

November 23, 2020

Simon V. Kinsella  
P.O. Box 792  
Wainscott, N. Y. 11975

Re: Response to FOIL Letter Dated November 20, 2020

Dear Mr. Kinsella,

I write in response to your letter referenced above which you have styled an appeal from LIPA's denial of your request for records pertaining to the 2015 South Fork Resources Request for Proposals (South Fork RFP). Contrary to your assertion, LIPA has not denied your request and your appeal is therefore premature.

Contrary to your letter, your FOIL does not merely seek "basic information such as the names and addresses of respondents" to the South Fork RFP. Instead, your FOIL requests all evaluation criteria, comparative analyses, correspondence, vendor responsibility questionnaires, interviews, site visit records and the like from the procurement record involving 21 proposals from 16 companies covering offshore wind, solar photovoltaic, lithium ion batteries, thermal storage, fuel cells, direct load control, aeroderivative combustion turbines, and reciprocating engines submitted for the purpose of enabling LIPA to meet projected peak load requirements, while avoiding to to 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).

Simultaneous with your FOIL, you have filed identical discovery demands in Deepwater Wind South Fork, LLC's pending application to the New York Public Service Commission for a Certificate of Environmental Compatibility and Public Need for the construction of a cable that will interconnect with LIPA's grid. See PSC Case 18-T-0604. I am advised that many of your demands have been denied by the presiding Administrative Law Judge as irrelevant to that matter.

FOIL has no relevance requirement, so LIPA recognizes its obligations to narrowly construe and apply any assertion of privileges. Nevertheless, the volume of records you seek are extensive. As you also know from your prior FOIL litigation against the New York State Office of State Comptroller, and the denial of your appeal to the State Supreme Court in Albany, County, respondents to any RFP are entitled to confidentiality protection under certain circumstances because their proposals contain commercially-sensitive, proprietary information which is expressly exempt from disclosure under FOIL. For this reason, LIPA is

obligated to review the records you seek, in some instances contact respondents who submitted the materials to the Authority under requests that their trade secrets would not be revealed in a manner that might cause them damage, and ultimately make the legal decision as to whether records may be disclosed. LIPA is endeavoring to do just that in response to your FOIL while also meeting our obligations of transparency.

To date, in the PSC matter referenced above, you have been provided voluminous, publicly available materials that are also responsive to the instant FOIL. See <https://www.lipower.org/wp-content/uploads/2019/02/2017-01-South-Fork-Board-Material.pdf>; <https://www.lipower.org/wp-content/uploads/2019/02/2018-11-South-Fork-Board-Material.pdf>. In the event additional records are ordered to be disclosed in the PSC matter, LIPA and its Service Provider will immediately comply to ensure your rights in addressing the issues in that separate matter are preserved. As for the remainder of materials you seek under FOIL, LIPA will provide full disclosure once our due diligence review is completed. In the event LIPA withholds any records, it will provide specific grounds for doing so as required under FOIL.

Meanwhile, I respectfully deny your request to treat your FOIL as having been denied. LIPA is fulfilling its legal obligations both to the public and to vendors who seek to offer services to all state agencies without fearing the very act of doing so may permanently compromise their ability to fairly compete in the marketplace. The Authority is reviewing the materials as expeditiously as possible.

Sincerely,

/s/ Thomas Falcone

Thomas Falcone

cc: Committee on Open Government