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April 9, 2007

VIA E-MAIL, EXPRESS MAIL, & HAND DELIVERY

The Honorable Arnetta McRae
Commission Chair

Ms. Joann T. Conaway
Commissioner

Dallas Winslow
Commissioner

Jaymes B. Lester
Commissioner

Jeffrey J. Clark
Commissioner

Delaware Public Service
Commission
861 Silver Lake Boulevard
Cannon Building Suite 100
Dover, Delaware 19904

John Hughes
Secretary
Delaware Department of Natural Resources and Environmental Control

J. J. Davis
Office of Management & Budget

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Russell T. Larson
Controller General

Re: Additional Comments to RFP Evaluations.

Dear Honorable Members of the RFP Evaluation Committee:

The New Energies Opportunities, Inc consultant team (the "Consultant") issued its "Interim Report on Delmarva Power IRP in Relation to RFP" on April 4, 2007 (the "Report"). Since the report touches on the RFP process in many respects, this letter provides supplemental comments to those previously submitted by Bluewater Wind Delaware LLC ("Bluewater") concerning the evaluation of the bid proposals.

This Report brings to the surface the stark reality of the underlying tension and conflict between Delmarva's interest and those of Delaware consumers. In so doing, it highlights and exposes the dire imperative of the four State Agencies to assert their unrivalled legal authority granted to them by the General Assembly and the Governor, so that the proper balance between Delmarva's desire to maximize profits and the interests of Delaware consumers can be realized.

By way of background, in the face of crippling price spikes, the Delaware General Assembly took the deliberative step of mandating an RFP process for new Delaware-based generation "to immediately attempt to stabilize the long-term outlook for standard offer supply in the DP&L service territory". 26 Del. C. § 1007(d). For its part, Delmarva has no interest in such stabilization, as it simply passes on such costs to Delaware consumers and is not faced with any of the actual risks associated with long-term contracts which are necessary to finance new generation facilities.

The key difference is that short term risks are perceived by some utilities and some Wall Street analysts as less risky than long term risks. This might be true in a stable-priced regime with no future environmental compliance costs. But, as the 16-year trading history of natural gas, and 16 years of PJM electricity prices show prices have steadily increased. Now, carbon costs will be fully accounted, exposing rate payers further. Simply stated, Delmarva has no

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incentive to enter into an agreement that saves the ratepayers money over the long-term and has every incentive to maximize profits at the customer's expense by purchasing power for the short-term. As such, Delmarva opposed this mandate in Legislative Hall but the members of the General Assembly rightly passed it over their objections.[1]

Having lost the battle in Legislative Hall, Delmarva re-engaged with renewed vigor at the start of this Public Service Commission process. Examples of Delmarva's efforts to frustrate this process are well documented in the media and the PSC record and they include the many Request for Proposals hearings, filed comments, and unsubstantiated over-market cost estimates in the IRP process. In addition with respect to the IRP process, the State's Consultant has found that Delmarva's approach to that important process "reflects a clear predisposition against the bids submitted to the RFP or for that matter against other long-term power purchase contracts". Report at 6.

This approach is particularly evident with respect to Delmarva's refusal to address properly the "potential magnitude of the risk that energy prices would shift higher on a long-term basis, due to higher natural gas prices or a regional shortfall in capacity relative to demand . . ." Report at 6. The Consultant discovered the reasons for this failure, finding that: "[b]ased on our discussion, we believe that a major concern of Delmarva was that it did not want to produce a scenario that would create a record to support selection of any of the bids for a long-term contract . . ." Report at 33. Finally, the Consultant brought this point home when leveling this charge at Delmarva:

> Finally, it has been our experience that Delmarva perceives risk management as a "one way" risk for its shareholders - - a concern that it be required to enter into a long-term contract whose costs would exceed market prices, ultimately creating the potential for less than full cost recovery. Proper implementation of its responsibilities under EURCSA requires a *far more balanced view* of risk assessment and risk management, with a focus on risks from the perspective of the Company's customers.
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> Report at 38 (emphasis added).

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[1] The reality is that much more severe measures, such as re-regulating the industry in total, were contemplated but Members of the General Assembly, at some political risk, adopted the less dramatic approach espoused in the Electric Utility Customer Supple Act of 2006 ("EURCSA").

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Thus, the Consultant has properly surfaced what has been clearly evident throughout this process - - Delmarva seeks to maximize its profits and minimize its risk - - even if the consumer would benefit by a long-term approach - - and will go to great lengths to fight any effort that may run counter to that corporate objective. It is the State Agencies proper role to promote the public interest.

EURCSA and the RFP process are the means to achieve these public ends. It is critical to the citizens of this State that the State Agencies implementing this process not let the opportunity to correct this imbalance pass. EURCSA provides a unique legal framework to allow the State Agencies to mandate a "more balanced view" and require Delmarva to diversify its portfolio and its risks with a long-term fixed price wind contract. 26 Del. C. § 1007. EURCSA was enacted with the consumer's interests in mind after they had suffered the punishing impacts of deregulation which unduly benefited utility interests. In many ways, this is a once-in-time opportunity to get back some of what was lost with electric deregulation - - a balanced approach to providing electricity to Delaware consumers. That opportunity goes away, in large part, if this RFP process is allowed to pass without consequence.

Having said that, there is no logic in forcing a long-term contract on Delmarva that does not make sense for Delaware. For example, NRG's proposals are clearly not environmentally sound, are too costly and provide no price stability. Conectiv's proposal provides little or no price stability, and has large carbon emissions that cannot be captured and sequestered. Bluewater's proposal has scored the highest on price stability and is the only proposal that moves the State forward in a significant way on the issue of reducing global warming and sea level rise that threatens to swamp one-third of Delaware.

The main criticism of the Bluewater proposal, amazingly, is the effect on price, but that allegation is based completely on Delmarva's estimates of future unknowable natural gas prices and carbon reduction costs. These are the same estimates that the IC highlighted as inappropriately low. Bluewater notes as only one of many gross inconsistencies that estimates produce, the latest State Consultant on April 4, 2007 found that the "additional cost above market, NPV of nominal" is $490 Million. Yet Delmarva repeatedly, in hearings and filings, found a $2 Billion above-market cost. How to explain the $1.5 Billion difference, except that both are indefensible estimates.

Bluewater notes for the record that the PSC posted the 2006 SOS auction prices showing a mean value of $103.00 per MWh for the 37 month contract, i.e., the wholesale electricity price. The lowest winning bid block was $99.60 per MWh and the highest was $117.60. (PSC, SOS Report, February 28, 2006) As the SOS report lacked further documentation, Bluewater leaves it to the State

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Agencies to compare this with Bluewater's evaluated price of $98.21 in 2005 dollars.

In conclusion and most importantly, the decision that the State Agencies must make on May 8, 2007 is not a final decision on this matter. It is merely a decision to require Delmarva to negotiate in good faith a contract with a bidder. The final contract requires full review and approval by the State Agencies. For its part, Bluewater is very confident that it can resolve all of the stated concerns with its bid should these negotiations move forward. Of course, if that turns out not to be the case, the State Agencies are free to reject or modify the contract in whole or in part. In short, this process to date has been about evaluating the various bidders and their proposals to determine whether there is a real opportunity for the State of Delaware and one that is worthy of detailed contract negotiations.

This opportunity is truly without parallel or precedent under the modern legal deregulated framework in which Delmarva operates. There may not be another opportunity for the State Agencies to redress the balance properly between Delmarva's corporate imperatives of profit and risk mitigation and the public benefits due Delaware's consumers. Moreover, there is nothing to be lost by allowing Bluewater the opportunity to negotiate out the remaining issues, as the State Agencies have final sign-off on the contract. Indeed, given the significant opportunity before the State to make real progress toward reliance on clean, renewable energy, there is little reason not to allow this opportunity to negotiate.

In closing, there has been sufficient study of this issue and millions of dollars spent on all sides of this RFP. It now comes down to whether Bluewater and Delmarva can come to contract terms that make economic and environmental sense for Delaware consumers. If allowed to negotiate, Bluewater is highly confident that we can reach such terms. We respectfully request that we be permitted to negotiate with Delmarva subject to State Agency review and approval.

Respectfully submitted,

Peter D. Mandelstam

Peter D. Mandelstam, President
Bluewater Wind Delaware LLC

cc: E-mail service list for RFP and IRP Dockets