

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION SECOND JUDICIAL
DEPARTMENT

CITIZENS FOR THE PRESERVATION OF WAINSCOTT,
INC.,

Petitioner,

VERIFIED PETITION

For an Order and Judgment Pursuant to CPLR Article 78

-against-

NEW YORK STATE PUBLIC SERVICE COMMISSION,

Respondent,

and

SOUTH FORK WIND, LLC f/k/a DEEPWATER SOUTH
FORK WIND, LLC,

Nominal Respondent.

1. Petitioner Citizens for the Preservation of Wainscott, Inc. (“CPW” or “Petitioner”), by its counsel Bond, Schoeneck & King, PLLC, for its verified Petition pursuant to Article 78 of the Civil Practice Law and Rules and Section 128 of the Public Service Law (“PSL”), respectfully alleges as follows:

PRELIMINARY STATEMENT

2. This proceeding is for direct review of an order (the “Order”) of the Public Service Commission (the “Commission”), granting a certificate of environmental compatibility and public need (“Article VII Certificate”) to South Fork Wind, LLC formerly known as Deepwater Wind South Fork, LLC (“SFW”) for the construction and operation of a 138-kV electric cable (the “high-voltage transmission cable”) in connection with the very first offshore windfarm in New York history, planned to be sited at sea off the eastern point of Long Island.

3. The Order was granted pursuant to Article VII of the PSL §§ 120 *et. seq.* As proposed by SFW and authorized by the Commission, the route for the high-voltage transmission cable (the “Beach Lane Route”) would come ashore at the foot of Beach Lane in the hamlet of Wainscott in Suffolk County, and then travel under and through the residential streets of Wainscott on its way to a proposed new substation.

4. This Court’s review of the Order is important because its jurisdiction is exclusive, and no other court of this state has jurisdiction “to hear or determine any matter, case or controversy concerning any matter which was or could have been determined in a proceeding under [PSL Article VII] or to stop or delay the construction or operation of a [major utility transmission facility]” (PSL § 129). The Public Service Law subjects the Commission’s decision and decision-making process to an independent review by this court. Accordingly, except for any review by the Court of Appeals, this Court will perform the only judicial review of the Order. Because of this, “an added emphasis is lent to [this Court’s] function in assuring that the location and construction of the proposed facility will be, in all respects, in the best public interest” (*Orange Cty. v. Pub. Serv. Comm’n*, 44 AD2d 103, 109 [3d Dept 1974], *modified on other grounds*, 37 NY2d 762 [1975]).

5. This Court’s review is particularly crucial here because the Commission, in issuing the Order and approving SFW’s Beach Lane Route, failed to make the specific findings required under Article VII.

6. Because of the harms and disruptions to the environment and people that frequently are inherent in the construction and operation of a major utility transmission facility (such as the high-voltage transmission cable), the Legislature enacted Article VII to ensure that the Commission would not approve any such facility unless and until the Commission made some

very particularized findings, including: “the nature of the probable environmental impact,” “that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives,” “that the facility will serve the public interest, convenience, and necessity,” and “that such facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems, which will serve the interests of electric system economy and reliability” (PSL § 126[1][b], [c], [e], and [h]).

7. Instead of carefully assessing the voluminous evidence submitted, the Commission with more fervor than facts given the political agenda of a former Governor bent on achieving ambitious clean energy goals – simply rubber-stamped the proposed “findings” of SFW as its own. It failed to perform the analysis, and make the findings and determinations, required by Article VII.

8. Accordingly, although the Order is over one hundred pages long, only the last approximately nine pages are devoted to “discussion” – everything else is mere summary of the proceedings to date. And even in the brief “discussion” section, the Commission provides little to no actual discussion or analysis, and the little it does provide is not supported by the record or is actually inconsistent with it.

9. This Petition sets forth in detail below the serious errors and omissions of the Commission in carrying out its statutory duty, which include the following:

10. **PFAS.** The trenching for the Beach Lane Route would plough through a PFAS contaminant plume that is known to be present in shallow groundwater in the area. The EPA warns that PFAS (per- and polyfluoroalkyl substances), may result in adverse health effects, including cancer, liver damage, and fetal developmental problems. There is significant evidence in the

record establishing the serious risks that construction of the Beach Lane Route will exacerbate existing PFAS contamination. From the outset, SFW underestimated the extent of the PFAS contamination along the Beach Lane Route. SFW failed to address PFAS until the Evidentiary Hearing (the “Hearing”) before Administrative Law Judge Belsito (“ALJ Belsito”), when it admitted it did not know whether its construction would encounter PFAS, but said it would test for PFAS contamination during construction *only after potential evidence of PFAS contamination is encountered*. Rather than accepting SFW’s perfunctory approach to a critical environmental issue, the Commission should have affirmatively addressed the potential impacts for these cancer-causing contaminants before any decision was made. Clearly, SFW should have been required to perform thorough exploratory testing for PFAS contamination before the Commission granted it a CECPN. However, despite SFW’s remarkable lack of diligence on this important issue, the Commission brushed aside concerns about PFAS, summarily concluding that it “agree[s] with the Applicant and DPS Staff and find[s] that the Project, as proposed and conditioned will not exacerbate existing PFAS.” This “finding” is unsupported by substantial evidence in the record, and fails to fulfill the Commission’s duty to determine “the nature of the probable environmental impact,” and “that the facility represents the minimum adverse environmental impact”.

11. ***CPW’s Alternatives.*** In addition to its preferred Beach Lane Route, SFW was required to submit a viable alternative – and, in determining whether the Beach Lane Route “represents the minimum adverse environmental impact,” the Commission was required to consider “the nature and economics of the various alternatives.” As discussed below, SFW’s purported “viable” alternative route was not viable at all as it would have run through and massively disrupt the Main Street downtowns of two busy Hamptons villages. But the Commission did not fulfill its obligation to ensure that SFW present an alternative that is truly

viable in substance rather than form. Although CPW was not required to do so, it expended considerable time and money to develop three viable alternative routes, and presented expert testimony at the Article VII hearing detailing how those routes were in all ways superior to the Beach Lane Route, SFW's preferred "viable" alternative route. Significantly, all three of CPW's alternative routes avoid PFAS contamination altogether, and substantially use existing commercial and industrial corridors, thereby reducing impacts on the environment and people in residential areas. The Commission failed to engage on the merits of the alternatives presented by CPW, and instead simply adopted SFW's position pro forma, summarily finding that there was "[n]othing" in the record that counseled adopting any of CPW's alternatives instead of the Beach Lane Route. This finding – which is flatly contradicted by significant evidence in the record – was all-the-more erroneous because the Commission incomprehensibly failed to consider and analyze one of CPW's alternatives altogether (an error that the Commission left unredressed despite CPW's having raised it in its petition for rehearing).

12. ***Hazards Caused by the Beach Lane Route.*** In addition to the noted PFAS hazard, the Beach Lane Route would cause significant dangers to the residents of Beach Lane. While the high-voltage transmission cable is being constructed and installed, Beach Lane – which is just 19 feet wide, and is flanked by a quiet residential neighborhood and fields given over to agriculture – would be significantly constricted, impeding traffic and emergency vehicles (particularly perilous on the dead-end Beach Lane) and increasing hazards to pedestrians. SFW asserted that during construction a 10-foot access lane will be maintained, to be shared by vehicles and pedestrians – but such constricted access over the multi-month construction period will significantly impact residents and beach visitors and will introduce safety risks that were unaddressed by South Fork. And SFW admitted that there may be times when access to Beach Lane will be closed altogether.

CPW introduced evidence at the hearing that the construction on Beach Line will violate two provisions of the New York State Building Code and three provisions of the New York State Fire Code (including a requirement for access for emergency vehicles). In two throw-away sentences in an over 100-page Order, the Commission gave a shrug to these concerns (and others), and failed to provide any meaningful analysis of these hazards and whether the proposed Article VII Certificate conditions are sufficient to mitigate them. Most importantly, the Commission only refers to the Building Code in its “Discussion” section and neglects the Fire Code entirely. The Commission merely recycles the same non-responsive argument of SFW that the answer to Fire Code issues is that the Building Code does not apply to the Project. While certain safety requirements emanate from the Building Code, the continued reference to the Building Code ignores the failure of SFW to address compliance under the Fire Code. Moreover, in the Order Denying Rehearing, the Commission erroneously referred to the New York State Building Code as the “Town of East Hampton Building Code,” and wholly failed to discuss the New York State Fire Code.

13. These determinations of the Commission, together with multiple other flawed determinations detailed below, are unsupported by substantial evidence in the record, and are arbitrary and capricious.

14. Offshore wind power is a salutary goal which CPW supports. But no matter how noble the goal, Article VII forbids the grant of a Certificate unless the Commission makes the specific findings required by the statute in a cogent way that is consistent with the law and backed by evidence. The Commission failed to do that here. Accordingly, this Court should nullify the Order.

THE PARTIES

15. CPW is a domestic not-for-profit corporation with its principal place of business in Wainscott, Town of East Hampton, Suffolk County, New York.

16. CPW was formed in early 2019 by a group of concerned citizens and residents of the hamlet of Wainscott and the Town of East Hampton. CPW is a 503(c)(3) not-for-profit corporation that is devoted to preserving the congeniality, natural beauty and bucolic character of Wainscott. CPW is supportive of alternative energy sources, including off-shore wind; and CPW believes development should carry a low community impact and be done responsibly so that the natural beauty of Wainscott and Long Island is not destroyed.

17. CPW was granted party status in this Article VII proceeding pursuant to PSL § 124 (1)(k). Despite having no obligation to do so, as a party to this proceeding with a vested interest in promoting conservation and protecting the environment and safety of the Wainscott community, CPW retained outside experts and conducted extensive research into the routing of the high-voltage transmission cable along SFW's proposed Beach Lane route, including in-depth analysis of other alternative routes that would provide fewer environmental and community impacts.

18. The Public Service Commission is an agency of the State of New York exercising regulatory authority over the siting of major utility transmission facilities pursuant to Article VII of the Public Service Law, and is empowered to issue an Article VII Certificate. The Commission's principal office is at Empire State Plaza, Agency Building 3, Albany, New York 12223-1350.

19. SFW is a Delaware limited liability company, and maintains offices at 524 Montauk Highway, Amagansett, New York 11930.

BACKGROUND

Project Description

20. On September 14, 2018, SFW filed an Application for an Article VII Certificate pursuant to PSL § 122 and the Commission’s implementing regulations (“the Application”) (*see Exhibit A*).¹

21. As more particularly described in the Application and a Joint Proposal developed in this Article VII proceeding (“the Joint Proposal”), the Project involves the construction of the South Fork Export Cable (“SFEC”), a 138-kV electric cable that would connect the proposed South Fork Wind Farm (“SFWF”), located offshore in federal waters, to the existing mainland electric transmission system in the Town of East Hampton on Long Island in Suffolk County, New York (*see Exhibits A, H*).

22. The SFEC includes three segments that are relevant to this Article VII proceeding: a submarine segment of the cable in New York State territorial waters (“SFEC-NYS”), a terrestrial underground segment of the cable (“SFEC-Onshore”), and a new interconnection facility (“SFEC-Interconnection Facility” or the “Cove Hollow Substation”) (*see Exhibit CCCCCC*, p. 4).

23. The remaining segment of the SFEC is located in federal waters (“SFEC-OCS”) and does not fall under the purview of the Article VII process.

24. SFW’s Beach Lane route will place the high-voltage cable ashore at Wainscott Beach at the foot of Beach Lane, travel under the entire length of Beach Lane, and then continue through Wainscott to a new substation on Cove Hollow Road (“the Cove Hollow Substation”) (*Exhibit SSSS*, p. 7).

¹ Unless otherwise indicated, all references are to the exhibits attached to the Affirmation of Kevin M. Bernstein, Esq., dated September 10, 2021, submitted in support of the within Verified Petition.

25. Specifically, the Beach Lane route is approximately 4.1 miles long beginning at the sea-to-shore transition vault within the Beach Lane road right-of-way and continuing approximately 0.7 miles to the intersection with Wainscott Main Street. At the intersection of Beach Lane and Wainscott Mainstreet, the high-voltage transmission cable turns northeast along Wainscott Main Street for 0.06 miles and subsequently northwest on Sayres Path for 0.04 miles. The high-voltage transmission cable then turns generally north along Wainscott Stone Road for approximately 0.2 miles, then turns on to Wainscott Northwest Road and travels approximately 1.1 miles, generally northwest past Montauk Highway/State Route 27 to the Long Island Railroad (LIRR). From there, the high-voltage transmission cable continues in an easterly direction within a portion of the LIRR right-of-way south of the railroad tracks, past Daniels Hole Road, Stephen Hands Path and Buckskill Road. The high-voltage transmission cable extends along the southern portion of the LIRR right-of-way for approximately 2.0 miles, at which location it reaches its point of voltage transformation at the Cove Hollow substation (*see Exhibit CCCCCC*, at 4). The incoming transmission cable 138 kV voltage is transformed or stepped down to 69 kV at the Cove Hollow Substation to be compatible with the voltage level at the next-door point of interconnection into the LIPA 69 kV transmission system (*Id.*).

26. As originally proposed, the Cove Hollow Substation is located adjacent to the existing East Hampton substation, and the point of interconnection for the project. The Cove Hollow Substation property footprint will consist of an approximately 2.7-acre work area, surrounded by a maintenance road and an exterior perimeter wall (*see id.*, at 5).

27. As part of its Application, SFW also submitted alternatives to its preferred Beach Lane route and deemed its alternative Hither Hills route (“SFW Hither Hills Route B”) a viable alternative (*see Exhibit B*).

28. As proposed, the SFW Hither Hills Route B would land the 138 kV transmission cable at Hither Hills State Park in Montauk (*see Exhibit B; Exhibit SSSS*, at 12).

29. The sea-to-shore transition vault would be located underground within the existing pavement of the parking lot at the eastern entrance of the Park, approximately 650 feet onshore from the Mean High Water Line. The on-land cable for this proposed route follows Old Montauk Highway a distance of 0.9 mile, the shoulder of Hwy. 27 a distance of 7.27 miles, the travel lanes of local roads (Pantigo Rd., Main St., Buell Ln. and Sag Harbor Turnpike) for a distance of 4.34 miles, and then runs along the LIRR ROW a distance of only the last 0.38 mile to a point of cable termination and transformation at the proposed new Cove Hollow Substation. (*see id.*).

CPW Alternatives

30. During the course of this Article VII proceeding, CPW presented the Commission with three alternatives for the SFEC onshore cable route: the Hither Hills East route; the Hither Hills West route (“the CPW Hither Hills routes”); and the Atlantic Avenue route (“the Atlantic Avenue route”); (*see Exhibits BBB; CCC; DDD; EEE; FFF; GGG; HHH*). In addition to leveraging rail lines to minimize impact to roads and residences, none of these routes present PFAS, emergency vehicle access or related safety issues.

31. The Hither Hills East route’s sea-to-shore transition vault location would be within the upper parking lot at the eastern entrance of Hither Hills State Park (the same location as SFW’s proposed Hither Hills Route B alternative) and follow Old Montauk Highway for a distance of 0.9 mile and Highway 27 for a distance of 0.6 mile. At the intersection of Napeague Harbor Road and Highway 27, the cable would cross under Highway 27 and extend to the north a distance of 245 feet to the LIRR right-of-way. From there, the cable would be installed within the LIRR right-of-way for a distance of 9.7 miles, until reaching the point of interconnection at the East Hampton

Substation. The entire onshore route for the Hither Hills East alternative is approximately 11.2 miles long (*see Exhibit SSSS*, pp. 14-15) of which only approximately 1.5 miles would be along a combination of residential and commercial roadways (Old Montauk Highway for a distance of 0.9 mile and Hwy. 27 for a distance of 0.6 mile)

32. The Hither Hills West alternative would place the sea-to-shore transition vault underground approximately 0.48 mile west of the Hither Hills State Park upper parking lot, on State-owned land in the unpaved area between the north side of State Route 27 (Montauk Highway) and the south side of, and adjacent to, the LIRR right-of-way. From the transition vault, the cable would be installed within the LIRR right-of-way for a distance of 10 miles, until reaching the point of interconnection at the East Hampton Substation. The entire onshore cable route for the Hither Hills West alternative is approximately 10.1 miles long (*see Exhibit SSSS*, at 15).

33. The Hither Hills East and Hither Hills West alternatives each have merely 18 residential structures within 100 feet of the routes' centerlines. In comparison, SFW's preferred Beach Lane Route has at least 43 residential structures within 100 feet of the route's centerline and SFW's proffered "viable" alternative, Hither Hills Route B, has at least 142 residential structures within 100 feet of the route's centerline (*see Exhibit DDD*).

34. The Atlantic Avenue route's sea-to-shore transition vault would be situated within the Town-owned Atlantic Avenue right-of-way near the Amagansett Life Saving and Coast Guard Station Museum, just north of the entrance to the Town-owned Atlantic Avenue Beach parking lot. From the landing location, the cable follows Atlantic Avenue for 0.70 miles to Montauk Highway/State Route 27 right-of-way, continuing north beneath the Montauk Highway/State Route 27 right-of-way for 0.10 miles to the north side of the existing LIRR right-of-way adjacent to the Amagansett Substation. The cable then continues for 4.2 miles within the LIRR right-of-

way until its point of interconnection at the East Hampton Substation. The total length of the on-shore Atlantic Avenue corridor, including along the rail line, is approximately 5.0 miles (*see Exhibits QQ; SS; TT; UU; SSSS*, at 18).

35. The Atlantic Avenue route maximizes use of compatible industrial right-of-ways along the LIRR, thereby avoiding impacts/disturbances to private properties and the community (*see Exhibit SSSS*).

36. Construction and operation of the Beach Lane Route will impact residential driveway access to 78 properties. SFW's Hither Hills Route B, if constructed and operated, would impact access to 563 residential driveways. In contrast, CPW's Hither Hills East and West routes will not impact access for any residential driveways. CPW's Atlantic Avenue route is also far preferable as it only impacts driveway access to 54 properties (*see Exhibit DDD*).

37. The CPW Hither Hills East and West routes would offer significant improvement over the SFW' Hither Hills Route B route by burying the transmission cable almost entirely within the LIRR right-of-way, thereby avoiding construction-related traffic disruptions and community impacts along 11.6 miles of Montauk Highway and local roads (*see pre-filed direct testimony of John Conrad*, at 15).

Procedural History

38. On September 24, 2019, SFW filed a Notice of Impending Settlement Negotiations with the PSC.

39. On August 12 and 21, 2019, CPW sent Information Requests to SFW (the "August Information Requests"). The August Information Requests contained nine (9) sets of information to SFW related to Transmission Export Cable; Noise; Impact of Tidal Forces; Length of Export

Cable; Marine Cable Installation; Horizontal Directional Drilling Work Area; Beach Lane Impacts and Consideration; Archeological Resources; and Public Outreach.

40. SFW failed to respond to several of the August Information Requests, stating the information requested was, among other things, irrelevant and that information would only be provided as part of the Environmental Management and Construction Plan (“EM&CP”) after the Commission approved of the Applicant’s approved route.

41. On November 8, 2019, SFW and other interested parties, including CPW, engaged in initial settlement negotiations in East Hampton. Additional settlement negotiations were then scheduled for November 20 and 21, 2019. The settlement meetings were all held at East Hampton Town Hall or later by phone.

42. Subsequently, on January 17, 2020, CPW filed a Motion to Compel regarding SFW’s deficient responses to its August Information Requests, with a revised motion on January 21, 2020. By Order dated February 12, 2020, ALJ Belsito denied CPW’s Motion to Compel dismissing CPW’s concerns with the Beach Lane Route regarding emergency vehicle access, impacts to private driveways, beach use, and parking and foot traffic.

43. On May 15, 2020, SFW filed an update to its Application, which included Updated Exhibit 4—Environmental Impact; Updated Exhibit E-3—Underground Construction; Updated Appendix A, Table 7—Biological Resources Report; Updated Appendix E—Sound Study Technical Report (Onshore); Updated Appendix I—Essential Fish Habitat Report (*see Exhibit G*).

44. Settlement negotiations were ongoing between November 8, 2019 and July 28, 2020. On September 17, 2020, SFW filed the resulting Joint Proposal and appendices. The Joint Proposal was signed by SFW, DPS, New York State Department of Environmental Conservation (“NYSDEC”), New York State Department of Transportation (“NYSDOT”), New York State

Department of State (“NYSDOS”), New York State Office of Parks, Recreations, and Historic Preservation (“NYSOPRHP”), PSEG Long Island (“PSEG”) (acting on behalf of and as agent of LIPA), The Trustees of the Freeholders and Commonalty of the Town of East Hampton (“Trustees”), Win with Wind, Montauk United, the Concerned Citizens of Montauk, the Group for the East End, Inc., Deborah Foster, Michael Hansen, and Cathy Rogers (*see Exhibit H*).

45. Several parties to the proceeding, including CPW, did not sign the resulting Joint Proposal. The Joint Proposal includes 195 Certificate Conditions in Appendix D (*see Exhibit H*).

46. Along with the Joint Proposal, per ALJ Belsito’s instruction, SFW prepared and filed a summary of the Joint Proposal discussing the changes to the Project since the initial Application was filed.

47. On September 25, 2020, the PSC issued a Notice Inviting Public Comment on the Joint Proposal by October 30, 2020.

48. On October 9, 2020, the intervening parties, including CPW, filed initial testimony and exhibits regarding the Amended Application and Joint Proposal (*see Exhibits II; JJ; SS; TT; UU; VV; WW; XX; YY; ZZ; AAA; BBB; CCC; DDD; EEE; FFF; GGG; HHH; III; SSSS; VVVV; XXXX*).

49. On October 30, 2020, CPW filed comments to the Joint Proposal in response to the September 25, 2020 Notice Inviting Public Comment. Among other things, CPW challenged the need for a new substation, the significance of the construction impacts from the Project, and the lack of consideration of viable alternatives to SFW’s Beach Lane route. CPW also pointed out that SFW’s summary of the Joint Proposal failed to sufficiently highlight the significant ways in which the Project was modified.

50. On October 30, 2020, CPW, SFW, and other entities filed rebuttal testimony and exhibits (*see Exhibits X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, III, PPPP, RRRR, TTTT, GGGGGG, HHHHHH*).

51. An evidentiary Hearing was held before ALJ Belsito on December 3, 4, 7, and 8, 2020. Due to the ongoing COVID-19 pandemic, the Hearing was conducted telephonically.

52. At the conclusion of the Hearing, SFW requested that ALJ Belsito forego preparation of a Recommended Decision and permit the case to proceed directly the Commission after briefing by the parties.

53. Over CPW's objection, and despite the benefits of a Recommended Decision, which is almost always issued, especially in a proceeding involving a voluminous evidentiary record (the record here includes transcripts from four days of Evidentiary Hearings and over 400 exhibits) with several issues of disputed facts amongst the parties, ALJ Belsito granted SFW's request and permitted this matter to proceed directly to the Commission.

54. On January 13, 2021, intervenor Simon Kinsella ("Mr. Kinsella") filed a Motion to Reopen the Record to recross-examine witnesses and introduce additional information, including results from Per- and Polyfluoroalkyl substances ("PFAS") testing near the Beach Lane route. (*see Exhibit TTTTT*).

55. On January 21, 2021, CPW responded to Mr. Kinsella's motion, and joined in his request that the record be reopened to consider the results of the groundwater and soil sampling conducted by SFW in January 2021, given the contamination in the area where SFW proposed to perform construction work. (*see Exhibit UUUUU*).

56. On February 10, 2021, ALJ Belsito issued a Ruling on Motions denying Mr. Kinsella's motion. (*see Exhibit BBBBBB*).

57. On March 18, 2021, the PSC issued an Order Adopting Joint Proposal.

58. Also, on March 18, 2021, then-Governor of New York State, Andrew Cuomo, issued a Press Release touting the Project and the future of off-shore wind in the State.

59. On April 19, 2021, CPW filed a timely Petition for Rehearing. Mr. Kinsella also filed a timely Petition for Rehearing and Stay that same day.

60. On August 12, 2021, the PSC issued an Order Denying Rehearing which addressed both CPW and Mr. Kinsella's respective Petitions for Rehearing.

JURISDICTION AND VENUE

61. This Court has jurisdiction to grant an order and judgment vacating and annulling the PSC's Order Adopting Joint Proposal pursuant to section 128 of the Public Service Law and Article 78 of the New York Civil Practice Law and Rules.

62. The Appellate Division, Second Department is the proper venue for this Article 78 proceeding pursuant to Section 128 of the Public Service Law, which specifies that such proceeding shall be brought in the Appellate Division of the Supreme Court of the state in the judicial department embracing the county wherein the proposed facility is located. Here, the proposed facility is in Suffolk County, which is within the jurisdiction of the Appellate Division, Second Department.

63. The Petitioner has no adequate remedy or relief at law or in equity other than the relief requested herein.

64. No previous application has been made by the Petitioner for the relief sought herein with regard to the Order Adopting Joint Proposal nor the Order Denying Petition for Rehearing.

STANDARD UNDER PUBLIC SERVICE LAW § 128

65. Public Service Law 128 outlines the grounds for and scope of review of the court in reviewing an Order of the PSC. Specifically, the Court may review the Order to determine if an order is (1) in conformity with the constitution and the laws of the state and the United States; (2) supported by substantial evidence in the record or by information properly considered in the opinion; (3) within the commission's statutory jurisdiction or authority; (4) made in accordance with procedures set forth in this article or established by rule or regulation of the commission; or (5) whether an order is arbitrary, capricious or an abuse of discretion.

THE PUBLIC SERVICE COMMISSION'S DECISION TO GRANT AN ARTICLE VII CERTIFICATE WAS ARBITRARY AND CAPRICIOUS AND NOT BASED UPON SUBSTANTIAL EVIDENCE IN THE RECORD.

The Commission Authorized Construction for Installation of the High-Voltage Cable in an Area Where Cancer-Causing PFAS Contamination is Likely to Spread.

66. PSL § 126(1)(b) requires the Commission to find the “the nature of the probable environmental impact.

67. The Beach Lane route runs adjacent to the Wainscott Sand & Gravel site, and just south of the East Hampton Airport, which are both known areas of harmful PFAS contamination (*see* Ex. 381).

68. PFAS are a part of a class of chemicals known as perfluorinated compounds, which are currently unregulated by the federal government and have been used in a number of industrial and commercial products such as firefighting foam, (*see* **Exhibit BBBB**, p. 9) as well as coatings that repel water, oil, stains and grease (*see* **Exhibit PPP**).

69. Some PFAS compounds do not readily break down and persist for long periods of time in the environment, particularly in water (*see* **Exhibit IIIII**, at 92).

70. The New York State Department of Environmental Conservation (DEC) advises that if drinking water contains PFAS above the Environmental Protection Agency (EPA) Lifetime Health Advisory, one should consider using an alternative or treated water source for any activity in which water might be ingested (*see Exhibit BBBB*, p. 9).

71. The EPA warns that exposure to PFAS contaminants may result in adverse health effects, including developmental effects to fetuses during pregnancy or to breastfed infants (e.g., low birth weight, accelerated puberty, skeletal variations), cancer (e.g., testicular, kidney), liver effects (e.g., tissue damage), immune effects (e.g., antibody production and immunity), thyroid effects and other effects (e.g., cholesterol changes) (*see Exhibit XXX*).

72. Based upon those serious concerns, the EPA has developed cross-agency goals and actions to address PFAS to protect health and limit human exposure, including new interim guidance issued in December 2020 outlining the current state of the science on techniques and treatments that may be used to destroy or dispose of PFAS and PFAS-containing materials from non-consumer products, including film-forming foam for firefighting (*see CPW Reply Brief*, n. 49) the same contaminants found within the general vicinity of the East Hampton Airport and Wainscott Sand and Gravel property along the Beach Lane route (*see Exhibit IIIII*, at 26-28; **Exhibit Y; Exhibit Z; Exhibit AA; Exhibit BB; Exhibit CC; Exhibit DD**).

73. SFW acknowledged that the persistence of PFAS compounds in the environment creates a potential danger to both the environment and public health. (*see Exhibit IIIII*, at 92; **Exhibit PPP**), and further acknowledged that the installation of the high-voltage transmission cable along the Beach Lane route will entail excavating within the PFAS contaminant plume that is known to be present in shallow groundwater in this area. (*see Exhibit IIIII*, at 17-18).

74. Significantly, the groundwater flow from the Airport where the contamination exists is generally to the southeast, and, by SFW's own admission, it is reasonable to assume that PFAS contamination from the Airport property is being carried with the flow of groundwater in a southeasterly direction toward Beach Lane and the area proposed for high-voltage cable installation.

75. The installation of the high-voltage transmission cable along Wainscott Northwest Road will entail excavating within the PFAS contaminant plume that is known to be present in shallow groundwater in this area (**Exhibit IIII**, at 36-37). The PFAS plume originated from contamination on the East Hampton Airport property, which DEC recently announced will undergo a detailed investigation to define the nature and extent of contamination at the Airport property (*see* **Exhibit IIIII**). Excavation for the high-voltage cable therefore could become a pathway for movement of PFAS-contaminated groundwater, causing areas—including residential water wells—to be contaminated or further contaminated.

76. In addition, because the water table is so high through Wainscott, SFW will be required to perform “dewatering” of the trenches when they are dug out.

77. The dewatering process will have the result of pulling even more nearby water into the trenches which, in turn, will pull even more water from adjacent areas toward the area of excavation.

78. Moreover, because the trench where the cable will be buried is not “water tight,” (**Exhibit IIII**, at 42-43) there is a very real and distinct possibility that the trenching itself will create a pathway for the migration of PFAS contamination.

79. SFW admitted that it lacks information concerning the extent of trenching that will intersect the water table, (**Exhibit IIII**, at 37-38) demonstrating its complete lack of due diligence in appropriately analyzing the probable environmental impacts of the Project.

80. In fact, SFW acknowledged it had not performed any analysis concerning the potential impact of contaminated groundwater encountered during construction and its resulting effect upon soil and groundwater conditions, including potential impact upon the drinking water wells of adjacent landowners. (**Exhibit IIII**, at 47-47, 50-51).

81. Nor has SFW conducted an appropriate analysis concerning the probable environmental impacts of contaminated soil encountered during construction—in fact, SFW concedes that it currently lacks data regarding PFAS contaminants that potentially exist in soils that may be encountered. (**Exhibit IIII**, at 176).

82. To that end, and significantly, SFW has failed to adequately address the manner by which it intends to appropriately deal with, and dispose of, contaminated groundwater and soil during construction, (**Exhibit IIII**, at 70, 72) and in so doing, has failed to fully assess the impact of such activities upon adjacent landowners. (**Exhibit IIII**, at 50-51).

83. Despite the very real danger of exacerbating existing PFAS contamination due to the proposed location of the Project, the Commission dismissed CPW and the other intervenors' concerns in half a page of "discussion." (**Exhibit CCCCCC**, p. 102).

84. The Commission states that it "agree[s] with SFW and DPS Staff and find[s] that the Project, as proposed and conditioned will not exacerbate existing PFAS." (**Exhibit CCCCCC**, p. 102).

85. Yet, the only evidence in the record regarding the extent of PFAS contamination was not presented by SFW or even the DEC.

86. The Commission’s conclusory statement about PFAS contamination fails to even attempt to balance the desires of SFW to move forward against the potential public health issues posed by performing construction activities in an area of known PFAS contamination where residents still have drinking water wells.

87. SFW’s concession in its initial post-hearing brief that “Certificate Conditions require SFW to perform pre-construction soil and groundwater testing along the Project route *to ascertain the extent of PFAS contamination*, (**Exhibit QQQQQ**, at 65) is a tacit acknowledgement that such information was neither known, nor available in the record before the Commission during this proceeding.

88. Indeed, this obvious failure is further highlighted by the fact that SFW conducted soil and groundwater sampling immediately *after* the conclusion of the Evidentiary Hearing in this matter.

89. Intervenor Simon Kinsella filed a motion to reopen the record to include the results of the sampling, which CPW joined, (*see* Motion to Reopen the Record), but that motion was denied by the Commission (*see* **Exhibit FFFFFFF**).

90. The Commission was required to assess the nature of the probable environmental impacts of the Project *before* granting the Article VII Certificate.

91. The Commission failed to do so here, against the evidence in the record.

92. While the Commission repeats the mantra that there will be “measures to ensure that the [contaminated] material is handled and disposed of properly,” there is no information about how these measures will be developed and if they will sufficiently control all contamination. (*see* **Exhibit CCCCCC**, at 102).

93. Post-certification plans and sampling are insufficient to cure SFW's glaring failure to put forth substantial evidence before the Commission that potential risk of PFAS contamination will be avoided or minimized.

94. Even with post-certification plans in place, there is no rational basis by which the Commission could have reached its determination as to how impacts of PFAS contamination of drinking water wells and impacts to the environment will be minimized, where the record is devoid of a complete evidentiary picture of what those impacts are.

95. Significantly, there is no evidence in the record that any of the alternatives proposed by CPW, discussed *infra*, will encounter these known areas of PFAS contamination.

96. Despite the known dangers of PFAS, the known presence of PFAS in Wainscott, and the wholly inadequate information from SFW concerning PFAS, the Commission adopted the Joint Proposal and issued an Article VII Certificate, without first conducting a thorough analysis of the probable environmental impacts, ostensibly leaving actual plans for any remediation relating to PFAS contamination to be worked out later.

97. The Commission's finding that the Project "will not exacerbate existing PFAS" is unsupported by substantial evidence in the record and fails to fulfill its statutory obligation to determine the "nature of the probable environmental impact" and "that the facility represents the minimum adverse environmental impact" under PSL §§ 126 (1) (b), (c).

The Commission Summarily Rejected, or Completely Ignored, Alternative Routes that CPW Presented in Evidence that Were Shorter and Less Impactful to People and the Environment.

98. Pursuant to PSL § 126(1)(c), the Commission must consider the "nature and economics of the various alternatives" in its determination that the Project represents the minimum adverse environmental impact.

99. The Commission summarily rejected, or completely ignored, viable alternative routes presented in evidence by CPW that were shorter and less impactful to the community and environment, and erroneously determined that SFW met its statutory obligation under PSL § 122 to present viable alternatives for siting of the Project.

SFW's Hither Hills Route B Alternative Is Not Viable

100. Under PSL § 122(1)(e), SFW was required to submit “a description of any reasonable alternate location or locations for the proposed facility”—and, in determining whether the Beach Lane route “represents the minimum adverse environmental impact,” the Commission was required to consider “the nature and economics of the various alternatives.” The Commission failed to do so here.

101. SFW’s purported “viable” Hither Hills Route B was not viable at all; in fact, that route was so flawed that it appeared to be intentionally designed to compare unfavorably to its preferred Beach Lane route, and also assuring that alternatives would receive scant consideration by the parties and, ultimately, the Commission.

102. SFW’s Hither Hills Route B alternative, among other things, placed the high-voltage cable on the Main Streets in Amagansett and East Hampton Village. Potential impacts from this alternative route would have included multiple construction seasons, traffic disruptions along 11 miles of Montauk Highway local roads, 73 road crossings, impeded access to local businesses, and construction-related noise (*see Exhibit SSSS*, at 12-14).

103. The degree of disruption and adverse impact associated with said route would never have been acceptable to the community, the Town or Village of East Hampton, or the Commission.

104. Given the inherent shortcomings of the route, one could reasonably conclude that SFW offered its so-called “viable alternative” (Hither Hills Route B) with the knowledge that its

impossibility would ensure that the preferred Beach Lane route would be approved, and in doing so failed to thoroughly investigate and assess viable alternatives, as it was required to do under PSL § 122.

105. Accordingly, the Commission's determination that the Joint Proposal appropriately considered viable alternatives was arbitrary and capricious and an abuse of discretion.

CPW Alternatives Eliminate Need for an Additional Substation

106. One of the most glaring errors in the Order is the Commission's summary of CPW's position on the interconnection point for the 138 kV cable.

107. CPW originally suggested the Buell Substation as an alternative location for the 138 kV transmission cable termination and interconnection equipment based upon a design that could accommodate the equipment and reduce LIPA rate payer billing by saving on the cost of installation (*see Exhibit VVVV*, p. 16-17).

108. To accommodate PSEG's reluctance to modify its NYISO ("New York Independent System Operator's") East Hampton Substation interconnection application, CPW expressly modified its proposal for the termination point of its alternatives from the Buell substation to the East Hampton substation in its Post-Hearing Reply Brief (*see Exhibit WWWW*). By switching the proposed interconnection point to the East Hampton substation, any arguments attacking CPW's alternatives regarding space and NYISO interconnection accommodation issues at Buell substation became moot. Termination directly into the East Hampton substation also resolves any conflict with satisfaction of the requirements of the Power Purchase Agreement ("PPA") with LIPA (*See Exhibit PPPP*, pp. 21-22).

109. CPW has provided evidence in the record establishing that its routes can connect directly to the East Hampton substation (*see Exhibit VVVV*, at 29; 37, 39-41), as required by the PPA, without the need to construct an entirely new interconnection facility.

110. The needless construction of the Cove Hollow substation will negatively impact the environment and surrounding community, especially the residents of Dune Alpin Farm (“Dune Alpin”) (*see Exhibit WWWW*, at pp. 24-25). Dune Alpin neighborhood is bounded by the LIRR right-of-way to the north, Cove Hollow Road to the east, Montauk Highway to the south, and Green Hollow Road to the west. The neighborhood is located amidst a beautiful former dairy farm setting, and is an architecturally-designed mixture of co-op units and individual homes. There are 107 families in the Dune Alpin neighborhood, comprising approximately 200 to 300 residents (*see Exhibit ZZZZ*, at 2).

111. A stand-alone substation covering 1.6 acres of land, directly next to Dune Alpin unnecessarily adds to electric infrastructure sprawl, to the detriment of the surrounding community (*see Exhibit ZZZZ*).

112. The only way to avoid the impacts to the Dune Alpin community is to not site a new substation, and CPW is the only party who has provided evidence establishing a way for that to occur.

113. The Commission erred in wholly failing to acknowledge CPW’s position concerning the modification from Buell to the East Hampton substation as the point of interconnection (*see Exhibit CCCCCC*).

CPW Alternatives Eliminate Risk of Further PFAS Contamination

114. As noted above, because the Beach Lane route runs adjacent to the Wainscott Sand and Gravel site and just south of the East Hampton Airport, where known PFAS plumes are located, construction in these areas could exacerbate existing PFAS contamination.

115. All of the alternative routes proposed by CPW, including both Hither Hills routes and the Atlantic Avenue route, would avoid the area near the Airport and Wainscott Sand and Gravel site, thereby completely eliminating the possibility of any exacerbation of spreading PFAS contamination.

CPW Alternatives Maximize Commercial/Industrial Corridors

116. In addition, CPW presented significant evidence in the record that its alternatives have far fewer new impacts to residential neighborhoods as they closely follow the LIRR right-of-way (*see Exhibit SSSS*, at 4-5, 11-17).

117. SFW's Beach Lane route follows 2.0 miles of narrow residential roads and makes only minimal use of the LIRR right-of-way for the last 2.1-mile segment of the 4.1-mile corridor (*see Exhibit SSSS*, at 42; **Exhibit AAA**; **Exhibit FFF**).

118. In contrast, CPW's Hither Hills routes, which the Commission simply ignored without comment, leverage rail lines to reduce the impacts to residences. CPW's Hither Hills East alternative eliminates all but 0.9 mile of cable installation beneath State Route 27 by routing 87% of the alignment within the LIRR right-of-way, and the Hither Hills West alternative eliminates entirely the installation of a transmission cable beneath State Route 27 and local roads by burying the cable within the LIRR right-of-way over its entire length between Hither Hills and the point of interconnection (*see Exhibit SSSS*, at 13-14). CPW further calculated that the Hither Hills routes will reduce residential impacts by at least 87% and up to 100% due to reduced reliance on local roads (*see Exhibit SSSS*, at 31).

119. Likewise, the Atlantic Avenue route utilizes the established LIRR right-of-way to carry 4.2 miles of the total 5-mile transmission corridor ending at the point of interconnection—meaning, 84% of the length of the proposed Atlantic Avenue route leverages established commercial/industrial rights of way without unnecessarily burdening residential roads (*see Exhibit SSSS*, at 42; **Exhibit AAA**; **Exhibit FFF**). If constructed, the Beach Lane Route will impact 78 residences, whereas the Atlantic Avenue route will only impact 54 residences (*see Exhibit DDD*). CPW calculated that the Atlantic Avenue route would reduce residential impacts by at least 31% and up to 63% (*see Exhibit SSSS*, at 31).

120. All of CPW's alternatives eliminate the need to construct the new Cove Hollow Substation reducing residential impacts to zero in those surrounding residential areas, such as Dune Alpin Farm (*see Exhibit SSSS*, at 32).

121. By maximizing use of existing commercial/industrial corridors and electric transmission rights of ways, CPW's alternatives promote the initiatives of the State of New York by utilizing existing commercial/industrial rights of way where visual, commercial, industrial, and environmental impacts already exist, thereby reducing adverse environmental and community impacts in previously undisturbed areas. (*see Exhibit SSSS*, at 31-32; **Exhibit VVVV**, at 10-11).

122. The LIRR path is already the site of high velocity train traffic. The right-of-way is off limits to pedestrians and protected against community access. Individuals who reside along the path are aware of the hazards involved with high kinetic energy rail car traffic. The LIRR right-of-way experiences frequent construction and maintenance work, and installation of the cable will have a minimal impact.

123. Despite significant evidence submitted by CPW establishing the viability of alternatives that maximize use of the existing LIRR right-of-way (*see Direct Testimony of John*

Conrad and corresponding exhibits), the Commission failed to distinguish between the impacts of installation of a high-voltage transmission cable along a road right-of-way and the impacts of the same installation along the LIRR right-of-way.

124. The LIRR right-of-way is an existing industrial corridor. In contrast, installation of a high-voltage transmission cable, carrying energy similar in magnitude and accident exposure, to the kinetic energy in a fast-moving passenger train, on a quiet, residential street such as Beach Lane and other local roads will have significant detrimental impacts to residents, that are not afforded the same protections as exhibited on the LIRR right-of-ways. Once the cable is installed on a residential lane, pedestrians will be able to walk and travel over manhole covers which could violently erupt based upon a short circuit. A cable installed on the LIRR right-of-way would have manhole covers which would be off limits to pedestrian and vehicle traffic.

125. The Commission wholly failed to distinguish between the impact from roads and rail lines (*see* Order), and in so doing, did not properly consider the evidence by CPW concerning alternative routes that take advantage of an existing industrial corridor to minimize environmental and community impacts (*see* pre-filed direct testimony of John Conrad and corresponding exhibits).

126. By conflating the impacts from roads and rail lines, the Commission overstated the impact CPW's Atlantic Avenue route would have on "additional amounts of residential areas." (*see* **Exhibit CCCCCC**, p. 73). While the Commission did not address CPW's Hither Hills route alternatives, such conflation would result in the same flawed analysis.

127. In fact, contrary to the Commission's determination in that respect, the evidence in the record establishes that most of this "additional amount" is confined to residences located along the LIRR right-of-way (*see* **Exhibit LLLLLL**, at 1012).

128. The conflation of road and rail line impacts on residences a results-oriented approach because these residences are already impacted by train traffic, (*see Exhibit LLLLLL*, at 1012), as well as existing electricity transmission infrastructure (*see Exhibit SSSS*, at 10).

129. Construction along an existing rail line, with electric transmission lines already sited that cross residential properties simply cannot be compared to the installation of a brand new high-voltage cable along the lanes and roads in the Wainscott neighborhoods.

130. The Commission's determination that the Beach Lane route represents minimum adverse environmental impact, considering the state of available alternatives, is simply not supported by substantial evidence in the record.

CPW Alternatives Were Erroneously Subjected to an Inapplicable "Non-Viability" Standard

131. Likewise, the Commission erred in concluding that the Joint Proposal met the statutory criteria of PSL § 126(1)(c) based upon the purported "non-viability" of CPW's proposed routes due to "inability to obtain necessary property rights" (*see Exhibit CCCCCC*, at 103).

132. First and foremost, CPW, as an intervenor, has no obligation under the Public Service Law to secure property rights in advance of proposing alternative routes to be considered by the Commission in an Article VII proceeding.

133. Furthermore, the acquisition of property rights does not fall within the Commission's jurisdiction under Article VII and, for that reason, the Commission should not have relied upon the procurement (or lack thereof) of necessary property rights as a determining factor in considering whether the statutory requirements of PSL § 126 were met.

134. Moreover, even assuming that the Commission in an Article VII proceeding has authority to condition the granting of an Article VII Certificate on the procurement of necessary

property rights (which it does not), any such responsibility for obtaining said property rights would necessarily fall upon SFW.

135. In its misconstruction of the parties' respective burdens of proof in this proceeding, the Commission set an unattainable "viability" bar for CPW's proposed routes, yet failed to apply that same standard to SFW's Beach Lane route (*see Exhibit CCCCCC*, at 103).

136. Namely, the Commission determined that CPW's routes were non-viable "due to the inability to obtain necessary property rights." (*Exhibit CCCCCC*, at 103).

137. Significantly, however, SFW does not have all necessary property rights for its alternative Hither Hills Route B route (*see Exhibit JJJJJ*, at 496), and has further acknowledged that it has not yet obtained all necessary property rights for its preferred Beach Lane route, including for the Cove Hollow substation. (*See Exhibit LLLLL*, at 864, 874).

138. The Commission's determination that CPW's alternatives were non-viable on the basis that necessary property rights had not yet been obtained was arbitrary and capricious and constitutes an abuse of discretion.

139. The fact that CPW does not have property rights for its Hither Hills routes or Atlantic Avenue route is not, and cannot be, a bar to full consideration during the Article VII process.

The Commission Failed to Analyze Either of CPW's Hither Hills Alternatives

140. Unlike with CPW's Atlantic Avenue route, where the Commission did perform at least a cursory, if flawed, analysis, the Commission erred in failing to analyze at all either of CPW's Hither Hills route alternatives. Given that CPW's Hither Hills routes does not present any risk of PFAS contamination, there are few, if any, residences along the routes, and there are no

dangerous Building or Fire Code violations, the Commission's failure to address, in any respect, these alternatives constituted error. (*see* **Exhibit CCCCCC**).

141. While the routes are mentioned, briefly, in the summary section of the Order, neither are mentioned, much less analyzed, in the "Alternatives" subsection of the "Discussion" section. (*see* **Exhibit CCCCCC**, at 103-104).

142. Furthermore, the Commission's Order neglects to mention that CPW decided to modify its proposal for the interconnection point of its alternatives from the Buell substation to the East Hampton substation (**Exhibit CCCCCC**, at 85), erroneously concluding that "interconnecting at the Buell Substation is...not a viable option" due to "lack of space and underground ROW" and "reliability and safety concerns." (**Exhibit CCCCCC**, at 104). This substantive error demonstrates the review by the Commission was inadequate.

143. Indeed, as set forth repeatedly in CPW's Direct Testimony and during the Evidentiary hearing, CPW's Atlantic Avenue and Hither Hills routes can be directly connected to the East Hampton Substation (*see* **Exhibit VVVV**, at 29), rather than the Buell substation.

144. CPW urged the Commission to "focus on CPW's proposal to utilize the East Hampton substation and ignore those portions of SFW's and PSEG's tunnel-visioned arguments about Buell Substation, the NYISO, and any upgrade projects PSEG may be in the process of implementing at Buell." (*see* **Exhibit WWWW**, at 24-25).

145. Despite that request, the Commission completely failed to consider the evidence in the record by CPW concerning the viability of alternative routes that could connect to the East Hampton substation, and avoid the need to construct a new interconnection facility. Instead, the Commission relied upon a contract for LIPA to suggest unsubstantiated claims as to the non-

viability of alternatives, the analysis of which are required to provide a robust and complete record in the proceeding dealing with alternatives.

146. The Commission's failure to appropriately analyze viable alternatives was arbitrary and capricious and an abuse of discretion.

The Commission Ignored the Serious Public Safety Concerns Presented by SFW's Beach Lane Route.

147. Construction along the Beach Lane route poses significant public safety concerns to the residents of Beach Lane and visitors of Wainscott Beach, which were seemingly ignored by the Commission.

148. Beach Lane is a narrow, residential road with a paved section of approximately 18 to 19 feet in width, and a total right-of-way of 49.5 feet (Pre-Filed Direct Testimony of Gary Beck, at 4).

149. Encompassing all 49.5 feet of the right-of-way, SFW's planned sea-to-shore transition work area along Beach Lane will occupy a 580-foot-long stretch of Beach Lane, and will include a 10-foot-wide access lane along the western edge of the work area to provide a pathway for vehicles and pedestrians to traverse Beach Lane during construction (**Exhibit XXXX**, at 4).

150. The 10-foot-wide access lane presents numerous grave safety concerns. First, a 10-foot-wide access lane simply cannot comply with New York State Building Code section 3301.2 requiring a minimum 20-foot clearance; and second, the Beach Lane route does not comply with section 3306.1 of the Building Code inasmuch as SFW cannot ensure that pedestrians are protected during construction activities in the case of emergency (Building Code of NY State § 3301.2 [2020]; **Exhibit XXXX**, at 5).

151. SFW admitted during the Hearing that there will be instances of complete road closure which will be unavoidable during construction, and further acknowledged that it had no plan to address the issue presented in such a scenario regarding access for first responders in the event of an emergency on Beach Lane (**Exhibit JJJJJ**, at 452-453).

152. In fact, CPW presented evidence that the Project will not be able to comply with sections 3301.2 and 3306.1 of the Building Code. (*see* **Exhibit XXXX**, at 4-7).

153. While SFW argues that the Building Code is inapplicable to the Project (*see* Applicant Initial Brief at 60), SFW does not provide any evidence to support its statutory interpretation in this regard.

154. Contrary to the Commission's determination, the Building Code *is* applicable because the Project falls under "Utility and Miscellaneous Group U" of Section 312 (Chapter 3), which provides a list of enumerated structures, including communication equipment structures, as well as inclusion of structures not on the list.

155. The Commission erred in adopting SFW's statutory interpretation of the applicability of the Building code without performing any independent analysis of its own (*see* Order, at 105), including analysis of the evidence submitted by CPW expert Gary Beck (*see* **Exhibit XXXX**)

156. The Commission further erroneously agreed with SFW that the "portions of the Fire Code referred to in CPW's arguments are not applicable to the Project." (*see* **Exhibit CCCCCC**, at 105).

157. The Commission's conclusion, however, fails to address the provision of the Fire code relating to emergency vehicle access, which is applicable to the Project (*see* **Exhibit CCCCCC**, at 105).

158. The Commission does not explain what relevant law or portions of the record it relied upon when making this decision (*see Exhibit CCCCCC*, at 105).

159. The applicability of the provisions of the Fire Code relating to emergency access has not been disputed, and testimony by CPW's expert that the Project would violate emergency fire code provisions are uncontested (*see Exhibit JJJJJ*, at 459-460).

160. While SFW asserts that it will comply with the provisions of the Fire code (*see Exhibit CCCCCC*, at 60), presumably including with regard to emergency vehicle access, there is nothing in the record to demonstrate how it will do so. Further, as CPW pointed out in its rebuttal testimony, there is insufficient space to create a turnaround area for emergency vehicles and equipment and insufficient space for an emergency access lane during construction along Beach Lane (*see Exhibit III*, at 4). The only rejoinder to CPW's arguments about failure to comply with the Fire Code was to argue that the Building Code was inapplicable, something that CPW disputes, but which the Commission adopted without addressing or analyzing the applicability of the Fire Code to issues such as emergency vehicle access (*see Exhibit CCCCCC*).

161. Indeed, given that "some temporary closure of non-NYSDOT [like Beach Lane] roads may be required," (*Exhibit CCCCCC*, at 17), completely blocking Beach Lane and other local roads would present a clear safety issue, including blocking emergency vehicles from accessing homes along the proposed cable route. Similar restrictions do not exist on the alternative routes proposed by CPW.

162. This significant safety issue, which arises because of the extreme narrowness of Beach Lane, is wholly unaddressed by the Commission's Order (*see Exhibit CCCCCC*).

163. The Commission provided no explanation of what relevant law or portions in the record it relied upon in erroneously concluding that the Joint Proposal satisfied provisions of the Fire Code.

164. With respect to the serious public safety issues posed by SFW's Beach Lane route, the Commission wholly neglected its duty to support its determination that the Project "conforms to applicable state and local laws and regulations" and that "the facility will serve the public interest, convenience and necessity" with evidence in the record, and its determination that the Joint Proposal met the criteria of Public Service Law §§ 126 (1)(g), (h) was an abuse of discretion.

The Commission Ignored Significant Adverse Impacts SFW's Beach Lane Route Will Have on the Wainscott Community.

165. In addition to safety concerns, the Project falls short of serving the public interest, convenience and necessity under PSL § 126(1)(h) because, due to the narrow, residential nature of Beach Lane, the planned construction will cause unnecessary traffic congestion, noise disturbances, and constrained access to both Wainscott Beach and residences along Beach Lane.

166. The 10-foot-wide access lane will result in a one-lane roadway for vehicles and pedestrians to traverse Beach Lane along the work zone, thereby resulting in significant traffic congestion (**Exhibit SSSS**, at 9-10).

167. Vehicles will also be forced to wait extended periods of time to ensure pedestrians traversing the access lane can do so safely.

168. Additionally, community access to Wainscott Beach will be limited due to construction activities and reduced parking availability. Supplemental parking along the shoulders of Beach Lane will also be eliminated during construction, which will likely span two beach-going seasons (*see* **Exhibit SSSS**, at 9-10).

169. Moreover, SFW sought a waiver from the Town Code provision that limits noise-generating activities after 8:30 p.m., despite the fact that it failed to provide an analysis of what efforts were made to avoid seeking such a waiver (**Exhibit E; Exhibit F**).

170. The noise disturbances associated with construction and operation of a new substation are also contrary to the public interest, convenience and necessity (**Exhibit JJJJ**, at 483).

171. There are numerous existing electrical facilities in close proximity to SFW's planned new substation, including a LIPA substation, diesel generator facility, emergency generation on the site, and a battery storage facility. These operations were not taken into account when conducting the noise analysis in SFW's Application (*see* **Exhibit E**).

172. Given none of the electrical equipment for the new substation was specified or ordered at the time of the Commission's Order Adopting the Joint Proposal, there was no way SFW's prepared noise impact analysis considered all noise impacts of the proposed construction in that area (*see* **Exhibit JJJJ**, at 354).

173. SFW's noise analysis also failed to account for noise from dewatering activities and installation of monitoring wells during construction (*see* **Exhibit JJJJ**, at 484-485).

174. SFW, and later the Commission, further failed to satisfy its obligations under PSL § 126(1)(h) by failing appropriately consider future maintenance, operations and repairs to the underground transmission cable and the corresponding impact on the Wainscott community.

175. The only other project sited in the United States by SFW (including its parent companies, Ørsted and Eversource), is the Block Island wind project off the coast of Rhode Island, which became operational in 2016 (**Exhibit JJJJ**, at 405).

176. In the four to five years Block Island has been operational, ocean waves have exposed portions of the transmission lines running to and from a beach on the island, necessitating the wind farm be taken offline for significant repair work, including cable re-burial. (*see Exhibit I*)

177. Notably, the Block Island cable is only 34.5 kV (currently a distribution voltage level in many parts of New York State), whereas the South Fork Wind cable will be a 138 kV transmission circuit, with the potential for devastating impacts resulting from the energy released during a cable short circuit or fault.

178. Despite this unfortunate experience on Block Island, SFW has failed to consider, let alone adequately address, potential impacts to the Wainscott community resulting from future repair work, maintenance and cable failures or short circuits.

179. Instead, SFW's arrogant approach attempted to skirt the issue by stating it does not anticipate future repair or maintenance work for the Project (**Exhibit JJJJJ**, at 480-471).

180. It is clear that any maintenance or repair work for the South Fork Wind cable – of which there will surely be some – will require round the clock crews working on site for potentially weeks on end. SFW's failure to acknowledge and confront the known possibility that repair work will be required will result in long-term impacts to residents of Beach Lane and does not satisfy PSL § 126(1)(h).

181. Wainscott is a community known for its vast open spaces, small farm stand, and two ponds (Wainscott Pond and Georgica Pond) as well as the small, iconic Wainscott Beach located at the end of Beach Lane. Residents of Wainscott and the Towns of East and South Hampton enjoy these scenic Long Island community resources year-round (*see Exhibit YYYY*, at 3).

182. SFW's Beach Lane route will be detrimental to the character of the Wainscott Beach because it requires disturbance and construction and placement of a high-voltage electric transmission cable on a bucolic pathway, Beach Lane (*see Exhibit VVVV*, at 34). Despite having knowledge of the dangers associated with placing a high-voltage cable along such a narrow, residential lane, both SFW and the Commission failed to identify and mitigate impacts to residents and the environment.

183. Accordingly, the interests of the public under PSL § 126(1)(h) are not served by the Project, which threatens to destroy their quiet enjoyment of the pristine environment and natural beauty surrounding Beach Lane and Wainscott Beach.

SFW's Beach Lane Route Will Cause Energy Loss and Fails to Conform to a Long-Range Plan for Expansion of the Electric Power Grid.

SFW's Beach Lane Route Will Cause Energy Loss

184. SFW's proposed Beach Lane route brings the high-voltage transmission cable into a quiet residential neighborhood. A landing of this nature is unprecedented and has not been performed in the United States or even in the home county (Denmark) of SFW's parent, Ørsted. (*see Exhibit YYYY*, at 6).

185. The combined ocean and land-based cable corridor for the Beach Lane route is longer than the alternative corridor suggested by SFW's Hither Hills Route B, and CPW's Atlantic Avenue route (*see Ex. 306*).

186. There is no doubt that this additional length will cause energy losses within the cabling system. (*see Exhibit VVVV*, at 32).

187. Similarly, the longer length of the Beach Lane route increases greenhouse gas generation. (*Id.*).

188. In fact, it is projected that the Hither Hills Route B would save approximately seven (7) percent in energy losses and greenhouse gas generation versus the Beach Lane routing. (see **Exhibit VVVV**, at 32).

189. Likewise, CPW's proposed Atlantic Avenue route, which is slightly shorter than SFW's alternative Hither Hills Route B route, would also result in significant energy savings and reduce the generation rates of greenhouse gas emissions. (see **Exhibit FFF**; **Exhibit VVVV**, at 32).

190. The Commission failed to appropriately analyze that evidence concerning the extent of additional energy losses within the cable system by the Beach Lane route, and its determination that SFW satisfied the requirements of PSL § 126 (1)(e) was in error.

191. Additionally, the Commission's Order provides no discussion whatsoever of undergrounding (see **Exhibit CCCCCC**, p. 104) and, in that regard, failed to appropriately assess whether SFW met the applicable statutory criteria under the Public Service Law.

SFW's Beach Lane Route Does Not Support Long-Range Expansion of the Grid

192. Furthermore, the record is devoid of substantial evidence to support the Commission's determination that the Beach Lane route will support the long-range plan for expansions of the electric transmission systems of Long Island and New York State as a whole.

193. Specifically, the Beach Lane route fails to improve and build electric system infrastructure reinforcement capacity within the eastern part of the LIPA South Fork transmission, sub-transmission, and distribution delivery systems to the east of the East Hampton Substation. (see **Exhibit VVVV**, at 12).

194. The Beach Lane route is designed to deliver energy to one specific substation, meaning there is no option to tie into that cable to deliver energy between the cable landing and the interconnection facility at the Cove Hollow substation (*see Exhibit VVVV*, at 12).

195. There is no electric system value to tap that cable to deliver energy between the cable landing and the interconnecting substation (*see Exhibit VVVV*, at 12).

196. However, if the cable ran on land to the east of the East Hampton substation (an option afforded SFW by CPW's alternatives), in the future that cable could be utilized to deliver energy and reinforce the eastern most portions of the LIPA transmission system (*see Exhibit VVVV*, at 12).

197. Required improvements have already been identified by LIPA/PSEG to the east of East Hampton. The Beach Lane route would neither reinforce the system infrastructure nor save the rate payers money in the future (*see Exhibit VVVV*, at 12).

198. Moreover, SFW failed to demonstrate the need to build an entirely new substation, which will contribute to unnecessary infrastructure spread (*see Exhibit JJJJJ*, at 345).

199. To be sure, the Cove Hollow substation serves no purpose to the Long Island electric grid, other than to accommodate an interconnection for the Project.

200. While construction of an entirely new, developer-owned substation is the easiest way for SFW to ensure completion of the Project on its preferred timetable, it does nothing to achieve the statutory objectives provided for by section 126 of the Public Service Law concerning long-range plans for expanding the electric grid.

201. This is apparent by SFW's acknowledgement throughout this proceeding that it cannot interface with a publicly owned substation, due to access issues (*see Exhibit JJJJJ*, at

528), and repeated reliance upon its unsupported excuse that the PPA requires the point of interconnection to be at the East Hampton substation. (*see* **Exhibit JJJJJ**, at 502).

202. In reality, it is simply easier for SFW to build a brand-new substation directly next to the East Hampton Substation, than to negotiate access and construction agreements with the owners of the existing substations. (*see* **Exhibit JJJJJ**, at 394-395).

203. While this approach is clearly designed to maximize profitability, it avoids coordination with PSEG, and fails to reinforce or expand the Long Island transmission system west of the Project.

204. Instead of relying upon the facts in the record to determine whether the Joint Proposal satisfied the requirements of Public Service Law § 128(1)(e), the Commission's Order merely regurgitates the New York State renewable energy goals, stating in a conclusory fashion that "[t]he Project will also help LIPA and the State meet its renewable energy goals and the requirements of the CLCPA." (**Exhibit CCCCCC**, at 104).

205. Notably, in its rebuttal testimony, SFW sought to argue that one benefit of the Project was to displace conventional generation but, remarkably, could not substantiate that assertion with any specifics. (*see* **Exhibit JJJJJ**, at 347-348).

206. The inability of the SFW's Public Interest and Need Panel to provide any testimony detailing how this Project will achieve the goals of the CLCPA through the displacement of conventional generation demonstrates that SFW is simply paying lip-service to the State's renewable energy policies regarding satisfying certain goals for off-shore wind generation by 2035 as a means of achieving the highly profitable pricing obtained in the South Fork Wind PPA with LIPA, particularly given the subscale size of SFW's Project (*see* Hearing Exhibit 321).

207. The Commission failed to undertake any meaningful analysis as to whether the Joint Proposal actually meets the criteria set forth in subsection (e) of the Public Service Law.

208. Mere regurgitation of the State’s renewable energy goals is insufficient and does not relieve the Commission of its duty to make this statutory finding.

**THE COMMISSION’S DECISION DENYING CPW’S REQUEST FOR A
REHEARING WAS ARBITRARY AND CAPRICIOUS AND AN ABUSE OF
DISCRETION.**

209. The Commission’s wholesale rejection of CPW’s arguments in support of its petition for a rehearing, including those related to viable alternative routes, was arbitrary and capricious and an abuse of discretion.

210. Indeed, the six-page Order provided no meaningful analysis whatsoever of the points raised in CPW’s petition for a rehearing (*see* Order Denying Rehearing).

211. In its Order denying CPW’s petition for a rehearing, the Commission wholly failed to provide any analysis differentiating between CPW’s proposed alternative Hither Hills routes and Atlantic Avenue route (*see* **Exhibit CCCCCC**, at 3-4).

212. Instead, the Order erroneously states that CPW “fail[]ed to acknowledge any of the contrary evidence in the record raised by the supporting parties as to the negative impacts attached to *that* route.” (**Exhibit CCCCCC**, at 3).

213. Again, like it did before in the Order adopting the Joint Proposal and issuing the Article VII Certificate, the Commission wholly failed to consider either of CPW’s proposed alternative routes beyond the Atlantic Avenue route—*i.e.*, its Hither Hills East and West alternatives.

214. Moreover, and contrary to the Commission's suggestion in its Order denying the petition for rehearing, CPW has never sought Article VII approval for any of its proposed routes (see **Exhibit P P P P P**; **Exhibit W W W W W**).

215. The notion that CPW had the obligation to provide "adequate notice to the persons that would be affected by the alternative route" is not consistent with the law applicable to Article VII proceedings.

216. As it relates to the issue of providing public notice, that statutory requirement under the Public Service Law applies solely to an applicant of an Article VII Certificate, not an intervenor, such as CPW.

217. Thus, the Commission's determination that CPW had a legal obligation under the Public Service Law to provide public notice of its proposed alternative routes, including notice to landowners upon whose property the Project would be installed or to adjacent landowners whose property could be required for construction easements, was in error.

218. The Commission's decision in that respect operates under the flawed premise that CPW bears the burden of proof in establishing it has obtained necessary property rights for its proposed alternative routes.

219. To be sure, CPW has no obligation under the Public Service Law to secure property rights in advance of proposing alternative routes to be considered by the Commission in this Article VII proceeding.

220. The Commission further erred in its Order denying CPW's request for a rehearing concerning the issue of potential PFAS contamination.

221. As set forth above, the Joint Proposal does not sufficiently address the potential environmental impact of exacerbation of PFAS contamination inasmuch as SFW did not perform

adequate research concerning potential spread of PFAS contaminants, including lack of groundwater and soil sampling, to provide the Commission with the data necessary to determine whether significant environmental impacts will be avoided or minimized by the Project.

222. The Commission's determination to adopt the Joint Proposal and grant SFW an Article VII Certificate in the absence of such evidence was error.

223. The Commission's failure to consider alternative routes that would completely eliminate the risk of potential PFAS contamination was likewise in error and warranted a rehearing on that basis.

AS AND FOR A FIRST CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(b))

224. Petitioner repeats and realleges paragraphs 1 through 223 as if set forth fully herein.

225. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126 (1)(b) establishing the nature of the probable environmental impacts was not based upon substantial evidence in the record.

226. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(b) of the Public Service Law.

AS AND FOR A SECOND CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(b))

227. Petitioner repeats and realleges paragraphs 1 through 226 as if set forth fully herein.

228. The Commission's Order finding that SFW satisfied the requirements of Public Service Law §126(b)(1) was arbitrary and capricious because the evidence did not establish, and there was no rational basis to conclude, the nature of the probable environmental impacts.

229. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(b) of the Public Service Law.

AS AND FOR A THIRD CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(b))

230. Petitioner repeats and realleges paragraphs 1 through 229 as if set forth fully herein.

231. The Commission's Order finding that SFW satisfied the requirements of Public Service Law §126(b)(1) was an abuse of discretion because the evidence did not establish, and there was no rational basis to conclude, the nature of the probable environmental impacts.

232. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(b) of the Public Service Law.

AS AND FOR A FOURTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(c))

233. Petitioner repeats and realleges paragraphs 1 through 232 as if set forth fully herein.

234. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126 (1)(c) that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives, was not based upon substantial evidence in the record.

235. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(c) of the Public Service Law.

AS AND FOR A FIFTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(c))

236. Petitioner repeats and realleges paragraphs 1 through 235 as if set forth fully herein.

237. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126 (1)(c) was arbitrary and capricious because the evidence did not establish, and there is no rational basis to conclude, that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives.

238. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(c) of the Public Service Law.

AS AND FOR A SIXTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(c))

239. Petitioner repeats and realleges paragraphs 1 through 238 as if set forth fully herein.

240. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126 (1)(c) was an abuse of discretion because the evidence did not establish, and there is no rational basis to conclude, that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of various alternatives.

241. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(c) of the Public Service Law.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(e))

242. Petitioner repeats and realleges paragraphs 1 through 241 as if set forth fully herein.

243. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126 (1)(e) that the facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving this state and interconnected utility transmission systems, which will serve the interests of electric system economy and reliability, was not based upon substantial evidence in the record.

244. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(e) of the Public Service Law.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(e))

245. Petitioner repeats and realleges paragraphs 1 through 244 as if set forth fully herein.

246. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126 (1)(e) was arbitrary and capricious because the evidence did not establish, and there is no rational basis to conclude, that such facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving this state and interconnected utility transmission systems, which will serve the interests of electric system economy and reliability.

247. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(e) of the Public Service Law.

AS AND FOR A NINTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(e))

248. Petitioner repeats and realleges paragraphs 1 through 247 as if set forth fully herein.

249. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126(1)(e) was an abuse of discretion because the evidence did not establish, and there is no rational basis to conclude, that such facility conforms to a long-range plan for expansion of the electric power grid of the electric systems serving this state and interconnected utility transmission systems, which will serve the interests of electric system economy and reliability.

250. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(e) of the Public Service Law.

AS AND FOR A TENTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(g))

251. Petitioner repeats and realleges paragraphs 1 through 250 as if set forth fully herein.

252. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126(1)(g) that the location of the facility as proposed conforms to applicable state and local regulations was not based upon substantial evidence in the record.

253. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(g) of the Public Service Law.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(g))

254. Petitioner repeats and realleges paragraphs 1 through 253 as if set forth fully herein.

255. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126 (1)(g) was arbitrary and capricious because the evidence did not establish, and there is no rational basis to conclude, that the location of the facility as proposed conforms to applicable state and local laws and regulations.

256. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(g) of the Public Service Law.

AS AND FOR A TWELFTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(g))

257. Petitioner repeats and realleges paragraphs 1 through 256 as if set forth fully herein.

258. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126 (1)(g) was an abuse of discretion because the evidence did not establish, and there is no rational basis to conclude, that the location of the facility as proposed conforms to applicable state and local laws and regulations.

259. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(g) of the Public Service Law.

AS AND FOR A THIRTEENTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(h))

260. Petitioner repeats and realleges paragraphs 1 through 259 as if set forth fully herein.

261. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126(1)(h) that the facility will serve the public interest, convenience and necessity was not based upon substantial evidence in the record.

262. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(h) of the Public Service Law.

AS AND FOR A FOURTEENTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(h))

263. Petitioner repeats and realleges paragraphs 1 through 262 as if set forth fully herein.

264. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126(1)(h) was arbitrary and capricious because the evidence did not establish, and there is no rational basis to conclude, that the facility will serve the public interest, convenience, and necessity.

265. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(h) of the Public Service Law.

AS AND FOR A FIFTEENTH CAUSE OF ACTION
(Violation of Public Service Law § 126(1)(h))

266. Petitioner repeats and realleges paragraphs 1 through 265 as if set forth fully herein.

267. The Commission's Order finding that SFW satisfied the requirements of Public Service Law § 126(1)(h) was an abuse of discretion because the evidence did not establish, and there is no rational basis to conclude, that the facility will serve the public interest, convenience, and necessity.

268. Consequently, the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate violated section 126(1)(h) of the Public Service Law.

AS AND FOR A SIXTEENTH CAUSE OF ACTION
(Violation of Public Service Law § 22)

269. Petitioner repeats and realleges paragraphs 1 through 268 as if set forth fully herein.

270. The Commission's decision denying CPW's petition for a rehearing was arbitrary and capricious because the Order adopting the Joint Proposal and granting SFW an Article VII Certificate was fraught with errors of fact and law, thereby warranting a rehearing.

271. Consequently, the Commission's Order denying CPW's petition for a rehearing violated Public Service Law § 22.

AS AND FOR A SEVENTEENTH CAUSE OF ACTION
(Violation of Public Service Law § 22)

272. Petitioner repeats and realleges paragraphs 1 through 271 as if set forth fully herein.

273. The Commission's decision denying CPW's petition for a rehearing was an abuse of discretion because the Order adopting the Joint Proposal and granting SFW an Article VII Certificate was fraught with errors of fact and law, thereby warranting a rehearing.

274. Consequently, the Commission's Order denying CPW's petition for a rehearing violated Public Service Law § 22.

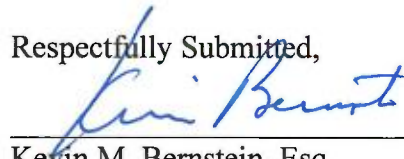
WHEREFORE, Petitioner Citizens for the Preservation of Wainscott, Inc., demands an order and judgment be granted in its favor and against Respondent Public Service Commission, pursuant to CPLR Article 78 and Public Service Law §§ 126, 128, as follows:

- 1) Vacating and annulling, as illegal, arbitrary and capricious the Commission's Order adopting the Joint Proposal and granting SFW an Article VII Certificate, determining that SFW satisfied §§ 126 (1) (b), (c), (e), (g), and (h) of the Public Service Law;

- 2) Vacating and annulling, as illegal, arbitrary and capricious, the Commission's Order denying Petitioner's Request for a Rehearing, in violation of Public Service Law § 22; and
- 3) Granting such other and further relief as this Court may deem just, proper, and equitable, together with Petitioner's costs and disbursements.

Dated: September 9, 2020

Respectfully Submitted,



Kevin M. Bernstein, Esq.

Claire G. Bopp, Esq.

Bond, Schoeneck & King, PLLC

*Attorneys for Citizens for the Preservation of
Wainscott*

One Lincoln Center

Syracuse, New York 13202-1355

Phone: (315) 218-8000

Fax: (315) 218-8429

Email: kbernstein@bsk.com

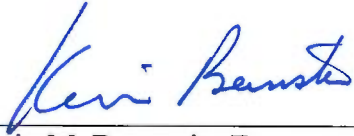
VERIFICATION

STATE OF NEW YORK)
) ss.
COUNTY OF ONONDAGA)

Kevin M. Bernstein, Esq., an attorney admitted to practice in the State of New York, affirms the following under penalty of perjury:

I am an attorney for Petitioner in the within proceeding. I have read the foregoing petition and know its contents; that the same is true of my own knowledge except as to matters therein stated on information and belief and as to those matters, I believe to be true. The basis for my information and belief is the testimony and exhibits attached to my accompanying affirmation, and publicly available documents.

I make this Verification pursuant to CPLR 3020(d)(3) because Petitioner is not in the county in which I have my office.



Kevin M. Bernstein, Esq.