

BEFORE THE STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of

PSC Case No. 10-T-0139

Application of Champlain Hudson Power  
Express, Inc. for a Certificate of  
Environmental Compatibility and Public  
Need Pursuant to Article VII of the  
Public Service Law for Construction,  
Operation and Maintenance of a High  
Voltage Direct Current Circuit from  
The Canadian Border to New York City.

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EVIDENTIARY HEARING  
3 Empire State Plaza  
19th Floor  
Albany, New York

July 18, 2012  
10:30 a.m.

Volume I

BEFORE: MICHELLE L. PHILLIPS  
Administrative Law Judge

KEVIN J. CASUTTO  
Administrative Law Judge

## PROCEDURAL

## P R O C E E D I N G S

1  
2 ALJ PHILLIPS: Good morning. Let's come  
3 to order, please. Can everyone hear me okay?

4 Let's go on the record. I call Case  
5 10-T-0139, Application of Champlain Hudson Power  
6 Express, Incorporated for a Certificate of  
7 Environmental Compatibility and Public Need  
8 pursuant to Article VII of the Public Service Law  
9 for the Construction, Operation, and Maintenance  
10 of a High Voltage Direct Current Circuit from the  
11 Canadian Border to New York City.

12 My name is Michelle Phillips, and with  
13 me is Kevin Casutto. We are the assigned  
14 Administrative Law Judges.

15 A Notice of Rescheduled Evidentiary  
16 Hearings issued on July 10, 2012 announced today  
17 as the date for commencing the evidentiary  
18 hearings in this proceeding.

19 I would like to begin by taking  
20 appearances. We will start with the table in the  
21 front and work our way back.

22 MR. HURST: Good morning, Your Honors.  
23 I am William Hurst with Greenberg, Traurig on  
24 behalf of Entergy Nuclear Power Marketing LLC and  
25 Entergy Nuclear Fitzpatrick, LLC.

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1 MR. JOHNSON: Good morning, Your Honors.  
2 My name is David Johnson from the law firm of Read  
3 and Laniado. I am counsel to the Independent  
4 Power Producers of New York.

5 MS. MORENO: On behalf of Department of  
6 Public Service staff representing the public  
7 interest in this proceeding, Anthony Belsito,  
8 Steven Blow, David Drexler and Ashley Moreno.

9 MR. POND: For the Applicant, Champlain  
10 Hudson Power Express and CHPE Properties Inc.,  
11 George Pond and Ekin Senlet from the law firm of  
12 Hiscock & Barclay. Also with us today is William  
13 Helmer, General Counsel, Transmission Developers,  
14 Inc.

15 MS. ROSENBLATT: Shira Rosenblatt and  
16 Peter Garam on behalf Con Edison.

17 MR. KODA: Richard J. Koda, Principal of  
18 Koda Consulting Inc. on behalf of the IBEW, Local  
19 97.

20 MR. INZERO: Good morning, Your Honors.  
21 Christopher Inzero on behalf of the County of  
22 Westchester Public Utility Service Agency.

23 MR. GOODMAN: Jay Goodman of Couch,  
24 White on behalf of the City of New York.

25 MR. OSINSKI: Javier Bucobo and John

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1 Osinski on behalf of the New York Power Authority.

2 ALJ PHILLIPS: Is that everyone? Okay,  
3 thank you. As indicated in relevant notices and  
4 rulings that are issued in this proceeding, the  
5 purposes of these evidentiary hearings are to  
6 consider and examine the terms of the February 24,  
7 2012 Joint Proposal that was submitted in this  
8 proceeding, including the subsequently submitted  
9 stipulation pertaining to issues addressed in the  
10 Joint Proposal.

11 We are going to permit examination and  
12 record entry of appropriate evidence and, if need  
13 be, address any such further matters as deemed  
14 appropriate. One such matter that we do want to  
15 address initially is the motion to strike Mr.  
16 Davis's rebuttal testimony. In a letter dated  
17 July 13, 2012 Con Edison moved to strike most of  
18 the rebuttal testimony of the DPS staff witness  
19 Andrew Davis saying that it rebuts conEdison's  
20 testimony that has now been withdrawn.

21 On July 16th DPS staff and the  
22 applicants separately e-mailed their opposition to  
23 Con Edison's motion to strike. Staff and the  
24 applicants argued that Con Edison's motion was  
25 untimely and that the rebuttal testimony and

1 exhibits at issue were properly filed. Staff also  
2 said that the challenged rebuttal testimony and  
3 exhibits helped to explain how the parties  
4 interested in the Luyster Creek issue got from  
5 their divergent starting positions to where they  
6 are now. Con Edison's motion is dismissed. In  
7 our ruling establishing schedule and hearing  
8 procedures that was issued on May 8th we required  
9 motions to strike prefiled testimony to be filed  
10 by noon, July 6th, and permitted parties to seek  
11 exception to the ruling's requirements. Con  
12 Edison filed its motion well after the applicable  
13 deadline and, even through they could have, did  
14 not seek exception to the applicable deadline or  
15 attempt to show good cause. In the alternative,  
16 even if we were to excuse this procedural defect,  
17 we note that the motion states as its basis that  
18 it wishes to exclude testimony rebutting the  
19 witnesses that were withdrawn. However, it  
20 doesn't apply that to all of the witnesses who  
21 rebutted the testimony of the Con Edison witnesses  
22 who have now been withdrawn or, in effect, are not  
23 going to be admitted into the record.

24 We also go back to our May 8th ruling on  
25 the issues and note that that ruling allowed

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1 parties to address the suitability and  
2 availability of the Luyster Creek site in their  
3 testimony or in other evidence at these hearings.  
4 That ruling remains in effect, notwithstanding the  
5 filing of the Luyster Creek stipulation and  
6 notwithstanding conEdison's voluntary decision not  
7 to offer its prefiled testimony and exhibits for  
8 admission into the record. So, in other words,  
9 the proffer of testimony concerning this issue was  
10 not dependent on the first instance on the  
11 submission of testimony by Con Edison and,  
12 therefore, can still be proffered for admission  
13 into the record even though Con Edison has  
14 voluntarily chosen not to offer its testimony and  
15 exhibits for admission.

16 I believe that addresses our reasons for  
17 dismissing or, in the alternative, denying the  
18 motion. But I will give Judge Casutto the  
19 opportunity to weigh in if he wishes.

20 ALJ CASUTTO: No. I have nothing  
21 further to add.

22 ALJ PHILLIPS: I would also note that we  
23 have granted or addressed two other requests to  
24 strike testimony. And, as a result, you will see  
25 indicated in the testimony that will be offered by

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1 Mr. Jessome and also by Mr. Younger that that  
2 testimony will now be indicated by redaction. We  
3 just wanted to make clear for the record that  
4 redaction in this instance means that the  
5 testimony has been stricken, not that it's  
6 confidential. In some other cases we use  
7 redaction to indicate confidential testimony. We  
8 just wanted to make clear for the record that that  
9 is not why it's being used here. That represents  
10 testimony that has been stricken.

11 Another procedural issue: We had asked  
12 the parties to submit exhibit lists indicating  
13 using the preassigned exhibit numbers, how they  
14 were going to designate the exhibits they are  
15 offering here at this hearing. Every party should  
16 have a copy of those; they were e-mailed. We  
17 received them from several parties including  
18 applicants, staff, IBEW, IPPNY, and I believe  
19 Entergy and Local 97. So, those are the hearing  
20 exhibit numbers that we will be using for purposes  
21 of this hearing.

22 I think, going forward, what we would  
23 like to do is first ask if there are any other  
24 procedural matters that parties wish to raise  
25 before we start with the cross-examination of the

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1 witnesses that were planned for today. Hearing  
2 nothing, we will continue.

3 I believe indicated in the documents  
4 submitted to us with respect to the schedule for  
5 witnesses, the first witness was to be Mr.  
6 Jessome; is that correct.

7 MS. MORENO: I have a question. Andrew  
8 Davis has not entered his testimony on disk with  
9 an affidavit. I guess the question we have is  
10 whether you would like us to prepare an affidavit  
11 with his testimony for incision, or you would like  
12 to put him on briefly to adopt his testimony and  
13 exhibits at this time.

14 ALJ PHILLIPS: I'm indifferent to how we  
15 proceed with that. Does any party have an  
16 objection to having Mr. Davis sworn in and copying  
17 his testimony into the record as if orally given?

18 Hearing no objection to that --

19 ALJ CASUTTO: Ms. Moreno, are you  
20 proposing to do that first before turning to Mr.  
21 Jessome?

22 MS. MORENO: Sure. That would be  
23 appreciated.

24 ALJ CASUTTO: Let's do that.

25 ALJ PHILLIPS: One other thing that I

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1 did want to address before we do that, NYPA  
2 submitted a letter also indicating that they were  
3 not intending to offer their witness's testimony  
4 but I am a little concerned because it purports to  
5 reserve a right to resubmit the testimony, I  
6 guess, on some other basis. I just want to make  
7 sure and make sure that counsel understands that  
8 this hearing is the only currently scheduled  
9 opportunity for submission of testimony, so there  
10 is no right to reserve. So, I wanted to make sure  
11 that that was understood before we proceed.

12 MR. BUCOBO: Your Honor, we don't intend  
13 to put testimony in. But in the event that the  
14 issue that is addressed in that letter becomes a  
15 part of the proceedings, we reserve the right to  
16 bring the testimony back in.

17 ALJ PHILLIPS: At this point there is no  
18 hearing scheduled to consider additional  
19 testimony. So, I guess you are saying should  
20 there be a further hearing scheduled, you want to  
21 have the opportunity to offer that testimony.

22 MR. BUCOBO: Should the issue be  
23 addressed I'll let it become a part of these  
24 hearings. Should the issue be addressed in these  
25 hearings, or should it become an issue in the

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1 hearings that we are going to have over the course  
2 of the next three days, again, we reserve our  
3 right to resubmit.

4 ALJ PHILLIPS: We will check in with you  
5 on Friday, then. I don't anticipate that  
6 happening, but I just wanted to make sure that you  
7 appreciated that these are the only hearings we  
8 have scheduled. If it does not come in now, it's  
9 probably not coming in.

10 MR. BUCOBO: That's clearly understood.

11 JUDGE PHILLIPS: Okay, thank you.

12 I guess at this point, if staff would  
13 like to call its witness.

14 MR. BLOW: Your Honor, I just want to  
15 make sure I understand correctly, we will be  
16 providing Mr. Davis's testimony today on CD, as  
17 asked for. We just didn't know exactly what to  
18 provide at this point.

19 ALJ PHILLIPS: That's understood.  
20 That's why I said you didn't have to deal with it  
21 until after we issued our ruling.

22 MR. BLOW: Right. So, the CD will be  
23 available so that it can be copied into the  
24 record.

25 ALJ PHILLIPS: Okay.

1 MS. MORENO: Staff calls Andrew C Davis.

2 ANDREW C. DAVIS:

3 called as a witness by counsel for DPS staff, and  
4 being sworn/affirmed by ALJ PHILLIPS, was examined  
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MORENO:

8 Q. Good morning, Mr. Davis. I show you a  
9 document entitled: The prepared testimony of  
10 Andrew C. Davis consisting of fifteen pages. Did  
11 you supervise or prepare this document?

12 A. Yes. I prepared this document.

13 Q. Do you have any corrections or changes to  
14 make to this document?

15 A. No, I do not.

16 MS. MORENO: Your Honors, I request that  
17 the document entitled: The prepared direct  
18 testimony of Andrew C. Davis be copied into the  
19 record as given orally.

20 ALJ PHILLIPS: The testimony of Mr.  
21 Davis will be copied into the record as though  
22 orally given.

23 Was that just the initial testimony that  
24 you are dealing with; correct?

25 MS. MORENO: Yes, that's correct. That

1 is the Direct Testimony.

2 (The Prefiled Direct testimony of Andrew  
3 Davis is inserted as follows)

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BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of

Application of Champlain Hudson Power Express, Inc. for a  
Certificate of Environmental Compatibility and Public Need  
Pursuant to Article VII of the PSL for the Construction,  
Operation and Maintenance of a High Voltage Direct Current  
Circuit from the Canadian Border to New York City.

Case 10-T-0139

June 7, 2012

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Prepared Testimony of:

ANDREW C. DAVIS  
UTILITY SUPERVISOR -  
ENVIRONMENTAL  
OFFICE OF ENERGY EFFICIENCY &  
ENVIRONMENT  
State of New York  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350

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1 Q. Please state your name and business address.

2 A. My name is Andrew C. Davis. My address is:

3 Three Empire State Plaza

4 Albany, New York 12223.

5 Q. By whom and in what capacity are you employed?

6 A. I am employed by the New York State Department  
7 of Public Service, Office of Electricity and the  
8 Environment, as Environmental Utility  
9 Supervisor. I also serve as the Agency  
10 Preservation Officer-Designee (APO) for purposes  
11 of coordinating Department consultations with  
12 the Office of Parks, Recreation and Historic  
13 Preservation (OPRHP) as required by Parks  
14 Recreation and Historic Preservation Law §14.09.  
15 My education and professional experience are  
16 summarized in attached Exhibit\_\_\_(ACD 1).

17 Q. Please describe your role in this case.

18 A. I reviewed the Champlain-Hudson Power Express  
19 Inc. (CHPEI) transmission facility project  
20 application and supplemental information,  
21 regarding environmental impacts and issues of  
22 natural resources, land use, visual and cultural  
23 resources, conformance with New York State

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1 Coastal Zone policies, and assisted in  
2 development of mitigation measures to minimize  
3 adverse environmental impacts on those  
4 resources. I examined many sections of the  
5 proposed facility location in the field. I  
6 examined the proposed transmission facility's  
7 potential impacts on cultural and heritage  
8 resources and coordinated review of historic and  
9 archeological resource impacts with the OPRHP.

10 During the period of time when parties were  
11 working in settlement discussions I worked  
12 extensively on identification and development of  
13 facility alternative locations, including the  
14 following alternative cable route segments:

- 15 o Lower Lake Champlain upland alternatives -  
16 I provided analysis of alternative  
17 landfalls to support the use of Route 22  
18 highway corridor from Dresden Station To  
19 Whitehall;
- 20 o Fort Edward Historic Train Station bypass;
- 21 o Hudson River estuary - Provided analysis  
22 for alternative alignments and landfall  
23 locations to avoid Significant Coastal

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1 Habitats in the Hudson River; developed  
2 final settlement routing from Coeymans to  
3 Cementon - 30 miles upland vs. in-river  
4 through several significant coastal habitat  
5 areas - that avoids 3 major dredged  
6 crossings of the federal navigation  
7 channel; and avoided impacts at NYS and  
8 municipal parks in Ulster Co.;

- 9 o Bypass at inactive industrial brownfield  
10 site in Haverstraw, Rockland County;
- 11 o Use of NYS Route 9W to avoid siting  
12 disturbances in Rockland County at hiking  
13 trails at unstable Hudson River waterfront  
14 locations at Hook Mountain State Park;
- 15 o Hell Gate bypass - identified significant  
16 reduction of aquatic construction impacts  
17 by reducing the length of in-river  
18 location, and changing 15 miles of in-water  
19 route from HVAC design (2 bundles of 3  
20 cables each) to HVDC (1 bundle of two  
21 cables) with associated change in converter  
22 station location; avoided areas under  
23 development for hydro-kinetic electric

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1 generation in East River at Hell Gate  
2 channel.

3 I also developed and provided analysis to  
4 support consideration of alternative converter  
5 station sites as proposed in the Joint Proposal  
6 for Settlement, and discussed in Exhibit 108 -  
7 the Comparative Analysis of Converter Station  
8 Sites.

9 Further, I participated significantly in  
10 the development of several proposed record  
11 exhibits, including the following:

- 12 o Exhibit 108 - Comparative Analysis of  
13 Converter Station Sites;
- 14 o Exhibit 110 - Amendment to Visual  
15 Assessment Report;
- 16 o Exhibit 121 - Revised Environmental Impacts  
17 Assessment;
- 18 o JP Appendix C: Proposed Certificate  
19 Conditions;
- 20 o JP Appendix E: EM&CP Guidelines; and  
21 o JP Appendix F: Best Management Practices.

22 Q. Did you attend the Site Inspection held by the

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1 Administrative Law Judges on May 1, 2012?

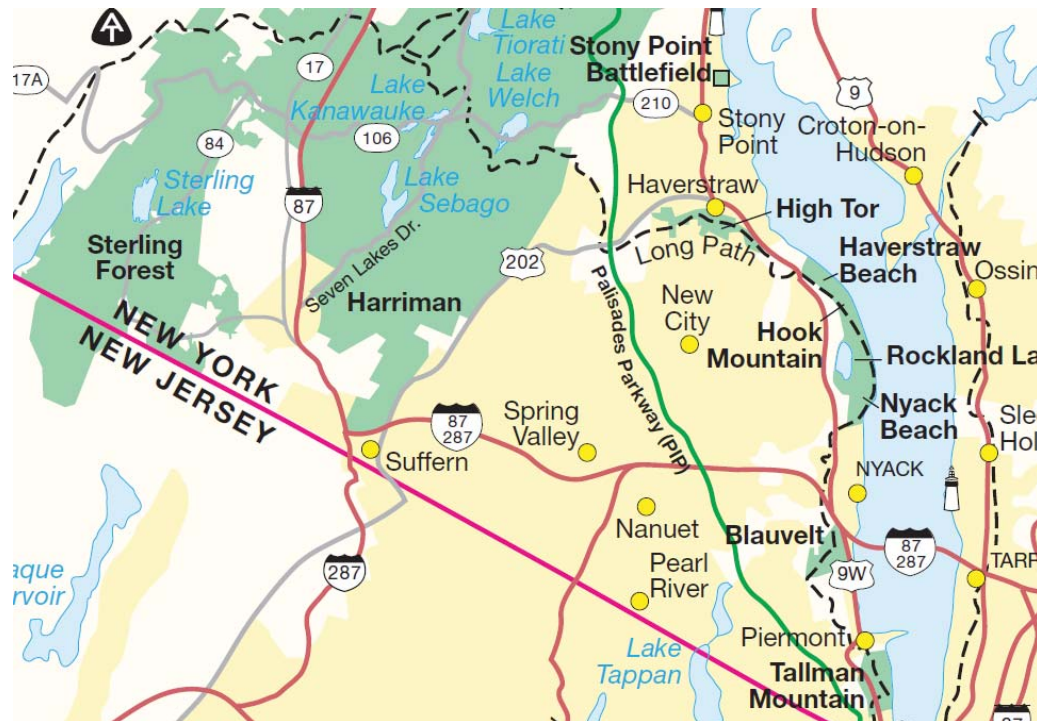
2 A. Yes. During the Site Visit conducted for the  
3 Administrative Law Judges on May 1, 2012, in the  
4 Rockland County area, the ALJs asked DPS staff  
5 about potential for impacts of the facility  
6 location on the Long Path (a long-distance  
7 hiking trail traversing portions of Rockland  
8 County in the general project area). In  
9 response, I explained to the judges that the  
10 location of the Long Path had been considered in  
11 earlier development of the West Hudson Railroad  
12 alternative, but that the Long Path, like other  
13 long-distance hiking trails, was historically  
14 subject to ongoing location adjustments as  
15 easements were finalized or as temporary  
16 arrangements expired. I offered to provide a  
17 factual report in testimony supporting the  
18 proposed settlement agreement, and the ALJs  
19 indicated that this was appropriate.

20 An earlier published location of the Long  
21 Path showed the Long Path as aligned along NYS  
22 Route 9W through parts of Nyack, and continuing  
23 north to a point south of Rockland Lake; from

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1           there, the Long Path entered the Rockland Lake  
 2           State Park and proceeded with an ascent of Hook  
 3           Mountain and then proceeded north along the  
 4           ridge of the Palisades formation; and then  
 5           descending to NYS Route 9W (The Long Path Guide,  
 6           Fifth Edition, 2002, New York-New Jersey Trail  
 7           Conference, editor Herb Chong). More recent  
 8           mapping at the Palisades Parks Conservancy  
 9           website confirms that this alignment has been  
 10          maintained to present as shown below:



11  
 12 (Long Path and State Parks location mapping source:

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1 Palisades Parks Conservancy website (May 23, 2012)  
2 <http://a1.exhibit->  
3 e.com/sites/palisades/img/palisades\_parkland.pdf)

4 This alignment of the Long Path hiking  
5 trail crosses over the proposed CHPEI facility  
6 alignment at two locations where the CHPEI  
7 cables will be installed via trenchless  
8 technology method known as Horizontal  
9 Directional Drilling (HDD) at crossings of the  
10 Rockland Lake State Park, at Mileposts 301.5 (DZ  
11 Sheet 536 of 568) and MP 302.6 (Sheet 541 of  
12 568). The proposed facility location will thus  
13 have no direct impact on the use or enjoyment of  
14 the Long Path hiking trail, since the use of HDD  
15 installation will result in no surface  
16 disturbance within the State Parks as the cable  
17 path will be drilled beneath the land surface  
18 from outside the Parks. I note that Exhibit  
19 121, the Environmental Impacts Report dated  
20 February 7, 2012, mistakenly refers to this  
21 trail as the Long Trail. The Long Trail is  
22 actually another long distance overland hiking  
23 trail that is located in the Green Mountains in

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1 the State of Vermont and is not located near the  
2 proposed CHPEI facility route.

3 This trenchless cable installation method  
4 will also be used at many locations along the  
5 length of the upland portions of the facility  
6 route to avoid disturbance of identified surface  
7 locations, including the State Parks and the  
8 Stony Point State Historic Site, also in  
9 Rockland County.

10 Q. Are there other locations where recreational  
11 resource concerns affected facility location or  
12 design considerations?

13 A. Yes. In general, the facility will avoid direct  
14 impacts on recreational resources including  
15 parks, trails and bikeways. There may be  
16 temporary impacts on designated bicycle routes  
17 located on roadway locations during facility  
18 construction, including designated NYS Bicycle  
19 Route 9 where that long-distance touring route  
20 is located along NYS Route 22 in Washington  
21 County from Dresden Station south to Whitehall  
22 Village (NYS DOT, *New York State Bicycle Route*  
23 *9*, undated map by Applied Geographics, Inc., for

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1 NYS DOT). Detailed facility location mapping of  
2 this area is at Appendix B Deviation Zone Maps,  
3 sheets 1 through 44); and for approximately 2400  
4 feet at NYS Route 9W in Clarkstown, Rockland  
5 County (See Appendix B Deviation Zone maps,  
6 sheets 537 through 541). At these locations,  
7 the facility will be located at roadside  
8 alignments where facility construction activity  
9 may temporarily affect traffic flow. Use of  
10 traffic control mitigation measures and other  
11 controls including measures identified in the  
12 Best Management Practices document (Joint  
13 Proposal Appendix F) will minimize impacts on  
14 these roadways including their recreational use  
15 as bicycle routes.

16 At one area in Washington County, there is  
17 potential to enhance a recreational use by  
18 development of the facility ROW as a multi-use  
19 recreation way - the Champlain Canalway Trail.  
20 In analyzing the proposed facility location in  
21 the Washington County Towns of Whitehall and  
22 Fort Ann, I recognized an opportunity for  
23 potential co-location and trail creation by

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1           shifting alignment of the transmission cable ROW  
2           away from track-side location within property of  
3           D&H Railroad - CP Rail. This area is depicted  
4           on the facility location alignment sheets and  
5           within the allowable Deviation Zone as defined  
6           in the Joint Proposal (JP). The figures  
7           indicating this area -- approximate project  
8           Milepost 112.5 to 116.8 - are at Appendix B,  
9           Facility Location, Deviation Zone Maps, Sheets  
10          46 through 73. The old Champlain Canal crosses  
11          CP Rail at MP 116.8 (Sheets 64 and 71 of 568).  
12          South of this intersection, an existing  
13          snowmobile trail runs parallel to the CP Rail  
14          tracks for approximately 2000 feet to Ryder Road  
15          near Milepost 117.2 (see Deviation Zone mapping  
16          at Sheets 71-73 of 568).

17                 As discussed in the Revised Environmental  
18          Impacts Assessment (Exhibit 121), at pages 73-74,  
19          the expanded Deviation Zone for the CHPEI  
20          facility in this area provides an opportunity for  
21          co-location of the underground HVDC cables with  
22          the proposed Champlain Canalway Trail as a shared  
23          use path along the old Champlain Canal towpath.

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1           The Facility design could readily accommodate  
2           installing the cables along the proposed route of  
3           the Champlain Canalway Trail within the Town of  
4           Whitehall so that post-construction restoration  
5           activities accommodate off-road bicycle,  
6           pedestrian and snowmobile uses, although the  
7           decision to pursue this option would need to  
8           occur later during detailed facility design and  
9           right-of-way easement negotiations. There have  
10          been public expressions of support for this  
11          concept and this routing variation in particular,  
12          as evidenced by letters submitted to the Public  
13          Service Commission by the New York State  
14          Snowmobile Association (September 20, 2010, DMM  
15          Item Number 91 {4B5094E5-11FB-47DC-87A6-  
16          E12CED01719E}); the Washington County Association  
17          of Snowmobile Clubs (October 12, 2011, DMM Item  
18          Number 269 {412FB87A-8B82-4D64-8E74-  
19          8F14884D0C69}); and the Washington County Board  
20          of Supervisors (October 26, 2011, PSC DMM  
21          document Item Number 270 {AF32C401-6A41-4F0C-  
22          BBE8-77D6C24E4982}).

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1 Q. On the May 1, 2012 site visit, did you also  
2 inspect the proposed Astoria Converter Station  
3 Site?

4 A. Yes. The Astoria Converter Station Site on  
5 property owned by Consolidated Edison  
6 (ConEdison) north of 20<sup>th</sup> Avenue in Astoria,  
7 Queens was the first official stop on the ALJ's  
8 May 1, 2012 site tour. The tour bus entered the  
9 ConEdison property via the main entrance  
10 opposite 31<sup>st</sup> Street, followed secondary access  
11 roads and stopped at the northeasterly portion  
12 of the proposed Converter Station Site. From  
13 there, the tour group disembarked from the bus  
14 and observed the site from the paved area  
15 adjoining the Converter Station Site. I was  
16 interested in walking over the southerly portion  
17 of the site to review the conditions of the  
18 forested area there and further assess site  
19 suitability. Despite warnings from the site  
20 manager about reports of feral cats and dogs in  
21 the area, I proceeded.

22 My observations of the site and the  
23 immediately adjoining area are as follows. Site

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1           vegetation is predominantly species associated  
2           with urban areas and areas of prior site  
3           disturbance and includes many common species  
4           including poplar, willow, red pine, red cedar,  
5           black cherry and poison ivy; non-native or  
6           invasive species, such as Norway maple, honey-  
7           locust, tree-of-heaven (*Ailanthus*), white  
8           mulberry, multi-flora rose, common reed  
9           (*Phragmites*), *Artemisia*, garlic mustard and  
10          orchard-grass. The only wildlife species I  
11          observed was one Canada goose flying over  
12          Luyster Creek.

13                 The site is fairly level, with a small rise  
14          at the southern end of the site where an area of  
15          debris dumping appears to have occurred  
16          historically in the past, and more recently  
17          small amounts of wood chips have been dumped in  
18          the forest. The shoreline area along Luyster  
19          Creek easterly of the site is partly bulk-headed  
20          with sheet piling. The site affords good  
21          accessibility with wide, level access roads and  
22          nearby waterfront. There are overhead electric  
23          transmission lines along the northerly edge of

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1 the site that connect to the Astoria Energy  
2 generating facility located on the opposite side  
3 of Luyster Creek.

4 Q. Was this the first time you had visited this  
5 area?

6 A. It was the first time I walked over the Astoria  
7 Converter Station Site, but I have been to the  
8 proposed Champlain-Hudson Power Express  
9 interconnection point at the Astoria Annex  
10 substation on a prior site inspection for this  
11 project. Previously, I have been on the  
12 ConEdison property and adjoining NYPA, NRG,  
13 Astoria Energy Associates and Astoria Generating  
14 properties on several occasions in the past as  
15 part of review of proposed generating facilities  
16 and associated transmission facility siting  
17 reviews as well as construction inspections at  
18 NYPA Poletti Repowering project.

19 Q. Have you ever been to other High Voltage DC-AC  
20 converter station sites?

21 A. Yes, I have been to the Neptune Regional  
22 Transmission System HV DC-AC converter station  
23 located in North Hempstead, Long Island on

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1           several occasions prior to and during  
2           construction, as well as during operation of  
3           that facility. I also reviewed the TransEnergie  
4           DC-AC converter station located in Brookhaven,  
5           Long Island as part of siting review prior to  
6           its construction.

7    Q.    Based on current site conditions, what is your  
8           conclusion regarding suitability of the Astoria  
9           Converter Station Site?

10   A.    I have not observed anything that suggests the  
11           site is not suitable for the proposed Astoria  
12           Converter Station.

13   Q.    In conclusion, do you recommend adoption of the  
14           Joint Proposal and supporting documents?

15   A.    Yes, I do.

16   Q.    Does this conclude your pre-filed direct  
17           testimony?

18   A.    Yes, it does.

1 BY MS. MORENO:

2 Q. Mr. Davis, this document is entitled: The  
3 rebuttal testimony of Andrew C. Davis consisting  
4 of 27 pages. Did you supervise or prepare this  
5 document?

6 A. Yes. I prepared this document.

7 Q. Do you have any corrections or changes to  
8 make to this document?

9 A. No, I do not.

10 MS. MORENO: Your Honors, I request  
11 that the document entitled: The rebuttal  
12 testimony of Andrew C. Davis be copied into the  
13 record as if given orally.

14 ALJ PHILLIPS: Mr. Davis, this rebuttal  
15 testimony will be copied into the record as though  
16 orally given.

17 (The Rebuttal testimony of Andrew C.  
18 Davis is inserted as follows)

19

20

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BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of

Application of Champlain Hudson Power Express, Inc. for a  
Certificate of Environmental Compatibility and Public Need  
Pursuant to Article VII of the PSL for the Construction,  
Operation and Maintenance of a High Voltage Direct Current  
Circuit from the Canadian Border to New York City

Case 10-T-0139

June 28, 2012

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Rebuttal Testimony of:

ANDREW C. DAVIS  
Utility Supervisor (Environmental)  
State of New York  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350

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1 Q. Please state your name.

2 A. My name is Andrew C. Davis.

3 Q. Have you previously testified in this proceeding?

4 A. Yes, I submitted Direct Testimony dated June 7,  
5 2012.

6 Q. What is the purpose of your testimony?

7 A. The primary purpose of my testimony is to show  
8 that the preliminary plans of Consolidated Edison  
9 Company of New York, Inc. (Con Edison) for a new  
10 Learning Center within the Astoria Complex in  
11 Queens, New York at the "Luyster Creek Property,"  
12 as defined in the testimony proffered by Con  
13 Edison, are not sufficiently developed to warrant  
14 denial of a Certificate of Environmental  
15 Compatibility and Public Need to the Applicants in  
16 this proceeding. I will also address recent  
17 planning initiatives that bear on the location of  
18 the Champlain Hudson Power Express in the New York  
19 City area.

20 Q. Have you reviewed the testimony and draft plans  
21 submitted by Con Edison witnesses Canizio,

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1 Fishbein and Drucker regarding the proposal to  
2 develop a new Learning Center at the Luyster Creek  
3 property?

4 A. Yes, I reviewed those documents, considered the  
5 alternative arrangements proffered in support of  
6 that testimony and did further investigation into  
7 certain aspects of planning and zoning in relation  
8 to that testimony and those proposals.

9 Q. Are you an attorney, architect or certified  
10 planner?

11 A. No, I am not. But I have reviewed several major  
12 facility proposals pursuant to Public Service Law  
13 (PSL) Articles VII and X in previous cases before  
14 the Public Service Commission (PSC) and the New  
15 York State Board on Electric Generation Siting and  
16 the Environment, including project sites within  
17 New York City, and have provided testimony and  
18 analysis regarding matters of zoning, planning,  
19 land use, waterfront development and related  
20 topics in other proceedings as referenced in  
21 Exhibit\_\_\_ (ACD-1) attached to my pre-filed direct

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1 testimony in this case. In addition, I have  
2 experience reviewing property matters including  
3 surveying, site planning, and the application of  
4 local land use and development regulations through  
5 previous professional work, and in my capacity as  
6 a member of the Planning Board in the rural town  
7 where I reside. I also have experience in review  
8 of several transactions by Con Edison involving  
9 PSC consideration of the transfer of utility  
10 properties subject to PSL Section 70, including  
11 the following cases:

12 CASE 01-E-0377 - Joint Petition of Con Edison  
13 and FSM East River Assocs., LLC, for  
14 Approval to Transfer Certain Real  
15 Property Located at 616 First Ave., A  
16 Portion of 685 First Avenue, 700 First  
17 Avenue and 708 First Avenue, Manhattan  
18 from Con Edison to FSM East River  
19 Associates LLC;

20 CASE 02-M-0741 - Petition of Con Edison for  
21 Approval of the Transfer of

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1                   Approximately 21.3 Acres of Land Located  
2                   in its Astoria Complex, Borough of  
3                   Queens, New York City, to Luyster Creek,  
4                   LLC;

5                   Case 05-M-0181 - Joint Petition of Con Edison  
6                   and 735 Avenue of the Americas LLC for  
7                   Approval to Transfer Certain Real  
8                   Property Located at 735-51 6th Avenue,  
9                   Manhattan, a/k/a 101-7 West 24th Street;

10                  Case 06-E-0546 - Petition of Con Edison for  
11                  Approval of the Transfer of Two  
12                  Easements in Property to the United  
13                  States of America;

14                  Case 07-E-0106 - Petition of Con Edison for  
15                  Approval of the Transfer of Certain Land  
16                  in Mount Pleasant, Westchester County to  
17                  Hardscrabble Hill Developments Group,  
18                  L.L.C. Pursuant to Section 70 of the  
19                  PSL;

20                  Case 07-M-0407 - Joint Petition of Con Edison  
21                  and 405 W. 53rd Development Group, LLC

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1                   for Approval of the Transfer of Certain  
2                   Real Property located at 405-427 West  
3                   53rd Street and for Related Relief.

4 Q.    Is the testimony of Con Edison witness Canizio  
5           confusing at any point?

6 A.    In my opinion, yes.  At page 3, lines 6 and 7 the  
7           testimony asks "Does Con Edison not already have a  
8           training facility in Queens?"  The answer at line  
9           8 begins, "Yes, on Vernon Boulevard in Queens."  
10           What this means to that witness may be different,  
11           but to me the testimony is stating that "Yes, Con  
12           Edison does not already have a training center."

13 Q.    Do you know for a fact whether Con Edison has a  
14           training center?

15 A.    Based on information and belief, Con Edison does  
16           have a training center at 43-82 Vernon Boulevard  
17           in Queens, at Block 488, Lot 114; it is in an M1-4  
18           zoning lot, as depicted at NYC Zoning Map 9b, and  
19           as reported at the New York City (NYC) OASIS  
20           website.  Attached as Exhibit\_\_\_ (ACD-2), is a  
21           screen shot from the OASIS website indicating the

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1 lot in relation to adjoining properties. The last  
2 time I drove or walked past that address, in April  
3 of this year, the training center was actually  
4 there.

5 Q. Does the preliminary design and testimony offered  
6 by Con Edison witnesses Fishbein and Drucker  
7 identify relevant requirements in the NYC Zoning  
8 Resolution (ZR)?

9 A. The Preliminary Zoning Analysis & Concept Design  
10 Qualifications document marked as Exhibit\_\_ (KD-2)  
11 includes identification of factors relevant to a  
12 preliminary review, however it also includes  
13 assumptions and qualifying statements such as:  
14 "The final interpretation of the ZLDA needs to be  
15 verified by a Zoning and Land Use Attorney.  
16 Without the benefit of Con Edison's Land Use  
17 Attorney, our interpretations were necessary to  
18 complete the Concept Design exercise in the  
19 scheduled timeframe" and "For the purpose of our  
20 preliminary zoning analysis and development of the  
21 Concept Design, the limits of the property were as

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1 defined by the property line shown in the CAD file  
2 (Astoria\_Map-local-no-contours.dwg). The property  
3 line must be confirmed by a site survey" (KD-2,  
4 page 1 of 7); "The parcel that is the subject of  
5 study is a part of the larger Block 850 Zoning lot  
6 1. The ZLDA appears to treat this parcel as a  
7 separate stand alone zoning lot for the purpose of  
8 determining zoning restriction and developable  
9 area" (KD-2, pg. 2 of 7); and "High voltage  
10 easement (aerial portion) as shown on the site  
11 survey...was not taken into consideration for this  
12 study" (KD-2, pg. 3 of 7). So as a preliminary  
13 look, the analysis takes into consideration many  
14 relevant aspects of the criteria that would apply  
15 to site development restrictions; but it does not  
16 resolve questions and issues raised by its author.  
17 It also does not address relevant considerations  
18 such as: how the presence of utility easements on  
19 the site might affect layout; how the pending  
20 remediation plans at adjoining parcel(s) might  
21 affect facility layout and development; whether

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1           the proposal is consistent with the New York City  
2           Waterfront Revitalization Plan; or whether or how  
3           the plan interferes with the proposed development  
4           of part of the site by CHPEI in this proceeding  
5           and through action of the Transfer of Property to  
6           Luyster Creek, LLC, as approved by the PSC in Case  
7           02-M-0741.

8    Q.    Does the layout generally conform to zoning  
9           requirements?

10   A.    The Preliminary Zoning Analysis in (KD-2) at pages  
11           3-6 lists many zoning provisions that may or may  
12           not be applicable. The analysis notes that the  
13           maximum size of accessory group parking facilities  
14           is 150 spaces (ZR 44-12); that the number of  
15           spaces "required" by the "program" greatly exceeds  
16           that maximum size; and that specific approvals by  
17           the Commissioner of Buildings and others would be  
18           necessary for 500 parking spaces. (Actually, the  
19           preliminary designs exceed 500 parking spaces: KD-  
20           4 Attachment 6 shows 511 spaces, KD-4 Attachment 8  
21           shows 502 spaces, and KD-4 Attachment 10 shows 511

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1 spaces plus 10 handicapped parking spaces for a  
2 total of 521.)

3 The analysis assumes that a "40 feet [setback  
4 for] shore public walkway" is not applicable;  
5 however the site layouts include this "40-0' req.  
6 waterfront yard at shore public walkway" as a site  
7 restriction ((KD-4 - Attachment 1) that influenced  
8 the development footprint shown in other figures.

9 Furthermore, it is not clear to me that the  
10 classification of the proposed use as "offices -  
11 conference and education center" is an appropriate  
12 classification for the proposed use. I have not  
13 consulted with NYC Department of City Planning on  
14 this question, but I note that, in general,  
15 convention or conference centers are much larger  
16 venues than the meeting hall area proposed in this  
17 preliminary assessment.

18 The American Planning Association Land Use  
19 Classification scheme has a structure type listing  
20 of "Exhibition, convention, or conference  
21 structure" which is defined as "A typical

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1           exhibition hall facility occupies several city  
2           blocks and contains 50,000 to 700,000 square feet  
3           of contiguous flat floor space. These halls have  
4           high ceilings (25 to 35 feet) and can accommodate  
5           a variety of events. Some very large cities  
6           (Chicago, for example, has multilevel exhibition  
7           halls).” By this classification scheme, the  
8           proposed use does not meet a “conference center”  
9           classification. I note that the NYC ZR is not  
10          based on this use classification scheme. The ZR  
11          does, however, establish and define special  
12          districts that include convention centers (e.g.,  
13          Special Willits Point District, Article XII,  
14          Chapter 4; 124-191) but there is no general  
15          listing in the NYC ZR for conference or convention  
16          centers in any use group. The ZR does include a  
17          use called “Trade or other Schools for Adults”  
18          which is within Use Group 9 or 16 (depending on  
19          objectionable effects) with parking standards PRC-  
20          B1 (similar to the proposed “office” use  
21          definition); and it also includes a “Meeting Hall”

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1 use within Use Group 6, but PRC-D with parking  
2 standards.

3 Q. Is the training center a school?

4 A. Probably not, as defined by the ZR, which defines  
5 a school as:

6 (a) an institution providing full-time day  
7 instruction and a course of study that meets  
8 the requirements of Sections **3204, 3205, and**  
9 **3210 of the New York State Education Law;** or  
10 (b) a nursery school or kindergarten...or  
11 (c) a child care service operating under a  
12 permit issued pursuant to Section 47.03 of  
13 the New York City Health Code.

14 Q. Is the training center a Trade School for Adults,  
15 or a Meeting Hall as defined by the ZR?

16 A. It is not clear from the information that Con  
17 Edison has provided what the duration of training  
18 sessions (the number of hours or days versus  
19 months or years in a particular training program  
20 or curriculum) that would inform such a  
21 distinction of use. Con Edison has also not

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1 indicated the number of participants or occupancy  
2 of the site at any particular time or for any  
3 conference type of event in the planning and  
4 design criteria used for the preliminary layout.  
5 Con Edison has presented the number of parking  
6 spaces proposed. If the use is considered a  
7 Meeting Hall, then the number of parking spaces  
8 allowed by classification PRC-D appears to be a  
9 function of the number of occupants for that use  
10 (one parking space per eight occupants) as well as  
11 the maximum number identified for the M3-1  
12 district.

13 Q. Is the training center an accessory use of the  
14 property?

15 A. Perhaps, if the Luyster Creek zoning lot parcel is  
16 considered part of the remainder of the Con Edison  
17 property within Block 850, Lot 1; but not likely.  
18 The NYC ZR defines an "accessory use" as follows:

19 (a) is a #use# conducted on the same #zoning  
20 lot# as the principal #use# to which it is  
21 related (whether located within the same or

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1 an #accessory building or other structure#,  
2 or as an #accessory use# of land), except  
3 that, where specifically provided in the  
4 applicable district regulations or elsewhere  
5 in this Resolution, #accessory# docks, off-  
6 street parking or off-street loading need not  
7 be located on the same #zoning lot#; and  
8 (b) is a #use# which is clearly incidental  
9 to, and customarily found in connection with,  
10 such principal #use#; and  
11 (c) is either in the same ownership as such  
12 principal #use#, or is operated and  
13 maintained on the same #zoning lot#  
14 substantially for the benefit or convenience  
15 of the owners, occupants, employees,  
16 customers, or visitors of the principal  
17 #use#.

18 Q. What is the principal use of the lot?

19 A. That depends on what you consider the "lot". The  
20 Con Edison Parcel of which the Luyster Creek  
21 Converter Site is a segment that includes several

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1 distinct areas, some of which are improved and are  
2 actively used, and others, including the CHPEI  
3 Luyster Creek Converter Station site, are  
4 apparently used for occasional parking of  
5 equipment, some dumping of debris and landscape  
6 trimmings, and apparently not much else. There is  
7 a Federal Aviation Administration Low Level Shear  
8 Detection tower that adjoins the proposed CHPEI  
9 Converter Station Site, and easements for electric  
10 transmission lines crossing to the north of the  
11 area.

12 The overall Con Edison parcel is identified  
13 as Lot 1 of Block 850 in the Borough of Queens.  
14 Attached Exhibit \_\_\_ (ACD-3) is a set of maps  
15 showing the zoning location of the Lot and Block  
16 location of the property. Most of Lot 1 is in  
17 practical terms used for electric transmission  
18 substations and utility equipment storage, an LNG  
19 gas storage facility with associated containment,  
20 processing, transfer and conveyance facilities,  
21 and access roads and waterfront loading areas

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1 along part of the East River waterfront and the  
2 northerly extent of Luyster Creek. The 5-acre  
3 Luyster Creek Converter Station site portion of  
4 the property is largely vacant.

5 Q. Do you have an opinion as to whether the proposed  
6 Con Edison training and education center would be  
7 an accessory use to the overall Con Edison  
8 property at Block 850, Lot 1?

9 A. Since Con Edison reportedly has one training and  
10 education center in NYC, as described above, and  
11 that is located on a lot apparently dedicated to  
12 that use (with accessory on-site parking and  
13 loading areas) then I would conclude that training  
14 and education centers as proposed in testimony of  
15 the Con Edison witnesses are not customarily found  
16 in connection with other Con Edison utility  
17 properties, and thus would conclude that it would  
18 not strictly meet the definition of an accessory  
19 use in the ZR.

20 Q. Do you have any observations regarding the  
21 preliminary layout of the Training and Education

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1 Center site as presented in the Con Edison  
2 testimony?  
3 A. The Con Edison layout presented in testimony of  
4 witnesses Fishbein and Drucker includes some 1.5  
5 acres of acreage that exceeds the footprint of the  
6 parcel described in the approved transfer of  
7 property from Con Edison to Luyster Creek LLC in  
8 Case 02-M-0741. Con Edison includes about 1.5  
9 acres of additional acreage at the northeasterly  
10 corner of the site depicted in the (KD-4) and (SF-  
11 3) series of figures attached to the testimony of  
12 Mr. Drucker and Mr. Fishbein. Attached as  
13 Exhibits\_\_\_(ACD-4) and (ACD-5) are two figures, one  
14 being a depiction of the parcel approved for  
15 transfer from Con Edison to Luyster Creek LLC, by  
16 the PSC in Case 02-M-0741, overlaid on an aerial  
17 orthophotograph of the area; and the other  
18 depicting that parcel outline imposed on the Con  
19 Edison preliminary site plan (KD-4) Attachment 10.  
20 These figures are based on the description of  
21 property to be transferred that accompanied the

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1 petition by Con Edison in Case 02-M-0741. These  
2 figures are a general representation of the metes  
3 and bounds described in that petition and portrayed  
4 on background information developed by others: the  
5 boundary line depictions used in these exhibits  
6 were not prepared by a licensed surveyor or  
7 professional engineer. They are general  
8 representations useful for planning purposes.

9 I further note that Con Edison acquired title  
10 in the form of "Letters Patent" to some currently  
11 or previously underwater lands that now involve  
12 upland and underwater areas from the New York State  
13 Office of General Services, classified as "Vacant  
14 Land" for tax purposes at the time of filing or  
15 recording on September 23, 2003. This acquisition  
16 is recorded at the Office of the City Register of  
17 the City of New York under register file number  
18 2003000379828.

19 Q. What is the proposed location of the proposed CHPEI  
20 transmission HVDC and HVAC cables in relation to  
21 the Luyster Creek site?

1 A. The location of the proposed CHPEI transmission  
2 cables was presented in Appendix B of the Joint  
3 Proposal. The proposed location, however has been  
4 modified to reflect, in part, an agreement between  
5 Con Edison and CHPEI to avoid crossing near certain  
6 infrastructure associated with LNG storage and  
7 processing at the northeasterly corner of the Con  
8 Edison property.

9 Attached is a figure Exhibit\_\_\_ (ACD-6) that  
10 depicts the revised location of the CHPEI cable  
11 route across the East River to landfall at the Con  
12 Edison property; proceeding to the proposed  
13 converter station site and interconnecting to the  
14 NYPA Astoria East substation site; and the Astoria-  
15 Rainey Cable exiting the NYPA substation and  
16 proceeding across the Con Edison property to 20<sup>th</sup>  
17 Avenue. It is my understanding that JP Appendix B  
18 will be updated to show this revision to the  
19 proposed transmission facility location.

20 Q. Will the route revision adversely affect the use of  
21 the waterfront area?

1 A. The cable alignment depicted shows the facility in  
2 close proximity to waterfront from the landfall at  
3 MP 332.1 to the proposed Astoria (Luyster Creek)  
4 Converter Station 5-acre site.

5 The cable should accommodate existing uses at  
6 this working waterfront location: it will be  
7 designed, constructed and operated in accordance  
8 with all applicable engineering and environmental  
9 criteria as described in the Joint Proposal and  
10 accompanying exhibits. As the cable will be buried  
11 and the surface restored appropriately to pre-  
12 existing conditions, there should be no significant  
13 adverse impact on natural resources or land uses  
14 associated with the waterfront location. The  
15 evaluation of conformance of the facility with  
16 Coastal Zone Policies and coastal area resources in  
17 the Joint Proposal and supporting exhibits does not  
18 change the conclusions regarding conformance of the  
19 project with the current WRP and CZM Program.

20 Q. Is there any additional information regarding  
21 pending environmental remediation efforts at the

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1 Con Edison property that affect the property  
2 approved for transfer to Luyster Creek LLC?

3 A. It is my understanding that the NYS Department of  
4 Environmental Conservation (DEC) has identified the  
5 need for improvement and replacement of a 30-inch  
6 diameter stormwater drainage culvert that crosses  
7 the south-central portion of the Luyster Creek  
8 parcel, and installation of a new outfall structure  
9 for that replacement drainage system at the Luyster  
10 Creek waterfront. Responding by email of June 22,  
11 2012 to an inquiry by DPS staff, Doug Macneal of  
12 DEC stated that "the actual outfall is buried now,  
13 and the new one will be located south of the mound  
14 south of the proposed converter station location."  
15 As described the location would cross the area  
16 included in the preliminary site design by Con  
17 Edison, and be several hundred feet away from the  
18 CHPEI Converter Station site.

19 Q. Are there any municipal or community planning  
20 initiatives underway that may affect the  
21 development potential and site arrangement

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1           considerations for advancing the Con Edison  
2           potential use of the Luyster Creek frontage  
3           portion of Block 850, Lot 1?

4    A.    Yes, there are two planning proposals that may  
5           bear on future plans or development of the  
6           property in question that warrant some degree of  
7           consideration.

8           First, NYC recently issued proposed revisions to  
9           the Waterfront Revitalization Program (WRP) most  
10          recently updated in 2002 as the New Waterfront  
11          Revitalization Program (New York City Department  
12          of City Planning document DCP #2-14).  The WRP  
13          comprises a local waterfront revitalization plan  
14          for Coastal Zone management purposes and guides  
15          development and resource protection considerations  
16          in the designated coastal zone areas.

17          The proposed WRP revisions were published by NYC  
18          Department of City Planning in March of this year,  
19          and include changes such as the boundary of the  
20          designated Coastal Zone in limited areas, and  
21          addition of Ecologically Significant and

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1 Recognized Ecological Complex areas; provisions to  
2 examine and minimize risks of climate change based  
3 on sea level rise projections; promotion of water-  
4 dependent industries and development of bulkhead  
5 and pierhead infrastructure for maritime use,  
6 including newly-designated Priority Marine  
7 Activity Zone areas; and other changes appropriate  
8 to the variety of conditions along the expanse of  
9 waterfront within the five boroughs.

10 The proposed WRP change most relevant to this  
11 proceeding includes the proposal to designate  
12 portions of the waterfront at the Con Edison and  
13 nearby properties as a Priority Marine Activity  
14 Zone, where shoreline maintenance and expansion  
15 may be necessary to maintain or expand water-  
16 dependent uses and waterborne transportation. The  
17 figure presented in Exhibit\_\_\_ (ACD-7) Luyster PMAZ  
18 shows the waterfront area in the Luyster Creek  
19 site vicinity proposed for designation as a  
20 Priority Marine Activity Zone in red, overlaid on  
21 an aerial ortho-photograph. The figure also

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1 indicates the revised location of the CHPEI cables  
2 in yellow.

3 The second planning initiative that may have a  
4 limited bearing on consideration of this area is  
5 the *Waterfront Vision Plan for Astoria & Long*  
6 *Island City, Queens*.

7 Q. How does this proposed change to the WRP affect  
8 the Luyster Creek site?

9 A. The designation as a Priority Marine Activity Zone  
10 appears to include part of the Luyster Creek  
11 shoreline at the area that Con Edison indicates  
12 would be for a "40-0' Req. waterfront yard at  
13 shore public walkway (ZR 62-332)" on Exhibit  
14 \_\_ (KD-4)-Attachment 1, and directly abutting the  
15 layout for the "Outdoor Training" area designated  
16 by symbol "K" on Exhibit \_\_ (KD-4) Attachment 10.  
17 The preliminary design concept presented by the  
18 Con Edison witnesses would involve location of  
19 outdoor training facilities including overhead  
20 utility facilities at a location directly abutting  
21 the reinforced bulkhead and loading area. Since a

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1 training and conference use or office space is not  
2 really a working waterfront activity,  
3 additional design consideration and plan  
4 refinement to avoid conflicts with the working  
5 waterfront use at this site would be appropriate.

6 Q. Is a shore public walkway required by the Zoning  
7 Regulations at this location?

8 A. As noted in the Preliminary Zoning Analysis and  
9 Concept Design Qualifications document by Con  
10 Edison witnesses (KD-2), waterfront public access  
11 requirements are exempted in manufacturing  
12 districts that are predominantly in Use Groups 16,  
13 17 or 18.

14 While the conceptual design presented by the Con  
15 Edison witnesses appears to be sensitive to  
16 providing a degree of recreational access to the  
17 Luyster Creek waterfront, I am not convinced that  
18 such access would be made generally available,  
19 given the security interests in limiting access to  
20 the Con Edison utility property in general, and  
21 areas of critical infrastructure at the Astoria

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DAVIS

1 complex in particular, as well as potential  
2 exposure to construction training at the proposed  
3 outdoor training area indicated on the preliminary  
4 design drawings.

5 Q. What is the *Waterfront Vision Plan for Astoria &*  
6 *Long Island City, Queens, and how does it relate to*  
7 *this proceeding?*

8 A. The circa-2011 *Waterfront Vision* plan was developed  
9 by the community with Green Shores NYC and the  
10 Trust for Public Land. The plan includes  
11 recommendations to provide waterfront access,  
12 connect waterfronts to neighborhoods, enhance  
13 environmental resources, and promote the East River  
14 as an educational and recreational resource.  
15 Recognizing the limitations presented by industrial  
16 zoning and uses, including the preclusion of access  
17 at the length of waterfront in the Con Edison  
18 property and adjoining lots, the plan identifies a  
19 potential access point to southeasterly shore of  
20 Luyster Creek from the end of 19<sup>th</sup> Avenue  
21 waterfront. Attached as Exhibit\_\_\_ (ACD-8

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1 Waterfront Vision Plan) is an excerpt from the  
2 Waterfront Vision plan that identifies the location  
3 and access concept. Development of this concept  
4 would provide a "get-down" with dock and launch  
5 point for small watercraft - canoes and kayaks -  
6 and provide a small area with public viewing areas.  
7 A simulation view of the design concept shows a  
8 view toward the north and west, including the Con  
9 Edison Luyster Creek waterfront area. The plan  
10 shows green space that fronts on 20<sup>th</sup> Avenue,  
11 corresponding with the ball fields owned by Con  
12 Edison at the southeasterly corner of its Block  
13 850, Lot 1 property, as well as the 20<sup>th</sup> Ave.  
14 frontage of the lot approved for transfer to  
15 Luyster Creek LLC in Case 02-E-0741, and identified  
16 as a proposed parking area in the preliminary  
17 designs for the Con Edison Learning and Conference  
18 use.

19 Q. Do you see this plan as being in conflict with the  
20 proposed use of the Luyster Creek parcel as either

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1 a Learning and Conference Center or the CHPEI  
2 Converter Station, or with both?

3 A. I see this as an opportunity to bring the  
4 adversarial parties together to cooperatively  
5 resolve the sole remaining facility siting issue in  
6 this major case. Con Edison has talented and  
7 professional lawyers, engineers, and design and  
8 architectural consultants that could be tasked with  
9 participating in concert with the other active and  
10 interested professionals and agencies involved in  
11 this proceeding to develop a comprehensive plan for  
12 the Luyster Creek property that serves the multiple  
13 interests of the parties and the public at large.  
14 In my opinion, there is no reason this needs to  
15 continue as a "winners and losers" situation. Con  
16 Edison has valuable greenspace property in the  
17 ballfields at 20th Ave. that is apparently not  
18 openly available to the public. The CHPEI facility  
19 will reportedly provide significant benefits to the  
20 electric system in the NYC region.

1 BY MS. MORENO:

2 Q. You prepared to total of eight exhibits  
3 which are identified as eight CDs 1 through 8, and  
4 have been marked as Exhibits 189 through 196. Did  
5 you prepare those exhibits or were they prepared  
6 under your supervision?

7 A. I prepared those exhibits, yes.

8 Q. Do you have any corrections to make at this  
9 time?

10 A. No corrections.

11 MS. MORENO: So, Your Honors, we have  
12 prefiled those exhibits as Hearing Exhibits 189  
13 through 196 to be marked for identification.

14 ALJ PHILLIPS: The exhibits so  
15 identified will be marked for identification. And  
16 I will just note at this point that we intend to  
17 deal with the moving into evidence of exhibits at  
18 the end of the day, so they will be marked for  
19 identification at this point.

20 (Hearing Exhibits 189-196 were marked  
21 for identification.)

22 It's our understanding that there is no  
23 cross-examination for this witness. Is that still  
24 the case? Hearing nothing, then, thank you and  
25 you are excused.

1 (The witness was excused at 10:50 a.m.)

2 ALJ PHILLIPS: The applicants are going  
3 to offer Mr. Jessome next.

4 MR. POND: Yes, Your Honor. The  
5 applicants offer Donald Jessome.

6 D O N A L D J E S S O M E,  
7 called as a witness by the Applicant and, being  
8 affirmed by ALJ PHILLIPS, was examined and  
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. POND:

12 Q. Mr. Jessome, do you have before you a  
13 document consisting of eight pages entitled:  
14 Direct testimony of Donald G. Jessome?

15 A. I do.

16 Q. Are you familiar with the contents of that  
17 document?

18 A. I am.

19 Q. If I asked you the questions contained in  
20 that document today would your answers be the same  
21 as given therein?

22 A. Yes.

23 Q. And, do you also sponsor two exhibits with  
24 your direct testimony which have been marked  
25 Hearing Exhibit 132 and 133?

1 A. I do.

2 Q. And, are you familiar with the contents of  
3 those exhibits?

4 A. I am.

5 Q. Is the information stated in there true and  
6 correct?

7 A. It is.

8 Q. Are you also sponsoring Exhibit 154 which is  
9 a list of hearing exhibits that you are  
10 sponsoring?

11 A. I am.

12 MR. POND: Your Honors, it may be useful  
13 for the record to explain what Hearing Exhibit 154  
14 is. It's a list of some of the exhibits that were  
15 in the original application and other documents  
16 filed in support of the JP. Those are the ones  
17 that Mr. Jessome is the witness to. We thought it  
18 might be useful for the record to pull for each of  
19 the witnesses and identify which exhibits going  
20 with the JP are sponsored by which witness, so  
21 we'll be doing that for each of our witnesses.  
22 Then, then, we'll be submitting an affidavit for  
23 the exhibits that are addressed by the witnesses  
24 who aren't appearing -- or sponsored by witnesses  
25 who aren't appearing here.

1 ALJ PHILLIPS: Thank you.

2 MR. POND: So, I would then move that  
3 the prefiled Direct testimony of Mr. Jessome be  
4 entered into the record as if given orally. And I  
5 tender Mr. Jessome for cross-examination.

6 ALJ PHILLIPS: The testimony will be  
7 moved into the record as though orally given.

8 (The prefiled testimony of Donald G.  
9 Jessome was entered into the record as  
10 follows)

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**DIRECT TESTIMONY**  
**OF**  
**DONALD G. JESSOME**

**SUBMITTED ON BEHALF OF**  
**CHAMPLAIN HUDSON POWER EXPRESS, INC.**  
**AND CHPE PROPERTIES, INC.**

**June 7, 2012**

**DIRECT TESTIMONY OF  
DONALD G. JESSOME**

**Q. Please state your name, title and business address.**

1 A. My name is Donald G. Jessome. I am President and Chief Executive Officer of  
2 Transmission Developers, Inc., TDI-USA Holdings Corp. (“TDI”); Champlain Hudson  
3 Power Express, Inc. (“CHPEI”) and CHP Properties, Inc. (“CHP Properties” and  
4 collectively with CHPEI, the “Applicants”). My business address is 600 Broadway,  
5 Albany, New York 12207.

6

7 **Q. Please describe your educational background and business experience.**

8

9 A. My educational background and business experience are summarized in Exhibit \_\_ (DGJ-  
10 1).

11 **Q. What is the purpose of your direct testimony in this proceeding?**

12 A. My testimony will provide an overview of Applicants’ direct testimony in this case. In  
13 addition, I will submit testimony on the cost of the Facility and the additional facilities  
14 required to be constructed in Canada to enable the Facility to supply electricity to  
15 consumers in New York State and on a memorandum of understanding recently signed  
16 by TDI and Luyster Creek, LLC, which has a contract to purchase the Luyster Creek  
17 property from the Consolidated Edison Company of New York, Inc. (“Con Edison”).

18

19 **1. Overview of Applicants’ Direct Testimony**

20

21

22 **Q. Please describe the direct testimony being submitted by Applicants in this**  
23 **proceeding.**

24

**DIRECT TESTIMONY OF  
DONALD G. JESSOME**

1 A. In their Ruling on Issues, Administrative Law Judges Michelle Phillips and Kevin J.  
 2 Casutto identified three issues for hearing in this proceeding: (1) deliverability; (2) the  
 3 proposed Luyster Creek site; and (3) cost/benefit analyses and facility costs. The issue of  
 4 deliverability is addressed in the direct testimony of Mr. Larry Eng and Mr. Clement E.  
 5 Nadeau. The suitability of the Luyster Creek site for use as a location for the Facility’s  
 6 converter station is addressed in the direct testimony of Dr. Sean Murphy. The benefits  
 7 of the Facility are described in the direct testimony of Ms. Julia Frayer of London  
 8 Economics. My direct testimony will address the issue of the cost of the Facility. In  
 9 addition, I will also describe a recently-signed agreement between TDI and Luyster  
 10 Creek LLC that is expected to provide Applicants with the right to use a portion of the  
 11 Luyster Creek site as the location for the Facility’s converter station.

**2. Facility Costs**

12  
 13  
 14  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

DIRECT TESTIMONY OF DONALD G. JESSOME

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Applicants have recently entered into a stipulation with Con Edison (the “Stipulation”). In the Stipulation, Applicants have renewed [REDACTED] their commitment to develop the Facility on a merchant basis (except with respect to use of the Astoria-Rainey Cable for the delivery of electricity not also delivered over the HVDC Transmission System). In addition, Applicants have also committed in the Stipulation: (1) to obtain a 75 percent throughput commitment for a minimum of 25 years from one or more financially-responsible shippers prior to commencing construction of the Facility;

<sup>1</sup> Case 12-F-0036, Comments of the Independent Power Producers of New York, Inc. on the Proposed Regulations to Implement Article 10 of the Public Service Law at 6 (May 25, 2012).

**DIRECT TESTIMONY OF  
DONALD G. JESSOME**

1 and (2) to file the Stipulation with the Federal Energy Regulatory Commission (“FERC”)  
2 prior to operation of the Facility.

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 Applicants are willing to provide high level estimates of the cost of both the Facility and  
11 the transmission upgrades in Canada required to connect to the Facility.

12  
13 **Q. What are the estimated costs of the Facility?**

14  
15 A. Applicants’ current estimate of the costs of the Facility has not changed since they  
16 submitted the Revised Construction Costs of the Project on April 29, 2011.<sup>2</sup>  
17 Accordingly, Applicants continue to estimate the costs of the HVDC Transmission  
18 System to be \$1.99 Billion and the costs of the Astoria-Rainey Cable to be \$200 Million.

19  
20 **Q. What are the estimated costs of the transmission upgrades in Canada?**

21  
22 A. Applicants have not received any information from TransEnergie regarding the facilities  
23 it intends to connect the Facility to its transmission system. Applicants have performed

---

<sup>2</sup> See JP Exhibit 111 filed on February 24, 2012.

**DIRECT TESTIMONY OF  
DONALD G. JESSOME**

1           their own estimate of the cost of these facilities, based on the same project cost elements  
2           used to provide their estimate of the total costs of the Facility. Applicants estimate the  
3           total cost of these upgrades at \$346 Million. The breakdown of these costs (in thousands  
4           of dollars) is as follows:

**Converter Station**

Hertel Converter	<b>\$170.0</b>
------------------	----------------

**Upland Cable**

RR Hertel to Richelieu River

Distance	12.4
Supply cost/mile	1.6
Install Cost/mile	3.5
Engineering cost/mile	0.1

Cable Supply	19.5
Install of Cable	43.9
Engineering	<u>1.8</u>
	<b>\$65.2</b>

**Upland Cable**

Railroad route to US border

Distance	21.1
Supply cost/mile	1.6
Install Cost/mile	3.5
Engineering cost/mile	0.1

Cable Supply	33.1
Install of Cable	74.6
Engineering	<u>3.1</u>
	<b>\$110.8</b>

<b>Total Costs</b>	<b>\$346.0</b>
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5

**DIRECT TESTIMONY OF  
DONALD G. JESSOME**

1 **Q. Do you have an estimate of the cost of building the hydroelectric and wind**  
2 **generation needed to supply electricity to the Facility?**  
3

4 A. We have not developed an estimate of the costs of constructing such facilities for the  
5 simple reason that the facilities in question are already under construction. Hydro  
6 Quebec states on its website that it currently has 2,468 MW of hydroelectric generating  
7 capacity under construction, including the 1,550 MW Romaine Project, and an additional  
8 1,200 MW of hydroelectric power in the draft-design phase. The Romaine Project is  
9 expected to enter into service in phases, with 640 MW becoming operational in 2014,  
10 270 MW becoming operational in 2016, 395 MW becoming operational in 2017 and the  
11 remaining 245 MW entering service in 2020.<sup>3</sup>

12 Because Canadian utilities are already developing these and other generating  
13 facilities to take advantage of Canada's abundant resources of hydroelectric and wind  
14 power, there is no need to develop detailed estimates of the likely costs of these facilities  
15 in order to gauge the financial viability of the Facility. Instead, the question becomes  
16 whether the low-cost, low-carbon electricity that will be produced by these new  
17 generating facilities will flow over the Facility to consumers in New York, or whether the  
18 owners of these generating resources will develop alternative markets for their energy  
19 production in other locations. Because of the advanced stage of the Facility when  
20 compared to alternative methods of bringing these electricity supplies to market, as well  
21 as the support that the Facility has received from state agencies including the Department

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<sup>3</sup> <http://hydroforthefuture.com/projets/9/developing-quebec-s-hydropower-potential>

**DIRECT TESTIMONY OF  
DONALD G. JESSOME**

1 of Public Service and the Department of Environmental Conservation, as well as leading  
2 enviromental groups such as Scenic Hudson, Riverkeeper and the New York Council of  
3 Trout Unlimited, the Facility is uniquely positioned to secure a long-term commitment to  
4 deliver electricity from these sources to consumers in New York State. If the  
5 Commission hesitates or imposes unreasonable conditions on the Facility, this  
6 opportunity may be lost and these electricity supplies may instead flow to consumers in  
7 New England, Ontario or Atlantic Canada. As Ms. Julia Frayer makes clear in her  
8 testimony on benefit issues, the consequences for New York State residents of a failure to  
9 capitalize on this unique opportunity in terms of higher energy costs, increased air  
10 pollution and reduced economic activity would be momentous.

11  
12 **3. Developments at Luyster Creek**

13  
14 **Q. Please describe the recent developments with respect to the Luyster Creek property**  
15 **where Applicants propose to locate their converter station.**

16  
17 A. As Dr. Sean Murphy explains in greater detail in his testimony, the Luyster Creek  
18 property is owned by Con Edison. Con Edison has entered into a written contract to sell  
19 that land to Luyster Creek, LLC, and the New York Court of Appeals has recently  
20 rejected the only reason Con Edison has given to date for refusing to convey that property  
21 to Luyster Creek, LLC as required by that agreement. I am pleased to report that TDI has  
22 entered into a memorandum of agreement with Luyster Creek, LLC in which the parties  
23 identified six acres at the Luyster Creek site to be made available to TDI or its affiliates

Case 10-T-0139

**DIRECT TESTIMONY OF  
DONALD G. JESSOME**

1           for use as a converter station site. A copy of this memorandum of understanding is  
2           attached to my testimony as Exhibit \_\_ (DGJ-2).

3  
4 **Q.    Does this conclude your testimony?**

5  
6 **A.    Yes.**

1 ALJ PHILLIPS: I believe the first party  
2 that was indicated for cross-examination was  
3 IPPNY.

4 MR. HURST: Your Honor, a little  
5 clarification. Entergy and IPPNY have the same  
6 positions on the cross-examination of Mr. Jessome.  
7 So I will, on behalf of Entergy, begin cross  
8 examination. And, Mr. Johnson may have some  
9 follow up questions after that.

10 ALJ PHILLIPS: Okay. There's no  
11 objection to that?

12 MR. POND: There's no objection, Your  
13 Honor.

14 MR. HURST: And, just a procedural  
15 question, Judge. I know Your Honor indicated that  
16 the moving of exhibits into evidence will occur at  
17 the close of the hearing, but I just want to  
18 clarify. It is my understanding that the exhibits  
19 to the JP will be moved into evidence at that  
20 time; is that right?

21 ALJ CASUTTO: Subject to objection.

22 ALJ PHILLIPS: I believe that's correct.

23 MR. HURST: Thank you very much.

24 CROSS EXAMINATION

25 BY MR. HURST:

1 Q. Good morning, Mr. Jessome.

2 A. Good morning.

3 Q. My name is Bill Hurst. I'm an attorney with  
4 Greenberg Traurig and we represent Entergy Nuclear  
5 Power Marketing LLC and Entergy Nuclear  
6 Fitzpatrick LLC in these proceedings.

7 Mr. Jessome, on page one line 13 and  
8 page two line 8 of your prefiled Direct testimony  
9 you indicate that you are here today, I guess, or  
10 in your Direct testimony you indicate that you are  
11 here to testify as to the cost of the facility  
12 that you describe in your Direct testimony; is  
13 that correct?

14 A. That's correct.

15 Q. Mr. Jessome, the Applicants here have hired  
16 TRC company as -- for lack of a better term -- as  
17 a contractor to plan the actual work of  
18 constructing the facility that you mention in your  
19 Direct testimony; is that right?

20 A. TRC is one of our engineering firms that is  
21 working with us.

22 Q. And, was the TRC team at one time led by a  
23 gentleman named Allan Pryor?

24 A. Allan Pryor was one of the members of the  
25 TRC team.

1 Q. And, until about 4:10 p.m. yesterday  
2 afternoon, Mr. Pryor has prefiled Direct testimony  
3 supporting Exhibit 9 to the original application  
4 which deals with costs; isn't that correct?

5 A. I'm not familiar with that.

6 Q. Mr. Jessome, are you familiar with the fact  
7 that last night at about 4:10 p.m. the applicants  
8 circulated an affidavit sponsoring certain  
9 additional exhibits in this case?

10 A. I'm not familiar with that. I'm sure it  
11 happened, but I am not familiar with it.

12 MR. POND: Your Honors, perhaps it would  
13 be helpful if Mr. Hurst could furnish the  
14 documents so the witness can look at it?

15 MR. HURST: That's okay. We can move  
16 on, Judge. It was another affidavit by the  
17 applicants which, presumably, will be moved into  
18 evidence at some point in the proceeding. So, we  
19 don't need to go with it right now.

20 ALJ PHILLIPS: We have just been handed  
21 the exhibit that has been premarked as Hearing  
22 Exhibit number 9.

23 Q. Mr. Jessome, I have just handed you what has  
24 been premarked in this case as Hearing Exhibit 9.  
25 Have you had a chance to look through that?

1 A. I have.

2 Q. Do you recognize what has been premarked as  
3 Exhibit 9, Mr. Jessome?

4 A. I do.

5 Q. And, can you tell us what it is, please.

6 A. It's a Cost of Proposed Facility.

7 Q. Is it true, Mr. Jessome, that that is the  
8 cost of the proposed facility that was submitted  
9 with the original application in this case?

10 A. That is correct.

11 Q. And, Mr. Jessome, if I can turn your  
12 attention to page 9-4 which is the last page of  
13 what has been premarked at Hearing Exhibit number  
14 9, do you see the total cost figure at the bottom  
15 of what looks like \$3 billion 301 thousand plus or  
16 minus?

17 A. I see that.

18 Q. And, that is not the cost of the facility as  
19 we sit here today; right?

20 A. That is correct.

21 Q. So, it's fair to say that Exhibit 9 is no  
22 longer a correct estimate of the overall facility  
23 costs; is that correct?

24 A. That is correct.

25 Q. Now, Mr. Jessome, is it fair for me to state

1 based on the footnote on page four of your  
2 prefiled Direct testimony that you are sponsoring  
3 Exhibit 111, the updated estimated costs in this  
4 proceeding?

5 A. That is correct.

6 MR. POND: Just for the record, Mr.  
7 Hurst has also confirmed by Exhibit 154 the list  
8 of exhibits that Mr. Jessome is sponsoring.

9 Q. Before turning to Exhibit 111, Mr. Jessome,  
10 at page four lines 17 and 18 of your prefiled  
11 Direct testimony, you assign a costs of \$200  
12 million to the Astoria Rainey cable portion of the  
13 project; is that correct?

14 A. Estimated cost.

15 Q. And that is not a TRC estimate; is that  
16 correct?

17 A. To the best of my knowledge, that is not a  
18 TRC estimate.

19 Q. To the best of your knowledge, Mr. Jessome,  
20 that estimate is actually derived from the NYISO's  
21 2010 facility study; isn't that right?

22 A. That's correct.

23 Q. That figure has not been updated or  
24 corrected by the applicant in any way for purposes  
25 of this proceeding; is that correct?

1           A. I believe it has been updated with respect  
2 to timing but, other than that, we have not  
3 updated it.

4           Q. And, in fact, under paragraph 15-C of the  
5 proposed certificate conditions the applicants can  
6 exceed that cost estimate by ten percent without  
7 having to go back to the Commission for  
8 consideration; is that correct?

9           A. I believe that's correct.

10          Q. And, ten percent over \$194 million would be  
11 somewhere in the range of \$213 million; is that  
12 correct?

13          A. It sounds correct.

14          Q. And, as you testified on page three lines 20  
15 through 22 of your prefiled Direct testimony, Mr.  
16 Jessome, that the Applicants have reserved the  
17 right to recover the costs associated with the use  
18 of the Astoria Rainey cable to deliver energy and  
19 capacity not transmitted over the HVDC  
20 transmission system on a non-merchant basis?

21          A. Only for those customers that are not going  
22 to be taking long-term service on our project.

23          Q. Mr. Jessome, how about the costs that you  
24 estimate in your prefiled Direct testimony, the  
25 \$200 million -- withdrawn. The \$200 million is

1 actually a rounding up of the \$194 million that is  
2 in the Joint Proposal; is that correct?

3 A. That is correct.

4 Q. Mr. Jessome, help me to understand. Where  
5 does that \$194 million fit in with the reservation  
6 of rights under precondition 15-C?

7 MR. POND: Your Honors, I'm going to  
8 object at this point. The focus of the hearing is  
9 on the cost of the facility. Mr. Hurst has moved  
10 off of the costs of the facility and is now  
11 cross-examining the witness with respect to the  
12 provisions of the JP, and that's really a legal  
13 and policy issue as well as beyond the scope of  
14 the hearing.

15 MR. HURST: Your Honors, I am inquiring  
16 as to facts within the scope of the witness's  
17 Direct testimony. He has opined as to the cost of  
18 the Astoria Rainey cable. We are exploring how  
19 that cost was derived, how it fits into the  
20 overall aspects of the proceeding. We are  
21 exploring the factual underpinnings of the  
22 witness's Direct testimony.

23 ALJ PHILLIPS: We are going to allow it  
24 for now.

25 Q. Mr. Jessome, as you testified on page three

1 lines 20 through 22 of your prefiled Direct  
2 testimony, the applicants have reserved the right  
3 to recover certain costs associated with the  
4 Astoria Rainey cable on a non-merchant basis; is  
5 that correct?

6 A. Again, for only those customers that would  
7 utilize the line or are not taking long-term  
8 service.

9 Q. My second question, then: Is that \$194  
10 million construction cost which you estimate at  
11 \$200 million in your prefiled Direct testimony  
12 included in that provision or is that something  
13 separate?

14 MR. POND: I'm not sure I understand the  
15 question, Your Honors. Included in what  
16 provision?

17 Q. In paragraph 15-C of the Joint Proposal, Mr.  
18 Jessome, when it speaks of costs for the use of  
19 the Astoria Rainey cable to deliver energy and  
20 capacity not transmitted over the HDVC  
21 transmission system, are the construction costs  
22 associated with the use of the Astoria Rainey  
23 cable as framed in the Joint Proposal?

24 A. I don't understand your question.

25 Q. Has the Applicant reserved the right to

1 recover the \$194 million in construction costs on  
2 a non-merchant basis?

3 A. Again, to the best of my knowledge, the  
4 merchant transmission customers that take  
5 long-term service on this line will pay for the  
6 service. And if there are customers who can  
7 utilize the Astoria Rainey cable, we reserve that  
8 right to recover some costs.

9 Q. At page four line 10 of your prefiled Direct  
10 testimony, you mention a high level estimate of  
11 costs. Do you see that part of your testimony?

12 A. I do.

13 Q. And you are referring to the cost estimate  
14 that you sponsor on Exhibit 111 when you make that  
15 characterization; is that correct?

16 A. That is correct.

17 Q. And Exhibit 111, Mr. Jessome, was submitted  
18 to the parties in this case in about April of  
19 2011; is that correct?

20 A. That is correct.

21 Q. And Exhibit 111 assumes in the costs set  
22 forth in Exhibit 111 a settlement route as  
23 proposed in the Joint Proposal; correct?

24 A. That is correct.

25 Q. And, in fact, in Exhibit 111 the Applicants

1 have changed the cost number from Exhibit 9 and  
2 Exhibit 36 to show changes in the route that were  
3 wrought during the seminal process; is that  
4 correct?

5 A. That is correct.

6 Q. So, generally speaking, it's fair for me to  
7 say that when the route changes, so does the cost  
8 of the project?

9 A. That is correct.

10 Q. So, hypothetically, if a regulatory agency  
11 forced the project overland where it is now under  
12 water, that might impact the cost estimate; right?

13 A. It may impact up or down. That is correct.

14 Q. Hypothetically, if the project included an  
15 environmental cleanup cost during construction,  
16 that would also impact the costs of the project;  
17 is that correct?

18 A. Hypothetically, yes.

19 Q. Mr. Jessome, the \$1.99 billion set forth in  
20 what has been premarked as Hearing Exhibit 111  
21 does not include the cost of overland property  
22 acquisition; correct?

23 A. That is correct.

24 Q. Now, do you know as you sit here today, Mr.  
25 Jessome, how much land in acres, or however you

1 want to frame it, the Applicant would need to  
2 actually acquire in order to build the project?

3 A. I do not know the exact figures.

4 Q. When you say you "don't know the exact  
5 figures" -- and my question is maybe a bit vague  
6 on that point -- I mean not just acquisitioning  
7 fees but easements, leases. As you sit here now,  
8 you are not able to tell us how much land the  
9 Applicants would need to acquire by any of those  
10 vehicles; is that correct?

11 A. I don't know the exact figures. I know that  
12 there are lease payments that would be made at  
13 some point in time.

14 Q. Now, Mr. Jessome, on or about July 11th of  
15 this year the Applicants filed a stipulation in  
16 this case that they entered into with Con Edison.  
17 Are you familiar with that?

18 A. Which one?

19 Q. This would have been a stipulation dealing  
20 with the location of the converter station in  
21 Astoria.

22 A. Yes, I am familiar with it.

23 Q. Mr. Jessome, I have just handed you what has  
24 been premarked in this proceeding as Hearing  
25 Exhibit 129. Do you recognize that document?

1 A. I do.

2 Q. And, can you tell us what that is?

3 A. It's a stipulation between the Applicants  
4 and Con Edison regarded the Luyster Creek site.

5 Q. And, if you turn your attention to what I  
6 have also handed you that has been premarked as  
7 Hearing Exhibit 130, do you recognize that  
8 exhibit?

9 A. I do.

10 Q. Can you tell us what that is?

11 A. It's a map of the Luyster Creek property,  
12 including the proposed subdivision of Parcel A.

13 Q. The stipulation that has been premarked as  
14 Hearing Exhibit 129 allows the Applicant to site  
15 its converter station at the Luyster Creek  
16 property; is that correct?

17 A. That is correct.

18 Q. Con Edison previously resisted the  
19 Applicant's plan to do so; is that correct?

20 A. There was a difference of opinion, yes.

21 Q. Is the Applicant going to pay Con Edison for  
22 the right to place the converter station where it  
23 is reflected on Exhibit 130?

24 A. There will be compensation, yes.

25 Q. How much will that compensation be?

1           A. We have not negotiated that compensation at  
2 this point in time.

3           Q. And, so, not having negotiated that  
4 compensation, it has not been included in Exhibit  
5 111; is that correct?

6           A. That is correct.

7           Q. If you turn your attention back to Exhibit  
8 111, Mr. Jessome, there is a line item about three  
9 quarters of the way down that says: "OGS permit  
10 costs." Do you see what I am referring to?

11          A. I do.

12          Q. Do you understand OGS to be Office of  
13 General Services?

14          A. I do.

15          Q. Do you understand that line item to pertain  
16 to the easement of lands under water that the  
17 project requires?

18          A. I do.

19          Q. Now, Mr. Jessome, the \$20 million line item  
20 on Exhibit 111 which you are sponsoring, that does  
21 not include the costs to remove the line once it's  
22 taken out of service; right?

23          A. It is for the lease of the rights.

24          Q. So, the answer to my question is yes?

25          A. It does not include any removal.

1 Q. And, Mr. Jessome, isn't it true that at this  
2 point, the Applicants are not contemplating the  
3 removal of the line when it is taken out of  
4 service?

5 A. To the best of my knowledge, that is  
6 correct.

7 Q. And, Mr. Jessome, are you aware of any  
8 studies in this report which examine the potential  
9 impacts of decommissioning the line in place?

10 A. I'm not familiar.

11 Q. Now, Exhibit 111 says nothing about project  
12 costs on the Canadian side of the border; isn't  
13 that correct?

14 A. That is correct.

15 Q. You have included certain of those costs in  
16 your Direct testimony at page four line 22 and  
17 continuing over to page five; right?

18 A. That is correct.

19 Q. And, those costs that you set forth in pages  
20 four and five of your prefiled Direct testimony  
21 were not obtained from Trans Energy; is that  
22 correct?

23 A. That is correct.

24 Q. And, in fact, the Applicants have not made  
25 any application to Trans Energy for firm

1 transmission service to, for example, the Hertel  
2 substation which is costed out on page five of  
3 your Direct testimony; right?

4 A. That's correct.

5 Q. In fact, the Applicant has no agreement with  
6 Trans Energy that would compel it to construct any  
7 of these things costed out on page five or your  
8 prefiled Direct testimony; right?

9 A. The project does not. Other parties have  
10 made requests.

11 Q. What parties are those, Mr. Jessome?

12 A. To the best of my knowledge, Hydro Quebec  
13 Production has made an interconnection request and  
14 Bellatore Energy has made an interconnection  
15 request.

16 Q. In fact, as we sit here today, the project  
17 has no contract with any Canadian shipper to  
18 supply any power to the Hertel substation or any  
19 other facilities you costed out at page five of  
20 your Direct testimony?

21 MR. POND: Your Honor, I'm going to  
22 object. I think we are beyond the scope of the  
23 costs of the facility at this point.

24 ALJ CASUTTO: Mr. Hurst, could you  
25 repeat the question?

1 Q. The question was: In fact, the project has  
2 no contract with any Canadian shipper to supply  
3 power to the Hertel substation and other  
4 facilities you costed out on page five of your  
5 Direct testimony?

6 MR. POND: Again, my objection is that  
7 it's not a question about costs, Your Honor.

8 ALJ CASUTTO: I will sustain the  
9 objection. But, I'll also note that my  
10 understanding is that the Applicant is not  
11 disputing that no such contracts exist.

12 MR. POND: That is a matter for the  
13 record. I just think we are moving in a direction  
14 that is getting afield of the direction set for  
15 the hearing, and I think we need to be careful  
16 about that.

17 ALJ CASUTTO: The objection is  
18 sustained.

19 MR. POND: Thank you, Judge.

20 Q. Mr. Jessome, to derive the Canadian side  
21 numbers that you've got at pages four and five of  
22 your prefiled Direct testimony, isn't it the case  
23 that you merely applied the same unit cost  
24 formulas that inform Exhibits 9 and 36 of the  
25 application to the Canadian infrastructure?

1 A. That is correct.

2 Q. To the extent that Exhibit 111, the United  
3 States side numbers are, as you say, high level,  
4 then so be would the Canadian side numbers in your  
5 prefiled Direct testimony; right?

6 A. They are estimates, correct.

7 Q. And, those estimates don't include the cost  
8 of acquiring any land on the Canadian side of the  
9 border; correct?

10 A. That is correct.

11 Q. Mr. Jessome, at page six, lines 15 through  
12 19 and page seven lines 4 through 7 of your  
13 prefiled Direct testimony, you recognize that  
14 alternate markets may exist for the Canadian power  
15 that you hope to tap into by this project; is that  
16 correct?

17 A. That is correct.

18 Q. So, what you are saying in those portions of  
19 your Direct testimony is, essentially, that if  
20 HG's power is not sold to TDI, it's going to be  
21 sold somewhere else?

22 A. To the best of my knowledge, it would be  
23 sold, that is correct.

24 Q. Looking at your resume or your CV, Mr.  
25 Jessome, I see that you spent some time with a

1 company called Edimira, Inc. Is that correct?

2 A. That is correct.

3 Q. And, at Edimira you were involved in  
4 transmission distribution of power and marketing  
5 and sales and all the areas that you mentioned in  
6 your resume; isn't that right?

7 A. Yes.

8 Q. In the course of that work, or otherwise in  
9 your experience in the marketing of power and  
10 energy, have you become familiar with the energy  
11 markets in which HQ participates?

12 A. Five years ago I had knowledge of those  
13 markets, yes.

14 Q. And, five years ago what were those markets;  
15 can you tell us?

16 A. The New York market, New England, Canada,  
17 Atlantic, and Ontario markets.

18 Q. You actually refer to some of those markets  
19 at page seven of your prefiled Direct testimony,  
20 right, you say: New England, Ontario or  
21 Atlantic-Canada?

22 A. Correct.

23 Q. Mr. Jessome, are you generally familiar with  
24 what has come to be known as the Northern Pass  
25 project?

1 A. I have familiarity with the project, yes.

2 Q. Do you understand that to be a proposed 1200  
3 megawatt HVDC line from Quebec to New Hampshire?

4 A. I believe that is the case, yes.

5 Q. Do you understand that HQ is also involved  
6 in that project?

7 A. I believe that that is correct.

8 Q. At this point, the project here has no  
9 contract or agreement with HQ; is that correct?

10 A. We do not have a long-term service  
11 agreement. That is correct.

12 Q. You anticipate one eventually; right?

13 A. We are working hard towards that, that's  
14 correct.

15 Q. Mr. Jessome at your prefiled Direct  
16 testimony on page three line 22 and page four line  
17 2, you talk about a condition in a June 4th  
18 stipulation between the Applicants and Con Edison;  
19 is that correct?

20 A. That is correct.

21 ALJ PHILLIPS: Wait a minute. I just  
22 want to double-check something. I think the June  
23 4th stipulation is Con Ed, staff, and the  
24 Applicants; is that correct?

25 MR. HURST: I think that's right, Judge.

1 Correct.

2 ALJ PHILLIPS: All right, continue.

3 Q. Mr. Jessome, you are at pages three and four  
4 of your prefiled Direct testimony explaining that  
5 as part of that stipulation the Applicants have  
6 agreed to obtain a commitment of 75 percent of the  
7 facility's throughput for 25 years and to file an  
8 agreement with the FERC. Is that, in sum and  
9 substance, what you are saying there?

10 A. That is correct.

11 Q. And, that is a condition that you are  
12 identifying in your prefiled Direct testimony  
13 because you think that that is a beneficial  
14 condition overall; correct?

15 A. It is a commitment that was made in the  
16 stipulation.

17 Q. Now, Mr. Jessome, TDI, Transmission  
18 Developers, Inc. recently filed a response to New  
19 York State's Energy Highway Initiative; is that  
20 correct?

21 A. That is correct.

22 Q. And, it was more than one transmission  
23 developer entity that made that submission; is  
24 that right? I just want to be clear.

25 A. Do you have a copy of it?

1 MR. HURST: I do. (Offering Exhibit 213)

2 Q. Mr. Jessome, I have just handed you what has  
3 been premarked in this proceeding as Hearing  
4 Exhibit 213. Have you had a chance to take a  
5 quick look at that?

6 A. I am familiar with that, yes.

7 Q. That is actually an Interrogatory Response  
8 that the Applicants submitted in this case; right?

9 A. That is correct.

10 Q. And there are some attachments to that  
11 Interrogatory Response; right, Mr. Jessome?

12 A. Yes. It is our Energy Highway submission.

13 Q. If you continue down, Mr. Jessome, you also  
14 see HQ's highway submission also included in that  
15 packet?

16 A. Yes. I see that.

17 Q. If you look back at the front page at what  
18 has been marked as Hearing Exhibit 213, you see  
19 where it says "IPPNY-44 Supplement"?

20 A. Yes, I see that.

21 Q. So, you understand this to be a supplemental  
22 response to an IPPNY Interrogatory in this case?

23 A. I do.

24 Q. And, do you understand that supplement to  
25 mean the inclusion of HQ's EHI submission in

1 response to IPPNY's Interrogatory Response?

2 A. Yes. I believe that is correct.

3 Q. The Applicants supplemented their Response  
4 in that respect because they wanted to show HQ's  
5 interest in the project; right?

6 A. We wanted to follow up with the information  
7 available.

8 Q. But HQ is not an affiliate of the Applicant  
9 here; right?

10 A. That is correct.

11 Q. So, the supplementation of HQ's EHI  
12 initiative is not responsive to the request that  
13 was made by IPPNY; right?

14 MR. POND: I'm going to object. That's  
15 argumentative. He has answered the question.

16 ALJ PHILLIPS: Right.

17 Q. Mr. Jessome, if you turn your attention to  
18 page three of the HQ EHI submission which is part  
19 of what has been marked as Hearing Exhibit 213 --

20 A. Page three?

21 Q. Yes, sir. Do you see the heading about an  
22 eighth of the way down that says: "Project 1,  
23 Hydro Quebec participation in the Champlain Hudson  
24 Power Express?"

25 A. I do.

1 Q. And do you understand that to be a reference  
2 to the project that is the subject of this  
3 proceeding here today?

4 A. I do.

5 Q. And, if you look in the project description,  
6 Mr. Jessome, the last sentence between, "Hydro  
7 Quebec proposes to become the anchor tenant for  
8 the project" -- do you see that sentence?

9 A. I do.

10 Q. Do you agree that, "Hydro Quebec proposes to  
11 become the anchor tenant for the project"?

12 A. I agree their Energy Highway submission  
13 states that.

14 Q. And, Mr. Jessome, if you could turn to TDI's  
15 submission which is also part of hearing Exhibit  
16 213, at page 11 under the heading "Customer  
17 Commitments," that says: "TDI will enter into a  
18 35-40 year transmission service agreement with  
19 Hydro Quebec production or other entity for 750  
20 megawatts capacity." Did I just read that  
21 correctly?

22 A. That is correct.

23 Q. And, Mr. Jessome on page twelve of TDI's  
24 submission, at the top: Sources of Project  
25 Finance, it states, "Hydro Quebec may supply all

1 data from the CHPE project"; is that correct?

2 A. That is correct.

3 Q. So, help me to understand this, Mr. Jessome.  
4 If I read page three, lines 19 and 20 of your  
5 prefiled Direct testimony together with the EHI  
6 responses, isn't it is fair to state that one of  
7 the possibilities here is that TDI sells 75  
8 percent of its transmission capacity to HQ for a  
9 term of years?

10 THE WITNESS: Your Honors, I am going to  
11 object. I have tried to let this go along to  
12 understand where it's going. But, it's clearly  
13 going beyond the scope of the issues set forth in  
14 this hearing.

15 MR. HURST: Your Honors, the EHI  
16 submissions were attached as exhibits to the  
17 rebuttal testimony by DPS staff. It goes directly  
18 to the cost of the project in terms of who is  
19 supplying the debt for it. And it's the 75  
20 percent throughput commitment as set forth in the  
21 stipulation with Con Edison. So, all of these  
22 issues are in this proceeding.

23 MR. POND: I think, Your Honor, having  
24 made a legal commitment to a throughput, I don't  
25 think that opens the door in this proceeding to an

1 examination in this hearing as to how we are going  
2 to meet that commitment. And, I think however we  
3 are going to meet that commitment is beyond the  
4 scope of the hearing which deals with cost issues  
5 and not who is going to sign a contract to pay  
6 those costs.

7 MR. HURST: Your Honor, the hearing goes  
8 beyond costs and also goes into benefits. As I  
9 understood DPS staff's rebuttal testimony, they  
10 were holding out the HQ commitment as part of the  
11 potential benefit of the project. So, it's all  
12 sort of bound up in the cost benefit analysis.

13 ALJ CASUTTO: I am going to deny the  
14 objection and you can continue, but subject to  
15 renewal, because I think you are beginning to get  
16 afield of what issues are involved here.

17 MR. HURST: I understand, Judge.

18 Q. Mr. Jessome, reading page three lines 19 and  
19 20 of your prefiled Direct testimony together with  
20 the EHI responses that we just reviewed, isn't it  
21 fair to state hypothetically that one possibility  
22 here is that the Applicant's here contract with HQ  
23 for 75 percent of the throughput capacity of the  
24 facility?

25 MR. POND: Your Honor, I'm going to

1 object to this on another ground which is that Mr.  
2 Jessome is here as a fact witness and he is not  
3 testifying as an expert. And hypothetical  
4 questions are not appropriate examination for fact  
5 witnesses.

6 MR. HURST: Mr. Jessome has set forth 75  
7 percent throughput commitment in the prefiled  
8 Direct testimony in his description of the  
9 contents and stipulation. So, if Mr. Pond has  
10 some information that he wishes to elicit on  
11 Redirect, he has some other way to establish that  
12 this witness is not the right one to testify.  
13 That is his prerogative. But at this point, I am  
14 simply cross-examining within the scope of the  
15 Direct testimony.

16 ALJ CASUTTO: I will allow the question.  
17 Can you respond to the question?

18 WITNESS: Could you just repeat it  
19 again?

20 Q. I will shorten it this time. Isn't it a  
21 possibility reading the EHI submissions in  
22 conjunction with your prefiled Direct testimony  
23 that the Applicant could sell 75 percent of its  
24 throughput capacity to HQ for a term of years?

25 A. That is a hypothetical situation. It could

1     happen.

2           Q.   And, isn't that actually what you are  
3     proposing in your EHI submission on page 11 when  
4     you say TDI will enter into a 35- to 40-year  
5     transmission service agreement with Hydro Quebec  
6     Production?

7           MR. POND:   I'm going to object to that  
8     as mischaracterizing the document.

9           ALJ CASUTTO:  I will sustain the  
10    objection.  The document will speak for itself.  I  
11    think that Mr. Hurst has pointed out facts in the  
12    record which may lead to certain conclusions or  
13    possibilities, and you can make those arguments in  
14    your closing brief, I think.  I will sustain the  
15    objection.

16          MR. POND:   Thank you, Judge.

17          Q.   Mr. Jessome, under the scenario that we just  
18    posited here, isn't it the case that for your  
19    project to have benefit in New York, HQ would then  
20    need to sell its power to some New York-based  
21    entity?

22          MR. POND:   Again, I guess I'm not sure  
23    what the question is.  If the question is:  Is  
24    that the only way the project can have benefit,  
25    then I object to the question because, again, it

1 misstates the record. HQ is one possible source  
2 of supply. But it's not -- I don't think there is  
3 anything in the record to say that that is the  
4 only source. So I believe it is mischaracterizing  
5 the record.

6 MR. HURST: Judge, I will restate the  
7 question.

8 ALJ CASUTTO: That is what I was going  
9 to suggest.

10 Q. Mr. Jessome, isn't it the case that for your  
11 project to have benefit to New York State  
12 consumers, for example, that whatever entity it is  
13 that you contract with for your transmission  
14 rights would need to deliver its power in New  
15 York?

16 A. That is correct.

17 Q. And, so, if we assume based on your EHI  
18 submission that that entity is HQ, as you mention  
19 it possibly might be on page 11, not to the  
20 exclusion of other entities that you also mention  
21 on page 11, would it be the case that HQ would be  
22 expected to contract with some New York based  
23 entity from the sale of that power?

24 MR. POND: I think this goes way beyond  
25 any issue that's addressed in the Direct

1 testimony.

2 ALJ CASUTTO: I'm going to sustain it.  
3 Mr. Jessome isn't here representing HQ, and you  
4 are asking him to answer for HQ by that question.  
5 So, I'm going to sustain the objection.

6 Q. Mr. Jessome, if I could direct your  
7 attention to your prefiled Direct testimony at  
8 pages six and seven, particularly page six, line  
9 19 through page seven line 4. Do you see that  
10 part of your testimony, Mr. Jessome?

11 A. I do.

12 Q. And, in that part of your testimony where  
13 you speak of this facility being uniquely  
14 positioned to secure a long-term commitment --  
15 page seven line three -- is what you are saying  
16 there that you believe the support of state  
17 agencies and environmental groups for the JP is  
18 among the factors that makes the project uniquely  
19 positioned to secure a long-term commitment from  
20 the Canadian source?

21 A. The more support for the project, the  
22 greater the certainty that the project will move  
23 forward.

24 Q. Actually, what you say here is that the  
25 support of the agencies and leading environmental

1 groups essentially means that the facility is  
2 uniquely positioned to secure a long-term  
3 commitment for hydroelectricity from these sources  
4 to consumers in New York state; right?

5 A. Again, the support helps commercialize the  
6 project overall.

7 Q. Applying that same logic, Mr. Jessome,  
8 wouldn't it be the case that those shippers would  
9 be less inclined to do business with the project  
10 if they learned that there were agencies out there  
11 that still have unresolved issues over aspects of  
12 the project?

13 A. I can't speculate as to what other people  
14 might feel.

15 Q. You are, at pages six and seven of your  
16 testimony, speculating that shippers might support  
17 the project because of the support that you have  
18 gotten so far?

19 MR. POND: I will object to that as  
20 argumentative.

21 ALJ CASUTTO: Sustained.

22 Q. Mr. Jessome, the Applicant submitted an  
23 update to their Army Corps of Engineers  
24 application in April of this year; isn't that  
25 right?

1 A. To the best of my knowledge, yes.

2 Q. And, between the filing of the original  
3 application and that update, there were some  
4 conversations and communications between the  
5 Applicants and the Army Corps of Engineers  
6 concerning this project; right?

7 A. I can't say for certain. I wasn't involved  
8 in all of the discussions.

9 Q. Mr. Jessome, I have just handed you what has  
10 been premarked in this case as Hearing Exhibits  
11 215 and 216. Have you had a chance to give those  
12 a quick look?

13 A. Very cursory.

14 Q. Okay. And, on Exhibit 215 do you understand  
15 that to be another response of the Applicants to  
16 the Discovery Request propounded by Anthony?

17 A. Yes. It appears to be the case.

18 Q. And, Mr. Jessome, I will represent to you  
19 that Exhibit 216 is actually an excerpt and an  
20 updated Army Corps of Engineers submission made by  
21 the Applicant in, I assume, late April of this  
22 year. Do you recognize that document?

23 A. Yes, I recognize the document.

24 Q. Now, in Hearing Exhibit 215 Mr. Jessome, I  
25 put a yellow sticky on a particular page in there

1 to make it more convenient for you to find, and  
2 you just opened to that. Are you now looking at  
3 the July 5, 2011 letter on the Department of the  
4 Army letterhead?

5 ALJ PHILLIPS: Can you help the rest of  
6 us get there?

7 ALJ CASUTTO: Why don't we go off the  
8 record for that purpose.

9 (A discussion was held off the record.)

10 ALJ CASUTTO: Let's go back on the  
11 record. Let the record reflect that Mr. Hurst is  
12 working with Hearing Exhibit 215, Attachment D.

13 MR. HURST: Five pages in from the  
14 cover.

15 ALJ CASUTTO: Please continue.

16 Q. Now, Mr. Jessome, I am referring you back in  
17 this line of questioning to your prefiled Direct  
18 testimony where you indicate that, "Support of  
19 state agencies and environmental groups makes your  
20 project uniquely positioned to secure long-term  
21 commitments." Do you remember that part of your  
22 Direct testimony, Mr. Jessome?

23 A. I do.

24 Q. And, isn't it true that in July, 2011 the  
25 Army Corps of Engineers told you in letters

1 addressed to you that it did not permit permanent  
2 structures to be linearly installed in federally  
3 maintained navigation channels?

4 MR. POND: I'm going to object, Your  
5 Honor. This is beyond the scope of the Direct and  
6 beyond the scope of the issues set for hearing. I  
7 think the statement that counsel is trying to  
8 bootstrap is merely a statement of the JP  
9 positions on the project. Well, it's not a basis  
10 for going beyond the issues set for hearing to ask  
11 Mr. Jessome detailed questions about the ongoing  
12 federal permitting process.

13 MR. HURST: Your Honors, Mr. Jessome  
14 made an affirmative statement in the prefiled  
15 Direct testimony that the support that the  
16 facility has received by state agencies, including  
17 the Department of Public Service and the  
18 Department of Environmental Conservation, as well  
19 as leading environmental groups, that the facility  
20 is uniquely positioned to secure long-term  
21 commitments to deliver electricity. I am allowed  
22 to attempt to impeach that conclusion by showing  
23 that there are agencies out there, including the  
24 one that has primary jurisdiction over the  
25 activities here, that has not supported the

1 project. So, to the extent that the Commission is  
2 being asked to render findings based on Mr.  
3 Jessome's statement that the support they have to  
4 date uniquely positions the project, I am allowed  
5 to show that there are other factors out there  
6 that would weigh against that.

7 ALJ CASUTTO: Well, the letter is within  
8 Exhibit 215 which we are expecting will be  
9 admitted into evidence at the end of the day  
10 today. So, you can make your argument, but I am  
11 going to sustain the objection as to the line of  
12 questioning.

13 Q. Mr. Jessome, is it correct for me to state  
14 based on Exhibit 215 that when the JP was filed in  
15 February of this year the signatory parties had  
16 agreed to a linear occupation of the navigation  
17 channel that the Army Corps of Engineers had  
18 already stated it would not permit?

19 MR. POND: Your Honors, same objection.

20 ALJ CASUTTO: Sustained. It is clear on  
21 the record.

22 MR. HURST: I have no further questions  
23 for this witness, Judge.

24 ALJ PHILLIPS: Mr. Johnson, do you have  
25 questions?

1 MR. JOHNSON: I have no questions.

2 ALJ PHILLIPS: Just to clarify, we  
3 normally allow all of the parties who want to do  
4 cross-examination to do that and then allow  
5 Redirect. Is that the procedure that we are going  
6 by? So, is Mr. Koda prepared to conduct  
7 cross-examination?

8 MR. KODA: I have no questions, Your  
9 Honor.

10 MR. GOODMAN: I have no questions.

11 ALJ PHILLIPS: What about Mr. Bucobo?

12 MR. BUCOBO: I have no questions for  
13 this witness, Your Honor.

14 ALJ CASUTTO: Let's go off the record.  
15 We will take a five-minute recess.

16 (Recess taken: 11:40 a.m. - 11:47 a.m.)

17 MR. POND: The Applicants have no  
18 Redirect for Mr. Jessome. Thank you very much.

19 ALJ CASUTTO: All right, thank you.  
20 That concludes your testimony. You may step down.  
21 Thank you very much.

22 (The witness was excused at  
23 approximately 11:48 a.m.)

24 MR. POND: The Applicant's next witness  
25 is Mr. Sean Murphy.

1                   S E A N M U R P H Y,  
2 called as a witness by the Applicants, and being  
3 duly affirmed by ALJ Casutto, was examined and  
4 testified as follows:

5                   ALJ CASUTTO: You may be seated.

6                   DIRECT EXAMINATION

7 BY MR. POND:

8           Q. Good morning, Mr. Murphy. Do you have  
9 before you the Direct testimony of Sean Murphy  
10 consisting of 19 pages?

11          A. I do.

12          Q. And, are you familiar with the contents  
13 thereof?

14          A. I am.

15          Q. If I asked you the questions contained  
16 therein would your answer be the same as given  
17 therein?

18          A. I would like to strike out a portion of the  
19 testimony. Going to page five, lines 5 through 9,  
20 the section -- the paragraph starts at, "I should  
21 point out the boundaries of Superfund site." As  
22 explained in Interrogatory Secony 30, that  
23 statement as in my testimony I think clouds the  
24 issue. As long as the Interrogatory is part of  
25 the record, it is not necessary as part of my

1 personal testimony.

2 Q. With that change, if I asked you the  
3 questions contained in your Direct testimony today  
4 would your answers be the same as given?

5 A. Yes.

6 Q. And, did you also prepare two exhibits that  
7 have been premarked as Hearing Exhibits 134 and  
8 135?

9 A. Yes.

10 Q. And, you are familiar with the contents of  
11 those exhibits?

12 A. I am.

13 Q. And, the same is true and correct?

14 A. Yes.

15 Q. You are also sponsoring Hearing Exhibit 153  
16 which is a list of hearing exhibits sponsored by  
17 Sean Murphy?

18 A. Yes.

19 MR. POND: Your Honor, at this time I  
20 move that the Direct testimony of Mr. Murphy be  
21 entered into the record as if given orally. And I  
22 tender the witness for cross-examination.

23 ALJ CASUTTO: The motion is granted. I  
24 would just ask to confirm again, what is the  
25 portion of the testimony that we were asked to

1 strike?

2 WITNESS MURPHY: It's on page five,  
3 lines 5 through 9. Again, an Interrogatory raised  
4 questions about that. And, I think that leaving  
5 that as part of the testimony I believe clouds the  
6 issue as far as there is an Interrogatory  
7 addressing that issue.

8 ALJ PHILLIPS: The Interrogatory at  
9 issue, has that been marked with a Secony exhibit  
10 number?

11 ALJ CASUTTO: Number 30.

12 MR. POND: It looks like we have not  
13 included that in the Applicant's exhibit list. We  
14 will use one of our reserved exhibits, and we will  
15 provide that electronically tomorrow. Okay, 173.

16 (The prefiled testimony of Sean Murphy  
17 was inserted into the record.)

18

19

20

21

22

23

24

25

**DIRECT TESTIMONY**

**OF**

**SEAN MURPHY, PH.D.**

**SUBMITTED ON BEHALF OF**  
**CHAMPLAIN HUDSON POWER EXPRESS,**  
**INC.**  
**AND CHPE PROPERTIES, INC.**

**June 7, 2012**

**Case 1-T-0139****Direct Testimony of Sean Murphy**

**Q. Please state your name, title and business addresses.**

1 A. My name is Sean Murphy. I am a Senior Regulatory Specialist with HDR Engineering,  
2 Inc. My office address is 970 Baxter Boulevard, Suite 301, Portland, Maine 04103.

3

**4 Q. Please describe your educational background and business experience.**

5 A. I earned a Masters of Environmental Management from the Yale School of Forestry and  
6 Environmental Management in 1994. My focus during that time was on integrated  
7 watershed management, with significant coursework in hydrology, soils, and land use  
8 planning. In 2003, I was awarded a doctorate in Forest Management from the University  
9 of Maine. The focus of my dissertation was the development of decision tools to  
10 facilitate land use planning. During my tenure at the school I provided lectures for land  
11 use planning classes. In the last twelve years, I have worked as a project manager and  
12 environmental scientist for a number of challenging environmental/engineering projects.  
13 My principal experience includes directing multi-disciplined resource impact analyses,  
14 the preparation of technical environmental permit documents, and the development of  
15 practical mitigation proposals for projects involving complex environmental issues and  
16 permit conditions. In addition, for several years I managed the monitoring and  
17 remediation of contaminated sites as well as advising financial lenders on the risk  
18 associated with these sites. I have been responsible for managing the publication of

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1 numerous environmental resource reports, impact analyses, and permit applications. My  
2 resume is attached to this testimony as Exhibit \_\_ (SM-1).

3

4 **Q. What is the purpose of your testimony in this proceeding?**

5 A. I will begin by discussing the process by which the parties to the JP selected the proposed  
6 location of the Luyster Creek Converter Station. I will then provide a discussion as to the  
7 availability of the proposed site. I will conclude with an overview of why this site is  
8 suitable and appropriate for this type of facility.

9

10 **1. SELECTION OF LUYSER CREEK CONVERTER STATION SITE**

11

12

13 **Q. Please describe the initial alternative analysis which was completed.**

14

15 A. Based on an interconnection feasibility study conducted by Siemens Energy, Inc., the  
16 Applicants concluded that there were three viable points of interconnection (POI) within  
17 the New York City: the Gowanus 345-kV Substation, the Astoria 345-kV Substation,  
18 and the Sherman Creek 138-kV Substation. The Applicants then researched potential  
19 converter station sites in proximity to each of these POIs and evaluated each based on the  
20 following criteria:

21

- Sufficient land available for the converter station building;

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- 1 • Proximity to preferred HVDC cable route (waterway) in order to minimize  
2 environmental impacts, neighborhood disruption, and costs associated with the  
3 cable connections to the converter station;
- 4 • Surrounding zoning designation(s) and land use(s) in proximity to the  
5 converter station site in order to maintain substantive compliance with local  
6 ordinances and land use expectations; and
- 7 • Potential environmental impacts associated with the cable installation as  
8 well as the construction of the converter station.

9 The Applicants retained a commercial real estate agent to assist in identifying properties  
10 of sufficient acreage that were available for sale or lease.

11 Through the real estate agent, the Applicants identified three potential sites on the  
12 water near the existing Gowanus substation that were available for sale or lease.  
13 However, there were a number of siting issues associated with these sites, including  
14 environmental contamination along the most likely cable route and the presence of a  
15 greater number of heavy vessels.

16 The Applicants were unable to identify any properties for lease or sale in the  
17 vicinity of the Astoria Substation. There was consideration given to constructing the  
18 converter station somewhere on the approximately 316 acre Consolidated Edison (“Con  
19 Edison”) property, referred to by the Applicants as the Astoria Complex, but research  
20 completed at that time indicated that construction at the Astoria Complex would be

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1 complicated by contamination and cultural resource issues associated with the site's  
2 previous use as the Astoria Gas Works manufactured gas plant.

3 The Applicants identified one property near the Sherman Creek substation that  
4 was available for sale or lease in the town of Yonkers, New York. The property was not  
5 ideal, as it was not located immediately adjacent to a waterway and there were mixed  
6 land uses in the immediate facility. However, the Applicants and property owner felt  
7 confident that, with proper design, the project could be sufficiently integrated into  
8 existing land uses.

9  
10 **Q. Please describe the issues associated with siting the facility through the Gowanus**  
11 **Canal Superfund Site.**

12  
13 A. The Gowanus Canal Superfund site was proposed as a National Priority List site by the  
14 Environmental Protection Agency ("EPA") in April of 2009 and listed in March of 2010.  
15 Numerous sampling events have shown the sediments of the Gowanus Canal to be  
16 contaminated with a variety of pollutants, including polycyclic aromatic hydrocarbons  
17 (PAH), volatile organic compounds, polychlorinated biphenyls ("PCBs"), pesticides and  
18 metals. Surface sediment sampling completed as part of a Remedial Investigation found  
19 that in the portion of the Superfund site near the three alterative converter station sites  
20 there were total PAH concentrations in surface sediments ranged from 16,350 to 65,890  
21 ug/kg, PCBs ranged from non-detect to 230 ug/kg, and lead ranged from 146 to 239  
22 mg/kg.

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1           The EPA's stated clean-up approach will be a long-term remedial phase focusing  
2           on the entire site but as of today the extent of that effort has not be specified. As such,  
3           the Applicants did not feel it would be prudent to install the cables into an area with so  
4           many unknowns.

5           I should point out that the boundaries of the Superfund site extend to just south of  
6           20th Street and Bryant Street. Therefore, contrary to statements that have been made as  
7           part of this proceeding, routing to all three of the potential converter station sites  
8           identified for the Gowanus converter station site would be within the boundaries of the  
9           Superfund site.

10  
11 **Q. Please describe the alternatives analysis that occurred immediately after the**  
12 **Certificate for Environmental Compatibility and Public Need was deemed complete.**

13 A. After the Applicants submitted their Application for a Certificate of Environmental  
14 Compatibility and Public Need in March of 2010, Con Edison expressed strong concerns  
15 over the use of the Sherman Creek substation as the point of interconnection. The  
16 Applicants agreed at that time to make the Astoria Annex owned by the New York Power  
17 Authority and located at the Astoria Complex their preferred POI option. Due to the  
18 greater distance from the Yonkers site to the Astoria Annex substation (~14.3 miles)  
19 compared to the Sherman Creek substation (~6.6 miles) based on the route at that time,  
20 the Applicants did investigate alternative sites along the route for the proposed converter  
21 station. However, as before, the Applicants were unable to identify any property along

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1 the route that met their initial criteria and the decision was made to retain the Yonkers  
2 site as the converter station location.

3  
4 **Q. Please describe, to the extent possible, the alternatives analysis that occurred while**  
5 **the Joint Proposal was being negotiated.**

6  
7 A. In its October 27, 2011 filing identifying certain alternative routes for the Facility, the  
8 Staff of New York State Department of Public Service (“NYSDPS”) also identified an  
9 alternative location for the converter station site in the Bronx on vacant land along the  
10 railroad right-of-way, which was referred to as the Harlem River Yard Site. While it was  
11 originally thought to be owned by the New York City Department of General Services,  
12 the property was later identified as owned by the New York State Department of  
13 Transportation (“NYSDOT”).

14 After NYSDOT informed Applicants that it was unwilling to make any part of the  
15 Harlem River Yard site available as a site for the converter station, , it came to the  
16 attention of settlement parties that Con Edison had agreed to transfer a parcel within the  
17 Astoria Complex to a private entity for a development project. The subdivision included  
18 land to the west of Luyster Creek and north east of 20th Avenue and was therefore  
19 referred to as the Luyster Creek Site. At the request of settlement parties, the Applicants  
20 completed a comparative analysis of only the Yonkers Site, Harlem River Rail Yard Site  
21 and Luyster Creek Site. The evaluation, which was initially completed in April of 2011,  
22 considered zone, land use, aquatic resources, visual and aesthetic resources, noise, and

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1 other resources. The final report was provided as Exhibit 108 to the Joint Proposal for  
2 Settlement.

3

4 **Q. Did the report provide any conclusions?**

5

6 A. The report noted that the properties comprising the Yonkers site had been re-zoned in  
7 December 2011 by an amendment of the Zoning Code of the City of Yonkers as D-IRT  
8 (office, industrial, research and development and technology-based uses) and D-MX  
9 (mixed commercial, residential and institutional uses), so that the converter station would  
10 be a non-conforming use of the site. In addition, there were concerns over whether the  
11 installation and operation of a converter station at the Yonkers Site represented the “best  
12 use” of this land, given the displacement of existing parking for public offices and the  
13 community’s desire for re-development. While the Harlem River Yard Site is zoned  
14 appropriately for the converter station, as previously noted the NYSDOT determined that  
15 it should be preserved intact for future rail development.

16 While the Applicants maintained that each of these sites would be a suitable  
17 location for the converter station associated with the Project, the overall environmental  
18 impacts would likely be reduced with the selection of the Luyster Creek site. In  
19 particular, the selection of this site would eliminate the need for any in-water double  
20 circuit high voltage alternating current (“HVAC”) cables. In addition, the operation of a  
21 converter station would be most consistent with the known and planned uses of the  
22 Luyster Creek Site as compared to the other two sites.

1           **2.       AVAILABILITY OF LUYSER CREEK CONVERTER STATION SITE**

2  
3       **Q.       Please describe how the Luyster Creek Site came to the Applicants' attention.**

4  
5       A.       As discussed earlier, NYSDPS Staff advised the Applicants that Con Edison had filed a  
6               petition pursuant to Public Service Law §70 to transfer approximately 21.3 acres of land  
7               with their Astoria Complex to Luyster Creek LLC (Case 02-M-0741). Based on  
8               available records, Luyster Creek LLC's intent at that time was to build an envelope  
9               manufacturing factory. On November 25, 2002 the New York State Public Service  
10              Commission ("Commission") approved the transfer subject to certain conditions.

11  
12      **Q.       What is the status of that petition?**

13  
14      A.       Subsequently, Con Edison learned that Luyster Creek LLC no longer intended to build  
15              the envelope factory and in December of 2004 they requested a Declaratory Ruling from  
16              the Commission confirming that the Commission order approving of the transfer and  
17              underlying State Environmental Quality Review were based on the use of the property for  
18              construction of an envelope manufacturing facility and additional jobs. Luyster Creek  
19              LLC disputed this interpretation, contending that other factors relied upon in the Transfer  
20              Order were sufficient to support a public interest finding. In April of 2007, the  
21              Commission found that the use of the property to construct an envelope manufacturing  
22              was an "essential factor" underlying the finding of a public interest for the transfer of the  
23              property and that further review under Public Service Law §70 would be required.

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1

**2 Q. What is your understanding as to where the matter stands now?**

3

4 A. Luyster Creek LLC sought relief from the courts on the issue as to whether the original  
5 2002 order was still valid. While both the New York Supreme Court and the New York  
6 Appellate Division upheld the Commission's decision, on April 26, 2012 the New York  
7 State Court of Appeals by unanimous decision ruled that development of an envelope  
8 factory was not made an express condition of the Commission's approval or a condition  
9 precedent to the transfer of the property, and so ordered that the Commission's April  
10 2007 decision should be reversed.

11 While I am not a lawyer, it would appear that, barring future legal action  
12 regarding the Commission's order or the Purchase Agreement itself, Con Edison and  
13 Luyster Creek LLC are now obligated to adhere to the terms of the Purchase Agreement,  
14 which would allow Luyster Creek LLC to purchase and develop the parcel. It should also  
15 be noted that, according to an affidavit filed under Case 02-M-0741, Luyster Creek LLC  
16 has agreed to pay Con Edison fifty percent of all Net Sales Proceeds received from the  
17 resale of the property or any portion thereof that occurs within three years of the sale of  
18 the property to Luyster Creek LLC.

19

**20 Q. Are you aware of Luyster Creek LLC's plans for the property?**

21

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1 A. Yes. As Mr. Donald Jessome explains in more detail in his direct testimony, Luyster  
2 Creek LLC has entered into a memorandum of understanding with Applicants that would  
3 permit Applicants to use six acres of that property as a site for their converter station.  
4

5 **Q. Are you aware of any other plans Con Edison has had for the property?**  
6

7 A. In 2008, various news sources reported that Con Edison was in negotiations to sell the  
8 same parcel of land under discussion today to Steel Equities, a developer who intended to  
9 convert the site to a warehouse and processing center for FedEx. According to one news  
10 story published in July of that year, the president of Steel Equities stated at the time that  
11 “Con Edison is going to sell the property, whether it is to us or someone else”, although  
12 this statement was never confirmed by Con Edison. In early December 2008, Con  
13 Edison issued a statement that they had opted out of talks with the developer.

14 According to statements filed in this proceeding, Con Edison is planning to use  
15 the site as “a training facility for utility workers.” It is not clear from the information  
16 provided to date whether this facility is intended to replace Con Edison’s existing training  
17 center located at 43-82 Vernon Boulevard in Queens, New York, which is called The  
18 Learning Center. I should point out that I was unable to find any publically available  
19 document discussing this intended use in either a general internet search or a search of  
20 Con Edison’s website.  
21

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1 **Q. Please describe The Learning Center.**

2

3 A. According to Con Edison’s website, the Learning Center is a 185,000-square foot training  
4 and conference facility that has been open since 1993. In addition to serving the training  
5 needs of Con Edison’s employees, it has also been utilized by “businesses, government  
6 agencies, nonprofit organizations, and other large outside organizations”. Con Edison  
7 instructors offer “more than 450 courses in a variety of highly specialized fields including  
8 electric, gas, and steam operations; customer operations; information technology;  
9 leadership; and environmental, health and safety compliance”. A presentation provided  
10 on the site states that amenities for the facility include “spacious on-site parking” and  
11 convenient access to mass transit options. The website also notes that the facility has a  
12 200-seat auditorium, conference rooms for business seminars and break-out rooms, and  
13 catering services.

14

15 **Q. Would this use affect the availability of the property?**

16

17 A. Again, it is not clear whether Con Edison is proposing to replace The Learning Center or  
18 whether this training center would be a supplemental facility. However, as a point of  
19 reference, The Learning Center is currently located on a parcel that City of New York  
20 records indicate is approximately 11 acres in size<sup>1</sup>. Given that the original parcel for sale  
21 was 21.3 acres and that the converter station and associated structures will require

---

1

<http://gis.nyc.gov/doitt/nycitymap/?searchType=AddressSearch&addressNumber=23&street=29%20Street&borough=Queens>

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1 approximately six acres, there would appear to be ample room to allow for both a  
 2 reasonable expansion of the training facilities and the installation of the proposed  
 3 converter station.

4  
 5 **3. SUITABILITY OF LUYSER CREEK CONVERTER STATION SITE**

6  
 7 **Q. Please describe existing land uses at and around the Luyster Creek Converter**  
 8 **Station site.**

9  
 10 A. I visited the Luyster Creek site on May 1, 2012. The Luyster Creek Converter station site  
 11 is currently vacant land with limited vegetation. Nearby uses include Con Edison's  
 12 Liquefied Natural Gas facility to the north, a storage area and Luyster Creek to the east, a  
 13 forested area to the south and the Astoria Annex to the west. Land uses at the Astoria  
 14 Complex have changed over the last decades, but operations have primarily been  
 15 dedicated to the generation and supply of power and/or fuel to New York City.

16  
 17 **Q. Would the proposed converter station be a compatible use in terms of existing land**  
 18 **use?**

19  
 20 A. Yes.

21  
 22 **Q. Would the training facility proposed by Con Edison be a compatible use in terms of**  
 23 **existing land use?**

24  
 25 A. Potentially. If the intent is to build a training center that will solely serve the training  
 26 needs of Con Edison utility workers, then I would tend to consider that use to be

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1 sufficiently tied to the existing utility functions of the overall site so that it would be  
2 consistent with the existing land use.

3           However, if the new training center is intended to substantially replace The  
4 Learning Center, there are three issues that may come into play. First, on-line New York  
5 City records indicate that while the Astoria Complex is currently zoned for Heavy  
6 Manufacturing (M3-1). The Learning Center property is zoned Light Manufacturing  
7 (M1-4). A review of New York City’s zoning regulations indicates that Use Group 4 is  
8 associated with community facilities and is not a permitted use with the Heavy  
9 Manufacturing district<sup>2</sup>. In addition, the Commission’s approval of the transfer of the  
10 larger property to Luyster Creek LLC noted that the Purchasing agreement with Con  
11 Edison included “deed restrictions prohibiting the use of the Property for food service or  
12 retail establishments”. While these restrictions would not be enacted should the Purchase  
13 Agreement with Luyster Creek LLC be nullified or otherwise not enacted, Con Edison’s  
14 concurrence with such limits may impact their ability to obtain a waiver for a facility  
15 where “dining services are available for breakfast, lunch, and dinner”.

16           Second, it was my experience that every individual seeking access to the Astoria  
17 complex must check in at a security booth and all visitors without sufficient clearance  
18 must obtain badges and be accompanied during their stay. Given the diversity of  
19 organizations which currently use The Learning Center, existing security and emergency  
20 response plans would need to be reviewed. Potential measures must ensure that the

---

<sup>2</sup> <http://www.nyc.gov/html/dcp/pdf/zone/art04c02.pdf>

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1 critical infrastructure located throughout the Astoria Complex is protected while not  
2 overwhelming security personnel.

3 In addition, during public meetings on the potential for siting a FedEx facility at  
4 the property there was a high level of local concern over the impacts associated with  
5 higher levels of traffic in the area. Information related to the number of daily visitors to  
6 The Learning Center is not readily available. However, aerial imagery indicates that  
7 there are over 300 parking spots immediately adjacent to The Learning Center and Con  
8 Edison's website states that they offer large training seminars for 250 people, suggesting  
9 that there could be a significant increase in traffic during current peak periods.

10

11 **Q. Please describe information currently available to the Applicants in terms of**  
12 **potential contamination at the proposed converter station site.**

13

14 A. The Applicants have not completed any independent environmental assessments at this  
15 time. However, in April of 2011 the Applicants submitted three interrogatories to  
16 Consolidated Edison requesting copies of certain environmental reports referenced in  
17 Exhibit B to the Verified Petition of the Consolidated Edison Company of New York,  
18 Inc. and Luyster Creek LLC For Authority Under Section 70 of the Public Service Law to  
19 Transfer Certain Real Property Located in Queens County to Luyster Creek LLC and for  
20 Related Relief filed with the New York State Public Service Commission in Case 02-M-  
21 0741.

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1           On June 8, 2011, the Applicants were provided the majority of the documents  
2 requested. These reports included “Data Summary Report, Eastern Parcel RFI, Astoria  
3 Facility” that was submitted to Con Edison in November of 1999.

4  
5 **Q. Please summarize the information provided in this report.**

6  
7 A. The Resource Conservation and Recovery Act Corrective Action Facility investigation  
8 (“RFI”) was prepared to support the anticipated sale and development of the 21.3 acre  
9 property to Luyster Creek LLC. A work plan for the proposed activities was submitted on  
10 behalf of Con Edison in February of 1999 and approved by the New York State  
11 Department of Environmental Conservation (“NYSDEC”) on February 16, 1999. The  
12 resulting Data Summary Report was submitted to the NYSDEC in November of 1999  
13 and provided the following findings of direct interest to this proceeding:

- 14           • Storage Tanks: Existing records apparently indicate that seven underground  
15 storage tanks (“UST”) may have been associated with pre-cast concrete product  
16 manufacturer located to the east of the proposed converter station location. The  
17 tanks include a 5,000-gallon No. 2 fuel oil tank (FO2-9), two 275-gallon No. 2  
18 fuel oil USTs (FO2-10 and FO2-11), and four 550-gallon USTs (GAS-1, GAS-2,  
19 GAS-12, and GAS-13). Available records indicate that FO2-9 was filled with  
20 concrete. The remaining tanks are listed as abandoned, but there is a lack of  
21 definitive information on the location and closure of these USTs. While available  
22 mapping strongly suggests that these tanks are located in close proximity to

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1 Luyster Creek, it is possible although not likely that a tank may be unearthed  
2 during any construction activities in this area.

- 3 • Fill Mound: A historic fill mound is located near the southern end of Luyster  
4 Creek. While the exact site for the converter station cannot be established without  
5 an on-site engineering inspection, preliminary mapping indicates that the southern  
6 portion of the proposed converter station location would likely fall within the  
7 approximate fill mound limits. Six test pits were advanced in 1999 using a  
8 backhoe towards the center of the fill mound as part of a subsurface investigation.  
9 The summary reported state that “the fill mound consists primarily of rock and  
10 soil to an approximate maximum depth of 14 feet” and that “no elevated  
11 headspace screening readings were recorded, nor were there any unusual odors or  
12 staining”.
- 13 • Piezometer F19: During a site investigation, volatile organic compounds  
14 (“VOCs”) were identified at Piezometer F19 located to the west of the fill mound.  
15 Fifteen soil borings were installed in 1999 to determine the vertical and lateral  
16 extent of soil contamination. The northern limits of the VOC-contamination were  
17 defined by boring Y28. While the exact siting of the converter station cannot be  
18 established without an on-site engineering inspection, preliminary mapping  
19 indicates that the converter station site is to the north of this location.
- 20 • Piezometer F09/Well F09B: No unusual soil conditions were noted during the  
21 installation of Well F09B, located in the northeast corner of the 21 acre parcel.

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1 Groundwater analysis found only one chlorinated VOC, 1,1-dichloroethane (1,1-  
2 DCA), at a concentration of 32 micrograms per liter (ug/L). The source and  
3 extent of this contaminant are unknown, although the piezometer is located  
4 downgradient of the proposed converter station location.

5  
6 **Q. Was the Data Summary Report reviewed by any outside parties?**

7  
8 A. The NYSDEC provided a review of the Data Summary report and identified the  
9 following items that would need to be addressed in the site-wide RFI:

- 10 • Installation of monitoring wells and groundwater quality monitoring north and west  
11 of the 21.3 acre parcel to determine the source of and extent of 1,1-dichloroethane in  
12 Well F09B.
- 13 • Soil Sampling south of the parcel to determine the extent of VOC-impacted soils  
14 outside of the parcel to the southwest.
- 15 • Installation of a monitoring well immediately downgradient of Y39 to evaluate  
16 potential groundwater impacts from the soil in this area.

17 It should be pointed out that none of these activities would occur within the area where  
18 the converter station is currently proposed to be located. In addition, the NYSDEC stated  
19 that a suitable procedure must be implemented to generate sufficient data to fully  
20 ascertain groundwater flow characteristics in the deeper hydrogeological unit.

21 In addition, another consultant reviewed a draft of the Data Summary Report  
22 completed in March of 1999 as well as Phase 1 Environmental Assessment completed in

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1 June of 1998. This consultant concluded that “the proposed development of the site  
2 would not be anticipated to require any extensive modifications to typical construction  
3 practices. Typical OSHA-required dust control procedures (with monitoring) would be  
4 appropriate to protect workers and the surrounding community. Excavation should  
5 proceed carefully as buried tanks or other unexpected materials could be encountered.” I  
6 have provided that report as Exhibit \_\_ (SM-2).

7  
8 **Q. Have any other environmental reviews been conducted to your knowledge?**

9  
10 A. The New York City Industrial Development Agency (“NYCIDA”) was the lead agency  
11 for the State Environmental Quality Review (“SEQRA”) of the proposed transfer of the  
12 land to Luyster Creek, LLC, due to a request from Luyster Creek LLC for financial  
13 assistance. The NYCIDA determined that the transfer of the property for the purpose of  
14 constructing an envelope facility was a Type I action as the project would have no  
15 significant impact on the environment and issued a negative declaration for the need for  
16 an Environmental Impact Statement.

17  
18 **Q. Would the proposed converter station be a suitable use of the property given the  
19 available information on contamination at the site?**

20  
21 A. Yes. The proposed Luyster Creek converter station site clearly has some level of  
22 contamination but other infrastructure projects have proceeded at the Astoria Complex in

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1           locations even closer to the “hot spots” on the site. There would be no worker safety  
2           issues post-construction as the converter station would be unmanned.

3

4           **4.     CONCLUSION**

5

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

7

8           **A.     Yes.**

1 ALJ PHILLIPS: May I just double-check  
2 before we begin? Entergy, do you have questions  
3 on what has now been included?

4 MR. HURST: We do not, Judge.

5 ALJ PHILLIPS: Okay, great. With those  
6 clarifications, the witness is available for  
7 cross-examination. And I believe Entergy is the  
8 only party that has indicated they have  
9 cross-examination.

10 MR. HURST: That's correct, Judge.

11 ALJ PHILLIPS: Please proceed.

12 CROSS EXAMINATION

13 BY MR. HURST:

14 Q. Good morning, Mr. Murphy. I'm Bill Hurst  
15 from the law offices of Greenberg, Traurig. You  
16 have seen who I represent in this proceeding.

17 Mr. Murphy, I direct your attention to  
18 your prefiled Direct testimony. At the bottom of  
19 page 18, top of page 19, you are at that point of  
20 your Direct testimony opining as to the  
21 suitability of the Luyster Creek site for purposes  
22 of this project; correct?

23 A. Correct.

24 Q. And, as I look at your resume or C.V., Mr.  
25 Murphy, I see that you have experience preparing

1 property screening service reports and  
2 environmental site assessments. Am I am reading  
3 that correctly?

4 A. In the earlier incarnation of my career I  
5 did that work, yes.

6 Q. When you did that work in an earlier  
7 incarnation of your career, wasn't it the case  
8 that one of the purposes of a property screening  
9 service report and environmental site assessments  
10 was to identify potential environmental risks in a  
11 particular piece of property?

12 A. Yes. That would be correct.

13 Q. That would be risks from on-site  
14 contamination or off-site contamination? We are  
15 talking about risks from environmental  
16 contamination, essentially; right?

17 A. Yes.

18 Q. Did some of your work in that past life  
19 include the preparation or review of Phase I and  
20 Phase 2 of Environmental Site Assessments?

21 A. Yes.

22 Q. Is it fair for me to state that a Phase 1  
23 environmental assessment is less in depth, I  
24 guess, for lack of a better term, than a Phase 2  
25 Environmental Assessment?

1 A. Yes.

2 Q. Is it also fair to say that Phase I  
3 Environmental Site Assessments generally don't  
4 involve intrusive testing and sampling and those  
5 kinds of things?

6 A. Yes. According to the ASTM standards for  
7 conducting Phase I environmental site assessment,  
8 no intrusive testing is required.

9 ALJ CASUTTO: What standard? Excuse me.

10 WITNESS MURPHY: ASTM standards for  
11 conducting environmental site assessments. I  
12 don't remember the number offhand. I would have  
13 to find it as some point if you're interested.

14 ALJ CASUTTO: Just for the record, what  
15 is ASTM?

16 WITNESS MURPHY: American Society of  
17 Testing and Materials.

18 MR. HURST: That was my next question.

19 ALJ CASUTTO: Phase 1 and Phase 2, you  
20 referred to are the U.S. Environmental Protection  
21 Agency Investigations; is that right?

22 Q. Those are environmental site assessments  
23 that can be either Phase 1 or Phase 2 that are  
24 conducted within the rules established by the  
25 ASTM. So, the ASTM is -- correct me if I'm wrong,

1 Sean -- sort of like an overriding trade group  
2 saying that Phase 1 ESA should be these minimum  
3 standards and Phase 2 ESA should be these minimum  
4 standards. And that is the generally accepted  
5 minimum standard in the industry but it's not my a  
6 regulatory agency?

7 A. Yes.

8 Q. Okay. And, Mr. Murphy, when you were  
9 preparing PSSRs and ESAs -- and you don't mind my  
10 saying PSSRs for Public Service Screening Reports  
11 -- you were sometimes asked to opine as to the  
12 environmental risks presented at a particular  
13 piece of property; isn't that correct?

14 A. That's correct.

15 Q. The same as you have done here on pages 18  
16 and 19 of your prefilled Direct testimony; right?

17 A. Yes.

18 Q. And, you sometimes did PSSRs and ESAs for  
19 lending institutions; did I read in your resume?

20 A. Yes.

21 Q. And, when you were preparing or examining  
22 ESAs and PSSRs for lending institutions, you were  
23 sometimes asked to opine as to the risk to the  
24 collateral that might be posed by whatever  
25 conditions might exist at the site?

1 A. I am trying to understand the question.

2 Q. What was the purpose for examining or  
3 conducting PSSRs and ESAs for lending institutions  
4 when you did that work?

5 A. In most cases, the ESAs were conducted  
6 because the lending institution was going to  
7 require either some lending money or could be  
8 within the chain of title for a property and,  
9 therefore, could be under RCRA and CERCLA  
10 standards. They could be part of the chain if  
11 remediation was required for the property.

12 Q. Just for the record explain what RCRA and  
13 CERCLA are.

14 A. Resource Conservation and Recovery Act is  
15 RCRA. And CERCLA I'm afraid I've used a lot  
16 without necessarily remembering what the exact  
17 acronym is.

18 ALJ CASUTTO: I believe it's  
19 Comprehensive Environmental Response Compensation  
20 and Liability Act.

21 WITNESS: I will thank you for that.

22 Q. Mr. Murphy, back to your Direct testimony in  
23 this case, I take it that when you were doing that  
24 work on PSSRs and ESAs that you would sometimes  
25 form your opinion or plan of action based on a

1 review of historic studies and reports; is that  
2 correct?

3 A. Review of historic studies and reports would  
4 be part of the Environmental Site Assessments.  
5 And, the transactions with the Property Screening  
6 Reports that we are talking about were more of  
7 sort of a general level of risk associated with a  
8 property rather than a higher level of analysis  
9 such as you might see with a transaction screening  
10 analysis which also has an ASTM standard to it as  
11 well.

12 Q. Were there sometimes occasions when you  
13 reviewed historic studies and reports when you  
14 sometimes felt that you needed to collect more  
15 data before you could offer an opinion as to --  
16 well, anything, really?

17 A. Certainly in the cases where the lending  
18 institution might be establishing a financial  
19 liability associated with the property. But I  
20 think in terms of the Property Screening Reports,  
21 in most cases you need to provide some opinion  
22 based on the available information.

23 Q. Mr. Murphy, in your prefiled Direct  
24 testimony -- I believe it's page nine, line 12,  
25 you mention a purchase agreement. Do you see that

1 part of your prefiled Direct testimony? And, can  
2 you tell me what purchase agreement you are  
3 referring to in your prefiled Direct testimony?

4 A. A purchase agreement that was represented  
5 existed between Con Edison and the Luyster Creek  
6 LLC.

7 Q. Have you reviewed that purchase agreement?

8 A. I have not. In developing my testimony, I  
9 reviewed the legal testimony, the legal court  
10 opinions on the matter without reviewing  
11 agreements.

12 Q. In the course of your preparation for your  
13 Direct testimony, just to clarify your prior  
14 answer, did you review the Commission Order order  
15 from 2002 that addressed the transaction?

16 A. I believe so, yes.

17 Q. I have just handed you what has been  
18 premarked in this case as Hearing Exhibit 218  
19 which I will represent to you is a copy of the  
20 verified petition and its attachments in Case  
21 02-N-0741, which is the Con Edison proceeding  
22 involving Luyster Creek Associates. The purchase  
23 agreement is actually an attachment to the  
24 verified petition, Mr. Murphy. It begins after  
25 page 11, the exhibit page on the petition.

1 A. I'm not finding it.

2 MR. HURST: May I approach the witness,  
3 Judge?

4 ALJ CASUTTO: Yes.

5 Q. Now, Mr. Murphy, have you had a chance  
6 briefly to look over the purchase agreement?

7 A. Yes.

8 Q. Is it your testimony that you have not seen  
9 that before today?

10 A. It does not look familiar to me.

11 Q. Mr. Murphy, if I can direct your attention  
12 to page 20 of what has been premarked Exhibit 218  
13 under the heading "Environmental."

14 ALJ CASUTTO: This is page 20 of the  
15 purchase agreement within the exhibit.

16 Q. Are you able to find that section?

17 A. I am.

18 Q. In the third full sentence of what is marked  
19 as subparagraph (i), the sentence that begins:  
20 "Purchaser agrees that in connection with any  
21 development of the premises" -- Do you see that  
22 sentence?

23 A. I do.

24 Q. Can you just take a minute and look over  
25 that sentence for me, Mr. Murphy.

1 A. (The witness complied.)

2 Q. Do you have an understanding in your own  
3 mind as to what that sentence means, Mr. Murphy?

4 MR. POND: Your Honor, I'm going to  
5 object at this point. The witness has testified  
6 that he is not familiar with the document. He is  
7 not an attorney. It's a legal document, and I  
8 think asking the witness what his understanding of  
9 what a legal document is in these circumstances is  
10 inappropriate.

11 MR. HURST: That goes to weight, not  
12 admissibility. And I'm not sure what a "legal  
13 document" means, but I am asking him what his  
14 interpretation is -- as he sits here right now --  
15 of a sentence that's in a document that pertains  
16 directly to the matter he has opined on. So, to  
17 the extent that he is able to opine on the  
18 suitability of the site conditions, we are then  
19 allowed to inquire into matters which might  
20 detract from his opinion in that regard and should  
21 have been taken into account but were not. And,  
22 that's exactly what I'm doing here.

23 MR. POND: You have the testimony that  
24 he hasn't reviewed the document. And you are free  
25 to make whatever use you want with respect to the

1 contents of the document. I don't think you need  
2 to ask him what his understanding is of a document  
3 that he had no understanding of when he came into  
4 this room. So, you are asking him to read it and  
5 interpret it and that is, effectively, asking for  
6 a legal conclusion.

7 ALJ CASUTTO: Let me ask Mr. Hurst to  
8 repeat the question, and we will make a decision  
9 on the objection.

10 Q. Mr. Murphy, you have had a chance to review  
11 the sentence that I directed you to: "Purchaser  
12 agrees that in connection with" -- correct?

13 A. Yes.

14 Q. As you read that sentence, did you form an  
15 understanding in your own mind as to what it meant  
16 to you, Mr. Murphy, as you sat and read that  
17 sentence?

18 MR. POND: Same objection, Your Honor.

19 MR. HURST: I will rephrase it, Judge.

20 Q. Mr. Murphy, having read the sentence that we  
21 have just directed your attention to, what does  
22 that mean to you as an environmental consultant?

23 MR. POND: Same objection, Your Honor.  
24 This is a document that he has not previously  
25 examined.

1           ALJ CASUTTO: I will allow him to answer  
2 the question if he understands the question.

3           A. Based on my reading of it at this particular  
4 moment in time, this looks to be standard, legal  
5 language that you might include for any site as a  
6 precautionary measure for one party or another.

7           Q. What is the precautionary measure that you  
8 observed as you read that sentence, Mr. Murphy?

9           A. I assume the language is referring to the  
10 disturbance of soils causing some sort of  
11 potential impact to the construction workers  
12 working at the site.

13          Q. And, that sentence is requiring prior  
14 notification to those workers of the potential  
15 environmental conditions at the site; right?

16          A. That is what it appears to be at this  
17 moment.

18          Q. Now, Mr. Murphy, in your prefiled Direct  
19 testimony at page eight lines 9 and 10 you refer  
20 to a Commission Order authorizing the transaction  
21 between Con Edison and Luyster Creek. Do you see  
22 that part of your testimony?

23          A. Yes.

24          Q. And, earlier you testified that you read  
25 that Commission Order; correct?

1 A. Yes.

2 Q. And, isn't it true that at page six, the  
3 Commission states, "The property is contaminated  
4 and will require potentially extensive remediation  
5 before it can be productively utilized"?

6 MR. POND: Perhaps you can provide him  
7 with a copy.

8 (Document proffered)

9 A. I have no recollection.

10 ALJ CASUTTO: Just a moment. When there  
11 are objections, please address the objections to  
12 the Judge. And when there are responses, please  
13 addresses them to the bench.

14 Q. Is your testimony, Mr. Murphy, that you have  
15 no recollection of reading that sentence in the  
16 Commission Order?

17 A. I don't recollect at this time.

18 Q. Is it your understanding that the lands that  
19 were described in the Commission Order from 2002  
20 were the same lands a portion of which Con Edison  
21 recently made available to the project for the  
22 siting of the converter station?

23 MR. GARAM: Con Edison in its  
24 stipulation said that it would not object to the  
25 siting of the converter station in the location.

1 It made no arrangement at all with respect to the  
2 property involved.

3 ALJ CASUTTO: So, you are objecting to  
4 the form of the question?

5 MR. HURST: I can rephrase.

6 Q. Mr. Murphy, when you reviewed the  
7 Commission's 2002 Order referred to in your  
8 prefiled Direct testimony, was it your  
9 understanding that that Order was discussing, at  
10 least in part, the lands on which the converter  
11 station is proposed to be located in this case?

12 A. The Order was related to the 21.3 acres, a  
13 portion of which is under discussion today as a  
14 potential site for the converter station.

15 Q. Isn't it true that there is also a proposal  
16 in this case for a new ring bus to be constructed  
17 on the same site?

18 A. I have been in the room where such  
19 conversations have been occurring, but I couldn't  
20 speak directly to the engineering for this project  
21 at this point.

22 Q. The HVD transmission line needs to get to  
23 the converter station somehow; right?

24 A. Yes.

25 Q. What would be the mode or method of

1 installation when the HVD transmission line comes  
2 out of the water at the Luyster Creek site and  
3 goes to the converter station? How does that  
4 happen?

5 MR. POND: Your Honor, I'm going to  
6 object. He said he's not an electrical engineer.  
7 I think it's going beyond the scope of testimony.

8 MR. HURST: Judge, he has opined as to  
9 the suitability of the site. And one of the  
10 issues in this case is the trenching of the cables  
11 to get to the converter station. So, it all goes  
12 to the suitability of the site.

13 MR. POND: I think if you want to ask  
14 about trenching, that's another --

15 ALJ CASUTTO: Exactly. I will sustain  
16 the objection. If you want to ask a related  
17 question, we'll see where that goes.

18 Q. Mr. Murphy, what is the distance from the  
19 water to the converter station?

20 A. I don't have that information at my  
21 fingertips right now.

22 Q. Without that information at your fingertips,  
23 isn't it the case that the current plan is to  
24 trench the cable from the river to the converter  
25 station site?

1 A. That is the current plan at this moment.

2 Q. And, isn't it true that the current plan is  
3 to trench the cable from the converter station  
4 site to the substation?

5 A. That is one option for the cable to reach  
6 the substation.

7 Q. Isn't it the case that one of the options  
8 for the cable to get from the substation to the  
9 streets of Astoria, Queens is to trench the cable  
10 at that point as well?

11 A. That it a potential option as well.

12 Q. As you sit here right now, Mr. Murphy, do  
13 you recall a target depth of the cable for  
14 trenching of between three and five feet?

15 A. The Applicants have represented that in  
16 previous documents, yes.

17 Q. Now, turning back to your opinion in your  
18 prefiled Direct testimony at pages 18 and 19,  
19 before you expressed your opinion you engaged in a  
20 discussion in your prefiled Direct testimony of  
21 environmental accords prepared by others; correct?

22 A. Yes.

23 Q. In fact, isn't it the case that the  
24 Applicant served Interrogatories on Con Edison  
25 seeking the production of certain reports that

1 bear on environmental conditions that bear on the  
2 Luyster Creek site?

3 A. Yes.

4 MR. HURST: Off the record for a minute,  
5 Judge?

6 ALJ CASUTTO: Yes.

7 (A discussion was held off the record.)

8 Q. I just handed you what has been premarked in  
9 this case as Hearing Exhibit 217, which are a  
10 series of Interrogatory Responses by Con Edison  
11 Company of New York, Inc. which were served in  
12 this case on June 8, 2011. Have you had a chance  
13 to look through Exhibit 217, Mr. Murphy?

14 A. Yes.

15 Q. And, do you recognize some of the Responses  
16 in there? Have you seen this Response before  
17 today?

18 A. Yes, I have.

19 Q. And, Mr. Murphy, if you will look at Con  
20 Edison's Response to CHPEI 2, which is the second  
21 and third pages, do you see the list of reports  
22 there?

23 A. I do.

24 Q. And did you review some or all of those  
25 reports in order to form your opinion in this

1 case?

2 A. I reviewed some of the reports.

3 Q. And Mr. Murphy, as you reviewed that list,  
4 isn't it the case that the most recent of those  
5 reports is dated in 2000, the year 2000?

6 A. Yes.

7 Q. And, Mr. Murphy, isn't it the case that  
8 neither your company nor the Applicants, as far as  
9 you know, have completed independent environmental  
10 assessments of the Luyster Creek site?

11 A. Yes.

12 Q. And, you actually say that at page 14 line  
13 14 of your prefiled Direct testimony?

14 A. Yes.

15 Q. Isn't it the case, Mr. Murphy, that that is  
16 why your prefiled Direct testimony on pages 15  
17 through 18 is actually a summary of assessments  
18 and reports prepared by others, including those  
19 shown in Hearing Exhibit 217?

20 A. Yes.

21 Q. Mr. Murphy, in your prefiled Direct  
22 testimony you refer to a November 1999 data  
23 summary report. Do you remember making that  
24 reference in your testimony?

25 A. I'm sorry. Can you direct me to where that

1 was?

2 Q. It's page 15, Mr. Murphy, at the top. And  
3 then, under the question: "Please summarize the  
4 information provided in this report."

5 A. Yes.

6 Q. And, so, that was the data summary report  
7 that was submitted to Con Edison in November of  
8 1999 referred to at the top of page 15. That is a  
9 report that you reviewed in connection with your  
10 opinion in this case?

11 A. Yes.

12 Q. And that report is, as we sit here today,  
13 about 12 and a half years old; right?

14 A. Yes.

15 Q. And, you, Mr. Murphy, did not participate in  
16 the collection of any of the data that was  
17 summarized in the 1999 report; right?

18 A. Correct.

19 Q. And as you sit here today, you have no way  
20 to vouch for the methods of data collection that  
21 were used as to the accuracy of the results;  
22 right?

23 A. The methods that were used were described  
24 within the report itself, and I had an opportunity  
25 to evaluate those as part of my review.

1 Q. You didn't have an opportunity to evaluate  
2 those methods as they were being implemented in  
3 the field in the collection of data; right?

4 A. That would be a direct supervisory role in  
5 this investigation.

6 Q. Based on that report, all you can do,  
7 really, is report out again the results that were  
8 set forth in that report; right?

9 MR. POND: Your Honor, I think that is  
10 argumentative. I think that's an argumentative  
11 question. Judge, I am making observations based  
12 on --

13 ALJ CASUTTO: I will allow it.

14 MR. HURST: I will ask the question  
15 again.

16 Q. Mr. Murphy, isn't it also the case that with  
17 respect to the sampling results that may have been  
18 described or expressed in the 1999 report, can you  
19 -- although you didn't take the samples or do the  
20 lab work -- all you can do is really review what  
21 the report says; right?

22 A. Yes.

23 Q. And, so, in your prefiled Direct testimony,  
24 in this portion really what you are saying is:  
25 Here are some twelve and a half year old reports

1 prepared by others and here's what they say.

2 That's as far as you can go; right?

3 MR. POND: Now, Your Honor, I really  
4 think that is argumentative.

5 MR. HURST: Judge, I'm exploring the  
6 contours of his opinion and what its basis is.

7 ALJ CASUTTO: I'll sustain the  
8 objection. Move on.

9 Q. Mr. Murphy, let's take a closer look at your  
10 testimony, then. On page fifteen of your prefiled  
11 Direct testimony you identified the presence of  
12 seven underground storage tanks at the Luyster  
13 Creek site; isn't that right?

14 A. Those are seven tanks identified within the  
15 21 acres, yes.

16 Q. And, of those seven tanks within the 21  
17 acres, only one has been documented to have been  
18 filled with concrete; right?

19 A. There is only documentation for one, yes.

20 Q. As to the other six, isn't it the case based  
21 on your prefiled Direct testimony that you are not  
22 really sure where they are located or might be  
23 located?

24 A. Yes.

25 Q. And, so there is really no way for you to

1 compare the proposed converter station footprint  
2 to the location of those six buried USTs; right?

3 A. Right.

4 Q. And, a corollary of that, of course, would  
5 be that as you sit here today, you really have no  
6 idea of what the condition of those six USTs may  
7 be as they currently exist?

8 A. If they exist on the site, yes.

9 Q. So, you don't even know whether, or if,  
10 there are tanks there; isn't that right?

11 A. Correct. The tanks could have been removed  
12 by now, and there is no official record for it.

13 Q. Based on the state of information that we  
14 have available to us as we sit here today, it is  
15 then equally likely that the tanks may be there  
16 someplace on the site? We just don't know that;  
17 right?

18 A. I'm not in a position to come up with a  
19 probability of the tanks being there or not being  
20 there.

21 Q. On page 16 of your prefilled Direct testimony  
22 you identify a fill mound.

23 A. Yes.

24 Q. You state in your Direct testimony that the  
25 converter station footprint, as it was known at

1 the time you filed your Direct testimony, is  
2 likely to fall within the fill mound limits;  
3 right?

4 A. Yes.

5 Q. Do you know if that still is the case based  
6 on the configuration set forth in Exhibit 129 or  
7 130?

8 A. No. Based on the configuration that was  
9 presented in the stipulation between the  
10 Applicants and Con Ed, the fill mound does not  
11 appear as if it would be within the footprint of  
12 the proposed converter station.

13 Q. Do you have a sense of what distance the new  
14 proposed converter station site might be from the  
15 fill mound?

16 A. I have not looked into that.

17 Q. At page 17, lines 1 through 4 of your  
18 prefiled Direct testimony, Mr. Murphy, isn't it  
19 true that you are reporting there about some  
20 groundwater contamination in a well on the 21.5  
21 acre parcel?

22 A. Yes.

23 Q. And isn't it the case, Mr. Murphy, that the  
24 source and extent of that groundwater  
25 contamination are, at least to you, unknown at

1 this point?

2 A. Yes.

3 Q. So, that contamination could be confined in  
4 an area away from the converter station, or  
5 perhaps it could be widespread. And we don't know  
6 that until there is actually sampling done and a  
7 report prepared and all of those things; right?

8 A. Yes.

9 Q. And, Mr. Murphy, at pages 17 and 18 of your  
10 prefiled Direct testimony, am I correct that you  
11 are essentially summarizing AKRF's May 1999 review  
12 of an earlier draft of a November 1999 data  
13 summary report?

14 A. Yes.

15 Q. And, they are also in that review looking at  
16 a 1998 Phase 1 ESA, just so the record is  
17 complete; right?

18 A. Yes.

19 Q. And, of all of the reports that were  
20 identified in Hearing Exhibit 217, you chose to  
21 attach just the AKRF report to your prefiled  
22 Direct testimony; right?

23 A. Yes.

24 Q. Why did you make that decision, Mr. Murphy?

25 A. Because I felt that that report provided a

1 summary of available information on sort of a high  
2 level, and that it also addressed the potential  
3 for the siting of a similarly proposed converter  
4 station.

5 Q. In the last part of your testimony, are you  
6 suggesting that the proposed manufacturing  
7 facility is similar to the converter station?

8 A. No. In terms of the likely construction  
9 based on the conversations that I had with the  
10 engineers at the time, as well as a general sense  
11 of how construction occurs, the thought was that  
12 that would provide a summary document for  
13 construction of a facility within the 21.3 acre  
14 parcel; construction being somewhat similar to  
15 that of the potential converter station.

16 Q. So, in this part of your Direct testimony  
17 where you are discussing AKRF's May 1999 review,  
18 you are essentially -- help me to understand what  
19 you are doing there in terms of the basis for your  
20 opinion. You are then summarizing AKRF's summary  
21 of a draft summary prepared by a third consultant;  
22 right?

23 A. Yes.

24 Q. And, so, let me see if I can say it a  
25 different way that makes a little more sense. So,

1 this part of your Direct testimony is really your  
2 summary of another consultant's summary of a third  
3 consultant's draft summary report?

4 A. Yes.

5 Q. And, isn't it the case, Mr. Murphy, that  
6 even AKRF's May 1999 summary invokes the need to  
7 exercise care, as "buried tanks or unexpected  
8 materials could be encountered"?

9 A. Yes.

10 Q. Isn't it possible based on the state of  
11 information available to you as you sit here  
12 today, Mr. Murphy, that those "other unexpected  
13 materials" could be underground storage tanks, for  
14 example; right?

15 A. It's possible that there are underground  
16 storage tanks within the footprint of the proposed  
17 converter station. And, it's also possible that  
18 there are not underground storage tanks within the  
19 footprint of the proposed converter station.

20 Q. And, the same goes for, for example,  
21 hazardous substances. Based on the state of  
22 information that you have available to you today,  
23 there could be some or maybe not some; right?

24 A. The preponderance of the evidence is that  
25 there is not significant contamination at the

1 site. I take your point that the studies were  
2 conducted at an earlier period of time.

3 Q. Just so we are clear, your opinion as  
4 expressed in your prefiled Direct testimony is  
5 based on your review of the reports that are set  
6 forth in Hearing Exhibit 217; correct?

7 A. Yes.

8 MR. HURST: I have no more questions for  
9 Mr. Murphy.

10 ALJ PHILLIPS: I don't believe there is  
11 any other party who has indicated cross  
12 examination for this witness.

13 MR. POND: Can we take a brief recess  
14 for five or ten minutes?

15 ALJ PHILLIPS: Five minutes.

16 (Recess: 12:27 p.m. - 12:35 p.m.)

17 ALJ PHILLIPS: Let's go back on the  
18 record. Mr. Pond, Redirect?

19 MR. POND: Yes.

20 REDIRECT EXAMINATION

21 BY MR. POND:

22 Q. Mr. Murphy, based on your cross-examination  
23 here today, is there anything in your Direct  
24 testimony that you would change?

25 A. No.

1 MR. POND: Thank you. That's all. Is.

2

3 ALJ PHILLIPS: At this time the witness  
4 is excused.

5 (Witness Murphy was excused at  
6 approximately 12:27 p.m.)

7 ALJ PHILLIPS: At this time I think it  
8 would be a good time to take our lunch break.  
9 We're going to take an hour, so if everyone could  
10 be back at 1:30. Thank you very much. We are off  
11 the record.

12 LUNCHEON RECESS

13 (12:27 p.m. - 1:35 p.m.)

14 ALJ CASUTTO: Ladies and gentlemen, may  
15 we come to order. I would like to reconvene for  
16 the afternoon session. And I believe the next  
17 witness would be Mr. Paynter for staff. So, staff  
18 may proceed in calling their witness.

19 T H O M A S S . P A Y N T E R ,  
20 called as a witness by Staff, and being duly  
21 affirmed by ALJ Casutto, was examined and  
22 testified as follows:

23 DIRECT EXAMINATION

24 BY S. MORENO:

25 Q. Good afternoon, Mr. Paynter. My name is

1 Ashley Moreno from Staff. Do you have before you  
2 a document entitled: The prepared testimony of  
3 Thomas S. Moreno consisting of four pages?

4 A. Yes.

5 Q. And did you supervise or prepare that  
6 document?

7 A. Yes.

8 Q. And do you also have before you a document  
9 entitled: The rebuttal testimony of Thomas S.  
10 Paynter?

11 A. Yes.

12 Q. And, the document entitled the Rebuttal  
13 Testimony of Thomas S. Paynter consisting of 36  
14 pages, did you supervise the preparation or  
15 prepare that document?

16 A. Yes.

17 Q. And, do you have any corrections or changes  
18 to make in either the Direct testimony or the  
19 Rebuttal testimony?

20 A. Yes, one addition. The Rebuttal testimony,  
21 page 23 line 12.

22 Q. What change are you proposing?

23 A. After the word "future" add "see Exhibit  
24 203."

25 Q. And just for clarity, that would be the

1 premarked hearing exhibit?

2 A. Yes.

3 Q. And, with that correction, if I were to ask  
4 you the questions in your Direct and Rebuttal  
5 document, would your answers be the same today?

6 A. Yes.

7 MS. MORENO: Your Honors, I request that  
8 the documents entitled: Prepared Testimony and  
9 Rebuttal Testimony of Thomas S. Paynter be copied  
10 into the record as if given orally.

11 ALJ CASUTTO: Yes, granted.

12 (The prefiled testimony of Thomas  
13 Paynter was inserted into the record.)

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BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of

Application of Champlain Hudson Power Express, Inc. for a  
Certificate of Environmental Compatibility and Public Need  
Pursuant to Article VII of the PSL for the Construction,  
Operation and Maintenance of a High Voltage Direct Current  
Circuit from the Canadian Border to New York City

Case 10-T-0139

June 28, 2012

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Prepared Rebuttal Testimony of:

THOMAS S. PAYNTER  
Supervisor of Regulatory  
Economics  
Office of Regulatory Economics  
State of New York  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350

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1 Q. What is your name and business address?

2 A. Thomas S. Paynter, New York State Department of  
3 Public Service, 3 Empire State Plaza, Albany New  
4 York 12223-1350.

5 Q. Is your educational and professional experience  
6 described in your direct testimony filed in this  
7 proceeding?

8 A. Yes.

9 Q. What is the purpose of this rebuttal testimony?

10 A. This testimony rebuts the testimony of Mark  
11 Younger regarding my analysis of the long-term  
12 production cost benefits of the Champlain Hudson  
13 Power Express project (CHPE). I also provide an  
14 updated estimate of Long-Term Economic Benefits.

15 **Summary of Direct Testimonies**

16 Q. Please summarize your direct testimony regarding  
17 the long-term production cost benefits of the  
18 Champlain Hudson Power Express project.

19 A. My analysis, as presented in the Joint Proposal at  
20 paragraphs 23 and 107 through 118, estimated the  
21 costs of developing hydroelectric resources by

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1 Hydro-Quebec (HQ) and delivering them to New York  
2 City via CHPE as approximately \$9.1 billion (\$6.7  
3 billion for HQ and \$2.4 billion for CHPE).

4 I assumed that, absent the electricity from  
5 CHPE/HQ, the alternative supply would come from  
6 building and operating a 1,000 MW combined cycle  
7 gas-fired turbine (CCGT) plant located in New York  
8 City. I estimated the construction cost at \$2.0  
9 billion and the operating cost at \$8.3 billion to  
10 \$10.3 billion, depending on assumptions about  
11 natural gas prices. This yielded a total  
12 estimated cost for the CCGT alternative of \$10.3  
13 billion to \$12.3 billion (net present value in  
14 2015 \$).

15 I concluded that, on a long-term basis, the  
16 CHPE project would provide a net economic benefit  
17 to society of approximately \$1.2 billion to \$3.2  
18 billion (net present value in 2015 \$). As Staff  
19 noted in the Joint Proposal, this should not be  
20 interpreted as ratepayer benefits; rather, to the  
21 extent that prices for electricity are determined

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1 in the long term by the cost of building and  
2 operating new CCGT capacity, the long-term  
3 economic benefits would be captured by CHPE's  
4 developers, their financial backers, and/or their  
5 users.

6 Q. Recognizing that this is just a siting case for  
7 CHPE, why did you incorporate the costs of HQ's  
8 resources into your long-term production cost  
9 analysis?

10 A. I included the cost of those resources because  
11 CHPE is designed to deliver such energy from  
12 Quebec to NYC; thus the economic value of the  
13 Facility depends greatly on the availability and  
14 cost of Quebec's hydroelectric resources. It is  
15 important to note that HQ bears the construction  
16 cost risks not only for its hydroelectric projects  
17 but also for its transmission facilities to  
18 deliver the energy to distant loads.

19 Moreover, HQ and other Canadian developers  
20 have a direct financial interest in obtaining the  
21 highest market price for their electricity.

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1           Therefore it is not surprising that HQ has  
2           expressed an interest in helping to finance CHPE,  
3           in order to deliver its new electricity supplies  
4           to the relatively high-cost New York City market.

5           Staff has provided this information on HQ's  
6           hydroelectric projects and its financial interests  
7           to help complete the record in this case and rebut  
8           claims that CHPE's financing could only come from  
9           New York loads.

10    Q.    Please summarize Mr. Younger's direct testimony on  
11           this issue.

12    A.    In large part, Mr. Younger presents a  
13           methodological critique, arguing that a MAPS-based  
14           analysis provides a better estimate of production  
15           cost savings (PCS) than my long-term economic  
16           benefits analysis (see pages 38-39); that CHPE  
17           should be analyzed as a stand-alone merchant  
18           project (see pages 54-55); and that HQ would  
19           prefer to sell its energy at the New York border  
20           price rather than help finance CHPE to deliver the  
21           energy to NYC (see pages 67-68).

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1           Regarding my long-term economic analysis, Mr.  
2           Younger argues that HQ's cost of developing  
3           hydroelectric resources and delivering them to  
4           CHPE are over 60% higher (\$4.1 billion higher)  
5           than my estimate, raising the cost estimate for  
6           the HQ resources from \$6.7 billion to \$10.8  
7           billion. Adding the estimated cost of CHPE, Mr.  
8           Younger estimated the total cost of CHPE/HQ to be  
9           \$13.2 billion.

10           Mr. Younger then argues that, due to current  
11           market conditions, the alternative to the Facility  
12           (a generic 1,000 MW combined-cycle gas-fired  
13           turbine or CCGT) could be deferred until ten years  
14           after CHPE's in-service date, reducing its  
15           present-value construction cost by almost 80%  
16           (from \$2.0 billion to just \$0.4 billion).

17           Moreover, Mr. Younger argues that only the  
18           recent "low-gas price" scenario should be  
19           considered, due to the expansion of shale gas  
20           supplies in recent years; in my analysis, this  
21           lowered the cost of the CCGT alternative by almost

1           \$2 billion compared to the "high gas price"  
2           scenario.

3           These factors led Mr. Younger to conclude  
4           that the cost of the CCGT alternative would be  
5           just \$8.4 billion (\$0.4 billion construction and  
6           \$8.0 billion operating), approximately \$4.8  
7           billion lower than his estimate of the cost of the  
8           combined CHPE/HQ hydro project.

9           Finally, Mr. Younger presented two economic  
10          analyses of CHPE on a stand-alone basis: First,  
11          an "Analysis Based on Historic Pricing", relying  
12          on NYISO energy prices from 2010 and 2011.  
13          Second, "Production Cost Modeling of the Project"  
14          based on the NYISO's economic planning process  
15          known as "CARIS" (Congestion Analysis and Resource  
16          Integration Study).

17                           **Rebuttal of Methodological Critique**

18    Q.    What is your response to Mr. Younger's  
19           methodological critique?

20    A.    Mr. Younger is arguing for a short-term  
21           profitability analysis, rather than the long-term

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1 economic analysis I provided. These are different  
2 analyses, which serve different purposes. CHPE's  
3 developers indicated their project was intended to  
4 deliver new resources (primarily hydroelectric)  
5 from Quebec to NYC over the next 35 years or more.  
6 My analysis addresses the question of whether such  
7 investments are economically efficient from a  
8 societal perspective, i.e. whether the costs of  
9 the combined investments in CHPE and associated  
10 hydroelectric resources in Quebec are less than  
11 the costs of the likely alternative resources.  
12 Mr. Younger's analyses address a different  
13 question, namely whether CHPE could obtain  
14 financing as a stand-alone merchant project under  
15 current market conditions, which have been  
16 depressed due to the "Great Recession" and low  
17 natural gas prices. Although my analysis treated  
18 CHPE as entering service in 2015, this was only  
19 for convenience; the actual timing would be  
20 determined by the developer and its financial  
21 backers, and according to Mr. Jessome's testimony,

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1 would not be feasible until 2018 at the earliest.

2 Q. Can you briefly explain how your long-term  
3 economic benefits analysis relates to a  
4 profitability analysis?

5 A. The principal difference is that economic benefits  
6 represent reductions in cost, whereas  
7 profitability analyses involve market prices.  
8 CHPE and HQ's dams are large projects, by  
9 necessity due to the large economies of scale  
10 inherent in dams and transmission lines (i.e.  
11 average costs tend to decline as the size of the  
12 projects increase). When large new supplies enter  
13 a market, they naturally tend to depress market  
14 prices. These price reductions benefit consumers  
15 at the expense of the suppliers; but the reduction  
16 in prices does not represent an economic (or  
17 societal) benefit, just a transfer payment from  
18 suppliers to consumers. The economic (societal)  
19 benefit ignores the price impacts, and just  
20 measures the difference in costs between the  
21 hydroelectric resources (including delivery costs)

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1 and the likely alternative resources.

2 Over time, markets respond to the depressed  
3 prices, e.g. through additional load or reductions  
4 in supply, until prices return to long-run  
5 equilibrium levels that reflect the cost of new  
6 entry. Thus, the transfer payments associated  
7 with price changes tend to fade over time. In the  
8 long run, HQ would expect to be able to sell its  
9 energy at long-run equilibrium prices reflecting  
10 the cost of alternative sources of supply, which I  
11 have assumed to be CCGTs in the case of NYC.  
12 Thus, in the long run, I would expect HQ's profits  
13 to reflect the long-run economic benefits  
14 estimated by my analysis. However, forecasting  
15 short-term profitability is complicated by the  
16 likely impact of the CHPE and HQ projects on  
17 market conditions.

18 Q. Are you saying that CHPE would not provide any  
19 long-term economic benefits to New York  
20 ratepayers?

21 A. No. CHPE may provide a variety of long-term

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1 ratepayer benefits, including fuel diversity and a  
2 reduced reliance on natural gas in NYC; this  
3 could, for example, reduce the need for  
4 additional, costly gas transmission lines.

5 Moreover, it may be that the long-run supply curve  
6 for CCGTs in NYC is upward-sloping, i.e. the  
7 average cost of new entry may increase with the  
8 number of CCGTs. In that case, CHPE could provide  
9 some long-term reduction in prices in NYC.

10 However, I have not attempted to quantify such  
11 long-term ratepayer benefits. Other Staff have  
12 estimated short-term wholesale market price  
13 impacts, which would be expected to benefit  
14 ratepayers over the short term.

15 Q. Do you agree with Mr. Younger that CHPE should be  
16 analyzed as a stand-alone merchant project?

17 A. No. It is difficult to analyze CHPE on a stand-  
18 alone basis because its profitability would be  
19 dependent on the availability and cost of supply  
20 in Quebec. Moreover, if CHPE were built without a  
21 contract with HQ, it would face the risk that HQ

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1           could forego development of new resources and  
2           simply sell its existing resources to CHPE at a  
3           higher price, taking advantage of CHPE's delivery  
4           of 1,000 MW to the NYC market. In that case, the  
5           economic benefits of CHPE would be largely  
6           transferred to HQ, leaving CHPE unprofitable  
7           regardless of its economic benefits to society.

8    Q.    Do you agree with Mr. Younger that HQ would rather  
9           sell at its border price than help finance CHPE?

10   A.    No; such an assumption is belied by the public  
11           interest expressed by both HQ and CHPE, for  
12           example in their responses to the New York Energy  
13           Highway Request for Information; see  
14           Exhibit\_\_\_\_(TSP-1) and Exhibit\_\_\_\_(TSP-2).  
15           Moreover, CHPE could help HQ recoup its investment  
16           in large new hydroelectric projects, which are  
17           expected to come on-line over the next few years.  
18           This is the flip side of the risk faced by CHPE if  
19           it were to build before HQ. The decision to  
20           develop additional hydro-electric resources in  
21           Quebec was made years ago, when market prices (and

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1 forecasts) were higher; now the costs of those  
2 projects are largely sunk. Were HQ to simply sell  
3 this additional energy at its border, this could  
4 cause a substantial reduction in the market price  
5 at the border, which would be exacerbated by  
6 transmission constraints within the New York  
7 system. Similar concerns would apply to exports  
8 to other regions. Moreover, this reduction in  
9 price would impact HQ's existing exports as well,  
10 representing a significant risk to HQ's  
11 profitability. CHPE could help minimize this risk  
12 to HQ. Thus HQ could address a number of its  
13 concerns by offering to help finance CHPE.

14 **Rebuttal of Quebec Resource Costs**

15 Q. What is your response to Mr. Younger regarding the  
16 cost of developing new hydroelectric resources in  
17 Quebec and delivering them to the Facility?

18 A. I estimated the cost of developing new  
19 hydroelectric resources in Quebec by averaging the  
20 cost of two recent projects: the Eastmain-1-A, La  
21 Sarcelle and Rupert Diversion project ("ELRD"),

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1           which is scheduled to be completed this year; and  
2           the Romaine project, which is currently under  
3           construction and is expected to enter service in  
4           phases over the period 2014 to 2020. Mr. Younger  
5           claims that the ELRD project should be excluded  
6           because it makes use of existing dams, arguing  
7           that the cost of those pre-existing dams would  
8           have to be included in the cost of the power from  
9           the ELRD project. However, the costs of pre-  
10          existing dams are clearly "sunk" costs, which do  
11          not add to the economic cost of the ELRD project.  
12          The ELRD project makes more efficient use of  
13          existing resources, and HQ may continue to develop  
14          such efficient projects in the future.

15                 With regard to the Romaine project, Mr.  
16          Younger notes that it is remote from HQ's main  
17          transmission system, and argues that the cost of  
18          the Romaine project should be increased by the  
19          cost of new transmission required to deliver its  
20          power to Quebec's existing bulk power system. I  
21          agree that, to the extent new hydroelectric

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1 resources require transmission investments to  
2 interconnect with the HQ system, these  
3 transmission costs should be included in the cost  
4 of the new resources. However, new lines such as  
5 those associated with the Romaine project may make  
6 possible development of additional hydroelectric  
7 projects in the future, along the lines of the  
8 ELRD project. I presume HQ took account of this  
9 potential, and other factors, in deciding to  
10 proceed with the Romaine project; I do not have  
11 sufficient information to second-guess HQ's  
12 business decision, nor is that appropriate in this  
13 case. At a minimum, there should be a discount to  
14 the cost of these lines, to recognize the value of  
15 any "headroom" they may create on the transmission  
16 system for future resource additions.

17 To account for these factors, I would include  
18 the cost of the transmission associated with the  
19 Romaine project, but average that with the ELRD  
20 project cost. I would also add the costs  
21 associated with interconnecting CHPE to the HQ

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1 system, estimated to be \$346 million, according to  
2 the testimony of Mr. Jessome.

3 Q. At p. 27, line 9, through p. 29, line 7, Mr.  
4 Younger stated that Staff had provided no support  
5 for its use of a 10% loss factor on the HQ system,  
6 and argued that this factor should be increased to  
7 19.4% based on the marginal line losses from the  
8 Niagara bus to the Poletti bus in 2011. How do  
9 you respond?

10 A. HQ's bulk system is comprised mostly of high  
11 voltage (735 kV) AC lines, designed to transfer  
12 power over long distances with relatively small  
13 line losses. An archived posting from HQ's  
14 website, provided as Exhibit\_\_\_\_(TSP-3), states  
15 that: "Between James Bay and Montreal (more than  
16 1,000 km apart), transmission losses vary from  
17 4.5% to 8%, depending on operating conditions and  
18 temperatures." Thus my assumption of 10% losses  
19 on the HQ system is indeed conservative; this  
20 rebuts Mr. Younger's claim that an additional,  
21 unspecified, factor would be needed to cover HQ

1 operating costs.

2 **Rebuttal of CCGT Resource Costs**

3 Q. What is your response to Mr. Younger's claims that  
4 the CCGT alternative could be deferred for 10  
5 years due to current market conditions, thus  
6 reducing its present value cost by \$1.6 billion?

7 A. Mr. Younger has introduced short-term market  
8 conditions into a long-term economic analysis.  
9 Specifically, my long-term production cost  
10 analysis assumes that, in the long run, NYC will  
11 require new resources, either due to load growth,  
12 to retirement of existing resources, or to satisfy  
13 environmental or other public policy goals. As  
14 mine is a long-term economic analysis, I  
15 considered all costs to be avoidable; thus my  
16 analysis did not account for the actual timing or  
17 sequence of decisions. Any actual investment  
18 decisions will obviously take into account current  
19 and expected short-term market conditions, and so  
20 will differ from this long-term analysis. Since  
21 CHPE is a merchant project, such decisions are

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1 properly made by the developer and its financial  
2 backers.

3 Q. If you were to take account of short-term market  
4 conditions, as Mr. Younger did, what major  
5 adjustments would be required to your long-term  
6 analysis?

7 A. Mr. Younger addressed the impact of current market  
8 conditions on the timing of the CCGT alternative,  
9 which I will accept for argument's sake. However,  
10 I would also have to adjust for market conditions  
11 regarding the development of hydroelectric  
12 resources in Quebec. Specifically, HQ is already  
13 constructing large new hydroelectric resources  
14 (and associated transmission lines) in Quebec, and  
15 indicates this new supply will be available for  
16 export. As a result, the construction costs of  
17 these hydroelectric resources (including any  
18 associated transmission facilities) are now  
19 effectively "sunk", and no longer avoidable.

20 If HQ fails to find a market for this new  
21 supply, HQ could end up "spilling water," i.e.

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1           letting low-cost hydropower resources go to waste.  
2           In that case, I would have to eliminate those sunk  
3           costs from its economic analysis. As a result of  
4           this adjustment, the principal remaining  
5           (avoidable) cost of the hydroelectric resources  
6           would be the cost of CHPE, which I estimated at  
7           approximately \$2.432 billion. I would add the  
8           cost of interconnecting CHPE with HQ, which would  
9           still be an avoidable cost, estimated to be \$346  
10          million. Thus the total economic cost of the  
11          CHPE/HQ supply would be reduced to approximately  
12          \$2.8 billion, rendering it very economic compared  
13          to the cost of the CCGT alternative, even using  
14          Mr. Younger's estimate of \$8.4 billion.

15   Q.    Could HQ simply offer to export its new  
16          electricity supplies to New York via the existing  
17          transmission system?

18   A.    Yes. However, HQ's existing interties with New  
19          York have limited capacity, so New York might not  
20          be able to take all of the additional exports  
21          offered, especially during the summer peak months

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1           when the interties to New York are often fully  
2           loaded already. Moreover, New York's transmission  
3           system has internal constrained interfaces, and  
4           any additional imports from HQ would exacerbate  
5           congestion across those interfaces. HQ noted  
6           these concerns in its response to the New York  
7           Energy Highway Request for Information (Energy  
8           Highway RFI): "In addition to transmission  
9           upgrades in Quebec, substantially increasing power  
10          flows from Hydro-Quebec would likely also require  
11          transmission upgrades in New York to remove  
12          existing deliverability constraints." See  
13          Exhibit\_\_\_\_(TSP-1), p. 8.

14                 The effect of these transmission constraints  
15          would be to reduce the market price received by  
16          HQ, not only for its additional exports, but also  
17          for its existing exports. As a result, simply  
18          offering the new supplies into New York across the  
19          existing interties may not be the best financial  
20          option for HQ. Similar arguments apply to  
21          offering the exports to other regions. As

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1 indicated in its Energy Highway RFI response, HQ  
2 appears prepared to consider financial investments  
3 in both CHPE and alternative transmission  
4 investments in New York, in order to maximize the  
5 value of its current and future hydroelectric  
6 projects in Quebec.

7 **Rebuttal of Gas Price Forecasts**

8 Q. What is your response to Mr. Younger's rejection  
9 of your "high gas price" scenario?

10 A. For its forecasts of natural gas prices, Staff has  
11 adopted the Annual Energy Outlook (AEO) forecasts  
12 produced by the Energy Information Administration  
13 (EIA), which provides forecasts through 2035. For  
14 my long-term economic analysis, I adopted these  
15 forecasts and extended them through 2049, assuming  
16 prices continued to increase at the same rate as  
17 during the last 5 years of the forecasts.  
18 However, the reference case forecast for AEO 2011  
19 represented a substantial decline from prior AEO  
20 forecasts. The AEO 2012 forecast, which Mr.  
21 Younger relies upon, is slightly below the AEO

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1           2011 forecast. Due to the uncertainty in  
2           forecasts of energy prices, Staff decided to  
3           present both the AEO 2010 and AEO 2011 forecasts  
4           as representing "high gas price" and "low gas  
5           price" scenarios.

6           As shown in Exhibit\_\_\_\_(TSP-4), for most of  
7           the past 60 years, natural gas prices have  
8           gradually converged towards oil prices, with the  
9           ratio between the two market prices gradually  
10          approaching 1.0. Such convergence over time is a  
11          natural outcome of competitive markets, due to the  
12          ability of some customers to switch between  
13          natural gas and oil, at least over the long term,  
14          depending on which was cheaper when measured on a  
15          common basis such as dollars per million BTU.

16          Since 2005, however, U.S. natural gas prices  
17          have fallen dramatically, due in part to the  
18          development of a new (and controversial) drilling  
19          technique known as hydrofracturing ("fracking");  
20          meanwhile world oil prices have remained high.  
21          The AEO 2011 and AEO 2012 forecasts assume that

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1           this divergence in energy prices continues  
2           indefinitely into the future. The low forecasted  
3           gas/oil price ratio is illustrated by the  
4           "Forecast" series in Exhibit\_\_\_\_(TSP-4), based on  
5           the AEO 2012 Forecast, implying little convergence  
6           between gas and oil prices over the next 20 plus  
7           years. Exhibit\_\_\_\_(TSP-5), from the NYISO's 2011  
8           CARIS Study, which was based on the AEO 2011  
9           forecast, similarly shows a continued divergence  
10          between gas and oil prices for electric  
11          generation. In fact, the AEO 2012 forecasts that  
12          natural gas prices for electric generation will  
13          remain below \$7 per million BTU from 2015 until  
14          2035, yet fuel oil prices for electric generation  
15          will remain above \$20 per million BTU over the  
16          same period (all prices measured in 2010 dollars);  
17          See Exhibit\_\_\_\_(TSP-6), page 10, Ratio of Prices  
18          for Gas/Residual Oil for Electric Generation.  
19          Comparable differences between natural gas and oil  
20          prices are also forecasted for other sectors of  
21          the economy.

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1           The unusually large spread in forecasted  
2           prices between oil and natural gas for the  
3           foreseeable future provides a strong incentive for  
4           customers to switch to the cheaper fuel. Such  
5           fuel-shifting could greatly increase the demand  
6           for natural gas over time, which could be expected  
7           to boost the market price for natural gas relative  
8           to oil. Thus while the EIA has forecasted a  
9           continued wide spread between oil and natural gas  
10          prices through 2035, it is quite possible that  
11          those prices will begin to converge again in the  
12          future. Certainly investors with a long time  
13          horizon, including HQ, may rationally maintain  
14          different forecasts than the AEO 2012 forecast,  
15          such as that natural gas prices will tend to rise  
16          more quickly to converge to world oil prices. The  
17          Commission need not second-guess the decisions of  
18          private investors in this case by requiring  
19          adoption of the "low-gas-price" (AEO 2011 or AEO  
20          2012) forecasts of energy prices.

1           **Rebuttal of "Analysis Based on Historic Pricing"**

2    Q.    Please summarize Mr. Younger's economic analysis  
3           of CHPE entitled "Analysis Based on Historic  
4           Pricing."

5    A.    In this analysis, Mr. Younger computed an  
6           annualized cost for CHPE and compared that to the  
7           revenues that CHPE could have earned from the  
8           NYISO's energy markets in 2010 and 2011 by  
9           purchasing energy at NYISO's HQ Proxy Bus price  
10          and selling at the Poletti (now Astoria) 345 kV  
11          bus price in NYC. To compute an annualized cost,  
12          Mr. Younger multiplied CHPE's estimated  
13          construction cost of \$2.194 billion by a 16%  
14          annual levelized carrying charge rate, yielding an  
15          annual revenue requirement of \$351 million, or  
16          \$44.52 per MWh delivered, assuming a 90% capacity  
17          factor for CHPE (7,884 GWh per year). To compute  
18          the revenues CHPE could have earned from NYISO's  
19          energy market, he compared the average price at  
20          NYISO's HQ Proxy Bus, grossed up by 4% to account  
21          for CHPE's estimated line losses, to the average

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1 price at Poletti (Astoria). For 2010 and 2011,  
2 the energy revenues averaged \$10.88/MWh and  
3 \$11.25/MWh respectively. Mr. Younger concluded  
4 that CHPE would be uneconomic based on these  
5 prices.

6 Q. What is your response to Mr. Younger's "Analysis  
7 Based on Historic Pricing"?

8 A. Regarding the annualized cost of CHPE, Mr. Younger  
9 took the 16% annual levelized carrying charge rate  
10 from the NYISO's economic planning process  
11 (CARIS); this is intended to represent a generic  
12 project financing cost. However, CHPE anticipates  
13 other sources of financing, presumably at more  
14 favorable terms, including HQ, whose business  
15 model involves long-term investments in  
16 hydroelectric projects and associated transmission  
17 lines. As a result, CHPE's financing costs may be  
18 well below the generic financing costs assumed by  
19 the NYISO.

20 On the revenue side, Mr. Younger chose to  
21 analyze electricity prices in 2010 and 2011, which

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1           were severely depressed by short-term market  
2           conditions, including the "Great Recession."  
3           Prices in other years have been substantially  
4           higher, yielding much greater potential revenues.  
5           For example, applying the same method to prices in  
6           2007 and 2008 yields \$20.28/MWh on average,  
7           roughly double the energy values from 2010-2011.

8           Moreover, the NYISO's HQ Proxy bus price does  
9           not necessarily reflect HQ's marginal cost of  
10          generation; rather it reflects the marginal cost  
11          of generation in northern New York (NYISO does not  
12          model HQ's generation costs). In fact, the costs  
13          of HQ's new hydroelectric supplies are largely  
14          sunk, so their marginal cost would be very low.  
15          Finally, as discussed above, if HQ were to simply  
16          offer to export its new resources into New York  
17          across the existing interties, this could  
18          significantly depress the HQ Proxy Bus price for  
19          HQ's existing as well as additional exports.  
20          Similar considerations apply to exports to other  
21          regions.

1           The above considerations illustrate just some  
2           of the complications involved in a financial  
3           evaluation of CHPE. Ultimately, as a merchant  
4           project, CHPE will have to be carefully evaluated  
5           by the developer and its financial backers to  
6           determine whether and when to go forward with this  
7           project.

8           **Rebuttal of "Production Cost Modeling of the Project"**

9           Q.    Please summarize Mr. Younger's Economic Analysis  
10           of CHPE entitled "Production Cost Modeling of the  
11           Project."

12           A.    Mr. Younger evaluated CHPE using the NYISO's CARIS  
13           methodology. This method calculates annualized  
14           costs based on a generic 16% levelized carrying  
15           charge rate. The benefits are defined as "New  
16           York Production Cost Savings," which measure the  
17           cost savings of internal New York generation and  
18           the net savings of imports, calculated as the net  
19           change in imports multiplied by the price of the  
20           imports in the case with CHPE in service. These  
21           are evaluated over just the first 10 years of the

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1 project's operation, in this case assumed to be  
2 2018-2027. Mr. Younger determined that the net  
3 present value costs totaled \$2.056 billion, while  
4 the production cost savings totaled \$0.59 billion.  
5 This yields a Benefit/Cost Ratio of 0.29, below  
6 the minimum 1.0 required under the CARIS process.

7 Q. What is your response to Mr. Younger's "Production  
8 Cost Modeling of the Project"?

9 A. As Mr. Younger noted, the NYISO's CARIS process is  
10 used to determine whether a transmission project  
11 is eligible to obtain regulated dollars from New  
12 York consumers. Under the CARIS process, the  
13 proposed project must be approved by an 80%  
14 supermajority of loads (consumers), in which case  
15 the project is ratebased, with costs allocated to  
16 all beneficiaries. In general, the NYISO planning  
17 process relies primarily on market-based  
18 (merchant) entry, and attempts to minimize  
19 reliance on regulated projects such as those  
20 requesting funding under the CARIS process. The  
21 CARIS planning process is therefore designed to

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1 identify projects that are "slam dunks," i.e.  
2 projects with such favorable economics that they  
3 can garner support from 80% of loads. The  
4 provision for ratebased treatment in such cases is  
5 intended to overcome the free-rider effect, i.e.,  
6 the ability of non-payers to reap the market  
7 benefits of the project. Since CHPE is a  
8 merchant project, it is not requesting regulated  
9 dollars, so the CARIS test is inapplicable.  
10 Indeed, limiting merchant developers to those  
11 projects that pass the CARIS test would turn the  
12 NYISO's process on its head, by deterring market-  
13 based projects and ultimately forcing greater  
14 reliance on regulated projects.

15 As a merchant project, CHPE will have to meet  
16 the needs of its financial backers. They will  
17 consider their own financing costs, which may be  
18 very different than the CARIS method's generic 16%  
19 levelized carrying charge rate. For the benefits,  
20 the financial backers will not be calculating 10  
21 years of "New York Production Cost Savings," as in

1 CARIS, but rather estimating their potential  
2 market-based revenues over the next 35 years and  
3 more. HQ will be concerned with finding a market  
4 for its new hydroelectric supplies and taking into  
5 account their potential impacts on market prices  
6 and congestion. These valid considerations are  
7 all outside the narrow scope of the CARIS  
8 analysis.

9 **Additional Rebuttal**

- 10 Q. At p. 17 line 17 through p. 24 line 10, Mr.  
11 Younger argues that, according to the NYISO's 2010  
12 Reliability Needs Assessment (RNA), there is no  
13 reliability need for additional capacity in NYC  
14 through at least 2020. How do you respond?
- 15 A. It is correct that the 2010 RNA did not identify a  
16 near-term reliability need in NYC, but this does  
17 not imply that CHPE is not "economic" or that it  
18 should not be allowed to enter the market. The  
19 RNA simply does not address the economic or  
20 environmental costs or benefits associated with  
21 new merchant investments such as CHPE. Instead,

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1           the function of the RNA is to identify potential  
2           shortages of capacity or other reliability needs  
3           that might require a regulated investment  
4           ("Regulated Backstop Solution", or RBS) in the  
5           event there is insufficient merchant investment.  
6           If merchant developers were to wait until the RNA  
7           indicated a reliability need, the NYISO would be  
8           forced to consider regulated backstop solutions.  
9           However, the NYISO favors reliance on market-based  
10          (merchant) projects, and tracks their status; as  
11          long as sufficient merchant project are under  
12          development, the NYISO does not have to trigger an  
13          RBS.

14                 As an example, the 2010 RNA listed several  
15          market-based projects, including the Empire  
16          Generation Project in upstate New York and the  
17          Linden VFT serving New York City, which later  
18          entered service despite the absence of a  
19          "reliability need," and which therefore helped  
20          avoid the need for a future RBS. Thus the entry  
21          of merchant projects in advance of a "reliability

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1           need" is not only consistent with, but is in fact  
2           an integral part of the NYISO's market-based  
3           planning process.

4    Q.    At p. 34 line 8 through p. 36 line 2, Mr. Younger  
5           argues that a CCGT alternative could interconnect  
6           more cheaply than CHPE and receive more capacity  
7           rights than CHPE. How do you respond?

8    A.    The only currently proposed CCGT in NYC is NRG's  
9           Berrians project. This is proposed to  
10          interconnect at exactly the same NYPA substation  
11          in Astoria as CHPE proposes. Indeed, my estimate  
12          for the cost of CHPE's interconnection was based  
13          on the NYISO's estimate of the cost of  
14          interconnection for the Berrians project.  
15          Moreover, the Siemens PTI Deliverability Analysis,  
16          which is listed in the Joint Proposal as Exhibit  
17          123, demonstrated that any new generation  
18          connected on Con Ed's 345kV system would incur  
19          comparable deliverability costs to receive full  
20          capacity rights. Mr. Younger's suggestion that a  
21          unit could interconnect on the 138kV system fails

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1 to consider potential limitations on that system;  
2 and his suggestion that a smaller gas turbine  
3 could interconnect more cheaply fails to address  
4 the fact that gas turbines have higher heat rates,  
5 and thus higher energy costs, than CCGTs and are  
6 generally not expected to provide baseload energy,  
7 as would CHPE.

8 Q. At p. 36 lines 3 through 15, Mr. Younger suggests  
9 that the NYISO might have to implement a new  
10 capacity zone within NYC, such that units  
11 interconnected on Con Ed's 138kV system would  
12 receive higher capacity values than units  
13 interconnected on Con Ed's 345kV system. How do  
14 you respond?

15 A. Creating a new capacity zone just for Con Ed's  
16 138kV system would unnecessarily fragment the NYC  
17 capacity market and limit competition among  
18 generators within that market. Con Ed's 138kV  
19 system and its 345kV system are interconnected at  
20 many points; indeed the 345kV system serves to  
21 deliver energy to the 138kV system. The recently

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1 announced retirements of two generators located in  
2 Astoria and interconnected on Con Ed's 138kV  
3 system led to a local reliability need on Con Ed's  
4 138kV system, which Con Ed was able to solve in a  
5 few months by installing a 345kV/138kV transformer  
6 and a short line (controlled by a Phase-Angle-  
7 Regulator) between Con Ed's 138kV system and the  
8 new Astoria 345kV substation. This new  
9 interconnection allows the Astoria Energy 2 plant  
10 (connected at the 345kV level) to meet the local  
11 reliability needs previously provided by the  
12 capacity retiring on the 138kV system. Such local  
13 transmission investments are a relatively low-cost  
14 way to strengthen the transmission system and  
15 permit greater competition among generators.  
16 Absent such investments, Con Ed might have been  
17 forced to make much higher out-of-market payments  
18 to retain access to the 138kV units.

19 **Updated Long-Term Economic Benefits Analysis**

20 Q. Based on your rebuttal to Mr. Younger's testimony,  
21 please update your long-term economic benefits

1 analysis.

2 A. Exhibit\_\_\_\_ (TSP-6) updates my long-term economic  
3 benefits analysis provided in the spreadsheet  
4 discussed in my direct testimony. I include the  
5 cost of transmission upgrades in Quebec associated  
6 with the CHPE interconnection (\$346 million per  
7 Mr. Jessome's testimony) and add \$1.8 billion to  
8 the cost of the Romaine project to cover its  
9 associated transmission lines. I continue to  
10 average the cost of the ELRD and Romaine projects,  
11 recognizing that not all new hydroelectric  
12 projects will require the level of transmission  
13 investment associated with the Romaine project. I  
14 continue to assume line losses on the HQ system of  
15 10%, which are greater than the actual range of  
16 line losses, to allow for HQ operating costs.

17 With these changes, the estimated cost of  
18 hydroelectric supply increases to \$8.1 billion,  
19 and the total cost of CHPE/HQ increases to \$10.5  
20 billion.

21 Regarding the cost of the CCGT alternative, I

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1 do not consider a deferral, as that would  
2 introduce short-term market conditions on only one  
3 side of the analysis, i.e. it would fail to  
4 address the impact of new HQ resources on short-  
5 term market conditions. I replace the AEO 2011  
6 gas price forecast with the slightly lower AEO  
7 2012 forecast. I also update the ratio of NYC to  
8 Henry Hub gas prices based on the updated value in  
9 the NYISO's 2011 CARIS Study (which increased the  
10 ratio from approximately 1.19, in the CARIS 2009  
11 Study, to approximately 1.29). The net effect of  
12 these changes is to increase the estimated cost of  
13 the CCGT alternative to between \$10.9 billion and  
14 \$13.2 billion, depending on gas prices.

15 The above adjustments yield a net economic  
16 benefit for CHPE/HQ of \$0.4 billion to \$2.6  
17 billion (in 2015 \$), depending on gas prices.  
18 Thus updating my long-term analysis continues to  
19 show net economic benefits for CHPE/HQ.

20 Q. Does this conclude your testimony at this time?

21 A. Yes.

1 BY MS. MORENO:

2 Q. Staff has circulated a premarked copy of our  
3 exhibits with exhibit numbers 197 through 202 that  
4 was filed with the testimony TSP 1-6. For  
5 clarity, in the morning session, Exhibit 213 was  
6 identified where both the HQ response to New York  
7 Energy Highway Request and the TDI USA Holding  
8 Corp response to the New York Energy Highway  
9 request for information were both identified as  
10 number 213. I will identify them here as 197 and  
11 198 respectively. And, in addition to those  
12 premarked exhibits, Staff circulated on July 13th  
13 an additional exhibit which we have identified as  
14 203 that was circulated to the parties. And I  
15 have copies for any party that needs a additional  
16 copy at this time. And we have a copy for the  
17 stenographer as well.

18 ALJ CASUTTO: Does anyone request an  
19 additional copy of Exhibit 203?

20 MS. MORENO: I request that the exhibits  
21 listed as 197 through 203 be marked as such.

22 ALJ CASUTTO: Yes. As indicated, the  
23 exhibits have been premarked prior to today. So,  
24 essentially your request is granted.

25 MS. MORENO: Thank you. And our witness

1 is ready for cross-examination.

2 ALJ CASUTTO: All right, thank you.

3 ALJ PHILLIPS: Just to clarify, the  
4 people who have Cross for this witness are IPPNY,  
5 Entergy, and Local 197. Are you agreed on the  
6 order that you want to go in?

7 MR. JOHNSON: I will be first.

8 CROSS EXAMINATION

9 BY MR. JOHNSON:

10 Q. Good afternoon, Dr. Paynter. My first  
11 question is: The analysis that you did in your  
12 Rebuttal testimony and what you did for the direct  
13 proposal, is it accurate to characterize that as  
14 analysis that measures long-term production costs?

15 A. Yes.

16 Q. And, the analysis that the other staff who  
17 are witnesses, David Wheat and Leka Gjonaj, their  
18 analysis for the JP and their rebuttal testimony,  
19 that is characterized as analysis of wholesale  
20 market benefits; is that correct?

21 A. Yes, I believe that's how they -- Their  
22 testimony speaks for itself.

23 Q. Would you agree that wholesale market  
24 benefits tend to be shorter term in nature being  
25 that they can be expected to decline and diminish

1 over time as market participants adjust their  
2 behavior in response to immediate reduction in  
3 prices, expected result additional supply?

4 MS. MORENO: Your Honors, I object.  
5 This is not fair to the contents of this witness's  
6 testimony. We have other witnesses that have  
7 prepared an analysis on that topic area.

8 MR. JOHNSON: I was just asking the  
9 question to this witness because there is an issue  
10 in this case distinguishing between long-term  
11 production costs, metric, and wholesale market  
12 benefits. And this witness is certainly qualified  
13 to answer that question.

14 ALJ CASUTTO: I will allow the witness  
15 to answer if he can.

16 A. Yes. As I stated in my rebuttal testimony  
17 on page nine, markets do respond to those price  
18 signals over time.

19 Q. And, do you agree that from the economic  
20 perspective that you generally prefer the  
21 production cost savings metric since it measures  
22 benefits on a societal basis and, therefore,  
23 ignores the transfer payments between ratepayers  
24 and generations that you have with the wholesale  
25 market benefits?

1           A. For purposes of analyzing the benefits and  
2 costs to society, I think it's standard to ignore  
3 the transfer payments that result from price  
4 changes.

5           Q. I guess for purposes of performing economic  
6 analysis for a transmission line like in this  
7 case, I know you are involved in the analysis of  
8 the Hudson Partners case. Typically, this type of  
9 analysis is suitable for measuring economic  
10 benefits, costs of benefits; correct?

11          A. Well, again, this is for looking at the  
12 costs and benefits on a societal perspective. So  
13 that basically just looks at the costs of the  
14 project versus the costs that are avoided by this  
15 project, so it doesn't get into price impacts at  
16 all.

17          Q. But it's a measure that the Commission uses  
18 in making a determination as to whether the  
19 project is in the public interest; right?

20          A. It is one measure, yes.

21          Q. Your analysis comparing the costs of  
22 building and operating the project and HQ  
23 Hydropower with the costs of building and  
24 operating 1000 megawatts of gas-fired turbines in  
25 New York City is an application of the production

1 cost savings; right? I think you just said that.

2 A. Yes.

3 Q. Can you turn to page four lines 5 through 9  
4 of the Rebuttal testimony.

5 A. Yes.

6 Q. It says: "Staff has provided this  
7 information on HQ's hydroelectric projects and its  
8 financial interests to help complete the record in  
9 this case and rebut claims that CHPE's financing  
10 can only come from New York loads." Isn't it true  
11 that CHPE's financing can come from New York loads  
12 indirectly? For example, if HQ finances the CHPE  
13 project through a transmission service, won't HQ's  
14 revenues from selling power to New York loads  
15 indirectly finance the CHPE project?

16 A. Well, I think that is not the usual  
17 definition of financing a project. Basically, I  
18 think of financing as putting up the money up  
19 front, whereas the revenues that the project would  
20 earn selling at market prices.

21 Q. But it enables the contract between HQ and  
22 Champlain Hudson?

23 A. Well, certainly, that would be the primary  
24 motive for HQ to provide the financing.

25 Q. If HQ's willingness to enter into a

1 transmission agreement with CHPE depends on HQ  
2 obtaining an out-of-market contract with a New  
3 York load serving entity, let's say like the New  
4 York Power Authority or Con Edison, or through the  
5 state, some type of subsidized arrangement through  
6 maybe the Energy Highway process, doesn't that  
7 make it true that CHPE -- that the project would  
8 be financed by subsidized payments?

9 MS. MORENO: Objection. Asking our  
10 witness to speculate on a hypothetical is not an  
11 appropriate question for this witness.

12 MR. POND: I also think it's beyond the  
13 scope of the issues set for the hearing.

14 ALJ CASUTTO: I am going to suggest that  
15 you rephrase the question to start out with. And  
16 make it simpler, because I heard a compounded  
17 question, a multiply compounded question there.  
18 Start out with a simple, more directed question.  
19 And, then, let's see if there is any objection and  
20 we will go from there.

21 Q. Well, you said in response to my second  
22 question that the contract between HQ and the  
23 Champlain Hudson project could be enabled by  
24 revenues that HQ earns from selling power to New  
25 York; correct?

1           A. I don't know about the use of the term  
2 "enabled."

3           Q. Well, the revenues that HQ is going to earn  
4 selling power to consumers in New York, those are  
5 the revenues that it's going to use to pay for the  
6 transmission service?

7           MS. MORENO: Objection. I'm sorry, but  
8 this is asking Mr. Paynter to analyze provider  
9 information properly held by HQ as to what their  
10 intents are for the project and interest in the  
11 planning agreement.

12           MR. POND: Asking if somehow HQ would  
13 finance that transaction, if they engaged in it,  
14 is clearly beyond the scope of the issues set  
15 forth here.

16           MS. JOHNSON: That's not true. He talks  
17 about HQ in his testimony.

18           ALJ CASUTTO: Okay. So, let me ask you  
19 to reference his testimony in your question. With  
20 reference to what portion of his testimony are you  
21 asking the question?

22           Q. Okay. On the top of page four line one, you  
23 state in your testimony: " Therefore, it is not  
24 surprising HQ has expressed an interest in helping  
25 to finance CHPE in order to deliver its

1 electricity supplies in the relatively high cost  
2 New York City market." Do you see that?

3 A. Yes.

4 Q. Now, my question concerns page two. If HQ  
5 is helping to finance CHPE, it's doing so because  
6 it is able to deliver electricity to the higher  
7 cost New York City market; correct? Is that what  
8 you say in this?

9 A. Well, that would certainly be -- I would  
10 expect that would be in the financial interest of  
11 HQ to sell its power at a good price.

12 Q. And, the revenues that HQ earns from selling  
13 to this high cost New York City market enables  
14 them to enter into this contract with CHPE for  
15 transmission services?

16 A. Again, I don't know that I would use the  
17 term "enable." Basically, HQ would be putting up  
18 money in this case for financing, and they would  
19 bear the risk of whatever the market revenues  
20 turned out to be.

21 Q. Would it be less risky if HQ had a long-term  
22 contract with a load serving out of New York?

23 MR. POND: Your Honor, at this point I  
24 will object. The issue of risks that HQ would or  
25 hypothetically might encounter is clearly beyond

1 the scope of the issues we are here for today.

2 ALJ CASUTTO: I agree, and I will grant  
3 the objection.

4 Q. Is it true that a transmission line's cost  
5 production savings tend to be larger than its  
6 potential profits in the energy market?

7 A. Yes. That is often the case due to the  
8 scale in transmission lines. They tend to be  
9 large projects, so when they enter service the  
10 result can be a reduction in the price difference  
11 across the line. So, it ends up collapsing that  
12 price difference at least in the short term.

13 Q. Please turn to page ten, line 17 through  
14 page 11 line 7. I'm going to read that into the  
15 record. You testified that, "It is difficult to  
16 analyze CHPE on a stand-alone basis because its  
17 profitability would be dependent upon the  
18 availability and cost of supply in Quebec.  
19 Moreover, if CHPE were built without a contract  
20 with HQ it would face the risk that HQ could  
21 forego development of new resources and simply  
22 sell its existing resources to CHPE at a higher  
23 price, taking advantage of CHPE's delivery or  
24 1,000 megawatts to the New York City market. In  
25 that case, the economic benefits of CHPE would be

1 largely transferred to HQ, leaving CHPE  
2 unprofitable regardless of its economic benefits  
3 to society." If HQ did not anticipate any profits  
4 selling its power over the CHPE project, would you  
5 agree that it would be unlikely for HQ to contract  
6 with CHPE for transmission service?

7 A. Well, as I said in my testimony, HQ would  
8 have to look at the options that it has available  
9 to it, which would include either selling at the  
10 border on an existing transmission system or  
11 helping to maybe fund transmission upgrades in  
12 order to get a potentially higher price. And,  
13 those are complicated decisions that I did not  
14 attempt to analyze specifically.

15 Q. Would you agree that HQ could contract with  
16 CHPE for transmission of service even if it  
17 anticipated selling because it has no other  
18 markets to sell to? Is that possible?

19 A. Well, in terms of selling at a loss, you  
20 know, the question is if the alternative were to  
21 simply dump energy or spill water, let's say,  
22 meaning that it would not be making full use of  
23 the hydroelectric power and simply letting some of  
24 that go to waste. In that case, the marginal cost  
25 of that hydro power would be zero. And, then, HQ

1 would have to basically say, well, is it worth  
2 helping to finance the line in order to get some  
3 price for that power rather than not being able to  
4 sell it at all.

5 Q. Assuming CHPE's revenues came from a  
6 contract with HQ, do you agree that CHPE's  
7 profitability is dependent upon the profitability  
8 of HQ?

9 A. That would depend on the structure of the  
10 contract, basically. The contract would shift  
11 risks from CHPE to HQ as the financier. And, I  
12 don't know what the contract terms might be.

13 Q. I guess another way to ask the question is:  
14 If HQ is unprofitable, would that make it more  
15 likely that CHPE would be unprofitable as well?

16 A. Well, I think there are a number of  
17 decisions, assessment decisions that are going on  
18 here. There is the decision about whether or not  
19 to build CHPE. There is also HQ's decision  
20 whether or not to build hydroelectric projects.  
21 And, those decisions are separate decisions. But,  
22 obviously, there are links between them.

23 Q. Please turn to page twelve lines 2 through  
24 11. You testified that, "Were HQ to simply sell  
25 this additional energy at the border, this could

1 cause a substantial reduction in the market price  
2 at the border which would be exacerbated by  
3 transmission restraints within the New York  
4 System. Similar concerns apply in exports to  
5 other regions." Have you or other staff provided  
6 any testimony in this proceeding as to what these  
7 price structures might be?

8 A. Not to my knowledge, no.

9 Q. You further testified: "Moreover, this  
10 reduction in price would impact HQ's existing  
11 exports as well, representing a significant risk  
12 to HQ's profitability." Have you or other staff  
13 provided testimony in this proceedings that  
14 determines HQ's profitability if it does not sell  
15 its energy over the CHPE equipment?

16 A. Not to my knowledge.

17 Q. Turning to page 17 line 20 through page 18  
18 line 1, you testified that, "If HQ fails to find a  
19 market for this new supply, HQ could end up  
20 spilling water; i.e., letting low cost hydropower  
21 resources go to waste." Is it your testimony that  
22 the only market for HQ's new supply is over the  
23 CHPE project?

24 A. No. I simply said that they would have to  
25 look at the potential impacts from increasing

1 sales in any of their markets.

2 Q. Turning to page 19 lines 14 through 17, you  
3 testified that, "The effect of these transmission  
4 constraints would be to reduce the market price  
5 received by HQ not only for its additional  
6 exports, but also for its existing exports."  
7 Then, turning back to what you had testified to on  
8 page twelve lines 2 through 11 -- and I have  
9 already read that into the record. If not  
10 building CHPE means that HQ must sell its  
11 additional energy at the border causing a  
12 substantial reduction in the market price, isn't  
13 it true that if the CHPE project is built, it will  
14 cause market prices at the existing border to  
15 substantially increase?

16 A. Well, this gets into the timing of the  
17 decisions here. In general, if HQ commits to  
18 build projects and simply sells the additional  
19 output at the border, then that would tend to  
20 depress the border price. Alternatively, if HQ  
21 were to finance transmission upgrades that allowed  
22 it to receive to avoid some of the congestion and  
23 reach higher price markets, then basically you  
24 would not see the price reduction, or at least as  
25 much price reduction at the border.

1 Q. Let's say the status quo stays the same and  
2 HQ goes ahead and finishes the project and it does  
3 have to sell its existing interfaces that haven't  
4 been upgraded. Are you testifying that that would  
5 cause prices to drop?

6 A. At the border, yes.

7 Q. So, if nothing happens and the Champlain  
8 Hudson project isn't built and everything stays  
9 the same, we should expect to see a reduction at  
10 the border of prices?

11 A. In general, yes.

12 Q. And, then, if nothing else happens except  
13 the Champlain Hudson project is built, the effect  
14 would be that that power, instead of flowing over  
15 the border at the existing prices, would now flow  
16 to New York City. And, that could have the effect  
17 of raising prices at the border where they  
18 otherwise would have been lowered if nothing had  
19 happened; isn't that right?

20 A. Yes. The prices at the border would end up  
21 being higher than they would have had CHPE not  
22 been built.

23 Q. Isn't it true that New York consumers would  
24 have to bear those increased costs at the border  
25 since that feeds right into the New York --

1 MS. MORENO: Objection. Mr. Paynter's  
2 testimony does not touch on providing this kind of  
3 analysis. He has testified to a generality, and  
4 he stated that he has not performed an in-depth  
5 analysis and cannot provide adequate response to  
6 this question.

7 ALJ CASUTTO: I am going to overrule it.  
8 If he is able to answer the question, he can  
9 answer it.

10 A. I haven't performed any study as to how much  
11 the price would be depressed or for how long it  
12 would be depressed in this particular example.

13 Q. I haven't asked you that question. I am  
14 just saying in general, if prices -- I guess the  
15 simple question is: If prices at the border are  
16 \$50 and they go to \$70, that would have some  
17 impact on what the customers will bear in their  
18 retail bills that they incur; is that correct?

19 A. Yes. In general, the impact of CHPE would  
20 be to redirect flows from Quebec directly into New  
21 York City as opposed to going into the existing  
22 New York transmission system. And, so, you would  
23 got a different pattern of price impacts. So,  
24 basically with CHPE you would have prices lower in  
25 New York City but higher in upstate regions at the

1 border compared to the case where HQ simply  
2 delivered all of that power at the border.

3 Q. Back to page 19, line 21 through page 20  
4 line 6, you testified, "As indicated in its Energy  
5 Highway RFI response, HQ appears prepared to  
6 consider financial investment in both CHPE and  
7 alternative transmission investments in New York  
8 in order to maximize the value of its current and  
9 future hydroelectric projects." In HQ's RFI  
10 response premarked as Exhibit 197 -- Do you have  
11 that in front of you? Page seven for HQ. It  
12 states -- it proposes: "That the State of New  
13 York consider a state holder process that would  
14 consider innovative ways in which policy and  
15 regulation might prioritize and promote  
16 incremental hydropower deliveries." Don't you  
17 agree that policies and regulations that  
18 "prioritize and promote incremental hydropower  
19 deliveries" would require your consumers to pay  
20 either above-market rates for hydropower or  
21 somehow subsidize hydropower? Is that a  
22 reasonable conclusion based on this?

23 A. Well, I don't think HQ is proposing that New  
24 York pay for the dams and transmission lines of  
25 Quebec.

1 Q. I was just talking about the energy.

2 A. The Energy Highway is specifically for, you  
3 know, they put in a couple of options. One is  
4 CHPE and another is perhaps helping to finance the  
5 in-state -- other in-state transmission upgrades.

6 Q. But this was an additional part of the HQ  
7 RFI response where they were asking for a  
8 state-holder process to provide a priority and  
9 promotion of hydroelectric power. And my question  
10 is: Could that mean some type of state subsidy  
11 for hydroelectricity?

12 A. I have no idea. This is just -- all they  
13 have said here is that they are proposing a  
14 state-holder process, and I have no idea what they  
15 would propose within that process. That's  
16 something that would have to be evaluated if they  
17 make such a proposal.

18 MR. JOHNSON: That's all I have, Your  
19 Honors.

20 ALJ CASUTTO: Thank you, Mr. Johnson.  
21 Mr. Hurst?

22 CROSS EXAMINATION BY MR. HURST:

23 Q. Mr. Paynter, good afternoon. My name is  
24 Bill Hurst. I am here on behalf of Entergy  
25 Nuclear Power Marketing LLC and Entergy Nuclear

1 Fitzpatrick LLC.

2 Just very briefly, Mr. Paynter, I just  
3 want to sort of confirm, if you will, what the  
4 findings were of the study you conducted in your  
5 rebuttal testimony. So, I direct your attention  
6 to page 36 of your rebuttal testimony, lines 15  
7 through 19, if you would. Are you with me on that  
8 page, Mr. Paynter?

9 A. Yes.

10 Q. Am I correct, Mr. Paynter, that based on the  
11 study that is set forth in your rebuttal  
12 testimony, your conclusion is that the production  
13 cost savings or, as you put it, the net economic  
14 benefit for CHPE/HQ is \$400 million when you use,  
15 among other adjustments, 2012 gas prices?

16 A. Well, the \$400 million refers to the AEO  
17 2012 gas prices.

18 ALJ CASUTTO: And, what is AEO?

19 WITNESS: Annual Energy Outlook provided  
20 by the Energy Information Agency.

21 Q. Am I correct in also stating that on page 36  
22 of your prefiled Direct testimony the \$2.6 billion  
23 dollar figure was derived, among the other  
24 adjustments that you have made here in your  
25 rebuttal testimony, by using the 2010 AEO gas

1 price forecast?

2 A. Yes.

3 Q. In the results of your studies that were set  
4 forth in the Joint Proposal in this case, do you  
5 remember what the low end of the range was in  
6 terms of the savings that were included in that  
7 document? And I can certainly show it to you to  
8 refresh your recollection, Mr. Paynter.

9 A. It was \$1.2 billion to \$2.2 billion.

10 Q. In that earlier study, then, is it fair to  
11 state that the \$1.2 billion was based on, or took  
12 into account, a 2011 AEO gas forecast?

13 A. That was one of the changes from the JP  
14 analysis to my rebuttal analysis. I also  
15 incorporated several other changes.

16 Q. So, those changes brought that low range  
17 figure from \$1.2 billion as set forth in the JP to  
18 \$400 million as set forth in your rebuttal  
19 testimony; right?

20 A. The primary driver of that reduction was the  
21 increase in estimated transmission investment  
22 costs in Quebec.

23 Q. Of the two ranges that you have given on  
24 record in this proceeding, Mr. Paynter, which are  
25 you advancing to the Commission as a basis for its

1 decision-making on the production cost issue?

2 A. The range in my rebuttal testimony.

3 MR. HURST: Thank you, Mr. Paynter. I  
4 have nothing further for you.

5 ALJ CASUTTO: Mr. Koda, do you have any  
6 questions for this witness?

7 MR. KODA: Yes, I do, Your Honor.

8 ALJ PHILLIPS: Can you come up to the  
9 empty seat here and use the microphone?

10 MR. KODA: Thank you, Your Honor.

11 CROSS-EXAMINATION BY MR. KODA:

12 Q. Good afternoon, Mr. Paynter. My name is  
13 Richard Koda. I am a principal of Koda  
14 Consulting, Inc. and I am representing the IBEW,  
15 Local 97.

16 On your original Direct testimony you  
17 indicate on page three, lines 7 through 9 that you  
18 have been assigned to estimate the potential  
19 long-run economic benefits of the Champlain Hudson  
20 Power Express project; is that correct?

21 A. Yes.

22 Q. And, when Mr. Johnson asked you a few  
23 questions regarding that analysis, you indicated  
24 that it was a long-term production cost type of  
25 analysis?

1 A. Yes.

2 Q. And, I guess the analysis for your Direct  
3 testimony was presented in the Joint Proposal at  
4 paragraphs 23 and 107 to 118 as indicated on lines  
5 20 and 21 of your Direct?

6 A. Yes.

7 Q. Just so I get some understanding of the  
8 analysis, in your Rebuttal testimony you indicate  
9 that -- on page 34 specifically -- that you are  
10 talking about Con Edison putting in a new  
11 interconnection at the Astoria Energy 2 plant,  
12 page 34 lines 8 through 15?

13 A. Yes.

14 Q. And, you indicate that the interconnection  
15 allows the Astoria Energy 2 plant to meet local  
16 reliability needs previously provided by the  
17 capacity retiring on the 138 kV system.

18 A. Yes.

19 Q. And that such local transmission investments  
20 are relatively low cost and greatly strengthen the  
21 transmission system and permit greater competition  
22 among generators; is that correct?

23 A. Yes.

24 Q. Going on to page 35 of your Rebuttal, you  
25 discuss including specifically on lines 4 through

1 9, you discuss including the cost of transmission  
2 upgrades in Quebec associated with the CHPE  
3 interconnection and the cost of the Romaine  
4 project associated transmission lines?

5 A. Yes.

6 Q. Did you include any cost of potentially  
7 spending the money, rather than on the CHPEI  
8 project, on improving the transmission system in  
9 western and upstate New York as opposed to a line  
10 running down the Hudson?

11 MR. POND: I'm not sure I understand the  
12 question. And it concerns me as the applicant in  
13 this case, is Mr. Koda providing that TDI make an  
14 investment in the infrastructure, in transmission  
15 infrastructure, in New York State in lieu of  
16 moving forward with the project? Is that the  
17 question?

18 MR. KODA: No.

19 ALJ CASUTTO: Is there a direct  
20 objection to the question?

21 MR. POND: If I understood the question  
22 I know I object to the question on the ground that  
23 I don't understand it.

24 MR. KODA: Do you want me to try and  
25 rephrase it, Judge?

1 ALJ CASUTTO: Yes.

2 Q. In your analysis of the CHPEI project, when  
3 you determined the cost benefits, et cetera, of  
4 that project, did you compare that project with  
5 other projects to see if there were other projects  
6 that produce a greater benefit to the public  
7 interest of New York?

8 A. I based my comparison on the relatively  
9 simple alternative of building a combined cycle  
10 gas fired plant in New York City. There are  
11 certainly many other projects that could be  
12 considered and that could be proposed, but they  
13 have not been proposed in the context of this  
14 case. And I am not prepared to try to develop a  
15 transmission proposal on my own.

16 Q. So, it is my understanding that your answer  
17 to my question is no?

18 A. Correct.

19 MR. KODA: Thank you. No further  
20 questions, Your Honor.

21 ALJ CASUTTO: Thank you. Ms. Moreno, do  
22 you have any Redirect?

23 MS. MORENO: If we can have five  
24 minutes, Your Honor?

25 ALJ CASUTTO: You are requesting a brief

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1 recess?

2 MS. MORENO: Yes.

3 ALJ CASUTTO: Let's take a five-minute  
4 break at this time.

5 (Recess: 2:15 p.m. - 2:21 p.m.)

6 ALJ CASUTTO: All right. Let's go back  
7 on the record. Ms. Moreno, the witness is yours  
8 for Redirect.

9 MS. MORENO: Thank you. We have no  
10 Redirect at this time.

11 ALJ CASUTTO: Thank you. And, that  
12 concludes the witness's testimony. Mr. Paynter,  
13 you may step down. Thank you very much.

14 (Witness Paynter was excused at 2:20  
15 p.m.)

16 ALJ CASUTTO: Judge PHILLIPS and I were  
17 thinking that we would address the testimony of  
18 witnesses for whom no cross-examination is  
19 requested in terms of getting that testimony into  
20 the record and also to discuss how we are going to  
21 deal with the exhibits, because as we are entering  
22 the electronic age, we are experimenting in this  
23 case with having given you pre-exhibit numbers in  
24 advance of the hearing so that the exhibits could  
25 be marked in advance to make it easier to enter

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1    them into the electronic system.  So, we will just  
2    talk a little bit more about those procedures.  We  
3    can go off the record at this time.  And we will  
4    go back on to address what we decide during this  
5    discussion.

6                   (A discussion was held off the record)

7                   (Time noted:  2:25 p.m. - 2:35 p.m.)

8                   ALJ CASUTTO:  Let's go back on the  
9    record.  We will come to order, please.  What we  
10   have discussed is how to handle the testimony of  
11   witnesses for whom no cross-examination is  
12   requested and, also, how we are going to deal with  
13   exhibits and moving exhibits into evidence.  And  
14   what we have agreed is that the mechanics are that  
15   we will deal with it on Friday.  If any party  
16   requires additional exhibit numbers so that these  
17   exhibits can be premarked, please let Judge  
18   PHILLIPS or I know and we will assign additional  
19   exhibit numbers to you.

20                   Let me ask at this time whether any  
21   party has any other questions or matters to be  
22   addressed before we recess for the day.

23                   MR. GOODMAN:  Jay Goodman for the City.  
24   First, the City had requested one hearing exhibit.  
25   I don't know if you reserved for it, but we

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1 actually will not require that. And, we will not  
2 be submitting that exhibit into the record. We  
3 also requested a half hour tomorrow to  
4 cross-examine Mark Younger. We have determined  
5 that we will not need the time for that  
6 cross-examination, just for planning purposes.

7 MR. BLOW: Your Honor, I will just ask a  
8 question about the timing in the morning. We  
9 originally asked for 9:00.

10 ALJ CASUTTO: Yes. I believe we have  
11 indicated that we will start at nine o'clock  
12 tomorrow morning. That will be the case.

13 MR. BLOW: Thank you.

14 MS. ROSENBLATT: Your Honors, Con Edison  
15 originally asked for seven exhibit numbers. Given  
16 the withdrawal of our testimony, we don't need  
17 any.

18 ALJ CASUTTO: Well, they will just  
19 remain reserved.

20 MS. ROSENBLATT: Thank you.

21 ALJ CASUTTO: All right. If there is  
22 nothing further, then we will recess at this time  
23 and we will reconvene here tomorrow morning at  
24 9:00 a.m. and continue the proceeding.

25 Thank you very much. Have a nice

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evening.

(The evidentiary hearing in the  
above-entitled matter was adjourned at  
approximately 2:40 p.m. to reconvene on  
July 19, 2012 at 9:00 a.m.)

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