Consolidated Edison will be  
12 providing?

13 MR. MOONEY: No.

14 JUDGE BOUTEILLER: You don't have any additional  
15 or independent information on that?

16 MR. MOONEY: No, I do not.

17 JUDGE BOUTEILLER: That's fine. Thank you.

18 MR. GULOTTA: One question.

19 BY MR. GULOTTA:

20 Q. With respect to this DOT requirements, does  
21 Congress have the authority to grant a waiver for that,  
22 to your knowledge?

23 MR. RIBACK: Your Honor, the cross-examiner is  
24 asking for a legislative conclusion.

25 JUDGE BOUTEILLER: Would it be fair for me to say

1 that in addressing the regulatory difficulties  
2 associated with using I87 that that panel can be  
3 responding to the question of what the nature of that  
4 regulatory process is, to the best of their knowledge?

5 MR. RIBACK: Yes.

6 JUDGE BOUTEILLER: Perhaps that question may be  
7 pertinent and responsible to at that time. So, I don't  
8 think we require any answer for that question for this  
9 panel.

10 MR. GULOTTA: Thank you. No further questions.

11 JUDGE BOUTEILLER: Have I missed any  
12 cross-examiners?

13 MR. KESSLER: I just want to add something that I  
14 forgot.

15 JUDGE BOUTEILLER: Again, it's a one way road.  
16 You can tell me what it is and we can see where we go  
17 from there.

18 MR. KESSLER: I would like to ask Mr. Chu to  
19 provide copies of any documents he used in calculating  
20 the \$130 to \$150 thousand he just testified to.

21 JUDGE BOUTEILLER: Yes. We can accommodate that.

22 Mr. Chu, I think you should be able to provide a  
23 work paper which is associated with the figure that you  
24 provided here. And can you provide that work paper for  
25 the benefit of clearly Time Warner, and I think there is

1 an outstanding request by most of the parties here to  
2 provide the work paper as well. Let's just see if your  
3 components and see if your numbers add up to these  
4 figures for sure.

5 MR. CHU: Okay.

6 JUDGE BOUTEILLER: Thank you.

7 Mr. Riback, is there any--Mr. Collins.

8 MR. COLLINS: One last question.

9 In testifying, Mr. Mooney had said community  
10 outreach was done before the application was filed. I  
11 was curious as to when the outreach had taken place in a  
12 discussion with Councilman Martinez with regard to the  
13 route coming through Inwood.

14 JUDGE BOUTEILLER: That will be the last question  
15 for this panel on this exercise.

16 MR. MOONEY: I believe I testified per advice  
17 from Con Edison public affairs. I would have to reach  
18 out to them, your Honor, to get that information.

19 JUDGE BOUTEILLER: We will take that as an on the  
20 record request. If you can find out whether or not that  
21 specific individual was contacted before the  
22 application, the date and the time and the location of  
23 such meeting, can that be provided to Mr. Collins?

24 MR. MOONEY: Yes, sir.

25 JUDGE BOUTEILLER: Thank you. This practice now

1 requires me to turn back to Mr. Riback and to find out:  
2 In light of the cross-examination we have just heard, do  
3 you have any further interest in direct testimony being  
4 elicited from these witnesses?

5 MR. RIBACK: No further questions, Your Honor.

6 JUDGE BOUTEILLER: That's the stock response you  
7 always get. Thank you very much.

8 So, with that, I want to thank this panel.  
9 Perhaps some of you will be coming back as members of  
10 other panels, but with respect to you as the panel who  
11 has testified with respect generally to the content of  
12 the application, also generally with respect to the  
13 terms of the Joint Proposal that's been entered into  
14 with the state DOT, I want to thank you for your  
15 testimony.

16 I want to thank you for your willingness to  
17 respond as truthfully and candidly as you possibly could  
18 to the questions that came from the attorneys and from  
19 those individuals who are not so experienced but are  
20 trying earnestly to elicit accurate information from  
21 you.

22 I want to thank you for your cooperation with the  
23 process and I want to excuse you as a panel and you are  
24 not subject to recall with the exception of Mr. Dempsey,  
25 who under his special circumstances will remain under

1 oath. We could easily apply the oath again to him, but  
2 with respect to the remainder of you you are all  
3 excused. Thank you very much.

4 (Panel excused.)

5 I would like to take ten minutes and during the  
6 ten minutes we will give Yonkers the opportunity to set  
7 up your panel here. And Consolidated Edison will be  
8 conducting cross-examination of the Yonkers' witnesses.

9 (Recess taken.)

10 JUDGE BOUTEILLER: By arrangement with the  
11 attorneys it's my understanding that the next witnesses  
12 would be the witnesses that are being proffered by the  
13 City of Yonkers; is that correct?

14 MS. O'SHEA: That is correct?

15 Let me ask counsel for Yonkers then to call your  
16 witnesses.

17 MS. O'SHEA: Yes, Your Honor.

18 Q. Chief Gardner, Chief Fitzpatrick, each of you has  
19 before you six pages of typewritten--six typewritten  
20 pages.

21 JUDGE BOUTEILLER: At this time can you just call  
22 all the witnesses and then we will swear them in and ask  
23 them to adopt their testimony. Just call them by name.

24 MS. O'SHEA: Chief William Fitzpatrick, Chief  
25 Charles Gardner, Joseph Rachiele, Andrew Api, Joseph

1 Moran, and Martin Doherty.

2 (The panel members, after first having been duly  
3 sworn, were examined and testified as follows:)

4 JUDGE BOUTEILLER: Thank you. I would like you  
5 to be seated at this time and just very simply for the  
6 record state your name and just state your position or  
7 business address. Either one will do for our purposes.

8 MR. FITZPATRICK: William Fitzpatrick, 5-7 New  
9 School Street, Yonkers, New York.

10 MR. GARDNER: Charles Gardner, Yonkers Police  
11 Department, 104 South Broadway, Yonkers.

12 MR. RACHIELE: Joseph Rachiele, City of Yonkers  
13 engineering department, 40 South Broadway, Yonkers.

14 MR. API: Andrew Api, City Engineer for the City  
15 of Yonkers, and I also work out of City Hall, Yonkers.

16 MR. MORAN: Joseph Moran, 40 South Broadway,  
17 Yonkers, New York.

18 MR. DOHERTY: Martin Doherty, 40 South Broadway,  
19 Yonkers, New York.

20 JUDGE BOUTEILLER: Now, your counsel will work  
21 with you to get your testimonies into the record.

22 DIRECT EXAMINATION

23 BY MS. O'SHEA:

24 Q. Chief Fitzpatrick, Chief Gardner, each of you has  
25 before you six typewritten pages that purport to be your



1 direct testimony in the case. Do you have corrections  
2 to the testimony?

3 A. (Fitzpatrick) No, I don't.

4 (Gardner) No.

5 Q. Do you adopt this testimony as your sworn  
6 testimony in this case?

7 A. (Fitzpatrick) Yes.

8 (Gardner) Yes, I do.

9 JUDGE BOUTEILLER: With that, I will instruct the  
10 reporter to copy into the record as if given orally  
11 today your prefiled testimony.

12 (The following is the prefiled testimony of Chief  
13 Fitzpatrick and Chief Gardner:)

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Pre-Filed Direct Testimony of  
First Deputy Chief Charles Gardner  
Deputy Fire Chief William Fitzpatrick

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1    **Q.    Mr. Gardner, please state your full name, employer and business address.**

2            A.    Charles Gardner, Yonkers Police Department, 104 South Broadway  
3    Yonkers, NY 10701.

4    **Q.    In what capacity are you employed?**

5            A.    First Deputy Chief, Deputy Chief of Field Services Bureau in charge of  
6    patrol and investigation divisions.

7    **Q.    Please summarize your education and professional background.**

8            A.    I have been employed with the City of Yonkers Police Department as a  
9    Police Officer for twenty-eight (28) years.

10           As First Deputy Chief of the Field Services Bureau my responsibilities include  
11    overall planning and directing of police operations; supervision, deployment, and  
12    evaluation of police personnel; and participation in public information and educational  
13    activities concerning law enforcement.

14   **Q.    Mr. Fitzpatrick, please state your full name, employer and business address.**

15           A.    William Fitzpatrick. City of Yonkers Fire Department, 5-7 New School  
16    Street, Yonkers, New York 10701.

17   **Q.    In what capacity are you employed?**

18           A.    Deputy Fire Chief in Charge of Operations

19   **Q.    Please summarize your education and professional background.**

20           A.    I have been employed with the City of Yonkers Fire Department for  
21    twenty-seven (27) years. I have served as a Chief officer for over five (5) years and over

Pre-Filed Direct Testimony of  
First Deputy Police Chief Charles Gardner  
Deputy Fire Chief William Fitzpatrick

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1 thirteen years (13) as a company officer serving in different capacities.

2 As Deputy Fire Chief in Charge of Operations my responsibilities include  
3 overseeing the daily operations of the Yonkers Fire department as it pertains to  
4 operations and response to fires, medical emergencies and other non-fire emergencies.

5 **Q. What is the purpose of your testimony?**

6 A. The purpose of this panel's testimony is to address the impact on  
7 emergency services and safety associated with Consolidated Edison's proposed route for  
8 the M-29 transmission line in the City of Yonkers.

9 **Q. How many fire stations are located along Consolidated Edison's proposed**  
10 **route?**

11 A. There are three (3) fire stations located along Consolidated Edison's  
12 proposed route. Station 10 is located on Saw Mill River Road; Station 1, which houses  
13 Fire Headquarters, is located on New School Street; and Station 3 is located on Vark  
14 Street. Station 1 is also home to the City of Yonkers' only Fire Rescue Company which  
15 is responsible for rescue response for the entire City.

16 **Q. How many fire stations are located along the route proposed by the City of**  
17 **Yonkers?**

18 A. None.

19 **Q. In your opinion, what impact will Consolidated Edison's proposed route for**  
20 **the construction of the M-29 Transmission Line have on emergency response**  
21 **services given the location of police and fire stations and the typical routing of**

Pre-Filed Direct Testimony of  
First Deputy Police Chief Charles Gardner  
Deputy Fire Chief William Fitzpatrick

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1 emergency response?

2           A.     Consolidated Edison's route would take the transmission line along  
3 one of the most dense industrial and commercial areas in Yonkers. It is also one of the  
4 most populated areas in the City of Yonkers. According to the 2000 U.S. Census, almost  
5 seventy thousand people live along the route of the proposed transmission line which is  
6 more than one third of the City of Yonkers' population.

7           Construction should be expected to cause unavoidable traffic tie ups and gridlock.  
8 Consolidated Edison proposes shutting down all but one lane of Tuckahoe Road for about  
9 a mile of its length. This is an already congested roadway where brief shut-downs of a  
10 single lane have been known to back up traffic for blocks. There are no practical  
11 alternate routes capable of handling a diversion from Tuckahoe Road. The closest roads  
12 that go straight through from the East Side to the West Side of the City are more than two  
13 and three miles to the South and North respectively. This type of major road work along  
14 several of the City's main arterial roads would cause potentially dangerous delays in the  
15 response time for emergency vehicles such as police cars, fire trucks, and ambulances.  
16 Response times during construction along Consolidated Edison's proposed route would  
17 be slower as a result of traffic thereby impacting the lives and the safety of the citizens of  
18 the City of Yonkers.

19           The First Police Precinct covers both ends of Tuckahoe Road. Tuckahoe Road is  
20 the main East/West route that patrol officers take when responding to and from calls for  
21 service. Closing down several lanes of Tuckahoe Road for a lengthy period of time

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First Deputy Police Chief Charles Gardner  
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1 would make rapid response to many calls impossible. Further, it could require the  
2 diversion of police cars from the Fourth precinct, which is a higher crime area and where  
3 police are needed most, to cover areas in the First precinct.

4 In addition to Fire Stations 10, 1, and 3 which are all located directly on  
5 Consolidated Edison's proposed route, several other Fire Stations would have their  
6 Primary Response Areas adversely affected as a result of construction related traffic. Fire  
7 Stations 12 and 9 use Roberts Avenue as a primary East/West route via Old Nepperhan  
8 Avenue and Nepperhan Avenue. Fire Station 6 must use Nepperhan Avenue South of  
9 Ashburton Avenue in responding to calls in its Primary Fire Response area. Fire Station  
10 4 must use Riverdale Avenue South of Ludlow Street in responding to many locations in  
11 its Primary Response Area. Therefore, along Consolidated Edison's proposed route,  
12 construction related traffic would negatively impact the response time of at least 7 Fire  
13 Stations in the City of Yonkers. Such an impact seriously jeopardizes the safety of  
14 thousands of City residents.

15 Tuckahoe Road, Saw Mill River Road, Nepperhan Avenue and Riverdale Avenue  
16 are all major truck routes. As construction moves through these areas, traffic congestion  
17 and lane closures will effect the typical routing of police and fire response. These  
18 emergency response vehicles would have to avoid Tuckahoe Road completely during the  
19 construction or risk being caught in gridlock, unable to respond to emergencies. This  
20 would add several minutes to response time which often means lost lives. Delayed  
21 response time as a result of construction related traffic along Consolidated Edison's

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1 proposed route unnecessarily and unreasonably puts the lives and safety of the citizens of  
2 Yonkers at risk.

3 **Q. How would the City of Yonkers' proposed alternative route mitigate the**  
4 **impact on emergency response services and safety?**

5 A. The City's proposed route will mitigate most, if not all, traffic problems  
6 and their corresponding effects on safety and emergency response times within the City.  
7 The City of Yonkers' proposed route entails construction on only a small portion of  
8 Tuckahoe Road. The City's proposed route eliminates the problem of traffic congestion  
9 along the City's most densely populated areas thereby eliminating safety concerns related  
10 to delayed response times.

11 **Q. Does this conclude your testimony at this time?**

12 A. Yes.

1 BY MS. O'SHEA:

2 Q. Mr. Rachiele, Mr. Api and Mr. Moran, you have  
3 before you ten pages typewritten that purport to be your  
4 direct testimony in this case. Do you have any  
5 corrections to make?

6 A. (Rachiele) No.

7 (Api) No.

8 (Moran) No.

9 Q. Do you adopt this testimony as your sworn  
10 testimony?

11 A. (Rachiele) Yes.

12 (Api) Yes.

13 (Moran) Yes.

14 JUDGE BOUTEILLER: With that, I will instruct the  
15 reporter to copy into the record as if given orally  
16 today your prefiled testimony.

17 (The following is the prefiled testimony of Mr.  
18 Rachiele, Mr. Api and Mr. Moran:)

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Pre-Filed Direct Testimony of  
Andrew A. Api, P.E.  
Joseph P. Rachiele, P.E.  
Joseph J. Moran, P.E.

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1       **Q.   Mr. Api, please state your full name, employer and business address.**

2           A.    My name is Andrew A. Api. I am employed by the City of Yonkers  
3 ("Yonkers"). My business address is 40 South Broadway, Room 315, Yonkers, New  
4 York 10701.

5       **Q.   In what capacity are you employed?**

6           A.    I am the City Engineer for the City of Yonkers' Department of  
7 Engineering.

8       **Q.   Please summarize your education and professional background.**

9           A.    I am a Professional Engineer with thirty-five (35) years of infrastructure  
10 experience. I received a Bachelor of Science Degree in Engineering from Manhattan  
11 College in 1971. I have been a Licensed Professional Engineer in the State of New York  
12 since 1980.

13           I was employed for twenty-five (25) years with the New York City Department of  
14 Environmental Protection as an engineer in charge of over \$250 million dollars in sewer,  
15 water, and highway projects mainly involving major utility interferences. I have been the  
16 City Engineer for the City of Yonkers for nine (9) years.

17       **Q.   Mr. Rachiele, please state your full name, employer and business address.**

18           A.    My name is Joseph P. Rachiele. I am employed by the City of Yonkers  
19 ("Yonkers"). My business address is 40 South Broadway, Room 315, Yonkers, New  
20 York 10701.



Pre-Filed Direct Testimony of  
Andrew A. Api, P.E.  
Joseph P. Rachiele, P.E.  
Joseph J. Moran, P.E.

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1    **Q.    In what capacity are you employed?**

2            A.    I am a Professional Engineer and the Deputy Director of the City of  
3    Yonkers' Department of Engineering.

4    **Q.    Please summarize your education and professional background.**

5            A.    I received a Bachelor of Science Degree in Civil Engineering from  
6    Manhattan College in 1992, as well as a Masters Degree in Business Administration from  
7    Manhattan College in 1999.

8                    I am a Licensed Professional Engineer in the State of New York. I have  
9    over fourteen (14) years of engineering experience working for the New York City  
10   Department of Environmental Protection, the New York City Department of Design and  
11   Construction, and currently, the City of Yonkers.

12                   My responsibilities as Deputy Director of the City of Yonkers'  
13   Engineering Department include: the supervision of civil engineers performing resident  
14   engineering services and site inspections on infrastructure improvement projects  
15   including construction of sanitary sewers, storm sewers, water mains, new roadways, and  
16   appurtenances; applying to New York State for the receipt of grants for the improvement  
17   of infrastructure in the City of Yonkers including gathering of all pertinent paperwork,  
18   forms, and design documents for the receipt of these monies; reviewing, approving and/or  
19   denying all permits in the City Right of Way including, but not limited to, street opening  
20   permits, utility work, sidewalks, and road closures; reviewing final surveys and  
21   performing site inspections for curb cuts and the issuance of certificates of occupancy;

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Andrew A. Api, P.E.  
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Joseph J. Moran, P.E.

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1 reviewing Freedom of Information Law information requested by City of Yonkers Law  
2 Department and; reviewing and approving payments by contractors and consultants.

3 **Q. Mr. Moran, please state your full name, employer and business address.**

4 A. My name is Joseph J. Moran. I am employed by the City of Yonkers  
5 ("Yonkers"). My business address is 40 South Broadway, Room 315, Yonkers, New  
6 York 10701.

7 **Q. In what capacity are you employed?**

8 A. I am a Professional Engineer and the Second Assistant City Engineer for  
9 the City of Yonkers' Department of Engineering.

10 **Q. Please summarize your education and professional background.**

11 A. I received a Bachelor of Science Degree in Civil Engineering from  
12 Manhattan College in 1985. I have been a Licensed Professional Engineer in the State of  
13 New York since 1991.

14 I have over twenty-one (21) years of experience in managing and  
15 inspecting Capital Construction contracts for Consulting Engineers, the City of New  
16 York, the City of New Rochelle, and the City of Yonkers. This includes experience in  
17 the supervision of engineer and construction inspectors for over eighteen (18) years. I  
18 have been employed with the City of Yonkers for nine (9) years.

19 **Q. What is the purpose of this panel's testimony?**

20 A. The purpose of this testimony is to address the construction related  
21 impacts associated with Consolidated Edison's proposed route for the M-29 transmission

Pre-Filed Direct Testimony of  
Andrew A. Api, P.E.  
Joseph P. Rachiele, P.E.  
Joseph J. Moran, P.E.

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1 line in the City of Yonkers.

2 **Q. What local and county infrastructure is located on the route proposed by**  
3 **Consolidated Edison?**

4 A. Sanitary sewers, storm sewers and combined sewers. Some of the sewers  
5 are brick, stone culvert, clay, extra strength vitrified pipe, concrete, and ductile iron. The  
6 sewers made from brick are the kind that are mainly found along Consolidated Edison's  
7 proposed route and are the most sensitive. Brick sewers are the most sensitive because  
8 they collapse easier due to the erosion of joints. Also located along Consolidated  
9 Edison's proposed route are county sewer trunk lines and water mains, both high and low  
10 pressure and a major Westchester County sewage line runs along Nepperhan Avenue  
11 from Old Nepperhan Avenue south. In addition, most of the City's old trolley tracks are  
12 still located underground, except for on Old Nepperhan Avenue.

13 **Q. In your opinion, what are the potential impacts to utilities associated with**  
14 **construction along Consolidated Edison's preferred route in Yonkers?**

15 A. Utilities existing along Consolidated Edison's proposed route include gas  
16 connections, water services, water mains, connections from catch basins to manholes,  
17 sanitary sewer laterals and some combined sanitary and storm sewers.

18 Consolidated Edison's proposed route traverses through some of the oldest and  
19 most densely populated areas in the City of Yonkers. As such, these areas contain some  
20 of the oldest and most sensitive infrastructure in the City. Consolidated Edison's project  
21 will require trenching of between eight (8) and nine (9) feet below street grade .

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Andrew A. Api, P.E.  
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Joseph J. Moran, P.E.

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1 Trenching this deep will inevitably cause major interferences with the numerous and  
2 congested utilities already existing in those areas.

3 The infrastructure includes, but is not limited to, cast iron water mains that are  
4 over 100 years old. As time goes by, the metallurgical components of the cast iron decay  
5 thereby causing hairline cracks in the mains. These mains are sometimes held together  
6 by the backfill around them. As interference and work occurs in close proximity to the  
7 water mains they become more susceptible to breaking. When a water main breaks, there  
8 will be no water supply in their service area for extended periods of time including  
9 potable water and fire hydrants. As water service connections between a home and the  
10 main are broken they would then have to be repaired all the way back to the house,  
11 thereby causing disruption to the homeowner's premises. This would cause great  
12 inconvenience to homeowners and business owners in the area and increased expense to  
13 the taxpayers of the City of Yonkers. More importantly, the potential loss of water  
14 supply to fire hydrants creates a major safety risk to the residents and business owners  
15 along Consolidated Edison's proposed route.

16 The infrastructure along Consolidated Edison's proposed route also includes some  
17 very old sewers that are made out of brick. The mortar adhering the bricks together  
18 decomposes over the years. As such, any vibration can cause the bricks to fall out of  
19 place. Therefore, construction, especially the kind of deep trench digging that is involved  
20 in Consolidated Edison's M-29 project, creates a greater risk of damage to this sensitive  
21 infrastructure and of service interruption than would exist if Consolidated Edison chose

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Andrew A. Api, P.E.  
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1 an alternative route for this transmission line.

2 In some of the areas along Consolidated Edison's proposed route, the new  
3 transmission line will cross or be located in very close proximity to existing eighty (80)  
4 to one hundred (100) year old sewers; in such cases failure of these sewers has to be  
5 expected. The same goes for the old water lines which feed major portions of the City.  
6 Damage to a major sewer or water line would be catastrophic for the City of Yonkers.

7 The sewers in the proposed area run by gravity and can not be offset over the new  
8 Consolidated Edison transmission line and may not be able to go under the line because  
9 of the depth of corresponding sewers. While the water and gas lines can be offset around  
10 Consolidated Edison's transmission line, they would require shutting off service for an  
11 extended period of time or, in some cases, require total replacement of each line. In the  
12 case of gas service shutdowns, service could not be restored until each dwelling was  
13 visited to light the stove pilots. This would delay construction further. If any part of the  
14 infrastructure is damaged as a result of construction it will lead to immeasurable delays in  
15 the completion of the project in order to repair the damaged infrastructure.

16 **Q. In your opinion, is there an alternative route for the M29 Transmission Line**  
17 **Project that would minimize the potential impacts associated with the construction**  
18 **and operation of these facilities?**

19 A. Yes. The City of Yonkers' proposed route which begins in Yonkers at the  
20 Sprain Brook Substation and would travel west on Tuckahoe Road to the I-87 South  
21 access ramp.

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Andrew A. Api, P.E.  
Joseph P. Rachiele, P.E.  
Joseph J. Moran, P.E.

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1 Q. What is your basis for this conclusion?

2 A. Along the route proposed by the City of Yonkers, the amount of  
3 residences and businesses affected by construction would be greatly reduced. Along  
4 Consolidated Edison's proposed route there exist 380 individual addresses, each with  
5 multiple sets of utility connections that will undoubtedly experience interference. Along  
6 the City of Yonkers' proposed route that impact is vastly mitigated by the fact that, with  
7 the exception of several hundred feet on Tuckahoe Road, the route is primarily located on  
8 the New York State Thruway thus avoiding the City's older and more sensitive utilities  
9 and infrastructure and causing virtually no utility interferences.

10 Any trench at depths of eight (8) to (9) feet, as Consolidated Edison is proposing,  
11 will require sheeting to protect the workers and prevent the loss of parallel roadways and  
12 utilities. Steel boxes cannot be used because of utility interferences and plating  
13 requirements; wood sheeting will be necessary. This is a very time consuming process  
14 thereby lengthening the time that the roadways will not be open to traffic. The trenches  
15 will average six (6) feet wide and will be minimally three hundred (300) feet long broken  
16 down as one hundred (100) feet for a pilot cut, one hundred (100) feet for pipe laying  
17 area and one hundred (100) feet for backfill/welding/paving area. The one hundred (100)  
18 foot pilot cut would be necessary because the braces for the sheeting will prevent the  
19 eighty (80) foot lengths of pipe from being able to be lowered into the trench from above,  
20 thereby requiring the pipe to be dragged through the sheeting under the braces. Four to  
21 five hundred foot long trenches would be common to attain any kind of productivity.

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1 Two lanes of traffic will be occupied during working hours to accommodate loading of  
2 excavated material, laying and welding of pipe, backfilling and paving. Occupying two  
3 lanes of traffic for some of the streets on Consolidated Edison's proposed route would  
4 mean complete closure; for others, it would mean severe traffic impacts.

5 Consolidated Edison's proposed route would require work to be performed during  
6 day-time hours, due to residential areas, whereas the City of Yonkers' proposed route  
7 along Interstate 87 would enable Consolidated Edison to work during night hours. The  
8 ability to proceed with construction during night hours would not only enable  
9 Consolidated Edison to complete the project more quickly but it would  
10 also alleviate construction related traffic impacts due to the reduced flow of traffic during  
11 off peak hours.

12 **Q. How many school are located along Consolidated Edison's proposed route?**

13 A. Four schools, two public two private. St. Casimir's Roman Catholic  
14 Elementary School is on Nepperhan Avenue and Westchester Islamic Center's  
15 Elementary School is located on Garfield Street with its rear class rooms facing  
16 Nepperhan Avenue separated from the route by only one lot. Hostos MicroSociety  
17 School and the PEARLs/Hawthorne Elementary School are on the Riverdale Avenue part  
18 of the route.

19 **Q. What is the duration of work in the vicinity of schools located along the route**  
20 **proposed by Consolidated Edison?**

**Pre-Filed Direct Testimony of  
Andrew A. Api, P.E.  
Joseph P. Rachiele, P.E.  
Joseph J. Moran, P.E.**

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1           A.     The duration of the work in the vicinity of each school would probably be  
2     several months, however, if the fragile utility infrastructure in the area is damaged by  
3     Consolidated Edison's construction, then the duration could be extended by several  
4     months.

5     **Q.     What equipment will be used in the vicinity of schools along the various**  
6     **routes? What will the noise impact be upon the schools?**

7           A.     The equipment required to perform this work would be large heavy  
8     excavation equipment, dump trucks, air compressors, pavement sawcutting machines,  
9     and welding equipment. Some of this equipment operates at a higher decibel level and  
10    the need for ear protection would be necessitated. This will be a loud operation  
11    impacting the noise level within the schools.

12    **Q.     How many schools are located along the City of Yonkers' proposed route?**

13           A.     None.

14    **Q.     Does this conclude your testimony at this time?**

15           A.     Yes.



1 BY MS. O'SHEA:

2 Q. Mr. Doherty, you have before you six pages  
3 typewritten that purport to be your direct testimony in  
4 this case. Do you have any correction?

5 A. (Doherty) No, I do not.

6 Q. Do you adopt this testimony as your sworn  
7 testimony in this case?

8 A. (Doherty) Yes.

9 JUDGE BOUTEILLER: With that, I will instruct the  
10 reporter to copy in the prefiled testimony as if it was  
11 given orally today.

12 (The following is the prefiled testimony of  
13 Martin Doherty:)

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Pre-Filed Direct Testimony of  
Martin Doherty, P.E.

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1    **Q.    Mr. Doherty, please state your full name, employer and business address.**

2            A.    Martin P. Doherty, City of Yonkers Traffic Engineering Division  
3    City Hall, 40 South Broadway, Yonkers, NY 10701

4    **Q.    In what capacity are you employed?**

5            A.    Traffic Engineer

6    **Q.    Please summarize your education and professional background.**

7    A.    I have been a Licensed Professional Engineer in New York State since 1978. I  
8    received a Bachelor of Science Degree in Civil Engineering from Polytechnic Institute of  
9    Brooklyn in 1973 and a Masters of Science Degree in Traffic Engineering from  
10   Polytechnic Institute of New York in 1981. I am a Fellow of the Institute of  
11   Transportation Engineers.

12           I was employed by the New York City Department of Transportation  
13   ("NYCDOT") from November 1973 to July 1990. I was hired as a Junior Civil Engineer  
14   and at the time of my departure from NYCDOT I was Chief of Engineering-Parking  
15   Division.

16           I have been employed by the City of Yonkers as Traffic Engineer since July of  
17   1990. As Traffic Engineer my responsibilities include: the determination of proper  
18   intersection controls and parking regulations on Yonkers City streets and roadways as  
19   mandated by the Federal and NYS Manuals on Uniform Traffic Control Devices;  
20   installation and maintenance of all intersection and parking controls; determination of  
21   proper locations for crosswalks, centerlines, channelizations and other pavement

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Martin Doherty, P.E.

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1 markings; installation and maintenance of all pavement markings; review of all proposed  
2 projects before the Planning Board and Zoning Boards, appropriate recommendations are  
3 made to these Boards to assure the safe and efficient movement of traffic and; review of  
4 all construction projects as they pertain to the maintenance and protection of traffic.

5 **Q. What is the purpose of your testimony?**

6 A. The purpose of this testimony is to address the construction related traffic  
7 impacts associated with Consolidated Edison's proposed route for the M-29 transmission  
8 line in the City of Yonkers.

9 **Q. What conclusions have you reached regarding the impact of construction-**  
10 **related traffic along Consolidated Edison's proposed route for the M29**  
11 **Transmission Line Project?**

12 A. Consolidated Edison's proposed route for the M29 Transmission  
13 Line primarily utilizes New York State arterial roadways. These roadways, by definition,  
14 are major truck routes in the City of Yonkers and are the backbone of our transportation  
15 system. These routes connect all major limited access highways to the City's commercial,  
16 industrial, and residential areas. They carry extremely high volumes of commercial truck  
17 traffic as well as commuter vehicles both into and out of the City.

18 The land uses fronting on Saw Mill River Road, Old Nepperhan Avenue,  
19 Nepperhan Avenue, and Riverdale Avenue are virtually 100% developed. In addition,  
20 these are amongst the oldest developed sections of the City. As such, the below ground  
21 infrastructure, such as water mains, sewer collectors and particularly house connections,

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Martin Doherty, P.E.

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1 is not only densely concentrated but also very old and susceptible to failures. Even  
2 minimal disturbances caused by construction related to this project, will in all probability,  
3 cause major, if not catastrophic, infrastructure failures. The repairs necessitated by such  
4 inevitable damage caused to the fragile infrastructure will undoubtedly cause further  
5 delay to the project thus creating unacceptable disruptions to traffic flow and having  
6 dangerous repercussions to emergency response services.

7       These State arterials are major school bus routes. There are over two hundred and  
8 six (206) school bus routes that will be affected by the proposed route. Presently,  
9 children are picked up and discharged at numerous locations on Riverdale Avenue,  
10 Nepperhan Avenue, and Tuckahoe Road. The use of red flashing school bus lights is  
11 disruptive to the smooth flow of traffic; the introduction of extensive trenching in the  
12 same locations will exacerbate an already difficult condition and endanger the safe  
13 transport of children.

14       These State arterials are also Westchester County Bee-Line bus routes. Delays  
15 caused by open trenches, construction equipment and trucks in the traveled roadway will  
16 affect a proportionally higher number of citizens, as it will impact not only those who live  
17 and work in the project area but also those who use the Westchester County Bee-Line  
18 bus. Bee-Line buses are also the main means of transport for high school students who  
19 do not receive city provided school buses. In addition, the proposed route passes directly  
20 in front of the Liberty Lines bus garage on Old Nepperhan Avenue at Saw Mill River  
21 Road. Liberty Lines is an operator for the County Bee-Line system; disruptions to the

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Martin Doherty, P.E.

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1 operations in the vicinity of their garage will further deteriorate service.

2 Consolidated Edison's proposed route for the M29 transmission line traverses  
3 four of the busiest intersections in the City of Yonkers. These are Tuckahoe Road at Saw  
4 Mill River Road, Nepperhan Avenue at Ashburton Avenue, Nepperhan Avenue at South  
5 Broadway and Riverdale Avenue at Prospect Street. The actual hours of  
6 operation/construction will be limited, however, the presence of plated roadways and  
7 inoperable loop detectors will cause a further decrease in the traffic level of service. It is  
8 the City's understanding the pipe sections are quite long, by necessity. Therefore, the  
9 installation will entail the opening of excessive lengths of trench; this will be problematic  
10 when crossing intersections, particularly those noted above. Disruption to traffic will be  
11 severe.

12 **Q. In your opinion, is there an alternative route for the M29 Transmission Line**  
13 **Project that would minimize the potential traffic impacts associated with the**  
14 **construction and operation of these facilities?**

15 A. Virtually all negative aspects of installing the M29 transmission line are  
16 non-existent if the Interstate 87 New York State Thruway ("Thruway") is utilized as the  
17 primary route south.

18 **Q. What is your basis for this conclusion?**

19 A. Within the Thruway right-of-way there are virtually no underground  
20 utilities to contend with. There exist some drainage facilities as on surface streets but no  
21 house connections will be encountered. This will speed the project considerably. There  
22 are no intersections on the Thruway right-of-way thus enabling the use of longer sections.

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1 of pipe. Traffic impacts can further be minimized by performing most work at night, as  
2 is done on most highway projects. Night construction would not be practical  
3 within the residential areas on Yonkers surface streets which encompass Consolidated  
4 Edison's proposed route. Furthermore, no Westchester County bus routes or school bus  
5 routes are affected on the Thruway.

6 **Q. Does this conclude your testimony at this time?**

7 **A. Yes.**

1 JUDGE BOUTEILLER: Does that make the witnesses  
2 available for cross-examination?

3 MS. O'SHEA: Yes, Your Honor.

4 JUDGE BOUTEILLER: Mr. Riback.

5 CROSS EXAMINATION

6 BY MR. RIBACK:

7 Q. Addressing the panel of Mr. Api, Rachiele and  
8 Moran. In developing your alternative route west on  
9 Tuckahoe Road and south on I87 to the Bronx line, did  
10 you consider Con Edison siting and construction criteria  
11 set out in the Article VII application?

12 A. (Rachiele) The Article VII application was never  
13 received. I never received a copy of it.

14 Q. It was given to the City of Yonkers. Your answer  
15 is no?

16 A. (Rachiele) Repeat the question again.

17 Q. Did you, in developing your alternative route,  
18 consider Con Edison's siting and construction criteria  
19 set out in the Article VII application that was provided  
20 to the City of Yonkers in the normal course of this  
21 Article VII application process?

22 JUDGE BOUTEILLER: Let me just ask a question.  
23 Are you familiar with any such criteria? Have you ever  
24 heard of Consolidated Edison having construction and  
25 siting criteria?

1 MR. RACHIELE: Not to the best of my knowledge,  
2 no.

3 JUDGE BOUTEILLER: Thank you. That's a  
4 sufficient response.

5 Q. Has the City of Yonkers conducted studies as to  
6 the constructability of its proposed alternative route?

7 A. (Rachiele) It's to my belief it would be the  
8 responsibility of Con Edison to do these studies.

9 Q. The route has been proposed by Yonkers, not by  
10 Con Edison.

11 JUDGE BOUTEILLER: To the best of your belief,  
12 knowledge and understanding, do you believe this route  
13 that you selected is capable of being constructed?

14 MR. RACHIELE: Yes.

15 JUDGE BOUTEILLER: Thank you. Please proceed.

16 Q. What's the basis for that conclusion?

17 A. (Rachiele) There are many basis for these  
18 conclusions. Cause less of an impact to residents.

19 Q. Those--I'm sorry. Finish your answer.

20 A. (Rachiele) Traffic, commercial establishments,  
21 infrastructure. I can go on and on.

22 Q. Those are impacts to your locality. I am asking  
23 you if it's your assessment whether it's physically  
24 possible to construct the transmission line along the  
25 route that you proposed?



1 A. (Rachiele) Yes, absolutely.

2 Q. What is the basis for the conclusion?

3 A. (Rachiele) My years of experience in engineering  
4 construction. My knowledge of the area and how  
5 construction impacts both the infrastructure and the  
6 community.

7 Q. Have you done any specific studies for this  
8 proposed route?

9 A. (Rachiele) Personally, no.

10 Q. Has anyone in the City of Yonkers done any  
11 specific studies for this proposed route, to the best of  
12 your knowledge?

13 A. (Rachiele) No.

14 Q. Has the City of Yonkers conducted studies as to  
15 the potential traffic impacts of its proposed  
16 alternative route, on the route itself?

17 A. (Api) Actually we haven't done any studies on the  
18 alternate route. We were requesting Con Edison to do  
19 that for us, do that as part of the process I mean.

20 Q. Again, this is your proposed route and Con Edison  
21 has no obligation to do studies for your proposal.

22 A. (Api) You presented a number of routes at one  
23 point and we did not like the route that you picked and  
24 gave you to look at a second route.

25 Q. Again, for the panel, have you assessed whether

1 your alternative route would be issued the necessary  
2 permits by the New York State Thruway Authority or other  
3 applicable state and federal agencies?

4 A. (Api) We have not done that.

5 Q. For the panel, again, doesn't the Yonkers  
6 alternative route also make use of a substantial portion  
7 of Tuckahoe Road when compared to Con Edison's proposed  
8 route?

9 A. (Api) It uses I would say less than half of the  
10 proposed--your initial route would have I would think  
11 between half and a third of the--I'm sorry.

12 The alternate route would be a half to a third of  
13 the original route that Con Edison had picked on  
14 Tuckahoe Road.

15 Q. A third to a half?

16 A. (Api) Sitting here and just looking, yes.

17 Q. Do you know specifically how many feet?

18 A. (Api) I could find that out for you. I don't  
19 know right now.

20 Q. Could you?

21 A. (Api) Yes.

22 Q. And get that information to me?

23 A. (Api) Absolutely.

24 Q. Did you consider any of Con Edison alternate  
25 street routes through Yonkers when making your

1 alternative assessment?

2 A. (Api) Yes.

3 Q. What alternate routes?

4 A. (Api) Actually I think you presented--Con Edison  
5 had presented six or seven.

6 Q. That is correct.

7 A. (Api) One of them that--one of them that seemed  
8 reasonable at first glance was the Putnam right-of-way  
9 route, and given that and basically we looked at that  
10 and this I87 and we came up with the I87 map being less  
11 objectionable to residents of Yonkers.

12 JUDGE BOUTEILLER: Let me ask company counsel  
13 just for clarity in our record, the route that he just  
14 identified and called the Putnam right-of-way, can you  
15 tell me under your alternatives which number that might  
16 have?

17 MR. RIBACK: I believe it's alternative seven.

18 JUDGE BOUTEILLER: Okay. Just for clarity on the  
19 record.

20 MR. RIBACK: It is alternative seven.

21 MS. O'SHEA: May I give the application for them  
22 to look at?

23 JUDGE BOUTEILLER: Did you want to leave it  
24 there?

25 MS. O'SHEA: Yes, I will leave it over there.

1 JUDGE BOUTEILLER: The question has been answered  
2 and you provided clarification for the record. I will  
3 request that you proceed with your next question.

4 BY MR. RIBACK:

5 Q. Did you consider any of the other alternatives  
6 Con Edison had proposed?

7 A. (Api) We looked at them all and basically it  
8 always came down to the one on 87 and/or the Putnam.

9 Q. And why is that?

10 A. (Api) Again, seemed like the less impact to the  
11 people of Yonkers.

12 Q. Could you tell me what the specific objections  
13 you have to each of the other alternative routes is?

14 JUDGE BOUTEILLER: You want to take them one by  
15 one, counsel?

16 MR. RIBACK: Sure, start with alternative one.

17 JUDGE BOUTEILLER: Off the record.

18 (Discussion held off the record.)

19 JUDGE BOUTEILLER: Let me indicate that we will  
20 continue now with the line of cross-examination from  
21 company counsel concerning your evaluation and  
22 consideration and the various alternatives offered by  
23 Consolidated Edison.

24 Counsel, can you please just for clarity and to  
25 deal with--provide us the time current, just restate

1 what your question is.

2 BY MR. RIBACK:

3 Q. The current question is whether Yonkers  
4 considered the other alternative routes proposed by Con  
5 Edison in its Article VII application and specifically  
6 at this point the alternative one.

7 A. (Api) I may have to amend what I said before  
8 because as we look at it it occurs to me that when we  
9 saw all the routes basically Con Edison had already  
10 picked the route that they are proposing.

11 We looked at all the routes with Con Edison and  
12 privately amongst ourselves. Basically Con Edison came  
13 up with reasons for why the alternates were not as good  
14 as the one that passes through Yonkers.

15 As we met amongst ourselves and with the elected  
16 officials, with the communities and whatever, basically  
17 we came to the conclusion that the route that was chosen  
18 by Con Edison was not the optimum route for us and maybe  
19 we would go back and discuss some of the other  
20 alternates.

21 The alternate that we proposed is very similar  
22 apparently to alternate number one. One of the main  
23 differences is the amount of time it spends in Tuckahoe  
24 Road. It doesn't go down to--I believe doesn't go down  
25 to Central Avenue. Doesn't cut through one of

1 our--another business area and then eventually get down  
2 to 287.

3 The route that we proposed is apparently an  
4 adaptation of your route number one, and I think that  
5 still meets our needs a little bit better.

6 Q. Why do you believe that your route is preferable  
7 to alternative one?

8 A. (Api) It minimizes the amount of time that's on  
9 Yonkers streets to right onto the highway at Tuckahoe  
10 Road as opposed to going all the way down Tuckahoe Road,  
11 which is another business area. A lot of individual  
12 small businesses that would be affected.

13 And then to turn down the service road in Central  
14 Avenue is one of our most heavily traveled roads and it  
15 does have a number of businesses and a large  
16 concentration of residents also on Central Park Avenue  
17 side of it.

18 Q. With respect to our alternative two, what were  
19 your specific objections?

20 A. (Api) Again, most of the objections on the other  
21 alternates were objections raised by Con Edison. They  
22 presented us with their preferred route and we reacted  
23 to their preferred route.

24 We had suggested or at least asked them to look  
25 at all of them. They presented their reasons why they

1 they thought there would be a problem and after  
2 listening to their explanations and their choice we  
3 thought that our choice was better.

4 Q. So, are you saying that among the seven  
5 alternative routes proposed by Con Edison you concurred  
6 with Con Edison that the Con Edison preferred  
7 alternative was, as among those alternatives, your  
8 preferred alternative?

9 MS. O'SHEA: Objection, Your Honor. That's  
10 leading.

11 JUDGE BOUTEILLER: I think the question is  
12 pertinent and relevant. Whether or not it leads or  
13 misleads the witnesses to an answer that's preferred by  
14 the counsel I am not so sure.

15 MS. O'SHEA: I withdraw the objection.

16 JUDGE BOUTEILLER: Objection withdrawn.

17 Does the witness have the question in mind?

18 MR. API: I am sorry?

19 JUDGE BOUTEILLER: Do you have the question in  
20 mind? I think you are being asked whether or not you  
21 agree with Consolidated Edison's selection of the route.

22 MR. API: No.

23 BY MR. RIBACK:

24 Q. The question was whether you agreed with Con  
25 Edison's selection of the route as amongst the seven

1 alternatives proposed by Con Edison?

2 A. (Api) No.

3 Q. So then what is the specific objection that you  
4 have to alternative two?

5 A. (Api) Alternate two was one that went through a  
6 large number of residential streets and, again,  
7 disruption to those streets would be unmanageable.

8 Q. Let's move on to alternative three.

9 A. (Api) Three is similar to two with the same  
10 objections. It's almost the same route in Yonkers.

11 Q. And alternative four.

12 A. (Api) Four was very similar to what you had  
13 proposed.

14 Q. Can I ask you if you're considering these  
15 analyses right now or you considered these before?

16 A. (Api) No, but I haven't memorized the numbers of  
17 which route was which. We usually refresh our memories  
18 especially when they duplicate each other.

19 JUDGE BOUTEILLER: Let me ask you a question on  
20 the one that seems to differ from many of the  
21 alternatives, that being alternative seven. Do you have  
22 a view with respect to the desirability or acceptance of  
23 that route as it pertains to Yonkers' interest?

24 MR. API: That was one of our--that was one of  
25 our leading alternates. We heard what Con Edison was



1 saying about some of the problems that may be caused  
2 using that route, and we also considered that in many  
3 areas it's through back yards of residents and perhaps  
4 they would not want to have it there.

5 JUDGE BOUTEILLER: So, from what you know of the  
6 geography and the locations and facilities along that  
7 route, and from what you have heard from Consolidated  
8 Edison, you would agree with them to basically rule out  
9 that alternative?

10 MR. API: Yes. As -- yes.

11 BY MR. RIBACK:

12 Q. Do you know if prior to filing the application  
13 with all the alternatives in it you and Con Edison  
14 consulted on the project?

15 A. (Rachiele) We had several meetings over the past  
16 year, but it seemed to me that Con Edison, although they  
17 had these alternatives in mind, was set with the one  
18 route that's proposed to us all along.

19 I think these alternates were just--they were  
20 designed just to appease us but I don't think they were  
21 really anything Con Edison was going to construct this  
22 M29 project.

23 Q. Going back, what about alternative six?

24 A. (Api) Basically four, five and six were close to  
25 identical routes in Yonkers. So, if we objected to one

1 we objected to all of them.

2 Q. For what reason?

3 A. (Api) Again, the businesses and the disruption to  
4 the residents of Yonkers.

5 Q. Aside from the Con Edison alternatives that are  
6 presented in the application, did you consider any  
7 variations on other street routes through Yonkers?

8 A. (Api) Again, we did, and we--that's how we came  
9 up with Tuckahoe Road to 87.

10 Q. Do you know how many other variations you  
11 considered?

12 A. (Api) Not that I can recall.

13 Q. Do you have a range? Do you have a range of  
14 alternatives that you considered?

15 A. (Api) No. I didn't figure it was part of our  
16 duties to figure out where you would go.

17 JUDGE BOUTEILLER: And you are correct about  
18 that, but let me ask you this hypothetical question. If  
19 for any reason the Public Service Commission were to  
20 reject the alternate that you have proposed, and if the  
21 Commission were to also reject the alternate that the  
22 Consolidated Edison proposed, where would you go next?

23 Would you have any alternative that you might  
24 propose different from this one if you knew for a fact  
25 that the Commission were to reject your proposal? Or

1 are we stymied?

2 MR. API: One of them we would like maybe to look  
3 at or actually we would like to look at Sprain Brook  
4 Parkway. And again, going back to the railway see if  
5 there is some way we can work out some of Con Edison's  
6 problems and some of our problems and make it work.

7 JUDGE BOUTEILLER: That's as much facilitation I  
8 can provide in this context.

9 BY MR. RIBACK:

10 Q. In considering the alternative seven, did you do  
11 any consultation with Westchester County?

12 A. (Api) We did not.

13 Q. Are you aware of any objections to alternative  
14 seven by Westchester County?

15 JUDGE BOUTEILLER: I can permit that because we  
16 allow hearsay in our proceedings.

17 A. (Api) Not directly.

18 Q. What about indirectly?

19 A. (Api) Indirectly from Con Edison. Con Edison  
20 said that Westchester County would be objectionable to  
21 it.

22 JUDGE BOUTEILLER: Sounds like double hearsay to  
23 me, but do you have any knowledge that you received in  
24 any sort of way, probably from the county, either  
25 formally or informally?

1 MR. API: No.

2 JUDGE BOUTEILLER: You had no communication with  
3 any county officials?

4 MR. API: No.

5 JUDGE BOUTEILLER: I am not going to allow that  
6 question because then who's testifying here? Okay?

7 BY MR. RIBACK:

8 Q. Could you tell me why the Yonkers proposed route  
9 stops at the Bronx county line?

10 A. (Rachiele) We don't have jurisdiction over the  
11 route in New York City.

12 Q. But the task that was requested on December 22nd  
13 was to provide an alternative route for the Con Edison  
14 project which is intended to go from the Sprain Brook  
15 substation to the Academy substation in upper Manhattan.

16 I guess my question is: Why did you feel it was  
17 unnecessary to complete the route?

18 A. (Api) You already have--first of all, because we  
19 don't have any objection to where it goes in the Bronx,  
20 and you also have as part of your alternative one, you  
21 have a route through Yonkers through the Bronx that  
22 picks up from 87.

23 JUDGE BOUTEILLER: I don't know that this forum  
24 or my guidance for the proceeding ever suggested that  
25 any community was expected to come up with complete

1 designs of a complete alternative.

2 I envisioned perhaps they might have insights  
3 within their own communities to provide as guidance for  
4 alternatives within the areas that they are most  
5 familiar with.

6 So, I would applaud Yonkers to the extent they  
7 have taken on that task and offered for our proceedings  
8 some of their thoughts as to how might be the best ways  
9 of transversing through the locations for which they are  
10 familiar, and were I in their shoes I don't think I  
11 would be willing to venture a guess as to what I thought  
12 neighboring communities should or should not do when  
13 they have their own host of concerns with respect to the  
14 construction.

15 I don't think you should be faulted whatsoever  
16 for having offered a segment within your own purview.  
17 Thank you.

18 Q. The alternative one that you looked at in the Con  
19 Edison application goes down or is proposed to go down  
20 the Major Deegan service road as opposed to the Major  
21 Deegan itself.

22 A. (Api) Again, you feel free to go down the service  
23 road if you like.

24 Q. In the last ten years has there been or--has  
25 there been any public improvement work of any kind

1 conducted along Con Edison's proposed route in Yonkers?

2 A. (Api) Yes.

3 Q. Could you please identify the location of each of  
4 these projects and specify the type of street work  
5 conducted for each.

6 MS. O'SHEA: Objection, Your Honor. That's  
7 overly broad. Everything in the last ten years?

8 JUDGE BOUTEILLER: Let me hear the question. I  
9 apologize.

10 (Question read by the reporter.)

11 JUDGE BOUTEILLER: I will allow the question to  
12 the extent that the witnesses have in the top of their  
13 head any information pertinent here. However, I won't  
14 require they will conduct any research to follow up on  
15 questions, and to the extent they have any current  
16 recollections of such projects I will permit them to  
17 share them to the quality and degree that they have  
18 them.

19 MR. API: In the last nine years, how long I have  
20 been here and Joe Moran have been here, off the top of  
21 my head I will give you a list.

22 Tuckahoe Road at low service pumping yard. There  
23 were two water mains installed, 30 inch water main, 24  
24 inch water main, in that order. Catch basins installed  
25 by mile square in Tuckahoe Road. There was--the entire

1 street was resurfaced. There was a drainage done  
2 underneath the Thruway. There was resurfacing on  
3 Tuckahoe Road from--down to Saw Mill River Road.

4 There was water work done in Saw Mill River Road.  
5 There was--I am trying to think of the next one, I  
6 apologize--sewer repairs on Nepperhan Avenue at Oneida.  
7 There was sewer repairs off of Nepperhan  
8 Avenue--actually sorry, didn't affect.

9 There was a major water main break at Nepperhan  
10 and Elm that was over a million dollars worth of repair  
11 to sewers and water. There was a sewer break on  
12 Nepperhan. There was repairs done at Prospect and  
13 Riverdale.

14 Currently right now is a project working on  
15 Riverdale Avenue because the sewers have collapsed, all  
16 of which supports why we are objecting to the work  
17 because, as you can see, a bunch of our infrastructure  
18 is very fragile and we have had numerous, numerous  
19 repairs to our infrastructure in this area?

20 Q. What about electric utility work on the route?

21 A. (Api) I am sorry?

22 Q. What about any electric utility work on portions  
23 of the route?

24 A. (Rachiele) That's responsibility of Con Edison to  
25 repair.

1 Q. I am not asking about repairs. I am asking if  
2 there has been any work conducted on portions of the  
3 proposed route in the last ten years.

4 A. (Rachiele) I would have to check the records but  
5 New York State DOT would issue the permits for that  
6 route.

7 Q. They may issue the permits, but are you aware of  
8 any construction work that's gone on in the streets of  
9 Yonkers either under the jurisdiction of the state DOT  
10 for electric utilities, or gas, or any other type of  
11 utility?

12 JUDGE BOUTEILLER: You can lead these  
13 witnesses if you have specific projects in mind. You  
14 can ask them whether they recall the projects or know of  
15 what degree of knowledge they may have, if you are  
16 referring to projects that Consolidated Edison conducted  
17 which are proximate to your route.

18 I don't care who identifies them. You know  
19 where the questions are coming from, so if you are aware  
20 of Consolidated Edison projects along the route in  
21 recent years that you want to raise with these witnesses  
22 why don't you identify which projects you are talking  
23 about.

24 MR. RIBACK: One second.

25 Q. For the various utility construction projects,



1 repair projects that you mentioned over the last nine  
2 years, when did the work at each of these locations  
3 occur?

4 A. (Api) Would you take within a year of each other?

5 Q. Sure.

6 A. (Api) Tuckahoe Road, the water main at Tuckahoe  
7 Road, about 2001. Resurfacing and catch basins was  
8 2000--late '04, maybe '05. Saw Mill River Road and  
9 Tuckahoe Road was '05. Oneida was '05. Nepperhan and  
10 Elm was January of '05 to March of '05, and Riverdale  
11 Avenue is current, and the one in Prospect was '98.

12 Q. You also mentioned something about the drainage  
13 under the Thruway?

14 A. (Api) Some catch basins.

15 Q. When was that?

16 A. (Api) Prior to the resurfacing '04, '05.

17 Q. And also you mentioned Tuckahoe Road resurfacing  
18 project?

19 A. (Api) '05.

20 Q. Do you recall how long each of these projects  
21 took?

22 A. (Api) About, like Joe says, the state and the  
23 county did the paving so they would have the better  
24 record of how long the contracts went, but they were  
25 in--Tuckahoe Road that county did was at least two

1 months. The state portion of Tuckahoe Road was a month.  
2 Saw Mill was a couple weeks at Tuckahoe Road.

3 Oneida was two weeks. Riverdale Avenue is into  
4 its third week. Riverdale and Prospect was a week at a  
5 time twice. Water main at Tuckahoe Road was several  
6 months.

7 Q. For each of these projects, could you tell us  
8 what problems Yonkers has encountered with street  
9 openings along the Con Edison proposed route?

10 A. (Api) I am sorry? I didn't understand what you  
11 said.

12 Q. You have indicated that there are some nine  
13 different projects?

14 A. (Api) Right.

15 Q. That the city has undertaken, as others have  
16 undertaken along portions of what Con Edison proposed as  
17 the route to this project. Could you tell me in  
18 connection with the work that was done, can you tell me  
19 what problems Yonkers may have encountered with the  
20 street openings?

21 JUDGE BOUTEILLER: Take your time and consider  
22 it.

23 A. (Api) Tuckahoe Road, no. The water main  
24 installation, when we did it in a--throughout, it took a  
25 few months to get across Tuckahoe Road. Traffic was

1 backed up to Bronxville -- to Tuckahoe Road when we  
2 worked there.

3 To minimize the problems we worked at night at  
4 times in sensitive areas. Again, most of our problems  
5 were traffic problems that, again, were horrendous while  
6 we did it but something that needed to be done. And we  
7 maintained small, short trenches, extremely short  
8 trenches, and we minimized the amount of space that we  
9 needed within the road and even with small trenches and  
10 with small trenches we had problems.

11 The resurfacing was done at night to accommodate  
12 the people. And traffic. Saw Mill River Road was in  
13 the middle of the intersection but it was on an isolated  
14 spot within the intersection so we were able to work  
15 around it. Did take several weeks to do it but it was  
16 one spot in the middle of the intersection.

17 I know it wasn't a problem because we were able  
18 to do, again, just a very short trench while in  
19 Nepperhan. Nepperhan at Elm was a major consideration.  
20 We had a water main break. We had traffic backed up for  
21 miles. It was an emergency. One or two--most of Nodine  
22 Hill. So we worked 24/7. We had cops working all day  
23 long.

24 Riverdale Avenue is working now and luckily it's  
25 in the parking lanes and we have minimized the amount of

1 time that we occupy any other lane in the excavation.

2 Q. So, most of the problems would be correct to say  
3 have been traffic issues?

4 A. (Api) For these jobs, traffic issues.

5 Q. And what was the depth of the construction at  
6 these jobs?

7 A. (Api) Most of them were shallow.

8 Q. What do you mean by shallow?

9 A. (Api) Water main was four feet deep on Tuckahoe  
10 Road and, I am sorry, Nepperhan was four feet deep.  
11 Tuckahoe Road was more like six feet.

12 Q. Six feet?

13 A. (Api) Yes.

14 Q. Was that the furthest depth for any of these  
15 projects?

16 A. (Api) At Riverdale Avenue, nine feet deep.

17 Q. Nine feet deep?

18 A. (Api) Yeah.

19 Q. You indicated that at least in one case some of  
20 the work was done at night. What construction  
21 restrictions were imposed for these projects to address  
22 these traffic concerns?

23 A. (Api) I am not sure what you mean.

24 Q. In other words, what limitations did you put on  
25 construction to minimize the traffic concerns that were

1 encountered?

2 A. (Api) Basically we allowed the paving to be done  
3 at night. We employed eight to ten police officers per  
4 night. We ran one lane in each direction on Tuckahoe  
5 Road. None of the businesses were accessible at that  
6 time. We just ran vehicles in and out.

7 It was periodic stoppage of traffic and because  
8 we did it late at night it was less of an impact on the  
9 community, on traffic through the community.

10 Tuckahoe Road is basically the only east-west  
11 corridor through Yonkers, that section of Yonkers, and  
12 basically is one of the reasons that we tried to  
13 minimize the traffic problems there.

14 Q. Are any of these proposals, aside from night time  
15 work, were there any time of day restrictions  
16 incorporated into the process?

17 A. (Api) Yeah, I don't recall there were ever any  
18 restrictions.

19 Q. That was on the construction issues?

20 A. (Api) Yes.

21 Q. What about traffic management restrictions for  
22 any of these jobs?

23 A. (Api) Again, I am not sure what you mean.

24 Q. Well, in certain cases you allowed construction  
25 to occur at night time or at other times of day to

1 minimize the construction impacts.

2 A. (Api) Right.

3 Q. I assume that the construction impacts we are  
4 talking about are noise and whatever environment issues.  
5 What about the traffic impacts associated with the  
6 construction? What kind of restrictions are  
7 imposed--were imposed on these projects?

8 A. (Api) On the night time?

9 Q. Just the night time.

10 A. (Api) Basically what I just went through. We had  
11 police officers on the job, alternate routes, the  
12 alternate lanes laid out with cones and lit throughout  
13 the night. Basically that's it, I mean.

14 Q. Do you typically impose time of day restrictions  
15 for street opening work at Yonkers?

16 A. (Api) Depends on the location.

17 Q. Have there been recent jobs where time of day  
18 restrictions were imposed?

19 A. (Rachiele) We impose restrictions based on the  
20 size of the roadway or the amount of traffic that goes  
21 on the roadway and the duration of the work that's  
22 involved.

23 Q. During the projects that you have spoken about  
24 were any techniques employed during these jobs to  
25 maintain emergency response capability?

1       A. (Api) On all the jobs there is a maintenance and  
2 protection of traffic plan, and the emergency access to  
3 the sites are always taken into consideration when the  
4 permits are given.

5           And, again, Tuckahoe Road, in the section that  
6 was closed at night, was basically a state road, so they  
7 also imposed some restrictions, like the application and  
8 whatever.

9       Q. On page eight, line eight, of your testimony you  
10 cite that brick sewers can collapse easier due to the  
11 erosion of joints. By brick sewers you mean brick sewer  
12 lines?

13       A. (Api) Brick sewers are, yeah, are sewers  
14 constructed of brick. I don't know what the distinction  
15 was that you made.

16       Q. We are not talking about the catch basins? We're  
17 talking about--

18       A. (Api) Oh, no, no. We are talking about what  
19 would appear--most times is round, could be oval shaped,  
20 but it's a structure that a sewer goes through at all  
21 times.

22       Q. Could you tell me what the aggregate length of  
23 the brick sewer lines along Con Edison's proposed route  
24 in Yonkers is?

25       A. (Api) I couldn't tell you off the top of my head,

1 no. I can get it for you at another time but couldn't  
2 tell you now.

3 Q. I appreciate that. Do you have a general sense  
4 of what the length is?

5 A. (Api) I would say all of Riverdale Avenue has  
6 brick sewers. The entire length that you were going to  
7 be there are brick sewers in there. I am sure a good  
8 portion of Nepperhan Avenue also has brick sewers.

9 Q. I ask for details of that plan.

10 A. (Api) Sure. Also there's a possibility of  
11 crossing at individual intersections, good possibility  
12 of that. Might be crossing above or below the brick  
13 sewers.

14 Q. Could you tell me what the average age of the  
15 brick sewer lines are along the route?

16 A. (Api) I don't build brick sewers any more and  
17 haven't in a number of years. We are finding--we are  
18 working on a sewer in Riverdale Avenue that was built in  
19 1986.

20 Q. That's one. What about others?

21 A. (Api) That's usually a good indication that they  
22 are at least 50 years old and probably more than that.

23 JUDGE BOUTEILLER: Is that generally when the use  
24 of bricks for sewers went out of fashion, about 50 years  
25 ago?



1 MR. API: Maybe even a little bit further back  
2 than that.

3 JUDGE BOUTEILLER: Okay. Thank you.

4 BY MR. RIBACK:

5 Q. For the street opening work that you conducted  
6 along the preferred route over the last ten years and  
7 the discussion of the nine or so jobs that you provided,  
8 what has been the city's experience with those brick  
9 sewers? How did you deal with any problems that you  
10 encountered?

11 A. (Api) If we know we are going to go near a brick  
12 sewer and we have time to plan ahead, we would try and  
13 rehabilitate the brick sewer, which means we either  
14 gummitte the brick sewer or we can in situ line it and  
15 that seems effective. Keeps the sewers in decent shape  
16 while we are working.

17 Q. Has that been done on most of the route?

18 A. (Api) No.

19 Q. What portion of the route do you think it has  
20 been done on?

21 A. (Api) None.

22 Q. You haven't done that yet?

23 A. (Api) No.

24 Q. But you have done work on this route where brick  
25 sewers exist and you haven't had the need to do that?

1 A. (Api) Haven't been near the brick sewers yet.

2 Q. During the work you conducted along the route in  
3 the nine projects, was there any damage resulting to the  
4 brick sewers from the work that you conducted?

5 A. (Api) Not that we can tell. Most of the routes  
6 that we were near--most of the repairs that we did or  
7 work that we did were short projects and they weren't  
8 near brick sewers.

9 Q. What do you mean by "near"?

10 A. (Api) Within a hundred yards minimum.

11 (Rachiele) When we did the repairs on these water  
12 mains we weren't at the depth where the brick sewer  
13 would be because we were at a shallow depth.

14 Q. On page nine, line three, of your testimony, you  
15 also indicate that the Yonkers infrastructure includes  
16 cast iron water mains. Do you know if any of these  
17 mains are along the Con Edison route?

18 A. (Api) I believe they are.

19 Q. Could you tell me what the aggregate length of  
20 the cast iron mains is along the route in Yonkers?

21 A. (Api) No, I couldn't. Not sitting here I  
22 couldn't.

23 Q. Could you get me that information?

24 A. (Api) Absolutely.

25 Q. Do you know what the average age of those mains

1 is along the route?

2 A. (Api) They range from the very new to the very  
3 old, and as corny as it sounds it's true. It's just  
4 some we put in recently in Tuckahoe Road. In Tuckahoe  
5 Road, you will cross 14 water mains within a hundred  
6 yards.

7 And one of the reasons we are concerned is one of  
8 the reasons we don't think you can progress very quickly  
9 there. That's one of the reasons we think the traffic  
10 will be affected.

11 (Moran) The water main that needed to be repaired  
12 at Nepperhan and Elm, which is along the proposed route,  
13 we were told by the Department of Public Works was over  
14 a hundred years old.

15 Q. For the projects that you conducted, again, along  
16 the proposed route, what has been the city's experience  
17 with those cast iron mains? Have you had any problems  
18 with the construction that you have undertaken?

19 A. (Api) Yeah, we had a major break in the water  
20 main at Nepperhan and Elm. Any time we have been near  
21 we have had--when the weather gets very cold we have  
22 more potential to have problems with cast iron mains.

23 Again, I don't recall. I don't know for sure.

24 Q. What caused that water main break?

25 A. (Api) I don't recall the break, to be honest

1 with you. I have--withdraw. Again, I do recall the  
2 break. It was in front of the Shell station. Again, I  
3 don't recall what the cause of it was. There was no  
4 apparent cause. It was just, again, the water leaking  
5 out of the pipe.

6 JUDGE BOUTEILLER: Okay. I think the witness  
7 indicated the quality of his understanding or  
8 recollection of the circumstances to that event. Can  
9 you ask your next question, please.

10 Q. Do you recall if there were any public work  
11 projects being undertaken at that time, at the time of  
12 the water main break?

13 A. (Api) At that location?

14 Q. Yes.

15 MS. O'SHEA: Talking about on Nepperhan Avenue?

16 Q. Talking about the water main break that you  
17 indicated occurred and whether you recall whether there  
18 was any cause associated with the public works project  
19 at that time.

20 A. (Api) There was not.

21 Q. So, to summarize, you only indicated there was  
22 one water main break that you can recall associated with  
23 this route over this period of time.

24 A. (Api) Yes, but and mostly because we haven't  
25 disturbed any of them by getting anywhere near them.

1       Q.   On page nine, lines 11 and 12, you state that  
2 breaks between a water main and home connections would  
3 increase expense to the taxpayers of the City of  
4 Yonkers. What specific expenses were you referring to?

5       A.   (Api) I am sorry. Where are you?

6       Q.   On your testimony, page nine, lines 11 and 12.

7       A.   (Api) What was the question?

8           JUDGE BOUTEILLER: The phrases are great  
9 inconvenience and increased expense. The word "great"  
10 does not relate directly to increased expense other than  
11 through two conjunctions.

12       A.   (Api) The inconvenience would be that you would  
13 possibly be out of water.

14           JUDGE BOUTEILLER: I think he's looking towards  
15 the increased expense but the adjective "great" or  
16 adverb "great" does not necessarily relate to increased  
17 expense.

18       MR. RIBACK: I didn't ask about "great". I just  
19 said increased expense.

20           JUDGE BOUTEILLER: Are you asking for some  
21 estimate of the increased expense? What are you asking  
22 for?

23       MR. RIBACK: I'm asking what the basis is for  
24 that increased expense, since it's my understanding, and  
25 you can confirm this, that any utility or contractor

1 would be responsible for the cost of infrastructure  
2 repairs.

3 MR. API: Could you just repeat the last part of  
4 what you just said.

5 BY MR. RIBACK:

6 Q. Given that the utility and/or contractor would be  
7 responsible for the cost of infrastructure repairs  
8 caused by the work that caused the problem, what is the  
9 increase--what would increase the expense to taxpayers  
10 in the City of Yonkers as a result of a water main break  
11 and home connection break?

12 MS. O'SHEA: Objection, Your Honor. Just to--you  
13 are saying given that these would be covered by the  
14 utility doing the work, but that doesn't necessarily  
15 mean that's what they were talking about in the  
16 testimony.

17 JUDGE BOUTEILLER: I think that's what the  
18 cross-examination is seeking to clarify.

19 MS. O'SHEA: Okay.

20 JUDGE BOUTEILLER: I think the question is  
21 permissible. If the utility company were to pay for any  
22 breaks that they were responsible for, and they covered  
23 those costs, are there some other body of costs that you  
24 would be concerned about for taxpayers in the City of  
25 Yonkers occurring for which they would not receive any

1 contributions or covering payments from Consolidated  
2 Edison?

3 A. (Rachiele) For instance, if a residential family  
4 is in proximity to one of these mains that broke, they  
5 may be without water for a day or so depending on the  
6 nature of the actual break.

7 JUDGE BOUTEILLER: That goes to the inconvenience  
8 of the homeowner. The question--

9 A. (Rachiele) I am going to get to the expense. If  
10 you had a family with small children then you would  
11 maybe want to go to a hotel for couple of days or bring  
12 in potable water, or if you had to go to work you  
13 wouldn't be able to wash your clothes. You would have  
14 to spend money on dry cleaning. These all are added  
15 expenses.

16 I know when I am inconvenienced with say a power  
17 outage, as I have been the last few years, that I have  
18 had added expenses incurred to in my home.

19 JUDGE BOUTEILLER: So maybe that sentence might  
20 be better worded if it said increased expenses to  
21 citizens of the City of Yonkers as opposed to their  
22 status as taxpayers?

23 MR. API: Yes.

24 JUDGE BOUTEILLER: That's closer to your intent  
25 when you made the statement?

1 MR. RACHIELE: Yes.

2 JUDGE BOUTEILLER: I think we've got the sentence  
3 clarified. Please proceed.

4 BY MR. RIBACK:

5 Q. Chief Gardner and Chief Fitzpatrick, you say on  
6 page 19 of your testimony that the city's route "entails  
7 construction on only a small portion of Tuckahoe Road".  
8 How many feet of construction would you consider small?

9 A. (Gardner) By that statement I meant that the  
10 entire length of Tuckahoe Road was not utilized, only  
11 the portion of Gracy Sprain Parkway to Saw Mill River  
12 Road. I don't know exactly how many feet that would be  
13 but it's not the entire length of Tuckahoe Road.

14 It would be the portion from the Con Edison side  
15 to Saw Mill River Road. I don't know how many feet that  
16 would be per se, but in that statement what I am stating  
17 is the portion that's going to be involved in this  
18 project would not be the entire length of Tuckahoe Road,  
19 just a portion Tuckahoe Road. The answer to the  
20 question is I don't know how many feet that would be.

21 Q. Mr. Api I believe indicated that your alternative  
22 proposal, which goes from Tuckahoe Road to I87, uses  
23 about a third to a half of a portion of Tuckahoe Road  
24 that Con Edison is proposing to use; is that correct?

25 A. (Gardner) If that's what he said I believe it to



1 be correct. I don't know.

2 Q. Would you consider that something more than a  
3 small percentage of Tuckahoe Road?

4 JUDGE BOUTEILLER: Maybe that sentence might be  
5 better read if it said the City of Yonkers' proposed  
6 route entails construction on only a smaller, a  
7 comparative statement. Would that be more accurate to  
8 your intent?

9 MR. GARDNER: Yes, Your Honor, it would.

10 JUDGE BOUTEILLER: Thank you. Let's proceed.

11 BY MR. RIBACK:

12 Q. Mr. Api and others indicated that there have been  
13 a number of public improvement projects along the  
14 proposed route over the course of the last ten years.

15 Could you please provide details of impacts to  
16 police, fire and emergency response time associated with  
17 each of the jobs and how it was specifically addressed.

18 A. (Gardner) Of the projects that were mentioned in  
19 the earlier testimony I am only familiar with two from a  
20 police perspective.

21 One was the water main break at Nepperhan Avenue  
22 and Elm Street which was an emergency. The road had  
23 collapsed and it required police assistance in directing  
24 traffic and diverting traffic to and from that area.

25 I can tell you that just the diversion of traffic

1 from that one intersection alone caused a major  
2 disruption of traffic in the area and utilized a lot of  
3 police resources to keep that. We had to man that on  
4 almost a 24 hour basis. So, that was very problematic  
5 for us.

6 Another one of the projects that police were  
7 involved in was the repaving on Tuckahoe Road. That was  
8 very problematic from the police perspective and we had  
9 number of officers directing traffic at that site during  
10 the construction.

11 Tuckahoe Road is problematic for us because it  
12 does delay response times. Tuckahoe Road in that  
13 particular area is one of our east-west corridors for  
14 emergency response vehicles and it's very difficult to  
15 have a diversion or alternate route that would be  
16 acceptable around Tuckahoe Road because of the natural  
17 barriers like the Thruway.

18 So, it's difficult for us, but paving I think is  
19 a little bit different than the project you are  
20 proposing because paving closes the roadway for shorter  
21 periods of time, and with police personnel on the scene  
22 you can actually drive over unfinished surfaces if we  
23 had to.

24 So, if vehicles are responding to that area they  
25 would have communications with police officers who were

1 directing traffic and we would have an opportunity in an  
2 emergency to actually ride over the roadway.

3 If you have gridlock, which I believe will occur  
4 in a project of this magnitude, it would be difficult  
5 for emergency vehicles to respond through the area. The  
6 City of Yonkers, the roadways are designed in such a  
7 manner that north-south travel is easier than east-west  
8 and we rely on several corridors that go east-west  
9 throughout the city for emergency response, which are  
10 from south to north McLean Avenue, Yonkers Avenue,  
11 Tuckahoe Road and Jackson Avenue.

12 So, Tuckahoe Road is one of our main east-west  
13 corridors for responsive emergency vehicles. Any time  
14 we have construction on the roadway it's problematic for  
15 me because delay in response time I think endangers the  
16 lives of the people in the City of Yonkers.

17 Q. Chief Gardner, you said there were several east-  
18 west corridors through Yonkers?

19 A. (Gardner) Yes, sir.

20 Q. Even though Tuckahoe Road might be the main one  
21 there are several others?

22 A. (Gardner) That's correct, but Tuckahoe Road--

23 Q. That's all I am asking.

24 A. (Gardner) Okay.

25 Q. I understand that the City of Yonkers has

1 received the engineering drawings for the proposed  
2 Yonkers' portion of Con Edison preferred route; is that  
3 correct?

4 A. (Api) Yes.

5 Q. Can you tell me how many times that route of the  
6 transmission line crosses your brick sewers?

7 A. (Api) Not off the top of my head. Again, with  
8 the other information we need to send you I can send you  
9 that also.

10 But it's not only brick sewers we are concerned  
11 with. It's also the clay sewers, the concrete sewers,  
12 and any other type of sewer or water main.

13 It's also the house connections that come from  
14 each house, including the water connections and the  
15 sewer connections. Sewer connections could be built of  
16 an assortment of pipes that would become a major problem  
17 mostly because they run by gravity, and we are concerned  
18 that your project will interrupt the straight line that  
19 the sewers flow right down from these houses to the  
20 sewers.

21 And if you interrupt the sewers and cause them to  
22 be diverted, you might cause problems. And we also  
23 anticipate that there will be some areas where you will  
24 not be able to maintain a gravity system in catch basins  
25 and, again, worse in people's houses.

1 Q. When doing work on this route or any of these  
2 roads along these routes, do you have a recommended  
3 distance from the sewer line in order to do the work?

4 A. (Api) Again, depending on the type of sewer, I  
5 mean prefer that it wouldn't be within five feet of a  
6 brick sewer if you are running along it. If you cross  
7 it under all circumstances we would want you to  
8 rehabilitate the brick sewer under all circumstances.

9 Q. Do you happen to know what the distance proposed  
10 is between the Con Edison preferred line and the brick  
11 sewer line along the route?

12 A. (Api) Again, not off the top of my head. I think  
13 it was part of what was requested of us and what we are  
14 going to bring in Monday.

15 MR. RIBACK: Could I request that information and  
16 the sewer crossing information?

17 MS. O'SHEA: I believe we are doing that in a  
18 supplemental to one of the interrogatories served on us  
19 by DPS. We were providing--taking Con Edison road maps  
20 and circling all our infrastructure underneath. Would  
21 that be acceptable?

22 MR. RIBACK: Circling doesn't tell me the  
23 distances.

24 MS. O'SHEA: And adding in the distance.

25 JUDGE BOUTEILLER: Okay. You are willing to

1 accept what Yonkers is doing to satisfy staff which  
2 might also satisfy your interest in knowing the specific  
3 distance that your facilities should be kept away from  
4 the sewer facilities at least in the view of Yonkers?

5 MR. RIBACK: Yes. That's fine.

6 BY MR. RIBACK:

7 Q. Chief Fitzpatrick, on page--I believe it's  
8 you--on page 18, on lines four to 14, you state there  
9 are at least seven fire stations in the city that would  
10 be negatively impacted by construction related traffic  
11 along Con Edison's proposed route.

12 Are you suggesting that all seven will be  
13 impacted simultaneously?

14 A. (Fitzpatrick) Depends on the assignment. If  
15 there was a four alarm assignment for a structure fire,  
16 Chief Gardner mentioned with the east-west routes being  
17 limited we could have up to five to six stations being  
18 impacted, either responded through the Nepperhan Valley  
19 area or Old Nepperhan or Tuckahoe Road.

20 Q. And that's--

21 A. (Api) Also addressing that, that it's been passed  
22 to us that you might be working from multiple locations  
23 so you would be very likely could be influencing, again,  
24 from several different directions. We talked about the  
25 possibility of actually having four locations operating

1 at once.

2 (Fitzpatrick) To answer your question, yes.

3 Q. That's even though construction on the line would  
4 not be occurring along the whole portion of the route at  
5 any one time?

6 A. (Fitzpatrick) If it was a call for a structure  
7 fire we would have up to six or seven pieces of  
8 equipment responding to five or six different locations.  
9 If that call was upgraded to a second alarm, units would  
10 be passing through the same area depending on where the  
11 work was at the time at any given time.

12 Q. How many times have you had that type of major  
13 fire?

14 A. (Fitzpatrick) Multiple alarm fires, we have 30 or  
15 40 a year.

16 Q. And all seven fire houses were involved in those?

17 A. (Fitzpatrick) When we have a second alarm fire we  
18 have up to 10 to 11 units at the scene of a fire, which  
19 would include probably seven or eight fire houses. When  
20 we go to a third alarm it would include probably like  
21 ten of the fire houses. Once we get a fourth alarm,  
22 which is the highest we can go, virtually every fire  
23 company in the city would be there.

24 Q. Mr. Doherty, you indicated there's 200 school bus  
25 routes in Yonkers that would be affected by the Con

1 Edison preferred route. That's on page 23, lines seven  
2 and eight.

3 In general, what time of day are the buses mostly  
4 on the road bringing or taking children from school?

5 A. (Doherty) Generally speaking, the school buses  
6 are on the road between 7:30 and 9:00 a.m. and 2:30 and  
7 4:00.

8 Q. Given those times, aren't those times generally  
9 compatible with typical time of day road construction  
10 restrictions?

11 A. (Doherty) They are.

12 Q. Again, on page 23, line 14 through 21, you raise  
13 concerns about the impacts of construction on the  
14 Westchester B line bus system and how it may affect  
15 workers and high school students.

16 Here, too, those buses most frequently operate  
17 during the early morning and late afternoon rush hours?

18 A. (Doherty) Correct.

19 Q. Again, wouldn't time of day restrictions on  
20 construction minimize the impact to most of the buses?

21 A. (Doherty) It would, although it should be kept  
22 in mind that the school buses in Yonkers tend to hit the  
23 road around 2:30 p.m., which is a little earlier than we  
24 often restrict construction, although on some of these  
25 main routes, which are school bus routes, we often do do



1 that, which would mean the entire workday for the  
2 project would be no longer than 9:00 a.m. to 2:30 p.m.

3 Q. Are you familiar with Yonkers' response to Con  
4 Edison's interrogatory three prepared by Yonkers'  
5 corporation counsel?

6 A. (Doherty) I am sorry, no.

7 MR. RIBACK: Your Honor, can I show this to the  
8 witness?

9 JUDGE BOUTEILLER: Sure, approach.

10 MR. DOHERTY: I apologize for not knowing what  
11 interrogatory three was.

12 JUDGE BOUTEILLER: Do we have a question about  
13 interrogatory three?

14 MR. RIBACK: If he's had a chance to review the  
15 document.

16 JUDGE BOUTEILLER: Was it prepared by this  
17 witness?

18 MS. O'SHEA: No.

19 MR. DOHERTY: I will answer whatever I can. I  
20 have not seen this document specifically.

21 BY MR. RIBACK:

22 Q. It appears to be a download of school bus pick  
23 ups and drop offs along Con Edison's preferred route.  
24 Would you concur with that?

25 A. (Doherty) I would seem to agree with that, yes.

1 Q. Subject to check, would you be surprised if only  
2 two thirds of the stops occurred either after 9:00 a.m.  
3 or 3:00 p.m.?

4 A. (Doherty) Consistent with what I previously  
5 said.

6 Q. About 3:30 p.m.?

7 JUDGE BOUTEILLER: Would your answer be the same?

8 A. (Doherty) I would have to check the actual  
9 numbers.

10 (Api) Yes. Saying that's when the bus stops, but  
11 buses are running before they stop, so they are  
12 traveling across the city. There is not a whole lot of  
13 short distance runs by these buses. Basically made  
14 crosstown, bring each other from one side to the other.

15 (Doherty) Also be kept in mind in order for the  
16 school bus to get to the stop by 3:30 the bus has to  
17 leave the garage and pick up the children and drops them  
18 off perhaps as late as 3:30.

19 MR. RIBACK: I have no further questions.

20 JUDGE BOUTEILLER: Mr. Drexler.

21 CROSS EXAMINATION

22 BY MR. DREXLER:

23 Q. What depth is the sewer mains located?

24 A. (Api) Again, they are varying depths, but it's--  
25 the range would probably be from nine feet to 12 feet

1 to--I mean there is a normal occurrence. It's not  
2 unusual to have them 15, possibly. I don't know if  
3 there is any 20 feet deep.

4 Q. So the shallowest one you know of would be about  
5 nine feet?

6 A. (Api) For the sanitary sewer, yes. The mains to  
7 the street, yes.

8 Q. And approximately how deep would the water lines  
9 be?

10 A. (Api) Typically you would have three to four foot  
11 cover over the water lines so that would make the bottom  
12 of them four to five feet deep typically. Again, those  
13 are the mains.

14 Q. Yeah. What is the approximate--what's the  
15 largest size sewer main that's under the preferred  
16 route?

17 A. (Api) I didn't check for size as much. When I  
18 overheard that the--somebody had mentioned it was 24, we  
19 checked the drawing that I had looked at this morning.  
20 At New Main and Nepperhan there is 36 240 inch changes  
21 right in the intersection.

22 Q. 36, so it's a 36 inch?

23 A. (Api) Round sewer, yes.

24 Q. And does the city maintain maps showing the exact  
25 location of the sewers and water mains and other

1 infrastructure?

2 A. (Api) As exact as were done 70, 50, a hundred  
3 years ago, yes.

4 Q. I just wanted to make an on the record request, I  
5 requested it off the record, but I would like to just  
6 formalize my request on the record, to provide a copy of  
7 the maps showing the location of the sewers, the water  
8 mains, and any other infrastructure under the preferred  
9 route.

10 A. (Api) Okay, but keep in mind most of what it will  
11 show will be the sewer mains, the water mains. And,  
12 again, part of our concern is for the laterals that  
13 connect to the mains because that is one of the things  
14 that we cannot change.

15 Q. So sometimes you don't even know where the  
16 location is until you actually dig and find out?

17 A. (Api) We won't know where the laterals are. We  
18 can take a guess or a calculated guess of where they are  
19 but we don't know in depth.

20 We know they are above--in the case of the sewers  
21 we will know they are above the level of the sewer, but  
22 other than that, they could drop in from the top or from  
23 the bottom. Problem is when they come in the bottom and  
24 something that interrupts them they can't be lowered and  
25 they cannot be raised.

1 JUDGE BOUTEILLER: That's because there is no  
2 record or map made of the laterals?

3 MR. API: The laterals, yeah, are not--no records  
4 are kept of them.

5 JUDGE BOUTEILLER: Thank you.

6 MS. O'SHEA: In response to that request, City of  
7 Yonkers had represented to Department of Public Service  
8 the records we have on infrastructure under many of the  
9 streets along this route would not be accurate and our  
10 engineering could tell you that because they are state  
11 roads.

12 The State Department of Transportation has and  
13 the county has made improvements both above the surface  
14 and below the surface of these roads, and the city is  
15 not in possession of the as builts for these  
16 improvements. So any records we could give you would  
17 not be complete, accurate and up to date, and our  
18 engineers could not testify as to their accuracy.

19 JUDGE BOUTEILLER: So what you are indicating is  
20 in addition to not being accurate with respect to any  
21 laterals associated with these mains, since the time  
22 they were installed, original map work there's been work  
23 performed by other agencies on these and the maps have  
24 not been updated in the custody of Yonkers to reflect  
25 this additional work?

1           MR. API: Example is Nepperhan Avenue has been  
2 widened by quite a bit through the years and that kind  
3 of throws off some of the reference points a matter of a  
4 few feet, which is crucial when you are digging next to  
5 it. Might not come up on a map.

6           JUDGE BOUTEILLER: So we have on the record the  
7 request. We have the concerns as you have expressed  
8 with respect to the request, but in spite of that you  
9 are willing to provide whatever records you can find  
10 handy with these understandings to be provided.

11           Thank you.

12           MS. O'SHEA: Yes, Your Honor.

13 BY MR. DREXLER:

14           Q. To figure out the exact location of the  
15 infrastructure, sewers, water mains, will the test pits  
16 that Con Ed is planning to perform identify the exact  
17 locations or assist in that?

18           A. (Api) It will help. It will assist greatly.

19           Q. There was testimony earlier about the projects on  
20 streets where the traffic had been restricted. And I  
21 was--I am interested in knowing how emergency vehicles  
22 were able to access the road under those restricted  
23 conditions.

24           A. (Api) The biggest restriction was--Chief Gardner  
25 had to address two of them earlier. At Nepperhan, there

1 were numerous cops, excuse me, police officers, my son  
2 is a police officer. Numerous police officers, actually  
3 they were there 24/7 for the duration of that job.

4 Tuckahoe Road there were--Chief would be able to  
5 tell you how many, but there were numerous officers and  
6 vehicles assisting in the flow of traffic.

7 The ones that were--other ones were relatively  
8 short. Again, one of the crucial things is when we are  
9 working in these areas we maintain an extremely short  
10 trench length and the width is minimized.

11 Equipment that was required to do the work that  
12 we have done is relatively small in relation to some of  
13 the equipment that Con Edison will have to use, such as  
14 300 ton crane to do the manholes, and backhoes to do  
15 excavation, and dump trucks to haul stuff away.

16 Q. I just want to understand how if traffic is being  
17 restricted, and it's one lane in each direction, and  
18 there is police officers on both ends of where the  
19 constraint or the restriction is on the traffic, do the  
20 police then stop traffic, if there is an emergency  
21 vehicle that needs to pass, to allow the vehicle to get  
22 through?

23 A. (Gardner) It depends on the location of the  
24 roadway and how the roadway is constructed, but  
25 generally, depending if you are going to close one lane

1 or two lanes, generally if you have gridlock it's very  
2 difficult for emergency vehicles to come through even if  
3 police are there.

4 The benefit of having police at the scene is they  
5 know when the emergency vehicles are coming and they can  
6 try to maybe alert them to try to take an alternate  
7 route or try to pull them through. But it is  
8 problematic for us. In both of those instances the  
9 emergency response time was probably affected  
10 negatively. Any time you affect the emergency response  
11 time of the vehicles it's dangerous to the public.

12 So, these were problem areas for us.  
13 Particularly Tuckahoe Road is a very problematic  
14 intersection for us because there's no alternate  
15 diversion route. So, that's very high level of concern  
16 for me is impacting the flow of traffic on one of our  
17 east-west emergency routes such as Tuckahoe Road.

18 Q. Are there any mitigation techniques that you can  
19 think of that would allow emergency vehicles to access  
20 the road under these tight restrictions, tight traffic  
21 restrictions?

22 A. (Gardner) Well, depending on where the road is  
23 you can have an alternate route which will have less of  
24 an impact, a mitigating impact. For example, if there  
25 is a roadway that runs parallel to it you can utilize



1 that as an alternate route for emergency vehicles.

2 That's not the case on Tuckahoe Road because of  
3 the natural barrier of Thruway and Sprain Parkway. You  
4 would have to either go north several miles to Jackson  
5 Avenue to go east-west, or travel south maybe to Palmer  
6 Road or another east-west corridor.

7 So, that's problematic for us, but some of the  
8 other areas if you can have an alternate route that  
9 would parallel the site it would be less or mitigating  
10 the impact on us.

11 MR. DREXLER: I don't have any more questions.  
12 Thank you.

13 JUDGE BOUTEILLER: Are there any other  
14 cross-examiners for this panel of witnesses? I assume  
15 that there is not.

16 You can approach the witnesses. You can consider  
17 whether or not there is any need for you to redirect on  
18 the basis of the cross-examination you have heard. Take  
19 a few minutes to do that and let us know whether you  
20 have redirect for the panel. I would appreciate that.  
21 Off the record until then.

22 (Recess taken.)

23 JUDGE BOUTEILLER: I understand there is redirect  
24 for this panel.

25 MS. O'SHEA: Just a couple of questions.

1 JUDGE BOUTEILLER: Okay. Please proceed.

2 REDIRECT EXAMINATION

3 BY MS. O'SHEA:

4 Q. My questions are for Mr. Rachiele, Mr. Api and  
5 Mr. Moran.

6 Were you aware of any specifications Con Edison  
7 had in choosing their route?

8 A. (Api) Yes. They were looking for a route with  
9 the least interference and least amount of bends in  
10 their pipe lines.

11 Q. Did you know that these were called their route  
12 evaluation criteria?

13 A. (Api) I didn't know it as that name, but seems  
14 reasonable.

15 Q. Can you tell me the difference between the work  
16 that has been done along the route in the past by the  
17 City of Yonkers and the project that Con Edison is  
18 proposing?

19 A. (Api) The jobs that we did were, again,  
20 relatively short trenches that are not very wide. They  
21 were basically one location at a time. They required  
22 small equipment.

23 The Edison work could be as long as four to five  
24 hundred feet long at one time. We anticipate taking two  
25 lanes for most of the time they are working. They

1 mentioned the 300 ton crane that will be used for some  
2 of their manholes, which isn't a quick set up and take  
3 down.

4 If they are working in multiple locations, as  
5 they indicated, each of those trenches would be  
6 multiplied by however many locations. Again, that  
7 affects quite a bit of people.

8 (Rachiele) And our repairs had to be done at that  
9 location because the infrastructure is there.

10 Q. So, did you have a choice in where you  
11 performed--

12 A. (Rachiele) No. It had to be done at that  
13 infrastructure, at that location.

14 (Api) And there was emergencies also.

15 Q. That was my next question. Thank you.

16 So, the projects that you have conducted for the  
17 most part along this route in the past, were they  
18 elective projects or were they necessary?

19 A. (Api) Both of them were--over the water main at  
20 Tuckahoe Road they were all emergency repairs.

21 MS. O'SHEA: I think that's it.

22 JUDGE BOUTEILLER: Mr. Riback.

23 MR. RIBACK: Nothing, Your Honor.

24 JUDGE BOUTEILLER: Staff.

25 MR. DREXLER: No.

1 JUDGE BOUTEILLER: That indicates that we have  
2 concluded the cross-examination of Yonkers' panel. I  
3 want to thank you for being here today. Thank you for  
4 your testimony. You are excused and if you attend the  
5 hearing it's at your own decision. Thank you very much  
6 for being here today. I appreciate your testimony.

7 (Panel excused.)

8 That will conclude the hearing for today. The  
9 hearing will resume tomorrow morning. It's my  
10 understanding that arrangements have been made that we  
11 can begin at 9:30 with the expectation that the  
12 witnesses being offered by the group that's been calling  
13 themselves the M29 committee would be offering the  
14 persons who prepared their report, offered in narrative  
15 form with approval of identified individuals.

16 We are prepared to begin the hearing tomorrow  
17 morning by taking up that group and any objections or  
18 motions pertaining to the presentation of their  
19 testimony. And then we will determine the next sequence  
20 of events for the remainder of the day as we continue to  
21 plug along.

22 We will stand in recess until 9:30 tomorrow  
23 morning.

24 (Hearing adjourned.)

25

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