

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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.

Case No. 18-T-0604

SIMON V. KINSELLA
SUPPLEMENTAL INFORMATION TO
MOTION TO REOPEN THE RECORD

Preliminary Statement

On January 13, 2021, I filed Motion to Reopen the Record. Since that time, new fact-based, relevant and material evidence has come to light that goes directly to the basis of the need for the Applicant's facility.¹ I respectfully request that this supplemental information be incorporated by reference and considered concurrently as part of my Motion to Reopen the Record.

If the Applicant or other intervenor-parties request time and opportunity to respond as if this were a new motion, I will not object; I have standing as an intervenor-party.

¹ NY CLS Public Service Law, Article VII, § 126 (1) (a)

Background

On August 24, 2020, I submitted a FOIL request to LIPA seeking information related to the South Fork RFP.² On Friday, January 22, 2021 (at 5:24 PM), LIPA Deputy General Counsel James Miskiewicz responded to my FOIL request.³

LIPA delayed responding to my FOIL request for five months, and only after filing two appeals with LIPA Chief Executive Officer Thomas Falcone did LIPA finally comply with my FOIL request.

LIPA provided the requested records nine (9) days *after* I had filed my Motion to Reopen the Record (on January 13, 2021) and thirty days *after* final evidence had been admitted into the record (on December 23, 2020).⁴

By failing to respond to my FOIL request and waiting until *after* the evidentiary record had closed, LIPA avoided disclosing the information during this proceeding. By doing so, LIPA has denied me and other intervenors-party “reasonable opportunity to present evidence and examine and cross-examine witnesses[.]”⁵ Also, LIPA has denied the New York State Public Service Commission (the “Commission”) the opportunity to consider material, admissible factual evidence relevant to the proceeding.

LIPA’s actions fit a well-established pattern in this proceeding of delays and obfuscation

² South Fork Request for Proposals (“South Fork RFP”) issued by PSEG Long Island LLC through its operating subsidiary, Long Island Electric Utility Servco LLC as agent of and acting on behalf of Long Island Lighting Company d/b/a LIPA on June 24, 2015

³ Freedom of Information Law (“FOIL”) request for information pertaining to South Fork RFP submitted to Long Island Power Authority (“LIPA”) on August 24, 2020.

⁴ Case 18-T-0604 - Ruling Admitting Evidence by ALJ Belsito on December 23, 2020.

⁵ 16 NYCRR § 4.5 (a)

designed to prevent evidence from being entered into the record, thereby denying the Commission the opportunity of taking a hard look at the Applicant's proposal. Intervenor-parties likewise have been denied the opportunity to add to the presently incomplete evidentiary record material admissible factual evidence.

This instance serves only to highlight the glaring deficiencies in the record.

I request that this supplemental information be admitted into the record and considered concurrently with my earlier motion to Reopen the Record.

Should the Commission make its determination on whether or not to grant the Applicant a Certificate of Environmental Compatibility and Public Need ("Certificate"), now, based on an insufficient and incomplete record, its decision will be prejudiced and subject to further litigation.

Intervenor Funding

New York State Public Service Commission (the "Commission") has *not* required South Fork Wind LLC (formerly Deepwater Wind South Fork LLC, the "Applicant") to deposit funds on account for intervenors "to defray expenses incurred by ... parties to the proceeding ... for expert witness, consultant, administrative and legal fees"⁶ in this proceeding. By denying funds to intervenors, the Commission has added to the burden of effective public participation. By so doing, the Commission has stifled public involvement to the Applicant's benefit and the detriment of the public interest. To the extent that the

⁶ NY CLS Pub Ser § 122(5)(a)

Commission has denied me the intervenor funds necessary to hire a lawyer, I respectfully request a degree of latitude regarding submitting this Supplemental Information.

Discussion

This Supplemental Information and my earlier Motion to Reopen the Record (submitted January 13, 2021) go to the basis of need for the Applicant's facility. Neither submission is an attempt to undo or challenge the procurement process or its subsequent award of a power purchase agreement, and I have never made any such attempt previously as the Applicant has (falsely) claimed.

This Supplemental Information and my earlier Motion to Reopen the Record seek to add to the currently insufficient and incomplete evidentiary record information directly relevant to Public Service Law § 126 (1) and the Commission's determination on whether to grant the Applicant a Certificate, or *not*.

LIPA's withholding of evidence

On August 24, 2020, I submitted a FOIL request to LIPA seeking information related to the South Fork RFP and its subsequent PPA. LIPA withheld from disclosing information responsive to the FOIL request until *after* the evidentiary hearing had concluded and the record closed (on December 23, 2020).⁷

Nevertheless, metadata attached to each file shows that the files (listed below) were all in LIPA's possession on or before December 2, 2020 – three weeks *before* the presiding officer

⁷ Case 18-T-0604 - Ruling Admitting Evidence by ALJ Belsito on December 23, 2020.

admitted final evidence into the record (on December 23, 2020).

The files were withheld until January 22, 2021 – a month *after* the evidentiary record had closed. By delaying disclosure, LIPA prevented relevant information from being admitted into evidence, thereby rendering the Commission blind when making its determination pursuant to Public Service Law § 126 (1). The delay is not merely coincidental, but LIPA’s calculated attempt to keep out of the evidentiary record fact-based information unfavorable to the Applicant’s case.

The date when each files was created is herein listed (below). The only exception is the covering letter (created on January 22, 2021).⁸ The far-left column is the exhibit reference.

Memorandum Re: South Fork Procurement

A 1/27/2017 LIPA to OSC Re: SF RFP Procurement (created: Dec 2, 2020)

Presentations by PSEG Long Island

B 7/14/2015 PSEGLI -South Fork RFP Webex (created: Nov 23, 2020)

C 4/5/2016 PSEGLI -South Fork RFP Exec. Com, PII (created: Nov 23, 2020)

South Fork RFP: Reports

D 4/5/2016 WESC -Load Shifting Effect (rev1) (created: Oct 27, 2020)

E (undated) WESC -Load Cycle Analysis (created: Dec 2, 2020)

F (undated) WESC -Deepwater EFOR Calc (modified: Nov 23, 2020)

G (undated) Deepwater EFOR Analysis (created: Jan 20, 2017)

H (undated) Potential Proposal Interferences (created: Dec 2, 2020)

I (undated) AEG100 Finalist Selection (created: Dec 2, 2020)

J 6/23/2016 Clarifying Questions (redacted) (created: Dec 1, 2020)

⁸ Cover letter from LIPA Deputy General Counsel James Miskiewicz addressed to Simon Kinsella (Jan 22, 2021)

Contract Encumbrance Request

K 1/30/2017 AC340 – Est. Contract Value (created: Nov 23, 2020)

FOIL Appeal Responses

L 11/24/2020 LIPA to Kinsella – FOIL Appeal Resp. Falcone (created: Nov 24, 2020)

M 1/22/2021 LIPA to Kinsella – FOIL Cover Letter, Miskiewicz

Evaluation Guide

N 12/1/2015 PSEG Long Island’s South Fork RFP (created: Nov 23, 2020)

South Fork RFP: Spreadsheets

O 9/3/2020 SF RFP Proposal Receipt Log CORRUPTED (created: Nov 16, 2020)

P (undated) SF RFP PPA Matrix - Final (modified: Nov 23, 2020)

Q (undated) Avoided Trans Cost (Ph II Rev7) (modified: Jan 19, 2017)

R (undated) Avoided Trans Cost (Ph III Rev10) (modified: Jan 20, 2017)

Approval from Office of the State Comptroller & Office of the Attorney General

The executed PPA is a final contract that had been approved by the New York Office of the State Comptroller (“NY OSC”) and the New York State Office of the Attorney General (“NY OAG”) (the latter as to form). However, neither the NY OSC nor OAG would have the requisite in-house technical engineering knowledge sufficient to make technical determinations on electrical transmission design. The NY OSC and OAG would have had to rely on technical engineering advice and recommendations from either PSEG Long Island or LIPA. Neither the NY OSC nor OAG is an agency specializing in the field of electrical engineering.

Furthermore, approval from NY OSC or OAG does *not* relieve the Commission of its obligations under Public Service Law, generally, and specifically Article VII, § 126 (1). If this

were true, such routine approvals by NY OSC and OAG would defeat the purpose of an Article VII review.

Presumption of Validity

Substantial evidence exists to sustain the burden of proof required to rebut the presumption of validity attached to the South Fork RFP and its subsequent PPA with specific regard to the basis of need for the facility.⁹

The ultimate strength, credibility or persuasiveness of petitioner’s arguments are not germane during this threshold inquiry. Similarly, the weight to be given to either party’s evidence is not a relevant consideration at this juncture. Instead, in answering the question whether substantial evidence exists, a court should simply determine whether the documentary and testimonial evidence proffered by petitioner is based on “sound theory and objective data” [10] rather than on mere wishful thinking. Though the substantial evidence standard is low, it “does not rise from bare surmise, conjecture, speculation or rumor” [11].[12]

LIPA has provided substantial evidence, objectively, that I now seek to add to the evidentiary record. The evidence goes directly to the heart of whether or not there exists a basis of need for the Applicant’s facility pursuant to Public Service Law, Article VII, § 126 (1) (a).

The Applicant relies upon the presumption that the South Fork RFP and its subsequent award to the Applicant of a PPA are beyond question, and by extension, the need as defined by LIPA in the South Fork RFP and PPA are, also, beyond question. Nevertheless, there exists a

⁹ NY CLS Public Service Law, Article VII, § 126 (1) (a)

¹⁰ *Matter of Commerce Holding Corp. v Board of Assessors*, 88 NY2d 724, 732

¹¹ *300 Gramatan Ave. Assocs. v State Div. of Human Rights*, supra, at 180

¹² *FMC Corp. v Unmack*, 92 NY2d 179, 188 [1998]

substantial body of evidence provided by both the NY OSC and LIPA sufficient to sustain the burden of proof to rebut the presumption of validity attached to the South Fork RFP and its subsequent award to the Applicant of a PPA between it and LIPA.

On October 9, 2020, I submitted to the New York State Department of Public Service (“NYS DPS”) substantial evidence, including written testimony (of 52 pages) together with thirty exhibits from New York State and US agencies (of 640 pages), and a further sixteen exhibits containing offshore wind speed data from the US National Oceanic and Atmospheric Administration (NOAA) (of 8,828 pages). The evidence was submitted to NYS DPS as Testimony Part 2 – Public Interest, Need & Price.¹³

Notably, evidence submitted to NYS DPS on October 9, 2020, included ten exhibits comprising Vendor Responsibility Questionnaires (“VRQs”). Vendors participating in the South Fork RFP were required to file VRQs with the NY OSC.

On November 5, 2020, the Applicant filed a Motion to Strike Testimony that included Testimony Part 2 - Public Interest, Need & Price in its entirety. On November 23, 2020, ALJ Belsito ruled that “the Applicant’s motion to strike is granted as to Mr. Kinsella’s Direct Testimony, “Part 2., Public Interest” and is otherwise denied.”¹⁴ The entire body of evidence has been stricken from the record, permanently, at the Applicant’s behest.

I respectfully request that my Testimony Part 2 – Public Interest, Need & Price be included in the evidence record in this proceeding.

¹³ Case 18-T-0604 – Testimony Part 2 - Public Interest, Need & Price by of Simon Kinsella, October 9, 2020

¹⁴ *Id.* – Ruling on Motion to Strick Testimony of Kinsella, dated November 24, 2020 (at p. 7)

Besides reinstating the evidence that had previously been stricken from the record, I seek to submit further evidence into the record that LIPA had provided me on January 22, 2021 (that is herein listed on pages 5 - 6).

In the instant proceeding, the Applicant relies on a presumption of validity to support the basis of need for its facility. Since the PPA was awarded pursuant to the South Fork RFP and the RFP defines the basis of the need a facility must satisfy, then it logically follows that since the Applicant's facility received a PPA, it must have met the basis of need.

Still, substantial evidence provided by both NYS OSC and, now, LIPA is sufficient to sustain the burden of proof to rebut that presumption. In other words, the Applicant received a PPA without having had met the need as defined by LIPA in the South Fork RFP.

Basis of Need (South Fork RFP and PPA)

The South Fork RFP and its subsequent PPA award are *sine qua non* to the Applicant's Article VII application.

Substantial evidence is detailed (below) that rebuts claims in the Applicant's Article VII application, testimony, and claims by signatory parties' to the Joint Proposal attesting "the basis of the need for the facility[.]"¹⁵

¹⁵ NY CLS Public Service Law, Article VII, § 126 (1) (a)

The Applicant defines the need for its facility by reference to the South Fork RFP¹⁶ and its subsequent award of a Power Purchase Agreement (“PPA”).¹⁷

The Article VII application defines the basis of need as follows –

The Project, in conjunction with the SFWF, addresses the need identified by LIPA for new sources of power generation that can cost-effectively and reliably supply the South Fork of Suffolk County, Long Island, as an alternative to constructing new transmission facilities [emphasis added]. The SFWF and the Project will also ... enable DWSF to fulfill its contractual commitments to LIPA pursuant to a Power Purchase Agreement (PPA) executed in 2017 resulting from LIPA’s technology-neutral competitive bidding process [emphasis added].¹⁸

The executed Joint Proposal defines the basis of need as follows –

The Project, in conjunction with the SFWF [South Fork Wind Farm], addresses the need identified by LIPA in its 2015 technology-neutral competitive bidding process (“South Fork RFP”) for new sources of power generation that could cost-effectively and reliably supply the South Fork of Suffolk County, Long Island. Further, the SFEC will help LIPA achieve its renewable energy goals.¹⁹

In 2015, PSEG Long Island established the South Fork Supply and Load Relief Project to defer new transmission needed on the South Fork until the year 2022 and to defer transmission needed east of the Buell substation until 2030 [emphasis added].²⁰

¹⁶ South Fork Resources Request for Proposals issued June 24, 2015 (“RFP”) administered by PSEG Long Island LLC (“PSEGLI”) as agent of and acting on behalf of Long Island Lighting Company d/b/a LIPA (“LIPA”)

¹⁷ Power Purchase Agreement between then Deepwater Wind South Fork LLC (the “Applicant”) and Long Island Lighting Company d/b/a LIPA executed February 2017 (“PPA”)

¹⁸ Article VII Application, Application (at p. 5, Section D)

¹⁹ Case 18-T-0604 (Exhibit No. 180) – Joint Proposal executed September 17, 2020 (at p. 9, paragraph 10)

²⁰ *Id.* (at p. 9, paragraph 11)

Department of Public Service (DPS) Staff Panel testimony define the basis of need for the Applicant's facility as follows –

The PPA resulted from a competitive bidding process initiated by LIPA in 2015 to address a need for cost-effective and reliable new sources of power generation [emphasis added.]²¹

The South Fork RFP defines the basis of need as follows –

As an alternative to adding new transmission lines, this Request For Proposals (“2015 SF RFP”) seeks to acquire sufficient local resources to meet expected peak load requirements until at least 2022 in the South Fork, and 2030 in the east of Buell subarea.

On November 23, 2020, LIPA Chief Executive Officer Thomas Falcone defined the basis of need as one “for the purpose of enabling LIPA to meet projected peak load requirements, while avoiding to to [sic] the greatest extent possible the construction of new transmission lines or other enhancements until 2030 in the far eastern area of the South Fork (east of the Buell substation near the Village of East Hampton).”²²

The Applicant's Article VII application, DPS Staff Panel testimony, the executed Joint Proposal, the South Fork RFP, and even LIPA's Chief Executive Officer all refer to the basis of the need for the facility that can be summarized as follows –

1) To defer new transmission lines/enhancements;

²¹ Case 18-T-0604 - Department of Public Service (“DPS”) Staff Panel testimony (at p. 29, lines 5-8)

²² See Exhibit L - Letter from LIPA Chief Executive Office Thomas Falcone to Simon Kinsella dated November 23, 2020 (received November 24, 2020) (at p. 1, second paragraph).

- 2) **To acquire cost-effective energy; and**
- 3) **To acquire reliable energy to meet peak demand.**

Note: There is a fourth need - to address State energy policy goals, but this need is not addressed here as it directly relates to neither the evidence proffered here nor the subject of my Motion to Reopen the Record. The need to “serve the public interest by, *inter alia*, contributing to State energy policy goals in the State Energy Plan and Clean Energy Standard”²³ is, *nevertheless*, addressed in my Initial Brief.²⁴ The Applicant’s proposed transmission project is expressly excluded from the Clean Energy Standard (order adopted August 1, 2016).

1) The need to defer new transmission lines/enhancements

On January 27, 2017, a memorandum from LIPA to NYS OSC regarding “LIPA’s 2015 Request for Proposals for South Fork Resources” lists ten transmission enhancements.²⁵ By choosing a portfolio of proposals that includes the Applicant’s offshore wind farm (90 MW) as the only source of power generation, LIPA seeks to defer transmission enhancements (listed in the table below).²⁶ The completion dates for new transmission lines/enhancements (second column in the table) have been added subsequently from PSEG Long Island information.²⁷

<u>In-Service</u>	<u>Year</u>	<u>Completed</u>	<u>Transmission line/Enhancement</u>	<u>Years of Deferral</u>
	2019	Yes	New Canal - Southampton 69 kV underground cable	2

²³ Case 18-T-0604 (Exhibit No. 180) – Joint Proposal executed September 17, 2020 (at p. 9, paragraph 11)

²⁴ *Id.* Initial Brief of Simon Kinsella submitted to NYS DPS January 13, 2021 (at pp. 25-30)

²⁵ Memorandum from LIPA to NYS OSC, Re: LIPA’s 2015 Request for Proposals for South Fork Resources, dated January 27, 2017, (at p. 24, Table 12 - Schedule for Transmission Projects Included in Portfolio 8)

²⁶ *Ibid*

²⁷ Case 18-T-0604 – Discovery Request PSEGLI-CPW-1 (LIPA) (at p. 3)

2019	6/2021	Upgrade Wildwood - Riverhead 69 overhead circuit to 138 kV	2
2019	6/2023	Bridgethampden - Buell New 69 kV underground cable	2
2020	6/2023	Amagansett 23 kV to 33 kV Conversion	3
2020	6/2023	East Hampton 23 kV to 33 kV Conversion	3
2020	6/2023	Buell 23 kV to 33 kV Conversion	3
2021	6/2023	Hither Hills 23 kV to 33 kV Conversion	3
2022	6/2023	Culloden Pt 23 kV to 33 kV Conversion	3
2022	7/2021	2nd Riverhead - Canal 138 kV cable	2
2026	Cancelled	Canal - Wainscott New 138 kV underground Cable	4

In October 2020, the developer behind South Fork Wind LLC, Ørsted A/S, announced that the South Fork Wind project would be delayed significantly until “the end of 2023.” Furthermore, Ørsted does not expect approval from the Bureau of Ocean Energy Management (“BOEM”) until late 2021.²⁸

By the time the Applicant’s project can deliver renewable energy by late 2023, the transmission lines/enhancements for which it was supposed to be an alternative will be finished. If the Applicant’s proposed transmission facility is specifically to defer new transmission lines and enhancements, then the project is superfluous.

Clearly, the South Fork Wind project will *not* defer the need for new transmission lines or enhancement.

The primary need for additional energy generation on the South Fork was to overcome transmission constraints that prohibited energy being delivered from mid-Long Island. Under Description of Solicitation and Objectives in the South Fork RFP, it reads as follows –

²⁸ Article in Newsday titled: South Fork Wind Farm delayed until 2023 published October 28, 2020 (see <https://www.newsday.com/business/south-fork-wind-farm-delayed-1.50050231>)

*The portion of the T&D System on the South Fork of Long Island is a peninsular, semi-isolated load pocket with highly constrained transmission capabilities connecting this load pocket with the remainder of the T&D System.*²⁹

To overcome these transmission constraints, LIPA entered into a PPA whereby the Applicant would deliver energy to the LIPA-owned substation in the Town of East Hampton “[a]s an alternative to adding new transmission lines ... to acquire sufficient local resources to meet expected peak[.]”³⁰ By the time the Applicant commences operations by the end of 2023,³¹ the transmission constraints will have been resolved, thereby permitting renewable energy to come from farther western Long Island at half the price.

Furthermore, LIPA’s estimated cost for the Applicant’s facility deducts the cost savings from “[d]eferring \$513 million transmission investment [that] is projected to save \$11 to \$37 million a year[.]”³² Since there are no transmission deferrals, there are no savings of \$11 to \$37 million each year. The \$513 million in transmission enhancements deducted by LIPA have to be added back to the project’s overall cost, making the Applicant’s proposed facility even more expensive. A project that is already twice the price of Sunrise Wind will be more costly, still. In the end, these costs will be passed onto ratepayers who will suffer the consequences.

2) (a) To acquire cost-effective energy

Contained within LIPA’s recent FOIL disclosure is a Contract Encumbrance Request.³³ The request breaks down the Office of the State Comptroller’s PPA contract valuation of \$1,624,738,893. The valuation is publicly available online from NYS OSC Open Book.³⁴

²⁹ South Fork Resources Request for Proposals issued by PSEG Long Island LLC on June 24, 2015 (at p. 2)

³⁰ *Ibid*

³¹ Article in Newsday titled: South Fork Wind Farm delayed until 2023 published October 28, 2020 (see <https://www.newsday.com/business/south-fork-wind-farm-delayed-1.50050231>)

³² LIPA Board of Trustees presentation, South Fork RFP, LIPA Board of Trustees, REV Committee Briefing dated September 21, 2016 (at p. 8, Estimated Contract Costs of Recommended Portfolio)

³³ Exhibit K – CONTRACT, AC340, Estimated Valuation

³⁴ New York Office of the State Comptroller, Open Book, Contract Number: C000883 <https://wwe2.osc.state.ny.us/transparency/contracts/contractsearch.cfm>

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 ³⁵		\$594,566,400	63.4%
		South Fork Wind		Sunrise Wind		

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

³⁵ New York Office of the State Comptroller, Open Book, Contract Number: C000883
<https://wwe2.osc.state.ny.us/transparency/contracts/contractsearch.cfm>

The table (above) provides the total amount of energy expected to be delivered by the Applicant's transmission facility for each contract year, together with how much that renewable energy will cost. The first four columns are from the NYS OSC's Contract Encumbrance Request (see Exhibit K). The fifth column is the price of the same energy but from Sunrise Wind (\$80).³⁶

<u>Total Cost for the same Renewable Energy</u>	
South Fork Wind	\$1,624,738,893
<u>Sunrise Wind</u>	<u>\$594,566,400</u>
Waste	\$1,030,172,493

Sunrise Wind is 63.4% less expensive than South Fork Wind.

The prices for South Fork Wind (above) are for its 90-megawatts facility. Neither South Fork Wind nor LIPA has disclosed an agreement for expanded capacity (see earlier Motion to Reopen the Record filed January 13, 2021).

South Fork Wind does not defer the need for new transmission lines, and Sunrise Wind can deliver the same renewable energy for half the price.

There is no advantage to paying \$1.62 billion for renewable energy from South Fork Wind when LIPA can buy the same renewable energy from Sunrise Wind for \$0.59 billion.

Sunrise Wind represents a saving of approximately \$1.03 billion (over twenty years).

2) (b) To acquire reliable energy to meet peak demand

³⁶ Exhibit S – LIPA South Fork Wind Farm Fact Sheet, release on October 28, 2019 (at p. 3 see chart)

Included in the documentation provided by LIPA (on January 22, 2021) is an analysis by WESC: Calculation of Effective Forced Outage Rate of Offshore Wind (DWW100) and Offshore Wind Plus Battery (DWW100+LIE400). Project DWW100 refers to the Applicant's proposed offshore energy generation facility that is the only energy source for the proposed transmission facility. The battery (LIE400) refers to a 33 MW battery. However, LIPA did not use a 33 MW battery. Instead, LIPA chose a much smaller battery of only 5.1 MW.

The WEC report on Effective Forced Outages reads as follows –

The goal of the South Fork RFP process is to obtain resources that can serve as an alternative to transmission capacity in order to cover transmission contingencies during high loading conditions. Wind generation is inherently variable, however, and its local capacity contribution must be determined by statistical analysis. The key metric is the effective forced outage rate (EFOR), which is the weighted probability that the resource is not available at the time it is needed [emphasis added].³⁷

The report uses an EFOR rate (the effective forced outage rate) of 5% in line with “[c]onventional generation resources [that] typically have an EFOR of around 5%.” When addressing the use of offshore wind as the sole source of energy, such as that being proposed by the Applicant, the report concludes –

*On the basis of a desired EFOR of 5%, the wind alone has a very small effective capacity due to the distinct statistical possibility that it may have very low available power output at the time of a peak-period contingency. [emphasis added]*³⁸

³⁷ WESC Report (undated): Calculation of Effective Forced outage Rate of Offshore Wind (DWW100) and Offshore Wind and Battery (at p. 1, third paragraph)

³⁸ *Id.* (at p. 2, last paragraph)

In another report by WESC, the Applicant's ability to deliver energy during times of peak demand is cast in even further doubt. The WESC report refers to the EFOR analysis (above) and reads as follows –

The EFOR analysis assumed no correlation between high load and persistent low-wind conditions. Initial analysis of temperature/wind correlation in the Block Island data provided by DWW indicates that such a correlation may exist. Therefore, basing the portfolio analysis on an uncorrelated 5% EFOR basis is not believed to be excessively conservative.

Given that LIPA chose to use a much smaller battery of only 5.1 MW, or just 15% of the capacity of the battery used in the EFOR analysis (the EFOR analysis above used a battery of 33 MW), it is doubtful that the Applicant's proposed facility will deliver sufficient energy to meet peak demand on the South Fork.

In another report – South Fork RFP Deepwater Offshore Wind Proposal – that is based on data provided by Deepwater Wind, it concluded “that Deepwater Wind's offshore wind project at P90 probability level would have a May through September Peak Period unavailability (or EFOR) of 29.9% without the assistance of LI Energy Storage battery [emphasis added.]”³⁹

The report continues: “Without the [33 MW] battery, shortfalls occur on 77 of the 152 Peak Period days, or about 50% of the days.” “There are periods of up to 4

³⁹ Exhibit G – South Fork RFP Deepwater Offshore Wind Proposal, EFOR Analysis (at p. 2)

consecutive days where Wind+Battery [33 MW] shortfalls are occurring in August and September.”⁴⁰

The LIPA reports and information raise further issues that are not addressed here but are equally important. One such problem is that of thermal time constraints. Thermal constraints occur when transmission lines do not have time to cool down during periods of low demand (typically at night) due to demand for charging batteries (at night) and then continuous demand due to peak load (during the day).

The recently disclosed information provided by LIPA goes directly to the need of the Applicant’s proposed facility and the Commission’s statutory mandate to “find and determine ... the basis of the need for the facility[.]”⁴¹

Substantial evidence provided by LIPA serves to reinforce the evidence that the Applicant successfully struck from the record in its Motion to Strike Testimony.

The evidence herein shows that the Applicant’s proposed transmission facility will *not* defer the need for new transmission lines/enhancements, and such transmission lines/enhancements that were deducted from the overall cost to justify the projects high price will have to be added back to the overall cost of the facility.

⁴⁰ *Id.* (at p. 3)

⁴¹ Pursuant to Public Service Law § 126 (1) (a)

Further, the Applicant's transmission facility's high price, the burden of which will fall upon ratepayers, is \$1 billion more expensive than is the same renewable energy from Sunrise Wind. No valid reason exists, technical or otherwise, as to why the South Fork Wind facility cannot be joined together with Sunrise Wind and share the same submarine transmission system, minimize environmental impacts and save a bundle of money that could be otherwise spent on hospitals and vaccines.

Finally, the evidence shows beyond doubt that the Applicant's facility is an inferior choice of technology upon which to rely for energy to meet peak demand. When we need energy during long hot summer days, offshore wind is the least likely source to provide that energy.

Once sufficient evidence exists “based on ‘sound theory and objective data’”⁴² rather than on mere wishful thinking”⁴³ and that the “petitioner has met its initial burden and rebutted the presumption of validity ... a court must weigh the entire record, including evidence of claimed deficiencies[.]”⁴⁴

Conclusion

⁴² *Matter of Commerce Holding Corp. v Board of Assessors*, 88 NY2d 724, 732

⁴³ *FMC Corp. v Unmack*, 92 NY2d 179, 188 [1998]

⁴⁴ *Ibid*

Pursuant to Public Service Law § 126 (1): “The commission shall render a decision upon the record [and] ... may not grant a certificate ... unless it shall find and determine ... the basis of the need for the facility ... that the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations [emphasis added.]”⁴⁵

Should the Commission chose to exclude from the evidentiary record information provided by LIPA in its recent response to my FOIL request, the Commission cannot “render a decision upon the record[.]”⁴⁶

LIPA's new information shows that Sunrise Wind is a viable alternative to South Fork Wind and that it is achievable to deliver energy from farther western Long Island.

The Sunrise Wind alternative would avoid unnecessary environmental impacts such as disturbing and exacerbating existing PFAS contamination above a sole-source aquifer and within a residential neighborhood along the Applicant’s proposed construction corridor

Sunrise Wind would avoid laying sixty miles of submarine cable parallel to the South Fork's southern shoreline and avoid horizontal directional drilling (HDD) beneath the beach off Beach Lane that could destabilize the shoreline. Sunrise Wind would avoid laying a new 138-kilovolt high-voltage cable within feet of where families play and walk to and from the beach, and avoid installing

⁴⁵ Public Service Law § 126 (1) (c)

⁴⁶ *Id.* § 126 (1)

yet more electrical infrastructure and equipment in what is already an extremely dangerous substation within 100 feet of homes within a residential neighborhood the accumulative effects of which have not been considered within this proceeding.

Should relevant, admissible factual evidence be excluded from the record, the Commission will be denied the opportunity of taking a hard look at issues of need, probable environmental impact, and public interest that are necessary for it to make a determination under Public Service Law § 126 (1); and by so doing would circumvent the purpose of Article VII, circumvent judicial process, and circumvent US constitutional provisions requiring “due process of law.”⁴⁷

For the aforementioned reasons, I respectfully request that this supplemental information be included by reference and considered concurrently with my earlier Motion to Reopen the Record submitted to the Department of Public Service on January 13, 2021; and that my Motion to Reopen the Record be granted in full.

Respectfully submitted,

Simon V. Kinsella
Dated: January 29, 2021
Wainscott, New York

⁴⁷ U.S. Const. Amend. XIV; N.Y. Const. Art. I, § 6.