

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Case 24-T-0446

Petition of New York Transco LLC and the New York Power Authority
for a Certificate of Environmental Compatibility and Public Need
Pursuant to Article VII of the Public Service Law
for the Propel NY Energy Project

**INITIAL STATEMENT IN OPPOSITION TO THE JOINT PROPOSAL,
AND MOTION FOR SUPPLEMENTAL DISCLOSURE, FURTHER PROCESS,
AND ABEYANCE OF ANY CERTIFICATION DECISION**

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PRELIMINARY STATEMENT

Daniel McAree, a party to this proceeding, respectfully submits this Initial Statement in Opposition to the Joint Proposal, together with this Motion for Supplemental Disclosure, Further Process, and Abeyance of Any Certification Decision, in Case 24-T-0446.

This submission is intentionally limited to the public and filed record in this proceeding, including formal discovery responses, formal discovery attachments, filed application materials, public rulings, the Joint Proposal, associated Certificate Conditions, and other public filings. It does not rely on nonpublic communications, settlement discussions, or other extra-record material.

On June 3, 2026, additional discovery requests designated CP-1 were served seeking detailed information concerning route selection, community impacts, traffic impacts, and project need. Those requests directly target core project-defining issues that remain unresolved on the current record and further confirm that the record is not yet complete for purposes of PSL § 126.

Other filed opposition papers underscore the same problem from a different angle. The Self-Consolidated Parties have separately identified concentrated route burdens on Glen Head and Glenwood Landing, including use of principal local ingress and egress corridors, business-district impacts, private-property concerns, and continued deferral of material mitigation details. Whether or not every contention in that filing is ultimately adopted in full, it reinforces that route-specific Long Island impacts remain active, material, and contested at the certificate stage, not settled details suitable for later implementation review.

Because Article VII requires the Commission to determine on the record whether the statutory standards are satisfied, the present record is not sufficient to support a certification decision at this time. Material project-defining issues remain unresolved, and the current record

reflects repeated deferral of critical route-specific, construction-specific, and impact-specific details to later EM&CP or other implementation-stage processes.

AUTHORITIES

The principal statutory authority remains PSL § 126, which requires the Commission to decide upon the record and prohibits the grant of a certificate unless the Commission finds, among other things, the basis of need, the probable environmental impact, and that the facility avoids or minimizes adverse impact to the extent practicable. See PSL § 126(1)(a)-(c).

PSL § 130 confirms that Article VII displaces separate state and municipal approvals once a certificate issues. That preemptive effect heightens the importance of a complete certificate record because, once a certificate is granted, the Article VII record must be strong enough to absorb the issues those displaced processes would otherwise address. See PSL § 130.

The Department's Article VII Guide confirms the sequencing point. The Commission first decides whether to issue a certificate, and only afterward are EM&CP filings developed, submitted, noticed, commented upon, and approved before construction may proceed. That sequence undercuts the Applicants' repeated insistence that route-specific and construction-specific information can safely be deferred. See DPS, *The Certification Review Process for Major Electric and Fuel Gas Transmission Facilities Under Article VII of the New York Public Service Law*, at 'Commission Decision' and 'Article VII Case Procedure' (June 2024).

This proceeding's protective order also remains important because it requires claimed protected information to be specifically identified and justified under FOIL and Part 6. It is not a blanket privilege to refuse to answer formal discovery. See Case 24-T-0446, *Ruling Adopting Protective Order* (issued Oct. 4, 2024), at 1; Protective Order ¶¶ 1, 3, 5-6.

For Article VII precedent, the following authorities remain useful. Case 10-T-0139, Champlain Hudson Power Express, Ruling on Evidentiary Hearing (issued June 26, 2020), held that no evidentiary hearing was required because no party identified any disputed issue of material and relevant fact. Case 19-T-0684, Ruling Establishing Procedural Schedule (issued Apr. 27, 2020), adopted written issues statements and evidentiary hearings as part of a robust discovery and hearing schedule. Case 13-T-0292, West Point Partners, Ruling on Motion to Dismiss (issued Oct. 7, 2014), addressed a request to dismiss or hold the case in abeyance pending further coastal and federal permit development. Case 08-T-0034, Hudson Transmission, Order Granting Certificate (issued Sept. 15, 2010), treated transportation, access to local businesses, pedestrian and vehicular traffic, alternatives, local laws, and minimum adverse environmental impact as certificate-stage issues. Newer joint-proposal orders, such as Cases 19-T-0549 and 19-T-0041, likewise show that transportation, alternatives, and state and local law conformance remain core Article VII subjects even when ultimately resolved through settlement.

FACTUAL AND PROCEDURAL BASIS

The Applicants' Sea Cliff discovery responses admit that the target burial depth in Hempstead Harbor changed from the originally proposed six feet, but refuse to disclose the reason for that change, stating that 'the reason(s) for the increase ... will not be disclosed.' In the same response, the Applicants state that the originally proposed six-foot burial depth was 'fully supported.' See Applicants' Response to PNYE-VOSC-1.1.

Those same responses state that final submarine design will not be complete until the relevant EM&CP phase and that the Applicants do not have final plan drawings for the currently anticipated cable locations within Hempstead Harbor. They also state that only 'relevant excerpts'

of communications were produced rather than complete communications. See Applicants' Responses to PNYE-VOSC-1.3, 1.8, and 1.9.

The formal discovery record also shows that charting of the cable area on NOAA electronic navigation charts is anticipated and that the NOAA-charted cable area is expected to include a no-anchor restriction feature. That is sufficient, standing on the present record itself, to establish that harbor-use and navigational restriction issues are part of the current case. See Applicants' Response to PNYE-VOSC-1.2.

The school-district discovery responses extend the same incompleteness pattern into school-adjacent terrestrial segments. Those responses disclose later traffic analyses, substantial preliminary construction durations, missing final plan drawings near schools, and reliance on representative EMF cases rather than school-specific modeling. See Applicants' Responses to PNYE-NSCSD-1.1 and 1.4 through 1.11; PNYE-RUFSD-1.3 through 1.8; PNYE-SCSD-1.3 through 1.8.

The June 1 GCA response extends the same pattern into the commercial Glen Cove Road corridor. The Applicants state that Article VII requires landowner notice, not 'abutter' notice; they define abutters for outreach purposes as owners within 200 feet of the route; they mark several listed businesses as 'Non-abutter' or as needing more information; they admit a preliminary 12-to-18-month construction duration on Glen Cove Road from Old Country Road to Back Road; they acknowledge one- and two-lane closures on average; and they continue to defer exact lane management, laydown details, timing, and related specifics to later EM&CP or MPT development. See Applicants' Responses to PNYE-GCA-1.1 through 1.10 and 1.16; PNYE-GCA-1.1 Attachment, at 1-12.

Separate public filings in opposition to the Joint Proposal further reflect unresolved route-specific concerns on Long Island, including concentration of construction along principal local traffic corridors, direct effects on business districts, and asserted deficiencies in private-property and community-protection provisions. Those filings do not substitute for the underlying evidentiary burden, but they further confirm that the present record has not resolved these issues in a manner that would support relaxed certificate-stage scrutiny.

REQUESTED PROCEDURAL RELIEF

For ALJ review purposes, the requested relief should be framed as a concrete procedural sequence rather than as a generalized objection. First, the ALJs should direct Applicants to supplement the record on the specific deficiencies preserved in this filing, including the undisclosed basis for the burial-depth change, complete or indexed agency communications, unresolved GLUW and public trust issues, cumulative sediment and mixing-zone specifics, route-specific business and traffic impacts, final plan-drawing deficiencies, and any other request-specific matters that remain incomplete or underdefined, including full responses to CP-1 discovery and any follow-up requests necessary to complete the record.

Second, where the Applicants invoke confidentiality or CEII in lieu of a substantive answer, the ALJs should require targeted identification of the withheld material and a privilege or protection log sufficient to evaluate the claim, rather than allowing broad non-answers to stand in the place of a discovery response.

Third, the ALJs should expressly reserve or schedule such further factual process as may be necessary for any material disputed issues of fact that remain unresolved after supplementation, including additional briefing, a further procedural ruling, or evidentiary hearing process if warranted.

Fourth, unless and until the record is completed and the unresolved material issues are narrowed or resolved, the ALJs should recommend that any certification decision be held in abeyance rather than allowing the case to proceed to final disposition on an underdeveloped record.

ARGUMENT

POINT I

THE COMMISSION CANNOT MAKE PSL § 126 FINDINGS ON THIS RECORD

A certificate under PSL § 126 must be granted, if at all, upon a record sufficient to support the statutory findings. The present record is not sufficient. It omits the substantive basis for a material design change, admits the absence of final design and final plan drawings, offers only selected 'relevant excerpts' rather than complete communications, and postpones critical specificity to future EM&CP submissions. See Applicants' Responses to PNYE-VOOSC-1.1, 1.3, 1.8, and 1.9; PSL § 126(1).

The same incompleteness appears on terrestrial segments and in the commercial Greenvale corridor. The school-district responses and the Greenvale response repeatedly assert that detailed construction timing, lane management, laydown locations, business access management, and location-specific sequencing are not relevant to certificate issuance and will be addressed later through EM&CP, MPT plans, or other work plans, even while providing preliminary estimates that confirm long-duration impacts. See Applicants' Responses to PNYE-NSCSD-1.4 through 1.8; PNYE-RUFSD-1.4 and 1.5; PNYE-SCSD-1.4 and 1.5; PNYE-GCA-1.2 through 1.8, 1.10, and 1.16.

The prejudice is not merely procedural. The public and participating parties have been asked to evaluate, comment upon, and prepare position statements concerning a project for which final alignments, final plan drawings, final laydown locations, final traffic-control plans,

and portions of the engineering rationale remain unavailable on the present record. Public participation cannot be fully meaningful where material project details remain undefined at the stage when the Commission must determine whether the PSL § 126 findings can be made.

The same point is reinforced by the breadth of community opposition filings focused on route-specific burdens in Long Island communities. Those submissions confirm that the unresolved details are not remote implementation questions. They are the very subjects on which affected parties continue to press material objections now.

The Commission is not being asked to approve a fully defined project with minor implementation details. It is being asked to approve a project whose own formal discovery record shows that material route-specific, design-specific, and impact-specific questions remain unresolved. That is why the record is not yet decision-ready under PSL § 126.

POINT II
FINAL DESIGN DOES NOT EXIST IN CRITICAL LOCATIONS, AND
CERTIFICATION IS PREMATURE

The Applicants expressly state that final submarine design will not be complete until EM&CP and that they do not have final plan drawings for currently anticipated cable locations within Hempstead Harbor. See Applicants' Responses to PNYE-VOSC-1.8 and 1.9. Comparable admissions appear at school-adjacent locations and on Glen Cove Road, where the Applicants still do not have final plan drawings and continue to offer only preliminary alignment expectations. See Applicants' Responses to PNYE-RUFSD-1.6, PNYE-SCSD-1.6, PNYE-NSCSD-1.9, and PNYE-GCA-1.6.

On Glen Cove Road, the Applicants say the preliminary route is generally within the northbound travel lanes, but that the alignment will vary based on underground infrastructure and roadway geometry and that final details will come later in EM&CP. See Applicants' Response to

PNYE-GCA-1.6. They also say laydown yards will be disclosed later in EM&CP and are not yet identified, except that they currently do not plan a laydown yard on Glen Cove Road. See Applicants' Response to PNYE-GCA-1.7.

A project that remains materially underdefined, with only preliminary lane assumptions, later laydown identification, later MPT details, and later contractor-specific schedules, is not in a posture in which the Commission or the ALJs can confidently determine the actual routing, impact locations, or impact minimization.

POINT III
THE RECORD CONFIRMS A MAJOR, UNDERDEVELOPED TRAFFIC AND
COMMERCIAL-CORRIDOR IMPACT PROBLEM

The Greenvale responses convert the traffic issue into a quantified commercial-corridor problem. The Applicants now admit that construction along Glen Cove Road from Old Country Road to Back Road in Greenvale will last approximately 12 to 18 non-consecutive months for vaults, manholes, duct bank, splicing, and cable pulling combined. See Applicants' Response to PNYE-GCA-1.2.

The same response set admits that duct bank construction work will on average require closure of one lane of traffic and splice vault installation will on average require closure of two lanes of traffic. See Applicants' Response to PNYE-GCA-1.4. At the same time, the Applicants ask the Commission to accept that future MPT plans will address bus disruption, station access, and retail access later. See Applicants' Responses to PNYE-GCA-1.8, 1.10, 1.11, and 1.16.

Other filed opposition papers similarly emphasize that the selected Long Island corridor includes principal local ingress and egress routes and business-district segments. Whether framed as Greenvale, Glen Head, or Glenwood Landing impacts, the point is the same. Extended

construction on principal local travel corridors, coupled with lane closures and deferred traffic-control specifics, is not a minor implementation detail; it is a certificate-stage impact issue.

A 12-to-18-month construction window in a major business corridor, combined with one- and two-lane closures and only future traffic-control specifics, is present record evidence of substantial corridor-wide impact, and it belongs in the certificate record, not postponed to later implementation documents.

POINT IV

THE RECORD REVEALS A THIN BUSINESS-IMPACT RECORD AND NO SERIOUS ECONOMIC MITIGATION FRAMEWORK

The business-impact record is weak on both notice and mitigation. In response to PNYE-GCA-1.1, the Applicants state that Article VII requires notice to landowners, not to 'abutters,' and that for their own outreach purposes they defined abutters as owners within 200 feet of the route. See Applicants' Response to PNYE-GCA-1.1. The attachment is revealing because it lists a number of businesses as 'Non-abutter' and marks several others as requiring more information to process the request. See PNYE-GCA-1.1 Attachment, at 12.

When asked about compensation for economic loss due to obstruction of business operations, the Applicants do not offer a business interruption plan, compensation mechanism, or corridor-specific support measure. Instead, they say they anticipate limited interruption, emphasize that the work zone will move along the route, and state that they are unaware of any instance where the PSC has required a business interruption plan from a transmission developer. See Applicants' Response to PNYE-GCA-1.9.

The separate opposition filing of the Self-Consolidated Parties underscores the same deficiency from the perspective of affected Long Island communities by identifying asserted gaps in prompt repair, reimbursement, and direct community protection for private property and

business impacts. Those filed objections do not replace the Applicants' burden. They underscore that the present record does not yet reflect a developed, concrete mitigation framework for highly localized economic and property effects.

That is not a meaningful mitigation record for a corridor the Applicants now expect to occupy for as long as 12 to 18 non-consecutive months with lane closures. It reinforces the broader point that community and business impacts are not yet sufficiently defined for certificate findings.

POINT V

NO-HEARING PRECEDENTS DO NOT APPLY BECAUSE THIS CASE PRESENTS UNRESOLVED MATERIAL FACTUAL ISSUES

Case 10-T-0139, Champlain Hudson Power Express, is frequently cited for the proposition that no evidentiary hearing is required where no party identifies any disputed issue of material and relevant fact. That proposition does not help the Applicants here because the condition that supported that ruling, a record free of disputed material facts, does not exist in this case.

Here, the current record presents multiple disputed and material issues of fact: the unexplained burial-depth change; the absence of final plan drawings and final alignment details in critical areas; unresolved charting, no-anchor, GLUW, and public trust questions; the absence of a settled cumulative-impact record for four trenches and multiple installation passes; the scale and duration of commercial-corridor impacts; the lack of a developed business interruption or localized remedial framework; and school-adjacent impacts that remain dependent on representative modeling and future MPTs rather than final route-specific commitments. See Applicants' Responses to PNYE-VOSC-1.1, 1.2, 1.8, 1.9, and 1.10; Applicants' Responses to

PNYE-GCA-1.2, 1.4, 1.6, 1.7, 1.9, and 1.18; Applicants' Responses to PNYE-NSCSD-1.4 through 1.11.

Case 19-T-0684 is more useful as a procedural analogue because it reflects a schedule that included written issues statements and evidentiary hearings to focus disputed matters and permit robust discovery. Joint-proposal cases such as 19-T-0549 and 19-T-0041 likewise do not authorize the Commission to bypass further process where the record remains materially underdeveloped. They show only that Article VII issues such as transportation, alternatives, and state and local law conformance can be resolved without a hearing when the record is otherwise complete enough to support that result.

POINT VI

THE APPLICANTS CONTINUE TO WITHHOLD THE FACTUAL BASIS FOR A MATERIAL ENGINEERING CHANGE

The burial-depth change in Hempstead Harbor is a substantive engineering and risk determination with direct implications for anchorage risk, charting, navigational use, environmental disturbance, and cable protection. Yet the Applicants refuse to disclose the reason for the change, while simultaneously representing that the prior six-foot depth was 'fully supported.' See Applicants' Response to PNYE-VOSC-1.1.

This point can be stated without reference to any non-public communications. A material project change has occurred; the prior design was purportedly fully supported; and the Applicants nonetheless refuse to identify the substantive basis for the change on the formal record. That is enough, standing alone, to create a gap the Commission cannot ignore under PSL § 126.

The protective order and related confidentiality framework do not alter this point. If any specific responsive item is genuinely protected, it can be identified and justified through the

existing process. What cannot be accepted is a certificate record that omits the underlying factual or technical basis for a significant design change.

POINT VII
THE GLUW, PUBLIC TRUST, AND HARBOR-USE RECORD REMAINS
MATERIALLY DEFICIENT

The formal discovery record already establishes that harbor-use and public-trust-adjacent issues are active and unresolved. The Applicants acknowledge that the cable area will be charted on NOAA electronic navigation charts and that the NOAA-charted cable area is expected to include a no-anchor restriction feature. See Applicants' Response to PNYE-VOSC-1.2. They also acknowledge that final submarine design and final plan drawings do not yet exist for currently anticipated Hempstead Harbor cable locations. See Applicants' Responses to PNYE-VOSC-1.8 and 1.9.

Those admissions are enough to show that the Commission is being asked to evaluate a submarine corridor whose final physical layout is not complete, but which is already expected to carry practical navigational consequences. That combination makes the absence of a clear, integrated harbor-use and rights analysis a material deficiency.

West Point Partners remains the most useful analogue on this cluster of issues because it emphasizes the importance of developing coastal and related external review issues before forcing a final certificate decision while routing and installation questions remain unsettled.

POINT VIII
THE ROUTE-CHOICE RECORD STILL DOES NOT SHOW THAT THIS IS THE
MINIMUM-IMPACT CORRIDOR

When asked why no alternative route to the preferred Glen Cove Road route was proposed, the Applicants answered by emphasizing routing principles favoring directness, minimizing route length, circuitry, cost, and special design requirements, and using public ROW

and major roadway corridors to the maximum extent practicable. See Applicants' Response to PNYE-GCA-1.18.

That answer shows the Applicants' priority structure plainly. Directness, co-location, and ratepayer cost are being privileged, while corridor-specific burdens are treated as manageable through later traffic controls and construction timing. But PSL § 126(1)(c) does not ask whether the chosen route is the most straightforward in the abstract. It asks whether the certificated facility avoids or minimizes adverse impacts to the extent practicable considering available technology and the nature and economics of alternatives. See PSL § 126(1)(c).

The separate opposition filing of the Self-Consolidated Parties sharpens the same point by identifying an asserted alternative corridor that, in their view, was screened out on residential-impact grounds while the selected route proceeds through denser residential and business areas and along principal local travel corridors. Whether that filing's route comparison is ultimately accepted in full or not, it confirms that route minimization and burden allocation remain live, disputed subjects in this proceeding rather than resolved background assumptions.

The existing public record therefore still does not convincingly demonstrate that Glen Cove Road is the minimum-impact corridor from a concrete community-impact perspective, as opposed to the most straightforward corridor from the Applicants' engineering and cost perspective.

POINT IX
THE CUMULATIVE-IMPACT, MIXING-ZONE, AND SEDIMENT-CONTROL
RECORD REMAINS INSUFFICIENT

The cumulative-impact problem should be stated directly. The issue is not whether one cable trench, viewed in isolation, appears manageable under selected assumptions. The issue is whether the overall Project, including four separate trenches, separate installation passes, cable

spacing, tidal movement, and staggered timing, has been evaluated in a way that captures overlapping, sequential, and compounding effects.

The Applicants' own sediment report already distinguishes one-cable-at-a-time water-column modeling from cumulative four-cable deposition. See PNYE_VOsc_1.10_Attachment, § 2.3; Table 2-4. The same attachment reports that, for the nine-foot burial scenario, the 100 mg/L suspended-sediment contour extends as far as 2,481 feet from the trench centerline, the cumulative area at or above 100 mg/L reaches 507 acres over trenching, and the maximum duration above 100 mg/L is 11.5 hours. See PNYE_VOsc_1.10_Attachment, Table 2-1; Table 2-2; Table 2-4.

Those formal modeling results are already enough to show that a serious cumulative-impact issue exists and that the record still lacks a direct, integrated statement of maximum cumulative lateral extent, total area, and duration when multiple trenches, cable spacing, separate passes, staggered timing, and tidal or current direction are considered together.

POINT X
SENSITIVE RECEPTORS, INCLUDING SCHOOLS, HAVE NOT BEEN
SUFFICIENTLY ANALYZED

The school-district discovery shows that the Applicants often rely on representative EMF cases rather than school-specific modeling. For Harbor Hill Elementary and Robbins Lane Elementary, the Applicants did not model school-specific cases and instead state that representative 'Case 1' applies. For the North Shore Middle School area, the Applicants rely on 'Case 24' for a 138-kV cable in a flowable cement fill duct bank. See Applicants' Responses to PNYE-RUFSD-1.7, PNYE-SCSD-1.7, and PNYE-NSCSD-1.10.

That issue is reinforced by missing final plan drawings at multiple school-adjacent locations and by the absence of route-specific analysis in areas where school-related traffic

conditions matter. See Applicants' Responses to PNYE-RUFSD-1.6, PNYE-SCSD-1.6, and PNYE-NSCSD-1.9. The section remains relevant, but as supporting proof of incomplete record development rather than as the principal driver of the motion.

POINT XI

BROAD RELIANCE ON PRIVACY AND PROTECTION CLAIMS HAS CONTRIBUTED TO AN INCOMPLETE DECISIONAL RECORD

Across the Sea Cliff, school-district, and GCA discovery responses, the Applicants repeatedly invoke attorney-client privilege, work product, confidentiality objections, non-final document objections, and CEII objections. See, e.g., 24-T-0446_Response to PNYE-RUFSD-1.pdf, General Objections ¶¶ 1, 7, 8, 10; 24-T-0446_Response to PNYE-SCSD-1.pdf, General Objections ¶¶ 1, 7, 8, 10; 24-T-0446_Response to PNYE-NSCSD-1.pdf, General Objections ¶¶ 1, 7, 8, 10; 24-T-0446_Response to PNYE-GCA-1.pdf, General Objections ¶¶ 1, 7, 8, 10.

The legal framework for protection exists, but it is not limitless. Public Officers Law § 87 and § 89, 16 NYCRR § 6-1.3, and the case protective order provide mechanisms for claiming protection of critical infrastructure and other confidential material. Those authorities support targeted protection, not a decisional record hollowed out by selective excerpts, withheld technical reasoning, and repeated assertions that the real details will come later through EM&CP. If the Commission declines to compel fuller disclosure or further process, it should at minimum state that it will assign reduced or no weight to engineering conclusions whose substantive basis is withheld, agency communication summaries presented through selective excerpts rather than full production, impact characterizations not reconciled with the Applicants' own traffic and sediment analyses, and project descriptions that remain non-final and contingent on later EM&CP development.

CONCLUSION

For the foregoing reasons, the ALJs should conclude that the current Article VII record is not yet sufficient to support PSL § 126 findings and that further process is required before any certification decision can properly be recommended or made.

Specifically, the ALJs should direct supplemental disclosure, require targeted logging and justification of any withheld material, preserve or schedule such further factual process as may be necessary to resolve material disputes, and recommend that any certification decision be held in abeyance unless and until the record is complete enough to support the required findings.

Dated: June 8, 2026

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Daniel McAree', with a long horizontal flourish extending to the right.

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