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IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 22-5316**

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IN RE:  
SIMON V. KINSELLA  
Plaintiff-Appellant *pro se*

v.

BUREAU OF OCEAN ENERGY MANAGEMENT (“BOEM”); and  
In their official capacity working for BOEM: AMANDA LEFTON, Director;  
MICHELLE MORIN, Chief, Environment Branch for Renewable Energy  
 (“OREP”); JAMES F. BENNETT, Program Manager, OREP (until July 2022);  
MARY BOATMAN, Environmental Studies Chief, OREP; EMMA CHAIKEN,  
Economist; MARK JENSEN, Economist; BRIAN HOOKER, Biologist; and  
JENNIFER DRAHER; and DEB HAALAND, Secretary of the Interior,  
U.S. DEPARTMENT OF THE INTERIOR; LAURA DANIELS-DAVIS, in her  
official capacity as Principal Deputy Assistant Secretary, Land and Mineral  
Management; and MICHAEL S. REGAN, Administrator,  
U.S. ENVIRONMENTAL PROTECTION AGENCY;

Defendants-Appellees

and

SOUTH FORK WIND LLC,  
Defendant-Intervenor.

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**AFFIDAVIT OF PLAINTIFF-APPELLANT  
SIMON V. KINSELLA IN SUPPORT OF  
RESPONSE TO DEFENDANT-INTERVENOR-  
APPELLEE SOUTH FORK WIND LLC’S MOTION  
TO DISMISS FOR LACK OF JURISDICTION**

(Fraud by a U.S. administrative agency)

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I, Simon V. Kinsella, Plaintiff-Appellant appearing *pro se*, state as follows pursuant to 28 U.S.C. § 1746—

Approval Process: COP, FEIS, & ROD

- 1) South Fork Wind LLC (formerly Deepwater Wind South Fork LLC).
- 2) In June 2018, Defendant-Intervenor South Fork Wind LLC (“SFW”) submitted to the U.S. Bureau of Ocean Energy Management (“BOEM”) the first of many updates to its Construction and Operations Plan (“COP”).
- 3) On October 19, 2018, BOEM issued Notice of Intent (“NOI”) to prepare an Environmental Impact Statement (“EIS”) for the SFW’s COP.
- 4) The NOI “serves to announce the EIS scoping process” for the COP (available at— <https://www.regulations.gov/document/BOEM-2018-0010-0001>).
- 5) In October 2018, Ørsted A/S announced that it would acquire then-Deepwater Wind South Fork LLC (now known as South Fork Wind LLC).
- 6) Ørsted A/S is majority owned by the “Danish state represented by the Danish Ministry of Finance” (Ørsted annual report 2021, at PDF 167, note 16). Available online at—  
<https://orstedcdn.azureedge.net/-/media/annual2021/annual-report-2021.ashx?rev=9d4904ddf4c44594adab627f7e4c62be&hash=69CE31C5D5935DD0DB46313E3BDEC952>

- 7) On November 19, 2018, Mr. Kinsella submitted comments to BOEM in response to the NOI (“2018 Comments”) (ECF No. 3-1, at 1–14) (see ¶¶ 17–21).
- 8) On January 8, 2021, BOEM issued a Draft Environmental Impact Statement (“DEIS”) for the latest version of SFW’s COP (May 2021).
- 9) On February 16, 2021, Plaintiff/Appellant gave testimony at BOEM’s Public Hearing #3 Meeting (“Public Hearing #3”).<sup>1</sup> During the public hearing, Mr. Kinsella made the following comments—
- a. “The overall project cost of South Fork Wind is more than \$1 billion more expensive per unit of energy over 20 years, than Sunrise Wind. These costs have been concealed from ratepayers. Today, we still do not know ... the final price that will be passed on to ratepayers for South Fork Wind” (at PDF 47).
  - b. “This information has been hidden from us” (at PDF 47).
  - c. “South Fork Wind has willfully ignored overwhelming evidence of extensive and pervasive PFAS contamination that exceeds New York state regulatory standards by 100 times in the area where [it] proposes to construct underground, its transmission infrastructure” (at PDF 47).
- 10) In response to the DEIS (January 8, 2021), Mr. Kinsella submitted further comments to BOEM on February 22, 2021 (“2021 Comments”).
- 11) The 2021 Comments repeat many of the same concerns Mr. Kinsella

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<sup>1</sup> See Public Hearing #3 Meeting Transcript (START: 440, PDF 46, END: 455, PDF 48). Available at— [https://downloads.regulations.gov/BOEM-2020-0066-0380/attachment\\_1.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0380/attachment_1.pdf)

expressed in his 2018 Comments and during Public Hearing #3, in addition to new concerns regarding environmental contamination of soil and groundwater (a sole-source aquifer used for drinking water) in the area where South Fork Wind proposed construction. The class of chemical contaminants is known as PFAS (per- and polyfluoroalkyl substances).

12) PFAS contamination includes two compounds known as—

PFOS (perfluorooctane sulfonate); and  
PFOA (perfluorooctanoic acid).

13) According to the U.S. Environmental Protection Agency (“EPA”), Adverse Health Effects from exposure to certain PFAS contaminants may lead to— adverse reproductive effects, adverse developmental effects, or delays in children (including low birth weight, accelerated puberty, bone variations, or behavioral changes); increased risk of some cancers (including prostate, kidney, and testicular cancers); the reduced ability of the immune system to fight infections (including reduced vaccine response); interference with the body’s natural hormones; and increased cholesterol levels and/or risk of obesity. Source available at epa.gov—  
<https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas> (last accessed December 16, 2022).

14) See 2021 Comments ( at ¶¶ 21–25, below).

15) On August 16, 2021, BOEM issued its Final Environmental Impact

Statement (“FEIS”) for the South Fork Wind’s final COP (May 7, 2021)

(<https://www.boem.gov/renewable-energy/state-activities/sfwf-feis>)

16) On November 24, 2021, BOEM issued its Record of Decision (“ROD”),<sup>2</sup> constituting the final agency action approving the South Fork Wind Project

(<https://www.boem.gov/renewable-energy/state-activities/record-decision-south-fork>).

### 2018 Comments

17) According to the 2018 Comments, “the Applicant [SFW] has not been forthright ... and many of the Applicant’s representations have been found to lack credibility” (ECF No. 3-1, at 1, paragraph 1).

18) The 2018 Comments notified BOEM of the following—

“The Applicant [SFW] has failed to comply with 30 CFR 585.627(a)(7) with specific regard to its potential negative impact upon employment. The Applicant [SFW] will charge approximately 22 ¢/kWh for its wind-generated electricity ... Vineyard Wind, which is just 20 miles from the Applicant’s proposed South Fork Wind Farm, will charge only 6.5 ¢/kWh. At the time Vineyard Wind announced its price of 6.5 ¢/kWh, neither it nor the Applicant had commenced construction ... The Applicant has refused to explain the staggering difference in price ... This money is money that will not be spent within the local economy. Instead of a family eating at a local restaurant or buying new shoes for their children, this money will go

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<sup>2</sup> Record of Decision, issued November 24, 2021 (“ROD”). Available online at boem.gov—  
<https://www.boem.gov/renewable-energy/state-activities/record-decision-south-fork>

overseas into the pockets of Ørsted” (see ECF No. 3-1, at 4–5).

19) At the time, Ørsted A/S held (indirectly) a 100% interest in then-Deepwater Wind South Fork LLC (now South Fork Wind LLC).

20) The 2018 Comments continue—

“[T]he Applicant now seeks permission to install infrastructure that can accommodate bringing electricity ashore at Wainscott Beach from a wind farm with a capacity of 600 [MW] ... The local Wainscott community and the general public have not been ‘consulted ... about potential impacts of [SFW’s] proposed activities’ under 30 CFR 585.626(b)(17)” (ECF No. 3-1, at 8).

### 2021 Comments

21) On February 22, 2021, BOEM received comments in response to its Draft Environmental Impact Statement (“DEIS”), issued on January 8, 2021 (“2021 February Comment”) (Amended Complaint, ECF No. 34-2, at 42–51).

22) BOEM received the 2021 Comments (on February 23, 2021), *nine months before* it had approved SFW’s Project (November 24, 2021). BOEM uploaded all the documents to its website. See Addendum BOEM Exhibits (also available at ECF No. 3-1, at 26–36).

23) The 2021 Comments included two hundred and seven exhibits containing verifiable records such as testimony, briefs, and government reports.

24) Exhibits on PFAS contamination in proximity to South Fork Wind’s

underground transmission infrastructure are listed (below) with links to the documents that BOEM uploaded to its website (e.g., click on “[Exhibit #005](#)”)<sup>3</sup>—

NYSDEC, Site Characterization Report, East Hampton Airport (November 30, 2018) (see PDF Page 26 of 60).....[Exhibit #066](#)

NYSDEC, Site Characterization Report, Wainscott Sand & Gravel (July 2020) (see PDF page 90 of 631).....[Exhibit #075](#)

PFAS Contamination Heat Map of Cable Route (p. 1).....[Exhibit #005](#)

SCDHS Private Well (303) PFAS Laboratory Reports (p. 416).....[Exhibit #066](#)

PFAS Zone - Onshore Route (decided *after* PFAS detected) (p. 1).....[Exhibit #006](#)

PFAS Contamination of Onshore Corridor (satellite map) (p. 2).....[Exhibit #004](#)

PFAS release within 500 feet of SFEC route (surface runoff) (p. 2).....[Exhibit #007](#)

NYS Public Service Commission

Kinsella Report No 3 - PFAS Contamination (p. 91).....[Exhibit #065](#)

Kinsella Testimony 1-1, PFAS Contamination (Sep 9, 2020) (p. 37).....[Exhibit #061](#)

Kinsella Testimony 1-2, PFAS Contamination (Oct 9, 2020) (p. 11).....[Exhibit #094](#)

Kinsella Testimony, Rebuttal (Oct 30, 2020) (p. 13).....[Exhibit #162](#)

Initial Brief (Kinsella) (Jan 20, 2021) (p. 34).....[Exhibit #009](#)

Reply Brief & Exhibits (Kinsella) (Feb 3, 2021) (p. 29).....[Exhibit #011](#)

Motion to Reopen Record (Kinsella) (Jan 13, 2021)(p. 21).....[Exhibit #022](#)

25) The 2021 Comments BOEM received and uploaded to its website includes the following comment (verifiable at [Exhibit #009](#), Initial Brief (Kinsella) (Jan 20, 2021), at 33, paragraph 4)—

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<sup>3</sup> [https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment\\_74.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_74.pdf)

“It is difficult to understand how DPS Staff can ignore the price of the Applicant’s delivered energy that is double that of Sunrise Wind. The irrationality of spending approximately \$2 billion on a facility that is not needed is mind-boggling.”

### BOEM’s Access to Records

26) BOEM had online access to publicly available records of the New York State Department of Environmental Conservation (“NYSDEC”), including records of the State Superfund Program –

a. for site East Hampton Airport (site record # 152250 and 152254)

(<https://www.dec.ny.gov/data/DecDocs/152250/>)

Pertinent documents include –

- [Fact Sheet.2018-01-05.Airport\\_Well Sampling Press Release SCDHS.pdf](#)
- [Fact Sheet.2019-06-19.East Hampton Airport Class 02 Listing.pdf](#)
- [Report.2018-11-12.Alpha Geosc Hydrogeo Rpt Wainscott S&G.pdf](#)
- [Report.2018-11-30.Airport Site Characterization Report Final.pdf](#)
- [Work Plan.2021-06-30.East Hampton Airport Site RIFS WP-FINAL.pdf](#);

and

- for site Wainscott Sand and Gravel (site record # 152254)

(<https://www.dec.ny.gov/data/DecDocs/152254/>)

Pertinent documents include –

- [Report.HW.152254.2020-07-28.Final SC Report.pdf](#)

27) BOEM had access to publicly available records of the NY Office of the State Comptroller (“NYOSC”) and could access those records to find the total valuation LIPA placed on the Power Purchase Agreement between it and South Fork Wind





the [East Hampton] airport property. PFOS and PFOA have been detected in some of the private wells that have been tested so far. One private well had PFOS and PFOA detected above the USEPA lifetime health advisory level” ([BOEM Exhibit #087](#) at PDF 9).<sup>4</sup> At the time, approximately ninety percent of residents used private wells for all their drinking water needs.

32) In 2016, the EPA released a “FACT SHEET” on “PFOA & PFOS Drinking Water Health Advisories.” It reads— “[E]xposure to PFOA and PFOS over certain levels 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).” ([BOEM Exhibit #080](#) at PDF 2, second paragraph).<sup>5</sup>

33) In June 2018, East Hampton Town Supervisor Van Scoyoc received an email from SCDHS stating that “PFC [PFAS] results have been received for 303” private wells, of which “[t]hirteen (13) wells are above the USEPA Health Advisory Level” and “[o]ne hundred and forty-four (144) wells had no detections of PFOS/PFOA.” Conversely, one hundred and fifty-nine (159) wells, or fifty-

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<sup>4</sup> [https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment\\_13.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment_13.pdf)

<sup>5</sup> [https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment\\_33.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment_33.pdf)

three percent (53%), had detectible levels of harmful PFOS/PFOA contamination.”

([BOEM Exhibit #087](#) at PDF 17).<sup>6</sup> The highest recorded PFOS/PFOA

contamination level was 791 ppt, more than seven times the EPA 2016 Health Advisory Level (*id.* at PDF 22, table, top row).

34) When SFW submitted its application to the NYSPSC (on September 14, 2020), it “determined that there were no hydraulically upgradient or adjacent properties along the study corridor that would represent a significant environmental risk to subsurface conditions.”<sup>7</sup> SFW knew to avoid the source of contamination (at East Hampton Airport)— “The study corridor consists of the Long Island Railroad (LIRR) right-of-way that begins (from west-to-east) approximately 0.20 mile west of the Wainscott-Northwest Road crossover[.]”<sup>8</sup> and includes a “500-foot radius[.]”<sup>9</sup> SFW included within its “study corridor” *only* the railroad tracks and knew *not* to investigate the residential area of Wainscott south of East Hampton Airport where it planned to build underground transmission infrastructure.

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<sup>6</sup> [https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment\\_13.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment_13.pdf)

<sup>7</sup> See Article VII application, Appendix F Part 2, Phase I Environmental Assessment prepared by VHB Engineering, Surveying, and Landscape Architecture P.C. - Hazardous Materials Desktop Analysis, dated March 30, 2018 (at PDF 142, first paragraph). See [dps.ny.gov—https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D741B793-DFC1-4056-BCCC-6F46E06C4616}](https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D741B793-DFC1-4056-BCCC-6F46E06C4616})

<sup>8</sup> *Id.* (at PDF 124, first paragraph).

<sup>9</sup> *Id.* (at PDF 125, first paragraph).

35) Wells at the Airport site (upgradient): EH-19A, EH-19A2, and EH-19B are within 1,000 feet from the proposed construction corridor, and Well EH-1 is within 500 feet from the South Fork Wind's construction corridor.

36) Wainscott Sand and Gravel ("Wainscott S&G") (NYSDEC site: 152254) is adjacent, downgradient, and on the opposite side of the South Fork Wind's proposed construction corridor.

37) Wells at the Wainscott S&G site (downgradient): MW5, MW3, and MW4 (groundwater), and Wells: S1, S11, and S16 (soil), are within one hundred and fifty feet downgradient from the South Fork Wind's construction site.

38) A similar profile of PFAS contamination at East Hampton Airport can be seen in wells on the opposite downgradient side of the construction corridor at the Wainscott S&G site.

39) Combined concentration levels of PFOS and PFOA contamination in all four groundwater monitoring wells within one thousand feet upgradient from the construction corridor are more than double the 2016 USEPA Health Advisory Level ("HAL") of 70 ppt, regulatory standards that are designed to protect human health, as follows—

40) Well: EH-19A – PFOS/PFOA = 145 ppt (exceeds 2016 HAL by 2.1x)

41) Well: EH-19A2 – PFOS/PFOA = 174 ppt (exceeds 2016 HAL by 2.5x)

42) Well: EH-19B – PFOS/PFOA = 166 ppt (exceeds 2016 HAL by 2.4x)

43) Well: EH-1 – PFOS/PFOA = 162 ppt (exceeds 2016 HAL by 2.3x)

44) The same PFOS/PFOA contamination measured against the updated 2022 USEPA (interim) HAL (0.02 ppt for PFOS and 0.004 ppt PFOA) are—

- 45) Well: EH-19A – PFOS = 5 ppt (exceeds 2022 HAL by 250 x)  
– PFOA = 140 ppt (exceeds 2022 HAL by 35,000 x)
- 46) Well: EH-19A2 – PFOS = 140 ppt (exceeds 2022 HAL by 7,000 x)  
– PFOA = 34 ppt (exceeds 2022 HAL by 8,500 x)
- 47) Well: EH-19B – PFOS = 77 ppt (exceeds 2022 HAL by 3,850 x)  
– PFOA = 89 ppt (exceeds 2022 HAL by 22,250 x)
- 48) Well: EH-1 – PFOS = 1.8 ppt (exceeds 2022 HAL by 90 x)  
– PFOA = 160 ppt (exceeds 2022 HAL by 40,000 x)

49) Soil contamination levels from PFOS, PFOA, and PFHxS chemical compounds detected on the shallow surface at the Airport site upgradient within one thousand feet of the construction corridor are as follows –

- 50) Well: EH-19A (soil) – PFOS = 3,900 ppt  
– PFOA = 180 ppt  
– PFHxS = 170 ppt
- 51) Well: EH-19B (soil) – PFOS = 12,000 ppt  
– PFOA = 3,800 ppt  
– PFHxS = 3,800 ppt
- 52) Well: EH-1 (soil) – PFOS = 10,000 ppt  
– PFOA = 180 ppt  
– PFHxS = 170 ppt

53) Groundwater samples taken from monitoring wells on the opposite side of the corridor from the source of contamination (at the Airport), within one hundred

and fifty feet downgradient from the construction corridor, all show exceedingly high levels of the same chemical compounds (PFOA, PFOS, and PFHxS) seen in soil samples taken at the Airport.

54) According to the NYSDEC Superfund Designation Site Environmental Assessment of the Wainscott S&G— “Overall, the highest total PFAS detections were in monitoring wells MW3, MW5, MW6 located on the Western (side-gradient) and Northern (upgradient) boundaries of the site, indicating a potential off-site source.” See [BOEM Index Exhibit #085](#) (at p. 2, Site Environmental Assessment, last sentence).

55) Contamination levels in groundwater monitoring wells within one hundred and fifty feet downgradient from the corridor (on the western side of the Wainscott S&G site) for groundwater (“GW”) Monitoring Wells MW5, MW3, and MW4 are as follows –

56) Well: MW5 (GW) – PFOS = 877 ppt (exceeds 2022 HAL by 43,850 x)  
– PFOA = 69 ppt (exceeds 2022 HAL by 17,250 x)  
– PFHxS = 566 ppt

– PFOS/PFOA = 946 ppt (exceeds 2016 HAL by 13.5 x)

57) Well: MW3 (GW) – PFOS = 1,010 ppt (exceeds 2022 HAL by 50,500 x)  
– PFOA = 28 ppt (exceeds 2022 HAL by 7,000 x)  
– PFHxS = 306 ppt

- PFOS/PFOA = 1,038 ppt (exceeds 2016 HAL by 14.8 x)
- 58) Well: MW4 (GW) – PFOS = 232 ppt (exceeds 2022 HAL by 11,600 x)
  - PFOA = 5.57 ppt (exceeds 2022 HAL by 1,393 x)
  - PFHxS = 43.4 ppt
  - PFOS/PFOA = 238 ppt (exceeds 2016 HAL by 3.4 x)
- 59) Groundwater containing levels of PFAS contamination exceeding USEPA limits flows from the source of contamination at the Airport site across South Fork Wind’s construction corridor downgradient to the Wainscott S&G site, where the same chemical compounds are present in groundwater monitoring wells.

FRAUD: Material Facts

- 60) On November 2, 2022, Pl./Appellant concurrently filed an Amended Complaint (ECF No. 34-2) and Motion for Emergency TRO (ECF No. 35).
- 61) Seven instances of fraudulent representation of material facts by nine individuals who participated in the review and approval of the Project are particularized in the Amended Complaint (ECF No. 34-2, at 111–136) and Memorandum in Support of the Emergency Motion for Temporary Restraining Order and Preliminary Injunction (ECF No. 35-1, at 2–4).
- 62) The instances of fraud are not minor mistakes but critical to the review, without which BOEM could not have approved the Project.
- 63) The fraud by BOEM and SFW concerns vital aspects of the Project, such as

environmental PFAS contamination of groundwater (used for drinking water) and the Project's cost (\$2 billion).

64) At least three fraud instances concern the Project's "Purpose and Need" (ROD, at 7, PDF 9, section 2.2), fatally corrupting the integrity of BOEM's NEPA analysis. The three fraudulent representations are—

- i. "The purpose of the Project is to develop a commercial-scale offshore wind energy facility" (that is not commercial scale);
- ii. "The Project will contribute to New York's renewable energy requirements, particularly the state's goal of 9,000 MW of offshore wind energy generation by 2035 [emphasis added]" (in reference to the Climate Leadership and Community Protection Act ("CLCPA") the requirements of which it does not meet regarding the consideration of project costs); and
- iii. "South Fork Wind's goal is to fulfill its contractual commitments to Long Island Power Authority (LIPA) pursuant to a power purchase agreement executed in 2017 resulting from LIPA's technology-neutral competitive bidding process [emphasis added]" (referring to the South Fork RFP that was neither "technology-neutral" nor "competitive").



### SFW Fraud: Water Quality

65) In February 2022, South Fork Wind commenced construction by installing underground concrete duct banks and transmission vaults for two miles through the residential neighborhood of Wainscott, NY. SFW began construction after BOEM had approved its Project (on November 24, 2021).

66) SFW moved quickly to pour concrete for high-voltage transmission infrastructure through local laneways and streets (zoned residential).

67) It knew that groundwater in the area contains high levels of harmful PFAS contamination exceeding EPA 2016 HAL (see Amended Complaint, ECF No. 34-2, ¶¶ 72–108.05).

68) SFW performed onsite testing that showed PFAS contamination levels exceeding the EPA 2016 HAL and NYS MCL. The Environmental Investigation Report (by GZA GeoEnvironmental of New York on behalf of Ørsted) is based on tests performed in December 2020 and January 2021— four months *before* South Fork Wind submitted to BOEM its final COP (in May 2021). SFW uploaded the Environmental Investigation Report to the NYS PSC website (on April 21, 2021) (File No.: 282) (last accessed December 17, 2022). Available at <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7F6C6BBF-6053-455D-AF06-E440FB46C63F}>)

69) The Environmental Investigation Report detected PFAS contamination in 20

wells within SFW’s construction corridor and noted that “levels of PFOA and PFOS exceeded NYSDEC’s Ambient Water Quality Criteria Guidance Values in one well each (MW-4A and MW-15A, respectively)” (see test results for Monitoring Wells MW-4A and MW-15A at ¶¶ 74–76, below).

70) The Environmental Investigation Report by GZA GeoEnvironmental of New York (revised April 1, 2021) *pre-dates* BOEM’s approval of the Project (on November 24, 2021) by eight months.

71) GZA’s Environmental Investigation Report is at <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7F6C6BBF-6053-455D-AF06-E440FB46C63F}> (File No.: 282) (last accessed December 17, 2022)

72) GZA’s Environmental Investigation Report (revised April 1, 2021) reads as follows— “PFAS were detected in samples from 20 wells [within SFW’s construction corridor]; levels of PFOA and PFOS exceeded NYSDEC’s Ambient Water Quality Criteria Guidance Values in one well each (MW-4A and MW-15A, respectively)” (at 8, PDF 34, Groundwater Results). Monitoring Well MW-4A is on Beach Lane, and MW-15A is on Wainscott NW Rd, in Wainscott, N.Y.

73) The NYSPSC file uploaded by SFW (on April 21, 2021), titled— Appendix H - Final HWPWP Part 3 (Attachment E), contains tables of laboratory report results, including PFAS contamination, as follows—

74) Table 10, Well MW-4A (sampled Jan 14, 2021), PFOA (50 ppt) exceeding NYS MCL<sup>10</sup> (10 ppt) by five times (at 6, PDF 103); and

75) Table 10, Well SB/MW-15A (sampled Jan 18, 2021), PFOS (14.7 ppt) exceeding NYS MCL (10 ppt) (at 11, PDF 108).

76) In February 2022, South Fork Wind's tested the same Monitoring Wells: Well MW-4A showed onsite PFOA (82 ppt) contamination exceeding the EPA 2016 Health Advisory Levels (70 ppt) and the NYS MCL (10 ppt) by eight times; and Well MW-15A showed onsite PFOS (12 ppt) contamination exceeding the NYS MCL (10 ppt). Limited, summarized, unsigned, undated, and unsubstantiated test results (without authorized laboratory results) were posted on the East Hampton Town's website by the Town, *not* South Fork Wind (ECF No. 34-20).<sup>11</sup>

77) In 2022, South Fork Wind did *not* publicly disclose the actual PFAS laboratory reports, breaking with prior practice. Previously (in April 2021), SFW had disclosed its PFAS laboratory test results of groundwater and soil samples taken in December 2020 and January 2021 (soil and groundwater samples were taken *after* the NYSPSC evidentiary record had closed, thereby avoiding examination and cross-examination of witnesses during the NYSPSC proceeding).

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<sup>10</sup> NYS MCL – New York State Maximum Contamination Level

<sup>11</sup> Available on the East Hampton Town Website (last accessed on December 17, 2022)—  
<https://ehamptonny.gov/DocumentCenter/View/11757/SFW-Monitoring-Well-summary-Feb-21-2022>.

- 78) SFW did *not* include *any* PFAS contamination results in its final COP.
- 79) SFW did *not* identify PFAS contamination in *any* of the six updates to its Construction and Operations Plan submitted to BOEM.
- 80) SFW identified other less harmful contaminants, such as “median groundwater nitrogen levels ... [that] have risen 40 percent to 3.58 mg/L” (COP May 2021, at 4-61, PDF 229, first sentence), but did *not* acknowledge the presence of chemicals “that can cause cancer and other severe health problems” (ECF No. 34-2, at 3, last sentence).
- 81) SFW commenced and continued with construction in a race to complete the onshore installation of the duct banks and vaults *before* the cases could be brought to trial. Two lawsuits had already been filed in New York State Supreme Court challenging the NYS Public Service Commission’s project certification, and another case had been filed challenging the South Fork RFP procurement process and contract (PPA) award—
- i. On September 9, 2021, Mr. Kinsella commenced legal proceedings challenging the New York State Public Service Commission’s Article VII certification (*Kinsella v. NYSPSC, et al.*, No. 2021-06572 (N.Y. App. Div., 2d Dep’t), pending).
  - ii. On September 9, 2021, Citizens for the Preservation of Wainscott, Inc. commenced legal proceedings challenging the New York State Public Service Commission’s Article VII certification (*Citizens for the Pres. Of Wainscott, Inc. v.*

*NYSPSC, et al.*, No. 2021-06582 (N.Y. App. Div., 2d Dep’t), pending).

- iii. On November 9, 2021, Mr. Kinsella sued Long Island Power Authority and South Fork Wind LLC, challenging the LIPA award of a power purchase agreement to South Fork Wind LLC. (*Kinsella v. Long Island Power Auth.*, No. 621109/2021 (N.Y. Sup. Ct. Suffolk Cnty.), on appeal).

82) The final COP (May 2021) that SFW submitted to BOEM for approval contains grossly misleading and demonstrably false information.

83) For example, under “Water Quality and Water Resources” (section 4.2.2), the developer asserts that “[t]his section provides a description of water quality and water resource conditions in the ... SFEC [South Fork Wind Export Cable] as defined by several parameters including: ... contaminants in water” (COP May 2021, at 4-56, PDF 224, first paragraph). The COP continues, “[t]his section also briefly discusses relevant anthropogenic activities that have in the past or currently may impact water quality, including point and nonpoint source pollution discharges, ... and pollutants in the water” (*id.*). SFW said that “the affected environment and assessment of potential impacts for water quality and water resources was evaluated by reviewing the revised Environmental Assessment completed as part of the BOEM NEPA review” (*id.*). SFW misleads the reader into believing that either it or BOEM reviewed “current public data sources related

to water quality and water resources in Suffolk County and on Long Island, including local, regional, state, and federal agency-published papers and reports and published journal articles” (*id.*) (SFW does *not* say who performed that review). SFW’s statements are grossly misleading and contrary to fact.

84) On January 2, 2020, SFW received detailed information on water quality and resources that fits neatly under the heading “Water Quality and Water Resources,” as described in SFW’s COP Section 4.2.2. The evidence took the form of eight interrogatories (144 pages) served on SFW in NYS Public Service Commission Case 18-T-0604.

85) A year later (on February 23, 2021), BOEM received copies of the same eight interrogatories (144 pages) (ECF No. 3-1, at 31, [BOEM Exhibit #087](#)).<sup>12</sup>

86) The eight interrogatories contained the following documents (the list is *not* all-inclusive)—

- i. Water Quality Advisory for Private-Well Owners in Area of Wainscott, issued by Suffolk County Department of Health Services (“SCDHS”) on October 11, 2017 ([BOEM Exhibit #087](#) at PDF 9);<sup>13</sup>
- ii. An email from Suffolk County Department of Health Services Deputy Commissioner Capobianco to East Hampton Town Supervisor Van Scoyoc containing a list of 303 test results of

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<sup>12</sup> [https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment\\_13.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment_13.pdf)

<sup>13</sup> The advisory notified residents that contamination exceeding the EPA 2016 HAL for combined PFOS/PFOA had been detected in private drinking-water wells.

private drinking water wells in Wainscott performed by SCDHS with the subject: “Wainscott PFC Weekly Update - 6/15/18” with a spreadsheet (*id.*, PDF 17–34);

- iii. New York State Department of Environmental Conservation (“NYS DEC”) Site Remediation Records for East Hampton Airport (site codes 152250 and 152156) that is upgradient and adjacent to the proposed construction corridor;
- iv. NYS DEC Maps (DECinfo Locator) identifying State Superfund Program Remediation Sites in Wainscott: Wainscott Sand and Gravel (site code: 152254); and East Hampton Airport (site codes: 152250 and 152156) (*id.*, at PDF 55–62);
- v. NYS DEC Site Characterization Report for East Hampton Airport (adjacent and upgraded to South Fork Wind’s construction corridor) with test results showing PFAS contamination exceeding the EPA 2016 HAL (*id.*, at PDF 70–104); and
- vi. A report submitted to East Hampton Town Supervisor Van Scoyoc, dated March 26, 2018, summarising PFAS contamination in Wainscott in the form of heat maps (based on the PFAS laboratory test results provided by SCDHS) (*id.*, at PDF 112–126).

87) On January 13, 2020, SFW (then-Deepwater Wind South Fork (“DWSF”)) responded to the final interrogatory, stating— “To date, DWSF [SFW] has not determined if there are any contaminated materials along the proposed Beach Lane route” (*id.*, at PDF 141, third paragraph). It would be another year before SFW

would make that determination.

88) SFW waited for the NYS Public Service Commission case record to close (on December 8, 2020) before testing the proposed construction corridor. SFW took its first onsite sample on December 23, 2020— just fifteen days *after* the NYSPSC case had concluded. Thereby, SFW avoided examining and cross-examining witnesses on its PFAS contamination test results.

89) On September 9, 2020, Mr. Kinsella submitted “Testimony Part 1-1 PFAS Contamination” in NYSPSC Case 18-T-0604 (see ECF No. 3-1, at 30, [BOEM Exhibit #061](#)),<sup>14</sup> and on October 9, 2020, submitted “Testimony 1-2 - PFAS Contamination” (see ECF No. 3-1, at 30, [BOEM Exhibit #094](#)).<sup>15</sup> Mr. Kinsella had provided his Testimonies on existing PFAS contamination (and 36 exhibits) to both SFW (on September 9 and October 9, 2020) and BOEM (in 2021 Comments). On October 9, 2020, Mr. Kinsella submitted “Testimony Part 2 – Public Interest and Price” in NYSPSC Case 18-T-0604 (see ECF No. 3-1, at 32, [BOEM Exhibit #099](#)),<sup>16</sup>

90) Rather than “discusses relevant anthropogenic activities that have in the past or currently may impact water quality, including ... and pollutants in the water” or review “state, and federal agency-published papers and reports” (COP, Water

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<sup>14</sup> [https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment\\_32.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment_32.pdf)

<sup>15</sup> [https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment\\_36.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0386/attachment_36.pdf)

<sup>16</sup> [https://downloads.regulations.gov/BOEM-2020-0066-0387/attachment\\_1.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0387/attachment_1.pdf)



Quality and Water Resources, *supra*), SFW filed a Motion to Strike Testimony 1-1 and 1-2 on impacts to water quality from PFAS contamination (on November 5, 2020) (ECF No. 3-1, at 30, [BOEM Exhibit #049](#)).<sup>17</sup>

91) SFW withheld from BOEM results of PFAS contamination from tests *it* performed in December 2020 and January 2021. By keeping from BOEM information on water quality and PFAS contamination, it had a duty to disclose SFW intended to obtain approval by deception, which it did successfully.

92) In the three years from when SFW filed its first Construction and Operations Plan (COP) in September 2018 until BOEM (unlawfully) approved the Project (in November 2021), SFW did NOT include *any* information on PFAS contamination in *any* of the six updates to its COP.

### BOEM Fraud: Water Quality

93) In its FEIS, BOEM concludes that “[o]verall, existing groundwater quality in the analysis area [Wainscott] appears to be good”<sup>18</sup>— contradicting a State Superfund Site Classification Notice issued by the New York State Department of Environmental Conservation (June 2019), concluding that groundwater contamination “presents a significant threat to public health and[] the environment”

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<sup>17</sup> [https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment\\_56.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_56.pdf)

<sup>18</sup> Final Environmental Impact Statement (“FEIS”), (at H-23, PDF 655, second paragraph). Available online at BOEM’s website here – <https://www.boem.gov/renewable-energy/state-activities/sfwf-feis>

(ECF No. 3-2, at 27, Exhibit A, first paragraph).<sup>19</sup>

94) BOEM received this document on February 23, 2021. The NYS DEC State Superfund Notice refers to East Hampton Airport, which is upgradient and adjacent to South Fork Wind's transmission corridor. The primary source of groundwater contamination in Wainscott emanates from the airport site, where the most significant source of PFAS (PFOA/PFOS) contamination is upgradient and within 1,000 and 500 feet of SFW's underground concrete transmission infrastructure.

95) The same contamination is evident downgradient from the transmission corridor at the Wainscott S&G site (NYSDEC site record 152254). WainscottS&G Well MW-3, within 150 feet downgradient from the transmission corridor (sampled November 7, 2019), contains groundwater PFOS contamination (1,010 ppt) exceeding the EPA 2016 HAL by 14 times (see Addendum Maps #1 – 4).

96) On February 23, 2021, BOEM received Mr. Kinsella's 2021 Comments and two hundred and seven (207) exhibits, many of which relate to groundwater contamination in Wainscott (ECF No. 3-1, at 27–36). The documents included multiple NYSDEC Site Characterization Reports, one hundred and fifty-two (152) laboratory test results of private drinking water wells from SCDHS, and other

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<sup>19</sup> NYS DEC, State Superfund Site Classification Notice (June 2019), East Hampton Airport (site 152250). Sources of PFAS contamination (PFOA/PFOS) are within 1,000 and 500 feet upgradient from South Fork Wind's onshore (underground) transmission route. See link – <https://www.dec.ny.gov/data/DecDocs/152250/Fact%20Sheet.HW.152250.2019-06-19.East%20Hampton%20Airport%20Class%2002%20Listing.pdf>

documents. The reports all show extensive PFAS contamination of groundwater exceeding regulatory standards. BOEM received the government agency reports *nine months before* it approved the project— but remained silent on environmental contamination from PFAS chemical compounds that had poisoned the drinking water supply in Wainscott (see Addendum BOEM Exhibits) (ECF No. 3-1, at 26–36).

97) Without regard to human health or the sole source aquifer that provides drinking water for thousands of residents, BOEM knowingly falsified its FEIS when it asserted that groundwater quality was “good,” contradicting the voluminous evidence it received in the 2021 Comments.

98) The FEIS is 1,317 pages, but “perfluorinated compounds” (BOEM uses a confusing and outdated term for PFAS) is mentioned only once (on page 655) “at a fourth site, NYSDEC #152250” (FEIS, at H-23, PDF 655, second paragraph).

99) BOEM conceals its location relative to SFW’s proposed construction corridor and the fact that it is upgradient within 500 feet of where SFW plans to install concrete duct banks.

100) BOEM mentions “[s]ite-related compounds” that have been “identified in soil and groundwater within and around the site” (*ibid*) without identifying those compounds. “Site-related compounds” (*ibid*) could include *any* compound related to any given site, whether a harmful contaminant or safe naturally occurring compounds such as calcium or sodium.

101) BOEM's carefully crafted sentence is more easily misread to mislead the reader into believing that BOEM had identified perfluorinated compounds (PFAS contaminants) "within" the site and had considered PFAS contamination in its environmental review. On the contrary, BOEM did *not* consider the mountain of evidence of environmental PFAS contamination in the area where South Fork Wind proposed constructing underground transmission infrastructure.

102) BOEM does not acknowledge the presence of onsite perfluorinated compounds (PFAS) or the location of the contamination relative to the site.

103) BOEM did not acknowledge PFAS contamination within South Fork Wind's proposed construction corridor through Wainscott in either its FEIS or ROD, *at all*.

104) BOEM does not consider or discuss mitigation plans for managing PFAS contamination in its FEIS or ROD.

105) BOEM approved the Project without imposing conditions that would safeguard construction workers while excavating soil or groundwater from within the construction corridor.

106) A known source of PFAS contamination, Firefighting foam, had been used to extinguish house fires near two locations: 75 Wainscott NW Road and Beach Lane near Well MW-4A. Construction works are seen in photographs excavating soil and groundwater without taking *any* precautions (see photos, ECF No. 1-3).

107) BOEM does not describe the adverse effects of PFAS contamination on

human health. BOEM does not consider the impacts of SFW's Project on existing PFAS contamination of the groundwater supply and its potential impact on human health or the environment. BOEM does not discuss an alternative to avoid environmental PFAS contamination.

108) BOEM falsely claims that the SFW's "COP includes all the information required" in 30 CFR § 585.627 (ROD at D-6, PDF 98, third paragraph) when its construction plan does NOT contain *any* of "the information required" concerning severe environmental (PFAS) contamination of a public health concern.

109) BOEM permitted South Fork Wind to proceed with construction through a highly contaminated area by approving its Project.

Exposé: 'Forever chemicals'

110) On April 4, 2022, Newsday published an exposé titled, 'Forever chemicals found in Suffolk's private water wells since 2016, data shows' by Vera Chinese (ECF No. 3-9). According to the report, Wainscott (south of East Hampton Airport) had 65 wells with "PFOS or PFOA over 10 ppt [the NYS MCL]" (*id.*, at 3). The area, Yaphank, with the next highest number of wells (32), had less than half the number of wells containing harmful contaminants than Wainscott. Of the total number of contaminated wells in Suffolk County (202), one-third (32%) are in Wainscott—the exact location where South Fork Wind is excavating soil and groundwater to install concrete duct banks and vaults.

### Background: Project Cost

111) On January 25, 2017, Long Island Power Authority (“LIPA”) Board of Trustees agreed to enter into a Power Purchase Agreement (“PPA”) with then-Deepwater Wind South Fork LLC (now known as South Fork Wind LLC).

112) When news broke that the LIPA Board of Trustees had approved entering into a PPA with SFW, national, regional, and local newspapers all reported that the cost of the Project was \$740 million—

- i. Wall Street Journal: “Construction on the **\$740 million** project will start in 2020 and it aims to be operational by 2022, according to Jeff Grybowski, chief executive of Deepwater Wind [SFW], which is primarily owned by hedge fund D.E. Shaw Group” (Jan 24, 2017) (ECF No. 34-15)
- ii. New York Times: “The project’s cost was projected at \$1 billion but is now expected to be **\$740 million**. Deepwater plans to finance the project with loans and equity investments, according to Jeffrey Grybowski, the company’s chief executive” (Jan 25, 2017) (ECF No. 34-17).
- iii. Newsday: “LIPA trustees unanimously approved a resolution to finalize a contract for an offshore wind farm ... a **\$740 million** project that could start producing energy by the end of 2022”

(Jan 25, 2017) (ECF No. 34-14).

- iv. Express News Group: “Jeffrey Gyrybowski, CEO of Deepwater Wind, said the company plans to construct between 12 and 15 turbines in the ocean 30 miles southeast of Montauk, at a projected cost of about **\$740 million**, connecting them to a LIPA substation in East Hampton Town” (Jan 24, 2017) (ECF No. 34-16).

113) On January 24, 2017, LIPA’s Director of Procurement, Maria Gomes, emailed LIPA executive, Rick Shansky, asking—

“Would you know the value for this so I can prepare an AC340?, **740 million?** [emphasis added]”

Mr. Shansky replied (3 minutes later)—

“Your choice - \$1.8B (25) or \$1.6B (20). As the extension is weak, perhaps go with 20 years” (ECF No. 3-1, at 29, [BOEM EXHIBIT #040](#), at 5).<sup>20</sup>

114) SFW and LIPA publicly announced the project cost of “\$740 million” (widely reported in the media) while acknowledging in an internal email on the same day that the actual cost was “\$1.6B” — more than double what SFW and LIPA represented to the public.

115) The following day (January 25, 2017), LIPA CFO Joseph Branco signed an

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<sup>20</sup> LIPA Contract Encumbrance Request, signed by LIPA CFO, Joseph Branca, on January 30, 2017 (at 5) ([https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment\\_36.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_36.pdf))

“AC340” Contract Encumbrance Request for “\$1.6 billion” that had been crossed out (*id.* at 4).

116) Ms. Gomes completed the “AC340” Contract Encumbrance Request LIPA CFO Joseph Branco signed (January 30, 2017) for \$1,624,738,893 (*id.*, at 1).

117) On February 6, 2017, LIPA executed a PPA with SFW. Under the PPA, LIPA agrees to purchase power from SFW’s proposed offshore wind farm with a capacity of 90 megawatts (“MW”) for \$1,624,738,893 (over 20 years).

118) At the same time, another New York Times article (January 25, 2017), citing as its source LIPA, “says the cost **is about the same as its other renewable energy projects, about 16 cents a kilowatt-hour.**” (ECF No. 34-17, at 3).<sup>21</sup>

119) On May 17, 2018, a News12 report quoted “Deepwater Wind [SFW] - V.P., Development, CLINT PLUMMER” repeating almost precisely the exact same phrase (in ¶ 118 above)— “... LIPA has said that our wind farm’s cost **is about the same as its other renewable energy projects, which are about 16 cents per kWh...**” (Exhibit D- SFW, Plummer, News12 “about 16 cents”).<sup>22</sup>

120) In the News12 report (above), Mr. Plummer quotes *another* company about

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<sup>21</sup> New York Times, Nation’s Largest Offshore Wind Farm Will Be Built Off Long Island, by Diane Cardwell, published January 25, 2017, last accessed December 9, 2022. Available here— (<https://www.nytimes.com/2017/01/25/business/energy-environment/long-island-power-authority-offshore-wind.html>).

<sup>22</sup> News12 Westchester, Residents have 'unanswered questions' about offshore wind farm (May 17, 2018) Available online at— <https://westchester.news12.com/amp/public-hearing-to-be-held-on-south-fork-wind-farm-38211384>.



*his* company’s price rather than make a statement in his official capacity (V.P., Development) for South Fork Wind LLC (then-Deepwater Wind South Fork LLC).

121) Two years apart, two companies (LIPA and SFW) used carefully constructed language almost precisely the same as if they had rehearsed what to say.

122) When SFW and LIPA publicly announced the agreement to purchase energy from an offshore wind farm (in early 2017), neither SFW nor LIPA publicly disclosed the power unit price. Instead, SFW and LIPA make only vague references such as “about” and compare the cost to “other renewable energy projects” without committing to an exact price. SFW’s and LIPA’s language is careful.

123) On July 9, 2019, Mr. Kinsella commenced legal proceedings for violations of NYS Freedom of Information Law. SFW and LIPA were forced disclosure the table of contract price for SFW’s energy.<sup>23</sup> It took years before either LIPA or SFW would disclose the prices in a public contract with a public utility that the public has to pay. Although, the disclosure stopped short of revealing how LIPA arrived at its valuation of the contract (PPA) of \$1.625 billion.

124) On July 24, 2020, The Hon. Richard Rivera’s ruling (signed January 14, 2020) reads as follows—

“In the instant matter the petitioner [Mr. Kinsella] ...  
substantially prevailed. The Court finds that the record requested

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<sup>23</sup> *Simon V. Kinsella v. Office of the New York State Comptroller*, No. 904100-19 (N.Y. Sup. Ct. Albany), decided for petitioner.

[PPA contract price] was of significant interest to the general public as the records sought consisted of the contract prices which would affect the pricing of utilities supplied to the general public.” (ECF No. 44-11)

125) Since SFW and LIPA executed the PPA (on February 6, 2017), it took four years before either party (SFW or LIPA) would disclose how they arrived at a PPA valuation of \$1,624,738,893 on the NY State Comptroller’s website –

<https://www2.osc.state.ny.us/transparency/contracts/contracttransactions.cfm?Contract=0000000000000000000024767>) (last accessed December 19, 2022).

126) On January 22, 2021, LIPA disclosed documents showing that around the time it executed the PPA with SFW (on February 6, 2017), LIPA estimated SFW would deliver 7.4 million megawatt-hours (“MWh”) of renewable energy (over twenty years) for \$1.625 billion ([BOEM EXHIBIT #040](#), at 2).<sup>24</sup> The cost of SFW’s power is \$219 per MWh (or 22 cents per kWh).

127) While SFW and LIPA were representing to the public that the price of SFW’s energy was “about 16 cents” (see ¶¶ 118-119), according to LIPA’s “AC340” Contract Encumbrance Request, the actual cost was 22 cents, thirty-eight percent more expensive than what SFW and LIPA had publicly disclosed.

128) On September 30, 2020, LIPA and South Fork Wind amended the PPA to

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<sup>24</sup> LIPA Contract Encumbrance Request, signed by LIPA CFO, Joseph Branca, on January 30, 2017 (see table on page 2). Available at BOEM.gov ([https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment\\_36.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_36.pdf))

expand the Project by 40 megawatts (from 90 to 130 MW).

129) The price of energy from South Fork Wind is summarized (below)—

	Offshore Wind Farm Project	Contract Size (MW)	Year Signed	Duration (years)	Offtake State	Contract Type	Levelized Nom. Price (\$/MWh)
(a)	SFW	90	Jan 2017	20	NY	PPA	\$219
(b)	SFW	40	Sep 2020	20	NY	PPA	\$118
(c)	SFW	130		20	NY	PPA	\$188

130) LIPA’s estimated projected energy deliveries were—

- i. In 2017, the projected delivered energy (SFWF 90 MW) was expected to be 7,432,080 MWh (371,604 MWh per year over 20 years).
- ii. In 2020, the projected delivered energy (SFWF 40 MW) was expected to be 3,303,147 MWh (165,157 MWh<sup>25</sup> per year over 20 years).
- iii. TOTAL, projected delivered energy (SFWF 130 MW) is expected to be 10,735,227 MWh (7,432,080 in addition to 3,303,147 MWh).

(ECF No. 1-5, at 3, Table 3. South Fork Wind Capacity and Price Calculation).

131) The cost of energy from South Fork Wind (19 cents) is more than double the average cost (8 cents) for the same renewable energy from four nearby offshore wind farms (ECF No. 1-5, at 2, Table 2. U.S. Offshore Wind Offtake Agreements

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<sup>25</sup> Offshore Wind Project Study Final Technical Report LIPA presented to the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy (“OSW Technical Report”), LIPA projects “additional annual delivered energy up to 165,157 MWh” from the South Fork Wind Farm’s incremental increase of 40 MW (ECF No. 3-4, at 22, PDF 23)

near South Fork Wind).<sup>26</sup>

132) Ratepayers living in Suffolk County, LIPA's service area, will ultimately bear the financial burden of paying for South Fork Wind.

### Sunrise/South Fork Alternative

133) Project cost is an environmental consideration. According to LIPA, South Fork Wind will deliver 10.7 m MWh of energy (over twenty years) for \$2.013 billion. For that price, Sunrise Wind (only three miles from SFW on the Outer Continental Shelf) could deliver twice the renewable energy (24 m MWh),<sup>27</sup> which would reduce double the carbon emissions and be twice as good for the environment.

134) Sunrise Wind and South Fork Wind are (indirectly) owned by the same joint and equal partners, Eversource and Ørsted.

135) There is no technical reason for not combining South Fork Wind with Sunrise Wind (the Sunrise/South Fork Alternative), contrary to the (false) claims in the NYSPSC Case 18-T-0604, Order Adopting Joint Proposal issued March 18, 2021 (ECF No. 34-13, at 45, PDF 50). The Order fails to mention that South Fork Wind and Sunrise Wind propose using A/C cable inter-arrays to connect the wind

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<sup>26</sup> Sunrise Wind (\$83.36/MWh), Vineyard Wind (\$74/MWh and \$65/MWh), and Revolution Wind (\$94.43/MWh, \$99.50/MWh, \$98.43/MWh), and Mayflower Wind (\$58.47/MWh). (Table 2. U.S. Offshore Wind Offtake Agreements near South Fork Wind, ECF No. 1-5, at 2).

<sup>27</sup> The total cost of energy from South Fork Wind (\$2,013,198,056), divided by the unit cost of renewable energy from Sunrise Wind (\$83.36/MWh), is 24,150,649 MWh.

turbine generators to the offshore transmission substation. There is no reason why the A/C cable inter-arrays could not be connected to eliminate South Fork Wind's sixty-six-mile-long separate transmission line.

### SFW Fraud: Cost (\$2 billion)

136) In 2019, South Fork Wind filed an Economic Development and Jobs Analysis (“Economic Analysis”) by Navigant Consulting Inc. (February 5, 2019) (see Exhibit E, SFW 2019 Economic Analysis).<sup>28</sup> It reads— “This advisory opinion was prepared ... at the request of Ørsted North America (“Ørsted”) to conduct an analysis that estimates ... jobs and economic outputs that will result from ... the ‘Project’” (Exhibit E, at 1, PDF 4, first paragraph).

137) Under the heading Summary Results, the report reads—

The Project will clearly have a positive economic impact and will add a significant number of jobs to the United States and to the state of New York [emphasis added].

138) The Economic Analysis continues—

“For New York state, ... the Value Added that is attributable to the project is approximately \$57.1 million in the construction phase (starting in 2020) and approximately \$3.9 million on an annual basis in the operations phase”

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<sup>28</sup> Available for download at boem.gov— <https://www.boem.gov/sites/default/files/renewable-energy-program/State-Activities/NY/Appendix-AA.pdf>

(*id.*, 2, PDF 5, last paragraph).

139) The report estimates that the total economic benefits from the Project's Value Added impacts would be \$135 million over the twenty-year contract (PPA) term.<sup>29</sup>

140) The Project's most crucial financial item—the Project cost—is missing from South Fork Wind's Economic Analysis.

141) According to the NY Office of the State Comptroller, the cost to Long Island Power Authority (“LIPA”) is \$2.013 billion (over 20 years),<sup>30</sup> the burden of which will fall *entirely* on Suffolk County ratepayers, LIPA's service area.

142) Assuming *all* Value Added (i.e., *beneficial*) spending in New York State occurs in Suffolk County (best case scenario), the Project's *net* Value Added impact economic would be negative \$1.9 billion.<sup>31</sup>

143) According to the Economic Analysis, SFW expects to withdraw from Suffolk County fifteen times (15 x) more than the estimated Value Added: “economic development benefits” (*id.*, at 6, PDF 9, “Value Add” definition, fourth paragraph).

144) SFW's Economic Analysis does *not* account for the Project cost. The report

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<sup>29</sup> Value Added, operational phase (\$3.9 m) by the contract (PPA) term (20 years), is \$78 m (unadjusted for inflation); in addition to the construction phase (\$57.1 m), is **\$135.1 million**.

<sup>30</sup> The N.Y. Office of the State Comptroller, the PPA valuation is \$2,013,198,056. See— (<https://wwe2.osc.state.ny.us/transparency/contracts/contracttransactions.cfm?Contract=00000000000000000000000085553>)

<sup>31</sup> Project cost (\$2.013 billion) less Value Added attributable to NYS (\$135.1 million).

relies on a one-sided analysis to support the conclusion that “[t]he Project will clearly have a positive economic impact,” which is contrary to fact.

145) Worse still is SFW’s impact on jobs.

146) According to the Economic Analysis, during the Project’s construction phase, total job earnings will be \$47.1 million, representing 413 “job years” (Exhibit E, SFW 2019 Economic Analysis, Table 1-2, at 3, PDF 6).

147) Assuming a construction phase of 2½ years,<sup>32</sup> 413 “job years” is 165 full-time equivalent jobs (with a high average yearly income per person of \$114,044, nearly double the Per Capita Income of \$59,484 for Suffolk County).<sup>33</sup>

148) During the operations phase, annual earnings will be \$2.9 million (*id.*), or \$58 million (with a high average yearly income of \$93,548, slightly over 1½ times Suffolk County’s Per Capita Income.

149) Total jobs of 31 include direct, indirect, and induced jobs).

150) According to SFW’s Economic Analysis, there will be 196 jobs with total earnings of \$105 million over the life of the Project.<sup>34</sup>

151) According to SFW’s COP (May 2021), the “Per Capita Personal Income 2015” in Suffolk County is “\$59,484” (at 4-326, PDF 490, Table 4.6-6).

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<sup>32</sup> See Tentative Schedule (COP May 2021, at 1-44, PDF 91, Table 1.5-1).

<sup>33</sup> According to SFW’s COP (May 2021), Per Capita Personal Income 2015 in Suffolk County is \$59,484 (at 4-326, PDF 490, Table 4.6-6).

<sup>34</sup> Earnings, operational phase (\$2.9 m) by the contract (PPA) term (20 years), is \$58 m (unadjusted for inflation); in addition to the construction phase (\$47.1 m) is **\$105.1 million**.

152) The Project cost (\$2.013 billion) represents approximately 1,692 full-time equivalent jobs.<sup>35</sup>

153) The *net* socio-economic impact on employment in Suffolk County is negative 1,496 (full-time equivalent jobs).<sup>36</sup>

154) South Fork Wind will result in nine times (9 x) more job *losses* (1,496) than its report claims it will *add* in Suffolk County (196).

155) The Economic Analysis' conclusion that "[t]he Project will clearly ... add a significant number of jobs" is *not* supported by the evidence.

156) The best-case scenario of South Fork Wind's total beneficial impacts on NYS/Suffolk County's economy is \$458 million.<sup>37</sup>

157) On the other hand, due to ownership interests, the Project cost will have an *adverse* impact of \$2.013 billion.

158) South Fork Wind is (indirectly) owned by joint and equal partners, Eversource and Ørsted. Eversource services Connecticut, Massachusetts, and New Hampshire, with headquarters in those states (*not* New York State). Ørsted is majority owned by the "Danish state represented by the Danish Ministry of

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<sup>35</sup> Project cost (of \$2.013 billion), divided by the Per Capita Personal Income (2015) for Suffolk County (\$59,484), is 1,692 full-time equivalent jobs.

<sup>36</sup> Full-time equivalent jobs (1,692) less operational jobs (31) less construction jobs (165).

<sup>37</sup> Summary of Jobs and Investment Impacts for New York (at 3, PDF 6, Table 1-2). Total construction phase beneficial economic impact is **\$186.1 million** (Earning \$74.1, Output \$81.9, and Value Add 57.1 million). Total operational phase beneficial economic impact is **\$272 million** (Earning \$2.8, Output \$6.8, and Value Add 3.9: sum multiplied by 20 years).



Finance” (Ørsted annual report 2021, at PDF 167, note 16).<sup>38</sup> North American ownership comprises “The Capital Group Companies, Inc. based out of Los Angeles, the US 5-10%” (*id.*) with a total North American ownership of 12% (*id.* at PDF 71). There is *no* indication of ownership interests in New York State or Suffolk County that would result in profits being returned to the local economy. Based on SFW’s Economic Analysis, the *total net adverse socio-economic impact* is expected to result in a capital outflow of \$1.555 billion leaving Suffolk County and New York State.

159) According to the SFW COP (May 2021), Suffolk County employed 747,600 people in 2017 (at 4-326, PDF 490, Table 4.6-6).

160) Each wage earner in Suffolk County would have to contribute the equivalent of \$104 every month for 20 years to pay for South Fork Wind’s *net adverse* impact of \$1.555 billion (i.e., \$1.555 billion divided by 747,600 wage earners in Suffolk County).

161) The *net adverse* impact of \$1.555 billion from South Fork Wind will leave Suffolk County and New York State.

162) Thirty-two percent (32%) of the *net adverse* impact (\$1.555 billion) will go

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<sup>38</sup> Ørsted annual report 2021 (at PDF 167, note 16). Available online at the following link - <https://orstedcdn.azureedge.net/-/media/annual2021/annual-report-2021.ashx?rev=9d4904ddf4c44594adab627f7e4c62be&hash=69CE31C5D5935DD0DB46313E3BDEC952>

overseas to shareholders in Denmark. Ørsted A/S (indirectly) has a 50% ownership interest in South Fork Wind LLC. Denmark shareholders own the majority (63.1%) of shares in Ørsted A/S as follows—the Danish State (50.1%), Danish institutional investors (6%), Andel A.M.B.A, Denmark (5%), and Retail investors, Denmark (2%) (see Ørsted annual report 2021, *supra*).

163) South Fork Wind did *not* consider or even acknowledge the Project cost (\$2.013 billion) or its socio-economic impact in *any* of its (six) updates to its COP over a three-year period (from June 2018 until May 2021).

164) South Fork Wind omitted the Project cost (\$2.013 billion) from its economic analysis, thereby misrepresenting the overall socio-economic impact its Project will have on Suffolk County.

165) Without the inclusion of the Project cost (\$2.013 billion) in South Fork Wind's COP, the Project could not be compared to other offshore wind farms based on cost (per unit of output).

#### BOEM Fraud: Cost (\$2 billion)

166) In 2020, BOEM's Acting Director, Walter D. Cruickshank, emphasized the role economic analysis plays in BOEM's decision-making—

“[E]conomics is a critical component of BOEM's work. It's so vital that it is mentioned in our mission: “...to manage development of U.S. Outer Continental Shelf energy and mineral resources in an environmentally and economically responsible way [emphasis

added]. [...] BOEM’s analysis of offshore energy projects’ total economic impact helps keep policymakers and the public informed on the economic activity associated with OCS energy development.”<sup>39</sup>

167) BOEM Science’s Editorial Board defines economic analysis as follows –

Economics is the study of choices – how people choose to allocate their resources (e.g., time and money) among competing uses or alternatives [emphasis added]. Just as individuals consider options and their tradeoffs, federal agencies are required to consider them as well. At BOEM, economic analyses help formalize this analytical process and provide both quantitative and qualitative information about the underlying tradeoffs associated with different policy options [emphasis added].<sup>40</sup>

168) BOEM explains that “[e]conomics is also a factor in designing fiscal and lease terms for ... renewable energy lease sales ... [and] the OCS Lands Act specifically states that ... the OCS should be “made available for expeditious and orderly development” (43 U.S.C. §1332 (3)). Economic analysis helps decision makers ... facilitate orderly development when designing fiscal terms by highlighting the tradeoffs associated with different policy options under consideration.”<sup>41</sup>

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<sup>39</sup> BOEM Ocean Science, Vol. 17, Issue 2, 2020 (at p. 3, ¶ 2)  
<https://www.boem.gov/sites/default/files/documents/newsroom/ocean-science/BOEM%20Ocean%20Science%202020%20Issue%202.pdf>

<sup>40</sup> *Id.* (at p. 3, colored insert box)

<sup>41</sup> *Id.* (at p. 5, last paragraph)

169) BOEM admits (in ¶¶ 1–3) to maintain a level of expertise in economic analysis necessary to achieve its mission “to manage development [...] in an environmentally and economically responsible way.”<sup>42</sup>

170) In November 2018, BOEM received the following estimated cost of power from SFW’s proposed (90 MW) facility (ECF No. 3-1, at 4, ¶¶ 17–20)—

Nameplate Capacity:	90 MW (megawatts)
Capacity Factor:	47%
Average Actual:	42.2 MW
Given:	1 MW of capacity produces 8,760 MWh per year
Average Actual:	370,000 MWh per year (34.2 MW x 8,760 hours)
Contract Valuation:	\$1,624,738,893 (NYS Comptroller, 20-year term)
Contract Valuation:	\$81,236,945 per year
Price per Output:	\$220 per MWh
Price per Output:	<b>22 cents</b> per kilowatt hour

171) In February 2021, BOEM received comprehensive information on the Project cost of SFW’s proposed facility, including two hundred and seven (207) exhibits (see 2021 Comments, ¶¶ 21–25) (ECF No. 3-1, at 15–36).

172) Included in the 2021 Comments received by BOEM (on February 23, 2021) was an internal LIPA Encumbrance Request (signed by LIPA CFO Joseph Branco on January 30, 2017) (ECF No. 3-1, at 29, [BOEM EXHIBIT #040](#), at 2).<sup>43</sup>

173) The Encumbrance Request shows the Project Cost (\$1,624,738,893).

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<sup>42</sup> *Id.* (at p. 3, ¶ 2)

<sup>43</sup> LIPA Contract Encumbrance Request, signed by LIPA CFO, Joseph Branca, on January 30, 2017 (see table on page 2). Available at BOEM.gov ([https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment\\_36.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_36.pdf))



Complaint Exhibit B, at p. 4, ¶ 4)—

By comparison (on October 23, 2019), Ørsted A/S announced a power purchase agreement for Sunrise Wind with a price of only \$80.64/MWh. If the same amount of energy (i.e. 7,432,080 MWh) was purchased from Sunrise Wind instead of South Fork Wind, it would cost only \$599,322,931, which is \$1,025,415,958 less expensive [emphasis added]” (3-1, at 18, third paragraph).



178) The 2021 Comments included a table comparing South Fork Wind’s price and energy deliveries to Sunrise Wind. The table has been included here (overleaf). (See the original table at ECF No. 3-1, at 28, [BOEM Exhibit #029](#), at 15).<sup>46</sup> Please see the table (overleaf).

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<sup>46</sup> [https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment\\_32.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_32.pdf)

Contract Year	South Fork Wind (cost of delivered energy)			Sunrise Wind (equivalent cost of delivered energy)		
	Energy Deliveries (MWh)	SFW Price (\$/MWh)	SFW Yearly Payments	Sunrise Price (\$/MWh)	Sunrise Yearly Payments	Sunrise Discount (from SFW)
0	37,040	\$160.33	\$5,938,623	\$80	\$2,963,200	50%
1	371,604	\$168.35	\$62,558,233	\$80	\$29,728,320	52%
2	371,604	\$176.76	\$65,686,144	\$80	\$29,728,320	55%
3	371,604	\$185.60	\$68,970,452	\$80	\$29,728,320	57%
4	371,604	\$194.88	\$72,418,974	\$80	\$29,728,320	59%
5	371,604	\$200.73	\$74,591,543	\$80	\$29,728,320	60%
6	371,604	\$206.75	\$76,829,290	\$80	\$29,728,320	61%
7	371,604	\$212.95	\$79,134,168	\$80	\$29,728,320	62%
8	371,604	\$219.34	\$81,508,194	\$80	\$29,728,320	64%
9	371,604	\$225.92	\$83,953,439	\$80	\$29,728,320	65%
10	371,604	\$228.18	\$84,792,974	\$80	\$29,728,320	65%
11	371,604	\$230.46	\$85,640,903	\$80	\$29,728,320	65%
12	371,604	\$232.77	\$86,497,312	\$80	\$29,728,320	66%
13	371,604	\$235.10	\$87,362,286	\$80	\$29,728,320	66%
14	371,604	\$237.45	\$88,235,908	\$80	\$29,728,320	66%
15	371,604	\$237.45	\$88,235,908	\$80	\$29,728,320	66%
16	371,604	\$237.45	\$88,235,908	\$80	\$29,728,320	66%
17	371,604	\$237.45	\$88,235,908	\$80	\$29,728,320	66%
18	371,604	\$237.45	\$88,235,908	\$80	\$29,728,320	66%
19	371,604	\$237.45	\$88,235,908	\$80	\$29,728,320	66%
20	334,564	\$237.45	\$79,440,906	\$80	\$26,765,120	66%
			\$1,624,738,893 <sup>47</sup>		\$594,566,400	63.4%


South Fork Wind

Sunrise Wind

**South Fork Wind is \$1 billion more expensive for the same renewable energy.**

<sup>47</sup> New York Office of the State Comptroller, Open Book, Contract Number: C000883  
<https://wwe2.osc.state.ny.us/transparency/contracts/contractsearch.cfm>

179) In the knowledge of SFW’s vastly overpriced (by \$1 billion) offshore wind farm, BOEM gave cost no thought *at all*, and approved it.

180) In BOEM’s FEIS (issued August 16, 2021), under the heading “Demographics, Employment, and Economics” “Affected Environment” (FEIS, at 3-153, PDF 205, section 3.5.3.1), BOEM writes –

“In the COP, SFW does not indicate that any single state or county would be the primary recipient of the Project’s economic impacts, adverse or beneficial ... Table 3.5.3-1. documents the ports, communities, counties, and states that could be directly or indirectly affected by the Project.” (*id.*, last paragraph).

181) As the heading, “Ports, Communities, Counties, and States in the Analysis Area” for Table 3.5.3-1 indicates (*id.*, at 3-154, PDF 206), the table lists the geographic areas “that could be directly or indirectly affected by the Project.”

BOEM identifies *only* individual ports or towns *within* Suffolk County—the Town of East Hampton (East Hampton), Port of Montauk (Montauk), Shinnecock Fishing Dock (Hampton Bays), and Greenport Harbor (Greenport).

182) BOEM does *not* list Suffolk County, as a whole, in Table 3.5.3-1 (above), that could be affected by the Project. Ratepayers living in Suffolk County, LIPA’s service area, will bear the economic burden of having to pay for the SFW Project, estimated to be over \$2 billion. BOEM does *not* include the area of Suffolk County in its analysis of impacts resulting from the SFW Project on demographics,



employment, and economics.

183) The ROD states that the “DOI has decided to approve ... the Habitat Alternative” (ROD, at 15, PDF 17, opening sentence).

184) Under the heading “Demographics, Employment, and Economics” (FEIS, at 3-153, PDF 205, section 3.5.3), the FEIS states that the Project will have a lesser “negligible to minor” *adverse* impact compared to a more significant “minor ... to moderate” *beneficial* impact on demographics, employment, and economics—

“Under the Habitat alternative ... impacts on demographics, employment, and economics in the analysis area ... would not be measurably different than under the Proposed Action: negligible to minor adverse and minor beneficial to moderate beneficial [emphasis added]” (*id.*, at 3-167, PDF 219, fourth paragraph, sect. 3.5.3.2.5).

185) BOEM’s ROD gives the same favorable weighting to *beneficial* impacts compared to *adverse* impacts on demographics, employment, and economics as follows—

- i. “Negligible to minor adverse and minor to moderate beneficial impacts to the socioeconomic analysis area in terms of employment, ... and income from construction and installation, O&M, and conceptual decommissioning [emphasis added]” (ROD at 12, PDF 14, third row, last column).
- ii. BOEM defines “Negligible” to be situations where “[n]o measurable impacts would occur” (FEIS, at 3-160, PDF 212, Table 3.5.3-5).

- iii. “Minor” are “[a]dverse impacts to the affected activity or geographic place [that] could be avoided ... Once the impacting agent is eliminated, the affected activity or geographic place would return to a condition with no measurable effects” (*id.*).
- iv. “Moderate” are “[i]mpacts to the affected activity or geographic place [that] are unavoidable ... during the life of the Project” (*id.*).

186) BOEM’s economic analysis area focuses on the “ocean economy” that does *not* include Suffolk County as a whole. BOEM describes the economic characteristics of its analysis area as follows—

“[The] focus of this analysis is the GDP for the “ocean economy,” which includes economic activity dependent upon the ocean, such as commercial fishing and seafood processing, marine construction, commercial shipping and cargo handling facilities, ship and boat building, marine minerals, harbor and port authorities, passenger transportation, boat dealers, and ocean-related tourism and recreation (National Ocean Economics Program 2020)” (FEIS, at 3-157, PDF 209, last sentence).

187) BOEM devotes nearly two hundred pages to the “ocean economy” and the socio-economic impact on the fisheries industry (FEIS, at 3-86 to 3-183, PDF 138-235, 197 pages). By comparison, BOEM remains silent, not a word, on the Project cost of \$2 billion and any potential *adverse* economic effects on Suffolk County, LIPA’s service area.

188) In the ROD, BOEM summarizes impacts on demographics, economics, and

employment from the SFW Project as follows—

“The FEIS also found that the Proposed Project could have, to some extent, beneficial impacts on ... demographics, employment, and economics” (ROD, at D-8, PDF 100, first paragraph).

189) BOEM’s ROD identifies possible “beneficial impacts” but does *not* identify *any* potential *adverse* impacts on demographics, employment, or economics. For example, BOEM does *not* acknowledge any potential *adverse* effects resulting from the two-billion-dollar cost burden to over one million people in LIPA’s service area.

190) BOEM’s economic analysis considers *beneficial* economic impacts such as local spending on capital expenditures of \$184 to \$247 million (depending on the wind farm’s capacity) (FEIS, at F-17, PDF 587, Table F-10).

191) BOEM considers *beneficial* impacts from operational spending of \$6.2 to \$12.3 million per year (*id.*, Table F-11), that is, \$123 to \$246 million over the 20-year contract term.

192) BOEM accounts for *beneficial* impacts from spending in the local economy by SFW on capital and operational expenses of \$307 to \$493 million (the addition of capital expenditure (§ 190) and operational spending (§ 191)).

193) BOEM’s analysis is one-sided. BOEM accounts for Project-related inflows into the local economy but ignores outflows. Project-related outflows (\$2 billion) outweigh inflows (\$307 to \$493 million) by 4 to 7 times. To put it another way,

for every dollar South Fork Wind puts into the economy, it takes out four-to-seven times that amount.

194) The net outflow (i.e., inflows of \$307 to \$493 million less an outflow of \$2 billion) equals \$1.5 to \$1.7 billion, exiting Suffolk County's economy.

195) BOEM does *not* acknowledge, let alone consider, the *adverse* economic impacts of withdrawing \$2 billion from Suffolk County's economy. Moreover, the *negative* economic impact (\$2.013 billion) is fixed under the terms of the PPA. In contrast, the limited *beneficial* effects are estimates.

196) BOEM has used biased financial data to support its decision.

197) Contrary to BOEM's assertion that the Project will have a "[n]egligible to minor adverse and minor to moderate beneficial impacts to the socioeconomic analysis area [emphasis added]" (see ¶¶ 185, 188, above), the Project will have a net *adverse* economic impact of \$1.5 to \$1.7 billion.

198) Contrary to BOEM's assertion that "the proposed Project could have... beneficial impacts on ... employment[,]" the high cost of South Fork Wind will have a \$2 billion *adverse* effect on the economy that dwarfs BOEM's *estimated beneficial* economic impact.

199) BOEM failed to consider both the Project's cost (of \$2 billion) and the people in Suffolk County who will have to pay that cost, including lower-income families.

### Fraud: Project Purpose and Need

200) BOEM states that the “purpose of the Project is to develop a commercial-scale offshore wind energy facility ... [emphasis added]” (*id.*, penultimate paragraph), but according to the owners, the Project’s scale is not commercial. In response to a request for information from the New York State Energy Research and Development Authority (“NYSERDA”), the Project’s joint and equal (indirect) owners, Ørsted and Eversource, stated that projects such as South Fork Wind (130 MW) are “not likely to deliver cost savings. Due to diseconomies of scale, the costs per unit of energy for projects of 100 MW and 200 MW in size are significantly higher than those for 400 MW projects” (ECF No. 3-1, at 35, [Exhibit #169](#), at 2, fourth paragraph).<sup>48</sup>

201) BOEM (falsely) claims that the Project “is designed” to contribute to a New York State renewable energy goal (FEIS at i, PDF 5, last paragraph), referring to the Climate Leadership and Community Protection Act (“CLCPA”), enacted in July 2019.<sup>49</sup> However, the design for South Fork Wind was submitted in the South Fork RFP by the “submittal deadline of December 2, 2015” (ECF No. 3-1, at 28, [Exhibit #030](#), at 7, footnote 5),<sup>50</sup> which *pre-dates* by three-and-a-half years New

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<sup>48</sup> Available at boem.gov, click here– [https://downloads.regulations.gov/BOEM-2020-0066-0387/attachment\\_68.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0387/attachment_68.pdf) at 2, fourth paragraph).

<sup>49</sup> New York Environmental Conservation Law (“NY ECL”) § 75-0103(13)(e)

<sup>50</sup> Available at boem.gov, click here– [https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment\\_49.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_49.pdf) (at 7, footnote 5).

York State’s enactment of the CLCPA. Setting aside the (insurmountable) timing difference, *arguendo*, the project would *not* have qualified under the CLCPA due to its high cost that is inconsistent with “a manner that seeks [...] to minimize costs” (NY ECL § 75-0109(3)(a)).

202) SFW and BOEM falsely represent the Project’s genesis, the South Fork Request for Proposals (“South Fork RFP”). BOEM parrots the developer’s COP (May 2021), asserting (falsely) that the power purchase agreement resulted from a “technology-neutral competitive bidding process” (ROD, at 7, PDF 9, penultimate paragraph) (COP May 2021, at ES-2, PDF 6, first sentence).

203) Subsequently disclosed (in January 2021), internal LIPA documents contradict SFW’s and BOEM’s claims.

204) On January 27, 2017, LIPA issued a memorandum regarding the South Fork RFP (ECF No. 3-1, at 28, [Exhibit #030](#)).

205) The memo shows that proposals were advanced in the procurement process based on their technology— “In some instances, proposals were advanced if they were the only proposal offering a particular technology” (*id.*, at 12, middle of the first paragraph).<sup>51</sup> The South Fork RFP was *not* “neutral” on a proposal’s technology.

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<sup>51</sup> Available here– [https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment\\_49.pdf](https://downloads.regulations.gov/BOEM-2020-0066-0385/attachment_49.pdf) (at 12, middle first paragraph).

206) South Fork Wind was the *only* wind farm proposal submitted for consideration in the South Fork RFP procurement— “Deepwater Wind [SFW] was the only proposal offering offshore wind technology” (*id.*, at 13, first paragraph). South Fork Wind did *not* compete against other offshore wind farm proposals in the South Fork RFP.

207) According to the June 24, 2015 notice “To All Interested Parties” (“Solicitation Notice”), “LIPA[] is soliciting proposals ... to acquire sufficient local resources to meet expected peak load requirements until at least 2022 in the South Fork of Long Island ... Such resources will be located on Long Island” (ECF No. 3-12, first paragraph).

208) The South Fork Wind Farm is *not* a “local” resource “located on Long Island” (*id.*); it is a generation resource located offshore in the Atlantic Ocean on the Outer Continental Shelf.

209) For further details on South Fork RFP procurement violations (NB: two separate cases), see Exhibit F- Kinsella v LIPA- COMPLAINT Index 621109-2021, Exhibit G- Kinsella v LIPA- Complaint Index 613-2021, and Exhibit H- Kinsella v LIPA- Table of Exhibits Index 613-2021.

210) SFW received favorable treatment during the South Fork RFP procurement process, whereby its proposal progressed despite failing to comply with mandatory criteria that other bids were eliminated for violating. According to the South Fork

RFP, SFW did not compete by the rules as other bidders. Thus, the South Fork RFP was uncompetitive.

211) SFW did *not* comply with the South Fork RFP’s mandatory criteria (§ 209).

212) The South Fork RFP was *not* competitive (Amended Complaint, ECF No. 34-2, at 8-9, FRAUD #5, and Sixteenth Claim for Relief, at §§ 669 – 677) (§ 209).

213) “The East Hampton Airport property consists of approximately 610 acres, including 56 acres of industrial uses along Industrial Road to the south” (Final Generic Environmental Impact Statement for East Hampton Airport, August 2010, at 61, PDF 71, fifth paragraph). “[T]he property includes airside facilities, including three runways and a series of connecting taxiways, and landside facilities (terminal building, aircraft hangars, aircraft parking aprons, vehicle parking, etc.). The property is bound by Long Island Rail Road tracks to the south” (*id.*).

Available on the Town of East Hampton’s official website (ehamptonny.gov) — <https://www.ehamptonny.gov/DocumentCenter/View/1233/East-Hampton-Airport-Final-Generic-Enviromental-Impact-Statement-PDF>.

214) The Record of Decision BOEM issued on November 24, 2021, reads— “DOI weighed all concerns in making decisions regarding this Project and has determined that all practicable means within its authority have been adopted to avoid or minimize environmental and socioeconomic impacts associated with the selected alternative and the approval of the COP [emphasis added]” (ROD, at 17,



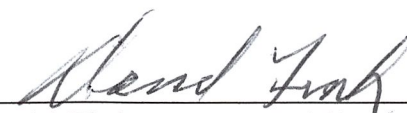
PDF 19, second paragraph). On the contrary, BOEM, in exercising authority delegated to it by the U.S. Department of the Interior (“DOI”), had *not* “weighed all concerns” (*id.*). BOEM neither considered *adverse* impacts related to the project cost (of \$2.013 billion) that outweighed *beneficial* economic impacts by many times, nor considered harmful environmental PFAS contamination of groundwater, acknowledging only “perfluorinated compounds” *somewhere else* on a 610-acre (see ¶ 213, above) “fourth site” (FEIS, at H-23, PDF 655, second paragraph).

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on December 30, 2022, in Wainscott, N.Y.

  
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Sworn before me this 30th day of December 2022

  
\_\_\_\_\_  
David Fink, Notary Public

DAVID FINK  
Notary Public, State of New York  
No. 4520152  
Qualified in New York County  
Commission Expires February 28, 2023