

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE
AND THE DELAWARE ENERGY OFFICE,
THE OFFICE OF MANAGEMENT AND BUDGET,
AND THE CONTROLLER GENERAL**

IN THE MATTER OF INTEGRATED RESOURCE)
PLANNING FOR THE PROVISION OF STANDARD)
OFFER SUPPLY SERVICE BY DELMARVA POWER &)
LIGHT COMPANY UNDER 26 *DEL. C.* §1007(c)) PSC DOCKET NO. 06-241
& (d): REVIEW AND APPROVAL OF THE REQUEST)
FOR PROPOSALS FOR THE CONSTRUCTION OF)
NEW GENERATION RESOURCES UNDER 26 *DEL. C.*)
§ 1007(d) (OPENED JULY 25, 2006))

ORDER NO. 7440

This 2nd day of September, 2008 the Delaware Public Service Commission ("the Commission"), Delaware Energy Office, the Office of Management and Budget, and the Controller General determine and Order the following:

1. By Order No. 7199 (May 22, 2007), the Commission, the Delaware Energy Office, the Office of Management and Budget, and the Controller General (collectively "the State Agencies") accepted Staff's proposed energy supply portfolio and directed Delmarva Power & Light Company ("Delmarva") to negotiate in good faith with Bluewater Wind LLC ("Bluewater") for a long-term power purchase agreement ("PPA") for the provision of wind power. (See PSC Order No. 7199 (May 22, 2007) at ¶¶ 51, 55.) On November 20, 2007, the State Agencies convened to consider the merits of Term Sheets outlining the proposed PPA between Bluewater and Delmarva, as well as the backup generation arrangements. By Order No. 7328 (Dec. 4, 2007), the State Agencies disaggregated the Bluewater proposal from the backup

arrangements and directed Delmarva and Bluewater to continue negotiating towards a final PPA for the procurement of off-shore wind power. (See PSC Order No. 7328 (Dec. 4, 2007) at ¶ 61.) The State Agencies further established a December 10, 2007 deadline for the completion of the negotiations. (Id. at ¶ 59.) Pursuant to Order No. 7328, Delmarva provided the State Agencies with a form PPA (the "Form PPA") on December 10, 2007. When the the Form PPA was considered by the State Agencies on December 18, 2007, the State Agencies unanimously voted to table the matter because there was not a consensus to approve the Form PPA in its then-present form. (See December 18, 2007 Tr. at 2308-2310.)

2. During May and June of 2008, Delmarva and Bluewater engaged in renewed negotiations. On June 23, 2008, Bluewater and Delmarva executed a negotiated PPA ("the Final PPA") pursuant to which Delmarva would purchase energy, capacity, and a specified quantity of renewable energy credits ("RECs") and other "environmental attributes" produced by 200 MW of installed capacity from a facility to be constructed off the coast of Rehoboth Beach - a reduction in contract size from the December 18, 2007 Form PPA of approximately fifty percent. The negotiated Final PPA offered a lower price for RECs with the application of a 350% multiplier to RECs acquired from the off-shore wind farm by Delmarva for the limited purposes of meeting Delaware's Renewable Portfolio Standards. Although many of the Final PPA's commercial terms were identical to those in the December 18, 2007 Form PPA, the final PPA provided termination rights to Bluewater for two years after execution of the contract, Delmarva covenanted not to

appeal a State Agency approval of the Final PPA as executed by the parties, and the Final PPA contained a limited most favored customer clause to protect the interests of Delmarva's ratepayers in the event that Bluewater sells energy to third parties in the future.

3. On June 25, 2008, legislation was unanimously passed by the General Assembly and signed by the Governor that: (a) established the 350% multiplier to RECs described above; and (b) provided that the costs arising out of the Final PPA will be distributed among Delmarva's entire customer base through a non-bypassable surcharge to be established by the Commission at an appropriate date in the future.¹

4. A public comment session was held on July 17, 2008 and interested parties submitted written comments regarding the Final PPA along with the future procedural process for consideration of the backup generation proposals on July 25, 2008.

5. Each party who filed written comments recommended that the State Agencies approve the Final PPA.² Delmarva stated that the Final PPA resolved several of its concerns, including cost impact, and fairness to SOS customers through the non-bypassable surcharge, as well as certain concerns about viability of the Bluewater project, based on pending land-based wind contracts that Delmarva had recently executed. (DP&L Comments at 5-6.)

¹See, Senate Bill No. 328.

²Written comments were filed by Delmarva, Staff, Conectiv, NRG, Jeremy Firestone, Alan Muller on behalf of Green Delaware, Senator George C. Bunting (commenting only on the backup generation proposals), and various members of the public.

6. Staff concluded that the Final PPA has more favorable pricing provisions - \$0.70 rate impact - due to application of the net contract costs to Delmarva's Delaware distribution customers by means of a non-bypassable surcharge, reduction in REC prices, higher forecasted energy prices, and reduction in power purchased from Bluewater. (Staff Comments at 7.) Despite concern over the 350% multiplier's potential dilution of the REC market, Staff determined that the Final PPA was commercially reasonable. (*Id.* at 8.) In light of the long-term system benefits associated with the Final PPA, Staff recommended approval of the PPA as a solution to promote long-term system benefits in the most-cost effective manner. (*Id.* at 8-12.)

7. The DPA strongly supported the limited most favored customer pricing provision of the Final PPA because it provides a level of pricing protection for Delaware's ratepayers if Bluewater offers future purchasers a lower price for energy produced by the wind facility. (DPA Comments at 4.) The DPA shared Staff's concern over the 350% REC multiplier, but determined it was necessary to bring finality to the RFP process. (*Id.* at 6-7.) The DPA asserted that its concern over the termination rights the Final PPA accords Bluewater are mitigated by New Jersey and Maryland's interest in purchasing power from the wind farm. (*Id.* at 8-10.) Accordingly, the DPA recommended approval of the Final PPA.

8. With regard to the disposition of the backup generation proposals, each party except for NRG, recommended closure of this Docket and that the Commission consider the potential addition of new generation resources in Southern Delaware in the context of the IRP

process.³ Delmarva argued that the hybrid is no longer necessary due to the reduction in size of the PPA - SOS customers only purchasing 25% of the original amount of energy - and the non-bypassable surcharge. (DP&L Comments at 7-9.) However, the remaining commenters agreed that the investigation of new generation assets remains necessary in light of reliability concerns. (See Staff Comments at 11; DPA Comments at 10; NRG Comments at 2-3; CESI Comments at 3; DEUG Comments at 2; Muller Comments at 2; Firestone Comments at 3-4.) With the exception of NRG, the parties argued that PSC Docket No. 07-20 is the more appropriate docket because of the comprehensive and continual evaluation of the energy portfolio under § 1007(c), it is a formal evidentiary proceeding akin to a rate case, and the issue of in-state new generation resources is a complex energy planning issue. (See Staff Comments at 11-12; DPA Comments at 10-11; DEUG Comments at 3-5; DPL Comments at 9-11; Muller Comments at 2; Firestone Comments at 3-4.)

9. NRG argued that it was committed to finalize a PPA for a backup facility to provide wind firming power with either a combined cycle facility or a peaking facility. (NRG Comments at 3-4.) Since May 2007, NRG asserted that nothing has changed with respect to Delaware's need for a hybrid approach to solve its future energy needs and achieve the objectives of the EURCSA as set forth in PSC Order No.

³If the backup proposals are considered in the RFP process, Conectiv argued that the State Agencies should select its proposal because it is less expensive than NRG's combined cycle proposal and offers superior technology. (CESI Comments at 4-5.) Conectiv further argued that NRG should not be permitted to submit a peaking bid to compete against Conectiv's now-public bid originally submitted on the assumption that it was a sealed bid competition rather than a multiple round bid process. (*Id.* at 6.)

7199 (May 22, 2007). (*Id.* at 2.) According to NRG, wind is not a direct substitute for dispatchable generation in meeting energy demand. (*Id.* at 3.) NRG further observed that the backup component of the hybrid will contribute to system reliability. *Id.* In light of the foregoing, NRG urged the State Agencies to keep this Docket open as a mechanism for reviewing the need for new generation resources in Southern Delaware. (*Id.*)

10. On July 31, 2008, the State Agencies convened to consider the Final PPA and the future disposition of negotiations with NRG and Conectiv regarding additional generation resources in Sussex County. The State Agencies unanimously decided by voice vote to approve the Final PPA.

11. The State Agencies determined that the Final PPA offered the greatest long-term benefits in the most cost-effective manner. In determining that the Final PPA fulfilled the intent of the EURCSA, the State Agencies recognized the significant effort of the participants in the docket, the State Agencies themselves, and the public.

12. With regard to consideration of the backup component of the hybrid energy portfolio approach presented by Staff in its May 2, 2007 report, the State Agencies determined the formal evidentiary process in PSC Docket 07-20 that utilizes the expertise of the Commission and its Staff was better suited for the complex investigation of the potential addition of new generation resources in Sussex County. The State Agencies observed that the General Assembly has promulgated additional legislation, the size of the wind PPA has changed, other states such as New Jersey and Maryland have expressed interest in

buying power from Bluewater's facility, and Delmarva has solicited bids for on-shore wind projects since Staff proposed the hybrid approach in May 2007. Accordingly, the State Agencies concluded that the IRP process with full public input is the most appropriate venue to evaluate the complex issue of new generation resources in Southern Delaware.

Now, therefore, **IT IS ORDERED:**

1. That the Purchased Power Agreement executed between Bluewater Wind LLC and Delmarva Power & Light Company on June 23, 2008 is hereby approved.

2. That Delmarva Power & Light Company is authorized to recover its costs incurred as a result of the Final Purchased Power Agreement through its rates unless, after Commission review, any such costs are determined by the Commission to have been incurred in bad faith, are the product of waste or out of an abuse of discretion, or in violation of law.

3. That the Commission will consider the potential addition of new generation resources in Southern Delaware in PSC Docket No. 07-20.

4. That, for the reasons stated above, the Docket is closed.

BY ORDER OF THE DELAWARE PUBLIC SERVICE COMMISSION,
THE DELAWARE ENERGY OFFICE,
THE COMPTROLLER GENERAL, AND THE
DIRECTOR OF THE OFFICE OF MANAGEMENT & BUDGET

DELAWARE ENERGY OFFICE

PUBLIC SERVICE COMMISSION

/s/ Philip J. Cherry

/s/ Arnetta McRae
Chair

/s/ Joann T. Conaway
Commissioner

THE CONTROLLER GENERAL

/s/ Russell Larson

/s/ Jaymes B. Lester
Commissioner

**DIRECTOR OF THE OFFICE OF
BUDGET & MANAGEMENT**

/s/ Jennifer W. Davis

/s/ Dallas Winslow
Commissioner

/s/ Jeffrey J. Clark
Commissioner

ATTEST:

/s/ Norma J. Sherwood
Acting Secretary