

Case: 18-T-0604

Case #1:22-cv-02147-JMC

Exhibit C

SIMON V. KINSELLA

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May 13, 2022

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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”),<sup>1</sup> 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.<sup>2</sup>

<sup>1</sup> South Fork Wind, LLC. (formerly Deepwater Wind South Fork, LLC.)

<sup>2</sup> 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](#)).

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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]." <sup>3</sup> 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](#)). <sup>4</sup>

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<sup>3</sup> 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](#))

<sup>4</sup> 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](#))

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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.<sup>5</sup> 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."<sup>6</sup>

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)."<sup>7</sup>

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."<sup>8</sup> 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.

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

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

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

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

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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.<sup>9</sup>

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.”<sup>10</sup>

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.”<sup>11</sup>

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.”<sup>12</sup> 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.

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

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

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

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

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**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.”<sup>13</sup>

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.”<sup>14</sup> 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.”<sup>15</sup> 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.

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

<sup>14</sup> 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](#)).

<sup>15</sup> 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](#)).

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**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.”<sup>16</sup>

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.”<sup>17</sup>

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.”<sup>18</sup>

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>).<sup>19</sup>

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

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

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

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

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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.”<sup>20</sup>

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.”<sup>21</sup>

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).<sup>22</sup> 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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<sup>20</sup> See Response of South Fork Wind, *Supra* (at p. 4, penultimate paragraph) ([PSC DMM 345 click here](#))

<sup>21</sup> 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](#))

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

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**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 [...]”<sup>23</sup>

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.

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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)

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

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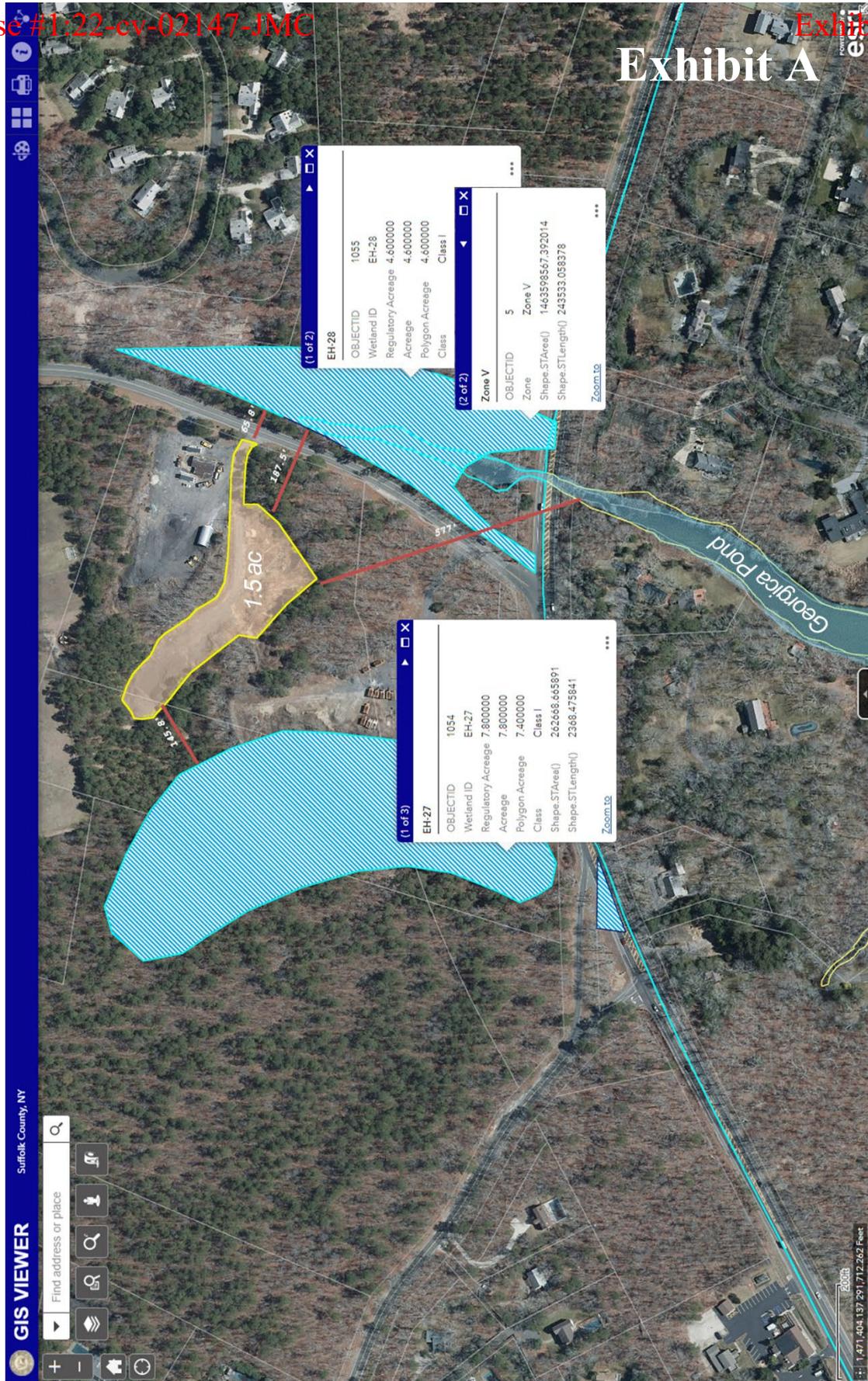


Exhibit A

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STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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

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**RESPONSE OF SOUTH FORK WIND, LLC  
TO COMMENTS RECEIVED ON  
CHANGE REQUEST 4 TO THE  
SOUTH FORK EXPORT CABLE  
ENVIRONMENTAL MANAGEMENT  
AND CONSTRUCTION PLAN**

South Fork Wind, LLC (“SFW”) respectfully submits this response to the comments it received from Mr. Simon Kinsella (“Mr. Kinsella”) on April 25, 2022<sup>1</sup> regarding the Environmental Management and Construction Plan Change Request 004 (“EM&CP Change Request”) SFW filed on April 6, 2022 in the above-referenced proceeding. In the EM&CP Change Request, SFW requested approval for: (i) use of two temporary laydown areas – 209 Springs Fireplace Road (tax map parcel 145.-4.-12.4 and 145.-4.-5.1) and 106 Stephen Hands Path (tax map parcel 193.-2-4)<sup>2</sup> (collectively, the “Proposed Laydown Areas”) – for equipment storage, material storage, and contractor staging; and (ii) relocation of splice vault MH-02. Department of

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<sup>1</sup> Mr. Kinsella filed an updated version of the comments on April 28, 2022.

<sup>2</sup> The EM&CP Change Request references use of parcels 193.-2-3 and 193.-2-4, however, the Town of East Hampton’s approval was limited to parcel 193.-2-4 and therefore SFW is limited to using that parcel.

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Public Service (“DPS”) Staff issued approval of the splice vault relocation request on April 11, 2022.<sup>3</sup> Mr. Kinsella filed his comments on April 25, 2022.<sup>4</sup>

As shown below, Mr. Kinsella’s comments are generally inaccurate, misleading and repetitive. Mr. Kinsella ignores the fact that construction of the Project is subject to extensive certificate conditions and the EM&CP and is overseen by a full-time, independent Environmental Monitor and DPS Staff. Moreover, SFW’s EM&CP Change Request 004 accurately sets forth the nature of the probable environmental impacts of the proposed change and shows that it will not result in any increase in adverse environmental impacts. Nor is the use of these laydown areas directly related to contested issues decided by the Administrative Law Judge or the Commission during the proceeding. Accordingly, pursuant to Certificate Condition 11, SFW requests that the proposed EM&CP change be approved by the Director of Environmental Certification and Compliance Section (“EC&C”) of the Office of Electric, Gas and Water, or his or her designee.<sup>5</sup>

**Kinsella Comment:** SFW’s EM&CP Change Request 003 for 40 Tan Bark Trail would have allowed SFW to establish a hazardous waste treatment facility in close proximity to a wetland.

**SFW Response:** SFW withdrew EM&CP Change Request 003 on April 25, 2022. Therefore, any concerns or arguments relating to the proposed laydown area at 40 Tan Bark Trail are moot. Notwithstanding the foregoing, to the extent SFW encounters any hazardous material during construction, it must adhere to the robust contaminated materials handling requirements set forth in the Certificate Conditions<sup>6</sup> and the approved EM&CP<sup>7</sup> (specifically the Hazardous Waste and Petroleum Work Plan and the Dewatering Plan). It is also worth noting that, 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.

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<sup>3</sup> Case 18-T-0604, Application of Deepwater Wind South Fork, LLC for a Certificate of Environmental Compatibility and Public Need for the Construction of Approximately 3.5 Miles of Submarine Export Cable from the New York State Territorial Waters Boundary to the South Shore of the Town of East Hampton in Suffolk County and Approximately 4.1 Miles of Terrestrial Export Cable from the South Shore of the Town of East Hampton to an Interconnection Facility with an Interconnection Cable Connecting to the Existing East Hampton Substation in the Town of East Hampton, Suffolk County, EM&CP Change 4 Minor Change Approved (issued April 11, 2022).

<sup>4</sup> Case 18-T-0604, *supra*, Opp. to EM&CP Change Request No. 4 (filed April 25, 2022).

<sup>5</sup> SFW has prioritized responding to those comments from Mr. Kinsella that are most misleading. To the extent that SFW does not address a specific claim, such omission should not be construed as SFW’s agreement with Mr. Kinsella’s claims or confirmation that Mr. Kinsella’s claims are accurate.

<sup>6</sup> Case 18-T-0604, *supra*, Order Adopting Joint Proposal (issued March 18, 2021) at Appendix D (“Certificate Conditions”).

<sup>7</sup> Case 18-T-0604, *supra*, Order Approving Environmental Management and Construction Plan Subject to Conditions (issued November 22, 2021).

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**Kinsella Comment:** There is nothing in the EM&CP Change Request or the Town Board Resolution that prevents SFW from transferring 60 truckloads of contaminated soil and/or groundwater at the Proposed Laydown Areas.

**SFW Comment:** The EM&CP Change Request clearly explains the activities for which the Proposed Laydown Areas would be used. Specifically, they will be used for the following activities: (i) storing equipment (such as work trucks, machinery, and storage containers); (ii) storing material (such as conduit, aggregates, signage, and masonry supplies); and (iii) contractor staging (field office trailers and parking, etc.). The EM&CP Change Request also makes it clear that no soil stockpile or dewatering storage and treatment activities will take place at the Proposed Laydown Areas. 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.

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. The trucks will be transporting materials such as cable, conduit, and other construction materials.

Any arguments regarding the language of the Town of East Hampton Town Board Resolution ("Resolution")<sup>8</sup> are irrelevant as SFW's actions will be limited to what is approved by the Public Service Commission ("Commission") as well as the requirements of its property agreements. As stated above SFW is not seeking approval from the Commission to undertake any activities with respect to soil or groundwater at the Proposed Laydown Area.

**Kinsella Comment:** The language of the Town Board Resolution is loose and does not prohibit SFW from undertaking certain potentially problematic actions, including: (i) releasing hazardous waste into Georgica Pond; (ii) stockpiling and/or treating soil or water from the SFEC-Interconnection Facility at the Proposed Laydown Areas; (iii) using groundwater to clean off trucks and equipment. If such materials are brought to the Proposed Laydown Areas, there could be a spill by a contractor as there are no primary or secondary containment measures on the equipment.

**SFW Response:** As noted above, SFW's actions are limited by the Commission's approval. The EM&CP Change Request clearly sets forth the list of actions for which SFW is seeking permission to use the Proposed Laydown Areas. 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. Moreover, SFW does not use groundwater to clean trucks, and all frac tanks have secondary containment measures, as is required by Appendix G of the EM&CP (Dewatering Plan), sections 3.5 and 3.9.

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<sup>8</sup> Town of East Hampton Town Board, RES-2022-551 (approved April 21, 2022), available at [http://easthamptontown.iqm2.com/Citizens/Detail\\_LegiFile.aspx?Frame=&MeetingID=2398&MediaPosition=&ID=27674&CssClass=](http://easthamptontown.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=2398&MediaPosition=&ID=27674&CssClass=).

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**Kinsella Request:** The EM&CP Change Request would allow SFW to operate a facility to treat hazardous substances at the Proposed Laydown Areas. Moreover, SFW is not a registered facility for storing and/or treating hazardous waste and has no experience doing so.

**SFW Response:** As is made clear by the language of the EM&CP Change Request, 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. As such, SFW will not be treating hazardous substances at the Proposed Laydown Areas and does not require any additional registrations or permits. To the extent that SFW must handle any contaminated soil or groundwater, which will not occur at the Proposed Laydown Areas, it will do so, as required, in accordance with the Certificate Conditions, as well as the EM&CP. In addition, SFW is using qualified contractors to construct the SFEC. These contractors, along with SFW's parent companies, Orsted and Eversource Energy, have extensive experience in the handling and treatment of contaminated materials during construction projects.

And, as stated above, 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.

**Kinsella Comment:** SFW incorrectly denied the existence of PFAS throughout the Article VII process and did not provide the Commission with adequate information regarding PFAS contamination in the Project area. Accordingly, the Joint Proposal does not adequately address the issue. SFW has never submitted testing results to any regulator and should be required to disclose all testing results to the Commission for review.

**SFW Response:** Mr. Kinsella's comments questioning the veracity or adequacy of the information reviewed by the Commission in granting the Certificate and calling for the disclosure of additional information are an improper collateral attack on the Commission's prior orders granting the Certificate, denying the petitions for rehearing filed in this case and approving the EM&CP. The time for challenging those Commission orders expired months ago and, as such, these requests, which are essentially requests that the Commission rehear those orders, are time-barred. Mr. Kinsella had ample opportunities during the Article VII proceeding to raise these issues and, in fact did raise these issues before the Commission, which considered and rejected his arguments on numerous occasions.

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. In denying the request for injunctive relief the Court noted:

After years of administrative proceedings, the NYPSC issued a Certificate of Environmental Compatibility and Public Need under Article VII of the Public Service Law allowing the project to move forward. These proceedings considered, among other things, the potential of the project to exacerbate PFAS contamination. The public was able to participate in the proceedings through hearings and the submission of testimony or comments. Plaintiffs participated in this process. The NYPSC found that the project would not exacerbate existing PFAS contamination, in part because as proposed, the project

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provided for preventative measures to ensure that groundwater flow was not materially altered. The NYPSC later denied a rehearing of the issue, holding that petitioners had not submitted sufficient evidence to demonstrate that the project's provisions for dealing with PFAS were inadequate.

The Court found that measures to ensure that any risk that construction of the Project will spread PFAS contamination were included as “conditions on the issuance of the project’s permits by the NYPSC” and that the plaintiffs failed to address those measures in their request for injunctive relief. Mr. Kinsella’s arguments here should be rejected for the same reasons that the U.S. District Court rejected Kinsella’s colleague’s arguments—Kinsella also fails to show that the Certificate Conditions adopted by the Commission are inadequate. *See Mahoney, et al. v U.S Department of the Interior, et al.*, Case No. 22-cv-01305-FB-ST, Order issued April 12, 2022, attached hereto.

Indeed, the Commission has determined that construction of the SFEC will not exacerbate any existing contamination and the Certificate Conditions and EM&CP contain thorough requirements for how SFW must handle, store, treat, and dispose of any contaminated material that is encountered. The Commission determined, based on the extensive record in the Article VII proceeding, that the Conditions adequately addressed any potential PFAS contamination issues.<sup>9</sup> Moreover, SFW disclosed the results of its preconstruction soil testing as part of the EM&CP (see Appendix H: Final Hazardous Waste and Petroleum Work Plan). These results were also reviewed by the NYSDEC.

As noted above, SFW has not yet encountered any hazardous material during its construction efforts. However, to the extent that they are encountered, SFW must adhere to the requirements of the Certificate Conditions and the EM&CP. Moreover, there is a full-time independent Environmental Monitor on-site to ensure SFW’s compliance with these requirements.

**Kinsella Comment:** SFW has not identified an off-site publicly owned treatment works (“POTW”) facility in violation of its approved Dewatering Plan.

**SFW Response:** Neither the Certificate Conditions nor the Dewatering Plan require SFW to publicly disclose the facilities at which it intends to dispose of any excavated or dewatered materials by filing such information with the Commission Secretary. Section 3.7.3 of the approved Dewatering Plan requires that: “SFW will inform [DPS] Staff of the selected POTW that will be used [...].” SFW informed DPS Staff of such locations, in compliance with the Dewatering Plan.

**Kinsella Comment:** SFW’s prior statements that it did not anticipate encountering contaminated groundwater are false because it would not be treating water with granular activated charcoal if it was not contaminated.

**SFW Response:** Under Certificate Condition 151 and Section 3.8.3 of the Dewatering Plan, “[a]ll water from dewatering operations will be pumped into one or more frac tanks and tested for emerging contaminants according to the most recent version of NYSDEC’s Guidelines for Sampling and Analysis of 1,4-Dioxane and PFAS. All water from a frac tank that is found to

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<sup>9</sup> Case 18-T-0604, *supra*, Order Adopting Joint Proposal (issued March 18, 2021) at 102.

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contain PFAS will be treated with granular activated carbon. All water from the frac tanks will be disposed of at a POTW in accordance with the POTW's standards or guidance values in effect at the time of dewatering operations." SFW is in full compliance with these requirements and is not seeking any changes to them through the EM&CP Change Request.

**Kinsella Comment:** SFW estimates that it will transport to the Proposed Laydown Areas 60 trucks loaded with excavated material containing hazardous waste per day at (undisclosed) concentration levels and 240,000 gallons per day of groundwater from its excavation sites.

**SFW Response:** There is nothing in the EM&CP Change Request that supports this allegation. SFW is not seeking approval to bring any materials from excavation or dewatering activities to the Proposed Laydown Areas. Moreover, SFW has almost completed its dewatering activities for the Project. At no time has SFW extracted more than 100,000 gallons per day of groundwater which would require a water withdrawal permit under 6 NYCRR section 601, nor is it proposing do so through the EM&CP Change Request or during the remaining Project construction activities.<sup>10</sup>

**Kinsella Comment:** If the Commission approves the EM&CP Change Request, SFW could treat contaminated soil and/or groundwater outside of regulatory standards.

**SFW Response:** Like Mr. Kinsella's other contentions, this is patently false. The EM&CP Change Request in no way seeks any changes to the requirements to which SFW must adhere if it encounters contaminated soil and/or groundwater. The EM&CP Change Request only requests Commission approval for temporary use of the Proposed Laydown Areas for equipment and construction material storage and contractor staging.

**Kinsella Comment:** SFW did not have permission to close portions of Montauk Highway for its construction activities on April 12 and 13.

**SFW Response:** This is another of Mr. Kinsella's patently false statements. SFW has performed all activities in accordance with the Certificate Conditions, Manual on Uniform Traffic Control Devices ("MUTCD"), and traffic management plans approved as part of the EM&CP. Moreover, all of SFW's construction activities have been performed under the supervision of a full-time environmental monitor to ensure compliance with all applicable conditions, laws, and regulations. Finally, SFW received permission from the NYS Department of Transportation under Highway Work Permit #2021-10- 94508 to perform night work on Montauk Highway to minimize disruptions to traffic. Furthermore, SFW's closure of Montauk Highway is not relevant to the Commission's consideration of the EM&CP Change Request.

**Kinsella Comment:** The EM&CP Change Request states that the NYSDEC mapped wetland EH-27 is 450 feet from the Proposed Laydown Areas but the DEC's public records show it is actually 150 feet away.

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<sup>10</sup> In fact, the total volume of groundwater that has been extracted during construction activities from the commencement of construction on February 1 through April 30 has been less than 50,000 gallons (less than one-half of the 100,000 gallons per day threshold that would trigger the requirement for a water withdrawal permit).

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**SFW Response:** 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. SFW is required by the Certificate Conditions and EM&CP to adhere to construction requirements within NYSDEC wetland regulated buffers and such activities are monitored by the full-time independent environmental monitor. NWI wetlands do not have regulated buffers. Moreover, as the EM&CP Change Request does not seek to allow SFW to perform any activities involving soil or groundwater at the Proposed Laydown Areas, there is no risk of accidental or intentional discharge to wetlands as a result of the request.

**Kinsella Comment:** SFW did not perform any site specific noise or air quality evaluations with respect to the use of the Proposed Laydown Areas.

**SFW Comment:** SFW performed noise and air quality evaluations of all anticipated construction activities both as part of its initial Article VII filing and again as part of the EM&CP filing. This included the vehicular traffic associated with construction. Moreover, all of SFW’s construction activities must adhere to the Noise Control Plan included as Appendix I to the EM&CP. As such, the noise and air quality impacts associated with the use of the Proposed Laydown Areas have already been contemplated and approved by the Commission.

Respectfully submitted,

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