

BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of  
  
Hudson Transmission Partners, LLC  
  
Case 08-T-0034

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Prepared Testimony of:

Philipose Philip  
Utility Analyst 2  
Office of Energy Efficiency and  
the Environment  
State of New York  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350

Jeremy D. Flaum  
Utility Analyst Trainee 1  
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Andrew C. Davis  
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Environment  
State of New York  
Department of Public Service  
Three Empire State Plaza  
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1 Q. Will the first member of the panel please state  
2 your name and business address.

3 A. My name is Philipose Philip. My address is:  
4 Three Empire State Plaza, Albany, New York  
5 12223.

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

7 A. I am employed by the New York State Department  
8 of Public Service (DPS or Department), Office  
9 of Energy Efficiency and the Environment, as a  
10 Utility Analyst 2.

11 Q. Please state your educational background and  
12 professional experience.

13 A. I received a B.S. in Electrical Engineering from  
14 the University of Kerala, India, in 1976 and a  
15 M.S. in Electrical Engineering from the  
16 Polytechnic University, Brooklyn, New York in  
17 1993. Since that time I have had many years of  
18 engineering, procurement and operations  
19 experience. For the last two years I have had  
20 substantial experience in environmental aspects  
21 of many energy facilities projects, including

1 reviewing and analyzing aspects of land use,  
2 local law issues, natural resources, noise and  
3 construction impacts. I have also ensured  
4 compliance with the State Environmental Quality  
5 Review Act for several wind energy projects.

6 Q. Mr. Philip, please describe your role in this  
7 case.

8 A. I am the Project Manager for the Hudson  
9 Transmission Partners, LLC Project (HTP). My  
10 duties primarily involve coordinating the  
11 Application review by DPS staff and interacting  
12 with other agencies and offices within the  
13 Department. I also participated in the initial  
14 negotiation process for this Project. Besides  
15 being the Project Manager, I reviewed the  
16 transmission facility Application, for general  
17 environmental impacts. I examined the proposed  
18 facility upland location and other alternate  
19 locations in the field.

20 Q. Will the second member of the panel please state  
21 your name and business address.

1 A. My name is Jeremy D. Flaum. My address is:  
2 Three Empire State Plaza, Albany, New York 12223

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

4 A. I am employed by the New York State Department  
5 of Public Service, Office of Energy Efficiency  
6 and the Environment, as a Utility Analyst.

7 Q. Please state your educational background and  
8 professional experience.

9 A. I received a B.S. in Geology from the State  
10 University of New York, College at Cortland, in  
11 2003, and a M.S. in Environmental Management  
12 from the University of Maryland, University  
13 College, in 2008. I have two and a half years  
14 of experience as an Environmental Consulting  
15 Geologist and I am in my first year as a Utility  
16 Analyst.

17 Q. Mr. Flaum, please describe your role in this  
18 case.

19 A. I reviewed the transmission facility Application  
20 regarding environmental impacts, including  
21 sediment handling, water quality, and mitigation

1           measures to minimize adverse impacts to  
2           environmental resources.

3    Q.    Will the third member of the panel please state  
4           your name and business address.

5    A.    My name is Andrew C. Davis.  My address is:  
6           Three Empire State Plaza, Albany, New York  
7           12223.

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

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

20   Q.    Mr. Davis, please describe your role in this  
21           case.

1 A. I reviewed the transmission facility application  
2 and supplemental information regarding  
3 environmental impacts and issues of land use,  
4 visual and cultural resources, consistency with  
5 New York State Coastal Zone policies, and  
6 mitigation measures to minimize adverse  
7 environmental impacts on those resources. I  
8 examined the proposed facility location in the  
9 field. I examined the proposed transmission  
10 facility's consistency with pertinent land use  
11 development and management plans relevant to the  
12 facility location, and I am continuing  
13 coordination of review of historic and  
14 archeological resource impacts with the OPRHP.  
15 As part of field review of the proposed facility  
16 location, I took photographs of the project area  
17 and of the proposed facility location and  
18 refinements of that location. These photographs  
19 are attached as Exhibit\_\_(PFD-2).

20 Q. Please describe the proposed transmission  
21 facility.

1 A. The proposed facility is described in the  
2 Application, section Exhibit 2.1 and subsequent  
3 revision in March 2009.

4 Q. Will the panel please summarize your testimony?

5 A. Construction of the upland transmission line  
6 will cause traffic impacts and business  
7 interruptions on 52<sup>nd</sup> street and on 12<sup>th</sup> Avenue.  
8 The Hudson Transmission Partners (HTP) project,  
9 as proposed, may have significant temporary  
10 adverse impacts on land use and resources of  
11 interest to the State of New York and municipal  
12 and other resource owners and managers, as well  
13 as potential permanent impacts on cultural  
14 resources of interest to the State. The project  
15 is not likely to entirely avoid adverse impacts  
16 on public parkland and park accessibility. The  
17 project, as proposed, will not be fully  
18 consistent with planning and resource management  
19 programs of the State or the City of New York.  
20 The Application does not fully represent the  
21 nature and degree of impacts that will result

1 from construction of the proposed facilities.

2 The HTP project will include ground  
3 intrusive upland activities and the disruption  
4 of bottom sediment in the New York/New Jersey  
5 Harbor. Drilling spoils and excavated sediment  
6 will be generated and require handling and  
7 disposal in accordance with applicable state and  
8 local laws.

9 Mitigation measures to protect public  
10 safety, traffic flow, cultural resources, land  
11 use, and water quality should be required by any  
12 certification.

13 Q. If the Commission were to grant a Certificate of  
14 Environmental Compatibility and Public Need  
15 (Certificate), are there any conditions which  
16 you would recommend be required to address the  
17 Public Service Law findings regarding  
18 environmental impact and public interest?

19 A. Appropriate certificate conditions for  
20 minimizing adverse impacts to natural and  
21 cultural resources, land use, access to business

1           and transportation facilities, minimizing  
2           disruption of traffic, and other aspects of  
3           appropriate project management are recommended  
4           in attached Exhibit\_\_ (PFD-03). These  
5           conditions are designed to minimize impacts  
6           through proper planning, construction  
7           scheduling, and other appropriate controls, and  
8           should be incorporated in a Certificate if the  
9           Commission decides to approve the Project.

10                   Examples of specific impact mitigation  
11           measures include the following:

12                   A complete traffic control plan should be  
13           included in the Environmental Management and  
14           Construction Plan (EM&CP) showing plans and  
15           procedures to avoid or mitigate the impacts.

16                   The owners of buildings and businesses  
17           along the route of the upland facility should be  
18           directly notified regarding the EM&CP so that  
19           they have sufficient notice and an opportunity  
20           to review the plans and provide comments, as  
21           well as to plan for the disruptions due to

1 construction adjoining building entry and exit  
2 points.

3 Mitigation measures, including construction  
4 and operational controls, performance  
5 measurements and restoration requirements should  
6 be conditions of any facility authorized.

7 Measures to minimize, avoid, and mitigate  
8 adverse effects on cultural resources should be  
9 required. Additional underwater archaeological  
10 and historic resource surveys should be required  
11 for identification of cultural resources, and  
12 refinement of strategies for impact avoidance,  
13 minimization, and mitigation.

14 Additional details related to specific  
15 impact mitigation recommendations are addressed  
16 in the testimony below.

17 Q. What are the proposed construction methods of  
18 concern in regards to sediment and water quality  
19 impacts?

20 A. The construction methods of particular concern  
21 involve the horizontal directional drilling

1 (HDD) pit and the temporary cofferdam that will  
2 be constructed near the New York landfall  
3 location to facilitate the transition from the  
4 upland to submarine cable. The proposed  
5 construction methods of the HDD pit and the  
6 temporary cofferdam are detailed in the  
7 Application, section E-3.1.2.1. Sediment will  
8 be dredged from the cofferdam and clean fill  
9 will be used to backfill the excavations upon  
10 completion of the cable installation. The  
11 methods of cable installation will be ground  
12 intrusive and require handling and disposal of  
13 sediment, water, and drilling fluids and  
14 cuttings in accordance with applicable local,  
15 state and federal laws and regulations.

16 Q. How will water that is recovered during the  
17 dredging within the temporary cofferdams be  
18 handled?

19 A. The Application does not fully address the  
20 handling of water recovered during dredging  
21 activities within the temporary cofferdams.

1 Page 10 of Appendix 4-9 of the Application  
2 states that dredged material will be deposited  
3 on material scows and water draining from the  
4 material on the scow will be filtered using  
5 geotextile fabric to reduce the discharge of  
6 suspended sediment. The Application does not  
7 describe how the water will be handled after  
8 passing through the geotextile fabric nor does  
9 it provide information regarding the  
10 effectiveness of the geotextile fabric to remove  
11 suspended sediments, particularly fine silts and  
12 clays.

13 Q. Does this present any concerns?

14 A. Fine silts and clays have a low settling  
15 velocity and longer residence time in  
16 suspension, and therefore they are more likely  
17 to increase the duration and extent of elevated  
18 turbidity concentrations, and to result in  
19 adverse environmental impacts.

20 Q. How do you propose to address these concerns?

21 A. Specifications for the geotextile fabric and on-

1 site dredged material dewatering methods should  
2 be described in detail in the EM&CP, as required  
3 by condition 28(p) of the DPS Staff Proposed  
4 Certificate Conditions, contained in Exhibit\_\_  
5 (PFD-3).

6 Q. What type of fill material will be used to  
7 backfill the excavation in the cofferdam?

8 A. Section 4.4.2.2 of the Application (Page 4-20)  
9 states that the areas dredged will be backfilled  
10 with clean sand following installation of the  
11 submarine cable and removal of the temporary  
12 sheet piles.

13 Q. Should additional information be provided?

14 A. The name and location of the source of the sand  
15 should be identified in the EM&CP, and the  
16 suitability of the sand should be evaluated, as  
17 required by condition 28(z) of the DPS Staff  
18 Proposed Certificate Conditions. If the sand  
19 will be obtained from a non-virgin source,  
20 documentation and/or analytical data should be  
21 presented confirming the sand is suitable for

1 use as backfill in accordance with the  
2 requirements of any Section 401 Water Quality  
3 Certification.

4 Q. Will HDD spoils be handled and disposed of in a  
5 manner that minimizes potential adverse  
6 environmental impacts?

7 A. The Application does not adequately describe the  
8 proposed handling of HDD fluids and cuttings.  
9 According to Page 9 of Appendix 4-9 of the  
10 Application, drill cuttings from the HDD process  
11 will be collected and stored on-site. The  
12 Applicant does not identify disposal procedures  
13 for cuttings, nor does it describe methods for  
14 handling and disposing of drilling fluids  
15 following the HDD process.

16 Q. Do you recommend any additional requirements?

17 A. Yes. Both drilling fluids and cuttings must be  
18 disposed of in accordance with applicable local  
19 and state laws and should meet the analytical  
20 requirements established by the intended  
21 disposal facility. The Applicant should address

1 the handling and disposal procedures for both  
2 HDD cuttings and drilling fluids in the EM&CP,  
3 as required by condition 28(y) of the DPS Staff  
4 Proposed Certificate Conditions, including  
5 methods for collecting, analyzing, and  
6 evaluating analytical data for characterization  
7 of the wastes prior to disposal.

8 Q. How will excavated soils from the upland trench  
9 and HDD pit be handled and disposed of?

10 A. Section 4.2.2.1 (Page 4-3) of the Application  
11 states that excavated soils from the HDD pit and  
12 upland trench will be disposed of off-site at  
13 the end of each work day. However, in the next  
14 paragraph of the same section, the application  
15 states that excavated upland soils will be  
16 examined to determine their potential  
17 suitability for reuse as backfill material.

18 Q. Is additional information required?

19 A. The proposed methods for handling excavated  
20 soils from the upland route and HDD pit should  
21 be specified. If the excavated soils will be

1 considered for use as backfill, a temporary  
2 stockpiling area will need to be designated.  
3 Identifying a safe and unobtrusive location for  
4 stockpiling large quantities of sediment on-site  
5 would be difficult in an already crowded  
6 construction environment. A proximal off-site  
7 location for temporary stockpiling of excavated  
8 soils should be considered.

9 Q. Should any requirements be imposed in this  
10 situation?

11 A. Soil should be field screened during excavation  
12 and a record of observations should be  
13 maintained, including grain size distribution,  
14 moisture content, plasticity, and visual and  
15 olfactory indicators of contamination. Any  
16 excavated soils possessing evidence of  
17 contamination should be stockpiled separately.  
18 Composite soil samples should be collected from  
19 individual stockpiles to characterize the soil  
20 and determine its suitability for reuse or  
21 disposal. In the event the Applicant intends to

1           undertake these activities, certificate  
2           conditions would be needed to address these  
3           matters in the EM&CP.

4    Q.    What do the bedrock core data contained in the  
5           November 4, 2009, Geotechnical Engineering  
6           Report, prepared by CMX, and identified as  
7           confidential, indicate regarding the feasibility  
8           of the proposed HDD boreholes?

9    A.    According to information reported in the HDD  
10           borehole profile sheets (HDD-4 through HDD-6)  
11           and bedrock boring logs (SBNY-1R through SBNY-  
12           3R), presented in Appendix B of the Geotechnical  
13           Engineering Report prepared by CMX, dated  
14           November 4, 2009 (HTP response to DPS Staff  
15           Interrogatory Response No. DPS-37), included in  
16           Exhibit\_\_ (PFD-4) [confidential], no significant  
17           weathering or fracture zones were observed at  
18           the depths through which the HDD bores will pass  
19           at each bedrock boring location. Based on the  
20           bedrock boring data, it is not anticipated that  
21           HDD operations would encounter significantly

1 weathered or fractured zones that would  
2 interfere with the HDD process and it does not  
3 appear likely that any major water bearing zones  
4 would be encountered during HDD operations.

5 Q. Will dewatering be required of the upland trench  
6 and/or HDD pit?

7 A. It is likely that dewatering will be required  
8 for parts of the upland trench and HDD pit.  
9 Page 8 of the Geotechnical Engineering Report  
10 prepared by CMX, dated November 4, 2009 (HTP  
11 response to DPS Staff Interrogatory Response No.  
12 DPS-37), included in Exhibit\_\_ (PFD-4)  
13 [confidential], projects that groundwater  
14 seepage into trench excavations and the drilling  
15 pit may occur. In addition, observations made  
16 by NYSDPS Staff of the topographic conditions at  
17 the site suggest surface water runoff will  
18 likely enter the trenches, vault and drilling  
19 pits and require dewatering.

20 Q. Should any requirements be imposed to address  
21 this situation?

1 A. The applicant should provide a layout plan and  
2 description of procedures for dewatering upland  
3 areas in the EM&CP, as required by condition  
4 28(x) of the DPS Staff Proposed Certificate  
5 Conditions, including methods for water  
6 recovery, handling, storage, testing, and  
7 disposal.

8 Q. Has an adequate water quality monitoring plan  
9 been developed for jet plowing and dredging  
10 operations?

11 A. No. The Applicant should include a suspended  
12 sediment and water quality monitoring plan,  
13 applicable to dredging and jet plowing  
14 operations in the EM&CP, as required by  
15 condition 28(aa) of the DPS Staff Proposed  
16 Certificate Conditions. The plan should include  
17 monitoring up-current to establish background  
18 conditions and monitoring at multiple down-  
19 current transects in order to evaluate suspended  
20 sediment transport. The applicant should also  
21 consider the potential effects of the temporary

1           cofferdam on water circulation patterns and  
2           suspended sediment distribution. The suspended  
3           sediment and water quality plan should meet the  
4           minimum requirements described in conditions 41  
5           through 46 of the DPS Staff Proposed Certificate  
6           Conditions included in Exhibit\_\_(PFD-3).

7    Q.    Does the facility avoid adverse effects to  
8           cultural resources of interest to the State of  
9           New York?

10   A.    The Application identified potential underwater  
11           archeological resources along the proposed  
12           route. In correspondence dated February 11,  
13           2008, from the OPRHP Historic Preservation Field  
14           Services Bureau (FSB) to HTP's consultant, Sarah  
15           K. Faldetta of the ESS Group, ORPHP requested  
16           that the Applicant submit information on how the  
17           HTP project would avoid underwater resources.  
18           This letter is included in Exhibit\_\_ (PFD-05).  
19           OPRHP reports that, as of March 16, 2010, it has  
20           not had any response to that request (Personal  
21           correspondence with Douglas Mackey, OPRHP FSB).

1           Thus, OPRHP has not issued any opinion as to  
2           whether or not the project may have adverse  
3           effects on resources listed or eligible for  
4           listing on the State or National Register of  
5           Historic Places. Where impacts are not avoided,  
6           typical procedures include developing detailed  
7           plans for cultural resource evaluation and  
8           possibly recovery and curation. The Applicant  
9           has not communicated any further plans to  
10          evaluate, avoid or recover resources in over two  
11          years.

12           The February 8, 2008, letter indicates that  
13          OPRHP FSB has no concerns regarding historic  
14          buildings, structures or archeological resources  
15          in the upland section of the project.

16    Q.    Is the location of the proposed facility  
17          consistent with local laws and ordinances?

18    A.    The location of the proposed facility appears to  
19          be consistent with local laws and Zoning  
20          Resolutions. The Zoning Resolutions of New York  
21          City were reviewed, including recent changes to

1           the code requirements for the Special Clinton  
2           District which overlays most of the upland  
3           project area. No code conflicts with the  
4           proposed facility location were identified.  
5           While transmission facilities are not  
6           specifically identified as an allowed use in the  
7           code, they are also not identified as a  
8           prohibited or excluded use. The underground  
9           transmission cable could potentially be  
10          considered as an accessory use, since it does  
11          not occupy surface area or necessarily preclude  
12          other land uses, although it is not directly  
13          related to other land uses, with the exception  
14          of the terminal interconnecting substation. The  
15          underground fluid vault is not designed for  
16          regular access or occupancy, so it is not a  
17          building.

18    Q.    Have you reviewed any other relevant land use or  
19          planning documents that relate to the proposed  
20          facility location?

1 A. Yes, the document entitled "Community District  
2 Needs - Manhattan - Fiscal Year 2010" issued by  
3 the City of New York Department of City  
4 Planning, and Office of Management and Budget  
5 was reviewed. That document is included, in  
6 relevant part, in Exhibit \_\_\_\_ (PFD-11).

7 In consideration of Community District 4,  
8 which includes the proposed facility landfall  
9 and upland location, this planning document  
10 identifies the area between Piers 92 and 97 as  
11 "the busiest section of Route 9A [12<sup>th</sup> Avenue]";  
12 and, identifies the planned "use of both Piers  
13 94 and 92 as a midsize convention center" (page  
14 117). Noting that many large construction  
15 projects in the district are underway or in  
16 planning, the Community District Needs  
17 assessment also notes that "active construction  
18 has a significant effect on traffic flow and  
19 quality of life. We need a commitment from a  
20 host of City agencies, including the Department  
21 of Buildings, the Department of Environmental

1 Protection, the Department of Transportation and  
2 the Police Department to coordinate enforcement  
3 efforts to ensure that our neighborhoods are not  
4 overwhelmed by the inevitable impacts of  
5 construction" (page 98).

6 The Community District Needs assessment  
7 also notes that DeWitt Clinton Park is in need  
8 of major renovation, including ballfields and  
9 play areas, restrooms, access, seating areas,  
10 lighting and drainage problems (page 118).

11 The proposed location of the HTP facilities  
12 is directly adjoining the north side of DeWitt  
13 Clinton Park east of 12<sup>th</sup> Avenue. As discussed  
14 in DPS Staff Quackenbush/Macks/Strub testimony,  
15 the proposed location of the construction layout  
16 for installation of the HTP facilities will  
17 likely temporarily impede accessibility at two  
18 entrances to the park (steps at park southwest  
19 corner, at intersection of 12<sup>th</sup> Avenue and 52<sup>nd</sup>  
20 Street; and at south side steps on 52<sup>nd</sup> Street  
21 between 11<sup>th</sup> and 12<sup>th</sup> Avenues). These access

1 points are non-accessible to wheelchairs; and  
2 there are four other accessible entrances to the  
3 park, as indicated on attached Exhibit\_\_(PFD-  
4 06), a map and inspection summary from the New  
5 York City Department of Parks & Recreation,  
6 obtained via internet address as noted on the  
7 figure). DPS panel witnesses  
8 Quackenbush/Macks/Strub provide additional  
9 details regarding potential impacts to DeWitt  
10 Clinton Park in related testimony.

11 In terms of the planned use of Piers 92 and  
12 94 as a convention center, DPS has learned of  
13 plans for the upgrade of structures and  
14 buildings located at the area on the surface at  
15 the proposed landfall of the HTP transmission  
16 facility. In 2009, the City Planning  
17 Commission granted approvals for redevelopment  
18 and major amendments of the head house building  
19 and pier 94 building as exhibition and  
20 convention space. The structural modifications  
21 reportedly include adding a second story and

1 other changes to increase the useable space, to  
2 provide improved public access to and egress  
3 from the site, as well as integrating the  
4 accessibility, use and amenities of the site  
5 with the adjoining Clinton Cove Park, which is  
6 located to the north of Pier 94. DPS Staff  
7 learned of the planned improvements from review  
8 of City Planning Commission approvals and  
9 actions as listed at the Department of City  
10 Planning web-site. Since the description of  
11 proposed enhancements appeared to involve the  
12 area proposed for the route of the HTP facility,  
13 DPS inquired further regarding the details of  
14 the proposed changes to the Piers and  
15 structures. In response to discovery DPS-42,  
16 New York City Economic Development Corporation  
17 (NYCEDC) provided a one page plan (labeled Piers  
18 92/94, A-101-Opt A) with nominal notations,  
19 purported to show the type of enhancements and  
20 structural changes planned for the area of Piers  
21 92 and 94. That plan is attached as Exhibit\_\_

1 (PFD-7). The document does not fully address  
2 DPS Staff inquiries regarding the location of  
3 construction activities, which were requested as  
4 a demonstration that the proposed transmission  
5 facility location and design would be fully  
6 compatible with other planned, approved land use  
7 and development plans in the project vicinity.  
8 In discussion with NYCEDC, DPS Staff explained  
9 that a demonstration of the design separation  
10 between the proposed fluid-filled, high voltage  
11 electric transmission cables and any underground  
12 structural support elements of the pierhead  
13 structures and buildings should be considered in  
14 determining the appropriate location for the  
15 transmission facility. DPS Staff's concerns  
16 regarding this issue have not been addressed,  
17 since there has been no showing that structural  
18 pilings or footings will be separated from the  
19 transmission facilities.

20 Q. Are there other potential land use effects which  
21 may occur due to the facility construction?

1 A. Yes, there is a potential for temporary  
2 interruption of pedestrian access to areas west  
3 of 12<sup>th</sup> Avenue, including the recreation and  
4 cultural resources at the facility landfall  
5 vicinity at Piers 92 and 94, and the Clinton  
6 Cove Park, which is located at the waterfront  
7 immediately north of Pier 94. There are already  
8 limitations on pedestrian access to the Piers  
9 and to Clinton Cove Park in the project area due  
10 to traffic patterns, and few pedestrian crossing  
11 sites. The pedestrian crosswalk at West 52<sup>nd</sup>  
12 Street is heavily used for access to the Clinton  
13 Cove Park and the Pier 94 "Unconvention Center".  
14 This area is depicted in Exhibit\_\_ (PFD-2) at  
15 Photos 8123 and 8133. There are no pedestrian  
16 crosswalks at 12<sup>th</sup> Avenue from 49<sup>th</sup> St. to 51<sup>st</sup>  
17 St. The **Community Needs Assessment** discussed  
18 above identifies this problem and states that "A  
19 pedestrian bridge between DeWitt Clinton and  
20 Clinton Cove Parks is needed for both safety and  
21 convenience in crossing the busiest section of

1           Route 9A" (page 117). Construction is likely to  
2           involve trenching, laying of conduits and cable  
3           pulling activities at the pedestrian crossing  
4           location, as well as the length of the sidewalk  
5           south of 52<sup>nd</sup> Street to the ConEdison 49<sup>th</sup> Street  
6           substation below West 50<sup>th</sup> Street.

7           It is also likely that pedestrian and  
8           vehical access to businesses and buildings  
9           immediately adjoining the facility location will  
10          be impeded during trenching and conduit or cable  
11          installations. As currently proposed in  
12          detailed plans provided in supplemental  
13          responses to DPS-31, the trench will be at the  
14          doorsteps of businesses along 52<sup>nd</sup> Street and  
15          12th Avenue. These areas are depicted in many  
16          of the photographs labeled in Exhibit\_\_ (PFD-2).

17          Mitigation measures including notice to  
18          business and building owners, and plans for  
19          specifically addressing site specific impacts,  
20          should be requirements of any Certificate issued  
21          by the Commission.

1 Q. Is the proposed facility located within a  
2 designated Coastal Management Zone?  
3 A. Yes. Most of the location of the proposed  
4 facility within New York State is within the  
5 area designated as Coastal Zone by the  
6 Department of State of New York. Attached  
7 Exhibit\_\_ (PFD-8) is a reproduction of maps of  
8 the designated Coastal Zone and Significant  
9 Coastal Habitats for the project area, published  
10 by the Department of State Coastal Resources  
11 Bureau. Page 1 is titled "Central Park South -  
12 NY12." The blue line depicts the landward edge  
13 of the designated Coastal Zone of the Lower  
14 Hudson River Reach; and the green line  
15 designates Significant Coastal Habitat. Page 2  
16 of this exhibit is an enlargement of the NY12  
17 map showing the Coastal Zone designation in the  
18 area of the proposed HTP facility landfall and  
19 interconnection.

20 Also attached is Exhibit\_\_ (PFD-9), a  
21 reproduction of the project area from the

1 official New York City map of the designated  
2 Coastal Zone for the project area. The boundary  
3 appears to coincide with the sidewalk along the  
4 easterly side of 12<sup>th</sup> Avenue. Thus, the majority  
5 of the length of the proposed transmission  
6 facility is within the designated coastal zone,  
7 as well as within the lower Hudson Reach  
8 Significant Coastal Habitat.

9 Q. Did the Application include an analysis of  
10 consistency with the State Coastal Zone  
11 Policies?

12 A. The Application includes a brief discussion of  
13 the Coastal Zone program in Exhibit 4 and  
14 Appendix 4-9, which provides a discussion of  
15 some of the State and Local Policies, a  
16 completed Federal Consistency Assessment Form,  
17 and a completed New York City Waterfront  
18 Revitalization Program Consistency Assessment  
19 Form. These forms are checklists indicating  
20 whether a project ostensibly will be in

1 compliance with each of the New York State  
2 Coastal Zone Program Policies.

3 The applicants' Coastal Management Policy  
4 analysis describes the facility routing as  
5 originally identified and proposed in the 2008  
6 Application. The routing has changed with the  
7 filing of the 2009 Supplement, increasing the  
8 length of line within the designated Coastal  
9 Zone in the upland area along 12<sup>th</sup> Avenue. Staff  
10 notes that the upland routing, including  
11 locations within the designated Coastal Zone,  
12 has been further refined as depicted in detailed  
13 plans, only recently received in supplemental  
14 responses to discovery request DPS-31.

15 The analysis of impacts of the facility  
16 within the Hudson River describe effects of  
17 horizontal directional drilling (HDD) and jet-  
18 plow installations, as well as the effects of  
19 construction within the open cofferdam at the  
20 submerged exit point of the HDD, including  
21 excavation, turbidity and sedimentation. The

1           proposal to return water drained through geo-  
2           textile fabric directly to the Hudson River, as  
3           discussed in regards to Local Policy 5.3 (Ex. 4,  
4           App. 4-9, page 10) is not necessarily protective  
5           of water quality, as described above, due to the  
6           preponderance of fine silts and clays in the  
7           material to be excavated from the cofferdam.

8           Regarding State Policies 19 through 22, the  
9           HTP analysis indicates that the HDD installation  
10          will not affect access to the Hudson River Park  
11          or the linear bike-way along the western side of  
12          12<sup>th</sup> Avenue. The analysis does not, however,  
13          note that the upland HDD setup is likely to  
14          impede access to two of the six public access  
15          points to the DeWitt Clinton Park, located at  
16          the north side of 52<sup>nd</sup> Street and fronting on  
17          12<sup>th</sup> Avenue, for the duration of HDD activities.  
18          Other access points to the DeWitt Clinton Park,  
19          including handicapped accessible locations, will  
20          not be affected by the HDD setup. While DeWitt  
21          Clinton Park is not directly located on the

1 foreshore of the Hudson River, it does front on  
2 the designated Coastal Zone area and provides  
3 limited visual access to the foreshore and the  
4 coastal area and water-related activities in the  
5 area.

6           Regarding State Policy 27, the Applicant  
7 contends that the "Project will meet the public  
8 need for additional electric energy and capacity  
9 resources within New York City" (Ex. 4, App. 4-  
10 9, page 8). The discussion also indicates that  
11 "the proposed project is not located within a  
12 Significant Maritime and Industrial Area"  
13 (SMIA). The location of the facility outside of  
14 an SMIA is not specifically consistent with  
15 Policy 2.1 in the New York City New Waterfront  
16 Revitalization Plan (NWRP). The NWRP  
17 "[p]romote[s] water-dependent and industrial  
18 uses in Significant Maritime and Industrial  
19 Areas." There are six designated SMIA locations  
20 in New York City, and none of those are located  
21 in Manhattan.

1           There are other problems with the NWRP  
2           Consistency Assessment Form provided by the  
3           Applicant. In particular, Appendix 4-9 does not  
4           describe the currently proposed facility  
5           location. In addition, the stated purpose of  
6           the activity indicates that the facility would  
7           provide "transmission capacity to new sources of  
8           power", although HTP has not indicated which  
9           "new sources of power" it would be accessing.  
10          The form indicates that the Applicant will be  
11          requesting "NYSDEC 401 Water Quality  
12          Certification" rather than such certification  
13          from the PSC. The HTP analysis also does not  
14          fully address NWRP policy 5.2C (question 29),  
15          which asks "[w]ould the action result in  
16          significant amounts of acid rain precursors  
17          (nitrates and sulfates)," given the potential  
18          increases of those emissions due to  
19          interconnection and operation of the proposed  
20          transmission facility.

1           Moreover, the analysis by HTP is not  
2           consistent in addressing the handling of  
3           hazardous materials or other pollutants (NWRP  
4           Policy 7, questions 38 and 41) as identified in  
5           the discussion of water quality above. The NWRP  
6           analysis also does not address temporary  
7           reduction in access to adjoining parkland  
8           (question 43) as discussed in this testimony.  
9           Further, the analysis is not correct in  
10          reporting that the project will not involve  
11          "lands or waters held in public trust by the  
12          state or city" (NWRP question 48), since the  
13          project will involve public lands beneath the  
14          Hudson River Parkway riverfront bikepath, the  
15          bed of the Hudson River beneath City lands  
16          between Piers 92 and 94, and the bed of the  
17          Hudson River for over 4 miles north of Pier 94.  
18          Similarly, the analysis is not complete  
19          regarding the potential for adverse effects on  
20          historic or archeological resources within the  
21          bed of the Hudson River, given the outstanding

1 request for documentation of avoidance, as  
2 requested by the OPRHP-HSB, which is discussed  
3 above. The NWRP analysis indicates that one  
4 bored conduit will be installed via HDD, whereas  
5 more recent information provided in response to  
6 discovery request DPS-31 indicates that three  
7 separate borings will be installed at the  
8 landfall location.

9 Q. Should the Commission issue a Water Quality  
10 Certification pursuant to Section 401 of the  
11 Clean Water Act?

12 A. At the appropriate time, following a  
13 demonstration by the applicant that it can  
14 comply with relevant water quality criteria, and  
15 following completion of appropriate procedures,  
16 issuance of a water quality certification  
17 pursuant to §401 may be appropriate. Those  
18 procedures would apply following receipt of a  
19 formal written request for issuance of a water  
20 quality certification from the applicant.  
21 Public notice and a public comment period or

1 hearing must be provided. Such request may  
2 accompany the submittal and public notice of an  
3 EM&CP detailing the final location of the  
4 proposed facilities, and should include a Water  
5 Quality Monitoring Plan for the in-river  
6 construction phases, including the installation  
7 and dredging of cofferdams, HDD and cable-  
8 pulling, and the jet-plow embedment of cable.

9 Q. Are there impact minimization or mitigation  
10 measures which should be requirements of any  
11 facility certification?

12 A. The conditions recommended in Exhibit\_\_ (PFD-3)  
13 are fairly standard requirements of Certificates  
14 issued by the Commission in Article VII  
15 proceedings. There are also some conditions  
16 more specific to this proceeding.

17 A requirement for documentation of the  
18 final location of facilities should be required,  
19 as recommended in Certificate Condition 74.  
20 This condition is appropriate to ensure that the  
21 final facility location is documented with as-

1 built drawings, and that requirements of 9 NYCRR  
2 Part 271 are addressed to the satisfaction of  
3 the Office of General Services - Bureau of Land  
4 Management. Attached as Exhibit\_\_ (PFD-10) is a  
5 document provided by the Bureau of Land  
6 Management (Bureau) listing the mapping  
7 requirements for as-built drawing details. The  
8 representative of the Bureau advises that the  
9 developer should consult with Bureau staff prior  
10 to development of final design drawings, and  
11 that initial approvals for construction  
12 easements are necessary. Time requirements for  
13 providing that information are also appropriate  
14 for obtaining location information and  
15 maintaining timely information.

16 A requirement should also be included, as  
17 part of the filing of any EM&CP segment, for  
18 direct notice of project construction activities  
19 to businesses and property owners within  
20 potentially impacted areas. Along 52<sup>nd</sup> Street  
21 and 12<sup>th</sup> Avenue, this would include the

1 businesses and properties within 100 feet of the  
2 proposed work area. The notice should include:  
3 details about the planned work locations, hours  
4 and duration of activities; provisions for  
5 protection of properties; offers to inspect  
6 building foundations and document existing  
7 conditions prior to construction; provisions for  
8 maintenance and protection of pedestrian and  
9 vehicle access to buildings and properties; the  
10 locations where additional information and  
11 copies of EM&CPs are available; contact  
12 information for certificate holder personnel,  
13 and instructions on how comments regarding  
14 construction plans and mitigation measures may  
15 be filed with the Secretary to the Public  
16 Service Commission, indicating appropriate  
17 deadlines for comments and contact information.  
18 This information is contained in proposed  
19 condition number 24.b.

20 In addition, a requirement to replace any  
21 trees damaged as a result of construction is

1 appropriate. The detailed routing of the  
2 proposed facility has recently been re-revised  
3 from that indicated in the 2009 Amendment to the  
4 Application, as indicated in plans identified as  
5 confidential by HTP in a series of responses to  
6 DPS-31. Along 12<sup>th</sup> Avenue, the facility location  
7 is proposed to be very close to the commercial  
8 buildings and businesses fronting on the east  
9 side of 12<sup>th</sup> Avenue (See photos in Exhibit\_\_  
10 (PFD-2). Construction could adversely affect  
11 the street trees growing in planting beds within  
12 the pedestrian sidewalks adjoining the proposed  
13 facility locations depicted at photos 8135 and  
14 8136, Exhibit\_\_ (PFD-2). To address these  
15 matters, we propose certificate condition 75.

16 Pedestrian traffic will also be affected in  
17 this area, given the need for access by large  
18 construction equipment to excavate a trench and  
19 lay conduits for transmission cables, and the  
20 need for placement of barricades appropriate for  
21 isolating the work zone from pedestrian areas.

1 Construction may also affect access to  
2 waterfront parks and the Pier 94 Convention  
3 Center, since many pedestrians use the sidewalks  
4 on 12<sup>th</sup> Avenue to access pedestrian crossing  
5 locations at traffic signals, such as at the  
6 corner of 52<sup>nd</sup> Street. This area is depicted in  
7 photos 8123 and 8133 in Exhibit\_\_ (PFD-2).  
8 These matters are addressed in proposed  
9 condition 28.j.

10 Q. Does this conclude the panel's testimony?

11 A. Yes, this does.