

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND DEPARTMENT

Matter of Kinsella v. New York State Pub. Serv. Commn.

2026 NY Slip Op 02654 (Supreme Court of the State of New York Appellate Division Second Department 2026)
· No. 2021-06572 · Decided April 29, 2026

SUMMARY

The Appellate Division, Second Department dismissed an Article 78 proceeding challenging a New York State Public Service Commission determination approving a South Fork Wind submarine export cable project. The court held that the petitioner failed to timely join South Fork Wind, LLC, a necessary party, within the 30-day limitations period under Public Service Law § 128.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Paul Wooten, J.; Lourdes M. Ventura, J.; Lisa S. Ottley, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	April 29, 2026
DOCKET	2021-06572
DISPOSITION	dismissed
PROCEDURAL POSTURE	Article 78 proceeding under Public Service Law § 128 challenging a New York State Public Service Commission determination; respondents moved to dismiss for failure to timely join South Fork Wind, LLC as a necessary party.
PRECEDENTIAL VALUE	published
PARTIES	Simon Kinsella, petitioner v. New York State Public Service Commission, New York State Department of Public Service, South Fork Wind, LLC

TOPICS

- motions to dismiss
- joinder
- statute of limitations
- judicial review of agency action
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Article 78 proceeding was subject to dismissal because the petitioner failed to timely join South Fork Wind, LLC, a necessary party, within the applicable 30-day limitations period.

HOLDINGS

1. An Article 78 proceeding challenging a final Public Service Commission order must be dismissed when the petitioner fails to timely join a necessary party within the 30-day statute of limitations period.

KEY QUOTATIONS

*“The petitioner failed to timely join South Fork as a necessary party within the 30-day statute of limitations period after issuance of a final order by the Commission” ([*1])*

FACTUAL BACKGROUND

On March 18, 2021, the New York State Public Service Commission adopted a joint proposal granting South Fork Wind, LLC, formerly known as Deepwater Wind South Fork, LLC, a certificate of environmental compatibility and public need under Public Service Law article 7. The certificate concerned construction and operation of a submarine export cable associated with an offshore windfarm project. Simon Kinsella commenced an Article 78 proceeding challenging the Commission's determination but failed to timely join South Fork Wind, LLC as a necessary party.

PROCEDURAL HISTORY

The Commission issued a March 18, 2021 determination adopting a joint proposal and granting South Fork Wind, LLC a certificate of environmental compatibility and public need for an offshore windfarm submarine export cable project. Kinsella commenced an Article 78 proceeding to review that determination but did not timely join South Fork Wind, LLC. The Appellate Division granted the respondents' motions to dismiss and dismissed the proceeding.

DISPOSITION

dismissed

CASES CITED

- Matter of 2214 Rt 208, LLC v Town of Montgomery Zoning Bd. of Appeals, 246 AD3d 904, 906-907
- Matter of Greens at Half Hollow, LLC v Suffolk County Dept. of Pub. Works, 147 AD3d 942, 944
- Matter of Incorporated Vil. of E. Williston v Public Serv. Commn. of State of N.Y., 153 AD2d 943