

BEFORE THE
NEW YORK STATE
PUBLIC SERVICE COMMISSION

In the Matter of
South Fork Export Cable

Case 18-T-0604

October 9, 2020

Prepared Testimony of Department
of Public Service Staff (DPS
Staff) Panel:

Andrew Davis
Chief - Certification &
Compliance
Office of Electric, Gas, and
Water

Jeremy Flaum
Utility Supervisor
Office of Electric, Gas, and
Water

Miguel Moreno-Caballero
Utility Engineering Specialist 3
(Acoustics)
Office of Electric, Gas, and
Water

State of New York
Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

1 Q. Please state the names, employer, and business
2 address of the Department of Public Service
3 Staff Panel (the DPS Staff Panel or Panel).

4 A. Our names are Andrew Davis, Jeremy Flaum and
5 Miguel Moreno-Caballero. We are employed by the
6 New York State Department of Public Service (DPS
7 or Department). Our business address is Three
8 Empire State Plaza, Albany, New York 12223.

9 Q. Mr. Davis, what is your position with the
10 Department?

11 A. I am the Chief of Environmental Certification
12 and Compliance, in the Office of Electric, Gas
13 and Water (or EC&C, OEGW).

14 Q. Please briefly describe your educational
15 background and professional experience.

16 A. I graduated from the State University of New
17 York, College of Environmental Science and
18 Forestry with a Bachelor of Science degree in
19 Natural Resources Management (Forestry) in 1981.
20 My professional training includes cultural
21 resources management, visual impact assessments,

1 remote sensing, ARC-MAP geographic information
2 systems, habitat evaluation, and wetlands
3 delineation, among other specialties.

4 Q. Mr. Davis, what are your qualifications and
5 experience in reviewing major electric
6 transmission and generation and related
7 facilities?

8 A. My education and professional experience is
9 summarized in the curriculum vitae (CV) attached
10 as Exhibit__(DPS-1).

11 Q. Mr. Flaum, what is your position with the
12 Department?

13 A. I am employed as a Utility Supervisor in the
14 Environmental Certification and Compliance
15 Section of the Office of Electric, Gas and
16 Water.

17 Q. Please briefly describe your educational
18 background and professional experience.

19 A. I graduated from the State University of New
20 York College at Cortland in 2003 with a Bachelor
21 of Science degree in Geology. I also received a

1 Master of Science degree in Environmental
2 Management from the University of Maryland,
3 University College, in 2008. I joined the
4 Department in 2009. Prior to joining the
5 Department, I held Geologist positions at two
6 environmental consulting firms where I performed
7 field investigations, oversight, and data
8 analysis for multiple environmental remediation
9 sites.

10 Q. Please describe your responsibilities with the
11 Department.

12 A. My primary responsibilities include evaluating
13 environmental impacts and construction
14 feasibility issues for electric generating
15 facilities under Article 10 of the Public
16 Service Law (PSL) and electric and gas
17 transmission facilities under Article VII of the
18 PSL. Additionally, I have reviewed utility
19 property site contamination investigation and
20 remediation (SIR) matters and provided
21 recommendations for SIR cost recovery in utility

1 rate cases before the Commission.

2 Q. Have you provided testimony in previous
3 proceedings before the Commission?

4 A. Yes. I have testified before the Commission as
5 part of Department Staff's SIR Panels for
6 numerous rate cases, including, most recently:
7 Cases 19-G-0309 and 19-G-0310, KeySpan Gas East
8 Corporation and Brooklyn Union Gas Company;
9 Cases 18-E-0067 and 18-G-0068, Orange and
10 Rockland Utilities, Inc.; and Cases 17-E-0459
11 and 17-G-0460, Central Hudson Gas and Electric
12 Corporation. I have also testified before the
13 Commission regarding the water quality issues
14 and environmental impacts of proposed major
15 electric transmission facilities in Cases 08-T-
16 0034 and 10-T-0139.

17 Q. Have you provided testimony in any other
18 proceedings as a member of Department Staff?

19 A. Yes. I provided testimony before the Siting
20 Board on Electric Generation and the Environment
21 (Siting Board) pursuant to PSL Article 10

1 regarding geologic and water resource impacts of
2 proposed major electric generation wind and
3 solar energy facilities in Cases 14-F-0490, 15-
4 F-0122, 16-F-0062, 16-F-0328, 16-F-0559, 16-F-
5 0205, 17-F-0282, and 16-F-0267. I also
6 testified as part of the Staff Policy Panels for
7 all of those cases, except 16-F-0267, and as
8 part of the Staff Panel in Support of Settlement
9 (SPSS) for Case 18-F-0262. Further, I recently
10 submitted testimony as part of the SPSS for Case
11 17-F-0182 - Mohawk Solar Project, Case 17-F-0617
12 - Coeymans Solar Farm, Case 17-F-0599 - East
13 Point Energy Center, and Case 17-F-0597 - High
14 River Energy Center, the first four major solar
15 electric generating facilities proposed pursuant
16 to PSL Article 10.

17 Q. Mr. Moreno what is your position at the
18 Department?

19 A. I am a Utility Engineering Specialist 3
20 (Acoustics) in the Environmental Certification
21 and Compliance section of the Office of

1 Electric, Gas and Water.

2 Q. Please summarize your educational background and
3 professional experience.

4 A. I attended the Pontifical Xaverian University in
5 Bogota, Colombia and received a Bachelor of
6 Science in Civil Engineering in 1986.
7 Thereafter, I continued my education at
8 Universidad del Norte in Barranquilla, Colombia
9 and graduated with a Master of Business
10 Administration degree in 1992. I have
11 accumulated more than 20 years of experience in
12 the field of acoustics and noise control. I
13 owned and operated my own business in Colombia
14 for about 13 years, where I worked as an
15 acoustical consultant and acoustical contractor.
16 I designed and built noise abatement solutions
17 for emergency generators, industrial machinery,
18 HVAC equipment, and interior acoustical designs
19 for indoor spaces. I obtained extensive
20 experience in noise control including noise
21 surveys and computer simulations of aircraft

1 noise for two international airports.
2 After my arrival to the United States, I was
3 employed as a Senior Acoustical Consultant by an
4 acoustical consulting firm in Washington D.C.,
5 from October 2005 until May 2008. There, I
6 analyzed sound surveys and performed computer
7 noise modeling for roadways and highways and
8 designed mitigation measures such as barriers
9 and selected building envelope specifications
10 for environmental noise control. I also
11 designed noise control solutions for mechanical
12 equipment and interior acoustics for indoor
13 spaces for a variety of projects. From May 2008
14 to June 2009, I was employed by an acoustical
15 consulting company in Manhattan and worked for
16 several acoustical and noise control projects
17 including data centers and corporate projects.
18 I joined the Department in November 2013. My
19 duties include reviewing PSL Article VII and
20 Article 10 pre-applications, applications,
21 environmental noise assessments, noise surveys,

1 and mitigation measures. I also review sound
2 collection protocols and witness sound
3 measurements to ensure compliance with
4 Certificate Conditions. I am a full member of
5 the Institute of Noise Control Engineering and
6 an Associate member of the Acoustical Society of
7 America.

8 Q. Mr. Moreno, which proposed facilities have you
9 reviewed under PSL Article VII and Article 10
10 regulations?

11 A. Under Article VII regulations, I have reviewed
12 the applications for the following certified
13 cases: New York Power Authority, Case 13-T-0515;
14 DMP New York, Inc. and Williams Field Services
15 Company LLC, Cases 13-T-0538 and 13-T-0350; PSEG
16 Power New York, Inc., Case 15-F-0040; and
17 Consolidated Edison (Con Edison) Company of New
18 York, Inc., Case 13-T-0586. I am currently
19 assigned to numerous PSL Article 10 proceedings
20 (and some potentially affiliated Article VII
21 filings) regarding wind generating facilities at

1 various stages including the following projects:
2 Cassadaga Wind, LLC, Case 14-F-0490; Lighthouse
3 Wind, LLC, Case 14-F-0485; Baron Winds, LLC,
4 Case 15-F-0122; Bull Run Energy, LLC, Case 15-F-
5 0377; Eight Point Wind, LLC, Case 16-F-0062;
6 Atlantic Wind, LLC, Case 16-F-0267; Canisteo
7 Wind Energy, LLC, Case 16-F-0205; Number Three
8 Wind, LLC, Case 16-F-0328; Heritage Wind, LLC,
9 Case 16-F-0546; Bluestone Wind, LLC, Case 16-F-
10 0559; Alle-Catt Wind Energy, LLC, Case 17-F-
11 0282; Atlantic Wind, LLC, Case 16-F-0713; and
12 High Bridge Wind, LLC, Case 18-F-0262. I am
13 also assigned to multiple PSL Article 10
14 proceedings (and some potentially affiliated
15 Article VII filings) regarding solar generating
16 facilities at various stages including the
17 following projects: Hecate Energy Albany 1, LLC
18 and Hecate Energy Albany 2, LLC, Case 17-F-0617;
19 and Hecate Energy Greene 1 LLC, Hecate Energy
20 Greene 2 LLC, and Hecate Energy Greene County 3
21 LLC, Case 17-F-0619.

1 Q. Mr. Moreno, what is your role in reviewing
2 projects filed under Article VII?

3 A. My duties under Article VII of the PSL include
4 the review of applications as they relate to the
5 noise assessments and avoidance or minimization
6 of environmental noise impacts from electric and
7 gas transmission facilities. My role regarding
8 these facilities consists of reviewing
9 application sections related to noise impact
10 assessments from construction and operation of
11 transmission lines, stations, and substations
12 which includes: pre-construction ambient noise
13 surveys; analysis of existing or potential
14 future prominent tones; noise modeling
15 parameters, assumptions and results; low-
16 frequency noise; indoor and outdoor speech
17 interference; and community complaint potential
18 or annoyance. I also review applicable noise
19 standards and guidelines, local regulations on
20 noise, design goals, noise abatement measures,
21 complaint and resolution plans for noise from

1 construction and operation of transmission
2 lines, stations and substations; proposed post-
3 construction noise evaluations, if any, and
4 compliance for conformance with certificate
5 conditions.

6 Q. Is the Panel sponsoring any exhibits to
7 accompany or support its testimony?

8 A. Yes, as stated previously, the CV of panel
9 member Andrew Davis is provided as
10 Exhibit__(DPS-1). Also, the Panel is sponsoring
11 Exhibit__(DPS-2A), Exhibit__(DPS-2B), and
12 Exhibit__(DPS-2C), which consists of
13 correspondences received from the New York State
14 Office of Parks, Recreation and Historic
15 Preservation regarding cultural resources
16 evaluations provided by the Applicant, and that
17 agency's recommended findings.

18 Q. Please summarize the scope of the Panel's
19 testimony.

20 A. The Panel is presenting DPS Staff's overall
21 review and recommendations on whether the

1 Commission can make the required findings
2 pursuant to Article VII of the PSL necessary to
3 grant a Certificate of Environmental
4 Compatibility and Public Need (Certificate) to
5 construct and operate the South Fork Export
6 Cable (the Facility). More specifically, the
7 Panel is providing DPS Staff's recommendations
8 on whether the Commission can make the required
9 findings pursuant to Article VII of the PSL
10 should the Commission adopt the terms of the
11 Joint Proposal for Settlement, including all
12 appendices (collectively referred to as the
13 "Joint Proposal" or "Settlement Documents"),
14 filed by the Applicant (Certificate Holder) on
15 September 17, 2020 and endorsed by Staff on
16 October 8, 2020.

17 Q. Please briefly describe the Facility.

18 A. On September 14, 2018, the Applicant filed an
19 application for a Certificate of Environmental
20 Compatibility and Public Need to construct,
21 operate, and maintain the South Fork Export

1 Cable, a 138 kilovolt (kV) alternating current
2 electric cable that will connect the South Fork
3 Wind Farm to the existing mainland electric grid
4 in East Hampton, New York. The Facility
5 includes both offshore and onshore segments, as
6 described in more detail in the Settlement
7 Documents.

8 Q. What findings does PSL Article VII require prior
9 to the Commission granting a Certificate?

10 A. In rendering a decision on an application
11 pursuant to PSL Article VII, the Commission may
12 not grant a certificate for the construction or
13 operation of a major utility transmission
14 facility unless it shall find and determine:
15 (a) the basis of the need for the facility;
16 (b) the nature of the probable environmental
17 impact;
18 (c) that the facility represents the minimum
19 adverse environmental impact;
20 (d) that the facility avoids or minimizes to
21 the extent practicable any significant adverse

1 impact on active farming operations that produce
2 crops, livestock and livestock products, as
3 defined in section three hundred one of the
4 agriculture and markets law, considering the
5 state of available technology and the nature and
6 economics of various alternatives, and the
7 ownership and easement rights of the impacted
8 property;

9 (e) that such facility conforms to a long-range
10 plan for expansion of the electric power grid;

11 (f) [applicable to gas transmission lines, not
12 electric transmission facilities];

13 (g) that the location of the facility as
14 proposed conforms to the applicable state and
15 local laws and regulations issued thereunder;
16 all of which shall be binding upon the
17 commission, except that the commission may
18 refuse to apply any local ordinance, law,
19 resolution or other action or any regulation
20 issued thereunder or any local standard or
21 requirement which would be otherwise applicable

1 if it finds that as applied to the proposed
2 facility such is unreasonably restrictive in
3 view of the existing technology, or of factors
4 of cost or economics, or of the needs of
5 consumers whether located inside or outside
6 of such municipality; and,
7 (h) that the facility will serve the public
8 interest, convenience, and necessity.

9 Q. How has the finding of "public need" been
10 reviewed under PSL Article VII?

11 A. The concept of "environmental compatibility and
12 public need" requires that the Commission
13 "protect environmental values, and take into
14 account the total cost to society of such
15 facilities" when making a decision on whether it
16 should grant an Article VII certificate (Chapter
17 272 of the Laws of 1970, Section 1, Legislative
18 Findings). No single aspect of an application
19 can be looked at in a vacuum; rather the
20 Commission must consider the totality of all of
21 the relevant factors in making its determination

1 of environmental compatibility and public need.
2 The relevant factors include, without
3 limitation, the electric system requirements,
4 the cost, the environmental impact, the
5 availability and impact of alternatives,
6 undergrounding considerations, conformance to
7 long-range plans, state and local laws, and the
8 public interest, convenience and necessity. In
9 deciding whether to authorize the construction
10 and operation of the facility, the Commission
11 must determine (among other things, as noted
12 above) whether to make the "minimum adverse
13 environmental impact" and "public interest,
14 convenience and necessity" findings. These
15 findings necessitate the weighing and balancing
16 of adverse environmental impact and public
17 convenience with other considerations, including
18 the state of available technology, the nature
19 and economics of the various alternatives, the
20 basis of public necessity for the facility and
21 other pertinent considerations addressed in the

1 evidentiary record.

2 Q. Please describe DPS Staff's review of the
3 Application and subsequent filings in this case.

4 A. In order to develop our recommendations, DPS
5 Staff reviewed the Application; supplements to
6 the Application, including the response to
7 identified deficiencies, and the Application
8 Update filed by the Applicant on May 15, 2020;
9 responses to discovery requests; and the Joint
10 Proposal, including its numerous appendices.

11 Q. Please describe the components of the Joint
12 Proposal.

13 A. The Joint Proposal includes a description of the
14 proposed Facility, a description of the
15 procedural background of the case, and an
16 enumeration of the terms of the Joint Proposal,
17 which includes the basis of need for the
18 Facility; justification of the proposed Facility
19 location and routing; conditions and limitations
20 on Facility construction and operation to
21 provide for assuring impact avoidance,

1 minimization, and mitigation is achieved by
2 appropriate measures. Further, the Joint
3 Proposal includes several appendices, including:
4 Appendix A - List of Documents in the
5 Evidentiary Record;
6 Appendix B - General Description of the Project;
7 Appendix C - Proposed Commission Findings;
8 Appendix D - Proposed Certificate Conditions;
9 Appendix E - Proposed Environmental Management
10 and Construction Plan (EM&CP) Specifications;
11 Appendix F - Proposed §401 Water Quality
12 Certification;
13 Appendix G - Benthic Sampling Plan;
14 Appendix H - Initial Hazardous Waste and
15 Petroleum Work Plan;
16 Appendix I - Suspended Sediment and Water
17 Quality Monitoring Plan Scope of Study;
18 Appendix J - Noise Control Plan Scope of Work;
19 Appendix K - Invasive Species Control Plan
20 Specifications; and
21 Appendix L - Specifications for Computer Noise

1 Modeling and Tonality Assessment.

2 Q. How were the proposed Certificate Conditions
3 developed?

4 A. Following the Secretary to the Commission's
5 determination that the Application, as
6 supplemented, was compliant with the Application
7 requirements, the Applicant issued a Notice of
8 Settlement in this case in an effort to discuss
9 parties' identified issues, and to explore
10 opportunities for resolution of issues and
11 development of a framework for a potential
12 settlement resolution among all parties.

13 Through a series of meetings, conference calls
14 and other communications, all conducted pursuant
15 to the Commission's Settlement Guidelines,
16 issues and positions were clarified, and draft
17 Certificate Conditions and Appendices were
18 developed, revised, and eventually proposed on
19 the record in this case.

20 Q. Please describe the settlement discussions.

21 A. The settlement discussions included attending

1 settlement meetings and conferences and the
2 review of the Joint Proposal, including the
3 proposed Certificate Conditions and other
4 appendices to the Joint Proposal.

5 Q. May signatory parties to the Settlement
6 Agreement except certain provisions for which
7 consensus agreement could not be achieved?

8 A. Yes. The Settlement Parties may disagree with
9 discrete conditions included in the proposed
10 Certificate Conditions or other portions of the
11 Joint Proposal. Where a party disagrees with a
12 discrete portion of the Joint Proposal, that
13 party will note its respective exceptions.

14 Q. Is DPS Staff a signatory party to the Settlement
15 Agreement?

16 A. Yes, DPS Staff filed a signature in support of
17 the Joint Proposal, without exception, on
18 October 8, 2020.

19 Q. Does DPS Staff believe the Commission can make
20 the required PSL Article VII findings discussed
21 above?

1 A. Yes. DPS Staff recommends that, based on the
2 evidentiary record and the proposed Settlement
3 Documents, the Commission can make findings in
4 all areas without further recommendations or
5 modifications to the proposed Settlement
6 Documents.

7 Q. Please explain why the Panel recommends that the
8 Commission can make the required Article VII
9 findings if it adopts the Joint Proposal,
10 including the proposed Certificate Conditions
11 and other appendices.

12 A. The Joint Proposal, including the proposed
13 Certificate Conditions and other appendices,
14 reflect extensive consultation among the parties
15 to identify conditions and guidance that would
16 avoid, minimize, or mitigate environmental and
17 other adverse impacts of the Facility. These
18 consultations resulted in agreements among
19 certain parties on conditions with respect to
20 several issues, including: suitability of the
21 proposed Facility Site, and avoidance of

1 significant land use impacts; electromagnetic
2 field (EMF) limits and monitoring; marine
3 resource impacts, protected species impacts;
4 traffic impacts; construction and operational
5 noise impacts; visual resource impact
6 minimization; decommissioning requirements;
7 siting and construction protocols to minimize
8 and otherwise mitigate impacts to marine
9 resources and fisheries; conditions for
10 minimizing the extent of site vegetation
11 clearing, requiring protection measures for
12 street trees proximal to the construction area,
13 and plans for minimizing impacts of Facility
14 vegetation management; measures to avoid impacts
15 on and protect disturbance of known historic and
16 archeological (or cultural) resources, and
17 responsive measures in the event of
18 unanticipated discovery of additional
19 archeological sites; details of protective
20 measures for construction impacts on regulated
21 wetlands; contaminated materials handling and

1 dewatering requirements; and offset provisions
2 for impacts on threatened and endangered (T&E)
3 species, if required. In addition, many of the
4 proposed Certificate Conditions are
5 administrative, or standard facility
6 construction conditions, that in the expert
7 opinions of DPS Staff are reasonable for any
8 major electric transmission project. DPS Staff
9 recommends that the Commission can find that the
10 Facility, as proposed in the Application and
11 Supplements, and as refined pursuant to the
12 Joint Proposal, would avoid, minimize, or
13 reasonably offset the potential for the Facility
14 to result in adverse environmental and community
15 impacts, while fulfilling the objective of
16 constructing and operating a 138-kV electric
17 transmission facility to interconnect a proposed
18 offshore wind energy project to the electric
19 grid serving the communities and electric
20 customers of eastern Long Island. Further, the
21 proposed Certificate Conditions are generally

1 consistent with Commission policy and precedent
2 developed through certification proceedings for
3 several electric transmission projects; include
4 specific provisions to address issues and
5 concerns for underground and underwater
6 construction and operation that meet or exceed
7 the conditions and requirements established
8 through certification proceedings for previous
9 underground and underwater projects; and
10 adequately address project-specific concerns.
11 The proposed Certificate Conditions are
12 supported by the record of this proceeding.

13 Q. Does the Panel advise that the Joint Proposal,
14 as proposed, is in the public interest?

15 A. Yes. The Joint Proposal was arrived at fairly,
16 in full compliance with all Commission rules and
17 Settlement Procedures and Guidelines and all
18 parties had an opportunity to participate.

19 After investigation and discussion, Staff
20 was able to understand the respective positions
21 of the parties and believes that the Joint

1 Proposal is a reasonable compromise of those
2 diverse positions. Joint Proposals by their
3 very nature involve compromise to be responsive
4 to diverse interests. As in most Joint
5 Proposals, the individual components are a
6 series of inter-related compromises that do not
7 stand alone. Therefore, the individual
8 components of a settlement must be considered as
9 a package. As a threshold matter, the
10 Commission should consider whether the overall
11 package is in the public interest, provided that
12 the Commission has a basis in the record for
13 making the necessary findings. The Commission's
14 Procedural Guidelines for Settlement established
15 in Case 90-M-0255 Opinion, Order and Resolution
16 Adopting Settlement Procedures and Guidelines
17 (issued March 24, 1992), Appendix B, p. 8, set
18 forth the following criteria for deciding
19 whether a settlement is in the public interest:
20 a. A desirable settlement should strive for a
21 balance among (1) protection of the ratepayers,

1 (2) fairness to investors, and (3) the long term
2 viability of the utility; should be consistent
3 with sound environmental, social and economic
4 policies of the Agency and the State; and should
5 produce results that were within the range of
6 reasonable results that would likely have arisen
7 from a Commission decision in a litigated
8 proceeding.

9 b. In judging a settlement, the Commission
10 shall give weight to the fact that a settlement
11 reflects the agreement by normally adversarial
12 parties.

13 Q. Please specifically describe how the Settlement
14 Documents could allow the Commission to
15 determine the Project satisfies the enumerated
16 findings under PSL Article VII?

17 A. Our recommendation is that the Commission can
18 make a finding that the overall package of the
19 Joint Proposal, which recommends authorization
20 of the construction and operation of the
21 Facility subject to numerous conditions

1 including specified safeguards to protect the
2 natural and human environment and other public
3 service infrastructure is in the public
4 interest. The key factors that justify our
5 recommendation are as follows:

- 6 1. the Facility route minimizes adverse
7 environmental impacts by avoiding sensitive
8 areas to the maximum extent practicable;
- 9 2. the Facility will provide delivery of power
10 from the South Fork Wind Farm;
- 11 3. the upland portion of the cable components
12 of the Facility cross Wainscott Beach in an
13 underground configuration, and otherwise will be
14 located underground within existing roadways and
15 railroad ROW; the point of interconnection is
16 within a property zoned for industrial use and
17 supporting existing electric utility facilities;
18 thus land use impacts of the transmission
19 facility are minimized to the maximum extent
20 practicable;
- 21 4. the cable facility is located underground

1 and underwater, and while the predominantly
2 above-ground interconnection substation
3 facilities are to be co-located with other
4 existing equipment, they will be significantly
5 screened from areas of public view by existing
6 vegetation thus avoiding any significant visual
7 impacts;

8 5. the Joint Proposal includes responsible
9 provisions for managing Facility construction
10 and operational impacts, including measures for
11 noise emissions, and other measures for working
12 in proximity to residential areas and for
13 protecting the natural and human environment
14 from significant adverse impacts;

15 6. the Joint Proposal embodies the agreement
16 of normally adversarial parties to a reasonable
17 result; and,

18 7. the Joint Proposal protects ratepayers by
19 relying on private investments for financing.

20 Need for the Facility

21 Q. Has the Applicant demonstrated in this

1 proceeding a basis of need for the proposed
2 Facility?

3 A. Yes. The Applicant executed a Power Purchase
4 Agreement (PPA) with the Long Island Power
5 Authority (LIPA) in 2017. The PPA resulted from
6 a competitive bidding process initiated by LIPA
7 in 2015 to address a need for cost-effective and
8 reliable new sources of power generation in
9 response to increasing power supply needs for
10 the South Fork of Long Island in Suffolk County.
11 The proposed Facility is needed to transmit
12 electricity from the proposed South Fork Wind
13 Farm to the point of interconnection, in order
14 for the Applicant to fulfill its obligations
15 under the PPA.

16 Q. Does DPS Staff recommend that the Commission
17 find that the Facility provides consistency with
18 energy policies and long-range objectives
19 contained in the most recent State energy plan?

20 A. Yes. The Facility would provide benefits
21 consistent with the State's policies regarding

1 renewable energy generation, including offshore
2 wind energy generation. It would also help the
3 State advance its efforts to meet regional
4 greenhouse gas emissions goals.

5 Q. What is New York's current policy on renewable
6 energy?

7 A. The Climate Leadership and Community Protection
8 Act (CLCPA), signed into law by Governor Cuomo
9 on June 18, 2019, establishes a clean energy
10 mandate of 70 percent renewable electricity by
11 2030 and 100 percent renewable electricity by
12 2040. The CLCPA further mandates development or
13 procurement of nine gigawatts of offshore wind
14 electric generation by 2035. Prior to the
15 CLCPA, The Energy to Lead, 2015 New York State
16 Energy Plan (State Energy Plan), stated that 50
17 percent of electricity consumed in the State
18 should be generated by renewable sources by
19 2030.

20 Q. Are there any State-specific policies, plans or
21 programs currently enacted to effectuate the

1 State Energy Plan goal of 50 percent consumption
2 from renewable energy by 2030?

3 A. Yes. In Case 15-E-0302, Proceeding on Motion of
4 the Commission to Implement a Large-Scale
5 Renewable Program and a Clean Energy Standard,
6 Order Adopting a Clean Energy Standard (issued
7 August 1, 2016), the Commission established a
8 Clean Energy Standard (CES) designed to
9 encourage consumer-initiated clean energy
10 investments; supports new renewable generation
11 resources through regular solicitation of
12 renewable energy credits (RECs) and obligates
13 load serving entities to provide retail
14 customers with increasing amounts of electricity
15 from new renewable generation sources; supports
16 the maintenance of certain at-risk facilities;
17 maximizes the value of potential new offshore
18 wind resources; and supports the preservation of
19 existing at-risk nuclear zero-emissions
20 attributes to serve retail customers.

21 Q. Does the Facility, as proposed by the Applicant,

1 contribute to the mandates and goals of the
2 CLCPA and the Renewable Energy Standard?

3 A. Yes. As proposed, the Facility would deliver up
4 to 132 megawatts (MW) of renewable energy from a
5 proposed offshore wind generating facility to
6 the existing East Hampton substation, thus
7 contributing to both the renewable energy and
8 offshore wind electric generating mandates of
9 the CLCPA and the clean energy goals and
10 offshore wind energy initiative included in the
11 2015 State Energy Plan.

12 Q. Is New York a member of any regional cap and
13 trade system aimed at reducing greenhouse gas
14 emissions?

15 A. Yes, New York is a member of the Regional
16 Greenhouse Gas Initiative (RGGI) which is a
17 regional marketplace that limits CO₂ emissions
18 through a cap and trade program.

19 Q. Will the Facility help the State of New York
20 contribute to a regional marketplace for
21 greenhouse gas emissions reductions?

1 A. Yes. The direct benefits of CO₂ emissions
2 reductions are realized through the broader
3 regional marketplace that New York State
4 participates in through RGGI.

5 Q. Will the Facility result in a reduction of
6 greenhouse gas emissions?

7 A. Yes, according the Exhibit 6 of the Application,
8 PSEG Long Island estimates that the Facility
9 will result in a reduction of more than 140
10 kilotons of CO₂ emissions from LIPA's energy grid
11 within the first five years of operation
12 (Exhibit 6, pgs. 6-3 to 6-4).

13 Environmental Impacts Avoidance, Minimization, and
14 Mitigation

15 Q. Does DPS Staff recommend that the Commission can
16 make a finding that the adverse environmental
17 effects of the Facility's construction and
18 operation are minimized or avoided to the
19 maximum extent practicable?

20 A. Yes. The Commission can find that the adverse
21 environmental effects of construction and

1 operation of the Facility are minimized or
2 avoided to the maximum extent practicable,
3 subject to the adoption of the refinements and
4 conditions presented in the Joint Proposal,
5 including the proposed Certificate Conditions,
6 as necessary to minimize the environmental and
7 other adverse impacts of the Facility. As
8 initially proposed by the Applicant, DPS Staff's
9 opinion was that the Commission could not make
10 the findings that the Facility minimizes or
11 avoids, to the maximum extent practicable,
12 adverse environmental impacts. Significant
13 conditions and controls would have been
14 appropriate to support such findings. However,
15 with the Facility refinements and the design,
16 performance, and mitigation measures included in
17 the Joint Proposal which, among other things,
18 propose measures to avoid, minimize or mitigate
19 impacts to: onshore and offshore land uses,
20 including adjoining residential properties;
21 water resources and geology; wildlife; visual,

1 archeological and cultural resources; and
2 potential noise receptors, DPS Staff recommends
3 that the Commission can make the required
4 findings. The Joint Proposal also includes
5 specific requirements for the filing, review,
6 and approval of the Environmental Management and
7 Construction Plan (EM&CP), including: clearing
8 and grading plans; final construction plans;
9 traffic control plans; access road designs;
10 water quality monitoring; and environmental
11 monitoring which will ensure that the Facility
12 is constructed and operated in a safe and
13 responsible manner.

14 Q. Please explain further how the Applicant has
15 avoided and minimized impacts to archeological
16 resources.

17 A. Archeological resource evaluations were
18 conducted by the Applicant, as described in the
19 Application in Exhibit 4. Those studies were
20 conducted pursuant to recommendations and
21 standard procedures specified by the OPRHP

1 Division for Historic Preservation (Division).
2 The Application and evidentiary record do not
3 provide indications of the Division's
4 conclusions following its review of the
5 Applicant's reports. DPS recommends that the
6 following documents indicating the Division's
7 conclusions be added to the record:
8 Exhibit__(DPS-2A,-2B and -2C): this
9 correspondence reflects the OPRHP Division for
10 Historic Preservation's review pursuant to the
11 National Historic Preservation Law (NHPL) §106
12 for the underwater cable (Exhibit__DPS-2A) and
13 upland cable route analysis (Exhibit__DPS-2B).
14 And Exhibit__(DPS-2C) provides a sign-off for
15 the Historic Architectural Survey including
16 buildings within the area studied for visibility
17 of the above-ground substation and
18 interconnection. The federal §106 review is
19 part of the federal licensing proceeding being
20 conducted by the US Dept. of Interior Bureau of
21 Offshore Energy Management (BOEM). On advice of

1 Counsel, the Panel acknowledges that the federal
2 agency §106 review supersedes the requirements
3 for review pursuant to NYS Parks, Recreation and
4 Historic Preservation §14.09. DPS recommends
5 consideration of the conclusions by the Division
6 as evidence that Archeological and Historic
7 Resources and potential impacts of the Facility
8 have been considered, and appropriate measures
9 for avoiding or minimizing impacts on these
10 resources have been assured by the responsible
11 actions of the Applicant.

12 Q. Is the proposed Facility in conformance with the
13 Coastal Policy provisions applicable to NYS
14 agency review for consideration of actions
15 pursuant to Executive Regulations at 19 NYCRR
16 Part 600?

17 A. The Application includes, at Appendix L, a
18 review of State Coastal Area Policy provisions
19 for the Facility site, which is generally
20 located within the designated NYS Coastal Area;
21 as well as a review of the provisions of the

1 Town of East Hampton Local Waterfront
2 Revitalization Plan (LWRP), as applicable to the
3 site. One notable aspect of the East Hampton
4 LWRP is the designation of many areas and sub-
5 areas as Scenic Area of Statewide Significance
6 (SASS); and others as Scenic Areas of Local
7 Significance (SALS). The Facility's proposed
8 landfall and onshore cable route and surrounding
9 area are included in the LWRP generally as
10 within Reach 11; are located within the Beach
11 Lane-Wainscott SASS sub-unit. The Facility
12 design is for underground installation of
13 conduits, cables and vaults for cable splicing,
14 thus avoiding any significant visibility of the
15 Facility following construction. As detailed in
16 the Application assessment of substation and
17 interconnection visibility, there will be
18 limited off-site visibility and no significant
19 adverse visual effects of the above-ground
20 substation components. The proposed Settlement
21 Documents include recommended Certificate

1 Conditions and design requirements for
2 minimizing or avoiding off-site substation
3 lighting impacts, further assuring minimization
4 of affecting the identified scenic qualities
5 considered in the SASS (and SALS). In addition,
6 measures for minimizing tree clearing and for
7 street tree protection conform with general SASS
8 and LWRP recommendations for minimizing visual
9 impacts of development actions within the
10 coastal area. The Commission can find that the
11 Facility generally conforms to the requirements
12 of the East Hampton LWRP and the benefits the
13 Facility will provide would offset any potential
14 policy inconsistency.

15 Q. Please explain further how the Applicant has
16 avoided and minimized impacts to water quality
17 for the offshore cable installation.

18 A. The Applicant proposes to install the offshore
19 cable using one, or a combination of, the
20 following methods: mechanical cutter, mechanical
21 plow (which may include a jetting system), jet

1 sled, jet trencher and/or controlled flow
2 excavation. Each of these types of installation
3 methods is designed to reduce the amount of
4 sediment disruption and resuspension as compared
5 to traditional open dredging methods. If jet
6 trenching technology is used, the Applicant will
7 conduct jet trenching trials prior to cable
8 installation in order to identify operational
9 controls necessary to ensure compliance with the
10 turbidity and suspended sediment threshold
11 limits specified in the proposed Certificate
12 Conditions. The proposed Certificate Conditions
13 will also require the Applicant to implement
14 real-time water quality monitoring during all
15 in-water activities that disrupt the sediment,
16 including cable installation and horizontal
17 directional drilling (HDD) exit pit excavation.
18 The proposed requirements for water quality
19 monitoring and turbidity and suspended sediment
20 threshold limits adhere to applicable NYSDEC
21 water quality requirements and guidance, and are

1 generally consistent with corresponding
2 conditions and requirements for other underwater
3 transmission facilities previously approved by
4 the Commission.

5 It should also be noted that the offshore cable
6 route has been located in Class A sediment. As
7 defined in the NYSDEC Division of Water
8 Technical and Operational Guidance Series 5.1.9
9 (November 2004), Class A sediment contains no
10 appreciable chemical contamination and no
11 toxicity to aquatic organisms. Consequently,
12 resuspension of contaminated sediments is not
13 anticipated during construction activities for
14 the offshore cable installation.

15 Q. Please explain further how the Applicant has
16 avoided and minimized impacts to wetlands and
17 streams.

18 A. The proposed upland portion of the Facility,
19 including the interconnection components, do not
20 cross any National Wetlands Inventory (NWI)
21 wetlands or NYSDEC freshwater wetlands or

1 regulated 100-foot adjacent areas to those
2 NYSDEC freshwater wetlands. Although one NYSDEC
3 littoral zone tidal wetland is crossed by the
4 proposed sea-to-shore transition corridor, the
5 crossing will be performed via horizontal
6 directional drilling. Consequently, no impacts
7 to the NYSDEC tidal wetlands are anticipated
8 during construction. The proposed Facility is
9 adjacent to two Town-regulated freshwater
10 wetlands. However, as proposed, the route does
11 not cross either wetland. In order to minimize
12 the risks of potential impacts to nearby
13 wetlands, the proposed Certificate Conditions
14 require the Applicant to adhere to setbacks of
15 300 feet for tidal wetlands and 100 feet for
16 freshwater wetlands, for certain activities, in
17 order to minimize the potential for discharges.
18 Further, the proposed Certificate Conditions
19 require the Applicant to create a Wetland Impact
20 Minimization and Mitigation Plan and delineate
21 the boundary of any regulated freshwater and

1 tidal wetlands prior to construction.

2 According to the Application, no mapped
3 NYSDEC-protected streams are crossed by the
4 proposed Facility corridor and interconnection
5 site.

6 Q. Does the Joint Proposal include provisions to
7 avoid, minimize, and mitigate impacts to T&E
8 species?

9 A. Yes. In order to minimize potential impacts to
10 Atlantic Sturgeon, the terms of the Joint
11 Proposal prohibit in-water work during the
12 period May 16 to June 30 and September 1 to
13 October 31. The Joint Proposal would further
14 limit in-water work during the periods May 1 to
15 May 15 and November 1 to November 15 to limited
16 seabed disturbing work, such as diver clearance
17 and maintenance of the HDD exit pit and backfill
18 of the HDD exit pit. If construction sequencing
19 requires the Applicant to backfill the HDD exit
20 pit between May 1 and May 15 or November 1 and
21 November 15, the Applicant would be required to

1 abide by an Atlantic Sturgeon Monitoring and
2 Mitigation Plan to be included in the EM&CP.
3 The Atlantic Sturgeon Monitoring and Mitigation
4 Plan must comply with the requirements of 6
5 NYCRR Part 182, incidental take permitting.
6 Further, in order to minimize the potential for
7 in-water work to impact T&E marine species,
8 including sea turtles and the North Atlantic
9 Right Whale, the proposed Certificate Conditions
10 require the Applicant to comply with BOEM and
11 National Oceanic and Atmospheric Administration
12 (NOAA) requirements for noise mitigation, and
13 mitigation, monitoring, and reporting
14 requirements for protected species as detailed
15 in the federal Construction and Operations Plan
16 (COP) approval and Incidental Take Authorization
17 issued for this Facility. Any sightings of
18 North Atlantic Right whales must be reported to
19 NOAA as soon as possible and an on-site
20 environmental monitor with stop work authority
21 would be required during in-water activities to

1 minimize any potential harm to protected
2 species.

3 Q. Does the Joint Proposal include provisions for
4 protection of upland and avian T&E species?

5 A. Yes. In order to avoid deterring or otherwise
6 impacting nesting or migrating shorebirds,
7 including least tern and piping plover,
8 construction and maintenance activities would be
9 prohibited within 500 feet of the southern edge
10 of the beach/pavement boundary between April 1
11 and November 1. The proposed Certificate
12 Conditions would further limit tree clearing
13 activities at the South Fork Export Cable (SFEC)
14 Interconnection Facility to occur between
15 December 1 and February 28, in order to avoid
16 impacts to Northern Long-Eared Bats (NLEB). The
17 Applicant would be required to perform roosting
18 tree surveys in accordance with an NLEB
19 Monitoring and Impact Minimization Plan prior to
20 any proposed clearing activities outside of the
21 December 1 through February 28 window. A

1 Roosting Tree Survey Plan would be developed in
2 accordance with the requirements of proposed
3 Certificate Condition 72(c) for the SFEC-
4 Interconnection Facility site and SFEC-Onshore
5 route, and would be included as part of the
6 EM&CP.

7 Q. Does DPS Staff recommend that the Commission can
8 make a finding that the Applicant has avoided,
9 offset, or minimized the impacts caused by the
10 Facility upon the local community to the maximum
11 extent practicable using verifiable measures?

12 A. Yes. DPS Staff asserts that, as originally
13 proposed, the Facility would not avoid,
14 minimize, or provide offsets for impacts on the
15 environment or the community to the maximum
16 extent practicable. However, with the Joint
17 Proposal, including the proposed Certificate
18 Conditions, DPS Staff recommends that the
19 Commission can make the required findings.
20 Measures for construction schedule, roadway
21 traffic and construction parking controls,

1 minimization of vegetation removal, pedestrian
2 access to the beachfront, lighting and noise
3 controls, access to public safety and site
4 restoration, are all included in the terms of
5 the Joint Proposal that, if adopted, provide
6 responsible and appropriate control and
7 performance measures that provide the basis for
8 the Commission finding that impacts on the
9 community have been avoided or minimized to the
10 extent practicable.

11 Q. Does the Panel recommend that the Commission can
12 find that the Applicant has minimized the impact
13 to the local community from noise generated by
14 the Facility?

15 A. Yes. DPS Staff believes that the Commission can
16 find that the potential adverse environmental
17 noise impacts from operation of the Facility
18 have been minimized with the design presented in
19 the Application provided the Commission adopts
20 the proposed Certificate Conditions on noise and
21 the Appendixes J and L (collectively, the Noise

1 Package), contained in the Joint Proposal filed
2 by the Applicant.

3 Q. What are the anticipated sound impacts from the
4 Facility as designed and as presented in the
5 Application?

6 A. The Application shows that noise sources from
7 the substation, as designed, will produce a
8 maximum sound level of about 35 dBA at non-
9 participating residences and about 37 dBA at
10 boundary lines and portions of non-participating
11 lands.

12 Q. What is the scope of the proposed Certificate
13 Conditions concerning noise for the Facility?

14 A. The signatory parties stipulated to proposed
15 Certificate Conditions that contain noise limits
16 for non-participating residences and portions of
17 lands that reasonably limit impacts from noise.
18 Also, Appendix L contains specific provisions
19 about how the final computer noise modeling and
20 tonality assessment will be presented. The
21 proposed Noise Package will ensure that adverse

1 environmental effects from noise will be
2 minimized to the maximum extent practicable.

3 Q. Do the proposed Certificate Conditions and
4 Appendix L include a post-construction sound
5 test?

6 A. No. Based on the estimated sound impacts from
7 the design and the Noise Package agreed to by
8 the Applicant and signatory parties, a post-
9 construction sound test at the most impacted
10 non-participating residences is not required.
11 Instead, the Applicant has agreed to present
12 final design and computer noise modeling 60 days
13 prior to the start of construction to
14 demonstrate that the final design, including any
15 changes to the design presented in the
16 Application, complies with all proposed
17 Certificate Conditions on noise. The Applicant
18 has agreed to perform the modeling and
19 calculations by following the provisions
20 included in Appendix L.

21 Q. What does DPS Staff recommend on noise impacts?

1 A. DPS Staff recommends that the Commission can
2 find that adverse environmental noise effects
3 from construction and operation of the
4 substation are avoided or minimized to the
5 maximum extent practicable if it adopts proposed
6 Certificate Conditions 40 and 41 and Appendices
7 J and L.

8 Q. Does the panel recommend that the Commission can
9 find that the Applicant has minimized the impact
10 to the local community from EMF by the Facility?

11 A. Yes. As part of the proposed Certificate
12 Condition 31, the Applicant would be required to
13 ensure that the design, engineering,
14 construction, and operation of the Facility will
15 comply with the Commission's guidelines and
16 standards regarding EMF.

17 Q. How will the Facility be decommissioned?

18 A. As part of proposed Certificate Condition 193,
19 the Applicant has committed to providing a
20 Decommissioning Plan in the EM&CP, and providing
21 financial assurance in the form of letters of

1 credit to be held by the Town and Trustees for
2 the portion of the Facility located in the Town
3 of East Hampton, and letters of credit to be
4 held by the New York State Office of General
5 Services (NYSOGS) or the Commission for the
6 portion of the Facility located in New York
7 State waters.

8 Q. Please explain the Decommissioning Plan further.

9 A. The Decommissioning Plan will require an
10 estimate based on final Facility design. The
11 proposed Certificate Conditions prohibit the
12 inclusion of salvage value of Facility
13 components as decommissioning cost offsets in
14 this estimate. Furthermore, this estimate will
15 be updated by a qualified independent engineer
16 licensed to practice engineering in the State of
17 New York to reflect inflation and any other
18 changes after one year of Facility operation and
19 every fifth year thereafter. Such estimates
20 will be submitted to the Secretary. As part of
21 that filing, the Applicant must file proof that

1 letters of credit have been obtained based on
2 the final decommissioning and site restoration
3 and updated estimates along with copies of
4 agreements between the Applicant and the Town,
5 Trustees, NYSOGS, and the Commission,
6 establishing a right for the Town, Trustees,
7 NYSOGS, and/or the Commission to draw on the
8 letters of credit.

9 State and Local Laws

10 Q. Will the Facility be constructed and operated in
11 conformance with applicable New York State laws
12 and regulatory requirements?

13 A. Yes. The Facility will be constructed and
14 operated in conformance with the recommended
15 Certificate Conditions and the terms of the
16 Joint Proposal, and the analysis represented in
17 the proposed record and except for the limited
18 waivers noted below is expected to comply with
19 State and local laws.

20 Q. Does DPS Staff recommend that the Commission can
21 make a finding that the Facility is designed to

1 operate in compliance with applicable State laws
2 and regulations?

3 A. Yes, assuming that the final design and
4 construction of the Facility will be conducted
5 in accordance with the recommendations and
6 requirements in the Joint Proposal and the
7 provisions of the specifications included in the
8 various attachments and appendices thereof, the
9 Facility is expected to conform to requirements
10 of New York State laws and regulations,
11 including the provisions of PSL Article VII and
12 implementing regulations; provisions of
13 Environmental Conservation Law and regulations
14 regarding water quality, NYS-regulated wetlands,
15 Rare, Threatened and Endangered Species, and
16 handling and disposal of contaminated materials;
17 and NYSDOT requirements for work and occupancy
18 of State Highway Right-of-Way; and, to the
19 extent applicable, comport with Parks,
20 Recreation and Historic Preservation Law §14.09,
21 to avoid or minimize adverse effects on cultural

1 resources, including archeological resources and
2 historic properties; and DOS Coastal policy
3 considerations as provided in 19 NYCRR Part 600.
4 In addition, the following must be demonstrated
5 in the final Facility design, construction plans
6 and compliance filings: protection of
7 archeological resources; conformance with water
8 quality standards and permitting standards for
9 State-protected water bodies; an approved
10 Stormwater Pollution Prevention Plan to
11 demonstrate conformance with State Pollution
12 Discharge Elimination Standards; and if
13 required, compliance with provisions addressing
14 incidental take of a threatened species at 6
15 NYCRR Part 182 and development of a final net
16 conservation benefit plan.

17 Q. Does DPS Staff recommend that the Commission can
18 make a finding that the Facility is designed to
19 operate in compliance with applicable
20 substantive provisions of local laws and
21 regulations?

1 A. Yes, except with respect to those specific
2 provisions applicable to construction of the
3 Facility that are recommended to be waived, as
4 detailed in the Joint Proposal (see Joint
5 Proposal paragraphs 157 through 159; and
6 recommended Certificate Condition 12). Notably,
7 the Application Exhibit 7 requested that
8 additional provisions of local measures be
9 waived, however the Settlement Parties worked to
10 refine the extent of waivers needed to
11 accommodate construction activities while
12 addressing public safety and convenience
13 interests. Facility operation and maintenance
14 is expected to comply with local laws and
15 regulations without exception.

16 Q. Is there anything else the Commission should
17 consider in rendering its determination?

18 A. Yes, any grant of a PSL Article VII Certificate
19 by the Commission should include delegation of
20 inspection and stop-work authority to
21 appropriate DPS Staff to enforce the

1 environmental, engineering, public safety, and
2 public interest requirements in the proposed
3 Certificate Conditions.

4 Q. Is there anything further?

5 A. Yes. Through information provided in discovery,
6 and through the course of settlement
7 negotiations resulting in the Settlement
8 Documents, DPS Staff is satisfied that all of
9 its potential issues that it initially believed
10 would require litigation have been resolved.

11 Q. Does this conclude the Panel's testimony at this
12 time?

13 A. Yes.