

**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

OPINION

PER CURIAM.

Matter of Kinsella v New York State Pub. Serv. Commn. - 2026 NY Slip Op 02654

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

2026 NY Slip Op 02654

April 29, 2026

Appellate Division, Second Department

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In the Matter of Simon.

Kinsella, petitioner,

v

New York State Public Service Commission, et al., respondents.

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 29, 2026

2021-06572 DECISION, ORDER & JUDGMENT

Mark C. Dillon, J.P.

Paul Wooten

Lourdes M. Ventura

Lisa S. Ottley, JJ.

Ratschko Wallace PLLC, New York, NY (Jonathan Wallace of counsel), for petitioner.

Robert Rosenthal, Albany, NY (John J. Sipos, John C. Graham, and Ryan Coyne of counsel), for respondent New York State Public Commission.

Couch White LLP, Albany, NY (Leonard H. Singer, Aldiama Anthony, and Brendan Wolf of counsel), for respondent South Fork Wind, LLC.

[*1]

Proceeding pursuant to Public Service Law § 128 and CPLR article 78, inter alia, to review a determination of the respondent New York State Public Service Commission dated March 18, 2021, which, after a hearing, adopted a joint proposal and granted the application of the respondent South Fork Wind, LLC, for a certificate of environmental compatibility and public

need with respect to the construction and operation of a submarine export cable in connection with a certain offshore windfarm project.

Motion by the respondents New York State Public Service Commission and New York State Department of Public Service to dismiss the petition for failure to timely join the respondent South Fork Wind, LLC, as a necessary party to the proceeding. Separate motion by the respondent South Fork Wind, LLC, to dismiss the petition for failure to timely join the respondent South Fork Wind, LLC, as a necessary party to the proceeding.

Upon the petition, and the papers filed in support of the motions and the papers filed in opposition thereto, it is

ORDERED that the motion of the respondents New York State Public Service Commission and New York State Department of Public Service and the separate motion of the respondent South Fork Wind, LLC, to dismiss the petition for failure to timely join the respondent South Fork Wind, LLC, as a necessary party to the proceeding are granted; and it is further,

ADJUDGED that the proceeding is dismissed, without costs or disbursements.

On March 18, 2021, the respondent New York State Public Service Commission (hereinafter the Commission) issued a determination adopting a joint proposal which granted South Fork Wind, LLC (hereinafter South Fork), then known as Deepwater Wind South Fork, LLC, a certificate of environmental compatibility and public need pursuant to Public Service Law article 7 for a South Fork export cable project.

The petitioner commenced this proceeding to review this determination.

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 (*see* Public Service Law § 128; *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).

DILLON, J.P., WOOTEN, VENTURA and OTTLEY, JJ., concur.

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PER CURIAM.

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2026 NY Slip Op 02654 April 29, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports.

In the Matter of Simon. Kinsella, petitioner, v New York State Public Service Commission, et al., respondents. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on April 29, 2026 2021-06572 DECISION, ORDER & JUDGMENT Mark C. Dillon, J.P. Paul Wooten Lourdes M. Ventura Lisa S. Ottley, JJ. Ratschko Wallace PLLC, New York, NY (Jonathan Wallace of counsel), for petitioner.

Robert Rosenthal, Albany, NY (John J. Sipos, John C. Graham, and Ryan Coyne of counsel), for respondent New York State Public Commission. Couch White LLP, Albany, NY (Leonard H. Singer, Aldiana Anthony, and Brendan Wolf of counsel), for respondent South Fork Wind, LLC. [*1] Proceeding pursuant to Public Service Law § 128 and CPLR article 78, inter alia, to review a determination of the respondent New York State Public Service Commission dated March 18, 2021, which, after a hearing, adopted a joint proposal and granted the application of the respondent South Fork Wind, LLC, for a certificate of environmental compatibility and public need with respect to the construction and operation of a submarine export cable in connection with a certain offshore windfarm project.

Motion by the respondents New York State Public Service Commission and New York State Department of Public Service to dismiss the petition for failure to timely join the respondent South Fork Wind, LLC, as a necessary party to the proceeding. Separate motion by the respondent South Fork Wind, LLC, to dismiss the petition for failure to timely join the respondent South Fork Wind, LLC, as a necessary party to the proceeding.

Upon the petition, and the papers filed in support of the motions and the papers filed in opposition thereto, it is ORDERED that the motion of the respondents New York State Public Service Commission and New York State Department of Public Service and the separate motion of the respondent South Fork Wind, LLC, to dismiss the petition for failure to timely join the respondent South Fork Wind, LLC, as a necessary party to the proceeding are granted; and it is further, ADJUDGED that the proceeding is dismissed, without costs or disbursements.

On March 18, 2021, the respondent New York State Public Service Commission (hereinafter the Commission) issued a determination adopting a joint proposal which granted South Fork Wind, LLC (hereinafter South Fork), then known as Deepwater Wind South Fork, LLC, a certificate of

environmental compatibility and public need pursuant to Public Service Law article 7 for a South Fork export cable project.

The petitioner commenced this proceeding to review this determination. 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 (see Public Service Law § 128; 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). DILLON, J.P., WOOTEN, VENTURA and OTTLEY, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.