Written Testimony

Part 3 – Rebuttal

Simon V. Kinsella

Intervenor

HEARING ON

Case 18-T-0604: Application of South Fork Wind, LLC (formerly Deepwater Wind South Fork, LLC) for a Certificate of Environmental Compatibility and Public Need for the Construction of Approximately 3.5 Miles of Submarine Export Cable from the New York State Territorial Waters Boundary to the South Shore of the Town of East Hampton in Suffolk County and Approximately 4.1 Miles of Terrestrial Export Cable from the South Shore of the Town of East Hampton to an Interconnection Facility with an Interconnection Cable Connecting to the Existing East Hampton Substation in the Town of East Hampton, Suffolk County.

BEFORE

The Honorable Anthony Belsito

New York State Department of Public Service

October 30th, 2020

Thank you for allowing me to submit rebuttal testimony in this hearing on whether the Applicant's proposed high-voltage transmission infrastructure project is environmentally compatible and needed, or not.

Testimony submitted by me in this proceeding is as follows –

Sep 9, 2020 – Testimony, Part 1-1 - PFAS Contamination

Oct 9, 2020 – Testimony, Part 1-2 - PFAS Contamination

Oct 9, 2020 – Testimony, Part 2 - Public Interest, Need & Price

Oct 30, 2020 – Testimony, Part 3 - Rebuttal

On September 14, 2018, South Fork Wind, LLC formerly known as Deepwater Wind South Fork, LLC (the "Applicant") submitted to New York State Public Service Commission (the "Commission") an application for a Certificate of Environmental Compatibility and Public Need ("Certificate"). In its application, the Applicant proposes to construct industrial-scale permanent electrical transmission infrastructure just beneath the surface of local rights-of-way through a residential neighborhood. The electrical transmission infrastructure comprises substantial underground transmission facilities designed to accommodate

high-voltage alternating-current (HVAC) cables for the delivery of energy generated from an offshore wind farm with an initial capacity of up to one-hundred-and-eighty megawatts (180 MW) and transmitted that energy to an existing LIPA-owned onshore substation located in the Town of East Hampton on eastern Long Island (the "Project").

Part 3 – Rebuttal: DPS Staff Panel

The following testimony is in rebuttal to New York State Department of Public Service ("DPS") Staff Panel testimony dated October 9, 2020.

Q 03-1 - Is DPS Staff Panel's response to the following question accurate (at pp. 28-29): "Has the Applicant demonstrated in this proceeding a basis of need for the proposed Facility?"

DPS Staff Panel's response is *not* accurate.

DPS Staff Panel testimony claims (falsely) that the Applicant has demonstrated in this proceeding a basis of need for the proposed Facility. In support of its testimony, DPS Staff Panel cited the Applicant's ~~"~~executed ~~a~~ "Power Purchase Agreement (PPA) with the Long Island Power Authority" executed February 2017 despite the fact that the PPA does *not* demonstrate any basis of need for the proposed facility. DPS Staff Panel

does *not* reference any particular section or paragraph within the PPA that demonstrates a basis of need for the subject facility.

DPS Staff Panel then leaps from the PPA to "a competitive bidding process initiated by LIPA in 2015 to address a need for cost-effective and reliable new sources of power generation in response to increasing power supply needs for the South Fork of Long Island in Suffolk County." This statement is *not* accurate for the following reasons –

(1) The "competitive bidding process" is in reference to the 2015 South Fork RFP "initiated by LIPA" and, therefore, any demonstrated basis of need would have been demonstrated by LIPA. The question asked: "Has the Applicant demonstrated in this proceeding a basis of need[,]" *not* LIPA;

(2) The 2015 South Fork RFP reads as follows: "As an alternative to adding new transmission lines, this Request For Proposals ("2015 SF RFP") seeks to acquire sufficient local resources to meet expected peak load requirements until at least 2022 in the South Fork [emphasis added.]" As more fully explained in my Testimony, Part 2 (dated October 9, 2020), the Applicant's proposed wind farm is sixty-miles out in the Atlantic Ocean and is *not* a local resource *in* the South Fork, it is *not* designed to meet peak demand and is in itself a proposal for a new

transmission line, so it can hardly be said that the Applicant's proposal is an "alternative to" or deferring the need for new transmission lines. The Applicant's proposed Project meets *none* of the principle objects or needs as defined within the South Fork RFP;

(3) DPS Staff Panel claims (falsely) that the "PPA resulted from a competitive bidding process" which is *not* true.

The PPA contractually defines the relationship between the Applicant and LIPA with specific regard to the South Fork Wind Farm, Export Cable (new transmission line) and interconnection facility (collectively the "Project"). The Applicant's proposal was the *only* large-scale power generation resource and the *only* offshore wind farm proposal submitted pursuant to the South Fork RFP and, therefore, no other proposal competed with it. Apart from service-related proposals, all other proposals submitted pursuant to the South Fork RFP were for local resources such as battery storage (*not* power generation) and one aeroderivative turbine a quarter of the capacity. No proposals for large-scale power-generation resources located outside the South Fork that required new transmission lines (other than the Applicant's proposal) were submitted pursuant to the South Fork

RFP because the South Fork RFP was *not* a request for such proposals; and

(4) DPS Staff Panel insinuates that the Applicant's proposal is a "cost-effective" project, but offers no evidence in support of this claim. At this time, neither the Applicant, LIPA nor PSEG Long Island has released the complete price that consumers will have to pay for delivered power by the Applicant's proposed project.

Q 03-2 - Would it have been possible for DPS Staff Panel to have had assessed the Joint Proposal, properly and completely, and to have had concluded it was in the public interest?

No. Not according to the Procedural Guidelines for Settlement established in NYS Public Service Commission ("PSC") Case 90-M-0255 Opinion, Order and Resolution Adopting Settlement Procedures and Guidelines (issued March 24, 1992), Appendix B (at p. 8) that DPS Staff Panel cites (at pp. 24-26) as the basis for its conclusion that the Joint Proposal is in the public interest.

Specifically, DPS Staff Panel quoted NYS PSC Opinion: that "a desirable settlement should strive for a balance among (1) protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the utility[.]" DPS Staff Panel could *not* have assessed whether or not

ratepayers were protected without knowing the price ratepayers would have to pay for the Applicant's delivered energy. The Applicant has *not* disclosed (within this proceeding) the price for its delivered energy pursuant to the executed PPA (for 90 megawatts) and has *not* disclosed (within this proceeding, publicly or otherwise) other than to PSEG Long Island, Long Island Power Authority ("LIPA"), Office of State Comptroller ("OSC") and Office of the Attorney General ("OAG") the price of a PPA Amendment that "was mutually executed recently" according to PSEG Long Island's supplemental response to Information Request SK #29 dated October 8, 2020 (see Exhibit 3-1). DPS Staff Panel would *neither* have known the Applicant's price table for delivered energy pursuant to the PPA (90 megawatts) *nor* for delivered energy pursuant to a PPA Amendment for additional capacity (including the actual amount of additional capacity). The Application is for delivered energy from the Applicant's proposed offshore wind power-generation facility that according the the Article VII application, could be as much as 180 megawatts. Until a PPA Amendment is disclosed, the total amount of energy to be delivered by the Applicant's proposed transmission facility is unknown and so is the final price for the delivered energy which are both dependent upon the PPA and any PPA Amendment. Without knowing the final capacity and price, DPS Staff Panel could *not* possibly have known whether or not ratepayers are

protected and, therefore, could *not* possibly have known whether or not the Joint Proposal was "a balance among (1) protection of the ratepayers, (2) fairness to investors, and (3) the long term viability of the utility[.]"

Furthermore, the Opinion quoted by DPS Staff Panel also states that a "desirable settlement … should be consistent with sound environmental … policies of the Agency and the State[.]" In January 2020, NYS Department of Environmental Conversation ("DEC") released new Guidance for Sampling and Analysis of PFAS under NYSDECs Part 375 Remedial Programs (see Testimony, Part 1, Q 1-25 at pp. 7-8 and Exhibit 1-1A) and represents New York State's environmental policy with regards sampling and analysis of PFAS contamination. This same PFAS contamination exists along a substantial portion of the Applicant's proposed construction corridor, but state policy as expressed in NYS DEC Guidance for Sampling and Analysis of PFAS has been ignored, completely, by both DEC and DPS Staff Panel. It is egregious that DPS Staff Panel claims (falsely) that the Joint Proposal is consistent with sound environmental policies of the Agency and the State when it is *not*.

Q 03-3 - Does "the Facility route minimizes adverse environmental impacts by avoiding sensitive areas to the maximum extent practicable" and does it include "specified safeguards to protect the natural and human environment" (DPS Staff Panel Testimony at p. 7)?

No. On the contrary, the Applicant's proposed facility appears to have target the most sensitive and most highly contaminated square mile on the South Fork and use it to inflict further disruption and cause further stress among local residents who already have been suffering from drinking water contaminated with PFAS chemicals. The insensitivity and callous disregard for the health and safety of local residents by New York State Governor Cuomo and NYS agencies is appalling! In DPS Staff Panel Testimony (at p. 27, lines 6-8) where it claims that "the Facility route minimizes adverse environmental impacts by avoiding sensitive areas to the maximum extent practicable" DPS Staff Panel is *not* telling the truth.

The Applicant's proposed route for its Export Cable runs through the middle of an area that is known to contain the highest levels of contamination on eastern Long Island where within one hundred feet of the Applicant's cable corridor groundwater contamination exceeds the NYS standard for PFOS by one-hundred-times (100x) and with five hundred feet upgradient, PFOS soil contamination is 10,000 parts per trillion. Please see Exhibit 3-2 – PFAS Heat Map representing a summary of PFAS

contamination derived from approximately two hundred and eighty four (284) Suffolk County Department of Health Services (SCDHS) laboratory test results of samples taken from private drinking-water wells within Wainscott (see Exhibit 3-3(a)-(d) - SCDHS PFAS Lab Reports) and two hundred and ninety-seven (297) PFOA and PFOS test results provided by SCDHS Deputy Commissioner Capobianco in email to East Hampton Town Supervisor Van Scoyoc with subject title: "Wainscott PFC Weekly Update - 6/15/18" (see Exhibit 3-4 SCDHS Email to Town Supervisor Van Scoyoc). Also, please presentation by Nicholas C. Rigano titled: DEC's Assessment of the Wainscott Sand and Gravel Property dated October 6, 2020 (see Exhibit 3-5).

Q 03-4 - Does the Joint Proposal protect "ratepayers by relying on private investments for financing" (DPS Staff Panel Testimony at p. 28, lines 18-19)?

DPS Staff Panel testimony states as one of its key factors "that justify our recommendation" is that "the Joint Proposal protects ratepayers by relying on private investments for financing." This is *not* true.

The cost of construction and the cost of operating ~~of~~ the Applicant's proposed offshore wind power-generation facility that it plans to locate sixty-miles offshore on the Outer Continental Shelf together with the

necessary new transmission lines and an interconnection facility will all be passed onto Suffolk County ratepayers who reside in New York State. These costs will be included along with an obscene profit margin that will largely go to foreign-owned companies and will be incorporated into the overall price that has yet to be fully disclosed to the ratepayers who will have to pay for it all. DPS Staff Panel offers *no* reasoning and *no* evidence for its irrational and unfounded claim.

Furthermore, "relying on private investments for financing" does *not* guarantee protection. For example, on July 20, 2018, New York State Energy Research and Development Authority ("NYSERDA") released a Request for Information OSW-2018 ("OSW RFI"). In response, Ørsted and Eversource, the joint venture partners that own the Applicant in this proceeding, South Fork Wind LLC, submitted comments under the name of Bay State Wind LLC (see Exhibit 3-6 - NYSERDA OSW RFI 2018, Ørsted & Eversource Comments at p. 2 and Exhibit 3-7 - NYSERDA OSW Policy Options Paper dated January 29, 2018 at p. 62 that Exhibit 3-6 references). In the OSW RFI, NYSERDA asked: "Should the 2018 RFP prescribe a minimum capacity … and if so, what should the minimum be?" Ørsted's and Eversource's response reads as follows –

> *The 2018 RFP should establish a minimum capacity bid of 400 MW. As one of the key findings of the NYSERDA OSW*

> *Policy Options Paper ("Options Paper"), NYSERDA concluded that "Small initial projects are not likely to deliver cost savings. Due to diseconomies of scale, the costs per unit of energy for projects of 100 MW and 200 MW in size are significantly higher than those for 400 MW projects. As a result, the total Phase I program costs for such smaller projects would be comparable to those of a 400 MW project despite their smaller size and energy output"*
>
> (Exhibit 3-7 - NYSERDA OSW Policy Options Paper dated January 29, 2018 at p. 62.)

In other words, the private investors backing the Applicant's proposal that is currently before the Commission in this proceeding, recommend *against* buying energy from offshore wind power-generation facilities of less than 400 megawatts because "diseconomies of scale" would mean that the "costs per unit of energy for projects of 100 MW and 200 MW in size are significantly higher[.]" Projects that delivery energy from small offshore wind power-generation facilities such as that being proposed by the Applicant in this proceeding "are not likely to

deliver cost savings" according to the owners of the Applicant in this proceeding.

Finally, by "relying on private investments" to protect ratepayers, there is a temptation for New York State authorities such as LIPA and companies it may employ to administer procurements such as PSEG Long Island LLC~~,~~ *not* to thoroughly evaluate proposals in the (unfounded) belief that a private investment would offer protection to ratepayers. This is exactly what happened in this proposal currently before the Commission in this proceeding as reported by Mark Harrington in Newsday published on May 24, 2017 (see Exhibit 3-8) –

"*We frankly did not do a thorough evaluation of [the] complex renewable costs," LIPA chief executive Tom Falcone said, because it's a "highly uncertain and rapidly changing industry."*