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Written Testimony of

Part 2 – Public Interest

Simon V. Kinsella

Intervenor

HEARING ON

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

BEFORE

The Honorable Anthony Belsito

New York State Department of Public Service

October 9<sup>th</sup>, 2020

1           **Thank you for allowing me to submit further testimony in this**  
2 **hearing on whether or not the Applicant’s proposed high-voltage**  
3 **transmission infrastructure project is environmentally compatible and**  
4 **needed.**

5           **This testimony is part 2 and addresses the economic impact of**  
6 **the Applicant’s proposal. This testimony is in addition to testimony**  
7 **parts 1 and 1(2) on the subject of PFAS contamination, submitted to**  
8 **New York State Public Service Commission on September 9<sup>th</sup> and 14<sup>th</sup>**  
9 **of 2020.**

10

11           Deepwater Wind South Fork, LLC (the “Applicant”) proposes to  
12 construct substantial electrical transmission infrastructure beneath the  
13 surface of local rights-of-way through a residential neighborhood. The  
14 electrical transmission infrastructure comprises underground transmission  
15 facilities designed to accommodate high-voltage alternating-current  
16 (HVAC) cables for the delivery of energy from an offshore wind farm with  
17 an initial capacity of up to one-hundred-and-eighty megawatts (180 MW)  
18 to an existing LIPA-owned onshore substation located in the Town of East  
19 Hampton on eastern Long Island (the “Project”).

20

1 Testimony - Part 2 – Public Interest, Need and Price

2 **Q 02.1 - Is the Commission required to consider whether an**  
3 **application for a certificate of environmental compatibility and public**  
4 **need is in the public interest, or not?**

5 Yes.

6 Pursuant to § 126(1)(h), New York State Public Service  
7 Commission (the “Commission”) “may *not* grant a certificate ... unless it  
8 shall find and determine ... that the facility will serve the public interest[.]”

9

10 **Q 02.2 - Is the price the public will have to pay for energy pursuant to**  
11 **a public contract with a public authority of public interest?**

12 Yes.

13 The issue of whether or not the price the public will have to pay  
14 pursuant to a public contract with a public authority for delivered energy by  
15 the Applicant already has been settled.

16 In the matter of *Simon V. Kinsella vs. Office of the New York State*  
17 *Comptroller* (NYSCEF index 904100-19.), Petitioner commenced the  
18 Article 78 proceeding seeking public disclosure of the price the public will

1 have to pay for energy delivered as proposed by the Applicant in the Article  
2 VII application currently before the Commission in this proceeding.

3 The decision handed down by the Hon. Richard Rivera, A.S.C.J.  
4 reads as follows (see **Exhibit 01 at p. 2**) –

5 *In the instant matter the petitioner ... substantially prevailed.*  
6 *... The Court finds that the record requested was of significant*  
7 *interest to the general public as the records sought consisted*  
8 *of the contract prices which would affect the pricing of utilities*  
9 *supplied to the general public [emphasis added].*

10 The underlying reason given for why the Applicant’s contract prices  
11 are of “significant interest to the general public” is because they “affect the  
12 pricing of utilities supplied to the general public.”

13

14 **Q 02.3 - Has the Applicant included the price of its energy that will be**  
15 **passed onto consumer in its Article VII application?**

16 No.

17 Conspicuously absent from the Applicant’s Article VII application  
18 is any mention of the price the public would have to pay for energy  
19 delivered pursuant to that application.

20 The Article VII application is based on the absurd premise that the  
21 price the public will have to pay for delivered energy from the subject

1 transmission facility pursuant to a public contract with a public authority is  
2 irrelevant in the determination by the Public Service Commission of  
3 whether to grant the Applicant a Certificate of Environmental Compatibility  
4 and Public Need (“Certificate”), or not.

5

6 **Q 02.4 - Is the price the public will have to pay for energy from the**  
7 **subject transmission facility important in this Article VII proceeding?**

8           The price the public will have to pay as expressed and in accordance  
9 with the terms to the Executed Power Purchase Agreement of February 6,  
10 2017 (“PPA”) that was awarded the Applicant pursuant to the South Fork  
11 Request for Proposal of June 24, 2015 (“South Fork RFP”) goes directly to  
12 the heart of why the Public Service Commission (the “Commission”) does  
13 *not* have the authority granted it in pursuant to NY CLS Pub Ser § 126(1)(a),  
14 (b), (c) and (h) to grant the Applicant a Certificate.

15           The price of energy from the subject transmission facility touches  
16 on whether: the facility is needed given that better alternatives exist at half  
17 the price; whether costs related to excavating highly contaminated soil and  
18 groundwater will be passed onto local taxpayers and whether local residents  
19 will be exposed to PFAS contamination (for a second time) as a result of  
20 construction activities; why better and cheaper alternatives where

1 overlooked during the South Fork RFP procurements process; and whether  
2 the Applicant's proposal is in the public interest, or *not*.

3 It took over a year and an Article 78 lawsuit<sup>1</sup> before the price of the  
4 Applicant's delivered energy was publicly disclosed. There is *no* reason  
5 why the South Fork RFP, its subsequent PPA or the price of energy from  
6 the subject transmission facility should be shielded from public scrutiny and  
7 denied consideration during this Article VII proceeding.

8

9 **Q 02.5 - What has the Applicant neglected to include in its Article VII**  
10 **application?**

11 Although the price has been disclosed to the public, the Applicant  
12 has chosen to exclude it from this Article VII proceeding along with other  
13 relevant and material documents that have a direct bearing on issues  
14 pertaining to the contract price and "would affect the pricing of utilities  
15 supplied to the general public."<sup>2</sup>

16

17 Such documents include the following –

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<sup>1</sup> See Exhibit 01 - *Simon V. Kinsella vs. Office of the New York State Comptroller*  
NYSCEF index 904100-19

<sup>2</sup> *Id.* (at p. 2)

- 1           • South Fork Resources Request for Proposals issued June 24,  
2           2015 (“South Fork RFP”) administered by PSEG Long Island  
3           LLC (“PSEG LI”) as agent of and acting on behalf of LIPA  
4           (**Exhibit 02**). The South Fork RFP procurement that resulted in  
5           a PPA award to the Applicant has been shrouded in secrecy. The  
6           PPA award to the Applicant has been presented *fait accompli*.  
7           No one has been allowed to look behind the curtain of the RFP  
8           procurement process. Disturbingly, it appears as though the  
9           company administering the procurement, PSEG Long Island,  
10          awarded the PPA to a business partner at the time and failed to  
11          disclose the relationship. Despite the procurement process  
12          having been completed and the PAA awarded to the Applicant,  
13          neither PSEG Long Island, LIPA nor the Applicant has disclosed  
14          the names of the other bidders, evaluation criteria, selection  
15          methodology, comparative analysis, market analysis, or any  
16          aspect whatsoever related to the procurement process.
- 17          • Power Purchase Agreement Executed February 6, 2017 (“PPA”)  
18          that governs the relationship between the Applicant and the  
19          public authority, Long Island Power Authority d/b/a/ LIPA  
20          (“LIPA”) (see **Exhibit 03**);

- 1           • PPA Amendment No. 1 for additional capacity of forty  
2           megawatts (40 MW) approved by the LIPA Board of Trustees on  
3           November 14, 2018 (see **Exhibit 04**). Yet, twenty months *after*  
4           the LIPA Board of Trustees had approved PPA Amendment No.  
5           1 (as of August 5, 2020), the amendment had been signed by  
6           *neither* LIPA *nor* the Applicant (see **Exhibit 05 – IR SK #29**).

7

8           **Q 02.6 - Is the South Fork RFP and its subsequent PPA award relevant**  
9           **to this Article VII proceeding?**

10           The Applicant refers to South Fork RFP and its PPA in its Article  
11           VII application (at p. 5) as follows –

12                     *The Project ... addresses the need identified by LIPA for new*  
13                     *sources of power generation that can cost-effectively and*  
14                     *reliably supply the South Fork of Suffolk County, Long Island,*  
15                     *as an alternative to constructing new transmission facilities.*  
16                     *The ... Project will also ... enable DWSF to fulfill its contractual*  
17                     *commitments to LIPA pursuant to a Power Purchase Agreement*  
18                     *(PPA) executed in 2017 resulting from LIPA's technology-*  
19                     *neutral competitive bidding process."*



1           The “technology-neutral competitive bidding process” is a reference  
2 to the South Fork RFP.

3           On September 17, 2020, a Joint Proposal signed by, *inter alia*,  
4 the Applicant, LIPA and PSEG Long Island was filed with New York  
5 State Department of Public Service (“DPS”).

6           The Joint Proposal reiterates the statements made by the  
7 Applicant in its Article VII application (above) and expounds upon the  
8 references it made to the South Fork RFP and PPA. It reads –

9           9. *The Commission must consider the totality of all relevant*  
10           *factors in making its determination of ... public need. The*  
11           *relevant factors include, without limitation, and in no order*  
12           *of priority, the basis of the need, cost ... and the public*  
13           *interest, convenience, and necessity.*

14           10. *The Project ... addresses the need identified by LIPA in its*  
15           *2015 technology-neutral competitive bidding process (“South*  
16           *Fork RFP”) for new sources of power generation that could*  
17           *cost-effectively and reliably supply the South Fork of Suffolk*  
18           *County, Long Island. Further, the SFEC will help LIPA*  
19           *achieve its renewable energy goals. ...*

- 1            *11. In 2015, PSEG Long Island ... developed the South Fork RFP*
- 2            *to:*
- 3            *a. Acquire additional local power production and/or*
- 4            *load reduction resources in the South Fork to meet*
- 5            *projected load growth and thereby defer the need*
- 6            *for new transmission infrastructure;*
- 7            *b. Support load demand to avoid overload of existing*
- 8            *transmission assets during transmission outages*
- 9            *that limit transmission capacity to the South Fork*
- 10           *load area; and*
- 11           *c. Support system voltage to avoid voltage collapse*
- 12           *during a transmission outage.*
- 13           *12. The SFWF, along with other proposals, was selected as a*
- 14           *portfolio because it most cost-effectively meets these needs*
- 15           *as established by PSEG Long Island. On February 6, 2017,*
- 16           *LIPA and DWSF executed a power purchase agreement*
- 17           *("PPA") for the SFWF that requires energy from the SFWF*
- 18           *to be delivered to the LIPA 9EU-East Hampton Substation.*
- 19           *The SFEC is required to interconnect the SFWF to the East*

1           *Hampton Substation pursuant to the PPA.*<sup>3</sup>

2           The Joint Proposal states that the “Commission must consider  
3 the totality of all relevant factors ... [including] without limitation ...  
4 the basis of the need” and then directs the Commission to “the need  
5 identified by LIPA in its 2015 technology-neutral competitive bidding  
6 process (“South Fork RFP”) [at paragraphs 9 and 10].”

7           Nothing could be more relevant to this Article VII proceeding  
8 than the need for the subject transmission facility as defined in the South  
9 Fork RFP. If there is any doubt, the signatories to the Joint Proposal  
10 include the Applicant and PSEG Long Island and they go so far as to  
11 tell the Commission that it “must consider ... without limitation ... the  
12 basis of the need ... identified by LIPA in its 2015 technology-neutral  
13 competitive bidding process (the South Fork RFP)[internal quotes  
14 removed]”. Similar references are made that direct the commission to  
15 the Executed Power Purchase Agreement of February 6, 2017 (above).

16           At the heart of the Applicant’s case, therefore, is its reliance of  
17 the South Fork RFP and its subsequent PPA award as the “basis of the  
18 need for the facility” without which the Commission cannot issue the  
19 Applicant a Certificate pursuant to NY CLS Pub Ser § 126(1)(a).

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<sup>3</sup> Executed Joint Proposal filed with on September 17, 2020 (at pp. 11-12)

1           The South Fork RFP and its subsequent PPA award are *sine qua*  
2 *non* to the Applicant's Article VII application currently before the  
3 Commission.

4

5   **Q 02.7 - Is the Applicant confused?**

6           I don't know, but after reading the Applicant's response to a  
7 Motion to Compel filed with DPS on September 8, 2020, I am very  
8 confused.<sup>4</sup>

9           In response to the Motion to Compel, the Applicant, claims that  
10 "there is no case before the Commission that concerns the RFP selection  
11 process or the PPA" and that "neither the 2015 RFP, the process used by  
12 LIPA that resulted in the ultimate selection of the SFWF, nor the terms  
13 and conditions of the Power Purchase Agreement that LIPA and DWSF  
14 entered into as a result of the 2015 RFP, are before the Commission in  
15 this case."

16           The Applicant's position that the South Fork RFP and its  
17 subsequent PPA are not "before the Commission in this case" conflicts

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<sup>4</sup> Motion of Simon V. Kinsella to Compel Town of East Hampton to Respond to Interrogatory/Document Request Si Kinsella #28(b), filed on August 28, 2020 ("Motion to Compel IR SK #28").

1 with the Applicant's Article VII application and the Executed Joint  
2 Proposal (see Q 2.06, above).

3 The Article VII application and Joint Proposal clearly place the  
4 South Fork RFP and its subsequent PPA at the heart of the Applicant's  
5 case by relying on it as the basis for its need.

6 For example, how would be possible to adhere to the Joint  
7 Proposal to the extent that the "Commission must consider the totality of  
8 all relevant factors [including] without limitation ... the basis of the need  
9 ... identified by LIPA in its 2015 technology-neutral competitive bidding  
10 process ('the South Fork RFP')" if "there is no case before the  
11 Commission that concerns the RFP selection process or the PPA" that  
12 resulted from the South Fork RFP?

13 Without the South Fork RFP and its PPA, the Applicant's case  
14 would *not* survive, but nonetheless, it appears as though the Applicant is  
15 throwing the baby out with the bathwater. If the South Fork RFP and its  
16 PPA are found to be inadmissible, then the Applicant has no basis for the  
17 need or that there was a "technology-neutral competitive bidding process"  
18 or, indeed, a power purchase agreement.

19

1 **Q 02.8 - Was the price of energy to be delivered by the transmission**  
2 **facility proposed by the Applicant influenced by the South Fork RFP?**

3 PSEG Long Island, LIPA and the Applicant all claim that the  
4 subject transmission facility is the result of a “competitive”  
5 procurement, but neither PSEG LI, LIPA nor the Applicant has  
6 disclosed the “competitive” price within the Article VII proceeding. If  
7 the price the public is to pay is truly competitive, then the Applicant  
8 would want to include it in its Article VII application, but it has *not*.  
9 This fact alone gives cause to ask why the price has been excluded.

10 The Hon. Richard Rivera, A.S.C.J. ruled that the Applicant’s  
11 contract prices are of “significant interest to the general public” because  
12 they “affect the pricing of utilities supplied to the general public.”  
13 Applying this same rule, it follows that other issues affecting contract  
14 prices likewise are of significant interest to the general public because  
15 they, too, “affect the pricing of utilities supplied to the general public.”  
16 One such issue, of course, is the bidding process that resulted in the  
17 contract award and the contract prices contained therein. The bidding  
18 process was the South Fork RFP procurement that resulted in PSEG LI  
19 awarding a PPA to the Applicant. The price of energy to be delivered

1 by the transmission facility proposed by the Applicant was more than  
2 influenced by, but was the result of the South Fork RFP?

3

4 **Q 02.9 - What was the nature of the South Fork RFP?**

5 The South Fork RFP was administered by PSEG LI as agent of  
6 and acting on behalf of LIPA.

7 PSEG LI claims that “21 proposals were received [in response  
8 to the South Fork RFP] from 16 entities” and it has disclosed the names  
9 of the three companies that were awarded contracts pursuant to the  
10 South Fork RFP (see Exhibit 08).

11 The three entities are as follows –

12 (1) Applied Energy Group, Inc. was awarded a service  
13 contract to implement a load reduction program;

14 (2) LI Energy Storage System, LLC was awarded a contract  
15 for two five-megawatt (5 MW/40 MWh) battery storage  
16 facilities in Montauk and East Hampton; and

17 (3) Deepwater Wind South Fork, LLC, the Applicant, was  
18 awarded a power purchase agreement to supply  
19 delivered energy for sale in New York State from an

1 offshore wind farm with an initial capacity of up to one  
2 hundred and eighty megawatts (180 MW);

3 In response to Information Request SK #32 (Exhibit 07) that  
4 seeks information as it relates to the South Fork RFP procurement  
5 process, PSEG LI replied: “We are not providing you with a list of the  
6 other 13 entities that submitted bids on December 2, 2015” (Exhibit 08).  
7 PSEG LI objected to providing any information pertaining to the South  
8 Fork RFP except for the three entities awarded contracts and then only  
9 to the extent that the information already had been publicly disclosed.

10 On September 30, 2020, a Motion to Compel PSEG LI to  
11 respond to Information Request SK #32 was served on PSEG LI, LIPA  
12 and intervening parties in this Article VII proceeding (Exhibit 09).

13 A day later (on October 1, 2020), the State of New York, Office  
14 of the State Comptroller (“OSC”) responded to Freedom of Information  
15 Law (“FOIL”) Request #2020-0444 filed with OSC on August 24, 2020.

16 FOIL request #2020-0444 sought information on the “names and  
17 addresses of all respondents to the ... 2015 South Fork RFP ... that filed  
18 a NYS Vendor Responsibility Questionnaire with OSC” (Exhibit 10,  
19 sub-Exhibit X).



1           On October 5, 2020, the information provided by OSC in  
2 response to FOIL Request #2020-0444 (i.e. the names of respondents to  
3 the South Fork RFP and corresponding Vendor Responsibility  
4 Questionnaires) was served on PSEG LI and filed with DPS in the form  
5 of Supplemental Information (Exhibit 10) to the Motion to Compel  
6 PSEG LI to respond to Information Request SK #32 (Exhibit 09).

7           In response to FOIL Request #2020-0444, OSC provided  
8 Vendor Responsibility Questionnaires *only* for companies that were  
9 required to file the questionnaires with OSC and it appears as though  
10 companies were required to file *only* if its proposal related to energy  
11 production or energy storage and if successful would have resulted in a  
12 power purchase agreement. Companies submitting proposals for  
13 services such as demand response software or energy efficiency  
14 products (e.g. thermostats) that if successful would have resulted in a  
15 service contract, were *not* required to file Vendor Responsibility  
16 Questionnaires with OSC.

17           OSC provided Vendor Responsibility Questionnaires for eleven  
18 companies, but many of these companies are single-purpose entities.  
19 For example, LI Energy Storage System, LLC submitted one proposal  
20 (for two energy storage facilities), but filed five Vendor Responsibility

1 Questionnaires using four different company names (Exhibit 10).  
2 Deepwater Wind South Fork, LLC filed two Vendor Responsibility  
3 Questionnaires (the other under the name of Deepwater Wind, LLC),  
4 but like LI Energy Storage System, LLC submitted only one proposal.

5 In all, five proposals were submitted pursuant to the South Fork  
6 RFP for energy production and/or energy storage. The five proposals are  
7 as follows –

8	LI Energy Storage System	Energy Storage	(2 by 5 MW)
9	AES Generation Development	Energy Storage	(~30 MW)
10	Convergent Energy and Power	Energy Storage	(~10 MW)
11	Halmar International	Aeroderivative Turbine	(25-30 MW)
12	Deepwater Wind South Fork	Offshore Wind	(up to 180 MW)

13 Applied Energy Group, Inc. submitted a proposal pursuant to the  
14 South Fork RFP and was subsequently awarded a service contract for a  
15 load reduction program that is designed to shed load during peak-load  
16 events via smart thermostats among other initiatives. Applied Energy  
17 Group, Inc. was *not* require to file a Vendor Responsibility  
18 Questionnaires with OSC because it was awarded a service contract (as  
19 opposed to a power purchase agreement).

1           Three of the five companies that submitted proposals pursuant to  
2 the South Fork RFP: (1) LI Energy Storage, (2) AES Generation and (3)  
3 Convergent Energy; all proposed using decentralized battery storage  
4 facilities located locally in the South Fork next to either the East Hampton  
5 Substation or the substation in Montauk. The fourth company, (4) Halmar  
6 International, proposed installing an aeroderivative turbine that would  
7 similarly have been installed next to a substation.

8           The advantages of siting a facility locally in the South Fork (where  
9 each of the aforementioned four facilities would have been located) over  
10 siting a facility elsewhere are as follows:

- 11       i.    The facilities are designed to quickly supply power onto the grid  
12           during peak-load when there is a short-fall in power supply.  
13           Depending on the type and capacity of the facility and the peak  
14           load, the facility would have provided power for a short period of  
15           time (approximately 2 to 8 hours depending on the facility and  
16           peak load);
- 17       ii.   As the demand for power on the South Fork increased each year,<sup>5</sup>  
18           the modular design of the facilities could be expanded and  
19           contracted seasonally and expanded each year as demand increased

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<sup>5</sup> *Id.* (Figure 1-2 at p. 3)

- 1           thereby providing a lower initial cost, flexibility and degree of  
2           responsiveness if necessary;
- 3    iii.    In the event when a source of renewable energy fails to generate  
4           power,<sup>6</sup> the facility is designed to quickly supply power onto the  
5           grid to make up the short-fall in power supply for a short period of  
6           time;
- 7    iv.    The facilities are all designed to be locally sited in the South Fork.  
8           If there were a natural disaster, for example, where the  
9           transmission system between the South Fork and Long Island west  
10          of Shinnecock Canal is disrupted, the facilities could provide  
11          power for a short period of time;
- 12   v.     Since the facilities as proposed would be sited next to a substation,  
13          they do *not* require new transmission lines (other than a short  
14          interconnection between the facility to the substation); and
- 15   vi.    At the time of the South Fork RFP, the facilities were to permit  
16          PSEG LI and LIPA to have more time to up-grade an aging,  
17          neglected and frail transmission and distribution system in the  
18          South Fork.

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<sup>6</sup> Renewable energy resources are an intermittent source of power. For example, when wind speed is insufficient to turn the blades of wind turbine, that turbine does *not* generate power, or when the sun is shaded behind dense cloud-cover on overcast days, a solar facility does not generate to same power it would on days when the sun shines unimpeded.

1           The three battery storage facilities and the aeroderivative turbine  
2 facility all satisfy objectives as defined in the South Fork RFP and are  
3 each tailored to address the problems of: (1) peak demand, (2) local  
4 resources in the South Fork, and (3) deferment of new transmission lines.

5           Of the five companies that submitted proposals for power  
6 production and energy storage pursuant to the South Fork RFP, only one  
7 company submitted a proposal that did *not* satisfy *any* of the principle  
8 objectives of the South Fork RFP. That company is Deepwater Wind  
9 South Fork, LLC.

10

11   **Q 02.10 - What were the objectives of the South Fork RFP?**

12           The objectives of the South Fork RFP were clear and unambiguous.  
13 Under the heading: Description of Solicitation and Objectives, the South  
14 Fork RFP states that if “peak load growth were to occur without the addition  
15 of local resources (i.e. Load Reduction and/or Power Production) in the  
16 [South Fork] load pocket, new transmission lines would need to be built.  
17 As an alternative to adding new transmission lines, this Request For  
18 Proposals (“2015 SF RFP”) seeks to acquire sufficient local resources to  
19 meet expected peak load requirements until at least 2022 in the South Fork,  
20 and 2030 in the east of Buell subarea [emphasis added].”

- 1           These same objectives are enumerated in the RFP as follows:
- 2           1. *Meet the requirements of REV via the PSEG Long Island*
- 3           *Utility 2.0 East End Infrastructure Deferment program.*
- 4           2. *Acquire additional local Power Production and/or Load*
- 5           *Reduction resources in the South Fork to meet projected*
- 6           *load growth and thereby defer the need for new transmission*
- 7           *[emphasis added].*
- 8           3. *Support “load demand in the South Fork to the degree*
- 9           *necessary to avoid overload of existing transmission assets*
- 10           *during transmission outages that limit transmission capacity*
- 11           *to the South Fork load area [emphasis added].*
- 12           4. *Support system voltage in the South Fork to avoid voltage*
- 13           *collapse during a transmission outage [emphasis added].*

14           The South Fork RFP is designed to address three main issues in the

15   South Fork: (1) peak demand, (2) local resources in the South Fork, and

16   (3) deferment of new transmission lines.

17

18   **Q 02.11 - Is the Applicant’s transmission facility as proposed**

19   **specifically designed to resolve issues of peak electrical demand?**

20           According to the South Fork RFP (Exhibit 02 at p. 53): “The South

21   Fork has a unique load profile, with significant summer, weekend, and

1 holiday activity in the Hamptons and surrounding towns, and corresponding  
2 peaks in energy usage ... the South Fork typically reaches its peak electric  
3 demand at a different time than the rest of Long Island, and is primarily  
4 driven by residential air conditioning load [emphasis added].” The RFP  
5 continues (*Id.* at p. 54): “Residential customer loads in the South Fork are  
6 much more weather sensitive than commercial. On a peak summer day, up  
7 to sixty (60%) percent of the average residential load is directly attributable  
8 to air conditioning [emphasis added].”

9           With regards to resolving problems of peak electrical demand on  
10 the South Fork, a solution dependent on offshore wind is fatally flawed.

11           In Europe, peak demand occurs in winter when offshore winds are  
12 strongest than at any other time of the year and, therefore, offshore wind  
13 facilities generate more energy to meet peak demand. Energy supply and  
14 energy demand are concurrent. When energy is needed most, offshore  
15 wind produces more energy.

16           The converse is true in the U.S. As the South Fork RFP explains  
17 (Exhibit 02 at p.53), peak electrical demand on the South Fork is  
18 “primarily driven by residential air conditioning” on hot summer days  
19 during the summer. The inherent problem with offshore wind-dependent  
20 energy generation, is that during the summer, ocean winds off eastern

1 Long Island are weakest and, therefore, offshore wind facilities generate  
2 less energy and sometimes *none at all* (Exhibit 12).

3 The success or failure of the subject transmission facility in this  
4 Article VII proceeding is wholly dependent upon whether or *not* the  
5 offshore wind turbines generate enough energy that can delivered to meet  
6 peak demand. If the wind turbines do *not* generate sufficient energy, then  
7 the proposed transmission facility will end up to be as financially ruinous  
8 as the Shoreham Nuclear Power Plant.

9 The Applicant has chosen to use Siemens Gamesa (SG 8.0-167  
10 DD) 8-megawatt wind turbines that have a cut-in speed of 3 meters per  
11 second (m/s) and a cut-off speed of 25 m/s (Exhibit 11).

12 The subject transmission facility, therefore, will generate energy  
13 *only* when the wind speed is between 3 and 25 m/s.

14 For example, a wind turbine on the Outer Continental Shelf (OCS)  
15 southeast of Nantucket during 2016, would *not* have generated power on  
16 average for (Exhibit 12 at p. 8) –

17 – More than 1 hour every 1.3 days

18 – More than 4 hours every 4.0 days

19 – More than 8 hours every 11.0 days



1                                   – More than 12 hours every 18.3 days

2                   The longest continuous period when an offshore wind turbine  
3 would not have generated power would have occurred on August 10, 2016  
4 and lasted for 1.8 days (*Ibid*). The average daily peak temperature for that  
5 week of August in 2016 in Montauk was 84°F.

6                   If a wind turbine was placed in the same location in 2017, for that  
7 year it would *not* have generated power on average for (*Id.* at p. 7) –

8                                   – More than 1 hour every 1.2 days

9                                   – More than 4 hours every 3.3 days

10                                  – More than 8 hours every 7.5 days

11                                  – More than 12 hours every 19.3 days

12                   The longest continuous period when an offshore wind turbine  
13 would not have generated power would have occurred on August 4, 2017  
14 and lasted for 1.4 days (*Ibid*). The peak temperature that day was 81°F.

15                   If a wind turbine was placed in the same location in 2015, for that  
16 year it would *not* have generated power on average for (*Id.* at p. 9) –

17                                  – More than 1 hour every 1.1 days

18                                  – More than 4 hours every 3.8 days

1                                   – More than 8 hours every   7.6 days

2                                   – More than 12 hours every   16 days

3                   The longest continuous period when an offshore wind turbine  
4 would not have generated power would have occurred on July 29, 2015  
5 and lasted for 1.2 days (*Ibid*). The peak temperature that day in Montauk  
6 was 89°F.

7                   In each of these situations, the East Hampton Energy Storage  
8 Center and the Montauk Energy Storage Center would have depleted their  
9 energy reserves within approximately three hours and the Town of East  
10 Hampton would need one hundred Accabonac Solar Farms to produce the  
11 same energy as the two energy storage facilities. If the Town of east  
12 Hampton were relying on an offshore wind farm without upgrading the  
13 South Fork’s fragile the transmission system, the Town would experience  
14 serious power supply problems and possible black-outs that could last  
15 days. What happened in California in the summer of 2020 would happen  
16 far more regularly on eastern Long Island if the South Fork were to rely on  
17 offshore wind to meet peak demand.

18                   A similar situation would have occurred if a wind turbine had been  
19 located closer to Long Island, just 23 nautical miles south-southwest of

1 Montauk Point (Exhibit 12 at p. 14). In this location an offshore wind  
2 turbine, during 2015, would *not* have generate power on average for –

3 – More than 0.5 hour every 0.9 days

4 – More than 1 hour every 1.4 days

5 – More than 4 hours every 3.6 days

6 – More than 8 hours every 10.0 days

7 – More than 12 hours every 31.1 days

8 The longest period when an offshore wind turbine would *not* have  
9 generated power in 2015 would have occurred on September 17, 2015 and  
10 lasted for 1.4 days. The peak temperature in Montauk that day was 80°F.

11 If a wind turbine had been located off Bazzards' Bay, MA,  
12 (Exhibit 12 at p. 17) an offshore wind turbine, during 2017, would *not*  
13 have generate power on average for –

14 – More than 0.5 hour every 1.3 days

15 – More than 1 hour every 1.9 days

16 – More than 4 hours every 9.4 days

17 – More than 8 hours every 91.3 days

1                                   – More than 12 hours every 182.5 days

2                   The longest period when an offshore wind turbine would *not* have  
3 generated power in 2017 would have occurred on August 11, 2017 and  
4 lasted for 0.9 days. The peak temperature in Bridgehampton that day was  
5 79°F.

6                   The scenarios as described above would occur every year during  
7 the summer and number of instances where offshore wind turbines are *not*  
8 generating power at all would occur more often with greater regularity  
9 during the summer. On the South Fork, when we need power most is  
10 when the wind is too weak to turn the blades that generate energy without  
11 which a transmission system can deliver no energy.

12                  In 2017 during a presentation to the Wainscott Citizens' Advisory  
13 Committee, Deepwater Wind produced a slide titled: Hourly Electrical  
14 Load and 90 MW Wind Farm. The demand curve for power on the South  
15 Fork appears reasonably accurate. Peak electrical demand spikes during  
16 the months from July through to mid-September (x-axis year hour 4368 to  
17 6192) on the South Fork (Exhibit 12 at p. 2). The extrapolated power  
18 output curve represents the delivered energy into the LIPA-owned East  
19 Hampton Substation (colored blue), on the other hand, is too thick and  
20 dense to determine energy fluctuations with any accuracy (*Ibid*).

1           The energy output curve has been more accurately represented (*Id.*  
2 at p. 1) based on wind speeds off Nantucket to the southeast. The gap – or  
3 Wind Power VOID – is clearly evident between the high peak summer  
4 demand curve and the low summer output curve.

5           If Deepwater Wind’s proposal for an offshore wind farm submitted  
6 pursuant to the South Fork RFP was designed to meet peak demand, then  
7 its power output curve would match the demand curve for peak power, but  
8 it does not. In fact, it is the exact opposite (Exhibit 12 at p. 1).

9           This graph illustrates the fundamental flaw in applying an offshore  
10 wind solution to mitigate peak electrical demand on the South Fork during  
11 the summer. What may be a good for Europe where demand for energy  
12 peaks at the same time supply peaks, but this does *not* apply in the U.S.

13           The US Energy Information Agency records the power generated  
14 and delivered to Block Island from the Applicant’s Block Island facility.  
15 In July 2019, this facility was operating at 25% capacity whereas in  
16 January 2019, the facility was operating at 58% of capacity. Since the  
17 Block Island facility commenced operations in 2017 until 2019, average  
18 capacity during the summer months (July, August and September) was  
19 29.7% whereas during the winter months (November, December January),  
20 average operating capacity was 51.8% (Exhibit 12 at p. 22).

1           The first of the South Fork RFP's three principle objectives is that  
2 the proposed facility addresses peak electrical demand on the South Fork.  
3 The subject transmission system being proposed by the Applicant is *not*  
4 designed to meet peak electrical demand.

5

6   **Q 02.12 - Is the Applicant's transmission facility as proposed a local**  
7 **resource in the South Fork and does it defer the need for new**  
8 **transmission lines?**

9           The second and third objectives of the South Fork RFP's three  
10 principle objectives is that the proposed facility is a local resources in the  
11 South Fork and that it defers the need for new transmission lines.

12           The proposed facility is an offshore wind farm that is approximately  
13 sixty miles away from its interconnection point at the East Hampton  
14 Substation and *cannot* by any stretch of the imagination a "local" resource  
15 in the South Fork.

16           Each of the other four proposals sited their energy storage and  
17 generation facilities according to the RFP's requirements, locally in the  
18 South Fork. Their facilities are all located immediately adjacent to either  
19 the East Hampton Substation or the substation in Montauk and stand in stark  
20 contrast Deepwater Wind's proposal to locate its generating facility out to

1 ocean on the Outer Continental Shelf. Deepwater Wind, again, fails to meet  
2 the South Fork RFP's objective to (Exhibit 02 at p. 10) –

3           2. *Acquire additional local Power Production ... in the*  
4                   *South Fork to meet projected load growth and thereby*  
5                   *defer the need for new transmission [emphasis added].*

6           The third objective of the South Fork RFP is to defer the need for  
7 expensive transmission upgrades, but by Deepwater Wind proposing to  
8 locate its power generating facility out to ocean half-way between the  
9 interconnection point on eastern Long Island and Nantucket, it creates a  
10 need for a massive new and very expensive offshore transmission system.  
11 Deepwater Wind South Fork does *not* propose to defer transmission lines.  
12 In fact, this Article VII proceeding is considering a new transmission line  
13 that the Applicant is proposing to build. Unlike the other four proposals  
14 that would have allowed for more time to up-grade frail transmission lines,  
15 Deepwater Wind proposed to build a new transmission line that only shifts  
16 the cost off PSEGLI's and LIPA's balance-sheet.

17           Rather than defer the need for up-grading transmission lines,  
18 Deepwater Wind actually proposes tripling-up on expense transmission  
19 lines. Deepwater proposes building its own sixty-mile-long undersea and  
20 onshore transmission system to deliver power to the LIPA-owned East  
21 Hampton Substation per it Article VII application, then in addition to that,

1 PSEG LI and LIPA have to up-grade a fail and aging transmission system  
2 on the South Fork to handle the additional power from the Applicant's  
3 offshore wind facility, and finally, the same owners of Deepwater Wind  
4 South Fork, LLC – Ørsted and Eversource Energy – propose building  
5 another offshore transmission line in parallel to that being proposed by the  
6 Applicant for approximately fifty miles (50 miles).

7 It is astounding that PSEG LI, LIPA and the Applicant all claim  
8 (falsely) that this proposal is designed to “defer the need for new  
9 transmission lines” (Exhibit 02 at p. 10).

10

11 **Q 02.13 - Does the local transmission system on the South Fork**  
12 **require up-grading irrespective of the Applicant's proposal?**

13 Irrespective of the Applicant's proposed transmission facility, the  
14 local transmission and distribution system on the South Fork was built to  
15 handle load fifty years ago and without expensive transmission upgrades  
16 cannot handle the additional power that the Applicant proposes to deliver  
17 via its transmission facility. The additional energy from the Applicant's  
18 proposed facility would effectively double the load for which the system  
19 was originally designed and built.

20 Indicative of the fragility of the local South Fork transmission  
21 system is a fire that broke out at PSEG Long Island's Bridgehampton



1 Substation on January 24, 2020. This occurred in the dead of winter when  
2 demand for power is at its lowest, yet, old equipment and a fail transmission  
3 system caused a transformer to erupt in flames.

4 In another incident, transmission wires on a utility pole in East  
5 Hampton caught fire on February 23, 2016 (Exhibit 13). Again, this  
6 occurred in the middle of winter when electrical load is lower than it is  
7 during the summer.

8 If the electrical transmission system on the South Fork catches fire,  
9 now, when the system is not flooded by intermittent and unstable energy  
10 from an offshore wind facility, without serious up-grades to the system  
11 *before* the Applicant's proposed facility commences operations, the  
12 transmission system would *not* be able to handle the additional power.

13 \_\_\_\_\_

14  
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20

**Left Blank**

1 **Q 02.14 - Was the South Fork RFP a “technology-neutral**  
2 **competitive bidding process” as PSEG LI, LIPA and Deepwater Wind**  
3 **claims?**

4 The proposal submitted by Deepwater Wind South Fork is a project  
5 the OSC valued at \$1.62 billion and is more expensive by several orders of  
6 magnitude than the other four proposals submitted pursuant to the South  
7 Fork RFP.

8 Out of the five proposals, the only proposal that did *not* meet *any* of  
9 the objectives as specified in the South Fork RFP was that submitted by  
10 Deepwater Wind South Fork, LLC.

11 The Applicant in this Article VII proceeding submitted a bid  
12 pursuant to the South Fork RFP procurement that –

- 13 • Would more likely fail to deliver power than provide power at  
14 peak times during the summer when it is needed most;
- 15 • Is not sited locally in the South Fork and instead located its  
16 generating resource out to ocean halfway between Block Island  
17 and Nantucket; and
- 18 • Proposes building a new sixty-mile-long transmission line that  
19 delivers intermittent and unstable power into a load pocket of  
20 fragile and old transmission lines that then creates a greater need  
21 to up-grade the local transmission system to handle the

1 additional power that will be delivered into the load pocket.  
2 Furthermore, the sixty-mile-long transmission system would be  
3 unnecessary given that the same companies who own Deepwater  
4 Wind South Fork, LLC (i.e. Ørsted and Eversource Energy)  
5 proposes to build another offshore transmission line in parallel  
6 along the same offshore route for the Sunrise Wind project at  
7 half the price.

8 The four companies that submitted bids in the South Fork RFP  
9 procurement (other than Deepwater Wind) all competed for a contract  
10 according to the rules as published in the RFP. Consequently, their bids all  
11 satisfied the objectives of the RFP and each proposal had its strengths and  
12 weaknesses and price.

13 Deepwater Wind's proposal did *not* satisfied *any* of the principle  
14 objectives of the RFP and the price of its proposal was many times greater  
15 than the other proposals and, yet, it was awarded a power purchase  
16 agreement. Deepwater Wind was *not* abiding by the same rules according  
17 to the South Fork RFP, clearly, so it must have been playing a different  
18 game and it was the *sole* company to be playing that game which, by  
19 definition, means **there was no competition.**

20

1 PSEGLI and Deepwater Wind both claim that the subject  
 2 transmission system “addresses the need identified by LIPA in its 2015  
 3 technology-neutral competitive bidding process (“South Fork RFP”)  
 4 [emphasis added].” The information provided here raises serious questions  
 5 as to the validity of this claim.

6 -----

7

8 **Q 02.15 - What does a professionally administered procurement**  
 9 **process look like?**

10 By way of comparison, New York State Energy Research and  
 11 Development Authority (“NYSERDA”) issued in October 2019 a report  
 12 titled: Launching New York’s Offshore Wind Industry: Phase 1 Report  
 13 (“NYOSW Phase 1 Report”).<sup>7</sup>

14 In this report, NYSERDA provides details on its evaluation criteria,  
 15 bidders, market and comparative analysis, an in-depth analysis on contract  
 16 prices, copies of the Purchase and Sale Agreements where the contract  
 17 prices are fully disclosed, and much more. Notably, there is no presumption  
 18 of confidentiality with regard the procurement process and selection criteria  
 19 once the bidding process has been finalized and the award(s) announced.

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<sup>7</sup> See Exhibit F - Launching New York’s Offshore Wind Industry: Phase 1 Report,  
 October 2019.

1 Likewise, there is no presumption of confidentiality with regard the  
2 procurement processes reviewed by Mayland Public Service Commission<sup>8</sup>  
3 or New Jersey Board of Public Utilities.<sup>9</sup>

4 NYSERDA awarded contracts to Sunrise Wind (Bay State Wind  
5 LLC) and Empire Wind (Equinor Wind US LLC) and even so, the public  
6 are still provided with the names of the other bidders: Atlantic Shores  
7 Offshore Wind (Atlantic Shores Offshore Wind LLC) and Liberty Wind  
8 (Vineyard Wind LLC). After the procurement process was complete, the  
9 awards were announced and information similar to that requested in IR SK  
10 #32 was released and publicly available.

11 The NYSERDA example of is one of a professionally administered  
12 RFP and stands in stark contrast to the secretive and opaque manner in  
13 which the South Fork RFP is being managed by PSEGLI.

14 To the extent that the manner in which an RFP is administered  
15 affects the price, the NYSERDA RFP resulted in prices that are  
16 approximately half the price of the secretive and opaque South Fork RFP  
17 administered by PSEGLI.<sup>10</sup> What is PSEGLI hiding?

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<sup>8</sup> See Exhibit Q - Mayland Public Service Commission: Evaluation and Comparison of US Wind and Skipjack

<sup>9</sup> See Exhibit R - NJ Board of Public Utilities, Evaluation Committee Award Recommendation, 2008

<sup>10</sup> NYSERDA contract prices are approximately 8.3 cents/kWh as opposed to the PSEGLI South Fork RFP contract price of 16.3 cents/kWh. See Exhibit F - Launching New York's Offshore Wind Industry: Phase 1 Report, October 2019 (at p. 38) and Exhibit G - LIPA

1           The US Department of Energy’s National Renewable Energy  
2 Laboratory published a report in June 2020<sup>11</sup> that compares utility-scale  
3 offshore wind farms (see table below). The price for delivered power from  
4 Deepwater Wind South Fork is 24% more expensive than power delivered  
5 pursuant to the next two most expensive contracts (US Wind and Skipjack).

6           Deepwater Wind South Fork and Sunrise Wind both transmit their  
7 power from adjacent offshore wind energy lease areas (they are only two  
8 miles apart), but Sunrise Wind has to transmit its power twice the distance  
9 than Deepwater Wind South Fork,<sup>12</sup> yet the price of delivered power from  
10 Sunrise Wind is half the rate of delivered power from Deepwater Wind  
11 South Fork LLC.

12           The anomalous nature of the above-market rate, by definition,  
13 means that the “pricing of utilities supplied to the general public” were  
14 subject to influences outside market forces. Had the procurement been truly  
15 market-driven and competitive, the price, by definition, would have been at  
16 market rate (not above-market). If the decision to award a PPA was

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Press Release - Price 16.3¢ (at p. 3). NB: The price of 14.1¢ widely publicized by LIPA includes prices for additional capacity to which neither LIPA nor the Applicant has committed and is *not* subject to contract.

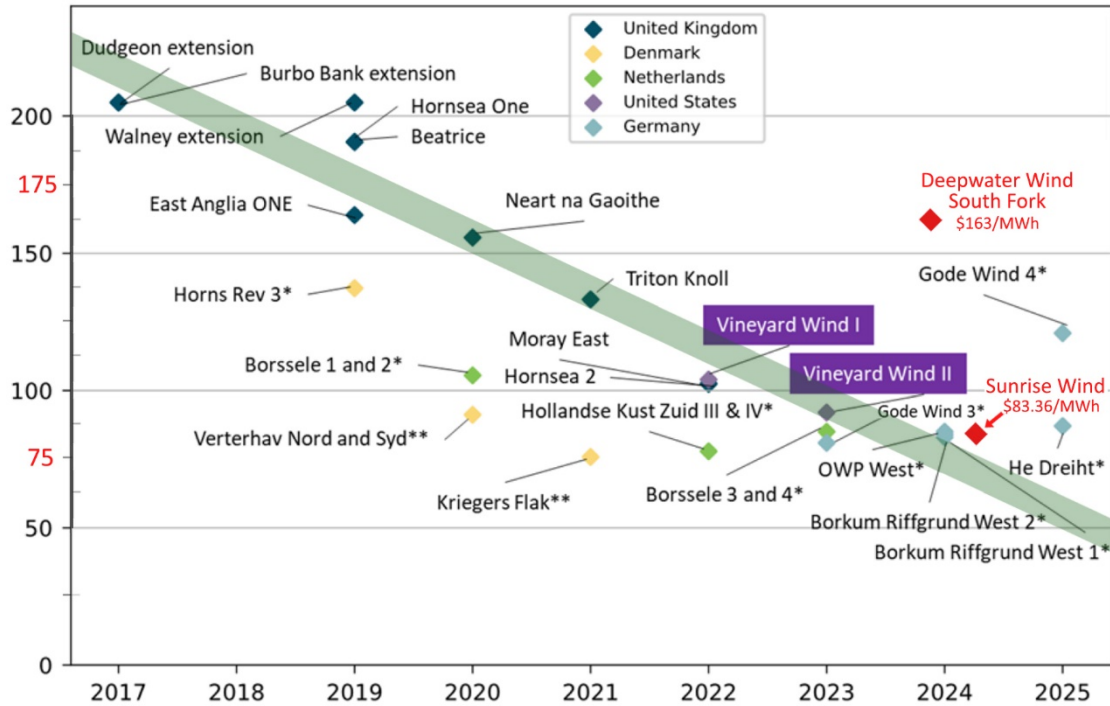
<sup>11</sup> See Exhibit I - NREL Comparing Offshore Wind Energy, Table A-2 U.S. Offshore Wind Offtake Agreements, June 2020 (at p. 49) - Technical Report NREL/TP-5000-76079 ([www.nrel.gov/publications](http://www.nrel.gov/publications))

<sup>12</sup> Sunrise Wind has to transmit its power ~110 miles from the source of generation to the interconnection in Holbrook whereas Deepwater Wind South Fork has to transmit its power half that distance, only ~55 miles to the interconnection in the Town of East Hampton.

1 determined by a market-driven “technology-neutral competitive bidding  
 2 process” as Deepwater Wind South Fork and PSEGLI both claim in their  
 3 recently filed Joint Proposal, then market forces would have produced a  
 4 competitive price, but it did not. PSEGLI’s South Fork RFP was as  
 5 competitive as the above-market price it produced.

6

7	Size	<u>Levelized Price</u>		
8	Project	(MW)	(\$/MWh)	(cents/kWh)
9	South Fork	90	\$163.00	16.3 ¢ ← Deepwater Wind South Fork and
10	US Wind	248	\$131.94	13.2 ¢ Sunrise Wind are in
11	Skipjack	120	\$131.94	13.2 ¢ adjacent lease areas,
12	Ocean Wind	1,100	\$116.82	11.7 ¢ but Sunrise Wind has
13	Revolution Wind	200	\$99.50	10.0 ¢ to transmit its power
14	Revolution Wind	104	\$98.43	9.8 ¢ twice the distance and,
15	Revolution Wind	400	\$98.43	9.8 ¢ ← yet, its power is still
16	Empire Wind	816	\$83.36	8.3 ¢ half the price of
17	Sunrise Wind	880	\$83.36	8.3 ¢ Deepwater Wind South
18	Vineyard Wind	400	\$74.00	7.4 ¢ Fork’s power.
19	Vineyard Wind	400	\$65.00	6.5 ¢
20	Mayflower Wind	400	\$58.47	5.8 ¢
21	Mayflower Wind	404	\$58.47	5.8 ¢



9

10           The degree to which the Applicant’s price is anomalous is clearly  
 11 evident when compared to eighteen similar (with fixed-bottom foundations)  
 12 commercial-scale offshore wind contracts for delivered power (see except  
 13 of Figure 1, above).<sup>13</sup>

14           The South Fork RFP is not transparent and resulted in PPA with a  
 15 price tag starkly outside market norms that serves to benefit Deepwater

<sup>13</sup> See Exhibit L – Fig. 32 - OSW Market Report Adjusted Strike Prices (updated August 2019) with notes. See Exhibit K - US DOE 2018 OSW Technologies Mk Report, updated Aug 2019 (Fig. 32 at p. 68) NB: Deepwater Wind South Fork and Sunrise Wind have been added subsequently and (for whatever reason) were not included in the original version published August 2019.



1 Wind South Fork LLC to the detriment of the public interest. IR SK #32  
2 attempts to shed light on the procurement process administered by PSEGLI  
3 in an effort to gain an understanding of the issues so that the public can  
4 participate in and make informed decisions in a functioning democracy.  
5 Energy, today, more than ever before, is an important issue. The public  
6 should be able to know how their taxpayer and ratepayer dollars are being  
7 spent. The IR at issue seeks to answer the most fundamental questions that  
8 are being denied public scrutiny. Information that should be disclosed and  
9 is standard practice in all other procurements includes: the names of all the  
10 bidders, the number of bidders in each portfolio, the basis and methodology  
11 used for determining the successful bidder(s), any comparative analysis,  
12 memoranda, reports and/or findings, the evaluation criteria, letters or other  
13 correspondence seeking to clarify proposals, interviews transcript or site  
14 visit reports, etc. These are issues that have a direct bearing on the price the  
15 public has to pay for Deepwater Wind South Fork's delivered power.  
16 Insight into the South Fork RFP procurement process and its PPA is  
17 necessary, material and imperative in assessing whether Deepwater Wind  
18 South Fork is in the public interest, or not. "The words, material and  
19 necessary, are ... to be interpreted liberally to require disclosure, upon  
20 request, of any facts bearing on the controversy which will assist  
21 preparation for trial by sharpening the issues and reducing delay and

1 prolixity [emphasis added].” Allen v Crowell-Collier Publ. Co., 21 NY2d  
 2 403, 406 [1968] and 2004 N.Y. PUC LEXIS 465 (N.Y.P.S.C. November  
 3 17, 2004).

4

5 **Q 02.16 - Did PSEG Long Island have a conflict of interest at the time**  
 6 **it awarded a PPA to the Applicant?**

7 PSEGLI administered the South Fork RFP and may not have  
 8 disclose an existing conflict of interest that may have had a bearing on the  
 9 procurement process it administered and the price the public will have to  
 10 pay for energy.

11

---

12 Did PSEG award a PPA to Deepwater Wind because it was the best  
 13 proposal in a competitive field where there was more than one offshore  
 14 wind farm developer bidding in an openly transparent and professionally  
 15 managed procurement process?

16

– or –

17 Did PSEG award a PPA to Deepwater Wind because they were  
 18 business partners and this is why there is an opaque and secretive  
 19 procurement process?

20

---

1           The public interest demands the former whereas the evidence  
2 suggests the latter. Regardless, it is in the public interest that issues  
3 influencing the price that the public will have to pay pursuant to a public  
4 contract with a public authority are publicly disclosed.

5           PSEGLI issued the South Fork RFP in June 2015. It reads: “PSEG  
6 Long Island and Servco<sup>14</sup> (collectively referred to as “PSEG Long Island”  
7 or “PSEG LI”), as agent of and acting on behalf of LIPA per the A&R  
8 OSA,<sup>15</sup> will administer this RFP on behalf of LIPA.”<sup>16</sup>

9           In January 2017, LIPA CEO, Thomas Falcone, requested  
10 authorization from the LIPA Board of Trustees to “execute a Power  
11 Purchase Agreement (‘PPA’) with Deepwater Wind South Fork, LLC  
12 (‘Deepwater’), a wholly owned subsidiary of proposer, Deepwater Wind,  
13 LLC, and to ... implement arrangements for ... LIPA ... to purchase  
14 energy, installed capacity, renewable attributes and ancillary services from  
15 Deepwater’s proposed South Fork Wind Farm (the ‘Project’).”<sup>17</sup>

---

<sup>14</sup> Long Island Electric Utility Servco, LLC (“Servco”) is a wholly-owned operating subsidiary of PSEG LI.

<sup>15</sup> Amended and Restated Operation Services Agreement (“A&R OSA”) dated December 31st, 2013.

<sup>16</sup> See Exhibit A – South Fork RFP dated June 24, 2015 issued and administered by PSEGLI (at p. 7)

<sup>17</sup> See Exhibit M – LIPA Trustees Board Approval of Deepwater PPA dated January 25, 2017 (at p. 1)

1           In February 2017, LIPA executed a PPA between it and Deepwater  
2 Wind South Fork, LLC (the Applicant) to buy power delivered to the LIPA-  
3 owned East Hampton Substation located in Town of East Hampton within  
4 New York State jurisdiction.<sup>18</sup>

5

6           Prior to 2018, Deepwater Wind South Fork, LLC (the Applicant)  
7 was a wholly-owned subsidiary of Deepwater Wind, LLC.

8

9           At the same time PSEGLI was administering the South Fork RFP,<sup>19</sup>  
10 it was also a business partner (indirectly through companies related by  
11 100% ownership interests) with Deepwater Wind LLC, the proposer and  
12 holding company of the company to which it awarded the contract pursuant  
13 to that RFP, Deepwater Wind South Fork LLC.

14

15           PSEGLI and Deepwater Wind each indirectly owned a fifty percent  
16 (50%) interest in Garden State Offshore Energy LLC when PSEGLI  
17 awarded its business partner, Deepwater Wind, a power purchase agreement  
18 pursuant to the South Fork RFP it was administering.

---

<sup>18</sup> Pursuant to the PPA, power is to be delivered from a ninety-megawatt (90 MW) offshore wind farm located on the Outer Continental Shelf (OCS) in US federal waters.

<sup>19</sup> PSEGLI administered the South Fork RFP from June 24, 2015 until February 6, 2017

1 PSEG LI is indirectly related by 100% ownership interests to a 50%  
2 ownership interest in the joint venture, Garden State Offshore Energy LLC,  
3 as follows –

- 4 I. PSEG Long Island LLC is a wholly-owned subsidiary of  
5 Public Service Enterprise Group Incorporated (“PSEG Inc.”)  
6 a company based in New Jersey;
- 7 II. PSEG Inc. wholly owns subsidiary PSEG Energy Holdings  
8 LLC;
- 9 III. PSEG Energy Holdings LLC wholly owns subsidiary PSEG  
10 Global LLC;
- 11 IV. PSEG Global LLC wholly owns subsidiary PSEG Renewable  
12 Generation LLC;
- 13 V. PSEG Renewable Generation LLC owns 50% of the  
14 Membership Units of Garden State Offshore Energy LLC.

15  
16 Deepwater Wind South Fork LLC, is indirectly related by 100%  
17 ownership interest a to 50% ownership interest in the joint venture, Garden  
18 State Offshore Energy LLC, as follows –

- 19 I. Deepwater Wind South Fork LLC (the Applicant) is a wholly-  
20 owned subsidiary of Deepwater Wind LLC;

- 1           II. Deepwater Wind LLC is wholly-owned by Deepwater Wind  
2           Holdings LLC;
- 3           III. Deepwater Wind Holdings LLC was formed in mid-2008 with  
4           the acquisition of assets from Winergy Power Holdings LLC and  
5           First Wind Holdings Inc.<sup>20</sup> and has been referred to in regulatory  
6           filings as “Deepwater Wind Holdings, LLC (former Winergy  
7           Power Holdings, LLC).”<sup>21</sup>
- 8           IV. Winergy Power Holdings LLC owns 50% of the Membership  
9           Units of Garden State Offshore Energy LLC.<sup>22</sup>
- 10
- 11       In November 2018, Deepwater Wind LLC was acquired by Ørsted A/S.<sup>23</sup>
- 12       In February 2019, Eversource Energy acquired a 50% interest “in selected  
13       activities acquired through Deepwater Wind. These included the Revolution  
14       Wind (704MW) and South Fork (130MW) development projects[.]”<sup>24</sup>

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<sup>20</sup> See Exhibit P - *N.J. Awards Grant for First Offshore Wind Project*, Wall Street Journal, Oct 3, 2008 (at p. 2)

<sup>21</sup> See Exhibit Q - Mayland Public Service Commission: *Evaluation and Comparison of US Wind and Skipjack Proposed Offshore Wind Project Applications* dated March 17, 2017 (at p. 144)

<sup>22</sup> See Exhibit R - NJ Board of Public Utilities, Evaluation Committee Award Recommendation, 2008 (at p. 4)

<sup>23</sup> See Exhibit N - Ørsted A/S 2018 Annual Report reads: “On 8 November 2018, we acquired all of the membership interests in Deepwater Wind LLC, effectively gaining control of the company [for DKK 3,228]” section 8.5 Company overview (at pp. 162-166). “Awarded” US capacity in 2018 - South Fork (130MW), Skipjack (120MW) and Revolution Wind (704MW) (at p. 28).

<sup>24</sup> See Exhibit N - Ørsted A/S 2018 Annual Report 2019 (at pp. 6-7).

1 **Q 02.17 - Did PSEG Long Island fail to disclose its conflict of interest?**

2

3 On March 3, 2020, PSEGLI was received (via email) information  
4 request Si Kinsella #19 (“IR SK #19”).

5 IR SK #19, question (10) reads – “Has PSEG or any of its  
6 subsidiaries and/or related entities invested in or maintained a beneficial  
7 and/or ownership interest in GSOE I, LLC or any of its subsidiaries and/or  
8 related entities at any time from January 1, 2015 through to March 3,  
9 2020?”<sup>25</sup>

10 PSEG Long Island responded (on March 13, 2020) as follows – “...  
11 yes. GSOE I, LLC is a direct, wholly-owned subsidiary of Garden State  
12 Offshore Energy LLC. PSEG Renewable Generation LLC, an indirect  
13 wholly-owned subsidiary of Public Service Enterprise Group Incorporated,  
14 owns 50% of the Membership Units of Garden State Offshore Energy  
15 LLC.”<sup>26</sup>

16 IR SK #19, question (8) reads – “Has PSEG or any of its subsidiaries  
17 and/or related entities invested in or maintained a beneficial and/or  
18 ownership interest in Ørsted A/S (a company registered in Denmark) or any

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<sup>25</sup> See Exhibit S – IR SK #19, March 3, 2020 (at p. 5)

<sup>26</sup> See Exhibit T – IR SK #19 – PSEGLI Response, March 13, 2020 (at pp. 5-6)

1 of its subsidiaries and/or related entities at any time from January 1, 2015  
2 through to March 3, 2020?”<sup>27</sup>

3 PSEGLI responded (on March 13, 2020), stating that “neither PSEG  
4 nor any of its subsidiaries and/or related entities has ‘invested in or  
5 maintained a beneficial and/or ownership interest in Ørsted A/S (a company  
6 registered in Denmark) or any of its subsidiaries and/or related entities at  
7 any time from January 1, 2015 through to March 3, 2020.”<sup>28</sup>

8 In response to question (8), PSEGLI did not disclose the 50%  
9 ownership interest PSEG Renewable Generation LLC (a related company  
10 indirectly by 100% ownership interests) held in Garden State Offshore  
11 Energy LLC, a company in which Ørsted A/S held a 50% ownership interest  
12 indirectly through companies related by 100 ownership interests.

13 PSEGLI was aware of Garden State Offshore Energy LLC and its  
14 wholly-owned subsidiary GSOE I LLC because it had been directed to these  
15 two specific entities in IR SK #19, Questions (10) and (11). Furthermore,  
16 if PSEGLI was uncertain as to the name of its business partner, that  
17 information is readily available in the Annual Reports of Ørsted A/S that

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<sup>27</sup> See Exhibit S – IR SK #19, March 3, 2020 (at p. 4)

<sup>28</sup> See Exhibit T – IR SK #19 – PSEGLI Response, March 13, 2020 (at p. 5)



1 can be accessed by the public via Ørsted A/S's website.<sup>29</sup> The ownership  
2 interests of Ørsted A/S are listed in its 2018 Annual Report.<sup>30</sup>

3

4 Of further interest is a transaction that took place just one month  
5 prior (in December 2016) to PSEGLI awarding the PPA to the Applicant,  
6 Deepwater Wind South Fork LLC (in January 2017) pursuant to the South  
7 Fork RFP.

8 In December 2016, PSEGLI and Deepwater Wind, together,  
9 purchased Renewable Energy Lease OCS-A-0482. The renewable energy  
10 lease was purchased through a wholly-owned subsidiary of Garden State  
11 Offshore Energy LLC called GSOE I LLC. The renewable energy lease  
12 was purchased for a subsidiary of Deepwater Wind Holdings LLC, Skipjack  
13 Offshore Energy LLC.<sup>31</sup>

14 PSEGLI, again, failed to disclose its relationship to an indirect  
15 beneficial/ownership interest in another Deepwater Wind subsidiary,  
16 Skipjack Offshore Energy LLC, the entity for which (in part) it was  
17 acquiring the lease.

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<sup>29</sup> <https://orsted.com/en/investors/ir-material/financial-reports-and-presentations#2>

<sup>30</sup> See Exhibit N - Ørsted A/S 2018 Annual Report (at pp. 162-164)

<sup>31</sup> See Exhibit Q - Maryland Public Service Commission, Evaluation and Comparison of US Wind and Skipjack Proposed Offshore Wind Project Applications dated March 17, 2017 (at pp. 9 and 12-13)

1 I do not know whether PSEGLI's failures to disclose are in violation  
2 of the Amended and Restated Operation Services Agreement ("A&R  
3 OSA") between PSEG Long Island, LLC and Long Island Power Authority  
4 d/b/a/ LIPA dated December 31, 2013.

5

6 **Q 02.18 - Is the price the public has to pay pursuant to the PPA**  
7 **between LIPA and the Applicant subject to New York State Law?**

8 The issue of the price of delivered power by the subject transmission  
9 facility currently before the Commission falls within the jurisdiction of New  
10 York State and, therefore, is within the jurisdiction of this Article VII  
11 proceeding.

12 The negotiated and executed contract prices have been agreed  
13 between the Applicant (as seller) and Long Island Power Authority d/b/a/  
14 LIPA (as buyer) according to the terms and conditions within the executed  
15 Power Purchase Agreement ("PPA") of February 6, 2017.<sup>32</sup>

16 The PPA is governed by the Laws of New York State.<sup>33</sup>

17 According to the executed PPA, LIPA is to buy from the Applicant  
18 "Delivered Energy - means Energy that is generated by the Project and

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<sup>32</sup> See Exhibit H - Power Purchase Agreement between Deepwater Wind South Fork LLC and Long Island Power Authority d/b/a/ LIPA, executed February 2017

<sup>33</sup> *Id.* Article 12.5 (at p. 55) and Section 5.02 (at p. 111)

1 delivered by Seller to Buyer at the Delivery Point measured by Buyer's  
2 Metering Devices” and the “Delivery Point - means the point of  
3 interconnection” in the Town of East Hampton, New York State.<sup>34</sup>

4 The contract prices are for power delivered by the Applicant’s  
5 transmission facility to New York State (Town of East Hampton) for sale  
6 to a New York State public authority (LIPA) according to a contract  
7 executed and governed by the Laws of New York State for use by  
8 consumers living in New York State (on eastern Long Island).

9 New York State Public Service Commission has jurisdictional  
10 authority within New York State and it is the only agency within New York  
11 State that has authority pursuant to Article VII to assess whether the  
12 Applicant’s proposal is in the public interest, or not.

13

14 **Q 02.19 - Is the price the public will have to pay for energy from the**  
15 **Applicant’s proposed facility in anyway affected by wind?**

16

17 On February 6, 2017, Deepwater Wind South Fork, LLC entered  
18 into a Power Purchase Agreement with Long Island Power Authority  
19 (“PPA”).

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<sup>34</sup> *Id.* Article 1: General Definitions (at p. 17)

1           On November 14, 2018, the LIPA Board of Trustees approved a  
2 “resolution authorizing the Chief Executive Officer ... to execute  
3 Amendment No. 1 to the Power Purchase Agreement ... to increase the  
4 delivered capacity (“Incremental Capacity”) by up to an additional 40  
5 megawatts.”

6           On October 9, 2020, PSEG Long Island informed me that “the  
7 PPA Amendment between the Long Island Power Authority and South  
8 Fork Wind, LLC (f/k/a Deepwater Wind South Fork, LLC) was mutually  
9 executed recently. In accordance with standard procedures, LIPA is  
10 submitting the Amendment to the Office of State Comptroller (OSC) and  
11 the Attorney General (AG) for review. Upon approval by the OSC and the  
12 AG, the Amendment will become effective and LIPA will then post the  
13 Amendment on its website for public viewing.”

14           If the Amendment which has *not* been disclosed is for energy  
15 subject to any given threshold (e.g. energy over 50 megawatts or energy  
16 below 100 megawatts) that will be charged at a different rate to other  
17 energy from the same facility, then the wind will directly affect the price  
18 of energy as it will determine the amount of energy delivered for sale in  
19 New York State. This is another reason why wind speed is important in  
20 the Article VII proceeding. END of Testimony.