

BEFORE THE  
NEW YORK STATE PUBLIC SERVICE COMMISSION

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APPLICATION OF HUDSON TRANSMISSION  
PARTNERS, LLC, for a CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND  
PUBLIC NEED for a 345 KILOVOLT CASE 08-T-0034  
SUBMARINE/UNDERGROUND ELECTRIC  
TRANSMISSION LINK BETWEEN MANHATTAN  
AND NEW JERSEY

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EVIDENTIARY HEARING

Monday, May 3, 2010  
1:00 p.m.  
Public Service Commission  
Empire State Plaza  
Agency 3 Building, 3rd Fl.  
Albany, New York

BEFORE: HONORABLE WILLIAM BOUTEILLER, ESQ.  
Administrative Law Judge

APPEARANCES:

FOR THE NYS PUBLIC SERVICE COMMISSION

STATE OF NEW YORK PUBLIC SERVICE COMMISSION  
Department of Public Service  
Office of General Counsel  
Three Empire State Plaza  
Albany, New York 12223-1350  
BY: DAVID G. DREXLER, ESQ.

FOR THE APPLICANT:

THE DAX LAW FIRM, PC  
54 State Street, Suite 805  
Albany, New York 12207  
BY: JOHN W. DAX, ESQ.  
AMY BUTLER

ALEXY ASSOCIATES, INC.  
(518) 798-6109

1 FOR THE NYS DEPARTMENT OF ENVIRONMENTAL  
2 CONSERVATION

3 NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
4 625 Broadway, 4th Floor  
5 Albany, New York 12233-1750  
6 BY: LAWRENCE H. WEINTRAUB, ESQ.  
7 BETSY HOHENSTEIN

8 FOR INDEPENDENT POWER PRODUCERS OF NEW YORK

9 READ & LANIADO  
10 25 Eagle Street  
11 Albany, New York 12207-1902  
12 BY: DAVID B. JOHNSON, ESQ.

13 FOR THE NEW YORK POWER AUTHORITY

14 NEW YORK POWER AUTHORITY  
15 123 Main Street  
16 White Plains, New York 10601  
17 BY: GARY D. LEVENSON, ESQ.

1                   ALJ BOUTEILLER: I want to call case  
2                   number 08-T-0034. This is the Commission's  
3                   proceeding pursuant to Article 7 of the Public  
4                   Service Law concerning an application that was  
5                   filed by the Hudson Transmission Partners to  
6                   construct a 345 kilovolt submarine/underground  
7                   electric transmission facility running from a point  
8                   in New Jersey to approximately midtown Manhattan.

9                   This hearing began in the middle of last  
10                  week. We have been on the record for three days,  
11                  and now this is the fourth day on the record, and  
12                  this will be, probably, the conclusion of the  
13                  hearings, and we'll close the record and probably  
14                  establish briefing dates at the end of today's  
15                  activity.

16                 To get this hearing started I'd like to  
17                 call for the appearances of the parties present,  
18                 starting with the applicant.

19                 MR. DAX: Thank you, Your Honor. For  
20                 Hudson Transmission Partners, LLC, John W. Dax.

21                 ALJ BOUTEILLER: Thank you very much. If  
22                 there's no one else at that table, then the first  
23                 table on my right.

24                 MR. WEINTRAUB: Your Honor, for the New  
25                 York State Department of Environmental

1 Conservation, Lawrence H. Weintraub and Thomas  
2 McGuire.

3 ALJ BOUTEILLER: Thank you very much.

4 Mr. Johnson, will you start us out for  
5 that table? We'll go right around that table.

6 MR. JOHNSON: For Independent Power  
7 Producers of New York, the law firm of Read and  
8 Laniado, LLP, David B. Johnson.

9 ALJ BOUTEILLER: Thank you much.

10 MR. LEVENSON: For New York Power  
11 Authority, Gary Levenson.

12 ALJ BOUTEILLER: Thank you. I think that  
13 brings us to staff.

14 MR. DREXLER: For Department of Public  
15 Service, staff, David Drexler.

16 ALJ BOUTEILLER: Thank you. Is there  
17 anyone else who needs to make an appearance? If  
18 not, I believe we can begin with the  
19 cross-examination from where we left off on  
20 Thursday. And if my records are correct, I think  
21 we're up to the witnesses being offered by the  
22 Department of Environmental Conservation. Counsel,  
23 can you call your witness?

24 MR. WEINTRAUB: Yes. I call David L.  
25 Gardner.

1 ALJ BOUTEILLER: Thank you.

2 D A V I D L. G A R D N E R,  
3 having been first duly sworn by the notary public,  
4 was examined and testified as follows:

5 ALJ BOUTEILLER: Thank you. Please be  
6 seated and, for the record, please state your name  
7 and your business address.

8 THE WITNESS: My name is David Gardner.  
9 I work for the Environmental Conservation  
10 Department, the Office of Climate Change, at 625  
11 Broadway, Albany, New York.

12 ALJ BOUTEILLER: If you'll press the  
13 button which says "push" and then you can speak  
14 very softly.

15 THE WITNESS: Good morning. My name is  
16 David Gardner. I work for the Environmental  
17 Conservation Department, Office of Climate Change,  
18 at 625 Broadway in Albany, New York.

19 ALJ BOUTEILLER: Thank you very much.  
20 We'll turn now to your counsel who will assist us  
21 in getting your testimony into the record.

22 BY MR. WEINTRAUB:

23 Q Mr. Gardner, do you have in front of you a  
24 four-page plus cover sheet document entitled "Prepared  
25 Testimony of David R. Gardner, PE," that was submitted

1 to the New York State Department of Public Service in  
2 the case of Hudson Transmission Partners, LLC, PSC case  
3 08-T-0034 dated March 18, 2010?

4 A Yes, I do.

5 Q And did you prepare the questions and answers  
6 contained therein?

7 A Yes, I did.

8 Q And if you were to give -- if you were to be asked  
9 those same questions today as you were then, would you  
10 give the same answers?

11 A Yes.

12 Q Do you have any additions or -- additions or  
13 changes that you'd like to make to that testimony now?

14 A No.

15 Q Thank you, Mr. Gardner.

16 MR. WEINTRAUB: I offer up Mr. Gardner  
17 for cross-examination.

18 ALJ BOUTEILLER: Are there any exhibits  
19 associated with this testimony?

20 MR. WEINTRAUB: Yes, Your Honor.

21 ALJ BOUTEILLER: Before you do that,  
22 let's move his testimony.

23 Absent any objection I will instruct the  
24 reporter to copy into the record as if given orally  
25 today prefiled direct testimony of this witness.

1 (The testimony is included, as ordered.)  
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BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of  
Hudson Transmission Partners, LLC  
PSC Case #08-T-0034  
Date: March 18, 2010

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Prepared Testimony of:

David R. Gardner, P.E.  
Office of Climate Change  
Department of Environmental Conservation  
625 Broadway  
Albany, New York 12233  
518-402-8448



1 Q. Please state your name and place of employment.

2 A. My name is David R. Gardner. I am a Senior Environmental Engineer with the  
3 Office of Air Resources, Climate Change and Energy, New York State  
4 Department of Environmental Conservation (DEC).

5 Q. Please describe your educational background?

6 A. I have both a bachelors and masters degree in Environmental Engineering from  
7 Rensselaer Polytechnic Institute. I am licensed as a Professional Engineer in  
8 New York State and the State of Vermont.

9 Q. What are the duties of your employment?

10 A. I provide technical support for policy, program and regulation development in  
11 addition to providing comment on climate and energy related legislation.  
12 Additionally, I co-authored the Climate Brief, a supporting document to the State  
13 Energy Plan (Plan). The Plan was approved by the Board on December 15, 2009  
14 and served to support Governor Paterson's Executive Order No. 24, signed  
15 August 16, 2009 (EO-24), and a New York State specific Climate Action Plan  
16 (CAP). Working with the New York State Energy Research and Development  
17 Authority (NYSERDA), the Brookhaven National Laboratories and the New York  
18 Academy of Sciences I have been tasked as part of the Plan's Visioning Group  
19 with the framing of a year 2050 look at the ways the State could satisfy the  
20 climate goals in EO-24. One of the uses of this Visioning White Paper is to serve  
21 as a guide for the Plan's sector-based Technical Working Groups during policy  
22 selection and development activities so that policies presented to the Climate  
23 Action Council will be amenable to obtaining the long-term, mid-century 80  
24 percent reduction goal and not hinder that goal.

25 I also serve as a government liaison on the Residential, Commercial, Industry  
26 and the Power Supply and Delivery Technical Working Groups as established by  
27 the Climate Action Council to provide information on policy development for the  
28 CAP. I also routinely sit as a Panel Advisory Committee member on climate and  
29 energy related projects funded through NYSERDA.

30 Q. In the course of your duties with the Office of Climate Change, did you become  
31 familiar with a proposal by Hudson Transmission Partners, LLC to construct and

1 operate a 660 MW electrical transmission line from PJM service territory to  
2 Manhattan (HTP project)?

3 A. Yes.

4 Q. Can you briefly describe the project?

5 A. The project is a 660 megawatt (MW) transmission line from New Jersey to New  
6 York. It connects New York City to various electric power generating units in the  
7 Pacific-Jersey-Maryland or PJM service territory.

8 Q. What is the purpose of your testimony?

9 A. The purpose of my testimony is to provide evidence on whether the HTP project  
10 is contrary to New York State policies and plans on energy supply and reducing  
11 greenhouse gas emissions inasmuch as it would be connecting to electric  
12 generating units in the PJM service territory that have a higher profile of polluting  
13 air emissions than emissions produced in New York.

14 Q. Did you make such an evaluation of the HTP project?

15 A. Yes.

16 Q. What is your evaluation?

17 A. The HTP project is contrary to the goals of the adopted State Energy Plan that  
18 became effective in November 2009.

19 The HTP project is also contrary to EO-24 which calls for an 80 percent reduction  
20 of emissions across all economic sectors in New York State by year 2050.

21 Finally, the project would make the goals of the State Energy Plan and EO 24  
22 harder to achieve, and represents a step backward in the achievement of the  
23 Plan and Executive Order.

24 Q. What are conclusions based on?

25 A. My conclusions are based on the air emissions modeling results entitled: "Year  
26 2013 Results of HTP's Emission Effects on New York and PJM Using Simulation  
27 Models." They are attached to my testimony as Exhibit A. These modeling  
28 results indicate that CO<sub>2</sub> emissions from the project could increase by as much  
29 as 485,058 tons per year. This increase can represent as much as 1.1 % of the  
30 total CO<sub>2</sub> from the electricity generating sector (interpolated from forecast CO<sub>2</sub>  
31 emissions data from the NY electric sector, NYSERDA – June 25, 2009

1 Greenhouse Gas (GHG) Emissions Inventory and Forecasts for the 2009 State  
2 Energy Plan).

3 Q. How would the projected increase in CO<sub>2</sub> from the HTP project be contrary to the  
4 State Energy Plan and EO-24?

5 A. The New York State Energy Plan contains a series of policy objectives for New  
6 York State. Among these objectives is to increase the use of energy systems that  
7 enable the State to significantly reduce greenhouse gas (GHG) emissions while  
8 stabilizing energy costs and improving the State's energy independence through  
9 development of in-state energy supply resources. At the same time, Executive  
10 Order No. 24 calls for the State to reduce its carbon emissions by 80 percent by  
11 the year 2050.

12 Inasmuch as the HTP transmission line relies to one extent or another on electric  
13 generating units with a higher carbon emissions profile, the construction and  
14 operation of the line contradicts the State Energy Plan goal and the 80 by 50  
15 goal. By connecting to the PJM grid, the HTP project would increase GHG  
16 emissions by as much as 485 thousand tons per year (according to the  
17 modeling).

18 Q. Can you describe what 485 thousand tons of CO<sub>2</sub> emissions means in relative  
19 terms?

20 A. It means approximately 85,000 cars on the road for one year, 60,500 light duty  
21 trucks or an additional coal-fired steam electric generating unit that burns over  
22 200,000 tons of coal annually.

23 Q. Relatively speaking, is this a large amount of CO<sub>2</sub>?

24 A. Four hundred and eighty-five thousand extra tons of CO<sub>2</sub> emissions per year is  
25 consequential in light of the overall goals to reduce CO<sub>2</sub> under the State Energy  
26 Plan and EO 24. To achieve the goals set forth in the 80 by 50 Plan, New York  
27 will have to reduce greenhouse gas emissions, including those from fossil fuels,  
28 from all sectors and from all fuels. Each increase in the amount of CO<sub>2</sub> makes the  
29 goal relatively harder to reach. To reduce greenhouse gases by 80 percent by  
30 2050 will require New York to develop additional sources of renewable energy or  
31 nuclear technologies, distribution network upgrades with energy storage and two-

1 way communication, and a very large reduction in demand through energy  
2 conservation. The increase in emissions accountable to the project will require  
3 tightening requirements within New York in other, potentially more difficult and  
4 expensive to control sectors, such as transportation or agriculture and waste.  
5 The increases in use of fossil fuels, resulting from the HTP project would need to  
6 be offset by more reductions in other sectors. In other words, the HTP project  
7 takes New York in the wrong direction insofar as it seeks to meet the goals of the  
8 State Energy Plan and EO 24.

9 Q. Are there any other aspects of the State Energy Plan or energy policies of the  
10 State to which the project is contrary?

11 A. Yes. The State's Energy Efficiency Portfolio Standard identifies energy efficiency  
12 improvement as the primary means for meeting the multiple objectives of the  
13 State Energy Plan. The State Energy Plan states (2009 State Energy Plan Volume  
14 I, Governor David A. Paterson, State of New York, Executive Summary, pp *xiii*)  
15 that "[i]nvesting in end-use energy efficiency, across all sources of energy and  
16 across all energy-using sectors, is the most economical approach to expanding  
17 the State's clean energy economy. In the short-run, investments in energy  
18 efficiency reduce energy use and bills for participating customers. In the long-run,  
19 a significant reduction in electricity demand has been shown to put downward  
20 pressure on wholesale electricity prices, reduce price volatility, and reduce  
21 emissions of carbon dioxide (CO<sub>2</sub>) and other air pollutants..." Understanding the  
22 Project as described and modeled enables a shift in the operation of generating  
23 units, the subsequent increase of emissions due to that generation shift, and the  
24 transmission of the generated electricity into the New York City zone, it is not in  
25 harmony with the most economic approach to expanding the State's clean  
26 energy economy, namely end-use energy efficiency and the reduction of demand  
27 in the New York City Metropolitan Area and the State of New York as a whole..

28 Q. Does this conclude your testimony?

29 A. Yes.

## Year 2013 Results of HTP's Emission Effects on New York and PJM Using Simulation Models

Pollutant	CRA - EDC Study			Navigant			IRP			DPS (full EEPs)			DPS (without EEPs)		
	Change (tons)	Base Emissions (tons)	% Change	Change (tons)	Base Emissions (tons)	% Change	Change (tons)	Base Emissions (tons)	% Change	Change (tons)	Base Emissions (tons)	% Change	Change (tons)	Base Emissions (tons)	% Change
NYISO	(490)	71,636	-0.68%	(1,251)	21,149	-5.91%	(288)	24,593	-1.17%	(1,295)	41,380	(3.1%)	(1,505)	49,094	(3.1%)
	(353)	70,816	-0.50%	(929)	88,390	-1.05%	(320)	72,415	-0.44%	(1,949)	97,226	(2.0%)	(1,158)	100,118	(1.2%)
CO2	(404,178)	52,819,904	-0.77%	(4,072,969)	80,375,429	-5.07%	(603,094)	31,773,513	-1.90%	(1,245,413)	43,045,276	(2.9%)	(1,262,561)	49,009,275	(2.6%)
PJM	1,126	353,261	0.32%	504	373,400	0.14%	347	25,501	1.36%	1,516	343,468	0.44%	1,549	348,340	0.44%
	1,602	1,105,142	0.14%	2,122	2,893,496	0.07%	1,293	93,855	1.38%	8,538	1,278,684	0.67%	7,791	1,300,549	0.60%
CO2	649,866	515,638,632	0.13%	2,459,527	956,245,175	0.26%	435,186	32,169,174	1.35%	1,730,471	234,573,714	0.74%	1,680,201	238,478,953	0.70%
Total	636	424,897	0.15%	(747)	394,549	-0.19%	59	50,094	0.12%	221	384,848	0.06%	44	397,434	0.01%
	1,249	1,175,958	0.11%	1,193	2,981,886	0.04%	973	166,270	0.59%	6,589	1,375,910	0.48%	6,633	1,400,667	0.47%
CO2	245,688	568,458,536	0.04%	(1,613,442)	1,036,620,603	-0.16%	(167,907)	63,942,687	-0.26%	485,058	277,618,990	0.17%	417,640	287,488,228	0.15%

Notes: CRA-EDC, Navigant & IRP  
 - Navigant numbers assume entire PJM Pool  
 - For IRP, case used is HTP\_30\_B\_A\_Y\_F (HTP Case) and CC\_30\_B\_A\_Y\_F (2012 Reference Case)

## Notes: DPS (full EEPs)

- 1 PJM emissions changes resulting from the HTP line exports to NY are added to NY's emissions with HTP in service.
- 2 CRA (Charles River Associates International) results provide to DPS Staff 6, 16, 2008
- 3 CRA HTP capacity factor approximately 65%
- 4 CRA includes a partial implementation of EEPs similar to NYISO's 2009 RNA, or approximately 30%
- 5 For this simulation, NY DPS results reflect EEPs energy reductions
- 6 NYDPS HTP capacity factor approximately 38%
- 7 CRA models entire Eastern Interconnection, whereas, NY DPS models NY, NE-ISO, PJM, with ties to HQ and OH.

## Notes: DPS (no EEPs)

- 1 PJM emissions changes resulting from the HTP line exports to NY are added to NY's emissions with HTP in service.
- 2 CRA (Charles River Associates International) results provide to DPS Staff 6, 16, 2008
- 3 CRA HTP capacity factor approximately 65%
- 4 CRA includes a partial implementation of EEPs similar to NYISO's 2009 RNA, or approximately 30%
- 5 CRA models entire Eastern Interconnection, whereas, NY DPS models NY, NE-ISO, PJM, with ties to HQ and OH.
- 6 NY DPS results do not reflect EEPs energy reductions
- 7 NYDPS HTP capacity factor approximately 57%

Not 01/1/10  
 dps

## Effect on New York Energy Label for the Various Models (see note 1)

	CRA - EDC Study (GE-MAPS)			Navigator			IRP			NY DPS (GE-MAPS, full EEPs)			NYDPS (GE-MAPS, no EEPs)		
	Change	Base Emissions	Change %	Change	Base Emissions	Change %	Change	Base Emissions	Change %	Change	Base Emissions	Change %	Change	Base Emissions	Change %
Pollutant	(tons)	(tons)	(see note 2)	(tons)	(tons)	(see note 2)	(tons)	(tons)	(see note 2)	(tons)	(tons)	(see note 2)	(tons)	(tons)	(see note 2)
Nox	(362)	72,529	(0.5%)	(747)	21,149	-3.53%	59	24,593	0.24%	221	41,380	0.53%	44	49,094	0.09%
Sox	2,744	72,958	3.91%	1,193	88,390	1.35%	973	72,415	1.34%	6,589	97,226	6.78%	6,633	100,118	6.63%
CO2	415,414	54,159,755	0.77%	(1,613,442)	80,375,429	-2.01%	(167,907)	31,773,513	-0.53%	485,058	43,045,276	1.13%	417,640	49,009,275	0.85%

## Notes:

1 PJM emissions changes resulting from the HTP line exports to NY are added to NY's emissions with HTP in service.

2 % Change = Total Change (tons) / NVISO Base Emissions (tons)

MA'd 2/2/10  
dps

1                   MR. WEINTRAUB: Your Honor, the first  
2 exhibits are emission test results which were made  
3 part of the original testimony. They were referred  
4 to as, I believe, Exhibit A in the original  
5 testimony, and I have a copy for the reporter.

6                   ALJ BOUTEILLER: Okay. The reporter --  
7 I'll simplify her life, if you can just provide for  
8 me the exhibits.

9                   MR. WEINTRAUB: Okay.

10                  ALJ BOUTEILLER: This is two copies of  
11 the same thing.

12                  MR. WEINTRAUB: They're different  
13 exhibits. I mean, they were both attached to the  
14 testimony.

15                  ALJ BOUTEILLER: The one you described  
16 for the record is this one?

17                  MR. WEINTRAUB: Yes, and this was also  
18 attached to the testimony. This is a comparison.

19                  ALJ BOUTEILLER: Off the record.

20                         (Discussion off the record.)

21                         (Exhibit No. 70 was marked for  
22 identification.)

23                  ALJ BOUTEILLER: Counsel, you've  
24 represented for the record that two documents were  
25 accompanying the prefiled testimony, and we've

1           discussed -- you've identified for the record the  
2           first and we'll mark that for identification as  
3           Exhibit Number 70.

4                       (Exhibit No. 70 was marked for  
5           identification.)

6                       ALJ BOUTEILLER: Can you describe the  
7           second document?

8                       MR. WEINTRAUB: Yes, the second document  
9           is a comparison. It's called "Year 2013 Results of  
10          HTP's Emission Effects on New York and PJM Using  
11          Simulation Models."

12                      ALJ BOUTEILLER: For identification we'll  
13          mark that as Exhibit Number 71.

14                      (Exhibit No. 71 was marked for  
15          identification.)

16                      ALJ BOUTEILLER: Are there additional  
17          exhibits associated with this witness?

18                      MR. WEINTRAUB: Yes. Yes, Your Honor. I  
19          have additional copies if anybody -- they were  
20          distributed if anybody wants them.

21                      The second exhibit --

22                      ALJ BOUTEILLER: I think we're to the  
23          third exhibit.

24                      MR. WEINTRAUB: The third exhibit is a  
25          document entitled "Patterns and Trends, New York



1 State Energy Profiles, 1994 to 2008," dated January  
2 2010, prepared by the New York State Energy  
3 Research & Development Authority, and this document  
4 is referred to in response to an interrogatory from  
5 Mr. Dax, HTP 1.

6 ALJ BOUTEILLER: So that would make this  
7 for identification Exhibit Number 72.

8 MR. WEINTRAUB: And I have extra copies  
9 of this document for everybody.

10 MR. DAX: What's the name of this  
11 document?

12 MR. WEINTRAUB: "Patterns and Trends, New  
13 York State Energy Profiles, 1994 to 2008," dated  
14 January 2010, prepared by the New York State Energy  
15 Research and Development Authority.

16 MR. DAX: Your Honor, is this in the  
17 nature of -- I'm not sure why this is being offered  
18 now as an exhibit. Is Mr. Gardner expanding his  
19 testimony or enlarging his testimony in some way?  
20 I may not object, but it's a little unclear why new  
21 exhibits are being offered up with this witness by  
22 his own attorney.

23 MR. WEINTRAUB: I can explain, Your  
24 Honor. The next item we're going to -- we are  
25 proposing as an exhibit is Mr. Gardner's response

1 to Mr. Dax's interrogatory request, and this  
2 document that I just described is referenced in  
3 that response.

4 ALJ BOUTEILLER: Let's go off the record.

5 (Discussion off the record.)

6 ALJ BOUTEILLER: For current purposes  
7 we're only marking things for identification.  
8 We'll mark this as Exhibit Number 72. We'll  
9 reserve any objection to this document at the time  
10 of moving it into evidence.

11 (Exhibit No. 72 was marked for  
12 identification.)

13 ALJ BOUTEILLER: Do you have further  
14 documents you want me to mark, Mr. Weintraub?

15 MR. WEINTRAUB: Yes. If anybody wants a  
16 copy of it --

17 MR. DREXLER: Yes.

18 MR. JOHNSON: Yes.

19 MR. DAX: Yes.

20 MR. LEVENSON: Yes.

21 MR. WEINTRAUB: Your Honor, the next  
22 exhibit is a response to an IR request from  
23 Mr. Dax, and it was Mr. Dax's HTP 1. And it's  
24 response -- the document is entitled "Response to  
25 HTP 1, Subject: Testimony of David R. Gardner."

1           It's -- the date of request was March 19, 2010, and  
2           the reply date is April 5, 2010. And Mr. Dax had  
3           posed some questions to Mr. Gardner as a result of  
4           his testimony, his original testimony, and  
5           Mr. Gardner responded, and we are proposing it as  
6           an exhibit.

7                     ALJ BOUTEILLER: For identification,  
8           Number 73.

9                     (Exhibit No. 73 was marked for  
10          identification.)

11                    MR. WEINTRAUB: If anybody would like --

12                    MR. DAX: I want to make sure I have the  
13          exact form it's submitted in.

14                    MR. WEINTRAUB: Sure. Anybody else?

15                    Your Honor, the next proposed exhibit is  
16          Volume I of the 2009 State Energy Plan, and in this  
17          connection we would ask that you take judicial  
18          notice of the entire 2009 State Energy Plan, but  
19          Mr. Gardner refers specifically to Volume I, and we  
20          have provided paper copies and thought it would be  
21          best to make it into an exhibit, unless you think  
22          it would be sufficient to make -- just take  
23          judicial notice of the entire State Energy Plan.

24                    MR. DAX: Applicant would join in the  
25          motion to take official notice of the entire plan.

1 I think that's a no brainer, really, and I don't  
2 have any objection to marking specific sections,  
3 but we certainly think official notice of the  
4 entire plan should be taken.

5 ALJ BOUTEILLER: Okay. So we have two  
6 proposals on the table. We have no objection from  
7 the applicant to taking official notice with  
8 respect to the entire State Energy Plan, and now  
9 the only question is for the convenience of the  
10 record, does it make sense to give an exhibit  
11 number to Volume I as you've copied it and provided  
12 it. If that makes it easier to make reference to  
13 things within the record, we can do that. If it's  
14 just being a doubling of the efforts, then I guess  
15 we shouldn't do it and we should avoid it, but I  
16 have no knowledge as to one way or the other as to  
17 which way you want to go with these exhibits.

18 MR. WEINTRAUB: Yes. Your Honor, the  
19 reason why we copied Volume I is that Mr. Gardner  
20 makes extensive reference to it.

21 ALJ BOUTEILLER: For the convenience of  
22 the record, we'll give it the next number in  
23 sequence. I believe that's Number 74 for  
24 identification.

25 (Exhibit No. 74 was marked for

1 identification.)

2 MR. WEINTRAUB: The next exhibit, Your  
3 Honor, is entitled "Climate Change Issue Brief, New  
4 York State Energy Plan, 2009, December 2009." We  
5 would like to offer that up as an exhibit.

6 ALJ BOUTEILLER: For identification,  
7 Exhibit Number 75.

8 (Exhibit No. 75 was marked for  
9 identification.)

10 MR. WEINTRAUB: And I have brought extra  
11 copies of it.

12 And I believe lastly, Your Honor, we have  
13 Executive Order, Governor's Executive Order Number  
14 24.

15 MR. DREXLER: That one is already in the  
16 record.

17 MR. WEINTRAUB: That's already in the  
18 record?

19 MR. DREXLER: Yes, it's marked for  
20 identification as --

21 MR. DAX: Mr. Gjonaj's rebuttal  
22 testimony.

23 ALJ BOUTEILLER: As long as it's clearly  
24 on the record, we don't need to reintroduce it into  
25 the record.

1 MR. WEINTRAUB: Okay. If anybody would  
2 like, I have lots of copies.

3 MR. DAX: Exhibit 53.

4 ALJ BOUTEILLER: Thank you for the  
5 clarity on the record. We appreciate that.

6 MR. WEINTRAUB: That's all for  
7 Mr. Gardner, Your Honor.

8 ALJ BOUTEILLER: Off the record.

9 (Discussion off the record.)

10 ALJ BOUTEILLER: We have your exhibits  
11 identified, Counsel. Does that mean that your  
12 witness is available for cross-examination?

13 MR. WEINTRAUB: Yes, Your Honor. The  
14 witness is available for cross-examination.

15 ALJ BOUTEILLER: Thank you very much. Is  
16 the applicant beginning with the cross-examination?

17 MR. DAX: Yes. Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. DAX:

20 Q Good afternoon, Mr. Gardner.

21 A Good afternoon, Mr. Dax.

22 Q I wish I felt as crisp and cool as you look.

23 A It's a beautiful day.

24 Q Do you understand the HTP proposed facility to be a  
25 connection to the PJM grid and not to particular

1 generating units?

2 A I understand that the grid consists of generation  
3 units and transmission facilities, so the list or whole  
4 subset of units would be a subset of the PJM grid, yes.

5 Q But I want to make sure we understand each other.  
6 You understand that the Hudson facility proposes to  
7 interconnect to the grid as opposed to a particular --  
8 one or more particular units?

9 A I guess, no, I do not understand that.

10 Q Okay. What don't you understand about that?

11 A I understand the host of units that fall into the  
12 purview of the PJM interconnect as being a subset of  
13 the PJM system and, therefore, being connected to the  
14 whole PJM would connect to that subset of units.

15 Q Do you understand that the proposed facilities'  
16 electrical interconnection is at a bus within a  
17 substation owned by PSE&G?

18 A I'm not aware of the owner, but I would understand  
19 that it would have to be connected to a bus, yes.

20 Q And that the bus is not in a switch yard related to  
21 a particular generator, is that correct?

22 A To the best of my knowledge.

23 Q Your counsel has introduced as Exhibit 73 your  
24 responses to IR HTP 1. Do you have that in front of  
25 you?

1 A I believe I do, yes.

2 Q You state on -- in response to 2B, your response  
3 is -- includes the following sentence, and this is at  
4 the bottom of page 2, "The only way to ensure that only  
5 power from renewable resources is conveyed over the  
6 project would be to isolate the renewable generating  
7 sources in the PJM area and tie that system solely and  
8 directly into the transmission facility proposed." Do  
9 you recall that?

10 A Yes.

11 Q Does that remain your testimony today, that that's  
12 the only way to ensure that only power from renewable  
13 resources is conveyed over the project?

14 A I would have to say with my limited knowledge of  
15 the interconnection that one way would be to have an  
16 electrically isolated set of facilities that would be  
17 connected, hard wired, that lead feeder, I think,  
18 terminology, into this kind of substation or bus. I  
19 don't know if it's the only way.

20 Q Okay. So -- but in discussing that particular way  
21 that you've described here, and I think you used the  
22 word lead or leader -- do you understand what the  
23 phrase "generator lead" means?

24 A Yes, I do.

25 Q What -- can you explain your understanding?



1     A     Again, it would be an isolated, electrically  
2     isolated generating facility that would drive power  
3     through some means and then be fed directly to one  
4     transmission facility to some end point.

5     Q     And between the generator lead, as you've just  
6     described it, and the HTP facility, as you understand  
7     it to be, do you have an opinion on which provides  
8     more -- which type of facility provides more or greater  
9     reliability benefits to the importing system?

10    A     I am sorry, I don't.

11    Q     Would another way of importing -- or using your  
12    words, would another way of ensuring that only power  
13    from renewable resources is conveyed over the  
14    project -- would another way be for a user of the  
15    project to use the line to shop for renewable resources  
16    in the exporting territory?

17    A     I am unfamiliar with the economic market that that  
18    would occur in.

19    Q     So you don't have an opinion?

20    A     Not today.

21    Q     You testified that the proposed facility is  
22    contrary to the goals of the State Energy Plan and  
23    Executive Order 24. I believe you state in your  
24    testimony that it's certifying -- "certificating this  
25    facility would be a step backward in the achievement of

1 the State Energy Plan and the Executive Order." Do you  
2 recall that testimony?

3 A Could you refresh me with a page and line, please?

4 Q Starting at line 16 there's a question on page 2.  
5 Excuse me. Page 2, line 16 and following through to  
6 line 23.

7 A Yes.

8 Q Now, is your -- are your statements there based on  
9 the increased CO<sub>2</sub> emissions that you believe would be  
10 attributed to HTP's operation?

11 A In part, yes.

12 Q What's the other part?

13 A The State Energy Plan specifically identifies  
14 in-state energy generation as one of the five  
15 strategies to be followed and striven for. It does  
16 specifically list interconnections regionally, but  
17 those being to Quebec and Ontario, and also for an  
18 eastern interconnection offshore wind collaboration or  
19 potential. It does not specifically state PJM or any  
20 connection west.

21 At one point it does warn against a  
22 one-size-fits-all federal adoption of wind generation  
23 in the midwest with a delivery into the east as it may  
24 not be appropriate.

25 Q I'm trying to understand, what in that answer

1     answers the question of what other parts besides the  
2     increase in CO<sub>2</sub> emissions do you base your statements  
3     about the project being contrary to the State Energy  
4     Plan?

5     A     The physical connection itself into the PJM system.

6     Q     So you're not aware -- you're unaware of any  
7     reference in the State Energy Plan to a tie between PJM  
8     and Con Ed's system?

9     A     Can you be more specific?

10    Q     I'm just asking if you have any awareness of that.  
11    You're either familiar -- let me -- I'll start over  
12    with a new question.

13           Are you aware of whether the State Energy Plan  
14    includes a reference to a line connecting the PJM  
15    system and the Con Edison system?

16    A     I can't certainly say. I do know that in the  
17    assessments there were a number of -- tons of policies,  
18    and in those policy scenarios there were numerous runs  
19    of an integrated planning model, and that may have been  
20    one of the scenarios run.

21    Q     Is it your -- I believe it's your belief that the  
22    goal of the State Energy Plan is a reduction of  
23    greenhouse gas emissions, is that correct?

24    A     I think in one of the -- as one of the listed five  
25    strategies there is a reference to an 80 percent

1 reduction, but I do not think it was specifically  
2 listed as a goal.

3 Q So what is it -- what is it identified as if not a  
4 goal?

5 A There were some references to infrastructure and to  
6 facilities planning that should take into consideration  
7 achievement of an 80 percent reduction of greenhouse  
8 gas emissions by mid century.

9 Q In your testimony that we just discussed you say  
10 that the HTP project is contrary to EO 24, which calls  
11 for an 80 percent reduction of emissions across all  
12 economic sectors by year 2050. And then you say "The  
13 project would make the goals of the State Energy Plan  
14 in EO 24 harder to achieve." What goals do you have in  
15 mind where you make those statements?

16 A The State Energy Plan is looking for energy  
17 independence and in-state renewable and other energy  
18 generation for the energy security. It's also looking  
19 at a macroeconomic benefit for jobs and a clean energy  
20 economy developing in New York State.

21 It's looking to reduce the dollars exported out of  
22 state for imported electricity by out-of-state  
23 generators as well. So for those reasons, and I'm sure  
24 there are a host of others that are listed in the  
25 energy plan itself, but I think that's a good start.

1 Q Do you have your own opinion on whether  
2 interregional ties increase the strength of the  
3 electric system or decrease the strength of an electric  
4 system?

5 A Yes, I have an opinion.

6 Q What's your opinion?

7 A I think it's dependent on the system that it is  
8 connected to. I think the longer your transmission  
9 facility, the greater chance for potential critical  
10 failure.

11 Q And are you an electrical engineer?

12 A No, I am not.

13 Q So is it your testimony, then, that the reduction  
14 of greenhouse gases is not, per se, a goal of the State  
15 Energy Plan?

16 A I participated extensively, sitting on the energy  
17 committee, working group meetings, and there was a lot  
18 of discussion between the Executive Chamber, the  
19 members and all the stakeholders in whether or not it  
20 would explicitly be a goal or not. What came out as a  
21 final product is the State Energy Plan that have been  
22 adopted was the development of a Climate Action Plan.  
23 And I think Executive Order 24 directly falls from the  
24 state energy planning process.

25 Q And what is -- I'm not sure --

1 MR. DAX: Can I have my question back  
2 again?

3 (Whereupon, the following question was  
4 read:

5 QUESTION: "So is it your testimony,  
6 then, that the reduction of greenhouse gases is  
7 not, per se, a goal of the State Energy Plan?")

8 A That's correct.

9 Q Okay. Is it a goal of Executive Order 24?

10 A Yes, it is.

11 Q And there's a relationship between the State Energy  
12 Plan and Executive Order 24, and that relationship is  
13 embodied in the Climate Action Plan; is that a correct  
14 analysis?

15 A I'm not sure there is a direct linkage there, no.

16 Q The -- would you say, in your opinion, that  
17 Executive Order 24 represents the State's commitment to  
18 reducing greenhouse gases?

19 A I'm not sure. I didn't write it.

20 Q I'm sorry. What?

21 A I'm not sure. I did not craft that document. I  
22 don't know what the intent was.

23 Q You're familiar with the document?

24 A Yes, I am.

25 Q I mean, you're familiar enough with the document

1     that you say that this project is contrary to it,  
2     correct?

3     A     Seems to me, yes.

4     Q     Is it contrary to it because of the greenhouse gas  
5     emissions relationship that you've talked about in your  
6     testimony?

7     A     Yes.

8     Q     Are you familiar with the State Energy Plan -- are  
9     you familiar with other parts of the State Energy Plan  
10    than the two volumes that your counsel marked for  
11    identification today?

12    A     What volumes do you mean?

13    Q     Are you familiar with the energy infrastructure  
14    volume, for example?

15    A     Do you mean the assessments volume, Volume II, or  
16    the briefs volume, Volume III?

17    Q     I'll show you something and you tell me. This is  
18    called "Energy Infrastructure Issue Brief, New York  
19    State Energy Plan, 2009." Are you familiar with that?

20    A     Yes. The energy briefs are a part of Volume III.

21    Q     So you are familiar with it?

22    A     Yes.

23    Q     I'm going to direct your attention to Section 2.7.3  
24    entitled "Nuclear Power" under the heading "Potential  
25    Closure of Indian Point." It starts on page 21 and

1 over to page 22 and ask you if you're familiar with it?

2 A I'm familiar with it.

3 Q You are?

4 A Yes.

5 Q Do you understand that one scenario that was  
6 analyzed in the State Energy Plan development involved  
7 the complete shutdown of Indian Point nuclear facility  
8 by 2015?

9 A Yes, that's correct.

10 Q Are you familiar with what the authors of the plan  
11 calculated would be the impact on greenhouse -- or CO<sub>2</sub>  
12 emissions from that shutdown?

13 A I cannot recall the actual emissions change, no.

14 Q Do you recall what direction the change was?

15 A I believe there was an increase.

16 Q And do you recall that -- and I'll show it to you  
17 again if you need to. The section starts out with the  
18 statement, "The State has opposed the relicensing of  
19 Indian Point units 2 and 3," and, I mean, I'm putting a  
20 period after that phrase, but it goes on to explain  
21 why.

22 A This is a paragraph about it, yes.

23 Q You recall that?

24 A Yes, I do.

25 Q Now, can I conclude -- is it fair to conclude --



1 would a logical conclusion from reading this be that  
2 there are competing goals or objectives in the State's  
3 energy policy, and some go in different directions with  
4 respect to greenhouse gas emissions?

5 A No, I don't think so.

6 Q Do you believe it's -- do you agree that what  
7 appears to be the statement that "The State has opposed  
8 the relicensing of Indian Point," do you agree that the  
9 State has opposed the relicensing of Indian Point?

10 A I'm not familiar with that, no.

11 Q Do you have any reason to doubt the accuracy of  
12 that statement in the State Energy Plan?

13 A Other than it was included as a siting issues  
14 brief, and those briefs were intended -- again, during  
15 the State Energy Plan development, it was unsure  
16 whether or not they were being included as an  
17 attachment or at all or in whole or in part into the  
18 State Energy Plan itself. But what the intent of those  
19 siting briefs was was to feed and generate discussion  
20 and development of the plan which came about in Volume  
21 I as the strategies and priorities. So all of those  
22 documents were drafted by many authors and then  
23 included in whole, basically, as attachments in Volume  
24 II and III, and I am not familiar about the validity of  
25 that statement or not.

1 Q You don't have any information that tells you  
2 whether that statement is valid or not?

3 A I'm sorry. No.

4 Q Okay. But one -- would you not assume that a  
5 statement in the final approved State Energy Plan would  
6 accurately represent what it purports to represent?

7 A Yes, I do believe that there were numerous  
8 reviewers of the information, and I would hope that it  
9 was correct.

10 Q Let's assume that it correctly states the State's  
11 position and that when it says the State has opposed  
12 the relicensing of Indian Point units 2 and 3, that  
13 that's accurate. Can we assume that?

14 MR. WEINTRAUB: Your Honor, I'm going to  
15 object. He's asking the witness to assume that  
16 some document is accurate, and he's already  
17 testified that he just doesn't have any basis to  
18 assume that. It was prepared by different  
19 preparers.

20 ALJ BOUTEILLER: Yeah, I'm troubled by  
21 the assumption. I'd be less troubled by the  
22 assertion of whether or not he has the knowledge or  
23 the facts associated with the claim that the State  
24 is opposed to the recertification of Indian Point.  
25 Ask him if he has any direct knowledge, please.

1 BY MR. DAX:

2 Q Do you have direct knowledge of whether the State  
3 opposes Indian Point units 2 and 3 relicensing?

4 A No, I don't.

5 Q So without that direct knowledge, you're not  
6 willing to accept that that part of the State Energy  
7 Plan is accurate in terms of its representation?

8 A I'm sorry. I'm not.

9 MR. DAX: Your Honor, I guess I'm a  
10 little at a loss. This witness is offered by DEC  
11 to speak to the State Energy Plan and the  
12 consistency of my client's project with it, but I'm  
13 not even -- I'm not even allowed him to ask him to  
14 accept as an assumption that something else in the  
15 State Energy Plan is accurate. I'm not sure -- I  
16 mean, it seems like there's a double standard being  
17 applied here. He's free to talk about the State  
18 Energy Plan to the extent that suits his client's  
19 purpose, but I can't ask him about information that  
20 might be interesting to my client.

21 ALJ BOUTEILLER: You've been asking the  
22 witness about Volume III, and I think you can  
23 establish on this record this witness' familiarity  
24 with Volume III, his knowledge of Volume III, and  
25 his views and opinions about Volume III. None of

1           that have you been excluded from doing.

2                       You asked him to assume something, and I  
3           said I would rather that you obtain his direct  
4           knowledge as opposed to making some assumption  
5           built into your question. Mine was an affirmative  
6           ruling, if that's confusing you.

7   BY MR. DAX:

8   Q    Were you involved in the preparation of Volume III?

9   A    I had co-authored, again, this climate -- climate  
10   change issues brief, and I'm forgetting right now if  
11   that was in Volume II or Volume III.

12   Q    Were you at all involved in the preparation of the  
13   section that we've just been talking about, the nuclear  
14   relicensing?

15   A    No, I was not.

16                   ALJ BOUTEILLER: Do you know of anyone at  
17   DEC who might have been involved in the development  
18   of that section?

19                   THE WITNESS: At DEC, no. I believe that  
20   DPS had authored, with the aid of NYSERDA and maybe  
21   another consultant, that section.

22                   ALJ BOUTEILLER: Okay. Thank you. Thank  
23   you for helping us probe the authorship of that  
24   section.

25   BY MR. DAX:

1 Q Just turn to page 2, line 29 of your testimony.

2 A Yes.

3 Q This is just a clarification. You say there that  
4 the modeling results from the model that you referred  
5 to -- and the modeling results are attached to your  
6 testimony -- "These modeling results indicate that CO<sub>2</sub>  
7 emissions from the project could increase by as much as  
8 485,058 tons per year. This increase can represent as  
9 much as 1.1 percent of the total CO<sub>2</sub> from the  
10 electricity-generating sector." Do you recall that  
11 testimony?

12 A Yes.

13 Q I'm just looking at the statistic. That 1.1  
14 percent is a representation -- a relationship between  
15 the increase that the modeling shows and the CO<sub>2</sub> now  
16 being produced by the electric-generating sector in New  
17 York State, isn't that correct?

18 A In, I think, the response to interrogatory, I have  
19 provided my answer as part of 1C, and it states, "The  
20 estimated increase in CO<sub>2</sub> of 1.1 percent is the net  
21 change between the New York ISO and PJM systems as  
22 compared to the emissions of the New York ISO system."

23 Q Okay. And let's go there. You've responded by  
24 pointing out your answer in Exhibit 73. You've  
25 compared the net change between -- the net change in

1 both systems to the base emissions in the NYISO system  
2 itself alone, isn't that correct?

3 A Yes.

4 Q If we did a comparison based upon the entire  
5 systems, both systems together, that 1.1 percent would  
6 be much less than 1.1 percent, would it not?

7 A I guess if you're good at math, then yes.

8 Q It's just one of the functions of statistics, isn't  
9 it?

10 A Right, parts of a hundred percent.

11 Q What did Mark Twain say? There are lies, damn  
12 lies, and there's statistics?

13 A I'm not sure. I haven't read Mark Twain.

14 Q Just -- you don't happen to have Mr. Gjonaj's  
15 exhibits in front of you, do you?

16 A Could you be more specific to the exhibits?

17 Q I'll strike that question.

18 Turn to page 4 of your testimony and look at lines  
19 2 through 8.

20 A Yes.

21 Q You say "One consequence of increasing greenhouse  
22 gas emissions would be an increased need to look to  
23 other sources or other sectors to achieve the State's  
24 reduction goals," isn't that correct?

25 A Yes.

1 Q And that -- I believe you said before that the  
2 decision not to relicense or a decision by the  
3 regulatory bodies not to relicense Indian Point 2 and 3  
4 could have an increase and could result in increased CO<sub>2</sub>  
5 emissions, isn't that correct?

6 A I think what I said, in some of the modeling that  
7 was done, it showed that if those were the assumptions  
8 going in, then that is possible, that there could be an  
9 increase in CO<sub>2</sub> emissions.

10 Q And that type of -- if that's the case, then that  
11 would have the same follow-on consequence of putting  
12 added pressure on other sectors to meet the State's  
13 goals, isn't that correct?

14 A If the same set of assumptions that went into that  
15 modeling run, that scenario, held true into the future,  
16 then I would probably assume that.

17 Q If it's true that the State was advocating for not  
18 relicensing Indian Point 2 and 3, then they would --  
19 the State would be promoting an objective that would  
20 have that same consequence, isn't that true?

21 A No, I don't think so. I think if you're looking  
22 narrowly at only two occurrences, then that would be  
23 true. I think what we're finding with the Climate  
24 Action Plan currently underway is that there are many  
25 intimate interactions between sectors, both generators,

1 consumers and other sub economic sectors, that you  
2 can't just isolate two occurrences and compare them.

3 Q That same complicated interrelationship that you  
4 just talked about is also true with respect to a  
5 transmission line that connects to a system like the  
6 PJM system, isn't that true?

7 A Yes.

8 Q Turn to page 3, lines 5 through 9. Your statement  
9 there is that a policy objective of the State Energy  
10 Plan is to reduce greenhouse gas emissions "while  
11 stabilizing energy costs." Do you recall that  
12 testimony?

13 A Yes.

14 Q What do you mean by the phrase "stabilizing energy  
15 costs"?

16 A I was citing language from the State Energy Plan.

17 Q What's your understanding of what it means?

18 A My understanding is that through energy efficiency  
19 and in-state generation, through renewable energy  
20 generation, there is a stabilization and/or downward  
21 trend of electric prices, and it gets fairly complex,  
22 to my understanding, beyond that.

23 Q So when you say stabilizing, you're connecting it  
24 or relating it in some way to a downward trend on  
25 energy prices?



1 A It's related to fuels pricing. It's related to a  
2 whole host of things.

3 Q When you use the phrase there as a description of  
4 the State policy objectives, what is it about energy  
5 pricing or energy costs that you think the State's  
6 policy is?

7 A I don't know if I'm going to use the appropriate  
8 words, but as far as electricity in the state, the  
9 State is looking for safe, reliable power that is  
10 affordable to its customers.

11 Q Does affordable mean -- let me start over. Do you  
12 understand or do you have an understanding of what  
13 prompted the Power Authority to issue the RFP back in  
14 2005 that my client responded to with the proposal to  
15 build this facility, the Hudson transmission facility?

16 A No, I'm not familiar.

17 Q So you don't know whether trying to achieve access  
18 to lower-priced sources of power was amongst the Power  
19 Authority's objectives?

20 A Amongst NYPA's objectives?

21 Q Right.

22 A No, I have not seen their objectives written.

23 Q Turn to page 4, lines 11 through 27. There you  
24 talk about the relationship of the project to achieving  
25 the State's energy efficiency goals. Do you recall

1     that testimony?

2     A     Yes.

3     Q     Now, are you testifying that operation of the  
4     Hudson facility is inherently -- would inherently  
5     conflict with increasing the efficiency with which  
6     energy is used?

7     A     I think indirectly it's counterproductive.

8     Q     And because?

9     A     Because you are allowing access to a greater  
10    capacity of electricity.

11    Q     Well, okay. How does that --

12    A     You're increasing supply while potentially either  
13    holding demand constant or lowering it.

14    Q     I'm not sure I understand that relationship. Do  
15    you have -- have you taken any undergraduate economics  
16    courses?

17    A     I have -- no.

18    Q     Do you understand the relationship between supply  
19    and demand?

20    A     To some degree.

21    Q     And if you -- is it your testimony that by  
22    increasing the supply of power that -- and if you hold  
23    demand constant that prices go down; is that what  
24    you're objecting to?

25    A     No. I don't think I have anything that I'm talking

1       about economically here.

2       Q       Then I need to --

3                       MR. DAX: Your Honor, could I have his  
4       previous answer reread, the answer in which he  
5       first explained this testimony and the relationship  
6       between my client's facility and efficiency reread?

7                       ALJ BOUTEILLER: Okay. Let's go off the  
8       record and let's work with the reporter. If you  
9       can say how many questions back, maybe that might  
10      help her.

11                      (Whereupon, the following questions and  
12      answers were read:

13                      "QUESTION: Now, are you testifying that  
14      operation of the Hudson facility is inherently --  
15      would inherently conflict with increasing the  
16      efficiency with which energy is used?

17                      "ANSWER: I think indirectly it's  
18      counterproductive.

19                      "QUESTION: And because?

20                      "ANSWER: Because you are allowing access  
21      to a greater capacity of electricity.

22                      "QUESTION: Well, okay. How does that --

23                      "ANSWER: You're increasing supply while  
24      potentially either holding demand constant or  
25      lowering it.

1                   "QUESTION: I'm not sure I understand  
2           that relationship.")

3   BY MR. DAX:

4   Q    Okay. Let's try to start with a new question here.  
5   Is it your testimony that the existence of the Hudson  
6   facility and its access to PJM markets will result in  
7   an increased consumption of electricity in New York  
8   State?

9   A    I think it provides the potential.

10   Q   How does that work? Explain what the potential is  
11   and how it would work to increase the consumption of  
12   electricity in New York State?

13   A    I really don't want to go too far beyond my  
14   expertise and simply give opinion. I guess the best  
15   way I can say, to the best of my knowledge, the  
16   increase in the availability of a product or a good has  
17   an indirect measure on its consumption rate.

18   Q    What's that indirect measure?

19   A    If that supply is not available, then alternative  
20   measures are sought.

21   Q    Well, let me ask -- go ahead. I'm sorry.

22   A    If that capacity is not available, then demand side  
23   or any sufficiency may be an alternative option  
24   available.

25   Q    So --

1 A That's --

2 Q I'm sorry. I don't mean to interrupt again.

3 A Okay.

4 Q Is it your testimony that if efficiency goals and  
5 efficiency policies can't be pursued, if there are --  
6 if there are more than adequate supplies of power  
7 available; is that your testimony?

8 A I think it makes it more difficult is what I'm  
9 saying.

10 Q What makes it more difficult?

11 A Because there's no pressure for the efficiency.

12 Q So I think embedded in your answer is that prices  
13 the pressure for increased efficiency?

14 A No. You could relate it to peak load on a hot  
15 summer afternoon. If you can release that peak load  
16 through energy efficiency on that day through solar  
17 panels that have a high coincidence factor for that  
18 loading, then you have a system reliability  
19 improvement.

20 Q Explain to me how the existence of the Hudson  
21 facility would stop or inhibit the deployment of solar  
22 panels.

23 A I don't know if I'm familiar with that.

24 Q But that's the import -- that is the conclusion you  
25 just gave us, that if Hudson is built, it will be --

1       there will be less pressure to install solar panels.

2       Isn't that the import of what you just said?

3       A       I think I was saying here that there's less  
4       pressure to do demand-side energy efficiency.

5       Q       Where does that pressure come from?

6       A       I'm sorry. Could you --

7       Q       What's the motivation to install solar panels or to  
8       do other demand-side measures?

9       A       I guess there are a lot of motivations depending on  
10       the consumer.

11       Q       What are some of them? Well, let me ask you, would  
12       tax credits be one of them?

13       A       I assume that that could be a part of something. I  
14       personally wouldn't go out and purchase something just  
15       to pay money to get a tax credit for a fraction of that  
16       in return.

17       Q       So what would the other reasons be?

18       A       My own behavior. My own goals personally. If the  
19       State has an energy efficiency goal, it's, I think,  
20       very hard, but people are relating that to dollars  
21       spent and electrical savings. I think there's a lot of  
22       difficulty there in tracking the efficiency, actually.

23       Q       And can you tell me how the existence of the Hudson  
24       facility would reduce the availability of tax credits  
25       or reduce people's personal choices to pursue

1 demand-side measures?

2 A I'm really unsure of the funding and cost recovery.  
3 I don't think I could speak to that.

4 Q You're not -- it's not your testimony, is it, or is  
5 it, that it's the State's policy to maintain higher  
6 energy prices to promote conservation?

7 A I don't think I said that anywhere.

8 Q I'm asking. I'm just asking the question. Do you  
9 understand it to be the State's policy to encourage the  
10 maintenance of high energy prices in order to promote  
11 conservation or efficiency?

12 A I haven't seen that written anywhere, no.

13 Q Would you agree that high energy prices tend to  
14 discourage usage of energy?

15 A No, not necessarily.

16 MR. DAX: I have nothing further, Your  
17 Honor.

18 ALJ BOUTEILLER: Okay. Who else is  
19 cross-examining this witness? Staff, any  
20 questions?

21 MR. DREXLER: No, Your Honor.

22 ALJ BOUTEILLER: Any other party have any  
23 questions for this witness? If not, you can  
24 approach the witness to consider the need for any  
25 redirect. You can do it at the table or out in the

1 hall.

2 MR. WEINTRAUB: Your Honor --

3 ALJ BOUTEILLER: Go ahead.

4 (Discussion off the record.)

5 ALJ BOUTEILLER: Let's ask Mr. Weintraub  
6 if he has any questions on redirect for this  
7 witness.

8 MR. WEINTRAUB: Your Honor, yes, the DEC  
9 has a few questions on redirect.

10 ALJ BOUTEILLER: Please proceed.

11 REDIRECT EXAMINATION

12 BY MR. WEINTRAUB:

13 Q Mr. Gardner, you were asked by Mr. Dax your  
14 understanding -- you were asked by Mr. Dax whether you  
15 understood that the HTP line was a connection to the  
16 PJM system in general and not to a particular  
17 generating unit. Do you recall that question?

18 A Yes.

19 Q And do you recall your responses?

20 A Yes. I said that it's connected to a host of  
21 generating units which is a subset of that PJM system.

22 Q Would you wish to elaborate on that response?

23 A I could briefly with some information that was  
24 cited in my response to the interrogatories. I'm  
25 sorry, I don't have the evidence number. But as of



1 March 31, 2009 the RTO known as the Pennsylvania, New  
2 Jersey, Maryland interconnection, PJM, consisted of  
3 over 550 member participants employing 1246 generating  
4 sources with a combined capacity of approximately  
5 164,895 megawatts. It has over 56,000 miles of  
6 transmission line. And these 1246 generating sources  
7 consist of a diverse primary fuel mix, including but  
8 not limited to approximately 53,000 megawatts of coal,  
9 6360 megawatts of distillate fuel oil, 8,030 megawatts  
10 of residual fuel oil, 49,730 megawatts of natural gas,  
11 32,380 megawatts of nuclear power, 6,480 megawatts of  
12 hydro and 915 megawatts of wind.

13 So what I meant as a subset of those systems is,  
14 again, here we have transmission lines at high voltage  
15 with distribution networks that are substation  
16 facilities, circuit protection equipment and whatnot in  
17 addition to the generating sources. Now, those  
18 generating sources also have a system average carbon  
19 intensity. And that's represented a couple different  
20 ways by PJM. And in 2009 was 1,137 pounds of CO<sub>2</sub> per  
21 megawatt hour. That was the system average intensity.

22 The marginal values were more on the order of 1800  
23 pounds per megawatt hour generated. Compared to New  
24 York, that's almost twice what our average and marginal  
25 carbon intensities are for our generation mix in New

1 York State.

2 Q Thank you. Mr. Dax at one point asked if you were  
3 an electrical engineer. Could you describe your  
4 qualifications to discuss the PJM electrical system?

5 A Well, I have a bachelor's and master's in  
6 environmental engineering, which covers a host of  
7 things, but more significantly I think my work and my  
8 career with the Environmental Conservation Department,  
9 I served as an air pollution enforcement engineer in  
10 numerous prevention of significant deterioration cases  
11 specifically relating to the coal-fired industry in New  
12 York State.

13 I also wrote a mercury control rule for those same  
14 coal-fired fossil facilities in New York State. And,  
15 again, have participated as co-author of briefs in the  
16 State Energy Plan and sit on the power supply and  
17 delivery technical working group of the Climate Action  
18 Plan that's a current ongoing event.

19 Q Thank you. Mr. Dax questioned you at length about  
20 the State Energy Plan. He mentioned the working papers  
21 in Volume II, and you had also discussed Volume I,  
22 which includes the objectives of the plan. Could you  
23 describe the relationship of the plan internally  
24 between Volumes I and Volumes II and the other volumes  
25 of the plan?

1       A     Yes. Volume I is meant to be the summary of  
2       thoughts, deliberations, studies, issue briefs and  
3       assessments where the State Energy Board has proposed  
4       five key strategies in achieving the State's energy  
5       objectives. Volumes II and III were papers that were  
6       written as prerequisite to the determination of those  
7       strategies. They covered a host of scenarios,  
8       infrastructure assessment briefs, things of those sorts  
9       that would be then deliberated upon to come up and  
10      formulate the five strategies that are presented in  
11      Volume I.

12            So again, Volumes II and III were created and  
13      crafted as information input into the State energy  
14      planning process. And then key items were either taken  
15      or disregarded and -- but all of the information was  
16      thought over in the crafting of Volume I, which  
17      actually presents the key strategies for the State  
18      energy goals.

19      Q     Thank you.

20                   ALJ BOUTEILLER: Let me interrupt and ask  
21      the witness a question. Is there anything within  
22      the documents that we might casually refer to as  
23      being the State's energy plan which either explains  
24      its composition and details the pertinence or  
25      significance of the sets of information it

1 provides? Can I turn to any particular page and  
2 find that internally within the documents?

3 THE WITNESS: I'm sorry, Your Honor, no.  
4 That was during the course of my involvement  
5 through -- from the start to finish in the  
6 deliberations and the discussions that took place  
7 in the energy committee working group.

8 ALJ BOUTEILLER: Okay. So public  
9 documents are not self-defining? One needs to have  
10 some familiarity with the process to understand how  
11 they interrelate?

12 THE WITNESS: Most likely.

13 ALJ BOUTEILLER: Okay, thank you.

14 MR. WEINTRAUB: That's all, Your Honor.

15 ALJ BOUTEILLER: Mr. Dax.

16 RECROSS-EXAMINATION

17 BY MR. DAX:

18 Q Mr. Gardner, in response to, I think, the last --  
19 in your last answer to Mr. Weintraub, you said that --  
20 I think you used the word "disregarded" to describe  
21 information within the State Energy Plan, Volumes II  
22 and III, that didn't make it into Volume I. Am I  
23 recalling your answer correctly?

24 A It might have been a strong word. But -- and  
25 again, as I had said, all of the assessments and the

1 issue briefs were discussed over and contemplated in  
2 crafting. There were a lot of policies recommended by  
3 the numerous authors and co-authors of all of those  
4 briefs and the work groups, and not all of those  
5 policies made it to be a key priority or policy in the  
6 final Volume I.

7 Q But if they didn't make it into Volume I, is it  
8 accurate to say they were disregarded?

9 A Again, that might have been a strong word to use.

10 Q You gave a lengthy response to a question about the  
11 PJM system. What was your database that you were  
12 citing from in terms of describing the capacity amounts  
13 and different types of technologies or fuels?

14 A This is from the PJM's -- I guess their own  
15 website, and they put out their capacity, much like our  
16 Gold Book. And I'm sorry. I don't have the exact name  
17 of that document right now.

18 Q That's okay. So that's -- you're referencing a  
19 document from --

20 A PJM product for their capacity load data.

21 Q What period of time was that accurate for?

22 A That was as of March 31, 2009.

23 Q Okay. It doesn't purport to represent what the  
24 system will look like, say, five years from now?

25 A No, not at all.

1 Q Were you here during the testimony that was given  
2 by Mr. Shalabi on Thursday?

3 A Yes.

4 Q Do you recall his answers to questions about the  
5 fact that -- his statements that the PJM system has  
6 within it transmission constraints? Do you recall that  
7 testimony?

8 A Yes, I do recall some congestion he had mentioned  
9 from west to east.

10 Q Do you recall what he said -- what fuel was -- let  
11 me start over.

12 Do you recall the answer he gave when he was asked  
13 what fuel was on the margin in the part of the system  
14 that the HTP facility will connect to?

15 A No, I don't recall.

16 Q You don't recall him saying that natural gas was  
17 the marginal fuel?

18 A No.

19 Q Okay.

20 MR. DAX: I have nothing further, Your  
21 Honor.

22 ALJ BOUTEILLER: Mr. Weintraub.

23 MR. WEINTRAUB: That's all, Your Honor.

24 ALJ BOUTEILLER: Okay. Then if there's  
25 nothing else with this witness, I want to thank you

1           for being here. You are excused.

2                   THE WITNESS: Thank you.

3                   ALJ BOUTEILLER: DEC, can you call your  
4           next witness, please?

5                   MR. WEINTRAUB: Yes. Your Honor, I call  
6           Rob Sliwinski as the next witness.

7                   R O B E R T   G .   S L I W I N S K I ,  
8           having been first duly sworn by the notary public,  
9                   was examined and testified as follows:

10                  ALJ BOUTEILLER: Thank you. Please be  
11           seated. Please state both your name and your  
12           business address.

13                  THE WITNESS: My name is Robert G.  
14           Sliwinski. I work for the Department of  
15           Environmental Conservation at 625 Broadway, Albany,  
16           New York.

17                  ALJ BOUTEILLER: Counsel, can you assist  
18           us in getting his testimony and his exhibits into  
19           the record?

20                  MR. WEINTRAUB: Yes, Your Honor.

21   DIRECT EXAMINATION

22   BY MR. WEINTRAUB:

23   Q    Mr. Sliwinski, you have in front of you a document  
24   entitled "Prepared Testimony of Robert G. Sliwinski,  
25   PE, Prepared in the Matter of Hudson Transmission

1 Partners, LLC, PSC case 08-T-0034," dated March 18,  
2 2010. It consists of ten pages plus the cover page.  
3 Did you prepare the several questions and answers that  
4 make up that testimony?

5 A Yes.

6 Q If I were to ask you the same questions today as --  
7 that you were asked when you prepared this testimony,  
8 would your answers be the same?

9 A Yes.

10 Q Do you have any changes that you would like to make  
11 to that testimony?

12 A No.

13 MR. WEINTRAUB: Your Honor, then I also  
14 have --

15 Q You also have in front of you a second document  
16 entitled "Prepared Supplementary and Rebuttal Testimony  
17 of Robert G. Sliwinski, PE," also submitted in the  
18 matter of Hudson Transmission Partners, LLC, PSC case  
19 08-T-0034, dated April 8, 2010. It consists of four  
20 pages plus the cover page. Did you prepare the several  
21 questions and answers that make up that testimony?

22 A Yes.

23 Q And if I were to ask you the questions that appear  
24 in that testimony today, would your answers be the  
25 same?



1     A     Yes.

2     Q     Do you have any changes you would like to make to  
3     that testimony?

4     A     No.

5                     MR. WEINTRAUB:  Your Honor, at this time  
6     DEC also has a number of exhibits that go with that  
7     testimony.

8                     ALJ BOUTEILLER:  First let's deal with  
9     the testimony, and then we'll come back to your  
10    exhibits.  First I want to take up the matter of  
11    the prepared testimony, the document consisting of  
12    ten pages in question and answer format.  Absent  
13    any objection from the parties present I will  
14    instruct the reporter to copy into the record as if  
15    given orally today those ten pages of prefilled  
16    testimony.

17                    (The testimony is included, as ordered.)

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BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of  
Hudson Transmission Partners, LLC  
PSC Case # 08-T-0034  
Date: March 18, 2010

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Prepared Testimony of:

Robert G. Sliwinski, P.E.  
Bureau of Air Quality Planning  
Division of Air Resources  
Department of Environmental  
Conservation  
625 Broadway  
Albany, New York 12233-3251  
518-402-8396

1 Q. Please state your name, position and place of employment.

2 A. My name is Robert Sliwinski. I am the Director of the Bureau of Air Quality  
3 Planning for the Division of Air Resources, New York State Department of  
4 Environmental Conservation (DEC). My business address is 625 Broadway,  
5 Albany, New York 12233.

6 Q. How long have you held this position?

7 I have held this position since January 2007 or for a little more than three years.

8 Q. What other positions have you held at DEC?

9 A. Before becoming Director of the Bureau of Air Quality Planning, I worked as the  
10 Director of the Bureau of Stationary Sources from 2003 to 2007. I was Chief of  
11 the Stationary Sources Inventory and Planning Section in the Bureau of Air  
12 Quality Planning Section from January 1993 to April 2003. My career with DEC  
13 dates back to April 1983, and I have held other positions in air quality.

14 Q. Please describe your educational background and your other professional  
15 experience?

16 A. I earned a Bachelor of Science in Forest Engineering at the State University of  
17 New York College of Environmental Science and Forestry in Syracuse, New York  
18 in 1979 and a Master of Engineering in Environmental Engineering from  
19 Rensselaer Polytechnic Institute in Troy, New York in 1982.

20 Q. What are the duties of your job at DEC?

21 A. As the Director of the Bureau of Air Quality Planning, I am responsible for the air  
22 quality planning efforts in New York State. This includes the State's obligations  
23 under the federal Clean Air Act to develop state implementation plans to meet  
24 national ambient air quality standards (NAAQS); the production of air emissions  
25 inventories; and the development of air emissions control programs and  
26 regulations to meet other federal mandates and State initiatives.

27 Q. Did those duties include writing any of State's air quality regulations?

28 A. Yes.

29 Q. Can you describe these regulations?

30 I was the principal author of regulations to control emissions from power plants  
31 and other large stationary sources of nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide

1 (SO<sub>2</sub>) including 6 NYCRR 227-2, Reasonably Available Control Technology for  
2 Oxides of Nitrogen; 6 NYCRR 227-3, Pre-2003 Nitrogen Oxides Emissions  
3 Budget and Allowance Program; 6 NYCRR Part 204, NO<sub>x</sub> Budget Trading  
4 Program; 6 NYCRR Part 237, Acid Deposition Reduction NO<sub>x</sub> Budget Trading  
5 Program; and 6 NYCRR Part 238, Acid Deposition Reduction SO<sub>2</sub> Budget  
6 Trading Program.

7 Q. In the course of your duties, did you become familiar with a proposal by Hudson  
8 Transmission Partners, LLC (HTP project) to construct and operate a 660 MW  
9 electrical transmission line from PJM service territory to Manhattan (HTP  
10 project)?

11 A. Yes.

12 Q. Can you briefly describe the HTP project?

13 A. The project is a 660-megawatt (MW) transmission line from New Jersey to New  
14 York. It connects New York City to various electricity generating units (EGUs) in  
15 the PJM service territory.

16 Q. What is the purpose of this testimony?

17 A. The purpose of my testimony is to show that the operation of the HTP project  
18 would result in emissions of SO<sub>2</sub> and NO<sub>x</sub> within the PJM service territory that  
19 may adversely affect air quality in New York State. These additional emissions  
20 upwind of New York State would impede the efforts of New York State to attain  
21 and maintain the NAAQS for ozone and particulate matter.

22 Q. Can you summarize your findings?

23 A. If the HTP project is constructed, my conclusion is that SO<sub>2</sub> emissions from  
24 EGUs affecting New York State could increase by as much as 6,589 tons per  
25 year. At the same time, NO<sub>x</sub> affecting New York State could increase by as much  
26 as 221 tons per year.

27 Q. What is your conclusion based on?

28 A. My conclusions are based on a record of air pollution modeling results furnished  
29 by staff of the Department of Public Service (DPS) entitled "Year 2013 Results of  
30 HTP's Emission Effects on New York and PJM Using Simulation Models" (DPS

1 model). A copy of the DPS modeling results are attached to my testimony as  
2 Exhibit A.

3 Q. Are you familiar with the type of modeling from which the DPS results were  
4 derived?

5 A. Yes. It is commonly accepted modeling for predicting generation of electricity on  
6 a unit-by-unit basis. One of the many uses for the outputs from the model is  
7 associating the air pollution emissions characteristics of the individual EGUs to  
8 evaluate the air emissions impacts from a certain set of circumstances.

9 Q. Did you prepare the DPS results that your conclusions are based on?

10 A. No.

11 Q. Were you able to make any conclusions regarding EGUs in the PJM territory that  
12 are likely to be the source of emissions affecting New York State?

13 A. Generally, the NO<sub>x</sub> and SO<sub>2</sub> emissions in PJM will increase as a result of the  
14 addition of the HTP line. The emissions increases will occur in New Jersey,  
15 Pennsylvania, Delaware and Maryland.

16 Q. Can you tell whether New York would be affected by such emissions?

17 A. In general terms, yes, but not quantitatively.

18 Q. How would such increases in SO<sub>2</sub> and NO<sub>x</sub> emissions affect New York State?

19 A. NO<sub>x</sub> emissions transported from upwind areas contribute to ozone and fine  
20 particle formation, decreased visibility and acid deposition. Sulfur dioxide (SO<sub>2</sub>)  
21 emissions transported from upwind areas contribute to fine particle formation,  
22 decreased visibility and acid deposition. Increasing emissions in the PJM  
23 territory will in New York lead to increased ozone and fine particle ambient levels,  
24 decreased visibility and increased acid deposition.

25 Q. What do you base this judgment on?

26 A. I base this on my professional experience and understanding of the phenomenon  
27 of air pollution transport. Not surprisingly, air pollution is carried with winds and  
28 weather systems to downwind areas where, when added to local air pollution, it  
29 can create or contribute to air quality problems. Generally, the closer the source,  
30 the greater the individual impact on a downwind area. However, there are very  
31 complex mechanisms at work in the formation of air pollution episodes that

1 require further explanation. I will use ozone air pollution for an example in my  
2 explanation with respect to long- and mid-range transport scenarios.

3 Long Range Transport - Severe ozone episodes in the Northeast often begin  
4 when a high pressure area from the Midwest passes into the middle or southern  
5 Atlantic states, where it assimilates into and becomes an extension of an Atlantic  
6 (Bermuda) high pressure system. This system, while moving east, picks up and  
7 accumulates the air pollution from the areas it passes through. As it moves into  
8 the Northeast, sources in the PJM territory and New York add to the air pollution  
9 burden. These high pressure systems are ideal for making ozone with vast  
10 areas of clear skies and high temperatures and a circulation pattern favorable for  
11 pollution transport over long distances (up to and beyond 1000 kilometers).

12 Mid-range Transport – Another transport mechanism known as a low level  
13 nocturnal jet can transport air pollution several hundred kilometers. The jet is a  
14 phenomenon of higher wind speeds that form just above the stable nocturnal  
15 boundary layer a few hundred meters above the ground. It can move air  
16 pollution several hundred kilometers overnight from the southwest to the  
17 northeast directly in line with the major metropolitan areas from Washington to  
18 Boston.

19 Other transport mechanisms occur over smaller scales. These include land, sea,  
20 mountain and valley breezes and can dominate in some local areas. This  
21 phenomenon can sometimes be observed in the Hudson Valley and Highlands.  
22 After sunset, the ground cools faster than the air above it creating a nocturnal  
23 temperature inversion. This stable boundary layer extends from ground level to  
24 only a few hundred meters high. Ozone above the stable layer is cut-off from the  
25 ground and not subjected to the removal and destruction forces at low levels.  
26 Above this layer, higher velocity winds relative to the stable air below can move  
27 the air up to several hundred kilometers overnight. Once the pollution is  
28 transported into the area, it needs to mix with the ambient air to create ozone air  
29 pollution problems. The next morning as the sun heats up the Earth's surface,  
30 the nocturnal boundary layer breaks up and the ozone transported overnight  
31 mixes down to the surface and combines with local air pollution. By late

1 afternoon, sunshine and warm temperatures combine to create more ozone  
2 pollution. Often the ozone transported into an area can be near or above the  
3 ozone NAAQS leaving an area with no ability to control its fate related to  
4 attainment of the NAAQS.

5 It is important to note that many large EGUs are considered elevated sources  
6 because of their tall stacks; they result in emissions being released several  
7 hundred feet into the atmosphere. These stacks facilitate the dispersion of  
8 emissions locally, but can inject these emissions directly into the level of the  
9 atmosphere where transport occurs.

10 The United States Environmental Protection Agency (EPA), in preparing its  
11 Clean Air Interstate Rule (CAIR), identified Delaware, Maryland, Michigan, New  
12 Jersey, Ohio, Pennsylvania, Virginia and West Virginia as contributing  
13 significantly to either ozone or PM2.5 nonattainment in the New York City  
14 metropolitan area.

15 Q. Does New York State have air quality goals that are affected by emissions of SO<sub>2</sub>  
16 and NO<sub>x</sub> from EGUs in upwind states?

17 A. Yes.

18 Q. Can you explain New York State's goals?

19 A. EPA has designated nonattainment areas in New York for ozone and particulate  
20 matter. The New York City metropolitan area is nonattainment for both ozone  
21 and PM2.5 under the standards set in 1997. The DEC has developed plans to  
22 show it will attain the NAAQS in the New York City area. The Buffalo-Niagara  
23 Falls, Rochester, Capital District, Jamestown, Watertown and Poughkeepsie-  
24 Newburgh areas are now meeting the 1997 standard for ozone, but the DEC has  
25 not developed maintenance plans to show it will continue to attain the standard.  
26 EPA has proposed to lower the ozone NAAQS to a level that would put all of  
27 these areas back into nonattainment. The DEC will once again be required to  
28 develop a plan to reduce emissions so that the areas can attain the NAAQS.  
29 In addition, the EPA has proposed to lower the NAAQS for SO<sub>2</sub>. This could  
30 potentially result in nonattainment in the New York City and Buffalo-Niagara Falls  
31 metropolitan areas. New York State also has an obligation to reduce its

1 contribution to visibility impairment in downwind Federal Class I Areas (national  
2 parks, forests and wildlife refuges). The DEC has developed a state  
3 implementation plan documenting how it will meet that obligation.  
4 New York State has also been a leader in the control of acid deposition. The  
5 Adirondacks are one of the areas in the nation most vulnerable to effects of acid  
6 deposition. State legislation, regulation, and advocacy has led to national  
7 programs to control acid deposition, but additional NO<sub>x</sub> and SO<sub>2</sub> emissions  
8 reductions are still needed for the Adirondacks to recover from the effect of  
9 decades of acid deposition.

10 Q. To what extent has New York State achieved its goals of reducing emissions of  
11 SO<sub>2</sub> and NO<sub>x</sub>?

12 A. Since 1980, EGUs in New York State have decreased their annual emissions of  
13 SO<sub>2</sub> from 474,276 tons to 65,427 tons in 2008 or an 86 % decrease in emissions.  
14 Since 1995, annual NO<sub>x</sub> emissions from EGUs in New York State have  
15 decreased from 120,138 tons to 31,060 tons in 2008 or a 74% reduction in  
16 emissions.

17 Q. How has New York State tried to achieve these goals?

18 A. Through a combination of regulation, enforcement and encouragement for the  
19 development of in-state renewable energy sources.

20 Q. Can you tell us about New York State's regulatory efforts?

21 A. Yes. The DEC promulgated and implemented 6 NYCRR Subpart 225-1, to limit  
22 the sulfur content in fuel. When combusted, sulfur in solid, liquid or gaseous  
23 fuels is oxidized and released as sulfur dioxide. This regulation resulted in  
24 decreases in emissions of sulfur dioxide from all combustion sources.

25 In 1990, the federal Clean Air Act was amended to include acid rain provisions  
26 that required EGUs of a certain type and size to reduce SO<sub>2</sub> emissions through  
27 the implementation of a national emissions cap-and-trade program and to meet  
28 NO<sub>x</sub> emission limits. Enabling regulations for these provisions were developed  
29 by the EPA.

30 The 1990 Clean Air Act amendments also required New York State to mandate  
31 the imposition of reasonably available control technology on major stationary



1 sources of NO<sub>x</sub> in order to achieve attainment of the ozone NAAQS. In  
2 response, in 1994 DEC adopted 6 NYCRR Subpart 227-2, Reasonably Available  
3 Control Technology (RACT) for Oxides of Nitrogen (NO<sub>x</sub>), which required EGUs  
4 (among other sources) to meet certain NO<sub>x</sub> emissions limitations or provide an  
5 alternative emission reduction plan approvable by the DEC.

6 The DEC also adopted 6 NYCRR Subpart 227-3, Pre-2003 Nitrogen Oxides  
7 Emissions Budget and Allowance Program, to implement a regional summertime  
8 (May through September) NO<sub>x</sub> emissions cap-and-trade program aimed at  
9 reducing the interstate transport of NO<sub>x</sub> and ozone within the northeastern United  
10 States. This program was the New York State component of a regional program  
11 involving the participation of all the states that make up the Northeast Ozone  
12 Transport Region and required further reductions in NO<sub>x</sub> emissions from large  
13 stationary sources, including EGUs.

14 With the 1998 promulgation of the Finding of Significant Contribution and  
15 Rulemaking for Certain States in the Ozone Transport Assessment Group  
16 Region for Purposes of Reducing Regional Transport of Ozone [63 FR 57356]  
17 (the NO<sub>x</sub> SIP Call), the EPA essentially expanded the Northeast program to other  
18 eastern states (22 states in all including New York State) in an effort to more  
19 effectively limit the interstate transport of ozone and NO<sub>x</sub>. During 2000, the DEC  
20 adopted 6 NYCRR Part 204, NO<sub>x</sub> Budget Trading Program, to implement the  
21 requirements of the NO<sub>x</sub> SIP Call.

22 New York State recognized that the summertime NO<sub>x</sub> emissions cap-and-trade  
23 program and the federal SO<sub>2</sub> emissions cap-and-trade program were inadequate  
24 in dealing with the scourge of acid rain. As a result, the DEC developed and  
25 promulgated regulations to further reduce NO<sub>x</sub> and SO<sub>2</sub> emissions from large  
26 EGUs. These regulations adopted in 2004 6 NYCRR Parts 237, Acid Deposition  
27 Reduction NO<sub>x</sub> Budget Trading Program, and 6 NYCRR Part 238, Acid  
28 Deposition Reduction SO<sub>2</sub> Budget Trading Program, implemented non-  
29 summertime (October through April) NO<sub>x</sub> and year-round SO<sub>2</sub> emissions cap-  
30 and-trade programs.

1 In 2005, the EPA issued the Rule to Reduce Interstate Transport of Fine  
2 Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to the Acid  
3 Rain Program; Revisions to the NO<sub>x</sub> SIP Call; Final Rule [70 FR 25162] to  
4 address the interstate transport of ozone and particulate matter precursor  
5 emissions – NO<sub>x</sub> and SO<sub>2</sub>. The Clean Air Interstate Rule was implemented  
6 through NO<sub>x</sub> and SO<sub>2</sub> emissions cap-and-trade programs. In 2007, the DEC  
7 promulgated 6 NYCRR Parts 243, CAIR NO<sub>x</sub> Ozone Season Trading Program, 6  
8 NYCRR Part 244, CAIR NO<sub>x</sub> Annual Trading Program, and 6 NYCRR Part 245,  
9 CAIR SO<sub>2</sub> Trading Program, to meet this federal mandate.

10 In 2006, the DEC promulgated mercury emissions controls for coal-fired power  
11 plants in New York State. As a result, starting in 2010 existing coal-fired power  
12 plants in New York will be collectively limited to emitting no more than 746  
13 pounds of mercury each year. In 2015, each facility will be required to meet an  
14 overall mercury emission rate of 0.6 pounds per trillion Btu, which represents an  
15 approximate 90% reduction from uncontrolled levels. The DEC has also been a  
16 party to several legal actions against electricity generating companies in New  
17 York State and upwind states over their failure to install and operate appropriate  
18 emissions controls in violation of the new source review provisions of the federal  
19 Clean Air Act. These actions have resulted in settlements and a court decision  
20 that will likely reduce emissions from EGUs. Specifically, as a result of these  
21 legal actions, in Western New York the Huntley Station and Dunkirk Station  
22 power plants owned by NRG Energy were required to reduce emissions by 81 %  
23 for NO<sub>x</sub> and 87 % for SO<sub>2</sub> from 2002 levels by the end of 2013.

24 In other actions, the State has also been attempting to reduce emissions of SO<sub>2</sub>  
25 and NO<sub>x</sub> through the State Energy Plan, the Renewable Energy Portfolio and the  
26 Energy Efficiency Portfolio. I believe that my colleague, David Gardner, will be  
27 presenting testimony on these initiatives in the context of reducing emissions of  
28 CO<sub>2</sub>.

29 Q. Have the other States that contribute to our air quality problems implemented  
30 similar air pollution control regulations?

1 A. No, not all of them. While New Jersey's fleet of EGUs has a comparable  
2 emissions profile, in 2008 Pennsylvania's EGUs emitted nearly three times the  
3 NO<sub>x</sub> and six times the SO<sub>2</sub> per unit of electricity generated. In 2008, Maryland's  
4 EGUs emitted two and half times the NO<sub>x</sub> and more than seven times the SO<sub>2</sub>.  
5 In Delaware, it was nearly three times the NO<sub>x</sub> and five times the SO<sub>2</sub>. For  
6 Virginia, it was more than twice the NO<sub>x</sub> and three times the SO<sub>2</sub> and EGUs in  
7 Ohio emitted more than three times the NO<sub>x</sub> and five times the SO<sub>2</sub>. Maryland  
8 and Delaware have implemented programs that will reduce their emissions in the  
9 future and while the federal CAIR program will have some effect on the  
10 emissions profiles in the other states, these programs are not expected to make  
11 up the entire difference between the EGU-control programs here in New York. In  
12 fact, the Department is currently engaged in a regulatory update to the NO<sub>x</sub>  
13 RACT regulations that will require further emission reductions from EGUs,  
14 especially in the New York City metropolitan area.

15 Another concern for New York State is the amount of mercury emitted from coal-  
16 fired EGUs in upwind States. While New York, Delaware and New Jersey have  
17 implemented strict mercury emissions controls on its coal-fired EGUs,  
18 Pennsylvania's rule was overturned in State court and it and other upwind States  
19 are waiting for the federal control program, which is not expected to be  
20 implemented until at least 2016. It should be noted that coal represents about  
21 50% of the generation in the PJM territory as opposed to 13% of the generation  
22 in New York State in 2008.

23 Q. If SO<sub>2</sub> emissions are now down from 474,276 to 65,428 tons, what percentage  
24 of an increase would operation of the HTP Project indicate?

25 A. According to the DPS model, the HTP Project would add 6,589 tons of SO<sub>2</sub>  
26 emissions per year, which represents about 10% of the current New York State  
27 EGU emissions

28 Q. What is this level of emissions equivalent to?

29 A. It would be a greater amount of emissions than a new 660 MW coal plant  
30 operating at 85% capacity, which would emit about 3,700 tons of SO<sub>2</sub> in a year.  
31 Thus, the HTP emissions are equal to nearly two 660 MW coal plants.

1 Q. As the State's chief air quality planner, do you have an opinion whether the HTP  
2 project should be certificated based on the DPS model results?

3 A. These potential emissions increases could have detrimental effects on the air  
4 quality in New York State. New York State has been working diligently to control  
5 air pollution to protect public health and the environment, including regulating  
6 emissions from fossil fuel fired power plants. A project of this nature would seem  
7 to skirt the environmental controls being placed on New York State facilities and,  
8 at the same time, permit facilities that impact air quality in New York State to  
9 increase production and cause air pollution that will impair our ability to meet our  
10 air quality goals. Since DEC can only regulate sources within the boundaries of  
11 New York State, this, in turn, could cause the DEC to require even stricter  
12 controls on in-State sources, including additional controls on power plants, to  
13 meet our air quality goals. For these reasons, I would oppose this project at this  
14 time. If this project is certificated, perhaps a mechanism to offset the emissions  
15 increases could be developed so that its air pollution impact could be somehow  
16 mitigated.

17 Q. Does this conclude your testimony?

18 A. Yes, it does.

## Year 2013 Results of HTP's Emission Effects on New York and PJM Using Simulation Models

Pollutant	CRA - EDC Study			Navigant			IRP			DPS (full EEPs)			DPS (without EEPs)		
	Change (tons)	Base Emissions (tons)	% Change	Change (tons)	Base Emissions (tons)	% Change	Change (tons)	Base Emissions (tons)	% Change	Change (tons)	Base Emissions (tons)	% Change	Change (tons)	Base Emissions (tons)	% Change
NYISO	(490)	71,636	-0.68%	(1,251)	21,149	-5.91%	(288)	24,593	-1.17%	(1,295)	41,380	(3.1%)	(1,505)	49,094	(3.1%)
	(353)	70,816	-0.50%	(929)	88,390	-1.05%	(320)	72,415	-0.44%	(1,949)	97,226	(2.0%)	(1,158)	100,118	(1.2%)
CO2	(404,178)	52,819,904	-0.77%	(4,072,969)	80,375,429	-5.07%	(603,094)	31,773,513	-1.90%	(1,245,413)	43,045,276	(2.9%)	(1,262,561)	49,009,275	(2.6%)
PJM	1,126	353,261	0.32%	504	373,400	0.14%	347	25,501	1.36%	1,516	343,468	0.44%	1,549	348,340	0.44%
	1,602	1,105,142	0.14%	2,122	2,893,496	0.07%	1,293	93,855	1.38%	8,538	1,278,684	0.67%	7,791	1,300,549	0.60%
CO2	649,866	515,638,632	0.13%	2,459,527	956,245,175	0.26%	435,186	32,169,174	1.35%	1,730,471	234,573,714	0.74%	1,680,201	238,478,953	0.70%
Total	636	424,897	0.15%	(747)	394,549	-0.19%	59	50,094	0.12%	221	384,848	0.06%	44	397,434	0.01%
	1,249	1,175,958	0.11%	1,193	2,981,886	0.04%	973	166,270	0.59%	6,589	1,375,910	0.48%	6,633	1,400,667	0.47%
CO2	245,688	568,458,536	0.04%	(1,613,442)	1,036,620,603	-0.16%	(167,907)	63,942,687	-0.26%	485,058	277,618,990	0.17%	417,640	287,488,228	0.15%

Notes: CRA-EDC, Navigant & IRP  
 - Navigant numbers assume entire PJM Pool  
 - For IRP, case used is HTP\_30\_B\_A\_Y\_F (HTP Case) and CC\_30\_B\_A\_Y\_F (2012 Reference Case)

## Notes: DPS (full EEPs)

- 1 PJM emissions changes resulting from the HTP line exports to NY are added to NY's emissions with HTP in service.
- 2 CRA (Charles River Associates International) results provide to DPS Staff 6, 16, 2008
- 3 CRA HTP capacity factor approximately 65%
- 4 CRA includes a partial implementation of EEPs similar to NYISO's 2009 RNA, or approximately 30%
- 5 For this simulation, NY DPS results reflect EEPs energy reductions
- 6 NYDPS HTP capacity factor approximately 38%
- 7 CRA models entire Eastern Interconnection, whereas, NY DPS models NY, NE-ISO, PJM, with ties to HQ and OH.

## Notes: DPS (no EEPs)

- 1 PJM emissions changes resulting from the HTP line exports to NY are added to NY's emissions with HTP in service.
- 2 CRA (Charles River Associates International) results provide to DPS Staff 6, 16, 2008
- 3 CRA HTP capacity factor approximately 65%
- 4 CRA includes a partial implementation of EEPs similar to NYISO's 2009 RNA, or approximately 30%
- 5 CRA models entire Eastern Interconnection, whereas, NY DPS models NY, NE-ISO, PJM, with ties to HQ and OH.
- 6 NY DPS results do not reflect EEPs energy reductions
- 7 NYDPS HTP capacity factor approximately 57%

Not 01/1/10  
 dps

## Effect on New York Energy Label for the Various Models (see note 1)

	CRA - EDC Study (GE-MAPS)			Navigator			IRP			NY DPS (GE-MAPS, full EEPs)			NYDPS (GE-MAPS, no EEPs)		
	Change	Base Emissions	Change %	Change	Base Emissions	Change %	Change	Base Emissions	Change %	Change	Base Emissions	Change %	Change	Base Emissions	Change %
Pollutant	(tons)	(tons)	(see note 2)	(tons)	(tons)	(see note 2)	(tons)	(tons)	(see note 2)	(tons)	(tons)	(see note 2)	(tons)	(tons)	(see note 2)
Nox	(362)	72,529	(0.5%)	(747)	21,149	-3.53%	59	24,593	0.24%	221	41,380	0.53%	44	49,094	0.09%
Sox	2,744	72,958	3.91%	1,193	88,390	1.35%	973	72,415	1.34%	6,589	97,226	6.78%	6,633	100,118	6.63%
CO2	415,414	54,159,755	0.77%	(1,613,442)	80,375,429	-2.01%	(167,907)	31,773,513	-0.53%	485,058	43,045,276	1.13%	417,640	49,009,275	0.85%

Notes:

1 PJM emissions changes resulting from the HTP line exports to NY are added to NY's emissions with HTP in service.

2 % Change = Total Change (tons) / NVISO Base Emissions (tons)

MA'd 2/2/10  
dps

1                   ALJ BOUTEILLER: Next you identified on  
2                   the record supplemental or rebuttal testimony  
3                   offered by this witness consisting of a total of  
4                   four pages. Absent any objection I will instruct  
5                   the reporter to copy into the record as if given  
6                   orally today what the witness has prepared as being  
7                   his supplemental and rebuttal testimony.

8                   (The testimony is included, as ordered.)  
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**New York State Department of Environmental Conservation**

**Office of General Counsel, 14<sup>th</sup> Floor**

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Alexander B. Grannis  
Commissioner

April 8, 2010

Hon. William Bouteiller  
Administrative Law Judge  
New York Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350  
By E-mail

*Re: Case 08-T-0034, Application of Hudson Transmission Partners, LLC for a  
Certificate of Environmental Compatibility and Public Need for 345 kV  
Submarine/Underground Electric Transmission Link Between Manhattan and  
New Jersey; Ruling regarding litigation schedule*

Dear Judge Bouteiller:

Attached is DEC's supplementary and rebuttal testimony. Betsy Hohenstein will hand deliver a paper copy tomorrow.

Sincerely yours,

Lawrence H. Weintraub  
Assistant Counsel

ec: Service list and DEC hearing staff



BEFORE THE  
STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of  
Hudson Transmission Partners, LLC  
PSC Case # 08-T-0034  
Date: April 8, 2010

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Prepared Supplementary and RubttalTestimony of:

Robert G. Sliwinski, P.E.

Bureau of Air Quality Planning  
Division of Air Resources  
Department of Environmental  
Conservation  
625 Broadway  
Albany, New York 12233-3251

1 Q. Please state your name, position and place of employment.

2 A. My name is Robert Sliwinski. I am the Director of the Bureau of Air Quality Planning  
3 for the Division of Air Resources, New York State Department of Environmental  
4 Conservation (DEC). My business address is 625 Broadway, Albany, New York 12233.

5 Q. Did you have an opportunity to review some of the assumptions behind the Department  
6 of Public Service's and Charles River Associate's modeling results for air emissions from  
7 the HTP transmission line?

8 A. Yes. Last week when responding to an interrogatory posed to me by HTP counsel and  
9 when reviewing testimony prepared by New York City Economic Development  
10 Corporation's consultant (Charles River Associates or CRA), I needed to perform  
11 additional review of the modeling results provided the Department of Public Service  
12 (DPS). During this review, I found what I believe to be fundamental problems with the  
13 modeling performed by DPS and gross errors in the summary information provided by  
14 CRA serious enough as to call into question all of the emissions analyses done to date for  
15 this project and potentially render these analyses invalid for assessing the emissions  
16 impact of the project.

17 Q. What did you find?

18 A. The DPS MAPS modeling did not properly assign the emissions that result from the  
19 operation of the electricity system in New York. The emission rates for SO<sub>2</sub> emissions  
20 identified as burning oil are set at zero. This is wrong. In fact, for Northport Power  
21 Station, SO<sub>2</sub> emission rates in the DPS model run are set at zero. This compares to actual  
22 emissions of 9,084, 9,922, and 5,898 tons in 2006, 2007, 2008, respectively. Similarly,  
23 Astoria Generating Station has emitted 1,351, 940 and 450 tons in 2006, 2007 and 2008,  
24 while the model runs have emissions set to zero.

25 Q. Are you aware of any possible explanation for these errors?

26 A. Yes. One possible explanation for this inaccurate treatment of emissions is the failure to  
27 assign generation in accordance with the reliability requirements that exist in the  
28 downstate area. If the MAPS model is set by DPS to run in an economic-only mode, it  
29 would ignore the 'loss of gas – minimum oil burn' requirement that dominates the choice  
30 of fuel utilized for certain generation assets for upwards of 2,000 hours per year.  
31 Because of this requirement, certain units are forced to operate in an uneconomic mode to

1 assure that the loss of a major gas supply line does not cause an interruption of electricity  
2 service. Essentially, units are required to burn oil instead of less expensive natural gas.  
3 This causes extra SO<sub>2</sub> and NO<sub>x</sub> emissions inherent in the use of the more polluting fuel,  
4 oil, which is not accounted for in the DPS analysis. I am not aware of any infrastructure  
5 improvements that will render the 'loss of gas – minimum oil burn' requirement obsolete  
6 in the 2013 time period.

7 Q. Can you tell us about the errors you found in the CRA model?

8 A. It appears that the CRA analysis has this same inaccuracy as well as another gross error.  
9 SO<sub>2</sub> emissions in Zones J and K, New York City and Long Island, as shown in Table 1 on  
10 page 6 of the prepared direct testimony of the transmission study panel, Scott W.  
11 Niemann and Christopher J. Russo, are 35 and 30 tons in the base case and 29 and 49  
12 tons in the HTP case. Similarly, NO<sub>x</sub> emissions in Zone J are in Table 1 are 3,649 tons in  
13 the base case and 3,586 tons in the HTP case while actual Zone J emissions in 2008  
14 exceeded 5,600 tons and the Zone K NO<sub>x</sub> emissions in Table 1 are 1,577 tons in the base  
15 case and 1,551 tons in the HTP case while actual emissions at Northport alone have  
16 ranged between 4,613 and 3,149 tons from 2006 to 2008. As described above, if the  
17 downstate reliability requirements are not properly represented in the model, the  
18 emissions analysis presented here would be so inaccurate that these results should be  
19 considered invalid.

20 In addition, upon further inspection of Table 1, it is obvious that something very unusual  
21 is being presented relating to NO<sub>x</sub> emissions in Zone D, northern New York, as to further  
22 call into question the analysis performed by CRA. CRA shows the NO<sub>x</sub> emissions in  
23 Zone D to be 38,670 tons in the base case and 38,603 tons in the HTP case. This is, quite  
24 frankly, a physical impossibility. There are not enough generation assets to create this  
25 amount of NO<sub>x</sub> emissions in Zone D which appears to be in excess of a two (2) orders of  
26 magnitude overestimation of NO<sub>x</sub> emissions in Zone D. Before this modeling can be  
27 used in any analysis, this anomaly needs to be explained.

28 Q. Can you tell us why you did not find these errors before?

29 A. Before doing my original review I was told by DPS staff that emissions in the model  
30 were based on actual emissions calculated from the USEPA Clean Air Markets Division  
31 database. I am very familiar with and have great confidence in that database. I did not

1 find these errors earlier because I focused my initial review on the overall emissions  
2 tabulations and the unit by unit difference tables presented to me by DPS. In looking at  
3 the individual unit emissions estimates, I re-ordered the spreadsheets and focused on the  
4 top emitting units and the units where the greatest changes in emissions were expected.  
5 By focusing on the data in this way, this problem was not apparent. In preparing my  
6 response to the HTP interrogatory and in reviewing the testimony presented by CRA, I  
7 re-examined the information presented to me by DPS. In this re-examination of the  
8 information presented to me by DPS, I found these problems with the analyses  
9 performed.

10 Q. Based on the errors so far found in the DPS' and CRA's models, do you believe that any  
11 reliable judgments can be made about the air emissions from the HTP transmission line?

12 A. No. Given what I know about the analyses performed to date, I cannot, nor can anyone,  
13 determine with any confidence what will be the air emissions impacts of the HTP project.  
14 To determine these impacts, this analysis would need to be re-done with more realistic  
15 reliability and emissions assumptions.

16 Q. If the analysis was redone, and the emissions results remained significantly adverse to air  
17 quality or commensurate with the results you already observed based upon an accurate  
18 analysis, is there a condition that would mitigate the adverse impact of such emissions?

19 A. A requirement to offset the increase in emissions that will result from utilizing the more  
20 polluting power such as the purchase of emission reduction credits commensurate with  
21 the emission impacts of the line. This is an alternative to a requirement that the line be  
22 connected to a low emissions dedicated generation source.

23 Q. DPS staff state in their supplementary testimony that stricter environmental regulations  
24 could impact the availability of current sources of generation and that the NYISO base  
25 case did not consider the impact of all of the potential tighter environmental regulations  
26 that may be implemented before 2019. Do you have a response to this statement?

27 A. NYISO recently completed a study "Assessment of Proposed NOx RACT Regulations on  
28 Emissions, Costs of Electricity and Electric System Reliability" that essentially updated  
29 the above conclusions based on more realistic application of the proposed revisions to the  
30 Department's NOx RACT regulation. This study concluded that a "more reasonable  
31 compliance schedule for retrofitting is estimated to be June 1, 2014 based on a two year

1 retrofit program beginning no earlier than 2012 as permitting, engineering, and financing  
2 would be required prerequisites to the beginning of construction.” The study further  
3 concluded that assuming nearly 8400 MW of generation would install suggested controls,  
4 NOx emissions in New York would be significantly lower (by nearly 20 %) and that the  
5 energy generated and the production cost and wholesale prices in New York were  
6 virtually the same under existing and proposed RACT regulations. DPS commented on  
7 the Department’s NOx RACT regulation based on the results of this study.

8 Conclusion

9 Q. Does this conclude your testimony?

10 A. Yes, it does.

11

1 ALJ BOUTEILLER: Now let's turn to your  
2 exhibits.

3 MR. WEINTRAUB: Your Honor, the first  
4 exhibit is entitled "New York State Department of  
5 Environmental Conservation, Response to HTP 2," and  
6 this is a -- this document is a response made by  
7 Mr. Sliwinski to HTP's second interrogatory to DEC.

8 ALJ BOUTEILLER: For identification,  
9 we'll mark it as Number 76.

10 (Exhibit No. 76 was marked for  
11 identification.)

12 MR. WEINTRAUB: And we are distributing  
13 copies to the other persons in this hearing.

14 Your Honor, the second exhibit is  
15 entitled "The Nature of the Ozone Air Quality  
16 Problem in The Ozone Transport Region, A Conceptual  
17 Description." It's prepared for the Ozone  
18 Transport Commission. It's a final version dated  
19 October 2006, and DEC would like to offer that up  
20 as an exhibit.

21 ALJ BOUTEILLER: For identification,  
22 Number 77.

23 (Exhibit No. 77 was marked for  
24 identification.)

25 MR. WEINTRAUB: Your Honor, the DEC's

1           third exhibit in connection with Mr. Sliwinski is a  
2           letter dated -- excuse me. There's no date on it.  
3           But it's to Mr. Alan J. Steinburg, regional  
4           administrator, United States Environmental  
5           Protection Agency, Region 2, 290 Broadway, 26th  
6           Floor, New York, New York. It is entitled  
7           "Revision to the New York State, New York Section  
8           111(D) State Plan for Implementation of Coal-Fired  
9           Electric Steam Generating Unit Mercury Emission  
10          Guidelines." And we do have extra copies for  
11          everybody.

12                   ALJ BOUTEILLER: For identification,  
13          Number 78.

14                   (Exhibit No. 78 was marked for  
15          identification.)

16                   MR. WEINTRAUB: Off the record, Your  
17          Honor.

18                   ALJ BOUTEILLER: Off the record.

19                   (Discussion off the record.)

20                   ALJ BOUTEILLER: Counsel, you want to  
21          describe for the record what you just passed out?

22                   MR. WEINTRAUB: Yes. Your Honor, the  
23          exhibit is the 2009 Load and Capacity Data Gold  
24          Book by ISO, New York State Independent System  
25          Operator.

1 ALJ BOUTEILLER: And the reason for  
2 providing this one when we have a document that at  
3 least is a subset of this document?

4 MR. WEINTRAUB: Your Honor, this is a  
5 fuller version that contains pages that we had  
6 on -- that DEC was also referring to in addition to  
7 the ones that were previously submitted as part of  
8 the exhibit.

9 ALJ BOUTEILLER: Okay. Exhibit Number  
10 79, for identification.

11 MR. DAX: For clarification, Your Honor,  
12 could we have the references, when Mr. Weintraub  
13 says that DEC is referring to the Gold Book, where  
14 are they referring to it?

15 MR. WEINTRAUB: Page 61.

16 MR. DAX: No, of Mr. Sliwinski or  
17 Mr. Gardner's testimony. I'm trying to get the  
18 reference to where you've used it.

19 MR. WEINTRAUB: Yes. You want me to  
20 find -- should I find it right now?

21 ALJ BOUTEILLER: It would be helpful if  
22 you can take a minute.

23 MR. WEINTRAUB: It was in page 9 of  
24 Mr. Sliwinski's original testimony.

25 ALJ BOUTEILLER: Okay, thank you.



1                   MR. DAX: Is this what you're -- this has  
2                   been represented to be the entire Gold Book and  
3                   it's not. I don't have an objection on that basis;  
4                   I just want the record to reflect that this is  
5                   another excerption, as opposed to Exhibit 58.

6                   ALJ BOUTEILLER: That clarity on the  
7                   record is useful and helpful. Neither document is  
8                   the entire Gold Book. Apparently, we have  
9                   different subsets for the purposes of the different  
10                  parties. Thank you, Mr. Dax.

11                  MR. WEINTRAUB: Should I proceed, Your  
12                  Honor?

13                  ALJ BOUTEILLER: Yes.

14                  MR. WEINTRAUB: The next exhibit is  
15                  entitled "Monitoring Analytics." It's -- "PJM  
16                  State of the Market 2008" is the further title.

17                  ALJ BOUTEILLER: Has that been  
18                  distributed to parties?

19                  MR. WEINTRAUB: Yes. Betsy is doing  
20                  that.

21                  ALJ BOUTEILLER: For identification,  
22                  Exhibit Number 80.

23                  (Exhibit No. 80 was marked for  
24                  identification.)

25                  MR. WEINTRAUB: Your Honor, the next

1 document is entitled "Report on Assessment of  
2 Proposed NO<sub>x</sub>, N-O<sub>x</sub> subscript, RACT, R-A-C-T  
3 Regulations on Emissions, Costs of Electricity and  
4 Electric System Reliability," submitted to New York  
5 Independent System Operator. It's issued February  
6 12, 2010. It was prepared by General Electric  
7 International, Inc., 20 River Road, Schenectady,  
8 New York 12345.

9 ALJ BOUTEILLER: If all the parties have  
10 this document as well, for identification, Exhibit  
11 Number 81.

12 (Exhibit No. 81 was marked for  
13 identification.)

14 MR. WEINTRAUB: Your Honor, the only  
15 other documents are ones that we would ask at the  
16 conclusion of the hearing that you take judicial  
17 notice of.

18 ALJ BOUTEILLER: Okay. We can handle  
19 that as a set. Anything further for this witness?

20 MR. WEINTRAUB: Your Honor, I have  
21 nothing further for this witness, and I present  
22 this witness as available for cross-examination.

23 ALJ BOUTEILLER: Thank you.

24 Mr. Dax.

25 MR. DAX: Thank you.

1 CROSS-EXAMINATION

2 BY MR. DAX:

3 Q Good afternoon, Mr. Sliwinski.

4 A Good afternoon.

5 Q In your testimony you concluded that certification  
6 of the HTP facility would result in increased emissions  
7 of SO<sub>2</sub> and NO<sub>x</sub> making New York's attainment of national  
8 ambient air quality standards more difficult, is that  
9 correct?

10 A No.

11 Q You didn't state that?

12 A I referred to an analysis that had been prepared by  
13 others to make that assertion.

14 Q Okay. Do you agree with that assertion or disagree  
15 with that assertion?

16 A In my rebuttal testimony I believe I stated that  
17 you can make no assertion regarding emissions as a  
18 result of these analyses because of the invalid  
19 assumptions made in the application of the model.

20 Q In light of that conclusion, can you point to me  
21 which parts of your original testimony you continue to  
22 subscribe to today?

23 A There is likely to be an increase in emissions as a  
24 result of this line. What the value or what the  
25 magnitude of that is, whether it's in the PJM region or

1     within New York State, currently you can't assess based  
2     on the way the analysis was performed, but there is  
3     likely to be an increase in emissions.

4     Q     Okay. So using that statement of likelihood, let  
5     me continue my questioning and we'll --

6     A     Sure.

7     Q     -- and we'll understand each other that you're not  
8     quantifying or subscribing to a particular assertion.

9     A     Very well.

10    Q     Would you agree that there are other variables in  
11    an electrical system operation that could have the same  
12    likelihood of an impact that you've just described?

13    A     I don't understand what you mean by that.

14    Q     Well, let's -- do you understand what load growth  
15    means?

16    A     Yes.

17    Q     And would load growth in the New York State system  
18    likely have the same increase in emissions impact that  
19    you subscribed to?

20    A     There -- yes, there would likely be an emissions  
21    increase.

22    Q     Would load growth in PJM likely increase emissions  
23    in the region?

24    A     Yes.

25    Q     Would the retirement of Indian Point units 2 and 3

1 have a likely impact on emissions?

2 A Yes.

3 Q An increase?

4 A Yes.

5 Q You probably heard me in discussions with other  
6 witnesses describe the State Energy Plan Volume III  
7 infrastructure brief statement about the relicensing of  
8 Indian Point units 2 and 3. Do you recall that  
9 testimony?

10 A Yes.

11 Q And do you recall references to the State Energy  
12 Plan statements there that the State opposes the  
13 relicensing of Indian Point units 2 and 3?

14 A I'll have to take your word for that, yes.

15 Q Do you have any independent information on the  
16 State's position in the relicensing of Indian Point 2  
17 and 3?

18 A No, I do not.

19 Q On page 5, lines 9 through 31, over to page 6,  
20 lines 1 through 9, you talk about --

21 MR. WEINTRAUB: Your Honor, would Mr. Dax  
22 specify which -- whether he's referring to the  
23 original testimony or the rebuttal testimony?

24 MR. DAX: The rebuttal only goes to page  
25 4, so I'm only talking about the other testimony.

1 MR. WEINTRAUB: Okay. There's a clarity.

2 BY MR. DAX:

3 Q There you talk about the DEC's responsibility to  
4 develop plans for achieving compliance with ambient air  
5 quality standards, is that correct?

6 A Yes.

7 Q It's correct, is it not, that DEC or New York  
8 State, neither is limited to focusing only on the  
9 electricity-generating sector to achieve attainment for  
10 these pollutants, isn't that correct?

11 A That is correct. As a matter of fact, we have  
12 focused on many sectors, most all sectors. For  
13 example, motor vehicles, we have the cleanest vehicles  
14 that are allowed under the Clean Air Act, the  
15 California low emission vehicle program. We also have  
16 a state-wide inspection and maintenance program for  
17 those motor vehicles, passenger cars.

18 In addition, we control VOCs from consumer  
19 products, such as hair spray and other personal care  
20 products, as well as we also have controls on small  
21 businesses, small factories, as well as -- I'm trying  
22 to think of large -- other large entities and large  
23 emitting sources. So we look at everything when we  
24 develop one of these plans. And many times we are  
25 among the leaders in the nation, if not the leader in

1 the nation, in controlling these emissions from these  
2 sources.

3 Q One final question. This is similar to a question  
4 I posed to Mr. Gardner. On page -- let's see -- page  
5 9, line 25, 27, you express the SO<sub>2</sub> emissions that would  
6 be attributable -- well, let me start over again. You  
7 say according -- this is at line 25. "According to the  
8 DPS model, the HTP project would add 6,589 tons of SO<sub>2</sub>  
9 emissions per year, which represents about 10 percent  
10 of the current New York State EGU emissions." Do you  
11 recall that?

12 A Yes.

13 Q That's the model that you no longer have competence  
14 in, isn't that correct, or the results?

15 A The results I don't have confidence in. The model  
16 is the model.

17 MR. DAX: Okay. I have nothing further,  
18 Your Honor.

19 ALJ BOUTEILLER: Does any other party  
20 have cross for this witness? Counsel for staff.

21 MR. DREXLER: Thank you.

22 CROSS-EXAMINATION

23 BY MR. DREXLER:

24 Q Good afternoon, Mr. Sliwinski.

25 A Good afternoon.

1 Q Would you please explain your understandings of how  
2 the Minimum Oil Burn rules work for New York City and  
3 Long Island?

4 A Let me refer to my testimony. I do believe I  
5 stated that. The way I understand it is that if the  
6 units -- there are various units that need to burn in a  
7 mode for -- as if one of the major gas lines into the  
8 city were to be -- was to be cut off or was no longer  
9 available that the -- you would have to run enough  
10 generation on oil in order to make sure you assert --  
11 you assure reliability.

12 Q Do you know how that's decided?

13 A Not specifically.

14 Q Do you know what triggers it in addition to -- let  
15 me put it this way: Is it true that the Minimum Oil  
16 Burns are triggered under various forecasts of low  
17 levels with the number of units involved increasing  
18 with increasing load levels? Is that your  
19 understanding?

20 A That's my understanding, yes.

21 Q And in the NYISO markets, if a unit is needed to  
22 operate in a certain manner to assure system  
23 reliability, for example, the Minimum Oil Burn, are  
24 economics set aside in that instance?

25 A It's my understanding that, yes, you would need to



1 burn oil based on that -- based on that assumption.

2 Q And are you -- you're familiar with the evaluation  
3 that DPS staff performed using the GE maps model?

4 A Yes.

5 Q And are you aware that when DPS prepared that  
6 model, a base case model was run, and then all other --  
7 all those assumptions were unchanged except for those  
8 required to model the HTP line itself?

9 A Yes.

10 Q So you would accept that staff simulations isolate  
11 the effects of operating the HTP line when compared to  
12 a base case simulation?

13 A Sure. The problem that I see is it ignores the  
14 single most important thing that dominates the  
15 emissions within the area from the sector. By doing  
16 so, you lose focus on what exactly are the air emission  
17 impacts.

18 It may be fine from an economic standpoint. It may  
19 be fine from a dispatch standpoint. I don't know. I  
20 can't speak to that. I'm not an expert on the model.

21 But I would say that something that does not  
22 predict what is going to happen in the emissions arena  
23 is -- or does so inaccurately is problematic for  
24 determining what the impacts of emissions are going to  
25 be.

1 Q So getting back to the Minimum Oil Burn, given that  
2 the units and the load level triggers are known and  
3 that the unit has to comply, even though they're  
4 uneconomic, and that these parameters would be  
5 unchanged in both the base case and the HTP line case  
6 simulations, wouldn't the Minimum Oil Burn effects net  
7 out when the base case air emissions are subtracted  
8 from the HTP line case emissions?

9 A I don't know that to be the case.

10 Q Why not? You have a different interpretation?

11 A I don't know the impact of what HTP would be on the  
12 Minimum Oil Burn requirements. I don't know that. So,  
13 therefore, I can't say whether or not there would be a  
14 net zero result.

15 Q Are you aware of whether LYPA and Con Edison rely  
16 upon PJM units to satisfy the Minimum Oil Burn  
17 requirement?

18 A I don't know what the reliability rules would  
19 entail and whether or not that would satisfy them.

20 Q Are you aware of whether the units are specifically  
21 located within Zone J to satisfy the Minimum Oil Burn  
22 and Zone K, which is Long Island?

23 A Yes.

24 Q So do Con Edison and LYPA call upon PJM units to  
25 satisfy the Minimum Oil Burn requirement?

1       A       I don't know that answer.

2                       MR. DREXLER:  One second, please.

3       Q       Mr. Sliwinski, if the Minimum Oil Burn rule was  
4       explicitly modeled in both the base case and the HTP  
5       case, and given the previous statement that PJM units  
6       are not used to satisfy the Minimum Oil Burn, what  
7       would you expect to happen to the SO<sub>2</sub> levels in New  
8       York?

9                       MR. WEINTRAUB:  Your Honor, I'm going to  
10       object because I think that Mr. Drexler did not  
11       correctly characterize Mr. Sliwinski's testimony.

12                      ALJ BOUTEILLER:  Did you establish a  
13       foundation with this witness that he understands  
14       the circumstances that you've portrayed?

15                      MR. DREXLER:  I think we satisfied  
16       that -- well, I'm not sure.  I thought he agreed  
17       that the PJM units were not used to satisfy the  
18       Minimum Oil Burn for New York and that --

19                      ALJ BOUTEILLER:  He agreed that they were  
20       modeled within your base case and with the  
21       variation, assuming the run of the Hudson  
22       Transmission Partners line.  If we go to back to  
23       your cross-examination of this witness, we'll find  
24       that assertion?

25                      MR. DREXLER:  I believe that's the case.

1 MR. WEINTRAUB: Your Honor, the statement  
2 I'm objecting to is Mr. Drexler stated that  
3 Mr. Sliwinski had agreed that PJM units are used to  
4 satisfy the LOGMOB rule, and that wasn't his  
5 testimony. I believe he said he didn't know  
6 whether that was the case.

7 ALJ BOUTEILLER: At that point you're  
8 asking him to accept a hypothetical, is that  
9 correct?

10 MR. DREXLER: Yeah. Yes.

11 ALJ BOUTEILLER: Can the question then  
12 stand on that basis, Mr. Weintraub?

13 MR. WEINTRAUB: Yes, Your Honor, if he  
14 wants to ask it hypothetically and if it's clear on  
15 the record that it is a hypothetical question.

16 ALJ BOUTEILLER: It is now. Okay. Can  
17 the witness answer the question?

18 THE WITNESS: Can I have the question  
19 repeated for me?

20 ALJ BOUTEILLER: Mr. Drexler, can you  
21 reconstruct the question?

22 MR. DREXLER: I'll try.

23 BY MR. DREXLER:

24 Q If the Minimum Oil Burn rules were explicitly  
25 modeled in both the base case and the HTP case, and

1     assuming that PJM units are not called upon to satisfy  
2     the Minimum Oil Burns for New York City, what would you  
3     expect to happen to the SO<sub>2</sub> levels in New York?

4     A     I guess -- one more time. Let me try to understand  
5     exactly what we're asking here.

6                     ALJ BOUTEILLER: Let's have the reporter  
7     read it back, please.

8                     (Whereupon, the following question was  
9     read:

10                    QUESTION: "If the Minimum Oil Burn rules  
11     were explicitly modeled in both the base case and  
12     the HTP case, and assuming that PJM units are not  
13     called upon to satisfy the Minimum Oil Burns for  
14     New York City, what would you expect to happen to  
15     the SO<sub>2</sub> levels in New York?")

16     A     They would remain the same, it seems. You're  
17     assuming that there would be no change to the dispatch,  
18     and I'm unclear that that would be the case, but if  
19     there's no change to the dispatch of those units, based  
20     on the loss of gas Minimum Oil Burn requirement, then  
21     the emissions would remain the same.

22                    MR. DREXLER: Okay. I have no further  
23     questions. Thank you.

24                    ALJ BOUTEILLER: Does any other party  
25     have questions for this witness?

1 MR. LEVENSON: Yes, Your Honor.

2 ALJ BOUTEILLER: Go ahead, Mr. Levenson.

3 CROSS-EXAMINATION

4 BY MR. LEVENSON:

5 Q I'm Gary Levenson with the New York Power  
6 Authority. How are you?

7 A I'm fine, thank you.

8 Q I just want to ask you a few questions about your  
9 rebuttal testimony.

10 A Sure.

11 Q Just referring to page 1, I think there you're  
12 discussing that -- lines 8 through 16, approximately,  
13 you say that you found fundamental problems with the  
14 modeling performed by DPS and gross errors in the  
15 summary information provided by CRA, serious enough to  
16 call into question all the emission analyses done to  
17 date. That's your testimony, right?

18 A That's correct.

19 Q And you say that the -- some of this we've been  
20 over, but you said that the air -- that certain  
21 downstate reliability requirements were not modeled in  
22 these analysis, specifically the loss of gas in Minimum  
23 Oil Burn requirement?

24 A That's correct. That loss against Minimum Oil Burn  
25 requirement dominates the emissions characteristics

1       within Zones J and K, SO<sub>2</sub> especially.

2       Q     You say on page 2, you describe how you believe  
3       this error or inaccuracy is manifested in the testimony  
4       of Mr. Neiman and Mr. Russo of CRA, correct?

5       A     That's correct.

6       Q     And it's your testimony that when you found out  
7       this fact, that the LOGMOB rules were not incorporated  
8       into the emission analyses, you were surprised?

9       A     That's correct, for the reason I just stated,  
10      because they do dominate the emissions characteristics  
11      of the generating sources in Zones J and K.

12      Q     You had an opportunity to review the testimony and  
13      exhibits of the CRA consultants before you filed your  
14      rebuttal testimony, correct?

15      A     That's correct.

16      Q     And did you review the revised benefits analysis of  
17      CRA? This is, I believe, Exhibit 23.

18      A     Could you bring that to me?

19      Q     Yes.

20      A     The question again, sir?

21      Q     Have you reviewed this document?

22      A     I did, yes.

23      Q     Okay.

24                   MR. LEVENSON: If I can just stand up  
25      here for a couple follow-up questions.

1 ALJ BOUTEILLER: Sure.

2 Q On page 4 --

3 MR. WEINTRAUB: Your Honor, if  
4 Mr. Levenson is going to ask Mr. Sliwinski  
5 questions regarding that document, I think it would  
6 be a fair if he had a copy of the document before  
7 him.

8 BY MR. LEVENSON:

9 Q On page 4 of that document do you see how -- can  
10 you read the heading of that slide?

11 A "What does an as-is (e.g. EDC) model leave out?"

12 Q You recognize -- you understand the as-is model to  
13 be the one that was incorporated into the master  
14 transmission plan analysis that CRA performed, both for  
15 purposes of economics and emissions?

16 A Yes.

17 Q And you notice here that what was left out --  
18 included in what was left out -- you just recited the  
19 heading -- was the Minimum Oil Burn rules?

20 A That's correct.

21 Q So you did not -- did you make any data requests to  
22 the CRA?

23 A I did not see that document until after I filed my  
24 original testimony, so I did not have knowledge of that  
25 exact -- that document, exactly. All I had from CRA



1       were some -- a couple of tables that were provided by  
2       DPS related to emissions changes on the modeling they  
3       ran. I never saw that document before I did my  
4       testimony.

5       Q     But you had it before you did your rebuttal  
6       testimony?

7       A     That's right. It was provided to me at that point.  
8       I'm not -- I'm trying to remember exactly when I saw  
9       it. To the best of my recollection, I did have it when  
10      I did my rebuttal testimony.

11      Q     Okay. So it was possible to learn this without  
12      having to consult the emissions levels themselves? It  
13      said right here, plain as day, that the Minimum Oil  
14      Burn rule was not included in the as-is analysis.

15      A     That's correct. It does say that. What I  
16      learned -- maybe I'll just go through my -- how -- what  
17      my review entailed here, how I found what I thought to  
18      be these errors, were upon receiving -- looking at --  
19      and this is probably just about at the same time --  
20      questions from Mr. Dax as well as the testimony that  
21      was filed by the CRA panel, I looked at those things at  
22      probably roughly the same time and noticed some things  
23      that were odd about them, that, you know, that the CRA  
24      analysis, that I didn't expect to see. I never saw,  
25      previous to that, the zone totals in the tables that

1       were provided in that testimony. At that point I saw  
2       that the level of SO<sub>2</sub> emissions was a lot lower than I  
3       expected.

4       Q     In your answer to one of Mr. Drexler's questions  
5       about whether the dispatches would be the same with the  
6       Minimum Oil Burn rule incorporated or not, you would  
7       have had the opportunity to ask CRA questions about  
8       that between the time they filed their direct testimony  
9       and the time you filed rebuttal, correct?

10      A     Not that I'm aware of.

11      Q     You only learned about -- you had the opportunity  
12      to learn about the Minimum Oil Burn rule assumption  
13      after the March 18 submission of the CRA materials?

14      A     Correct.

15                   MR. WEINTRAUB: Your Honor, I'm going to  
16      object. I recall we had a discussion at last  
17      week's hearing about not delving into why  
18      somebody -- why somebody did or didn't file an  
19      interrogatory request or make an information  
20      request or use the opportunity to do this or that  
21      at a certain time, and we agreed that we weren't  
22      going to get involved in that. We were going to  
23      just stick to evidentiary matters.

24                   ALJ BOUTEILLER: And if you want to use  
25      that as precedent here, you're going to have to be

1 far more specific to refresh my recollection as to  
2 how that was identical or comparable to the  
3 circumstance here. The circumstance presented here  
4 is that we do have an alteration between the time  
5 of the witness' direct testimony and rebuttal  
6 testimony, which other parties are perceiving as  
7 being a significant alteration in the witness'  
8 testimony, such that it could affect the further  
9 processing of this case. So I think we have a  
10 material change in testimony that ought to be  
11 followed up here. But if you can be more specific  
12 with how I ruled and how I'd be inconsistent about  
13 hearing this testimony, I'd be willing to hear  
14 that.

15 MR. WEINTRAUB: Your Honor, I can't  
16 remember exactly the exact circumstance. I just  
17 remember the general discussion. I withdraw the  
18 objection.

19 ALJ BOUTEILLER: Yeah. Context is  
20 everything. Your objection is overruled.

21 MR. LEVENSON: Mr. Weintraub derailed me  
22 sufficiently with that objection.

23 ALJ BOUTEILLER: Would you like to hear  
24 your last question?

25 MR. LEVENSON: Please.

1 ALJ BOUTEILLER: Can we go back to the  
2 last question?

3 (Whereupon, the following question was  
4 read:

5 QUESTION: "You only learned about -- you  
6 had the opportunity to learn about the Minimum Oil  
7 Burn rule assumption after the March 18 submission  
8 of the CRA materials?

9 ANSWER: Correct.")

10 COURT REPORTER: It was answered before  
11 the objection.

12 ALJ BOUTEILLER: Okay. Your next  
13 question.

14 BY MR. LEVENSON:

15 Q When you were answering one of Mr. Drexler's  
16 questions, you agreed that if the Minimum Oil Burn  
17 assumption had been employed, that the emissions change  
18 of HTP being in the study would be the same as long as  
19 dispatch didn't change?

20 A That's right. Right. Under that assumption that  
21 there would be no difference in the amount of oil  
22 burned.

23 Q All right. And you made no inquiries about that  
24 after March 18th to the City witnesses?

25 A No, I did not.

1 Q One other thing about the Minimum Oil Burn issue,  
2 if the Minimum Oil Burn rule were included in the  
3 studies, and having -- excepting for discussion sake  
4 that the delta in emissions by the HTP line is the  
5 same, would the emission impacts of the HTP line in the  
6 PJM New York State region be a smaller percentage of  
7 the total emissions?

8 A I'm not sure I understand the question.

9 Q Okay. I'll restate it. The studies you said you  
10 saw have the Minimum Oil Burn rule excluded and you  
11 observed that the emissions were -- from certain units  
12 were low, correct?

13 A They were zero.

14 Q Understood. And if the Minimum Oil Burn assumption  
15 were included, and excepting for discussion's sake that  
16 the delta for HTP is the same in either case, isn't the  
17 emissions impact with the Minimum Oil Burn rule  
18 included a smaller percentage of the total SO<sub>2</sub> and NO<sub>x</sub>  
19 emissions?

20 A Again, I don't -- I don't -- I'm not getting it.  
21 I'm not understanding your question. I'm sorry.

22 Q That's okay. I'll ask it one other way. Doesn't  
23 the denominator go up when the Minimum Oil Burn rule is  
24 included in the analysis?

25 A Yes.

1 Q Okay.

2 MR. LEVENSON: I have no further  
3 questions, Your Honor.

4 ALJ BOUTEILLER: Does any other party  
5 have any further questions for the witness before I  
6 ask Mr. Weintraub to approach the witness and  
7 consider the need for redirect? If not, go ahead  
8 and approach the witness, either at the table or  
9 out in the hall.

10 MR. WEINTRAUB: Out in the hall, Your  
11 Honor.

12 ALJ BOUTEILLER: Sure.

13 (Discussion off the record.)

14 ALJ BOUTEILLER: Is there redirect for  
15 the witness?

16 MR. WEINTRAUB: Yes, Your Honor. DEC has  
17 some redirect.

18 ALJ BOUTEILLER: Please proceed.

19 REDIRECT EXAMINATION

20 BY MR. WEINTRAUB:

21 Q Mr. Sliwinski, you were asked a series of questions  
22 about the LOGMOB rules, and would you wish -- do you  
23 wish to clarify some of your responses to those  
24 questions?

25 A Yes. When performing an analysis such as was done

1     in this case, you would -- to be able to interpret the  
2     results of that analysis, you need to have good inputs  
3     in the assumptions, to suppose that something would  
4     come out as a result of this, based on certain things  
5     being assumed in the model, so I guess my point is that  
6     without considering the single most important rule,  
7     local reliability on emissions within the city or in  
8     state, Zones J and K, I could not or I do not believe  
9     the model could come out with a decent approximation of  
10    what will happen in terms of emissions within those  
11    areas. So without knowing that, I can't make an  
12    assessment of what is the impact of this project on air  
13    emissions in -- as a result.

14   Q     Thank you.

15            You were asked a couple of questions about -- you  
16    were asked hypothetical questions to assume that -- to  
17    assume that what was done approximated the LOGMOB  
18    rules. Do you recall those questions?

19   A     Yes.

20   Q     Can you just -- can you simply make such  
21    assumptions and have a valid result?

22   A     The reason you have these models and the reason you  
23    use these models is to attempt to quantify or  
24    approximate the results of the system. The system is  
25    very complex. Changing these inputs can have differing

1 results. You can't predict the results based on that.  
2 So I would say that the reason you run the model is  
3 to -- is to attempt to quantify what might happen. Not  
4 putting those things in and trying to quantify it, I  
5 don't think you can come to any conclusions, at least  
6 in terms of air emissions.

7 Q So, Mr. Sliwinski, if -- for the Commission to make  
8 a determination of environmental impact, at least in  
9 terms of air impacts, do you believe that these models  
10 have to be rerun?

11 A Yes.

12 Q Thank you.

13 MR. WEINTRAUB: That's all, Your Honor.

14 EXAMINATION

15 BY ALJ BOUTEILLER:

16 Q I don't have many questions or any questions, but  
17 let me ask you a simple question. And, again, I don't  
18 know what the answer to the question is. I'm more  
19 interested in what your view is.

20 The runs that were performed and the results that  
21 it produced, is it possible that that might be a floor  
22 or a minimum amount of emissions that one might  
23 attribute to this scenario? Is that a fair  
24 characterization?

25 A I really don't know. I just don't know the answer.



1 I don't know how to quantify the impact.

2 Q I think you're clear on the record with respect to  
3 how you believe the model should be run to reconstruct  
4 operating conditions as you saw them, and you were  
5 surprised that those conditions were not modeled  
6 explicitly. Is that fair?

7 A Correct.

8 Q But the results that you see from this model where  
9 everything was held constant and some explanation has  
10 been tried to be offered to you that that was a  
11 sufficient way of approaching things, I understand  
12 that, we do have some results here, and what -- your  
13 suggestion is that these results should be entirely  
14 disregarded, thrown away completely?

15 A Let me try to put it in -- quantify it a bit for  
16 you, Your Honor. The emissions in the city we're  
17 talking about in, say, Zone J, they're talking tens of  
18 tons of SO<sub>2</sub>, and we're talking -- I'm talking two orders  
19 of magnitude or more higher than that, thousands of  
20 tons. To suppose that this has no difference on it, I  
21 don't know that answer. I would suggest that as a  
22 result of that, that I can't make any statements  
23 related to air emissions and how they would -- whether  
24 what's been provided to me is a valid look at what this  
25 project may do.

1 Q Okay. So, again, I'm just trying to tease out from  
2 you what I've just heard as an answer. Your largest  
3 concern, your biggest fear is that there is the  
4 potential for an order of magnitude of air quality  
5 emissions that this study has not revealed that you  
6 believe that a correctly modeled study might be able to  
7 demonstrate?

8 A I don't even know that. All I know is based -- you  
9 run -- models are, you know, the tools. And to  
10 properly assess something, your assumptions, your input  
11 assumptions have to be correct. Something that so  
12 grossly underestimates SO<sub>2</sub> emissions raises red flags to  
13 me. It tells me that I don't -- I can't accurately or  
14 properly assess what the result of this project will  
15 be.

16 Q So for analysis purposes, based upon the  
17 information that you've learned throughout this  
18 proceeding about how the model was performed, what it  
19 assumed, from learning all of that at the stages you  
20 learned it, at this point in the process -- I hate to  
21 use this phrase because of events -- but you're back to  
22 ground zero; you're back to the starting point, is that  
23 correct?

24 A Yes. I wish I was brought into this process  
25 earlier on so I could have participated in that, but I

1 started in this when they had already had modeling  
2 results.

3 ALJ BOUTEILLER: Okay. I'm understanding  
4 a little bit better now. Thank you.

5 THE WITNESS: Thanks.

6 ALJ BOUTEILLER: Let's go back to Mr. Dax  
7 and see if he has any more questions for you.

8 RECROSS-EXAMINATION

9 BY MR. DAX:

10 Q I do have a question.

11 A Sure.

12 Q I want to follow up on that. A Minimum Oil Burn  
13 is, by definition, a fixed number of hours and megawatt  
14 hours of use of oil, is that correct?

15 A I'm not exactly sure what the -- all the details  
16 are, but yes, that is my understanding.

17 Q So it's a fixed minimum?

18 A Based on a number of other factors, there's -- you  
19 know, like I said, my understanding is it is, you know,  
20 depending on the load, on the system and et cetera.

21 Q Okay.

22 A And what's available in other units, what units are  
23 available and all that. It's not the same thing every  
24 day, and it's not the same thing, you know, based --  
25 you know, it changes all the time because the system

1       itself is changing all the time.

2       Q       So the Minimum Oil Burn changes all the time  
3       depending upon other conditions in the system?

4       A       That's my understanding.

5       Q       Okay. But if we -- do you understand that the  
6       model that was run with HTP and without HTP was  
7       identical in all other respects other than those two --  
8       that factor, that variable, HTP or no HTP?

9       A       That's my understanding, yes.

10      Q       So the Minimum Oil Burn would have been the same in  
11      each of those models in terms of what actually was  
12      being modeled as being consumed by those must-run  
13      units, isn't that correct?

14      A       There was no oil ever used in those units in the  
15      model. They were all burning natural gas in the model  
16      all the time.

17      Q       All right.

18      A       So I don't know what oil would have done.

19      Q       If you add -- let me restate my question. In the  
20      case in which HTP was assumed to operate and in the  
21      case in which HTP was assumed not to exist, the  
22      conditions, the underlying conditions, load, unit  
23      availability, were the same, were they not?

24      A       That's my understanding, yes.

25      Q       So if the model had had the Minimum Oil Burn in

1     each model, in each run of the model, wouldn't the  
2     units of oil consumed have been the same?

3     A     That I can't answer. I don't know the answer to  
4     that question.

5     Q     That's the one you don't know?

6     A     That's what I don't know. I'm not -- I'm not  
7     familiar enough with the model itself.

8     Q     But if they were the same --

9     A     That's what -- I've haven't been asked that.

10    Q     If they were the same, then the point that has been  
11    made by others today that the net impact of the HTP  
12    line on total emissions would be the same, wouldn't it?

13    A     That's what I've been told, yes.

14                     MR. DAX: That's all I have.

15                     ALJ BOUTEILLER: Mr. Levenson?

16                     MR. LEVENSON: Yes.

17    RE CROSS-EXAMINATION

18    BY MR. LEVENSON:

19    Q     A brief follow-up. You were saying in your  
20    questions -- your answers to Mr. Weintraub and, I  
21    believe, with the judge that the assumptions are  
22    everything, and if there's bad inputs, the whole model  
23    is suspect, correct?

24    A     Correct.

25    Q     Now, you agree that the assumptions were the

1 product of a consensus process, the consensus  
2 stakeholders to the massive transmission plan and all  
3 the stakeholders agreed to them; that's your  
4 understanding, right?

5 A That's my understanding, yes.

6 MR. LEVENSON: Okay. Nothing further,  
7 Your Honor.

8 ALJ BOUTEILLER: Mr. Drexler?

9 MR. DREXLER: Yes, just a couple  
10 follow-ups.

11 RECROSS-EXAMINATION

12 BY MR. DREXLER:

13 Q Are you aware that DPS staff's analysis was  
14 intended to provide the differences in emissions both  
15 without the HTP line and with the HTP line in service?  
16 Is that correct?

17 A That's my understanding.

18 Q So DPS staff's analysis was not intended to provide  
19 the absolute values of emissions, correct? Forecast  
20 emissions, correct?

21 A That's my understanding, yes.

22 Q Okay. One other question. On page 1 of your  
23 rebuttal and supplementary testimony, lines 22 and 23  
24 indicate a number of emissions that are decreased  
25 relatively over time -- I think there's one aberration,

1 2007. But can you provide an explanation for why those  
2 emissions have decreased?

3 A It's my understanding that the price of oil has  
4 gone down -- I mean the price of natural gas has gone  
5 down to a point where it is the economic choice, so, in  
6 fact, oil is not -- in those years that were quoted  
7 there, oil was the economic choice and it was being  
8 burned more often in those units. Now it's -- natural  
9 gas is the economic choice, and it is being burned more  
10 often as the fuel and that --

11 MR. DREXLER: I have no more questions.  
12 Thank you.

13 ALJ BOUTEILLER: Mr. Weintraub, do you  
14 need to approach the witness again?

15 MR. WEINTRAUB: Yes, Your Honor.

16 (Discussion off the record.)

17 ALJ BOUTEILLER: Further redirect?

18 MR. WEINTRAUB: Yes, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. WEINTRAUB:

21 Q Mr. Sliwinski, you were asked at least one or more  
22 questions regarding whether it mattered if the LOGMOB  
23 rules -- if the LOG -- if the Minimum Oil Burn rules  
24 were imposed upon the model in terms of air emissions  
25 and your ability to state what the total emissions

1 would be. Can you comment on that?

2 A Yes. In the sense that for me to make some sort of  
3 assessment on air emissions, I would need to look at  
4 the totality of the emissions that are going to occur  
5 within an area as a result of this project. Taking out  
6 one of the factors that means the most related to air  
7 emissions doesn't allow me to make any assessment on  
8 that.

9 MR. WEINTRAUB: That's all, Your Honor.

10 ALJ BOUTEILLER: Unless somebody twists  
11 my arm, I don't believe that's going to require any  
12 further cross-examine.

13 Mr. Drexler, consider my arm twisted.

14 RECROSS-EXAMINATION

15 BY MR. DREXLER:

16 Q Mr. Sliwinski, when generators are burning natural  
17 gas, is sulfur dioxide emitted?

18 A Very minimal.

19 MR. DREXLER: Nothing further. Thank  
20 you.

21 ALJ BOUTEILLER: Okay. I'm going to call  
22 it at that point. There's not going to be anything  
23 further. Let's go off the record.

24 (Discussion off the record.)

25 ALJ BOUTEILLER: I want to thank the



1 witness for being here today, and you are excused.

2 Let's go off the record.

3 (Discussion off the record.)

4 ALJ BOUTEILLER: Counsel for the  
5 applicant, call your witness.

6 MR. DAX: James P. Nash.

7 ALJ BOUTEILLER: Before you sit down,  
8 I'll ask you to raise your right hand.

9 J A M E S P. N A S H,  
10 having been first duly sworn by the notary public,  
11 was examined and testified as follows:

12 ALJ BOUTEILLER: Please be seated, and  
13 please state for the record your name and your  
14 address.

15 THE WITNESS: My name is James P. Nash.  
16 My business address is 501 Kings Highway East,  
17 Fairfield, Connecticut.

18 ALJ BOUTEILLER: If you can hit the  
19 button on the microphone and turn it green,  
20 everyone will hear you.

21 DIRECT EXAMINATION

22 BY MR. DAX:

23 Q Mr. Nash, did you cause to be prefiled testimony in  
24 support of the original application that has been  
25 marked as Exhibit 1?

1       A     Yes, I did.

2       Q     I show you a one-page document consisting of ten  
3       lines of questions and answers in which you explain  
4       which parts of the original application you were  
5       responsible for. Is that the document that you -- was  
6       prefiled with the application on your behalf?

7       A     Yes, it is.

8       Q     Is it accurate?

9       A     Yes.

10                   MR. DAX: Your Honor, I ask that the  
11       identified document be incorporated into the record  
12       as if given orally.

13                   ALJ BOUTEILLER: Absent objection, I will  
14       instruct the reporter to copy into the record as if  
15       given orally today the one-page document of  
16       prefiled testimony by Mr. Nash.

17                   (The testimony is included, as ordered.)

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**James P. Nash, P.E.**

Public Service Commission Case No. 08-T-\_\_\_\_\_  
Hudson Transmission Partners, LLC

- 1   **Q.**    Please state your name, employer, and business address.
- 2   **A.**    James P. Nash, Hudson Transmission Partners, LLC, 501 Kings Highway
- 3           East, Fairfield, Connecticut 06825.
- 4   **Q.**    In what capacity are you employed?
- 5   **A.**    I am Vice President, Engineering for Hudson Transmission Partners.
- 6   **Q.**    For what parts of the application are you responsible?
- 7   **A.**    Exhibits 4.13, 5, E-1, E-2, E-4 and E-5 were prepared under my
- 8           supervision.
- 9   **Q.**    Please explain your professional background and expertise.
- 10  **A.**    Please see attached curriculum vitae.

1 BY MR. DAX:

2 Q And did you cause to be prefiled with the prefiling  
3 on April 8th a "Prepared Supplemental and Rebuttal  
4 Testimony of James P. Nash"?

5 A Yes, I did.

6 Q I show you a document consisting of three pages  
7 of -- one of them a cover sheet and two pages of  
8 questions and answers as I've identified. Is that the  
9 document that you caused to be prefiled?

10 A Yes, it is.

11 Q If I were to ask you these questions today, would  
12 your answers be the same as set forth in this document?

13 A Yes, they are.

14 Q Okay.

15 MR. DAX: Your Honor, I'm going to ask  
16 that that document be incorporated into the record  
17 as if given orally here today.

18 ALJ BOUTEILLER: Okay, a copy for the  
19 reporter, a copy for me.

20 Absent any objection, I will instruct the  
21 reporter to copy into the record as if given orally  
22 today the prepared supplemental and rebuttal  
23 testimony of the witness, Mr. Nash.

24 (The testimony is included, as ordered.)

25

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

-----X

Case No. 08-T-0034 of Hudson Transmission  
Partners, LLC for a Certificate of Environmental  
Compatibility and Public Need for a 345 Kilovolt  
Submarine/Underground Electric Transmission  
Link Between Manhattan and New Jersey

-----X

**PREPARED SUPPLEMENTAL AND REBUTTAL  
TESTIMONY OF JAMES P. NASH  
APRIL 8, 2010**

James P. Nash, Vice President, Engineering  
Hudson Transmission Partners, LLC  
501 Kings Highway East  
Fairfield Connecticut 06825

ALEXY ASSOCIATES, INC.  
(518) 798-6109

1 Q. State your name, address and job description.

2 A. James P. Nash, Hudson Transmission Partners, LLC (HTP), 501 Kings Highway East,  
3 Fairfield Connecticut 06825; Vice President, Engineering.

4 Q. Have you previously filed testimony in this proceeding?

5 A. Yes. I provided testimony sponsoring various parts of the application HTP filed in  
6 January of 2008. My *curriculum vitae* are attached to that testimony.

7 Q. What is the purpose of this testimony?

8 A. I will describe the current status of HTP's interconnection requests in PJM and the New  
9 York Independent System Operator (NYISO). I will also explain the modifications we  
10 are proposing to the certificate conditions addressing Transmission System Reliability as  
11 proposed by DPS in Exhibit PFD-3. The facilities studies for HTP in both PJM and  
12 NYISO are complete. HTP is working with staff at PJM and the interconnecting utilities  
13 of Public Service Electric & Gas (PSE&G) and First Energy Corporation (First Energy)  
14 to finalize Interconnecting Service Agreements and Construction Service Agreements so  
15 as to allow PSE&G and First Energy to proceed with associated network upgrades. The  
16 PSE&G-related agreements also establish technical specifications for HTP to follow to  
17 finalize its designs and commission the interconnection with PSEG's 230 kV substation.

18 HTP was a participant in NYISO's Class Year 2008 facilities study group, which  
19 concluded in January 2010. In this process HTP has accepted the estimated System  
20 Upgrade Facilities costs submitted by Con Edison and has also provided acceptable  
21 security to NYISO. HTP is presently working with NYISO and Con Edison staff to  
22 finalize the associated three-way Interconnection Agreement to proceed with the  
23 interconnection at the Con Edison W49th Substation.

1 Q. Have you reviewed proposed certificate conditions related to Transmission System  
2 Reliability as provided by DPS in Exhibit PFD-3?

3 A. Yes. HTP has proposed several deletions, edits and clarifications, which can be found in  
4 certificate condition numbers 54-76 in Exhibit CH-2. For example, we have used the  
5 term "Transmission Facility" throughout rather than "electric plant" and made other  
6 similar changes for clarity and consistency. We reconciled the DPS proposals to the  
7 actual allocation of responsibilities involved in interconnecting the cable and in  
8 controlling its operation. For example, HTP is not responsible for the design and  
9 construction of the affected system upgrades or the attachment facilities, including the  
10 Con Edison W49th Substation modifications. Therefore, HTP cannot commit to provide  
11 associated design drawings and final cost estimates for those items. HTP has also  
12 clarified language regarding how and under what methods the interconnection will be  
13 directed for operation, since the Regional Transmission Organization that will be the  
14 control authority (NYISO or PJM) has not yet been determined. HTP will keep PSC staff  
15 informed of this determination and abide by the proposed conditions as they relate to the  
16 respective control authority. We also deleted one provision, Certificate Condition No.  
17 65(d), which appears to be a holdover from the Bayonne Energy Center generator lead  
18 decision and Certificate Condition No. 74, a provision that would simply duplicate  
19 authority that rests exclusively with the Office of General Services.

20 Q. Does that complete your testimony?

21 A. Yes.

1 BY MR. DAX:

2 Q Mr. Nash, have you had occasion to review some  
3 comments that were provided by Mr. Drexler to us  
4 concerning certificate conditions regarding  
5 transmission reliability?

6 A Yes, I have.

7 Q Did it cause you to make any revisions to those  
8 certificate conditions as included in the revised  
9 Exhibit CH-2, which has now been marked for  
10 identification as Exhibit 26? Did you make -- were you  
11 responsible for changes that were incorporated into  
12 that document?

13 A Yes, I was.

14 Q I'm going to show you a document that appears to be  
15 an e-mail printout, printed out by Amy Butler, so her  
16 name shows at the top. It has page 1 of 2, but I'm  
17 only showing you one page of it. And there is text in  
18 blue and in red and in black, and the e-mail from  
19 myself to Mr. Drexler, cc'd to all parties, and ask  
20 whether you've seen that document?

21 A Yes, I have.

22 Q And do you understand what it purports to show?

23 A Yes, I do.

24 Q And can you explain just briefly, without going  
25 into the details, what it purports to show in general



1 terms?

2 A It demonstrates our acceptance of a number of  
3 comments proposed by DPS staff and also four specific  
4 items that we did not feel were acceptable.

5 MR. DAX: Your Honor, I'd like to ask --  
6 I would ask that that document so identified be  
7 marked for identification as Exhibit 82 for  
8 identification.

9 ALJ BOUTEILLER: Do you have two?

10 MR. DAX: Yes.

11 ALJ BOUTEILLER: The document just  
12 described will be marked as Exhibit Number 82 for  
13 identification.

14 (Exhibit No. 82 was marked for  
15 identification.)

16 BY MR. DAX:

17 Q And attached to that e-mail was there, in fact, a  
18 set of revised certificate conditions?

19 A Yes, there were.

20 Q And I'm showing you a document that has -- in the  
21 upper right-hand corner it starts with Exhibit\_PFD-03,  
22 and then the next line says second "Revised 4-30-2010,  
23 Exhibit\_CH-2, page 1 of 25, HTP Proposed Certificate  
24 Conditions." Is that the document --

25 A Yes, it is.

1 Q -- that was attached to that e-mail?

2 A Yes.

3 Q Does that -- starting on certificate condition  
4 number 55, does that show changes that you were  
5 responsible for that were made subsequent to the filing  
6 of this when it was marked as Exhibit 26?

7 A Yes.

8 MR. DAX: Your Honor, I ask that the  
9 document that has been identified be marked for  
10 identification as Exhibit 83.

11 ALJ BOUTEILLER: It will be so marked.

12 (Exhibit No. 83 was marked for  
13 identification.)

14 BY MR. DAX:

15 Q Now, with reference to Exhibit 82 and the comments  
16 in red, and pointing to language as needed in Exhibit  
17 83, would you briefly explain the items in red that  
18 reflect comments provided by DPS that HTP was either  
19 unwilling to accept or not willing to accept as  
20 proposed by DPS?

21 A Yes, certainly. On a general comment, it was  
22 requested by DPS that the term.

23 "Transmission facility" indicated encompasses  
24 associated equipment including but not limited to the  
25 associated back-to-back HVDC terminal. Upon advice of

1 counsel, I've been informed that expanding the  
2 definition for "transmission facility" has implications  
3 elsewhere within the application.

4 Q And is it correct that the transmission facility,  
5 as defined by the application and in the certificate  
6 conditions proposed by the applicant, is limited to the  
7 New York side of the transmission for the entire  
8 system?

9 A Yes, it is.

10 Q So the transmission facility includes the cable and  
11 associated equipment from the New Jersey border to the  
12 Con Edison substation, is that correct?

13 A That is correct.

14 Q And the DPS comment that was received previously  
15 would have expanded that definition to include  
16 equipment located in New Jersey, is that correct?

17 A That's correct.

18 Q Okay. Continue to the next comment.

19 A Yes. Related to specific line item numbers, item  
20 number 55, request to add back in language referencing  
21 substation and transmission interconnection as it  
22 relates to that portion of the transmission facility  
23 that would -- should require proof of acceptance by Con  
24 Edison. Con Edison, through the process of review and  
25 acceptance of the project and the portion associated

1 with them, is confined to the substation at the West  
2 49th Street -- the facilities inside the West 49th  
3 Street substation. Therefore, the changes that we  
4 propose would limit it specifically to that portion of  
5 the facility.

6 Q So if you turn to what's been marked for  
7 identification as Exhibit 83 and you turn to page 18  
8 and look at certificate condition 55, does the wording  
9 there reflect what you just said, that it provides that  
10 prior to commencing construction of the portion of the  
11 transmission facility associated with the cable  
12 entrance into and its termination within the West 49th  
13 Street substation must first be approved by Con Edison,  
14 is that correct?

15 A That's correct.

16 Q If you turn to the next comment, which is  
17 concerning number 65, would you explain the applicant's  
18 position there, certificate condition 65?

19 A Yes. That's on page 20, and -- 21, actually, here.  
20 There was a request that specified that New York ISO be  
21 the control authority for this project when, in  
22 actuality, the determination of what that control  
23 authority is going -- who that control authority is  
24 going to be has not yet been determined. That's an  
25 ongoing process and would likely take place after the

1 completion of this process here. That determination  
2 will be made as part of a joint committee formed to  
3 develop a document called a Common Operating  
4 Instruction for the project itself, and that will  
5 include participation by ourselves as certificate  
6 holder, New York ISO, Con Edison, PJM and PSE&G. We  
7 propose to add language to this particular line item  
8 such that would offer to DPS staff all copies of  
9 drafts, finals and modifications to that document  
10 through the life of the project.

11 Q Is that shown on page 22 of Exhibit 83 in the --  
12 what looks to be the new condition 65E?

13 A Yes.

14 Q So in lieu of agreeing with staff that we would  
15 commit somehow to have -- that you would commit to have  
16 the New York ISO be the control authority, what --  
17 you're offering up an alternative that includes  
18 providing this document to them, is that correct?

19 A That's correct.

20 Q Just for reference, you're familiar with the  
21 Neptune project, is that correct?

22 A Yes, I am.

23 Q And who is the controlling authority for Neptune?

24 A That is PJM.

25 Q Okay. Now, the last comment that the applicant did

1 not accept or modified -- concerns condition number 66  
2 in which the DPS request was to put back in the  
3 original language, what is your explanation for not  
4 agreeing to that?

5 A Yes. As I -- in response to our desire to strike  
6 the words "withstand most system abnormalities," we  
7 offer as an alternative -- and we believe an approved  
8 alternative -- that we would design the system as  
9 required by NPCC protection requirements. Those would  
10 include, perhaps, system abnormalities, which is a  
11 general term not fully defined but would be better  
12 defined than NPCC and would also include standard and  
13 normal operating requirements for our interconnection.

14 Q With the exception of those four comments  
15 highlighted in red on Exhibit 82, has Hudson accepted  
16 and agreed to incorporate the remaining comments that  
17 were in Mr. Drexler's original e-mail?

18 A Yes, we have.

19 Q Thank you.

20 MR. DAX: The witness is available for  
21 cross-examination, Your Honor.

22 ALJ BOUTEILLER: Thank you.

23 Mr. Drexler.

24 MR. DREXLER: Thank you.

25 CROSS-EXAMINATION

1 BY MR. DREXLER:

2 Q Good afternoon, Mr. Nash.

3 A Good afternoon, Mr. Drexler.

4 Q I want to turn to -- start with page 3 of your  
5 supplemental and rebuttal testimony.

6 A Yes.

7 Q At lines 3 through 19 your testimony discusses  
8 changes to and deletions of certificate conditions  
9 recommended by DPS staff witnesses. At lines 18 and 19  
10 you assert that condition 74 will only "duplicate  
11 authority that rests exclusively with the Office of  
12 General Services." Have you discussed this condition  
13 with DPS staff?

14 A I have not personally discussed that with DPS  
15 staff.

16 Q Have you discussed this recommendation condition  
17 with the Office of General Services?

18 A I have not personally discussed this with.  
19 However, I believe that an application has been made to  
20 the Office of General Services for this petition and  
21 grant of rights to install the line in the final  
22 location.

23 Q Can you explain how the last sentence of  
24 recommended certificate condition 74 duplicates  
25 authority that rests exclusively with OGS?

1     A     May I look at the language? I believe that the  
2     language, as defined, for what is required by the  
3     project in order to obtain permission under OGS  
4     regulations, has been properly addressed by the project  
5     and submitted accordingly. Therefore, since that  
6     process is in place, it is not necessary to include  
7     duplicate language within our conditions here.

8     Q     Would your version of this condition change if you  
9     understood that OGS recently asked DPS staff to include  
10    such a requirement to assist OGS in compliance  
11    regarding the matter of documenting as-built  
12    facilities, submerged lands, locations --

13                 COURT REPORTER: I'm sorry.

14                 MR. DREXLER: I can repeat it.

15                 MR. DAX: Your Honor, we'll stipulate  
16    that if that, in fact, is the case, we'll agree to  
17    it. Our only point here, as Mr. Nash has said, was  
18    to avoid answering to two masters on the same  
19    subject.

20                 We have made an application to OGS. It  
21    was -- we were asked last week for a copy of that  
22    application on the record, and on Friday we  
23    circulated it to all parties. And we -- I've had  
24    many conversations with OGS over the months and  
25    most recently last week with Mr. John Hernick, who



1 is the project manager on our application. And if  
2 Mr. Hernick wants this language in the Article 7  
3 certificate, we have no problem with that.

4 ALJ BOUTEILLER: Mr. Drexler, is there a  
5 meeting of the minds here now?

6 MR. DREXLER: Just so we're clear, HTP is  
7 willing to add back in condition number 74 as  
8 proposed?

9 MR. DAX: I want to run it by OGS. Or if  
10 you have evidence -- if you can show me a  
11 communication with OGS proposing this language --  
12 our nervousness was there's always the risk that  
13 subtle differences will creep into language. And  
14 when there is a primary jurisdiction body that is  
15 running that particular show, I want to make sure  
16 that we're agreeing to abide by their rules and not  
17 have to do something slightly differently on the  
18 same topic to meet a condition in this separate  
19 certificate, which really generally doesn't involve  
20 property rights.

21 So with that qualification, it's just a  
22 matter of checking. If this is exactly the way OGS  
23 wants to see us comply with their requirements,  
24 their as-built requirements, then so be it. We  
25 certainly have no problem with giving you copies of

1           whatever we give them. That was not the issue.

2                   MR. DREXLER: I'm not sure -- I'm not  
3           sure how we close the loop on this, Your Honor. It  
4           sounds like HTP is willing to accept this subject  
5           to check.

6                   ALJ BOUTEILLER: And all I need on the  
7           record is your representation that you're not the  
8           authors of this language; the authors of this  
9           language are OGS, and this language has just been  
10          delivered by you exactly the way you received it  
11          from OGS. That's all that Mr. Dax is looking for.

12                   MR. DREXLER: This language was worked  
13          out by DPS in conjunction with OGS, so, I mean, I  
14          would say that we may be considered a co-author of  
15          this.

16                   ALJ BOUTEILLER: I think you need to  
17          continue your line and we need to pursue this  
18          independent of what the status of OGS is. You've  
19          just compounded or complexed it. So just close out  
20          your questions.

21                   MR. DREXLER: All right. Let me keep  
22          going, then.

23          BY MR. DREXLER:

24          Q        Okay. Your testimony does not explain why Exhibit  
25          CH-2 deletes clauses 75 and 76, correct?

1                   MR. DAX: I think Mr. Hocker was asked  
2                   questions about that. This was his exhibit.  
3                   Mr. Nash was really confined to transmission  
4                   reliability issues. And these two issues were  
5                   specifically asked of Mr. Hocker. So I don't think  
6                   Mr. Nash, quite frankly, has anything more to offer  
7                   than what's in the record through Mr. Hocker.

8                   ALJ BOUTEILLER: Is that acceptable to  
9                   you, Mr. Drexler?

10                  MR. DREXLER: Just one second, please. I  
11                  think I would like the question to still go to the  
12                  witness. I would like the record to be clear that  
13                  this witness does not have any explanation for why  
14                  clauses 75 and 76 have been deleted.

15                  ALJ BOUTEILLER: You're referring to  
16                  Exhibit Number 83, the very last page?

17                  MR. DREXLER: Correct.

18                  ALJ BOUTEILLER: The copy I have shows  
19                  those as being stricken, 75 and 74. I just want  
20                  that clear for the record.

21                  MR. DREXLER: I think they're -- on  
22                  Exhibit CH-2 that are clauses 75 and 76. They  
23                  might be different labels.

24                  MR. DAX: I believe it was a typo that  
25                  was in PFD-03, and we just kept using that same

1 document for tracking changes to the certificate  
2 conditions.

3 ALJ BOUTEILLER: I just want whoever is  
4 using this record to be able to follow it by your  
5 question. So if we're referring to Exhibit Number  
6 83, we don't have an accurate description of 83 in  
7 your question. If you're referring to some other  
8 document or exhibit, you need to be clear about it.

9 MR. DREXLER: All right. To be  
10 explicitly clear, I am referring to what has been  
11 labeled as Exhibit 83. At the top it's a HTP cover  
12 sheet, shows it's "HTP Proposed Certificate  
13 Conditions, Revisions to PFD 3." On page 25 of 25  
14 condition number 75 has been completely stricken,  
15 and the following condition labeled as 74 has been  
16 completely stricken as well.

17 MR. DAX: Just for the record, these were  
18 stricken -- these are identical as in Exhibit 26.  
19 In other words, those aren't new strike-outs.  
20 Those are the strike-outs that were in Exhibit 26  
21 sponsored by Mr. Hocker.

22 ALJ BOUTEILLER: All right. And we have  
23 a question now before the witness.

24 MR. DREXLER: May I repeat the question?

25 BY MR. DREXLER:

1 Q Your testimony does not explain why those two  
2 conditions that I just referenced have been deleted,  
3 correct?

4 A Correct.

5 Q And, therefore, you have no reason or explanation  
6 to offer of why those were deleted?

7 A Other than the same explanation as was offered by  
8 counsel, that they were addressed in other testimony.

9 Q Okay. All right. On page 2, lines 19 through 21,  
10 you indicate that HTP has accepted the SUF costs and  
11 provided security. What are the costs of the facility  
12 upgrades within NYISO?

13 A I don't have that precise number. It's in the  
14 vicinity of -- I'm sorry. I'd have to check that and  
15 provide that. I don't have that before me.

16 MR. DREXLER: I'd like to make an  
17 on-the-record request that HTP provide that  
18 information, please.

19 ALJ BOUTEILLER: You want to reserve an  
20 exhibit number for it?

21 MR. DREXLER: Yes, please, I would like  
22 to reserve Exhibit Number 84.

23 ALJ BOUTEILLER: Okay.

24 MR. DAX: Subject to whatever  
25 confidentiality requirements the New York ISO

1           tariff imposes and making appropriate arrangements  
2           for that, we will endeavor to get that information.

3                   ALJ BOUTEILLER:  They've accepted, and we  
4           don't know whether or not this is confidential  
5           information.  Possibly it is.  And it will be  
6           submitted on that basis.

7                   Mr. Johnson?

8                   MR. JOHNSON:  Is there a protective order  
9           in this case?

10                   ALJ BOUTEILLER:  I have not rendered a  
11          protective order of a general nature.

12                   MR. JOHNSON:  Okay.  So to the extent it  
13          is critical infrastructure information, which I  
14          believe it probably is, and other parties want  
15          access to that data, at that point a protective  
16          order could be issued to protect access to the  
17          other parties because I assume it would be given to  
18          you?

19                   MR. DAX:  We're not asking for cost of  
20          service rates, Your Honor.  I'm not sure -- I'm,  
21          you know, happy to give out information that's  
22          relevant, but I'm not sure how far we're going to  
23          go down this cost --

24                   ALJ BOUTEILLER:  When we receive the  
25          information and it is made available, the fact that

1           it will be received will be known to you. You can  
2           make your request for the information at that time,  
3           and we'll entertain any objections to such request  
4           at that time as well.

5                       We will reserve Exhibit Number 84 for the  
6           information that the applicant has agreed to  
7           provide Department of Public Service staff as  
8           reflected on the record.

9                       MR. DREXLER: Thank you.

10          BY MR. DREXLER:

11          Q       What are the costs and the facility upgrades within  
12          PJM?

13          A       I don't have this information before me.

14                      MR. DREXLER: I guess similar request  
15          along the lines of the last question, I'd like to  
16          make an on-the-record request that that information  
17          be provided and included as -- within the exhibit,  
18          the proposed exhibit identified as Number 84.

19                      MR. DAX: Same qualifications.

20                      ALJ BOUTEILLER: But let's give it a  
21          separate number so as not to confuse the two cost  
22          estimates. The second one you're asking for is for  
23          the PJM system, is that correct?

24                      MR. DREXLER: Correct.

25                      ALJ BOUTEILLER: Okay. So let's call

1           that one Exhibit Number 85.

2       BY MR. DREXLER:

3       Q     These costs that are going to be provided, are they  
4     annual costs?

5       A     I'm not sure what costs -- the SUF costs and New  
6     York ISO and the PJM costs?

7       Q     Yes. Are they one-time charges or are they annual  
8     costs?

9       A     I prefer not to answer that until we have clarity  
10    established as to what is and what isn't revealable  
11    language with regards to these interconnection.

12                   ALJ BOUTEILLER: Can you make sure that  
13    your response to Exhibits Number 84 and 85 are  
14    clear as to whether or not they're recurring costs  
15    or they're one-time costs?

16                   MR. DREXLER: I don't know if they  
17    indicated that they can.

18                   MR. DAX: We will do that, Your Honor.  
19    The tariff explains that SUF costs are generally  
20    one time. Sometimes they're maintenance costs.  
21    We'll try to sort them out.

22                   ALJ BOUTEILLER: The responses with  
23    respect to 84 and 85 will be explicit with regard  
24    to those categories.

25                   MR. DREXLER: Okay.



1 BY MR. DREXLER:

2 Q And will HTP be required to make annual  
3 contributions to PJM's regional transmission expansion  
4 plans?

5 A I'm not sure.

6 Q What is the amount of the security?

7 MR. DAX: Which security are you talking  
8 about?

9 MR. DREXLER: I'm referencing on page 2  
10 of the testimony, line 21, indicates security to  
11 the NYISO. And what amount is that security? Has  
12 that security been provided.

13 MR. DAX: We will endeavor to provide  
14 that information when we provide the information in  
15 response to Exhibit 84. It's probably subject to  
16 the same confidentiality obligations.

17 ALJ BOUTEILLER: If that's acceptable,  
18 the proposal is to include that information with  
19 the remainder of the information being provided in  
20 Exhibit Number 84.

21 MR. DREXLER: Great. Thank you.

22 BY MR. DREXLER:

23 Q In Exhibit 1 of the HTP application at pages 4-83  
24 in Section 4.13.2.2 it indicates that the HC power  
25 cable will meet the PSC magnetic field standard for new

1 transmission facilities at the edges of the project  
2 rights-of-way. What is the width of the project  
3 right-of-way at upland locations?

4 MR. DAX: Do you need to see the  
5 reference?

6 THE WITNESS: I'd like to see the  
7 reference.

8 MR. DAX: Counsel, will you show the  
9 witness the document?

10 MR. DREXLER: Your application?

11 MR. DAX: Yes.

12 MR. DREXLER: I happened to bring a copy  
13 with me.

14 MR. DAX: That's good. It's your  
15 cross-examination.

16 MR. DREXLER: Permission to approach the  
17 witness?

18 ALJ BOUTEILLER: Approach.

19 BY MR. DREXLER:

20 Q There you are.

21 A Could I ask you to restate the question, please?

22 Q What is the width of the project right-of-way at  
23 upland locations?

24 A I'm not able to make that determination with this  
25 information in front of me.

1                   MR. DAX: Your Honor, we can stipulate  
2                   that there is no right-of-way as defined -- as I  
3                   suspect counsel is defining it. The right-of-way  
4                   is the public streets, public rights-of-way of the  
5                   city streets, much like Con Edison or Brooklyn  
6                   Union or anybody in the same line of business uses.

7                   Also, these questions were the subject of  
8                   extensive discovery responses that are included in  
9                   Exhibit CH-1, whatever that's been marked as. That  
10                  would be Exhibit 25. And so there is evidence in  
11                  the record concerning compliance with the  
12                  Commission standards. But in terms of a  
13                  right-of-way width, it's -- it really doesn't apply  
14                  in the context of the use of city streets.

15                 ALJ BOUTEILLER: We have the applicant's  
16                  representation from counsel as to how they're  
17                  addressing your request for a specification of a  
18                  right-of-way in this instance in this context with  
19                  reference to exhibits provided to staff and  
20                  existing on the record.

21                 MR. DREXLER: Okay.

22                 BY MR. DREXLER:

23                 Q     What is the width of the project right-of-way at  
24                  submarine locations?

25                 A     Again, I'm not precisely sure on the definition of

1 right-of-way, but I believe we're granted a quarter or  
2 approximately 100 feet wide in which we are to make --  
3 perform our cable installation as part of the  
4 certification. We would then provide as-built drawings  
5 to all required parties identifying its location.

6 MR. DREXLER: There was a on the  
7 record -- in response to one of the on-the-record  
8 requests last week at the hearing, there was a --  
9 the petition for a grant of easement in lands under  
10 the waters of the Hudson River, County of New York  
11 was provided -- was in letter from Mr. Dax to the  
12 Office of General Services dated October 14, 2009.  
13 I'd like to ask that that document be marked as an  
14 exhibit.

15 ALJ BOUTEILLER: Do you have copies? Do  
16 you have something for me to mark?

17 MR. DREXLER: I got one copy.

18 ALJ BOUTEILLER: There's a fax machine  
19 across the hall.

20 MR. DREXLER: Let me ask a question  
21 before I ask that this be marked for  
22 identification, okay?

23 BY MR. DREXLER:

24 Q I'd like to ask, are you aware that in that  
25 document on page 2, paragraph 7, it indicates that

1 Hudson is requesting that the permit be converted to an  
2 easement 30 feet in width? Are you aware of that  
3 statement.

4 A I am not. I was not participating in the  
5 production of that permit application.

6 MR. DREXLER: We'll have copies made  
7 right now.

8 MR. DAX: And we'll stipulate to 30 feet,  
9 if that's the fact he's trying to elicit.

10 ALJ BOUTEILLER: Does that suffice for  
11 your purposes, Mr. Drexler?

12 MR. DREXLER: We'll still be asking that  
13 this whole document be marked as an exhibit unless  
14 you want to provide it, Jonathan.

15 MR. DAX: It was your request. I  
16 supplied it in response to your request very  
17 promptly. And if you -- I have no problem with it  
18 coming into the record, but I don't have copies  
19 with me.

20 MR. DREXLER: We'll have copies made  
21 right now. How many copies do we need, two, three?  
22 Who else would like copies in the room?

23 ALJ BOUTEILLER: Let's go off the record.

24 (Discussion off the record.)

25 BY MR. DREXLER:

1 Q Are you aware of the proposed location of the  
2 facility in relation to buildings along West 52nd  
3 Street?

4 A Yes.

5 Q Approximately how close to those buildings is the  
6 location of the proposed transmission facility?

7 A I do not have that technical information before me,  
8 so I hesitate to provide an answer.

9 MR. DAX: We offered Mr. Hocker up with  
10 detailed drawings that were in front of Mr. Hocker,  
11 and I think he did get some questions about it. I  
12 don't know why this transmission reliability  
13 witness is being asked questions about the  
14 proximity of the line to buildings.

15 ALJ BOUTEILLER: Mr. Dax, are you saying  
16 this is not the correct witness for those questions  
17 to be asked?

18 MR. DAX: For that particular question.  
19 If he wants to tie it to EMF issues, this is the  
20 correct witness. But if he's talking about where  
21 is the line going to be in relation to buildings,  
22 that was a Mr. Hocker question.

23 MR. DREXLER: These questions go to the  
24 EMFs.

25 ALJ BOUTEILLER: Please proceed on that

1 basis.

2 BY MR. DREXLER:

3 Q Are you aware that Exhibit 31 indicates that the  
4 facility will be located seven feet from the fronts of  
5 buildings at West 52nd Street?

6 A Subject to check, I would accept your statement.

7 Q Are you aware that Exhibit 31 also indicates that  
8 the facility be located seven feet from the fronts of  
9 buildings at 12th Avenue?

10 A Again, subject to check, I'll accept your  
11 assertion.

12 Q And assuming an offset of seven feet from nearest  
13 buildings, as indicated in that Exhibit 31, what will  
14 the magnetic field strengths related to operation of  
15 the proposed facility be at the nearest portion of  
16 occupied buildings?

17 A I do not have that information before me to provide  
18 an answer.

19 Q Do you know where that information can be found?

20 A I do not have a specific reference to any exhibit  
21 numbers, but I believe that magnetic field charts and  
22 predictive levels have been provided as part of this  
23 process.

24 MR. DAX: Exhibit 25.

25 BY MR. DREXLER:

1 Q Will the facility comply with the PSC policy  
2 standards for magnetic field strength at the nearby  
3 buildings at 52nd Street?

4 A Yes.

5 Q And also at the 12th Avenue?

6 A Yes.

7 Q I'd like to refer back to -- do you have a copy of  
8 Exhibit CH-1?

9 MR. DAX: It's Exhibit 25, for the  
10 record.

11 A Not before me.

12 Q Are you familiar with the response to that exhibit?

13 A Yes.

14 Q And I want to read the statement to you from that  
15 exhibit.

16 MR. DAX: What particular page of the  
17 exhibit or IR response?

18 MR. DREXLER: It's page 36 of Exhibit --

19 MR. DAX: 25.

20 MR. DREXLER: -- 25.

21 MR. DAX: Do you have a copy to show the  
22 witness?

23 MR. DREXLER: I'll read him the statement  
24 to see whether he's familiar with the response.

25 BY MR. DREXLER:



1 Q Therein, in part, this answer provided by you on  
2 June 2, 2009 states "the analysis shows that magnetic  
3 field strength is below the New York State interim  
4 standard of 200 milligauss in all conditions except the  
5 splice area where the cable is in a horizontal  
6 configuration. At this location the cable is an  
7 assumed depth of 4 feet and the phases are assumed to  
8 be 39 inches arc to facilitate splicing." Does that  
9 sound familiar?

10 A Yes, it does.

11 Q Is that information correct?

12 A Yes.

13 Q Would you like to revise your testimony that you  
14 just provided indicating that the facility will comply  
15 with the PSC policy standards for magnetic field  
16 strength in nearby buildings?

17 MR. DAX: There's no reason to do that.

18 He said that there'll be mitigation required.

19 BY MR. DREXLER:

20 Q What mitigation will be implemented?

21 A I do recall that there is an intention to install  
22 EMF reducing wires around those splices such as to  
23 counteract the effects of magnetic fields generated at  
24 those particular points, which will allow the project  
25 to stay within compliance, as you state.

1                   MR. DAX: Could I show the witness the  
2                   answer to the complete -- the complete answer to  
3                   the IR rather than him having to go from  
4                   recollection and getting selected quotes from  
5                   Mr. Drexler?

6                   ALJ BOUTEILLER: Yes, put it before him.

7                   MR. DAX: This is at page 36. You can  
8                   scroll up or down with these buttons.

9                   ALJ BOUTEILLER: Mr. Drexler.

10                  MR. DREXLER: Yes.

11                  BY MR. DREXLER:

12                  Q     What mitigation measures will be employed here?

13                  A     As described in the exhibit, there are several ways  
14                       to accomplish this. One could be a greater depth of  
15                       burial, reducing the distance between the phases, and  
16                       we're also offering, as part of an Attachment C, some  
17                       simple technological mitigation methods, one that I  
18                       just described earlier about counteractive EMF wiring  
19                       such as to reduce the EMF at that point.

20                  Q     What analysis have you done to conclude that these  
21                       mitigation measures will allow the PSC's policy  
22                       standards for magnetic field strength to be met?

23                  A     I think it's readily acceptable that greater depth  
24                       does, in fact, reduce the EMF at any particular point,  
25                       as does moving the phases closer together. And those

1 mitigation methods for some technological mitigation  
2 has been provided as part of Attachment C by our cable  
3 contractor, Prysmian, P-r-y-s-m-i-a-n.

4 Q Attachment C has not been included in your response  
5 here.

6 MR. DAX: We didn't include Attachment C.

7 You're right.

8 BY MR. DREXLER:

9 Q Is there anything in the record that shows that the  
10 mitigation measures will allow compliance with the  
11 PSC's policy standards?

12 MR. DAX: May I be heard, Your Honor?

13 ALJ BOUTEILLER: Mr. Dax.

14 MR. DAX: The Department of Public  
15 Service in their Exhibit PSD-03 has a certificate  
16 condition which has been -- become customary in  
17 Article 7s that I'm familiar, which is in the EMCP  
18 the applicant is bound to provide a professional  
19 engineer's certification that, if built to design,  
20 the project will comply with the interim standards  
21 for magnetic and electric fields that the  
22 Commission has established. That has been the  
23 customary approach to EMF in these projects. That  
24 was included in staff's proposed certificate  
25 conditions in this case. Applicant has accepted

1           that certificate condition and, as a result of  
2           that, one does not generally get into the details  
3           of how it's going to be done. It's left to the  
4           EMCP stage. There was extensive discovery earlier  
5           in -- more than a year ago in this proceeding in  
6           which we provided answers based upon studies that  
7           were done to respond to the discovery requests, and  
8           the record includes those. If there are  
9           attachments missing and somebody wants us to  
10          include those as an exhibit, we'll be happy to  
11          supply them.

12                   ALJ BOUTEILLER: Mr. Drexler, are you  
13          requesting Attachment C at this time?

14                   MR. DREXLER: Yes, I am requesting a copy  
15          of Attachment C be put into the record. The  
16          problem is here there is no defined design to  
17          ensure compliance. They've essentially left it up  
18          to, I guess, a decision down the road.

19                   MR. DAX: We've complied with their  
20          request. It is their condition that says do this  
21          in the EMCP. Apparently, that's not enough now,  
22          but that was a staff proposal, and we accepted it.

23                   ALJ BOUTEILLER: Okay. I'm hearing  
24          arguments that belong in briefs at this point.  
25          Okay.

1 MR. DREXLER: I'm okay with the  
2 on-the-record request.

3 ALJ BOUTEILLER: Are we reserving an  
4 exhibit number?

5 MR. DREXLER: Yes. I'd like to ask that  
6 Exhibit 86 -- Exhibit Number 86 be reserved for a  
7 copy of the October 14, 2009 transmittal from John  
8 Dax to John Egan of the New York State Office of  
9 General Services regarding the petition for a grant  
10 of easement in lands under the waters of the Hudson  
11 River, County of New York.

12 Judge, do you have a copy at this point?

13 ALJ BOUTEILLER: You're changing topics  
14 on me or not? Off the record.

15 (Discussion off the record.)

16 ALJ BOUTEILLER: Before we go on to any  
17 further matters or go back in time to perfect  
18 matters that were raised on the record before,  
19 let's continue with our consideration of Exhibit  
20 Number 25 and specifically page 36 of that exhibit  
21 where we had some cross-examination of this witness  
22 and in your cross-examination an indication that  
23 staff had not received Attachment C that was  
24 referenced on this page of Exhibit Number 25.  
25 Mr. Drexler, is that true, that you've not received

1 a copy of Attachment C?

2 MR. DREXLER: I'm not necessarily saying  
3 that I haven't received it but that the record  
4 should reflect the information contained therein.

5 ALJ BOUTEILLER: So you want to reserve a  
6 number for the record to include the Attachment C  
7 cross-referenced in Exhibit Number 25, is that  
8 correct?

9 MR. DREXLER: Yes, please.

10 ALJ BOUTEILLER: Let's reserve that  
11 number is --

12 MR. DAX: Your Honor, may I be heard,  
13 just to expand on the scope of what's coming in?

14 ALJ BOUTEILLER: Okay. Please do.

15 MR. DAX: As I said off the record,  
16 Attachment C is referenced in the response to DPS  
17 23, and Attachment C is one of several attachments  
18 to a study that was performed by David Estey,  
19 E-s-t-e-y, of RLC Engineering to respond to DPS's  
20 questions. We would propose to submit the entirety  
21 of that study, which we did not include in what has  
22 now been marked as Exhibit 25, which was done not  
23 purposefully but to reduce paper. We will now  
24 bring that in. And, yes, indeed, staff has had  
25 that. And I just would note that generally, when

1           you come to cross-examine witnesses, you should  
2           come with your documents in hand.

3                   ALJ BOUTEILLER:   Okay.   That's fine.  
4           Let's just stick to the matters at hand.   We'll  
5           reserve Number 86 for the document as described  
6           between Mr. Dax and Mr. Drexler, but let's go back  
7           in your series.   I've already reserved Number 85.  
8           Do we have the -- no?

9                   MR. DAX:   85 is the PJM costs.

10                  ALJ BOUTEILLER:   85 is PJM.   86, now, is  
11           the one you just identified, but we did have  
12           conversation and we did not have documents  
13           available, but I believe the documents are  
14           available now for inclusion in the record.

15                  Mr. Drexler, can you identify the next  
16           document that you want to include in this record  
17           that we discussed previously?

18                  MR. DREXLER:   Yes, Your Honor.   The  
19           document that is identified as an October 14, 2009  
20           correspondence between John W. Dax and John Egan,  
21           Commissioner of the New York State Office of  
22           General Services, regarding petition for a grant of  
23           easement in lands under the waters of the Hudson  
24           River, County of New York.

25                  ALJ BOUTEILLER:   87, for identification.

1 (Exhibit No. 87 was marked for  
2 identification.)

3 MR. DREXLER: Do you have copies now,  
4 Your Honor?

5 ALJ BOUTEILLER: I already have one.

6 MR. DREXLER: Okay.

7 BY MR. DREXLER:

8 Q Turning to what's been marked as Exhibit 83, these  
9 are the HTP revised certificate conditions. On page 3  
10 of 25, paragraph 8B indicates that the certificate  
11 holder shall seek to minimize electromagnetic fields by  
12 designing and constructing the transmission facility,  
13 including the cables and the manholes, as deep as  
14 practical and as close as practical to the center of  
15 the West Side Highway, taking into consideration the  
16 location of preexisting underground facilities and the  
17 requirements of the affected New York City agencies.  
18 Given the rerouting of the facility along the buildings  
19 along the West Side Highway, how can this condition be  
20 met?

21 A It's my understanding that present design,  
22 including this location that you're talking about,  
23 takes this into consideration and does meet standards.

24 Q But the line will not be located near the center of  
25 the West Side Highway, correct?



1 A As close as practical.

2 Q But the consideration is to put it as close as  
3 possible to the buildings along the West Side Highway,  
4 isn't that correct?

5 A In reading this, I could still read that to be as  
6 close as practical, taking into consideration other  
7 discussions with regards to the location of the cable,  
8 closer to the buildings than originally anticipated.  
9 However, if there was a need to modify this language  
10 for DPS, I would imagine we could discuss that.

11 Q Do you know at what distance the HTP facility will  
12 meet the PSC policy standards for magnetic field  
13 strength?

14 A I don't recall the precise distance for the  
15 standard.

16 MR. DREXLER: I have no further questions  
17 right now. Thank you.

18 ALJ BOUTEILLER: Is there cross for this  
19 witness from other parties present?

20 MR. WEINTRAUB: Not from DEC, Your Honor.

21 ALJ BOUTEILLER: If not, Mr. Dax, do you  
22 need to redirect?

23 MR. DAX: I just have one question.

24 That's with respect to the last topic about 8B.

25 REDIRECT EXAMINATION

1 BY MR. DAX:

2 Q Mr. Nash, were you directly involved in the process  
3 of applying for the revocable consent to the City of  
4 New York for permission to locate, install and occupy  
5 public streets for the location of the cable?

6 A Not personally.

7 Q Do you have a general familiarity of what that  
8 process entails?

9 A Generally.

10 Q And is it true that that process of seeking to  
11 locate and install and occupy cable -- install cable  
12 and occupy city streets for location of the cable  
13 involved consultation either directly or indirectly  
14 through New York City DOT with a number of city  
15 agencies?

16 A Yes, I'm aware of that.

17 Q Did that include the agency that controls water and  
18 sewer facilities in the city?

19 A Yes, that's my recollection.

20 Q Is that the Department of Environmental Protection?

21 A Yes.

22 Q And did it also involve consultation with other  
23 utility companies?

24 A Yes.

25 Q And did it also involve consultation with Economic

1 Development Corporation?

2 A Yes.

3 Q As well as the city DOT itself?

4 A Yes.

5 Q And do you understand that the location that has  
6 been displayed on various detailed drawings that have  
7 been marked for identification in this proceeding are  
8 the result of those consultations?

9 A I'm sorry. I do know they were involved. I'm not  
10 quite sure exactly what your question is.

11 Q Let me restate it. Are you aware -- have you seen  
12 any detail drawings that have been submitted in this  
13 proceeding to date that locate -- that show the  
14 location, the proposed location of the facility?

15 A Yes.

16 Q Do you understand that those drawings reflect the  
17 results of the consultations that we just talked about  
18 with the various agencies?

19 A Yes, they do.

20 MR. DAX: Nothing further.

21 ALJ BOUTEILLER: Mr. Drexler, anything  
22 further?

23 MR. DREXLER: No, Your Honor.

24 ALJ BOUTEILLER: Any other party? If  
25 not, Mr. Nash, you're excused, and thank you for

1 your testimony.

2 THE WITNESS: Thank you.

3 ALJ BOUTEILLER: Is there anything  
4 further from the applicant at this time?

5 MR. DAX: That is our case, Your Honor.

6 ALJ BOUTEILLER: Thank you very much.

7 Mr. Drexler, do you have a witness at  
8 this time?

9 MR. DREXLER: Yes, Your Honor, DPS staff  
10 calls Edward Schrom.

11 ALJ BOUTEILLER: Thank you.

12 MR. DREXLER: Can we go off the record  
13 for a second?

14 ALJ BOUTEILLER: Off the record.

15 (Discussion off the record.)

16 ALJ BOUTEILLER: Mr. Schrom, please  
17 stand. Please raise your right hand.

18 E D W A R D S C H R O M,  
19 having been first duly sworn by the notary public,  
20 was examined and testified as follows:

21 ALJ BOUTEILLER: Please be seated.  
22 Please state your name and your address.

23 THE WITNESS: My name is Edward Schrom.  
24 I work at the Department of Public Service, 3  
25 Empire State Plaza, Albany, New York.

1 ALJ BOUTEILLER: We'll turn to counsel  
2 for the testimony to be coming into the record.

3 DIRECT EXAMINATION

4 BY MR. DREXLER:

5 Q Mr. Schrom, do you have before you a 13-page  
6 document plus cover sheet entitled "Prepared Testimony  
7 of Edward C. Schrom, Jr."?

8 A That's correct.

9 Q Was that testimony prepared by you or under your  
10 direction?

11 A Yes, it was.

12 Q Do you have any substantive additions or  
13 corrections to make to that testimony?

14 A I have none.

15 Q If I were to ask you the questions contained in the  
16 testimony, would your answers be the same as those  
17 contained therein?

18 A Yes, they would.

19 MR. DREXLER: Your Honor, I move that the  
20 testimony of Mr. Schrom be placed into the record  
21 as if given orally.

22 ALJ BOUTEILLER: Absent objection, I will  
23 instruct the reporter to copy into the record as if  
24 given orally today the prefiled direct testimony of  
25 the staff witness, Edward C. Schrom.

1 MR. DREXLER: Thank you.  
2 (The testimony is included, as ordered.)  
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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:

Edward C. Schrom, Jr.  
Electric Operations Specialist  
Office of Electric, Gas, and  
Water  
State of New York  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350

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EDWARD C. SCHROM, JR.

1 Q. Please state your name, employer and business  
2 address.

3 A. Edward C. Schrom, Jr., New York State Department  
4 of Public Service (Department), Three Empire  
5 State Plaza, Albany, New York 12223.

6 Q. In what capacity are you employed by the  
7 Department?

8 A. I am a Power System Operations Specialist in the  
9 Bulk Electric Systems Section, Office of  
10 Electric Gas and Water.

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

13 A. I graduated from Rochester Institute of  
14 Technology with a Bachelor of Science degree in  
15 Electrical Engineering.

16 Q. Have you previously testified in other  
17 proceedings?

18 A. I have testified before the New York State  
19 Public Service Commission (Commission) on  
20 numerous Article VII transmission siting cases

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1           and numerous rate cases. I have also testified  
2           before the New York State Board on Electric  
3           Generation Siting and the Environment on Article  
4           X power plant siting cases, and before the State  
5           Energy Office in the State Energy Master Plan  
6           III proceeding.

7   Q.   Do you belong to any professional associations?

8   A.   Yes, I am a member of the Institute of  
9           Electrical and Electronics Engineers (IEEE), the  
10          IEEE Industrial Applications Society, the IEEE  
11          Dielectric and Electrical Insulation Society,  
12          and the IEEE Power Engineering Society.

13   Q.   Are you a licensed professional engineer?

14   A.   Yes. I am registered as a professional engineer  
15          in the State of New York.

16   Q.   What is the purpose of your testimony in this  
17          case?

18   A.   The purpose of my testimony in this case is to  
19          discuss the potential reliability benefits of  
20          the Hudson Transmission Partners, LLC (HTP)

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1 project.

2 Q. Has the New York Independent System Operator,  
3 Inc. (NYISO) conducted a Reliability Needs  
4 Assessment (RNA) for the New York Control Area  
5 for the next 10 years?

6 A. Yes.

7 Q. What are the conclusions of the RNA?

8 A. The RNA indicates that there is no reliability  
9 need for new capacity or transmission facilities  
10 through at least 2018. However, various  
11 sensitivity analyses performed in the RNA study  
12 indicate that capacity could be needed under  
13 certain scenarios, particularly in Zone J, in  
14 the next 10 years. These scenarios include,  
15 among others, implementation of more stringent  
16 air emission regulations, retirement of the  
17 Indian Point nuclear facility, and higher than  
18 expected load growth.

19 Q. Why is it important to look at the potential  
20 reliability impacts under various scenarios?

- 1     A.     While the RNA base case models the system based  
2           on current expectations regarding load and  
3           resource availability, it is important to  
4           understand the potential system impacts related  
5           to various possible events so that planning for  
6           those events can happen as soon as possible.  
7           Long-term outages or the retirement of large  
8           amounts of generation (i.e., 100 MWs or more) in  
9           New York City could result in the remaining  
10          resources being strained or insufficient to  
11          supply load. To maintain the reliability of the  
12          bulk system, sufficient lead-time is needed to  
13          add transmission and/or other generation, and/or  
14          secure sufficient additional demand response  
15          resources. The addition of a new generator  
16          and/or transmission line is likely to take up to  
17          five years from the point of conception.
- 18     Q.     What were the results under the RNA scenarios  
19           which modeled potential future NO<sub>x</sub> emissions  
20           limitations?

1 A. According to the RNA, implementation of programs  
2 to control NO<sub>x</sub> emissions from fossil-fueled  
3 generators could render some units unavailable,  
4 and limit other units' output, potentially  
5 resulting in inadequate resources within the  
6 control area.

7 Q. What did the scenario related to the retirement  
8 of Indian Point indicate?

9 A. Due to its location in a constrained area of the  
10 system, retirement of one of the two Indian  
11 Point nuclear plants, which are up for  
12 relicensing by the Nuclear Regulatory Commission  
13 (NRC), would result in inadequate resources in  
14 2014.

15 Q. Has the NYISO studied the reliability impacts  
16 associated with all of the potential new  
17 environmental regulations?

18 A. The NYISO is currently in the process of  
19 studying the potential cumulative impacts of  
20 various potential environmental regulations

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1 including those related to CO<sub>2</sub>, SO<sub>x</sub> and NO<sub>x</sub>  
2 emissions, New Source Review, and Best Available  
3 Control Technology (BACT) for water cooling.  
4 Generator owners will need to weigh the  
5 potential costs of the investments in the plant  
6 to meet the new regulations versus the forecast  
7 revenues from operating the plant. Potentially  
8 cost-prohibitive retrofit expenses to meet the  
9 emissions requirements could cause certain  
10 generating plants to operate less, or shut down  
11 altogether.

12 Q. Did the NYISO examine the risk that the capacity  
13 retirement would place on Zone J?

14 A. The NYISO performed an analysis to determine how  
15 much capacity would have to be taken away to  
16 cause an exceedance of the loss of load  
17 expectation (LOLE). The RNA showed that if 750  
18 MWs of capacity were retired from the lower  
19 Hudson Valley, or between 500 MWs and 750 MWs  
20 were retired in NYC in the year 2018, the

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1 resource adequacy criteria would not be met.

2 Q. Besides plant retirements, what else could  
3 impact reliability in Zone J?

4 A. If a large generator were to suffer a boiler  
5 implosion or become damaged in some way,  
6 capacity from the plant could be out for  
7 possibly some number of years.

8 Q. Are there any potential benefits available from  
9 the HTP project?

10 A. Yes. HTP may offer several potential benefits,  
11 including: 1) The ability of the back to back  
12 HVDC unit to isolate New York from disturbances  
13 in New Jersey flowing over the proposed  
14 transmission facility. For example, if New  
15 Jersey should suffer a blackout or voltage  
16 collapse problem, the terminal would isolate New  
17 York from disturbances flowing over the proposed  
18 facility. The terminal basically acts like a  
19 mechanical check valve. However, the proposed  
20 facility would not protect New York from

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1        disturbances in New Jersey flowing over other  
2        interconnections with New York, such as the "A,  
3        B, and C" lines, or the two 345 kV lines; 2) The  
4        capability of the back-to-back HVDC terminal to  
5        change the direction of flow or change the  
6        amount of flow within a half-cycle, which is  
7        faster and more controllable than a phase  
8        shifter, and allow a faster response to system  
9        conditions; 3) An additional source to Zone J in  
10       the west 49<sup>th</sup> street load center; 4) An  
11       additional source well below the often-  
12       constrained Dunwoodie interface that limits  
13       imports into Zone J; and, 5) The addition of the  
14       HVDC line has a very low contribution of short  
15       circuit current compared to an AC transmission  
16       line or a new generator, and thereby limits the  
17       amount of necessary upgrades (i.e., breaker  
18       change-outs).

19    Q.    Was it not a recommendation of various blackout  
20       reports that there is a need to isolate or block

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1 propagating disturbances from affecting other  
2 Independent System Operators (ISOs) or state?  
3 A. Reports by the various organizations, in  
4 response to the Department of Energy's 2003  
5 Blackout Report, have recommended HVDC as a  
6 method of blocking disturbances from propagating  
7 across ISOs and states. HVDC is not free  
8 flowing like AC transmission, but blocks a  
9 disturbance from propagating, and can control  
10 unwanted power flows. Unfortunately, more HVDC  
11 units would need to be installed before all  
12 unwanted flows could be prevented, or  
13 disturbances blocked on the interconnected  
14 system. Surrounding New York State, the  
15 installation of this HVDC back to back unit  
16 would be the first step in developing those  
17 systems to block disturbances from sweeping  
18 across the United States. HTP could be the  
19 first of many needed HVDC installations.  
20 Q. Have there been any applications of HVDC



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1           installed to block system disturbances from  
2           propagating in North America?

3    A.    Yes.  We currently have a HVDC back-to-back  
4           terminal in Hydro-Quebec, Canada, that prevents  
5           disturbances from propagating from Hydro-Quebec  
6           through to New York over that facility.  
7           Disturbances that have occurred on the Canadian  
8           system have not been able to propagate into New  
9           York.  Such disturbances have included voltage  
10          collapse problems, solar magnetic disturbances,  
11          and cascading transmission problems.  These  
12          events have occurred without any warning to  
13          operations personnel, but have been blocked from  
14          coming into New York.

15   Q.    Has HTP accepted its cost allocation for the  
16          class year study of 2008?

17   A.    Yes.  They have officially accepted the class  
18          year allocation of approximately 17 million  
19          dollars and have forwarded a deposit to the  
20          NYISO.

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1 Q. Have you evaluated the potential Electromagnetic  
2 Fields (EMFs) associated with the HTP line?

3 A. Yes.

4 Q. What are the results of your evaluation?

5 A. The developer will be able to meet the  
6 Commission's standard for EMFs in most  
7 instances, except for the horizontal  
8 configuration. At maximum conductor current in  
9 the horizontal configuration, the  
10 electromagnetic field as calculated would be 400  
11 mg above the conductors. HTP should be required  
12 to develop a shielding plan to reduce the  
13 electromagnetic field to a reasonable level for  
14 horizontal configurations.

15 Q. If the Commission approves the HTP line, would  
16 you recommend any conditions to ensure  
17 reliability?

18 A. Yes. The certificate conditions, identified as  
19 Exhibit \_\_ (PFD-3), in the testimony of  
20 Philip/Flynn/Davis, which I was involved in

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1 preparing, should be required as part of any  
2 certificate that may be issued.

3 Q. Has the applicant completed the System  
4 Reliability Impact Statement (SRIS) study  
5 process?

6 A. Yes. The applicant completed and received  
7 approval of its SRIS at the NYISO's Operating  
8 Committee on February 28, 2008. The SRIS shows  
9 that the project can be interconnected to the  
10 Con Edison control area reliably. However, the  
11 SRIS does not cover the operating parameters by  
12 which it will operate. Those details will  
13 follow in the facility studies that are to be  
14 conducted later.

15 Q. Do you believe that this project may be needed  
16 for reliability?

17 A. Yes, in the event that a large amount of  
18 generation is retired or experiences a long-term  
19 outage, as mentioned above.

20 Q. Does this conclude your initial testimony?

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1 A. Yes.

1 DIRECT EXAMINATION

2 BY MR. DREXLER:

3 Q Mr. Schrom, have you had an opportunity to review  
4 HTP's proposed revisions to the transmission system  
5 reliability proposed certificate conditions?

6 A Yes, I have.

7 Q I'd like to ask you just a few questions about  
8 those conditions and the terms that HTP has not agreed  
9 to within those system conditions -- or certificate  
10 conditions, excuse me.

11 ALJ BOUTEILLER: Mr. Drexler, are we  
12 still working with Exhibit Number 83?

13 MR. DREXLER: Let me confirm. Yeah, I'll  
14 work off 83, Exhibit 83.

15 ALJ BOUTEILLER: I just want clarity in  
16 the record. That's all.

17 MR. DREXLER: Yeah.

18 BY MR. DREXLER:

19 Q Now, in the conditions starting on page 18 of 25 of  
20 Exhibit 83, paragraph 54 through, say, paragraph 73 on  
21 page 24 of 25, you've noted that they have changed  
22 the -- included the word "transmission facility"  
23 throughout those conditions, is that correct?

24 A That's correct.

25 Q And in some places those conditions related to the

1 provision of information to DPS staff, correct?

2 A That's correct.

3 Q And staff, from what I understand, is interested in  
4 obtaining information relative to the associated  
5 equipment, including but not limited to the associated  
6 back-to-back HVDC terminal, is that correct?

7 A That's correct.

8 Q And the provision of that information would not  
9 provide the Public Service Commission with jurisdiction  
10 that it didn't otherwise have, would it?

11 A That's correct.

12 Q And looking specifically at paragraph 55 on page 18  
13 of 25, was this condition intended to provide  
14 information to DPS staff?

15 A This paragraph was intended to allow DPS staff to  
16 not only review what was going on at West 49th Street  
17 but the back-to-back terminal that the HTP was  
18 proposing to build with this project and the  
19 interconnection to the PSE&G system, so that we knew  
20 that work was ongoing and that the project was going to  
21 make its in service dates. In addition, if there was  
22 ever a failure, it would also allow us to visit those  
23 places to see what work was being accomplished.

24 Q In addition, this condition references proof of  
25 acceptance by Consolidated Edison?

1 A That's correct.

2 Q Why is that important to include in the certificate  
3 conditions?

4 A Because we don't want the company to be purchasing  
5 equipment or to do a design that's not acceptable to  
6 Con Edison in order to interconnect this cable or this  
7 facility to the system. We don't want them to spend  
8 money for facilities that can't be connected and then,  
9 in turn, at a later time come back and say, "well, gee  
10 we bought all this stuff and it cost us millions of  
11 dollars and we can't connect," even though it doesn't  
12 meet Con Ed's requirements.

13 Q Turning to condition -- proposed condition number  
14 56 --

15 A Yes.

16 Q -- according to the revisions provided by HTP by  
17 including this as the transmission facility, would DPS  
18 staff be allowed to inspect the portions of the  
19 facility outside of New York?

20 A According to the way this is written, that the  
21 transmission facility is only the facility that  
22 connects West 49th Street to the state line, so that  
23 would preclude us from going over and looking at the  
24 HVDC back-to-back terminal and the PSE&G substation.

25 Q Why is it important that DPS staff be allowed to

1 inspect the entire facility?

2 A DPS needs to know -- the staff needs to confirm for  
3 the Commission that the owner of the facility is doing  
4 due diligence in getting his facility constructed, and,  
5 at a later time, if there is a failure, something that  
6 DPS staff can go look and see what the failure and what  
7 the work is that is involved in making the facility  
8 back to normal.

9 Q Turning to page 21 of 25 under HTP's proposed  
10 certificate conditions, paragraph 65, is it correct  
11 that this condition leaves it ambiguous as far as  
12 who -- whether the ISO, the New York ISO or PJM will  
13 have operational control of the facility?

14 A It leaves it ambiguous as to who has the control,  
15 and we are concerned that because this is coming into  
16 the Con Edison load center in Zone J, and because Con  
17 Edison is responsible for its system, the only ones  
18 that can really have the purview of the system is the  
19 New York ISO and PJM -- I mean, New York ISO and Con  
20 Edison. Con Edison can suffer a number of different  
21 scenarios, which may be the loss of a major  
22 transmission line or something like that, and, as a  
23 result, may need the power flows reduced or changed, or  
24 there may be a knowledge of certain other transmission  
25 lines which may preclude the transfer of this capacity.



1       So we believe the New York ISO should be the operator  
2       of this cable.

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

4                       (Discussion off the record.)

5                       ALJ BOUTEILLER:  You can ask your next  
6       direct question.

7       BY MR. DREXLER:

8       Q       Turning to page 23 of 25, paragraph 66, is this  
9       condition as it was originally drafted by DPS intended  
10      to ensure that HTP would be working with Con Edison  
11      before purchasing equipment?

12      A       Yes.  This is directly -- its purpose is to have  
13      them work with Con Edison on the design to ensure that  
14      their equipment can be connected to Con Ed's system.  
15      Con Ed, after all, designed its system, and there are  
16      certain aspects that they need to know about, and those  
17      are not written into NPCC protection requirements.

18                      MR. DREXLER:  Thank you, Your Honor.  The  
19      witness is now available for cross-examination.

20                      ALJ BOUTEILLER:  Mr. Dax?

21                      MR. DAX:  Yes, I have some questions just  
22      about the supplemental direct testimony.

23      CROSS-EXAMINATION

24      BY MR. DAX:

25      Q       Good afternoon, Mr. Schrom.

1 A Good afternoon, Mr. Dax.

2 Q In response to a question about the changes that  
3 were proposed to condition 55, I think you indicated  
4 that your concern there was to make sure that DPS is  
5 provided with relevant information about the entire  
6 facility, including what's in New Jersey as well as  
7 what's in New York. Do I correctly paraphrase your  
8 previous answer?

9 A From terminal to terminal, yes.

10 Q Would you look at condition 64? And with the  
11 exception of making some what I'll call minor editing  
12 changes, would you agree with me that HTP has not  
13 proposed any deletions or substantial changes to 64?

14 A I would agree with that.

15 Q And that the -- 64 requires that the certificate  
16 holder file a copy of the following documents with the  
17 Secretary to the Commission, and then there are  
18 documents listed A through G, is that correct?

19 A That's correct.

20 Q Now, is there anything missing from that list of  
21 documents that you think should be provided that's not  
22 listed there?

23 MR. DREXLER: Essentially, the answer to  
24 this was provided in his testimony earlier.

25 MR. DAX: You didn't actually discuss 64

1 with him. You discussed other provisions but not  
2 64, and this is my opportunity to ask questions.

3 ALJ BOUTEILLER: The question will stand.  
4 I believe the question is does anything further  
5 come to mind that's of equivalent value that should  
6 be listed in addition to these documents.

7 MR. DREXLER: This may take some time.  
8 This requires him to go through all of -- the whole  
9 section that they've changed because, as I  
10 discussed in the testimony, by changing the  
11 certificate holder -- or, excuse me, the definition  
12 of "transmission facility."

13 MR. DAX: Nothing in 64 refers to the  
14 term "transmission facility," number one. Number  
15 two, if this is the provision that staff proposed  
16 in their original certificate condition proposal,  
17 where it puts us on the hook to provide copies of  
18 documents, it's the logical place for us to look to  
19 understand what we need to supply, and if there are  
20 things missing, it should be put in.

21 ALJ BOUTEILLER: It's not clear from my  
22 degree of participation to what extent the witness  
23 needs to refresh his recollection with respect to  
24 the sum and substance of everything that's going on  
25 here. Just if he can indicate for the record just

1           what comes to mind or not comes to mind immediately  
2           at this point in time, we'll have that  
3           characterization of it.

4                     Mr. Schrom, can you think of anything  
5           else, or can you tell us what kind of review would  
6           you need to accomplish to be able to respond to  
7           that question?

8                     THE WITNESS: This 55 really refers to  
9           construction activities and prior to the  
10          commencement of construction, a portion of the  
11          facility, so we're really talking prior to  
12          construction of the facility. These documents that  
13          are referred to in Section 64 are really referring  
14          to, basically, post or just before it -- really,  
15          startup of the facility.

16       BY MR. DAX:

17       Q     So it's a timing issue. 55 then -- I think you had  
18       characterized 55 in response to Mr. Drexler as an  
19       information requirement provision, but I think what  
20       you're saying now is it's really a question of the  
21       timing of certain types of information, is that  
22       correct?

23       A     That's correct.

24       Q     Let's look at 55. Let's -- just to wrap up 64,  
25       sitting there today, nothing comes to mind that would

1 be missing from the list of documents that you would  
2 want to see the applicant provide pursuant to 64, is  
3 that correct?

4 A There is nothing missing from there right now that  
5 I know of. This is the same certificate conditions  
6 that have been given to other people.

7 Q Turning to 55, do you understand that Con Edison is  
8 going to review and accept or not accept the designs  
9 for the entire facility?

10 A They are not going to do it for the entire  
11 facility. If you mean the entire facility from West  
12 49th Street and New Jersey --

13 Q Let's start there.

14 A Con Edison's responsibility, as I understand it, is  
15 for West 49th Street and the -- and what -- how the  
16 HVDC system works.

17 Q Okay.

18 A And its effect upon Con Edison's system.

19 Q Okay. So looking at 55 with respect to the changes  
20 that have been proposed by HTP today, and if you read  
21 the first three lines, "prior to commencing  
22 construction of the portion of the transmission  
23 facility associated with the cable entrance into and  
24 its termination within the West 49th Street  
25 substation," stopping right there, let's just talk the

1 extent of what your concern is with 55. Doesn't that  
2 respond to your answer you just gave, that Con Edison  
3 is interested in those portions of the facility that  
4 are at West 49th Street?

5 A No, because they would be concerned about how your  
6 terminal facilities look at the other end.

7 Q Okay. And would that be dealt with in the  
8 interconnection agreement between Con Edison and the  
9 ISO and HTP?

10 A I would expect it would, but the way a lot of these  
11 interconnection agreements go, that the interconnection  
12 agreement never seems to get finalized and construction  
13 starts of the facilities, and the interconnection  
14 agreement finally gets solidified, you know, two months  
15 before the plant goes into operation.

16 Q What projects are you referring to?

17 A Many of the transmission -- wind transmission lines  
18 that have been up, been put up, and other facilities.

19 Q Any of the interregional interconnections that --

20 A This would be the second interregional  
21 interconnection. So we're trying to have assurance  
22 that we have enough information in the right places to  
23 get the information.

24 Q Do you know whether -- are you familiar with the  
25 Neptune project?

1 A Yes, I am.

2 Q Do you know whether that interconnection agreement  
3 was signed before construction started?

4 A That, I couldn't tell you, but I am familiar with  
5 it.

6 Q Now, does Con Ed have input into the relay  
7 coordination study?

8 A That's provided to provide enough information, they  
9 have input into it. And the purpose of the relay  
10 interconnection study is to make sure you provide that  
11 information and everybody is on the same level playing  
12 field.

13 Q Aren't those requirements a requirement of the New  
14 York ISO tariff?

15 A They may be a requirement of the New York ISO  
16 tariff. We're trying to make sure it's done in time so  
17 we're not down to the last minute and somebody is  
18 screaming "well, you're holding me up." We gave you  
19 advance notice it's due by a certain period of time so  
20 that it's done prior to the time when you have to  
21 energize.

22 Q Okay. Now going back to 55, explain to me what is  
23 missing that you think Con Edison needs to approve  
24 before construction starts other than that portion of  
25 the facility associated with the entrance into and its

1 termination within the substation?

2 A As far as construction into the West 49th Street,  
3 that's all they really have to approve. But we want to  
4 make sure that the rest of this stuff is coming in.

5 Q When you say "the rest of this stuff," what are you  
6 referring to?

7 A Which is referring to the HVDC back-to-back unit  
8 and that you are doing work in New Jersey. We wouldn't  
9 want to certify one piece and then the other piece  
10 doesn't occur, and you put 50 percent in the ground and  
11 the other 50 percent never gets put down on the ground.

12 Q In your experience, is that likely to happen with a  
13 project -- revenue financed project?

14 A I have seen facilities stop. And we want to make  
15 sure that we know what's going on with this facility  
16 from day one when it starts.

17 Q What facilities were stopped?

18 A There have been other facilities that have stopped.

19 Q Can you --

20 A I don't think it's my right to say about which  
21 facilities have stopped, because we have been committed  
22 to being confidential with these people when they've  
23 had problems.

24 Q Okay. Turn to certificate condition 56. That's  
25 one certificate condition where you object to our



1 restriction of the definition of "transmission  
2 facility" to being the jurisdictional part of this  
3 interregional tie, isn't that correct?

4 A That's correct.

5 Q Now, what is 66, Subdivision 8, of the Public  
6 Service Law?

7 A You'll have to speak with my attorney.

8 Q You don't know what that means, inspection pursuant  
9 to Section 66.8? I'm just asking -- I'm asking for  
10 your understanding of this language here on this page  
11 of this exhibit. And if you don't have an  
12 understanding, you can just say that.

13 A You'll have to speak with my attorney, because I am  
14 not a lawyer. Only he can tell you.

15 Q You don't have an understanding, a laymen's  
16 understanding, of what Section 66.8 inspections consist  
17 of or authorize?

18 A I'm only authorized to inspect facilities in the  
19 State of New York, Mr. Dax. That's the legal limit of  
20 my jurisdiction. And if I walked into the State of New  
21 Jersey and start inspecting stuff, I'm sure I could be  
22 stopped very fast.

23 Q So an inspection of the facility in New Jersey  
24 would not be done pursuant to Section 66.8, isn't that  
25 correct? From what you just said, isn't that a logical

1 conclusion?

2 A I would go -- if I had to go to New Jersey for an  
3 inspection because your facility did not operate and  
4 see why and if you were doing repair work, that would  
5 be a purpose for the Commission to know that you were  
6 doing due diligence in getting the facility back in  
7 service. That would be one good example.

8 Q Would it be acceptable to you if 56 was redrafted  
9 to say that on reasonable notice to the certificate  
10 holder, Department's representatives will be allowed to  
11 visit and inspect facilities in New Jersey?

12 A I will not negotiate with you on the stand,  
13 Mr. Dax. If you want to negotiate, you have to speak  
14 with my attorney.

15 Q I'm not negotiating. I asked you a question.

16 A You'll have to speak with my attorney.

17 Q Are you refusing to answer that question?

18 A Mr. Dax, I don't know all the law, and I'm best  
19 represented by my attorney at this point.

20 Q I'm not asking for any conclusions of law. I'm  
21 asking whether you would personally, as a  
22 representative of the reliability section of the volt  
23 transmission system, Department of Public Service,  
24 would find that acceptable if we took out the reference  
25 to 66.8 and simply said that on reasonable notice

1 Department representatives can inspect facilities in  
2 New Jersey?

3 ALJ BOUTEILLER: I'll just interject at  
4 this point, the witness need not answer. He's  
5 indicating for the record that he doesn't know if  
6 that would work or not, and he thinks he needs  
7 advice of counsel to know whether or not your  
8 specific language would work for his purposes. I  
9 think the record is clear.

10 BY MR. DAX:

11 Q Go to 65, certificate condition 65. In your  
12 answers to Mr. Drexler, I came to the understanding  
13 that your position here is that you want to make it  
14 mandatory that the certificate holder arrange to have  
15 the NYISO be the system operator -- to be the control  
16 authority for the Hudson transmission facility. Is  
17 that a correct understanding?

18 A Yes, that is correct.

19 Q Are you aware of any -- are you aware of any  
20 authority that a -- one party to an interregional tie  
21 can dictate who the control authority will be?

22 A No, I am not.

23 Q Has Con Ed complained to you about condition 65?

24 A No, they have not.

25 Q Have you had any discussions with Con Ed about any

1 of the certificate conditions?

2 A We have talked about the HTP project.

3 Q Have you talked about your certificate conditions  
4 with Con Edison?

5 A I discussed with them what it would mean if, say,  
6 PJM were to be the operator. And the concern that came  
7 to my mind immediately was the fact that if you start  
8 pumping all this capacity into Con Edison, they have no  
9 eyesight into the Con Edison area in seeing how the  
10 system is, or should there be a failure of a cable or a  
11 device that has -- causes any other facility to go over  
12 its limits, it would be impossible for PJM to see it.  
13 And, as a result, I think it's best left with the New  
14 York ISO, who has visual limits, and Con Edison, who  
15 has visual limits of the facilities that are in there.

16 Q Now, was that your concern, or was that a concern  
17 expressed by Con Edison?

18 A They agreed with me that it's a concern.

19 Q Who did you talk to?

20 A I talked to the operators.

21 Q Specific names?

22 A No, I don't.

23 Q I think you said you're familiar with the Neptune  
24 system, is that correct?

25 A I'm familiar it exists.

1 Q Is that it? Are you familiar with how it's  
2 operated?

3 A No, I have never seen the operational agreement.

4 Q Are you familiar with how it's controlled by PJM?

5 A No, I'm not.

6 Q Are you familiar with the communication links  
7 between LYPA and PSEG and Neptune?

8 A I know that there's a fiber cable running between  
9 them.

10 Q Do you know what its purpose is?

11 A The certificate condition was to have it be a  
12 communication link and for a protective relay.

13 Q What does "protective relay" mean?

14 A It means those elements which guard the system and  
15 measure the amount of power going back and forth and  
16 then, in turn, take action should the power not be  
17 equal.

18 Q And is that protective relaying -- does that  
19 protective relaying include a continuous communication  
20 link?

21 A It is a continuous communication link. Should the  
22 guard tones go away, then the protection system knows  
23 there's a problem.

24 Q Are you familiar with whether -- do you know  
25 whether or not operators at LYPA and operators at

1 PSEG -- or not PSEG -- First Energy -- excuse me --  
2 First Energy is the counterparty to Neptune --  
3 operators at First Energy, operators at LYPA and  
4 Neptune operators are in constant communication?

5 A I would hope so.

6 Q And that would address this concern that you just  
7 had about what's addressed in your version of 65, isn't  
8 that true?

9 A I can't agree.

10 Q Why not?

11 A Because I believe that there -- PJM cannot see into  
12 New York. It can't see the Con Edison service area.  
13 The only one that can see the Con Edison service area  
14 is the New York ISO and Con Edison and, therefore, they  
15 cannot see what the limiting facility is.

16 (Discussion off the record.)

17 Q Do you know whether, beyond the Neptune  
18 interconnection and whatever might become of the HTP  
19 connection, whether the ISO, the New York ISO and PJM  
20 have communication protocols?

21 A Do they have communication protocols? I don't know  
22 what you mean by "protocols."

23 Q Do they communicate with each other?

24 A They communicate all the time. They have hot  
25 lines.

1 Q Continuously?

2 A No.

3 Q Only through hot lines?

4 A They continue -- let's stop before we get carried  
5 away. They have schedules. Those are called the DNIs.  
6 They have set schedules about the transactions will be  
7 in which directions at what hours. Then, if there's a  
8 change, they pick up the hot line and they talk verbal  
9 to verbal.

10 Q And a change could be a problem on a system on  
11 either side of the border, right?

12 A It could be. And sometimes you don't get any  
13 communication. You sit there and you react to what you  
14 see.

15 Q And why would that be -- why would New York be  
16 better able to deal with that than PJM, given that  
17 conditions could change on either side of the border?

18 A Because, again, you're trying to push this power to  
19 Con Edison and have everything that you've made  
20 representation is that all -- you are pumping power  
21 into Con Edison. Con Edison and the New York ISO are  
22 the only ones that have visualization of the Con Ed  
23 system. PJM has no visualization of the Con Ed system.

24 Q And if in the absence of -- let's -- why don't you  
25 define what "visualization" means?

1     A     That is to see every bus, to see every breaker  
2     position, to see every line and how many megawatts it's  
3     carrying, what direction the flow is, if a facility  
4     drops out of service, what the flow is redistributed at  
5     and if any facility goes over short time or long time  
6     emergency ratings.

7     Q     In case one of those contingencies were to happen,  
8     explain for the record two different scenarios. In  
9     each of these two scenarios explain how the operators  
10    would react. One is the scenario in which PJM is the  
11    control authority, and one is the scenario in which New  
12    York ISO is the control authority. And now you've had  
13    this contingency event, like you listed, has happened  
14    on the Con Ed side. Explain how the operators would  
15    react in each of those scenarios.

16    A     I don't know exactly how those operators will  
17    react. The only thing I can say is that if it became  
18    an emergency such that you went over a rating, then the  
19    New York ISO would see it and then, in turn, they would  
20    have to call PJM and say "you got to back off and get  
21    our flows down to a reasonable level that you're  
22    shipping to us."

23                               (Discussion off the record.)

24    Q     Are those -- are those types of contingency issues  
25    identified in the SRS process?



1     A     The SRS process does evaluate some contingencies.  
2     It does not operate -- it does not evaluate operating  
3     contingencies, which is a different level. Operating  
4     contingencies involve all the various pieces of  
5     equipment and involve all the various equipment that  
6     could be out or bus faults or anything else that could  
7     happen. They are a much more rigorous type of  
8     analysis.

9     Q     So what we're left -- I think you've stated the  
10    difference is -- between my two scenarios is in the  
11    case of an operating contingency in the one situation,  
12    there would have to be a call made over the hot line to  
13    PJM. In the other case, presumably, that phone call  
14    would not have to be made. Is that correct?

15   A     I don't follow you.

16   Q     Let's go back to --

17                 MR. DAX: I would like to have his answer  
18    reread from several questions ago when I asked the  
19    question about two different scenarios.

20                 ALJ BOUTEILLER: Can you find that?

21                 (Whereupon, the following answer was  
22    read:

23                 "ANSWER: I don't know exactly how those  
24    operators will react. The only thing I can say is  
25    that if it became an emergency such that you went

1           over a rating, then the New York ISO would see it  
2           and then, in turn, they would have to call PJM and  
3           say 'you got to back off and get our flows down to  
4           a reasonable level that you're shipping to us.'")

5   BY MR. DAX:

6   Q    My question is, that's the difference between the  
7       two scenarios? A call would have to be made to another  
8       control authority in the one scenario and not in the  
9       other scenario?

10   A    You mean if PJM was the control?

11   Q    Yeah, that's the scenario that we were talking  
12       about.

13   A    If -- in that ne particular one that she just read  
14       back, if PJM was the control -- no, I think we answered  
15       that was the New York ISO was in control, they would  
16       call PJM, and if PJM was the control, you would end up  
17       almost doing the same thing.

18                   MR. DAX: I have no further questions,  
19       Your Honor.

20   A    But --

21   Q    I'm sorry. Go ahead. I didn't mean to interrupt  
22       you. I thought you were done.

23   A    I know you always want to run me over. The problem  
24       is that, really, PJM would not have the visualization  
25       that New York has and could take actions of their own

1 with such a condition, whereas PJM, you're forced --  
2 they have -- they're only controlling their side to the  
3 full -- you know, to the full amount, and New York  
4 could take other actions based upon redispatch or  
5 something else in order to limit the amount.

6 Q In both case -- I'm sorry. You want to complete  
7 your answer?

8 A Go ahead.

9 Q Are you done?

10 A Yes.

11 Q In any event, you've already agreed that there is  
12 continuous communication between the two control  
13 authorities, isn't that correct?

14 A I would never admit that there is totally  
15 continuous communication. As I said in the beginning,  
16 there are times when the operators don't talk and they  
17 take actions of other means.

18 As an example, you could all of a sudden lose a  
19 unit and all the operators on the floor are busy in PJM  
20 trying to recuperate from a major lost unit. They  
21 start pulling on New York and our operators go "well,  
22 you must need capacity and we have it available" and we  
23 just ship it. They don't necessarily talk.

24 Q So contingencies can happen on either side of the  
25 interregional seam, isn't that correct?

1     A     That's correct, but it can have detrimental  
2     effects. And if you are being hurt, you need -- you're  
3     going to have to take some sort of action. And if that  
4     hurt is so bad, you may have to either open other  
5     breakers or you may -- it's not an easy scenario for  
6     either side.

7     Q     And you're a New York regulator, so your concern is  
8     New York, isn't that correct?

9     A     My concern is the Consolidated Edison Company and  
10    its customers. I'm concerned about the system  
11    reliability and integrity of the New York system.

12                 MR. DAX: Nothing further.

13                 ALJ BOUTEILLER: Does any other party  
14    have questions for this witness? If not, you can  
15    approach your counsel and the two of you can  
16    consider the need for redirect.

17                 MR. WEINTRAUB: Your Honor --

18                 ALJ BOUTEILLER: Did you have some?

19                 MR. WEINTRAUB: Yes.

20                 ALJ BOUTEILLER: I'm sorry.

21                 MR. WEINTRAUB: Is it okay to ask  
22    questions of other parts of Mr. Schrom's testimony?

23                 ALJ BOUTEILLER: This is the time.

24                 MR. WEINTRAUB: Okay. I know it's late,  
25    so I wanted to be careful.

1 CROSS-EXAMINATION

2 BY MR. WEINTRAUB:

3 Q Mr. Schrom, on page 4 through 5 of your testimony,  
4 your initial testimony, you were asked, starting on  
5 page 4, line 18, what were the results under the RNA  
6 scenarios which modeled potential future NO<sub>x</sub> emissions  
7 limitations, and you answered, "According to the RNA,  
8 implementation of programs to control NO<sub>x</sub> from fossil  
9 fuel generators could render some units unavailable and  
10 limit other units' output, potentially resulting in  
11 inadequate resources within the controlled area." In  
12 answering that question, did you -- had you reviewed  
13 what has been marked as Exhibit 81, which is the  
14 General Electric Report on Assessment of Proposed NO<sub>x</sub>  
15 RACT Regulations on Emissions, Costs of Electricity and  
16 Electric System Reliability? And I can show you the  
17 document if you'd like.

18 A No, I did not. I reviewed only the RNA.

19 Q Thank you. And the second question that follows  
20 after that, on page 5, what did the scenario that you  
21 were asked -- what did the scenario related to the  
22 retirement of Indian Point indicate, and you answered,  
23 "Due to its location in a constrained area of the  
24 system, retirement of one of the two Indian Point  
25 nuclear power plants which are up for relicensing by

1 the Nuclear Regulatory Commission would result in  
2 inadequate resources in 2014." My question is, do you  
3 have any specific information indicating the date when  
4 Indian Point is supposed to retire?

5 A Do I have on me dismissive dates, no. I reviewed a  
6 document which showed the dates, but we just chose that  
7 as the date. They're both very close to that date.

8 Q When the date -- let me just -- clarification. You  
9 chose 2014 as a date in that answer because you had  
10 reviewed something that said Indian Point is supposed  
11 to retire before that date?

12 A Supposed to retire -- not retire in 2014, but  
13 they're up for relicensing. If they don't get the  
14 relicensing, then in 2014 they would retire.

15 Q Okay. So your answer was based upon your  
16 conjecture regarding whether Indian Point would be  
17 relicensed or not?

18 A That's correct.

19 Q Thank you.

20 MR. WEINTRAUB: That's all, Your Honor.

21 ALJ BOUTEILLER: Mr. Drexler, you can  
22 approach the witness.

23 MR. DREXLER: Does anybody else --

24 ALJ BOUTEILLER: Go ahead.

25 (Discussion off the record.)

1 ALJ BOUTEILLER: Let's ask Mr. Drexler if  
2 he has any further redirect for this witness?

3 MR. DREXLER: No, we have nothing further  
4 for Mr. Schrom. Thank you.

5 ALJ BOUTEILLER: Okay. So that does not  
6 open up for any further questions.

7 And I want to thank you for your  
8 testimony. You are excused.

9 Is there anything else we need to put  
10 into the record from the staff?

11 MR. DREXLER: Yes, Your Honor.

12 ALJ BOUTEILLER: Okay. No more  
13 witnesses, right? We've taken care of all your  
14 witnesses?

15 MR. DREXLER: All the witnesses have  
16 been -- have testified and their testimony has been  
17 entered into the record.

18 ALJ BOUTEILLER: You have some proposed  
19 exhibits?

20 MR. DREXLER: I have one proposed  
21 exhibit.

22 ALJ BOUTEILLER: Can you describe it for  
23 us, please?

24 MR. DREXLER: Yes. I will bring copies  
25 up in just one second. The description would be

1           they contain the label at the top, the exhibit  
2           identified as LPG-7, 16-page document which  
3           includes a number of generators that could be  
4           potentially dispatched as a result of the operation  
5           of HTP, changes in dispatch among those generators.

6                   ALJ BOUTEILLER:   Okay.   If you'll  
7           distribute it, and as soon as we get it, I'll give  
8           it the next number for identification.

9                   MR. DAX:   Are you changing it, or is it  
10          the same one?

11                  MR. DREXLER:   No, it's the same one.   We  
12          just didn't get it in before.

13                  ALJ BOUTEILLER:   Thank you.   The next  
14          number available is Number 88 for identification.

15                  MR. DAX:   Your Honor, can we go off the  
16          record for a minute?

17                  ALJ BOUTEILLER:   Off the record.

18                               (Discussion off the record.)

19                  ALJ BOUTEILLER:   Staff, is that the last  
20          exhibit you want to proffer at this time?

21                  MR. DREXLER:   Yes, Your Honor.   Thank  
22          you.

23                  ALJ BOUTEILLER:   Mr. Dax, do you have  
24          some exhibits to offer?

25                  MR. DAX:   Yes, I do.   I have two



1 exhibits. The first one is a response by DPS  
2 witnesses Quackenbush and Maxx to Information  
3 Request HTP 3, and the question that I was  
4 particularly interested in was the -- we had  
5 elicited from them information about what dates to  
6 the site the staff made visits to the area  
7 including the DeWitt Clinton Park, and there was  
8 some discussion of that on the record the other  
9 day, and I thought it would be useful to have this  
10 brought into evidence as an exhibit. So I would  
11 ask that Exhibit 89 be applied to the response to  
12 HTP 3.

13 ALJ BOUTEILLER: Okay. Do you have two  
14 copies for me?

15 MR. DAX: I do.

16 ALJ BOUTEILLER: Thank you.

17 MR. DAX: And I also have a document  
18 which consists of Information Request HTP 9  
19 addressed to the Independent Power Producers of New  
20 York and a one-page objection by the Independent  
21 Power Producers, and I ask that this document be  
22 marked for identification as Exhibit 90.

23 ALJ BOUTEILLER: We'll mark it for  
24 identification.

25 (Exhibit No. 90 was marked for

1 identification.)

2 ALJ BOUTEILLER: Before we turn to any  
3 other matters concerning taking official notice on  
4 the record, are there any other proffered exhibits  
5 at this time?

6 MR. LEVENSON: Your Honor, I was just  
7 going to ask you, at the beginning of today you  
8 talked about exhibits that didn't make it into the  
9 transcript. Did you want to handle that now?

10 ALJ BOUTEILLER: Yeah, let's handle that  
11 now. I know you're here. You can take care of one  
12 of the two I had in mind. But we're at the same  
13 location, so let me prep that and then I'll engage  
14 you in the conversation as well.

15 Our court reporter from the New York City  
16 location has been working diligently on the  
17 transcripts for this hearing. In the process of  
18 doing so, he's run into a couple of difficulties in  
19 trying to reproduce the official transcript to be  
20 exactly that which was provided in prefiled  
21 testimony or the documents that were submitted in  
22 advance of the hearing. I want to reserve a  
23 number, and we will fulfill it with information  
24 that won't come as any surprise to anyone, but  
25 Exhibit Number 91 will be used to incorporate into

1 the record some documents or some information we're  
2 having difficulty including in the prefiled  
3 testimony. With respect to the New York City  
4 Economic Development Group, they offered a panel of  
5 witnesses, Neiman and Russo. The prefiled  
6 testimony of Neiman and Russo contained four  
7 tables. Those four tables are not reproducible  
8 using the kind of software or transcribing  
9 equipment that's available to our New York City  
10 reporter. In light of that, I will copy those  
11 tables and make them each a portion of Exhibit  
12 Number 91 in this case. So each party present can  
13 reproduce or replicate or prepare for yourselves an  
14 equivalent Exhibit 91, which will consist of the  
15 table number 1 on page 6 of the Neiman/Russo  
16 testimony, table number 2 of page 7 of the  
17 Neiman/Russo testimony, table 3 on page 10 of the  
18 Neiman/Russo testimony, and table 4 on page 11 of  
19 that testimony. I will make physical copies of  
20 those, and those will be incorporated in the record  
21 as exhibits in case whoever turns to the transcript  
22 has difficulty finding the information where we  
23 would have preferred to have it located.

24 We have a comparable difficulty  
25 associated with a table that exists in the prefiled

1       brief of the New York Power Authority. You had a  
2       chart on page 8 that we're not being able to  
3       produce within the transcript. I would propose  
4       that we make that Exhibit Number 92 in this case,  
5       and if I can provide the copy for the official  
6       report -- a copy kept for the Secretary, each of  
7       the parties can put on their list of exhibits that  
8       page or, at a minimum, that chart will be included  
9       in Exhibit Number 92. One second, please.

10               (Off the record.)

11               ALJ BOUTEILLER: Back on the record,  
12       before we turn to matters of official notice, let's  
13       see what the status is with respect to the exhibits  
14       that we've identified for today. We started out  
15       with Exhibit Number 70. We reserved a few exhibits  
16       for information to be provided by the parties, and  
17       I'll entertain any objections to any of the numbers  
18       that have been identified now.

19               Mr. Johnson, did you have an objection?

20               MR. JOHNSON: I was just concerned about  
21       the relevancy of IPPNY's objection to HTP-09.

22               ALJ BOUTEILLER: Off the record.

23               (Discussion off the record.)

24               ALJ BOUTEILLER: You're referring to  
25       Exhibit Number 90, and you want to -- you want

1           counsel to explain the reference or the need for  
2           this exhibit in the record?

3                     MR. JOHNSON:   Yes.

4                     ALJ BOUTEILLER:   Mr. Dax?

5                     MR. DAX:   IPPNY intervened on the  
6           question of competitive impacts and targeted the  
7           contract between HTP and NYPA at a time when there  
8           is not a near term reliability need for additional  
9           capacity as a competitive issue.  We asked -- in  
10          our Information Request we asked IPPNY to identify  
11          which of its members have power purchase agreements  
12          with Zone J incumbent utilities, such as Con  
13          Edison, LYPA and -- Zone K and Zone J, such as  
14          LYPA, NYPA and Con Edison.  We thought that was  
15          relevant to the issue of fixed long-term contracts  
16          and whether there's a competitive impact from them.

17                    It's our position that there are several  
18          IPPNY members that have such contracts to recover  
19          costs and that -- I mean, while hypocrisy is not  
20          grounds for disqualification, it certainly is  
21          relevant to inform the Commission when somebody is  
22          making -- protesting about competitive impacts and  
23          doesn't want to disclose their own members' fixed  
24          power purchase agreements, we think that that is  
25          relevant.  At least it tends to give color to the

1 nature of the argument that's being made by IPPNY.

2 ALJ BOUTEILLER: So the exhibit gives you  
3 the foothold for purposes of making your argument?

4 MR. DAX: That's right.

5 ALJ BOUTEILLER: Mr. Johnson?

6 MR. JOHNSON: Well, in response to that,  
7 I can't identify any particular contracts, but I  
8 can say that some of the contracts were signed long  
9 ago pursuant to Section 66C of the Public Service  
10 Law. These are so-called PRPA contracts. There  
11 have been recent contracts that were signed with  
12 Long Island Power Authority for purposes of meeting  
13 reliability needs.

14 I think the information that Mr. Dax  
15 seeks, there's no way for him to demonstrate that  
16 these particular contracts are the type of contract  
17 that the New York Power Authority would enter into  
18 with HTP, which we're alleging is a non-economic  
19 contract, a contract that is designed to suppress  
20 clearing prices in the New York City region and is  
21 not designed to meet reliability need, and whose  
22 costs are greater than the direct benefits to  
23 consumers and the production costs savings. The  
24 contracts that John Dax is seeking, there's no way  
25 he'll be able to show any of that information.

1                   MR. DAX: That was not the grounds for  
2                   their objection, Your Honor. I guess until we got  
3                   the contracts -- and all we asked for -- we asked  
4                   for several things. We asked for the name of the  
5                   counter-party, the name of the project, and the  
6                   megawatt size of the contract and the term. Now,  
7                   with that as a starting point, we probably would  
8                   have been able to figure out when the contracts  
9                   were executed and what the reliability needs were  
10                  at that time. And so we could have made a number  
11                  of arguments.

12                 IPPNY's objection was not based upon the  
13                 argument that Mr. Johnson is now raising about how  
14                 limited the usefulness of it would have been.  
15                 Their argument is that they had no obligation to  
16                 divulge their members' contracts in this  
17                 proceeding. So I think it's a disingenuous  
18                 argument because whether or not we were able to  
19                 make use of and how we might make use of the  
20                 contracts isn't at issue. They simply weren't made  
21                 available to us.

22                 MR. JOHNSON: We did argue, though, it's  
23                 not relevant nor material.

24                 ALJ BOUTEILLER: Okay. I guess we're  
25                 previewing the arguments that are going to get

1 further hearing, I guess, in the briefs that will  
2 come in the case. I'm going to rule Exhibit 90 not  
3 only can be identified, it can be admitted into  
4 evidence to be used for whatever arguments the  
5 parties think that it needs to. I'm not making any  
6 determination that those are good arguments or bad  
7 arguments. The only determination I'm making at  
8 this point is we'll hear the arguments and we'll  
9 consider them in due course. So at least for that  
10 minimal purpose, if not for others, it will allow  
11 Exhibit 90 to be in evidence in this case.

12 We've reserved a number of items for  
13 numbers for exhibits to be coming in. With respect  
14 to them and with everything else that's been  
15 identified today, just I'll just note on the record  
16 that we moved the exhibits on Thursday afternoon,  
17 so we're good to 69. Now at this point I'm  
18 wondering, is there any reason why we should not  
19 move into evidence any exhibit subsequent to 69,  
20 that being Number 70 through 92, with the knowledge  
21 that some of these numbers are being reserved? If  
22 there is no objection, if there are no arguments,  
23 then we'll consider all the documents that we've  
24 received and numbers we've given them for  
25 identification will, in fact, be evidence and



1 exhibits in this case.

2 (Exhibits Nos. 70 through 92 were  
3 received in evidence.)

4 ALJ BOUTEILLER: The onus is on those  
5 parties who have reserved a number to timely  
6 provide us the documents that they have asked the  
7 number be reserved. Please provide a cover letter  
8 reminding us of the reserved number for your  
9 document when you provide it. And, of course,  
10 you'll provide all information to all active  
11 parties here. If you'll provide me the official  
12 copies to include in the record, I'll forward it to  
13 the Secretary.

14 I think that takes us past the time of  
15 exhibits. Now let's talk about matters of official  
16 notice.

17 Mr. Weintraub.

18 MR. WEINTRAUB: Yes. Your Honor, DEC has  
19 several documents which it would ask that -- would  
20 ask that official notice be taken of. They are New  
21 York State Department of Environmental  
22 Conservation, Division of Water, Technical &  
23 Operational Guidance Series, summarized as TOGS,  
24 and in the list of exhibits we provided -- before  
25 the hearing we identified a website. I could state

1           that website for the stenographer, if that's how  
2           you wish me to proceed.

3                   ALJ BOUTEILLER:  Let's go off the record  
4           and we'll have you just recite them for her off the  
5           record, and then, when we come back on the record,  
6           we'll just confirm that that's what you've done,  
7           okay.  So let's go off the record.  Off the record.

8                   (Discussion held off the record.)

9                   <http://www.dec.ny.gov/chemical/28677.html>

10                  <http://www.dec.ny.gov/regulations/2652.html>

11                  ALJ BOUTEILLER:  Just for the convenience  
12           of everyone, let me explain what we've done.  DEC  
13           has two series of Technical & Operational Guidance  
14           Series called TOGS.  The address for each has been  
15           copied into the record.  That's where these series  
16           can be located on the Internet.  And it's with that  
17           location that you've asked us to take official  
18           notice of these series, is that correct?

19                  MR. WEINTRAUB:  Yes, Your Honor.

20                  ALJ BOUTEILLER:  Okay.  Your request is  
21           reflected on the record.  And the record will also  
22           reflect no objection from the parties present.

23                  Do you have other pieces of information  
24           you want the Commission to take official notice of?

25                  MR. WEINTRAUB:  Yes, Your Honor.  The

1           third -- there's a third document in that series,  
2           New York State Department of Environmental  
3           Conservation, Division Of Water, Technical &  
4           Operational Guidance Series 1.310. That is not on  
5           the web, but I have -- we have downloaded the  
6           document onto a CD and distributed it to the  
7           parties here, and I can provide that to Your Honor.

8                     ALJ BOUTEILLER: I'll take one or two of  
9           your disks. The record will reflect that you're  
10          requesting us to take official notice of an  
11          additional Technical & Operational Guidance Series.  
12          You've provided it by disk to the parties present,  
13          and you've provided me copies, one to be included  
14          with the official file, and I'll keep one for my  
15          own personal use if I need to make reference to  
16          that information. Do you have further items?

17                    MR. WEINTRAUB: Yes, Your Honor. On that  
18          same disk we have included -- if we can go off the  
19          record.

20                    ALJ BOUTEILLER: Off the record.

21                    (Discussion off the record.)

22                    ALJ BOUTEILLER: Counsel, from the  
23          description paper that you've provided in advance,  
24          it's clear to me that you have additional  
25          information on that disk, and we don't need to

1           belabor the inclusion of Volume I of the State  
2           Energy Planning Board document or the copy of the  
3           Executive Order Number 24 that you've included on  
4           the disk as well. Why don't you reference for the  
5           record and provide other counsel the courtesy of  
6           knowing your reference to a PSC case?

7                   MR. WEINTRAUB: PSC case 07-M-0548,  
8           Proceeding on Motion, and that's the EEPS -- it's  
9           the EEPS case, and so we would ask that you take  
10          judicial notice of that case.

11                  ALJ BOUTEILLER: Okay. And the documents  
12          that you want parties to be aware of are included  
13          on that disk.

14                  MR. WEINTRAUB: Yes, Your Honor.

15                  ALJ BOUTEILLER: And for the reporter's  
16          purposes, it's E-E-P-S, Energy Efficiency Portfolio  
17          Standard.

18                  Is there anything else on that disk?

19                  MR. WEINTRAUB: One more, Your Honor, one  
20          more document, and that's the New York State  
21          Implementation Plan for PM -- stands for  
22          particulate matter -- 2.5 and Ozone, and that --  
23          and we would ask that judicial notice be taken of  
24          that document. We've provided a website which I  
25          can hand to the stenographer, and it's also on the

1 CD.

2 ALJ BOUTEILLER: Since it's on the CD, we  
3 can take official notice of it on that location.  
4 And just for the convenience of the parties using  
5 this record, I'll ask you to give the web  
6 description or address to the reporter, and we'll  
7 have her copy it into the record. We can do that  
8 now.

9 [www.dec.ny.gov/chemical/60541.html](http://www.dec.ny.gov/chemical/60541.html)

10 ALJ BOUTEILLER: Anything further?

11 MR. WEINTRAUB: That's all, Your Honor.

12 ALJ BOUTEILLER: Okay. Staff counsel,  
13 did you have anything?

14 MR. DREXLER: No, Your Honor.

15 ALJ BOUTEILLER: You're working with the  
16 exhibits.

17 Mr. Levenson.

18 MR. LEVENSON: Yes. I request we take  
19 official notice of a New Jersey Board of Public  
20 Utilities case. Developments of this case has to  
21 do -- it's the siting of the Susquehanna Roseland  
22 line, and it relates to discussion in this case  
23 about whether there was so-called leakage of CO<sub>2</sub>  
24 emissions into eastern PJM. And this is a recent  
25 Order from the BPU of New Jersey, and I have a

1 citation and a docket number. If that's  
2 sufficient, I'll --

3 ALJ BOUTEILLER: Can you provide the  
4 citation for the record, please?

5 MR. LEVENSON: It is docket number  
6 EM 09010035 in the Matter of Petition of Public  
7 Service Electric Gas Company for the termination  
8 pursuant to provisions of NGSA 40:55-D-19  
9 (Susquehanna Roseland transmission line) from the  
10 Board Of Public Utilities, issuance on February 11,  
11 2010.

12 ALJ BOUTEILLER: Did you say you had  
13 courtesy copies available?

14 MR. LEVENSON: I do not, Your Honor.

15 ALJ BOUTEILLER: Okay. We have the  
16 description for the record. Let's go off the  
17 record for a second.

18 (Discussion off the record.)

19 ALJ BOUTEILLER: While off the record we  
20 discussed the courtesy that counsel for Power  
21 Authority will provide, which means that he has  
22 this decision available electronically and he plans  
23 on sending it electronically to the parties  
24 present.

25 Mr. Johnson, anything further, official

1 notice or anything?

2 MR. JOHNSON: No, thanks.

3 ALJ BOUTEILLER: Mr. Dax?

4 MR. DAX: Yes, thank you, Your Honor. I  
5 have three documents that I would like official  
6 notice taken of.

7 In cross-examination of Mr. Maxx  
8 concerning the authority of the Commission to  
9 authorize the occupation of public parkland, he  
10 referred in an answer to case -- PSC case 70365,  
11 New York Power Authority, Cable Sound Crossing  
12 Project. I have an 11-page excerpt of the  
13 memorandum from -- which it doesn't really indicate  
14 where -- who it's to, but it's from Frank S.  
15 Robinson, Administrative Law Judge, and it's part  
16 of a much larger document that is in the  
17 Commission's files under that docket number. And I  
18 only am offering this excerpt because it deals with  
19 the question of the parkland alienation issue.  
20 Apparently, there were -- there was a decision to  
21 site this transmission line in a county park known  
22 as Twin Creeks, and objections were made by  
23 municipalities to that.

24 In a footnote on page 11, which is on the  
25 fourth page of this excerpt, there's a footnote in

1       which Judge Robinson says, "The municipalities  
2       state that Twin Lakes Park is a dedicated  
3       Westchester County parkland and that park areas in  
4       New York State are impressed with the public trust  
5       with their use for other than park purposes  
6       requiring the direct and specific approval of the  
7       legislature."

8               Same footnote, new paragraph, "Applicant  
9       replies," applicant being the Power Authority,  
10      "replies that the rules cited by the municipalities  
11      does not apply to a taking by the State as would be  
12      the case here." That is the end of the discussion  
13      that we could identify in this entire document, and  
14      I would ask that judicial -- official notice be  
15      taken of the entire document, and I have the  
16      relevant excerpts here to distribute.

17             ALJ BOUTEILLER: Okay. Distribute the  
18      documents, and the only question I have is, is  
19      this, if you know, a recommended decision or a  
20      final determination by the agency?

21             MR. DAX: You know, I'm a little  
22      mystified myself as to what this is because it's  
23      not in a form that I'm familiar with. I have  
24      somebody checking that out, as a matter of fact.

25             ALJ BOUTEILLER: Okay. And we'll hear



1       about it in your brief, but you've got courtesy  
2       copies for everyone present. You've explained its  
3       location and source and its public existence, so we  
4       have the document for official notice.

5               MR. DAX: As you know, we filed a  
6       prehearing Memorandum of Law in which we addressed  
7       this parkland alienation issue. And further  
8       efforts in our research have uncovered two other  
9       documents that I would like official notice taken  
10      of. The first one is a November 30, 2007 advisory  
11      ruling by the DEC general counsel Allison Crocker,  
12      addressed to the Executive Director of New Yorkers  
13      for Parks, which appears to be an advocacy -- a  
14      park advocacy group located in New York. And this  
15      document is, in its entirety, four pages -- a  
16      four-page letter in which Ms. Crocker makes  
17      reference to, among other things, an Office of  
18      Parks, Recreation and Historic Preservation  
19      handbook on the alienation and conservation of  
20      municipal parkland. And I would ask that official  
21      notice be taken of this advisory ruling. Do you  
22      need two copies?

23             ALJ BOUTEILLER: Yes, please. And next?

24             MR. DAX: Then I have that handbook on  
25      Alienation and Conversion of Municipal Parkland

1 prepared by the New York State Office Of Parks,  
2 Recreation and Historic Preservation, content --  
3 the cover sheet says "Content revised April 1,  
4 2005," and I ask that that document, which is --  
5 it's thirty -- I think 35 pages of text followed by  
6 several appendices -- ask that that document --  
7 that official notice be taken of that document as  
8 well.

9 ALJ BOUTEILLER: Is that it, Mr. Dax?

10 MR. DAX: That's it.

11 ALJ BOUTEILLER: Before we turn to the  
12 matter of briefs and their due dates in this case,  
13 is there anything further I need to consider for a  
14 full and adequate record for submission to the  
15 Commission?

16 Mr. Drexler.

17 MR. DREXLER: Yeah. I just want to  
18 follow up on HTP's offer to provide Commissioner  
19 Curry additional information. I wanted to know  
20 what that process was going to be and whether the  
21 parties would be given an opportunity to respond to  
22 that.

23 ALJ BOUTEILLER: It's an inquiry that  
24 you've just made of the applicant, and if the  
25 applicant is prepared to respond to you, we'll

1           entertain the response, but there's no duty or  
2           obligation at this point.

3                   MR. DAX: We haven't had time to confer  
4           amongst each other -- amongst ourselves. And I'm  
5           not in a position to respond but, of course,  
6           anything would be done to all -- on notice to all  
7           parties before we would contact Your Honor or  
8           anybody else.

9                   ALJ BOUTEILLER: Okay. So we have an  
10          update on the status of the -- into the interaction  
11          that we had with Commissioner Curry during the  
12          hearing last week, and there has been no further  
13          development along those lines.

14                   MR. DREXLER: That doesn't answer my  
15          question about what process would we be allowed.  
16          Are we going to --

17                   ALJ BOUTEILLER: Let's go off the record.  
18                   (Discussion off the record.)

19                   ALJ BOUTEILLER: While off the record we  
20          discussed the circumstances presented by the  
21          appearance of Commissioner Curry at the hearing and  
22          whether or not there will be any proceedings or any  
23          process oriented around the Commissioner's  
24          expression of his interest in this case. But  
25          nothing was resolved on that.

1           Further, there have been some scheduling  
2 proposals circulated today, but because everyone  
3 has been in the hearing, I don't believe that  
4 they've had -- they, the parties, have had ample  
5 time to examine that and to chat among themselves  
6 with respect to what are the most beneficial dates  
7 for purposes of briefing this case. What I would  
8 propose, absent any objection, is we will go off  
9 the record. We will close the evidentiary hearing.  
10 We will close the record in this case. And we will  
11 remain present for a few minutes and see what kind  
12 of progress we can make in clearing dates for  
13 briefs. If that doesn't work particularly well,  
14 we'll make some contingency arrangements to either  
15 get on the telephone or transfer e-mails or that  
16 sort of thing.

17           So absent any objection from the parties  
18 present, I want to bring the hearing to an end and  
19 conclude these proceedings. I want to thank the  
20 parties for their participation. I know that the  
21 hearings went a little bit longer than we were  
22 estimating, but I think that is endemic with the  
23 kinds of proceedings we run. I think counsel gave  
24 me the benefit of your best estimates, and during  
25 the course of the hearings you've sensitized me to,

1       you've brought me into the purview of the areas  
2       that remain active among you.

3               Clearly, in your briefs I'm looking for  
4       matters being clearly identified in two categories;  
5       one category, that being everything that's been  
6       resolved without any confusion and we think  
7       everybody is on the same page. Clearly, there's a  
8       lot of material in an application like this, a lot  
9       of review by staff, a lot of involvement from other  
10      parties, and clearly designating in the category of  
11      these things are resolved and settled and dealt  
12      with well is an important feature or attribute to  
13      maintain in these proceedings, segregating it away  
14      from the matters that remain open and in contention  
15      and require consideration of a third party, a  
16      person like me, for purposes of figuring out what  
17      seems to be most reasonable or most probative, most  
18      logical or constitutes the best practice that we  
19      can recommend to the Commission. So please  
20      differentiate between the two.

21             I know the practice in cases like this is  
22      stylized, and I'm familiar with past styles. I'm  
23      looking for those comprehensive briefs from the  
24      applicant and the staff that I've seen in the past  
25      which deal with all of the aspects of an Article 7

1 certification proceeding, dealing with all the  
2 potential impacts, and dealing with all of the  
3 statutory findings that need to be had here. I'm  
4 not suggesting that other parties don't need to be  
5 as comprehensive. Clearly, on issues in which  
6 you're in dispute, you need to be as persuasive as  
7 the applicant or the staff is. But, clearly, you  
8 don't need to address as many aspects of the  
9 application as those two parties do, but feel free  
10 to address all the aspects of the application that  
11 you feel are pertinent or significant to you and  
12 your clients in participating in this proceeding.

13 That being said, I'd like to probably go  
14 off the record at this point in time and bring the  
15 hearing to an end. Thank you very much for your  
16 attention and for the quality performance that  
17 you've provided for this case.

18 We're off the record.

19  
20 \* \* \* 6:03 p.m. \* \* \*  
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C E R T I F I C A T E

I, Kay Trigilio, a Shorthand Reporter and  
Notary Public in and for the State of New York, do  
hereby certify that the foregoing record taken by me  
is a true and accurate transcript of the same, to  
the best of my ability and belief.

Kay Trigilio, Notary Public  
State of New York

DATE: May 10, 2010

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