



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

Writer Direct: (518) 776-2580

November 12, 2019

(Via Electronic Filing)

The Honorable Richard Rivera
Albany County Family Court
30 Clinton Avenue
Albany, New York 12207

Re: *Kinsella v. Office of New York State Comptroller*, Index No. 904100-19
Supreme Court, Albany County

Dear Judge Rivera:

I write to advise the Court of a relevant change in status in this Article 78 proceeding regarding a FOIL request for pricing information in a renewable energy contract.

This morning the undersigned disclosed to Petitioner's counsel the pricing information that forms the basis of this entire proceeding. The undersigned asked Petitioner's counsel, who is now in possession of the information Petitioner seeks, to voluntarily discontinue this proceeding, and again offered to commit to writing a promise to release amended pricing, but Petitioner's counsel has not responded. Nor has Petitioner's counsel responded to messages left the previous Friday afternoon advising him that the information was forthcoming.

Petitioner has previously rejected good-faith efforts by Respondent to resolve this matter without the need for further litigation. As set forth in Respondent's Memorandum of Law in Response to the Petition (Dkt. No. 14) and the Affirmation of Helena Lynch (Dkt. No. 16), Respondent notified Petitioner's

counsel on several occasions that the contract pricing at issue in this proceeding would soon be released. *See* Dkt. No. 14 at 9-10 (ECF pages 13-14); Dkt. No. 16 at 2. Respondent further notified Petitioner, through counsel, that soon-to-be finalized amended pricing would also be released, and offered to commit these representations to a written stipulation. Petitioner rejected these efforts to reach an amicable resolution of this matter.

Respondent respectfully requests that the Court take into consideration that Respondent has honored its representation to Petitioner to make the sought-after information available, and has now released the information at issue in this proceeding. Respondent has acted in good faith and in accordance with its obligations under FOIL. Respondent further requests that the Court schedule a conference to discuss resolving this matter without the need for further litigation.

Thank you for your attention to this matter.

Respectfully submitted,

/s/ Helena Lynch

Helena Lynch

Assistant Attorney General

cc: GOVERNMENT JUSTICE CENTER (via ECF filing)
Cameron McDonald
Attorneys for Petitioner
100 State Street, Suite 410
Albany, New York 12207

From: [Cameron Macdonald](#)
To: [Si Kinsella](#)
Subject: Fwd: Kinsella FOIL - pricing
Date: Tuesday, November 12, 2019 11:22:25 AM
Attachments: [C000883 \(contract pricing\).pdf](#)

Si - I missed her voicemail and did not get an email. Regardless, the pricing information is attached.

As it turns out, Helena called me after COB Friday with some purported urgency regarding this FOIL litigation. I have no idea what could be urgent about this proceeding. Any thoughts?

Regardless, I don't know why we should need to bargain for pricing information that should be public in the first place. But I am willing to defer to you. As much as I would like to get a good precedent established, too much delay in this area could hurt your more pressing cause relating to this wind power project. - Cam

Cameron Macdonald
Government Justice Center
cam@govjustice.org
T - (518) 434-3125
C - (443) 621-8904

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----- Forwarded message -----

From: **Lynch, Helena** <Helena.Lynch@ag.ny.gov>
Date: Tue, Nov 12, 2019 at 10:19 AM
Subject: Kinsella FOIL - pricing
To: Cameron Macdonald <cam@govjustice.org>

Cam,

As a follow-up to my voicemail and email messages of last Friday, attached please find the pricing from the original contract. This is the information that your client sought through his FOIL request and the information at issue in the pending Article 78.

As I have stated several times previously, the amended pricing will be released soon, and we will be willing to enter into a stipulation to release the amended pricing as

soon as the amendment is approved if you would consent to discontinue the litigation.

Please let me know your response.

-Helena

Helena Lynch

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APPENDIX 4

CONTRACT PRICE

- I. 20 Year Term. If the Effective Date occurs:
- (x) on or prior to March 31, 2017, then the Contract Price during the Base Term shall be as set forth in Column I of Table 4-1 below; or
 - (y) after March 31, 2017, then the Contract Price during the Base Term shall be as set forth in Column II of Table 4-1 below.
- II. Extension. If the Base Term is extended pursuant to Section 2.1.2 and if the Effective Date occurred:
- (x) on or prior to March 31, 2017, then the Contract Price during the Extended Term shall be as set forth in Column I of Table 4-2 below; or
 - (y) after March 31, 2017, then the Contract Price during the Extended Term shall be as set forth in Column II of Table 4-2 below.

[remainder of page intentionally blank]

Table 4-1: Contract Price

<i>Contract Year</i>	<i>I. Contract Price (\$/MWh)</i>	<i>II. Contract Price (\$/MWh)</i>
0	\$160.33	\$177.23
1	\$168.35	\$186.09
2	\$176.76	\$195.40
3	\$185.60	\$205.17
4	\$194.88	\$215.42
5	\$200.73	\$221.89
6	\$206.75	\$228.54
7	\$212.95	\$235.40
8	\$219.34	\$242.46
9	\$225.92	\$249.74
10	\$228.18	\$252.23
11	\$230.46	\$254.76
12	\$232.77	\$257.30
13	\$235.10	\$259.88
14	\$237.45	\$262.47
15	\$237.45	\$262.47
16	\$237.45	\$262.47
17	\$237.45	\$262.47
18	\$237.45	\$262.47
19	\$237.45	\$262.47
20	\$237.45	\$262.47

Table 4-2: Contract Price

<i>Contract Year</i>	<i>I. Contract Price (\$/MWh)</i>	<i>II. Contract Price (\$/MWh)</i>
21	\$94.80	\$94.80
22	\$96.80	\$96.80
23	\$99.00	\$99.00
24	\$101.20	\$101.20
25	\$103.40	\$103.40

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of
SIMON V. KINSELLA,

Petitioner,

-against-

Index No.: 904100-19

OFFICE OF THE NEW YORK STATE
COMPTROLLER,

Respondent.

**AFFIRMATION OF
HELENA LYNCH**

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

HELENA LYNCH, an attorney duly admitted to practice before this Court,
hereby affirms the following under penalty of perjury:

1. I am an Assistant Attorney General in the Office of Letitia James, the New
York State Attorney General.

2. I submit this Affirmation in support of Respondent's response to the
Verified Petition dated July 9, 2019.

3. Annexed hereto as **Exhibit 1** is a true and correct copy of the Power
Purchase Agreement Between the Long Island Power Authority and Deepwater Wind
South Fork, LLC, dated February 6, 2017 (referred to as the "PPA").

SK - Exhibit 06 (page 8 of 9)

4. This document was produced to Petitioner in response to the November 28, 2018 FOIL request by Petitioner that is the subject of this proceeding.

5. In email messages dated August 13, 2019 and August 15, 2019, and in a voicemail message dated August 15, 2019, I notified Petitioner's counsel that, based on information provided by LIPA, the pricing he sought would be released once LIPA and Deepwater finalize and amend PPA.

6. In reviewing counsel's response to my message dated August 13, 2019, I realized that I had not made it clear that the pricing in the amended PPA will also be disclosed, in addition to the pricing in the original PPA, once the amended PPA is finalized.

7. For this reason, I left the August 15, 2019 voicemail and on that date sent a second email, making it clear that both the pricing in the original PPA and the pricing in the amended PPA will be disclosed once the amended PPA is finalized.

8. On August 21, 2019, I communicated to Petitioner's counsel an offer to commit to a written stipulation the representation that the pricing information in both the original PPA and amended PPA would be disclosed once the amended PPA is finalized.

9. I proposed that the parties submit this stipulation to the Court to be so-ordered.

10. Petitioner's counsel rejected this offer

SK - Exhibit 06 (page 9 of 9)

11. Annexed hereto as **Exhibit 2** is a true and correct copy of a letter from Jane Hall, Records Access Officer, to Mr. Si Kinsella, dated December 3, 2018.

12. Annexed hereto as **Exhibit 3** is a true and correct copy of a letter from Jane Hall to Mr. Si Kinsella, dated January 3, 2019.

13. The date on Exhibit 3 states January 3, 2018, but this date contains a typo. The letter was authored on January 3, 2019.

14. Annexed hereto as **Exhibit 4** is a true and correct copy of the text of the New York State Climate and Community Protection Act.

Dated: Albany, New York
August 26, 2019

/s/ Helena Lynch

Helena Lynch
Assistant Attorney General, of Counsel