

1 12-7-2020 - Deepwater Wind South Fork, LLC - 18-T-0604

2 STATE OF NEW YORK

3 PUBLIC SERVICE COMMISSION

4 Case 18-T-0604 - Application of Deepwater Wind South  
5 Fork, LLC for a Certificate of Environmental  
6 Compatibility and Public Need for the Construction of  
7 Approximately 3.5 Miles of Submarine Export Cable from  
8 the New York State Territorial Waters Boundary to the  
9 South Shore of the Town of East Hampton in Suffolk  
10 County and Approximately 4.1 Miles of Terrestrial  
11 Export Cable from the South Shore of the Town of East  
12 Hampton to an Interconnection Facility with an  
13 Interconnection Cable Connecting to the Existing East  
14 Hampton Substation in the Town of East Hampton,  
15 Suffolk County.

16  
17 DECEMBER 7, 2020 at 9:37 a.m.

18 WebEx

19  
20 ALJ ANTHONY BELSITO, DPS  
21  
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2 I N D E X O F P R O C E E D I N G S

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4 DPS STAFF PANEL:

5 CROSS EXAMINATION BY MR. KINSELLA 583

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2 (On the record at 9:37 a.m.)

3 A.L.J. BELSITO: Record.

4 THE REPORTER: I'm ready we are on  
5 the record.

6 A.L.J. BELSITO: Thank you very  
7 much. I call case 18-T-0604, application of Deep  
8 Water Wind South Fork LLC for a certificate of  
9 environmental compatibility and public need for the  
10 construction of approximately 3.5 miles of  
11 submarine export cable from the New York state  
12 territorial water's boundary to the south shore of  
13 the town of East Hampton and Suffolk County and  
14 approximately 4.1 miles of terrestrial export cable  
15 from the south shore of the town of East Hampton to  
16 an interconnection facility with an interconnection  
17 cable connecting the existing East Hampton  
18 substation in the town of East Hampton Suffolk  
19 County. My name is Tony Belsito, I am the  
20 Administrative Law Judge for this proceeding. This  
21 is the third day of evidentiary hearings pursuant  
22 to a notice that was issued by the secretary on  
23 November 13<sup>th</sup>, 2020.

24 We just had a brief off the record  
25 discussion of the process for today. Mr. Kinsella

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2 emailed around the parties a -- a list that folks  
3 are having difficulty, including myself, accessing  
4 of a number of the exhibits. It is my  
5 understanding there's a large number, or a number  
6 of exhibits, I haven't seen the list so I won't  
7 characterize it, that are new and have not been  
8 circulated or otherwise shared with the parties  
9 before. At this point, I'm going to open the floor  
10 for staff to respond to that list if they would  
11 like to.

12 MR. FORST: Yes thank you Your Honor  
13 this is Nick Forst from DPS staff. So we would  
14 object to these additional exhibits. At this  
15 point, there has been exhibit worksheet and a list  
16 of exhibits included with the cross examination  
17 worksheet that was submitted prior to today. And  
18 due to the technical difficulties as well as the  
19 lack of foundation for the exhibit, we would object  
20 to them being introduced at this point. I would  
21 just further add.

22 MR. OSSIAS: And I would add, I  
23 would add Your Honor it's also, it's also  
24 prejudicial at this point to introduce exhibits  
25 that were not previously.

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2 A.L.J. BELSITO: Could the speaker  
3 identify himself please.

4 MR. OSSIAS: I'm sorry sorry, I  
5 would add.

6 THE REPORTER: I'm sorry I didn't  
7 get, I didn't get who was talking.

8 MR. OSSIAS: My apologies, it's  
9 Brian Ossias.

10 THE REPORTER: Thank you.

11 MR. OSSIAS: I -- I just wanted to  
12 add to what Mr. Forst indicated with regard to the  
13 objection. I think it's, I think it's highly  
14 prejudicial at this point to expect staff to review  
15 documents, some of those are my understanding  
16 hundreds of pages in length and -- and be expected  
17 to answer questions on cross examination.

18 A.L.J. BELSITO: Alright thank you,  
19 Mr. Kinsella would you like to respond?

20 MR. KINSELLA: Yes Your Honor. The  
21 documents, most of them are already listed on the  
22 exhibit list. I've discussed some of them in prior  
23 cross examination. I'm just putting together a  
24 list of the documents now. I'll be -- I'll be  
25 finished that in a few minutes and I can email that

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2 around and if staff, DPS staff panel wish to object  
3 to any particular document, we can discuss that or  
4 if they're concerned about the providence of the  
5 document, where it comes from, I can direct them to  
6 where the document is originally. The document is  
7 actually labeled on the attachment where it is  
8 originally filed so there shouldn't be an issue  
9 there. If you'll give me one minute, I'll finish  
10 this list and then I will.

11 A.L.J. BELSITO: Mr. -- Mr. Kinsella  
12 the hearing was supposed to start at 9:30. So this  
13 is how we'll work with this at this time. Are  
14 these exhibits you plan to use in cross  
15 examination?

16 MR. KINSELLA: Yes Your Honor.

17 A.L.J. BELSITO: Okay so as you  
18 bring them up, I'll allow DPS staff to object to  
19 them at -- at the time. But I'm going to go ahead  
20 and take appearances and then we'll start with  
21 cross examination and I will consider DPS staff's  
22 objection to individual documents as they're  
23 raised, with the consideration that you don't have  
24 to repeat everything you said, I understand your  
25 argument as it applies certainly to new documents



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2 and rather than wait for a list or go through each  
3 one of them at this point as they're brought up,  
4 you may reiterate your objection at that time. So  
5 as far as the appearances go, again we'll go  
6 through the same process as last week, I will read  
7 the party name and -- and you can let me know if  
8 you're on the line. Some folks have already  
9 emailed me and that is also sufficient. Or if you  
10 do not star six your line in time, and I don't get  
11 that you're here, an email again is sufficient. So  
12 the applicant South Fork Wind?

13 MR. SINGER: This is Len Singer for  
14 the applicant, the law firm of Couch White by Len  
15 Singer and Devlyn Tedesco.

16 A.L.J. BELSITO: Alright DPS Staff?

17 MR. FORST: Good morning Your Honor,  
18 it's Nicholas Forst and Brian Ossias for DPS Staff.

19 A.L.J. BELSITO: DEC Staff? PSEG  
20 Long Island? P-s-e-g Long Island excuse me.

21 MR. GREENBLATT: Good morning this  
22 is Jeff Greenblatt from PSEG Long Island and we  
23 might also have LIPA on.

24 MS. ZAFONTE: Yes Lisa Zafonte from  
25 LIPA.

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2 A.L.J. BELSITO: Thank you. The  
3 town of East Hampton?

4 MR. EILBOTT: Good morning Your  
5 Honor this is Eli Eilbott from the law firm Duncan,  
6 Weinberg, Genzer, and Pembroke, I'm on the line  
7 I'll be muted thank you.

8 A.L.J. BELSITO: Thank you.  
9 Citizens for the Preservation of Wainscott?

10 MR. BERNSTEIN: Good morning Your  
11 Honor, Kevin Bernstein, Bond Schoeneck and King, my  
12 colleague Claire Bopp is also on WebEx with me and  
13 my co-counsel Lance Gotko of Friedman Kaplan is  
14 also listening in, I'm not sure that he's on the  
15 WebEx but he'll make his appearance as well.

16 A.L.J. BELSITO: Thank you. The  
17 Trustees of the Freeholders and Commonality of the  
18 Town of East Hampton?

19 MR. SPITZER: Good morning Your  
20 Honor, Dan Spitzer and Mila Buckner of the firm of  
21 Hodgson Ross on behalf of the trustees.

22 A.L.J. BELSITO: Good morning thank  
23 you. Win With Wind?

24 MS. AIDUN: Good morning Your Honor,  
25 Hillary Aidun, A-I-D-U-N of the Sabin Center for

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2 Win with Wind.

3 A.L.J. BELSITO: Do, thank you.

4 Dune Alpin Property Owners Association?

5 MR. BERNSTEIN: Your Honor I am  
6 representing their interests, this is Kevin  
7 Bernstein I'm representing their interests in this  
8 proceeding.

9 A.L.J. BELSITO: Thank you. Long  
10 Island Commercial Fishing Association?

11 MS. BRADY: Yes Your Honor good  
12 morning.

13 A.L.J. BELSITO: Good morning. And  
14 Mr. Bernstein again for Michael and Pamela Mahoney  
15 as well?

16 MR. BERNSTEIN: Yes Your Honor.

17 THE REPORTER: I'm sorry I'm sorry I  
18 didn't get the woman who answered, her name.

19 A.L.J. BELSITO: Bonnie Brady.

20 THE REPORTER: Okay thank you.

21 A.L.J. BELSITO: For the Long Island  
22 Commercial Fishing Association.

23 THE REPORTER: Thank you.

24 A.L.J. BELSITO: And Thomas.

25 MS. COVERT: Good morning Your

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2 Honor?

3 A.L.J. BELSITO: Yes.

4 MS. COVERT: This is Lisa Covert on  
5 behalf of New York State DEC I'm on the line,  
6 apologies for missing, I have mute problems.

7 A.L.J. BELSITO: No problem at all  
8 it happens to all of us. Thank you for letting me  
9 know. And Mr. Thomas Bjurlof? And again if -- if  
10 I've missed your name or if you've had mute  
11 problems, feel please feel free to email me and  
12 I'll be providing a list to Janet at the end of the  
13 day. On -- first on the schedule today is the DPS  
14 Staff panel to be cross examined by Mr. Kinsella.  
15 And is the panel ready to go?

16 MR. FORST: Your Honor this is...

17 A.L.J. BELSITO: I'm sorry?

18 MR. FORST: This is Nick Forst from  
19 Staff the panel should be on the line.

20 A.L.J. BELSITO: Excellent and the  
21 panel consists of Andrew Davis, Jeremy Flaum, and  
22 Miguel Moreno-Caballero?

23 MR. FORST: That's correct Your  
24 Honor.

25 A.L.J. BELSITO: Excellent.

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2 MR. FORST: Nick Forst, Staff panel  
3 are you on the line can you just say hello so we  
4 know you're there?

5 MR. DAVIS: Andrew Davis here.

6 MR. FLAUM: Jeremy Flaum here.

7 MR. FORST: And is Miguel there?

8 Just give us one second Your Honor. I apologize.  
9 Miguel if you're on the line you have to do star  
10 six to unmute in addition to any other device you  
11 may be muted on.

12 A.L.J. BELSITO: He is showing up on  
13 my participant list.

14 MR. FORST: Your Honor this is Nick  
15 Forst from Staff, he is in the participant list and  
16 he can confirm he can hear us but I believe he's  
17 having a little bit of technical difficulty with  
18 his microphone. Similar to other witnesses that  
19 we've had in previous days unfortunately.

20 A.L.J. BELSITO: Okay is there a way  
21 for him to fix that quickly or use a telephone to  
22 call into the, or have the WebEx call him?

23 MR. FORST: Yeah we're trying to  
24 resolve that right now Your Honor apologies.

25 A.L.J. BELSITO: No problem. We'll

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2 go off the record until Mr. Moreno.

3 (Off the record at 9:49 a.m.)

4 (On the record at 9:51 a.m.)

5 THE REPORTER: Okay we're back on  
6 the record.

7 A.L.J. BELSITO: Oh sorry Janet.

8 THE REPORTER: That's okay.

9 A.L.J. BELSITO: Could I just remind  
10 everybody to mute their line while they're not  
11 speaking. Okay we're on the record and all the  
12 witnesses previously -- previously identified  
13 please stand and raise your right hand. Do you  
14 swear or affirm that the testimony you will provide  
15 is the truth? Mr. Davis?

16 MR. DAVIS: Andrew Davis, I so  
17 affirm.

18 MR. DAVIS; SWORN

19 A.L.J. BELSITO: Mr. Flaum?

20 MR. FLAUM: Jeremy Flaum, I so  
21 affirm.

22 MR. FLAUM; SWORN

23 A.L.J. BELSITO: Mr. Moreno?

24 MR. MORENO: Miguel Moreno, I do.

25 MR. MORENO; SWORN.

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2 A.L.J. BELSITO: Thank you. Mr.  
3 Ossias or Mr. Forst the panel is -- is yours to  
4 prepare.

5 MR. FORST: Thank you Your Honor.  
6 Panel, could you please state your names, positions  
7 and business addresses for the record please? Mr.  
8 Davis we can start with you. Can folks hear me?

9 A.L.J. BELSITO: I can hear you, I -  
10 - I did not hear Mr. Davis's response.

11 MR. DAVIS: Can you hear me now?

12 MR. FORST: Yes.

13 MR. DAVIS: Andrew Davis, Chief of  
14 Environmental Certification and Compliance Office  
15 of Electric, Gas and Water, New York State  
16 Department of Public Service.

17 MR. FORST: Mr. Flaum?

18 MR. FLAUM: Jeremy Flaum, Utility  
19 Supervisor, Environmental Certification and  
20 Compliance Section of the Office of Electric, Gas,  
21 and Water Department of Public Service, address 3  
22 Empire State Plaza, Albany, New York.

23 MR. FORST: And Mr. Caballero?

24 MR. MORENO: Miguel Moreno-  
25 Caballero, you can call me Miguel Moreno for the

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2 record. I work in the Environmental Certification  
3 and Compliance Section of the Department of Public  
4 Service as a Utility Engineering Specialist 3 in  
5 Acoustics and the address is 3 Empire State Plaza,  
6 Albany, New York.

7 MR. FORST: Thank you. Do you  
8 comprise the staff panel?

9 MR. DAVIS: Yes.

10 MR. FLAUM: Yes.

11 MR. MORENO: Yeah.

12 MR. FORST: Panel members before you  
13 is a document entitled Prepared Testimony of  
14 Department of Public Service Staff Panel.  
15 Consisting of a cover page and 56 pages of  
16 questions and answers dated October 9<sup>th</sup>, 2020. And  
17 four exhibits submitted with your testimony labeled  
18 DPS-1, DPS-2a, DPS-2b, and DPS-2c is that correct?

19 MR. DAVIS: That is correct.

20 MR. FLAUM: That is correct.

21 MR. FORST: Yes these -- these  
22 exhibits have been pre marked as exhibits 375  
23 through 378. Was this set of testimony and  
24 exhibits prepared by you or under your direct  
25 supervision?



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2 MR. DAVIS: Andrew Davis yes it was.

3 MR. FORST: And do you have any  
4 changes or corrections to make to that testimony?

5 MR. DAVIS: No changes, no  
6 corrections.

7 THE REPORTER: Panel please, I'm  
8 sorry but I just need the panel to be sure to state  
9 their name when they talk, thank you.

10 MR. FORST: This is Nick Forst  
11 again, and panel if you were asked the same  
12 questions today under oath would you answer them  
13 the same way?

14 MR. DAVIS: Andrew Davis yes I would  
15 answer the questions the same way.

16 MR. FORST: And panel do you affirm  
17 that the information contained in your testimony  
18 and exhibits is true to the best of your knowledge,  
19 information, and belief?

20 MR. DAVIS: Yes it is. Andrew Davis  
21 that was.

22 MR. FORST: Your Honor I would move  
23 that the pre filed direct testimony of the staff  
24 panel be entered into the record as if given orally  
25 during the hearing. It's my understanding we might

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2 be handling that all at one time and I would now  
3 proffer the staff panel for cross examination.

4 A.L.J. BELSITO: Excellent thank  
5 you. Mr. Kinsella, the panel is yours to cross.

6 MR. KINSELLA: Thank you Your Honor,  
7 thank you Mr. Forst, Staff panel.

8 CROSS EXAMINATION

9 BY MR. KINSELLA:

10 Q. To begin with, most of my  
11 questions will be addressed to Andrew Davis. Mr.  
12 Davis, have you got in hand a copy of your  
13 testimony?

14 A. (Davis) Yes I do.

15 Q. Do you mind turning to page 15  
16 of the DPS testimony please?

17 A. I have it.

18 Q. At line 14 of DPS testimony,  
19 DPS states that the commission is required to take  
20 into the account the total cost to society is that  
21 correct?

22 A. Yes that's what's stated in the  
23 testimony.

24 Q. Thank you. Is another word for  
25 total whole, or entire, or complete?

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2 A. I don't understand the  
3 question.

4 Q. Mr. Davis I'm trying to elicit  
5 a meaning for the word total, does total mean  
6 whole, or entire, or complete? What is your  
7 understanding of the, of the meaning?

8 A. Title? The word total I don't  
9 understand.

10 Q. Sorry that might be my accent.  
11 Total, t-o-t-a-l, total. As in total cost to  
12 society. What is your understanding of the meaning  
13 of the word total?

14 A. All encompassing.

15 Q. Thank you. Total does not mean  
16 partial or incomplete is that correct? Mr. Davis.

17 A. I was just reading the  
18 sentence, rereading the sentence.

19 Q. Take your time.

20 A. Total cost. Adding them all  
21 up.

22 Q. Total does not mean partial or  
23 incomplete is that correct?

24 A. I guess one interpretation is  
25 no it does not, yes it does.

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2 Q. So if I used the word total, it  
3 does not mean partial? Partial is the opposite to  
4 total correct? A part of something is not the  
5 totality of something. Is that a correct  
6 statement?

7 A. It sounds like a reasonable  
8 statement yes.

9 Q. Thank you. And would you  
10 consider rate payers to be members of society?

11 A. It, in part yes.

12 Q. In part, in part of rate payers  
13 or part of society? Rate payers do they constitute  
14 a part of society?

15 MR. OSSIAS: Your Honor can we just,  
16 can I just object, I -- I -- I -- I mean the notion  
17 of society has not really been defined in -- in  
18 staff testimony so perhaps Mr. Kinsella can -- can  
19 provide a little more detail.

20 THE REPORTER: Who is that, who is  
21 that Mr. Singer?

22 MR. OSSIAS: Sorry it was Brian  
23 Ossias, Department Staff.

24 THE REPORTER: Oh okay thank you.

25 BY MR. KINSELLA: (Cont.)

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2 Q. In reply to Mr. Oassias's  
3 comment, the quote was drawn protection  
4 environmental values and takes into account the  
5 total cost to society of such facilities. That's a  
6 quote from chapter 272 of the laws of 1970 section  
7 1, legislative findings.

8 A.L.J. BELSITO: I'll let the  
9 witness answer if they can. But I will, Mr.  
10 Kinsella you -- you continue to ask one or two  
11 questions and you keep rewording them, so it's  
12 difficult to tell if you're asking the negative or  
13 the positive. So please ask a question and give  
14 the panel a moment to answer, or their, thank you.

15 MR. KINSELLA: Yes your, yes Your  
16 Honor I was just trying to help the -- the witness.

17 A.L.J. BELSITO: Unless they ask for  
18 clarification, don't rephrase the question until  
19 they've answered it.

20 MR. KINSELLA: Thank you Your Honor.

21 BY MR. KINSELLA: (Cont.)

22 Q. So Mr. Davis if you don't  
23 answer the question can you ask for clarification  
24 because I'm not quite sure whether it's my accent  
25 or understanding of the words.

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2 A. (Davis) Well it's also  
3 partially that your phone line is very weak and I'm  
4 a little hard of hearing.

5 Q. Ah okay I'll try and speak up  
6 then.

7 A. So it's a combination of those  
8 things.

9 Q. Okay I'll try, I'll try and  
10 speak up.

11 A.L.J. BELSITO: Would you like to -  
12 - to repeat the question Mr. Davis?

13 MR. DAVIS: Yes I need the question  
14 repeated thank you.

15 BY MR. KINSELLA: (Cont.)

16 Q. The question was do you  
17 consider rate payers to be members of society?

18 A. (Davis) Rate payers meaning  
19 what exactly?

20 Q. If you look at staff testimony,  
21 there's a section starting at line 11, going  
22 through to line 15. And it is a quote from chapter  
23 272 of the laws of 1970 section 1, legislative  
24 findings. And I'm trying to understand what your  
25 understanding of the word society is. The line 14

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2 reads the total cost to society of such facilities.

3 So, what do you mean by the word society and does  
4 it include rate payers?

5 A.L.J. BELSITO: I believe he asked  
6 for a definition or your definition of rate payer.

7 BY MR. KINSELLA: (Cont.)

8 Q. Somebody who pays rates, in  
9 this case electricity rates.

10 A. (Davis) Somebody, I -- I guess  
11 I'm putting in context somebody, rate payers  
12 includes as I understand it, individuals and  
13 businesses and is a business a member of society, I  
14 don't know. You're asking me definitions of words  
15 and I don't have a dictionary at hand to look them  
16 up.

17 Q. That's -- that's okay and  
18 that's a good question. For the sake of the  
19 question, let limit it to individuals. So, do  
20 individual rate payers, would you consider  
21 themselves members of society?

22 A. Do any other panel members have  
23 an opinion?

24 Q. Mr. Davis I'm not quite sure  
25 I'm asking the question of you, do you not

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2 understand the question?

3 A. Well, there might be people who  
4 don't engage with others and I guess I would, if  
5 they're not engaging in society then I don't know  
6 if they're, they might not be members of society, I  
7 don't know. I don't see, the -- the word rate  
8 payers isn't in this whole citation of the  
9 testimony that you're asking me about, so.

10 Q. I think the question is more  
11 around the word society.

12 A.L.J. BELSITO: I think he's  
13 provided an answer, if you have a different  
14 question related to this, you can try it.

15 BY MR. KINSELLA: (Cont.)

16 Q. Okay. You replied that society  
17 some members, some individuals that don't interact  
18 with others are not members of society. So in that  
19 instance, would the -- would DPS not consider the  
20 public need in their instance because they're not  
21 members of society, individuals that did not  
22 interact with other people?

23 A. (Davis) Oh dear. Rate payers,  
24 society could include rate payers.

25 Q. So.



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2 A. I'm sure there's plenty of rate  
3 payers that aren't, I -- I withdraw that phrase.

4 Q. This is not a trick question  
5 Mr. Davis, it's just a very straightforward  
6 question, the general meaning of the word society  
7 and how it applies in the context of the  
8 legislative.

9 A.L.J. BELSITO: Mr. Kinsella I  
10 believe he just said that rate payers, some rate  
11 payers are members of society. Can we move on?

12 MR. OSSIAS: Your Honor, Your Honor,  
13 it's Brian Ossias with Staff counsel, to the extent  
14 he's asking for the panel to draw legal conclusions  
15 I would object. The statute is -- is that obviously  
16 speaks for itself and we'll have an opportunity to  
17 brief what the meaning of the statute is at -- at a  
18 later date.

19 A.L.J. BELSITO: Okay I think he got  
20 an answer to his question so I would move onto the  
21 next one.

22 BY MR. KINSELLA: (Cont.)

23 Q. Mr. Davis when a rate payer  
24 pays his or her regular electricity bill, would you  
25 say that that is a cost incurred by the rate payer?

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2 A. (Davis) I believe so yes.

3 Q. Are you, Mr. Davis again, are  
4 you aware of any provision in the public service  
5 law or the procedural guidelines for settlements  
6 that preclude the commission from considering the  
7 cost of electricity born by rate payers when  
8 reviewing the public need?

9 A. The cost to rate payers, yes  
10 potentially one of the factors the commission would  
11 consider in making a decision.

12 Q. So where DPS writes the concept  
13 of public need requires that the commission take  
14 into account the total cost to society, would you  
15 include in that cost, the cost for electricity  
16 incurred by over one million rate payers on Eastern  
17 Long Island.

18 MR. FORST: Objection Your Honor,  
19 this is Nick Forst for Staff, I mean I think my co-  
20 counsel Mr. Ossias stated this already but these  
21 are calling for legal conclusions as to what's  
22 considered you know under a commission finding in  
23 the statute, you know I just think that this is  
24 inappropriate.

25 MR. KINSELLA: Your Honor if I can

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2 speak to the objection?

3 A.L.J. BELSITO: You may.

4 MR. KINSELLA: Thank you. These  
5 words are directly from staff panel's testimony.  
6 If they don't understand the meaning of the words.

7 A.L.J. BELSITO: You can ask the  
8 staff its understanding of those words but I don't  
9 think that you can ask them to define or speak for  
10 the commission or explain the commission's views of  
11 this.

12 MR. KINSELLA: No I'm just asking  
13 for their understanding of the words Your Honor.  
14 I'm not asking for a legal opinion.

15 A.L.J. BELSITO: Okay, the  
16 question's been posed.

17 BY MR. KINSELLA: (Cont.)

18 Q. Mr. Davis.

19 A. (Davis) Can you repeat the  
20 question I've forgotten what you asked.

21 Q. That's okay. So where DPS  
22 writes the concept of public need requires that the  
23 commission take into account the total cost to  
24 society. Would you include in that cost, the cost  
25 for electricity incurred by over one million rate

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2 payers on Eastern Long Island?

3 MR. FORST: Objection Your Honor,  
4 cost of what?

5 MR. KINSELLA: Cost for electricity.

6 A.L.J. BELSITO: Mr. Kinsella I  
7 think you can ask the panel in drafting their  
8 testimony if they considered the cost of to an  
9 individual rate payer of electricity or the cost of  
10 paying their electricity bill for an individual  
11 rate payer.

12 BY MR. KINSELLA: (Cont.)

13 Q. Mr. Davis did you understand  
14 that question, would you like me to repeat it to  
15 you?

16 A. (Davis) This -- this  
17 questioning your, this testimony is simply reciting  
18 a sentence out of the commission's settlement  
19 guidelines. I don't believe anywhere else in our  
20 testimony presented that we addressed cost to rate  
21 payers.

22 Q. So you're saying that the  
23 Department of Public Service did not consider the  
24 cost born by rate payers for electricity related to  
25 the project under consideration today?

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2 MR. SINGER: Your Honor this is Len  
3 Singer, can I be heard on this issue?

4 A.L.J. BELSITO: Yes sir.

5 MR. SINGER: If this is going to the  
6 prices under the power purchase agreement, I  
7 believe you have already ruled on a number of  
8 occasions that it's not -- not relevant to this  
9 case.

10 MR. FORST: And Your Honor this is  
11 Nick Forst from Staff, I mean we would join in that  
12 objection as well included in the most recent  
13 motions to strike Mr. Kinsella's testimony, it was  
14 made very clear by Your Honor that issues related  
15 to the cost of the PPA and any comparative analysis  
16 were also stricken.

17 MR. KINSELLA: Your Honor may I  
18 speak to the objection?

19 A.L.J. BELSITO: Sure.

20 MR. KINSELLA: Objections. Your  
21 Honor, struck testimony from, struck the entire  
22 testimony from part two of my testimony, the  
23 grounds was that it was related to the PPA and the  
24 South Fork RFP and it was somehow an attempt to  
25 unwind or undo those documents. I'm not

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2 referencing the power purchase agreement or the  
3 South Fork RFP, I'm just asking for the meaning of  
4 the words as they are written in the testimony.

5 A.L.J. BELSITO: Okay and I think  
6 Mr. Davis answered that question. He said they  
7 were quoted from, and he can correct me if I'm  
8 mischaracterizing his testimony, but they were  
9 quoted from the -- the legislation and in the rest  
10 of the testimony they do not address costs of rate  
11 payers, or costs to rate payers. I think it's time  
12 to move onto a different question Mr. Kinsella.

13 BY MR. KINSELLA: (Cont.)

14 Q. Okay Mr. -- Mr. Davis just to  
15 confirm that you said that rate payers or the cost  
16 to rate payers was not considered in this  
17 testimony, was the cost to rate payers considered  
18 at all by DPS?

19 A. (Davis) There's no testimony in  
20 this, in our document, to the best of my  
21 recollection that addresses cost to rate payers.

22 A.L.J. BELSITO: Move on Mr.  
23 Kinsella.

24 MR. KINSELLA: Thank you Mr. Davis,  
25 yes Your Honor.

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2 BY MR. KINSELLA: (Cont.)

3 Q. In DPS testimony at page 32,  
4 lines three to six, I'll just give you a minute to  
5 turn to that page. Page 32.

6 A. (Davis) Sorry.

7 Q. Three to six. The testimony  
8 reads the facility would deliver up to 132  
9 megawatts of renewable energy from a proposed  
10 offshore wind generating facility to the existing  
11 East Hampton substation. Is that correct?

12 A. That's what the testimony reads  
13 yes.

14 Q. Thank you. Where will the  
15 proposed offshore wind generating facility be  
16 located?

17 A. Approximately 35 miles easterly  
18 of Montauk is my understanding.

19 Q. Thank you. How long would the  
20 South Fork export cable have to be to join the  
21 offshore wind generating facility to the  
22 interconnection facility in the town of East  
23 Hampton?

24 A. I -- I don't have that number  
25 off the top of my head. I believe it's started in

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2 the application. But there's, for in terms of the  
3 article seven review and certification proceeding,  
4 the length of the cable was approximately 3.1 miles  
5 to the best of my recollection, within the waters  
6 of New York. And just over four miles on upland.

7 Q. Do you have access to the  
8 documents I uploaded earlier today and or the email  
9 I sent out with the exhibits?

10 A. Well the email didn't work  
11 because it was to a Dropbox which, so I fiddled  
12 with that for a few minutes but it was fruitless.

13 Q. Did you receive an email with  
14 attachments from me this morning? An hour ago  
15 approximately.

16 A.L.J. BELSITO: Do you have a  
17 particular document that you can refer him to?

18 MR. KINSELLA: Yes it's SK Exhibit  
19 DPS number three. Which is from exhibit 40 of Deep  
20 Water Wind South Fork's response to IR Trustees  
21 one.

22 MR. FORST: Your Honor this is Nick  
23 Forst from Staff, there's three exhibits here  
24 labeled number three.

25 MR. KINSELLA: Yes sorry.



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2 A.L.J. BELSITO: I'm looking at --  
3 at the working exhibit list Mr. Kinsella. Is this  
4 exhibit on that list?

5 MR. KINSELLA: I've got to find the  
6 working list.

7 MR. FLAUM: Your honor, Jeremy  
8 Flaum.

9 A.L.J. BELSITO: Yes sir.

10 MR. FLAUM: May I ask a question?

11 A.L.J. BELSITO: Of course.

12 MR. FLAUM: Mr. Kinsella has  
13 directed his questions to Mr. Davis and at one  
14 point, Mr. Davis asked if any of the other panel  
15 members had anything to add to his response to Mr.  
16 Kinsella's question. My question to you is, if Mr.  
17 Kinsella directs a question to an individual panel  
18 member but there, another panel member that may be  
19 able to provide a -- a response to that question,  
20 is that allowed?

21 A.L.J. BELSITO: Yes it is. Anyone  
22 on the panel who can provide an answer is -- is  
23 able to answer.

24 MR. FLAUM: Thank you your honor.

25 A.L.J. BELSITO: Did you have

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2 something you wanted to add to any of the questions  
3 that have been asked so far?

4 MR. FLAUM: No I do not your honor.

5 A.L.J. BELSITO: Okay thank you for  
6 the clarifying question. Mr. Kinsella have you  
7 located the working list?

8 MR. KINSELLA: I can't your honor  
9 because this list is different from the, on hang on  
10 hang on.

11 A.L.J. BELSITO: I sent it out  
12 yesterday.

13 MR. KINSELLA: Oh hang, I think I  
14 may have found it here we go. Okay it's exhibit  
15 number 204, and of that exhibit it's page number  
16 152.

17 A.L.J. BELSITO: Do the witnesses  
18 have access? It looks like it's an exhibit  
19 proposed by South Fork Wind.

20 MR. FLAUM: Jeremy Flaum, I have the  
21 exhibit in front of me.

22 MR. DAVIS: Andrew Davis I have the  
23 exhibit also.

24 BY MR. KINSELLA: (Cont.)

25 Q. Okay it's, yes, page 152. So

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2 Mr. Davis, looking at that exhibit, there's a table  
3 there, table 3.2, would you say that the distance  
4 or the length of the transmission cable to connect  
5 the offshore wind farm to the interconnection  
6 facility is approximately 65 miles long as  
7 proposed?

8 A. (Davis) Table 3.2-1.

9 Q. That's correct.

10 A. Summary of South Fork Export  
11 Cable Segment. Beach Lane, yes, total 65.5 miles.  
12 Document speaks for itself.

13 Q. Thank you Mr. Davis. If DPS  
14 were to divide the total capacity of the offshore  
15 wind generating facility of 132 megawatts by the  
16 total length of the South Fork export cable, I, 65  
17 and a half miles, would that work out to be  
18 approximately two megawatts of capacity for every  
19 mile of transmission cable?.

20 A. I -- I don't see -- I don't  
21 know why one would want to do that measurement.

22 Q. Have you got a calculator  
23 there?

24 A. I could find one.

25 A.L.J. BELSITO: Mr. Kinsella

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2 there's no reason for the witness to -- to do math  
3 for you. He answered your question, ask another  
4 one please.

5 BY MR. KINSELLA: (Cont.)

6 Q. Okay just to make sure, do you  
7 agree that 132 megawatts divided by 65 miles is  
8 approximately two megawatts of capacity for every  
9 mile?

10 A.L.J. BELSITO: The witness said he  
11 did not know, ask a different question.

12 MR. KINSELLA: Yes your honor.

13 BY MR. KINSELLA: (Cont.)

14 Q. Have you heard of another  
15 offshore wind farm that is being proposed by the  
16 same owners Orsted and Eversource, of South Fork  
17 Wind called sunrise wind?

18 A. (Davis) Yes I have heard of it.

19 Q. Do you mind looking at the  
20 second exhibit, SK exhibit DPS number two? Now  
21 the, your honor.

22 A. I'm sorry which one?

23 Q. It's SK exhibit DPS number two.

24 MR. FORST: Your honor this is Nick  
25 Forst there's two exhibit twos, there's 2a and 2b.

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2 Can Mr. Kinsella clarify which one he is referring  
3 to?

4 MR. KINSELLA: 2a your honor. A and  
5 B was just my way of making it convenient because A  
6 is just the page whereas B is the entire report.

7 A.L.J. BELSITO: I still have no  
8 idea what you're talking about Mr. Kinsella, which  
9 document? Please refer to the working document  
10 list. I don't see anything that's listed as SK  
11 anywhere.

12 MR. KINSELLA: Okay this is a new, a  
13 new exhibit.

14 A.L.J. BELSITO: Okay where would I  
15 find it?

16 MR. KINSELLA: In an email I sent to  
17 you about an hour ago.

18 A.L.J. BELSITO: Do the witnesses  
19 have access to those documents.

20 MR. DAVIS: Is this page 38 of 378?

21 MR. KINSELLA: Exactly.

22 MR. DAVIS: I have, your honor I  
23 have access to page 38, I do not have access to the  
24 other 377 pages out of 378.

25 MR. KINSELLA: That's okay they're

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2 not in that exhibit, they're in the one marked B.

3 Just to save everyone downloading the entire  
4 report.

5 MR. FLAUM: Jeremy Flaum, I also  
6 have page 38 of the exhibit in front of me.

7 MR. FORST: Your honor this is Nick  
8 Forst from Staff I'm going to object. I mean  
9 obviously again, this is just similar to what we  
10 discussed this morning as you referenced with  
11 individual objections to -- to new exhibits. Mr.  
12 Kinsella is offering a single page out of a 378  
13 page report, you know, minutes before cross  
14 examination. To which the staff panels had no  
15 opportunity to review the entire report and is  
16 being asked on a single page and presumably on page  
17 38 there's highlighted text which they're, you  
18 know, being asked to potentially respond to out of  
19 context. I mean I would just object that, you know  
20 there's no foundation for this document at this  
21 point.

22 MR. KINSELLA: Your honor may I  
23 speak to the objection?

24 A.L.J. BELSITO: No not yet, you  
25 need to tell me the name of the exhibit again, I'm

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2 still lost.

3 MR. KINSELLA: Okay your honor did  
4 you receive three emails from me this morning?

5 A.L.J. BELSITO: Again what's the  
6 name of it Mr. Kinsella?

7 MR. KINSELLA: SK exhibit DPS-002a.  
8 It's got P38 after it, it's a PDF document, single  
9 page.

10 A.L.J. BELSITO: Okay I have that in  
11 front of me, you can ask the witnesses if they're  
12 familiar with it.

13 BY MR. KINSELLA: (Cont.)

14 Q. Mr. Davis are you familiar with  
15 this document at all? It's a NYSERDA, it's from a  
16 NYSERDA report.

17 A. (Davis) I'm sorry I was on  
18 mute. The, Andrew Davis here, the, I've looked at  
19 the -- the page quickly and I, there's a couple of  
20 highlighted sections I note. But I haven't, I have  
21 not reviewed the original document.

22 A.L.J. BELSITO: Okay then we can  
23 move on from any questions related to this. The  
24 staff objection is -- is legitimate.

25 MR. KINSELLA: Okay your honor.

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2 BY MR. KINSELLA: (Cont.)

3 Q. Mr. Davis, are you aware of,  
4 you mentioned that you are aware or have heard of  
5 Sunrise Wind, are you aware of the capacity or how  
6 big that project is?

7 A. (Davis) I'm aware that Sunrise  
8 Wind Project is in the 800 megawatt range.

9 Q. Thank you. Do you know where  
10 the Sunrise Wind Project is connecting to Long  
11 Island whereabouts?

12 MR. OSSIAS: Yeah your honor I'm  
13 just going to object to the form of the question, I  
14 don't believe Sunrise is, and maybe I'll stand  
15 corrected, it's Brian Ossias of Staff counsel, I --  
16 I -- I -- I think it's a proposed project. I think  
17 the question it seems to conclude that it is going  
18 to land at a certain point on the -- on Long  
19 Island.

20 MR. KINSELLA: I'll rephrase the  
21 question.

22 BY MR. KINSELLA: (Cont.)

23 Q. Mr. Davis, are you aware of  
24 where the proposed project proposes to land its  
25 export cable on Long Island?



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2 A. (Davis) You're -- you're, the  
3 sound, your voice is, your phone connection is very  
4 weak but I believe you're asking if I know where  
5 Sunrise Wind proposes to land -- land fall. And I  
6 do know.

7 Q. Where is that?

8 A. At, I believe it's the town of  
9 Brookhaven.

10 Q. Thank you. How long do you  
11 think the cable would have to be to connect Sunrise  
12 Wind to Brookhaven? Or let me rephrase the  
13 question. Would the cable to connect Sunrise Wind  
14 to Brookhaven be substantially longer than the  
15 cable to connect South Fork Wind to Beach Lane?

16 MR. FORST: Your honor this is Nick  
17 Forst from Staff, I'm going to object to that.  
18 This calls for a degree of speculation that it's a  
19 proposed project, and there's not a -- a  
20 specifically defined landing site and it's asking  
21 the witness to, you know, provide some kind of, you  
22 know, best guess at -- at, you know, based on  
23 potential landing sites which are not in the record  
24 or, you know, not even the, to be determined at  
25 this point. I mean I -- I, I -- I also struggle

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2 with the relevance of -- of this line of  
3 questioning.

4 MR. KINSELLA: May I speak to the  
5 objection your honor?

6 A.L.J. BELSITO: Sure.

7 MR. KINSELLA: My line of  
8 questioning firstly goes directly to the evaluation  
9 of alternatives which is part of 120, section 126.  
10 And with regard, approximating, this is not a, you  
11 know, a fine point.

12 A.L.J. BELSITO: Okay I'm going to  
13 stop you right there. If you're asking the panel  
14 whether or not they considered Sunrise as an  
15 alternative to this project, you can ask them that  
16 question. If the answer is no, then the details of  
17 that consideration don't matter. So ask them the  
18 first question first and then maybe we can move on.

19 MR. KINSELLA: Thank you your honor,  
20 good suggestion.

21 BY MR. KINSELLA: (Cont.)

22 Q. Mr. Davis, has DPS Staff panel  
23 considered Sunrise Wind as a possible alternative,  
24 alternative in its analysis when it drew its  
25 conclusion and wrote its testimony?

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2 A. (Davis) The, my familiarity  
3 with the proposed Sunrise project is -- is,  
4 postdates the -- the date of our testimony being  
5 filed. I -- I am somewhat familiar with the  
6 proposal and my understanding is that pending is an  
7 application pursuant to article seven is pending  
8 soon. I also recall testimony of Mr. Bowes from, I  
9 think, Friday who's indicated that to my  
10 recollection that was not technologically feasible  
11 to join the two projects.

12 Q. Okay do you mind if I ask the  
13 question again? The question was.

14 A.L.J. BELSITO: I believe Mr.  
15 Kinsella that you got your answer when he said his  
16 knowledge of the Sunrise project postdates drafting  
17 of their testimony.

18 MR. KINSELLA: So am I correct in  
19 saying that the DPS did not consider Sunrise Wind  
20 in its testimony?

21 A.L.J. BELSITO: Mr. Kinsella you  
22 asked that question and you got your answer, please  
23 move onto the next question.

24 BY MR. KINSELLA: (Cont.)

25 Q. Mr. Davis, again, in your, in

1 12-7-2020 - Deepwater Wind South Fork, LLC - 18-T-0604  
2 DPS testimony, exhibit DPS-1, I believe that is  
3 witnesses resumes, you've listed on your resume  
4 case 18-E-0015.

5 A. (Davis) Could you point me to a  
6 page of the exhibit? There's a lot of cases listed  
7 on this.

8 Q. I know, it's an impressive  
9 list. It's page three of four of your CV, or  
10 resume.

11 A. Okay and what was the number?

12 Q. It's the very last case, 18-E-  
13 0015, Offshore Wind Energy Proceeding.

14 A. Yes I see that.

15 Q. Is that supposed to be case 18-  
16 E-0071 Offshore Wind Energy?

17 A. I don't, I don't know.

18 Q. Because I looked up that case  
19 18-E-0015 and it doesn't exist.

20 A. Oh. I -- it could be the wrong  
21 citation.

22 Q. If we turn back to, is there  
23 any way that you could look that up and correct it  
24 if possible?

25 A. Potentially.

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2 A.L.J. BELSITO: Mr. Kinsella is the  
3 particular case number all that important? Do you  
4 have the next question?

5 MR. KINSELLA: I do but I was  
6 actually taking the opportunity just to check where  
7 a quote was in my next question.

8 MR. FORST: Your honor this is Nick  
9 Forst from Staff, I think subject to check we can  
10 stipulate that that, it's the Offshore Wind  
11 Proceeding and -- and move forward with this, I  
12 don't want to drag down the proceeding, you know  
13 checking numbers.

14 A.L.J. BELSITO: If -- if Mr. Davis  
15 is willing to confirm it's the Offshore Wind  
16 Proceeding, it's on his resume, then I think we can  
17 move on with not worrying about the particular case  
18 number.

19 MR. KINSELLA: Okay I'm happy with  
20 that. Mr. Davis if we can turn back to DPS  
21 testimony.

22 MR. FORST: Excuse me sorry, excuse  
23 me Mr. Kinsella, can Mr. Davis confirm that that's  
24 the correct proceeding?

25 MR. KINSELLA: Yes but I'm happy if

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2 he does that later if -- if he doesn't have access.

3 A.L.J. BELSITO: We're just looking  
4 for the name of the proceeding, was he, Mr. Davis,  
5 this is Mr. Belsito, were you referring to the  
6 commission's offshore wind proceeding when you  
7 listed that case, whatever the case number might  
8 be?

9 MR. DAVIS: Yes I think so.

10 A.L.J. BELSITO: Okay thank you for  
11 the clarification. Go ahead Mr. Kinsella.

12 BY MR. KINSELLA: (Cont.)

13 Q. Thank you your honor. Mr.  
14 Davis, back to DPS testimony on page 32, it reads  
15 does the facility as proposed by the applicant  
16 contribute to the mandates and goals of the CLCPA  
17 and the Renewable Energy Standard, is that correct?

18 A. (Davis) Yes at the last page,  
19 line of page 31 onto page 32 it's what it says.

20 Q. Thank you. Is the renewable  
21 energy standard a reference to an order by the  
22 commission adopting a clean energy standard or CES  
23 issues August 1<sup>st</sup>, 2016?

24 A. Sorry what's the question?

25 Q. Is the renewable energy

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2 standard a reference to, or part of, an order by  
3 the commission adopting a clean energy standard, or  
4 CES that was issued on August 1<sup>st</sup>, 2016?

5 A. I don't remember. Mr. Flaum  
6 might be able to address that.

7 A. (Flaum) Jeremy Flaum, yes.

8 Q. Mr. Flaum can you answer that  
9 question? Mr. Flaum did I understand you correctly  
10 that you answered yes or do you need time?

11 A. That is my understanding.

12 Q. Thank you. Mr. Flaum it seems  
13 that you're more familiar with this and the clean  
14 energy standard or CES was designed to achieve a  
15 statewide goal of 50% renewable generation resource  
16 by 2030, commonly referred to as the CES 50 by 30  
17 target is that correct? Sorry Mr. Flaum did you  
18 answer yes to that?

19 A. I did not yet answer.

20 Q. Okay.

21 A. I do not have the specific  
22 information in front of me, subject to check, I  
23 will agree.

24 Q. Thank you. Can you confirm  
25 that within the CES framework order, and at the

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2 request of the commission, NYSERDA released the New  
3 York State Offshore Wind Master Plan in early 2018?

4 MR. FORST: Objection your honor  
5 this is Nick Forst from Staff, can Mr. Kinsella  
6 clarify what framework order he's referring to and  
7 the case number? Are we still in the same offshore  
8 wind case? You know.

9 MR. KINSELLA: Same offshore wind  
10 case, this is all about the CES, so yes CES  
11 framework order. The clean energy standard.

12 A.L.J. BELSITO: Which -- which  
13 order? When was it?

14 MR. KINSELLA: CES order was issued  
15 on August 1<sup>st</sup>, 2016 by the commission or adopted.

16 A.L.J. BELSITO: Okay thank you for  
17 the clarification, what's the question?

18 BY MR. KINSELLA: (Cont.)

19 Q. Can you confirm that within the  
20 CES framework order, and at the request of the  
21 commission, NYSERDA released the New York State  
22 Offshore Wind Master Plan on January 29<sup>th</sup>, 2018?

23 A. (Flaum) I cannot confirm, I do  
24 not have the documents in front of me.

25 Q. If you have a look at SK



1 12-7-2020 - Deepwater Wind South Fork, LLC - 18-T-0604  
2 exhibit DPS number six, case 18-E-071 at page  
3 three.

4 A.L.J. BELSITO: Mr. Kinsella are  
5 you referring again to the email you sent this  
6 morning or back to the working exhibit list?

7 MR. KINSELLA: This is the email I  
8 sent out this morning your honor. I was trying to  
9 make everything easy.

10 BY MR. KINSELLA: (Cont.)

11 A. (Flaum) There are two, Jeremy  
12 Flaum, there are two SK exhibit DPS number 006,  
13 case 18-E-0071 documents in PDF format.

14 Q. Go with.

15 A. Which one you are referring to?

16 Q. Number A, it's just the  
17 extracts of two pages.

18 A. Jeremy Flaum, I have the  
19 reference document open in front of me.

20 Q. Okay do you need a minute just  
21 to familiarize yourself with it?

22 A.L.J. BELSITO: Mr. Kinsella, I'm -  
23 - I'm struggling to see where you're going here.  
24 You're just having them look at old commission  
25 documents and confirming what they say? The

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2 commission documents speak for themselves. What we  
3 we doing?

4 MR. KINSELLA: I -- I am going  
5 somewhere with this your honor, I think it's  
6 important.

7 A.L.J. BELSITO: Well get there  
8 quickly please.

9 MR. KINSELLA: Thank you, I've just  
10 got to establish a link.

11 BY MR. KINSELLA: (Cont.)

12 A. (Davis) This is Mr. Davis I'm  
13 familiar with the master plan to some extent.

14 Q. Thank you Mr. Davis.

15 A. And the document does, in front  
16 of us, does describe its.

17 Q. That document D, New York State  
18 Offshore Wind Master Plan was issued as a part of  
19 the CES framework in furtherance of that goal to  
20 achieve 50% renewable energy resources by 2030?

21 A. The document speaks for itself  
22 and was released, I'm not, you're -- you're --  
23 you're characterizing withing a certain way which  
24 I'm not sure is relevant.

25 MR. FORST: Your honor this is Nick

1 12-7-2020 - Deepwater Wind South Fork, LLC - 18-T-0604  
2 Forst from Staff, if Mr. Kinsella is asking the  
3 panel to confirm what the order says as it's  
4 written on the page, I -- I don't think that's  
5 necessary. I mean obviously this is a commission  
6 order that's released to the public, it's out there  
7 in the, in -- in the public domain, Mr. Kinsella  
8 can certainly refer to what it says and -- and --  
9 and you know speak to it himself in brief as much  
10 as he wants. But confirming simply that it reads,  
11 that there is a goal of 50 by 30 I mean I don't --  
12 I don't see where we are in having the panel  
13 confirm that.

14 A.L.J. BELSITO: I agree, please  
15 move to the next question Mr. Kinsella.

16 BY MR. KINSELLA: (Cont.)

17 Q. As a part of the New York  
18 Offshore Wind Master Plan is included the Offshore  
19 Wind Policy Options paper by also by NYSERDA is  
20 that correct?

21 MR. OSSIAS: It's Brian Ossias, Mr.  
22 Kinsella can you direct me to where your are  
23 referring to please?

24 MR. KINSELLA: Okay. In the email  
25 of the exhibits it's SK DPS number seven. And on

1 12-7-2020 - Deepwater Wind South Fork, LLC - 18-T-0604  
2 the original list, on the original list per Judge  
3 Belsito's spreadsheet it would be document number  
4 419.

5 MR. OSSIAS: Thank you.

6 MR. FORST: This is Nick Forst, that  
7 -- that document is 117 pages long, is there  
8 specific area of the document you're referring to?

9 MR. KINSELLA: You're looking at the  
10 exhibits I emailed out or the original one?

11 MR. FORST: I have both if you could  
12 just instruct the panel where you're expect them to  
13 look so that they can review the information that  
14 would be helpful.

15 MR. KINSELLA: It's 33-7A, page four  
16 and page 62 of the full document. The full  
17 document is 3-7B, they're the exhibits I emailed  
18 out this morning. In the original spreadsheet,  
19 document 419 it would be at page four of page 62  
20 are the two pages I'm referring to, or will be  
21 referring to.

22 A.L.J. BELSITO: For clarification  
23 of the record, it's the executive summary of the  
24 Offshore Wind Policy Options Paper I believe Mr.  
25 Kinsella has asked the panel to refer to page four

1 12-7-2020 - Deepwater Wind South Fork, LLC - 18-T-0604  
2 of that executive summary.

3 MR. KINSELLA: That's correct your  
4 honor thank you.

5 MR. DAVIS: Andrew Davis I have that  
6 page.

7 BY MR. KINSELLA: (Cont.)

8 Q. Mr. Davis, the Offshore Wind  
9 Policy Options Paper presents policy options by  
10 NYSERDA for the deployment of offshore wind energy  
11 within the clean energy standard, is that correct?

12 A.L.J. BELSITO: Mr. Kinsella, these  
13 documents speak for themselves, if you have a  
14 question of the panel and what the panel knows or  
15 what the panel thinks, then please ask them.  
16 Having us go through and read documents that are in  
17 the public domain is not productive.

18 MR. KINSELLA: Thank you your honor.

19 BY MR. KINSELLA: (Cont.)

20 Q. Mr. Davis, in view of the  
21 offshore.

22 A. (Davis) I can't understand,  
23 your sound is really bad on your, on your phone.  
24 You have to speak clearly.

25 Q. Is that better Mr. Davis can

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2 you hear me?

3 A. Thank you that's better.

4 Q. Okay. In the context of the  
5 Offshore Wind Policy Options Paper, would you  
6 consider South Fork Wind to be an economic project?

7 MR. FORST: Your honor this is Nick  
8 Forst from Staff I would object, I mean this is a  
9 NYSERDA report, there's no foundation that Staff  
10 have you know, written this document or you know,  
11 have any kind of basis to apply it in this project  
12 or in this proceeding. So I, you know, I would  
13 just object that that calls for speculation I  
14 believe.

15 MR. KINSELLA: May I speak to the  
16 objection your honor?

17 A.L.J. BELSITO: Sure.

18 MR. KINSELLA: Staff testimony  
19 states that South Fork Wind complies with the clean  
20 energy standard or the renewable energy standard.  
21 And this is a part of that standard, this document,  
22 this options policy. It's been on the exhibit list  
23 for a long time.

24 A.L.J. BELSITO: Ask the panel, in  
25 drafting their testimony, that's what you're cross

1 12-7-2020 - Deepwater Wind South Fork, LLC - 18-T-0604  
2 examining on, they considered the Offshore Wind  
3 Policy Options Paper.

4 MR. KINSELLA: Thank you your honor.

5 BY MR. KINSELLA: (Cont.)

6 Q. Mr. Davis did you consider the  
7 Offshore Wind Policy Paper when drafting your  
8 testimony?

9 A. (Davis) I was, I'm aware of the  
10 policy options paper, I didn't believe that it is  
11 applicable to the project directly, the -- the  
12 policy options paper was studying a particular area  
13 including the four wind energy areas that were  
14 being recommended for leasing to BOEM, by BOEM, the  
15 Bureau of Offshore Energy Management. Page 70 of  
16 the options paper has a map of the study area and  
17 it includes the study area is, does not extend  
18 easterly from the -- the -- the tip of Long Island.  
19 The South Fork Project wind generation aspect and  
20 most of the transmission line are outside of the  
21 study area.

22 Q. That's not my understanding of  
23 the reading. That's in an appendices and that was  
24 just.

25 A.L.J. BELSITO: Mr. Kinsella, Mr.

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2 Kinsella, it's not your turn to testify, you asked  
3 the question you got your answer. If you would  
4 like to ask another question you may.

5 BY MR. KINSELLA: (Cont.)

6 Q. So just by clarifying your  
7 answer Mr. Davis the answer is no, is that correct?  
8 DPS Staff panel did not consider the NYSERDA policy  
9 -- policy options paper when in drafting its  
10 testimony. Is that correct?

11 MR. FORST: Your honor this is Nick  
12 Forst, I'm going to object, I -- I think this has  
13 been asked and answered. I mean obviously you  
14 know, Mr. Davis just answered that the study itself  
15 does not include the applicable areas in which the  
16 project is located. And you know it appears that  
17 the -- the study would be inapplicable on that  
18 basis.

19 MR. KINSELLA: Like I said the  
20 answer is no. Okay.

21 A.L.J. BELSITO: His answer is on  
22 the transcript. You know I -- I think I'm going to  
23 sustain the objection, the question was asked and  
24 it was answered.

25 BY MR. KINSELLA: (Cont.)



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2 Q. Okay Mr. Davis, or can DPS  
3 Staff panel turn to exhibit, or SK exhibit DPS-008,  
4 a, it's the first one. And on the spreadsheet it  
5 would be document 418, pages one and two.

6 A. (Davis) This is not anything  
7 you emailed today?

8 Q. It is, yes.

9 A. I'm not seeing a number eight.  
10 I'm seeing a number seven, number one, number 2a,  
11 number three, number three, number two.

12 Q. Email number two.

13 A. Email number two from you  
14 today?

15 Q. Yes.

16 MR. FORST: Your honor this is Mr.  
17 Forst from DPS Staff, is Mr. Kinsella referring to  
18 the new exhibits DPS 11 and DPS 12? Sorry that's  
19 probably question.

20 MR. KINSELLA: I was referring to  
21 DPS 8A which is, which is, which is on the exhibit  
22 list, it's number 418.

23 MR. FLAUM: Jeremy Flaum, I have the  
24 exhibit referenced in front of me.

25 MR. DAVIS: And Mr. Andrew Davis I

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2 have it also.

3 BY MR. KINSELLA: (Cont.)

4 Q. Mr. Davis, the, as you can see  
5 the document comments from Bay State Wind, the  
6 owners of Bay State Wind, Orsted, and Eversource,  
7 also the owners of South Fork Wind.

8 MR. FORST: Objection your honor  
9 this is Nick Forst from Staff, I don't think that  
10 Mr. Kinsella has laid a foundation for this  
11 document. I mean obviously you know he can ask the  
12 staff panel whether they're familiar with it or  
13 not, but you know I think Mr. Kinsella starting  
14 with a foundation that isn't his question is a  
15 little improper.

16 A.L.J. BELSITO: Mr. Kinsella what's  
17 this document from?

18 MR. KINSELLA: It's a comment  
19 submitted by Bay State Wind in response to a  
20 request for information from NYSERDA.

21 A.L.J. BELSITO: And how does it  
22 relate to DPS panel staff testimony?

23 MR. KINSELLA: The owners, or the  
24 common owners, Orsted and Eversource, in this  
25 document, recommend against a wind farm or buying

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2 or establishing a wind farm with a minimum less  
3 than, with a capacity less than 400 megawatts.

4 A.L.J. BELSITO: Is staff testimony  
5 refer to this document?

6 MR. KINSELLA: No they did not.

7 A.L.J. BELSITO: Okay so what are  
8 you asking them?

9 MR. KINSELLA: Did they take this  
10 document into consideration when drafting their  
11 testimony with.

12 A.L.J. BELSITO: Okay.

13 MR. KINSELLA: What, can I finish  
14 the question your honor?

15 A.L.J. BELSITO: I thought you did  
16 I'm sorry please do.

17 MR. KINSELLA: Did DPS Staff take  
18 into consideration comments by the owners of South  
19 Fork Wind, Eversource, and Orsted, where they  
20 recommended against buying energy from a windfarm  
21 of less than 400 megawatts due to diseconomies of  
22 scale?

23 MR. SINGER: Your honor this is Len  
24 Singer, I object to that question, that is not what  
25 was recommended by the owners of this facility.

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2 A.L.J. BELSITO: Rather than get  
3 into an argument of what the document says or does  
4 not say, we can just ask staff whether or not they  
5 considered it.

6 MR. FORST: Your Honor, this is Nick  
7 Forst from staff. I mean I would object as well; I  
8 mean this seems outside the scope of staff's  
9 testimony as it relates to this specific project.  
10 I think you know asking about papers and other  
11 proceedings without a sufficient foundation is --  
12 is just really outside the scope of what staff  
13 testified to.

14 A.L.J. BELSITO: I think whether or  
15 not they considered a particular document in their  
16 testimony is a legitimate question, but I see no  
17 reason why we can't ask that question in a  
18 straightforward manner and move on to the next one.

19 BY MR. KINSELLA: (Cont.)

20 Q. Thank you, Your Honor. Mr.  
21 Davis or Mr. Flaum, did you consider this document  
22 when drafting your testimony?

23 A. (Davis) Andrew Davis here. No.

24 Q. Thank you. Okay. Can I turn  
25 back to DPS testimony, please? Page 25. Lines 13-

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2 21. Does DPS refer to the commission's procedural  
3 guidelines for settlement as the basis for its  
4 determination that the project as proposed by South  
5 Fork Wind was in the public interest?

6 A. (Flaum) Jeremy Flaum. Can you  
7 re-ask the question? I didn't understand you.

8 Q. In DPS testimony, does DPS  
9 refer to the commission's procedural guidelines for  
10 settlement as the basis for its determination that  
11 the project as proposed by South Fork Wind was in  
12 the public interest?

13 A. This is Jeremy Flaum. The  
14 testimony speaks for itself.

15 Q. I'm sorry, is that someone  
16 speaking?

17 MR. FORST: This is Nick Forst. I  
18 just asked people who are not speaking or  
19 participating actively and hearing to mute their  
20 lines, please. Or ensure that there's no  
21 background noise. Thank you.

22 BY MR. KINSELLA: (Cont.)

23 Q. Mr. Flaum, where the procedural  
24 guidelines for settlement refer to protection of  
25 the ratepayers, does this mean DPS is striving for

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2 a balance that ensures ratepayers are protected  
3 from paying exorbitantly-high rates?

4 A.L.J. BELSITO: Mr. Kinsella, this  
5 is Tony. I'm not sure I understand the question.  
6 Are you asking the DPS panel to interpret what the  
7 commission guidelines state?

8 MR. KINSELLA: I'm asking the DPS  
9 panel what they meant in their testimony, Your  
10 Honor.

11 A.L.J. BELSITO: Which test--where,  
12 in their testimony, are we again?

13 MR. KINSELLA: Page 25, Lines 13-  
14 21.

15 MR. FORST: Your Honor, this is Nick  
16 Forst from staff. The panel has already answered  
17 this question; the testimony speaks for itself.  
18 The lines that Mr. Kinsella is referring to are an  
19 identification of the commission's guidelines, I  
20 don't believe there's an interpretation there to be  
21 clarified. So, I would argue that this has been  
22 asked and answered already.

23 MR. KINSELLA: Your Honor, I'm just  
24 seeking clarification. Earlier on, the witness  
25 testified that ratepayers were not considered. But

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2 again, in the testimony, they're saying that  
3 ratepayers were considered.

4 A.L.J. BELSITO: Okay, you're  
5 starting to characterize previous testimony that I-  
6 -I'm not sure you're characterizing correctly.  
7 What is the question at hand now?

8 MR. KINSELLA: Where the procedural  
9 guidelines for settlement referred to the  
10 protection of the ratepayers, does this mean DPS is  
11 striving for a balance that ensures ratepayers are  
12 protected from paying exorbitantly-high rates?

13 A.L.J. BELSITO: Okay. So, that, to  
14 me, sounds like you're asking me to--them--excuse  
15 me, the panel--to interpret what the guidelines  
16 refer to or what they mean. I think that you can  
17 ask the panel what they considered in coming to  
18 their conclusions; you cannot ask them what the  
19 commission was thinking or what it meant when it  
20 wrote its guidelines.

21 BY MR. KINSELLA: (Cont.)

22 Q. Ah, very good point. Thank  
23 you, Your Honor. What was the--Mr. Flaum or Mr.  
24 Davis, what did you consider when you wrote and  
25 referred to the procedural guidelines? Did you mean

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2 that DPS is striving for a balance that ensures  
3 ratepayers are protected from paying exorbitantly-  
4 high rates?

5 A. (Flaum) Jeremy Flaum. In the  
6 context of this Article 7 proceeding, I am not  
7 aware that this merchant developer is seeking  
8 recovery of the cost of construction of the  
9 proposed Article 7 facility as a regulated utility  
10 by the commission.

11 Q. Thank you, Mr. Flaum. But I  
12 don't know what that means.

13 MR. OSSIAS: Objection, Your Honor.  
14 It's Brian Ossias. The panel answered the  
15 question. If Mr. Kinsella would like to ask some  
16 clarifying questions, I'm fine; but asking the  
17 panel because he doesn't know what it means doesn't  
18 seem to add much detail.

19 BY MR. KINSELLA: (Cont.)

20 Q. Mr. Flaum, did DPS consider the  
21 impact on ratepayers of the proposed project?

22 MR. OSSIAS: It's Brian Ossias,  
23 again, Your Honor. I thought this was that earlier  
24 in the testimony. I would object that that's an  
25 answer.



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2 BY MR. KINSELLA: (Cont.)

3 Q. Is DPS aware of a recent  
4 Article 78 ruling, the matter of Simon V. Kinsella  
5 v. the Office of the New York State Comptroller,  
6 that settled the matter as to whether or not South  
7 Fork Wind's contract prices were in the public  
8 interest?

9 MR. OSSIAS: Your Honor, it's a  
10 compound question. This is Brian Ossias. I would  
11 just object to the form of the question. Did he  
12 ask if they're aware of the document first before  
13 he goes into another question?

14 MS. ZAFONTE: This is Lisa Zafonte.  
15 I'm also objecting on the grounds that--of the  
16 relevancy.

17 MR. KINSELLA: If I can speak to the  
18 objections, Lisa--

19 A.L.J. BELSITO: Ask them whether or  
20 not they're aware of the document, Mr. Kinsella.

21 BY MR. KINSELLA: (Cont.)

22 Q. Thank you, Your Honor. Are DPS  
23 panel aware of this document? Would you like me to  
24 repeat the document reference?

25 A. (Flaum) Jeremy Flaum. Yes,

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2 please.

3 Q. It's an Article 78 ruling in  
4 the matter of Simon V. Kinsella v. Office of the  
5 New York State Comptroller that settled the matter  
6 as to whether or not South Fork Wind's contract  
7 prices were in the public interest.

8 A.L.J. BELSITO: Mr. Kinsella.

9 MR. KINSELLA: Yes, Your Honor.

10 A.L.J. BELSITO: You are starting to  
11 characterize the document. Stop and ask them if  
12 they're aware of it. Then you can ask them if they  
13 have an opinion of what the document is.

14 MR. KINSELLA: Thank you, Your  
15 Honor.

16 BY MR. KINSELLA: (Cont.)

17 Q. Are you aware of the document?

18 A. (Flaum) Is this a document on  
19 the record of this proceeding?

20 Q. Yes, it's the document that I  
21 emailed this morning, SK Exhibit DPS No. 9, it is  
22 2 pages, I think.

23 MR. OSSIAS: Objection, Your Honor.  
24 That document is not in the record per se; I mean  
25 Mr. Kinsella can certainly try to introduce it, but

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2 again, not part of the documentation.

3 A.L.J. BELSITO: Thank you for the  
4 clarification; it has not been moved into the  
5 record. I think we're all on the same page, we're  
6 just trying to find the specific document; we'll  
7 worry about whether or not it's in the record at  
8 another time.

9 MR. KINSELLA: Thank you, Your  
10 Honor. The document is a new document. Mr. Forst  
11 is correct. It's in Email 2, 3, it's SK Exhibit  
12 DPS009.

13 BY MR. KINSELLA: (Cont.)

14 A. (Davis) Andrew Davis here. I  
15 see that email, which came at 9:36 am today, after  
16 this hearing had already started. So, I see it,  
17 but I'm not familiar with it.

18 Q. Okay. Mr. Flaum--or Flaum.  
19 I'm sorry. Am I pronouncing your name correctly?

20 A. (Flaum) It's "Flauun" but,  
21 "Flom" is fine.

22 Q. Sorry, I apologize.

23 A. No worries. I have the  
24 document in front of me.

25 Q. Have you seen that document

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2 before? Are you aware of it?

3 A. I do not recall seeing this  
4 document prior to today.

5 Q. Thank you. A question for DPS  
6 panel. What is the rate for energy that will be  
7 delivered by South Fork Wind's proposed facility  
8 that will be passed on to ratepayers?

9 MR. SINGER: This is Len Singer. I  
10 object. Your Honor, you've already said on a  
11 number of occasions that that is not the subject of  
12 this proceeding.

13 A.L.J. BELSITO: I don't think it  
14 was referred to in staff testimony either, is it?  
15 Unless I'm...

16 MR. KINSELLA: It was, actually,  
17 Your Honor.

18 A.L.J. BELSITO: Okay. Where.

19 MR. KINSELLA: Hang on. Sorry. No,  
20 it is not referred to in staff testimony; you're  
21 correct.

22 A.L.J. BELSITO: Okay. Again, Mr.  
23 Kinsella, you're going to have an opportunity in  
24 brief to make a lot of arguments. Right now, we're  
25 trying to elicit testimony from staff to either

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2 clarify or expand upon the testimony that they have  
3 already provided. So, I know--

4 MR. KINSELLA: I appreciate that,  
5 Your Honor.

6 A.L.J. BELSITO: I know that that is  
7 new to you, but please try to focus on that issue  
8 so we can move forward. Please.

9 MR. KINSELLA: Thank you, Your  
10 Honor. I'll try and do that. So, I'm just going  
11 forward. Okay. Can I refer the DPS staff panel to  
12 the executed joint proposal Page 9? I have a  
13 procedural question, Your Honor.

14 A.L.J. BELSITO: Okay.

15 MR. KINSELLA: The joint proposal,  
16 because DPS signed onto the joint proposal, that is  
17 effectively testimony as well? Can they be cross-  
18 examined on the joint proposal?

19 A.L.J. BELSITO: You can ask them  
20 about the joint proposal, their testimony  
21 essentially describes and refers and is about the  
22 joint proposal. So, yes.

23 BY MR. KINSELLA: (Cont.)

24 Q. Thank you, Your Honor. DPS  
25 staff panel, have you had time to get to Page 9 of

1 12-7-2020 - Deepwater Wind South Fork, LLC - 18-T-0604

2 the executed joint proposal?

3 A. (Flaum) Jeremy Flaum. I'm  
4 viewing Page 9 of the joint proposal.

5 Q. This is in reference to the  
6 paragraph under the heading, "Need for the  
7 project." Did DPS conduct the appropriate due  
8 diligence to verify that the 2015 Technology-  
9 Neutral Competitive Bidding Process South Fork RFP  
10 was actually competitive?

11 MR. SINGER: Objection, Your Honor.  
12 I think this is consistent with your rulings on  
13 this issue. The South Fork RFP, and competitive  
14 pricing, and comparative analysis of the RFP is  
15 outside the scope of this proceeding.

16 MR. KINSELLA: Speaking to the  
17 objection, Your Honor, I'm just asking whether DPS  
18 staff panel conducted any due diligence, because  
19 they've signed a statement saying that it is a  
20 competitive bidding process. So, did they verify  
21 that or not. That's all I'm asking.

22 MR. SINGER: So, I would just  
23 clarify: you can certainly ask the panel whether  
24 participants do any sort of RFP analysis, but I  
25 would not agree with any further characterization

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2 beyond whether they participated or not.

3 MR. KINSELLA: I'm not asking  
4 whether they participated.

5 A.L.J. BELSITO: A fair question is-  
6 -I believe you asked them whether or not they  
7 conducted any analysis of the RFP, right? That's  
8 whether or not they participated in it. That's a  
9 fair question. Whether characterizing it is due  
10 diligence or something else, it just sounds like  
11 your own testimony and something you can put in  
12 brief.

13 BY MR. KINSELLA: (Cont.)

14 Q. Thank you, Your Honor. Did DPS  
15 conduct any analysis or review the technology-  
16 neutral competitive bidding process.

17 MR. SINGER: Objection. Objection,  
18 again. I mean I think I made it clear; you can ask  
19 about their participation, but I would just please  
20 ask you to not characterize the RFP in any way.

21 MR. KINSELLA: I'm quoting--I'm  
22 quoting directly from the joint proposal. I'm just  
23 asking--

24 A.L.J. BELSITO: I'll allow the  
25 question.

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2 BY MR. KINSELLA: (Cont.)

3 A. (Flaum) This is Jeremy Flaum.

4 I did not perform any analysis of the RFP process.

5 Q. Thank you.

6 A. (Davis) Andrew Davis here. The  
7 statement in Paragraph 10 on Page 9 of the joint  
8 proposal, it's simply--this is what you were just  
9 asking us about moments ago under "Need for the  
10 Project," is just saying what is described in  
11 Exhibit 3. And that's what we reviewed. The  
12 description of needs in Exhibit 3.

13 Q. What page were you on, Mr.  
14 Davis?

15 A. Joint Proposal. Page 9,  
16 Paragraph 10.

17 Q. Okay. Thank you. In drafting  
18 its testimony and before signing the joint  
19 proposal, did DPS consider times or the  
20 intermittency of offshore wind during the summer  
21 when wind is low and it wouldn't be enough?

22 A.L.J. BELSITO: Mr. Kinsella,  
23 you're starting to testify again. Ask the question  
24 and stop and wait for an answer. Did they  
25 consider...?



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2 BY MR. KINSELLA: (Cont.)

3 Q. Did DPS consider times when  
4 energy would not be delivered from an offshore wind  
5 farm due to weak weather conditions?

6 MR. OSSIAS: Your Honor, I just want  
7 to object to the question. It's Brian Ossias,  
8 Staff Counsel. I think he presses the question as  
9 in drafting testimony before the signature of the  
10 JP. Was that the chronology? I thought that they  
11 submitted--staff provided its signature after the  
12 JP was submitted but before testimony.

13 A.L.J. BELSITO: I'm sorry I missed  
14 that part of Mr. Kinsella's statement if that's  
15 happened. Could you repeat your question without  
16 describing the impacts of the intermittency?

17 MR. KINSELLA: Yes, Your Honor. Did  
18 DPS consider times when there would be no power  
19 generated from the offshore wind farm facility due  
20 to weak weather conditions?

21 MR. SINGER: This is Len Singer. I  
22 object. That's irrelevant.

23 MR. KINSELLA: Can I speak to the  
24 objection, Your Honor?

25 A.L.J. BELSITO: I'll allow the

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2 question.

3 BY MR. KINSELLA: (Cont.)

4 Q. Thank you.

5 A. (Flaum) Jeremy Flaum. Can you  
6 please refer to the page of our testimony just to  
7 find context for the question?

8 Q. Executed joint proposal, Page  
9 9. It reads, "The project, in conjunction with the  
10 South Fork Wind Farm, addresses the need identified  
11 by LIPA..." et cetera, et cetera, et cetera, "for  
12 new sources of power generation that could cost-  
13 effectively and reliably supply South Fork Wind.  
14 This goes to the reliable nature of the energy  
15 being supplied from the facility."

16 A. (Davis) You must be mistaken.  
17 The testimony at Page 9 does not describe that.

18 Q. The Joint Proposal Page 9.

19 A. You said the testimony at Page  
20 9.

21 Q. I'm sorry, my mistake if I  
22 misspoke. I meant to say the joint proposal--the  
23 executed joint proposal on Page 9. Sorry about  
24 that.

25 A. (Flaum) Jeremy Flaum. What I

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2 had asked, though, was can you refer to our  
3 testimony for context for the question that you're  
4 asking of our testimony?

5 Q. Okay. It's not a context  
6 within your testimony; the context is within the  
7 joint proposal that DPS signed.

8 A. (Davis) And the joint proposal  
9 is simply describing the history of what happened  
10 to effectuate the RFP and the response to it.  
11 Which I would point out was three years before the  
12 application.

13 Q. So, am I correct in assuming  
14 that you're saying that the Department of Public  
15 Service did not take into consideration times when  
16 the generating facility would not provide power due  
17 to weak weather conditions?

18 A.L.J. BELSITO: Mr. Kinsella, I did  
19 say that you could ask questions about the joint  
20 proposal, but I still think you have to tie it back  
21 to their testimony. I think that you could go  
22 through every thought that ever existed on the  
23 planet and ask staff whether or not they  
24 considered--considered it in putting together their  
25 testimony or inciting the joint proposal. But I

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2 don't think that gets us very far. I think their  
3 testimony states what it states, the joint proposal  
4 states what it states; and if you have to ask  
5 questions of staff to clarify what those things  
6 state, then that's okay. But trying to go through  
7 everything that they may or may not have thought of  
8 during the process that resulted in the joint  
9 proposal is not what we're going to do today.

10 BY MR. KINSELLA: (Cont.)

11 Q. Thank you, Your Honor. Okay,  
12 with reference to DPS testimony, Page 24, Lines 15  
13 to 17, where it talks about the procedural  
14 guidelines for settlements, does DPS believe that  
15 the proposed South Fork Wind project could affect  
16 materially utilities rates? I'm sorry what was the  
17 testimony reference page 24 lines 15 to 17. and  
18 the question again this DPS believe the proposed  
19 South Fork Wind Project could affect, materially,  
20 utilities rates?

21 A. (Davis) I'm sorry, what was the  
22 testimony reference?

23 Q. Page 24, Lines 15 to 17.

24 A. And the question again?

25 Q. Does DPS believe the proposed

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2 South Fork Wind Project could affect, materially, a  
3 utilities rate?

4 MR. FORST: Objection, Your Honor.  
5 Can Mr. Kinsella clarify what he means by "a  
6 utilities rate"? I mean, obviously, he's asking  
7 about this project, but I'm not sure what he means  
8 by "a utilities rate".

9 MR. KINSELLA: I was actually  
10 quoting directly from the procedural guidelines for  
11 settlements.

12 A.L.J. BELSITO: The guidelines are  
13 guidelines and speaking generalities; we're talking  
14 about this case in this project. Could you please  
15 clarify your question?

16 MR. KINSELLA: The DPS testimony  
17 stated that the joint proposal was arrived at  
18 fairly in full compliance with all commission's  
19 rules and settlements, procedures and guidelines.  
20 And part of those rules, settlements, procedures,  
21 and guidelines is that the proposed--I'm asking  
22 whether DPS believes the rates affect materially  
23 or--just bear with me, I've got to find them. Does  
24 DPS believe that the supporting documentation has  
25 to be of comparable quality and detail required for

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2 a major rate case? According to Section A,  
3 Paragraph 2, Page 3.

4 A.L.J. BELSITO: Mr. Kinsella,  
5 supporting document for what?

6 MR. KINSELLA: Supporting document  
7 for the application for a certificate, Your Honor.

8 A.L.J. BELSITO: Are you asking them  
9 to make an interpretation of the guidelines and how  
10 they apply to this particular case?

11 MR. KINSELLA: I'm asking whether  
12 they believe the supporting documentation complies  
13 with the commission's rules and settlement  
14 procedures.

15 MR. OSSIAS: Your Honor, it's Brian  
16 Ossias. I think the testimony has a line of  
17 question and answer that goes to that very  
18 question.

19 A.L.J. BELSITO: Could you point us  
20 to that question, Mr. Ossias? I think I agree with  
21 you, but I don't want to do that off the top of my  
22 head.

23 MR. OSSIAS: Well, if I understand  
24 the question correctly, it's on page--the question  
25 itself is on Page 24. I believe Mr. Kinsella

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2 referenced it and then an answer goes on to respond  
3 to the question about the components of the joint  
4 proposal and how it complies with the settlement  
5 guidelines. Maybe I misunderstood the question,  
6 I'm just trying to clarify this testimony.

7 A.L.J. BELSITO: Okay. Mr.  
8 Kinsella, are you asking a different question than  
9 the one that's posed here in the testimony?

10 MR. KINSELLA: I will move on, Your  
11 Honor.

12 A.L.J. BELSITO: Okay.

13 BY MR. KINSELLA: (Cont.)

14 Q. DPS staff panel, which New York  
15 state agency is responsible for the environmental  
16 review of the proposed South Fork Wind Project.

17 A. (Flaum) Jeremy Flaum. My  
18 understanding is that multiple New York state  
19 agencies participated in that review, including  
20 Department of Public Service.

21 Q. Thank you, Mr. Flaum. But my  
22 question was who is ultimately responsible for the  
23 environmental review of the application?

24 A.L.J. BELSITO: I'm sorry to  
25 interrupt, you said the South Fork Wind Project?

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2 Are you referring to the Article 7 project under  
3 consideration here or a different part of the  
4 overall generation project?

5 MR. KINSELLA: No, no, I'm just  
6 specifically referring to the Article 7  
7 application, the subject of this hearing.

8 A.L.J. BELSITO: Okay. So, the  
9 question is who's responsible for the environmental  
10 review? Which I think the question was answered.  
11 Or, who's responsible for granting the certificate?

12 MR. FLAUM: Who's ultimately  
13 responsible for signing off on the environmental  
14 review? So, Article 7--

15 A.L.J. BELSITO: So, I don't know  
16 exactly what that means, by "signing off on the  
17 environmental review". I think the most technical  
18 reference I think I can relate it to is whether or  
19 not the certificate is granted. Is that the  
20 question you're asking? Is the Art VII process it?

21 MR. KINSELLA: Yes.

22 A.L.J. BELSITO: Okay. If the panel  
23 can answer that, they may.

24 BY MR. KINSELLA: (Cont.)

25 A. (Flaum) Jeremy Flaum. The



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2 Public Service Commission is the deciding body on  
3 whether to grant or deny an application for a  
4 certificate.

5 Q. If there is a failure of a  
6 thorough environmental review, is there another New  
7 York state government agency that can guarantee a  
8 thorough environmental review?

9 A. I don't understand your  
10 question.

11 Q. Are there any safeguards of  
12 which you're aware for environmental review other  
13 than the Article 7 process in New York state?

14 A. (Davis) What was the first part  
15 of your question?

16 Q. If DPS fails to conduct a  
17 thorough environmental review or there is a failure  
18 of a thorough environmental review is there another  
19 New York state agency that can guarantee an  
20 environmental review? It's the Article 7. Are  
21 there any further safeguards? What I'm really  
22 asking is the onus completely on your shoulders for  
23 the environmental review?

24 MR. OSSIAS: Your Honor, it's Brian  
25 Ossias. Again, I just to the form of the question,

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2 "Is the onus completely on your shoulders." I  
3 believe the panel has testified that the  
4 commission--the Public Service Commission, under  
5 the public service law, has the authority to review  
6 and issue certificates pursuant to that section of  
7 the law. So, I think that was the response given  
8 to Mr. Kinsella's question.

9 A.L.J. BELSITO: Alright. Mr.  
10 Kinsella, given Mr. Ossias'... we'll call it a  
11 clarification of the answer, do you have a further  
12 question?

13 BY MR. KINSELLA: (Cont.)

14 Q. No, Your Honor. I'll move on.  
15 Is DPS aware of a chemical contaminant referred to  
16 as PFAS?

17 A. (Flaum) Yes.

18 Q. Could you tell me what that  
19 acronym stands for, please?

20 A. I need a minute to find the  
21 exact wording. My understanding is that PFAS  
22 refers to per- and polyfluoroalkyl substances.

23 Q. Thank you, Mr. Flaum.

24 A.L.J. BELSITO: Mr. Kinsella, I'm  
25 sorry to interrupt. But about how much longer do

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2 you think you have?

3 MR. KINSELLA: I will try and move  
4 quickly, Your Honor. Half an hour?

5 A.L.J. BELSITO: Okay. Janet, are  
6 you okay for another half hour without a break or  
7 would you like to take one now?

8 THE REPORTER: No, I'm good.

9 MR. KINSELLA: It might actually be  
10 a bit longer.

11 THE REPORTER: I'm still good.

12 A.L.J. BELSITO: Continue, Mr.  
13 Kinsella. If it goes much beyond noontime, we'll  
14 reconsider a break.

15 BY MR. KINSELLA: (Cont.)

16 Q. Okay. Thank you, Your Honor.  
17 Mr. Flaum, in any of the PSC cases listed in your  
18 resume, have you had any direct dealing with PFAS  
19 contamination?

20 A. (Flaum) Not that I recall  
21 before this proceeding.

22 Q. Do you have any formal training  
23 from a university or technical college in the field  
24 of chemistry, geology, geochemistry, organic  
25 chemistry, hydrology, or other similar field

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2 related to the interaction of organic compounds in  
3 the environment and people?

4 A. I have a Bachelor of Science  
5 degree in Geology.

6 Q. Do you have any expertise in  
7 chemistry or training?

8 A. I would not characterize myself  
9 as an expert in chemistry.

10 Q. Do you understand the nature of  
11 PFAS chemical compounds and how they interact in  
12 the environment and people?

13 A. I don't know what you mean by  
14 "the nature of".

15 Q. Do you have an understanding of  
16 how PFAS contamination interacts in the environment  
17 and interacts with people?

18 A. I have a general understanding.

19 Q. Do you have an understanding of  
20 what sorbation is?

21 A. Sorbation or sorption?

22 Q. Sorry, my mistake. Sorption.  
23 But I think, in answering that question, you  
24 answered it.

25 A.L.J. BELSITO: For my own

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2 clarification, you're referring to the word S-O-R-  
3 P-T-I-O-N, sorption?

4 MR. KINSELLA: That's correct, Your  
5 Honor. Sorption.

6 A.L.J. BELSITO: Thank you.

7 BY MR. KINSELLA: (Cont.)

8 Q. Mr. Davis do you have any  
9 formal training from a university or technical  
10 college in any of those fields--chemistry, geology,  
11 geochemistry, organic chemistry, hydrology?

12 A. (Davis) Andrew Davis here. No,  
13 I do not. Not in those fields.

14 Q. Thank you. Mr. Moreno, same  
15 question: do you have any formal training from a  
16 university or technical college in the field of  
17 chemistry, geology, geochemistry, organic  
18 chemistry, or hydrology?

19 MR. OSSIAS: Miguel, you're on mute.

20 BY MR. KINSELLA: (Cont.)

21 A. (Moreno) I'm sorry for that.  
22 Could you repeat your question, please?

23 Q. Mr. Moreno, do you have any  
24 formal training from a university or technical  
25 college in the field of chemistry, geology,

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2 geochemistry, organic chemistry, hydrology,

3 or other similar field related to  
4 the interaction of organic compounds with the  
5 environment and with people?

6 A. No, I do not.

7 Q. Thank you. Mr. Flaum, when did  
8 you first become aware of PFAS contamination in  
9 Wainscott?

10 MR. OSSIAS: Your Honor, Brian  
11 Ossias. I must object to the form of the question.

12 BY MR. KINSELLA: (Cont.)

13 Q. That's actually a good point.  
14 I'll start with rephrasing the question. Mr.  
15 Flaum, are you aware of any PFAS contamination in  
16 Wainscott?

17 A. (Flaum) I don't know if I was  
18 entirely unmuted. I am aware, yes.

19 Q. And do you recall what month  
20 and year you became--you first became aware of the  
21 contamination?

22 A. I do not recall the month or  
23 year.

24 Q. Do you recall whether it was as  
25 early as 2017 that you became aware of the

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2 contamination?

3 A. It was at some time during the  
4 course of this proceeding; I do not remember the  
5 month or year.

6 Q. So, you would define the  
7 beginning of this proceeding in September 2018, is  
8 that correct--when the applicant filed the  
9 application or later?

10 A. When the applicant filed its  
11 application. What I meant by during the course of  
12 this proceeding, from that point to the present.

13 Q. Thank you. Has DPS reviewed  
14 the site characterization report of East Hampton  
15 Airport dated November 30, 2018 that was prepared  
16 for New York state DEC?

17 A. I have seen it and reviewed it,  
18 yes.

19 Q. Do you recall when you reviewed  
20 that document?

21 A. I do not recall the specific  
22 day that I first reviewed it or any specific days  
23 that I subsequently went back to review it again.

24 Q. Do you recall whether it was  
25 this year that you first reviewed it?

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2 A.L.J. BELSITO: To some extent, I  
3 think that the applicant--or excuse me, the witness  
4 has answered. Can you clue me in on where we're  
5 going with this, please?

6 MR. KINSELLA: I'm just trying to  
7 get an understanding to what extent the DPS has  
8 considered the contamination and the effect the  
9 proposed facility may have on that contamination.

10 A.L.J. BELSITO: Okay. I'm not sure  
11 how the specific timeline was considered unless  
12 they didn't learn about it until after they agreed  
13 to the joint proposal; but it sounds like they  
14 learned about it before that.

15 MR. KINSELLA: With regards to  
16 timelines, these are complicated matters and it  
17 takes time to review them properly and to seek  
18 correct advice. It gets very technical, Your  
19 Honor. If someone's given a week to do something,  
20 that's not time enough.

21 A.L.J. BELSITO: Okay. If you have  
22 another question; I think the last answer was there  
23 was no specific recollection. So, if you have  
24 another one, you can ask it. But I prefer you move  
25 on.



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2 BY MR. KINSELLA: (Cont.)

3 Q. I am moving on, Your Honor.

4 Mr. Flaum, has DPS reviewed the site  
5 characterization report for the Wainscott Sand &  
6 Gravel, dated July 2020, prepared for New York  
7 state DEC?

8 A. I have seen it and reviewed it.

9 Q. Do you recall when you reviewed  
10 it?

11 A. I do not recall when was the  
12 first time I reviewed it, and I do not recall  
13 specific dates of any time I have reviewed it  
14 since.

15 Q. Mr. Flaum, has DPS reviewed the  
16 draft environmental impact statement that was  
17 prepared for the Wainscott Commercial Center  
18 Preliminary Subdivision submitted to the Town of  
19 East Hampton dated July 2020?

20 A. Can you refer? Is this an  
21 exhibit in this proceeding?

22 Q. Yes, it is.

23 A. Can you please refer me to the  
24 exhibit so that I can review the document and let  
25 you know whether I previously reviewed it?

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2 Q. Yep. Okay. Hold on. Okay.

3 On the document list--on Judge Belsito's document  
4 list--it would be Exhibit 390 and 391.

5 A. Yes, I have seen this exhibit.

6 Q. Have you reviewed the document  
7 in detail?

8 A. I've reviewed the document,  
9 portions of the document; I have not read every  
10 word of the document.

11 Q. Did you read the portion of the  
12 document that relates to PFAS contamination?

13 MR. FORST: Objection. Could Mr.  
14 Kinsella point to a specific piece of the document?  
15 I mean I think it's very general.

16 A.L.J. BELSITO: That would be more  
17 helpful, thank you. Do you have a particular site  
18 or a page citation, Mr. Kinsella?

19 MR. KINSELLA: I do, Your Honor.  
20 Actually... okay, it might be easier if you go to  
21 the exhibit that I emailed out this morning because  
22 they're all in one place, and that's SK exhibit DPS  
23 No. 10 they emailed out this morning. That's in  
24 Email 2 of 3. And it's page... oh, forget that.  
25 Sorry, it's not in there. Okay. Page 78 of 631.

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2 A.L.J. BELSITO: I'm sorry. Which  
3 document are we on again?

4 MR. KINSELLA: Sorry, hang on. It's  
5 not that one. It would be Exhibit G-2, Page...  
6 the beginning of Page 3... it will be the figures  
7 beginning at Page 32.

8 A.L.J. BELSITO: 32 of 144? Is that  
9 where you're referring to, Mr. Kinsella?

10 MR. KINSELLA: Yes, Your Honor.

11 A.L.J. BELSITO: Thank you.

12 MR. OSSIAS: I'm sorry. Can you  
13 tell me--again, it's Brian Ossias--what is the  
14 exhibit number? Apologies.

15 MR. KINSELLA: Exhibit G-2, I  
16 think...

17 THE REPORTER: Who was that  
18 speaking?

19 MR. OSSIAS: Brian Ossias.

20 THE REPORTER: Thank you.

21 A.L.J. BELSITO: It's No. 391 on  
22 the working exhibit list in DMM.

23 MR. KINSELLA: That's correct.  
24 Thank you.

25 A.L.J. BELSITO: It's one of

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2 Documents 133, currently serial number 403.

3 BY MR. KINSELLA: (Cont.)

4 Q. And specifically, Page 40 of  
5 144.

6 A. (Davis) Mr. Davis here. Could  
7 you please repeat the citation to where this  
8 document is?

9 Q. Okay. It's on the--it's on  
10 Judge Belsito's master list; it's Exhibit 391;  
11 document name is Exhibit G-2-DEIS. And it's Page  
12 40 of 144.

13 A. And what was the item number in  
14 the DMM?

15 Q. 133.

16 MR. FORST: This is Nick Forst from  
17 DPS staff. For the panel's benefit, this was  
18 submitted with Mr. Kinsella's testimony, so it's  
19 one of his testimonial exhibits.

20 BY MR. KINSELLA: (Cont.)

21 Q. Thank you. So, I was actually  
22 waiting on the answer, is anyone waiting on me?

23 A. (Flaum) Sorry, yes, what was  
24 the question? Jeremy Flaum speaking.

25 Q. Sorry, Jeremy. Mr. Flaum, has

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2 DPS reviewed this document as it relates to PFAS  
3 contamination?

4 A. I have seen and reviewed the  
5 document.

6 Q. Thank you. Has DPS conducted  
7 any investigation itself into the PFAS  
8 contamination in Wainscott?

9 MR. FORST: Objection. This is Nick  
10 Forst. Can you clarify what you mean by  
11 "investigation"?

12 BY MR. KINSELLA: (Cont.)

13 Q. A detailed analysis of all the  
14 information that extends to possible testing  
15 itself, such that it could draw an independent  
16 conclusion as to the nature of PFAS contamination  
17 and its potential impact on the construction  
18 corridor as being proposed as part of this  
19 application.

20 A. (Flaum) Jeremy Flaum. I  
21 reviewed the information on the record of this  
22 proceeding, did not perform any independent field  
23 analysis or testing of environmental contamination  
24 conditions in Wainscott.

25 Q. Did DPS determine independently

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2 the potential movement of contamination across the  
3 proposed construction corridor as a part of the  
4 application process?

5 A. Potential transport of  
6 contaminated groundwater?

7 Q. Not necessarily groundwater,  
8 Mr. Flaum. Just contamination.

9 A.L.J. BELSITO: Please let him  
10 answer the question. If you have another question,  
11 you can ask him to provide an answer.

12 BY MR. KINSELLA: (Cont.)

13 Q. I apologize.

14 A. (Flaum) There's transport of  
15 contaminated groundwater that was considered part  
16 of our review of the record of this proceeding.

17 Q. Have you finished, Mr. Flaum?

18 A. Yes, I have. Thank you.

19 Q. Did DPS consider other  
20 transport, other than through groundwater, of PFA  
21 contamination?

22 A. Are you referring to natural  
23 transport or transport associated with construction  
24 of the proposed project?

25 Q. Natural transport.

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2 A. I do not understand what type  
3 of other natural transport of PFAS contaminants you  
4 might be referring to.

5 Q. For example, leaching.

6 A. Thank you for that  
7 clarification. Yes. So, I should have been more  
8 clear in my previous response. I considered the  
9 potential leaching of PFAS contaminants from  
10 contaminated soil into the upper aquifer and  
11 subsequent transport of contaminated groundwater.

12 Q. Did you consider leaching--or  
13 did DPS consider leaching other than through  
14 groundwater?

15 A. We considered potential -- we  
16 considered existing contamination at the airport  
17 facility and surrounding area and potential  
18 migration of the contamination from sources.

19 Q. Mr. Flaum, I have to ask: are  
20 you being provided these answers?

21 A. Absolutely not.

22 Q. Thank you. Did DPS test for  
23 any organic content, any organic matter in the soil  
24 or sack under construction cargo?

25 A. I think I previously indicated

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2 I did not perform and I'm not aware of any other  
3 DPS staff that performed any field investigation of  
4 contamination issues at the proposed project area.

5 Q. Thank you. Does DPS staff have  
6 a special scientist employed with the department  
7 who is professionally trained in chemical  
8 properties and environmental interactions of PFAS  
9 compounds?

10 A. Not that I'm aware of.

11 Q. So, would I be correct--I'll be  
12 correct in saying that you did not speak with any  
13 site specialist on DPS staff if you're not aware.

14 A.L.J. BELSITO: I think that's a  
15 fair conclusion. Unless the witness would like to  
16 contradict me.

17 BY MR. KINSELLA: (Cont.)

18 Q. I think it's pretty safe.  
19 Thank you, Your Honor. Mr. Moreno, do you recall  
20 speaking with a specialist scientist on DPS staff  
21 who's professionally-trained in the chemical  
22 properties and environmental interactions of PFAS  
23 compounds?

24 A. (Moreno) This is Miguel Moreno.  
25 Can you hear me?



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2 Q. Yes, I can.

3 A. Did you ask me a question? And  
4 if so, could you, please, repeat?

5 Q. Do you recall speaking with any  
6 specialist scientist on DPS staff who is  
7 professionally trained in the chemical properties  
8 and environmental interactions of PFAS compounds?

9 A. The question is out of the  
10 field of my expertise.

11 Q. Thank you. Mr. Davis, do you  
12 recall speaking with any specialist scientist on  
13 DPS staff who is professionally-trained in the  
14 chemical properties and environmental interactions  
15 of PFAS compounds?

16 A. (Davis) I'm not aware, as Mr.  
17 Flaum testified, that there is such a specialist on  
18 DPS staff.

19 Q. Thank you. Your Honor, I'm  
20 just about to delve into having a look at the  
21 specific instances of contamination from those  
22 reports. Hopefully, it'll be a lot smoother than  
23 the last time I did this. In the light of that,  
24 would you want to take a break or would you like to  
25 push on?

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2 A.L.J. BELSITO: Why don't we take a  
3 15-minute break? Why don't we start back at 12:45?  
4 It's a little longer than 15 minutes. Off the  
5 record.

6 THE REPORTER: Okay, we're off the  
7 record.

8 (Off the record 12:22 p.m.)

9 A.L.J. BELSITO: Okay Mr. Mareno are  
10 you back on the line?

11 MR. MARENO: Hi your honor I'm here,  
12 do you hear me?

13 A.L.J. BELSITO: I can thank you.  
14 Mr. Forst can you confirm that the staff DPS panel  
15 is ready to go?

16 MR. FORST: Yes your honor, all  
17 three are in attendance, they -- they should be  
18 ready to go.

19 A.L.J. BELSITO: Okay, Janet are you  
20 ready to go back on the record.

21 THE REPORTER: I'm ready we're back  
22 on the record.

23 (On the record at 12:47 p.m.)

24 A.L.J. BELSITO: Thank you, Mr.  
25 Kinsella you may proceed with your cross

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2 examination of the DPS staff panel.

3 CROSS EXAMINATION (Cont'g.)

4 BY MR. KINSELLA

5 Q. Thank you your honor. Mr.  
6 Flaum, would you agree, would you agree with the  
7 statement that soil, in its natural state is  
8 primarily composed of sand, silt, clay, water, and  
9 a high variable amount of natural organic carbon?

10 A. (Flaum) Generally I would agree  
11 with that statement, gravel could be thrown in  
12 there as well.

13 Q. Thank you. Would you also  
14 agree with the statement that the amount of natural  
15 organic carbon in the sub surface matrix affects  
16 the sorptive characteristics of PFAS contamination?

17 A. Can you say that again please?

18 Q. Would you also agree that the  
19 amount of natural organic carbon in the sub surface  
20 matrix affects the sorptive characteristics of PFAS  
21 contamination?

22 A. To the extent of my knowledge  
23 but as I previously indicated I don't have any  
24 formal training in PFAS characteristics  
25 specifically.

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2 Q. I understand thank you. I'd  
3 like to refer to exhibits, the onshore water  
4 resources panel exhibit by the applicant, exhibit  
5 OWRP-3, specifically page five. Mr. Flaum, after  
6 reading the section in the box that's titled  
7 Partitioning Summary, the fourth point, the first  
8 bullet point of the fourth point, titled PFAAS.  
9 After reading that, would you agree that the amount  
10 of natural organic carbon in the sub surface matrix  
11 affects the sorptive characteristics of PFAS  
12 contamination?

13 A. This is Nick Forst from DPS  
14 staff, Mr. Kinsella can you just clarify where  
15 you're looking again specifically?

16 Q. It's -- it's the applicant's  
17 exhibit OWRP-3, page five of 18. And there's a  
18 blue box in the bottom right corner titled  
19 Partitioning Summary.

20 A. Okay thank you.

21 Q. Fourth bullet point down reads  
22 PFAAS for the avoidance of doubt, PFAAS is  
23 perfluoroalkyl acids which includes PFOA and PFOS.  
24 As most of the other main PFAS contaminants.

25 A. This is Mr. Forst again can you

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2 just re ask your question?

3 Q. Would you agree that the amount  
4 of natural organic carbon in the subsurface matrix  
5 affects the sorptive characteristics of PFAS  
6 contamination?

7 A. (Flaum) Yes, that statement  
8 seems generally consistent with the first sub-  
9 bullet of bullet four?

10 Q. Thank you. Referring now to my  
11 exhibit ten, that's sorry, SK Exhibit DPS number  
12 10, PFAS. Page one.

13 MR. FORST: Your honor, this is Nick  
14 Forst from DPS staff, you know I would just like to  
15 point out you know we would object to this I mean I  
16 understand that Mr. Kinsella is pulling, you know  
17 various pieces of documents together into one  
18 exhibit, but you know I would just like to evidence  
19 or caution that you know these are excerpts of much  
20 larger reports and exhibits and you know I'm not  
21 certain that staff has every opportunity to -- to  
22 analyze all of them as well as all of their  
23 constituent parts which you know they've been  
24 removed from. There's quite a few documents here  
25 that the exhibit itself.

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2 A.L.J. BELSITO: I -- I hear your  
3 concern. Mr. Kinsella this is part of the exhibit  
4 five of the article seven application?

5 MR. KINSELLA: Yes all -- all those  
6 exhibits are a part of the existing record.

7 A.L.J. BELSITO: Okay.

8 MR. KINSELLA: I'm just trying to  
9 save people time.

10 A.L.J. BELSITO: In order to save  
11 time, rather than pull up the exhibit five in its  
12 entirety, I'll let you ask the question but taking  
13 pages out of context is not helping this process  
14 move forward.

15 MR. KINSELLA: I'm stuck between a  
16 rock and a hard place if I want to refer to a page  
17 in a report. I'm criticized for.

18 A.L.J. BELSITO: Mr. Kinsella ask  
19 the question please.

20 BY MR. KINSELLA: (Cont.)

21 Q. Apologize for that. Does DPS  
22 panel recognize on page one the applicant's  
23 proposed cable route through Wainscott?

24 A. (Flaum) Are you referring to  
25 PDF page one of SK Exhibit DPS number 010-PFAS.PDF?

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2 Q. Exactly. All the original  
3 references are there.

4 A. I -- I see what you are  
5 referencing yes.

6 Q. Do you recognize that the  
7 applicants proposed route goes from Montauk Highway  
8 up to the Long Island Railway and passes  
9 immediately and adjacent to the west of what is  
10 known as Wainscott Sand and Gravel which was a  
11 former sand mining operation?

12 A. There's not a legend or a lot  
13 of labels on this figure. Believe I understand  
14 what you're referring to based on the partial map  
15 and what appears to be the applicant's proposed  
16 route and a dotted line figure.

17 Q. Thank you I appreciate that the  
18 map doesn't have many markings on it and I'm  
19 relying more on your -- your knowledge after  
20 examining all the reports. Given that that was a  
21 former sand mine, would it reasonable to -- to  
22 assume that the soils in the local area have a high  
23 sand content?

24 A. It seems like a reasonable  
25 statement.

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2 Q. And with your understanding of  
3 subsurface materials or matrix soils, silts, and  
4 sands, is does sand generally have a high organic  
5 carbon content or a low organic carbon content?

6 A. Low.

7 Q. So in your understanding, how  
8 would that generally affect the sorptive behavior  
9 of PFAS contamination?

10 A. Less organic carbon, less sorry  
11 less organic content would generally be associated  
12 with less sorption.

13 Q. Which would be associated would  
14 you say with greater mobility?

15 A. Maybe other variables to  
16 consider but generally yes.

17 Q. Thank you. Would you mind  
18 turning to page three of the same exhibit please.

19 A.L.J. BELSITO: Mr. Kinsella when  
20 you say the same exhibit are you referring to  
21 exhibit five of the application? Or are you  
22 referring to a document you sent around earlier  
23 today?

24 MR. KINSELLA: Your honor if you  
25 just give me 30 seconds, I may consider cutting



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2 this cross examination shorter than expected. I  
3 think many of the questions are no longer necessary  
4 just hold on.

5 A.L.J. BELSITO: Sure.

6 MR. KINSELLA: Your honor, I'm happy  
7 to finish the cross examination now. Everything is  
8 factually based already.

9 A.L.J. BELSITO: Okay. Is there any  
10 other cross examination for these witnesses?  
11 Hearing none, would counsel for DPS like to confer  
12 with their witnesses regarding redirect?

13 MR. FORST: Yes your honor if we  
14 could just have ten minutes that would be great.

15 A.L.J. BELSITO: Sure. We'll go off  
16 the record. Let us -- let us know when you're  
17 done.

18 THE REPORTER: We're back on the  
19 record.

20 A.L.J. BELSITO: Thank you.

21 MR. FORST: Your Honor, DPS does not  
22 have any redirect.

23 A.L.J. BELSITO: Okay. Thank you  
24 very much. Then the panel is excused. Thank you  
25 very much. So, per my email yesterday, I'd like to

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2 address the exhibit list, particularly the working  
3 exhibit list that I sent around also yesterday.  
4 Does anyone have any additions to that list at this  
5 time? I understand, Mr. Kinsella, that you sent  
6 around a lot of documents today, but I believe most  
7 of them are portions of these documents and I  
8 appreciate your efforts in trying to facilitate  
9 things, but re-labeling everything caused me more  
10 confusion. So, if I got frustrated, I apologize.

11 But right now, I think we need to  
12 work with one list; it's the list I sent around as  
13 a copy of a copy of South Fork Wind LLC Exhibit  
14 List, December 6, 2020. Is there anyone on the  
15 line who does not have that document? Okay. Would  
16 anyone like to make or re-raise any objections to  
17 any of the documents listed on that? I'll start  
18 with the applicant.

19 MR. SINGER: This is Len Singer.  
20 Yes, I have a number of documents that we have  
21 objections to. I'll start in with Document #311 on  
22 the list, the email with respect to the planned  
23 work off of Wainscott Beach--

24 MR. BERNSTEIN: Sorry to interrupt.  
25 This is Kevin. I was muted when the judge asked

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2 his first question which was, "Any additions?" For  
3 some reason, I was muted. So, can we do that first  
4 before you raise your objections and...?

5 A.L.J. BELSITO: Sure, we'll start  
6 with the additions. Go ahead, Mr. Bernstein.

7 MR. BERNSTEIN: I'm sorry about  
8 that.

9 A.L.J. BELSITO: That's okay.

10 MR. BERNSTEIN: So, we wanted to  
11 include additional IR responses that PSEG had sent  
12 around to the parties, and those are PSEG response-  
13 -excuse me. That was just a detailed item--PSEG  
14 Response to CPW-1, dated December 9th, 2019; PSEG  
15 Response to CPW-2, dated February 3rd, 2020 but  
16 supplemented on the 19th and the 21st of February;  
17 PSEG Response to CPW-4 dated May 14, 2020. PSEG  
18 Response to CPW-5, same date; PSEG Response to CPW-  
19 6, May 13th; PSEG Response to CPW-7 dated May 14,  
20 2020. In addition, we would offer, for the exhibit  
21 list, three trustee responses: Trustee Response to  
22 CPW-4 dated, I believe, it's September 2nd, 2020;  
23 and Trustee Response to CPW-5 and 6, there are two  
24 separate ones, both dated September 25th, 2020.

25 The other thing I would like to note

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2 is that PSEG Response to CPW-14, which is Exhibit  
3 340 was updated on December 3rd, and the dates not  
4 reflected on the exhibit list. I'm not sure it  
5 matters, but I just wanted to state that for the  
6 record. The three other things I wanted to raise  
7 is that our affidavits that we sent around earlier  
8 today I included affidavits on behalf of Gouri,  
9 that's G-O-U-R-I, Edlich, and also Mr. Lambert, and  
10 Mr. Faber, all of which sponsor their IR responses  
11 to South Fork Wind's IR requests, and we would  
12 request that those responses go into the record.

13 And then finally, Your Honor, this  
14 is more for you--

15 A.L.J. BELSITO: I'm sorry, which  
16 responses do you want into the record? Can you be  
17 more specific with the last part there?

18 MR. BERNSTEIN: Sure. CPW responses  
19 to SFW-01 to 15. to 15. And CPW responses to  
20 SFW-06 dated October 26th. They related to Mr.  
21 Stephen Lambert; and then responses to SFW-08.  
22 It's CPW responses to SFW-08 related to the  
23 responses of Mr. Neil Faber. And then you may  
24 recall that the applicant does have a pending  
25 motion for incorporation by reference that I think

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2 may or may not figure into the exhibit list in some  
3 way. I don't know--

4 So, did you get my last item, judge,  
5 before we got that recording about your applicant's  
6 motion for incorporation?

7 [Operator Instructions]

8 A.L.J. BELSITO: Okay. This is  
9 Tony. I just re-muted everyone to try to avoid  
10 whoever's phone we were listening to. So, Mr.  
11 Bernstein, could you unmute yourself and continue?

12 MR. BERNSTEIN: Yeah, I did. So,  
13 the last item, as I mentioned, if you were able to  
14 hear, is the applicant's motion for a corporation  
15 by reference that's outstanding.

16 A.L.J. BELSITO: Okay. Thank you.  
17 Now, the IR responses that you just referred to  
18 that you would like to add to the record, have  
19 those been distributed to the parties and myself?

20 MR. BERNSTEIN: Yes, they've all  
21 been distributed when they were responded to.

22 A.L.J. BELSITO: Yeah, I didn't  
23 receive most--unless there was a dispute, I don't  
24 have the IR responses.

25 MR. GREENBLATT: This is Jeff

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2 Greenblatt from PSEG Long Island. I had a question  
3 for Kevin: with the six IRs that you mentioned--1,  
4 2, 4, 5, 6, and 7--is the plan to use those  
5 documents for cross-examination of the panel  
6 tomorrow or would you like those just as part of  
7 the record, but you're not using them for cross?

8 MR. BERNSTEIN: Jeff, most likely  
9 the latter.

10 MR. GREENBLATT: Okay, no cross, but  
11 on the record.

12 MR. BERNSTEIN: Yeah, the ones I  
13 plan on the crossing are the ones there are  
14 potentially 14, just the ones that were included.  
15 I can distribute the ones that... judge, the one  
16 I--the 1, 2, 4, 5, 6 and 7 unless PSEG has no  
17 objection to those entering the record.

18 MR. GREENBLATT: I don't--I don't  
19 have an objection, I just--I would have just had an  
20 issue if it was going to be used for cross.

21 THE REPORTER: Who said they don't  
22 have an objection? Was that Jeff?

23 MR. GREENBLATT: That's Jeff  
24 Greenblatt.

25 THE REPORTER: Thank you.

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2 A.L.J. BELSITO: Go ahead.

3 MS. BRADY: This is Bonnie Brady. I  
4 have two questions. I'm not sure if this is the  
5 time, but one regarding a document that I would  
6 like to be put into an exhibit to another I have a  
7 question about.

8 A.L.J. BELSITO: Are they directly  
9 tied to the documents Mr. Bernstein just brought  
10 up?

11 MS. BRADY: One of them actually  
12 was.

13 A.L.J. BELSITO: Okay. Ask that  
14 question then, please.

15 MS. BRADY: Okay. Regarding the  
16 motion for incorporation by reference of  
17 Deepwater's construction operation plan, is that  
18 the--Deepwater is requesting to put the entirety of  
19 the COP into the exhibits for this hearing?

20 A.L.J. BELSITO: Well, we'll address  
21 that in a minute. Right now, I would like to  
22 address the IR responses.

23 MS. BRADY: Okay. Thank you.

24 A.L.J. BELSITO: Are there any  
25 objections to the additions that Mr. Bernstein just

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2 raised or just offered? Any of the IR responses?

3 Okay. Mr. Bernstein, I need to have a copy of  
4 those.

5 MR. SINGER: Your Honor, I was on  
6 mute. I do have an objection.

7 A.L.J. BELSITO: Go ahead, Mr.  
8 Singer.

9 MR. SINGER: So, the responses from  
10 the Dune Alpin witnesses, it's one thing to put in  
11 the responses of an opposing party that is relevant  
12 in terms of essentially being an admission against  
13 interest; but to put in your own responses without  
14 asking any questions about it is improper and is in  
15 the nature of adding additional testimony. So, I  
16 object to inclusion of the responses to our  
17 information requests from the Dune Alpin witnesses.

18 MR. BERNSTEIN: And my response is  
19 that all the affidavits that we've offered have  
20 sworn to the veracity of those responses and that  
21 should be sufficient to get them into the record,  
22 and--period.

23 MR. SINGER: Yeah, I'm not arguing  
24 about authentication; I'm arguing that it is  
25 improper for someone to put their own information



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2 request responses into the record. As I said,  
3 putting an opposing party's information responses  
4 into the record is appropriate given that it could  
5 be argued that it's an admission; but putting your  
6 own responses into the record is analogous to  
7 additional testimony.

8 A.L.J. BELSITO: Mr. Bernstein,  
9 would you like to respond to that specific  
10 objection?

11 MR. BERNSTEIN: Yeah, these were  
12 requests made by the applicant to provide  
13 information, frankly, to determine whether or not  
14 there would be any cross-examination of these  
15 individuals; just because they don't have any  
16 cross-examination for these individuals doesn't  
17 mean that this information should not be entered  
18 into the record. Let it speak and let the  
19 information speak for itself--

20 A.L.J. BELSITO: Well, if I had  
21 them, I could probably make a decision right now.  
22 However, I don't. So, I'm going to reserve  
23 decision, but please explain to me why you didn't  
24 provide that information for the record prior to it  
25 being requested.

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2 MR. BERNSTEIN: That was  
3 inadvertent.

4 A.L.J. BELSITO: Not to me. Why  
5 hasn't--why wasn't this information part of their  
6 testimony? Why is it just coming to light now,  
7 whatever it may be?

8 MR. BERNSTEIN: Because it was in  
9 response--the IR requests were in response to their  
10 testimony. So, in other words, their testimony  
11 came out--

12 A.L.J. BELSITO: Please send me  
13 those documents this afternoon and I'll reserve a  
14 decision for them until I see them. I think I  
15 understand your objection, Mr. Singer. That just  
16 refers to... the response is from CPW's responses  
17 to SFW?

18 MR. BERNSTEIN: SFW-01 and SFW-06,  
19 and SFW-08. Three individuals.

20 A.L.J. BELSITO: Okay.

21 MR. SINGER: This is Len Singer.  
22 Technically, they're not CPW responses; they're  
23 responses from the Dune Alpin witnesses, but...  
24 but this one was...

25 MR. BERNSTEIN: For the second two.

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2 Great.

3 A.L.J. BELSITO: Please, make sure I  
4 get those documents and please have them filled out  
5 with the specific information that's on the  
6 spreadsheet including page numbers and everything  
7 else so I don't have to try to fill that through  
8 myself.

9 MR. BERNSTEIN: Okay. Will do.

10 MS. BUCKNER: Your Honor, this is  
11 Mila Buckner for the Trustees of East Hampton. We  
12 were reviewing the exhibit list that you circulated  
13 over the weekend and it looks like some of our  
14 follow-up exhibits that were provided last Friday  
15 have yet to be incorporated. I sent those to you  
16 in an email. Would you like me to send those  
17 again? Specifically, it's CPW Response to Trustees  
18 IR 4 and 5, and we had also provided some  
19 additional information about page numbers for our  
20 exhibits.

21 A.L.J. BELSITO: I apologize for not  
22 incorporating those corrections. I did receive  
23 them. Would you just send me a note for an email  
24 today reminding me that I need to go back and look  
25 at those? You don't have to send everything again.

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2 MS. BUCKNER: Okay. Will do.

3 A.L.J. BELSITO: I appreciate that.

4 Sorry to need reminders, but that's how my brain  
5 works. Okay. Were there other suggestions for  
6 additions to the list? Is that where we were?

7 MS. BRADY: Your Honor, can I bring  
8 up the...?

9 A.L.J. BELSITO: Yes, Ms. Brady.  
10 I'm sorry. It's your turn.

11 MS. BRADY: The first was in the  
12 Excel spreadsheet Exhibit 435. I wanted to submit  
13 the four-page document from the Northeast Fisheries  
14 Science Center regarding longfin inshore squid.

15 A.L.J. BELSITO: Okay. I have that  
16 listed currently. It's 435, correct?

17 MS. BRADY: Yes.

18 A.L.J. BELSITO: Okay. So...

19 MS. BRADY: I'm sorry, go ahead.

20 A.L.J. BELSITO: What did you want  
21 to state about that?

22 MS. BRADY: That I'd like it  
23 included.

24 A.L.J. BELSITO: Okay. Well, I  
25 meant do we need to add anything to that particular

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2 list right now? Right now, the list is there. And  
3 that's on the list, right? Do you have additions to  
4 the list?

5 MS. BRADY: I do have one possible  
6 edition and that's why I need a point of  
7 clarification. The applicant who had requested for  
8 the motion for incorporation by reference of  
9 Deepwater South Fork LLC Construction Operation  
10 Plan, does that, in fact, mean they would like to  
11 submit all of the documents that are included  
12 within the South Fork Construction Operation Plan  
13 into the list of exhibits for this hearing?

14 A.L.J. BELSITO: I'll let the  
15 applicants speak to that. I took their motion as  
16 rather than included in the list of exhibits, it  
17 would just be--judicial notice would be taken of  
18 it. But...

19 MR. SINGER: This is Len Singer.  
20 That's correct, Your Honor.

21 MS. BRADY: Okay. So, is there a  
22 way for me to ask to incorporate that within the  
23 exhibit?

24 MR. SINGER: If judicial notice is  
25 taken of it, you can refer to it in your brief. It

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2 doesn't have to be on the exhibit list.

3 MS. BRADY: Then I would like to  
4 then request if the list Volume 2, which is the  
5 appendices, to the construction operation plan be  
6 included on the list of exhibits or included within  
7 that overarching construction operation plan which  
8 has two volumes to it.

9 A.L.J. BELSITO: Mr. Singer, is the  
10 specific request encompassed by your overarching  
11 request?

12 MR. SINGER: Yes, it would be the  
13 entire COP.

14 MS. BRADY: Including all of the  
15 appendices?

16 MR. SINGER: Yes.

17 MS. BRADY: Thank you. That's all,  
18 Your Honor.

19 MR. SINGER: Is that the only  
20 addition you were offering, Ms. Brady?

21 MS. BRADY: Yes, that's it. Thank  
22 you.

23 A.L.J. BELSITO: Okay. Any other  
24 parties who would like to add to the five exhibit  
25 lists?

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2 MR. KINSELLA: Yes, Your Honor. I'd  
3 like to include the judicial ruling in the Article  
4 78 case, all of three pages.

5 MR. SINGER: This is Len Singer. I  
6 would object to that. I can detail my objection if  
7 you would like to hear it.

8 MR. KINSELLA: It is a judicial  
9 ruling, Your Honor.

10 A.L.J. BELSITO: Was that on a  
11 previous list of exhibits that you've provided?

12 MR. KINSELLA: It was originally  
13 Exhibit 12.

14 A.L.J. BELSITO: Someone needs to  
15 remember to put themselves on mute; I'm hearing no  
16 conversations because three of them are going on at  
17 once.

18 MR. KINSELLA: Okay. Yes, the  
19 original version of the original exhibit was  
20 included in my testimony, Part 2. And it was  
21 struck, but I don't believe the grounds on which  
22 this was struck--sorry, the grounds on which all  
23 the exhibits were struck apply to this particular  
24 ruling.

25 A.L.J. BELSITO: Why do you think

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2 it's relevant to the commission's decision?

3 MR. KINSELLA: Ah, it goes to the  
4 public interest.

5 A.L.J. BELSITO: Mr. Singer, would  
6 you like to respond?

7 MR. SINGER: Yes, Your Honor. It's  
8 a ruling about a case in which Mr. Kinsella brought  
9 a Freedom of Information Act challenge to the  
10 denial of his request for a portion, I believe, of  
11 the Power Purchase Agreement; and whether the  
12 Freedom of Information Act allowed the state  
13 agencies to not provide that document is not  
14 relevant to anything in this case.

15 MS. ZAFONTE: Lisa Zafonte joins in  
16 that objection.

17 MR. KINSELLA: May I respond to that  
18 objection, Your Honor?

19 THE REPORTER: Wait, I didn't get  
20 the name of the woman who spoke.

21 MS. ZAFONTE: Lisa Zafonte.

22 THE REPORTER: Thank you.

23 MS. ZAFONTE: You're welcome.

24 A.L.J. BELSITO: Alright, Mr.  
25 Kinsella.



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2 MR. KINSELLA: It is directly  
3 relevant to the case because the ruling goes to  
4 whether or not prices that affect the prices that  
5 consumers pay for utility are of the public  
6 interest; and the ruling says that prices are of  
7 the public interest, and I think that that goes to  
8 the--

9 A.L.J. BELSITO: Okay, I've heard  
10 the arguments. I'm going to actually--given the  
11 number of objections, I'm probably going to have to  
12 rule after today. So, I heard the arguments, I'll  
13 reserve decision on that one. Are there other  
14 additions?

15 MR. KINSELLA: The only other  
16 addition I'd like to include is the NYSERDA report  
17 "Launching New York's Offshore. Wind Industry:  
18 Phase 1 Report".

19 A.L.J. BELSITO: And has that been  
20 sent around? I don't know what that document looks  
21 like.

22 MR. KINSELLA: It's the document  
23 that investigates the agreements of Equinor and  
24 Sunrise Wind--

25 A.L.J. BELSITO: Has that document

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2 been circulated to the parties?

3 MR. KINSELLA: It was today; I can't  
4 remember if it was circulated earlier on.

5 A.L.J. BELSITO: Okay. Today is  
6 fine. Where, today, was that documentary  
7 circulated?

8 MR. KINSELLA: It was circulated by  
9 email, and on that link that you couldn't open.

10 A.L.J. BELSITO: Which one of your  
11 three emails and which document specifically are we  
12 referring to now?

13 MR. KINSELLA: Okay. It was...  
14 it's Document 002B and 2A and that was in Email 1.  
15 2A is just the excerpt--the one-page or three-page  
16 excerpt--and 2B is the full report.

17 A.L.J. BELSITO: Would anyone like  
18 to object to that?

19 MR. SINGER: Yes, Your Honor. Len  
20 Singer, I object to that on the ground that it's  
21 irrelevant; you've already determined that the  
22 price of the power under the Power Purchase  
23 Agreement in this case, is not something that's  
24 relevant to this case. And therefore, if that's  
25 not the case--since that's not relevant here, then

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2 the price of any other project wouldn't be relevant  
3 either.

4 MR. KINSELLA: In response to that  
5 objection, this report is not about the price, it's  
6 just as important about the economies of  
7 alternatives.

8 MS. ZAFONTE: Lisa Zafonte. I'm  
9 going to object on the ground that it's not  
10 relevant to the proceeding.

11 A.L.J. BELSITO: I'll reserve, but  
12 I'm not sure I have the document. You're saying  
13 it's 002A and 002B? All I see is 002A.

14 MR. KINSELLA: Yes, 002B is the  
15 entire document which was on the link, but I didn't  
16 email it around because it's too long.

17 A.L.J. BELSITO: Okay, the link is  
18 useless to me, so I don't have the document.  
19 Please, make sure I get it before the end of the  
20 day and I'll reserve my decision on that one.

21 MR. KINSELLA: Yes, Your Honor.

22 A.L.J. BELSITO: Are those the only  
23 additions you have to suggest Mr. Kinsella?

24 MR. KINSELLA: Yes, Your Honor.

25 A.L.J. BELSITO: Are there any other

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2 parties that would like to suggest additions? Okay.  
3 We'll start with objections other than to those new  
4 suggestions. Mr. Singer?

5 MR. SINGER: Yes, Your Honor. As I  
6 was starting to say, I've actually got a number of  
7 these, Your Honor. So, the first one is with  
8 respect to No. 311, the email regarding the work  
9 off--the offshore work. It was discussed during  
10 testimony, but as we argued at that time, that  
11 document is irrelevant to any decision that the  
12 commission needs to make in this case--irrelevant  
13 to the statutory findings that the commission has  
14 to make.

15 MR. BERNSTEIN: Judge, this is Kevin  
16 Bernstein. I don't recall that conclusion being  
17 made with regard to this email; I think that it  
18 initially came up because I asked it for of a  
19 particular panel, okay? And then I think that it  
20 was discussed so that might be appropriate for a  
21 panel in which Ms. Garvey participated in; so,  
22 then, I did ask her questions, we did go through  
23 questions with regard to communications with the  
24 public about the recent survey activities--and the  
25 time at which the survey vessel arrived, and with

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2 that and in that regard, I think it's relevant to  
3 the credibility of the witness.

4 A.L.J. BELSITO: Okay, I've heard  
5 those arguments. Next one.

6 MR. SINGER: Next one is Document  
7 No. 312, the New York State Offshore Wind Master  
8 Plan. This is a NYSERDA document, but it was not  
9 used during cross-examination; no witness testified  
10 that they had any knowledge of it, and so we object  
11 to its inclusion here. But if it is included, we  
12 would request that the full document be included,  
13 including all the appendices--and that's if all the  
14 appendices were not submitted in the initial filing  
15 of the document.

16 MR. KINSELLA: Your Honor, I  
17 actually referred to that document today and I  
18 believe others have referred to the master plans.  
19 I would object to the objection, if that's  
20 possible.

21 A.L.J. BELSITO: Okay.

22 MR. BERNSTEIN: Same here, Your  
23 Honor. Plus, this is a public document--

24 A.L.J. BELSITO: I'm sorry, Mr.  
25 Bernstein. It's my recollection that the witnesses

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2 today were not familiar with that document; you may  
3 have brought it up, but you weren't testifying, is  
4 that correct to your recollection, Mr. Kinsella?

5 MR. KINSELLA: Sorry, Your Honor.

6 Do you mind repeating that?

7 A.L.J. BELSITO: My recollection of  
8 the testimony today was the witnesses had not  
9 reviewed that for this proceeding; you may have  
10 raised it, but the witnesses were not familiar with  
11 it. Is that your recollection of the testimony  
12 today?

13 MR. KINSELLA: That is correct, Your  
14 Honor.

15 A.L.J. BELSITO: Okay. Mr.  
16 Bernstein, would you like to be heard on this  
17 exhibit?

18 MR. BERNSTEIN: Yeah, a couple of  
19 points. First of all, this is a public document  
20 and I wouldn't disagree with Len that if we're  
21 going to put in the master plan, we put in all the  
22 appendices, but it is a public document that's  
23 readily available on the NYSERDA website. In  
24 addition, all of my cross isn't complete, so this  
25 very well may be a question that I have in a

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2 limited respect of the trustees with regard to some  
3 of their testimony. So, I would ask you to  
4 reserve, as you are for all these other objections,  
5 until all the testimony is heard.

6 A.L.J. BELSITO: Can you get me all  
7 the appendices sent to me in PDF form by the end of  
8 the day?

9 MR. BERNSTEIN: I can get you the  
10 page at which the PDFs appendices are linked, but I  
11 think they probably are too large to email. So, I  
12 will check if--

13 A.L.J. BELSITO: If I can access  
14 them by the end of the day, then I will certainly  
15 consider what's there.

16 MR. BERNSTEIN: Yeah, absolutely.

17 A.L.J. BELSITO: Mr. Singer, next.

18 MR. SINGER: Next, Your Honor, is  
19 Document #315, the OCS study. That was not used  
20 during any cross-examination, no witness talked  
21 about it, validated it, or authenticated it.

22 MR. BERNSTEIN: Your Honor, this  
23 testimony and the applicant's rebuttal testimony  
24 with regard to the knowledge of best management  
25 practices with regard to offshore wind projects,

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2 this document directly addresses that part of their  
3 testimony; and then during cross-examination, I did  
4 ask whether or not they were aware of any best  
5 management practices and I believe the question--  
6 the answer was no. And therefore, this document  
7 directly refutes that testimony and therefore is  
8 relevant and should be entered into the record.

9 MR. SINGER: Well, it doesn't refute  
10 the testimony of the witnesses if they said they  
11 weren't aware of these best management practices,  
12 because they didn't testify that they were aware of  
13 these particular practices.

14 MR. BERNSTEIN: That's something you  
15 currently argue--

16 A.L.J. BELSITO: Alright. So,  
17 without getting into that exact nature of the  
18 testimony which we don't have in front of us, I  
19 think I understand the general arguments--unless  
20 they go beyond exactly what was said.

21 MR. SINGER: No, not from me, Your  
22 Honor.

23 A.L.J. BELSITO: Okay. Thank you.  
24 Next one.

25 MR. SINGER: The next ones, I think



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2 I can cover as a group because I have the same  
3 objection to all of them. They would be the  
4 documents that are included as 319, 320, 328, and  
5 329. All of these are third-party articles of some  
6 kind that appeared in some type of publication  
7 somewhere; they were not used during cross-  
8 examination, they're not documents from any of our  
9 witnesses. Also, they're irrelevant because  
10 they're talking about the impacts of wind power or  
11 the price of wind power, and that is not a subject  
12 matter of this Article 7 case. So, I object to  
13 them on the grounds that there's no foundation and  
14 that they're not relevant.

15 MR. BERNSTEIN: Your Honor, there's  
16 testimony and I believe it's the construction  
17 engine--maybe it's the public interest and need  
18 panel--that talks about the displacement of  
19 traditional generation as a result of this project  
20 as demonstrating public interest and need. And  
21 these documents refute that position set forth in  
22 the applicant's testimony, and so that's their  
23 purpose. And therefore, they should be entered  
24 into the record for that reason. They test the  
25 credibility of the statements that are set forth in

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2 the applicant's testimony and should be admitted.

3 MR. SINGER: So, Your Honor--Len  
4 Singer, again--I don't believe that's the case.  
5 They weren't asked about any of these documents,  
6 whether someone like Dr. Lesser from the Manhattan  
7 Institute--who, by the way, is a noted climate  
8 change denier, but I won't argue that point--if  
9 he's going to write an article and it's going to be  
10 submitted into some type of publication, that  
11 doesn't mean that it should come into this case  
12 just because some random third party has written  
13 something about the climatic impacts or the cost of  
14 wind power.

15 MR. BERNSTEIN: So, this is one of  
16 the exhibits that I believe that we were presenting  
17 on behalf of the Mahoneys, this is part and parcel  
18 with their testimony, they're due to be crossed  
19 tomorrow. And--

20 A.L.J. BELSITO: Okay. I've heard  
21 the--I think I've heard the arguments that--I'm  
22 sorry, Mr. Bernstein, I didn't mean to interrupt  
23 you.

24 MR. BERNSTEIN: I just--all I had to  
25 say--and you'll, I'm sure, agree with this is that

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2 it really just goes to the weight of how for these  
3 exhibits, and really, they shouldn't be excluded  
4 but you can consider them in any way you wish.

5 MR. KINSELLA: Your Honor, I'd also  
6 say that I think that document should be included.  
7 I don't think that Dr. Lesser should be dismissed  
8 as a climate-denier; his articles are quite  
9 insightful, and well-argued, and well-researched.

10 A.L.J. BELSITO: Okay. Whether they  
11 are or not goes to their weight rather than their  
12 admissibility, but I will consider everyone's  
13 arguments. Mr. Singer?

14 MR. SINGER: The next one would be  
15 the Document #341. This document was not used  
16 during cross-examination of any witness, it is not  
17 a public document, it's just some, again, random  
18 document that talks about vehicle sizes and  
19 weights; there's no context for it and there's no  
20 foundation for it.

21 MR. BERNSTEIN: Well, I mean the  
22 context for it, first of all, is the cross-  
23 examination that is to occur of Mr. Beck, which has  
24 not occurred yet; and it relates to--clearly  
25 relates to public safety which is an issue that

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2 we've squarely raised and that the construction and  
3 engineering panel of the applicant has attempted to  
4 refute. So, for that reason, and because there  
5 have been a lot of questions about vehicle size  
6 many of which have not been answered or could not  
7 have been answered, we think that this is directly  
8 relevant to both the issue that we've raised and to  
9 the credibility of the witnesses.

10 MR. SINGER: Well, I think there has  
11 to be some nexus to the witnesses, the testimony,  
12 and in this case, since it wasn't used during  
13 cross-examination of any our witnesses, at this  
14 time, I don't think there's any basis for admitting  
15 it, but I can understand if you want to reserve on  
16 that until after Mr. Beck testifies. But at this  
17 point in time, there's no basis for including it in  
18 the record.

19 A.L.J. BELSITO: Okay. Again, we'll  
20 reserve and we can move on to the next one.

21 MR. SINGER: Okay. The next group I  
22 have would be--and again, I'll just go through them  
23 all because I have the same objection--it would be  
24 documents 342, 343, 344, 345, 346, 347, 348, 349,  
25 350, and 351. They're all third-party documents

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2 that came from various different publications;  
3 there's no nexus between these documents and any of  
4 the testimony that our witnesses gave or any of the  
5 cross-examination of our witnesses. A couple of  
6 them are called blog posts; I don't think that  
7 parties to the case should be allowed to just  
8 randomly submit documents to Your Honor and say  
9 that they should be included in the case, there has  
10 to be some basis for including the documents such  
11 as them agreeing on cross-examination that they  
12 reviewed them or that they're familiar with them,  
13 and we don't have any of that with any of these  
14 documents. And that would be 342 through 351.

15 MR. BERNSTEIN: So, Your Honor, my  
16 immediate response on two of them is that I'm  
17 pretty sure that I had specific questions with  
18 regard to 343 and 351 with regard to the Atlantic  
19 right whale and the black sea bass. I had specific  
20 questions about those; in fact, I think I even  
21 pointed out--

22 A.L.J. BELSITO: I think I agree  
23 with you. So, my recollection is similar to yours.

24 MR. BERNSTEIN: And then finally,  
25 there was a lot of--there were a lot of questions--

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2 mostly from Ms. Brady--regarding EMF and that  
3 relates to 347. With regard to the other ones...  
4 well, actually, I do specifically remember asking  
5 you about failure rates and referencing of offshore  
6 wind transmission systems. So, that's 342 as well.  
7 So 342, 343, and 351, there was cross-examination  
8 either about those documents or about those issues.  
9 Ms. Brady had questions with regard to EMF and  
10 that's 350 and 347; maybe after I'm done, she could  
11 add to that.

12 On the blog posts, I probably would  
13 concede on those.

14 MR. SINGER: So, Your Honor, with  
15 respect to 342, Mr. Bernstein obviously did ask  
16 about failure rates, but he did not ask anything  
17 about that particular document.

18 A.L.J. BELSITO: Okay. So noted.  
19 So, I think I've heard the arguments. Mr.  
20 Bernstein, there's four blog posts?

21 MR. BERNSTEIN: Yeah, about.

22 A.L.J. BELSITO: You're conceding on  
23 those?

24 MR. BERNSTEIN: Yeah, I think so. I  
25 don't believe that we planned on using those to

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2 cross tomorrow; and I'm not sure that they relate  
3 to any specific subject matter that have been  
4 raised in the construction engineering panel or  
5 during our cross--like the other ones that we have  
6 objected to the objection, as it were.

7 A.L.J. BELSITO: Okay. I appreciate  
8 it. Next up, Mr. Singer.

9 MR. SINGER: Yes, Your Honor. My  
10 last group here is 429, 430, 433, 434, and 435; I  
11 believe 435 is the one that Ms. Brady just  
12 referenced, but none of those documents were used  
13 during cross-examination, none of the witnesses  
14 testified that they were familiar with them because  
15 they weren't used. So, there's no foundation;  
16 plus, I believe the document which is 430, I guess,  
17 a web page screen capture of some random web page  
18 is irrelevant to this case; as well as, I believe,  
19 the... no, that's it. That's the only one that's  
20 irrelevant; the other ones were just no foundation  
21 for them and not used during cross.

22 A.L.J. BELSITO: Thank you. Ms.  
23 Brady, would you like to respond to those?

24 MS. BRADY: I would, Your Honor.  
25 And Len, could you tell me what numbers you're

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2 specifically referring to again on the exhibit  
3 side? I'm looking at the list here.

4 MR. SINGER: Yep, Bonnie, it's 429,  
5 430, 432, 433, and 434.

6 MS. BRADY: Okay. 429 is the  
7 Fisheries Communication and Outreach Plan; that was  
8 on the website because I specifically had questions  
9 and crossed the entire fisheries panel specific to  
10 that regarding your loss. That is the document  
11 that's on the website. So, in Exhibit 9, the  
12 summary report, Best Management Practices Workshop  
13 for Offshore Wind Facilities, I think, by mistake,  
14 I actually put the best management practice  
15 regarding marine mammals. I meant a different one,  
16 but I did see someone else in the exhibit list and  
17 they may have actually included. I think it was Si  
18 Kinsella. So, that was specific to fisheries  
19 mitigation compensation and gear loss.

20 A.L.J. BELSITO: I'm sorry, Ms.  
21 Brady. I lost you. We're talking about document  
22 4...

23 MS. BRADY: 30.

24 A.L.J. BELSITO: 430?

25 MS. BRADY: 430. Yes, Your Honor.



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2 When I submitted it--

3 A.L.J. BELSITO: Where it's a screen  
4 capture and you said somebody else might have put  
5 that one in?

6 MS. BRADY: No, no, no. 431 is a  
7 web page screen capture; 430, which Len told me  
8 about, is I guess he's confusing 430 with 431. Is  
9 that correct, Len?

10 A.L.J. BELSITO: My 431--I'm sorry.  
11 My 430 is a web page screen capture.

12 MS. BRADY: According to this  
13 document that I have here, the Excel, it says 430  
14 is the Best Management Practices for Atlantic  
15 Offshore Wind Facilities. Okay, I'll jump one down  
16 and assume this is what you're referring to then.  
17 That was a document from a website called  
18 offshore.com.

19 A.L.J. BELSITO: Okay. No, you lost  
20 me when you were talking about the Long Island  
21 Commercial Fisheries Association Exhibit 9 Summary  
22 Report, Best Practice--Best Management Practices?

23 MS. BRADY: Correct.

24 A.L.J. BELSITO: That's the document  
25 you meant to provide and that's the document you

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2 provided?

3 MS. BRADY: I meant to provide a  
4 different document, but instead, the document that  
5 was submitted was regarding marine mammals which I  
6 understand I did not reference in my cross-  
7 examination of anyone. However, I noticed one of  
8 the other parties to the case had included it--

9 A.L.J. BELSITO: Okay, so the  
10 document that you provided, is it relevant? Do we  
11 need it on our list?

12 MS. BRADY: No, I guess. As far as  
13 in 431 which I spoke to, it's a web page screen  
14 capture from an offshore wind-specific company that  
15 puts out information regarding offshore wind that  
16 spoke to some Taiwanese fishermen that were  
17 fighting for their mitigation and compensation  
18 plan. When I was discussing different countries as  
19 having--including Denmark, where Ørsted is from--as  
20 having compensation plans that were specific and  
21 paid for so that they would not have to put in  
22 their gear through survey work. I also referenced  
23 the Taiwanese-specific plan where they also were  
24 paid to the dog for not having to work during  
25 survey work.

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2 MS. BRADY: And the other number, I  
3 believe, Len, is 432, Fishing Gear Conflict  
4 Prevention and Claim Procedure. Again, that was a  
5 second of the gear loss documents, one that showed  
6 the 30-day requirement. One of them showed 30 day-  
7 -both were showed a 30-day requirement--

8 A.L.J. BELSITO: You lost me again.  
9 Where one off or two off.

10 MS. BRADY: Okay, I'll read it out  
11 loud.

12 MR. SINGER: If I can clarify, I did  
13 not object to the document entitled "Fishing Gear  
14 Conflict Prevention and Claim Procedure".

15 MS. BRADY: Can you tell me what  
16 the names of the ones that you objected to? Because  
17 obviously, my Excel is off by one number and I have  
18 no idea why. So, what were the names so that  
19 there's no confusion.

20 MR. SPITZER: Start looking at the  
21 column number, Bonnie, instead of the exhibit  
22 number and they're one off. So, if you look at  
23 that first column, that's the line number. The  
24 judge and Len are looking at the second column.

25 MS. BRADY: Okay. Yes, thank you so

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2 much. Now, I get it.

3 THE REPORTER: And this is Janet.

4 Who was just speaking?

5 MS. BRADY: Bonnie Brady. And that  
6 was Nick Forst, I think, from DPS. Was that you,  
7 Nick?

8 MR. SPITZER: That's Dan Spitzer.

9 THE REPORTER: Okay, Dan.

10 MR. SPITZER: So, let me just go  
11 through it again. Maybe it's somewhat confusing.

12 MS. BRADY: No, I see it now. It's  
13 the line is one off; I've got it clearly. So, 429-  
14 -

15 MR. SPITZER: Wait. Bonnie, can you  
16 wait a second? So, I just want to clarify: I did  
17 not object to the document entitled, "Fisheries  
18 Communication and Outreach Plan," which is 428.  
19 So, you just commented on that; I would agree that  
20 I have no problem with that.

21 MS. BRADY: 429, we've already  
22 discussed.

23 MR. SINGER: Yes, that's right. I  
24 do object to the web page screen capture; I do not  
25 object to the Fishing Gear Conflict Prevention and

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2 Claim Procedure document. I do object to the State  
3 of Rhode Island Coastal Resource Management Council  
4 addressing interaction with, as well as what you  
5 refer to as Exhibit 14.

6 MS. BRADY: Right. 432, that's a  
7 letter from the Coastal Resource Management Council  
8 to Deepwater Wind regarding issues that were not  
9 going to grant them coastal consistency that had to  
10 do specifically with surveys and a lot of the other  
11 work that was done that was not complete. I would  
12 implore the judge to allow that to stay within the  
13 exhibits.

14 Now, down to 433, that's the--the  
15 Addressing Interactions between Fisheries and  
16 Offshore Wind Development, the Block Island Wind  
17 Farm, that was the two-year plan of the Coastal  
18 Resource Management Council for Rhode Island  
19 working with the fishing industry to come up with a  
20 compensation and mitigation plan, and the efforts  
21 that they took to do so, things that they were  
22 required to do in order to receive federal  
23 consistency approval by the state of Rhode Island.  
24 However, New York had nothing similar, but I wanted  
25 to put it in there as an example of what types of

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2 things were done regarding mitigation and  
3 compensation.

4 And 434, Exhibit 14, that  
5 specifically is--I have the Export Cable Failures,  
6 that is critical because it speaks to the issues as  
7 to why cables fail and how, and when they don't  
8 work, and they become unearthed, and how that would  
9 affect fishermen who might lose the ability to gain  
10 income because of an exposed cable for a variety of  
11 reasons. That is extremely important, especially  
12 for fishermen.

13 MR. SINGER: Yep, I understand it  
14 might be important, but it's irrelevant to this  
15 case. It doesn't talk about anything that's been  
16 proposed here; and that that would be true of the  
17 document regarding the Rhode Island Coastal  
18 Resource Management plan as well as the documents  
19 related to the Block Island Wind Farm, that's not  
20 at issue here.

21 MS. BRADY: Well, the issue is,  
22 though, Len, is the amount of years of experience,  
23 and when an actuary says that when 80 percent of  
24 all the offshore wind claims are cable-related for  
25 faults, that's kind of the predecessor of things to

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2 possibly come and I think that it needs to address  
3 the issue regarding what is to be done with the  
4 cable, and how it is going to be...

5 MR. SINGER: I understand. But  
6 you're testifying; there's no testimony in the  
7 record that talks about any of those documents.

8 A.L.J. BELSITO: I've heard both  
9 sides--the arguments on both sides. I will take a  
10 look and let what I think.

11 MS. BRADY: Thank you, judge.

12 MR. SINGER: Thank you.

13 A.L.J. BELSITO: So, before we move  
14 on, I just want to make sure that I have all the  
15 numbers written down correctly, Mr. Singer, so I'm  
16 going to read them--just the numbers back to you,  
17 if that's okay.

18 MR. SINGER: Yep.

19 A.L.J. BELSITO: Everyone else,  
20 please make sure they're muted. Number 311, 312,  
21 315, 319, 320, 328, 329, 341, 429, 430, 432, 433,  
22 434, and 435?

23 MR. SINGER: That's correct. But--

24 A.L.J. BELSITO: I'm coming, 342,  
25 343, 344, 345, 346, 47, 48, 49, 50, 51.

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2 MR. SINGER: That's correct, Your  
3 Honor. You got them all.

4 A.L.J. BELSITO: Okay. Thank you.

5 MS. BRADY: Excuse me, judge, was  
6 435 also requested to be struck? I heard you say  
7 435; I know 434, but I was not aware of 435.

8 MR. SINGER: I wouldn't object--I  
9 would not object to 435 as the entire document.

10 MS. BRADY: I will get that other  
11 information for you as soon as I can.

12 A.L.J. BELSITO: Okay, I have it  
13 marked on my list correctly now. The applicant's  
14 objections... are there other parties that would  
15 like to object to any currently proposed witness--  
16 excuse me, exhibits? Excellent. Are there any  
17 objections to any of the pre-filed testimony that  
18 has been offered so far or will be offered  
19 tomorrow?

20 MR. SINGER: Your Honor, this is Len  
21 Singer. I don't have an objection at this time,  
22 but I do have a clarification that I'd like to  
23 discuss today that may save us some time tomorrow.  
24 And it relates to CPW witness's Conrad's rebuttal  
25 testimony.



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2 A.L.J. BELSITO: If it will save  
3 time tomorrow, go ahead.

4 MR. SINGER: So, on Page 2 of Mr.  
5 Conrad's rebuttal testimony, he has a sentence that  
6 states, "Unfortunately, the settlement process that  
7 DPS mentioned in its testimony did not recognize,  
8 examine, or compare the CPW alternatives in a  
9 meaningful way." I believe that is a  
10 characterization of what happened during  
11 settlement; if that is considered to not be a  
12 violation of the settlement confidentiality  
13 guideline, then I should be able to ask him  
14 questions about that to explore what actually  
15 happened during settlement to challenge whether  
16 that is actually an accurate statement--which I  
17 don't believe it is, but I would ask Mr. Conrad  
18 questions about that tomorrow.

19 If Your Honor, you believe that  
20 talking about the settlement process in that way is  
21 not a violation of confidentiality provisions, then  
22 I think I should be able explore whether that's an  
23 accurate statement or not. I think the best way  
24 would be to strike that and there's a number of  
25 other sentences in this document that I believe

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2 talk about this settlement process that would, in  
3 my mind, be potentially inappropriate, but I'll  
4 leave that your ruling on this particular  
5 statement.

6 A.L.J. BELSITO: So, where are the  
7 references again--specific references page and  
8 line?

9 MR. SINGER: Okay. So, I've got  
10 Page 2, Lines 14 through 18; and then on Page 3,  
11 Lines 7 where Mr. Conrad testifies that CPW could  
12 not have analyzed public need without CPW's  
13 publicly-filed testimony. I believe responding to  
14 that would require discussion about what was  
15 presented during settlement by Mr. Conrad. And on  
16 Page 5, at Lines 6 through 7, he states that he  
17 does not believe that DPS was in a position to  
18 finally determine which alternative was in the  
19 public interest because it had not reviewed CPW's  
20 alternative. And during settlement, that was  
21 reviewed. On Page 6, at Line 3, there is the same  
22 statement that the DPS staff did not know CPW's  
23 alternatives at the time it signed the joint  
24 proposal.

25 On Page 7, at Lines 1 through 2,

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2 there's another sentence that said, "The  
3 alternatives presented by CPW during the settlement  
4 discussions were not considered in a meaningful  
5 way." I would object to that statement or request  
6 that I be allowed to explore that in cross-  
7 examination. On Lines 9 through 11, there is a  
8 question about during a settlement meeting, was  
9 incredibly determined that the applicant preferred  
10 route is consistent with the entire rest of the  
11 sentence, but the answer there is no. Again, I  
12 would challenge whether that is the case. But I do  
13 believe it a violation of the settlement  
14 confidentiality.

15 On Page 11, it looks like--

16 A.L.J. BELSITO: I'm sorry, Mr.  
17 Singer, for interrupting. The last page reference  
18 was Page 9 before you got to 11?

19 MR. SINGER: Yes, Your Honor.

20 A.L.J. BELSITO: Do you have the  
21 line reference as well?

22 MR. SINGER: Actually, no, I don't  
23 have it. I'm sorry. The next one I have is Page  
24 11, Lines 15 through 17. And then also on Page 11,  
25 Line 22; both statements have to do with what was

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2 considered during the settlement process--or lack  
3 of what was considered during the settlement  
4 process according to them. And then the last one  
5 was... yeah, back to Page 7, Lines 1 through 2. I  
6 don't know if you got that one, Your Honor? The  
7 answer is that the alternatives presented by CPW  
8 during the settlement discussions were not  
9 considered in a meaningful way. And then also on  
10 Page 7, at Lines 9 through 11, there is a question  
11 that starts off, "During the settlement meetings,  
12 was incredibly determined."

13 A.L.J. BELSITO: Thank you. Mr.  
14 Bernstein?

15 MR. BERNSTEIN: Yeah, I have to look  
16 at this a little further, Your Honor. I think  
17 that... we... studiously avoided including  
18 anything in the testimony that directly referred  
19 to--or referenced the substantive nature of  
20 discussions during settlement. And therefore, at  
21 the outset, I would say that I don't believe it's a  
22 violation of 3.9. I think the point here simply is  
23 that the first time that our alternatives could  
24 become public was the same time that staff--DPS  
25 staff--filed a testimony, October 9.

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2 And therefore, DPS staff's  
3 conclusions in its testimony were without the  
4 benefit of the publicly filed and publicly-now-  
5 known alternatives that CPW presented. And that is  
6 probably the substance of much of that testimony  
7 that Len just went through. Not exactly what was  
8 discussed, not... what anyone's reaction was  
9 during settlement simply couldn't be possible for  
10 staff to reach the conclusions that it did because  
11 it did not yet know, from a public perspective,  
12 what those alternatives were that we were  
13 proposing.

14 So, that is my general reaction. I  
15 think that we can go through it one by one tomorrow  
16 after I've had a little chance to think further  
17 about it--I mean I'm not looking to prolong  
18 tomorrow in any way, shape, or form, don't get me  
19 wrong. So, perhaps, if Mr. Singer can distribute  
20 all those page and line references once we're  
21 finished today, we get started on this even before  
22 we get to my cross of the trustees tomorrow  
23 morning.

24 A.L.J. BELSITO: I appreciate your  
25 attempt to make a distinction between what staff

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2 knew about public information and what staff knew  
3 about the actual proposals. And my concern is less  
4 about whether the pre-filed testimony is an actual  
5 violation of the settlement guidelines or not; or  
6 given the particular statements in that testimony,  
7 it's fair from Mr. Singer to probe the veracity of  
8 those statements? My concern is during that probe,  
9 it's almost inevitable that individual party's  
10 positions, I think, would have to be--to some  
11 extent, would have to be revealed. I guess I can  
12 think about it a little further tomorrow, but let's  
13 suppose that these alternatives were proposed in  
14 settlement discussions to some level of detail, I  
15 guess staff doesn't need to respond that they had a  
16 particular feeling about them or not.

17           However, even if, for instance, they  
18 knew about them, they've looked at them in  
19 considerable detail, but then signed onto the JP,  
20 there's plenty, I think, to deduce about what their  
21 position and settlement discussion was. Am I  
22 overly concerned about this?

23           MR. BERNSTEIN: Sorry for  
24 interrupting. More than that, Your Honor, I think  
25 that they had an opportunity to file a rebuttal

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2 testimony as well after these alternatives were  
3 first made publicly available on October 9 and that  
4 did not occur.

5 MR. FORST: Your Honor, this is Nick  
6 Forst from staff. I appreciate Kevin speaking for  
7 us, but I actually don't. I mean I don't want the  
8 lack of rebuttal filing from staff to indicate  
9 something that it doesn't. So, ultimately, I think  
10 there's--this would go on the record, Mr. Singer's  
11 objections are, I think, well founded in the sense  
12 that the testimony he's trying to really cast the  
13 settlement discussions in a particular way based on  
14 the fact that it resulted in a JP that doesn't  
15 include CPW's alternatives.

16 So, I mean, ultimately, I think  
17 these issues could be briefed, but I would just say  
18 we should try to stay away from discussing  
19 settlement discussions as much as possible because  
20 of the requirements under 3.9.

21 MR. SINGER: So, I would just add to  
22 that, Your Honor. Hypothetically, if Mr. Conrad  
23 gave a presentation to the settlement group that  
24 included all of the alternatives that they now  
25 proposed in their October 9 filing, in their

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2 testimony, then I would argue that the parties did  
3 have an opportunity, prior to signing the joint  
4 proposal, to consider those alternatives, and they  
5 rejected them because they signed on to the joint  
6 proposal.

7 So, again, hypothetically, if that  
8 occurred, I think I should have the opportunity to,  
9 as you stated, question the veracity of Mr.  
10 Conrad's claims.

11 MR. BERNSTEIN: I mean it just seems  
12 to me, Len, that you just argued against your  
13 objection to begin with; that whether or not you  
14 have the ability to question or make arguments in  
15 brief as to what you may deduce from those  
16 statements. It's either whether it's subject to  
17 cross or can be argued in brief. Those two things  
18 should still be able to happen.

19 MR. SINGER: Well, I want to get on  
20 the record, Kevin, that Mr. Conrad--without  
21 revealing anything that happened during the  
22 settlement--may have made a presentation with all  
23 of those alternatives to the parties. So, unless  
24 I'm able to cross-examine Mr. Conrad about it, I  
25 wouldn't have a basis for discussing it in the



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2 brief.

3 MR. BERNSTEIN: When you're asking  
4 that question, I think that the greater concern,  
5 which as you started out with, is how do we go...  
6 in terms of the discussion development? I mean it  
7 doesn't sound like you are looking to probe any of  
8 that, but we're looking to probe whether or not  
9 there are certain presentations that were made  
10 during settlement without necessarily getting into  
11 the granular substance of those.

12 MR. SINGER: That's right. I just  
13 want to point out that there was a discussion and  
14 it was detailed, and Mr. Conrad did talk about  
15 that. If you want to stipulate to that, maybe we  
16 can work out some stipulations.

17 MR. BERNSTEIN: Let me think about  
18 that one, but maybe it's a way to get beyond this.

19 MR. SPITZER: Your Honor, this is  
20 Dan Spitzer. That would actually be helpful  
21 because I suspect that Mr. Bernstein is going to  
22 want to question the first witness tomorrow about  
23 how the trustees came to their conclusion and to  
24 alternatives. And obviously, what was said in  
25 settlement was part of what was considered and we

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2 should be able to discuss it in a generic way.

3 And I didn't see what's in Mr.  
4 Conrad's testimony, but frankly, we should be able  
5 to answer Mr. Bernstein's questions in a way that  
6 allows--that makes the record make sense rather  
7 than just saying, "Well, I can't say whether I knew  
8 or didn't know about it," because, hypothetically,  
9 there was a two-hour presentation on the topic, and  
10 hypothetically, Mr. Conrad's testimony is correct  
11 on that point, and hypothetically, the trustees  
12 considered that. So, without going to the details,  
13 sometimes, stipulations might be helpful all around  
14 tomorrow.

15 A.L.J. BELSITO: I love that  
16 solution--assuming we can get there. Because I  
17 think I understand everyone's concerns; I don't--I  
18 think to the extent settlement discussions have  
19 been characterized at all, I think that they're  
20 legitimate topics for cross-examination; but at the  
21 same time, I want to make sure that we don't cross  
22 any lines we're not supposed to accidentally  
23 tomorrow. So, if the parties can get together and  
24 figure out exactly what they're all comfortable  
25 with, it would certainly make my life a lot easier.

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2           Alright, if that's something you  
3 think is doable, then I think that's how we should  
4 move forward on that issue.

5           MR. BERNSTEIN: We're certainly  
6 willing to consider it if that means that the  
7 testimony comes in completely. But we could--Len  
8 and I could talk about it offline.

9           A.L.J. BELSITO: Okay. My general  
10 leaning is to avoid--okay, I'll let you guys talk  
11 about it offline and see where we get. Are there  
12 other objections to pre-filed testimonies? Okay.  
13 Okay, so I'm holding off any rulings regarding what  
14 exhibits are being moved in. The testimonies that--  
15 -other than the stuff, the testimony that we've  
16 discussed--the pre-filed testimony for witnesses  
17 that have already been crossed can be considered as  
18 part of the record at this point, but I'll put  
19 everything in one ruling to make sure it's there--  
20 or maybe two rulings--but it'll all be written  
21 down.

22           MR. SINGER: I take it that would  
23 include not just witnesses who have been crossed,  
24 but witnesses who haven't been crossed for which we  
25 have affidavits?

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2 A.L.J. BELSITO: Yes, and who will  
3 not be crossed, yes.

4 MR. SINGER: Thank you.

5 MS. BRADY: Your Honor, can I ask  
6 one more question, please?

7 A.L.J. BELSITO: You may.

8 MS. BRADY: I don't know if I  
9 included this when I was speaking--cross-examining  
10 Kevin Smith from Fugro. I had spoken regarding a  
11 paper that the helped to write, and at that point,  
12 I asked him if he had familiarity with it that he  
13 would feel comfortable answering questions. And I  
14 believe he did say so. I just need to know whether  
15 I need to submit that as being an additional  
16 exhibit. And if I do, should I--

17 A.L.J. BELSITO: Is it on the list?

18 MS. BRADY: It's not on the list,  
19 no, sir.

20 A.L.J. BELSITO: Then you need to  
21 submit it.

22 MS. BRADY: Okay, I will submit it  
23 then.

24 A.L.J. BELSITO: Does anyone else  
25 know what you're talking about right now?

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2 MS. BRADY: It's called the summary-  
3 -Seabed Considerations for Offshore Wind  
4 Development on the Atlantic Outer Continental  
5 Shelf. It's a 2011 document and I will send a copy  
6 of it around to everyone. Thank you.

7 A.L.J. BELSITO: And you indicated  
8 that Mr. Smith actually participated in putting  
9 together the document?

10 MS. BRADY: He's one of the co-  
11 authors of the document, yes.

12 A.L.J. BELSITO: Okay. Yes, please  
13 send that around.

14 MS. BRADY: I'm sorry. Thank you.  
15 I will.

16 A.L.J. BELSITO: No problem.  
17 Alright. Any other logistics we have to deal with  
18 before we discuss tomorrow's schedule?

19 MR. BERNSTEIN: Yes, Your Honor. I  
20 sent around a potential itinerary for site visit.

21 A.L.J. BELSITO: Okay. We can do  
22 that off the record, right?

23 MR. BERNSTEIN: Sure.

24 A.L.J. BELSITO: Are there any other  
25 objections or considerations, or discussions we

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2 should have on the record? Alright. We'll go off  
3 the record and deal with the logistics for tomorrow  
4 and the site visit.

5 THE REPORTER: Okay, we're off the  
6 record.

7 A.L.J. BELSITO: Thank you.

8 (Off the record 2:24 p.m.)

9 (The hearing concluded.)

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2 STATE OF NEW YORK

3 I, JANET WALLRAVIN, do hereby certify that the foregoing  
4 was reported by me, in the cause, at the time and place, as  
5 stated in the caption hereto, at Page 566 hereof; that the  
6 foregoing typewritten transcription consisting of pages 566  
7 through 723, is a true record of all proceedings had at the  
8 hearing.

9 IN WITNESS WHEREOF, I have hereunto  
10 subscribed my name, this the 9th day of December, 2020.

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13 JANET WALLRAVIN, Reporter

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