



**THOMAS P. DiNAPOLI**  
STATE COMPTROLLER

STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**  
110 STATE STREET  
ALBANY, NEW YORK 12236

**PRESS OFFICE**  
Tel: (518) 474-4015  
Fax: (518) 473-8940

December 3, 2018

Mr. Si Kinsella  
si@wainscott.life

Re: FOIL Request #2018-694

Dear Mr. Kinsella:

I have received your Freedom of Information Law (FOIL) request dated 11/26/2018 and received in this office on 11/26/2018 via email.

I have asked the appropriate personnel within this agency to gather the requested information to the extent that it is kept or held by this agency.

We will process your request as soon as possible. After the records you described are retrieved, we will be better able to determine if additional time is needed to review the records to establish whether they are available pursuant to FOIL and, if they are, to reproduce the records.

I will contact you within twenty business days to advise you regarding our determination or, if additional time is needed, to provide a date when you can expect our determination. If such records are available under FOIL, we will notify you when you may expect to receive the records.

Sincerely,

A handwritten signature in blue ink that reads "Jane Hall". The signature is written in a cursive style with a large, looping initial "J".

Jane Hall  
Records Access Officer

E-MAIL: SI@WAINSCOTT.LIFE

P.O. Box 792  
WAINSCOTT, N. Y. 11975

MOBILE: (631) 903-9154

November 26, 2018

Records Access Officer  
Office of the NYS Comptroller  
110 State Street  
Albany, NY 12236-0001

Sent via Fax and Email  
Fax: +1-518-473-8940  
Email: FOIL@OSC.State.NY.US

## Re: FOIL Request Deepwater Wind South Fork, LLC

Dear Sir or Madam:

Pursuant to New York State Freedom of Information Law (FOIL), I hereby request a copy of each “record” of the Office of the NYS Comptroller (“OSC”) and each “agency” of the OSC (as the terms “record” and “agency” are defined in Public Officers Law §86), specifically:

1. The Power Purchase Agreement (“PPA”) between Deepwater Wind South Fork, LLC (“Deepwater”) and the Long Island Power Authority (“LIPA”) executed February 2017 (OSC contract number: C000883) together with all appendices and/or attachments referred to in the PPA including but not limited to the contract price and any increase or decrease in contract price over the term of the PPA; and
2. The PPA between Deepwater and LIPA executed November 2018 together with all appendices and/or attachments referred to in the PPA including but not limited to the contract price and any increase or decrease in contract price over the term of the PPA.

In the event that either Deepwater and/or LIPA claims that contract price(s) are “trade secrets . . . submitted . . . by a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise” (Public Officers Law § 87(2)(d)), the OSC must provide “persuasive evidence” that disclosure would cause the harm envisioned by an exception to rights of access and that a “speculative conclusion that disclosure might potentially cause harm” or similar blanket denial is insufficient to meet the burden of proof (Markowitz v. Serio, 11 NY3d 43, 51, 862 NYS2d 833 [2008]).

For the avoidance of doubt, I am not requesting any records pertaining to how the contract price is derived, records of formulae or costing information which may be considered to be legitimate “trade secrets”.

I am requesting the negotiated contract price and terms as expressed in the PPA. The subject of the PPA, the South Fork Wind Farm, is “unique” (Contracting Plumbers Cooperative Restoration Corp. v. Ameruso, 105 Misc. 2d 951, 430 NYS 2d 196, 198 [1980]) insofar as its location, capacity, technology, distance of delivery, infrastructure needs, geology, regulatory environment, etc., and the PPA, as stated in Contracting Plumbers, *supra*, has been “negotiated independently with certain benefits and concessions ... depending upon circumstances particular to” the South Fork Wind Farm. Disclosure of the contract price, therefore, would neither adversely impact negotiating positions nor substantially injure the competitive position of future projects.

This FOIL request is in the public interest and the specific interest of Long Island ratepayers who ultimately will have to pay the contract price. Revealing the terms of public contracts fosters the purpose of the Freedom of Information Law “to shed light on government decision making, which in turn both permits the electorate to make informed choices regarding governmental activities and facilitates exposure of waste, negligence and abuse” (Encore College Bookstores, Inc. v. Auxiliary Service Corporation of the State University of New York at Farmingdale, 87 NY2d 410 (1995)).

In early 2017, the deadline for submission of bids had been reached and the PPA was awarded to Deepwater. Deepwater, therefore, as the “successful bidder [has] no reasonable expectation of not having its bid open to the public” (Contracting Plumbers, *supra*). As stated in Contracting Plumbers, *supra*, and confirmed in a case involving a request for a copy of a successful proposal following an award, “Once the contract was awarded ... the terms of [the] RFP response could no longer be competitively sensitive” (Cross-Sound Ferry v. Department of Transportation, 219 AD2d 346, 634 NYS2d 575, 577 [1995]).

Furthermore, the holding company of Deepwater disclosed the contract price to the ratepayers of Rhode Island and Maryland for two of its subsidiaries, namely Deepwater Wind Rhode Island, LLC of Rhode Island (24.4 ¢/kWh with a 3.5% yearly increase) and Skipjack Offshore Energy, LLC of Maryland (13.2 ¢/kWh with a 1% yearly increase). The ratepayers of Long Island should be treated in the same way and the contract price should be disclosed as it was to the ratepayers of Rhode Island and Maryland.

The time period covered by this FOIL request is from January 1, 2017 through the date of your response to this request. I am willing to pay the applicable fee for delivery of copies of the requested records. The requested records may be delivered via email ([Si@Wainscott.Life](mailto:Si@Wainscott.Life)) or via United States Postal Service (addressed to: PO Box 792, Wainscott, NY 11975).

Thank you very much for your cooperation.

Sincerely yours,



Si Kinsella

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 \*\*\* ACTIVITY REPORT \*\*\*  
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ST. TIME	DESTINATION NUMBER	DESTINATION ID	NO.	MODE	PGS.	RESULT
01/12 14:17	17844856568		5414	AUTO RX	ECM	1 OK 00'28
01/16 13:20	4562679		1057	TRANSMIT	ECM	1 OK 00'18
01/16 17:19	17844856568		5415	AUTO RX	ECM	1 OK 00'27
01/17 17:00	7844562344		5416	AUTO RX	ECM	1 OK 00'17
01/19 12:07	4562679		1058	TRANSMIT	ECM	1 OK 00'19
01/19 18:50	4562679		1059	TRANSMIT	ECM	1 OK 00'17
01/19 20:02			5417	AUTO RX	0	NG 00'20
					0	
01/20 22:26	14039810290		1060	TRANSMIT	ECM	1 OK 00'32
01/24 13:28	4562679		1061	TRANSMIT	ECM	1 OK 00'18
01/25 14:40	7844856261		5418	AUTO RX	ECM	1 OK 00'30
01/25 20:36	4562679		1062	TRANSMIT	ECM	1 OK 00'19
01/25 20:55	4561766		1064	TRANSMIT	ECM	1 OK 00'30
01/25 20:59	4578667		1065	TRANSMIT	0	NG 00'00
					0	STOP
01/25 21:00	4578667		1063	TRANSMIT	0	NG 00'00
					0	#018
01/27 15:05	4562679		1066	TRANSMIT	ECM	1 OK 00'18
01/30 12:24	15184738940		1067	TRANSMIT	0	NG 00'35
					0	#018
01/30 12:35	15184738940		1068	TRANSMIT	ECM	2 OK 00'36
01/30 13:09	4562679		1069	TRANSMIT	ECM	1 OK 00'17
01/30 14:13	4562679		1070	TRANSMIT	ECM	1 OK 00'17
01/30 14:34	7844856261		5419	AUTO RX	ECM	1 OK 00'32