

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Case 24-T0446 - Petition of New York Transco LLC and New York Power Authority for a Certificate of Environmental Compatibility and Public Need, Pursuant to Article VII of the New York Public Service Law, to Construct, Operate, and Maintain an Approximately 89.7-Mile Underground Transmission Line through Suffolk, Nassau, Queens, Bronx, and Westchester Counties.

**RESPONSE OF THE INCORPORATED VILLAGE OF SEA CLIFF TO THE
REPLY STATEMENT OF THE NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**

The Incorporated Village of Sea Cliff ("Village") respectfully submits this response to the June 26, 2026 Reply Statement of the New York State Department of Environmental Conservation ("NYSDEC").

The Village is outraged by NYSDEC's submission and objects in the strongest possible terms to its characterization of the Village's Statement in Opposition.

NYSDEC expressly directed its Reply primarily toward the Village's filing. It then stated that the Village "inaccurately" claimed that the Joint Proposal does not include measures to minimize sediment disturbance or testing to determine whether contaminated sediments affect habitat within Hempstead Harbor, and requested that the Commission approve the Joint Proposal without modification.¹

That is not what the Village said.

The Village expressly identified and discussed the sampling, monitoring, mitigation, corrective-action, and shellfish provisions contained in the Joint Proposal. The Village's position was - and remains - that those provisions are limited, substantially deferred, insufficiently comprehensive, overly dependent upon after-the-fact monitoring and mitigation, and not stated in a sufficiently clear and enforceable manner.²

The Village specifically stated that Hempstead Harbor was not completely excluded from benthic sampling. It explained that Condition 133 establishes a limited, project-corridor sampling program rather than a comprehensive Harbor-specific baseline and post-construction assessment. The Village also requested practical, enforceable sediment controls, immediate post-trenching assessment, protection of oyster beds, and prompt restoration if damage occurs.³

¹Reply Statement of the New York State Department of Environmental Conservation, Case 24-T-0446 (June 26, 2026) ("NYSDEC Reply"), at 2 n.1, 4-6.

²Incorporated Village of Sea Cliff, Statement in Opposition to Joint Proposal, Case 24-T-0446 (June 5, 2026) ("Village Opposition"), at 9-12, 18-20.

³Village Opposition at 10-12; Hempstead Harbor Protection Committee Letter to the Public Service Commission (May 12, 2025), attached as Exhibit F to the Village Opposition ("HHPC Letter"), Ex. F at 1-3.

There is an obvious and material difference between claiming that no protective measures exist and demonstrating that the measures provided are inadequate. NYSDEC ignores that distinction.

Rather than answer the Village's actual concerns regarding scope, timing, prevention, enforceability, prompt corrective action, public health, and protection of Harbor-specific resources, NYSDEC recites provisions that the Village had already acknowledged and portrays that recitation as a correction of an inaccurate municipal filing.

That characterization is misleading and unacceptable, particularly from the State agency entrusted with protecting New York's environmental resources.

I. NYSDEC DOES NOT ANSWER THE VILLAGE'S ACTUAL OBJECTIONS

The Village did not deny that Condition 133 requires benthic sampling. It explained why sampling at discrete stations along the cable corridor - including stations spaced at 1,000-foot intervals within Hempstead Harbor - is not a comprehensive Harbor-specific assessment.

The Village did not deny that the Joint Proposal contains water-quality monitoring and corrective-action provisions. It explained that those provisions do not require all of the practical protections requested by the Village and the Hempstead Harbor Protection Committee, including:

1. Use of the slowest practicable jet-plow advancement rate;
2. Use of the minimum jet pressure necessary to accomplish installation;
3. Effective sediment-containment measures where technically feasible;
4. Contaminant-specific sediment protocols;
5. Continuous real-time monitoring with clear and enforceable thresholds;
6. Immediate shutdown requirements; and
7. Prompt assessment and restoration after an impact occurs.

The Village did not deny that the Joint Proposal addresses shellfish. It explained that the proposed conditions do not establish adequate and enforceable protections for all shellfish species, oyster-restoration areas, benthic habitat, and measurable post-construction recovery.

NYSDEC's identification of provisions already acknowledged by the Village does not establish that those provisions are sufficient.

II. CONDITION 133 CREATES AN UNACCEPTABLE DELAY AND ABANDONMENT GAP

NYSDEC defends sampling at 1,000-foot intervals within Hempstead Harbor as a standard scientific procedure intended to provide representative information. The Village does not dispute that interval sampling may be useful for characterizing general benthic conditions. The issue is whether it will detect localized and concentrated impacts caused by trenching, jet plowing, sediment resuspension, tidal transport, and deposition.

Impacts may be concentrated:

1. Within the actual trenches and work areas;
2. At locations containing contaminated sediment;
3. In depositional areas affected by currents and tides;
4. Near naturally occurring shellfish beds;
5. Near oyster-restoration areas;
6. Near public bathing beaches and shoreline resources; and
7. At locations where seabed conditions or construction methods produce greater disturbance.

A representative sampling program may describe general conditions while entirely missing serious damage at a particular shellfish bed, restoration area, depositional area, or contamination hotspot. Repeating the Applicant's 2024 sampling locations may provide comparability, but it does not establish that the original survey design identified every sensitive Harbor resource or every location likely to be affected by sediment transport.

Even more troubling is the timing established by Condition 133. The condition does not require the two post-installation benthic surveys to occur within a fixed period after trenching, jet plowing, cable installation, or completion of sediment-disturbing work within Hempstead Harbor. Instead, it permits post-offshore-construction sampling to occur between August 1 and October 31 within 24 months of the Project's "full energization." Condition 134 then permits the final written report to be submitted up to six months after completion of each sampling event.⁴

Nothing in Condition 133 ties full energization to the date on which the Harbor bottom is disturbed. The submarine cable work could be completed years before the entire 89.7-mile Project is fully energized. If full energization is delayed for five years, ten years, or longer, the benthic surveys intended to identify the effects of Harbor construction may be delayed for the same period and then conducted as much as 24 months later.

A survey and report produced years after the actual disturbance would be of little value in determining:

1. Where sediment traveled during construction;
2. Whether recently deposited sediment buried shellfish;
3. Whether an oyster-restoration area was smothered or damaged;
4. Whether contaminants reached a public beach or sensitive shoreline;
5. Whether changes in the benthic community resulted from the Project or from intervening events; or
6. What immediate corrective measures should have been taken.

Full energization may also never occur. Condition 212 expressly contemplates circumstances in which construction halts for 18 continuous months or the Facility is constructed but ultimately not energized. It requires only consultation regarding whether decommissioning is

⁴Propel NY Energy Project Joint Proposal, Appendix D, Proposed Certificate Conditions (April 2026) ("Certificate Conditions"), Conditions 133-134, at 67-69.

needed; a decommissioning plan, restoration plan, and financial security arise only if such a plan is later determined to be required.⁵

The Joint Proposal therefore leaves an extraordinary and unacceptable gap: the Applicant could disturb contaminated Harbor sediments, install some or all of the submarine facilities, and then delay or abandon the remainder of the Project without a clearly triggered obligation to conduct the two post-installation benthic surveys, immediately assess the resulting damage, or restore the Harbor.

The Village finds it astonishing that a project of this magnitude could be permitted to disturb contaminated sediments and environmentally sensitive resources without an unconditional requirement to assess and restore the Harbor promptly, regardless of whether the overall Project is ever completed or fully energized.

Conditions 133, 134, and 212 must be revised to require:

1. Targeted pre-construction sampling at actual disturbance areas, contamination hotspots, shellfish beds, oyster-restoration areas, likely depositional areas, and potentially affected public beaches;
2. An initial benthic, sediment-chemistry, shellfish, oyster-restoration, water-quality, and shoreline assessment immediately following completion of each sediment-disturbing phase within Hempstead Harbor;
3. Additional sampling immediately following any exceedance, unexpected plume migration, observed deposition, or suspension of marine construction;
4. Mandatory assessment whenever marine construction is inactive for more than a defined short period, regardless of the status of the remainder of the Project;
5. Mandatory assessment, restoration, and, where appropriate, decommissioning if the Certificate Holder decides not to complete or energize the Project;
6. No reliance upon full energization as the triggering event for assessing construction damage;
7. Prompt corrective action whenever adverse impacts are identified;
8. Continued monitoring until objective restoration standards are achieved;
9. Prompt public release of all sampling results; and
10. Financial security established before marine construction begins and sufficient to fund assessment, decommissioning, Harbor restoration, shellfish replacement, shoreline remediation, and related municipal costs if the Project is delayed, suspended, or abandoned.

The Applicant must not be permitted to disturb Hempstead Harbor now and postpone responsibility for determining the resulting damage until an undefined future event that may never occur.

III. ESSENTIAL ENVIRONMENTAL PROTECTIONS REMAIN DEFERRED

NYSDEC's defense of the Joint Proposal relies substantially on plans that have not yet been prepared, including the Benthic Sampling Plan, Environmental Compliance Plan, Suspended

⁵Certificate Conditions, Condition 212, at 91-92.

Sediment and Water Quality Monitoring Plan, Fisheries Studies Working Group plans, Hard Clam Impact Minimization Plan, and, if later determined necessary, a Hard Clam Mitigation Plan.⁶

These are not minor construction details. They will determine what is sampled, where sampling occurs, which contaminants are monitored, what thresholds apply, when work must be reduced or stopped, how impacts are measured, what mitigation is required, and whether restoration is considered successful.

It is precisely this deferral that the Village objected to. The Commission should not approve the Project first and decide later what the governing environmental protections will actually require.

The concern is substantially heightened by NYSDEC's Reply. NYSDEC has already endorsed the Joint Proposal without modification and has now minimized or mischaracterized the Village's Harbor-specific concerns. Under those circumstances, subsequent NYSDEC review cannot, by itself, credibly substitute for a complete public record, objective standards, and meaningful participation by the municipalities and parties most directly affected.

The Village recognizes that the EM&CP process may provide notice and an opportunity to submit comments. However, a post-certification comment opportunity is not equivalent to resolving threshold environmental protections before the Commission determines that the Project represents the minimum adverse environmental impact. Nor does an opportunity to submit comments ensure that NYSDEC or the Applicant must respond substantively to municipal objections, that disputed technical issues will be resolved, or that construction will be withheld until those issues are addressed.

All material Harbor-related plans must therefore:

1. Be publicly filed before any related construction is authorized;
2. Be provided directly to all affected municipalities, beach operators, Harbor authorities, water suppliers, and environmental-restoration organizations;
3. Be subject to meaningful municipal and party review and comment;
4. Include written, on-the-record responses by the Applicant and NYSDEC to substantive objections;
5. Be subject to express Commission approval; and
6. Remain unresolved until the Commission determines, on the record, that the plans adequately protect Hempstead Harbor.

These critical decisions cannot be left to an informal post-certification process dominated by the Applicant and agencies that have already committed themselves to approval of the Joint Proposal.

⁶NYSDEC Reply at 3-6; Certificate Conditions, Conditions 117, 133-142, and 176-191.

IV. NYSDEC IGNORES THE RISK OF NEW NO-ANCHORAGE AREAS AND RESTRICTIONS ON CURRENT LAWFUL HARBOR USES

NYSDEC's Reply is entirely silent on one of the Village's most fundamental concerns: the substantial and unresolved risk that the Project will result in new no-anchor or no-anchorage areas, exclusion or cable-protection zones, or other limitations on existing lawful uses of Hempstead Harbor.

The Village raised this issue at length in its original opposition. Hempstead Harbor is a working and recreational harbor that supports anchoring, mooring, navigation, sailing, fishing, swimming, bathing, boat launching, yacht clubs, marinas, commercial and municipal operations, waterfront access, tourism, and other lawful water-dependent uses. The continued exercise of those uses is not a privilege to be reconsidered after certification. It is an existing public use that must be protected as a threshold requirement.

Condition 77 acknowledges that the target burial depth may not be achieved in all locations and relies on post-installation identification and future cable-protection measures. Appendix H similarly relies on mariner notification and later coordination. Those provisions do not establish that new anchorage restrictions will be avoided; they confirm that the consequences of shallow burial and supplemental cable protection may not be known until after installation.⁷

The risk is not eliminated because a federal agency may ultimately chart, announce, or formalize an anchorage restriction. If inadequate burial or supplemental cable-protection measures create the need for a charted cable corridor, a no-anchor advisory, an exclusion area, or a practical expectation that vessels avoid anchoring over the cables, the Project will have caused the restriction regardless of which agency formally implements or publishes it.

Nor has the Applicant quantified the likelihood that target burial depth will not be achieved, identified every location where supplemental protection may be required, or disclosed the extent, duration, and permanence of the restrictions that could follow. The Commission cannot find that the Project represents the minimum adverse environmental impact while the probability and geographic extent of those impacts remain unknown.

Notice to mariners is not mitigation. Informing boaters after certification that construction, shallow burial, cable-protection measures, or new restrictions interfere with existing Harbor uses does not preserve those uses. A post-construction notice cannot cure the loss of an anchorage, the displacement of sailing or fishing activity, interference with marina or yacht-club operations, or any other restriction on a lawful public use.

Before certification, the Applicant must be required to establish the final cable alignment, an enforceable minimum burial outcome sufficient to avoid anchoring conflicts, and a mandatory obligation to re-bury or otherwise correct any segment that does not achieve that outcome without limiting Harbor use. The Applicant must also identify every location where supplemental cable

⁷Incorporated Village of Sea Cliff, Statement in Opposition to Joint Proposal, Case 24-T-0446 (June 5, 2026), at 5-9; Propel NY Energy Project Joint Proposal, Appendix D, Proposed Certificate Condition 77; Joint Proposal, Appendix H, Table H.1, Item 8.

protection may be necessary and demonstrate that the proposed design will not create or lead to any new restriction on lawful Harbor activity.

The Certificate Conditions must expressly provide that the Project shall be designed, constructed, operated, and maintained so that it does not cause, require, request, recommend, or necessitate any new no-anchor or no-anchorage area, exclusion zone, cable-protection zone, or other limitation on any current lawful use of Hempstead Harbor. Preservation of all existing lawful uses must be an enforceable Project requirement, not a goal deferred to later agency coordination.

If the Applicant contends that any limitation may be unavoidable, that limitation must be fully identified, mapped, justified, and evaluated before certification, with notice to affected municipalities and Harbor users and a meaningful opportunity to be heard. The Commission should not approve the Project first and allow a restriction on public Harbor use to emerge later as a post-installation consequence.

V. RECENT EXPERIENCE DEMONSTRATES WHY DEFERRED REVIEW AND AFTER-THE-FACT CORRECTIVE ACTION ARE INADEQUATE

The Village's concern is not theoretical. The May 2023 fire at the East Hampton Energy Storage Center provides a recent and deeply troubling example of an energy project whose pre-construction review did not identify or fully account for the pathway of harm later reported by the public water supplier.

The Town of East Hampton Planning Department recommended a negative declaration after concluding that no significant adverse impacts had been identified. Its review relied, in part, on project representations concerning battery chemistry, spill potential, fire suppression, and containment.⁸

The Public Service Commission's review was separately limited to the lease transaction. The Commission expressly stated that potential environmental impacts belonged in the Town's SEQRA review and determined that no further review under Public Service Law Section 70 was warranted.⁹

⁸Town of East Hampton Planning Department, Memorandum to Planning Board re East Hampton Energy Storage Center, LLC (May 10, 2017), at 2-3 (describing the proposed spill-containment and fire-suppression measures and recommending a negative declaration after finding no significant adverse impacts), <https://www.ehamptonny.gov/AgendaCenter/ViewFile/Item/608?fileID=650>.

⁹Case 17-M-0422, National Grid Generation LLC, Declaratory Ruling on Lease Transaction (issued Sept. 19, 2017), at 5-6 (stating that potential environmental impacts were matters for the Town permitting and SEQRA process and that no further PSC review under PSL Section 70 was warranted), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B13F610D7-42F7-4CA2-BFBD-EB7FEADA4051%7D>.

Following the 2023 fire, the Suffolk County Water Authority reported on June 5, 2026, that its tests detected PFPrA in water that migrated from the fire, that two wells were taken out of service, and that use of two additional wells was restricted as a precaution. The Authority also reported filing suit against the developers, operators, and equipment manufacturers associated with the facility.¹⁰

The Village does not assert that the same outcome will occur here, that the pending lawsuit has established liability, or that NYSDEC was the lead reviewing agency for the East Hampton project. The point is narrower and directly relevant: an energy project may receive environmental and land-use approvals based on assurances and assumptions that fail to identify an important release pathway, and by the time monitoring reveals the problem, irreplaceable public resources may already be impaired.

That recent experience directly supports the Village's objection to approving this Project while material protections remain deferred to future plans. It also demonstrates why the Commission cannot substitute trust in future agency discretion and after-the-fact corrective action for complete analysis, objective standards, and enforceable conditions before certification.

The consequences of an incomplete review are especially serious where the affected resources include Hempstead Harbor, public bathing beaches, shellfish-restoration areas, and Long Island's sole-source aquifer. At minimum, the Commission must require an independent worst-case and release-pathway analysis, automatic shutdown requirements, immediate municipal and public notification, enforceable containment measures, prompt remediation, and financial security sufficient to address harms that were not predicted or that the Applicant later proves unable to control.

VI. CONDITION 189 IS REACTIVE, DISCRETIONARY, AND INADEQUATE

NYSDEC relies heavily on Condition 189 as evidence that water-quality exceedances will be adequately addressed. That reliance provides little comfort to the Village.

Condition 189 provides that, if a TSS limit or water-quality standard is exceeded at the edge of the applicable mixing zone, or a plume is observed beyond that mixing zone, the Certificate Holder must immediately notify the Aquatic Environmental Monitor, DPS Staff, and NYSDEC and immediately implement practicable corrective measures, such as operational modifications. A Corrective Action Plan must then be provided to DPS Staff and NYSDEC within 24 hours. Only if the operational changes fail to bring the activity into compliance must the Certificate Holder cease the activity - and even then, DPS Staff, after consultation with NYSDEC, may approve continued activity in writing.¹¹

Condition 189 therefore does not require an automatic shutdown at the first exceedance. It does not require immediate notice to the Village, other affected municipalities, public-health

¹⁰Suffolk County Water Authority, Impacts from East Hampton Battery Storage (June 5, 2026) (reporting detection of PFPrA in water that migrated from the May 2023 fire, removal of two wells from service, restrictions on two additional wells, and the filing of a lawsuit), <https://www.scwa.com/easthamptonbattery/>.

¹¹Certificate Conditions, Condition 189, at 82-83.

officials, beach operators, Harbor authorities, emergency responders, or the public. It permits the activity causing the exceedance to continue while operational modifications are attempted. Even if those measures fail, it allows DPS Staff, in consultation with NYSDEC, to permit continued operation.

The same agencies presently advocating approval of the Joint Proposal without modification would therefore retain discretion to permit the activity to continue after an exceedance has occurred and initial corrective measures have failed.

NYSDEC's current submission seriously undermines confidence in that process. The Department has already minimized or mischaracterized the Village's concerns regarding contaminated sediment, shellfish resources, Harbor-specific monitoring, and enforceable protections. The communities surrounding Hempstead Harbor cannot reasonably be expected to place unquestioning trust in a future discretionary decision by NYSDEC and DPS Staff after contaminated sediment has already been suspended and a water-quality standard has already been exceeded.

An exceedance must result in immediate and automatic suspension of the activity causing it. Work should not resume until:

1. The cause has been identified;
2. The extent and direction of plume migration have been determined;
3. Effective corrective measures have been implemented;
4. Potential impacts to shellfish beds, oyster-restoration areas, public beaches, and other sensitive resources have been evaluated;
5. Independent monitoring confirms compliance; and
6. The Commission issues a written determination, on notice to affected municipalities, that resumption will not threaten public health or Harbor resources.

NYSDEC's confidence in its own future discretion is not an adequate environmental safeguard.

VII. PUBLIC BATHING BEACHES ARE NOT ADEQUATELY PROTECTED

The Village is particularly alarmed by the absence of meaningful protections for the four public bathing beaches located along Hempstead Harbor. These beaches serve residents and visitors who swim, wade, lie on the shoreline, and play in the sand and shallow water. Children have direct and repeated contact with those waters and shoreline sediments.

The proposed conditions themselves recognize that sediment will be disturbed and resuspended. They establish standards for TSS, turbidity, arsenic, copper, mercury, dioxins/furans, and other constituents, and expressly contemplate the possibility that a plume may migrate beyond the edge of the applicable mixing zone. The existence of Condition 189's plume-migration trigger

confirms that movement beyond the designated mixing zone is a foreseeable event that must be planned for.¹²

Yet the Joint Proposal does not establish:

1. Monitoring stations specifically positioned to detect movement toward public bathing beaches;
2. Baseline testing of beach water and shoreline sediment;
3. Immediate notification to municipalities and beach operators when an exceedance or plume migration occurs;
4. Objective beach-closure criteria;
5. Public-health testing following an exceedance;
6. Criteria governing when a beach may safely reopen;
7. Shoreline sediment sampling to determine whether contaminants have been deposited; or
8. Responsibility for beach closures, cleanup, lost municipal revenue, public notification, and remediation.

A Corrective Action Plan submitted to DPS Staff and NYSDEC within 24 hours does nothing to protect a child who may have entered affected water or played in affected shoreline sediment before the Village learned that an exceedance occurred.

Nor is it sufficient to characterize a plume as limited, temporary, or within a regulatory mixing zone. The relevant question for parents is not whether a concentration remained below an acute-toxicity threshold at a designated monitoring point. The question is whether arsenic, mercury, copper, dioxins/furans, or other contaminated Harbor sediment may have reached the water or shoreline where their children swim and play.

The Village will not accept a regulatory framework that could leave it explaining to parents that their children may have encountered "only a little arsenic," mercury, or other contaminated sediment.

Public-health protection requires prevention, immediate municipal notice, real-time monitoring, automatic suspension, and objective closure and reopening protocols - not reassurance after an exposure may already have occurred.

Condition 189 and the related water-quality provisions must therefore be revised to require:

1. Immediate and automatic suspension of any activity causing a TSS, turbidity, contaminant, or other water-quality exceedance;
2. Immediate notification to all affected municipalities, county and local health agencies, beach operators, Harbor authorities, emergency-response agencies, and the public;
3. Real-time monitoring positioned between construction activities and all potentially affected bathing beaches, shellfish beds, oyster-restoration areas, and sensitive shoreline resources;
4. Baseline, construction-period, and post-construction sampling of beach water and shoreline sediment;

¹²Certificate Conditions, Conditions 181 and 185, at 80-82, and Condition 189, at 82-83; HHPC Letter, Ex. F at 2 (requesting off-season work because disturbed sediment could affect bathing beaches).

5. Immediate beach-closure procedures when monitoring identifies an exceedance, plume migration toward a beach, or potential contaminant deposition;
6. Objective, health-protective criteria for reopening;
7. No resumption of the activity causing the exceedance until independent sampling confirms compliance and the Commission issues a written determination authorizing resumption; and
8. Full responsibility by the Certificate Holder for testing, notification, closure, cleanup, remediation, lost municipal revenue, and all other resulting costs.

Without these protections, Condition 189 remains reactive rather than preventive and leaves Harbor users dependent on agency discretion exercised only after an exceedance has occurred.

VIII. NYSDEC'S SHELLFISH RESPONSE IS INEXCUSABLY NARROW

NYSDEC relies principally on a Hard Clam Impact Minimization Plan, a possible Hard Clam Mitigation Plan, and a June 1 through July 31 restriction intended to protect hard-clam spawning and larval development. Condition 74(d)(i) places shellfish under the heading "Species of Economic Importance" and focuses specifically on hard clams.¹³

That is not a complete response to the Village's concerns regarding shellfish resources. The proposed conditions do not clearly protect oysters and other shellfish established and maintained primarily for environmental-restoration purposes.

The Village's original opposition incorporated and relied upon the Hempstead Harbor Protection Committee's requests for turbidity curtains around oyster beds, Harbor-wide shellfish-density and sediment surveys, testing to determine whether disturbed contaminants were deposited on sensitive shellfish areas, and prompt replacement of adversely affected oyster and clam populations.

The Village, as a member of the Hempstead Harbor Protection Committee and in cooperation with the Coalition to Save Hempstead Harbor, has participated in the planting of more than two million oysters in Hempstead Harbor for environmental-restoration purposes. Those oysters were planted to improve water quality, remove excess nutrients, enhance habitat, and advance the long-term ecological recovery of Hempstead Harbor.¹⁴

NYSDEC's Reply does not address:

1. Where those oyster-restoration areas are located;
2. Whether they have been mapped in relation to the final cable alignment and anticipated sediment plumes;
3. How they will be protected from sediment deposition;
4. Whether the June 1 through July 31 work restriction protects oysters or other shellfish species;

¹³Certificate Conditions, Condition 74(d)(i), at 48-49; NYSDEC Reply at 6.

¹⁴HHPC Letter, Ex. F at 1-3. The letter reported that more than one million oyster seeds had been planted in 2024, that a comparable planting was expected in 2025, and that the approximately two million oysters at maturity could filter up to 100 million gallons of water per day.

5. Whether the corridor-based sampling stations will detect impacts to restoration areas outside those stations;
6. What replacement will be required if planted oysters are buried, smothered, displaced, or killed; or
7. How the loss of substantial public, municipal, and community investment will be addressed.

It is astonishing that NYSDEC would defend the Joint Proposal's shellfish protections without meaningfully addressing one of the most significant ongoing ecological-restoration programs in Hempstead Harbor.

Protection of hard clams for economic purposes does not automatically protect oysters, other shellfish species, or shellfish established for environmental restoration.

IX. CONDITION 74(D)(I) AND RELATED PROVISIONS MUST BE BROADENED

To remove any ambiguity, the Village specifically requests that Condition 74(d)(i), together with all related shellfish, benthic, sampling, and mitigation provisions, be broadened to protect:

1. All shellfish species, not only hard clams;
2. Naturally occurring shellfish beds;
3. Shellfish beds established or maintained for environmental-restoration purposes;
4. Oyster-restoration areas;
5. Juvenile, recently planted, and mature shellfish; and
6. Habitat supporting shellfish survival, propagation, filtration, nutrient removal, and other ecological functions.

The revised conditions must require the Certificate Holder, in consultation with NYSDEC, the Hempstead Harbor Protection Committee, the Coalition to Save Hempstead Harbor, and affected municipalities, to identify and map all potentially affected shellfish and oyster-restoration areas before construction. Those resources must be avoided to the maximum extent practicable.

The conditions must also require turbidity curtains or equivalent effective sediment-containment measures around identified shellfish and oyster-restoration beds where technically feasible. The Applicant's generalized position that a turbidity curtain cannot be continuously relocated with moving jet-trenching equipment does not answer whether fixed, localized, or strategically placed sediment controls can protect specific shellfish beds or restoration areas.

If the Certificate Holder contends that such protection is infeasible at a particular location, it must submit a site-specific technical demonstration and propose an equally protective alternative before construction is authorized.

The conditions must further require:

1. Pre-construction documentation of shellfish density, condition, and habitat;
2. Construction-period monitoring capable of detecting plume movement and deposition;
3. Immediate post-trenching assessment;
4. Continued monitoring until recovery is established;

5. Prompt restoration and replacement where impacts occur; and
6. Full financial responsibility for damage to shellfish resources and environmental-restoration projects.

X. RESTORATION MUST BEGIN PROMPTLY AND BE GOVERNED BY MEASURABLE STANDARDS

NYSDEC states that the benthic community and submarine substrate must be restored to pre-construction condition. The Village does not dispute the desirability of that general outcome. The deficiency lies in when impacts will be identified, when corrective action must begin, and how restoration success will be measured.

Condition 133 permits post-installation benthic sampling within 24 months of full energization. Condition 208 contains general restoration language, but it does not establish a Harbor-specific benthic restoration program, oyster-replacement standards, or an immediate post-trenching assessment requirement.¹⁵

The Village's position is clear:

1. An initial post-trenching survey must occur immediately after completion of each sediment-disturbing activity within Hempstead Harbor;
2. Any exceedance, unexpected plume migration, sediment deposition, shellfish injury, beach impact, or habitat disturbance must be investigated immediately;
3. Physical restoration, shellfish replacement, sediment removal, containment, or other corrective action must commence promptly when an adverse impact is identified;
4. Monitoring must continue until objective recovery standards are achieved;
5. A detailed restoration contingency plan must be approved before construction begins; and
6. The Certificate Holder must bear full financial responsibility for investigation, monitoring, restoration, replacement, and mitigation.

The Village is not asserting that every natural biological community can recover instantaneously. It is asserting that assessment and active remediation must begin immediately following the occurrence or discovery of an impact. Later surveys should verify that recovery has occurred. They must not become an excuse to postpone necessary corrective action.

The phrase "restore to pre-construction condition" is also inadequate without defined standards. The conditions must specify:

1. The biological, physical, and chemical criteria defining pre-construction condition;
2. The baseline measurements and reference locations to be used;
3. The deadline for commencing corrective action;
4. The period within which active restoration work must be completed;
5. The frequency and duration of monitoring;
6. The decision-maker responsible for determining whether restoration has succeeded;

¹⁵Certificate Conditions, Conditions 133-134, at 67-69, and Condition 208, at 90.

7. The corrective measures required if recovery is incomplete;
8. The replacement ratio applicable to lost oysters and other shellfish;
9. The method for valuing damage to publicly supported restoration projects; and
10. Financial security sufficient to guarantee performance.

Without those standards, restoration to pre-construction condition remains a general promise rather than a complete and enforceable obligation.

XI. MAJOR VILLAGE CONCERNS REMAIN UNANSWERED

NYSDEC's Reply addresses only selected environmental issues and leaves many of the Village's objections unresolved, including:

1. The 500-foot mixing zone within Hempstead Harbor;
2. The cumulative width and possible overlap of sediment plumes from multiple cables and trenches;
3. The basis for contaminant and water-quality thresholds;
4. The absence of automatic shutdown requirements;
5. The potential transport and deposition of contaminants at public beaches and shoreline areas;
6. The absence of a definite sampling and restoration trigger if the Project is delayed or abandoned;
7. Sole-source-aquifer and public drinking-water risks;
8. Emergency-response obligations and unfunded local burdens;
9. Cumulative impacts associated with the expanded substation footprint and reasonably foreseeable related infrastructure; and
10. Whether the Project remains necessary and in the public interest under current conditions.

These issues were raised in the Village's original and supplemental opposition papers and remain material to the Commission's required findings under Public Service Law Section 126.¹⁶

NYSDEC's support for the Joint Proposal does not provide the missing evidence necessary for the Commission to resolve those issues.

XII. CONCLUSION

The Village objects in the strongest possible terms to NYSDEC's Reply Statement.

NYSDEC did not fairly answer the Village's opposition. It mischaracterized a carefully stated objection to the adequacy and enforceability of the proposed protections as an inaccurate assertion that protective measures do not exist.

The Village's filing was clear. It acknowledged the provisions contained in the Joint Proposal and explained why they are insufficient.

¹⁶Village Opposition at 4-20; Incorporated Village of Sea Cliff, Supplemental Statement in Opposition to Joint Proposal, Case 24-T-0446 (June 8, 2026), at 2-9.

NYSDEC's Reply does not rebut that analysis. It repeatedly points to general conditions and future plans while avoiding the Village's actual concerns regarding prevention, scope, timing, enforceability, automatic shutdown, immediate municipal notification, prompt restoration, public beaches, oyster-restoration areas, abandonment, the creation of new no-anchorage areas, and limitations on current lawful Harbor uses.

Even more troubling is what NYSDEC did not address. NYSDEC did not meaningfully address the protection of more than two million oysters planted in Hempstead Harbor for environmental restoration. It did not require comprehensive Harbor-specific sampling. It did not establish automatic shutdown requirements. It did not protect public beaches. It did not require immediate assessment and remediation when damage occurs. It did not establish measurable restoration standards. It did not explain what happens if the Project is delayed indefinitely or abandoned after the Harbor has been disturbed. It did not address the substantial risk that inadequate burial or future cable-protection measures will create new no-anchor or no-anchorage areas or otherwise limit current lawful Harbor uses. It did not explain why these critical protections should remain deferred until after certification.

Instead, NYSDEC asks the Commission to approve the Joint Proposal without modification and trust that these matters will be handled later.

The Village emphatically rejects that approach.

Hempstead Harbor is not an expendable construction corridor. It is an active public waterway, a significant environmental resource, a working and recreational harbor, a shellfish-restoration area, a location of public bathing beaches, and the beneficiary of decades of municipal, community, State, federal, and private investment.

The Commission should not place that resource - or the children and families who use it - at risk based on future plans, undefined standards, after-the-fact mitigation, discretionary agency decisions made only after an exceedance has already occurred, or a post-construction sampling trigger that may be delayed for years or may never occur at all.

The Commission should reject NYSDEC's request to approve the Joint Proposal without modification.

Before any Certificate is granted, the Commission must require:

1. Complete Harbor-specific baseline information;
2. Targeted sampling of disturbance areas, contamination hotspots, shellfish beds, oyster-restoration areas, depositional areas, public beaches, and sensitive shoreline resources;
3. Immediate post-trenching assessment regardless of the status of the remainder of the Project;
4. Mandatory assessment and restoration if construction is delayed, suspended, or abandoned;
5. Financial security established before marine construction begins;
6. An enforceable prohibition against any new no-anchor or no-anchorage area, exclusion or cable-protection zone, or other limitation on any current lawful use of Hempstead Harbor;
7. Final and enforceable avoidance, monitoring, sediment-control, mitigation, public-notification, and restoration requirements;

8. Turbidity curtains or equally protective sediment controls around shellfish and oyster-restoration beds where technically feasible;
9. Immediate and automatic shutdown upon any TSS, turbidity, contaminant, water-quality, or plume-migration exceedance;
10. Immediate notice to affected municipalities, health authorities, beach operators, Harbor authorities, and the public;
11. Beach-monitoring, closure, testing, cleanup, and reopening protocols;
12. Immediate corrective action and measurable restoration and shellfish-replacement standards, with monitoring until those standards are achieved;
13. Protection of all shellfish species and shellfish used for environmental restoration;
14. Meaningful municipal and party participation in all material environmental plans; and
15. Resolution of the Village's remaining environmental, navigational, anchoring, drinking-water, emergency-response, cumulative-impact, and public-need concerns.

The Village therefore respectfully renews its request that the Joint Proposal be rejected in its present form or, at minimum, held in abeyance pending supplementation of the public record and meaningful review by the affected parties.

Dated: June 26, 2026
Sea Cliff, New York

Respectfully submitted,

INCORPORATED VILLAGE OF SEA CLIFF

By: /s/ Bruce Kennedy
Bruce Kennedy, Village Administrator
300 Sea Cliff Avenue, Sea Cliff, New York 11579
(516) 671-0080 | bkennedy@seacliff-ny.gov