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May 13, 2022

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Sent via Electronic Mail Only
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Re: Case 18-T-0604 - Application of Deepwater Wind South Fork, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of Approximately 3.5 Miles (3.1 Nautical Miles) (138 kilovolt [kV]) of Submarine Export Cable from the New York State Territorial Waters Boundary to the South Shore of the Town of East Hampton in Suffolk County and Approximately 4.1 Miles (138 kV) of Terrestrial Export Cable from the South Shore of the Town of East Hampton to an Interconnection Facility with an Interconnection Cable Connecting to the Existing East Hampton Substation, in the Town of East Hampton in Suffolk County.

Dear Mr. Singer and Ms. Tedesco:

Please correct the materially false statements in “RESPONSE OF SOUTH FORK WIND, LLC TO COMMENTS RECEIVED ON CHANGE REQUEST 4 TO THE SOUTH FORK EXPORT CABLE ENVIRONMENTAL MANAGEMENT AND CONSTRUCTION PLAN dated May 3, 2022.

On behalf of South Fork Wind, LLC (“South Fork Wind” or “SFW”),¹ you made factually inaccurate and misleading comments about me with reckless disregard for the truth.

The Town of East Hampton is circulating South Fork Wind’s untruthful comments about me and defaming my good name. Among those circulating SFW’s false statements is Town Supervisor Peter Van Scoyoc. It is not the first time Peter Van Scoyoc has used his office to spread misinformation and untruthful statements to protect Deepwater Wind.²

¹ South Fork Wind, LLC. (formerly Deepwater Wind South Fork, LLC.)

² On August 3, 2020, Peter Van Scoyoc issued “Statement from the office of East Hampton Town Supervisor Peter Van” on official Town of East Hampton letterhead. The official press release contained false information and untruthful accusations (see [Statement from the office of East Hampton Town Supervisor, click here](#)).

I have a right to safeguard my reputation and good name, and I will take legal action to enforce that right against South Fork Wind for making unsubstantiated, false, and damaging allegations if necessary.

South Fork Wind's harmful comments are made under the guise of regulatory filings, thereby giving them a false veneer of authority and credibility, adding to the weight attributable to your standing as members of the legal profession.

Your comments impugn my good character. Accordingly, please correct the false allegations South Fork Wind made against me in its response to my comments on Change Request No. 4 and cease and desist immediately from making further comments about me that are plainly untrue.

SFW Comment #01:

South Fork Wind (falsely) alleges that I made the following statement: "SFW did not have permission to close portions of Montauk Highway for its construction activities on April 12 and 13 [emphasis added]." ³ I did *not* make such a statement.

South Fork Wind falsely attributed *its* misquoted statement, then alleged (again falsely) that "[t]his is another of Mr. Kinsella's patently false statements."

I made the following statement, which I stand by and repeat herein as true –

On the nights of April 12 and 13, SFW closed Montauk Highway to traffic in both directions without approval from NYSDOT and without authority [emphasis added].

On April 13, I received an email signed by "The South Fork Wind Team" (from Megan A. Aconfora). It reads: "[...] the Highway Work Plan included in the EM&CP approved by the NYPSC states that a detour scheme was developed with plans for a full night closure on Montauk Highway to expedite construction times, but for this to happen, the developer needs to coordinate and gain approval of the NYSDOT. We received that approval [emphasis added]."

As it turned out, SFW did *not* have approval from NYSDOT (see the [narrowly-limited permit, click here](#)).⁴

³ See [Response of South Fork Wind, LLC to Comments Received on Change Request 4 to the South Fork Export Cable Environmental Management Plan](#) (at p. 6, penultimate paragraph) ([PSC DMM 345 click here](#))

⁴ See [Letter in Opposition by Kinsella to Petition of South Fork Wind for Approval of EM&CP Change Request No. 4, dated April 25, 2022](#) (at p. 12, last paragraph) ([PSC DMM 344 click here](#))

South Fork Wind's response to my Letter of Opposition cited the same "Highway Work Permit #2021-10-94508" but did *not* provide the Commission with a copy. A link to the permit is [available here](#). The permit is also in my Letter of Opposition of April 25 filed with the Commission.

The permit shows that South Fork Wind did *not* have authority for a "full night closure of Montauk Highway" in accordance with the Highway Work Plan approved by the Commission.⁵ Regardless, South Fork Wind shut down Montauk Highway completely in violation of its certificate conditions.

South Fork Wind's claim that I provided "false statements" is demonstrable false and defamatory. Furthermore, the East Hampton Town Board is circulating South Fork Wind's false claims in an effort to play the man and not the ball.

Accordingly, please correct South Fork Wind's materially false statements that it filed with the Public Service Commission.

SFW Comment #02:

"The wetland to which Mr. Kinsella is referring is shown on Appendix G to his comments. That wetland is not an NYSDEC-mapped wetland (and is not EH-27) but is a National Wetlands Inventory ("NWI") wetland. EH-27 is 450 feet away from the Proposed Laydown Areas."⁶

Response #02: South Fork Wind's claim is demonstrable false and defamatory. I did *not* direct the reader to "Appendix G" in reference to the "NYSDEC mapped wetland EH-27" but to an area the "USEPA classifies [as] the same wetland as a '3.78 acre Freshwater Forested/Shrub Wetland habitat' (classified PFO4E)."⁷

South Fork Wind then repeats its (false) accusation to support its untruthful claim that the NYSDEC-mapped wetland "EH-27 is 450 feet away from the Proposed Laydown Areas."⁸ The accusation and the groundless claim by South Fork Wind are demonstrable false.

The NYSDEC mapped wetland with ID EH-27 *is* only 150 feet southwest of SFW's proposed Laydown Area.

⁵ See EM&CP, Appendix X – Highway Work Plan (at p. 8, third paragraph) ([PSC DMM 301, click here](#)).

⁶ See Response of South Fork Wind, *Supra* (at p. 7, first paragraph) ([PSC DMM 345 click here](#))

⁷ See Letter in Opposition by Kinsella, *Supra* (at p. 13, penultimate paragraph) ([PSC DMM 344 click here](#))

⁸ See Response of South Fork Wind, *Supra* (at p. 7, first paragraph) ([PSC DMM 345 click here](#))

My Letter of Opposition states the following, which I stand by and repeat herein as accurate (please see Exhibit A, attached) –

Change Request No. 4 states that “NYSDEC-mapped wetland EH-27 is approximately 450 feet southwest of the site.” According to the NYSDEC (GIS Viewer), the NYSDEC mapped wetland with ID EH-27 is only 150 feet southwest of SFW’s proposed area and overlaps all three tax map parcels.⁹

Accordingly, please correct South Fork Wind’s materially false statements that it filed with the Public Service Commission.

SFW Comment #03:

“As it will not store or treat soil or groundwater at the Proposed Laydown Areas, SFW will not be transporting any soil or groundwater, contaminated or otherwise, to the sites.”¹⁰

Response #03: Change Request No. 4 contains no prohibition against SFW using the “Laydown Areas” for handling, transferring, or anything else to do with soil and groundwater other than storing and treating it. It does *not* necessarily follow that just because SFW will not “store or treat soil or groundwater,” it will not also carry out other activities such as handling or transferring soil and groundwater at the sites.

SFW Comment #04:

“Mr. Kinsella’s assertion that there will be up to 60 trucks per day traveling to and from the Proposed Laydown Areas carrying excavated material is untrue and unsupported by the language of the EM&CP Change Request.”¹¹

Response #04: The “up to 60 trucks per day” comment *is* supported by the language of Change Request No. 4. The reference to the language was provided to SFW at the time. For your convenience, here it is (again): “Sixty (60) trucks, multiplied by 4,000 gallons of groundwater for a “large vacuum truck” as defined in EM&CP, Appendix G – Dewatering Plan, September 2021 (at p. 9) ([PSC DMM 306 click here](#)) is equal to 240,000 gallons of waster [*sic*][wastewater] per day.”¹² The example of “up to 60 trucks per day” illustrates that South Fork Wind has failed to account for tons of excavated material containing (undisclosed) levels of contamination. South Fork Wind attempts to disguise the large volume of trucks by claiming they are for transporting cables and workers with their lunch boxes.

⁹ See Letter in Opposition by Kinsella, *Supra* (at p. 12, last paragraph) ([PSC DMM 344 click here](#))

¹⁰ See Response of South Fork Wind, *Supra* (at p. 3, second paragraph) ([PSC DMM 345 click here](#))

¹¹ See Response of South Fork Wind, *Supra* (at p. 3, third paragraph) ([PSC DMM 345 click here](#))

¹² See Letter in Opposition by Kinsella, *Supra* (at p. 11, footnote 20) ([PSC DMM 344 click here](#))

SFW Comment #05:

“SFW is not seeking approval to bring excavated material or groundwater from any part of the Project (the South Fork Export Cable (“SFEC”) route or SFEC-Interconnection Facility) to the Proposed Laydown Area for any purpose. As such, there is no risk of discharge into Georgica Pond.”¹³

Response #05: South Fork Wind’s Change Request No. 4 does *not* prohibit bringing “excavated material or groundwater from any part of the Project [...] to the Proposed Laydown Area for any purpose.” South Fork Wind only says that it will *not* “stockpile” soil or perform “dewatering storage and treatment activities” at the laydown areas. South Fork Wind does *not* rule out using the proposed Laydown Area for handling, transferring, or disposing of groundwater or soil.

Such prohibitions are *not* contained in South Fork Wind’s Change Request No. 4.

South Fork Wind’s (false) claim that “there is no risk of discharge into Georgica Pond” is untrue. The South Fork Wind’s Final Environmental Impact Statement reads: “Onshore construction activities may lead to [...] soil contamination due to leaks or spills from construction equipment.”¹⁴ The Bureau of Ocean Energy Management’s Record of Decision for South Fork Wind reads: “Negligible to moderate impacts on onshore surface water [...] quality from erosion, [...], discharges, and inadvertent spills or releases.”¹⁵ The findings contradict South Fork Wind’s (false) claim that “there is no risk of discharge into Georgica Pond [emphasis added].”

Also, there is *no* secondary method of containment for the proposed Laydown Area immediately upgradient from Georgica Pond, only a vaguely unspecific reference to “erosion control measures [...] to prevent disturbance of adjacent freshwater wetlands either by machinery or storm water run-off.” South Fork Wind’s plans are irresponsible and reckless.

It would only take one contractor to spill (accidentally) a frac tank containing 22,000 gallons of water from dewatering activities with (undisclosed) levels of PFOS or PFOA contamination for that release to cause irreparable harm to the sole-source aquifer and Georgica Pond.

South Fork Wind’s claim that “there is no risk of discharge into Georgica Pond” is demonstrably false. Please correct the inaccurate information.

¹³ See Response of South Fork Wind, *Supra* (at p. 3, last paragraph) ([PSC DMM 345 click here](#))

¹⁴ See Bureau of Ocean Energy Management (“BOEM”), South Fork Wind Farm and South Fork Export Cable Project Final Environmental Impact Statement, August 16, 2021 (at p. E2-4 or 476 of 1,317)([South Fork FEIS, available online here](#)).

¹⁵ See BOEM Record of Decision South Fork Wind Farm and South Fork Export Cable Project Construction and Operations Plan, dated November 24, 2021 (at p. 13 of 130)([South Fork ROD, available online here](#)).

SFW Comment #06:

“SFW is not proposing to bring excavated soil or dewatered material (contaminated or otherwise) from any part of the project to the Proposed Laydown Areas for any purpose.”¹⁶

Response #06: South Fork Wind’s claim is *not* true. South Fork Wind not only proposes “to bring excavated soil or dewatered material” to a Laydown Area, but it also has a lease that expressly permits it to store soil and groundwater at a Laydown Area.

According to the Lease South Fork Wind recently filed with the Commission (for 209 Springs Fireplace Road), South Fork Wind is expressly permitted (under the heading of permitted uses) to use the site for “storage” of “soil and water.”¹⁷

If South Fork Wind’s sentiments (above) are true— that it is “not proposing to bring excavated soil or dewatered material (contaminated or otherwise) from any part of the project”— then the sentiments would be reflected in Change Request No. 4, but they are *not*. South Fork Wind’s comments were made (on May 3) eight (8) days *before* the Commission approved Change Request No. 4 (on May 11). Still, South Fork Wind chose *not* to include its comments in the legally enforceable change request that the Commission approved. The sentiments of South Fork Wind are unenforceable by design.

Please also see Comment #05 (above).

SFW Comment #07:

“Since commencing construction of the SFEC in February 2022, SFW has excavated thousands of cubic yards of soil and has not encountered any hazardous materials.”¹⁸

Response #07: Since January 2022, South Fork Wind has refused to release *any* laboratory reports for testing soil or groundwater for contamination. Prior to January 2022, South Fork Wind filed laboratory (signed and authorized) test results for soil and groundwater contamination with the Public Service Commission. The documents were publicly available. At the time, South Fork Wind was found to be testing soil and ground to avoid detecting contamination (see Wainscott Citizens’ Advisory Committee presentation at <https://oswsouthfork.info/wcac-april-2022>).¹⁹

¹⁶ See Response of South Fork Wind, *Supra* (at p. 4, second paragraph) ([PSC DMM 345 click here](#))

¹⁷ See Springs Fireplace Rd Lease (at p. 1, last paragraph) (available at [PSC DMM 346, click here](#)).

¹⁸ See Response of South Fork Wind, *Supra* (at p. 4, third paragraph) ([PSC DMM 345 click here](#))

¹⁹ See Wainscott Citizens’ Advisory Committee presentation on April 2, 2022, [click here](#)).

South Fork Wind refuses to substantiate the claim that it “has not encountered any hazardous materials.” Perhaps this is because South Fork Wind has *not* tested the soil or groundwater for contamination.

SFW Comment #08:

“Opponents of the SFW Project with whom Mr. Kinsella regularly collaborates in conjuring up issues in an effort to stop the Project, raised these same issues in an action in U.S. District Court for the Eastern District of New York seeking a restraining order against the Project.”²⁰

Response #08: South Fork Wind’s dismissive remarks regarding existing levels of PFAS contamination that exceed federal and state regulatory standard is disturbing. South Fork Wind’s belief that residents are “conjuring up” PFAS contamination reveals a callous disregard for human health and the environment. It gives cause for concern regarding the seriousness with which South Fork Wind treats contaminants of a public health concern.

South Fork Wind’s own testimony and exhibits state that “studies in humans have shown that certain PFAS may affect the developing fetus and child, including possible growth, learning, and behavior changes. In addition, they may decrease fertility and interfere with the body’s natural hormones, increase cholesterol, affect the immune system, and even increase cancer risk.”²¹

Further, South Fork Wind’s mocking characterization of residents as *collaborators* is malicious, demeaning, and wrong. Had South Fork Wind looked more closely at the Complaint to which it refers, it would have noticed that I am *not* a party to the action (and I am not a lawyer, as South Fork Wind knows all too well).²² Also, I am *not* a proponent of the idea that preferential pathways are the *central* issue of concern regarding PFAS contamination in Wainscott regarding South Fork Wind’s proposed underground transmission infrastructure. South Fork Wind’s suggestion that “Mr. Kinsella’s arguments here should be rejected for the same reasons that the U.S. District Court rejected Kinsella’s colleague’s arguments” is unsubstantiated and unfounded.

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²⁰ See Response of South Fork Wind, *Supra* (at p. 4, penultimate paragraph) ([PSC DMM 345 click here](#))

²¹ See SFW Exhibit (OWRP-5) – U.S. Agency for Toxic Substances and Disease Registry (ATSDR): FAQ on Per- and Polyfluoroalkyl Substances (PFAS)(at p. 2, first paragraph)([PSC DMM 198, click here](#))

²² See *Mahoney, et al. v U.S Department of the Interior, et al.*, Case No. 22-cv-01305-FB-ST

Additional Comments:

South Fork Wind has ignored the fact that both its proposed “Laydown Areas” are in Groundwater Management Zone V. “Commercial/Industrial properties located in GWMZ III, V, and VI are limited to a total discharge of 300 gallons per day (gpd) per acre [...]”²³

South Fork Wind has *not* assessed the impact on noise and air quality conditions at its proposed Laydown Areas. Still, it assures neighbors that “noise and air quality impacts associated with the use of the Proposed Laydown Areas have already been contemplated [...]” It is difficult to see how “30 trucks per day” operating out of each site could silently glide in and out of the driveways without creating more traffic, making noise, or avoiding spreading (contaminated) dust and dirt. Perhaps they are driven by fairies.

For the reasons outlined in this letter, I request that South Fork Wind correct the false allegations and inaccurate statements of fact it made in its response to my comments on EM&CP Change Request No. 4 and cease and desist immediately from making further comments about me that are plainly untrue.

Sincerely yours,



Simon Kinsella

C/c: All Parties in Case 18-T-0604 (via email, w/ exhibits)
ALJ Anthony Belsito (via email, w/ exhibits)

²³ See Suffolk County Comprehensive Water Resources Management Plan, March 2015 (at p. 8-7)

